



9 MOTIONS

9.1 Motions are a fundamental form of parliamentary activity. They are, in a sense, the building blocks upon which the legislature conducts its business. In undertaking its key functions, the Assembly must consider propositions put to it and reach decisions on those propositions, not by consensus, but by way of the agreement of the majority of Members present and voting.

9.2 Within the framework of its standing orders, almost every matter requiring a decision of the Assembly is determined by a motion being moved, the Chair proposing the question (for instance, 'That the motion be agreed to' or 'That the bill be agreed to in principle'), the question being put and the Assembly determining the matter on the voices or by a vote¹ and the will of the Assembly being expressed by way of a resolution or order.

9.3 With certain exceptions, consideration of motions dominates the proceedings of the Assembly.² It is by way of motion and resolution that the Assembly conducts its business and reaches its decisions, whether it is expressing an opinion on a matter, making an order in relation to its own procedures, ordering that a document be presented or that a committee consider a matter. The Assembly's consideration of legislation, for instance, is composed of its consideration of a series of motions (albeit with certain key questions being set by the standing orders rather than moved on the floor). A question is proposed and put on whether the bill be agreed to in principle and, should that question be agreed to, each of its component parts are made the subject matter of a resolution or a decision in turn with the final decision being made on the question that the bill (or the bill as amended) be agreed to.³

9.4 In certain limited circumstances, the standing orders make provision for the Chair to propose or put a question without a motion having been moved.⁴ The determination of committee membership where there are more nominations than places available (standing order 222) is not initiated by motion (and is determined by ballot rather than by a vote).⁵ On occasions, especially when making a decision regarding the order of its business or the application of a particular procedural rule or standing order (eg, the relaxation of the relevancy rule to facilitate a cognate debate), the Assembly will proceed by way of leave (unanimous consent, see standing order 82), with the Chair ascertaining whether it is the wish of the Assembly that a certain course be followed.

1 Or by ballot if so ordered (standing order 265).

2 Exceptions are the very important activity of questions (on notice and without notice), statements and the matters of public importance procedure. Though the Assembly may and does order that papers be presented (initiated by motion), the majority of papers are presented pursuant to stipulations the Assembly has inserted in the laws of the Territory. And see footnote 4 below.

3 See *Redlich*, Vol II, p. 215.

4 As referred to above, in consideration of the components of bills at the detail stage and the final question on agreement on a bill the standing orders set down key questions to be proposed and put by the Chair. In a similar vein, standing orders make limited provision for the Speaker to propose or put forthwith a question without a motion being moved following (a) the Assembly resolving that a debate be adjourned (the question to fix the time for the resumption of the debate—standing order 65), (b) a declaration of urgency (standing order 192), (c) the naming of a Member (standing order 203) and (d) at 6 pm on each sitting day (the 'automatic adjournment'—standing order 34). In one instance the standing orders even provide for an 'automatic' order of the Assembly authorising the publication of a committee report upon its presentation to the Assembly (standing orders 212 and 212A).

5 In the election of Speaker, Deputy Speaker and Chief Minister (and Leader of the Opposition), Members vote by delivering to the Clerk a ballot paper in writing containing the name of the candidate for whom the Member votes.

9.5 *House of Representatives Practice* defines a motion as, in its widest sense: ... any proposal made for the purpose of eliciting a decision of the House. It may take the form of a proposal made to the House by a Member that the House do something, order something to be done or express an opinion with regard to some matter.⁶

9.6 Not all motions lead to a decision of the Assembly. Motions are often defeated, not receiving the support of the majority of Members voting or of a special majority if so required by the standing orders. In addition, and as will be set out below, a motion not called upon is removed from the *Notice Paper* after eight weeks and a motion may be otherwise dropped, withdrawn, deferred, or superseded (usually by way of amendment).

9.7 The House of Representatives divides motions into two classes—substantive motions and subsidiary motions. The former are described as ‘self-contained proposals drafted in a form capable of expressing a decision or opinion of the House’ whereas subsidiary orders are described as ‘largely procedural in character’ relating directly to the conduct of business in the House or arising in the course of it.⁷ Generally, though not definitively, substantive motions require notice to be given while subsidiary motions do not. The Legislative Assembly acknowledges this division⁸ and, to a certain extent at least, the practice of the Assembly is based upon it.⁹

9.8 This chapter will examine the general procedure for dealing with motions in the Assembly, the procedures for giving notice, the rules regarding their subject matter, their progress in the Assembly, the determination of the question on motions, the procedure on amendments, and orders and resolutions of the Assembly.

REQUIREMENT FOR NOTICE TO BE PROVIDED

9.9 Generally, motions that put before the Assembly any question of substance (substantive motions) require notice of at least one sitting day. Standing order 123 stipulates that a Member may not, except by leave of the Assembly or as otherwise provided for by the standing orders, move any motion except pursuant to notice appearing on the *Notice Paper*. The importance of the requirement for notice to be provided is not to be underestimated. It allows Members to prepare for the consideration of important issues, permits time for community scrutiny and input (the *Notice Paper* is published widely), and protects against ambush, the misuse of a majority on the floor of the Assembly and matters being considered in haste. Generally, the minimum period of notice required is one sitting day, though more would be expected for many matters and in certain circumstances a longer period is required. To be effective a motion of no confidence in a Chief Minister requires at least one week’s notice;¹⁰ a motion to rescind a resolution or a vote of the Assembly ordinarily requires at least three days notice;¹¹ and the Assembly itself has imposed extraordinary restrictions on the manner in which a Member may raise a matter that relates, or may relate, to the behaviour or physical or mental capacity of a judicial officer.¹²

6 *House of Representatives Practice*, p. 285.

7 *House of Representatives Practice*, p. 285.

8 See standing orders 48 and 117(d).

9 A Member being only permitted to make a charge against another Member or reflect upon his or her character or conduct upon a substantive motion which admits of a distinct vote of the Assembly.

10 Self-Government Act, subsection 19(b) and standing order 81.

11 If moved within the same calendar year: Standing order 137.

12 See paragraphs 1.61 to 1.64.

9.10 Notice, however, is not required to be given for all motions. The Assembly can waive the requirement for notice by granting a Member leave to move a motion (though in the United Kingdom House of Commons the sanction of the Chair is also necessary).¹³ As the Assembly could not proceed in the day-to-day consideration of its business without some degree of procedural flexibility, standing orders provide that the following motions may be moved without notice:

- a motion to grant a Member or Members leave of absence from the Assembly;¹⁴
- a motion for the adjournment of the Assembly (which may only be moved by a Minister)¹⁵ and a motion moved to fix the next meeting of the Assembly (when moved by a Minister);¹⁶
- a motion for the adjournment of a debate;¹⁷
- the closure motion;¹⁸
- motions to call upon executive business during consideration of Assembly business or private Members' business;
- a motion to extend the time allotted to Assembly business;¹⁹
- a motion to refer a petition to a committee;²⁰
- a motion to take note of an explanation by a Minister concerning an unanswered question;²¹
- a motion to postpone consideration of a notice of motion moved by the Member who gave the notice;²²
- a motion to postpone an order of the day or (when moved by the Member in charge thereof when an order of the day is reached) a motion to discharge an order of the day;²³
- a motion to refer a bill to a standing or select committee;²⁴
- motions to postpone clauses and (at the conclusion of the detail stage) a motion to reconsider a bill in whole or in part;²⁵
- a motion for the allotment of time for an urgent bill (should the Assembly agree to the declaration of a bill as an urgent bill);²⁶
- a motion to fix the time for consideration of amendments to a bill recommended by the Governor-General or a motion to postpone their consideration;²⁷
- a motion ordering the presentation of a document quoted from (if moved immediately upon the conclusion of the relevant speech);²⁸
- (on any paper being presented to the Assembly) a motion moved by a Minister to take note of the paper or to refer the paper to a committee for inquiry and report;²⁹

