LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE
Speaker Ms Joy Burch MLA (Chair), Ms Nicole Lawder MLA (Deputy Chair),
Ms Suzanne Orr MLA, Mr Andrew Braddock MLA

Submission Cover sheet

Review of the Standing Orders and Continuing Resolutions of the Tenth Assembly

Submission number: 005

Date authorised for publication: 28 November 2022

LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

OFFICE OF THE LEGISLATIVE ASSEMBLY

Ms Joy Burch MLA
Chair, Standing Committee on Administration and Procedure
ACT Legislative Assembly
Civic Square
Canberra ACT 2600

Dear Ms Burch,

Review of Standing Orders

Thank you for your letter of 6 October 2022 inviting submissions to the Legislative Assembly's Standing Committee on Administration and Procedure - Review of Standing Orders.

The submission of the Office of the Legislative Assembly is divided into three sections:

(1) significant amendments to the standing orders and continuing resolutions;

(2) technical amendments to the standing orders and continuing resolutions; and

(3) other matters.

Yours sincerely,

[redacted]

Tom Duncan
Clerk
23 December 2022

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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

December 2022

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Significant amendments to standing orders and continuing resolutions

References to the Monarch and/or Queen

53 – Use of Queen's, Governor-General's or Governor's name
268 – How moved
269 – Addresses to Queen sent to Governor-General by Speaker

Following the death of Queen Elizabeth II, it is necessary to amend those standing orders that refer to "Her Majesty" and/or "Queen". To prevent standing orders requiring amendment to address this issue in the future, the Office proposes omitting references to "Queen" and/or "Her Majesty" and replace with "the Sovereign".

Proposed amendment
Omit standing order 53 and heading, substitute the following standing order and heading:
"**Use of the Sovereign's, Governor-General's or Governor's name**
53. A Member may not use the name of the Sovereign or their representative in Australia disrespectfully in debate, nor for the purpose of influencing the Assembly in its deliberations.".

Proposed amendment
Chapter 23 heading, omit "Queen", substitute "Sovereign".

Proposed amendment
Omit standing order 268, substitute the following standing order:
"268. Subject to standing order 126, whenever it is deemed proper to present an address to the Sovereign or the Governor-General, a motion on notice stating the terms of the proposed address shall be moved.".

Proposed amendment
Omit standing order 269 and heading, substitute the following standing order and heading:
"**Addresses to the Sovereign sent to Governor-General by Speaker**
269. Addresses to the Sovereign shall be transmitted to the Governor-General in Australia by the Speaker, who shall request the representative to cause them to be forwarded for presentation.".

Standing order 30 – Prayer or Reflection – amend to reflect current practice

Standing order 30 states that, at the beginning of each sitting, the Speaker invites members to pray or reflect on their responsibilities to the people of the Australian Capital Territory and then acknowledges that the Assembly is meeting on the lands of the traditional custodians. Current practice of the Assembly is that the acknowledgement occurs first with the Speaker then inviting members to pray or reflect.

The Office proposes that both the heading to standing order 30 and its text be amended to reflect current practice of the Assembly. The Office also proposes that the standing orders require the Chair to make the acknowledgement in the Ngunnawal language as required by the resolution of the Assembly of 28 November 2019.

Proposed amendment

Omit standing order 30 and heading, and substitute the following standing order and heading:

"**Acknowledgement and prayer or reflection**

30. Upon the Speaker taking the Chair at the commencement of each sitting, and a quorum of Members being present, the Speaker shall acknowledge that the Assembly is meeting on the lands of the traditional custodians and then the following shall be read by the Speaker:

> Members, at the beginning of this sitting of the Assembly, I would ask you to stand in silence and pray or reflect on our responsibilities to the people of the Australian Capital Territory.

The Speaker shall the read the acknowledgement in the Ngunnawal language followed by an English translation.".

