

Cane Toads, Notices of Motion and the Law of Unintended Consequences

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The New South Wales Legislative Council is the oldest Parliament in Australia, and a legislature which has operated very effectively as a House of Review through use of its various parliamentary processes, including the power to order documents from Executive Government, established in a series of successful court challenges during the 1990s. Legislation is given careful scrutiny and frequently amended. It has a highly active committee system which deals with many politically sensitive inquiries and contributes significantly to public policy developments in the state. With many experienced and highly capable members and a dedicated and professional parliamentary staff, it is a highly functioning and effective chamber. However, as this paper demonstrates, this is no guarantee against the Law of Unintended Consequences when it comes to introducing reforms to procedures: well meaning and constructive change can still have some at times absurd results.

The Cane Toad Invasion

In Australia we have many types of frogs and toads. Most are considered innocuous, benign, and an essential part of the ecosystem. Not so the Cane Toad.² This very ugly creature is native to Central and South America. It is notable for three things: it has poisonous glands, toxic to most animals; it has a voracious appetite; and it is gifted with a spectacular ability to breed, laying thousands of eggs at a time. It is a feral animal in Australia, which has moved from its original introduced habitat in the northern cane fields of Australia to cover large swathes of the continent. All attempts to date to contain their numbers have failed, and in some parts of the state of Queensland they are in plague proportions. Alarm was raised in 2011 when the cane toad invasion hit Sydney, with a one kilo toad discovered sitting in a bird bath in a backyard in the suburbs.³

The twist on the cane toads is that originally they were introduced as a solution to a different infestation. Cane beetles were causing significant damage to Australia's commercially valuable cane fields, and cane toads were introduced on a trial basis in 1935 by the Bureau of Sugar Experiment Stations. Unfortunately the agriculturists at the time significantly under-estimated the Toad's reproductive capacities, and their ability to adapt to new less tropical climates. Because of their poisonous glands, they had few natural predators. The cane toads were a failure in reducing cane beetles. While they weren't very interested in the cane beetles they ate everything else, all the time breeding prolifically. As their numbers grew they began expanding out of the cane fields, eating everything in their path. As described by Professor Rick Shine of Sydney University:

The Toads are remarkable invasion machines. In the course of about 50 [toad]generations in Australia they have changed from...quiet little meandering animals that don't travel very far to these road warriors on the invasion front that move every night, move long distances, move in straight lines. The invasion front is moving about six times faster than in the early decades of toad invasion.⁴

¹ The views expressed in this paper are those of the author and do not represent the official position of the either the House or the Department of the Legislative Council, as will become apparent in the latter part of this paper.

² For a general description of this animal: <http://animals.nationalgeographic.com/animals/amphibians/cane-toad/>

³ "Cane toad invasion hits Sydney backyards" <http://www.abc.net.au/local/stories/2011/12/07/3385686.htm>

⁴ ABC radio interview – Scientists warn cane toads moving towards southern Australia 28 March 2007, <http://www.abc.net.au/am/content/2007/s1883422.htm>

The Law of Unintended Consequences and parliamentary procedure

Cane toads are a classic illustration of the so called Law of Unintended Consequences. In the world of public policy it is commonplace to see policies or plans which when implemented have different and sometimes opposite effects to those intended. Prohibition in the U.S. in the 1920s is often cited as the classic example. In his 1936 paper “The Unanticipated Consequences of Purposive Social Action”⁵ sociologist Robert K Merton popularised the concept by which a change in the environment leads to unanticipated and often undesirable outcomes, simply because humans are not able to fully control the world around them. He listed five possible causes of unanticipated consequences:

1. Ignorance, making it impossible to anticipate everything, thereby leading to incomplete analysis
2. Errors in analysis of the problem or following habits that worked in the past but may not apply to the current situation
3. Immediate interests overriding long-term interests
4. Basic values which may require or prohibit certain actions even if the long-term result might be unfavourable
5. The fear of some consequence which drives people to find solutions before the problem occurs, thus the non-occurrence of the problem is not anticipated.

Parliaments are inherently conservative, with a heavy reliance on precedent and slow, incremental change. However changes to standing orders and procedures are commonplace, as presiding officers, other office holders and parliamentary clerks grapple with the challenges of adapting often very old processes to a rapidly changing outside world. Procedural reforms are subject to all the types of flaws that Merton identified, because the world is complex and members of parliament are not necessarily as predictable as clerks may think they are (or maybe they are just less predictable than clerks?).

What follows is a depiction of a procedural reform brought in to fix a problem which was causing members some considerable frustration: their lack of ability to move and debate motions in the House. The immediate problem was solved – members were more able to move motions in the house. Unfortunately the motions themselves, like the cane toads in Queensland, grew larger and ever more numerous. Attempts to rein in the proliferation of notices of motions have been no more successful than attempts to hold back the invading tide of cane toads.

It is an example of failing to anticipate the changes in behaviour that are given momentum by a reform. Many parliaments have their own experiences of this when they make changes to their standing orders or a presiding officer makes a ruling to address a perceived problem, only to find new challenges sometimes greater than that posed by the original.

Motions and Notices in the NSW Legislative Council

The giving of notices of motion is a common practice in most Commonwealth parliaments. As a motion is for the purpose of eliciting a decision of the House, members are required to give sufficient notice of substantive motions to allow members time to determine their position and gain an understanding of the terms of debate on the matters concerned.⁶ Each of the Australian parliaments has within its standing and sessional orders some system of requiring notice to be given of motions, other than subsidiary motions such as adjournments.

⁵ <http://www.d.umn.edu/cla/faculty/jhamlin/4111/2111-home/CD/TheoryClass/Readings/MertonSocialAction.pdf>

⁶ *Erskine May Parliamentary Practice* 24th edition 2011, p392-393. In this paper I will not deal with subsidiary motions, those which technical or formal in nature such as motions to adjourn debate. The requirements of notice are less relevant to these types of motions.

In the Legislative Council during the 1980s motions were very considered and few in number: there were rarely more than 15 items of general business on the business paper on any one day.⁷ This increased to approximately 50 items on the paper during the 1990s, but even with this increase, until recently most motions passed consisted of no more than three or four short paragraphs amounting to less than 100 words.⁸

In the New South Wales Legislative Council notices of motions are normally given before the House proceeds to the business on the Notice [Business] Paper. Members give notice by reading the notice of motion aloud, stating the day proposed for moving the motion and handing the Clerk a signed written copy. If the notice is lengthy it need not be read, provided a summary of the intent of the notice is indicated to the House.⁹ The Chair provides all private members an equal opportunity to give notices. There is no restriction on the number of notices a member may have on the business paper.

