

CHAPTER 10

RESOLUTIONS, MOTIONS AND AMENDMENTS

Decisions of the House are made by resolutions and orders. Both resolutions and orders are a statement of the position of the Council on a particular matter or issue. The substance of a resolution can be anything that can normally be proposed as a motion, for example a motion that the House expresses its appreciation or condolence. By contrast, orders require that a particular action be taken by the Government or other body accountable to the Council, for example an order that a committee of the Council undertake an inquiry into a particular issue or an order that the executive government produce certain documents.

In reality, the distinction between resolutions and orders of the House is not observed in usage. Generally speaking, only procedural orders, notably the standing orders and orders for the production of documents, are referred to as orders, while many other orders are in fact referred to by convention as resolutions.

MOTIONS

For the House to agree on a particular resolution or order, it must first be presented by a member for the consideration of the House as a proposal in the form of a motion.

There are two categories of motions – substantive and subsidiary.

Substantive motions are self-contained proposals requiring the agreement of the House and normally require notice be given at a previous sitting. The majority of the House's work is the consideration of substantive motions. These proposals range from those that are procedural in nature, such as variations to the time of the meeting of the House or the order of its business, to debates on matters of significant public importance and the consideration of bills.

Subsidiary motions are of a technical or formal nature. Subsidiary motions do not require notice and generally are consequential on another matter occurring. For example, amendments to motions are subsidiary motions, as are motions that a

report be printed or that a petition be received. The motions for the second and third readings of a bill are also subsidiary, their purpose being simply to progress the bill to its next stage.

Notices of motions

Unless specifically provided for in the standing orders, a member who wishes to initiate a subject for discussion as a motion may do so only if notice was given at a previous sitting of the House. This is called giving notice of motion. This requirement provides an opportunity for members to prepare for matters which come before the House for debate and decision. A motion which requires notice may also be moved at once by leave of the House by unanimous consent, with any objection preventing it from occurring (SOs 73 and 76).¹

Notices of motions are normally given before the House proceeds to the business on the Notice Paper, although they may be given at other times by leave of the House (SO 71(6)). No debate is allowed on the question that leave be given.² Generally, the House consents to such a request, particularly when it is apparent that the member has merely missed the opportunity during the routine of business, or when a matter has occurred during the sitting which requires action the next sitting day.

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 (SO 71(1)).³ A member may give notice on behalf of any other member who is not present in the House (SO 71(4)).

Under a practice first instituted by President Willis in 1992, ministers may give consecutive notices of motions whereas private members may only give one notice on each call from the Chair.⁴ This procedure is intended to give all private members an equal opportunity to give notices. The Chair usually recognises the Leader of the Opposition immediately after ministers, and then alternates the call between the government, opposition and cross-bench members until all notices have been given. There is no restriction on the number of notices a member may have on the Notice Paper.

Notices are set down on the Notice Paper under the relevant category in the order in which they are given (SO 71(3)). Notices given by a minister are set down under government business and private members' notices are set down under private

1 See, for example, *LC Minutes* (7/6/2006) 103, when leave was granted to move a motion to amend the resolution appointing the Select Committee on the Continued Public Ownership of Snowy Hydro Limited, as agreed to earlier that day.

2 Ruling: Trickett (Deputy), *LC Debates* (30/11/1900) 6079-6080.

3 Ruling: Fazio (Deputy), *LC Debates* (3/5/2006) 22429.

4 *LC Debates* (25/2/1992) 24.

members' business outside the order of precedence. Notices relating to business of the House, matters of privilege or matters of public importance are set down on the Notice Paper according to the standing orders.

Notices of motions are not considered to be the property of the House until they are moved. Until then a member may withdraw the notice or change the date for bringing on the motion without requiring the consent of the House (SO 72).

There is no time limit on notices remaining on the Notice Paper, and in general they remain until moved, withdrawn or the House is prorogued. While members generally give notice of their intention to move their motion on the next sitting day, they may give notice for a specific day not more than four weeks from the day the notice is given (SO 71(7)). A member may change the date for bringing on their motion by giving notice of the new date, but that date may not be earlier than the original date (SO 72).

While members generally give notice for the next sitting day, in most instances it is not possible for the motion to be moved at that time. The Notice Paper generally contains too many items of business to be dealt with during any one sitting and notices can remain on the Notice Paper for extended periods. In May 2006, the House considered a motion for a sessional order to provide for the removal of those notices of motions which remain on the Notice Paper after 30 sitting days without being moved, although the notice could be renewed once only by providing written notification to the Clerk before its removal from the Notice Paper.⁵ The matter was not concluded and the order of the day for resumption of the debate was subsequently withdrawn from the Notice Paper.⁶

There are few restrictions on the subject matter of notices, aside from the rules of order and decorum which apply to debate. Rules of debate regarding the use of unbecoming expressions, disrespectful references to the Queen or Governor, or the making of allegations against members which could constitute a contempt, apply equally to the content of motions.

A notice contrary to the standing orders or established practice must be amended before it appears on the Notice Paper (SO 71(8)) or the House may refuse to receive the notice and have it removed from the Notice Paper.⁷ In 1990, the President directed the Clerk to amend a motion already moved when a point of order was taken that certain wording breached the *sub judice* convention.⁸ In 2002, the President directed the Clerk to amend a notice of motion when a point of order was taken that several paragraphs of the motion were out of order.⁹ In 2007, the President directed the Clerk to remove a private members' notice of motion

5 *LC Minutes* (24/5/2006) 36.

6 *LC Minutes* (6/9/2006) 174.