13 See *May*, p. 331.

14 Standing order 22.

15 Standing order 35.

16 Standing order 36.

17 Standing order 65.

18 Standing order 70.

19 Standing orders 77 (d) and 77 (e).

20 Standing order 99.

21 Standing order 118A(b).

22 Standing order 124.

23 Standing orders 150 and 152.

24 Standing order 174.

25 Standing orders 185 and 187.

26 Standing order 192.

27 Standing orders 196 and 197.

28 Standing order 213.

29 Standing order 214.

- a motion by a Minister to appoint Members of a committee pursuant to standing order 222;
- a motion moved pursuant to standing order 254 by the chair of a committee (or in his or her absence, the deputy chair) upon the presentation of a report of a committee to the Assembly;
- in a case of necessity, a motion to suspend standing orders;³⁰ and
- should the Speaker inform the Assembly that a matter of privilege (or contempt) merited precedence, a motion to refer the matter to a select committee.³¹

9.11 In addition, money proposals may be submitted by a Minister without notice³² and standing order 126 provides that, as a courtesy, the Assembly will ordinarily grant precedence to a motion moved without notice for a vote of condolence or thanks of the Assembly.

9.12 For obvious reasons, the practice of the Assembly is that the Chair will accept a motion without notice to divide a question moved pursuant to standing order 133. There may be other occasions when, though the standing orders do not provide a specific exemption from the requirement for notice, depending on the circumstances the Chair may wish to ascertain whether it was the wish of the Assembly to proceed forthwith to the resolution of a matter and, should there be no dissentient voice, allow that course to proceed. Such occasions would include resolving a question concerning the application of standing order 156 (conflict of interest); determining the terms of a message to be sent to the Governor-General after consideration of amendments recommended by the Governor-General;³³ the resolution of a course of action arising out of a witness's objection to a question;³⁴ and deciding whether a ballot should be taken and the manner of so taking.³⁵ Other occasions could be for a motion that a petition not be received or for a motion arising out of a matter of privilege, motions in respect of the privileges and immunities of the Assembly, or motions arising out of matters of order.

GIVING NOTICE

9.13 A Member gives notice of a motion by delivering a copy of its terms to the Clerk in the Chamber during a sitting. The notice must be signed by the Member.³⁶ There is no provision in Assembly standing orders for a notice to be given orally though this has occurred with the leave of the Assembly.³⁷

9.14 Should a Member be absent, another Member may give a notice of motion for him or her at his or her request. The Member giving the notice must put the name of the absent Member on the notice and must also sign the notice.³⁸

9.15 The terms of standing order 101 preclude a notice being lodged whilst the Assembly is not sitting and a Member who has been suspended from the service of the Assembly is specifically precluded from lodging notices during the period of suspension.³⁹

30 Standing order 272.

31 Standing order 276(e).

32 Standing order 200.

33 Standing order 199.

34 Or other matter arising, standing order 263.

35 Standing orders 265 and 267.

36 Standing order 101. The requirement that the notice should indicate the day proposed for moving the motion was dropped from standing order 101 in the amendments of March 2008.

37 MoP 1992-94/254. The motion was a motion of censure of a Minister.

38 Standing order 104.

39 Standing order 206.

9.16 For a motion of no confidence in the Chief Minister given in accordance with standing order 81 to be effective, at least one week's notice must be given.⁴⁰ The notice of such a motion must be reported to the Assembly by the Clerk at the first convenient opportunity and the Clerk may not enter the notice on the *Notice Paper* until it is so reported.⁴¹

9.17 A motion for the purpose of rescinding a resolution or other vote of the Assembly during the same calendar year requires three days notice if it is to be moved in the same calendar year⁴² and the *Judicial Commissions Act 1994* contains particular procedures for the lodgement of notices of motion that relate to the behaviour or physical or mental capacity of judicial officers.⁴³

9.18 Standing order 108 prohibits the giving of a contingent notice of motion.

ENTRY OF NOTICE ON THE *NOTICE PAPER*

9.19 As a general rule, notices are listed on the *Notice Paper* ahead of orders of the day and in the order in which they are provided to the Clerk.⁴⁴ However, the standing orders contain two significant provisos which, in fact, determine the order in which notices (and orders of the day) are listed on the *Notice Paper*. These are:

- the determination of the days and times precedence is allocated to the three categories of business (executive, private Members' and Assembly business) as set by standing order 77; and
- the responsibility for arranging the order of both Assembly and private Members' business lies with the Standing Committee on Administration and Procedure and standing order 78 gives the Manager of Government Business the option of arranging the order of executive business.

The orders so determined, subject to any specific order of the Assembly and the provisos referred to in paragraphs 9.16 and 9.17, are those that appear on the *Notice Paper* (see paragraph 8.35).

9.20 A notice of motion becomes effective only when it appears on the *Notice Paper*.⁴⁵

RULES REGARDING CONTENT OF NOTICES

9.21 Standing order 107 places upon the Speaker an obligation to amend the content of a notice of motion that is too long, contains unbecoming expressions or offends against any standing order.

9.22 Notices of motions have been ruled out of order and withdrawn from the *Notice Paper* because they infringed standing order 130 (the anticipation rule). For example, in 2000 a notice was ruled out of order because it anticipated debate on an order of the day for the resumption of debate on a bill.⁴⁶ In 2003 another was disallowed for anticipating debate

40 Self-Government Act, subsection 19(b) and standing order 81.

41 Standing order 103. See also Chapter 6: Executive.

42 Standing order 137. The standing order also provides that one day's notice is sufficient to correct irregularities or mistakes or the corrections may be made at once by leave of the Assembly.

43 See paragraphs 1.61 to 1.64.

44 Standing order 125.

45 Standing order 112.

46 MoP 1998-2001/11 | 19 Assembly Debates (6.12.2000) 3721.

on an order of the day for the consideration of a report of an Assembly committee which was scheduled for debate the following day.⁴⁷ The Speaker has also directed that a notice be removed from the *Notice Paper* because it infringed the same question rule (standing order 136).⁴⁸

9.23 The Assembly has taken the unusual step of ordering that a notice relating to the conduct of a senior public servant be removed from the *Notice Paper* and it prohibited the placement on the *Notice Paper* of a notice relating to the allegations contained therein for the remainder of that year.⁴⁹ The Speaker has also directed that a notice containing inappropriate material be removed from the *Notice Paper*.⁵⁰

9.24 The provisions of standing order 276 would preclude a Member raising a matter of privilege by way of a notice of motion, but would not necessarily preclude a Member from lodging a notice of motion on a matter if the Speaker was of the opinion that the matter did not merit precedence.⁵¹

9.25 The Speaker may also direct that a notice that offended against the sub judice convention be amended or removed and, as referred to above, the provisions incorporated by the Assembly in the Judicial Commissions Act contain particular restrictions on Members wishing to raise matters in the Assembly relating to the behaviour or capacity of judicial officers.

