

Joint Select Committee on Parliamentary Procedure

Reforms to parliamentary processes and procedures

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How to contact the committee

Members of the Joint Select Committee on Parliamentary Procedure can be contacted through the Committee Secretariat. Written correspondence and enquiries should be directed to:

Mr Russell Grove, Clerk of the Legislative Assembly

Joint Select Committee on Parliamentary Procedure

Parliament House, Macquarie Street

Sydney New South Wales 2000

Internet www.parliament.nsw.gov.au

Email Russell.Grove@parliament.nsw.gov.au

Telephone (02) 9230 2222

Facsimile (02) 9230 2333

Terms of reference

- (1) A joint select committee, to be known as the Joint Select Committee on Parliamentary Procedure, be appointed to inquire and report into reforms to Parliamentary processes and procedures that are being proposed to be implemented by the Commonwealth Parliament.
- (2) The committee is to consider the extent to which those proposed reforms have already been applied in New South Wales and, to the extent that they have not, to consider and recommend whether those or related reforms ought to be adopted in New South Wales, including, in particular:
 - (a) provisions for the Presiding Officers to be independent of the Government and, if the Presiding Officer is a member of the Government, for the Deputy Presiding Officer to be drawn from the Opposition;
 - (b) time limits that apply on questions and answers in Question Time in both Houses, and requirements for answers to be responsive and relevant to questions asked;
 - (c) the entitlement of Opposition leaders to ask supplementary questions;
 - (d) the time periods that are allocated to debates, Members' speeches and to the consideration of private members' bills;
 - (e) the oversight of bills by committees;
 - (f) the number of sitting weeks; and
 - (g) any related matters.
- (3) The committee report on the outcome of any such inquiry within four weeks of the date of this resolution being agreed to by both Houses.
- (4) Notwithstanding anything contained in the standing orders of either House, the committee consist of 12 members, as follows:
 - (a) Six members of the Legislative Assembly of whom:
 - (i) three must be Government members,
 - (ii) two must be Opposition members,
 - (iii) one must be an independent member, and
 - (b) Six members of the Legislative Council of whom:
 - (i) one must be a Government member,
 - (ii) two must be an Opposition members;
 - (iii) two must be cross-bench members; and

(iv) one must be the President who is to be an ex official member.

- (5) That the members be nominated in writing to the Clerk of the Legislative Assembly and the Clerk of the Legislative Council by the relevant party leaders and the independent and the cross-bench members respectively. In the absence of any agreement concerning Legislative Council representation on the committee the matter is to be determined by that House.
- (6) The Speaker be appointed to serve on such committee as the Legislative Assembly independent member and be a Joint Chair of the committee.
- (7) That the President be a Joint Chair of the committee.
- (8) Notwithstanding anything contained in the standing orders of either House, at any meeting of the committee any four members of the committee is to constitute a quorum, provided the committee meets as a joint committee at all times.
- (9) Notwithstanding anything contained in the standing orders of either House, the relevant Minister(s) be required, within two weeks of the report of the committee being tabled, to report to the Houses on what action, if any, the Government proposes to take in relation to each recommendation of the committee.
- (10) The committee must meet with representatives of the Standing Orders and Procedure Committee from the Legislative Assembly and the Procedure Committee from the Legislative Council and may accept submissions from members of both Houses.
- (11) A message be sent acquainting the Legislative Council of the resolution, requesting the Legislative Council to agree to a similar resolution, to appoint three of its members to serve with the members of the Legislative Assembly upon the committee, and to fix a time and place for the first meeting.

These terms of reference were referred to the Committee by resolution of both Houses.¹

¹ *LA Votes and Proceedings* (22/09/10) 2317-2319; (23/09/10) 2329-2331, *LC Minutes* (23/09/10) 2080-2083.

Committee membership

The Hon Richard Torbay MP	Independent	<i>Joint Chair</i>
The Hon Amanda Fazio MLC	Australian Labor Party	<i>Joint Chair</i>
The Hon John Aquilina MP	Australian Labor Party	
The Hon David Campbell MP	Australian Labor Party	
The Hon Tanya Gadiel MP	Australian Labor Party	
The Hon Don Harwin MLC	Liberal Party	
Dr John Kaye MLC	The Greens	
The Hon Trevor Khan MLC	The Nationals	
The Revd the Hon Fred Nile MLC	Christian Democratic Party	
Mr Daryl Maguire MP	Liberal Party	
Mr Adrian Piccoli MP	The Nationals	
The Hon Mick Veitch MLC	Australian Labor Party	

Table of contents

	Foreword	xi
Chapter 1	Introduction and executive summary	1
	Background to the Inquiry	1
	Conduct of the Inquiry	1
	Areas of agreement between both Houses	1
	Issues specific to each House	2
	Implementation	3
	Summary of findings and recommendations	3
Chapter 2	The views of the Members of the Legislative Assembly	11
	Introduction	11
	An expanded Selection Committee	11
	The independence of the Speaker	12
	Acknowledgement of Country	13
	The operation of Question Time	14
	Matters of Public Importance	16
	Private members' business and private members' bills	16
	Adjournment Debate	17
	90 second statements	18
	Ministerial Statements	18
	The committee system	19
	Numbers of committee, committee membership and committee of chairs	19
	Non-Government Chair of the Public Accounts Committee	20
	Pre-legislative scrutiny of Bills	21
	Responses to committee reports and short statements by Chairs	22

Consideration of Bills	24
Recommittal of votes	24
Appropriation Bills	25
Commencement of legislation	25
Sitting days	26
Resources of the Parliament	27
Parliamentary Budget Office	27
Funding and staffing of Parliament	28
Pairing arrangements	28
Parliamentary Integrity Commissioner	29
Establishment of a Formal Code of Conduct	30
A Register of Lobbyists	31
Concluding comments	31
Chapter 3 The views of the Members of the Legislative Council	33
An expanded Selection Committee	33
The independence of the Presiding Officers	34
Proposal for the Chair to be paired	37
Participation of the Chair in private members' business	39
Acknowledgement of Country	39
Operation of question time	40
Time limits for questions and answers and supplementary questions	40
Duration of questions	40
The share of questions	41
The rules for questions	41
The relevance of answers	42
Points of order and notes	44

Matters of public importance	44
Private members' business and private members' bills	45
The time available for consideration of private members' business	45
The selection of private members' business	46
Adjournment	48
90 second statements	48
Ministerial statements	49
The committee system	49
The oversight of bills by committees	49
The operation of the Legislative Review Committee	53
Response to committee reports	54
Debate on committee reports	55
Time limits for the consideration of bills	56
Recommittal of votes	56
The definition of appropriation bills	57
Commencement of legislation	58
Review of the number of sitting days and the time available for debate	59
Resources of the Parliament	62
Pairing arrangements	63
A Parliamentary Integrity Commissioner	64
Establishment of a Formal Code of Conduct	65
A register of lobbyists	66

Appendix 1 Agreement for a Better Parliament: Parliamentary Reform	67
Appendix 2 Minutes	77

Foreword

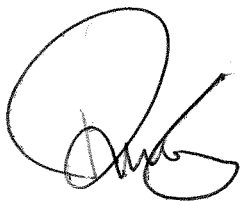
This inquiry arose out of proposals for reform of the Commonwealth House of Representatives contained in the 'Agreement for a Better Parliament: Parliamentary Reform', which was developed following the 2010 Federal Election and the return of a minority Labor Government.

The 'Agreement for a Better Parliament' was referred to this Joint Committee to allow the Parliament to investigate whether there are reforms to the practices and processes of the House of Representatives that could usefully be adopted by either or both of the Houses of the New South Wales Parliament. This is the first time such an approach has been taken in New South Wales, and was an opportunity to consider parliamentary reform proposals here in New South Wales from a new perspective.

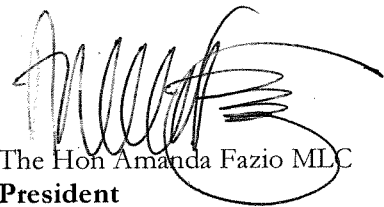
In this report, the Committee notes areas in which the two Houses of the New South Wales Parliament have already adopted the reforms outlined in the 'Agreement', areas where each House could potentially undertake further reforms, and proposals in the 'Agreement' which are not suitable for implementation by the two Houses. As a general statement, however, many of the reforms outlined in the 'Agreement' have already been implemented by the Houses here in New South Wales. Other proposals have merit and warrant detailed examination by the Procedure Committees of the respective Houses, either in this Parliament or the next.

The report also contains certain recommendations for the Government to consider. We also note that the Government has introduced the Parliamentary Budget Officer Bill 2010, which has already passed through the Legislative Assembly and is now before the Legislative Council for consideration.

We would like to thank our fellow Committee members for their work on this inquiry, which was conducted within a very tight timeframe. Thanks also to the members of the committee secretariat from both Houses who supported the work of the Committee.



The Hon Richard Torbay MP
Speaker



The Hon Amanda Fazio MLC
President

Chapter 1 Introduction and executive summary

Background to the Inquiry

- 1.1 This inquiry was referred to the Joint Select Committee on Parliamentary Procedure by resolution of the two Houses on 23 September 2010. The resolution required the Committee to ‘inquire and report into reforms to Parliamentary processes and procedures that are being proposed to be implemented by the Commonwealth Parliament’. This is a reference to the ‘Agreement for a Better Parliament: Parliamentary Reform’, developed following the 2010 Federal election. A copy of the Agreement is at Appendix 1.

Conduct of the Inquiry

- 1.2 In approaching the inquiry, the Committee was cognisant of the fact that Section 3 of the *Constitution Act 1902* constitutes the Legislative Assembly and the Legislative Council as separate and sovereign Houses of the New South Wales Parliament. Their membership and electoral arrangements are very different, as are their practices and procedures. Of note, each House has adopted distinct Standing Orders setting out their rules of procedure under section 15(2) of the *Constitution Act 1902*.
- 1.3 For this reason, at the Committee’s first meeting on 6 October 2010, the Committee resolved to divide into two working groups made up of the Members of the respective Houses. Each working group was to consider the application of the reforms proposed in the ‘Agreement for a Better Parliament’ to their particular House.
- 1.4 The outcome of this process is shown in the Table at the end of this Chapter, which lists the reforms proposed in the ‘Agreement for a Better Parliament’ and the response of the two working groups representing the Legislative Assembly and the Legislative Council. Further details are subsequently provided in Chapter 2 (The views of Members of the Legislative Assembly) and Chapter 3 (The views of Members of the Legislative Council).

Areas of agreement between both Houses

- 1.5 Inevitably, the two working groups adopted different positions on certain reforms contained in the ‘Agreement for a Better Parliament’. However, it is important to emphasise areas of commonality from the working groups of both Houses. Of note, one of the principal objectives of the ‘Agreement for a Better Parliament’ is the reform of Question Time in the House of Representatives. The two working groups share this perspective. The Council has already introduced time limits for questions and answers and supplementary questions. The Legislative Assembly working group supported the introduction of time limits for answers in the Assembly. The Council working group also supported further examination of the relevance of answers. At the same time, Members of both Houses did not support the proposals to limit the taking of points of order during Question Time and to limit the use of notes by ministers in answering questions.

1.6 Another of the principal objectives of the ‘Agreement for a Better Parliament’ is to increase the independence of the Speaker of the House of Representatives. Both working groups noted that the traditions in the NSW Parliament are for the Speaker and President to be independent and impartial, but not necessarily apolitical. In this context, the proposed pairing arrangements were not supported by either working group in their current form, on the basis that they would not necessarily increase the independence of the Presiding Officers.

1.7 Other areas of broad commonality between the two Houses include:

- The Acknowledgement of Country, already in place in both Houses.
- Debate on matters of public importance, already in place in both Houses.
- The Code of Conduct for Members, already in place in for both Houses, and regularly reviewed by the respective Privileges Committees of the two Houses.
- Arrangements for ministerial statements, already in place in both Houses, although the Council working group would support the extension of this arrangement to cross-bench members if an appropriate mechanism could be found.
- Opposition from both working groups to 90 second statements, on the basis that both Houses have alternate arrangements for members to raise matters in the House.
- Support from both working groups for the retention in both Houses of the current time limits for the consideration of bills.
- Opposition from both working groups to the recommittal of votes.
- Support from both working groups for the list of unproclaimed legislation, regularly tabled in both Houses, to include reasons as to why the legislation has not been proclaimed. The Council working group also advocate adoption of a commencement provision in all bills whereby if the act is to commence by proclamation, but has not commenced within 6 or 12 months after assent, it commences automatically.
- Support from both working groups for the retention of the current sitting arrangements and time limits on debate in both Houses.
- Support from both working groups for placing the funding and staffing arrangements of the Parliament on a more secure and independent footing.
- Support from both working groups for the proposal for the introduction of a Parliamentary Integrity Commissioner to be considered by the Privileges Committees of both Houses.

Issues specific to each House

1.8 The working groups also adopted certain proposals for reform specific to their particular Houses.

1.9 The Assembly working group raised issues concerning the Chair of the Public Accounts Committee and the introduction of a requirement for a Minister to provide an explanation where a response to a committee report is not received within the required 6 months.

- 1.10** The Council working group supported further examination of the merits of a Selection of Business Committee, especially as it may relate to the management of private members' business and debate of committee reports in the Council. The Council working group also advocated further examination of the merits of some of the reforms to committees listed in the 'Agreement for a Better Parliament', the merits of defining the meaning of appropriations bills 'for the ordinary annual services of the Government'.

Implementation

- 1.11** Whilst both the Assembly and Council working groups have made some recommendations for immediate reform, in most instances it has been recommended that matters be examined further by the Procedure Committees of the respective Houses. In part, this reflects the tight time frame for the Committee's inquiry.

- 1.12** Members of the Assembly working group indicated that the following matters raised in this report may be taken to the Legislative Assembly Standing Orders and Procedure Committee immediately:

- Providing for two Assistant Speakers, one Government Member and one non-Government Member.
- Providing for the Speaker to nominate 4 Temporary Speakers, two Government Members and two non-Government Members.
- Placing a five-minute limit on answers to questions asked in the House.
- Requiring the Chair of the Public Accounts Committee to be a non-Government Member.
- Requiring ministers to provide an explanation to the House for a late response to a committee report.
- Requiring ministers to provide an explanation to the House for a late response to a petition with 500 or more signatures.
- Requiring the list of unproclaimed legislation tabled by the Speaker 90 days after assent to include the reasons why the legislation remains unproclaimed.

- 1.13** Members of the Council working group note that issues such as the merits of a Selection or Business Committee, or the adoption of new arrangements concerning the management of private members' business, are very complex, and could not realistically be reviewed and trialled in the current Parliament. Accordingly, the Council working group has made recommendations for review by the Legislative Council's Procedure Committee in the new Parliament.

Summary of findings and recommendations

- 1.14** The response of the two working groups to each of the reforms contained in the 'Agreement for a Better Parliament' is set out below, with further details specific to each House in Chapters 2 and 3.

Table 1 Summary of responses

Reforms proposed in the ‘Agreement for a Better Parliament’	Legislative Assembly response	Legislative Council response
An expanded Selection Committee	The Legislative Assembly does not currently have a Selection Committee. It was considered that the current arrangements in place for determining general business, which provides opportunities for reordering are adequate.	The merits of the Council trialling a Selection or Business Committee, for example for dealing with private members’ business and committee reports, should be considered by the Legislative Council’s Procedure Committee in the new Parliament.
The independence of the Presiding Officers	<p>The tradition of the House has been for the Speaker to be independent and impartial, but not necessarily apolitical. The <i>Constitution Act 1902</i> was amended in 2007 to permit the Speaker, when not presiding, to take part in any debate or discussion and vote on any question. This includes being able to vote on any question that may arise during private members’ business.</p> <p>The election of the Speaker, Deputy Speaker and Assistant Speakers is a matter for the House. However, the appointment of two Assistant Speakers is supported, with one being from the Government and the other a non-Government member. In addition, four temporary Speakers should be appointed with two being Government members and two being non-Government members. This matter should be further considered by the Standing Orders and Procedure Committee.</p> <p>In relation to pairing arrangements for Presiding Officers it was noted that such arrangements would not increase the independence of the Speaker or the Deputy Speaker.</p>	<p>The tradition of the House has been for the President to be independent and impartial, but not necessarily apolitical. The proposal to pair the presiding officers would not increase their independence, unless they exercised their casting vote according to the traditional conventions. The recent trend in legislative arrangements for Houses elected according to a proportional system of voting is to give their presiding officers a deliberative vote rather than a casting vote when in the Chair.</p> <p>There are already provisions in the Legislative Council for the President to participate in debate on the floor of the House on private members’ business, as well as any other item of business.</p>

Acknowledgement of Country	Already in place.	Already in place.
The operation of Question Time	<p>A time limit on answers of up to five minutes should be introduced. This matter should be further considered by the Standing Orders and Procedure Committee.</p> <p>The current arrangements for supplementary questions, the rules for questions, the requirements for relevant answers and the proportionate share of questions are adequate and do not need amending.</p> <p>The proposals to limit the taking of points of order during Question Time and to limit the use of notes by ministers in answering questions are not supported. However, consideration should be given to providing the Speaker with discretion to stop the clock if spurious points of order are taken.</p>	<p>Reforms to the operation of Question Time relating to time limits for questions and answers, supplementary questions and the duration of Question Time are already in place in the Legislative Council.</p> <p>In the Legislative Council, questions are shared equally between Government, Opposition and cross-bench members. Changing the current practice to reflect proportionate shares would involve a reduction of questions for cross-bench members. This approach is not supported.</p> <p>The merits of further reforms to the operation of Question Time, notably to the relevance of answers, should be considered by the Legislative Council's Procedure Committee in the new Parliament.</p> <p>The proposals to limit the taking of points of order during Question Time and to limit the use of notes by ministers in answering questions are not supported.</p>
Matters of public importance	Already in place.	Already in place.

