

Procedure Committee

Deadlines for government bills

Regulation of the consumption of alcohol by members during sitting hours

Government responses to petitions

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Terms of reference

Deadlines for government bills

That the Procedure Committee inquire into and report on whether there should be a standing order for the cut-off date of government bills.¹

Regulation of the consumption of alcohol by members during sitting hours

1. That this House:
 - (a) notes the recent public debate about alcohol consumption by members during the sitting hours of the House,
 - (b) reiterates its commitment to the highest standards of behaviour during sitting hours,
 - (c) confirms that it is inappropriate for a member to attend the House while under the influence of alcohol, and
 - (d) urges members who are unable to control their use of alcohol to seek professional assistance.

5. That the Procedure Committee inquire into and report on the regulation of the consumption of alcohol by members during sitting hours, including suggestions for changes to standing orders, sessional orders, the Code of Conduct for Members or other relevant instruments that:
 - (a) would ensure to the extent possible that the decision making capacity and behaviour of all members attending the House are not impaired or adversely influenced by the consumption of alcohol on sitting days,
 - (b) would address the use of the pair system for members who are under the influence of alcohol, and
 - (c) would seek to provide the people of New South Wales with confidence in the House and respect their demand for sober and sensitive decision making.

6. That the Procedure Committee is to:
 - (a) take into account public expectations of the behaviour of members of Parliament and the regulation of alcohol consumption in other workplaces characterised by high consequence decision making, and
 - (b) give consideration to a total ban on alcohol consumption by members on sitting days before the last bell and appropriate ways to enforce it.

4. That the Procedure Committee report by Friday 27 September 2013.²

On 11 September 2013 the House resolved that the reporting date for the inquiry be extended to Wednesday 27 November 2013³, and on 27 November 2013 the House further resolved that the committee report by 6 March 2014⁴.

¹ *LC Minutes*, 12 June 2012, pp 1041-2.

² *LC Minutes*, 19 June 2013, p 1825.

³ *LC Minutes*, 11 September 2013, p 1975.

⁴ *LC Minutes*, 27 November 2013, p 2275

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Chair's Foreword

On 12 June 2012, the Hon Mick Veitch MLC moved a motion for the House to adopt a standing order implementing cut-off dates for the receipt of bills from the Legislative Assembly and introduction of bills into the Legislative Council during the final weeks of a sitting period. On an amendment being moved by the Leader of the House, the Hon Duncan Gay, the House resolved that the Procedure Committee inquire into and report on whether there should be a standing order to apply cut-off dates to government bills.

The Committee identified a number of suggested reasons for applying cut-off dates to government bills and analysed the impact and effectiveness of past cut-off dates in the Legislative Council. The Committee found that while cut-off dates do not appear to have had the effect of diminishing the number of bills passed in the concluding weeks of a sitting period, cut-off dates have nevertheless been useful. They have provided useful guidance for ministers and departments on the timing for the introduction of legislation and provided the House with a measure of influence and control over the timing and extent of debate on government legislation without unduly obstructing the Government's legislative program.

The Committee considers that there is merit in continuing the application of a cut-off date procedure, but that the cut-off date procedure be applied by way of sessional order rather than by way of standing order.

In June 2013, the Committee received a reference from the House regarding the regulation of the consumption of alcohol by members of Parliament during sitting hours, including suggestions for changes to standing orders, sessional orders, the Code of Conduct for Members or other relevant instruments. Following a review of the previous occasions on which the consumption of alcohol by members has come before the consideration of the Legislative Council, and relevant regulatory provisions operating in New South Wales and other jurisdictions, the Committee considers that members must take responsibility for their own behaviour and the current code of conduct outlining the standards expected of members, together with provision for a mechanism for dealing with the disorderly conduct of members in the House under the standing orders, are sufficient.

However, the Committee believes there would be merit in ensuring that members understand that all inappropriate behaviour, including behaviour the result of a member's intoxication by the consumption of alcohol or other substances, falls clearly within the purview of the disciplinary mechanism outlined under SOs 190-192 and makes recommendations to this effect.

The Committee also takes this opportunity to make certain observations regarding the provisions for petitions presented in the Legislative Council and to recommend that the House adopt a new procedure to require ministers to provide a response to petitions of 500 signatures or more, similar to that operating in the Legislative Assembly.

I thank all members of the Committee for their contribution to these inquiries, as well as the staff of the Committee Secretariat for their valuable support.

The Hon Don Harwin MLC
President

Summary of recommendations

Recommendation 1

That the cut-off date procedure be applied by way of resolution for a period of one year, comprising two sitting periods, rather than by standing order, and the dates for the cut-off be determined by resolution rather than by the application of a “two-thirds” rule.

Recommendation 2

That the President make a statement to the House to make clear the standards expected of members and that “grossly disorderly” conduct under SO 192 includes intoxication and other inappropriate behaviour.

Recommendation 3

That, for the remainder of the current session and unless otherwise ordered, standing order 68 be varied by inserting after paragraph (9):

- (a) The minister must table a response within 35 calendar days of a petition being received by the House if that petition has been signed by 500 or more persons.
- (b) If the House is not sitting at the time at which the minister seeks to table the response in the House, the minister may present the response to the Clerk.
- (c) A response presented to the Clerk is:
 - (i) on presentation, and for all purposes, deemed to have been laid before the House,
 - (ii) to be printed by authority of the Clerk,
 - (iii) for all purposes, deemed to be a document published by order or under the authority of the House,
 - (iv) to be recorded in the Minutes of the Proceedings of the House, and
 - (v) to be forwarded Clerk to the member who lodged the petition.

Chapter 1 **Deadlines for government bills**

- 1.1 On 12 June 2012, the Hon Mick Veitch MLC moved a motion for the House to adopt a standing order implementing cut-off dates for the receipt of bills from the Legislative Assembly and introduction of bills into the Legislative Council during the final weeks of a sitting period.⁵
- 1.2 On an amendment moved by the Leader of the House, the Hon Duncan Gay, the House resolved that the Procedure Committee inquire into and report on whether there should be a standing order to apply cut-off dates to government bills.