9.26 Should the Speaker amend an unbecoming notice, the Member who lodged the notice must be notified of the revision.⁵² It would be expected that the same provision would apply should the Speaker prevent the inclusion of a notice that offended against the standing orders or practice of the Assembly. The Speaker has advised the Assembly when he or she has ordered the withdrawal of a notice from the *Notice Paper*.⁵³

NOTICE DIVIDED

9.27 Should a notice of motion contain matters that are not relevant to each other, the Speaker may instruct the Clerk to divide the notice into two or more notices. The Member who lodged the notice must be notified of the revision.⁵⁴

TERMS OF NOTICE ALTERED BY MEMBER

9.28 A Member may alter the terms of a notice he or she has given by notifying the Clerk in writing within time for the alteration to be made on the *Notice Paper*.⁵⁵ The amended notice may not exceed the scope of the original notice, nor may it otherwise offend against the standing orders or practices of the Assembly. The fact that a notice has been amended is indicated on the *Notice Paper* together with the date the amendment was made.⁵⁶

⁴⁷ MoP 2001-04/853; Assembly Debates (20.8.2003) 2881.

⁴⁸ MoP 1989-91/666; Assembly Debates (11.12.1991) 5886; A motion that has been withdrawn by leave of the Assembly may be moved again (standing order 131) as the matter would not have been resolved either in the negative or in the affirmative.

⁴⁹ MoP 1992-94/344-5; Assembly Debates (13.5.1993) 1463-4.

⁵⁰ The Speaker having made an explanation concerning the issues raised, (the terms of the motion were critical of the Speaker's conduct and did not relate to his responsibilities as a Member). MoP 1989-91/293; Assembly Debates (12.9.1990) 3092-4.

⁵¹ Or, for that matter, if the Speaker was of the opinion that the matter merited precedence and the Member did not at that stage wish to move a motion referring the matter to a select committee.

⁵² Standing order 107.

⁵³ See paragraph 9.22.

⁵⁴ Standing order 106.

⁵⁵ Standing order 110.

⁵⁶ NP (31.5.2007) 1711.

9.29 It is not unusual in the Assembly for Members to be granted leave to amend notices of motion immediately prior to moving the motion.⁵⁷

CONSIDERATION POSTPONED OR MOTION WITHDRAWN

9.30 Consideration of a motion may be postponed before it is moved and motions may also be removed or withdrawn from the *Notice Paper*.

9.31 Postponement of consideration may occur when:

- the Member who gave notice of the motion moves to postpone it and the Assembly so orders;⁵⁸
- a Member is absent from the Chamber when his or her notice is called upon, and another Member, at the request of the proposer, fixes a future time for moving the motion (otherwise the motion must be withdrawn from the *Notice Paper*);⁵⁹ and
- a Member fails to move his or her notice when it is called upon, he or she may fix a future time for moving the motion (otherwise the motion must be withdrawn from the *Notice Paper*).⁶⁰

The provision whereby a Member may fix a future day for moving a motion by notifying the Clerk in writing was removed from the standing orders in March 2008.

9.32 Motions are removed or withdrawn from the *Notice Paper* when:

- a Member, who has given notice of a motion, withdraws the notice by notifying the Clerk in writing at any time prior to that proposed for moving the motion;⁶¹
- the Clerk, after notifying the Member who gave notice, removes from the *Notice Paper* a notice which has not been called upon for eight sitting weeks;⁶²
- a Member is absent from the Chamber when his or her notice is called upon and no other Member, at his or her request, fixes a future time for moving the motion;⁶³ and
- a Member fails to move his or her notice when it is called upon and he or she does not fix a future time for moving the motion.⁶⁴

PROGRESS IN THE ASSEMBLY

9.33 There is a particular logic in the rules that apply to the Assembly's consideration of motions: a Member moves a motion, the Speaker proposes the question on the motion and, at the conclusion of the debate, the Speaker puts the question and elicits the will of the Assembly. The process can be more complicated, however, and prior to examining the detail of the progress of a motion it is worth considering the distinction between the Speaker 'proposing' the question and 'putting' the question.

9.34 There are two stages where the Speaker lays the question before the Assembly. By way of explanation and taking as an example a motion which undergoes no change (and

57 MoP 2001-04/1012; MoP 2004-08/116, 229.

58 Standing order 124. MoP 2001-04/168 (consideration was postponed until after consideration of a specified item of business).

59 Standing order 127. MoP 1995-97/235; MoP 1998-2001/793; Assembly Debates (29.3.2000) 1003. And see paragraph 8.39.

60 Standing order 128. MoP 1995-97/613; Assembly Debates (27.2.1997) 610. MoP 1998-2001/676. MoP 2001-04/337.

61 Standing order 111. MoP 2001-04/142; Assembly Debates (9.5.2002) 1393.

62 Standing order 125A.

63 Standing order 127. MoP 2001-04/113. And see paragraph 10.31.

64 Standing order 128. MoP 1992-94/342; Assembly Debates (13.5.93) 1406-7. And see MoP 1992-94/789; Assembly Debates (30.11.1994) 4315. MoP 1998-2001/621; Assembly Debates (25.11.1999) 3682. MoP 1998-2001/767.

its consideration is not interrupted), it is first 'proposed' by the Speaker and debate may then ensue. The Speaker may propose the question a number of times during the course of the debate when each Member concludes his or her speech and the debate will conclude when no Member rises to speak (or the mover has spoken in reply, the time allotted to a debate expires or when a closure motion is proposed and carried). The Speaker then finally lays the question before the Assembly by 'putting' the question—stating that 'The question is that ...' (stating the exact words of the motion) or 'The question is that the motion standing in Ms X's name be agreed to'. The Assembly makes its decision known, either by the voices or by a vote.⁶⁵

Motion moved and question proposed

9.35 Motions have precedence over each other according to the order in which they are listed on the *Notice Paper*⁶⁶ although, as outlined above, standing orders make provision for certain motions to be moved without notice and for motions to be moved with the leave of the Assembly.

9.36 Once a notice is called upon by the Clerk, or the Speaker calls upon a Member to move his or her motion,⁶⁷ the practice is for the Member to then move the motion by proposing its terms or by stating that he or she moves the motion standing in his or her name on the *Notice Paper* or 'in the terms as circulated in the Chamber'. The practice now is that the Member speaks to the motion after the question is proposed from the Chair.⁶⁸ A Minister may move a motion on behalf of another Minister who is absent from the Chamber.⁶⁹

9.37 Immediately after the Member has moved his or her motion (there is no provision for motions to be seconded in the Assembly),⁷⁰ the Speaker must 'propose' the question on the motion to the Assembly for the purpose of eliciting the will of the Assembly.⁷¹ The Speaker does so by either proposing the full terms of the motion (especially if the motion does not appear on the *Notice Paper* or the terms have not been circulated in the Chamber) or by proposing 'That the motion be agreed to' or 'That Ms X's motion be agreed to.' Once the question has been proposed by the Speaker, the motion is in possession of the Assembly. It is no longer the property of the mover and cannot be withdrawn without the leave (unanimous consent) of the Assembly.⁷² The mover then speaks to the motion, unless the motion is one that must be moved 'without argument or opinion offered'.⁷³

9.38 Debate may then ensue, though certain motions are not open to debate.⁷⁴ If the terms of the question under consideration have not been circulated, during the course of the debate any Member may require the question on the matter under discussion to be read by the Speaker, but not so as to interrupt a Member speaking.⁷⁵ In the normal course of events, at the conclusion of the debate the Speaker will 'put' the question and the will of the Assembly will be determined (and the motion disposed of).

⁶⁵ See paragraph 9.54. And see *Redlich*, Vol II, pp. 221-2.

⁶⁶ Standing order 124. See paragraph 9.18.

⁶⁷ Should the motion not require notice or it is moved by leave of the Assembly.

⁶⁸ In the past, where a motion appeared on the *Notice Paper* or its terms had been circulated in the Chamber (and it was open to debate) Members were occasionally permitted to speak before actually moving the motion, but he or she was required to move the motion at the conclusion of his or her speech. This is not current practice.

⁶⁹ Standing order 80.