New Standing order 36A – fixing an alternate sitting day

While the Assembly orders the days the Assembly is to sit, there have been occasions when additional sitting days have been required and days removed. The Assembly has adopted the practice set out in Section 17 of the Self-Government Act which states:

> **17 Times of meetings**
>
> (1) Subject to subsection (3), the Assembly shall meet:
>
> (a) within 7 days after the result of a general election is declared: and
>
> (b) within 7 days after a written request for a meeting, signed by such number of members as is fixed by enactment, is delivered to the Presiding Officer.

The Assembly has not yet made any enactment relating to this Section of the Act and the proposed new standing order would codify the current practice.

Proposed amendment

New Standing order 36A

"Fixing an alternative day to sit

36A The Speaker may fix an alternative day or hour of meeting on receipt of a request in writing from an absolute majority of members."

Standing order 59 – Anticipation of discussion – No anticipation of questions on notice appearing on the *Notice Paper*

A practice has developed where members are asking questions, during questions without notice, that are the same as questions appearing on the *Notice Paper*. To ensure that questions appearing on the *Notice*

Paper are not repeated during question time, effectively giving members two opportunities to receive an answer to the same question, the Office proposes that members not be able to ask a question without notice, that is the same as a question on notice appearing on the *Notice Paper* during the sitting week in which the question without notice was asked.

Proposed amendment
Omit standing order 59, substitute the following standing order:

"59. A member may not anticipate the discussion of any subject which appears on the *Notice Paper*, including questions on notice. In determining whether a discussion is out of order on the ground of anticipation the Speaker shall have regard to the probability of the matter anticipated being brought before the Assembly within a reasonable time. A member may not ask a question without notice the same in substance as a question placed on the notice paper in the same sitting week.

Dissent from Chair's ruling—New Standing order 73A

There is no provision in the standing orders for a member to express dissent with a ruling by the Chair. It is practice that there has been often robust debate on a matter raised by a member; either a point of order or a request for a ruling, prior to the Chair's decision. House of Representative Practice states that a dissent from a ruling must be declared at once, submitted in writing, and dealt with immediately. 30 minutes is allocated for the whole debate: proposer 10 minutes, any other member 5 minutes. No amendment may be moved as the ruling is either accepted or rejected.

Proposed amendment
New Standing order 73A
"73A Dissent from Speaker's Ruling

73A A motion of dissent from the Chair's ruling may be made, without notice, immediately following the ruling. The motion must be in writing and relate specifically to the matter raised. The time allocated for the debate shall be 30 minutes with each member speaking for not more than 5 minutes.

Standing order 74 – Routine of business – Inclusion of a period for constituency statements; removal of ministerial statements from the afternoon; an item of private Members business in the morning and afternoon; correction to petitions

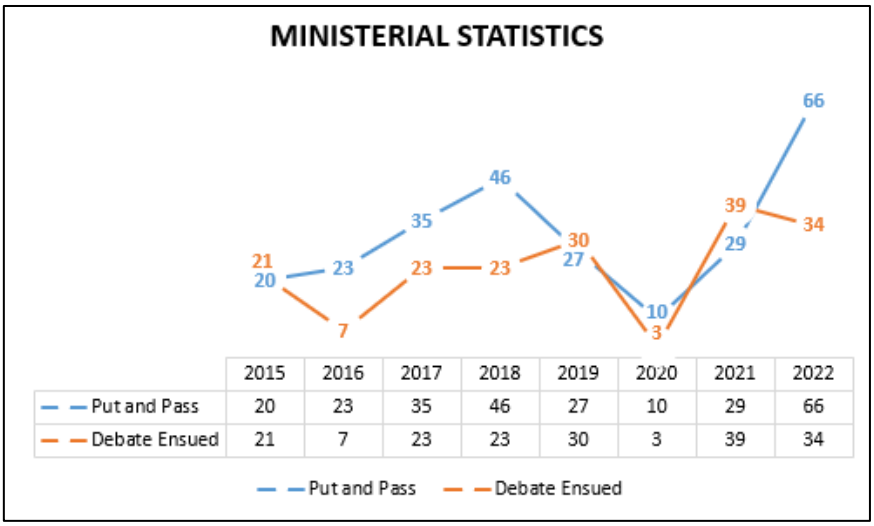
Standing order 74 sets out the routine of business for the Assembly with each day following the same format with provision made for Assembly business on a Thursday.