7 Ruling: Lackey, *LC Debates* (4/7/1895) 7807.

8 *LC Minutes* (16/5/1990) 164.

9 *LC Minutes* (19/3/2002) 69, (10/4/2002) 112.

from the Notice Paper because it breached the provision of section 5 of the *Constitution Act 1902* relating to the origination of money bills in the Assembly.¹⁰

Under the standing orders, the following motions do not require notice:

- a motion for the election of the President at the commencement of the sittings following a periodic Council election, or when a vacancy occurs (SO 12);
- a motion for the election of the Deputy President at the commencement of the sittings following a periodic Council election, or when a vacancy occurs (SO 15(1));
- a motion moved by a minister regarding the conduct of government business (SO 37);
- a motion for the postponement of an item of business on the Notice Paper (SO 45);
- a motion that a document relating to public affairs quoted by a minister be ordered to be laid on the table (SO 56);
- a motion that on a document being laid before the House, that a day be appointed for its consideration or that it be printed (SO 57);
- a motion that certain papers tabled in the previous month and not ordered to be printed at that time be printed (SO 59);
- a motion moved by a minister for a special adjournment of the House, or to express the appreciation, thanks or condolences of the House (SO 74);
- a motion to discharge an order of the day (SO 81);
- a motion that a member who rises to address the House 'be now heard' (SO 97);
- a motion that a member who is speaking in a debate 'be no longer heard' (SO 98);
- a motion, following the adjournment of a debate, that the order of the day for resumption of the debate take precedence over all other business on the Notice Paper for that day, except government business on a government day (SO 101);
- a motion that strangers be ordered to withdraw from the House before a division is taken (SO 114);
- a motion at any time when there is no business under discussion that a resolution of the House be communicated by message to the Assembly (SO 125);
- a motion after a bill has been read a second time to refer the bill to a committee (SO 141(2));
- a motion, following the adoption of the report of the committee of the whole on a bill, that a future day be fixed for the third reading of the bill (SO 148(1));

¹⁰ *LC Minutes* (28/6/2007) 204; *LC Debates* (28/6/2007) 2046.

- a motion for the appointment of a committee to draw up reasons for the Council not agreeing to amendments proposed by the Assembly to a bill originating in the Council (SO 152(8));
- a motion for a minister in the Assembly to sit in the Council for the purpose of explaining the provisions of a bill (according to section 38A of the *Constitution Act 1902*) (SO 163);
- a motion for a private bill to be introduced again and read a first time, having previously lapsed due to prorogation (SO 171(1));¹¹
- a motion that an item of private members' business in the order of precedence, postponed for a third time, remain in its place on the Notice Paper (SO 188);
- a motion for the suspension of a member found guilty of an offence under the standing orders (SOs 190(3) and 191(1));
- a motion for a distinguished visitor to be admitted to a seat on the floor of the House (SO 195);
- a motion that the House adjourn to discuss a matter of urgency (SO 201(1));
- a motion following the tabling of a report from a committee that the House take note of the report (SO 232).

Contingent notices of motion

Contingent notices indicate that, contingent on a particular event occurring, a subsequent motion will be moved, thereby abrogating the need for notice of the subsequent motion. Contingent notices are not given for a particular day, and can relate to a single event or to regularly occurring procedures in the House. Where a contingent notice is specific to a particular event, such as the tabling of the budget papers or the introduction of a specific bill, it expires upon activation.¹² Where a contingent notice relates to a regular event, such as the tabling of any document or the calling on of any item of business, it does not expire upon activation and can be used multiple times by the member.

It is common practice for members to give a range of contingent notices at the beginning of each session as a device to overcome the requirement for notice to be given of motions for the suspension of standing orders (SO 198).¹³ These include contingent notice:

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- 11 The motion for a private bill to be introduced again can only be moved following receipt of a petition by the promoters of the bill for leave to proceed.
- 12 For example, a contingent notice has been given indicating that, on receipt of a message from the Assembly requesting the attendance of the Treasurer in the Legislative Assembly chamber to present the budget speech, standing orders be suspended to allow the message to be considered forthwith, thus avoiding the requirement under standing order 126 that a future day be fixed for consideration of the message.
- 13 See *LC Notice Paper (21/11/2006) 2029-2033*.

- that the House take note of a paper which has just been tabled;
- for an instruction to the committee of the whole in relation to a bill;
- for consideration of a particular item of business;
- for passage of a bill through all its stages during any one sitting of the House;
- for conduct of the business of the House;
- for precedence of business after prayers;
- for precedence of government business;
- for censure of a minister;
- for finding a minister in contempt of the House.

Moving motions

Motions are called on in the order they appear on the Notice Paper. The member bringing the motion, known as the mover, must first be recognised by the Chair as being entitled to move the motion according to the standing orders. Once the mover has obtained the floor, the mover states the motion by reading it aloud, normally prefixed with the phrase 'I move'. If the motion is lengthy, the mover may refer to its number on the Notice Paper, and the general subject matter of the motion. Generally, once the motion has been moved, the House will consider and debate the motion, assuming that under the standing orders the motion may be debated. Amendments may be moved to the motion at this time. Once any amendments have been debated and voted on, the original motion, as amended or otherwise, may be voted on by the Council. If the motion is adopted by the majority, it becomes a resolution or order of the Council.

A member may seek leave to amend the motion before moving it in the House.

A motion may be moved by another member at the request of the member who has given notice (SO 75(2)). Motions, other than the motion for the Address-in-Reply, do not require a seconder (SO 75(1)).