⁷⁰ Though by custom, condolence motions are sometimes seconded.

⁷¹ Standing order 129.

⁷² Standing order 129.

⁷³ Standing order 63.

⁷⁴ See paragraphs 11.14 to 11.17.

⁷⁵ Standing order 60.

9.39 Should proceedings be interrupted before the Speaker proposes the question (and before the motion is in the possession of the Assembly) by the Assembly adjourning in accordance with the 'automatic adjournment' at 6 pm, standing order 34(d) makes provision for 'any business under discussion and not disposed of' to be set down on the *Notice Paper* for the next sitting. Things are more problematical, however, should proceedings be interrupted by (a) the failure to obtain a quorum, (b) the 2 pm interruption of business or (c) the expiration of the time allotted to private Members business or Assembly business. In each of these circumstances the relevant standing orders⁷⁶ make provision for the Speaker to fix the time for 'the resumption of the debate' on any business under discussion. As there is no debate (the question not being in the possession of the Assembly), the proceedings would be dropped from the *Notice Paper* unless the Speaker were to seek the guidance of the Assembly in the matter. Should the Speaker be required to adjourn the Assembly in the case of grave disorder,⁷⁷ the proceedings would also be dropped.

9.40 Consideration of a motion by the Assembly may be interrupted prior to its resolution by, say, a motion to suspend the standing orders, a motion arising out of a matter of order⁷⁸ or a motion on a matter of privilege allotted precedence by the Speaker. In the normal course of events, once the intervening matter had been determined or disposed of, the Assembly would return to consideration of the original question. A motion may, however, be withdrawn, its consideration deferred or superseded or the question may even be dropped.

Motion withdrawn

9.41 As outlined above, there are procedures whereby a notice may be withdrawn by a Member (see paragraph 9.32). However, once the question has been proposed by the Speaker, a motion may not be withdrawn by a Member without the leave of the Assembly.⁷⁹

9.42 A motion may only be withdrawn by the Member who moved it (though, in the absence of a Minister, another Minister may act on his or her behalf).⁸⁰ Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment has been first disposed of by being agreed to, withdrawn, or negatived. The question on the amendment stands before the main question.⁸¹

9.43 A motion that has been withdrawn by leave of the Assembly may be moved again.⁸²

Consideration of question deferred

9.44 Consideration of a question may be deferred by the Assembly adjourning the debate and fixing a future time for its resumption. During the course of a debate a Member (apart from a Member who has spoken to the question or has the right of reply) may move 'That the debate be now adjourned.' The Speaker is required to put the question forthwith and it must be determined without amendment or debate. If the motion is agreed to, the Speaker

76 Standing orders 68 and 77(f)

77 Standing order 207.

78 See, for example, MoP 1995-97/463.

79 Standing order 129.

80 Standing order 80.

81 *House of Representatives Practice*, pp. 298-9.

82 Standing order 131.

must propose to fix the time for the resumption of the debate.⁸³ Should that question be agreed to, consideration of the question is deferred. Should it be negatived, the business would be dropped from the *Notice Paper*.

9.45 In similar fashion, consideration of a question is deferred should:

- debate on a question be interrupted at 6 pm by the 'automatic adjournment' and the question 'That the Assembly do now adjourn' is agreed to or the Speaker adjourns the Assembly at the conclusion of the time allotted for the adjournment debate;⁸⁴
- debate on a question be interrupted at 2 pm and the Speaker fixes the time for the resumption of the debate;⁸⁵ and
- the Speaker fix the next sitting Wednesday for the resumption of the debate on any business under discussion and not disposed of at the expiration of any time allotted to private Members' business and the next sitting Thursday for the resumption of the debate on any business under discussion and not disposed of at the expiration of the time allotted to Assembly business or the time Assembly business is interrupted.⁸⁶

Question superseded

9.46 A question is temporarily superseded should a Member move an amendment to the question (see paragraphs 9.70 to 9.93). Once an amendment is moved, the question proposed is 'That the amendment be agreed to' and this question temporarily supersedes consideration of the original question. Should the amendment be negatived or, by leave, be withdrawn, the original question is again proposed and, at the conclusion of the debate, put.⁸⁷ If the amendment is agreed to, the original question is superseded and the question that is then proposed is 'That the motion, as amended, be agreed to'.

Question dropped

9.47 In the event of the Speaker adjourning the Assembly should grave disorder arise, any question before the Assembly would be dropped.

9.48 A question would also be dropped from the *Notice Paper* should the Assembly, having agreed to the question 'That the debate be now adjourned', negative the question to fix the time for the resumption of the debate put in accordance with standing order 65.

Question put

9.49 At the conclusion of debate on a question (no Member rising, the mover having spoken in reply, the closure having been agreed to, or the time allotted by the standing orders having expired) the Speaker must put the question to the Assembly.

83 Standing order 65. The standing order actually stipulates that, if the question on the adjournment is decided in the affirmative, the Speaker must 'put' a question to fix a time for the resumption of the debate. In fact, the Speaker proposes the question, which is open to debate and amendment.

84 Standing order 34. Any business under discussion and not disposed of at the time of the adjournment is set down on the *Notice Paper* for the next sitting. Also, should the question be negatived the proceedings are resumed at the point at which they had been interrupted.

85 Standing order 74.

86 Standing order 77(f). Currently, private Members' business has precedence over executive business on each sitting Wednesday. This was not always the case.

87 Standing order 147. A further amendment, or further amendments, may of course intervene.

Question divided

9.50 It is not unusual for the Assembly to order that a question be divided in accordance with standing order 133.⁸⁸ Care needs to be taken by the Chair because, as with amendments, there is a need to ensure that the question, if altered, is left in an intelligible and internally consistent form.

Determination of question

9.51 Unless a special majority is required (see paragraphs 9.62 to 9.65) all questions arising at a meeting of the Assembly must be decided by a majority of the votes of the Members present and voting. The Chair has a deliberative vote only and if the votes on a question are equal the question 'shall pass in the negative'.⁸⁹

9.52 A Member who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority is precluded from voting on a question where the matter or question relates directly or indirectly to that contract (see paragraphs 4.33 and 4.43).

9.53 The vast majority of votes in the Assembly are determined on the voices. Should the opinion of the Chair be challenged when he or she determines that the 'Ayes' or 'Noes' have it, standing orders provide for a vote, or a call, of the Assembly.⁹⁰

9.54 The practice is that the Speaker puts the question by stating that 'The question is that ...' (stating the exact words of the motion) or 'The question is that the motion standing in Ms X's name be agreed to' and calls upon all Members voting in favour of the question to say 'Aye' and then calls upon all Members against the question to say 'No'. The question is resolved in the affirmative or the negative by the majority of the voices.⁹¹ The Speaker then states whether (in the Chair's opinion) the 'Ayes' or the 'Noes' have it.

9.55 Should the Chair's opinion be challenged, the question must be decided by a vote—a call of the Assembly.⁹² Any Member may challenge the Chair's opinion by requesting a call of the Assembly. He or she must do so as soon as possible⁹³ and usually does so stating the contrary case.⁹⁴

9.56 Upon the Chair's opinion being challenged and a vote being called for the following procedures apply:

88 See, for example, MoP 1995-97/433-4.

89 Self-Government Act, subsections 18(2) and 18(3).

90 It is of note that the standing orders of the Assembly draw a distinction between a question being decided on the voices and a question being decided by a vote—equating a vote with a call of the Assembly as set out in Chapter 14 of the standing orders. That distinction is not included in section 18 of the Self-Government Act.