Notices given by a minister are set down under government business and private members' notices of motions are set down under private members' business outside the order of precedence.¹⁰ The challenge for most members is not, therefore giving notice of a motion but how to gain the opportunity to move the motion in the House.

A regular system of drawing of individual members items from the business paper is undertaken to establish the order of precedence of motions on the day assigned to private members (or general) business.¹¹ For cricket lovers, the Duckworth–Lewis system is a good analogy for what is set out under the 5 standing orders that prescribe the system: it is mathematically sound; extremely fair to all parties, but largely incomprehensible to the participants who work under it, who trust in its fairness regardless.

Dissatisfaction and the pressure for reform – 2007-2011

This orderly process had undergone only moderate change over the years. The problem was by the session of Parliament that began in 2007 it was becoming increasingly frustrating for many members. Private members business day only provided a mechanism for a small number of motions to be moved and debated in each session. While members generally gave notice that they intended to move the motion for the next sitting day, in most instances it was not possible for the motion to be moved at that time. The business paper contained too many items to be dealt with during any one sitting and notices of motions remained on the business paper for extended periods.

In 2010 a Joint Select Committee of both Houses examined a number of procedural issues.¹² The Committee's report identified a number of problems with the Council's current system of giving of notices, in particular:

- lack of flexibility to bring forward current topical matters
- Because of the lack of flexibility, members were routinely suspending standing orders to bring on items, often interrupting government business and the existing order of business.

⁷ Procedure Committee (NSW Legislative Council) *Notices of Motion* Report no. 7, June 2012, p2.

⁸ Although in a submission to the Procedure Committee inquiry the Opposition Whip pointed to a number of very long motions proposed by Opposition and cross bench members on a sitting day in 2006.

⁹ Standing order 71(1).

¹⁰ For more detail see Lovelock and Evans *New South Wales Legislative Council Practice* (2008) Federation Press, p277- 278.

¹¹ Standing orders 183-189.

¹² Joint Standing Committee on Parliamentary Procedure *Reforms to Parliamentary Processes and Procedures* Report No. 1 (2010) p44.

- The Notice Paper was becoming increasingly long as parliamentary sessions progressed and matters of private members' business bank up.
- Relatively few private members' motions were being disposed of; that is, being agreed to, negatived or withdrawn.¹³

With the start of a new Parliament in 2011 these issues were revisited by an inquiry to the Council's Procedure Committee, responsible for review of standing orders. It reported that in the four year parliamentary term from 2007 to 2011, 937 notices (excluding government notices) were given of which only 46 were disposed of on the days assigned to private members business.¹⁴ In contrast 130 motions were moved as a result of suspending standing orders, so in effect the normal program of business was being regularly disrupted because of a lack of opportunity for motions to be moved and debated.

The Solution: Using formal business to pass motions

For every problem there are usually a number of solutions, but there was one which presented itself immediately to both staff and members who had considered the problem. As with many parliaments, there was provision at the beginning of proceedings each day to deal with motions formally, that is having the question put without debate or amendment.¹⁵ In fact the Legislative Council has had this process of formal business since the mid 19th century. Prior to 2007 the process was to call all notices of motion on the business paper, asking members whether they wished these to be put as formal business. Members would object, except for any individual motions for which there was agreement that this should proceed as formal business. Typically these motions were ones where prior agreement had been reached between various parties beforehand, on uncontroversial issues such as membership of committees, reporting dates, expressions of condolence or granting leave of absence to a member. Over time it had come to be used for some more significant motions, such as orders for the production of state papers, but only again where prior agreement had been reached.

In 2007, after an approach to the clerks by a cross bench member, the process was refined to more closely resemble formal business in the Australian Senate. Only the notices of motion which members had requested be considered as formal business were called on, rather than all motions on the business paper. In the period 2007-2011, 263 motions were disposed of in this way, by far the most important method of having a motion agreed to by the House.

Because this method was working well, the Procedure Committee, with advice from the clerks, came up with a new streamlined process to make it easier for members to put forward motions. A sessional order was created for the moving of notices in formal business, modifying the existing system. This provided a notification procedure with a timeframe – members filled in a form in the chamber, advising which of their notices of motion they wished to be considered as formal business the following day. The Clerk then, prior to the end of the day, circulates by email a list of all motions proposed to be moved as formal business, the topic of the motion and the member who intends to move it. At the beginning of proceedings each day the Chair then calls on the motion and the name of the member, providing an opportunity for any member of the House to object to the motion being dealt with as formal business. Provided there is no objection,¹⁶ the member then simply moves the motion, mentioning its number on the business paper and the topic it relates to, and the question is put without debate.

¹³ *Op cit* p44

¹⁴ Procedure Committee *Report relating to private members' business, the sitting pattern, Question Time and petitions* Report no.6 November 2011 p3.

¹⁵ Standing Order 44.

¹⁶ One objection is enough to relegate the notice of motion back to the end of the Business Paper.

Unintended Consequences: Dramatic expansion of motions

The new system has proved extremely effective in allowing members to dispose of motions. In particular members have used it to move motions relating to community functions they have attended, charity fundraisers they wish to give prominence to, and significant sporting or cultural achievements by local individuals they wish to celebrate.

But procedural reforms are no different to any other change in policy; they are just as subject to the Law of Unintended Consequences. What neither the Clerks nor most members of the Procedure Committee anticipated was the streamlining of formal business would lead to an absolute explosion in the giving of notices and the length of those motions. The charts below show what happened:

Table 1: Motions moved and disposed of 2007-2012

	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
Notices given	262	252	319	286	663
Motions moved	71	92	154	198	379
Resolved	51	86	140	189	374

