

Procedure Committee

**Report relating to private
members' business and the
sitting pattern**

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Terms of reference

1. That the following matters, identified in the report of the Joint Select Committee on Parliamentary Procedure in its October 2010 report as requiring further review by the Procedure Committee in this Parliament, be referred to the Committee for inquiry and report:
 - (a) the merits of the Legislative Council trialling a Selection or Business Committee,
 - (b) the merits of various options for reforming the current system of managing private members' business, including the option of a Selection or Business Committee,
 - (c) the merits of further reforms to the operation of Question Time, including to the relevance of answers,
 - (d) mechanisms to enable the provision of a right of reply to ministerial statements to be extended to a representative of the cross bench,
 - (e) procedures for the more regular referral of bills to the Legislative Council's standing committees, including the potential impact of any such change,
 - (f) the merits of the Legislative Council trialling new arrangements for debate on committee reports, including the option of trialling a Selection or Business Committee to allocate debate times,
 - (g) the merits of the Legislative Council passing a resolution concerning, the meaning of appropriations bills "for the ordinary annual services of the Government".
2. That the Committee inquire into and report on the sitting days and routine of business for the Legislative Council for the spring 2011 sitting period.
3. That the Committee report on paragraph 1 (b) and paragraph 2 by Friday 17 June 2011.

LC Minutes, 10 May 2011, p83

Committee Membership

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¹ From 14 June 2011 in place of the Hon Tony Kelly MLC, resigned

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Chair's Foreword

The terms of reference for this inquiry arose from recommendations made by the Joint Select Committee on Parliamentary Procedure in 2010, which identified certain matters for further inquiry and report by the Procedure Committee.

According to the terms of reference, the Committee is to report firstly on two matters, being modifications to the system for managing private members' business, including the merits of a Selection or Business Committee, and the sitting days and routine of business of the Legislative Council.

In addressing the terms of reference, the Committee considered the development and merits of the system of private members' business currently in operation in the Legislative Council and the mechanisms through which this system might be enhanced. While the Committee also gave consideration to the manner in which Selection or Business Committees operate in other jurisdictions, the Committee has recommended that this option be further considered following a process of trial and review of the amendments to the current system via a series of sessional orders proposed throughout this report.

By convention, the Government of the day determines a sitting pattern that best suits its legislative and policy program. The sitting pattern recently adopted by the Legislative Council comprises a four day sitting week in two week blocks, the first week being Tuesday to Friday and the second week Monday to Thursday. While acknowledging that the Government may wish to continue with four sitting days per week in order to deliver on its legislative program, the Committee recommends that consideration be given to a sitting pattern that reflects the same sitting days each sitting week. The Committee believes this may go some way to addressing concerns raised by members which are discussed within this report.

I thank all members of the Committee for their contribution to this inquiry, as well as the Clerk of the Parliaments and the Committee Secretariat for their valuable support.

The Hon Don Harwin MLC
President

Summary of recommendations

Recommendation 1

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- (a) That a sessional order be adopted to provide that private members' business notices of motions outside the order of precedence that have remained on the Notice Paper for 20 sitting days without being moved be removed from the Notice Paper.
- (b) That the sessional order not apply to notices of motions for bills or for the disallowance of statutory rules or to orders of the day.

Recommendation 2

page 8

- (a) That standing order 188 be amended by sessional order to provide that notices of motions listed in the order of precedence may only be postponed once and if postponed a second time, would be removed from the order of precedence and returned to its position outside the order of precedence.
- (b) That the sessional order not apply to notices of motions or orders of the day for bills.

Recommendation 3

page 8

- (a) That a sessional order be adopted to amend standing order 186 to reduce the overall time for debate on private members' motions from three hours to two hours.
- (b) That the time allocated for the contributions of the mover and subsequent speakers to the motion be adjusted accordingly.

Recommendation 4

page 9

- (a) That a sessional order be adopted to amend standing order 185 to provide that members who have a notice of motion in the order of precedence may substitute for that item a notice of motion outside the order of precedence in the name of that member.
- (b) That members be required to notify a Clerk-at-the-Table of their intention to substitute an item no later than the last sitting day in the week preceding the next day on which general business has precedence under the sessional orders.

Recommendation 5

page 10

That standing order 198 be amended by sessional order to provide that the question on a motion for the suspension of standing and sessional orders to allow the moving of a motion forthwith that an order of the day or motion on the Notice Paper relating to an order for papers under standing order 52, or an Address to the Governor under standing order 53, be decided without amendment or debate except a statement by the mover and a statement by a Minister not exceeding 5 minutes each.

Recommendation 6

page 11

That the sessional order varying standing order 44 be amended to provide that the written request from a member for a notice of motion to be called over as formal business be handed to a Clerk-at-the-Table by 2.30 pm on the sitting day prior to the sitting day on which the member wishes the matter to be considered as formal business.

Recommendation 7*page 13*

That the merits of a Selection or Business Committee be further considered following a process of trial and review of the amendments to the system for managing private members' business proposed in this report.

Recommendation 8*page 17*

While the Committee acknowledges that the Government of the day, by convention, determines a sitting pattern that best suits its legislative and policy program, consideration be given to a sitting pattern for the Legislative Council of a regular four day sitting week from Tuesday to Friday.

Recommendation 9*page 18*

That sessional orders be adopted to provide that, on the last sitting day of the week:

- question time commence at 2.00 pm, and
- business be interrupted at 3.00 pm to allow a Minister to move the adjournment of the House if desired.