Private members' business and private members' bills	The Legislative Assembly already provides priority for Private Members' Business at certain times on Thursday and Friday. The current procedures for determining the order of private members' business are considered to be working effectively and no changes are required.	Reform of the current system of managing private members' business in the Legislative Council is supported. The merits of various reform items, including the option of a Selection or Business Committee, should be considered by the Legislative Council's Procedure Committee in the new Parliament.
Adjournment debate	Not supported as other procedures are in place such as private members' statements which enable Members to raise broad ranging issues.	Already in place.
90 second statements	Not supported as provision is made for private members' statements, of up to 5-minutes duration, to be given each sitting day.	Not supported. In the Council, members already have an opportunity to raise constituency matters in the adjournment debate.
Ministerial statements	<p>The Legislative Assembly Standing Orders already provide for ministerial statements of unlimited duration and for the Leader of the Opposition or member deputed to make a response for up to the same period of time as the statement.</p> <p>The House can grant leave to permit more than one member to address the House in response to a ministerial statement. It was considered that this should remain a matter for the House to determine.</p>	<p>The Legislative Council has already adopted provisions for the Leader of the Opposition, or a member nominated by the Leader of the Opposition, to speak to a ministerial statement for a period of time not exceeding the time taken by the minister in making the statement.</p> <p>The extension of this provision also to provide a right of reply to a representative of the cross-bench would be supported in principle, if an appropriate mechanism could be developed for the cross-bench members of the Council to agree on a representative to speak in reply. This should be considered by the Legislative Council's Procedure Committee in the new Parliament.</p>

The committee system	<p>The Legislative Assembly has a different committee system to the House of Representatives. It is considered that no changes should be made to the Legislative Assembly committee system at this stage.</p> <p>Changing the number of members on committees, providing for supplementary members, and establishing a formal committee of chairs are not supported.</p> <p>The Legislative Assembly Members did not form a unanimous view on the issue of whether the Chair of the Public Accounts Committee should be a non-Government member. This matter should be further considered by the Standing Orders and Procedure Committee.</p> <p>The proposal to have pre-legislative scrutiny of bills is not supported.</p> <p>The Legislative Assembly Standing Orders currently require the Government to respond to a committee report within 6 months of the report being tabled. It is proposed that Standing Order 303A be amended to require the responsible Minister to provide an explanation for a late response to a committee report in the same way they are required to explain why an answer to a question without notice is late. This matter should be further considered by the Standing Orders and Procedure Committee.</p> <p>In addition, to ensure consistency in the procedures of the House the Legislative Assembly Members were of the view that Standing Order 125 should be amended to provide for the Minister to advise the House of any reasons for a late response to a petition that has</p>	<p>Procedures for the more regular referral of bills to committees, and the potential impact of any such changes on the Council's committee system and the passage of legislation, should be considered by the Legislative Council's Procedure Committee in the new Parliament.</p> <p>A new joint committee for the scrutiny of subordinate legislation could be established, while maintaining the role of the Legislation Review Committee in relation to primary legislation. Arguably, such a committee should be administered by the Council.</p> <p>Certain mechanisms concerning responses to committee reports are already in place in the Council. Further reforms would not appear necessary at this time.</p> <p>The merits of the Council trialling new arrangements for debate on committee reports, including trialling a Selection or Business Committee to allocate debate times, should be considered by the Legislative Council's Procedure Committee in the new Parliament.</p>
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	<p>500 or more signatures. This matter should be further considered by the Standing Orders and Procedure Committee.</p> <p>The Legislative Assembly currently requires committee chairs to inform the House of the subject matter of any new inquiry being undertaken. This procedure is considered sufficient and there is no need for the standing orders to be amended to provide for short statements by the Chair.</p>	
Time limits for the consideration of bills	The current arrangements are appropriate.	The current arrangements are appropriate.
Recommittal of votes	Not supported.	Not supported.
Appropriation Bills	The issue of the Appropriation Bill containing matters which should be the subject of separate legislation has not been an issue and the Bill has traditionally only contained matters related to appropriating monies for recurrent services, capital works and services of the Government.	The merits of the Council as a first step passing a resolution concerning the meaning of appropriations bills ‘for the ordinary annual services of the Government’ should be considered by the Legislative Council’s Procedure Committee in the new Parliament.
Commencement of legislation	<p>Not supported. However, the Legislative Assembly Members noted that a list of legislation remaining unproclaimed 90 days after assent is regularly tabled and it is proposed that this list include reasons as to why the legislation has not been proclaimed. This matter should be further considered by the Standing Orders and Procedure Committee.</p>	<p>The Government should include in the list of unproclaimed legislation tabled in the Council under standing order 160(2) reasons why the legislation has not been proclaimed.</p> <p>The current arrangements for the commencement of legislation are an inappropriate delegation of legislation power to Executive Government.</p> <p>The Government should adopt a commencement provision in all bills whereby if the act is to commence by proclamation, but has not commenced within 6 or 12 months after assent, it commences automatically.</p>

Review of the number of sitting days and the time available for debate	The current sitting arrangements and time limits on debate are appropriate.	The current sitting arrangements and time limits on debate are appropriate.
Parliamentary Budget Office	Legislation has been introduced into the New South Wales Parliament to establish a Parliamentary Budget Officer.	
Funding and staffing of the Parliament	The funding and staffing arrangements of the Parliament should be reviewed to place them on a more secure and independent footing.	The funding and staffing arrangements of the Parliament should be reformed to place them on a more secure and independent footing.
Pairing arrangements	Not supported.	Not supported.
A Parliamentary Integrity Commissioner	The merits of a Parliamentary Integrity Commissioner should be considered by the Legislative Assembly's Committee on Parliamentary Privilege and Ethics in the new Parliament, in consultation with the Legislative Council's Privileges Committee.	The merits of a Parliamentary Integrity Commissioner should be considered by the Legislative Council's Privileges Committee in the new Parliament, in consultation with the Legislative Assembly's Committee on Parliamentary Privilege and Ethics.
Establishment of a Formal Code of Conduct	The New South Wales Parliament adopted a Code of Conduct for Members in 1988. It is currently being reviewed by the Committee on Parliamentary Privilege and Ethics.	The New South Wales Parliament adopted a Code of Conduct for Members in 1988. It is currently being reviewed by the Privileges Committee.
A Register of Lobbyists	The Government introduced the NSW Government Lobbyist Code of Conduct in 2009.	The Government introduced the NSW Government Lobbyist Code of Conduct in 2009.

Chapter 2 The views of the Members of the Legislative Assembly

Introduction

- 2.1** Clauses 1 and 2 of the resolution appointing the Committee set out the reforms to parliamentary processes and procedures to be considered by the Committee. Reference is made to the ‘Agreement for a Better Parliament: Parliamentary Reform’, proposed to be implemented by the Commonwealth Parliament.
- 2.2** The New South Wales Legislative Assembly has already adopted many of the reforms that have been proposed for the Commonwealth Parliament. However, the ‘Agreement for a Better Parliament: Parliamentary Reform’ raised a number of issues that could improve parliamentary process in the Legislative Assembly. The Legislative Assembly Members of the Committee have agreed that a number of reforms should be implemented or given further consideration and has recommended that such reforms be referred to the Legislative Assembly Standing Orders and Procedure Committee for further consideration.
- 2.3** This Chapter sets out the reforms contained in the ‘Agreement for a Better Parliament: Parliamentary Reform’ document and provides discussion on their merits or otherwise in relation to the New South Wales Legislative Assembly.

An expanded Selection Committee

- 2.4** The ‘Agreement for a Better Parliament’ provides for an expanded Selection Committee of the House of Representatives to be established, including aligned and non-aligned members, for the purposes of facilitating the participation of all members in the processes of the House.
- 2.5** The Selection Committee of the House of Representatives is currently responsible for timetabling the order of business for committee reports and private members’ business. It has 11 members: the Deputy Speaker, the Government Whip, the Opposition Whip, the Third Party Whip, four government members, and three opposition and other non-government members.
- 2.6** The Legislative Assembly does not currently have a selection committee to determine private members’ business. The current procedures provide for general business to be conducted in chronological order, with opportunities for business to be reordered or postponed.
- 2.7** The Legislative Assembly Members considered that the current system for determining general business was adequate and that there was no need for a selection committee.

Finding

The Legislative Assembly does not currently have a Selection Committee. It was considered that the current arrangements in place for determining general business, which provides opportunities for reordering are adequate.

The independence of the Speaker

- 2.8** The ‘Agreement for a Better Parliament’ canvasses arrangements in relation to the Speaker of the House of Representatives to ensure that the ‘role of the Speaker will be independent of Government’. It envisages that the independence of the Speaker would be anchored by the Speaker and Deputy Speaker being drawn from alternate political parties, with an arrangement for them to be paired during their tenure in office. Subsequently, these pairing arrangements have not been implemented.
- 2.9** In relation to the New South Wales Legislative Assembly, section 31(1) of the *Constitution Act 1902* provides:
- There shall be a Speaker of the Legislative Assembly, who is the Presiding Officer of the Legislative Assembly and is recognised as its independent and impartial representative. (emphasis added).
- 2.10** Section 31 was amended in 1992 in response to a requirement in the memorandum of understanding, commonly known as the Charter of Reform, which was signed on 31 October 1991 by Premier Greiner and three non-aligned Independent members of the Legislative Assembly. The memorandum required ‘Constitutional recognition of the independence of the two presiding officers and their roles as the voice of the Parliament to Executive Government’.
- 2.11** While constitutional recognition of the independence and impartiality of the Speaker was only adopted in 1992, many Speakers before this have upheld the Westminster traditions of being impartial despite the fact that the Speaker is usually drawn from the party with the majority in the House.
- 2.12** The ‘Agreement for a Better Parliament’ document proposed that the Speaker and Deputy Speaker can participate in Private Members’ Business but cannot vote. It was noted by the Legislative Assembly Members that in 2007 an amendment was made to the *Constitution Act 1901* to provide for the Speaker to be able to take part in debate or discussion and vote on any question when not presiding in the Chair. Accordingly, the Legislative Assembly Members considered that the proposal in the Commonwealth Parliament to deny the Speaker and Deputy Speaker the right to vote in private members’ business was in direct conflict to this provision in the *Constitution Act* and did not support the proposal.
- 2.13** It was noted that the House elects the Speaker, Deputy Speaker and Assistant Speakers and currently there is no formal stipulation that these officers should be Government or non-Government members as it is a matter for the House to decide. It was acknowledged by the Legislative Assembly Members that there are currently two Assistant Speakers, provided for under a sessional order, and that there was merit in having two Assistant Speakers, one

Government member and one non-Government member. Accordingly, the Legislative Assembly Members are of the view that the Standing Orders and Procedure Committee should consider an amendment to Standing Order 12 to provide for the election of two Assistant Speakers – one Government and one non-Government.

- 2.14** On a related note, under Standing Order 19 the Speaker can nominate up to five members to act as Temporary Speakers. In the current Parliament two Assistant Speakers have been appointed and only four Temporary Speakers have been nominated, two Government and two non-Government. The Legislative Assembly Members were of the view that this provided an appropriate balance and accordingly it has been recommended that two Assistant Speakers be appointed and that Standing Order 19 should be amended to provide for the appointment of four Temporary Speakers, two from the Government and two non-Government.
- 2.15** The Legislative Assembly did not support the proposal in the Commonwealth Parliament for the Speaker and Deputy Speaker to be paired for all divisions as it was considered that this would not increase the independence of the Speaker or Deputy Speaker. It is noted that this reform was not adopted by the House of Representatives.

Finding

The tradition of the House has been for the Speaker to be independent and impartial, but not necessarily apolitical. The *Constitution Act 1902* was amended in 2007 to permit the Speaker, when not presiding, to take part in any debate or discussion and vote on any question. This includes any question that may arise during private members' business.

The election of the Speaker, Deputy Speaker and Assistant Speakers is a matter for the House. However, the appointment of two Assistant Speakers is supported, with one being from the Government and the other being a non-Government member. In addition, four temporary Speakers should be appointed with two being Government members and two being non-Government members. This matter should be further considered by the Standing Orders and Procedure Committee.

In relation to pairing arrangements for Presiding Officers it was noted that such arrangements would not increase the independence of the Speaker or the Deputy Speaker.

Acknowledgement of Country

- 2.16** The 'Agreement for a Better Parliament' provides for the acknowledgement of country in the House of Representatives each sitting day prior to prayers.
- 2.17** Since the 22nd September 2005, the Legislative Assembly has formally acknowledged that the Eora people are the traditional owners of the land on which the House meets.
- 2.18** The current Standing Orders, which were approved by the Governor on 21 February 2007, formally incorporated this acknowledgement of country into the procedures of the House and provide for an acknowledgement of Country at the commencement of each sitting day. Standing Order 39(2) provides:

The Speaker or the Clerk shall read the following acknowledgment of Country after reading the prayer each day:

"We acknowledge the Traditional Owners, the Gadigal People of the Eora Nation. We also acknowledge the Traditional Owners of the lands we represent and thank them for their custodianship of Country."

- 2.19** It was noted by the Legislative Assembly Members that the New South Wales Legislative Assembly was the first House of Parliament in Australia to adopt an acknowledgement of country in their Standing Orders.

Finding

An acknowledgement of Country is already in place in the Legislative Assembly.

The operation of Question Time

- 2.20** The 'Agreement for a Better Parliament' recommended a range of reforms in relation to Question Time in the House of Representatives.
- 2.21** It was proposed that time limits be introduced for questions and answers in the House.
- 2.22** The current procedure in the Legislative Assembly is for Question Time to be for a period of 45 minutes or the answering of 10 questions, whichever is the later. The Legislative Assembly Members considered the issue of time limits and generally considered that time limits for answers should be introduced. It was suggested that an answer should be limited to 5 minutes duration and that such a time limit would encourage Ministers to ensure that their answer was relevant to the question asked. It was noted that the average length of an answer for the current Parliament is already around 5 minutes.
- 2.23** The Legislative Assembly Members did not consider there was a need to introduce time limits for questions. The Standing Orders already require questions to be concise and Speakers have at times asked members to rephrase questions that are too long. Accordingly, it has not been recommended that a time limit be placed on questions.
- 2.24** It was noted that the current arrangements where Question Time lasts for 45 minutes or the answering of 10 questions will not be affected by the introduction of time limits.
- 2.25** The 'Agreement for a Better Parliament' document also proposed that the Leader of the Opposition or their delegate be able to ask one supplementary question during each Question Time and that the Speaker should not inhibit the ability of the Opposition to hold the Government to account.
- 2.26** The Legislative Assembly Standing Orders currently provide for one supplementary question to be asked each Question Time by any Member who has asked a question. The Legislative Assembly Members were of the view that this was adequate and noted that the practice has been for supplementary questions to be asked by non-Government members.

- 2.27** In relation to the Speaker not inhibiting the ability of the Opposition to hold the Government to account, the Legislative Assembly Members considered that no change was required to the Standing Orders as the practice has been for the Speaker to provide the Opposition with a wide ambit when asking questions so long as they conform with the rules for questions.
- 2.28** Another issue that was discussed was in relation to the requirement for an answer to be relevant to the question asked. The reforms for the House of Representatives include a requirement that the answer be "directly" relevant. The Legislative Assembly Members considered that a requirement to make an answer directly relevant may be too prescriptive and that it had the potential to encourage more points of order to be raised as to whether an answer was directly relevant. Accordingly, this proposal was not supported.
- 2.29** The 'Agreement for a Better Parliament' document requires a proportionate share of questions to be allocated to non-aligned members. It was noted by the Legislative Assembly Members that non-aligned Members are already allocated a proportionate share of questions across the week and accordingly no change is required.
- 2.30** Other issues that were considered included restricting points of order on relevance to one per question and prohibiting Ministers from using notes when answering questions. The Legislative Assembly Members were of the view that there should not be any restriction on raising points of order and noted that the introduction of time limits on answers would assist in ensuring that answers were relevant to the question. The Members also discussed the option of formally providing the Speaker with discretion to stop the clock if spurious points of order are taken.
- 2.31** In relation to the use of notes it was agreed that the practice of the Legislative Assembly is that the reading of speeches is not allowed but that Members can refer to copious notes. The Committee noted that Ministers often referred to notes in order to ensure the information provided to the House is accurate particularly when referring to figures, statistics or other detailed material. The Committee also considered that the current provisions enable Members to raise points of order about members reading speeches and that this was sufficient.

Finding and recommendation

A time limit on answers of up to five minutes should be introduced. This matter should be further considered by the Standing Orders and Procedure Committee.

The current arrangements for supplementary questions, the rules for questions, the requirements for relevant answers, and the proportionate share of questions are adequate and do not need amending.

The proposals to limit the taking of points of order during Question Time and to limit the use of notes by ministers in answering questions are not supported. However, consideration should be given to providing the Speaker with discretion to stop the clock if spurious points of order are taken.

Matters of Public Importance

- 2.32** The ‘Agreement for a Better Parliament’ provides for debate on matters of public importance to be extended to 1½ hours (with time limits for speakers), for debate to be given greater prominence following Question Time, and for debates to be proportionately allocated to non-government members.
- 2.33** The Legislative Assembly standing orders currently provide for discussion on a matter of public importance on Tuesday and Wednesday. It was noted that the time limits for the Matter of Public Importance procedure were recently changed when ‘family friendly’ hours were adopted to ensure that the time allocated for other business was sufficient. The Legislative Assembly Members agreed that the change in the time limits did not substantially affect the intent of the procedure which is to allow any member to initiate a discussion on a particular matter.
- 2.34** Under Standing Order 110 the Speaker determines what matters can be raised under the matter of public importance procedure. While the Speaker has sole discretion in relation to determining the matters to be raised, it has been the practice for Speakers to alternate between matters raised by Government and non-Government members with a proportionate share to be allocated to non-aligned members.

Finding

A procedure for Matters of Public Importance is already in place in the Legislative Assembly.

Private members’ business and private members’ bills

- 2.35** The resolution appointing the Committee and the ‘Agreement for a Better Parliament’ make specific reference to the time available for consideration of private members’ business.
- 2.36** In particular the proposals for the House of Representatives are aimed at ensuring that time is allocated in the Main Chamber for votes on private members’ bills during Government Business and that private members’ business is given priority at certain times.
- 2.37** The Legislative Assembly Members noted that the proposal regarding votes on private members’ bills was an issue specific to the House of Representatives. The Legislative Assembly does not have a second chamber and all votes for private members’ bills are already held in the Chamber.
- 2.38** In relation to ensuring that private members’ business has priority at certain times, the routine of business in the Legislative Assembly (SO 96) gives general business priority at certain times on Thursday and Friday. General Business General Notices and Orders of the Day are considered on Thursday from 11.45 am to 1.30 pm; debate on private members bills has priority on Thursday between 4.30 pm and 5.30 pm; and private members’ bills are introduced on Friday from 10 am until 10.30 am.

- 2.39 In addition to these procedures which are specifically referred to as general business, all members have opportunities to participate in take note debates on committee reports tabled on Fridays and private members' statements can be made each sitting day.
- 2.40 As previously noted the Legislative Assembly Members were of the view that the current procedures for determining the order of general business items are working effectively and do not need amending.

Finding

The Legislative Assembly already provides priority for Private Members' Business at certain times on Thursday and Friday. The current procedures for determining the order of private members' business are considered to be working effectively and no changes are required.

Adjournment Debate

- 2.41 The 'Agreement for a Better Parliament' sets out various provisions for the adjournment debate in the House of Representatives.
- 2.42 The Legislative Assembly removed the provisions for an adjournment debate when new Standing Orders were approved by the Governor in December 1994.
- 2.43 The adjournment debate traditionally provides for a wide ranging debate on almost any topic. *House of Representatives Practice* notes that "...the adjournment debate provides Members with an opportunity to speak on any matter they wish to raise."²
- 2.44 The adjournment debate has been taken over by other procedures of the House. For example private members' statements have a fairly wide ambit so long as the matter relates to a members' electorate or has been raised by a constituent. In many ways the ambit of private members' statements allows for the type of matter that could be raised during an adjournment debate. Provision is made for the giving of private members' statements in the routine of business each sitting day.
- 2.45 The Legislative Assembly Members also noted the introduction of 'family friendly' sitting times in 2008, which provide for an automatic adjournment at 7.30 pm on Tuesday and Wednesday and 6.30 pm on Thursday and at the conclusion of private members' statements on Friday, would require other business to be dispensed with to provide for an adjournment debate. This was not supported by the Legislative Assembly Members.

² Fifth edition, p 573.

Finding

The proposal for an adjournment debate was not supported as other procedures are in place such as private members' statements which enable Members to raise broad ranging issues.

90 second statements

- 2.46** The 'Agreement for a Better Parliament' includes a provision for 15 minutes to be allocated prior to Question Time for members to make 90 second statements on constituency matters.
- 2.47** The Legislative Assembly already has in place a procedure for private members' statements which allows members to make statements for up to five minutes in duration in relation to constituency issues.
- 2.48** In the routine of business, time is provided for up to 16 private members' statements to be given each sitting day. On Tuesday they are considered between 1.00 pm and 2.15 pm; on Wednesday between 5.45 pm and 7.00 pm; on Thursday from 5.30 pm until 6.30 pm; and on Friday from 1.30 pm until the House adjourns. Accordingly the Legislative Assembly Members did not support this proposal.
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Finding

The proposal for 90 second statements is not supported as provision is made for private members' statements, of up to 5-minutes duration, to be given each sitting day.