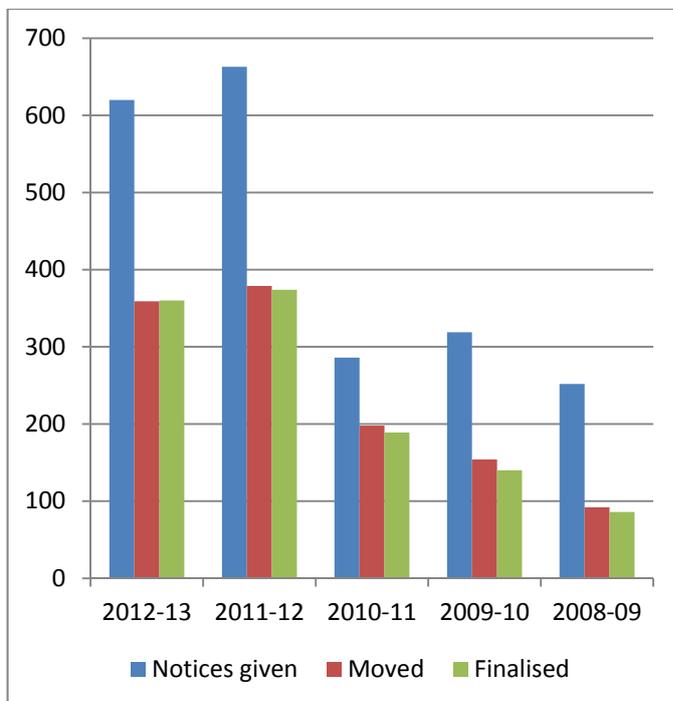


Chart 1: Notices of Motions given, moved and finalised

More motions are now being passed in each year than in the entire term of the last Parliament. The beginning of the day when notices are given orally can sometimes see up to 50 notices given.¹⁷ Likewise the moving of motions under the formal business provisions can at times involve up to 20 motions, again reducing the time available for other business of the House. Since the reforms it is not uncommon for up to 45 minutes to be taken up at the start of the day with the giving of notices of motion and the moving of motions, all without debate.

There are of course arguments that the increase in notices of motions, and of motions being passed, is positive: more members are being able to gain the approval of the House for more motions, democracy is served and members are more actively engaged. Some of these arguments are canvassed below.

However if the increase in notice of motions is not necessarily a bad outcome, there are several consequences of the increase which are more clearly negative. The content of the motions has suffered: as in most things, quantity has diluted quality. Some members began to compete to be as fulsome as possible in their celebration of constituents' achievements, and describe in forensic detail the functions they attended. Three categories of motions stand out:

- motions attending events;
- celebration of constituent's achievements; and
- motions on international events/situations.

Many of these motions have become mini-speeches in themselves, numbering several hundred words, rather than an invitation to debate a matter or a proposition upon which the House can make a decision.

This is perhaps what lies behind restrictions in many Parliaments of the number of words, such as the 250 word limit referred to in *Erskine May* and Speakers' rulings against "excessive use of quotation in motions so as to prevent attempts to write statements or speeches made by persons outside the House into its record"¹⁸, and by the Australian Senate's rule that a notice of motion must "not contain statements, quotations or other matter not strictly necessary to make the proposed resolution or order intelligible."¹⁹

Some examples to illustrate:

On 11 September 2014 the House passed a motion a member gave notice of congratulated the Australian athletes who won gold, silver or bronze medals in the recently concluded Commonwealth Games. While this was unremarkable as the subject of a motion, the motion then went on to name each athlete and provide details of the event at which they won gold. For the team events it named every member of the team. In total 140 events and over 250 athletes were named in a motion spanning 1,444 words. The full motion appears as an appendix to this paper.

¹⁷ Thankfully there is provision in the standing orders for a member to just identify what the notice relates to then add the magic words "as the motion is lengthy full details have been provided in written form and are available from the clerks". While a member can insist that a motion be read out in full this provision is an increasingly left alone!

¹⁸ P398-99 24th edition 2011

¹⁹ Odgers 13th edition 2012, p222, quoting standing order 76(4).

A similar lengthy motion was passed on 29 May 2014 which celebrated National Netball Day by providing a detailed analysis of the major events in the netball calendar in the year, concluding with the following paragraphs:

For the first time since 2011, the NSW Swifts have secured a spot in the ANZ Championship Finals, the team consisting of: Carla Dziwoki, Kimberlee Green, Paige Hadley, Madeline Hay, Sharni Layton, April Letton, Abbey McCulloch, Brooke Miller, Sonia Mkoloma, Susan Pratley, Caitlin Thwaites, Gretel Tippett, Sarah Wall, Head Coach, Rob Wright Assistant Coach: Megan Anderson, Technical Assistant Coach: Anita Keelan, Contracted Defensive Specialist Coach: Mo'onia Gerrard, Contacted Midcourt Specialist Coach: Megan Simpson, Apprentice Coaches: Briony Akle, Moira Gaha, Team Manager: Toni Kidwell, Performance Analyst: Bjorn Maddern, Physiotherapists: Paula Peralta, Brett Doring and Daniel Vukovic, Netball NSW Strength & Conditioning Coach: Jason Howell,

(iii) Miss Mo'onia Gerrard, former Captain of the NSW Swifts and Vice Captain of the Australian Diamonds was selected as a finalist for New South Wales Woman of the Year,

(iv) Nine Netball NSW Coaches have been awarded the Netball Australia Advanced Coaching Accreditation recently: Megan Anderson, Adele Caesar, Rosemary Clarke, Amber Cross, Gima Crowdy, Therri Ellison, Mo'onia Gerrard, Sonia Mkoloma and Marj Parr,

(v) Netball NSW Volunteers were nominated and recognised at the New South Wales Sports Federation's Community Sports Volunteer Awards including, Thomas Turner of Parramatta Auburn Netball Association, a young up-and-coming umpire, mentored by New South Wales Umpires' Coordinator, Jan Simpson and his grandmother, AA umpire, Ronda Kimble OAM, was awarded New South Wales Young Official of the Year after rising quickly through the umpiring ranks, achieving his National C and B Badges within 12 months of each other, officiating at Dooleys State League, State and State Age Championships, the Oceania Netball Cup and the Marie Little Shield and other Netball NSW members were finalists for awards including Eugene Afa, Marion van Munster and Robin Butler,

(vi) International and New South Wales umpire, Sharon Kelly celebrated officiating her 100th ANZ Netball Game,

(vii) Seven New South Wales players were named in the Australian 17U Development Squad, including Keira Austin (Eastwood Ryde), Prudence Ellis (Ku-ring-gai), Kristen Kessler (Wyong), Lauren Moore (Wyong), Claire O'Brien (St George), Amy Parmenter (Randwick) and Cassandra Radford (Sutherland Shire),

(viii) Six New South Wales players were named in the Australian 19U Squad, including Toni Anderson (Sutherland Shire), Madeline Hay (NSW Swifts/Sutherland Shire), Georgia Marshall (City of Sydney/Sydney Uni), Tanisha Stanton (Eastwood Ryde), Lauren Yager (Sutherland Shire) and Billie Gurr (City of Sydney/Sydney Uni),

(ix) five New South Wales players were named in the Australian 21U Squad, Kristina Brice (Baulkham Hills), Taylah Davies (Sutherland Shire), Kristiana Manu'a (Liverpool City), Kimberley Ravallion (QLD Firebirds / Eastwood Ryde) and Gretel Tippett (NSW Swifts).