Recommendation 10*page 18*

That the Procedure Committee conduct a further review, prior to the completion of the spring sittings, of the impact of the sitting pattern on members and the conduct of business of the House.

Chapter 1 Background to the inquiry

Establishment of the inquiry

- 1.1 On 10 May 2011, the House resolved that certain matters identified by the Joint Select Committee on Parliamentary Procedure as requiring further review be referred to the Procedure Committee for inquiry and report.² Two of these matters, being options for reforming private members' business, including the merits of a Selection or Business Committee, and the sitting days and routine of business for the Legislative Council spring 2011 sitting period, were to be reported on by 17 June 2011.

The system for managing private members' business

- 1.2 In September 2010, a Joint Select Committee on Parliamentary Procedure was established by both Houses to inquire into and report on reforms to parliamentary processes and procedures proposed to be implemented by the Commonwealth Parliament following the 2010 Federal Election. To that end, the Joint Select Committee considered whether these processes and procedures could usefully be adopted by either or both Houses of the New South Wales Parliament and the extent to which they were already in operation.

In its report³, the Joint Select Committee found that some of the reforms proposed for the Commonwealth had already been implemented by the Legislative Council, but deemed several key proposals to have merit and be worthy of more detailed examination by the Procedure Committee. In particular, Legislative Council members supported reform of the current system of managing private members' business in the Council and recommended that options be further considered in the 55th Parliament.

- 1.3 Chapter 2 provides an overview of the development of the system of private members' business currently in operation in the Legislative Council.
- 1.4 Chapters 3 and 4 discuss the merits of various options proposed for modification of the current system, including the merits of a Selection or Business Committee, and provides a brief commentary on the features of such committees operating in other jurisdiction.

The sitting pattern

- 1.5 Over several sessions of Parliament, the House adopted sessional orders providing for a five day sitting calendar, but in practice generally sat for three days per week, two days on which government business took precedence, and one day on which private members' business took precedence until 5.00 pm.⁴

² *LC Minutes*, 10/5/2011, p83

³ Report of Joint Select Committee on Parliamentary Procedure entitled "Reforms to Parliamentary Processes and Procedures", p33

⁴ See for example *LC Minutes*, 10/5/2007, p52

- 1.6** In a departure from this pattern, and to conform with the Legislative Assembly sitting pattern, the House sits four days a week in a two week block. During the first week the House sits from Tuesday to Friday and during the second week sits from Monday to Thursday. The consideration of business has followed a new pattern attached at Appendix 2.
- 1.7** Chapter 5 discusses proposals for sitting days and the routine of business for the 2011 spring sitting period.

Chapter 2 The operation of private members' business in the Legislative Council

The purpose of private members' business

- 2.1 The standing and sessional orders provide a range of mechanisms by which private members can raise matters in the House, including the adjournment debate (SO 31); take-note debates on committee reports (SO 232) and the budget; urgency motions (SO 201); debate on matters of public importance (SO 200); debate on the address-in-reply (SO 8); and private members business on the Notice Paper (SOs 183-189).
- 2.2 The precedence of private members' business, also known as general business, is the most common means by which private members raise issues of concern to their constituents, propose legislation and alternatives to government policies. Private members' business comprises motions and bills.
- 2.3 Standing order 40 provides that the House is to appoint the days or times on which government business and general business is to take precedence. Over several sessions, general business had taken precedence on Thursdays until 5.00 pm. However, under the current sessional order, general business takes precedence on the fourth sitting day of each sitting week from 9.30 am until 2.30 pm.⁵ Allowing for formalities and question time, general business has precedence for a little over three hours each week.

Development of the current system

- 2.4 At any one time, there are normally far more items of private members' business on the Notice Paper than can ever be dealt with in one sitting day, or even many sitting days. Accordingly, the House has developed procedures for determining which items of private members' business are to be brought forward for debate.
- 2.5 From 1895 to 1999, the House employed the traditional 'remanet' system for managing private members business, under which notices of motions and orders of the day had precedence on alternate private members' days.⁶ Under this system, if a member wanted their item to have precedence, they gave notice or adjourned debate until a specific private members' day when either notices of motions or orders of the day took precedence.
- 2.6 This system became particularly problematic for members as the number of private members' items increased following changes in the composition of the House. In response, on 8 September 1999, the House adopted a sessional order for a new system for managing private members' business derived from procedures in the Canadian Parliament's House of Commons. The sessional order was adopted each subsequent session with minor modification and finally adopted under standing orders 184 and 185 in May 2004.

⁵ *LC Minutes*, 9/5/2011, p72

⁶ Former SO 57

2.7 Under the standing orders, on days set aside for general business, the House considers items of private members' business in a sequence established by a draw of eligible members, conducted by the Clerk at the beginning of the session. The names of members are drawn separately in a sequence of opposition, government and cross bench. The eligibility criteria under the standing orders are intended to ensure that individual members or groups of members are not disproportionately advantaged or disadvantaged in each draw. As the House disposes of items, further draws are conducted to ensure there are sufficient items, up to a limit of 12, in the order of precedence.