There is precedent for notices concerning the same matter to be moved together to allow debate on the alternative propositions which would otherwise be precluded.¹⁴

A notice of motion on the Notice Paper not moved when it is called on lapses and is withdrawn from the Notice Paper (SO 75(3)).¹⁵

Unlike notices of motions, which can be withdrawn at any time before being moved, a motion once moved is in the possession of the House and can only be withdrawn by the mover by leave of the House (SO 75(4)). A motion which has been withdrawn can be moved again in the same session, as the matter has not been determined by the House.

¹⁴ See, for example, *LC Minutes* (21/11/1923) 90, (13/11/1941) 126.

¹⁵ See, for example, *LC Minutes* (18/9/1997) 57.

Where a motion is complicated the House may, by motion without debate, order the question be divided into parts to allow members to vote differently on each part if desired (SO 102(3)).

At the request of a member, a motion consisting of more than one question is put sequentially, often referred to as *in seriatim* (SO 102(4)). President Johnson ruled in 1988 that the proper time to request that a motion consisting of more than one resolution have those resolutions put *in seriatim* is when the question is put, not during debate.¹⁶

The standing orders provide for the House to refer a complicated question to a committee of the whole House. The rules of debate applying to committee of the whole, particularly the ability to speak more than once on a question, may be an effective means of considering complicated motions consisting of several parts on which amendments are proposed.¹⁷

When a motion has been adjourned, either until a later hour of the same day, the next sitting day or to a specified day, it becomes an order of the day. Orders of the day may only be discharged by motion without notice at the time they are called on (SO 81(4)). Bills are slightly different in this regard. Once an order of the day relating to a Council bill has been discharged the original bill is withdrawn. Although it is possible to discharge the order of the day in relation to any bill, only bills which have been initiated in the Council can be withdrawn. When an order on an Assembly bill is discharged in the Council a message to that effect is sent to the Assembly.¹⁸

Motions not open to debate

Every motion is debatable unless debate is specifically prevented by the standing orders. The following motions cannot be debated:

- a motion for fixing a day for resumption of debate interrupted for adjournment (SO 32(3));
- a motion dealt with as formal business (SO 44);
- a motion for the postponement of business (SO 45);
- a motion for a petition to be received or for a petition to be read by the Clerk (SO 68(5));
- a motion for disallowance of a statutory rule to proceed as business of the House (SO 78);
- a motion for a member to 'be further heard' (SO 94(2));

¹⁶ Ruling: Johnson, *LC Debates* (2/6/1988) 1336.

¹⁷ Standing orders 172, 173; see also ruling: Hay, *LC Debates* (11/6/1890) 1222, (11/6/1890) 1222-1223.

¹⁸ See *LC Minutes* (13/9/2005) 1550-1551. A precedent to the contrary occurred in 1931 when an Assembly bill was discharged and withdrawn in the Council, *LC Minutes* (30/6/1931) 188.

- a motion for member to 'be now heard' (SO 97);
- a motion for a member to 'be no longer heard' (SO 98);
- a motion for the closure of debate (SO 99);
- a motion for a difficult question to be divided (SO 102);
- a motion for the first reading and printing of a bill (SO 137 and 187);
- a motion that a bill be considered an urgent bill (SO 138);
- a motion for committal of a bill after the second reading (SO 141);¹⁹
- a motion fixing a day for the third reading of a bill (SO 148);
- a motion 'that the question be now put' and 'that the Chair report progress and ask leave to sit again' (SO 173);
- a motion that a member, having been found to have committed an offence under the standing orders, be suspended from the service of the House (SO 190).

Dilatory motions

Superseding motions

A superseding motion is used to prevent further discussion on a matter before the House. If such a motion is resolved in the affirmative, the original question lapses and may only be resumed by motion on notice (SO 106). There is no debate on a motion to supersede the question.

There are various forms of motion for superseding the question. These are:

- that the debate be now adjourned (SO 105);
- that further consideration of the bill be now adjourned;
- that the House do now adjourn.

The effect of the first two forms of motion, 'That the debate be now adjourned' and 'That further consideration of the bill be now adjourned', without specifying a particular day or time, is that, if carried, the next order or notice of motion is then proceeded with. The matter under discussion drops from the Notice Paper and can only be restored by motion on notice.

The third motion, 'That the House do now adjourn', if carried, results in all business for the day ending, although under the standing orders the provision for 30 minutes of debate on the motion for the adjournment of the House still applies. The motion for the adjournment of the House to supersede the question was moved and carried in September 2005 during an urgency motion on the Australian Labor Party's attitude toward Aboriginal people.²⁰

¹⁹ See also ruling: Johnson, *LC Debates* (29/10/1986) 5668.

²⁰ *LC Minutes* (20/9/2005) 1584.

Only a member who has the call and who has not previously spoken to the original motion may move such an adjournment. A member who moves this type of dilatory motion may not later speak to the main question if the dilatory motion is negated.²¹ A dilatory motion cannot be moved before the House has proceeded to the orders of the day, nor when the question for the adjournment of the House is already under discussion.²²

It is also possible to supersede a question in committee of the whole by moving that the Chair leave the Chair without reporting progress.²³

The previous question

The moving of the previous question is another form of dilatory motion. The consequence of moving the previous question is that the House must decide whether or not to have the original question put to the House. The form in which the previous question is put to the House is: 'That the question be not now put' (SO 107(1)).²⁴

Only a member who has the call may move the previous question. The motion for the previous question is debatable and, in debating the motion, the original question and any amendment may be debated. The motion may not be amended but may be withdrawn or superseded by another dilatory motion such as an adjournment motion (SO 107). A member who has spoken on the original question can speak to the previous question as it is a new question for debate.