Ministerial Statements

- 2.49** The 'Agreement for a Better Parliament' includes a provision for ministerial statements and responses to be limited to 10 minutes, with opportunity for responses by non-government members.
- 2.50** The Legislative Assembly already has a similar provision. Standing Orders provide for ministerial statements to be given before or after Question Time. Such statements are of unlimited duration and the Leader of the Opposition or member deputed are able to make a response for the same length of time as the statement.
- 2.51** The Legislative Assembly Members raised concerns that introducing time limits of up to 10 minutes for a ministerial statement has the potential for responses to be longer than the actual statement. This was considered inappropriate and it was agreed that the current arrangements were adequate.
- 2.52** The proposal to provide proportionate opportunities for non-Government members to respond to ministerial statements was not supported. It was noted that the House can grant leave to permit more than one member to respond to a ministerial statement. While it is unusual, there have been a number of occasions where leave has been given to permit more
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than one member to respond to a ministerial statement, including non-aligned members. For example, on 25 October 2007, leave was granted for the Leader of The Nationals and five Independent members to respond to a ministerial statement made by the Premier about Aboriginal reconciliation.³

- 2.53** The Legislative Assembly Members were of the view that the current Standing Orders should remain unchanged and that the practice of the House granting leave to permit more than one non-Government member to respond should be maintained.

Finding

The Legislative Assembly Standing Orders already provide for ministerial statements of unlimited duration and for the Leader of the Opposition or other member deputed to make a response for up to the same period of time as the statement.

The House can grant leave to permit more than one Member to address the House in response to a ministerial statement. It was considered that this should remain a matter for the House to determine.

The committee system

- 2.54** The ‘Agreement for a Better Parliament’ includes a number of proposals for the committee system of the House of Representatives. These proposals include:
- a reorganisation of the general purpose standing committees;
 - increasing the number of supplementary members on committees;
 - consideration of the powers of committees by a committee of chairs;
 - requiring a non-Government Chair of the Public Accounts Committee;
 - pre-legislative scrutiny of bills;
 - providing a mechanism for responses to committee reports; and
 - allowing chairs of committees to make short statements on committee inquiries.

Numbers of committee, committee membership and committee of chairs

- 2.55** The ‘Agreement for a Better Parliament’ proposed for the House of Representatives general purpose standing committees to be reduced to nine with Standing Committees established on specific portfolio areas.
- 2.56** The Legislative Assembly Members noted that the committee system of the House of Representatives was substantially different to the committee system administered by the

³ *LA Votes and Proceedings*, 25 October 2007, p 334.

Legislative Assembly. The Legislative Assembly has established a number of statutory committees in addition to standing committees on topical issues, as opposed to portfolio based committees.

- 2.57** It was considered that the current committee system was working effectively and that no change should be made to the committee system at this stage.
- 2.58** In relation to committee membership, the proposal for the House of Representatives was for committees to have seven members, which fully reflects the membership of the House. It also provides for an increase in the number of supplementary members to four and for these supplementary members to have full participatory rights, other than voting rights.
- 2.59** Legislative Assembly Standing Order 273 provides that a committee shall consist of between 5 and 10 members and for statutory committees the number of members is set out in legislation. Accordingly, no change is recommended.
- 2.60** In relation to supplementary members, the Legislative Assembly Members were of the view that supplementary members are not required as members appointed to committees should make themselves available for committee work.
- 2.61** The ‘Agreement for a Better Parliament’ proposed for “the powers of committees to be referred to the committee of Chairs as soon as possible to ensure the most authority possible for Committees within allocated resources.”
- 2.62** The Legislative Assembly currently has an informally constituted Chairs’ Liaison Group, which meets to consider significant issues that affect committees. Accordingly, it was considered there is no need for a committee of chairs to be established to consider the powers of committees.

Finding

The Legislative Assembly has a different committee system to the House of Representatives. It is considered that no changes should be made to the Legislative Assembly committee system at this stage.

Changing the number of members on committees, providing for supplementary members, and establishing a formal committee of chairs are not supported.

Non-Government Chair of the Public Accounts Committee

- 2.63** The ‘Agreement for a Better Parliament’ provides for the Chairman of the Joint Parliamentary Committee on Public Accounts and Audit to be drawn from a member of the non-Government party or a non-aligned member.
- 2.64** The Legislative Assembly Members noted that while a number of jurisdictions appointed a non-Government member as the chair of the public accounts committee, the tradition in New South Wales has been for a Government Chair.

- 2.65 The Legislative Assembly Members of the Committee were not unanimous on this issue. It was agreed that the matter should be referred to the Standing Orders and Procedure for further consideration.

Finding and recommendation

The Legislative Assembly Members did not form a unanimous view on the issue of whether the Chair of the Public Accounts Committee should be a non-Government Member. This matter should be further considered by the Standing Orders and Procedure Committee.

Pre-legislative scrutiny of Bills

- 2.66 The resolution appointing the Committee provides that the Committee is to consider the oversight of bills by committees. The ‘Agreement for a Better Parliament’ provides in turn for all Bills that will be introduced into the House of Representatives to be referred immediately to the Selection Committee. The Selection Committee would then determine whether bills are controversial and require further consultation by a committee before they are introduced.
- 2.67 It is noted that improving the role of committees in pre-legislative scrutiny was considered by the House of Representatives Standing Committee on Procedure. In its report entitled *Building a modern committee system: An inquiry into the effectiveness of the House committee system* the Committee made the following observation in relation to committee scrutiny of bills in the House of Representatives:

Standing order 215 allows a general purpose standing committee to inquire into and report on any pre-legislation proposal or bill referred to it. This power has existed since the establishment of the committee system in 1987. Historically, however, House committees have had very little involvement in considering legislation or pre-legislation proposals. Such inquiries have only been undertaken since 1994, and there have only been a handful of such inquiries since then. ...

By contrast, committees of the Senate, the Parliaments of Scotland and New Zealand, and the UK and Canadian Houses of Commons, are more involved in considering bills and proposed legislation. Automatic referral of bills to committees tends to be the norm in many other parliaments. This is notably the case in the unicameral New Zealand and Scottish Parliaments.⁴

- 2.68 The Legislative Assembly Members considered there was no need for pre-legislative scrutiny of bills. It was noted that there is already capacity for the Government to issue ‘White Papers’, and exposure drafts for consultation in relation to proposed legislation prior to it being introduced into Parliament.

⁴ House of Representatives Standing Committee on Procedure, *Building a modern committee system: An inquiry into the effectiveness of the House committee system*, June 2010, pp 115-116.

2.69 It was also noted that the procedure for the passage of legislation is designed to allow consideration, scrutiny and debate by all Members and that there is no need for legislation to be scrutinised prior to introduction.

2.70 The Legislative Assembly Standing Orders already provide for bills to be referred to a committee for detailed consideration if it is considered there is need for further scrutiny. Standing Order 198 provides:

198. Amendments may be moved to the question “That this bill be now agreed to in principle” to leave out all words after the word “That” and adding words to refer the bill to a committee (as specified).

2.71 In addition, the Legislation Review Committee is responsible for considering Bills introduced into Parliament and is required to report to both Houses as to whether any Bill:

- trespasses unduly on personal rights and liberties, or
- makes rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, or
- makes rights, liberties or obligations unduly dependent upon non-reviewable decisions, or
- inappropriately delegates legislative powers, or
- insufficiently subjects the exercise of legislative power to parliamentary scrutiny.⁵

2.72 The Legislative Assembly Members noted the views of the Legislative Council Members as detailed in Chapter Three regarding the need for a committee to scrutinise subordinate legislation. However, it is noted that the Legislation Review Committee maintains responsibility for considering subordinate legislation under the same parameters as it considers bills. Accordingly, the issue raised by the Legislative Council Members presents an opportunity for the Legislation Review Committee to review its role and the resources available to it to undertake its role.

Finding

The proposal for pre-legislative scrutiny of bills by committees of the Legislative Assembly is not supported.

Responses to committee reports and short statements by Chairs

2.73 The ‘Agreement for a Better Parliament’ incorporates provisions concerning a requirement for Government responses to committee reports within 6 months of the report being presented to the House.

⁵ Section 8A of the *Legislation Review Act 1987*.

- 2.74 The Legislative Assembly adopted amendments to the Standing Orders in 2009 which require the Government to respond to committee reports within 6 months of the report being tabled.
- 2.75 It is noted that the current provisions regarding government responses to committee reports do not require the responsible Minister to give reasons for a late response. The Legislative Assembly Members of the Committee agreed that in the interests of accountability Ministers should be required to provide an explanation for a late response in the same way they are required to provide an explanation to the House for a late answer to a question on notice.
- 2.76 On a related issue regarding ministerial accountability, the Standing Orders regarding petitions also require the responsible Minister to provide a response to any petition which has 500 or more signatures within 35 calendar days of the petition being tabled. In order to ensure consistency with the procedures in place for answers to questions on notice and the proposal noted above in relation to responses to committee reports, it is recommended that Standing Order 125 be amended to provide for the Minister to provide an explanation to the House if a response to a petition is late.
- 2.77 The proposals for the House of Representatives also includes provision for the chair of a committee to make a short statement during private members' business time informing the House of new inquiries being undertaken by the committee.
- 2.78 The Legislative Assembly Standing Orders were amended in 2009 to require chairs to inform the House of the subject matter of any new inquiry. Standing Order 299 provides for the chair, after Question Time, to table reports or advise of any new inquiries being undertaken or referred. The Standing Order does not permit the chair to make a statement about the inquiry. However, it is considered that the current procedure is sufficient for providing the House with information about inquiries to be conducted.

Finding

The Legislative Assembly Standing Orders currently require the Government to respond to a committee report within 6 months of the report being tabled. It is proposed that Standing Order 303A be amended to require the responsible Minister to provide an explanation for a late response to a committee report in the same way they are required to explain why an answer to a question without notice is late. This matter should be further considered by the Standing Orders and Procedure Committee.

In addition, to ensure consistency in the procedures of the House the Legislative Assembly Members were of the view that Standing Order 125 should be amended to provide for the Minister to advise the House of any reasons for a late response to a petition that has 500 or more signatures. This matter should be further considered by the Standing Orders and Procedure Committee.

The Legislative Assembly currently requires committee chairs to inform the House of the subject matter of any new inquiry being undertaken. This procedure is considered sufficient and there is no need for the standing orders to be amended to provide for short statements by Chair.

Consideration of Bills

- 2.79** The ‘Agreement for a Better Parliament’ proposes varying time limits for consideration of bills in the House of Representatives. It also proposes providing for the Selection Committee to determine where a bill is not controversial and for the time limits for such bills to be reduced to 5 or 10 minutes. The Selection Committee will also be able to place limits on speaking times for bills on which there are a large number of members wishing to speak.
- 2.80** Legislative Assembly Standing Order 85 provides for maximum time limits for members speaking on legislation. Apart from the mover and responder, who have unlimited speaking time, all members are afforded up to 15 minutes (with an option for a 5 minute extension if agreed by the House) to speak on bills.⁶ Not all members avail themselves of the full time allocated. The Legislative Assembly Members of the Committee were of the view that to avoid confusion the same maximum time limits should be in place for all bills.
- 2.81** The proposals for the House of Representatives also includes introducing a procedure to enable 5 minutes of questions at the end of each member’s speech to encourage ‘smarter debate’. The Legislative Assembly Members did not support this proposal and noted that members are afforded an opportunity under the Standing Orders to request that a bill be considered in detail if further clarification on the legislation before the House is required.
- 2.82** The ‘Agreement for a Better Parliament’ also proposes that additional time be allocated for the summing up of Appropriations and related Budget Bills by the Minister for Finance in the Main Committee, and additional time for consideration in detail in the Main Committee.
- 2.83** The Legislative Assembly Members were of the view that provisions relating to the Main Committee were not relevant to the New South Wales Legislative Assembly.

Finding

The proposals to vary the time limits for different bills and provide for 5 minutes of questions at the end of speeches are not supported. Proposed changes to the consideration of the Appropriations and related Budget bills in the Main Committee of the House of Representatives are not relevant to the New South Wales Legislative Assembly.

Recommittal of votes

- 2.84** The ‘Agreement for a Better Parliament’ proposes that there may be a recommittal of a vote on the same sitting day when a Member is inadvertently absent, following the carriage, after the debate, of a motion to suspend standing orders to allow this.

⁶ Standing Order 85 provides that party leaders may speak for an unlimited duration on the Appropriation Bill in addition to the mover and responder, and for a Minister and for the Leader of the Opposition or member deputed to speak for an unlimited duration in addition to the mover of a private member’s bill.

- 2.85** The Legislative Assembly Members did not support the adoption of this proposal. It was noted that all members are given adequate time from when the bells are rung to attend a vote in the House and that the Chair has a discretion in the event of a lift malfunction to have the bells rung again.
- 2.86** In addition, it was noted that Standing Order 154 provides that a question that has already been determined by the House cannot be considered again and that Standing Order 155 provides a mechanism to rescind any vote of the House (except a question on the passing of a bill).

Finding

Introducing a procedure for the recommittal of votes in instances where a member is inadvertently absent is not supported.

Appropriation Bills

- 2.87** The ‘Agreement for a Better Parliament’ provides for the development of a mechanism to resolve the issue of appropriation bills containing matters which should be the subject of separate legislation.
- 2.88** The Legislative Assembly Members were of the view that this issue had not arisen in New South Wales to date and accordingly there is no need for a change in the way the Appropriation and cognate Bills are drafted. It was noted that the Appropriation Bill itself has traditionally only contained matters related to appropriating monies for recurrent services, capital works and services of the Government. It was also noted that the long title of the appropriation bills limits the legislation to these matters and that the Standing Orders require that all clauses of a bill be within the long title.
- 2.89** The Legislative Assembly notes the views of the Legislative Council Members of the Committee in Chapter Three of this report (paragraph 3.140) and also notes that no evidence is provided to support their contention.

Finding

The issue of the Appropriation Bill containing matters which should be the subject of separate legislation has not been an issue and the Bill has traditionally only contained matters related to appropriating monies for recurrent services, capital works and services of the Government.

Commencement of legislation

- 2.90** The ‘Agreement for a Better Parliament’ proposes the establishment of a mechanism to ensure that a commencement date be included in all legislation.

- 2.91** In New South Wales, under subsection 23(1) of the *Interpretation Act 1987*, a bill which has been assented to by the Governor is deemed to commence 28 days after the date of assent unless the bill provides for commencement on another day by proclamation or otherwise. Some bills specify the day of assent as the date of commencement whilst other bills specify a particular date. However, many bills provide that their provisions are to commence on a day or days to be appointed by proclamation by the Governor and published in the Government Gazette.
- 2.92** The Legislative Assembly notes the concerns raised by the Members of the Legislative Council that this arrangement effectively places the Executive Government above the Parliament in law making. However, the view of the Legislative Assembly Members is that there may be some difficulties in providing a commencement date for all pieces of legislation at the time it passes the House. It was noted that the flexibility in commencement by proclamation allowed the Government to delay the commencement of the operation of a law until administrative arrangements or regulations were in place for the law to operate effectively and that this was often necessary.
- 2.93** In accordance with Standing Order 117 the Speaker tables a list of legislation remaining unproclaimed 90 days after assent every 15 sitting days. The Legislative Assembly Members were of the view that while the date of commencement of legislation should remain a decision for the Executive, the Parliament should be informed of the reasons why legislation remains unproclaimed.
- 2.94** Accordingly, the Legislative Assembly Members are of the view that in the interests of ministerial accountability consideration should be given to amending Standing Order 117 to provide that the list of legislation unproclaimed 90 after assent should contain the reasons for the non-proclamation.

Finding and recommendation

The proposal for the development of a mechanism to ensure that a commencement date be included in all legislation is not supported. However, the Legislative Assembly Members noted that a list of legislation remaining unproclaimed 90 days after assent is regularly tabled and it is proposed that this list include reasons as to why the legislation has not been proclaimed. This matter should be further considered by the Standing Orders and Procedure Committee.

Sitting days

- 2.95** The ‘Agreement for a Better Parliament’ proposes that more sitting weeks be considered depending on Government and Private Members’ Business.
- 2.96** The New South Wales Parliament has two distinct sitting periods each year. The Budget sittings which generally are held from late February to July and the Spring sittings held from early September to December. The Parliament has sat on average for 16 sitting weeks over the current Parliament.

- 2.97** The Legislative Assembly Members were of the view that the current number of sitting weeks are adequate. It was noted that since November 2000 the House has adopted a sessional order providing for Friday Sittings and that this was formally adopted in the new Standing Orders approved by the Governor in 2007.
- 2.98** The Legislative Assembly Members noted that the schedule of sitting days can be amended from time to time by resolution of the House if there is a need for additional sitting days to consider the business before the House.
- 2.99** It was also noted that the need for more sitting days of the Legislative Assembly needs to be considered in the context of the demanding constituency and other duties Members of the Legislative Assembly are required to undertake.

Finding

The Legislative Assembly Members are of the view that the current number of sitting weeks are adequate.

Resources of the Parliament**Parliamentary Budget Office**

- 2.100** The ‘Agreement for a Better Parliament’ proposes that a Parliamentary Budget Office be established in the Parliamentary Library “to provide independent costings, fiscal analysis and research to all members of parliament.”
- 2.101** It is noted that the New South Wales Government introduced the *Parliamentary Budget Officer Bill 2010* into the Parliament on 19 October 2010. The Bill establishes the Parliamentary Budget Officer as an independent officer of Parliament with the following functions:
- Preparing costings of election policies for parliamentary leaders and Independent members (including a budget impact statement for all their policies) in the period prior to a State general election;
 - Preparing costings of proposed policies of members of Parliament at the request of the member at any time during the year; and
 - Providing to members of Parliament analysis, advice and briefings of a technical nature on financial, fiscal and economic matters (including in relation to the costing of proposals included in the State budget).
- 2.102** The Bill has passed the Legislative Assembly and is currently in the Legislative Council awaiting the Minister’s second reading speech.

Finding

Legislation has been introduced into the New South Wales Parliament to establish a Parliamentary Budget Officer.

Funding and staffing of Parliament

- 2.103** The ‘Agreement for a Better Parliament’ also raises issues in relation to the funding and staffing of the Federal Parliament. In particular, it proposed an external review of the staffing levels in the House of Representatives Committee Office, the establishment of a House Committee on Appropriations and Staffing, and the adequacy of teleconferencing and video conferencing facilities be undertaken.
- 2.104** In relation to appropriations and staffing, the Legislative Assembly Members did not support the establishment of a committee to oversee the appropriations of the Parliament and its staff. It was noted that such a proposal has already been considered but not adopted when the matter was considered in 1992 by the Select Committee on the Management of the Parliament.
- 2.105** It was also noted that under current processes the Parliament’s budget is determined by the Executive and accordingly the establishment of a committee on the Parliament’s appropriation would be largely tokenistic and ineffective. It was considered that staffing arrangements were more effectively managed by the Presiding Officers and senior management of the Parliament and that having a committee of members to oversee staffing was not necessary.
- 2.106** While the Legislative Assembly Members did not support the proposals outlined in the ‘Agreement for a Better Parliament’ they were of the view that the funding and staffing arrangements of the Parliament should be reviewed to place them on a more secure and independent footing.
- 2.107** In relation to teleconferencing and video conferencing facilities, the Legislative Assembly Members noted that such facilities were already available.
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Finding

The funding and staffing arrangements of the Parliament should be reviewed to place them on a more secure and independent footing.

Pairing arrangements

- 2.108** The ‘Agreement for a Better Parliament’ proposes mechanisms for dealing with pairs including pairing non-aligned Members.
- 2.109** It is noted that the current arrangements for pairs in the Legislative Assembly is an informal one between the Party Whips. Given the informal nature of the arrangement the pairing of non-aligned members cannot be accommodated.
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Finding

The proposal for reforming the pairing arrangements in the Legislative Assembly is not supported.