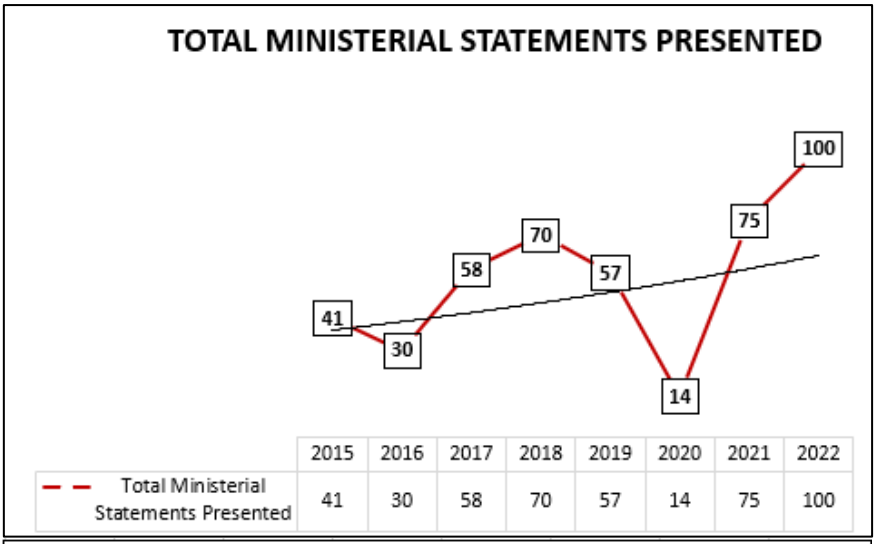
In other parliaments, periods of time are set aside for Members to speak about constituency related matters. For instance, in the Commonwealth House of Representatives 30 minutes is set aside for such statements on every day that the Federation Chamber meets. In the NSW Legislative Assembly, standing 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. This will also serve a purpose of addressing a lack of business in the morning of a sitting day which has resulted in a significant increase in ministerial statements being made – see table 1 below.

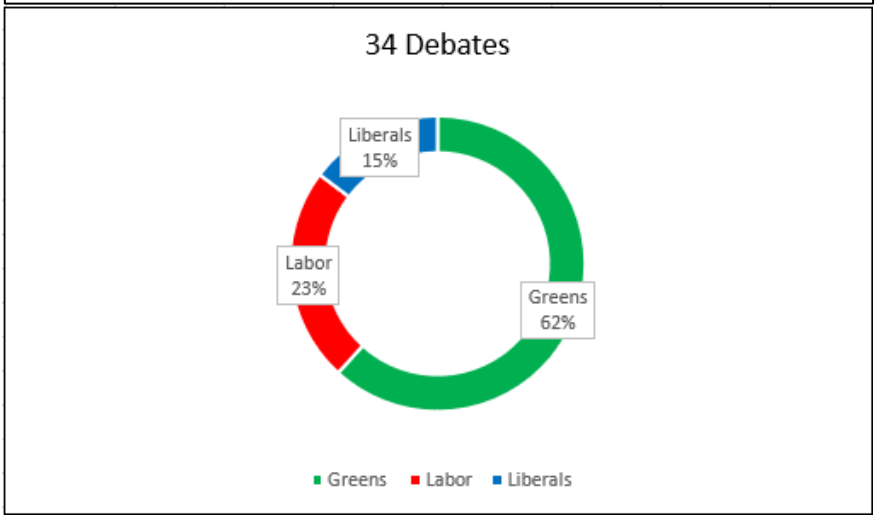
The Office submits that the Assembly establish a set time of 30 minutes every Tuesday and Wednesday for such statements. This would enable 12 Members to make statements about constituency related matters every sitting week.

