

INQUIRY INTO RULES FOR NOTICES OF MOTIONS

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Rules for notices

The Legislative Council is seeking to vary the rules applying to notice of motion.

For the most part, the proposed rules reflect elements of the Senate's rules on the same matter. In particular, proposed paragraphs (a), (b), (c) and (f) reflect existing Senate practice.

The Senate has no equivalent to proposed paragraph (d), which proposes a 250 word limit in relation to non-technical motions. The Senate instead relies on the rules contained in standing order 76, particularly paragraphs (7) and (8):

- (7) A notice shall consist of a clear and succinct proposed resolution or order of the Senate relating to matters within the competence of the Senate, and shall not contain statements, quotations or other matter not strictly necessary to make the proposed resolution or order intelligible.
- (8) The President may delete extraneous matter from notices and may require a senator giving a notice contrary to the standing orders to reframe the notice.

These provisions are, effectively, the same as those in paragraphs (c) and (f) of the proposed Council order. They provide useful methods of restraining the length and variety of notices that may be given, but it is rare for the President to formally use the power to delete material or rule notices out of order. Instead, informal discussions between clerical staff and senators tend to suffice to ensure notices remain within the rules.

It is to be doubted that the Senate would agree to an arbitrary word limit on notices, as proposed in paragraph (d); nor an arbitrary quota of notices, as proposed in paragraph (e).

The Senate has from time to time dealt with concerns about the length and number of notices, however, and has adjusted its practices accordingly. The [Annotated Standing Orders of the Australian Senate](#) describes the problem as involving "the proliferation of lengthy notices of motion on policy matters, particularly on broadcast days [which] led to concerns being expressed about the length of time being taken by senators to give notices at the expense of other business". The entry on standing order 76 charts the development of the current approach, which is that senators for the most part simply lodge their notices, signed and in writing, with the Clerk for circulation to senators and entry onto the Notice Paper. Typically motions are not read when moved – they are identified by business type and number and a brief description of the topic – so very little time is spent reading out the terms of notices or motions.

The entry in the annotated standing orders identifies several Procedure Committee reports dealing with these matters, which may be of interest to the Council. The entry concludes by noting:

From a practical point of view, the Senate has adapted to the fact that most notices of motion are now not given orally and are therefore not heard. Party leaders, whips and independent senators are provided with unedited copies of all

notices of motion given on any day in order to prepare for the next day's sitting. Notices edited in accordance with paragraphs (7) and (8) are published in the Notice Paper for the next sitting day.