Parliamentary Integrity Commissioner

- 2.110** The ‘Agreement for a Better Parliament’ canvasses the appointment of a Parliamentary Integrity Commissioner to investigate and make recommendations to the Privileges Committees of the House of Representatives and the Senate on individual investigations, provide advice to parliamentarians on ethical issues and uphold the Parliamentary Code of Conduct and control and maintain the Government’s Lobbyist Register.
- 2.111** In New South Wales, the Presiding Officers have appointed a Parliamentary Ethics Adviser, whose function is to advise any member of Parliament on ethical issues concerning the exercise of his or her role as a member of Parliament (including the use of entitlements and potential conflicts of interest). The role excludes the giving of legal advice.
- 2.112** However, the role of the Parliamentary Integrity Commissioner envisaged under the ‘Agreement for a Better Parliament’ clearly goes beyond that currently performed by the New South Wales Parliamentary Ethics Adviser.
- 2.113** The issue of a Parliamentary Integrity Commissioner has been raised previously in New South Wales in the context of the limited capacity of the ICAC to investigate or adjudicate on breaches of the Code of Conduct for Members where matters of parliamentary privilege arise. In 2003, in a report to the Speaker of the Legislative Assembly, the ICAC raised as an option to address this issue, the establishment of a Parliamentary Commissioner. However, the ICAC noted that in New South Wales, where the ICAC can investigate all corrupt conduct allegations, apart from those to which parliamentary privilege applies, the likely need to call on a Parliamentary Commissioner would be relatively seldom.
- 2.114** The limitation in the ICAC’s jurisdiction to investigate conduct which is covered by parliamentary privilege was also considered during an independent review of the *Independent Commission Against Corruption Act 1988* completed by Mr Bruce McClintock SC in 2005. The final report on that review included a recommendation that consideration be given to the establishment of a parliamentary investigator or parliamentary committee to investigate:
- minor matters involving members of Parliament, so as to permit the ICAC to focus on serious and systemic allegations of corruption; and
 - allegations of corruption that the ICAC is unable to investigate because of parliamentary privilege as preserved by section 122 of the Act.⁷

⁷ McClintock B, *Independent review of the Independent Commission Against Corruption Act 1988*, Final Report, January 2005, p 87.

- 2.115** Subsequently, amendments to the Act were made to give effect to certain recommendations contained in Mr McClintock's report.⁸ However, these did not include any changes to the ICAC's capacity to investigate members of Parliament, or any provision for a parliamentary investigator.⁹
- 2.116** Clearly, any proposal to appoint a Parliamentary Integrity Commissioner in New South Wales would need to be considered carefully. Should this matter be pursued, it would appropriately be a matter for inquiry and report by the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics and the Legislative Council Privileges Committee.

Finding and recommendation

The merits of a Parliamentary Integrity Commissioner should be considered by the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics in the new Parliament, in consultation with the Legislative Council Privileges Committee.

Establishment of a Formal Code of Conduct

- 2.117** The 'Agreement for a Better Parliament' proposes the appointment of a cross-party working group to draft a code of conduct for members of the Federal Parliament.
- 2.118** The New South Wales Parliament adopted a Code of Conduct for Members in 1998. Under the *Independent Commission Against Corruption Act 1988*, the Independent Commission Against Corruption has jurisdiction to make findings of 'corrupt conduct' against members for a 'substantial breach' of the Code. Enforcement of the Code, however, is the responsibility of the individual Houses.
- 2.119** The Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics and the Legislative Council Privileges Committee are currently reviewing the Code, as they are required to do every four years under the Part 7A of the *Independent Commission Against Corruption Act 1988*.
- 2.120** Any amendments to the Code should only be made once this review process is completed.

Finding

The New South Wales Parliament adopted a Code of Conduct for Members in 1998. It is currently being reviewed by the Committee on Parliamentary Privilege and Ethics.

⁸ See the *Independent Commission Against Corruption Amendment Act 2005*.

⁹ *LC Debates* (2/3/2005) 14411.

A Register of Lobbyists

- 2.121** The ‘Agreement for a Better Parliament’ contemplates further enhancements to the Federal Register of Lobbyists.
- 2.122** In New South Wales in 2009, the Government introduced the NSW Government Lobbyist Code of Conduct. As of 1 February 2009, lobbyists (as defined in the Code) who act on behalf of third party clients are required to be registered with the Department of Premier and Cabinet on the NSW Lobbyist Register. The Code provides that a Government Representative is not to permit lobbying by a lobbyist not on the register.
- 2.123** The NSW Government Lobbyist Code of Conduct defines Government representatives to include ministers and parliamentary secretaries, but does not otherwise include members of Parliament. However, Premier’s Memorandum M2009-03 Lobbyist Code of Conduct and Register, issued by former Premier Nathan Rees, specifies that the Code of Conduct also applies to ‘Government Members of Parliament and their staff’.
- 2.124** There have been a number of criticisms made of the NSW Code and Register. Following the release of an Issues Paper in May 2010, the ICAC commenced an inquiry into the lobbying of public officials and public authorities in New South Wales and the related procedures and regulatory system.
- 2.125** The purported extension of the NSW Government Lobbyist Code of Conduct to Government backbenchers was the subject of a submission by the Clerk of the Parliaments and the Clerk of the Legislative Assembly to the ICAC inquiry. The Clerks argued that the purported extension of the Code is inconsistent with the principle of the separation of powers, under which the Executive Government should not seek to regulate how, and with whom, non-executive members of Parliament communicate when conducting their parliamentary business. These members, as elected representatives of the people, have a right to communicate with whom-ever they choose, just as they have the right to determine the sources of their information and the matters they choose to bring before Parliament.
- 2.126** It is also not at all clear how the purported extension of the NSW Government Lobbyist Code of Conduct to Government backbenchers could possibly be enforced.

Finding

The Government introduced the NSW Government Lobbyist Code of Conduct in 2009.

Concluding comments

- 2.127** The resolution appointing the Committee and the ‘Agreement for a Better Parliament’ set out a range of proposals that are aimed at improving parliamentary processes and procedures.
- 2.128** From consideration of the proposals it became clear that a number of them are clearly related to the situation in the Federal Parliament and accordingly are not necessarily going to improve the parliamentary process in New South Wales. However, there were a number of proposals

that the Legislative Assembly Members of the Committee considered were worthy of further consideration by the Standing Orders and Procedure Committee.

Recommendation

That the Standing Orders and Procedure Committee consider the merits of making the following changes to the Standing Orders:

- Providing for two Assistant Speakers, one a Government Member and one a non-Government Member.
- Providing for the Speaker to nominate four Temporary Speakers, two Government Members and two non-Government Members.
- Placing a five minute limit on answers to questions asked in the House.
- Requiring the Chair of the Public Accounts Committee to be a non-Government Member.
- Requiring Ministers to provide an explanation to the House for a late response to a committee report.
- Requiring Ministers to provide an explanation to the House for a late response to a petition with 500 or more signatures.
- Requiring the list of unproclaimed legislation tabled by the Speaker 90 days after assent to include the reasons why the legislation remains unproclaimed.

Chapter 3 **The views of the Members of the Legislative Council**

The New South Wales Legislative Council has already implemented some of the reforms outlined in Clause 2 of the resolution appointing the Committee and the ‘Agreement for a Better Parliament’. Of note, the Legislative Council has already adopted time limits for questions and answers in Question Time and the entitlement of all members to ask supplementary questions.

However, in other areas, the ‘Agreement for a Better Parliament’ does raise possible reforms to processes in the Legislative Council. These matters are discussed in this chapter.

An expanded Selection Committee

- 3.1** The ‘Agreement for a Better Parliament’ provides for an expanded Selection Committee of the House of Representatives to be established, including aligned and non-aligned members, for the purposes of facilitating the participation of all members in the processes of the House.
- 3.2** The Selection Committee of the House of Representatives is currently responsible for timetabling the order of business for committee reports and private members’ business. It has 11 members: the Deputy Speaker, the Government Whip, the Opposition Whip, the Third Party Whip, four government members, and three opposition and other non-government members.
- 3.3** The Legislative Council does not currently have a Selection Committee. However, the adoption of such a committee may have merit in formalising the various informal discussions that occur each week behind the scenes concerning the business of the House. Similar to the House of Representatives, such a committee could usefully:
 - Determine the order for the conduct of private members’ business and the time limits for debate on each item in a given sitting week; and
 - Determine the allocation of time for the discussion of committee reports (this issue is canvassed in more detail later in this submission at Item No. 10).
- 3.4** Such issues are canvassed in more detail in the section on ‘The selection of private members’ business’ under Item 6 and the section on ‘Debate on committee reports’ under Item 10.
- 3.5** Were such a Committee to be adopted, its membership could be such as to reflect the composition of the House, with all parties represented on the Committee.
- 3.6** Such a committee could be trialled for a 6 or 12 month basis by way of sessional order.

Finding

The merits of the Council trialling a Selection or Business Committee, for example for dealing with private members' business and committee reports, should be considered by the Legislative Council's Procedure Committee in the new Parliament.

The independence of the Presiding Officers

- 3.7** The 'Agreement for a Better Parliament' canvasses arrangements in relation to the Speaker of the House of Representatives to ensure that the 'role of the Speaker will be independent of Government'. It envisages that the independence of the Speaker would be anchored by the Speaker and Deputy Speaker being drawn from alternate political parties, with an arrangement for them to be paired during their tenure in office. Subsequently, these pairing arrangements have not been implemented.
- 3.8** No changes were contemplated for the President of the Senate in the Agreement.
- 3.9** The resolution appointing the Committee asks it to consider the current provisions for the Presiding Officers to be independent of the Government, including the possibility of the President and Deputy President being drawn from the Government and the Opposition respectively.
- 3.10** In relation to the New South Wales Legislative Council, section 22G of the *Constitution Act 1902* provides that:
- There shall be a President of the Legislative Council, who is the Presiding Officer of the Legislative Council and is recognised as its independent and impartial representative. (emphasis added)
- 3.11** Section 22G was inserted into the *Constitution Act 1902* in 1992 in response to a requirement in the memorandum of understanding, commonly known as the Charter of Reform, which was signed on 31 October 1991 by Premier Greiner and three non-aligned independents in the Assembly. The memorandum required 'Constitutional recognition of the independence of the two presiding officers and their roles as the voice of the Parliament to Executive Government'.
- 3.12** While constitutional recognition of the independence and impartiality of the President was only adopted in 1992, there is nevertheless a long-standing tradition of an independent and impartial President in the Legislative Council dating back to the first address given by the first President of the Legislative Council, the Hon Sir Alfred Stephen, on 22 May 1856. In that address, President Stephen indicated that he considered his position as 'primus inter pares' (first amongst equals), and that he was not in a position to regulate and control, but merely to regulate the debate.
- 3.13** The tradition of the President acting as an independent Chair in the House is largely maintained today. Of note, the President or other member presiding does not have a deliberative vote in the House, only a casting vote. The standing orders also entail various expectations that the President will act impartially in the Chair.

- 3.14** However, while there is a tradition that the President must be independent and impartial in the Chair, there is not a tradition that the President must be apolitical, as in many Westminster Parliaments, notably the House of Commons. In the House of Commons, the Presiding Officer is expected to resign from his or her political party on appointment to the position.¹⁰ In addition, at election time, the Speaker of the House of Commons contests his or her seat as ‘the Speaker seeking re-election’, rather than as a candidate of a political party. The House always re-elects an incumbent Speaker even if his/her former party is no longer in Government.
- 3.15** This tradition of an apolitical President does not exist in the Legislative Council.
- 3.16** First, since the reconstitution of the Council in 1978 as a directly elected House, the election of the President has always been along party lines. Although there is no requirement to this effect, the President has always been a member of the party with the most seats in the House at the time of his or her election. This does not necessarily mean the party in Government.
- Following the reconstitution of the Council in 1978, and during the length of the 46th Parliament (1978 – 1981), the 47th Parliament (1981 – 1984) and the 48th Parliament (1984 – 1988), Labor was in Government, and held the most seats in the House. In 1978, and again in 1984, the Hon John Johnson, a member of the Labor Party, was elected to the position of President.
 - At the commencement of the 49th Parliament (1988 – 1991), the Coalition took office, however, President Johnson continued in the position of President from the previous Parliament. At the time, there was no requirement for the House to elect a new President at the beginning of each Parliament. Rather, the existing President continued to hold office. Despite the Coalition taking office, Labor maintained the most seats in the House: 21 to the Coalition’s 19. An attempt to remove President Johnson from office on the second sitting day of the 49th Parliament was unsuccessful.
 - In the 50th Parliament (1991 – 1994), which first met on 2 July 1991, President Johnston again continued in the position of President from the previous Parliament. However, President Johnson was removed from office on 3 July 1991, when President Willis, a member of the Liberal Party, was elected. At the time, the Coalition had the most seats in the House: 20 to Labor’s 18. In December 1991, subsections 22G(2)(a) and (b) were inserted into the *Constitution Act 1902* to require the Council to elect a new President at its first meeting following any periodic Council election and at any other time when the office became vacant.
 - In the 51st Parliament (1995 – 1999), which first met on 2 May 1995, President Willis was re-elected as President despite Labor this time coming to office. At the time, the Coalition had the most seats in the House: 18 to Labor’s 17. On 29 June 1998, President Willis resigned from office, and President Chadwick, also a member of the Liberal Party, was elected to the position for the remainder of the 51st Parliament.

¹⁰ It is expected that the Speaker keep apart from old party colleagues or any one group or interest and does not, for instance, frequent the Commons dining rooms or bars.

- It was only in the 52nd Parliament (1999 – 2003) that Labor again gained a majority in the House, and a Labor President was elected. This has continued in the 53rd Parliament (2003 – 2007) and the 54th Parliament (2007 to present).

3.17 Second, it is accepted in the Legislative Council that the President may continue to play a role in party politics, including attending and voting in the party room, and campaigning at elections on behalf of his or her party.

3.18 Third, under subsection 22G(6) of the *Constitution Act 1902*, the President may take part in any debate or discussion in the House. The President, like any other member of the House, is elected to represent the views of his or her constituents in the Parliament. It remains an important principle that the President should be entitled to participate in debate on a matter of importance to the President or his or her constituents.

3.19 When the President takes part in debate, he or she does so from the floor of the House (SO 86).¹¹ The practice of the President participating in debate was common up until the commencement of the Presidency of President Flowers (1915 – 1928). Since then, however, the practice has only been used rarely.¹²

3.20 Fourth, it has become commonplace for the President to vote in committee of the whole. During the 19th century, when the Council was an appointed body, it was common for the President to take part in debate and vote in committee of the whole. Participation markedly decreased in the 20th century, especially following the reconstitution of the Council in 1933, with only occasional instances of the President voting in committee of the whole in the decades prior to the subsequent reconstitution of the Council in 1978. However, since the reconstitution of the Council in 1978, and especially since 1988 when the Government has no longer held a majority in the House, it has once again become common for the President to vote in committee of the whole.

3.21 In summary, the President of the Legislative Council exercises a high degree of independence and impartiality in the Chair, including ensuring an adequate opportunity for all members to participate in debate. However, outside the House, the President is not expected to be apolitical.

3.22 Given these observations, the proposals in the ‘Agreement for a Better Parliament’ represent a departure from the traditions of the Council. Of note, there is not a tradition in the Legislative Council for:

- the President to abstain from attending his or her party room;
- the President and Deputy President to be drawn from alternate political parties;

¹¹ In order to do so, the President may request that the Deputy President, or in the absence of the Deputy President, the Assistant President or one of the Temporary Chairs takes the Chair, without any announcement to the House (SO 22).

¹² On 2 June 1988, President Johnson took part in debate on a motion concerning abortion; *LC Hansard* (2/6/1988) 1333. On 16 April 1991, President Johnson took part in debate in committee of the whole on the Nurses Bill 1991; *LC Hansard* (16/4/1991) 2091, 2096-2097.

- the President or Deputy President to be paired for all divisions. Nor are Temporary Chairs paired when occupying the Chair.

Proposal for the Chair to be paired

3.23 Particular note is made of the proposal in the ‘Agreement for a Better Parliament’ for the Chair to be paired when presiding in the House.

3.24 Section 22I of the *Constitution Act 1902* provides that a question arising in the Council shall be decided by a majority of the votes of the members present, other than the President or other member presiding. The President or other member presiding does not have a deliberative vote. It is only where there is an equality of votes that the President or other member presiding has a casting vote. Section 22I specifically states:

All questions arising in the Legislative Council shall be decided by a majority of the votes of the Members present other than the President or other Member presiding and when the votes are equal the President or other Member presiding shall have a casting vote.

3.25 The provisions of section 22I are reproduced in standing order 102(7), which provides:

All questions will be decided by a majority of the members present other than the President or other member presiding. When the votes are equal the President or other member presiding will have a casting vote.

3.26 The traditional argument in favour of the President having a casting vote, but not a deliberative vote, is that it helps to maintain the impartiality and independence of the Office of President, as the President is not called upon to cast a vote in most circumstances.

3.27 Where the President is called to give a casting vote, the conventions guiding the President have traditionally been:

- the Chair should always vote for further discussion where this is possible;
- where no further discussion is possible, decisions should not be taken except by majority;
- a casting vote on an amendment to a bill should always leave the bill in its existing form.¹³

3.28 The President has also traditionally given his or her reasons for voting a particular way (standing order 116).

3.29 In recent years, however, the Chair has increasingly voted according to the wishes of his or her party, particularly where the question involves an amendment moved by a member of the same party. In this regard, the traditional independence of the President in the Chair is perhaps changing.

¹³ *Erskine May*, 23rd edn, pp 413-414. For examples, see *LC Debates* (4/6/1990) 4993, (20/3/1991) 1402, (27/8/1991) 537, (25/9/1991) 1729, (1/7/1999) 1897, (7/5/2003) 363.

- 3.30** There seems to be an acceptance of this change amongst members and no public controversy.
- 3.31** Bearing this in mind, there is a question over whether the provisions of Section 22I continue to be appropriate if the President is voting along party lines.
- 3.32** Moreover, there is an argument that in a House elected by proportional representation, it is not appropriate that the party or parties that provide the presiding officers should have to forfeit a vote on the floor of the House. The President of the Senate has always had a deliberative vote rather than a casting vote. The Australian Capital Territory (Self-Government) Act 1988 establishing the ACT Legislative Assembly provided for members elected by proportional representation (in multi-member constituencies). This Act provides that the presiding officer shall have a deliberative vote and not a casting vote. Following the reconstitution of the Legislative Council in Victoria in 2006, with members elected by proportional representation (in multi-member provinces), the presiding officers were given a deliberative vote in the Chair. Previously, they only voted in a division where there was an equality of votes.
- 3.33** On the other hand, if it was felt that the presiding officers in the Legislative Council should be more independent of Government, along the lines outlined in the ‘Agreement for a Better Parliament’, a permanent pairing of the President and Deputy President could be contemplated to ensure that neither of them exercised a deliberative vote when not in the Chair (for example, the President while the House was in committee of the whole). This could be facilitated by the election of a President who is a member drawn from the Government and a Deputy President who is a member drawn from the Opposition, as foreshadowed by the terms of the resolution establishing the Committee. These two presiding officers could be paired for all divisions. Similar arrangements could apply to an Assistant President or a Temporary Chair of Committees drawn from the Government or the Opposition.
- 3.34** However, there would be problems with this arrangement in practice. First, unless Section 22I of the *Constitution Act 1902* was amended, the Chair would still have a casting vote. Unless the Chair exercised this casting vote according to the traditional conventions, there would be no real change from the status quo. Second, this arrangement presumes that the presiding officers would always have voted along party lines. Occasionally, members ‘cross the floor’ and vote against party lines. Also, members are given conscience votes on a number of issues. In these circumstances, a permanent pair could present a problem for the presiding officer not in the Chair, who would be obliged to voluntarily absent themselves from the chamber, regardless of their personal view on the question before the House.
- 3.35** The ‘Agreement for a Better Parliament’ envisaged that if the Speaker was not drawn from the Government or the Opposition, ‘the same pairing arrangements will apply’. In practice, however, this would be difficult to implement. In fact a President drawn from the cross-bench would need to announce to the House on each division how he or she would cast a vote if he or she had done so, so that a member voting the other way could voluntarily absent himself or herself from the vote. The same difficulties would apply to a Deputy President, Assistant President or a Temporary Chair of Committees drawn from the cross-bench.
- 3.36** There could also be an argument that if a member absented himself or herself from the Chamber because of the known disposition of the Chair, this would be in conflict with the *Constitution Act 1902* which precludes the President from having a deliberative vote.