91 Standing order 134.

92 Standing orders 135 and 153.

93 Assembly Debates (24.5.1989) 65.

94 During the course of the Second Assembly a motion proposing to amend standing order 153 to require at least two Members to call for a vote was referred to the Standing Committee on Administration and Procedures. The committee, having stated that the proposed amendment raised significant issues in relation to the rights of independent Members, recommended that standing order 153 remain in its current form but also advised that it had resolved to monitor the operation of the standing order. The report was noted (MoP 1992-94/16, 32, 52, Assembly Debates (21.5.1992) 690-2). In a later report, having monitored the operation of the standing order, the committee recommended the adoption of temporary orders to facilitate the trial of a procedure whereby (a) at least 2 members would be needed to challenge the Chair's opinion before a vote could be called and (b) should only one member call for a vote, that member's dissent be recorded in the *Minutes of Proceedings and Hansard*. The report was adopted by the Assembly and the temporary orders operated for the remainder of the Second Assembly (standing order 153—*Calling for a vote*, Report of the Standing Committee on Administration and Procedures, August 1993, MoP 1992-94/411, Assembly Debates (26.8.1993) 2729-30, and see MoP 1992-94/706).

- the Chair directs that the bells be rung and the Deputy Clerk rings the bells and turns a four minute sand glass;⁹⁵
- any Member who called for the vote (challenged the opinion of the Chair) must remain seated until after the call of the Assembly and must vote with those who, in the opinion of the Chair, were in the minority when the voices were taken;⁹⁶
- a Member is not entitled to vote unless, when the call of the Assembly is taken, he or she is in his or her allotted seat;⁹⁷
- Members must vote in accordance with their voices (either 'Aye' or 'No');⁹⁸
- should a Member wish to abstain from voting, he or she must absent themselves from the Chamber;⁹⁹
- when all Members are in their places or after the lapse of four minutes as indicated by the sand glass, the Speaker requests that the doors be locked, states the question and directs the Clerk to call the Assembly;
- on the commencement of the call of the Assembly, every Member within the seats allotted to Members must vote and the Members may not move from their places until the result is announced;¹⁰⁰
- the Clerk calls the names of the Members in alphabetical order and each Member, on being called, must vote either in favour or against the question by signifying 'Aye' or 'No' accordingly, the Member presiding having a deliberative vote only;¹⁰¹ and
- the Clerk must then present the list to the Speaker who must declare the result.¹⁰²

9.57 On the declaration of the result, should the votes be equal, the question is resolved in the negative.¹⁰³

9.58 The time for which the bells are rung is determined by a sand glass mounted adjacent to the Deputy Clerk's seat in the Chamber. Upon the Speaker directing that the bells be rung, the Deputy Clerk rings the bells and turns the sand glass. The vote may not proceed until after the lapse of four minutes as indicated by the sand glass. If it is apparent to the Speaker that all Members who can be present are in the Chamber, he or she may dispense with this requirement.¹⁰⁴

9.59 Should a point of order arise during a vote (from the stating of the question after all Members are in their places, through the call of the Assembly until the declaration of the result), it must be decided by the Speaker.¹⁰⁵

9.60 Should there be confusion or error concerning the numbers reported, the Assembly must proceed to another vote on a question where the situation cannot be otherwise corrected.¹⁰⁶

95 Standing order 158.

96 Standing order 155.

97 Standing order 157.

98 Standing order 154.

99 Standing order 157. This requirement was inserted in the standing orders in the March 2008 amendments. For the background to the change see Standing Committee on Administration and Procedure, *Review of standing orders and other orders of the Assembly—Volume 1*, Report 2, December 2007, pp. 42-3.

100 Standing order 160.

101 Standing orders 160 and 161.

102 Standing order 162. The lists are also recorded in the *Assembly Debates*.

103 Standing order 162. MoP 1989-91/299; MoP 1998-2001/1309; MoP 2001-04/1248.

104 Standing order 159.

105 Standing order 163.

106 Standing order 165.

9.61 The lists of votes must be recorded in the *Minutes of Proceedings* and, should a complaint be made to the Assembly that a vote has been inaccurately recorded, the Speaker may cause the record to be corrected.¹⁰⁷

SPECIAL MAJORITIES

9.62 The Self-Government Act makes provision for a special majority to be required to decide a question at a meeting of the Assembly. The relevant paragraphs are:

- paragraph 12(d), which provides that the person holding office as Presiding Officer (Speaker) vacate the office when an absolute majority of the Members of the Assembly vote in favour of the person's removal from office;
- subsection 18(2), which provides that the standing rules and orders may include the requirement that a special majority is required to decide a question;
- paragraph 19(c), which provides that a resolution of no confidence in a Chief Minister has no effect unless it is passed by at least the number of Members necessary to be a quorum (a quorum being formed by an absolute majority of Members);¹⁰⁸ and
- section 26, which provides for entrenching laws to include requirements for enactments (and thus the entrenching law itself) to be passed by a special majority of Members.

9.63 In the precedents to date relating to entrenchment provisions, the special majority required for relevant bills considered by the Assembly has been 'at least' a two-third majority of Members—taken to be at least 12 Members. At the necessary stage the Speaker has directed that there be a call of the Assembly prior to the question requiring a special majority being put (see paragraphs 11.121 to 11.128).

9.64 Standing orders also require special majorities:

- for a motion of no confidence in the Chief Minister to be carried (an absolute majority of Members);¹⁰⁹ and
- for a motion moved without notice to suspend the standing orders to be carried (an absolute majority of Members).¹¹⁰

9.65 An absolute majority of Members of the Assembly is taken to be nine Members of the Assembly (see paragraph 7.42). The practice of the Assembly is that when the question on a motion without notice to suspend the standing orders is carried on the voices, it is taken to have been carried by an absolute majority of Members.

BALLOTING

9.66 Though no question has been determined in the Assembly by ballot (ballots have been used for the election of officeholders¹¹¹ and for the determination of committee membership), the Assembly may not necessarily be precluded from voting by way of ballot should circumstances so determine. In fact, standing order 265 provides for a ballot to be taken whenever the Assembly thinks fit. Any procedures adopted by way of ballot may need to state explicitly that Members voted in this way.¹¹²

¹⁰⁷ Standing orders 154, 164 and 166

¹⁰⁸ Self-Government Act, subsection 18(1).

¹⁰⁹ Standing order 81.

¹¹⁰ Standing order 272.

¹¹¹ Where, though there are motions moved, no question is proposed or put.

¹¹² Subsection 18(2) of the Self-Government Act providing that questions shall be decided at a meeting of the Assembly by a majority of the Members present and voting.

9.67 Standing orders include specific provision for the election of Speaker, Deputy Speaker and Chief Minister by ballot (when two or more Members are proposed for the respective positions). They also provide for the election of a Leader of the Opposition¹¹³ and the determination of committee membership¹¹⁴ by ballot.

9.68 Before the Assembly proceeds to any ballot, the bells must be rung for four minutes, as is the case when a vote is called for.¹¹⁵

9.69 The provisions set out in standing order 267 explicitly provide for the manner of taking a ballot.

AMENDMENTS

9.70 Another key form of parliamentary proceeding is an amendment. An amendment is a subsidiary motion—a motion for fundamental or partial change in, curtailment of or addition to a motion already before the House.¹¹⁶ The procedure of moving amendments has been used prolifically in the Assembly, and it is one that is of particular importance.