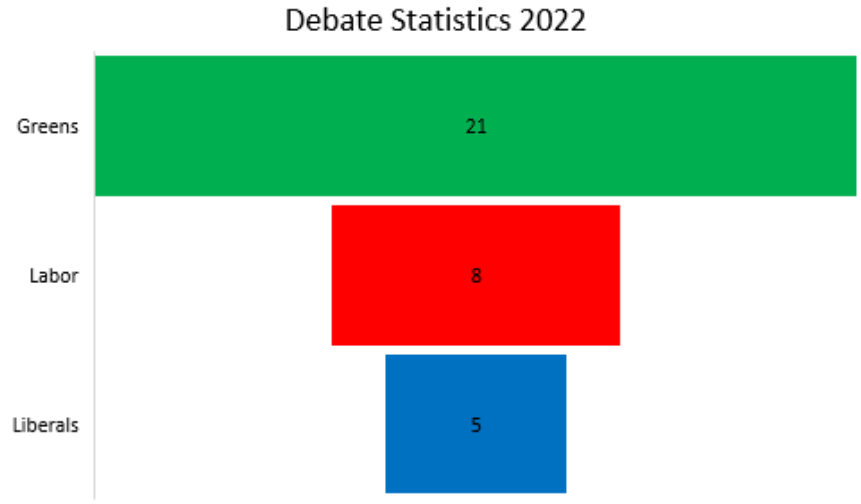
In relation to ministerial statements, the allocated spot in an afternoon has rarely been used with most ministerial statements being made in the mornings. It is proposed to remove the afternoon allocation.

Over the past 8 years there has been a steady incline in the presentation of Ministerial Statements presented in any given Assembly. Statistics show that Ministerial statements have almost doubled, jumping from 41 in 2015, to 100 in 2022.
Out of the 100 Ministerial Statements presented, 66 were put and passed, while only 34 were debated. Looking exclusively at 2022, a pattern emerged that highlighted the nature of Ministerial Debates, with 21 or 62% being debated by the Greens; 8 or 23% being debated by Labor and 5 or 15% being debated by The Liberals.









The moving of one Private Members' business item to the morning could allow the Assembly to adjourn earlier, while making use of the full two hours in the mornings.

Proposed amendment

Omit

Substitute

Standing order 74 – Routine of business

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

Prayer or reflection
Presentation of petitions and responses
Constituency statements (on sitting Tuesdays and Wednesdays)
Ministerial statements
Executive Notices and orders of the day
Private Members business (1 item)
Questions without notice
Presentation of papers
Private Members' business (1 item)
Executive Notices and orders of the day:

Standing orders 77(b), (f) and (g) – Business – precedence over – Removal of time limit for Assembly business and fixing future Wednesday's and Thursday's for private members' and Assembly business respectively

Standing order 77 outlines the priority of business during sitting days and allocates the time allotted, including 45 minutes for Assembly business on a sitting Thursday. The standing order allows for the extension of Assembly business for 30 minutes on a motion moved by any member. The Office proposes that, as the initial 45 minutes allocated to Assembly business is very rarely utilised, those standing orders relating to time allocation for Assembly business are redundant and could be removed.

Standing order 77(g) allows the Speaker to fix the next sitting Wednesday for the resumption of any business under discussion and not disposed of at the expiration of the time allotted to private members' business. As private members' business now occurs every sitting day and the order of private members' business is programmed by the Standing Committee on Administration and Procedure, this section of the standing order is no longer required.
The standing order also allows the Speaker to fix 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 at the time Assembly business is interrupted. As the Office is proposing the deletion of time allocations for Assembly business and, as with private members' business, this category of business is programmed by the Standing Committee on Administration and Procedure, the Office proposes the deletion of standing order 77(g).

Proposed amendment

Omit standing order 77(b), substitute the following standing order:

"77. (b) on sitting Thursdays, Assembly business shall have precedence over Executive business in the ordinary routine of business from the conclusion of consideration of any Executive notices of intention to present bills;".

Proposed amendment

Delete standing order 77(f).

Proposed amendment

Delete standing order 77(g).

Standing order 81A—Censure motions and Privileges Committee proposals

Standing order 81A deals with the requirement for a member to give a copy of any proposed motion of censure or motion to establish a privileges committee to Members 90 minutes prior to the time propose to move the motion. Recent circumstances indicated a need to expand the scope of this standing order to facilitate due consideration of the referral of additional matters to an existing privileges committee.