Operational difficulties under the current system

2.8 In its report the Joint Select Committee on Parliamentary Procedure identified a number of operational difficulties experienced under the current system, as follows:

1. There is a lack of flexibility in allowing members to bring forward current topical matters. Members generally have to wait significant periods of time in order to bring forward an item of private members' business under the draw.
2. Because of the lack of flexibility in the current arrangements, members routinely suspend standing and sessional orders to bring on items outside the order of precedence, often interrupting government business or other items of business.
3. The inflexibility of the current arrangements does not allow the House to be responsive and timely in debating matters that are topical and in the news. The corollary of being impeded from debating matters that are currently in the news is that the House is often required under the current system for managing private members' business to debate a notice of motion given many months or even years previously.
4. Members have been repeatedly adjourning items in the order of precedence when issues have arisen which delay the progress of the item to its conclusion.
5. There is no expiry date for notices of motions given by private members. Accordingly, the Notice Paper becomes increasingly long as a session progresses and matters of private members' business bank up.
6. Relatively few private members' motions are being disposed of; that is, being agreed to, negatived or withdrawn.⁷

2.9 Trends in the consideration of business over the 54th Parliament provide an insight into the manner in which some of these difficulties have manifested.

2.10 Of the 937 items of private members' business for which notice was given, only 466, just over half, were moved. Of those moved, only 46 items were disposed under the standing orders for the private members' system.

2.11 In contrast, 130 items were disposed of following the suspension of standing and sessional orders, and 263 items were disposed of as formal business.

⁷ Joint Standing Committee on Parliamentary Procedure Report, p45

2.12 These matters and the mechanisms through which they may be addressed are elaborated in the following chapter.

Chapter 3 **Modification of the current system of private members' business**

- 3.1 This chapter outlines a number of measures designed to address the operational difficulties set out in Chapter 2.

Numbering of items on the Notice Paper

- 3.2 Historically, items of business listed under the various categories of business on the Notice Paper have been numbered chronologically. As items are disposed of, the items remaining have been renumbered. This can present challenges in tracking the progress of a particular item, particularly when items listed before the item are disposed of.
- 3.3 On 4 May 2011, the President advised the House that items outside the order of precedence would now retain a specific number for the duration of the session, regardless of the disposal of other items of business around it.

Committee comment

The Committee is of the view that this will assist members and staff in keeping track of items of private members' business. For example, members can now list their items with relevant numbers on their websites, for constituents and other interested parties to follow.

The Committee notes that the new system in which items retain a specific number for the duration of the session, regardless of the disposal of other items of business, is a positive initiative and should be retained.

Adoption of an expiry date for private members' business outside the order of precedence

- 3.4 At present there is no limit to the number of notices that may be given by members, or the length of time they may remain on the Notice Paper. Consequently, very soon after a session commences, the Notice Paper contains significantly more items than could ever be dealt with in one sitting day. During the previous Parliament, many notices given by members were never dealt with and remained on the Notice Paper until prorogation.
- 3.5 The introduction of a provision to impose a mandatory lapsing of items after a certain period of time may assist in reducing the number of items on the Notice Paper, removing outdated notices and introducing a measure of renewal to the paper.
- 3.6 Other jurisdictions that have adopted such provisions have applied a time limit ranging from one week⁸, to 20⁹ or 30¹⁰ sitting days, or up to one year¹¹. Other jurisdictions have also

⁸ New Zealand House of Representatives SO 96

⁹ Victorian Legislative Council SO 6.15

distinguished between particular types of business, for instance exempting motions for the disallowance of regulations¹² or bills¹³.

- 3.7** The Committee considers that an expiration date of 20 sitting days would provide members with sufficient time to have their item disposed of, while also bringing greater currency to the matters listed for the consideration of the House.
- 3.8** The Committee determined that the date of expiry should apply to motions only, with bills and motions for the disallowance of statutory rules and instruments to be exempt. The provision would also apply only to notices of motions.

Recommendation 1

- (a) That a sessional order be adopted to provide that private members' business notices of motions outside the order of precedence that have remained on the Notice Paper for 20 sitting days without being moved be removed from the Notice Paper.
- (b) That the sessional order not apply to notices of motions for bills or for the disallowance of statutory rules or to orders of the day.

Postponement of items in the order of precedence

- 3.9** Under the current system for private members' business, an item listed in the order of precedence and postponed for a third time is removed from the order of precedence and returned to the list of items outside the order of precedence, unless the House otherwise orders (SO 188). This provision aims to prevent members from postponing an item of business inside the order numerous times, thereby preventing other members from bringing items before the House.
- 3.10** There have been many occasions on which items have been postponed one or two times. On the few where an item has been postponed on three occasions, rather than the item being removed from the order of precedence, the House has ordered that it remain in the order of precedence.
- 3.11** The Committee considered that, in the case of notices of motions, the current provisions may be too lenient and the House could benefit from a reduction in the number of times a member can postpone consideration of their item. This would place an onus on members to give due consideration to the relevancy of items in the order of precedence and encourage greater movement of business through the House. The Committee considers that the 'three strikes' rule should continue to apply to notices and orders of the day relating to bills.

¹⁰ Victorian Legislative Assembly SO 144, Western Australian Legislative Assembly SO 74, Queensland Legislative Assembly SO 74

¹¹ New South Wales Legislative Assembly SO105

¹² New Zealand House of Representatives SO 96

¹³ Victorian Legislative Council SO 6.15

Recommendation 2

- (a) That standing order 188 be amended by sessional order to provide that notices of motions listed in the order of precedence may only be postponed once and if postponed a second time, would be removed from the order of precedence and returned to its position outside the order of precedence.
 - (b) That the sessional order not apply to notices of motions or orders of the day for bills.
-

Time limits for debate

- 3.12** The standing orders currently provide that debate on motions is limited to a total of three hours, with 30 minutes for the mover, 20 minutes for speakers to the motion and 10 minutes for the mover in reply. Bills are subject to various limits at each stage, with debate on the second reading limited to 30 minutes for the mover and 20 minutes for others speakers and the mover in reply, with no overall limit on the time for debate.
- 3.13** While members should not be unduly restricted in debating matters before the House, the Committee considers that a reduction in the time allowed for debate on private members' motions from three hours to two hours could increase the number of items dealt with. The Committee agreed that the existing time limits for bills be retained.
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Recommendation 3

