

INQUIRY INTO RULES FOR NOTICES OF MOTIONS

Organisation: Legislative Council, Victoria
Name: Mr Andrew Young
Date received: 15 February 2017



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10 February 2017

Mr David Blunt
Clerk of the Legislative Council
New South Wales Parliament
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Blunt,

David

Re: Procedure Committee inquiries into rules for questions and notices of motion

Thank you for your invitation to make a submission with respect to the above. Your examination of question time rules is of particular interest to us in view of the significant changes made to question time rules in the Victorian Parliament in the last two years. I make this submission on behalf of the President of the Victorian Legislative Council and understand you may receive a separate submission from the Legislative Assembly.

1. Rules for Questions Without Notice

As part of its 2014 election platform, the Victorian ALP promised to make various reforms to Parliamentary business and in particular promised to abolish 'Dorothy Dixers'. Following the election of the Andrews' Labor Government, in early 2015 certain sessional order changes were made in the Legislative Assembly relating to Question Time. The non-government controlled Legislative Council (14 Government MPs / 26 non-Government MPs), took the Assembly reforms a step further with its own sessional orders adopted on 12 February 2015.

Nine non-government questions

Sessional Order 3 suspends existing Standing Orders relating to questions without notice and applies the following:

- Questions without notice may be asked at the time prescribed by Standing Order 5.02 when any business before the Council will be interrupted.
- Only non-Government Members may ask oral questions without notice under Standing Order 8.01(2).
- The time allocated for questions without notice will be until a total of nine oral questions (not including related supplementary questions) have been answered.

The most notable changes are the removal of any questions by Government Members and the total number of questions each day being reduced from 10 to 9. The allocation of the nine non-government questions each day is calculated on a yearly spreadsheet based on the party representation in the House. In addition to the Coalition Opposition, non-

government parties include 5 Greens and 5 minor-party cross benchers. On a typical day, the Opposition will ask 5 or 6 questions and the Greens/cross benchers will ask 3 or 4. Time limits for questions without notice are: 1 minute for the substantive question, 4 minutes for an answer, 1 minute each for a supplementary question and further answer.

Content of answers and follow-up written responses

A further significant change to the rules for questions without notice is set out in Sessional Order 5 dealing with the content of answers. Sessional Order 5 is as follows:

- All answers to questions without notice must be direct, factual, succinct and relevant.
- The President may determine that an answer to an oral question without notice or supplementary question is not responsive to the question, and may accordingly direct the Minister to provide a written response to the question and lodge it with the Clerk by 11.45 a.m. on the next sitting day. A copy of any response provided under this Sessional Order must be given to the Member who asked the question and printed in *Hansard*.
- The President will determine the adequacy of a written response to a question provided under this Sessional Order. The President may determine that a written response does not appropriately answer the question and may direct the Minister to provide another written response and lodge it with the Clerk by 11.45 a.m. on the next sitting day. A copy of the further response must be provided to the Member who asked the question and printed in *Hansard*.

The President of the Council made the following statement to the House with respect to whether or not an answer has been responsive:

"I want to emphasise to members that it is not my intention to judge answers to questions on whether or not a member is necessarily satisfied by the answer or whether or not the answer is even a complete answer. As long as it is apposite to the question and is direct, succinct and factual in particular, then obviously it meets the criteria set out in the sessional order – they are the rules I will apply."

The new sessional orders enabling the President to rule answers as being not responsive and ordering written responses has added to the workload of the Department of the Legislative Council in terms of processing necessary documentation. Clearly it has also placed an extra responsibility on Ministerial offices and Government departments who must prepare written answers within a very short time frame. For questions falling within the direct Ministerial responsibilities of one of the five Upper House Ministers, written responses are required within 24 hours (see above). If the question is to a Minister representing a Minister in the other House, the President has consistently directed that a written response must be provided within two sitting days. The Sessional Order does not provide for this, but the House has not disputed the President's practice.

In the two years the sessional order has been in operation, of the approximate 1,825 questions asked, the President has directed that written responses be provided to 760 questions. This includes a combination of substantive and supplementary questions. Accordingly, based on these figures, only 58 per cent of answers have been deemed responsive. It should be pointed out that the volume of written responses ordered has possibly been magnified as a result of the six-month suspension of the Leader of the Government in the Upper House and resultant impact on proceedings during question time. There are a significant number of questions asked by cross bench Members to Ministers representing Ministers in the Assembly, which also contributes to the large number of written answers ordered.