The rationale for cut-off dates

- 1.3 There are a number of reasons for applying cut-off dates to government bills:
- A cut-off date helps prevent a government from introducing legislation towards the end of a sitting period and attempting to have that legislation passed without adequate time for consideration;
 - A cut-off date sends a message to the government and government departments and encourages the introduction of legislation in a timely manner;

A cut-off date helps the House by ensuring a more manageable distribution of government bills across a sitting period.

Past cut-off procedures for Government bills in the Council

- 1.4 The Legislative Council first adopted a cut-off procedure for government bills on 20 March 2002. The measure was introduced after the Council received 21 bills from the Assembly, introduced 3 bills and concluded consideration of 37 bills in the last two sitting weeks of 2001. In total, the Council sat for more than 42 hours over the three final sitting days of 2001 in order to conclude its business.
- 1.5 The sessional order imposed cut-off dates for the receipt of bills from the Legislative Assembly and the introduction of bills into the Legislative Council for both the winter and spring sittings that year. Any bill introduced in the Council or received from the Assembly after the deadline, unless declared urgent, would be set down for the first sitting day in the next session.⁶

⁵ On 12 June 2012, Mr Veitch also moved a motion for the House to adopt a sessional order relating to procedures to apply to the passage of government bills. The sessional order was adopted without amendment or debate.

⁶ The sessional order, as passed, provided that bills received after a named date in June 2002 would be set down for the first sitting day in September 2002. That provision was later amended to omit "September 2002" and insert instead "after the winter recess" as it had become known that the House would be sitting in August 2002, earlier than expected.

Deadlines for government bills, regulation of the consumption of alcohol by members during sitting hours and ministerial responses to petitions

- 1.6 Cut-off date provisions were readopted in much the same terms by the Council in 2003, 2004, 2006, 2009, 2011 and 2012. On 21 November 2012 the House resolved that the provision would apply in the first half of 2013.
- 1.7 Senate cut-off date arrangements, on which the Council cut-off date arrangements were originally modelled, are discussed in Appendix 2.

The impact of the cut-off date provisions

- 1.8 The parliamentary year in New South Wales usually consists of two sitting periods – an autumn or ‘budget’ period which runs from approximately February to June, and a spring period which runs from approximately August to November or early December. The sitting periods are characterised by an interruption for a winter and summer long adjournment, usually six to eight weeks.
- 1.9 The following table shows the impact of cut-off provisions on the passage of bills by sitting period. The sitting periods in which a cut-off was adopted by the House are shaded.

Sittings of the Legislative Council	Length of sittings in days	Bills passed	Bills passed during last 4 sitting weeks (% of bills passed)	Bills passed during last 2 sitting weeks (% of bills passed)
Jan-June 2000	28	68	68	44
July-Dec 2000	28	46	35	63
Jan-4 July 2001	29	61	64	49
5 July-Dec 2001	27	70	71	55
Jan-June 2002	25	68	72	53
July-Dec 2002	30	71	73	38
Jan-3 July 2003	17	41	98	71
4 July-Dec 2003	22	63	79	53
Jan-July 2004	26	68	62	44
July-Dec 2004	24	47	74	62
Jan-July 2005	24	65	81	55
July-Dec 2005	20	54	96	57
Jan-July 2006	25	58	71	57
July-Dec 2006	26	70	86	57
Jan-July 2007	15	37	100	70
July-Dec 2007	20	62	77	53
Jan-July 2008	27	67	76	57
July-Dec 2008	20	56	82	50
Jan-July 2009	26	57	70	40
July-Dec 2009	24	63	71	46
Jan-July 2010	27	63	68	46
July-Dec 2010	24	74	77	47
Jan-July 2011	20	27	78	55
July-Dec 2011	35	45	60	40
			76.3	52.7

- 1.10** The table shows that the imposition of cut-off dates has not had a noticeable impact on the number of bills passed during the last two sitting weeks of a sitting period. Since 2000, the House is averaging over 52 per cent of bills being passed in the last two sitting weeks of any sitting period. When cut-off dates have been imposed, the rate has varied between a low of 40 per cent and a high of 71 per cent.
- 1.11** Other measures of the impact of cut-off dates show:
- The number of bills received from the Assembly after cut-off dates have been imposed has ranged from none on three occasions, one in September 2006, eight in November 2002 and 11 bills in June 2002. In June 2004 five bills were received after the cut-off date but only one was declared urgent.
 - Since the introduction of cut-off dates, 47 bills have been considered by the House by ministers using the urgency procedure, with urgency having been declared most frequently in 2002 (30 times) and 2003 (8 times). The frequency with which the urgency procedure has been used to introduce bills after the imposed cut-off dates has, however, reduced in recent years, with only three bills having been declared urgent in 2011. On each occasion on which the Government has declared a bill urgent under the sessional order the House has agreed, allowing critical legislation to be considered after the cut-off date.
 - Since the introduction of the sessional order, only seven bills have been set down as orders of the day for the next sitting period – four in 2004, and three in 2011. On each occasion the bill was set down on motion of the minister. The House has never deferred the consideration of a bill until the next session following opposition to the urgency procedure.
- 1.12** Based on the table and points above, cut-off dates do not appear to have had the effect of diminishing the number of bills passed in the concluding weeks of a sitting period. Bills are still routinely received from the Assembly after cut-off dates, and are routinely declared urgent and passed under the urgency provisions. In effect, the House, while imposing a cut-off date, is not applying it rigorously and is not obstructing the Government's legislative program.
- 1.13** However, this does not mean that cut-off dates have not been useful. Even where cut-off dates have not been enforced, they have nevertheless:
- Provided useful guidance for ministers and departments on the timing for the introduction of legislation. Past and present Governments have demonstrated a willingness to apply the deadline to departmental legislative proposals via Premiers' Memoranda.
 - Provided the House with a measure of influence and control over the timing and extent of debate on government legislation without unduly obstructing the Government's legislative program.
- 1.14** It is possible that had cut-offs not been imposed during the sitting periods that they were in force, providing guidance to the executive and the House, the legislative volume in the concluding weeks of the sitting period would have been even higher.
- 1.15** Aside from the New South Wales Legislative Council, the Australian Senate is the only House of Parliament in Australia which imposes cut-off date procedures. However, other jurisdictions have adopted alternative mechanisms for ensuring adequate scrutiny of

government legislation. For example, as well as the cut-off date provision, the Australian Senate refers bills to committees for inquiry and report, as does the Queensland and the New Zealand Parliaments.