If the previous question is agreed to, the Chair is prevented from putting the original question and any amendment to it, and the House proceeds to the next item of business. The original question and any amendment are disposed of, but may be resumed, by motion on notice, since the decision of the House binds the Chair not to put the question on the original motion only at that time.²⁵

If the previous question is negated, the original question and any amendment to it must be put forthwith without amendment, debate or motion for adjournment (SO 108(2)).

When a motion consists of a series of motions which are under discussion as one motion, and the questions are to be put separately, the decision of the previous question on the first motion is conclusive for all of the motions (SO 108).

21 McKay W (ed), *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 23rd edn, LexisNexis, UK, 2004, p 395.

22 *Ibid*, p 394.

23 *LC Minutes* (2/5/1989) 620.

24 Before the adoption of new standing orders in 2004, the form of the closure motion and the previous question had been the same: 'That the question be now put'. The form of the previous question was changed in order to avoid confusion.

25 *Erskine May*, 23rd edn, pp 395-396. This would require the order of the day being restored to the business paper by notice of motion.

The standing orders allow for the use of the previous question both on the motion for second reading and the third reading of a bill (SO 140(2)(c) and 148(3)(b)). However, the previous question may not be moved to an amendment, or during proceedings in committee of the whole (SO 173).

There have been few occasions on which the previous question has been moved in the Council.

In 1895 the previous question was moved during the second reading of the Conditional Purchasers' Relief Bill. The previous question being put, the House divided, 10 members voting with the ayes and 6 with the noes. As the report from the tellers revealed that there was not a quorum present (the quorum at the time being one fourth of the members excluding the President, that is 17 of the 67 members), according to standing orders the President adjourned the House without the vote being declared. On the resumption of the debate on the second reading of the bill some six months later, the previous question was again put. The question was resolved in the affirmative and the motion for the second reading put and agreed to.²⁶

The same question rule

A motion may not be moved if it is the same in substance as one already decided in the same session unless the order or resolution was determined more than six months previously or has been rescinded (SO 103). The rule is seldom applied as it is not often that a motion is exactly the same as a motion moved previously. Even if the terms are the same as one previously determined, the motion almost invariably has a different effect because of changed circumstances and is therefore not the same motion.²⁷

The same question rule in general can be avoided by the rescission of a resolution of the House, or by rewording the terms of the motion. Whether the second motion is substantially the same as the first is a matter for the judgment of the Chair. A question which has not been definitely decided may be raised again. Consequently, a motion which has been withdrawn may be moved again.

In 1934, the Chair of Committees ruled that an amendment proposed on a recommitted bill was in order despite being the same in substance as an amendment negated on a casting vote during the previous committal.²⁸ By contrast, in 1997, a second motion by a different member immediately following a failed motion for the suspension of standing orders to allow a motion to be moved that the House take note of a report was ruled out of order because the same motion had already been negated.²⁹

26 *LC Minutes* (12/12/1895) 164, (10/6/1896) 26; see also *LC Minutes* (5/12/1994) 483-490 for examples of the previous question under old standing order 108.

27 *Odgers*, 11th edn, p 182.

28 *LC Minutes* (12/12/1934) 422.

29 *LC Minutes* (8/4/1997) 581.

The application of the same question rule to subsidiary motions on bills varies from its application to substantive motions. The question ‘That this bill be now read a second time’ is asking the House to agree to the second reading ‘now’. If the question is negated, and provided no other mechanism has been used to prevent the bill proceeding at that time (such as a ‘this day six months’ amendment), the order of the day for the second reading of the bill can be restored, on motion, to the Notice Paper.³⁰ A bill which has been successfully revived following its defeat on the motion for its second or third reading is restored to the commencement of the stage it had reached before it was defeated. The motion must be moved again and debate proceeds in the normal manner from that stage. The application of the same question rule to bills is dealt with in detail in Chapter 12 (The Legislative Process).

The rule of anticipation

Under standing order 92, a member may not anticipate in debate any matter shown on the Notice Paper, except an item of private members’ business outside the order of precedence unless, in the opinion of the President, there is no likelihood of the motion or order of the day being called on within a reasonable time. However, it is not considered anticipation if the new motion or amendment is a more effective form of proceeding. A bill is more effective than a motion; a substantive motion more effective than a motion for adjournment of the House; and an adjournment motion more effective than a question.

There is no application of the rule of anticipation in regard to notices since it is not until a motion is before the House that the rule is invoked. Members may give identical notices of motions without contravening the rule of anticipation, since it is possible that a member may give notice of motion without intending to ever proceed. The giving of a contingent notice of motion in relation to a bill in the other House also does not invoke the rule of anticipation, since it is not known when, if ever, the bill will come before the House.

In recent years both the House of Commons and the Senate have tended to interpret the rule of anticipation liberally, only invoking it where a member speaking on another matter appears to be entering on debate on a bill or motion which is expected to come before the House within a short period of time.

Sub judice

The *sub judice* convention is discussed in more detail in Chapter 11 (Rules of Debate). However, in the context of motions, it is relevant to note that in 1990 certain paragraphs of a motion for the appointment of a select committee were ruled by President Johnson *sub judice* and the Clerk was directed to amend the motion.³¹

30 See motion for the restoration of the Anti-Discrimination (Homosexual Vilification) Amendment Bill, *LC Minutes* (16/9/1993) 242-243.

31 *LC Minutes* (16/5/1990) 164-165, *LC Debates* (16/5/1990) 3364-3369.

AMENDMENTS

A motion which has been moved and become a question can be amended.