In relation to the presentation of a privileges committee report, it is also proposed that a copy of such report be provided to all members 90 minutes prior to the report being presented to the Assembly to ensure sufficient time for members to consider the findings and/or recommendations of the report.

Recommendation

Standing order 81A

Omit the standing order, substitute

"81A. In relation to proposed motions of censure, motions of no confidence; the proposed establishment of a new privileges committee and the referral of additional matters to an existing privileges committee, copies of the relevant motions shall be provided to the Speaker for circulation to all Members 90 minutes prior to the time at which the motion is proposed to be moved.

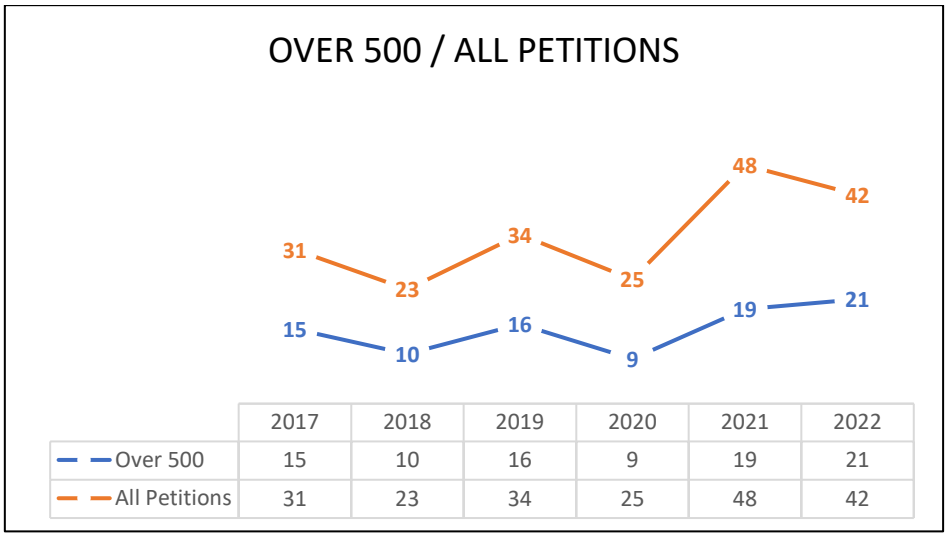
In addition, upon completion of a privileges committee's inquiry, the Chair shall provide to the Speaker a copy of the Committee's report for circulation to all Members 90 minutes prior to the time at which the report is expected to be presented."

Standing order 99A—Referred to committee

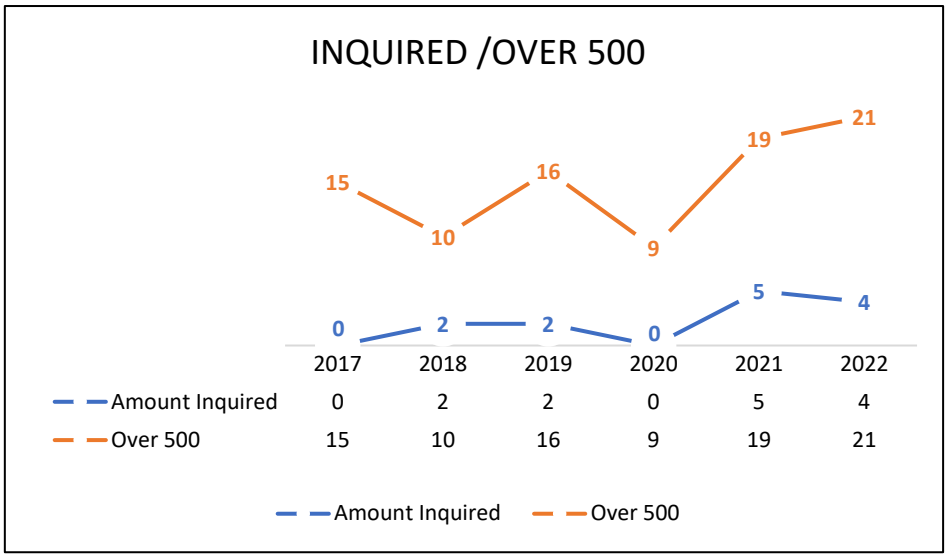
Standing order 99A orders petitions with more than 500 signatures to be automatically referred to the relevant standing committee for consideration. It has been suggested that this figure is too low as the number of actual inquiries by committees remains small.