Community events and commemorations

Community events are very popular subject matter for motions from many members. In a multicultural society such as the State of New South Wales the ability of members to engage with various communities by attending dinners, events and celebrations is a crucial aspect of their parliamentary role. Motions indicating a member's support of particular communities are appropriate for the House to recognise. Of course there are also political benefits to a member in associating themselves with specific communities. Rather than the subject matter of the motions themselves, the major disadvantage of the what has emerged in the Council is the way these motions have grown in length.

While many motions begin with an acknowledgement of the fine work of the organisation and noting an annual celebratory dinner, many then go on to list every significant attendee at the event. An example, by no means the longest, is shown below, moved on 27 November 2013:

That this House notes that:

(a) On Saturday 23 November 2013, the Australian Lebanese Association of NSW, under its President Mr Wissam Azzi held a celebratory dinner at Bankstown to:

(i) mark the 70th Anniversary of the Independence Day of Lebanon,
(ii) host its Annual Youth Awards honouring young Australians of Lebanese heritage who achieved academic excellence in the Higher School Certificate Examinations in 2012,

(b) those who attended as guests included:

(i) the Consul-General for Lebanon, Mr George Bitar Ghanem,
(ii) Mr Craig Laundy MP, Federal Member for Reid, representing the Honourable Tony Abbott MP, Prime Minister of Australia,
(iii) the Honourable Tony Burke MP, Federal Member for Watson, representing the Honourable Bill Shorten MP, Leader of the Federal Opposition,
(iv) Mr Glenn Brookes MP, Member for East Hills, representing the Honourable Barry O'Farrell MP, Premier of New South Wales,
(v) Mr Tony Issa MP, Member for Granville,
(vi) the Honourable David Clarke MLC, Parliamentary Secretary for Justice,
(vii) Councillor Karl Ashfor, Mayor of the City of Bankstown,
(viii) representatives of numerous religious, cultural and community Lebanese-Australian organisations, and

(c) since its foundation in 1947, two decades before the establishment of an Embassy for Lebanon in Australia, the Australian Lebanese Association of NSW has worked to assist and represent the Lebanese-Australian community in New South Wales.

2. That this House commends those who were honoured at the Association's 22nd Annual Youth Awards for their outstanding academic achievements, namely:

(a) Leahn Saliba, Wafa Kazal, Layale Dib, Melissa Wehbe, Sebastian Elias Taji, Michael Antoun, Samantha Antoun, Eliane Seif, Nadia Raad, Maryanne Daher, Melissa Haddad, Edward El-Kek, Sarah Elmasri, Judith Diab, Joe Azzi, Mohamed Mokdad, Kristina Wakim, Daniel Azzi, Fatima Dareen Gebara, Peter Sara, Johnathon Geagea, Adam Tabikh and Sarah El-Dadoun, and

(b) the Australian- Lebanese Association of NSW for its 66 years of service to the Lebanese-Australian community and the people of New South Wales generally.

3. That this House extends its congratulations to the Lebanese-Australian community on the occasion of the 70th anniversary of the independence of Lebanon.

Members have had the motion passed by the House framed, then presented by the member to the community group concerned at their next function (which may then feature as the next motion, and so it goes on). It has also become apparent that many of these "function/dinner" motions are based upon the guest list – this came to light when the Clerk found himself referred to in the House in a motion as attending a dinner which he had declined the invitation.

Another variant of these motions are condolence motions for community figures. In the past condolence motions were typically a couple of short sentences, mainly expressing sympathy to family and friends for their loss. Many now extend to mini biographies, such as the one below moved on 19 March 2014:

That this House notes that:

(a) Wendy Hughes was born on 29 July 1952 in Melbourne,

(b) she had early training in classical ballet but became an actress after moving to Sydney and studying at the National Institute of Dramatic Art, graduating in 1970,

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(c) she had early roles in television series such as Homicide from 1967, Power Without Glory,

Matlock Police, Lucinda Brayford and the TV saga Snowy River and more lately in her extended role in State Coroner; her most recent appearance was in Miss Fisher's Murder Mysteries,

(d) Wendy also worked in Los Angeles for a number of years including in Star Trek and an extended role in Homicide: Life on the Street (1993),

(e) Wendy Hughes was a theatre actress of great standing, appearing for all the major theatre companies in Australia, often for the Melbourne Theatre Company; she was notable in Edward Albee's The Goat and excelled in classics such as Sweet Bird of Youth in 2002 and Who's Afraid of Virginia Woolf; she played Mrs Robinson in The Graduate, the lead role in Honour in 2010 and most recently appeared in Pygmalion in 2012 for the Sydney Theatre Company,

(f) she became well regarded for her work in the renaissance of the Australian film industry with roles in films such as Petersen, My Brilliant Career, Newsfront and the long running internationally successful Lonely Hearts, working both here and abroad,

(g) Wendy Hughes also became an independent film producer and writer,

(h) Wendy was a very talented performer and was nominated six times for Australian Film Institute awards, with her most notable success as winner of the Australian Film Institute award for best actress in 1983 for her leading role in the film Careful, He Might Hear You, and

(i) she passed away on 8 March 2014 aged 61.

2. That this House acknowledges her outstanding contribution to the arts and extends its condolences to her two children, her siblings and many friends and admirers.

Condolence motions have also become competitive, with at times two (for a famous Rugby League player and for a former Premier) or even three (for the death of Pope Shenouda of Alexandria) motions passed on the same issue. If the community figure is still alive this is no barrier to the House commemorating their achievements: some motions passed appear to be only slightly edited versions of people's resumes.

Another problem of the new system is apparent in many motions commemorating historical events. Motions commemorating the Battle of the Coral Sea, or the anniversary of voyages by Australian Antarctic explorers, for instance, provided sufficient detail to form a summary of the events described. Because the motions are put at the start of the day without debate, the debate is effectively put into the words of the motion. The purpose of a motion – to set the parameters for a debate and provide a proposition for the House to decide – is subverted.