An amendment is a subsidiary motion moved in the course of debate on a substantive motion, the purpose of which is either to modify the question so as to make it more acceptable to the majority of members, or to supersede the question by presenting an alternative proposition.

A question can be amended by omitting certain words, omitting certain words in order to insert or add other words or inserting or adding words (SO 109(1)). It is also possible to substitute a question by omitting all words after ‘That’ and inserting new words.³² Any new words must be relevant to the words being replaced.

If required by the Chair, an amendment to a question must be in writing and signed by the mover, thus enabling circulation of the amendment to members in the chamber (SO 109(8)).³³ While this rule is generally insisted on for amendments to bills in committee of the whole,³⁴ it may not always be enforced in the case of a simple amendment to a question before the House.

Under the standing orders, there are a number of rules on the content of amendments. In addition, various rulings and precedents have further clarified the grounds on which amendments can be ruled out of order. The main rules on the content of amendments are:

- Amendments must be relevant to the motion it proposes to amend (SO 109(4)).³⁵ Generally, this rule is interpreted liberally. According to *Odgers*, an amendment need only relate to the subject matter of the motion or to a closely related subject matter to be acceptable.³⁶
- Amendments should be framed so that, if agreed to, the amended motion is intelligible.³⁷ If the proposed amendment would make a clause or motion unintelligible or ungrammatical, or if it is incoherent and inconsistent with other amendments agreed to, it is out of order.
- The same question rule applies to amendments, that is, an amendment cannot be proposed if it is the same in substance as another amendment, the question on which has already been determined.
- An amendment cannot be inconsistent with an amendment already agreed to.

32 Occasionally the motion is for all words after another word such as ‘That this House’. See, for example, *LC Minutes* (15/11/1979) 238.

33 Ruling: Burgmann, *LC Debates* (8/3/2001) 12445.

34 *LC Debates* (18/2/1982) 2168-2189.

35 Rulings: Burgmann, *LC Minutes* (7/12/1999) 326. An amendment by the Leader of the Opposition to a motion for a special adjournment was ruled out of order as it did not relate to the term of the adjournment; see ruling: Peden, *LC Debates* (27/9/1932) 519-520.

36 *Odgers*, 11th edn, p 184.

37 *Erskine May*, 23rd edn, p 401.

- Amendments which are vague, trifling or tendered in a spirit of mockery are out of order.
- An amendment must not be a direct negative of the question, 'as the proper method of expressing a contrary opinion is by voting against a motion without seeking to amend it'.³⁸ An amendment is only a direct negative if agreeing to it would have exactly the same effect as negating the motion.

No amendment may be moved to words which the House or committee of the whole has agreed should remain or be inserted or added, except to add other words (SO 110).

The mover of a motion may not propose an amendment to the motion (SO 109(6)), but may seek leave to amend the motion before moving it. Leave is generally granted where the consequences of the amendment are minor.³⁹

On one occasion in 2005, in response to the debate which had taken place, when speaking in reply the mover of the motion sought leave to amend the motion. In ruling the amendment inadmissible, the Chair indicated that where a member wished to amend their own motion they should do so by seeking leave before moving the motion, or by arranging for another member to move an amendment during the course of the debate.⁴⁰ Similarly in 2006, an attempt by a member to amend his own motion when speaking in reply, following criticisms raised during debate, was ruled out of order.⁴¹

An amendment once moved cannot be withdrawn except by leave of the House, and the original motion may not be withdrawn if an amendment has been proposed on the motion, unless the amendment is first withdrawn or negated (SO 75(6) and 109(5)).

Members who have spoken on a motion cannot again seek the call in order to move an amendment, as this would be contrary to the rule that members may only speak once in debate. However, where new material is introduced by way of amendment, a member who has already spoken on the substantive motion may speak again to that amendment, and propose an amendment to the amendment, provided they limit their speech to the amendment moved after they first spoke.⁴² These rules do not apply during debate on amendments in committee of the whole.

An amendment may not be moved to an earlier part of a question if a later part has been amended or has been proposed to be amended, unless the proposed amendment has been withdrawn by leave of the House (SO 109(3)). However,

38 *Ibid*, p 398.

39 *LC Minutes* (7/9/2006) 188, (16/11/2006) 363, (19/10/2006) 280. On one occasion, notice for leave to bring in a bill was amended, by leave, *LC Minutes* (28/9/2006) 247.

40 Ruling: Fazio (Deputy), *LC Debates* (17/11/2005) 19934.

41 *LC Minutes* (30/8/2006) 151.

42 Ruling: Solomons (Deputy), *LC Debates* (17/11/1988) 3599.

procedures have developed to allow alternative propositions to be put before the House in contravention of this rule. It is now common practice for conflicting amendments to be proposed and debated simultaneously, but the Chair will not put the question on an amendment which is in conflict with a decision on an earlier amendment.⁴³

With the leave of the House or committee of the whole, amendments may be moved and considered *in globo* if they are related, although in recent years it has become practice for members to seek and be given leave to move unrelated amendments *in globo*.

Putting the question on an amendment

Once debate on an amendment is concluded, the Chair will put the question on the amendment. If there are many amendments, they are dealt with in the order in which they occur in the motion. Once all the amendments are put, the Chair puts the original motion, as amended (if any amendments are agreed to), or as first moved (SO 111).