Over the past 6 years there has been a steady increase in both the number of petitions received and the amount that are inquired into by Committees.

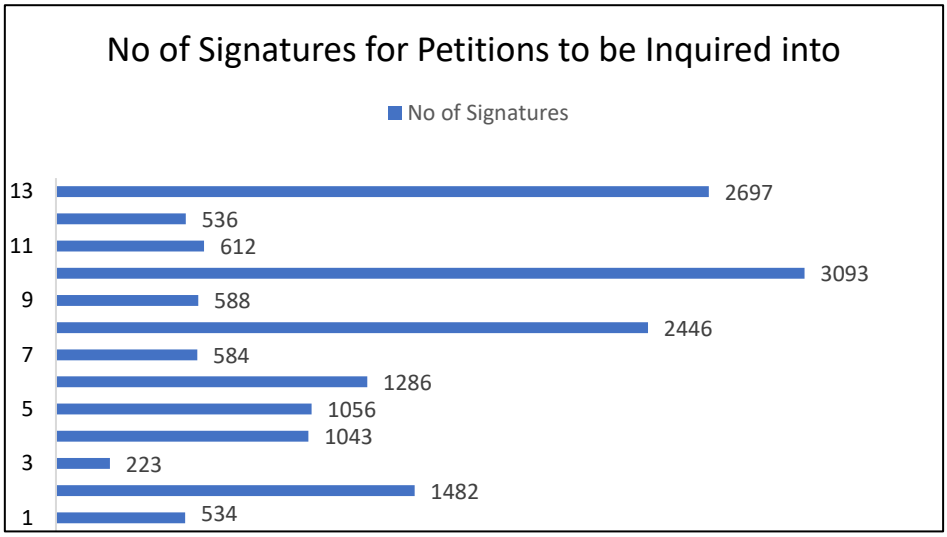
When looking at the data, a pattern emerged highlighting that nearly half of all petitions are over 500 signatures each year, meaning that in 2022 out of 42 petitions, 21 where referred to Committees and only 4 were inquired into.



	2017	2018	2019	2020	2021	2022
Over 500	15	10	16	9	19	21
All Petitions	31	23	34	25	48	42



	2017	2018	2019	2020	2021	2022
Amount Inquired	0	2	2	0	5	4
Over 500	15	10	16	9	19	21



Standing order 100 – Referred to Ministers – Minister's response—change to time for response and publication of responses

Currently Ministers have 3 months to respond to petitions that have been presented in the Assembly. With the introduction of petitions of over 500 signatures being automatically referred to the relevant standing committee, these committees are waiting for the Minister's response before deciding whether or not to inquire into a petition, thus delaying possible inquiries. It is proposed to reduce the time for Ministers to respond to 30 days. This would be consistent with the time Ministers have to answer Questions on Notice.

Ministers' responses to petitions are required to be provided to the Clerk who presents them to the Assembly at the next sitting and not made publicly available until tabled. This can result in quite a significant delay in the response being available to Committees and the public. The amendment to this standing order would permit any government response to a petition received by the Clerk under this standing order to be authorised for publication and circulated to all Members.

Proposed amendment

In standing order 100 omit:

"A Minister must respond to that petition within 3 months of the tabling of the petition by lodging a response with the Clerk for presentation to the Assembly, such responses being announced at the end of the petitions announcement."

And substitute:

"A Minister must respond to that petition within 30 days of the tabling of the petition by lodging a response with the Clerk for presentation to the Assembly, such responses being announced at the end of the petitions announcement. If the Assembly is not sitting when the Minister's response is received by the Clerk, the response is deemed to authorised for publication and circulated to all Members."