The Sessional Order outlined above does not enable the President to order a third written response if the first two responses are not responsive. There have been some points of order in the House when the further (second) written response has been circulated on the grounds that it has yet to be appropriately answered. The President has advised he can take no further action under Sessional Orders. However, consistent with the section below, any Member may move that the Minister's written response be taken into consideration on a future day.

Consideration of answers

Legislative Council Standing Order 8.06 states: 'on motion without notice the Council may order that an answer to a question and/or supplementary question be taken into consideration on a future day.' On occasions, following a Minister's answer/s, a Member (typically a non-government member), will move that the answer/s be taken into consideration on the next day of meeting. These questions are then listed on the Notice Paper as an Order of the Day to be possibly debated within the next 20 sitting days. The current Council Notice Paper has three such matters listed under General Business (non-government business). It is not common for such questions to be debated.

Constituency questions

In addition to the nine questions without notice, the Legislative Council has introduced a new form of question called Constituency Questions (sessional order 4, adopted 12/02/2015):

- At the conclusion of questions without notice up to ten Members may ask Ministers an oral question relating to a constituency matter.
- The time limit for each Member asking a constituency question is one minute.
- Answers to constituency questions must be given to the Clerk in writing within 30 days of the question being asked.
- A copy of the answer will be given to the Member who asked the question, and all answers will be incorporated in *Hansard*.

On several occasions during Constituency Questions, certain Members asked broad questions which did not directly relate to their electorate. The President reminded Members that Constituency Questions need to relate directly to a Member's constituency and not a matter of broader policy. On some occasions the President has ruled the Constituency Question out of order on these grounds.

On one occasion a Member raised a matter about the accuracy of an answer to a constituency question, stating that the response was not apposite to the question and was potentially misleading. The President ruled that he cannot correct Ministers' answers or direct them how to respond, nor does he have the power to refer a Constituency Question back to a Minister for a further response.

There have also been several occasions when the number of Constituency Questions asked each day has exceeded the limit of 10, by leave of the House.

Time for commencement of questions without notice

The Victorian Legislative Council and Legislative Assembly have different times allocated for questions without notice. The Council's Question Time commences at 2.00 p.m. on a Tuesday and 12.00 p.m. on Wednesdays and Thursdays. In the Assembly, Question Time is 12.00 p.m. on Tuesdays and 11.00 a.m. on Wednesdays and Thursdays. This scheduling allows the public, media and others to observe Question Time in both Houses.

2. Notices of Motion

Council Standing Order 6.01 deals with Notices of Motion as follows:

1. Notices of motion may be given in formal business after the presentation of papers. No notice of motion will, without leave of the Council, be received after the Council has proceeded to the Orders of the Day.
2. Every Member giving notice of a motion will read it aloud and deliver to the Table a copy of such notice signed by him or her or on his or her behalf, and stating the day proposed for moving such motion.
3. A Member may not give two notices of motion consecutively if any other Member has any notice to submit.
4. A Member, with the consent of another Member who is not present, may give notice for that Member by putting the name of such Member on the notice of motion.
5. A notice of motion will be printed on the Notice Paper. Any notice of motion or part of a notice of motion which, in the opinion of the President, contains material not in conformity with the Standing Orders may be omitted from the Notice Paper by order of the President.

Standing Orders stipulate that a notice of motion, other than for the consideration of a Bill, will be discharged from the Notice Paper after it had been listed for 20 consecutive sitting days. This did not apply to business standing in the name of a Minister.

Content of motions

The rules governing the content of substantive motions have developed through the practice of the House and are not found in the Standing Orders. A motion may be moved on virtually any matter and is not restricted to Victorian Government administration. Allegations against Members may only be made by substantive motion. A notice of motion should present a concise and succinct proposition and allow a decision to be made by the House.

In general, notices of motion should not contain —

- matters which are irrelevant to each other;
- unparliamentary or offensive language;
- matters which are *sub judice*;
- matters which offend against the same question rule; or
- unnecessary and excessive quotations and extraneous material.

