



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE
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Submission Cover Sheet

Review of Standing Orders

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LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

Office of the Legislative Assembly

Submission to the Standing Committee on
Administration and Procedure's review of standing
orders and continuing resolutions of the Assembly

MAY 2018

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INTRODUCTION

This is a submission from the Office of the Legislative Assembly (the Office), which is headed by the Clerk of the Legislative Assembly.

As can be seen from [**Attachment A**](#) to this submission, this is the fourth comprehensive review of the Legislative Assembly standing orders, with reviews also occurring in the Fifth, Sixth and Ninth Assemblies (with a focus on the expanded 25 Member Assembly). In addition, the Standing Committee on Administration and Procedure has presented 29 reports since self-government that have considered changes to various standing orders and continuing resolutions.

It is the Office's view that the Assembly's standing orders have served the institution well but that periodic review as required under standing order 16, is an important means by which to ensure the continuing relevance and usefulness of the Assembly's practice and procedures.

This submission is divided into the following three sections:

- (1) significant amendments to standing orders and continuing resolutions;
- (2) technical amendments to standing orders; and
- (3) amendments to the committee system which, if accepted, would not entail changes to the standing orders but rather the resolutions of appointment establishing Assembly committees.

It also contains a note about the honorific "the Honourable" which could be covered by a continuing resolution.

SIGNIFICANT AMENDMENTS TO STANDING ORDERS AND CONTINUING RESOLUTIONS

Standing order 74 – Routine of business – Inclusion of a period to note petitions and a period for constituency statements

Standing order 74 sets out the routine of business for the Assembly, with Tuesdays and Thursdays being days for Executive business, and Wednesdays being days for private Members' business. Provision is also made for precedence to be given to Assembly business for a period of 45 minutes on Thursday and for Executive Members' business to be given precedence for one hour, also on Thursday.

Over the last several Assemblies, a practice has developed where, upon the Clerk announcing that certain MLAs have lodged petitions, Members seek leave of the Assembly to make a statement concerning the petition, with no time limit applying.

In order to streamline this procedure, and to enable members of the community to have certainty as to when a particular petition might be debated and to attend proceedings, the Office submits that a time every Tuesday morning be set aside to deal solely with petitions. This period could also be used to present any ministerial responses to petitions.

This would entail:

- the Clerk announcing petitions and any ministerial responses lodged;
- the Speaker proposing the question “That petitions (and ministerial responses – if any) be noted”;
- debate on the motion proceeds with each Member having five minutes;
- the time for debate on the question being restricted to 30 minutes; and
- at the conclusion of the time allotted, or when no further Members rise, the Speaker would put the question – That the petition (and/or ministerial response) be noted.

In other parliaments, periods of time are set aside for Members to speak about constituency related matters. For instance, in the Commonwealth House of Representatives 30 minutes is set aside for such statements on every day that the Federation Chamber meets. In the NSW Legislative Assembly, standing order 108 makes provision for 16 private Members being able to speak for five minutes each, with Ministers allowed a two minute reply to each statement.

The Office submits that the Assembly establish a set time of 45 minutes every Tuesday for such statements. This would enable nine Members to make statements about constituency related matters every sitting week.

Proposed amendment 1

Standing order 74, omit the standing order, substitute the following standing order:

“Routine of business”

The Assembly shall proceed each day with its ordinary business in the following routine:

Tuesday	Wednesday	Thursday
Prayer or reflection and acknowledgement of country	Prayer or reflection and acknowledgement of country	Prayer or reflection and acknowledgement of country
Presentations of Petitions (and ministerial responses) by Clerk Debate on the question—That petitions (and ministerial responses) be noted	Private Members' Business—Notices and orders of the day	Executive Business—Presentation of bills
Constituency statements		Assembly Business—Notices and orders of the day
Ministerial statements		Executive Members' Business—Notices and orders of the day
Executive Business—Notices and orders of the day		Ministerial statements
Questions without notice	Questions without notice	Executive Business—Notices and orders of the day
Presentation of papers	Presentation of papers	Presentation of papers
Matter of public importance	Private Members' Business—Notices and orders of the day	Matter of public importance
Executive Business—Notices and orders of the day		Executive Business—Notices and orders of the day
Adjournment	Adjournment	Adjournment

provided that at 2.30 pm on each day the Speaker shall interrupt the business before the Assembly in order that questions without notice shall be called on, and

- (a) if a vote is in progress at the time fixed for interruption, that vote, and any vote consequent upon that vote, shall be completed and the result announced; and
- (b) the Speaker shall fix a later hour for the resumption of the debate on any business under discussion and not disposed of at the time of interruption;

provided further that, in relation to ministerial statements, copies shall be provided to the Speaker for circulation to all Members two hours prior to the time at which the statement is proposed to be made; and that Ministers shall table a copy of the statement and move that the paper be noted.

Standing order 77(j) – Business – precedence over – Dealing with notices to disallow Territory laws

In recent years, there have been occasions where an MLA lodges a notice of motion to disallow a Territory law (often a planning variation under the Planning Act) and, subsequently, another MLA having lodged a separate notice, seeks to have it called on, and then votes against the motion. The effect of this is that if the second notice is dealt with by the Assembly, the original notice would be ruled out of order by way of the same question rule.

Also, because notices to disallow Territory laws are considered to be Assembly business, they are dealt with on Thursday morning, but only if: (a) the Standing Committee on Administration and Procedure has programmed it; and (b) the MLA lodging the notice wishes to have the notice moved (which they may not). Of course, if such a notice is not dealt with by the Assembly within the stipulated time (usually six sitting days) then (under the provisions of the Legislation Act) the Territory law is automatically disallowed, and the previous law is revived. This can potentially result in a situation in which laws may be disallowed not because of a conscious act on the part of the Assembly but instead as a result of the Assembly failing to programme discussion on the matter.