The proposed standing order

1.16 On 12 June 2013, the Hon Mick Veitch proposed a new standing order formalising a cut-off date for government bills in the following terms:

1. That, this House agrees to and adopts the following standing order for procedures to apply to the passage of government bills:
 1. At the beginning of each year, the House must adopt dates for each sitting period by which government bills are to be received from the Legislative Assembly, or introduced in the Legislative Council.
 2. Where a bill is received from the Legislative Assembly or introduced by a Minister after the deadline, debate on the motion for the second reading is to be adjourned at the conclusion of the speech of the Minister moving the motion, and the resumption of the debate is to be made an order of the day for the first sitting day in the next sitting period.
 3. However, if after the first reading, a Minister declares a bill to be an urgent bill and copies have been circulated to members, the question "That the bill be considered an urgent bill" is to be decided without amendment or debate, except a statement not exceeding 10 minutes each by a Minister and the Leader of the Opposition, or a member nominated by the Leader of the Opposition, and one cross-bench member. If that question is agreed to, the second reading debate and subsequent stages may proceed forthwith or at any time during any sitting of the House.
 4. For the purposes of this standing order, a "sitting period" means a period of sittings during which the House adjourns for no more than four weeks.
2. That this House authorises the President to present this standing order to Her Excellency the Governor for approval.

1.17 The terms of the standing order proposed by Mr Veitch are broadly consistent with those of the sessional order originally adopted in 2002, and readopted over a number of years since. Paragraphs 1(2) and 1(3) of Mr Veitch's motion reflect the terms of the standard sessional order for cut-off dates as it has been adopted in previous years.

1.18 However, paragraphs 1(1) and 1(4) introduce additional provisions consequent on the proposed adoption of the rule as a standing order (as opposed to a sessional order). Paragraph 1(1) provides for the adoption of cut-off dates at the beginning of each year by which government bills are to be received from the Legislative Assembly or introduced into the Legislative Council. Paragraph 1(4) provides a definition of a "sitting period".

Standing order versus sessional order

- 1.19** A sessional order provides maximum flexibility, allowing the House to modify the rule to suit each particular sitting period, as has indeed happened on several occasions in the past.⁷ For example, a sessional order can also be amended to account for an early adjournment of the House or prorogation. In addition a sessional order is adopted by way of a simple motion on notice. By contrast, new standing orders must be submitted to the Governor for approval and do not become a rule of the House until approved.
- 1.20** A standing order would provide certainty and permanence to the cut-off procedure. In the past, as indicated, cut-off dates have been adopted on an as-needs basis. While this may be a good thing, it also means that the House does not have certainty and predictability in relation to the rules for the passage of legislation. Equally, the Government is not able to plan its legislative agenda in a particular sitting period with certainty as to whether a cut-off date will be imposed or not.

Defining the cut-off date

- 1.21** Should the House adopt a standing order setting a cut-off date there are two ways in which the cut-off date could be determined from one sitting period to the next:
- Adopting the cut-off date for the standing order by way of a sessional order at the beginning of each year (or even each sitting period); or
 - Defining the cut-off date as a fixed point during the sitting period.
- 1.22** The terms of the standing order proposed by Mr Veitch provides for the adoption of a sessional order at the beginning of each year which would set the cut-off dates for the forthcoming autumn and spring sitting periods. This option provides maximum flexibility, allowing the House to determine the cut-off date according to the sitting pattern proposed by the Government, and to change the date if necessary.
- 1.23** The second option does not require the House to set cut-off dates each year, but instead sets the cut-off date at a fixed point during any one sitting period: for example, a point 2/3 of the way through the sitting period, or two weeks prior to the end of the sitting period. These options do not require amendment should the session be extended, as the cut-off date would automatically shift to a later date.
- 1.24** A problem with the approach of setting the cut-off date based on a fixed point during a sitting period is that there is no easy definition of a sitting period which can vary considerably in length due to prorogation and other factors.
- 1.25** The proposed standing order defines a sitting period as ‘a period of sittings during which the House adjourns for no more than four weeks’. However, this definition does not fit neatly with past sitting patterns. In past years, there have been occasions on which the House has adjourned for more than four sitting weeks, and then returned to conclude consideration of the legislative agenda within the same sitting period. An alternative to the proposed four week

⁷ For example, on three occasions, the sessional order has been amended to delay the deadline by which bills were to be introduced in the Council.

provision is for a “sitting period” to be defined by the interruption of the Council’s sitting pattern by a winter or summer adjournment or prorogation, or the House could pass a resolution at the commencement of each year agreeing to the dates that will comprise the sitting periods for the year.

Provision for members of the crossbench to speak to the motion for urgency

- 1.26** Under the terms of the standing order proposed by Mr Veitch, one crossbench member may speak for 10 minutes to the question “That the bill be considered an urgent bill”.
- 1.27** On two occasions in the past, the terms of the sessional order imposing cut-off dates has provided for two crossbench members to speak to the motion for urgency.⁸ On one occasion, the resolution provided that the two crossbench members speak for 5 minutes each, ensuring that the standard 10 minute time limit afforded to the Opposition was not exceeded.⁹

Committee comment

- 1.28** The application of cut-off dates for government bills has considerable precedent in the Legislative Council and is now a well-established and recognised mechanism for managing the scrutiny and scheduling of government legislation. While the provision does not appear to have had the effect of diminishing the number of bills passed in the concluding weeks of a sitting period, it nevertheless sends a strong message to the government and the public service, and gives the House a level of influence and control over the timing and extent of debate on government legislation.
- 1.29** While the terms of the standing order proposed by Mr Veitch are broadly consistent with past sessional orders, the merits of a standing order or sessional order need to be considered closely. Adoption of a cut-off date by sessional order provides maximum flexibility, allowing the House to modify the rule to suit each particular sitting period. A standing order, while not as flexible as a sessional order, would have the effect of formalising cut-off dates for all sitting periods, and provide long-term certainty to the government and House in regard to rules for the introduction of bills.
- 1.30** The Committee considers that there is merit in the cut-off date procedure. The Committee also considers that the cut-off date should be set by way of resolution of the House, rather than standing order. Adoption of dates for the cut-off by way of resolution will provide clarity and certainty to members, ministers and departments and reflect a continuation of past practice, whereas the adoption of a “two-thirds” rule may lead to complications where sitting periods vary in length from one period to another.
- 1.31** The Committee also recommends that the resolution be applied for a period of one year, comprising two sitting periods. The Committee will continue to monitor the operation of the cut-off dates under this procedure.