As recently as late last year, the President raised concern at a particular notice of motion that made an allegation towards a Minister. The President was concerned that such a notice would sit on the Notice Paper for up to 20 days without being debated. This particular notice was subsequently withdrawn by the Member.

Length of motions

Presidents' rulings require that motions be direct and succinct and not contain unnecessary opinion and debate. Whilst not stated in Standing Orders, the Council follows the practice of the House of Commons that motions should not normally exceed 250 words. A more lenient view is taken if the notice includes a terms of reference for a committee, which often require more than 250 words.

Power of President to alter motions

Members are encouraged to provide a copy of their notice to the Clerks prior to the commencement of the sitting day, so that it can be checked to ensure the notice conforms with the Standing Orders and is in the appropriate form. This avoids potential issues later if the motion is not in order. Once given, all notices are reviewed by the Clerks before they are published in the Notice Paper.

Under Standing Order 6.01(5), any notice of motion or part of a notice of motion which, in the opinion of the President, contains material not in conformity with the Standing Orders may be omitted from the Notice Paper by order of the President. In practice, the Clerks will liaise with the Member and suggest they alter a motion if it contains offensive language or extraneous information. In the event that a Member is unwilling to make suggested changes, the President will make a final determination.

Alteration of notices

Under Standing Order 6.04, after a notice of motion has been given, the motion may be altered by the Member by delivering to the Clerk an amended notice at least one day prior to the day for moving such motion. The alterations have to be sufficiently minor, so as not to change the motion's main intention. If a significantly different notice is to be given, the Member must withdraw the existing notice and give notice of the new motion. The President has previously ruled that when an amendment to a notice of motion results in a change to the substance, and not mere wording, of the motion, it would be preferable if the Member making the change notified party leaders in order that no Members were taken by surprise. Notices altered pursuant to Standing Order 6.04 are published in the amended form on the following day's Notice Paper, with the change signalled by a footnote.

Withdrawal of notices

A Member who has given notice of a motion may withdraw the notice by advising the Clerk in writing. They can do so at any stage after the notice is given and before the motion is moved. Once written advice is received, the notice is removed from the next Notice Paper.

There have been instances where a Member has withdrawn a notice on the same day as giving the notice. In such cases, the Member must advise the Clerk in writing and the notice is not published on the Notice Paper. The President, however, may intervene if the Member has deliberately abused the process by giving and then withdrawing a notice.

Order in which motions are considered

Under Standing Orders, Notices of Motion take precedence over Orders of the Day. Notices are called in the order in which they appear on the Notice Paper. The order in which General Business and Government Business appears on the Notice Paper is adjusted each day in accordance with the business that is given priority in the Standing Orders. If any motions have been given precedence by resolution of the House, these are listed first on the Notice Paper.

3. Matters of importance to be placed on public record

I understand your Procedure Committee is also interested to examine mechanisms that enable members to have matters which they believe to be of importance to them to be placed on the parliamentary record. The Legislative Council Standing Orders has various such mechanisms.

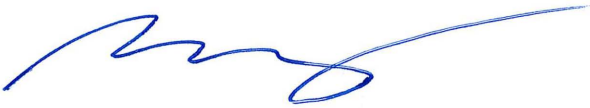
Standing Order 5.13 (Statements by members) provides up to 15 Members each day to make a statement on any topic of concern. Each Member will be entitled to make only one such statement in each sitting week. A Member may assign his or her single entitlement to another Member provided that no individual Member may be called more than once each day. Members from a party will no longer be called if in so doing a single party would have in excess of 50 per cent of all the potential statements for that week. The statements are not subject to debate or a question.

Further, under Standing Order 12.14, when there is no question before the Chair and with the consent of the President, a Member may explain how he or she has been misrepresented or explain another matter of a personal nature. A personal explanation will not be debated

Standing Orders also provide for a procedure whereby a Member can, without leave, move a motion of urgent public importance. The procedure is set out in Standing Orders 6.09 and 6.10 and replaced what were formerly called urgency motions. Such motions are rare.

I trust the above information will be of assistance to your Procedure Committee's deliberations. Please do not hesitate to contact me if you require further information on these matters.

Yours sincerely



Andrew Young
Clerk of the Legislative Council