To address this issue, the Office submits that the standing orders provide a mechanism by which the Assembly is compelled to deal with these notices prior to the end of the stipulated period (for most subordinate legislation it is six sitting days and for planning variations it is five sitting days). Accordingly, the Office submits that standing order 77(j) be amended.

Proposed amendment 2

Standing order 77(j), add the following words:

“, and, if such a notice has not been called on by the end of the day before the stipulated period ends, the Member shall move the notice on the next sitting day and such business shall take precedence over other business”.

Standing order 106A – Notice limits

There are currently no word limits for notices of motion. Whilst most motions are relatively concise, it is now quite common for notices to be very lengthy and, when they are moved in the Assembly, it is often the case that an amendment moved to it is just as long or even longer. For example on 9 May 2018, an 899 word notice was moved and a 595 word amendment was moved to that motion. If the practice of lodging lengthy notices continues, it will result in longer *Notice Papers* and longer *Minutes of Proceedings*. It should be noted

that, despite a recent reduction strategy, the Office still prints 127 *Notice Papers* each sitting day.

The table below indicates several instances where long notices were lodged and long amendments moved.

Date	Word count of motion moved	Word count of amendment/s moved
27 November 2017	453	321
14 February 2018	792	–
14 February 2018	265	538
14 February 2018	215	438
21 February 2018	473	293
21 February 2018	127	765
21 March 2018	495	619
11 April 2018	527	–
11 April 2018	254	437

The Tasmanian House of Assembly has standing order 75 which limits both the number of notices which can be given by a Member each sitting day (three) and the length (250 words). The Office submits that putting a word limit on the length of notices would be worthwhile.

Proposed amendment 3

Insert standing order 106A, as follows:

“Standing order 106A – Notices limits

106A No member may give a notice in excess of 300 words, except that the Speaker may accept a notice in excess of 300 words in length from: (a) a Minister, provided such a motion is required by statute; or (b) a Member giving notice to establish a committee or refer a matter to a committee; or (c) a Member giving notice of a motion of want of confidence in the Chief Minister or a Minister.”.

Standing order 113(a) – Questions without notice and questions on notice – Questions electronically

Standing order 122 – Answers to questions on notice – Answers electronically

Standing order 113(a) provides that Members may ask a written question to be placed on the *Questions on Notice Paper* for written reply. Standing order 122 provides that the answer to a question on notice shall be given by delivering it to the Clerk. The administrative practice of the Office is that the deadline for the lodgement of questions is 12 noon on a sitting Thursday, and that Members must supply both a written and electronic version of questions. This timeframe permits sufficient time for the Office to check and format questions, and make any stylistic changes before the *Questions on Notice Paper* is issued on the Friday of a sitting week (the last edition contained 168 questions on notice). There are occasions where questions are not provided in a timely manner and the codification of the requirement to submit questions by 12 noon of a sitting Thursday would provide a firmer procedural basis for the deadline.

The Office is moving towards the establishment of an electronic database of questions on notice, which will have a search capability. The Office notes that the NSW Legislative Assembly requires (standing order 132) that Members lodge questions on notice in both hard copy and electronically. The Office submits that such a requirement for both questions and answers be clearly set out in the standing orders.

Proposed amendment 4

Standing order 113(a), add the following:

“Such questions shall be lodged with the Clerk, in both hard copy and electronically by 12 noon of a sitting Thursday.”.

Proposed amendment 5

Standing order 122, after “delivering” omit “it”, substitute “a hard copy and an electronic copy”.

Standing order 118(c) – Answers to questions without notice – Response to question without notice being in the form of a ministerial statement

Standing order 118(c) was inserted initially as a temporary order in 2008 (Seventh Assembly).

It was incorporated in standing orders at a time when Ministers were able to give 10 minute answers to questions without notice. Up until November 2003, there was no time limit for Ministers to answer questions, with some answers going for periods of seven or eight minutes (see Standing Committee on Administration and Procedure, *Report No. 3*, November 2003). In August 2009, the time limit for answers was dropped from five minutes to four minutes (with two minutes for an answer to three supplementary questions).

The time for answers to questions without notice has changed significantly since self-government. Consider the following:

- . 1989–November 2003 – no time limit on answers;
- . November 2005–27 August 2009 – five minutes and five minutes for answering one supplementary;
- . 27 August–13 December 2016 – four minutes for original question and two minutes for three supplementary questions; and
- . December 2016–present – two minutes for original question and two minutes for two supplementaries.

As can be seen, there has been a steady reduction in the time limits applied to answers since 1989 with the current arrangements allowing three two minute answers (a total of six minutes) for a line of questioning.

It is arguable that with the advent of the December 2016 arrangements, the capacity for a Minister to make what amounts to a ministerial statement during the question time period is limited. It is also the case that determining whether or not an answer is in a form of a ministerial statement is an exceedingly difficult one for the chair to determine. Accordingly, the Office submits that the standing order be deleted. The standing order has only been utilised on one occasion.

Proposed amendment 6

Standing order 118 (c), omit “A Member who believes a response given to a question was in the form of a ministerial statement, may seek the leave of the Speaker to respond to the statement at the conclusion of Question Time for a period not exceeding five minutes.”.

Standing order 139 – Amendments proposed – Amendments to be in writing and circulated before being moved

If a Member moves an amendment to a bill, standing order 182 requires it to be in writing and that copies of the amendment have been circulated to Members.