⁸ *LC Minutes* (11/5/2004) 777; (2/9/2009) 1311.

⁹ *LC Minutes* (2/9/2009) 1311.

Recommendation 1

That the cut-off date procedure be applied by way of resolution for a period of one year, comprising two sitting periods, rather than by standing order, and the dates for the cut-off be determined by resolution rather than by the application of a “two-thirds” rule.

Chapter 2 Regulation of the consumption of alcohol by members on sitting days

- 2.1 On 19 June 2013, the House resolved that the Procedure Committee inquire into and report on the regulation of the consumption of alcohol by members of Parliament during sitting hours, including suggestions for changes to standing orders, sessional orders, the Code of Conduct for Members or other relevant instruments.
- 2.2 The following pages provide a brief summary of the previous occasions on which the consumption of alcohol by members has come before the consideration of the Legislative Council, relevant regulatory provisions operating in New South Wales and other jurisdictions and recommendations arising out of the Committee's inquiry into the matter.

Previous consideration by the House of regulatory provisions regarding the use of alcohol by members

Amendment to draft SO 190 – Conduct of members

- 2.3 On 17 March 2004, Ms Lee Rhiannon (Greens), moved an amendment to SO 190¹⁰ (Disorderly conduct by members) to:
- provide that the President may name a member who displays drunken behaviour or who enters the chamber under the influence of alcohol or drugs and report the member's offence to the House,
 - provide that, if a member enters the chamber under the influence of alcohol or other drugs, a motion may be moved without notice that the member be suspended from the service of the House for the remainder of the sitting, and
 - provide that, if such a motion is moved, the member may submit to a breath analysis to determine the concentration of alcohol present in their blood. The outcome of the breath analysis would then determine whether the question on the motion for the suspension of the member would be put, or would lapse.¹¹
- 2.4 During debate, Ms Rhiannon stated that the terms of the amendment had been drafted in consultation with the Leader of the Opposition and the Christian Democratic Party, who had given notice of a similarly worded motion which also specifically sought to make Parliament an alcohol-free and drug-free workplace.¹² Ms Rhiannon also noted that her motion had been prompted by an incident in the Legislative Assembly involving an inebriated member.¹³

¹⁰ On 14 October 2003, the House adopted proposed, revised standing orders as sessional orders on a trial basis. These sessional orders formed the basis of the current standing orders, which were adopted on 5 May 2004.

¹¹ LC Minutes 17/3/2004 p 616.

¹² LC Notice Paper 17/3/2004 p 1294.

¹³ LC Debates 17/3/2004 pp 7385-6.

2.5 On motion of Mr Gallacher, the question was amended to refer the matter to the Parliamentary Ethics Adviser for advice as to the desirability and practicability of implementing a Drug and Alcohol Policy for the Parliament. The motion required the Parliamentary Ethics Adviser to consider the terms of the motion moved by Ms Rhiannon, and the terms of the notice given by Revd Nile.¹⁴ In his annual report to Parliament provided in December 2004, the Parliamentary Ethics Adviser advised that he had discussed the Code of Conduct with the Joint Clerks, but made no specific reference to the outcome of the House's referral.¹⁵

2006 Review of Code of Conduct

2.6 In 2006, Ms Rhiannon made a submission to the Privileges Committee's periodic review of the Code of Conduct for Members, proposing that an additional clause be inserted into the code to require that members "not perform their duties as an MP while under the influence of alcohol or any other drug".¹⁶

2.7 In its report, the Committee stated that, while it supported the intent of the proposed amendment, the Code of Conduct had been adopted for the purposes of providing criteria against which an allegation of corrupt conduct could be determined, as required by s9(1) of the ICAC Act 1998. The Code was therefore not the means for addressing general behavioural concerns. The Committee went on to state that standing orders 190, 191 and 192 currently provide a formal mechanism for dealing with the disorderly conduct of members in the House, the suspension of members, and members who are called to order. The House has power to take action against a member for "conduct unworthy of a member".¹⁷ This would, by inference, include the conduct of a member who performed their duties while intoxicated.

2.8 The Committee further determined that the term "under the influence" was open to widely differing interpretations and it was not clear who would be the judge of whether such conduct had occurred. The expression "any other drug" was also uncertain, as it could potentially encompass prescription drugs or drugs available over the counter from chemists, such as tablets for headaches, allergies and various chronic conditions.¹⁸ Consequently, the Committee did not recommend that the amendment proposed by Ms Rhiannon be adopted by the House.

¹⁴ LC Minutes 17/3/2004 p 617.

¹⁵ Report of Mr Ian Dickson, Parliamentary Ethics Adviser, dated 9 December 2004, tabled 22 February 2005.

¹⁶ Privileges Committee (2006) *Review of Members' Code of Conduct and draft Constitution (Disclosures by Members) Amendment Regulation 2006*, p 26.

¹⁷ *Ibid*, p 27.

¹⁸ *Ibid*.

Provisions for the regulation of consumption of alcohol by members in New South Wales and other jurisdictions