9.71 As McGee states:

Many Members may be totally opposed to [a motion that is before the House]. However, other Members may have some, but not entire, sympathy with the motion. Are they then to vote for the motion in its present form as being less than perfect but better than nothing, or are they to oppose it in the hope that they can support an improved motion later? The answer is that ultimately, when the question is put to the vote, they may well have to decide between these two alternatives, but meanwhile another course is open to them – they could seek to have the motion amended.¹¹⁷

9.72 Amendments may be moved after the main question has been proposed. They may be moved by any Member who has the call and, though it is not uncommon for Members to circulate the terms of proposed amendments prior to moving them, notice is not required. In certain circumstances, especially during the consideration of legislation, the Chair may urge Members to circulate proposed amendments as soon as possible to expedite its consideration. Debate may even be adjourned to give Members a chance to consider recently circulated amendments.

9.73 Not every motion is open to amendment. For example, it is not permissible to move amendments to some motions that are set out in standing order 63 (nor may Members debate those motions). And no amendment may be moved to the question 'That the Assembly do now adjourn'.¹¹⁸ Though there is no specific prohibition in the standing orders, it would not be permitted to move an amendment to a motion to appoint Members to a committee (pursuant to standing order 222). The correct procedure is for all nominations to be notified in writing and, in the event that there are more nominations than places, the Assembly proceeds to a ballot to decide the matter.

113 Should the two largest non-government parties be of equal size—standing order 5B, MoP 1989-91/4. Note the most unusual procedures adopted by the Assembly on that occasion for the examination of the ballot papers by Members.

114 Should there be more nominations for membership of a committee than there are places on the committee—standing order 222, MoP 1989-91/307.

115 Standing order 266.

116 *Redlich*, Vol II, p. 228.

117 *McGee*, p. 215.

118 Standing orders 34 and 35.

Form of amendments

9.74 A question, having been proposed, may be amended by:

- omitting certain words only;
- omitting certain words in order to substitute other words; or
- inserting or adding words.¹¹⁹

9.75 An amendment must, for the purposes of the record, be provided in writing and be signed by the mover. In the case of an amendment to a bill, it may be proposed only if copies are immediately available for circulation to Members.¹²⁰ An amendment must be legible and, further, every amendment must be drawn up so as to leave the question, if altered in accordance therewith, in an intelligible form and not a meaningless form of words.¹²¹

Content of amendments

9.76 Though the standing orders do not contain any reference to amendments that are a direct negative, an amendment is not in order if it is confined to the mere negation of the terms of a motion. The proper mode of expressing a completely contrary opinion is by voting against a motion without seeking to amend it.¹²² As in the House of Representatives, amendments may be moved which evade an expression of opinion on the main question by entirely altering its meaning and object. This is usually effected by moving for the omission of all or most words of the question after 'That' and proposing the substitution of an alternative proposition. Most importantly, the alternative proposal must be relevant to the subject of the original question.¹²³

9.77 The most important rule relating to amendments is that they must be relevant to the question upon which they are moved.¹²⁴ An amendment, whilst it may restrict the area of relevancy in a debate, may not expand it.¹²⁵ An amendment can be used to change the details of a proposition before the House but not the proposition itself. An amendment may not expand the area of relevancy in a debate, though it may temporarily restrict it whilst the House turns its exclusive attention to a narrower amendment.¹²⁶ This rule has not been strictly adhered to in the Assembly. For example, it has been permitted to widen the scope of a motion expressing lack of confidence in a Minister over a particular issue to also express lack of confidence in a second Minister, though over the same issue.¹²⁷ As Speaker Cornwell acknowledged in his November 1996 statement following his Canberra Lakes ruling (see paragraph 9.79), in following the practice of the House of Representatives many amendments have been moved in the Assembly, and accepted as being in order, that could be claimed to be expanded negatives in that they usually sought to put alternative propositions to the Assembly.

¹¹⁹ Standing order 138.

¹²⁰ Standing order 182.

¹²¹ Assembly debates (21.11.1996) 4204. *Redlich*, Vol II, p. 229.

¹²² Assembly Debates (21.11.1996) 4205-6. *House of Representatives Practice*, p. 305.

¹²³ MoP 2001-04/980-1; Assembly Debates (22.10.2003) 3930-1, and see *House of Representatives Practice*, pp. 306-7.

¹²⁴ Standing order 140. And see *Redlich*, Vol II, p. 229.

¹²⁵ Assembly Debates (21.11.1996) 4204-5.

¹²⁶ *McGee*, pp. 216-7. Though it should be noted that the practice in the Assembly, in somewhat similar vein to that of the House of Representatives, is that unless a Member clearly indicates otherwise (and so confines his or her remarks) a Member speaking to an amendment is taken to also be speaking to the main question.

¹²⁷ MoP 1992-94/473-4; Assembly Debates (23.11.93) 3953.

In other words, amendments have been allowed which evade an expression of opinion on the main questions by altering their meaning and object.¹²⁸

9.78 This issue has received some consideration on the floor of the Assembly. It has also been the subject of a number of rulings by Speakers.

9.79 A key ruling was made by Speaker Cornwell in 1996 in relation to the following motion:

That this Assembly require the Government to put before it any proposed use of Lake Burley Griffin, Lake Tuggeranong or Lake Ginninderra or their foreshores prior to granting any permission for a new use of these areas for any purpose.

An amendment was circulated that proposed to omit all words after 'That this Assembly require the Government to' and substitute the words 'undertake appropriate consultation in regard to significant public works development in the ACT'. The Speaker upheld a point of order that the foreshadowed amendment was not relevant to the motion. A motion of dissent from the ruling was then moved, by leave. Following debate, the motion of dissent was negatived. An amendment to insert the word 'significant' before the words 'proposed use' was ruled as being in order. Following the expression of concerns from the floor regarding consistency in practice, the Speaker later presented reasons for his rulings to the Assembly.¹²⁹ In rulings since, amendments that proposed to widen the scope of motions have consistently been ruled out of order.¹³⁰

9.80 It is forbidden to introduce by way of amendment a motion which by rule has to be brought forward as a substantive motion (after notice or by leave),¹³¹ nor would it be permissible to introduce a matter that relates to, or may relate to, the behaviour or physical or mental capacity of a judicial officer.¹³²

9.81 Standing orders impose certain restrictions on amendments to the question 'That this Bill be agreed to in principle',¹³³ amendments to bills¹³⁴ and amendments to money proposals.¹³⁵ In addition, an amendment may not anticipate a matter on the *Notice Paper*.¹³⁶ An amendment would be out of order were it to be substantially the same as a motion that had been negatived or agreed to¹³⁷ or if it were inconsistent with a previous decision on the question.¹³⁸

¹²⁸ Assembly Debates (21.11.1996) 4205-6. An example given was where, a Minister having moved a motion of censure of the Leader of the Opposition, the Leader of the Opposition moved an amendment which proposed to substantially change the nature of the motion in that it proposed to censure the Minister for Health on a related matter. And see comments at *May*, p. 398-401. At the time of the adoption of the March 2008 amendments to the standing orders a proposal to amend standing order 140 to declare amendments which omit a substantial part of a motion or offer an alternative proposition as unacceptable was negatived in the Assembly. See MoP 2004-08/1389.

¹²⁹ MoP 1995-97/463; Assembly Debates (25.9.1996) 3342-50. Assembly Debates (21.11.1996) 4203-6.

¹³⁰ See, for example, Assembly Debates (11.12.1996) 4718-9; (25.8.1999) 2430-1; MoP 2001-04/135; Assembly Debates (8.5.2002) 1298-9; MoP 2001-04/165, Assembly Debates (15.5.2002) 1684; MoP 2001-04/1284, Assembly Debates (31.3.2004) 1393-4. And see, in particular, Assembly Debates (19.11.2003) 4363-4.

¹³¹ *Redlich* Vol II, p. 230.

¹³² See paragraphs 1.61 to 1.64.

¹³³ Standing order 173. See paragraphs 11.59 to 11.61.