However, there is no such requirement for an amendment to a motion. Standing Order 139 only requires that such an amendment be in writing and signed by the mover.

The Office submits that it would enhance the work of the Assembly for Members to know the contents of an amendment in a timely manner prior to debate, and that an amendment to the standing orders to achieve this effect is warranted.

Also, were the Committee to accept the proposal to limit the length of notices of motion to 300 words, it would be consistent to limit the length of amendments to 300 words.

Proposed amendment 7

Standing order 139, add the following:

“An amendment can only be moved if copies of the amendment have been circulated to Members and must not be longer than 300 words in length (unless it relates to a motion as specified in standing order 106A).”

Standing order 182A – Amendments in writing and circulated – Scrutiny of Government amendments to its own bills

Standing order 182A was adopted on 22 March 2012 having previously been trialled as a temporary order from 26 February 2009. It arose out of the Labor/Greens Parliamentary Agreement for the Seventh Assembly which stipulated that Government amendments to their bills be examined and reported on by the Scrutiny Committee before they are moved in the Assembly. However, the standing order sets out exceptions which allow the Assembly to dispense with the use of the standing order where it is the judgement of the Assembly that an amendment is urgent, minor or technical in nature or in response to comments made by the Scrutiny Committee itself.

As can be seen from the following table, in the Eighth and Ninth (to date) Assemblies the Scrutiny Committee has examined about a quarter of Government amendments to bills.

Assembly	No of Government amendments moved	No of times Government amendments referred to Scrutiny Committee
8 th Assembly	47	13
9 th Assembly	13	3

The Office also notes that the Scrutiny Committee does not look at Opposition or Crossbench amendments to bills. The Office observes that if the principle underpinning the referral of amendments to the Scrutiny committee is to ensure that adequate due diligence is applied to law making, the source of an amendment to a bill—be it from the Government, Opposition, or Crossbench—is largely immaterial. This was a point made by the then Attorney-General who said during the debate on the change, ‘the real issue here is that, if it

is good parliamentary practice for government amendments to be scrutinised by the scrutiny of bills committee, then it is good parliamentary practice for all amendments to all bills to be scrutinised by the scrutiny of bills committee’.

The Office makes no submission on this matter but supports the important work of the Scrutiny Committee and the broader principle that scrutiny of proposed laws—whether in the form of complete bills or amendments to bills—are deserving of appropriate scrutiny. The Committee may wish to consider changes to the standing orders so that certain amendments are not placed beyond the reach of that scrutiny.

Standing order 210 – Strangers not admitted into body of Chamber

Standing order 210 provides that no strangers, other than a nursing infant being breastfed by a Member, or an accredited Auslan interpreter, may be present in the part of the Chamber allocated to Members.

In October 2016, the NSW Legislative Council’s Procedure Committee presented a report entitled *Young children accompanying Members into the House*. The committee recommended that the President be given the discretion to allow a Member caring for a child and seated in the President’s gallery to able to vote in any division. The recommendation was subsequently adopted as a sessional order.

The Office submits that similar provision is made in the Assembly’s standing orders. .

Proposed amendment 8

Standing order 210, omit the standing order, substitute the following standing order:

“Strangers not admitted into the body of Chamber

210 Except with the permission of the Speaker, who may exercise discretion for a short period in the case of Members caring for infants or an Auslan interpreter, only Members are permitted on the floor of the Chamber during meetings of the Assembly.”.

Standing order 211 – Papers presented – Papers presented by Ministers

Standing order 211 provides that a Minister or the Speaker may present papers. The normal practice is that, at the conclusion of question time, Ministers in order of seniority present papers and, on occasion, either seek leave to make a statement in relation to the paper or move a motion to take note of the paper.

This practice differs to that used in the House of Representatives. In a resolution adopted on 9 December 1987, the House determined the following procedure:

- (1) By 12 noon on each sitting day a schedule of papers to be presented will be made available to the Manager of Opposition Business and will be circulated to all Members in the Chamber at the first opportunity;
- (2) Following questions without notice a Minister will present the papers as listed on the circulated schedule;
- (3) Papers presented will continue to be recorded in *Hansard* and the *Votes and Proceedings*; and
- (4) A Minister shall present each paper individually if a schedule has not been circulated in accordance with these procedures or the paper has not been listed on the schedule, and shall retain the option of presenting a paper separately from the list if a statement is to be made or a motion moved in connection with the paper.

If the Assembly wanted to streamline its presentation of papers procedure it could move towards the House of Representatives practice and have the Manager of Government Business circulate a schedule of papers to be tabled by 12 noon on a sitting day. Ministers or non-Executive Members could indicate which papers require a motion to take note of the paper, and, after the Manager of Government Business presents the papers listed in the schedule, the Manager of Government Business could move separate motions to take note of those identified documents.

Proposed amendment 9

Standing order 211, add the following:

“By 12 noon on a sitting day a schedule of papers to be presented by the Executive will be made available by the Manager of Government Business to whips and will be circulated to all Members electronically. Ministers and non-Executive Members may indicate to the Manager of Government Business which papers on the schedule they wish to have a motion to take note moved prior to question time, and upon presentation of the papers listed on the schedule, the Manager of Government Business shall move the motions requested.”.

Standing order 212A – Publication of certain documents authorised – Authorisation of minutes of proceedings, extracts of minutes of proceedings and Government responses to committee reports presented to the Speaker when the Assembly is not sitting

Standing order 212A provides that certain papers presented to the Assembly are authorised for publication.

Reports and discussion papers of standing and select committees of the Assembly are authorised for publication when presented to the Assembly, however, committee minutes of proceedings and extracts of minutes of proceedings are not included in this standing order, and there is an argument that they should be. Minutes are published in the parliaments of NSW, Victoria, Tasmania and Western Australia.