New South Wales

Statutory provisions

- 2.9** Since 2004, the New South Wales Parliament has been subject to a liquor licence as provided for under the *Liquor Act 2007*¹⁹. No other legislative instruments presently make reference to the consumption of alcohol by members of Parliament.
- 2.10** Provision for a liquor licence in the parliamentary precincts was made in the Liquor Amendment (Parliamentary Precincts) Bill in 2004. In his second reading speech, the Minister for Gaming and Racing stated that the intent of the bill was to apply the same rules to members that apply to the community at large by removing exemptions of the application of state liquor laws to the parliamentary precincts that were previously in place, as was the case in other state jurisdictions throughout Australia.²⁰
- 2.11** The bill provided for the Governor to issue a licence authorising the sale of liquor within parliamentary precincts and imposing certain conditions on the areas in which liquor could be served, a system that uniquely applied to other Crown facilities such as the Sydney Opera House, the Art Gallery of NSW, the Royal Botanic Gardens and the Domain. The bill also enabled the Presiding Officers to enter into a memorandum of understanding with the then Director of Liquor and Gaming, the chief regulatory officer in the then Department of Liquor and Gaming. The Minister stated that the bill ensured that the principal objects of the Liquor Act – harm minimisation and responsible service of alcohol requirements – would apply in Parliament House.
- 2.12** During debate on the bill, several members observed that the new provisions followed a recent incident in which a member entered the Legislative Assembly allegedly in an inebriated state.²¹
- 2.13** The *Liquor Amendment (Parliamentary Precincts) Act 2004* commenced on 1 September 2005 with the Governor’s licence for Parliament House coming into effect on that date. The licence was originally held by the joint clerks, but has since been transferred to the Executive Manager – Parliamentary Services. The liquor licence applies to members, staff and visitors.
- 2.14** As part of the liquor licence arrangements, the Presiding Officers entered into a memorandum of understanding with the Director of Liquor and Gaming in relation to the activities of special inspectors under the *Liquor Act 1982*.

The Parliament House liquor licence

- 2.15** The licence provides for the sale and consumption of alcohol in licensed areas and also for take away sales from the bars.

¹⁹ The Liquor Act 1982 was replaced by the Liquor Act 2007.

²⁰ LC Debates 12/5/2004 pp 8936-7.

²¹ LC Debates 28/6/2004 p 10248.

2.16 The licenced areas are:²²

- Strangers' Bar
- Staff Bar
- Members' Bar
- Strangers' Dining and Function Dining Room
- Three Private Function Rooms
- Members' Dining Room

2.17 Under the licence conditions, the Parliament adopted certain harm minimisation policies including the "House Policy" for the responsible service of alcohol, signage to be displayed in licensed areas and a Code of Conduct for the responsible promotion of liquor products.

2.18 In a memorandum to members and staff circulated by the Presiding Officers on 30 August 2005, it was advised that, although the licensed areas in Parliament House were to be only those listed above, functions involving the delivery and service of alcohol would continue to be able to be undertaken in other parts of the building. In relation to such functions the memorandum advised that any function in any part of the building at which alcohol would be supplied, including non-licensed parts of the building, would require a member to submit a request for approval, and a commitment that the member or their specified representative would be present at the function, that there would be no service of alcohol to any person under the age of 18 years, and that the House policy and the Code of Practice for the responsible promotion of liquor products would be adhered to. Alcohol would not be supplied to any function which did not have written approval.

President's Rulings

2.19 Rulings of the President regarding appropriate standards of behaviour for members have not made specific reference to the use of alcohol or other drugs.

Codes of Conduct

2.20 The Code of Code for Members adopted in 2007 requires members to "maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament, and using their influence to advance the common good of the people of New South Wales"²³.

2.21 The Code does not include specific reference to acceptable standards of behaviour or the use of alcohol by members. As noted above, SOs 190-192 provide a formal mechanism for dealing with the disorderly conduct of members in the House.

2.22 The Code of Conduct for Members' Staff does not make reference to the use of drugs or alcohol, but requires staff to demonstrate professionalism in their duties.

²² The licenced areas also include two areas no longer used for the service of food and beverages: the Staff Dining Room and the Cellar on level 5.

²³ LC Minutes 21/6/2007 pp 148-150. The previous Code adopted in 1999 included the same provision.

- 2.23** The Code of Conduct for Parliamentary Staff prohibits staff from performing their job, remaining at work or undertaking any work-related activity if they are adversely affected by alcohol or other drugs. Employees may be directed to stop work or leave the workplace if affected by alcohol or drugs to the detriment of their work or for safety reasons. Staff are also required to exercise discretion when attending private functions held at Parliament House.

Drug and Alcohol Management Policy

- 2.24** The Parliament has in place a Drug and Alcohol Management Policy for staff. This policy provides explicit guidance to managers in dealing with staff with addiction issues and in responding to incidents, while also emphasising the responsibilities of staff to conduct themselves appropriately.

Employee Assistance Program

- 2.25** The Parliament has recognised that employees have important relationships, concerns and interests beyond their work and sometimes face problems at home or at work which can make life difficult, and which may affect their health, well-being and work performance.
- 2.26** A free, professional, confidential counselling and consulting service is provided by Davidson Trahaire Corpsych for all staff, their immediate family members and people in close relationships with them.
- 2.27** This service is also provided for members of Parliament to use and is a valuable source of support for any member seeking to manage problems relating to the consumption of alcohol or other substances, or other work or personal concerns. The Parliament could do more to promote the availability of this service for members.

Other jurisdictions

- 2.28** Provisions for the regulation of consumption of alcohol or other drugs by members during sittings and at other times in other Australian jurisdictions are broadly consistent with those in New South Wales.
- 2.29** Like New South Wales, several Australian parliamentary jurisdictions are subject to state liquor licensing provisions²⁴ or responsible service of alcohol requirements,²⁵ however none are subject to legislative requirements or other policies that specifically regulate the consumption of alcohol by members during sittings. While some parliaments have adopted Codes of Conduct for Members that make reference to general standards of acceptable behaviour, none make specific reference to the use of alcohol or other drugs.²⁶ In some jurisdictions, the Code of Conduct that applies to parliamentary staff makes specific reference to consumption of

²⁴ ACT Legislative Assembly, NT Legislative Assembly.

²⁵ WA Legislative Assembly and Legislative Council, Queensland Legislative Assembly. Note that the Queensland Parliamentary Service reserves the right to define “intoxication” for the purpose of refusing liquor supply to the disorderly or unduly intoxicated.

²⁶ NT Legislative Assembly, Victorian Legislative Council.

alcohol and is more stringent than that applying to members.²⁷ Rulings of the Presiding Officer have not made specific reference to members' use of alcohol or other drugs.