- (a) That a sessional order be adopted to amend standing order 186 to reduce the overall time for debate on private members' motions from three hours to two hours.
 - (b) That the time allocated for the contributions of the mover and subsequent speakers to the motion be adjusted accordingly.
-

Substitution of items listed in the order of precedence

- 3.14** The current system of managing private members' business does not make allowance for a member to withdraw their item in the order of precedence, or transfer their position to another member, without penalty.
- 3.15** Under SO 185(4), members who withdraw their item are deemed to have had an item 'disposed of' and must wait until all other members of their group – opposition, crossbench or government – have had their names drawn before they are again deemed eligible for the draw. Under SO 185(5), where a member transfers their position to another member, the member is ineligible for subsequent draws until all other members of their group have had their names drawn. The transfer provisions also only apply for the two day period during which members may notify the Clerk of their choice of item to be listed inside precedence. Once the item of choice has been notified the member may not transfer their position, regardless of whether debate on the item has commenced.
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- 3.16** The Committee considers that modification of these rules to allow members to substitute a notice in the order of precedence in their name with another notice on the paper would assist members in prioritising items and enable the House to debate matters that are topical and of immediate concern.
- 3.17** The Committee determined that members should be able to substitute notices by notifying the Clerk no later than the last sitting day in the week preceding the next day on which general business is to take precedence in order to afford other members adequate notice of business likely to come before the House. The Committee further determined that these provisions should only apply to items on which debate has not commenced.

Recommendation 4

- (a) That a sessional order be adopted to amend standing order 185 to provide that members who have a notice of motion in the order of precedence may substitute for that item a notice of motion outside the order of precedence in the name of that member.
- (b) That members be required to notify a Clerk-at-the-Table of their intention to substitute an item no later than the last sitting day in the week preceding the next day on which general business has precedence under the sessional orders.

Use of provisions for the suspension of standing and sessional orders

- 3.18** As noted by the Joint Standing Committee on Parliamentary Procedure, due to the lack of flexibility in the current arrangements for managing private members' business, members routinely suspend standing and sessional orders to bring on items outside the order of precedence, often interrupting government business or the items of private members already in the order of precedence.¹⁴
- 3.19** Over the four year period of the 54th parliament, only 46 items of private members' business in the order of precedence were disposed of under the standing orders relating to private members' business (that is, not by the suspension of standing orders or consideration as formal business under SO 44).
- 3.20** In contrast, 130 items were disposed of following the suspension of standing and sessional orders. The House suspended standing and sessional orders 252 times in order to dispose of those 130 items. Of the 130 items disposed of, 60 related to an order for papers for the production of documents from the Executive under SO 52, or a related matter (eg. the publication of the report of an independent legal arbiter, or the publication of privileged documents).
- 3.21** In order to enhance the flow of business in the House, the Committee proposes that the House adopt a sessional order that would impose new time limits for debate where members move to suspend standing orders for the purpose of moving a motion for the production of

¹⁴ JSC Report p46

documents under SO52 or SO53.¹⁵ Debate would be limited to five minutes for the mover and five minutes for a Minister to speak on behalf of the Government. If the suspension is agreed to, the motion would be debated in the usual manner and would be subject to the new two hour limitation proposed for debate on private members' motions.

- 3.22** The Committee also gave consideration to options for limiting debate on motions for the suspension of standing orders in other circumstances. However, the Committee was ultimately of the view that the proposed provisions relating to motions for the production of papers should first be trialled. Following a review, it could then be determined whether the procedures for the suspension of standing and sessional orders warrant further consideration or amendment.
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Recommendation 5

That standing order 198 be amended by sessional order to provide that the question on a motion for the suspension of standing and sessional orders to allow the moving of a motion forthwith that an order of the day or motion on the Notice Paper relating to an order for papers under standing order 52, or an Address to the Governor under standing order 53, be decided without amendment or debate except a statement by the mover and a statement by a Minister not exceeding 5 minutes each.

Notification of items for consideration as formal business

- 3.23** Under SO 44, before the House proceeds to business on the Notice Paper each day, the President will ask whether there is any objection to notices of motions or orders of the day for the third reading of a bill being taken as a formal motion. If no objection is taken, the member may move the motion, the question on which is put without amendment or debate.
- 3.24** On 5 June 2007, at the commencement of the 54th Parliament, a sessional order was adopted under which members were required to request, in writing, that a notice of motion be called over as formal business the following sitting day. This sessional order was again adopted in the 55th Parliament. The sessional order is intended to provide members with sufficient time in which to consider whether to support an item proceeding as formal business.
- 3.25** During its inquiry, the Committee considered whether the process of formal business would be further enhanced if members were required to submit their request earlier the previous day. At present, members may submit their requests until the adjournment of the House the previous day, so the final list of items is not circulated until after the rising of the House. The Committee considered that earlier notification, for example by the afternoon of the previous sitting day, would afford members more time for consideration and negotiation.
- 3.26** If an earlier time for notification was agreed to by the House the Clerk would then advise members of the items to be called over as formal business the next day shortly after the cut-off time.

¹⁵ Relating to an Address to the Governor for the production of documents concerning the royal prerogative; dispatches or correspondence to or from the Governor, or the administration of justice.