Standing order 101 – Notice of motion – how given – timing of lodgement and electronic versions to be allowed

Standing order 101 provides that notices to be considered by the Standing Committee on Administration and Procedure, under standing order 16(a)(iii), must be delivered to the Clerk no later than 12 noon on the Monday of the sitting week at which it is proposed to be moved. During the COVID-19 pandemic it was agreed that members could provide notices to the Clerk electronically due to a large number of members and staff working remotely. The Office suggests that this arrangement be formally reflected in the standing orders.

It is also suggested by the Office that standing order 101 be amended to allow for notices to be delivered on a Tuesday of a sitting week, if the Monday is a public holiday. This has been the practice and this amendment formally reflects the practice in the standing orders.

Proposed amendment

Omit standing order 101, substitute the following standing order

"**Notices of motion – how given**

101. Notice of motion shall be given by delivering a copy of its terms to the Clerk in the Chamber during a sitting. The notice must be signed by the Member, (if a co-sponsored motion, by all Members whose names are on the notice).

Except that a proposed notice of motion to be considered by the Standing Committee on Administration and Procedure under standing order 16(a)(iii) must be delivered to the Clerk, either in signed hard copy or signed electronic copy, no later than 12 noon on the Monday of the sitting week at which it is proposed to be moved. In instances where the Monday is a public holiday, no later than 12 noon on the Tuesday of the sitting week at which it is proposed to be moved.".

Standing order 113A-113B— Questions without notice—reforming procedures to prevent Dorothy Dixers in favour of constituency related questions—and allowing questions to be debated

Question time is the main opportunity in the Assembly chamber for non-executive MLAs to scrutinise ministers about the government's administration of the Territory.

Under current arrangements, the standing orders permit members of the government backbench/crossbench to pose what are colloquially known as 'Dorothy Dixers'—rehearsed questions that are typically used as a means for ministers to enunciate the positive attributes of particular government programs and policies, or to disparage the policies and proposals of political opponents.

It is widely acknowledged that this practice serves no substantive accountability purpose and duplicates other procedures by which ministers are able to explain their policies to the chamber (for example, through ministerial statements).

Expert evidence put to the 2021 House of Representatives Standing Committee on Procedure inquiry into Question Time was highly critical of Dorothy Dixers. Members of the public also expressed deep misgivings

to the committee about the practice. From the report of that committee:

> More than 86 per cent of respondents to the public survey [conducted by the standing committee] thought that the ability to ask Dorothy Dix questions should be removed, while a further eight per cent thought the practice should be amended…
>
> Overwhelmingly, … [Dorothy Dixers] were seen as disingenuous and as not aiding the pursuit of government accountability, thereby contravening the purpose of Question Time. Instead they were seen as providing an opportunity for answers that were effectively press releases or talking points for the government. The Accountability Round Table considered Dorothy Dixers to have a 'corrosive influence'.
>
> Many authors considered that Dorothy Dix questions should be discontinued, and some put that only non-government Members should ask questions during Question Time…[1]

Dorothy Dixer questions were variously described by submitters to the inquiry as:

- 'demeaning' to the government backbenchers who are required to ask them;
- 'a complete waste of time'; and
- 'an appalling, terrible use of Question Time'.[2]

Recognising that backbenchers—whether from the government, opposition or crossbench—still have an important role to play in representing their constituents and seeking information that will be of interest to their electors, the Office does not support the proposition that only non-government members should be able to ask questions at Question Time.

There is, however, a strong case to reform the Assembly's Question Time procedures so that questions without notice that are put by non-executive government members are confined to questions about constituency related matters, rather permitting broad pretextual queries used to give government ministers a wide-ranging political platform.