- 2.30** Across Australian jurisdictions, pairing of members for the purposes of divisions is a matter for the parties and the whips.
- 2.31** The extended sittings of the House have been identified as contributing a significant risk to the occupational health and safety of members and staff in other jurisdictions. A report commissioned by the departments of the Victorian Parliament in 2010 found that while the normal operations of the Parliament did not provide evidence of fatigue as a demonstrably uncontrolled risk for staff, staff who are required to work to provide support for the extended sitting of either House were at an elevated risk of poor work performances, work-related injury at work or while travelling to and from the work place, and longer-term effects of work intensity on health and well-being.²⁸ Data collated by the Victorian Parliament found that being awake for 17 hours impairs performance to the same level as having a 0.05 blood alcohol content; being awake for 20 hours impairs performance to the same level as having a blood alcohol level of 0.1.²⁹
- 2.32** Following these findings, the Victorian Parliament has drafted a Parliament-wide Fatigue Management Policy, expected to be formalised this year. A Fatigue Management Training Plan has also been developed with a view to providing relevant training for staff in roles particularly impacted by the extended sitting hours.

Committee comment

- 2.33** The Committee notes that the behaviour of members directly reflects on the dignity and reputation of the Legislative Council. Members will only maintain the public trust placed in them by performing their duties with honesty and integrity, respecting the law and the institution of Parliament. This extends to the manner in which members conduct themselves both in and outside the Chamber during the sittings of the House.
- 2.34** The Committee believes that members must take responsibility for their own behaviour. The Legislative Council has adopted a code of conduct outlining the standards expected of members, and the House has provided a mechanism for dealing with the disorderly conduct of members in the House under the standing orders. However, the Committee believes there would be merit in ensuring that members understand that all inappropriate behaviour, including behaviour the result of a member's intoxication by alcohol or other substances, falls clearly within the purview of the disciplinary mechanism outlined under SOs 190-192.
- 2.35** Consequently, the Committee recommends that the President make a statement to the House to make clear the standards expected of members and that "grossly disorderly" conduct under SO 192 includes intoxication and other inappropriate behaviour.

²⁷ WA Legislative Assembly and Legislative Council, Queensland Legislative Assembly.

²⁸ "Report to the Victorian Parliament on Fatigue Risk Management", prepared by Professor Drew Dawson, 7 July 2011.

²⁹ Parliament of Victoria, "Fatigue Management – What is fatigue", OHS Guidance Note 1.

Deadlines for government bills, regulation of the consumption of alcohol by members during sitting hours and ministerial responses to petitions

- 2.36** The Committee notes that over the years regrettable incidents involving members' alcohol use have tended to occur during extended sittings in the early hours of the morning. Extended sittings also lead to fatigue, which can impair performance just as much as alcohol, and may pose occupational health and safety risks.
- 2.37** The Committee notes that there may be merit in the adoption of a similar framework for members and staff working extended hours for the purposes of servicing the operation of the two Houses, similar to that currently being implemented in the Victorian Parliament.
- 2.38** Another option worthy of future careful consideration is an automatic adjournment of the House, unless otherwise ordered, at a set time (eg. midnight).

Recommendation 2

That the President make a statement to the House to make clear the standards expected of members and that "grossly disorderly" conduct under SO 192 includes intoxication and other inappropriate behaviour.

Chapter 3 Referral of petitions

- 3.1** Provisions for petitions have previously been considered by the Committee.³⁰ In its report of November 2011, the Committee noted that a number of issues had been raised which warranted further consideration, including whether the House should require government responses to petitions.
- 3.2** Under Legislative Council standing order 68, the Clerk must refer a copy of every petition which is received by the House to the minister responsible for the administration of the matter the subject of the petition. There is no requirement for the minister to provide a response.
- 3.3** In contrast, Legislative Assembly standing order 125, amended in 2009, provides that, if a petition forwarded by the Clerk to a minister has been signed by 500 or more persons, the minister must lodge a response with the Clerk within 35 calendar days of the petition being received by the House. The receipt of the response shall be reported to the House by the Clerk and a copy of the response sent to the member who lodged the petition. The response will also be published. Similar provisions for Government responses to petitions have been adopted in the Queensland and Tasmanian Parliaments.
- 3.4** The Committee notes advice from the Clerk that ministers have, from time to time, sought advice as to how they might respond to the issues raised in petitions under the standing orders.
- 3.5** On 25 February 2014 the Committee considered a draft sessional order to formalise a requirement for responses to petitions, and to provide for the referral and publication of such responses, in similar terms to Legislative Assembly standing order 125.

Committee comment

- 3.6** The Committee considers that petitions remain an important means by which citizens can put their concerns or grievances directly before Parliament. While the House has the means to refer a petition to a committee for inquiry and report, there is currently no onus on ministers to respond to the concerns raised by citizens or a mechanism for any such responses to be published. This operates in contrast to the practice of several other jurisdictions, including Queensland, Tasmania and the NSW Legislative Assembly, where the standing orders require ministerial responses to be tabled or published as a matter of routine.
- 3.7** The Committee considers that there would be merit in formalising a requirement for ministers to respond to petitions of 500 signatures.

³⁰ See Report No. 6, “Report relating to private members’ business, the sitting pattern, Question Time and petitions”, dated November 2011.

Recommendation 3

That, for the remainder of the current session and unless otherwise ordered, standing order 68 be varied by inserting after paragraph (9):

- (a) The minister must table a response within 35 calendar days of a petition being received by the House if that petition has been signed by 500 or more persons.
 - (b) If the House is not sitting at the time at which the minister seeks to table the response in the House, the minister may present the response to the Clerk.
 - (c) A response presented to the Clerk is:
 - (i) on presentation, and for all purposes, deemed to have been laid before the House,
 - (ii) to be printed by authority of the Clerk,
 - (iii) for all purposes, deemed to be a document published by order or under the authority of the House,
 - (iv) to be recorded in the Minutes of the Proceedings of the House, and
 - (v) to be forwarded Clerk to the member who lodged the petition.
-

Appendix 1 Minutes of Proceedings

Minutes No. 6

Wednesday 20 June 2012

President's Dining Room, Parliament House, 10.05 am

1. Members present

Mr Harwin (Chair)

Mr Borsak

Mr Foley

Miss Gardiner

Mr Gay

Dr Kaye

Mrs Mitchell

Dr Phelps

Mr Searle

In attendance: David Blunt, Stephen Frappell, Jenelle Moore.

2. Apologies

Ms Fazio, Mr Gallacher, Revd Mr Nile.

3. Confirmation of previous Minutes no. 5

Resolved, on motion of Dr Kaye: That Minutes no. 5 be confirmed.