Recommendation 6

That the sessional order varying standing order 44 be amended to provide that the written request from a member for a notice of motion to be called over as formal business be handed to a Clerk-at-the-Table by 2.30 pm on the sitting day prior to the sitting day on which the member wishes the matter to be considered as formal business.

3.27 Draft sessional orders for the implementation of recommendations 1 to 6 are provided at Appendix 1.

Chapter 4 Provision for a Selection or Business Committee

- 4.1 Under the terms of reference, the Committee is to consider the suitability of a Selection or Business Committee to assist in the management of private members' business in the Legislative Council.
- 4.2 The Committee considered the manner in which such committees operate in other jurisdictions, and in particular the merits and common features of such committees.

The merits and features of a committee

- 4.3 Other jurisdictions that operate according to the provisions of a Selection or Business Committee, or have recommended that such a committee be adopted for the management of private members' business, have argued that the merits of a selection committee include:
- formalising the various informal discussions that occur each week behind the scenes concerning the business of the House,
 - providing members with ownership of and responsibility for the business of the House – both what it should debate and for how long,
 - providing a mechanism for members to determine the time limits to apply to particular items of business,
 - determining the allocation of time for different types of business – for example motions, bills and committee reports, and
 - providing a forum for decision-making that adequately reflects the party composition of the House.
- 4.4 Selection Committees in other jurisdictions have some common features:
- membership reflects party proportionality of the House,
 - members are tasked with determining both the order of business and the time allocated,
 - only notices already on the Notice paper are considered,
 - there is provision for members to argue the merit of particular items of business over others, either through their representatives on the committee or by attendance at the meeting, and
 - weekly meetings to determine the list for the week immediately following and, in some cases, to discuss any issues relevant to business for subsequent weeks.

- 4.5 Other jurisdictions also differ in particular aspects. For example, the committees operating in the ACT and House of Representatives are chaired by the Speaker and Deputy Speaker respectively. In contrast, the committee recently proposed by the House of Commons would elect a Chair by a ballot conducted in the House.
- 4.6 The scope of the business determined by the committee also differs. For example, the system operating in the House of Representatives requires members to afford priority to notices for bills over other notices and orders of the day, and requires members to be guided in their decision by general principles adopted by the House, weighing considerations such as the currency of and interest in an issue, the extent to which the issue comes within the purview of the parliament, the probability of the subject being brought before the House by other means within a reasonable time and the number of members affiliated with the party raising the matter.
- 4.7 The purpose of such committees is also subject to variation. The system recently proposed by the Reform of the House of Commons Select Committee focuses on the committee as a mechanism for empowering backbench members and providing them with a greater sense of ownership for the business that is debated in their own House, rather than simply facilitating the process of selection. While there is provision for attendance of the Government business managers to advise as to the availability of ministers at particular times, the Government is specifically excluded from the selection process on the basis that the business over which the Government 'loses' control is business in which the Government has little direct interest.

The operation of a Selection or Business Committee in the Legislative Council

- 4.8 Whilst the Committee recognised the benefits that such a process for the selection and regulation of business might provide, the Committee determined that provisions for such a committee should not be considered further until the amendments to business proposed in this report have been trialled and reviewed.

Recommendation 7

That the merits of a Selection or Business Committee be further considered following a process of trial and review of the amendments to the system for managing private members' business proposed in this report.

Chapter 5 The sitting pattern

- 5.1 On 9 May 2011, according to standing order, the House adopted sessional orders for the sitting days and times and the routine of business. Together, the sessional orders and the sittings days circulated by the Government establish a sitting pattern that differs considerably to that under which the House has operated for several sessions of Parliament.
- 5.2 In recognition of the change, the House referred to the Procedure Committee for inquiry and report, the sitting days and routine of business for the Legislative Council for the spring 2011 sitting period.

The current sitting times and routine of business

- 5.3 The most significant variation in the routine of business under which the Legislative Council is currently operating is that the sitting days are set by a calendar circulated by the Government for the Legislative Assembly under which the Council will sit four days per week in two week blocks, the first week Tuesday to Friday and the second week Monday to Thursday.
- 5.4 The sessional orders set the times of meeting and adjourning and the precedence of business according to the place in which the day falls in the week, that is, first, second, third, fourth or fifth. For example, the time for meeting on Tuesday of the first week will be 2.30 pm, it being the first sitting day of the week and on Tuesday of the second week the House will meet at 11.00 am, it being the second sitting day of the week, and so on.
- 5.5 The provisions for meeting times and precedence of business are as follows:
- The House meets at 2.30 pm on the first sitting day, 11.00 am on the second and third sitting days and 9.30 am on the fourth and fifth.
 - Question time commences at 4.00 pm on the first sitting day and 2.30 pm each subsequent sitting day.
 - Business is interrupted at 6.30 pm on the first, second and third sitting day and at 3.30 pm on the fourth and fifth day to allow a Minister to move the adjournment of the House if desired.
 - Government business takes precedence on the first, second, third and fifth sitting days, and after 3.30 pm on the fourth sitting day; and general business takes precedence on the fourth sitting day until 2.30 pm.
 - Debate on committee reports takes precedence after question time on the first sitting day until 6.30 pm.
- 5.6 Although previous sessional orders have also provided for a five day sitting week, it was extremely rare for the House to sit on Monday and Friday. In 2009 and 2010 the sitting days were adopted by resolution of the House, establishing a three day sitting week unless the House otherwise ordered.
- 5.7 Another change under the current sessional orders is the provision for business to be interrupted each day to allow the Minister to move the adjournment motion if desired.