In addition, from time-to-time governments respond to committee reports when the Assembly is not sitting and there is no provision to have them circulated out of session to Members. This occurred most recently with the response to the Select Committee on an Independent Integrity Commission. It also occurs regularly with responses to Scrutiny Committee reports. It is suggested that there be provision in the standing orders to enable early publication and distribution of these documents.

Proposed amendment 10

Standing order 212A(b), after “reports”, insert “, minutes of proceedings, extracts of minutes of proceedings”.

Proposed amendment 11

Standing order 212A(b), after “Assembly”, insert “, or government responses to committee reports presented in the Assembly or, if the Assembly is not sitting, provided to the Speaker in electronic and paper format”.

Standing order 228A – Committee of Chairs

It has been the practice for several Assemblies for committee chairs to meet twice a year and to advise the Speaker on the operation of Assembly committees. The Office submits that this practice be formalised in the standing orders.

Proposed amendment 12

Insert standing order 228A, as follows:

“Committee of chairs

228A. A committee of chairs shall be established at the commencement of each Assembly following the election of chairs for each committee to advise the Speaker on matters relating to the operation of Assembly committees. The committee shall consist of every chair of a standing and select committee and the Speaker shall be the chair of the committee.”

Continuing resolution 5AA – Commissioner for Standards – Clarification of role of Standing Committee on Administration and Procedure

Continuing resolution 5AA provides for the appointment and operation of a Legislative Assembly Commissioner for Standards.

The practice of dealing with matters considered by the Commissioner is that, once investigated, the Commissioner sends a report to the Standing Committee on Administration and Procedure which, in turn, reports to the Assembly. However, it is not

explicitly stated that the committee will inquire into and report on a commissioner's investigation on a complaint. Accordingly, for the sake of clarity it is suggested a new clause be inserted to reflect this requirement.

Proposed amendment 13

Delete paragraph 4(c) of the resolution.

Continuing resolution 5AA paragraph 4(b), omit all words after "procedure; and", substitute the following:

"(5) The Committee will inquire into and report on any report provided to it by the Commissioner pursuant to subparagraph 4(b) of this resolution. If the Assembly is not sitting when the Committee wishes to report on a report of the Commissioner, the Committee may send its report to the Speaker, or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation.".

Proposed amendment 14

Continuing resolution 5AA, renumber paragraphs (5) to (7) as a consequence of proposed amendment 13.

Continuing resolution 8AC – ACT Lobbyist Regulation Guidelines – Public content of Register

This continuing resolution provides guidelines for ACT Lobbyists. Paragraph (1)(i) of the guidelines under the heading "Public Content of the ACT Register of Lobbyists" requires details of lobbying activity for the preceding 12 months. As this information is required in the quarterly return (provided for under the heading "Maintaining accuracy of the Register") the requirement is redundant.

Proposed amendment 15

Continuing resolution 8AC, omit the following requirement under the heading "Public Content of the ACT Register of Lobbyists":

"name and address of each person or entity on whose behalf lobbying has been conducted in the preceding 12 months, whether or not for reward".

Continuing resolution 8AC – ACT Lobbyist Regulation Guidelines – Maintaining accuracy of Register

Continuing resolution 5AA also requires lobbyists to lodge a quarterly return. Other jurisdictions require six-monthly returns and the Office submits that this is a more reasonable frequency for the provision of the information.

Proposed amendment 16

Continuing resolution 8AC, under the heading “Maintaining accuracy of the Register”, omit “a quarterly return, within 10 working days of 31 March, 30 June, 30 September and 31 December”, substitute “a six monthly return, within 15 working days of 30 June and 31 December”.

Continuing resolution 8AC – ACT Lobbyist Regulation Guidelines – Prohibition on contact with unregistered lobbyists

The Ethics and Integrity Adviser has advised that guidelines do not stipulate that Members/Ministers/their staff/ACT public service shall not knowingly deal with a person not on the lobbyists register. The Office submits that such a prohibition should be included.

Proposed amendment 17

Continuing resolution 8AC, insert after the information under the heading “Persons/Entities not required to be registered:

“Prohibition on contact with unregistered Lobbyists

Members/Ministers agree, and their personal staff and all ACT public service officers shall be directed, not to knowingly or intentionally entertain any non-exempted communication from:

- . a lobbyist not registered on the ACT Register of Lobbyists;
- . an employee, contractor or other person authorised to carry out lobbying activities on behalf of a registered lobbyist where that person’s name does not appear on the Register in the details recorded for that registered lobbyist; or
- . any registered lobbyist or employee, contractor or other person authorised to carry out lobbying activities on behalf of that registered lobbyist who in their opinion has failed to comply with the Lobbying Code of Conduct;

and shall immediately advise the Registrar if they became aware or reasonably suspected that a registered lobbyist or authorised person had contravened the ACT Lobbying Code of Conduct.”.

TECHNICAL AMENDMENTS TO STANDING ORDERS

Standing order 9 – Absence of Speaker and Deputy Speaker – Clarifying that the Assembly is meeting

Standing order 9 sets out election arrangements where the Speaker and Deputy Speaker are both absent. The language used in this standing order differs from standing order 65. The Office submits that the language be made consistent.

Proposed amendment 18

Standing order 9, insert after “Whenever the Assembly” the words “is meeting and”.