Because of the cursory way the motions are dealt with at great speed at the start of the day it could be argued the House at times fails to give the consideration to the motion that it would give if the words were subject to a proper debate. When the motions are put up as formal business the assumption is that the motions are uncontroversial, and few members give much consideration to their terms. This can be particularly problematic when members put forward motions relating to international events (bearing in mind that as a house of a state parliament the NSW Legislative Council has not had any foreign affairs jurisdiction for more than a hundred years).

An example of the pitfalls of this approach occurred, on 25 October 2012 the House passed, without debate at the start of proceedings, a motion supporting the right to self-determination of Nagorno-Karabakh, a province of Azerbaijan. This was reported internationally – for instance an Armenian newspaper in the United States reported: "Australia's New South Wales Recognizes Karabakh Independence"²⁰ Unfortunately this motion was contrary to the position held by the Australian government. There are in fact a small number of members of the Legislative Council who are very

²⁰ See <http://asbarez.com/106074/australia%E2%80%99s-new-south-wales-recognizes-karabakh-independence/>. One of the respondents to the online article perhaps summed up the situation best: That's a bit weird, a "state" recognising an Independent Nation".

committed to the position of Nagorno-Karabakh and have continued to speak on the issue and even visit the area at considerable personal risk; however it is doubtful whether the majority of the other 42 members of the Council were aware they were taking a unanimous stand against a foreign government in supporting the motion. On another occasion a motion passed without debate on the 1915 Armenian Massacre led to the Turkish government announcing a ban on New South Wales MPs from attending the Gallipoli 100th anniversary celebrations in Turkey.²¹

Attempts to reverse the reform

These are just some of the external impacts of the procedural change. Of course there is an unseen impact on the Table staff and clerks who assist in the drafting of these motions. Under considerable time pressures before the sittings of the House a typical day sees the staff given 20 to 30 motions often of more than 500 words to format, and, at times, rewrite to make grammatical sense. The sheer size of the motions in some cases make it impossible to effectively ensure the content is accurate and properly proofed, even though once passed they enter the permanent record of the House. The House is frequently passing motions asserting detailed facts for which any checking is the responsibility of the initiating member.

Very quickly some of the leaders in the House realised the new system of formal business had perhaps unleashed a monster, or at least the procedural equivalent of an invading army of cane toads. On 6 March 2012 the President referred a new inquiry to the Procedure Committee into notices of motion. In the report produced on June 2012 the problem was described in these terms:

Notices currently given by members often comprise multiple paragraphs, lists of names, quotes and can amount to 800 words or more...

However, perhaps due to the absence of strict rules, there has recently been a change in the nature, form and number of notices being given in the Council which raises certain issues:

- There is a tendency for notices to contain argument, imputations and debating points, virtually amounting to an undelivered speech which is then printed in the Notice Paper.
- Notices are increasingly lengthy, dense and complex. There is a risk the House will agree to a motion containing facts and detail which are impossible to verify, and which could potentially reflect negatively on the standards and integrity of the House. This is especially the case when they are put as formal business, without debate.
- There is a tendency for motions to relate to matters of a community and constituency nature rather than of State significance. In a House of Review in which the members represent the State as a whole, there may be a perception that this trend is trivialising the importance of resolutions of the House or trifling with the time and processes of the House.

The propensity of members to bring on notices dealing with community and constituency issues by way of formal business has also increased, perhaps an unintended consequence of the provisions adopted by the House to make it easier for the House to deal with matters formally.²²

A discussion paper prepared by parliamentary staff was circulated which proposed canvassing possible solutions: limiting the number of words per motion, limiting the number of notices of motion able to be given by any one member, and looking at alternative ways members could raise community matters such as short topical statements or community recognition statements.

²¹ <http://www.smh.com.au/nsw/turkey-bans-nsw-mps-from-gallipoli-service-20130822-2sc5i.html>

²² Procedure Committee *Notices of motions* Report 7, June 2012 p2.

In response the Committee received four submissions from members, three of which were members themselves of the Committee. These present very effectively the arguments for and against the current freedom and flexibility in the drafting of motions.

The Government Whip was critical of members of a State legislature making statements on issues more relevant to either national members, and stated:

the absence of strict rules in relation to notices of motions has been a workable *modus vivendi* only because members have previously worked within a set of self-enforced strictures. This is no longer the case.

We strongly believe that motions should be a statement of principles, policies or priorities, not a 'laundry list' of names of notables, or unproven assertions...we therefore believe that the President, acting on advice from the clerk of the Parliaments, should enforce a more stringent regime upon extraneous material in notices of motion.²³

The Whip also supported the UK model of a word limit of 250 words, except for committee references and orders to produce documents; and a limit of two notices per day per member.

Interestingly, another government member made a submission which disagreed with any substantive changes to the current procedures:

[members] represent the whole state and are routinely asked to visit communities from all over New South Wales, attend functions and take up issues on behalf of communities or constituents... and should not be constrained from raising issues as they think appropriate through the notice of motion process.²⁴

As stated earlier, this highlights the importance in a multi-cultural society of members engaging with ethnic communities as part of political life.

The Opposition Whip, a former President of the House, made a submission strongly opposing any limitations on the existing rights of members to raise matters through motions:

Such a change...would undermine the role of the Council as a House of Review and would place the President in a position of adjudicating what was acceptable to go on the [business] paper. This...should not be adopted lightly as it would change the perception of the impartial role of the President.²⁵

The Opposition Whip argued that national and international issues were of great concern to many residents of New South Wales and so it was appropriate for members representing those residents to have the opportunity to debate these matters. Limiting the length of notices was opposed as an "infringement of the rights of members to raise matters of importance, especially if the matters raised are complex and require a degree of detail". In regard to limits on the number of notices of motions, the Whip argued:

Such a restriction would constitute a gagging of members of the cross bench where two parties [currently] only have two members each. For example placing a limit of two notices of motion per day per member would allow the Government members to place 38 items per day on the [business] paper and the two smallest parties would only be allowed to place four items.²⁶

²³ The Hon Dr Peter Phelps MLC, *Submission*, p4.

²⁴ Hon. Marie Ficarra MLC *Submission* p1.

²⁵ Hon Amanda Fazio MLC *Submission* p1.

²⁶ *Op cit* p3.

As possible solutions the Whip suggested removing the requirement that notices be read verbally and allowing multiple notices by one member to be moved in list form instead of individually.