Interruption of business at 6.30 pm on the first, second and third sitting day each week and at 3.30 pm on the fourth and fifth day implies that the House will rise earlier than in previous sessions when there was a provision for interruption only on Thursday and Friday, and the House regularly sat until 10.30 pm or later.

- 5.8** While the current sitting pattern differs from previous sessions, the overall number of hours the House is to sit each week is virtually the same, that is, approximately 26 and 27 hours each week respectively, inclusive of lunch and dinner breaks. The time allocated to government business and private members' business is the same under both patterns - government business taking precedence for approximately 11 hours each week, and private members' business for approximately three hours each week. Under the current sessional orders, debate on committee reports has precedence for one and a half hours each week. In the previous Parliament, committee reports were debated for one hour each week.

Impacts of the current sitting pattern

- 5.9** While it is for the House to determine its own sitting pattern, the Committee recognises that it is imperative that sitting days and times meet the requirements of the Government in managing its legislative program. The Committee respects the convention that the Government issues the sitting days for the House, but nevertheless believes that any real or potential impacts of the current arrangements should be considered.
- 5.10** At the time of reporting, the House has operated under the new sitting pattern for 20 sitting days. Consequently, the Committee is unable to provide a comprehensive view on the effectiveness or impact of the new pattern. However, in considering the sittings times and routine of business, some issues have been identified which committee members wish to draw to the attention of the House and the Government.
- 5.11** The first issue relates to the impact of the current sitting pattern on members' ability to undertake the full range of parliamentary duties for which they are responsible. The Committee notes that while the parliamentary sittings are a significant component of the work of members, there are other important functions such as addressing constituency issues and committee activities. In addition, Ministers and Parliamentary Secretaries and Shadow Ministers have responsibilities related to their ministerial and shadow ministerial roles.
- 5.12** Several committee members noted that the three day sitting pattern of previous sessions, with regular fixed days, allowed members, and particularly country and regional members, to spend more time on these other responsibilities. The three day sitting week also provided more certainty to members needing to organise meetings and other business. It is also noted that a shorter sitting week with evening sittings provides country and regional members with more flexibility to meet family responsibilities. This is a particular matter of concern to the significant number of country and regional members in the House.
- 5.13** Another significant concern with the current sitting pattern is the impact of the alternating sitting week schedule on the ability of members to schedule meetings and appointments and to organise their business. Anecdotal evidence suggests that there may be some confusion within departmental and ministerial offices relating to the alternating sitting days each week, and the availability of Ministers and other members. The Committee acknowledges this

confusion may be resolved over time, once members and ministerial and department staff become more familiar with the sitting pattern.

- 5.14** Committee members also note that while the House is sitting, members are generally required to be on duty. Unless paired, they must be available to vote in divisions, secure quorums and speak to matters before the House. Consequently, members have limited time in which to attend to other business while the House is sitting.
- 5.15** It was also noted that the duties of a member which are not directly related to the sittings of the House, such as caucus and other political party meetings, meetings with constituents, departmental advisers and community and interest groups and participation in committee meetings and hearings, may need to be deferred to non-sitting weeks.
- 5.16** There is also a workload implication for government departments and agencies and parliamentary and ministerial staff. The increase in workload of Ministers and members will, in turn, increase the workload of departmental and parliamentary staff in terms of preparation and research for the business of the House. An example of the increased workload for these staff includes an additional Question Time each sitting week, as compared with recent Parliamentary sessions.
- 5.17** The alternating sitting pattern may also be problematic for committee staff and members in scheduling committee meetings, hearings and site visits. During sitting weeks committee members are able to meet only during the lunch breaks, after the House rises and, if no other commitments have been made, on Monday or Friday when the House is not sitting. It is more likely that committee meetings and hearings will be scheduled for non-sitting weeks, competing with the member's other obligations. Previously, committees regularly scheduled meetings for Fridays of sitting weeks with some certainty that members would be in Sydney and available. Again, the Committee noted that the three day sitting week arguably provides greater opportunity for scheduling of committee hearings and deliberative meetings.
- 5.18** The current sitting pattern has also caused a change in the travel routine of country and regional members and may have a continuing impact on their ability to fulfil all their work and family obligations. The Committee notes that of the current members of the House, 20 live in country or regional areas. On weeks when the House rises at 4.00 pm on Friday afternoon, due to the lack of availability of flights, some members have been unable to travel until Saturday morning. In addition, these members have been required to return to Sydney on Sunday night in order to be available for parliamentary commitments on Monday morning and for the sitting of the House at 2.30 pm that day. Consequently, on those weekends, members have very little time available for constituency, community and family responsibilities.
- 5.19** Finally, the Committee recognises that the current sitting pattern addresses, to some extent, the potential adverse health effects on members and reduction in their effectiveness due to long sitting hours and late night sittings.¹⁶ However, any modern workplace must balance effective conduct of business and quality of work with the work health and safety of its members and their ability to fulfil family and other obligations. It will be important to monitor the impact of the current sitting pattern in order to identify and address any adverse consequences.