Finding

The tradition of the House has been for the President to be independent and impartial, but not necessarily apolitical. The proposal to pair the Presiding Officers would not increase their independence, unless they exercised their casting vote according to the traditional conventions. The recent trend in legislative arrangements for Houses elected according to a proportional system of voting is to give their Presiding Officers a deliberative vote rather than a casting vote when in the Chair.

Participation of the Chair in private members' business

- 3.37** The 'Agreement for a Better Parliament' proposes that 'The Speaker and Deputy Speaker can participate in Private Members' Business but cannot vote'.
- 3.38** This proposal is already in place in the Legislative Council, although it is not restricted to private members' business. As indicated before, the President, like any other member of the House, is elected to represent the views of his or her constituents in the Parliament. As such, it is fundamentally important that the President should be entitled to participate in debate on a matter of importance to the President or his or her constituents, whether it is a matter of private members' business or any other item of business.
- 3.39** In the Council, when the President takes part in debate, he or she does so from the floor of the House (SO 86). In order to do so, the President may request that the Deputy President, or in the absence of the Deputy President, the Assistant President or one of the Temporary Chairs takes the Chair, without any announcement to the House (SO 22).
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Finding

There are already provisions in the Legislative Council for the President to participate in debate on the floor of the House on private members' business, as well as any other item of business.

Acknowledgement of Country

- 3.40** The 'Agreement for a Better Parliament' provides for the acknowledgement of country in the House of Representatives each sitting day prior to prayers.
- 3.41** In the Legislative Council, the President routinely acknowledges the Gadigal clan of the Eora nation and its elders on the first sitting day of each week after prayers. This acknowledgement of country was first instituted by President Burgmann in the 53rd Parliament. It has been continued by Presidents Primrose and Fazio. However the arrangement is informal; it is not written in the standing orders.
- 3.42** The arrangements should be continued.
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Finding

An Acknowledgement of Country is already in place in the Legislative Council.

Operation of question time

- 3.43** The resolution appointing the Committee and the ‘Agreement for a Better Parliament’ canvass provisions for the reform of Question Time.

Time limits for questions and answers and supplementary questions

- 3.44** The ‘Agreement for a Better Parliament’ canvasses time limits for questions and answers and supplementary questions.
- 3.45** The Legislative Council adopted time limits for questions in 2002 by way of sessional order. Those time limits were subsequently incorporated in the current standing orders in 2004.
- 3.46** The time taken by members to ask a question during Question Time is limited to one minute and an answer by ministers to four minutes. A minister may seek leave to extend the time for an answer by one minute (SO 64(5)(a)). At the discretion of the President, one supplementary question to seek elucidation of an answer may immediately be put by the member who asked the question. In asking a supplementary question the member has one minute and the minister has two minutes to answer (SO 64(5)(b)).¹⁴
- 3.47** It is well established that a supplementary question must be a new question on the same subject, and not a repetition of the original question, either in full or in part. In addition, supplementary questions are not an opportunity to ask another unrelated question. Equally, supplementary questions must not contain new material.

Duration of questions

- 3.48** The ‘Agreement for a Better Parliament’ envisages that approximately 20 questions be asked during Question Time each day in the House of Representatives.
- 3.49** The Legislative Council standing orders do not limit the duration of Question Time each day but generally after one hour the Leader of the Government asks that further questions be placed on the Questions and Answers Paper. This generally allows around 20 questions to be asked each day during Question Time.

¹⁴ These time limits were first introduced as a sessional order adopted on 12 March 2002 and subsequently incorporated in the new 2004 standing orders.

Finding

Reforms to the operation of Question Time relating to time limits for questions and answers, supplementary questions and the duration of Question Time are already in place in the Legislative Council.

The share of questions

- 3.50** The ‘Agreement for a Better Parliament’ requires a proportionate share of questions to be allocated to non-aligned members of the House of Representatives.
- 3.51** In the Legislative Council, questions are shared equally between Government, Opposition and cross-bench members. As a result, cross-bench members are allocated more questions than what would be a proportionate share. A practice has been established that the first call is generally given to the Leader of the Opposition. The call is then alternated between Government, Opposition and Cross-bench members. However, the allocation of the call is within the President’s discretion.
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Finding

In the Legislative Council, questions are shared equally between Government, Opposition and cross-bench members. Changing the current practice to reflect proportionate shares would involve a reduction of questions for cross-bench members. This approach is not supported.

The rules for questions

- 3.52** The ‘Agreement for a Better Parliament’ includes a requirement that the Speaker of the House of Representatives should give due regard to the rules for questions, but not in such a way that would inhibit the ability of the Opposition to hold the Government to account.
- 3.53** In the Legislative Council, the rules governing questions and answers are set out in standing order 65. As a general observation, the rules for questions are extensive. They 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).
- 3.54** The ‘Agreement for a Better Parliament’ is, in effect, requesting the Speaker to use his discretion in applying the House of Representatives rules governing questions and answers to ensure that they are not used to undermine Questions Time’s traditional role of holding the Government to account.
- 3.55** As this is a subjective matter involving the exercise of the presiding officer’s discretion, no specific changes to the standing orders are considered necessary.
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The relevance of answers

3.56 A reform proposed in the ‘Agreement for a Better Parliament’ which has not been adopted by the Council is the proposal concerning relevance:

The Standing Orders be amended so that answers must be “directly relevant to the question”, with the Speaker to lead on enforcement of the relevance test.

The Government and Opposition will support the Speaker in taking a strong stance on this issue.

3.57 In the Legislative Council, the rules guiding the answers to questions without notice are far less prescriptive than the rules for questions. Standing order 65(5) and (6) only provide:

(5) An answer must be relevant to a question.

(6) In answering the question a member must not debate the question.

3.58 The requirement that an answer must be relevant in standing order 65(5) has traditionally been interpreted very broadly by successive Presidents of the Legislative Council. It is common for a point of order to be taken in the House that a minister is not being relevant to a question. In such instances, the President has generally ruled that the minister should continue to be generally relevant.

3.59 The reform proposal in the ‘Agreement for a Better Parliament’ requiring a minister to be ‘directly relevant to the question’ and for the Presiding Officer to take the lead in enforcing the relevance test would clearly be a significant departure from these current arrangements.

3.60 This reform has been adopted in the Australian Senate. On 13 November 2008, the Senate adopted on a temporary basis new rules for Question Time which included a rule that answers were to be ‘directly relevant to each question’. The new rules have continued to be adopted by the Senate on a temporary basis ever since, on the recommendation of the Senate Procedure Committee.

3.61 However, advice from the Clerk of the Senate is that the requirement for answers to be ‘directly relevant’ has not significantly altered the nature of answers provided during Question Time in the Senate.

3.62 Ultimately, the requirement that a minister’s answer be ‘directly relevant’ to the question asked must be interpreted and enforced by the Presiding Officer. Necessarily, though, such a judgement is a subjective one.

3.63 It is notable that the New Zealand Parliament, amongst all Westminster parliaments, appears to have gone furthest in setting out requirements for ministers to be relevant when answering questions. Standing order 377 of the New Zealand Parliament is as follows:

377 Content of replies

- (1) An answer that seeks to address the question asked must be given if it can be given consistently with the public interest.
- (2) The reply to any question must be concise and confined to the subject-matter of the question asked, and not contain-
 - (a) statements of fact and the names of any persons unless they are strictly necessary to answer the question; or
 - (b) arguments, inferences, imputations, epithets or ironical expressions, or
 - (c) discreditable references to the House or any member of Parliament or any offensive or unparliamentary expression.
- (3) Replies shall not refer to proceedings in committee at meetings closed to the public that have not yet been reported to the House or (subject to Standing Order 111) to a case pending adjudication by a court.

3.64 Significantly, standing order 377 above applies many of the rules for the asking of questions in the New Zealand Parliament (rules that are also applied in the Council) to ministers when answering questions. Of particular note are the rules that in answering a question:

- ministers must be concise and confine their answers to the subject matter of the question;
- ministers may only provide statements of fact or the names of any persons where they are strictly necessary to answer the question; and
- ministers may not engage in arguments, inferences, imputations, epithets or ironical expressions.

3.65 The application of many of the rules for the asking of questions in the New Zealand Parliament to ministers when answering questions is observed in *Parliamentary Practice in New Zealand*:

The Minister's reply must address the question asked. This involves a question of relevancy. The reply must be a direct response to the question; it cannot be a statement on an unrelated matter which it suits the Minister to introduce. ...

The Minister's reply to a question is required to conform to many of the rules applying to questions. It must be concise and confined to the subject matter of the question asked.

3.66 It is open to the Council to trial similar rules for the answering of questions without notice during Question Time, in effect adopting many of the rules currently in place for the asking of questions without notice to the answering of those questions. Such an approach could be trialled through a sessional order varying standing order 65(5) and (6).

Recommendation

The merits of further reforms to the operation of Question Time, notably to the relevance of answers, should be considered by the Legislative Council's Procedure Committee in the new Parliament.

Points of order and notes

- 3.67** The 'Agreement for a Better Parliament' also includes provisions concerning the taking of points of order on relevance during Question Time, and the use of notes by ministers during Question Time.
- 3.68** The proposal to limit the taking of points of order is not supported. It is not clear why the right of a member to draw attention to a departure from the standing orders should be restricted. Should this option be adopted, following the taking of one point of order in relation to a minister's answer, there would be no further mechanism to draw the minister back to the question should the minister again stray from the question.
- 3.69** A more useful reform that should be considered is the stopping of the clock when a point of order is being taken, both in question time and at other times.
- 3.70** Equally, restrictions on the use of notes by ministers during Question Time are not supported. There is already a prohibition on the reading of speeches.¹⁵ However, ministers should be entitled to refer to notes during Question Time, as any speaker in the House is entitled to refer to speaking points during debate. Preventing a minister from referring to notes, especially where the minister is responding to a question on behalf of a minister in the other House, would likely adversely affect the quality of answers.
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Finding

The proposals to limit the taking of points of order during Question Time and to limit the use of notes by ministers in answering questions are not supported.

Matters of public importance

- 3.71** The 'Agreement for a Better Parliament' provides for debate on matters of public importance to be extended to 1½ hours (with time limits for speakers), for debate to be given greater prominence following Question Time, and for debates to be proportionately allocated to non-government members.

¹⁵ Rulings: Peden, *LC Debates* (22/12/1936) 1388; Johnson (26/3/1981) 5256; Solomons (27/2/1990) 163.

- 3.72** The Council has already adopted these measures. Matters of public importance are considered following business of the House each sitting day, before the House proceeds to government business or private members' business, giving them appropriate prominence. Most matters of public importance are matters raised by non-Government members. The same time limits for the overall debate (1½ hours) is applied.
- 3.73** The Council also has provisions for debate on urgency motions in somewhat similar terms.
- 3.74** These arrangements should be continued. Indeed, better use of standing orders 200 and 201 dealing with matters of public importance and urgency motions would potentially entail a reduction in the number of items being notified and brought on for debate as private members' business through the suspension of standing orders.

Finding

The proposals for debate on matters of public importance are already in place in the Legislative Council.

Private members' business and private members' bills

- 3.75** The resolution appointing the Committee and the 'Agreement for a Better Parliament' make specific reference to the time available for consideration of private members' business.

The time available for consideration of private members' business

- 3.76** Arguably, private members' business is the most important mechanism available to private members for debate on topics of their own choice, incorporating both private members' bills and private members' motions.
- 3.77** In the Legislative Council, debate on private members' business is in normal circumstances restricted to Thursdays, with a little over three hours available on any one day. However, the House does not always consider private members' business on Thursdays: at the beginning of a sitting period it is not unusual for days other than Thursday to be given over to private members' business; equally towards the end of a sitting period when there is often a backlog of government bills before the House, it is not uncommon for the House to give precedence to consideration of government business on a Thursday.
- 3.78** Additional time could be made available for the consideration of private members' business either by the House sitting additional weeks a year, or by the House sitting longer during existing sitting weeks, for example on Friday, similar to the Legislative Assembly. Such an arrangement could be trialled by the Council by way of sessional order. For example, consideration of Committee reports and the take note debate on budget estimates could take place on a Friday morning, rather than the current Wednesday, allowing additional time for the consideration of either government business or private members' business on a Wednesday.

3.79 Against this proposal, however, it is noted that the amount of time devoted to private members' business in the Council is broadly consistent with the time allocated in other Parliaments. In addition, Council committees often use Friday as a day to hold meetings and hearings. This matter is raised further in the sections below on 'The oversight of bills by committees' (Item No. 10) and 'Sitting days and the time available for debate' (Item No. 15).

The selection of private members' business

3.80 An issue related to the timing of private members' business is the mechanism by which items of private members' business are prioritised by the House. Invariably, the House has more items of private members' business before it than could possibly be dealt with in any one sitting day.

3.81 The current system for managing private members' business in the Legislative Council provides for items to be dealt with according to a system of precedence, whereby the House considers items of private members' business in the sequence established by a draw conducted by the Clerk at the beginning of the session. As the House disposes of items, further draws are conducted to ensure there are sufficient items, up to a limit of 12, in the order of precedence.

3.82 However, this current system of managing private members' business is not operating as intended. The system has some significant operational difficulties:

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.
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, negatived or withdrawn.

3.83 The perceived need for reform of the operation of private members' business in the Council was most recently raised in the Council by the Leader of the Government in the House, the Hon John Hatzistergos:

The fact is that we used to have a situation in this House whereby there was an order of precedence. Members would be balloted, and in turn their respective legislation or items of general business would be able to be discussed on private members' day. I think that has long gone out the window. What has been happening in recent times is that the only way a private member is able to have a matter debated in this House is effectively by using the vehicle of urgency. Basically it means that the definition of urgency ceases to take on the meaning it once had, whereby members would simply wait their turn through the normal procedure of balloting, have their matters heard, and urgency was basically confined to urgent matters.

There have been a large number of matters where members have, almost religiously, only got their private members' matters debated effectively by using the vehicle of urgency. Indeed, that is the only other vehicle by which those matters can be debated. That is the practical situation we are confronted with.¹⁶

- 3.84** There are various models employed by other parliaments within Australia, New Zealand and the UK for the selection of items of private members' business – some involve negotiations behind the scenes, often through the whips, while others require more direct involvement of officers of the House, if necessary through the use of ballots.
- 3.85** Most recently, the Reform of the House of Commons Select Committee, in its first report entitled *Rebuilding the House*, argued for a system where backbench business is organised by a Backbench Business Committee, responsible for all business which is not strictly ministerial.
- 3.86** There are a number of options for reform of the operation of private members' business that could be trialled by way of a sessional order. These options include:
1. A Selection Committee system similar to that used in the House of Representatives, and the proposed Backbench Business Committee in the House of Commons. This option would entail the greatest flexibility in which items were debated, but also provide the political parties through the whips with the greatest collective scope for selecting items of private members' business to be brought forward. In the House of Representatives, the Selection Committee accords priority to items of private members' business and the time allocated for debate for each item according to general principles previously adopted by the House, including: the importance of the subject, the current level of interest in the subject, the extent to which the subject comes within the responsibility of the Commonwealth Government and the number of members affiliated with the party raising the matter.
 2. A Selection Committee system but with a separate arrangement for private members' bills, in order to facilitate timely Government responses to private members' bills.
 3. A notification system, whereby individual members could notify items of private members' business to be set down for the following Thursday, somewhat similar to the operation of formal business under standing order 44 of the Legislative Council (as amended by sessional order).

4. Increasing flexibility under the current system to allow members to substitute an item inside the order of precedence standing in their name for another item, which need not necessarily be in their name.

3.87 Reform of the current system of managing private members' business in the Legislative Council is supported, however detailed consideration of options for reform is beyond the scope of this Committee in the limited time period available to it. The matter could be referred to the Procedure Committee of the Council for further consideration.

Finding and recommendation

Reform of the current system of managing private members' business in the Legislative Council is supported. The merits of various reform items, including the option of a Selection or Business Committee, should be considered by the Legislative Council's Procedure Committee in the new Parliament.

Adjournment

3.88 The 'Agreement for a Better Parliament' sets out various provisions for the adjournment debate in the House of Representatives.

3.89 Similar provisions are already in place in the Legislative Council under Standing Order 31. No further change is necessary.

Finding

The proposals concerning the adjournment debate are already in place in the Legislative Council.

90 second statements

3.90 The 'Agreement for a Better Parliament' includes a provision for 15 minutes to be allocated prior to Question Time for members to make 90 second statements on constituency matters.

3.91 There is no equivalent provision in the Legislative Council. In the Council, members already have an opportunity to raise constituency matters in the adjournment debate. While consideration could be given to such a provision at a later date, it is not proposed to implement such a proposal in the Council at this time, pending a review of the operation of this proposal in the House of Representatives.

Finding

The proposal for 90 second statements in the Legislative Council is not supported.

Ministerial statements

- 3.92** The ‘Agreement for a Better Parliament’ includes a provision for ministerial statements and responses to be limited to 10 minutes, with opportunity for responses by non-government members.
- 3.93** The Legislative Council already has a similar provision under Standing Order 48. A minister may make a ministerial statement of unlimited duration. In reply, the Leader of the Opposition, or a member nominated by the Leader of the Opposition, may speak to a ministerial statement for a period of time not exceeding the time taken by the minister in making the statement.
- 3.94** There is some difficulty extending a right of reply to cross-bench members. Currently there are seven political parties represented in the Legislative Council. In the 52nd Parliament, there were 10 political parties represented.
- 3.95** One option would be to develop an appropriate mechanism for the cross-bench members of the Council to agree on a representative to speak in reply.

Finding and recommendation

The Legislative Council has already adopted provisions for the Leader of the Opposition, or a member nominated by the Leader of the Opposition, to speak to a ministerial statement for a period of time not exceeding the time taken by the minister in making the statement.

The extension of this provision also to provide a right of reply to a representative of the cross-bench would be supported in principle, if an appropriate mechanism could be developed for the cross-bench members of the Council to agree on a representative to speak in reply. This should be considered by the Legislative Council’s Procedure Committee in the new Parliament.

The committee system

The oversight of bills by committees

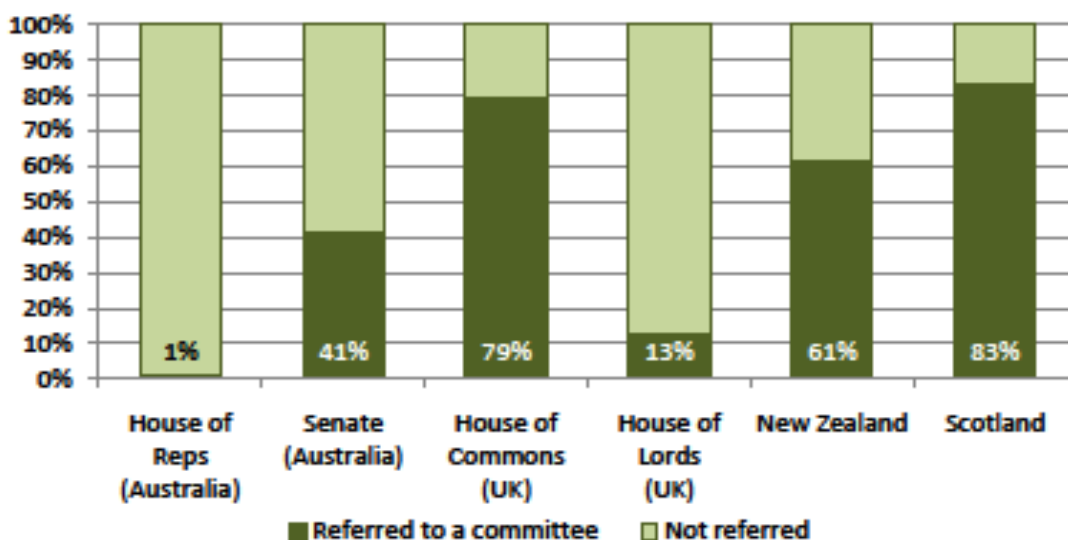
- 3.96** The resolution appointing the Committee provides that the Committee is to consider the oversight of bills by committees. The ‘Agreement for a Better Parliament’ provides in turn for a reorganisation of the general purpose standing committees of the House of Representatives, with membership of those committees to fully reflect membership of the House. All bills introduced into the House must be referred immediately to the Selection Committee, with bills regarded as controversial or requiring further consultation or debate to be immediately referred to the relevant standing or joint committee.
- 3.97** These proposed reforms to the operation of the committee system in the House of Representatives follow a major report on the House committee system released in June 2010 by the House of Representatives Standing Committee on Procedure entitled Building a

modern committee system: An inquiry into the effectiveness of the House committee system. In this report, the Committee made the following observation in relation to committee scrutiny of bills in the House of Representatives:

Standing order 215 allows a general purpose standing committee to inquire into and report on any pre-legislation proposal or bill referred to it. This power has existed since the establishment of the committee system in 1987. Historically, however, House committees have had very little involvement in considering legislation or pre-legislation proposals. Such inquiries have only been undertaken since 1994, and there have only been a handful of such inquiries since then. ...