Originally it was necessary to put various questions depending on the nature of the amendment – either to omit words or to insert words. In May 1990, the House agreed to a resolution which provided that any amendment proposed in the House or committee of the whole, unless otherwise determined, would be put in the simple form ‘That the amendment be agreed to’.⁴⁴

Occasionally complicated amendments or conflicting amendments require the Chair to put the question in the older form to allow the House or committee the opportunity to accept part but not all of an amendment, and to make clear the consequence of each part of the question. The forms of these questions are as follows:

- The question put from the Chair on an amendment to omit words is: ‘That the words proposed to be omitted stand part of the question’. If the omission of words is agreed to, the chair then puts the original question, as amended. If the omission of words is not agreed to, the Chair puts the original question as moved.
- The question put from the Chair on an amendment to insert words is: ‘That the words proposed to be inserted be so inserted’. If the insertion of words is agreed to, the chair then puts the original question, as amended. If the insertion of words is not agreed to, the Chair puts the original question as moved.
- The first question put from the Chair on an amendment to omit and insert words is: ‘That the words proposed to be omitted stand part of the question’. If the omission of words is not agreed to, the Chair puts the original question as moved. If the omission of words is agreed to a further ques-

43 See, for example, *LC Minutes* (25/9/2002) 389-390.

44 *LC Minutes* (21/5/1990) 180.

tion is then put from the Chair 'That the words proposed to be inserted be so inserted'. If the insertion of words is agreed to, the Chair then puts the original question, as amended.

The result of the House deciding on the different parts of amendments can result in gaps occurring in a motion or bill when words are omitted but no words are inserted in their place.⁴⁵

Amendment to an amendment

An amendment may be moved to an amendment (SO 109(2)) but once an amendment is agreed to it cannot be further amended except by leave. An amendment to an amendment must be specific to that amendment and not to the original question.⁴⁶ In such cases the amendment on the amendment is dealt with first. Then the question on the original amendment, as amended (if the amendment on the amendment is agreed to), is put.

Where an amendment to an amendment is before the House, the Chair first puts the question 'that the amendment to the amendment be agreed to' as a distinct question. The chair then puts the question 'that the amendment (as amended if the amendment was agreed to) be agreed to'. The question is then put that the original question be agreed to, either as amended, or as first moved (SO 111).

Motions not open to amendment

Under the standing orders, the following motions cannot be amended:

- a motion for the adjournment of the House to terminate the sitting (SO 31(3));
- a motion for disallowance of a statutory rule to proceed as business of the House (SO 78);
- a motion for the adjournment of debate on the motion of dissent from the ruling of the President (SO 96);
- a motion for the previous question (SO 107) and, if the previous question is negatived, the original question and any amendment to it (SO 108);
- a motion for debate on a matter of public importance (SO 200);
- an urgency motion (SO 201);
- motions taken as formal business under standing order 44.⁴⁷

⁴⁵ See *Erskine May*, 17th edn, p 416 regarding questions 'mutilated' by amendment.

⁴⁶ For amendments on an amendment in committee, see the Road Transport (Safety and Traffic Management) Amendment (Alcohol) Bill, *LC Debates* (16/3/2004) 7233, 7247-7248 (carried on division); see also an order for papers on Snowy Hydro Limited, *LC Minutes* (25/5/2006) 54; see also budget estimates committees, *LC Minutes* (8/6/2006) 122.

⁴⁷ However, leave has been granted for the mover to amend a motion during formal business on several recent occasions. See, for example, *LC Minutes* (16/11/2006) 363, (15/11/2006) 347, (19/10/2006) 280, (18/10/2006) 269.

Amendments to procedural motions on bills

Procedural motions for the second and third readings of a bill can be amended as provided by the standing orders and practice. The motion for the second reading can be amended by omitting 'now' and inserting instead 'this day six months', or referring the bill to a standing or select committee, or by moving the previous question (SO 140). The motion for the third reading can be amended by omitting 'now' and inserting instead 'this day six months' or by moving the previous question (SO 148).

The motion that the Chair of Committees report the bill to the House can be amended to allow for the reconsideration of any of the clauses in the bill. The motion that the House adopt the report can be amended to allow for the recommitment of the bill, in whole or in part (SO 147), and for an instruction to the committee (SO 180(2)).

In addition, a member who wants to place on record any special reasons for not agreeing to a second or third reading of a bill may move a 'reasoned amendment'. The form of a 'reasoned amendment' is to leave out all words after 'That' and to insert other words explaining why the House opposes the second or third reading. A reasoned amendment must be relevant, must not include in its scope other bills then before the House, must not be concerned with the provisions of the bill upon which it is moved, nor anticipate amendments to be moved in committee, and should not be a direct negation of the principle of the bill. The effect of carrying a 'reasoned amendment' to the second or third reading of a bill is that no order is then made for a second or third reading on a future day, and the bill drops from the Notice Paper. The bill may be restored by motion on notice.

Amendments to bills are dealt with in greater detail in Chapter 12 (The Legislative Process).

VOTING AND DIVISIONS

When debate on a motion or amendment has concluded, the Chair puts the question and the House, or committee of the whole, decides whether it is in favour of or against the proposal.

Section 22I of the *Constitution Act 1902* provides for a 'simple' majority, that is, one-half the members present plus one, for the determination of all questions arising in the Council, that is, procedural and other non-legislative resolutions as well as the passing of legislation.⁴⁸ Section 22I 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.

⁴⁸ Section 22I of the *Constitution Act 1902*, standing order 102(7).

There was a temporary exception to this rule in 1997. Under section 33F of the *Special Commissions of Inquiry Act 1983*, now repealed, there was a requirement for the agreement by two-thirds of the members of the House present and voting to authorise the Governor to establish a special commission of inquiry concerning parliamentary proceedings.⁴⁹

There is no rule requiring a member to vote on a question. Members frequently abstain by being absent from the chamber when a vote is taken. A member may not vote in any division on a question if the member has a direct pecuniary interest in the matter not in common with other citizens (SO 113(2)), but this does not prevent the member from participating in the debate.