¹⁶ See the Interim Report: Procedural changes implemented in the 43rd Parliament, Procedure Committee, House of Representatives, p49

Conclusion and Committee view

- 5.20** In summary, the Committee acknowledges that the Government of the day, by convention, determines a sitting pattern that best suits its legislative and policy program. The recent change has resulted in a four day sitting pattern with alternating days over a two week cycle. The Committee notes that under the current sitting pattern the time allocated to government business and private members' business is much the same as in previous Parliaments, with government business taking precedence for approximately 11 hours each week, and private members' business for approximately three hours each week.
- 5.21** One of the major issues for Committee members and others is the impact of the current pattern on the other work of members, such as constituency and committee work, as well as ministerial responsibilities. Committee members are concerned that over time, there may be less opportunity to focus on the broader role of members of Parliament. The Committee noted the advantages of the three day sitting pattern in providing sufficient time to undertake business not related to the sittings of the House, such as constituency and committee work. However it was also noted that long sitting hours and late nights, often until 10.30 pm, associated with previous sitting patterns, are not conducive to effective conduct of business and the health of members and staff.
- 5.22** While acknowledging that the Government may wish to continue with four sitting days per week in order to deliver on its legislative program, the Committee recommends that consideration be given to a sitting pattern that reflects the same sitting days each sitting week. For example, a sitting week would commence on Tuesday each week. The Committee believes this may go some way to addressing the concerns raised above, particularly in relation to the current scheduling difficulties for country and regional members, and the potential confusion occurring within ministerial and departmental offices. Such a regular sitting pattern each week may also assist Ministers and other members with the organisation of other business.
- 5.23** To further address the difficulties of the four day sitting pattern for country and regional members, the Committee considers that the adjournment of the House on the last day of the sitting week at an earlier time would assist members with their travel and other commitments. Consequently the Committee proposes that the routine of business on the fourth sitting day be amended so that Question Time commence at 2.00 pm, and business be interrupted at 3.00 pm to allow the Minister to move the adjournment if desired. So as not to reduce the amount of time allocated to private members' business it is proposed that the lunch break be reduced to one hour in conjunction with this proposal.
- 5.24** In order to adequately assess the impact of the four day sitting pattern on members and the conduct of business of the House, the Committee believes it will be important to further review the sitting pattern prior to the completion of the spring sittings.

Recommendation 8

While the Committee acknowledges that the Government of the day, by convention, determines a sitting pattern that best suits its legislative and policy program, consideration be given to a sitting pattern for the Legislative Council of a regular four day sitting week from Tuesday to Friday.

Recommendation 9

That sessional orders be adopted to provide that, on the last sitting day of the week:

- question time commence at 2.00 pm, and
 - business be interrupted at 3.00 pm to allow a Minister to move the adjournment of the House if desired.
-

Recommendation 10

That the Procedure Committee conduct a further review, prior to the completion of the spring sittings, of the impact of the sitting pattern on members and the conduct of business of the House.

Appendix 1 Proposed sessional orders

Formal Business

That, notwithstanding anything contained in the standing orders, the sessional order varying standing order 44 be amended by omitting paragraph 3 and inserting instead:

3. The request from a member that a notice of motion standing in the name of that member on the Notice Paper be taken as formal business must be signed by that member and handed to one of the Clerks-at-the-Table by 2.30 pm on the sitting day before the sitting day on which the member wishes the matter to be considered as formal business.

Substituting items in the order of precedence

That, for the remainder of the current session and unless otherwise ordered, standing order 185 be varied as follows:

1. A member who has an item of private members' business in the order of precedence may substitute for that item, an item of private members' business outside the order of precedence standing in the name of that member.
2. A member substituting an item in the order of precedence must hand a signed notification of the substitution to one of the Clerks-at-the-Table during a sitting of the House,
3. Notification is to be given no later than the last sitting day in the week preceding the next day on which general business has precedence under the sessional orders.
4. Once a motion has been moved, it cannot be substituted.

Postponement of motions in the order of precedence

That, for the remainder of the current session and unless otherwise ordered, standing order 188 be amended to read as follows:

188. 1. A notice of motion in the order of precedence may only be postponed once. A notice of motion postponed for a second time will be removed from the order of precedence and returned to its position outside the order of precedence.
2. This sessional order does not apply to notices of motions for bills.

Expiry date for notices of motions

1. That, for the remainder of the current session and unless otherwise ordered, a private members' business notice of motion outside the order of precedence that has remained on the Notice Paper for 20 sitting day without being moved will be removed from the Notice Paper.
2. This sessional order does not apply to notices of motions for bills or for the disallowance of statutory rules.

Debate on private members' motions

That, for the remainder of the current session and unless otherwise ordered, standing order 186 be amended to read as follows:

Debate on motions

- (1) An item of private members' business, other than a bill, must not receive more than two hours of debate.
- (2) When an item other than a bill is being considered:
 - (a) the mover of the motion may speak for not more than 20 minutes, and
 - (b) any other member may speak for not more than 15 minutes.
- (3) When an item other than a bill is not earlier disposed of, at 10 minutes before the end of the time provided for the consideration of the item, the President is to interrupt proceedings to allow the mover of the motion to speak in reply for not more than 5 minutes. The President will then put every question necessary to dispose of the motion, forthwith and successively without further amendment or debate, unless the motion is withdrawn as provided by the standing orders.

Suspension of standing orders—motions for orders for papers

That, for the remainder of the current session and unless otherwise ordered, standing order 198 be amended to read as follows:

- (1) In urgent cases, any standing order or other order of the House may be suspended by the House in whole or in part:
 - (a) by a motion on notice, or
 - (b) by leave of the House.
- (2) On a motion for the suspension of a standing or other order, (with the exception of motions referred to in paragraph 3) a member may not speak for more than five minutes, and if the debate is not concluded after the expiration of 30 minutes after the moving of the motion the question on the motion will then be put.

- (3) A motion for the suspension of standing orders, on contingent notice, to allow the moving of a motion forthwith that an order of the day or motion on the Notice Paper relating to an order for papers under standing order 52, or an Address to the Governor under standing order 53, be called on forthwith, the question is to be decided without amendment or debate except a statement by the mover and a statement by a Minister not exceeding 5 minutes each.
- (4) Where a standing order or other order of the House is suspended by the House in whole or in part, any subsequent procedural motion is to be put without amendment or debate.