By contrast, committees of the Senate, the Parliaments of Scotland and New Zealand, and the UK and Canadian Houses of Commons, are more involved in considering bills and proposed legislation. Automatic referral of bills to committees tends to be the norm in many other parliaments. This is notably the case in the unicameral New Zealand and Scottish Parliaments.¹⁷

3.98 The Committee’s report also included the following table comparing the proportion of bills referred to committee each year in the House of Representatives with the Senate, the House of Commons, the House of Lords, the New Zealand Parliament and the Scottish Parliament.



Source: House of Representatives Standing Committee on Procedure, *Building a modern committee system: An inquiry into the effectiveness of the House committee system*, June 2010, p 118.

3.99 As indicated above, in the Senate, bills are routinely referred to the legislative and general purpose standing committees for inquiry and report. As stated in *Odgers*:

A major refinement [to the committee system] occurred with the adoption of resolutions by the Senate on 5 December 1989 providing for the systematic referral of bills to legislative and general purpose standing committees. These

¹⁷ House of Representatives Standing Committee on Procedure, *Building a modern committee system: An inquiry into the effectiveness of the House committee system*, June 2010, pp 115-116.

orders came into effect in the latter half of 1990 and facilitated the realisation of a long-held ideal, that Senate committees should have a greater role in the consideration of legislation.¹⁸

- 3.100** The most common method by which bills are referred to a committee in the Senate is through the adoption of a report of the Selection of Bills Committee. This Committee comprises the whips of the major and minority parties and four other senators, and meets weekly when the Senate is sitting to consider which bills introduced into the Senate or due for introduction should be referred to committees for inquiry and report. The Senate may also refer bills to its legislative and general purpose standing committees immediately after the bill has been read a second time.
- 3.101** The Senate's legislative and general purpose standing committees are then able to determine their own procedures in dealing with individual bills. In most cases this involves seeking evidence from a wide range of stakeholders, including by written submissions and oral evidence at public hearings. Committees may consider in detail or in principle amendments to bills and make recommendations to the Senate accordingly.¹⁹
- 3.102** By contrast, the Council does not have a system for the routine scrutiny of controversial or important pieces of legislation, as is the case in the Senate, or as is being proposed in the House of Representatives. In the past 15 years, only 10 bills have been referred to committees for inquiry and report. There have been occasions in the Council where bills have been referred to committee, while the bill itself has still progressed through its remaining stages. In addition, from time to time, inquiries have been conducted retrospectively into the impact of certain legislation.
- 3.103** In the Council, committees have tended rather to focus on general references concerning matters of policy or government administration.
- 3.104** The merits of moving to such a system for referral of legislation to legislative scrutiny committees would need to be considered closely by the Procedure Committee of the Council. There would be merit in considering whether detailed consideration of certain bills in committee, with an opportunity to take evidence from expert witnesses, would enhance the role of the Council as a 'House of Review'. The proposal may also have merit as a mechanism for preventing undue haste in the passage of legislation through the House. However, detailed consideration of this proposal is beyond the scope of this Committee in the limited time period available to it.
- 3.105** Were the Committee system of the Council to evolve in this way, as contemplated in the resolution appointing the Committee, four significant issues would need to be considered.
- 3.106** First, the Legislative Council is a small House of only 42 members, in contrast to the Senate which has 76 members, and the House of Representatives which has 150 members. In addition, in recent times, a number of ministers have come from the Legislative Council. Accordingly, the number of backbench members of the Council available to serve on

¹⁸ H.Evans (ed), *Odgers' Australian Senate Practice*, 12th edn, Department of the Senate, Canberra, 2008, p 349.

¹⁹ *Ibid*, p 385.

committees is limited. Were the committee system to evolve to undertake greater review of legislation, a necessary precursor to that would likely be the establishment of a selection of bills committee, similar to that in the Senate and that proposed in the House of Representatives, which would be in a position to make judicious decisions about which bills should be referred to committee for inquiry and report. The Council would be unlikely to be able to support the referral of all or even most bills to committee, as is the norm for example in the Scottish Parliament. Referral of only the most important or controversial bills would be more appropriate. It also seems likely that committees would be less able to undertake inquiries into general references.

3.107 As an extension of these matters, it should also be noted that the referral of more bills to committees for inquiry and report would necessarily involve members devoting more time to committee work. Proposals for reform of the sitting pattern for the House to sit longer, for example on Fridays, as canvassed previously in this submission, could potentially hinder the capacity of committees to meet and transact business.

3.108 Second, were more bills to be referred to committees, the current committee system of the Council, comprising the three policy oriented Standing Committees (the State Development Committee, the Social Issues Committee and the Law and Justice Committee), together with the five General Purpose Standing Committees, would need to be examined, including their membership. While it may be that the role of reviewing bills could appropriately be undertaken by the five General Purpose Standing Committees in their current form, this would need to be considered closely.

3.109 Third, the procedures of the House would need to be examined. As an example, standing order 24A of the Senate sets out detailed procedures for the referral of bills from the Senate to committees on the recommendation of the Scrutiny of Bills Committee. Standing order 24A(8) of the Senate provides:

(8) Where a motion moved pursuant to paragraph (4) is agreed to with or without amendment, at the conclusion of the stage of the consideration of a bill referred to in the report adopted by that motion or in an amendment, the bill shall stand referred to the standing committee specified, and the further consideration of the bill shall be an order of the day for the day fixed for the presentation of the report of the standing committee.

3.110 Similar arrangements would need to be considered in the Legislative Council.

3.111 Fourth, the Committee Office of the Legislative Council is currently staffed by 17 FTE staff, working across the three policy-oriented Standing Committees and the five General Purpose Standing Committees. The Privileges Committee and Procedure Committee are supported separately by the Procedure Office. The role of committee staff is to facilitate the effective operation of committees, including managing inquiries to be undertaken by the committees, organising meetings of the committees, preparing business papers and preparing draft reports. Were the committees in the Council to take on a significantly greater role and workload relating to the scrutiny of bills, the staffing of the Committee Office would need to be considered.

Recommendation

Procedures for the more regular referral of bills to committees, and the potential impact of any such changes on the Council's committee system and the passage of legislation, should be considered by the Legislative Council's Procedure Committee in the new Parliament.

The operation of the Legislative Review Committee

- 3.112** A related issue concerning the oversight of bills by committees is the effective operation of the Legislation Review Committee.
- 3.113** The Legislative Review Committee has two main functions: the review of both primary legislation (bills) and subordinate legislation (regulations, ordinances and the like) against a set of accountability standards that focus on individual rights, liberties and obligations, and on parliamentary propriety. It has eight members: three nominated by the Council and five by the Assembly.²⁰
- 3.114** By contrast, in the Senate, there are two committees that undertake the responsibilities of the Legislation Review Committee: the Scrutiny of Bills Committee, and the Regulations and Ordinances Committee, which is the most longstanding and prestigious committee in the Senate. These two committees are respectively responsible for reviewing all primary and subordinate legislation.
- 3.115** Prior to 2003, the New South Wales Parliament only had a Regulation Review Committee for the scrutiny of delegated legislation. However, in a 2001 report entitled *A NSW Bill of Rights*, the Law and Justice Committee recommended that a joint committee be established to scrutinise all bills before the Parliament on human rights grounds. The Committee considered that the new committee should be separate from, and in addition to, the existing Regulation Review Committee, given evidence from other jurisdictions suggesting that if the scrutiny of bills and regulations were combined, one of the two functions would suffer.²¹
- 3.116** In response to the Committee's report, the Government introduced amendments to the Regulation Review Act 1987 which provided for the Regulation Review Committee to be reconstituted as the Legislation Review Committee, and for the Act to be renamed the Legislation Review Act 1987.²² The Legislation Review Committee was to undertake the scrutiny of both bills and regulations, contrary to the recommendation of the report of the Law and Justice Committee. In that regard, the Government's position was explained in the following terms:

The Government does not agree with the Standing Committee's recommendation that the scrutiny of legislation committee should be separate from the Regulation Review Committee. The Government notes that the Standing Committee's observation that the criteria for an effective scrutiny committee are already

²⁰ *Legislation Review Act 1987*, s 5(1).

²¹ Standing Committee on Law and Justice, *A NSW Bill of Rights*, Report No 17, October 2001, p 132.

²² Legislation Review Amendment Bill 2002.

reflected in the way the Regulation Review Committee works ... The Government believes that the Standing Committee's concern about the Regulation Review Committee's workload can be addressed by the methods adopted in the Bill. In particular, the membership of the committee will be expanded from 8 members to 12. Also, if the Government's proposal is accepted, the Government is prepared to allocate additional funding to the renamed Regulation Review Committee to enable it to carry out this new function.²³

- 3.117** Subsequently, however, the bill was amended in the Assembly to maintain the membership of the Committee at eight members rather than 12.²⁴
- 3.118** While the commitment of the members and staff of the Legislation Review Committee is not under question, from time to time, the capacity of the Committee to perform the large task of scrutinising both primary and delegated legislation has been questioned. In its 2003-2004 report the Legislation Review Committee itself recommended that the Act be amended to permit it to appoint a sub-committee to report on regulations.²⁵
- 3.119** It is also noted that the Council has taken the greater interest of the two Houses in the scrutiny and review of delegated legislation. This is consistent with the House's role as the House of Review. Motions for the disallowance of delegated legislation under section 41 of the Interpretation Act 1987 are routinely considered by the House, unlike in the Legislative Assembly.
- 3.120** In these circumstances, there would be merit in revisiting the functions of the Legislation Review Committee, with a view to the establishment of a new joint committee for the scrutiny of subordinate legislation, while maintaining the role of the Legislation Review Committee in relation to primary legislation. Such a committee should be administered by the Council.

Recommendation

A new joint committee for the scrutiny of subordinate legislation could be established, while maintaining the role of the Legislation Review Committee in relation to primary legislation. Arguably, such a committee should be administered by the Council.

Response to committee reports

- 3.121** The 'Agreement for a Better Parliament' incorporates provisions concerning Government responses to Committee reports within 6 months of the report being presented to the House.
- 3.122** In the Legislative Council, standing order 233 requires the Clerk to refer all committee reports which recommend that action be taken by the government to the Leader of the Government for a response. The government must, within six months of a report being tabled, report to

²³ *LC Debates* (25/9/2002) 5289.

²⁴ *LA Debates* (27/6/2002) 4157-4158.

²⁵ *Operations, Issues and Future Directions*, above n 123, p 10.

the House what action, if any, it proposes to take in relation to each recommendation of the committee. If the House is not sitting when a minister seeks to report to the House, a response may be presented to the Clerk.

- 3.123** The President is required to report to the House if a government response has not been received by the six months' deadline (SO 233(4)). The record of governments to date in providing responses within the required time frame is generally very good. However, on several occasions, ministers have written to the Clerk advising that a response will be provided, but outside the deadline.
- 3.124** It should also be noted that the quality of Government responses to Committee reports varies. In recent times, some Government responses have not addressed each committee recommendation, as required by the standing orders. On those instances, the Clerk has been obliged to write back to the relevant minister alerting him or her to the requirements under the standing orders and seeking a more complete response.
- 3.125** The 'Agreement for a Better Parliament' contemplates further enforcement provisions: requiring the minister to table a statement explaining to the House why the response could not be prepared in time, and also provision for the minister to make him or herself available to appear before the relevant committee to answer questions on that statement. These reforms would not appear necessary at this time.

Finding

Certain mechanisms concerning responses to committee reports are already in place in the Council. Further reforms would not appear necessary at this time.

Debate on committee reports

- 3.126** A further issue of interest concerning committee processes is debate in the House on committee reports. Given the number of committee reports tabled in the Council, they are often not debated until weeks or months after they are tabled, in which time the currency of the information in the report, and the urgency of addressing some of the recommendations of the Committee, may lapse.
- 3.127** There would be merit in a re-examination of both the time set aside for debate on committee reports (currently Wednesdays after the lunch break for a time specified according to sessional order), and the time restriction on speakers on committee reports. A case could be made that a committee report should be debated within a strict number of sitting weeks after it is tabled. To do otherwise may be seen as downplaying or diminishing the important work and findings of the committees.
- 3.128** As foreshadowed earlier in this submission, the House may consider the adoption of a Selection Committee. Such a committee could usefully consider how much time should be set aside in a sitting week to ensure that committee reports are debated in a timely manner, when that debate should take place, and how much time should be allocated to speakers. As

foreshadowed previously in this submission, one option may be for time to be set aside on Friday for debate on committee reports.

- 3.129** In the House of Representatives, the Selection Committee determines the order of priority of debate on committee reports and the maximum times to be allocated for debate.

Recommendation

The merits of the Council trialling new arrangements for debate on committee reports, including trialling a Selection or Business Committee to allocate debate times, should be considered by the Legislative Council's Procedure Committee in the new Parliament.

Time limits for the consideration of bills

- 3.130** The 'Agreement for a Better Parliament' proposes varying time limits for consideration of bills in the House, with the Selection Committee to determine time limits for discussion of certain bills.
- 3.131** The Council does not impose time limits on debate on Government bills, although it does impose time limits on debate on private members' bills. Time limits for debate in the Council are considered further in the section on 'Sitting days and the time available for debate' (Item No. 15).
- 3.132** It is not proposed to change these arrangements at this time.
- 3.133** The 'Agreement for a Better Parliament' also includes a proposal for a trial of 5 minutes of questions at the end of all members' speeches to encourage 'smarter debate'. This proposal is not supported. It is already the case that debate in the House is intended to be an exchange of views and arguments. Members are expected, to some extent, to respond to the arguments of previous speakers.

Finding

The current time limits for the consideration of bills in the Council are appropriate.

Recommittal of votes

- 3.134** The Legislative Council has no formal rules dealing with the recommittal of votes, and such a proposal is not supported. Members routinely attend divisions in the House. On the very rare occasions where issues arise in relation to a member's attendance in the House on time, members may seek the leave of the House for the matter to be redressed.

Finding

The recommittal of votes in the Council is not supported.

The definition of appropriation bills

- 3.135** Section 53 of the Commonwealth Constitution provides that the Senate may not amend a bill which would appropriate money for the ordinary annual services of the Government.
- 3.136** The ‘Agreement for a Better Parliament’ raises the meaning of ‘the ordinary annual services of the Government’ at the Commonwealth level, and various Senate resolutions concerning what does and does not constitute the ordinary annual services of Government.
- 3.137** In New South Wales, similar issues arise in relation to the operation of 5A of the *Constitution Act 1902*, which limits the powers of the Council in relation to money bills appropriating public revenue for the ordinary annual services of government.
- 3.138** The position of the Council is that the expression ‘the ordinary annual services of the Government’ contained in section 5A denotes services provided or maintained within a financial year which the Government is reasonably expected to provide in accordance with its legislative and constitutional powers, through Government Departments and agencies. It does not denote capital works, parliamentary appropriations or special appropriations. It also has no relevance to taxation bills.
- 3.139** While section 5A imposes certain restrictions on the powers of the Council with respect to money bills for the ordinary annual services of the Government, the Council does not admit any further restrictions on its legislative power. Deadlocks between the Houses on all other bills, including other money bills, should be dealt with under section 5B in the normal way.
- 3.140** By contrast, it is noted that the Legislative Assembly places a far wider interpretation on the provisions of the *Constitution Act 1902* concerning money bills, in particular the requirements of section 5 dealing with the initiation of money bills, section 5A dealing with deadlocks over appropriation bills ‘for the ordinary annual services of the Government’, and section 46 concerning messages from the Governor in relation to money bills.
- 3.141** A useful first step to the resolution of this matter may be for the Council to pass a resolution, similar to the Senate, concerning its understanding of what constitutes appropriation bills ‘for the ordinary annual services of the Government’ within the meaning of section 5A.

Recommendation

The merits of the Council as a first step passing a resolution concerning the meaning of appropriations bills ‘for the ordinary annual services of the Government’ should be considered by the Legislative Council’s Procedure Committee in the new Parliament.

Commencement of legislation

- 3.142** The ‘Agreement for a Better Parliament’ proposes the establishment of a mechanism to ensure that a commencement date be included in all legislation.
- 3.143** In New South Wales, under subsection 23(1) of the Interpretation Act 1987, a bill which has been assented to by the Governor is deemed to commence 28 days after the date of assent unless the bill provides for commencement on another day by proclamation or otherwise.²⁶ Some bills specify the day of assent as the day of commencement and some specify a particular date. However, many bills provide that their provisions are to commence on a day or days to be appointed by proclamation.²⁷
- 3.144** Although this flexibility in commencement by proclamation is administratively convenient, allowing the Government to delay the commencement of the operation of a law until administrative arrangements or regulations are in place for the law to operate effectively, it confers a great deal of power on the executive government to determine when, if ever, the provisions of a bill passed by the Parliament will have effect.²⁸
- 3.145** The failure of some bills to include a provision specifying a date of commencement has led in some instances to delay in the proclamation of certain pieces of legislation.
- 3.146** There have also been instances where the Executive Government has not proclaimed amendments made to a bill in the Council, even though the amendments were subsequently agreed to by the Assembly and assented to by the Governor.
- 3.147** Such a position effectively places the Executive Government above the Parliament in law making. It is an inappropriate delegation of power from the Parliament to the Executive Government.
- 3.148** Standing order 160(2) of the Council now requires that a list of all legislation which has not been proclaimed 90 days after assent be tabled in the House on the second sitting day of each month. A useful reform would be to require that list to include the reasons why the legislation has not been proclaimed.

Recommendation

The Government should include in the list of unproclaimed legislation tabled in the Council under Standing Order 160(2) reasons why the legislation has not been proclaimed.

²⁶ *Interpretation Act 1987*, s 23(1)(b) and (c).

²⁷ That is, publication in the Government Gazette.

²⁸ See the Legislation Review Committee, *Annual Review 2004/2005*, Report No 3, September 2006, pp 11-12. See also the Legislation Review Committee, *Legislation Review Digest No 10 of 2004*, 30 August 2004, pp 52-56.

- 3.149** In the Federal Parliament, the Government has now adopted a commencement provision in all bills whereby if the act is to commence by proclamation, but has not commenced within 6 or 12 months after assent, it commences automatically. Provisions allowing proclamations to be made at any time after assent are now not included in bills unless there is some special reason for doing so.²⁹
- 3.150** The adoption of a similar arrangement in New South Wales is supported.
- 3.151** However, as indicated, the ‘Agreement for a Better Parliament’ now goes one step further, proposing that a mechanism be established to ensure a commencement date be included in all legislation.
- 3.152** This approach is not supported at this time, pending implementation of the reform proposed above. As indicated, there may on occasion be good reason why the commencement of a bill or provisions of a bill should be delayed for a certain period.

Finding and Recommendation

The current arrangements for the commencement of legislation are an inappropriate delegation of legislation power to Executive Government.

The Government should adopt a commencement provision in all bills whereby if the act is to commence by proclamation, but has not commenced within 6 or 12 months after assent, it commences automatically.