¹³⁴ Standing order 181. See paragraphs 11.89 to 11.91 and 11.93.

¹³⁵ Standing orders 201 and 201A. See paragraph 11.92.

¹³⁶ Standing order 130.

¹³⁷ Standing order 136. And see Assembly Debates (17.8.2005) 2837 and *May*, p. 388. The Speaker has a discretion in the application of the same question rule, for good reason. For example, it would be a nonsense to strictly apply the same question rule to amendments to the provisions of a bill that were substantively the same as an earlier amendment that had already been agreed to.

¹³⁸ Standing order 141.

Progress in the Assembly

9.82 As an amendment is strictly dependent on the main question, it cannot be moved until the Chair has proposed the main question. The Member may read out the terms of the amendment when moving it, but the usual practice is to move the amendment by using the words 'in the terms as circulated in the Chamber' or words to similar effect.

9.83 Once an amendment has been moved in the Assembly, the Chair proposes the question 'That Ms X's amendment [No....] be agreed to'.¹³⁹ The question on the amendment thus temporarily supersedes the question on the original motion.

9.84 Debate may then ensue on the amendment and it is Assembly practice that a Member speaking to an amendment, who is yet to speak to the main question, is taken to be also speaking to the main question.

9.85 There may, of course, be more than one amendment proposed to the main question. There are, therefore, certain key provisions which ensure that the business of the Assembly progresses in an orderly and logical manner and does not end in confusion and nonsensical and unintelligible proposals.

9.86 Firstly, and most importantly, any amendment proposed must be disposed of before another amendment to the original question may be moved.¹⁴⁰

9.87 Should several amendments be proposed to the same motion, they must be taken in the order in which the words of the original motion affected by them appear in that motion to ensure that the Assembly moves logically through the consideration of a question. Thus the Chair will usually encourage Members to circulate proposed amendments and try to ensure that the call is allocated in a manner that will enable amendments to be moved in order.¹⁴¹

9.88 An amendment may not be moved to any part of a question after a later part has been amended, or after a question has been proposed on an amendment thereto, unless the proposed amendment has, by leave, been withdrawn.¹⁴²

9.89 Another key point is that an amendment may not be proposed which is inconsistent with a previous decision on a question.¹⁴³ Should the Assembly have, for example, agreed to substitute, insert or add words to a question, it would be out of order to propose an amendment to those words unless it were to add words.

9.90 During the course of a debate on an amendment a proposed amendment may, by leave, be withdrawn¹⁴⁴ and amendments may be moved to proposed amendments (see paragraph 9.92).

9.91 At the conclusion of the debate on the question 'That the amendment be agreed to' the Chair puts the question. If the question is resolved in the affirmative, the original question is superseded and the question is then proposed 'That the motion, as amended, be

¹³⁹ This has been Assembly practice. The practice utilised in the House of Representatives has not been adopted in the Assembly (though standing orders would not preclude it). See *House of Representatives Practice*, pp. 309-10, in particular, footnote 187, p. 310.

¹⁴⁰ Standing order 143.

¹⁴¹ Though prior circulation of an amendment could not be taken to confer on any Member the right to the call and any Member receiving the call must have the right to move an amendment. *House of Representatives Practice*, p. 308.

¹⁴² Standing order 142.

¹⁴³ Standing order 141.

¹⁴⁴ Standing order 144.

agreed to' (thus becoming the principal question). If the question is resolved in the negative, the question is proposed as originally proposed.¹⁴⁵ Both questions are open to debate.

Amendments moved to amendments

9.92 An amendment may be moved to a proposed amendment. It would be dealt with in the same procedural sequence as an amendment to a motion—ie, the question on the original proposed amendment is temporarily suspended by the question on the subsequent proposed amendment.¹⁴⁶ The Chair would require the Assembly to deal with the amendment to the original amendment before dealing with the amended (or unamended) amendment, and then the amended (or unamended) motion. This is by no means unusual in the Assembly. The Assembly has considered an amendment to an amendment to an amendment.¹⁴⁷

9.93 In the case of serial amendments, the Chair works back to the original motion, the question on each amendment being resolved by way of separate questions being put to the Assembly.

ORDERS AND RESOLUTIONS OF THE ASSEMBLY

9.94 Once agreed to, a motion becomes an order or a resolution of the Assembly. *Redlich* states:

The result of ascertaining the will of the House ... may be an expression of either command or wish, an order or a resolution. There is no third form of parliamentary action. The essential difference between the two is that resolutions are directed to the outer world, and orders to the internal affairs of the House.¹⁴⁸

9.95 By its orders, a House directs its committees, its Members, its staff, the order of its own proceedings and the acts of all persons whom they concern. By its resolutions, a House declares its own opinions and purposes.¹⁴⁹ However, as *House of Representatives Practice* points out, in practice the terms are often used synonymously, with (in that House) 'resolution' being the term most generally used.¹⁵⁰

9.96 The Assembly makes many orders on a day-to-day basis, almost exclusively as directions in the conduct of its proceedings. Over the course of an Assembly a myriad of such orders would be made; it is how the Assembly conducts its business. The term 'order' is also used to describe an abstract formulation of a rule as to the business of the Assembly and certain of its orders clearly have an ongoing effect or are recognised as having ongoing validity (see paragraphs 8.11 and 8.12).

9.97 In a limited way the Assembly's orders can have a bearing outside the Assembly. The Assembly's power to send for 'persons, papers and records' underpins its power to conduct inquiries and the Assembly has power to punish breaches of privilege or contempts (see paragraphs 2.79 to 2.87, 2.105 and 2.106).

¹⁴⁵ Standing orders 146 and 147.

¹⁴⁶ Standing order 145.

¹⁴⁷ MoP 2001-04/1685.

¹⁴⁸ *Redlich*, Vol. II, p. 222.

¹⁴⁹ *May*, p. 418

¹⁵⁰ *House of Representatives Practice*, p. 311.

9.98 It is by no means unusual for the Assembly to order the production of papers or records,¹⁵¹ even ordering the executive to commission an independent audit to determine the assets and the public debt associated with those assets¹⁵² and to order that documents be tabled by a certain time.¹⁵³ This was particularly the case in the Third Assembly.

9.99 The Assembly has both expressed support for and dissociated itself from actions of the executive.¹⁵⁴ By way of resolution, it has purported to order or direct the executive to take certain action¹⁵⁵ (and the executive has complied).¹⁵⁶ Petitions have been received which have requested the Assembly to demand that a Minister reverse a decision¹⁵⁷ and requesting the Assembly to direct that a Minister undertake certain action.¹⁵⁸

9.100 At times concerns have been expressed that the Assembly has encroached upon the role of the executive (see paragraphs 6.32 to 6.40), but as a rule such resolutions cannot be said to have legal efficacy on the outside world. The Assembly is able to bring its power of direction into play only in the form of an Act of parliament.¹⁵⁹ Though it is common for the Assembly to legislate to ensure that its resolutions do have legal effect,¹⁶⁰ even without legislative power the Assembly does have considerable persuasive power. At the end of the day the fact is that the Assembly has paramount power in guiding the executive and may even withdraw its confidence in the executive. This should not be overlooked. Ministers have been

151 See, for example MoP 1989-91/573 (order requiring the Minister for Health to provide the monthly budgetary figures, in approximately the same form as provided to the Estimates Committee, within 48 hours of receiving them from the Board of Health); MoP 1995-97/138 (order requiring the government, inter alia, to provide a list of products purchased by them which were manufactured by French companies or were a product of France; and see MoP 1995-97/182 and MoP 1995-97/433 (order terminated)); MoP 1998-2001/403-5 (order of the Assembly regarding the presentation of documents in relation to the Bruce stadium redevelopment); and MoP 2001-04/1162 (Speaker tables letter reporting to the Assembly on action taken regarding community services accommodation in response to a resolution of the Assembly (MoP 2001-04/1069-70)).