The question being put, the Chair declares, in the opinion of the Chair, whether the majority of voices are for the 'ayes' or 'noes'. If there is no challenge, the Chair declares that the 'ayes' or the 'noes' 'have it' - that is, which side is in the majority. This is called voting on the voices.

Where the members declared by the Chair to be in the minority dispute the result they may call for a division, which is a more formal method of determining the question (SO 112(3)). However, in order to object to the Chair's determination of the outcome of a question on the voices and to call for a division, members must have clearly voted on the voices for or against the question. In addition a division may only be held if two or more members call for a division (SO 112(4)). If only one member calls for a division, the member may ask for their vote to be recorded in the Minutes of Proceedings (SO 112(5)).⁵⁰

When a division has been demanded the division bells are rung for five minutes and simultaneously a minute glass timer is turned by one of the Clerks at the Table. When successive divisions are taken and there is limited or no intervening debate, the Chair may direct the bells be rung for one minute, if no member objects (SO 114(4)). On expiry of the five minutes (or one minute) the Chair orders the doors to be locked. The Usher of the Black Rod bars the northern door to the chamber and stands in front of it for the duration of the division, while chamber support staff place cords across the entrances to the chamber floor at the eastern end of the chamber. No member is permitted to enter or leave the chamber after the Chair has ordered the doors to be locked.

Once the doors have been locked the Chair again states the question and directs members present to take their seats, the 'ayes' to the right and 'noes' to the left of the Chair. Every member then present must vote in accordance with the member's vote by voice and may not leave the House until the division is concluded. A member is not entitled to vote in a division unless the member is present in the chamber when the question is put with the doors locked (SO 113). Unlike the

49 See Special Commission of Inquiry into Claims of Mrs Arena, *LC Minutes* (25/9/1997) 93-94.

50 See, for example, *LC Minutes* (3/12/2003) 482-483. This provision was introduced with the trial of the new standing orders in 2003.

Senate, the Council standing orders do not require members who have voted with their voice to remain in the chamber to vote in a division on the same question. This was the subject of a ruling by President Burgmann on 2 March 2006 following a point of order that two members who had voted with their voice with the 'noes', and had called the division, were no longer in the chamber when the doors were locked.⁵¹ If it appears that there is only one member voting on one side of the House in a division, the Chair declares the question at once (SO 115(3)).

The Chair appoints two tellers from each side, who record the names and total number of members voting on each side, sign their respective lists and present them to the Chair. The Chair declares the result of the division to the House (SO 115(1)). The lists of members voting in a division are recorded in the Minutes of Proceedings and in Hansard. In the case of an equality of votes, the Chair must give a casting vote. Any reasons given for a casting vote by the Chair are recorded in the Minutes of Proceedings (SO 116).

A member speaking to a point of order during a division must remain seated (SO 117). To attract the attention of the Chair in such cases it is the practice for a member to place something on their head, such as a piece of paper.

If the numbers or names of members voting in a division are incorrectly reported, the House, on being informed of the error, may order the record to be corrected (SO 118).⁵²

Free votes

Free votes, or conscience votes, occur when political parties decide that their members are free to vote as they chose on a particular matter, rather than on party lines. There are no standing rules or orders relating to free votes. Examples of free votes include divisions on the second reading of the Crimes Amendment (Sexual Offences) Bill 2003,⁵³ the Crimes Amendment (Grievous Bodily Harm) Bill 2005⁵⁴ and the Human Cloning and Other Prohibited Practices Amendment Bill 2007.⁵⁵

Pairs

Pairs are an informal arrangement between the whips of the major parties. If a member cannot be present for a vote they may arrange a 'pair' with a member of the opposite side through their whip. In this case neither member votes, but their names are recorded by the tellers and printed in the Minutes of Proceedings and Hansard (SO 115(3)).

51 *LC Debates* (2/3/2006) 20944.

52 *LC Minutes* (25/10/1932) 87.

53 *LC Debates* (27/5/2003) 1138.

54 *LC Debates* (4/5/2005) 15505.

55 *LC Debates* (26/6/2007) 1684-1685, 1686, 1687, 1689, 1690, 1692-1693.

Casting vote

In the case of an equality of votes in division, the Chair exercises a casting vote. The Chair may give reasons for casting their vote in a particular way, and those reasons are recorded in the Minutes of Proceedings (SO 116). The principles guiding a casting vote are:

- 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.⁵⁶

In recent years, however, the practice has often been for the chair to vote according to the wishes of his or her party, particularly where the question involves an amendment moved by a member of the same party.

Ballots

There are a number of standing orders dealing with ballots. Standing orders 13 and 15(2) provide for the conduct of a ballot to elect the President and Deputy President. Standing order 129 provides for the use of ballots for the appointment of managers for the Council in a free conference with the Assembly. In addition, where there is an absence of agreement amongst members as to the representation of members on a committee, the House may select the members by ballot conducted under standing order 135 (SO 210).⁵⁷

These are the only circumstances in which a ballot may be used under the current standing orders. However, in 1890 during consideration in committee of the whole of a resolution on Australian Federation, the delegates of the Council to the Australian Federation Convention were selected by ballot. Although a point of order was taken that the ballot should be held in the House, the Chair ruled that, as the committee had decided to take a ballot and as there was no rule regulating the matter, a ballot must be taken in committee.⁵⁸

When a ballot is required, the bells are rung and the doors locked as in a division. Ballot papers are distributed by the Clerks to all members in their places. Members must write on the ballot paper the name or names of the candidate or candidates for whom they wish to vote and deposit it in the ballot boxes provided by the Clerk. In a ballot to elect the President when two or more members have been proposed, the candidate with the greatest number of votes is declared

56 *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.