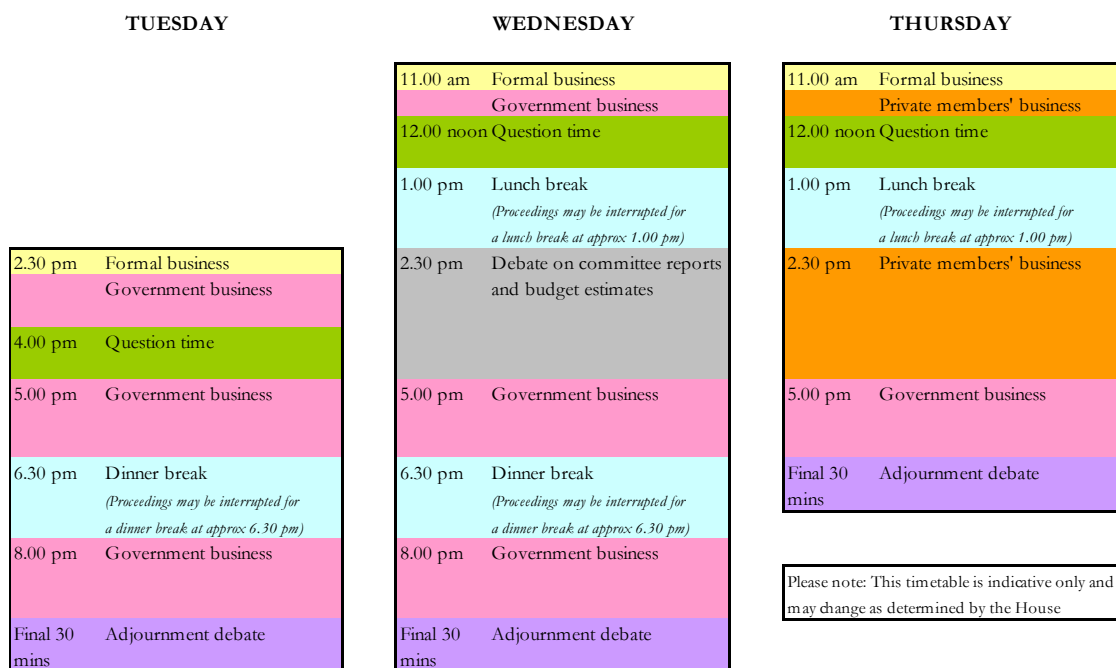
Review of the number of sitting days and the time available for debate

- 3.153** The resolution appointing the Committee and the ‘Agreement for a Better Parliament’ raise both the number of sitting weeks each year, and the time periods that are allocated to various debates.
- 3.154** Currently, the New South Wales Parliament sits approximately 18 calendar weeks a year. This has remained largely unchanged over the past few decades. This sitting pattern generally follows the sitting pattern proposed by the Government in advance of the calendar year.³⁰
- 3.155** On weeks that the Council sits, the order of business is set by way of sessional order, which currently provides that government business takes precedence on Monday, Tuesday, Wednesday and Friday, and after 5.00 pm on Thursday, and that private members’ business

²⁹ *Odgers*, 12th edn, p 269.

³⁰ However it is important to emphasise that outside of the opening and prorogation of Parliament by the Governor, it is ultimately a decision of the Houses themselves as to when they should sit. This is a fundamental principle of the Westminster system of parliamentary democracy. As McHugh J stated in the High Court in *Egan v Willis* (1998) 195 CLR 424 at 478: ‘The history of the procedures of the House of Commons and its effect upon our Westminster system makes it clear that it is a matter for the Council as to the way in which it conducts business and the order of its business ...’

takes precedence until 5.00 pm on Thursday. In reality, the House seldom sits on Monday or Friday; it is usual practice for a special adjournment of the House to be moved on Thursdays until the following Tuesday or a subsequent Tuesday. A figure summarising these arrangements is produced below.



3.156 Within this order of business, the following time limits for debate are currently enforced under the Council standing orders:

Time limits in the Legislative Council

Adjournment motions (SO 31)	Debate: 30 minutes Speakers: 5 minutes
Committee reports (SO 232)	Debate: 60 minutes Chair/Mover: 15 minutes Speakers: 10 minutes Chair/Mover: 10 minutes in reply
Private members' motions (SO 186)	Debate: 180 minutes Mover: 30 minutes Speakers: 20 minutes Debate interrupted 15 minutes before end of debate time Mover: 10 minutes in reply
Private members' bills (SO 187)	<i>Leave to bring in bill</i> Debate: 60 minutes Speakers: 10 minutes Debate interrupted 10 minutes before end of debate time <i>Second and third readings</i>

Adjournment motions (SO 31)	Debate: 30 minutes Speakers: 5 minutes No debate time limit Mover: 30 minutes Speakers: 20 minutes Mover: 20 minutes in reply
Disallowance motions (SO 78)	Debate 90 minutes Mover/Minister: 15 minutes Speakers: 10 minutes Mover: 10 minutes in reply
Matters of public importance (SO 200)	<i>Question of urgency</i> Mover/Minister: 10 minutes <i>Debate</i> Debate: 90 minutes Mover/Minister/Opposition: 15 minutes Speakers: 10 minutes
Urgency motions (SO 201)	<i>Question of urgency</i> Mover/Minister: 10 minutes <i>Debate</i> Mover/Minister/Opposition: 15 minutes Speakers: 10 minutes
Ministerial statements (SO 48)	No time limit for Ministers, Leader of the Opposition given equal time to respond
Suspension of standing orders (SO 198)	Debate: 30 minutes Speakers: 5 minutes
Question time (SO 64)	Question: 1 minute Answer: 4 minutes Supplementary question: 1 minute Answer to supplementary question: 2 minutes

3.157 There are no time limits on debate of Government bills, as noted previously.

3.158 The application of time limits to debate in the Council is a relatively recent phenomenon. Prior to the introduction of the current standing orders in 2004, time limits were trialled according to sessional order on various items of business. For example, in 1987, a sessional order was introduced imposing time limits on speeches on bills in the Council. At the time, the move was met with considerable opposition. It was thought that the Council members should not be unduly constrained or restricted by limiting the time available to them in debate. However, the application of time limits to various debates in the Council has since become

largely accepted as a necessary restraint in view of the limited number of sitting days available to the Council each year.

- 3.159** In recent years, the above combination of sitting weeks, sitting patterns and time limits on certain debates has been sufficient to support the completion of the Government's legislative program each spring and autumn sitting period. In order to do so, the Council has often been required to sit late towards the end of the sitting period. However, proposals to trial more 'family friendly' sitting hours have not been permanently adopted.
- 3.160** Given this, there is no obvious need for significant changes to the sitting pattern of the Council or the time periods that are allocated to debates.

Finding

The current sitting arrangements and time limits on debate in the Council are appropriate.

Resources of the Parliament

- 3.161** The 'Agreement for a Better Parliament' raises issues in relation to the funding and staffing of the Federal Parliament.
- 3.162** The New South Wales Parliament is funded under the budget process through the annual Appropriation (Parliament) Act.
- 3.163** In recent years, the Parliament, similar to many government departments and agencies, has operated within significant budgetary constraints.
- 3.164** It should be emphasised that it is entirely appropriate that the Parliamentary departments should be required to meet global savings targets in common with the New South Wales public sector. There is no case for the Parliamentary departments to be profligate with the public money or exempt from appropriate budget efficiencies.
- 3.165** However, it should also be noted that the Parliamentary departments are particularly affected by the following factors:
- the ageing of Parliament House and the escalating cost of building maintenance; and
 - the exaggerated effect on the Parliament of global savings targets set by Treasury, where a large proportion of the Parliament's budget (approximately 70 per cent) consists of 'protected items', such as members' salaries and entitlements set by the Parliamentary Remuneration Tribunal.
- 3.166** Currently, there is no mechanism in place to give recognition to such factors.
- 3.167** It is also undesirable that the funding of the Parliamentary departments that support the Legislative Council and Legislative Assembly is determined by the Executive Government through the annual Appropriation (Parliament) Act with little or no input into the process by the Presiding Officers or other representatives of the Parliament.

- 3.168** It is essential that the Treasurer and the Budget Committee of Cabinet consult the Presiding Officers each year in relation to the Parliament's budget.
- 3.169** The 'Agreement for a Better Parliament' also considers the staffing of the Parliament. The staffing of the Parliament could be put on a more solid foundation through the passage of a Parliament Act, which could usefully:
- entrench the current three-department structure of the parliamentary service (that is, the Department of the Legislative Council, the Department of the Legislative Assembly, and the Department of Parliamentary Services) and the roles of the three department heads (that is, the Clerk of the Parliaments, the Clerk of the Legislative Assembly and the Executive Manager, Parliamentary Services);
 - clarify and resolve issues concerning the employment arrangements for members' staff.

Recommendation

The funding and staffing arrangements of the Parliament should be reformed to place them on a more secure and independent footing.

Pairing arrangements

- 3.170** The 'Agreement for a Better Parliament' raises issues in relation to the pairing of members of the House of Representatives.
- 3.171** The position of the Legislative Council is that pairing arrangements are entirely informal and are a matter for the parties and the whips. These current arrangements are satisfactory.
- 3.172** However, an option that may be considered in the future is the party vote system used by the New Zealand Parliament since 1996. Under this system, votes are cast as a block by party representatives on behalf of each of the various parties recognised in the House. However, each member remains free to withdraw his or her vote from the party vote and use it in a different way from that of the party.
- 3.173** Detailed consideration of this option is beyond the scope of this Committee in the limited time period available to it. However, the matter could be referred to the Procedure Committee of the Council for further consideration.

Finding

The reform of pairing arrangements in the Legislative Council is not supported.

A Parliamentary Integrity Commissioner

- 3.174** The ‘Agreement for a Better Parliament’ canvasses the appointment of a Parliamentary Integrity Commissioner to investigate and make recommendations to the Privileges Committees of the House of Representatives and the Senate on individual investigations, provide advice to parliamentarians on ethical issues and uphold the Parliamentary Code of Conduct and control and maintain the Government’s Lobbyist register.
- 3.175** In New South Wales, the Presiding Officers have appointed a Parliamentary Ethics Adviser, whose function is to advise any member of Parliament on ethical issues concerning the exercise of his or her role as a member of Parliament (including the use of entitlements and potential conflicts of interest). The role excludes the giving of legal advice.
- 3.176** However, the role of the Parliamentary Integrity Commissioner envisaged under the ‘Agreement for a Better Parliament’ clearly goes beyond that currently performed by the New South Wales Parliamentary Ethics Adviser.
- 3.177** The issue of a Parliamentary Integrity Commissioner has been raised previously in New South Wales in the context of the limited capacity of the ICAC to investigate or adjudicate on breaches of the Code of Conduct for Members where matters of parliamentary privilege arise. In 2003, in a report to the Speaker of the Legislative Assembly, the ICAC raised as an option to address this issue the establishment of a Parliamentary Commissioner. However, the ICAC noted that in New South Wales, where the ICAC can investigate all corrupt conduct allegations apart from those to which parliamentary privilege applies, the likely need to call on a Parliamentary Commissioner would be relatively seldom.
- 3.178** The limitation in the ICAC’s jurisdiction to investigate conduct which is covered by parliamentary privilege was also considered during an independent review of the Independent Commission Against Corruption Act 1988 completed by Mr Bruce McClintock SC in 2005. The final report on that review included a recommendation that consideration be given to the establishment of a parliamentary investigator or parliamentary committee to investigate:
- minor matters involving members of Parliament, so as to permit the ICAC to focus on serious and systemic allegations of corruption; and
 - allegations of corruption that the ICAC is unable to investigate because of parliamentary privilege as preserved by section 122 of the Act.³¹
- 3.179** Subsequently, amendments to the Act were made to give effect to certain recommendations contained in Mr McClintock’s report.³² However, these did not include any changes to the ICAC’s capacity to investigate members of Parliament, or any provision for a parliamentary investigator.³³

³¹ McClintock B, *Independent review of the Independent Commission Against Corruption Act 1988*, Final Report, January 2005, p 87.

³² See the *Independent Commission Against Corruption Amendment Act 2005*.

³³ *LC Debates* (2/3/2005) 14411.

- 3.180** Also of note, in 2004, the Hon Peter Breen gave notice in the Council of a bill for an Act relating to the appointment and functions of a Parliamentary Commissioner for Standards.³⁴ The Commissioner was to be the final authority on members' use of parliamentary resources and their obligations with respect to their entitlements and allowances. As such, the bill was to follow the model already in place in other Parliaments, such as the British House of Commons.³⁵ Notice of the bill was given on a number of occasions and remained on the business paper until 2007, but the bill was never introduced into the House.
- 3.181** Clearly, any proposal to appoint a Parliamentary Integrity Commissioner in New South Wales would need to be considered carefully. Should this matter be pursued, it would appropriately be a matter for inquiry and report by the Privileges Committees of both Houses.

Recommendation

The merits of a Parliamentary Integrity Commissioner should be considered by the Legislative Council's Privileges Committee in the new Parliament, in consultation with the Legislative Assembly's Privileges and Ethics Committee.

Establishment of a Formal Code of Conduct

- 3.182** The 'Agreement for a Better Parliament' proposes the appointment of a cross-party working group to draft a code of conduct for members of the Federal Parliament.
- 3.183** The New South Wales Parliament adopted a Code of Conduct for Members in 1988. Under the Independent Commission Against Corruption Act 1988, the Independent Commission Against Corruption has jurisdiction to make findings of 'corrupt conduct' against members for a 'substantial breach' of the Code. Enforcement of the Code, however, is the responsibility of the individual Houses.
- 3.184** The Privileges Committees of both Houses are currently reviewing the Code, as they are required to do every four years under the Part 7A of the Independent Commission Against Corruption Act 1988.
- 3.185** Any amendments to the Code should only be made once this review process is completed.

Finding

The New South Wales Parliament adopted a Code of Conduct for Members in 1988. It is currently being reviewed by the Privileges Committee.

³⁴ *LC Notice Paper* (31/03/2004) 1429.

³⁵ *LC Debates* (1/4/2004) 7963. For further description of the content of Mr Breen's draft bill see McClintock B, *Independent review of the Independent Commission Against Corruption Act 1988*, Final Report, January 2005, pp 85-86.

A register of lobbyists

- 3.186** The ‘Agreement for a Better Parliament’ contemplates further enhancements to the Federal Register of Lobbyists.
- 3.187** In New South Wales in 2009, the Government introduced the NSW Government Lobbyist Code of Conduct. As of 1 February 2009, lobbyists (as defined in the Code) who act on behalf of third party clients are required to be registered with the Department of Premier and Cabinet on the NSW Lobbyist Register. The Code provides that a Government Representative is not to permit lobbying by a lobbyist not on the register.
- 3.188** The NSW Government Lobbyist Code of Conduct defines Government representatives to include ministers and parliamentary secretaries, but does not otherwise include members of Parliament. However, Premier’s Memorandum M2009-03 Lobbyist Code of Conduct and Register, issued by former Premier Nathan Rees, specifies that the Code of Conduct also applies to ‘Government Members of Parliament and their staff’.
- 3.189** There have been a number of criticisms made of the NSW Code and Register. Following the release of an Issues Paper in May 2010, the ICAC commenced an inquiry into the lobbying of public officials and public authorities in New South Wales and the related procedures and regulatory system.
- 3.190** The purported extension of the NSW Government Lobbyist Code of Conduct to Government backbenchers was the subject of a submission by the Clerk of the Parliaments and the Clerk of the Legislative Assembly to the ICAC inquiry. The Clerks argued that the purported extension of the Code is inconsistent with the principle of the separation of powers, under which the Executive Government should not seek to regulate how, and with whom, non-executive members of Parliament communicate when conducting their parliamentary business. These members, as elected representatives of the people, have a right to communicate with whomever they choose, just as they have the right to determine the sources of their information and the matters they choose to bring before Parliament.
- 3.191** It is also not at all clear how the purported extension of the NSW Government Lobbyist Code of Conduct to Government backbenchers could possibly be enforced.

Finding

The Government introduced the NSW Government Lobbyist Code of Conduct in 2009.

Appendix 1 Agreement for a Better Parliament: Parliamentary Reform

AGREEMENT FOR A BETTER PARLIAMENT

PARLIAMENTARY REFORM

Preamble

There are 150 local MP's that have recently been elected by the communities of Australia to the House of Representatives. This document is a combined effort to increase the authority and opportunities for participation for all MP's, regardless of their political party or their status of office.

The principles behind this document are twofold; to confirm 150 local MP's (and by extension their communities) as the foundation blocks of our Australian system of democracy, and increasing the authority of the Parliament in its relationship with the Executive.

For these improvements to work, it will take a commitment by all MP's to respect the cultural change that these changes bring. While the community demands a 'feisty' and 'testing' parliamentary floor, there will be a need for recognition by all to allow more MP's to be involved in various roles and debates, to allow more community issues to be tested through private members voting, and to allow a Speaker (in particular) to rule with a firm hand as debate tests the boundaries of the Standing Orders on the floor.

The Executive will also need to show a commitment to the cultural change that this moment brings, and will need to be more flexible, more consultative, and more engaged with all MP's if these new arrangements are to work.

This document has been produced through engagement with many people, including former Speakers and Clerks, MP's, party "elders", and members of the community. This broad engagement has been done in an endeavour to achieve improvements that are sustainable beyond the current three year-term, and improvements that work for all. All are thanked for their considered involvement.

1. ENHANCING THE PARTICIPATION OF ALL MEMBERS IN THE MANAGEMENT OF THE HOUSE OF REPRESENTATIVES

An expanded Selection Committee will be established, including aligned and non-aligned Members.

The Committee will be Chaired by the Speaker.

All Members will receive the same rights for the purposes of facilitating their full participation in all processes of the House. For the purposes of Standing Order 41A, Question Time and participation in all other debates, all Members interests would be guaranteed by the Selection Committee.

2. INDEPENDENT SPEAKER

2.1 Independence

The role of the Speaker will be independent of Government.

If the Speaker is drawn from a political party then the Deputy Speaker will be drawn from an alternate political party and both the Speaker and Deputy Speaker will:

- abstain from attending their respective party rooms; and
- when in the Chair, be paired for all divisions.

If the Speaker is non-aligned, then the same pairing arrangements will apply.

The Speaker and Deputy Speaker can participate in Private Members' Business but cannot vote.

Members of the Speakers Panel will be temporarily paired when occupying the chair during votes.

2.2 Power of the Speaker

The Speaker will rigorously enforce the Standing Orders of his or her own motion.

3. ACKNOWLEDGEMENT OF COUNTRY

At the beginning of each sitting day, prior to prayers, the Speaker will make an acknowledgement of country.

4. QUESTION TIME

4.1 Time Limits for Questions and Answers

Questions during Question Time be limited to forty five seconds and answers to four minutes.

It is noted that a Member may ask leave of the House for an extension of time.

4.2 Supplementary Question

The Leader of the Opposition or their delegate has the option of asking one supplementary question during each Question Time.

4.3 Duration of Question

Question Time will conclude no later than 3.30pm, enabling 20 questions each day in the normal course of events.

4.4 Questions

The Speaker shall give due regard to Standing Order 100 dealing with the material that questions may contain but not in such a way that would inhibit the ability of the Opposition to hold the Government to account.

4.5 “Relevance” Standing Order

The Standing Orders be amended so that answers must be “directly relevant to the question”, with the Speaker to lead on enforcement of the relevance test.

The Government and Opposition will support the Speaker in taking a strong stance on this issue.

4.6 Proportionate Share

A proportionate share of the Questions be allocated to non-aligned members, including the order in which those questions are asked during Question Time.

4.7 Points of Order

The Standing Orders be principally raised and enforced by the Speaker.

The point of order on relevance can only be once per question.

4.8 Notes

It is the preference in Question-Time for both questioners and Ministers to use best endeavours not to use notes. It is understood there are times when notes should be used to assist in providing the House with the best possible information in the most accurate and timely way possible. However, at all other times, the preference is no notes.