The difficulty of reversing procedural change

While members often raised similar concerns in regard to some issues, neither the submissions made nor the Committee itself reached a consensus view on the six areas referred to the Committee. In the end a stalemate was reached, as expressed in the concluding paragraphs of the Committee's final report:

The Procedure Committee, comprising a membership that is reflective of both the party representation in the House and the various office holders who together manage the business of the House, has historically made recommendations on a consensus view. This has been particularly important as many of the recommendations made by the Committee relate to significant changes in procedure, and the House places great weight on the Committee's deliberations and recommendations.

For this reason, the Committee has not made any recommendations, rather outlining the issues and varying views of members so as to ensure that all members of the House are fully informed should any member bring proposals before the House for its deliberation and decision.²⁷

The approach of the Procedure Committee is consistent with an approach taken in many parliaments of the need for consensus in procedural reform. It demonstrates how a procedural change, once implemented, becomes very difficult to wind back when at least a significant portion of members has found it can use the procedures to advantage.

Those words were written more than two years ago, and since then the situation has remained pretty much as it was at that time. Unlike the spread of the cane toad, the unintended consequence has not continued to expand exponentially. Motions have continued to be passed at two to three times the frequency prior to the 2011 procedural reform but the rate of growth has plateaued. After all, there are only 42 members of the House, and there are limits to how many motions busy and active members can put their name to.

But the House continues at the start of each day to pass motions full of guest lists for community functions, criticising foreign governments, providing mini biographies of noteworthy individuals and congratulating by name members of sporting teams, their coaches, physios, scorers and administrators. Anyone reading the minutes of proceedings would be astonished about the breadth of interest and the decisiveness of the members of the House, able to agree on so many issues all without debate or division. In a recent example, on 2 July 2014 House sat for a total of less than an hour but still managed to pass several detailed motions, of which the following commemorating the 72nd anniversary of Japanese Midget submarines entering Sydney Harbour is a good example:

1. That this House notes that on 30 May 2014, the Prime Minister the Hon Tony Abbott MP, was the MC for the Defence of Sydney Commemoration, held at the former School of Artillery, North Head, to remember the WWII submarine attack on Sydney Harbour.

2. That this House notes that 2014 represents the 72nd anniversary of three Japanese midget submarines entering Sydney Harbour on 31 May 1942, during which a torpedo attack sank the HMAS Kuttabul, a converted ferry on which British and Australian troops were sleeping, killing and total of 21 sailors on board.

3. That this House notes that:

(a) on the night of 29 May 1942, five large Japanese submarines positioned themselves 56 kilometres north-east of Sydney Heads,

²⁷ Procedure Committee *Notices of motions* Report 7 June 2012 p16.

- (b) at 3.00 am the next day one of the submarines launched a reconnaissance aircraft, which after circling Sydney Harbour returned to its submarine, reporting the presence of 'battleships and cruisers' moored in the Harbour,
- (c) the flotilla's commanding officer decided to attack the Harbour with midget submarines the next night,
- (d) the next day the five submarines approached to within 11 kilometres of Sydney Heads, and at about 4.30 pm they released three midget submarines which then began their approach to Sydney Harbour,
- (e) the outer-harbour defences detected the entry of the first midget submarine at about 8.00 pm, but it was not identified until it became entangled in an anti-torpedo net that was suspended between George's Head and Green Point,
- (f) before HMAS Yarroma was able to open fire on the first submarine the submarine's two crew members destroyed their vessel with demolition charges and killed themselves,
- (g) the second submarine entered the harbour at about 9.48 pm and headed west towards the Harbour Bridge, causing a general alarm to be issued by the Naval Officer in Charge, Sydney,
- (h) about 200 metres from Garden Island, the second submarine was fired on by the heavy cruiser USS Chicago, prompting the submarine to fire its two torpedoes at the cruiser, one of which ran ashore on Garden Island but failed to explode and the other of which passed under the Dutch submarine K9 and struck the harbour bed beneath the depot ship HMAS Kuttabul where it exploded, killing 21 sailors, 19 from the Royal Australian Navy and two from the Royal Navy, before the submarine then slipped out of the harbour, its mission complete, and
- (i) the third submarine was sighted by HMAS Yandra at the entrance to the Harbour and was depth-charged, and
- (j) some four hours later, the third submarine entered the Harbour but was subsequently attacked with depth charges and sunk in Taylor Bay by vessels of the Royal Australian Navy with both members of the submarine crew committing suicide.

3. That this House notes that:

- (a) the guest speaker at the commemoration was the writer and famous historian Les Carlyon, who spoke about the upcoming centenary of Anzac, marking the allied landing at Gallipoli in 1915 and said: "What's the Anzac commemoration about? It's simply remembering", and
- (b) the commemoration included the laying of wreaths and memorial books by the representatives of many organisations including the Premier's wife Mrs Kerryn Baird and the Rev Fred Nile.

As an unintended consequence of a procedural reform, the Legislative Council's experience in reforming the giving of notices is not especially harmful, as annoying as it may be for some senior members, the staff that check and proof motions, and perhaps at times for consuls of foreign nations. Certainly the infestation of cane toads ranks much higher in the annals of failed experiments in public policy. But the example does serve to remind that human ingenuity makes for unanticipated outcomes, and members of parliament certainly rank highly in the human ingenuity stakes. A change once made is very hard to reverse. Parliamentary clerks would do well to factor in the Law of Unintended Consequences when faced with a procedural problem needing a new solution.

Appendix: A motion passed on 11 September 2014 by the NSW Legislative Council

2014 COMMONWEALTH GAMES

1. That this House notes that at the 2014 Commonwealth Games, Australian athletes won 51 Gold Medals, 43 Silver Medals and 46 Bronze Medals, which was the second highest Commonwealth Games medal tally.