57 *LC Minutes* (15/9/2004) 987, (16/9/2003) 287, (22/5/2003) 117, (24/6/2003) 156, (26/9/2007) 241.

58 *LC Minutes* (8/10/1890) 306; *LC Debates* (8/10/1890) 4332, 4350.

elected, provided that member also has a majority of the votes of the members present. If no candidate has such a majority, the name of the candidate with the least number of votes is withdrawn and a new ballot is conducted until one candidate is elected President by such a majority. In the event of an equality of votes, the ballot is conducted again and, if there is still an equality of votes, the Clerk determines, by lot, which candidate will be withdrawn (SO 13).

In all other ballots, the Clerk ascertains and reports to the President the name of the member having the greatest number of votes, who will then be declared elected by the Chair. If two or more members have an equality of votes, the result of the ballot will be decided by the casting vote of the Chair.⁵⁹

DURATION OF RESOLUTIONS

The majority of motions agreed to by the House have a singular or one-off effect. The effect of procedural motions on bills and resolutions expressing condolence, for example, is limited to the specific purpose for which they are proposed. Other resolutions have a specific duration, such as resolutions adopting sessional orders or the appointment of select and standing committees.

The House has also adopted resolutions of continuing effect until rescinded or otherwise ordered. For instance, the resolution declaring the precincts of the Parliament as a smoke-free environment adopted in 1993,⁶⁰ the resolution authorising and regulating the broadcast of proceedings of the Council adopted in 2007,⁶¹ procedures for citizen's right of reply (now included in the standing orders),⁶² the Code of Conduct for members adopted in 2007⁶³ and the transfer of records of the Council to State Records adopted in 2006⁶⁴ are expressed as having continuing effect.

The ability of the House to adopt such resolutions of continuing effect was the subject of some dispute. Formerly, it was accepted in the Council that a resolution had effect only for the session in which it was adopted, based on the absence of explicit provision in the standing orders and the view that a House should be free to choose for itself whether a resolution is to continue to have effect in each new session. The adoption of standing order 79 in 2004, which provides for the House to adopt resolutions which have continuing effect until such time as they are amended or rescinded, ended any such uncertainty.

Following the commencement of the new session of Parliament on 22 May 2006, disagreement arose between the Council and the executive government as to the

59 *LC Minutes* (19/3/2002) 73-74.

60 *LC Minutes* (9/11/1993) 362-364.

61 *LC Minutes* (18/10/2007) 279-281.

62 *LC Minutes* (13/11/1997) 177-178.

63 *LC Minutes* (26/5/1999) 91-92, (27/6/2007) 148-152.

64 *LC Minutes* (23/11/2006) 431-432.

effect of prorogation on resolutions ordering the production of State papers. Correspondence from the Premier's Department, tabled by the Clerk, indicated that the Government had received advice from the Crown Solicitor that the orders for papers in place at the time of prorogation had lapsed and that there was no power to restore the original resolution in the new parliamentary session.⁶⁵ Consequently, no documents were produced in respect of four orders. Motions subsequently agreed to by the House again ordering that the papers be provided included a paragraph which noted the many established conventions recorded in the Journals of the Council where the government had complied with an order of the House for State papers in the subsequent session, notwithstanding the prorogation of the House.⁶⁶

RESCISSION OF RESOLUTIONS

The rescission of a resolution has retrospective effect, annulling the resolution from the time it was made. Rescission motions are infrequent, given that it is not necessary to rescind a resolution if the intention is to cease the operation of the resolution prospectively, as this can be done by a new resolution.

As *Erskine May* points out, a rescission motion should not be used simply to override a decision of the House, as this would be contrary to established practice:

[R]escission is opposed to the spirit of the existing rule that no question shall be offered which is substantially the same as one on which judgment has been expressed during the current session.⁶⁷

The standing orders require seven days' notice of a rescission motion (SO 104), allowing members time to consider whether a decision of the House should be undone.

In practice it is more common for standing orders to be suspended on notice, or by leave, to override the seven days' requirement, and to allow a motion for the rescission of a resolution to be moved immediately, or the next day. Between 1995 and 2000, 12 resolutions were rescinded, all by leave or suspension of standing orders. In 2004, the order for the third reading of the Gene Technology (GM Crop Moratorium) Amendment Bill to be set down for the next sitting day was rescinded, standing orders having been suspended by leave, to allow the third reading to proceed forthwith.⁶⁸

The House has rescinded motions for the disallowance of statutory rules on two occasions.⁶⁹ The ministers in each case quoted legal advice, from the Crown

65 *LC Minutes* (25/5/2006) 47.

66 *LC Minutes* (25/5/2006) 49-57, (6/6/2006) 70-72, (8/6/2006) 119-120.

67 *Erskine May*, 23rd edn, p 421.

68 See *LC Minutes* (17/11/2004) 1145.

69 *LC Minutes* (30/10/1996) 410, (12/11/1998) 864.

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Solicitor and from Parliamentary Counsel,⁷⁰ that if the Council had not rescinded its resolution the effect of section 8 of the *Subordinate Legislation Act 1989* would have been to prevent any new regulation being published for four months. This would have left the industries involved unregulated for that period. Acting on this advice the Council voted to rescind its disallowance in each instance.

70 *LC Debates* (30/10/1996) 5477-5478 per the Hon Ronald Dyer; *LC Debates* (12/11/1998) 9800 per the Hon Jeffrey Shaw.