152 MoP 1989-91/85; Assembly Debates (27.9.1989) 1565-8. MoP 1989-91/88; Assembly Debates (28.9.1989) 1597-9.

153 See, for example, MoP 1995-97/243 (order requiring the Chief Minister, by the end of the sitting, to table all details of certain expenses incurred regarding the appointment of the chief executive officer of her Department); MoP 1995-97/259 (order directing Minister to table certain records by close of business that day); MoP 1995-97/269 (order requiring Chief Minister to respond to a question on notice by the adjournment of the Assembly that day (and see MoP 1995-97/270)); MoP 1995-97/279, 281 (order requiring the Chief Minister to table a report before the Assembly rose that day).

154 MoP 1992-94/129 (resolution rejecting an announced decision of the government) and MoP 1998-2001/753 (resolution condemning and dissociating the Assembly from an ACT Government submission to a Senate committee inquiry).

155 See, for example, MoP 1989-91/88; MoP 1992-94/610, 625 (resolution instructing Minister to facilitate distribution of personal identification cards); MoP 1995-97/138 (resolution requiring government to provide a list of French products purchased by the government and implement a ban thereon, and see MoP 1995-97/433—order terminated); MoP 1995-97/725 (resolution requiring government to refrain from certain administrative action regarding the implementation of surveillance cameras that was not in accordance with an Assembly committee report); MoP 1998-2001/1024-5 (resolution calling on government to appoint a board of inquiry into disability services, and see MoP 1998-2001/1052-3); MoP 1998-2001/1303-4 (resolution directing that there be no involuntary redundancies among a nominated group of forestry workers without the approval of the Australian Industrial Relations Commission); MoP 1998-2001/1322-3 (resolution directing the government to set a nominated rate as a maximum rate as workers' compensation premium payable by certain companies and the operation of the rate be limited to a certain period); MoP 2001-04/935-8 (resolution directing, inter alia, the Chief Minister to write to the Premier of New South Wales and a Minister in his government advising them of the Assembly's views on the Canberra-Sydney rail link); and MoP 2001-04/1332-3 (resolution calling on the government to implement certain policies regarding youth music in the Territory and report back to the Assembly within a certain time—and see ministerial statement made in response MoP 2001-04/1596).

156 See, for example, MoP 2001-04/244 where the Speaker presented responses to resolutions of the Assembly regarding the East Timorese Parliament, the optional protocol to the Convention on the elimination of all forms of discrimination against women, elder abuse in the ACT and property matters in de facto relationships.

157 MoP 1998-2001/99.

158 MoP 1998-2001/109.

159 *House of Representatives Practice*, p. 313.

160 See, for example, *Commissioner for the Environment Act 1993*, section 9 (Suspension and removal of commissioner); *Judicial Commissions Act 1994*, section 5 (Removal of judicial officer) and section 18 (Resolution by Legislative Assembly); *Legislation Act 2001*, section 65 (Disallowance by resolution of Assembly) and section 68 (Amendment by resolution of Assembly); *Planning and Development Act 2007*, section 15 (Assembly may recommend directions to authority) and section 80 (Assembly may reject plan variations completely or partly) and *Territory-owned Corporations Act 1990*, subsections 13(8) and (9) (directions re the transfer on trust for the Territory) and see MoP 2001-04/1045. (Assembly approval of the disposal of undertakings of Totalcare Industries Limited in accordance with subsection 16(4) of the *Territory-owned Corporations Act 1990*).

censured for failing to take action in accordance with the Assembly's wishes as expressed in resolutions¹⁶¹ and for failing to take certain action as directed by the Assembly.¹⁶² A Member has also been censured for failing to comply with an order to present a document.¹⁶³

9.101 The *Standing Orders and continuing resolutions of the Assembly*, particularly the latter, give specific recognition to certain motions (and resolutions) of the Assembly, including motions of no confidence in the Chief Minister and votes of thanks or condolence.¹⁶⁴

RESOLUTION OR VOTE RESCINDED

9.102 A resolution or vote may be rescinded. Standing order 137 makes specific provision for a resolution or vote of the Assembly to be read and rescinded. A rescission of the same resolution or vote may not take place within the same calendar year unless three days notice is given. There is a proviso: to correct irregularities or mistakes, one day's notice suffices or the corrections may be made at once by leave of the Assembly.

9.103 As in the House of Representatives, the practice is rarely invoked in the Assembly.¹⁶⁵ It is almost exclusively utilised, following the suspension of standing and temporary orders, to facilitate the reconsideration of bills (and parts thereof or questions decided thereon).¹⁶⁶ In addition (again, following the suspension of standing orders), the procedure has been used to rescind an order fixing a future day for the consideration of an order of the day,¹⁶⁷ to rescind particular orders and to rescind a vote concerning the appointment of a select committee.¹⁶⁸

9.104 It is not uncommon for the Assembly to alter orders or resolutions by amending them, the practice usually being confined to the alteration of its own orders regarding the conduct of its proceedings or the appointment of its committees.¹⁶⁹ In addition, the Assembly from time to time puts aside the operation of its own standing orders by making a concrete order prescribing a course of procedure 'notwithstanding the provisions of' a particular order or particular orders (see paragraph 8.17).

CASUAL VACANCIES IN THE SENATE—RESOLUTION OF THE ASSEMBLY, 18 FEBRUARY 2003

9.105 The two Senators representing the ACT in the Commonwealth Parliament are elected at the same time as a general election for the House of Representatives. When a Senator vacates his or her seat before the expiry of his or her term, a casual vacancy occurs and that vacancy is filled by a person chosen by the ACT Legislative Assembly.¹⁷⁰

¹⁶¹ MoP 1995-97/216-7.

¹⁶² MoP 2001-04/925.

¹⁶³ MoP 1992-94/86.

¹⁶⁴ Standing orders 81 and 126. For examples of votes of thanks, see MoP 1995-97/816, MoP 1998-2001/233 and MoP 2001-04/725.

¹⁶⁵ See *House of Representatives Practice*, p. 314 for comment on the rarity of such motions.

¹⁶⁶ See, for example, MoP 1998-2001/336, 832, 937; MoP 2001-04/1646.

¹⁶⁷ MoP 2001-04/97-8.

¹⁶⁸ MoP 1998-2001/889-90.

¹⁶⁹ See, for example, MoP 2001-04/1331.

¹⁷⁰ The resolution places restrictions on the Assembly in making this choice. Apart from meeting the general requirements for eligibility to be a member of the Senate, the person selected must, as far as is possible, be of the same political allegiance as the outgoing Member.

9.106 This resolution, adopted in 2003, sets out the formal process for choosing a replacement. When advised by the President of the Senate, via the Chief Minister, that a vacancy exists, the Chief Minister shall move either:

That consideration of the choice of a person to hold the vacant place of a senator for the Australian Capital Territory shall proceed forthwith; or

That consideration of the choice of a person to hold the vacant place of a senator for the Australian Capital Territory shall be set down for a future day.

9.107 Where the latter motion is moved, consideration of the matter has precedence over all other Assembly business. The resolution also sets out the wording of the motion that is moved when proposing a person to fill the vacancy.¹⁷¹

¹⁷¹ MoP 2001-04/528-9. The Assembly adopted the resolution setting out the procedures to be followed when filling a casual vacancy and then proceeded immediately to apply them, appointing Senator Humphries to replace Senator Reid.