2. That this House congratulates and commends the following on their results at the 2014 Commonwealth Games:

(a) Individual Gold Medallists:

- (i) 100m Hurdles – Women – Sally Pearson,
- (ii) 1500m Para Sport Wheelchair – Women – Angela Ballard,
- (iii) Discus Throw – Women – Dani Samuels,
- (iv) High Jump – Women – Eleanor Patterson,
- (v) Javelin Throw – Women – Kim Mickle,
- (vi) Long Jump Para Sport – Women – Jodi Elkington,
- (vii) Marathon – Men – Michael Shelley,
- (viii) Pole Vault – Women – Alana Boyd,
- (ix) Boxing 52kg – Men – Andrew Moloney,
- (x) Boxing 60kg – Women – Shelley Watts,
- (xi) Cycling Track 1km Time Trial – Men – Scott Sunderland,
- (xii) Cycling Track 4000m Individual Pursuit – Men – Jack Bobridge,
- (xiii) Cycling Track 500m Time Trial – Women – Anna Meares,
- (xiv) Cycling Track Keirin – Men – Matthew Glaetzer,
- (xv) Cycling Track Scratch Race – Women – Annette Edmondson,
- (xvi) Cycling Track Sprint – Women – Stephanie Morton,
- (xvii) Diving 3m Springboard – Women – Esther Qin,
- (xviii) Shooting 10m Air Pistol – Men – Daniel Repacholi,
- (xix) Shooting 25m Rapid Fire Pistol – Men – David J Chapman,
- (xx) Shooting 50m Rifle Prone – Men – Warren Potent,
- (xxi) Shooting Skeet – Women – Laura Coles,
- (xxii) Shooting Trap – Men – Adam Vella,
- (xxiii) Shooting Trap – Women – Laetisha Scanlan,
- (xxiv) Swimming 100m Backstroke – Women – Emily Seebohm,
- (xxv) Swimming 100m Freestyle – Men – James Magnussen,
- (xxvi) Swimming 100m Freestyle – Women – Cate Campbell,
- (xxvii) Swimming 100m Freestyle Para Sport S8 – Women – Maddison Elliott,
- (xxviii) Swimming 100m Freestyle Para Sport S9 – Men – Rowan Crothers,
- (xxix) Swimming 200m Backstroke – Men – Mitch Larkin,
- (xxx) Swimming 200m Backstroke – Women – Belinda Hocking,
- (xxxi) Swimming 200m Freestyle – Men – Thomas Fraser-Holmes,
- (xxxii) Swimming 200m Freestyle – Women – Emma McKeon,
- (xxxiii) Swimming 200m Freestyle Para Sport S14 – Men – Daniel Fox,
- (xxxiv) Swimming 200m Individual Medley – Men – Daniel Tranter,
- (xxxv) Swimming 50m Backstroke – Men – Ben Treffers,
- (xxxvi) Swimming 50m Breaststroke Women – Leiston Pickett,

(b) Team Gold Medallists:

- (i) Cycling Track 4000 m Team Pursuit – Men – Alex Edmondson, Glenn P O'Shea, Jack Bobridge and Luke Davison,
- (ii) Diving 10m Platform Synchronised – Men – Matthew Mitcham,
- (iii) Hockey – Men – Andrew Charter, Andrew Philpott, Aran Zalewski, Chris Ciriello, Daniel Beale, Eddie Ockenden, Fergus Kavanagh, Jacob Whetton, Kiel 61

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Brown, Kieran Govers, Mark Knowles, Matt Gohdes, Matthew Swann, Simon Orchard, Trent Mitton and Tristan White,

- (iv) Hockey – Women – Anna Flanagan, Ashleigh Nelson, Brooke Peris, Casey Eastham, Edwina Bone, Emily Smith, Georgia Nanscawen, Georgie Parker, Jane Claxton, Jayde Taylor, Jodie Kenny, Karri McMahon, Kate Jenner, Kellie White, Madonna Blyth and Rachael Lynch,
- (v) Netball – Bianca Chatfield, Caitlin Bassett, Caitlin Thwaites, Julie Corletto, Kimberlee Green, Kimberley Ravallion, Laura Geitz, Madi Robinson, Natalie Medhurst, Renae Hallinan, Sharni Layton and Tegan Caldwell,
- (vi) Squash Doubles – Men – Cameron Pilley and David Palmer,
- (vii) Squash Doubles – Mixed – David Palmer and Rachael Grinham,
- (viii) Swimming 4 x 100m Freestyle Relay – Men – Cameron Mcevoy,

JamesMagnussen, Jayden Hadler, Kenneth To, Matt Abood, Ned Mckendry and Tommaso D'Orsogna,

(ix) Swimming 4 x 100m Freestyle Relay – Women – Alicia Coutts, Brittany Elmslie, Bronte Campbell, Cate Campbell, Emma Mckeon, Maddie Groves and Melanie Schlanger,

(x) Swimming 4 x 100m Medley Relay – Women – Alicia Coutts, Belinda Hocking, Bronte Campbell, Cate Campbell, Emily Seebohm, Emma Mckeon, Lorna Tonks and Sally Hunter,

(xi) Swimming 4 x 200m Freestyle Relay – Men – Cameron Mcevoy, David Mckeon, Mack Horton, Ned Mckendry and Thomas Fraser-Holmes,

(xii) Swimming 4 x 200m Freestyle Relay – Women – Alicia Coutts, Brittany Elmslie, Bronte Barratt, Emma Mckeon, Maddie Groves and Remy Fairweather,

(c) Individual Silver Medallists:

(i) Athletics 1500m Para Sport Wheelchair – Men – Kurt Fearnley,

(ii) Boxing over 91kg – Men – Joseph Goodall,

(iii) Cycling Road Individual Time Trial – Men – Rohan Dennis,

(iv) Cycling Track 3000m Individual Pursuit – Women – Annette Edmondson,

(v) Cycling 4000m Individual Pursuit – Men – Alex Edmondson,

(vi) Cycling 500m Time Trial – Women – Stephanie Morton,

(vii) Cycling Scratch Race – Men – Glenn P O'Shea,

(viii) Cycling Scratch Race – Women – Amy Cure,

(ix) Cycling Sprint Women – Anna Meares,

(x) Diving 1m Springboard – Men – Matthew Mitcham,

(xi) Diving 1m Springboard – Women – Maddison Keeney,

(xii) Gymnastics Artistic Beam – Women – Mary–Anne Monckton,

(xiii) Gymnastics Floor – Women – Lauren Mitchell,

(xiv) Gymnastics Uneven Bars – Women – Larrissa Miller,

(xv) Swimming 100m Backstroke – Men – Mitch Larkin,

(xvi) Swimming 100m Breaststroke – Women – Lorna Tonks,

(xvii) Swimming 100m Breaststroke Para Sport SB9 – Women – Madeleine Scott,

(xviii) Swimming 100m Freestyle – Men – Cameron Mcevoy,

(xix) Swimming 100m Freestyle – Women – Bronte Campbell,

(xx) Swimming 100m Freestyle Para Sport S9 – Men – Matthew Cowdrey,

(xxi) Swimming 1500m Freestyle – Men – Mack Horton,

(xxii) Swimming 200m Backstroke – Men – Josh Beaver,

(xxiii) Swimming 200m Backstroke – Women – Emily Seebohm,

(xxiv) Swimming 200m Breaststroke – Women – Sally Hunter,

(xxv) Swimming 200m Butterfly – Men – Grant Irvine,

(xxvi) Swimming 200m Freestyle – Men – Cameron Mcevoy,

(xxvii) Swimming 200m Individual Medley – Women – Alicia Coutts,

(xxviii) Swimming 200m Individual Medley Para Sport SM10 – Women – Katherine Downie,