Standing orders 14 and 15 – Absence of, and vacancy in office of, Clerk

Standing orders 14 and 15 have operated since the establishment of the Assembly in 1989 and set out arrangements where the Clerk is absent or there is a vacancy in the Office of the Clerk. The provisions have been superseded by section 19 of the *Legislative Assembly (Office of the Legislative Assembly) Act 2012*, which provides that:

- (1) The Speaker may appoint the following to act as clerk:
 - (a) the deputy clerk;
 - (b) in the absence of the deputy clerk—
 - (i) any other member of the office’s staff; or
 - (ii) if the Speaker is satisfied that no-one mentioned in subparagraph (i) is a suitable person—a suitable person.

A suitable person means a person who has extensive knowledge of, and experience in, relevant parliamentary law, practice and procedure. As the Act now covers absences of the Clerk, it is suggested these standing orders be deleted.

Proposed amendment 19

Delete standing orders 14 and 15.

Standing order 16 – Administration and Procedure Committee – Improving Grammar

Standing order 16 establishes the Standing Committee on Administration and Procedure and sets out the role and operation of the committee. The insertion of paragraph (a)(i) to allow a review of the standing orders each term does not read correctly.

Proposed amendment 20

Standing order 16 (a)(i), omit “in addition to the committee undertaking inquiries self-referred or from the Assembly, in the third year of an Assembly term it shall”, substitute “undertake self-referred inquiries or inquiries referred by the Assembly and, in addition, in the third year of an Assembly term the committee shall”.

Standing order 22 – Leave of absence – Remove reference to having priority over all other business

Standing order 22 provides that a motion of leave of absence for an MLA can be moved at any time without notice and ‘has priority over all other business’. As the motion can be moved at any time and there are other standing orders that provide priority over all other business (for example, standing order 81) the Office submits that the provision relating to priority is redundant.

Proposed amendment 21

Standing order 22, omit “The motion shall have priority over all other business.”.

Standing order 42 – Members rise to address Speaker – Speaking in a language other than English

In the Ninth Assembly there have been instances where Members have spoken in debate in another language. After the event the Speaker ruled that if a Member wishes to speak in a language other than English, certain requirements apply. The Office submits that rather than rely on the Speaker’s ruling in this area of practice, it would be appropriate to codify the requirements in the standing orders. The proposed approach is based on a standing order the Northern Territory Legislative Assembly.

Proposed amendment 22

Insert standing order 42A, as follows:

“Speaking in a language other than English

42A A Member may, when called by the Chair, rise and speak in any language other than English so long as an oral translation is provided in the English language by the same Member immediately prior to the words spoken in the language other than English and a written translation is provided to the Clerk immediately prior to the contribution by the Member speaking.”.

Standing order 43 – Indulgence to members unable to stand – Omit by reason of sickness or infirmity

Standing order 43 provides that, with the indulgence of the Assembly, a Member unable conveniently to stand, by reason of sickness or infirmity, will be permitted to speak while sitting. This standing order makes no account for a situation where a Member in a wheelchair is elected or for some other reason is unable to stand. Standing order 65 of the House of Representatives deals with this by allowing the Speaker to call a Member who, for whatever reason, is unable to rise.

Proposed amendment 23

Omit standing order 43, substitute the following standing order:

“43 If a Member is unable to rise, he or she will be permitted to speak while seated.”.

Standing order 69(d) – Time limits for debates and speeches – Clarify that all co-sponsors of bills can speak

Standing order 69(d) provides that co-sponsors of bills can speak to bills being debated at the in-principle stage. There is some ambiguity as to whether the 20 minutes allocated is for all the co-sponsors. The Office submits that clarification is warranted.

Proposed amendment 24

Standing order 69(d), omit “Co-sponsors” (twice occurring), substitute “Each co-sponsor” (twice occurring).

Standing order 85 – To be addressed to the Assembly, legible, and free of sponsorship – Heading – Sponsorship of petitions

The heading to this standing order mistakenly refers to the previous standing order which required petitions to be free of sponsorship by an MLA. In 2008, the Assembly deleted this requirement, but the heading was not changed to reflect this change. It is recommended that the heading be altered.

Proposed amendment 25

Standing order 85, heading, omit “, and free of sponsorship”.

Standing order 94 – Must be respectful and within ministerial responsibility – Typographical error

This standing order contains a typographical error. At the end of the third line, the standing order states “or is critical of a character or conduct of a person”. Instead of “a” it should be “the”.

Proposed amendment 26

Standing order 94, third line, after “critical of” omit “a”, substitute “the”.

Standing Order 99A – Referred to committee – Paper Petitions and e-petitions which cumulative have more than 500 signatures

The current wording of this standing order doesn’t make it clear that if a paper petition has, say, 250 signatures, and an equivalent e-petition (i.e. an e-petition containing exactly the same words) has 300 signatures (bringing the total to 550 signatures), the identically worded petitions will be referred to the relevant committee. The proposed amendment clarifies this matter.

Proposed amendment 27

Standing order 99A, before “or” insert “and/”.

Standing order 100A(i) – Electronic petitions (“e-petitions”) – Clarifying who can sign an e-petition

Standing order 100A stipulates that persons must join an e-petition and cannot sign on behalf of others unless in the case of incapacity from illness. The working of the standing order is ambiguous and clarification is warranted.

Proposed amendment 28

Standing order 100A(i), omit the standing order, substitute the following standing order:

“100A(i) Persons may join an e-petition themselves and not on behalf of others, except in the case of a person who is not able to join due to an incapacity, in which case, with the agreement of that person, another person may join on behalf of that person.”.