This will be reviewed at the end of the first session to see if further restrictions on use of notes in Question Time can and should be applied.

5. MATTERS OF PUBLIC IMPORTANCE

5.1 Length

The maximum length of discussion on Matters of Public Importance be extended to 1 hour and thirty minutes. That the proposer and the next speaker be allowed to speak for up to 15 minutes and that other speakers be allowed to speak for up to 10 minutes.

5.2 Greater Prominence

The Matter of Public Importance debate will immediately follow Question Time.

5.3 Proportionate Share

A proportionate share of Matters of Public Importance be allocated to all non-Government Members.

6. PRIVATE MEMBERS BUSINESS AND PRIVATE MEMBERS BILLS

6.1 Voting on Private Members' Bills

The Speaker, the Leader of the House, and the Selection committee, will ensure time is allocated for votes on Private Members' Bills during Government Business time in the Main Chamber.

6.2 Priority given for Private Members Business on Mondays

The Standing Orders will be amended to provide for:

- a period of committee and delegation business and private Members' business to be given priority in the Chamber on Mondays from 12 noon – 1.45pm, beginning with Petitions Committee report and statement(s) for 10 minutes;
- quorums and divisions called during the period of committee and delegation business and private Members' business being deferred until 5pm on Monday;
- the Main Committee to regularly meet on Mondays from 10.30 a.m. to 1.30 p.m, commencing with a 30 minute period of three minute constituency statements as provided by standing order 193, followed by committee and delegation reports and private Members' business being given priority;
- 90 second statements to take place from 1.45 p.m. each day, prior to Question Time, in the Main Chamber;
- a period of committee and delegation business and private Members' business to be given priority in the Chamber from 7:30pm to 9:30pm; and
- the adjournment to be proposed at 9.30 p.m. on Mondays, and the House adjourning at 10 p.m.

7. ADJOURNMENT

The Adjournment Debate shall be one hour on Monday and Tuesdays, and 30 minutes on Wednesdays and Thursdays.

8. 90 SECOND STATEMENTS

15 minutes will be allocated prior to Question time for Members to make 90 Second Statements on constituency issues.

9. MINISTERIAL STATEMENTS

9.1 Time Limits

Ministerial statements and response be limited to 10 minutes, except in circumstances agreed to by the Speaker or for Prime Ministerial statements.

9.2 Proportionate Opportunities to Respond to Ministerial Statements

The Speaker will ensure that opportunities to respond are provided to non-Government Members.

10. THE COMMITTEE SYSTEM

10.1 Numbers of Committees

The number of general purpose standing committees be reduced to nine, comprising standing committees on:

- Aboriginal and Torres Strait Islander Affairs;
- Economics;
- Education and Employment;
- Climate Change, Environment and the Arts;
- Health and Ageing;
- Infrastructure and communications;
- Social Policy and Legal Affairs;
- Agriculture, Resources, Fisheries and Forestry; and
- Regional Australia.

10.2 Committee Membership

Membership of committees will ideally be seven. Committee membership will fully reflect membership of the House, including the crossbench.

The maximum number of supplementary members for each general purpose standing committee inquiry be increased to four; with supplementary members having full participatory rights, other than voting rights.

10.3 Powers of Committees

The powers of Committees be referred immediately to the Committee of Chairs as soon as established to ensure the most authority possible for Committees within allocated resources.

10.4 Chair of the Joint Parliamentary Committee on Public Accounts and Audit

The Chairman of the Joint Parliamentary Committee on Public Accounts and Audit be drawn from a member of a non-Government party or a non-aligned Member.

10.5 Pre-Legislative Scrutiny of Bills

All Bills to be introduced into the House be referred immediately to the Selection Committee.

All Bills regarded as controversial or requiring further consultation or debate be immediately referred to the relevant Standing or Joint Committee to allow a period of discussion and public consultation on introduction. One member objecting in the Selection Committee will be sufficient to declare a Bill controversial.

Non-controversial Bills will be authorised for immediate introduction into the House.

This mechanism will be reviewed to ensure it does not cause unnecessary delays to the House legislative processes, and is indeed a mechanism to speed up the legislative agenda.

10.6 Responses to Committee Reports

Within six months of a House or Joint committee report being presented in the House, a government response will be tabled in the House. If no such response has been received within six months of such a report being presented in the House, a statement signed by the relevant Minister (or Minister representing the Minister) must be tabled stating the reasons why the response could not be prepared in time.

The Minister (or Minister representing the Minister) must also make themselves available to appear before the relevant Committee at the next reasonably available opportunity to answer questions on that statement.

Following this, issues of dispute between a Parliamentary Committee and an Executive will be referred to the Auditor-General for further follow-up, clarification, and attempted resolution.

A timely response to Committee Reports will be included as a Key Performance Indicator in the employment arrangements of Agency Heads.

The Clerks will ensure a report on the status of responses to Committee Reports is included in the Notice Paper on a monthly basis online.

10.7 Statements during Private Members Business by Committee Chairs

Standing orders will be amended to provide for committee Chairs to make short statements during private Members' business time, informing the House of new inquiries being undertaken by the committee.

11. CONSIDERATION OF BILLS

11.1 Speaking Times

The time limit allocated for all Members speaking on Bills will be reduced from 20 to 15 minutes.

The Selection Committee is able to determine, where a Bill is not controversial, that time limits for speaking on that Bill be reduced to 5 or 10 minutes.

Where a large number of Members wish to speak on a particular Bill, the Selection Committee can, by agreement, place limits on speaking times to facilitate as many Members as possible speaking on the Bill.

The Speaker, with the Selection Committee, is to consider and potentially trial 5 minutes of questions (30 second question with two minute answers) at the end of all MP's speeches, so as to encourage "smarter debate".

11.2 Consideration in Detail

The Leader of the House in consultation with the Selection Committee will ensure that;

- during Government Business time in the Main Chamber additional time will be allocated for the summing up of Appropriations and related Budget Bills by the Minister for Finance; and
- additional time is allocated for the Consideration in Detail process in the Main Committee.

12. RECOMMITAL OF VOTES

The Standing Orders be amended so that there may be a recommital of a vote on the same sitting day when a Member is inadvertently absent following a successful suspension of standing orders after debate.

13. APPROPRIATION BILLS

The Senate resolution on appropriation bills which contain matters which should have been the subject of separate legislation is noted. To prevent this occurring, the parties and non-aligned Members agree to developing a mechanism to resolve this issue prior to the next appropriation bills being introduced.

14. ASSENT TO LEGISLATION

A mechanism be established to ensure a commencement date be included in all legislation.

15. SITTING DAYS

That more sitting weeks each year be considered depending on Government and Private Members Business.

16. RESOURCES OF THE PARLIAMENT

16.1 Parliamentary Budget Office

A Parliamentary Budget Office be established, based in the Parliamentary Library, to provide independent costings, fiscal analysis and research to all members of parliament, especially non-government members.

The structure, resourcing and protocols for such an Office be the subject of a decision by a special committee of the Parliament which is truly representative of the Parliament.

16.2 External review of staffing levels within the Department of the House of Representatives committee Office

The Speaker will arrange for an external review of staffing levels within the Department of the House of Representatives Committee Office and the Parliamentary Library.

This will incorporate a work analysis to determine the nature and level of secretariat support necessary for the ongoing inquiry work of committees, to ensure that the House committee system is supported by an adequate number of appropriately qualified staff.

16.3 Establishment of a representative House Committee on Appropriations and Staffing

A House Committee on Appropriations and Staffing be established, chaired by the Speaker, to make recommendations to the House on:

- estimates of the funding required for the operation of the Department of the House of Representatives; such estimates, once agreed by the House, are to be conveyed by the Speaker to the Minister for Finance and Deregulation for consideration and approval;
- proposals for changes to the administrative structure of, or service provision by, the Department of the House of Representatives;
- administration and funding of security measures affecting the House;
- any other matters of finance or services referred to it by the Speaker or the House; and
- the Liaison Committee of Chairs and Deputy Chairs have a more active role in monitoring the resources available to committees, with the Chair to report to the House Committee on Appropriations and Staffing on committee activities and resource levels.

16.4 Allocation of teleconferencing and videoconferencing facilities

The Leader of the House, with the Speaker will investigate the adequacy of teleconferencing and videoconferencing facilities available to committees; and consideration of any upgrades or additional facilities required to meet current and anticipated future demand from committees.

17. PAIRING VOTES

17.1 Pairing arrangements for all Members

Additional mechanisms will be considered that responsibly deal with essential absences by Members from the House, including 'pairs'.

The Government and Opposition will guarantee a 'pair' to non-aligned Members providing there are reasonable grounds.

These arrangements may be similar to those that currently occur between the Whips in the Senate.

18. PARLIAMENTARY INTEGRITY COMMISSIONER

This commissioner would be supervised by the privileges committee from both House and Senate to provide advice, administration and reporting on parliamentary entitlements, investigate and make recommendations to the Privileges Committees on individual investigations, provide advice to parliamentarians on ethical issues and uphold the Parliamentary Code of Conduct and control and maintain the Government's Lobbyists register.

19. ESTABLISH A FORMAL CODE OF CONDUCT FOR MEMBERS AND SENATORS

A cross-party working group and inquiry process will be established to draft a code of conduct for members of the House and the Senate. Once established, this code will be overseen by the Privileges committee.

20. REGISTER OF LOBBYISTS

Further enhancements to the Register of Lobbyists be examined, including to the online publication of the Register and to place the register under the supervision of the Parliamentary Integrity Commissioner.

21. REVIEW MECHANISM

A mechanism will be established to review all standing order and other procedural changes in this agreement and will report following the first session of this Parliament.

22. OTHER “BETTER GOVERNMENT” IMPROVEMENTS;

It is expected, through the life of this Parliament, and with Private Members Bills now having the ability to be voted on, that there will be further steps taken to improve Government in the following way;

- Open and Accountable Government improvements
- Further steps on improving democratic operation of the Parliament
- Electoral Funding Improvements
- Truth in Political Advertising improvements

Appendix 2 Minutes

Minutes of Proceedings of the Joint Select Committee on Parliamentary Procedure

Wednesday 6 October 2010 at 2.00 pm

Speaker's Suite

Members Present:

The Hon Richard Torbay, MP (Joint Chair)
 The Hon Amanda Fazio, MLC (Joint Chair)
 The Hon John Aquilina, MP
 The Hon David Campbell, MP
 The Hon Don Harwin, MLC
 The Hon Trevor Khan, MLC
 Mr Daryl Maguire, MP
 The Revd the Hon Fred Nile, MLC

Apologies:

The Hon Tanya Gadiel, MP
 Dr John Kaye, MLC
 Mr Adrian Piccoli, MP
 The Hon Michael Veitch, MLC

1. Terms of Reference of the Committee

The Committee noted its terms of reference which had been agreed to by the Houses on 23 September 2010.

2. Correspondence

The Committee noted correspondence received from Mr Adrian Piccoli, MP.

3. Conduct of the Inquiry

The Committee considered how it could most effectively conduct its inquiry in view of the very tight reporting deadline set by the Houses.

Resolved, on motion of Revd Nile, seconded by Mr Campbell:

That, in view of the fact that the Committee will be required to report to the Houses by Thursday 21 October 2010, the Committee divide into two working groups made up of the Members of the respective Houses, to consider the Committee's terms of reference and that report-back meetings be held as follows – Friday 15 October 2010 at 9.00 am and Monday 18 October 2010 at 2.00 pm.

4. General Business

The Committee agreed that it would recommend that its report be referred to the respective Standing Orders Committees of both Houses for consideration.

5. Adjournment

The Committee adjourned at 2.35 pm until Friday 15 October 2010 at 9.00 am.

.....
 (Speaker)

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 (President)

Minutes of Proceedings of the Joint Select Committee on Parliamentary Procedure

Friday 15 October 2010 at 9.00 am

Speaker's Suite

Members Present:

- The Hon. Richard Torbay, MP (Joint Chair)
- The Hon Amanda Fazio, MLC (Joint Chair)
- The Hon David Campbell, MP
- The Hon Don Harwin, MLC
- Dr John Kaye, MLC
- The Hon Trevor Khan, MLC
- Mr Daryl Maguire, MP
- The Revd the Hon Fred Nile, MLC
- The Hon Michael Veitch, MLC

Apologies:

- The Hon John Aquilina, MP
- The Hon Tanya Gadiel, MP
- Mr Adrian Piccoli, MP

1. Minutes

The minutes of the meeting held on 6 October 2010 were adopted on the motion of Mr Campbell, seconded Revd Nile.

2. Report of working groups

As resolved at the previous meeting the Committee divided into two working groups to consider the Committee's terms of reference.

The working groups reported on their progress.

3. Adjournment

The Committee adjourned at 10.25 am until Monday 18 October 2010 at 2.00 pm.

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(Speaker)

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(President)

Minutes of Proceedings of the Joint Select Committee on Parliamentary Procedure

Monday 18 October 2010 at 2.00 pm

Speaker's Suite

Members Present:

- The Hon Amanda Fazio, MLC (Joint Chair)
- The Hon John Aquilina, MP
- The Hon David Campbell, MP
- The Hon Don Harwin, MLC
- Dr John Kaye, MLC
- The Hon Trevor Khan, MLC
- Mr Daryl Maguire, MP
- The Revd the Hon Fred Nile, MLC
- Mr Adrian Piccoli, MP

Apologies:

The Hon. Richard Torbay, MP
 The Hon Tanya Gadiel, MP
 The Hon Michael Veitch, MLC

1. Minutes

The minutes of the meeting held on 15 October 2010 were adopted on the motion of Revd Nile, seconded Mr Campbell.

2. Consideration of draft report

The Committee determined that the Foreword and Chapter One would be considered together.

Foreword

Resolved, on the motion of Revd Nile, seconded by Mr Aquilina, That the word ‘implement’ in the second last paragraph of the foreword be amended to ‘consider’.

Chapter 1 – Introduction and executive summary

Paragraph 1.12 – it was agreed that the paragraph would specify the matters that are to be referred to the Legislative Assembly Standing Orders and Procedure Committee to reflect the recommendation on page 20 of the Draft Chapter 2.

Table 1 – it was agreed that the wording of the reform ‘The independence of the Speaker’ be amended to ‘The independence of the Presiding Officers’.

Table 1 – Mr Piccoli moved, That the Legislative Assembly response for the operation of Question Time be amended by the omission of the following words:

‘A time limit on answers of up to five minutes should be introduced.’

Question put, That the amendment be agreed to –

The Committee divided.

Ayes 1 [Piccoli] Noes 3 [Aquilina, Campbell, Maguire]

Question negatived.

The Legislative Council Members abstained from the vote as it was a matter concerning the Legislative Assembly.

Table 1 – It was agreed that before ‘Resources of the Parliament’ that a section entitled ‘Budget Office’ would be inserted to enable a summary of the findings of the Legislative Assembly working group in the table.

Table 1 – It was agreed that the Table be amended to reflect the wording of the findings and recommendations in the respective chapters.

Resolved, on the motion of Revd Nile, seconded Mr Aquilina, That the Foreword and Chapter One be agreed to.

3. Legislative Assembly Working Group

The Legislative Assembly Working Group considered Chapter 2 – Views of the Members of the Legislative Assembly.

Paragraph 13, page 2 of the draft chapter – Mr Piccoli moved, That the paragraph be amended by the omission of the following words:

‘It was acknowledged by the Legislative Assembly Members that there are currently two Assistant Speakers, provided for under a sessional order, and that there was merit in having two Assistant Speakers, one Government member and one non-Government member. Accordingly, the Legislative Assembly Members are of the view that the Standing Orders and Procedure Committee should consider an amendment to Standing Order 12 to provide for the election of two Assistant Speakers – one Government and one non-Government.’

Question put, That the amendment be agreed to –

The Committee divided.

Ayes 1 [Piccoli] Noes 3 [Aquilina, Campbell, Maguire]

Question negatived.

The Legislative Council Members abstained from the vote as it was a matter concerning the Legislative Assembly.

Paragraph 14, page 2-3 of the draft chapter – Mr Piccoli moved, That the paragraph be amended by the omission of the following words:

‘The Legislative Assembly Members were of the view that this provided an appropriate balance and that given that it has been recommended that two Assistant Speakers be appointed that Standing Order 19 should be amended to provide for the appointment of four Temporary Speakers, two from the Government and two non-Government.’

Question put, That the amendment be agreed to –

The Committee divided.

Ayes 1 [Piccoli] Noes 3 [Aquilina, Campbell, Maguire]

Question negatived.

The Legislative Council Members abstained from the vote as it was a matter concerning the Legislative Assembly.

Sitting days page 16 – it was agreed that a new paragraph be inserted as follows:

‘The Legislative Assembly Members noted that the schedule of sitting days can be amended from time to time by resolution of the House if there is a need for additional sitting days to consider the business before the House.’

4. Adjournment

The Committee adjourned at 3.15 pm until Wednesday 20 October 2010 at 10.15 am.

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(Speaker)

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(President)

Minutes of Proceedings of the Joint Select Committee on Parliamentary Procedure

Wednesday 20 October 2010 at 10.15 am

Speaker’s Suite

Members Present:

- The Hon. Richard Torbay, MP (Joint Chair)
- The Hon Amanda Fazio, MLC (Joint Chair)
- The Hon John Aquilina, MP
- The Hon David Campbell, MP
- The Hon Tanya Gadiel, MP
- The Hon Don Harwin, MLC
- Dr John Kaye, MLC
- The Hon Trevor Khan, MLC
- Mr Adrian Piccoli, MP
- The Hon Michael Veitch, MLC

Apologies:

- Mr Daryl Maguire, MP
- The Revd the Hon Fred Nile, MLC

1. Minutes

The minutes of the meeting held on 18 October 2010 were adopted on the motion of Mr Aquilina, seconded Mr Piccoli.

2. Consideration of draft report

The Committee agreed to consider the report chapter by chapter.

Chapter 1 – Introduction and Executive Summary

Paragraph 1.07 – It was agreed that the paragraph would be amended to include a new bullet point:

“Support from both working groups for placing the funding and staffing arrangements of the Parliament on a more secure and independent footing.”

Paragraph 1.10 – It was agreed, as a consequential amendment, to omit the following words:

“and placing the funding and staffing arrangements of the Parliament on a more secure footing.”

Resolved, on the motion of Dr Kaye, seconded Mr Piccoli, That Chapter 1 as amended be agreed to.

Chapter 2 – The Views of the Members of the Legislative Assembly

Paragraph 2.101 – It was agreed that the paragraph be amended to reflect the current status of legislation introduced into the Parliament to establish a Parliamentary Budget Office as at the time of the adjournment of the Legislative Council this day.

Consequential amendments – It was agreed that the summary in Chapter 1 and the finding in Chapter 2 be amended to reflect the amendment to paragraph 2.101.

Resolved, on the motion of Mr Aquilina, seconded Mr Campbell, That Chapter 2 as amended be agreed to.

Chapter 3 – The Views of the Members of the Legislative Council

Paragraph 3.169 Recommendation –

Resolved, on the motion of Mr Veitch, seconded Dr Kaye, That the recommendation be amended to state:

“The funding and staffing arrangements of the Parliament should be reformed to place them on a more secure and independent footing.”

Consequential amendments – It was agreed that the summary in Chapter 1 be amended to reflect the amendment to the recommendation.

Resolved, on the motion of Dr Kaye, seconded Mr Veitch, That Chapter 3 as amended be agreed to.

Adoption of the Report

Resolved, on the motion of Mr Piccoli, seconded Ms Gadiel, That –

- (1) The draft report, as amended, be the report of the Committee and that it be tabled in both Houses;
- (2) The Joint Chairs and the Secretariat be permitted to correct stylistic, typographical and grammatical errors; and
- (3) That, once tabled, the report be placed on the Parliament’s website.

The Committee adjourned at 10.35 am, *sine die*.

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(Speaker)

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(President)