Appendix 2 2011 Autumn sitting pattern

The following sitting pattern was adopted by sessional order of the Legislative Council of 9 May 2011.¹⁷

Time	First Sitting Day	Time	Second Sitting Day	Time	Third Sitting Day	Time	Fourth Sitting Day
9.30		9.30		9.30		9.30	Private Member's Business
10.00		10.00		10.00			
10.30		10.30		10.30			
11.00		11.00	Government Business	11.00	Government Business		
11.30							
12.00							
12.30							
1.00			1.00	Lunch	1.00	Lunch	
2.30	Government Business	2.30	Question Time	2.30	Question Time	2.30	Question Time
		3.30	Government Business	3.30	Government Business	3.30	Adjournment (for 4.00 pm)
4.00	Question Time					4.00	
						4.30	
5.00	Committee Reports					5.00	
						5.30	
						6.00	
6.30	Adjournment (for 7.00 pm)	6.30	Adjournment (for 7.00 pm)	6.30	Adjournment (for 7.00 pm)	6.30	

¹⁷ LC Minutes 9/5/2011 pp 71-75.

Appendix 3 Minutes of proceedings

Minutes No. 1

Wednesday 25 May 2011

President's Dining Room, Parliament House, 6.35 pm.

1. **Members present**

Mr Harwin (Chair)
Miss Gardiner
Revd Mr Nile
Mr Gay
Mr Kelly
Mr Foley
Dr Phelps
Ms Fazio
Mrs Mitchell
Mr Borsak
Ms Faehrmann

In attendance: David Blunt, Julie Langsworth, Susan Want, Jenelle Moore.

2. **Apologies**

Mr Gallacher

3. **Confirmation of Chair**

Mr Gay noted, as per convention, that the President be the Chair of the Procedure Committee.

4. **Inquiry into private members' business and the sitting pattern**

The Committee confirmed the terms of reference.

Resolved, on motion of Ms Fazio, that the reporting date for the balance of the terms of reference for which a reporting date has not been set, be determined following the initial reporting date of 17 June 2011.

The Chair tabled a discussion paper entitled "Options for reforming private members' business".

The Committee deliberated.

Resolved, on motion of Revd Mr Nile, that the Chair prepare a draft report for the consideration of the Committee.

5. ...

6. **Next meeting**

The next meeting of the Committee will be held on Thursday 2 June 2011 at the rising of the House (approximately 4.15pm) in the President's dining room.

7. **Adjournment**

The Committee adjourned at 7.35 pm.

David Blunt

Clerk to the Committee

Minutes No. 2 - Draft

Wednesday 15 June 2011

President's Dining Room, Parliament House, 1.05 pm.

1. Members present

Mr Harwin (Chair)
Miss Gardiner
Revd Mr Nile
Mr Gallacher
Mr Gay
Mr Foley
Mr Scarle
Dr Phelps
Ms Fazio
Mrs Mitchell
Mr Borsak

In attendance: Lynn Lovelock, David Blunt, Julie Langsworth, Susan Want.

2. Apologies

Ms Faehrmann

3. Substitution

The Chair tabled correspondence from Ms Faehrmann and Dr Kaye, dated 15 June 2011 advising that, due to Ms Faehrmann's absence, Dr Kaye would attend today's meeting in Ms Faehrmann's place.

4. Confirmation of previous Minutes no. 1

Resolved, on the motion of Ms Fazio, that Minutes no.1 be confirmed.

5. Chair's draft report entitled "Report relating to private members' business and the sitting pattern"

The Committee considered the Chair's draft report, as previously circulated.

The report was read.

The Committee deliberated.

Chapter 1 read.

Resolved, on the motion of Ms Fazio, that Chapter 1 be adopted.

Chapter 2 read.

Resolved, on the motion of Ms Fazio, that Chapter 2 be adopted.

Chapter 3 read.

Resolved, on the motion of Ms Fazio, that Chapter 3 be adopted.

Chapter 4 read.

Debate ensued.

Resolved, on the motion of Revd Mr Nile, that the word 'Committee' be inserted at the first line of recommendation 7, after 'Business'.

Resolved, on the motion of Dr Phelps, that Chapter 4, as amended, be adopted.

Chapter 5, having this day been circulated by the Chair, read.

Debate ensued.

Resolved, on the motion of Mr Foley, that additional material be included, reflecting the advantages of a three day per week sitting pattern followed during previous sessions.

Resolved, on the motion of Mr Foley, that additional material be included to indicate the number of country and regional members currently in the Legislative Council.

Resolved, on the motion of Miss Gardiner, that additional material be included, recommending that the Committee conduct a further review prior to the completion of the spring sittings, of the impact of the sitting pattern on members and the conduct of business of the House.

Resolved, on the motion of Revd Mr Nile, that Chapter 5, as amended be adopted.

Resolved, on the motion of Ms Fazio, that Appendix 1 and Appendix 2 be adopted.

Resolved, on the motion of Ms Fazio, that the draft report, as amended, be the report of the Committee and presented to the House according to standing order 226(1).

6. ...

7. ...

8. **Next meeting**

The Chair informed the Committee that the next meeting of the Committee will be held in the first weeks of the Spring session in order to consider the remaining terms of reference before the Committee.

9. **Adjournment**

The Committee adjourned at 2.04 pm.

Lynn Lovelock
Clerk to the Committee