Standing order 147A – Clerk to make typographical, grammatical or clerical changes to wording of amendments or motions

On several occasions during a sitting year, a motion or amendment is moved in the Assembly that has been drafted immediately prior to it being moved. Often these motions or amendments have minor typographical or grammatical errors. This requires that the MLA issues a revised motion or amendment, or, more commonly, amends and initials the original copy held by the Clerk. On several occasions these minor errors are not picked up until after they have been passed in the Assembly and as a result appear (with minor errors) in the *Minutes of Proceedings*.

The Office submits that, like bills and standing order 191, the Clerk be vested with the authority to make amendments to correct clerical, grammatical or typographic errors in either a motion or an amendment. A check of other parliaments indicates that some other Clerks possess this power.

Proposed amendment 29

Insert standing order 147A, as follows:

“Clerk to correct minor errors in motions and amendments

147A The Clerk may correct typographical, clerical and grammatical errors contained in motions and amendments that have passed the Assembly.”.

Standing order 174 – Reference to select or standing committee – Debate must be adjourned before a bill can be referred to a committee

Standing order 174 enables the Assembly to refer a bill to an Assembly committee any time after the presentation of the bill to the Assembly but before the completion of the detail stage. In this Assembly, there have been several occasions when, immediately after the bill has been introduced, but before the bill has been made an order of the day, a motion has been moved to refer the bill to a committee. Technically, a bill must become an order of the day before it can be progressed further in the Assembly or a committee, otherwise the bill lapses. The Office submits that the standing order be amended to clarify that the bill becomes an order of the day before it can be referred.

Proposed amendment 30

Standing order 174, after “Assembly”, insert “and debate being adjourned on the order of the day.”.

Standing order 225B – Resignation of Chair and Deputy Chair

There is currently no standing order which provides for the resignation of a Chair or a Deputy Chair of a committee. Where this has occurred, the Office has relied on standing order 11A, which provides that the Speaker shall resign to the Clerk, and, in the case of a resignation of a Deputy Chair, standing order 13 which provides that the Deputy Speaker shall resign to the Speaker. Accordingly, chairs of committees have resigned by writing to the secretary of the committee, and deputy chairs have resigned by writing to relevant chairs. The Office submits that a stronger procedural basis for the practice would be achieved through provision in the standing orders.

Proposed amendment 31

Insert standing order 225B, as follows:

“Resignation of Chair and Deputy Chair

225B A Chair of a committee may resign in writing to the secretary of that committee, and the election of a new Chair shall be the first item of business at the next meeting of the committee. Until a new Chair is elected the Deputy Chair shall be acting Chair. A Deputy Chair of the committee may resign in writing to the Chair of the committee, and the election of a new Deputy Chair shall be the first item of business at the next meeting.”.

Standing order 243 – Disclosure of documents of the Assembly and its committees

Standing order 243 provides a mechanism for the Speaker to permit any person to examine and copy evidence which has not already been published and in the custody of the Assembly for at least 10 years. These documents could potentially involve *in camera* evidence and there is little guidance on how a decision to publish such document might be made. Without derogating from the Assembly’s prerogatives to authorise the publication of documents, it is suggested this be clarified to ensure procedural fairness.

Proposed amendment 32

Standing order 243(c), omit and substitute the following:

- (c) witnesses who have given evidence *in camera*, either written or oral, as far as practicable, shall be given opportunity to comment on the proposal for the release of that evidence, before a decision is made. If a witness does not respond to the invitation to comment after reasonable effort has been made to contact them, the Speaker may decide whether or not to authorise disclosure in the absence of the witness’s views being made known. In making a decision, the Speaker will take into account any public or parliamentary interest and the interests of the witness. ”.

Standing order 250B – Unable to agree on a report

Standing order 250B sets out arrangements for those situations where a committee is unable to agree on a report. Whilst it sets out that the Chair must present a written statement, it is not clear that it should be presented to the Assembly. The Office submits that this be clarified.

Proposed amendment 33

Standing order 250B, after “present”, insert “to the Assembly”.

Standing order 253 – Presentation of report – Extracts of relevant minutes of proceedings

This standing order provides that a committee report, together with the minutes of proceedings, be presented by the Chair, or Deputy Chair in the Chair's absence. It is the practice of most committees to table extracts of minutes of proceedings relating to the report, and it is submitted that this be reflected in the standing orders.

Proposed amendment 34

Standing order 253, after “proceedings”, insert “or extracts of the relevant minutes of proceedings”.

Standing order 264A – Protection of witness – Adverse mention procedures

Standing order 264A deals with protection and arrangements in relation to witnesses to committees, as well as adverse mention procedures. As adverse mention procedures are significant, the Office submits that this be dealt with in a separate standing order, which will necessitate a change to the title of standing order 264A.

Proposed amendment 35

Standing order 264A, omit the title “Protection of witnesses – Adverse mention procedures”, substitute the title “Dealing with witnesses”.

Proposed amendment 36

Standing order 264A, omit paragraphs (k) to (m).

Proposed amendment 37

Standing order 264A, omit “– Adverse mention procedures” from heading

Insert standing order 264B, as follows:

“Adverse mention procedures

- 264B (a) Where a committee has reason to believe that evidence about to be given may reflect adversely on a person, the committee shall give consideration to hearing that evidence in private session.
- (b) Where a witness gives evidence reflecting adversely on a person and the committee is not satisfied that that evidence is relevant to the committee’s inquiry, the committee shall give consideration to expunging that evidence from the transcript of evidence, and to forbidding the publication of that evidence.
- (c) Where evidence is given which reflects adversely on a person and action of the kind referred to in 264A(a) is not taken in respect of the evidence, the committee shall provide reasonable opportunity for that person to have access to that evidence and to respond to that evidence by written submission and appearance before the committee.”.