4. ****

5. ****

4. Inquiry into deadlines for government bills

The Committee noted the following terms of reference referred by the House on 12 June 2012:

That the Procedure Committee inquire into and report on whether there should be a standing order for the cut-off date of government bills.

The Committee deliberated.

Resolved, on the motion of Dr Kaye: That the committee secretariat prepare a briefing paper on the operation of deadlines for government bills in other jurisdictions and past adoption of similar resolutions in the NSW Legislative Council.

5. Adjournment

The Committee adjourned at 10.17 am, *sine die*.

David Blunt

Clerk to the Committee

Minutes No. 7

Thursday 29 August 2013

President's Dining Room, Parliament House, 1.00 pm

1. Members present

Mr Harwin (Chair)
Mr Borsak
Ms Fazio
Mr Foley
Mr Gallacher
Miss Gardiner
Mr Gay
Dr Kaye
Revd Mr Nile
Dr Phelps
Mr Searle

In attendance: David Blunt, Stephen Frappell, Susan Want, Jenelle Moore.

Also in attendance, Mr Rob Stefanic Executive Manager – Department of Parliamentary Services

2. Apologies

Mrs Mitchell

3. Confirmation of previous Minutes no. 6

Resolved, on motion of Revd Nile: That Minutes no. 6 be confirmed.

4. Correspondence

The Chair noted that there were nil items of correspondence.

5. Inquiry into the regulation of the consumption of alcohol by members during sitting hours

The Chair tendered a briefing note regarding the consumption of alcohol by members during sitting hours, previously circulated.

The Clerk also briefed the Committee.

The Chair invited Mr Stefanic to brief the Committee.

The Committee deliberated.

Resolved, on the motion of Dr Kaye: That the committee request the concurrence of the House to extend the reporting date until Wednesday 27 November 2013.

Dr Kaye to circulate options for regulating the consumption of alcohol by members before the next meeting.

To be further considered at the next meeting.

6. Inquiry into deadlines for government bills

The Chair tendered a discussion paper regarding cut-off dates for government bills, previously circulated.

The Committee deliberated.

To be further considered at the next meeting.

7. Adjournment

The Committee adjourned at 1.48 pm, *sine die*.

David Blunt

Clerk to the Committee

Minutes No. 8

Thursday 17 October 2013

President's Dining Room, Parliament House, 4.05 pm

1. Members present

Mr Harwin (Chair)

Mr Borsak

Ms Fazio

Mr Foley

Miss Gardiner

Dr Kaye

Mrs Mitchell

Revd Mr Nile

Dr Phelps

In attendance: David Blunt, Stephen Frappell, Susan Want, Jenelle Moore.

2. Apologies

Mr Gallacher, Mr Gay, Mr Searle.

3. Confirmation of previous Minutes no. 7

Resolved, on motion of Ms Fazio: That Minutes no. 7 be confirmed.

4. Correspondence

The Chair noted that there were nil items of correspondence.

5. Inquiry into cut-off dates for government bills

The Chair tendered a draft motion proposed by Ms Fazio, as previously circulated. The proposed motion would apply a cut-off date for both sessions of a calendar year and would rely on the House having resolved the sitting days for the year in advance.

The Committee deliberated.

Resolved, on the motion of Revd Mr Nile: That the Chair prepare a draft report for the consideration of the Committee, recommending the adoption of a sessional order in the terms proposed by Ms Fazio.

6. Inquiry into the regulation of the consumption of alcohol by members during sitting hours

The Clerk briefed the Committee.

The Chair tendered two options for addressing the consumption of alcohol by members during sitting hours submitted by Dr Kaye and Ms Fazio, previously circulated.

The Committee deliberated.

Deadlines for government bills, regulation of the consumption of alcohol by members during sitting hours and ministerial responses to petitions

A majority of members present indicated a preference for a statement to be made by the President to the House to make clear the standards expected of members and that “grossly disorderly” conduct under SO 192 includes intoxication and other inappropriate behaviour.

Resolved, on the motion of Dr Kaye: That the Chair prepare a draft report for the consideration of the Committee.

7. Other business

The Clerk briefed the Committee regarding the provisions of Legislative Assembly standing order 125, which requires a minister to lodge a response with the Clerk within 35 calendar days of a petition being received by the House if that petition has been signed by 500 or more persons.

The Committee deliberated.

Resolved, on the motion of Miss Gardiner: That the committee secretariat prepare a draft sessional order for the consideration of the committee in similar terms to Legislative Assembly standing order 125.

8. Adjournment

The Committee adjourned at 4.50 pm, *sine die*.

David Blunt
Clerk to the Committee

Draft Minutes No. 9

Tuesday 25 February 2014

President’s Dining Room, Parliament House, 1.02 pm

1. Members present

Mr Harwin (Chair)
Ms Fazio
Mr Foley
Mr Gallacher
Mr Gay
Mrs Mitchell
Mr Searle

In attendance: David Blunt, Susan Want, Rebecca Main.

2. Apologies

Mr Borsak, Miss Gardiner, Dr Kaye, Revd Nile, Dr Phelps.

3. Confirmation of previous Minutes no. 8

Resolved, on motion of Ms Fazio: That Minutes no. 8 be confirmed.

4. Correspondence

The Chair noted that there were nil items of correspondence.

5. Consideration of Chair’s draft report

The Chair submitted his draft report entitled, 'Deadlines for government bills, Regulation of the consumption of alcohol by members during sitting hours, Government responses to petitions' which, having been previously circulated, was taken as being read.

Chapter 1 read.

Resolved, on the motion of Mr Gallacher: That Chapter 1 be adopted.

Chapter 2 read.

Resolved, on the motion of Ms Faxio: That Chapter 2 be adopted.

Chapter 3 read.

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

Resolved, on the motion of Mr Gallacher: That the draft report be the report of the Committee and be presented to the House.

6. Adjournment

The Committee adjourned at 1.08pm, *sine die*.

David Blunt
Clerk to the Committee

Appendix 2 The cut-off date procedure in the Australian Senate

Aside from the New South Wales Legislative Council, the Australian Senate is the only House of Parliament in Australia and New Zealand which imposes cut-off date procedures.