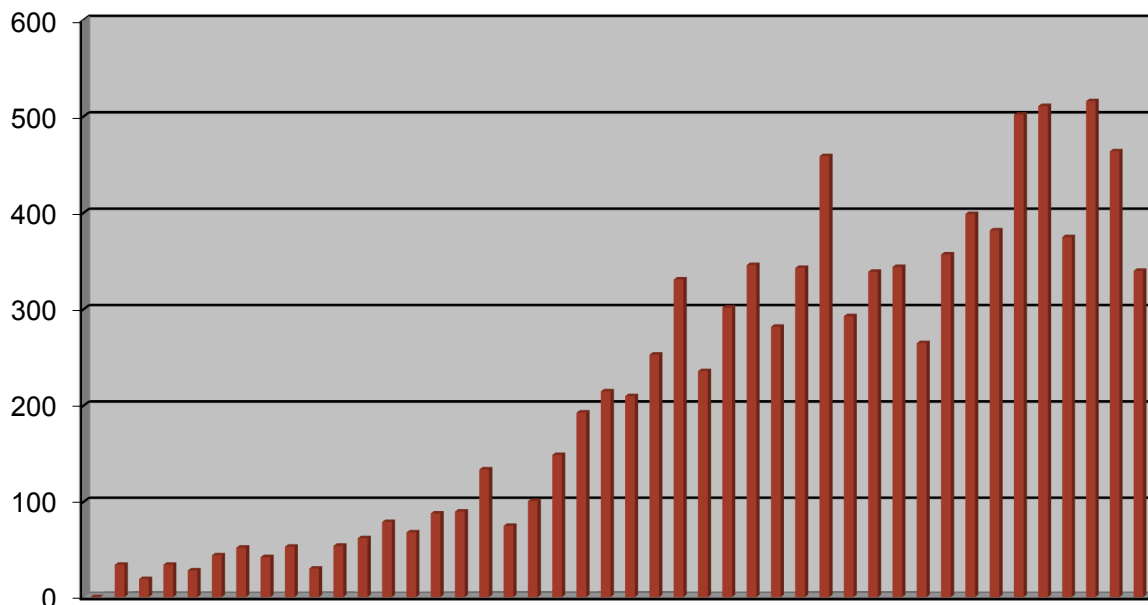
Formal motions

The main vehicle for dealing with such notices is through the Senate's 'formal business' procedure. The Senate standing orders have always provided a process for 'fast-tracking' business by allowing a vote to be taken on motions or which notice has been given, without amendment or debate, provided no senator objects to that course of action. That process has become increasingly useful over the years as the amount of business available for debate has expanded to exceed the available time. It is used for routine or generally agreed motions, and well as for more controversial motions. The Senate's routine of business for the Senate prescribes particular times for different categories of debate, so the formal business process provides the only routine opportunity for many motions to be considered.

Practices

Although the orders which provide for 'the discovery of formal business' have not changed over many years, the practices of the Senate have. For many years senators were content to put their own views on matters of political or general interest on the public record by giving notice of a motion with no intention of putting every such motion to a vote. These days senators invariably seek to put such motions to the vote. On occasion, the Senate will deal with more than 20 such motions in a day. The chart, below, demonstrates the use of the formal business procedure.

Requests for formality, 1973 to 2016



The rules about formal business being dealt with "without amendment or debate" are avoided to a degree by the practice of seeking leave to move such motions, or to make "short statements". Various practices have built up around such statements – generally only

one statement may be made by senators from a particular party, they are generally restricted to one minute, and they are not supposed to amount to debate. The Senate Procedure Committee has considered the formal business process on several occasions, most recently in its [Second report of 2011](#) in which it reminded senators of the intended operation of the procedure:

Procedures for dealing with formal motions

The committee has considered the operation of standing order 66 on numerous occasions. Standing order 66(3) provides that a formal motion shall be put and determined without amendment or debate. Current difficulties are largely attributable to senators seeking leave to depart from these rules and the Senate granting leave, almost as a matter of course. In particular, the number of statements being made by leave in relation to complex motions leads to a *de facto* debate on those motions, contrary to standing order 66. This is because senators, instead of making statements, assert views in the nature of debate by mounting arguments and responding to positions expressed by others.

While the committee recommends no changes to standing order 66, noting its value as a daily opportunity for motions from all sources and of all types to be put to the vote, it urges senators to pay more heed to the existing restrictions. For example, if a senator wishes to amend a notice of motion, then generally, as a courtesy to the Senate, that notice should be postponed till the next day of sitting to enable the senator to use the procedures under standing order 77 to amend the notice in writing and for the notice to appear in its amended form in the next day's *Notice Paper*. Secondly, the committee encourages parties to use internal means to limit the number of senators seeking leave to make statements on motions to one from each group (Government, Opposition, Australian Greens).

These principles and courtesies are occasionally brought to senators' attention. Although current practice may not strictly comply with the intended operation of the procedure there has been little interest in revising arrangements, suggesting that it suits senators' requirements well.

Motions declared not formal

The biggest challenge to constraining the time taken to deal with these kinds of motions comes when there is an objection to using the 'fast-track' procedure. Where any senator objects to a motion being dealt with as formal, it cannot proceed on that basis. Sometimes objection is taken because of the political character of the question, or because it deals with complex or sensitive matters which, in the opinion of one or more senators, ought not be dealt with by way of a simple vote without debate. An objection is sometimes followed by a proposal from the owner of the notice to suspend standing orders so it may be debated. This guarantees a 30 minute procedural debate on the need to deal with the motion, and occasionally a longer debate on its substance, and effectively giving those matters precedence over other business in the meantime. In its [first report of 2004](#), the Procedure Committee dealt with the concern that the opportunity to move and debate a suspension motion in these circumstances virtually forced senators to accept requests for formality, because of the time that might otherwise be lost. A discussion paper attached to the report

considered some solutions, including limiting or removing debate on such suspension motions, or requiring a higher threshold for refusal of formality, however none of those options have been pursued.

Again, the lack of any impetus for changes to these procedures suggest they suit the current requirements of senators.