(xxix) Swimming 200m Individual Medley Para Sport SM8 – Men – Jesse Aungles,

(xxx) Swimming 400m Freestyle – Men David Mckeon,

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(xxxi) Swimming 400m Individual Medley – Men – Thomas Fraser–Holmes,

(xxxii) Swimming 50m Backstroke – Men Mitch Larkin,

(xxxiii) Swimming 50m Freestyle – Men Cameron Mcevoy,

(xxxiv) Swimming 50m Freestyle – Women Cate Campbell,

(d) Team Silver Medallists:

(i) Cycling Track Para Sport 1000m Time Trial B Tandem – Men – Jason Niblett and Kieran Modra,

(ii) Cycling Track Para Sport Sprint B Tandem – Men – Jason Niblett and Kieran Modra,

(iii) Diving 3m Springboard Synchronised – Men – Grant Nel and Matthew Mitcham,

(iv) Gymnastics Artistic Team Competition – Women – Georgia–Rose Brown, Larrissa Miller, Lauren Mitchell, Mary–Anne Monckton and Olivia Vivian,

(v) Lawn Bowls Triples – Women – Karen Murphy, Kelsey Cottrell and Lynsey Clarke,

- (vi) Swimming 4x100m Medley Relay – Men – Cameron Mcevoy, Christian Sprenger, James Magnussen, Jayden Hadler, Josh Beaver, Kenneth To, Mitch Larkin and Tommaso D'Orsogna,
- (vii) Table Tennis Doubles – Women – Jian Fang Lay and Miao Miao,
- (e) Individual Bronze Medallists:
 - (i) Athletics Javelin Throw – Men – Hamish Peacock,
 - (ii) Javelin Throw – Women – Kelsey–Lee Roberts,
 - (iii) Marathon – Women – Jess Trengove,
 - (iv) Cycling – Mountain Bike Cross Country – Men – Daniel Mcconnell,
 - (v) Cross Country – Women – Rebecca Henderson,
 - (vi) Cycling Road Individual Time Trial – Women – Katrin Garfoot,
 - (vii) Cycling Track – 3000m Individual Pursuit – Women – Amy Cure,
 - (viii) Diving 1m Springboard – Men – Grant Nel,
 - (ix) Diving 1m Springboard – Women – Esther Qin,
 - (x) Judo 73kg – Men – Jake Bensted,
 - (xi) Judo Over 100kg – Men – Jake Andrewartha,
 - (xii) Judo 48kg – Women – Amy Meyer,
 - (xiii) Judo Under 48kg – Women – Chloe Rayner,
 - (xiv) Bowls Singles – Men – Aron Sherriff,
 - (xv) Shooting 25m Sport Pistol – Women – Lalita Yauhleuskaya,
 - (xvi) Shooting – 50m Free Pistol – Men – Daniel Repacholi,
 - (xvii) Swimming 100m Backstroke – Men – Josh Beaver,
 - (xviii) Swimming 100m Backstroke – Women – Belinda Hocking,
 - (xix) Swimming 100m Butterfly – Women – Emma Mckeon,
 - (xx) Swimming 100m Freestyle – Men – Tommaso D'Orsogna,
 - (xxi) Swimming 100m Freestyle – Women – Emma Mckeon,
 - (xxii) Swimming 100m Freestyle Para Sport S8 – Women – Lakeisha Patterson,
 - (xxiii) Swimming 100m Freestyle Para Sport S9 – Men – Brenden Hall,
 - (xxiv) Swimming 200m Backstroke – Men – Matson Lawson,
 - (xxv) Swimming 200m Butterfly – Women – Maddie Groves,
 - (xxvi) Swimming 200m Freestyle – Women – Bronte Barratt,
 - (xxvii) Swimming 200m Individual Medley Para Sport SM8 – Men – Blake Cochrane,
 - (xxviii) Swimming 400m Freestyle – Women – Bronte Barratt,
 - (xxix) Swimming 400m Individual Medley – Women – Keryn McMaster,
 - (xxx) Swimming 50m Breaststroke – Men – Christian Sprenger,
 - (xxxi) Swimming 50m Butterfly – Women – Brittany Elmslie,
 - (xxxii) Swimming 50m Freestyle – Men – James Magnussen,
 - (xxxiii) Swimming 50m Freestyle – Women – Bronte Campbell,
 - (xxxiv) Weightlifting 77kg – Men – Francois Etoundi,
 - (xxxv) Weightlifting over 105kg – Men – Damon Kelly, and

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- (f) Team Bronze Medallists:
 - (i) Cycling Track Para–Sport 1000m Time Trial B Tandem – Women – Brandie O'Connor and Breanna Hargrave,
 - (ii) Cycling Track Para–Sport Sprint B Tandem – Men – Paul Kennedy and Thomas Clarke,
 - (iii) Cycling Track Para–Sport Sprint B Tandem – Women – Brandie O'Connor and Breanna Hargrave,
 - (iv) Cycling Track Team Sprint – Men – Matthew Glaetzer, Nathan Hart and Shane Perkins,
 - (v) Diving 3m Springboard Synchronised – Women – Anabelle Smith and Maddison Keeney,
 - (vi) Lawn Bowls Fours – Men – Brett Wilkie, Matt Flapper, Nathan Rice and Wayne Ruediger,
 - (vii) Lawn Bowls Para–Sport B2/B3 Mixed Pairs – Bruce Jones, Joy Forster, Peter Scott and Tony Scott,
 - (viii) Rugby Sevens – Men – Cameron Clark, Con Foley, Ed Jenkins, Greg Jeloudev, James Stannard, Jesse Parahi, Liam Gill, Pama Fou, Samuel Myers, Sean McMahon, Tom Cusack and Tom Lucas,
 - (ix) Squash Doubles – Mixed – Cameron Pilley and Kasey Brown,
 - (x) Table Tennis Team – Women – Jian Fang Lay, Melissa Tapper, Miao Miao,