In recent years, the Senate's calendar year has comprised three periods of sittings – an autumn period, a winter period and a spring period. The term “period of sittings” is defined as the period during which the Senate and House of Representatives adjourns for not more than 20 days.³¹

Under standing order 111(5) of the Australian Senate, where a bill

- is first introduced in the Senate by a minister during a period of sittings, or
- is received from the House of Representatives, having been introduced in the House of Representatives in the same period of sittings, or
- is received from the House of Representatives after the expiration of two-thirds of the total number of days of sitting of the Senate scheduled for that period of sittings,

the debate on the second reading must be adjourned at the conclusion of the mover's speech and made an order of the day for the first day of sitting in the next period of sittings, without any question being put.³²

However, under standing order 111(6), special arrangements apply to bills introduced or received from the House of Representatives during the first period of sittings after the commencement of a new Parliament. If a bill is introduced in the Senate or received from the House of Representatives within the first two thirds of the first sitting period after a general election of the House of Representatives, the bill may pass all stages within that period, provided that the second reading is not resumed until 14 days after the introduction of the bill in either House.

The Senate may exempt a bill from a deadline, allowing its earlier consideration. This is usually done by way of a motion moved by a minister. As a matter of practice, the government tables a statement of reasons for seeking such an exemption.³³

Odgers notes that in the event of the Senate changing its sitting pattern with prospective effect, before a deadline has operated, the deadline is changed. However if a change is made during or after a period of sittings when a deadline has already operated, the deadline does not change.³⁴

A figure representing the operation of the Senate cut-off procedures and the special arrangements for bills in the first period of sittings after a general election is provided below:

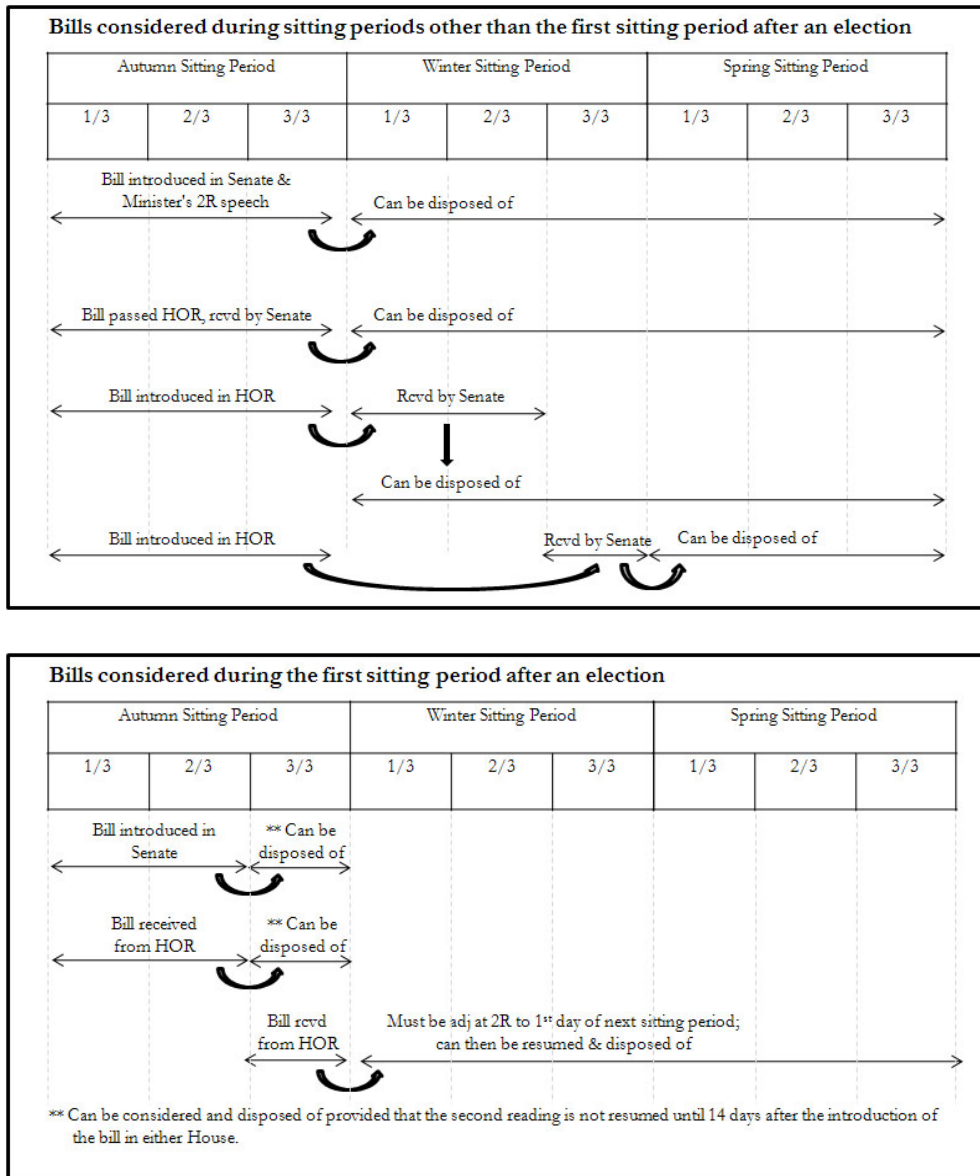
³¹ Evans, H and Laing, R (eds), 2012, *Odgers' Australian Senate Practice*, 13th edn, Department of the Senate, Canberra, 2012, p. 295.

³² The deadline does not apply to private senators' bills.

³³ Advice from the Deputy Clerk of the Senate.

³⁴ *Odgers*, p 296.

Diagram 1: Timeline for consideration of a government bill under the Senate’s standing orders



The effectiveness or otherwise of the procedure in the Senate is difficult to determine. Statistical data reveal that the percentage of bills passing in the last two weeks of a sitting period has varied considerably, as it does in the Council. *Odgers* suggests that changes in the cut-off procedures in the mid-1990s, introducing more stringent cut-off arrangements, may have been effective in curbing the concentration of bills in the Senate at the end of sitting periods, facilitating greater scrutiny. However, the progressive ‘watering-down’ of the procedure over successive years suggests that such a stringent measure may, in practice, be unworkable for a government whose legislative agenda is subject to competing external demands and priorities.