Standing order 276 – Privilege

This standing order sets out the procedure for dealing with privilege. Standing order 277 deals with matters constituting contempt. There is a distinction between breach of privilege and contempt and is probably best described in this extract from p 431 of *House of Representatives Practice* (Sixth Edition).

‘Contempt’ and ‘breach of privilege’ are not synonymous terms although they are often used as such.

The power of both Houses to punish for contempt is a general power similar to that possessed by the superior courts of law and is not restricted to the punishment of breaches of their acknowledged privileges ... Certain offences which were formerly described as contempts are now commonly designated as breaches of privilege, although that term more properly applied only to an infringement of the collective or individual rights or immunities, of one of the Houses of Parliament. It has been said that ‘All breaches of privilege amount to contempt; contempt does not necessarily amount to a breach of privilege. In other words a breach of privilege (an infringement of one of the special rights or immunities of a House or a Member) is by its very nature a contempt (an act or omission which obstructs or impedes a House, a Member or an employee of the House, or threatens or has a tendency so to do), but an action can constitute a contempt without breaching any particular right or immunity.

The Office submits that the title and text of standing order 276 be amended to include contempt.

Proposed amendment 38

Standing order 276, omit the title “Privilege” and “Upon a matter of privilege arising”, substitute the following:

“Privilege and contempt

276 Upon a matter of privilege or a contempt arising”.

ASSEMBLY COMMITTEES

The terms of reference for this review ask that the standing orders and continuing resolutions of the Assembly be reviewed once an Assembly term with a view to ensuring that the practices and procedures of the Assembly remain relevant and reflect best practice. How ‘best practice’ is conceived is, in some respects, a matter of opinion but on looking at practices in other parliament can be informative.

The structure and composition of Assembly committees are not technically part of the standing orders (except for the Standing Committee on Administration and Procedure), but rather contained in resolutions of appointment usually passed at the commencement of each assembly. However, Chapter 20 of the standing orders contain 49 standing orders concerning the effective operation of their democratic functions.

From the First to the Seventh Assemblies committees typically comprised three members – one Opposition MLA, one Government MLA and one Crossbench MLA. In the Eighth and Ninth Assemblies this changed, and committees comprised four Members – two Opposition MLAs and two Government MLAs (although two standing committees and some select committees have five MLAs).

This composition has led to problems, most notably the inability of several committees to report their findings and making recommendation to government in relation to particular inquiries. In the Eighth Assembly the following committees failed to produce a report:

- Standing Committee on Planning, Environment and Territory and Municipal Services (MoP 2012-16/351);
- Selection Committee on Regional Development (MoP 2012-16/483); and
- Standing Committee on Planning, Environment and Territory and Municipal Services (MoP 2012-16/561).

Most recently, in the current Assembly, the Standing Committee on Education, Employment and Youth Affairs produced a two page report with no recommendations (MoP 2016-18/801).

Due to the failure of some committees to agree to a report, the Assembly determined to insert a specific standing order (250B – Unable to agree to a report) addressing that situation.

The Committee may wish to consider the New Zealand Parliament's approach in relation to its committee system. In the unicameral New Zealand Parliament, the governing party does not command a majority of seats, with the Labour Party having 46 of the 120 seats – well short of the 61 required to achieve a majority government. There the Labour Party has formed an alliance with New Zealand First (nine seats) and the Green Party (eight seats), resulting in a minority government held with 63 seats.

The table below shows the comparison between the ACT Legislative Assembly and the New Zealand Parliament.

New Zealand Parliament:

Party	No of seats	% of seats
Labour Party	46	38%
New Zealand First	9	7.5%
Greens	8	6.7%
National	56	46.6%
ACT	1	0.6%

ACT Legislative Assembly:

Party	No of seats	% of seats
Labor	12	48%
Liberal	11	44%
Greens	2	(8%)

Although there are similarities between the ACT Legislative Assembly and New Zealand Parliament, the New Zealand Parliament has structured its committee system quite differently to that in use within the Assembly. As can be seen from the following table, of the 12 committees in the New Zealand Parliament, seven of them contain non-government majorities.

Composition of New Zealand Select Committees

Committee	Committee Chair	No of Members	Non-Govt Members No	Non-Govt Members %	Non-Govt Members No	Non-Govt Members %
Economic Development, Science and Innovation	Non-Government	10	4	40	6	60*
Education and Workforce	Non-Government	11	5	45	6	55*
Environment	Government	9	4	44	5	56*
Finance and Expenditure	Government	13	7	54	6	46^
Foreign Affairs, Defence and Trade	Non-Government	8	3	37.5	5	62.5*
Governance and Administration	Non-Government	8	4	50	4	50
Health	Government	8	4	50	4	50
Justice	Government	8	4	50	4	50
Maori Affairs	Government	8	3	37.5	5	62.5*
Primary Production	Non-Government	8	4	50	4	50
Social Services and Community	Non-Government	9	4	44	5	56*
Transport and Infrastructure	Government	9	4	44	5	56

* 1 Green

^ 1 ACT Party

No of committees: 12

No of non-Government chairs: 6

No of committees with non-Government majority: 7

If the Assembly determined to follow the New Zealand model, thereby mostly avoiding situations where committees are unable to report (as well as reducing the number of committees that each MLA sits on), a structure along the following lines could be adopted.

Committee	Chair	Other Members
Economic Development and Tourism	Opposition	2 Labor
Employment, Education and Youth Affairs	Government	1 Liberal 1 Labor
Environment, Transport and City Services	Government	2 Liberal
Health, Ageing and Community Services	Government	1 Liberal 1 Crossbench
Justice and Community Safety	Opposition	2 Labor
Planning and Urban Renewal	Crossbench	1 Liberal 1 Labor
Public Accounts	Opposition	1 Liberal 1 Labor

Such a structure would also bring the committee system broadly in line with the requirements of standing order 221, which states:

221. Overall membership of committees shall comprise representatives of all groups and parties in the Assembly as nearly as practicable proportionate to their representation in the Assembly.

As the table below shows the revised structure would be more in line with standing order 221.

Current (excluding Standing Committee on Administration and Procedure):

Party	No of c'ttee positions	% of c'ttee positions	% of Assembly seats
Government MLAs	14	46.6%	48%
Opposition MLAs	14	46.4%	44%
Crossbench	2	6.6%	8%

Proposed (excluding Standing Committee on Administration and Procedure):

Party	No of c'ttee positions	% of c'ttee positions	% of Assembly seats
Government MLAs	10	47.6%	48%
Opposition MLAs	9	42.8%	44%
Crossbench MLAs	2	9.5%	8%

A NOTE ON THE HONORIFIC ‘THE HONOURABLE’

Over the last several assemblies the Office has received queries from Members about the use of the honorific ‘The Honourable’ in reference to members of the Australian Capital Territory Executive and the Speaker. It has been pointed out that the ACT is the only Australian jurisdiction that does not use the honorific in respect of its ministers or its presiding officer.

In some jurisdictions the title is conferred by statute and in others it arises from convention. In the Australian parliamentary context, the term is typically reserved for: 1. members of the Executive Council, responsible for advising the Crown through the Governor-General, state governors and, in the case of the Northern Territory, the Administrator; and 2. presiding officers of upper and lower houses.

It has been thought that because the ACT does not have a vice-regal function within its system of government and therefore no Executive Council to advise it, the honorific was not applicable. However, on the basis that the s 37(d) of the *Australian Capital Territory (Self-Government) Act 1988* (Cth) vests in the Executive all the ‘prerogatives of the Crown’, there is an argument that ministers forming the ACT Executive are not merely able to advise the Crown’s representative but, in fact, to exercise the functions of the Crown and on this basis the title ‘the Honourable’ could reasonably be applied.

The Office has been advised that there is no legal impediment to adopting the title to members of the ACT Executive and the Presiding Officer as a matter of convention and were the Assembly of a mind to do so, a parliamentary basis for the title could be achieved through the inclusion of a provision in the standing orders.

As mentioned above, such a change would bring the Assembly into line with the practice of the Federal, State and Northern Territory parliaments, as well as other legislatures in the Commonwealth.

ATTACHMENT A REVIEWS OF STANDING ORDERS AND CONTINUING RESOLUTIONS OF THE ASSEMBLY

First Assembly

Inquiry into and report on standing orders 200 and 201

Inquiry into the Proposed Ethics Committee/Code of Conduct

Second Assembly

Inquiry into standing orders 79 and 153

Inquiry into standing orders 200 and 201

Inquiry into standing order 153 – Calling for a Vote

Citizen's Right of Reply

Third Assembly

Standing orders and Citizen's Right of Reply

Application of standing order 207

Proposed temporary orders relating to addresses to the Assembly

Fourth Assembly

Inquiry into a Code of conduct for Members of the Legislative Assembly and a Parliamentary Ethics Advisor for the ACT

Proposed amendments to Standing Orders relating to disorder, questions without notice and voting

Standing order 8 – Temporary Deputy Speaker

Register of Members' Interests

Order of Private Members' and Assembly business

Fifth Assembly

Review of Standing Orders: Discussion Paper

The appropriateness of a Code of Conduct for Members and their staff

Standing Order 118 – Proposed time limits for answer to questions without notice

Standing order 168(c) – proposed change

Sixth Assembly

Review of Code of Conduct for Members

Review of standing orders

Seventh Assembly

Latimer House Principles

Eighth Assembly

Standing orders relating to the consideration of committee reports

Lobbyist Regulation

Inquiry standing order 241 – Disclosure of proceedings, evidence and documents of committees

Inquiry into Ministerial Statements

Family Friendly Workplace

Ninth Assembly

Review of standing orders for the Ninth Assembly

Standing orders relating to contempt

Review of Continuing Resolution 9 – Senator for the Australian Capital Territory – Procedures for Election

Code of Conduct for all the Members of the Legislative Assembly for the Australian Capital Territory

Omnibus Bills

Commissioner for Standards Referral Process

ATTACHMENT B TEXT DESCRIPTION FOR ROUTINE OF BUSINESS TABLE.

Tuesday

- . Prayer or reflection and acknowledgement of country
- . Presentations of Petitions (and ministerial responses) by Clerk
- . Debate on the question— That petitions (and ministerial responses) be noted
- . Constituency statements
- . Ministerial statements
- . Executive Business—Notices and orders of the day
- . Questions without notice
- . Presentation of papers
- . Matter of public importance
- . Executive Business—Notices and orders of the day
- . Adjournment

Wednesday

- . Prayer or reflection and acknowledgement of country
- . Private Members' Business— Notices and orders of the day
- . Questions without notice
- . Presentation of papers
- . Private Members' Business— Notices and orders of the day
- . Adjournment

Thursday

- . Prayer or reflection and acknowledgement of country
- . Executive Business— Presentation of bills
- . Assembly Business—
- . Notices and orders of the day
- . Executive Members' Business— Notices and orders of the day
- . Ministerial statements
- . Executive Business—
- . Notices and orders of the day
- . Questions without notice
- . Presentation of papers
- . Matter of public importance
- . Executive Business—
- . Notices and orders of the day
- . Adjournment

[Return to Routine of Business table](#)