Such an approach is in line with the view expressed by the Clerk to the House of Representatives, Claressa Surtees, who stated in her submission to the House of Representatives inquiry:

> … it would be important to focus on the form of the questions rather than seeking to limit the ability of government Members to raise questions. To do so might restrict the notional ability of

[1] House of Representatives Standing Committee on Procedure, *A window on the House: practices and procedures relating to Question Time,* March 2021, pp 40-43
[2] House of Representatives Standing Committee on Procedure, *A window on the House: practices and procedures relating to Question Time,* March 2021, pp 40-43

a Member to take part in the proceedings of the House. Members have responsibilities not only to their party (if aligned to a party) but also to their constituency and to the House itself.[3]

Against this background, the committee may wish to consider that the standing orders be amended in such a way as to remove Dorothy Dixers while maintaining the ability of government members to ask questions seeking information in relation to constituency matters. Such an approach could consist of three components for the period set aside for questions.

1. **Questions without notice**—This portion of Question Time would be directed acquitting the Assembly's accountability and scrutiny function and would have the following features:
   (a) Only non-government Members would be able to ask oral questions of Ministers without notice.
   (b) Questions without notice would not conclude until non-government members seeking to ask a question have asked at least the number of questions equivalent to the number of non-government Members present in the chamber.
   (c) Two supplementary questions may be asked by each non-government member who asked the original question.
2. **Constituency questions**—This item of business would be directed towards questions relating to matters arising in individual electorates and could operate in a manner similar to the procedure adopted in the Victorian Legislative Council (standing order 8.08).
   a) At the conclusion of questions without notice, up to 6 non-executive government Members and 6 non-government Members may ask a constituency question of a minister.
   b) A constituency question must—
      (i) relate to matters falling with the ACT jurisdiction;
      (ii) ask a question seeking information; and
      (iii) relate to a specific matter within the Members' constituency.
   c) Two supplementary questions may be asked in relation to each constituency question by the Member asking the original question.
3. **Answers be noted**—This procedure would operate following the conclusion of constituency questions (or in the event that there is not agreement to the proposal to introduce constituency questions, at the conclusion of questions without notice) in much the same manner as the procedure set out in Senate standing order 72(4). The procedure provides an opportunity for MLAs to reflect on the adequacy or otherwise of ministers' answers during Question Time / Constituency questions and for matter raised during the questioning periods to be substantively debated.

Proposed amendment

Omit standing order 113A and substitute:

"Questions without notice

Questions without notice shall not conclude until non-government members seeking to ask a question have asked at least the number of questions equivalent to the number of non-government Members present in the chamber."

[3] House of Representatives Standing Committee on Procedure, *A window on the House: practices and procedures relating to Question Time,* March 2021, p 44.

Proposed amendment

Omit standing order 113B and substitute:

"Supplementary questions

Immediately following an answer to a question without notice, two supplementary questions may be asked by each non-government member who asked the original question. A supplementary question shall:

(a) be precise and direct in its terms;

(b) be relevant to the original question or shall arise out of the answer given;

(c) not contain any preamble;

(d) not introduce new subject matter."

Proposed amendment

Insert new standing order 113D as follows:

"Constituency questions.

113D (a) At the conclusion of questions without notice, up to 6 non-executive government Members and 6 non-government Members may, without notice, ask a constituency question of a minister.

(b) A constituency question must—

(i) relate to matters falling with the ACT jurisdiction;

(ii) ask a question seeking information; and

(iii) relate to a specific matter within the Members' constituency.

(c) Two supplementary questions may be asked in relation to each constituency question by the Member asking the original question."

Proposed amendment

Insert new standing order 113E as follows:

"Answers to be noted

113E After question time the Speaker shall move that the Assembly take note of answers given that day to questions without notice and constituency questions. A Member may speak for not more than 5 minutes on the motion. The time for debate on the motion shall not exceed 30 minutes."

Standing order 122—Answers to questions on notice

Ministers have 30 days to answer questions on notice (including questions taken on notice during questions without notice). On occasion, Ministers have asked that questions on notice be redirected to a different ministerial portfolio. This amendment to the standing order confirms that, in such circumstances, the 30 day time limit remains and is not reset by the redirection.

Proposed amendment

In standing order 122, add "The 30-day time limit for answering a question is not affected if a question is redirected to a different minister. r."

Standing order 139 – Amendments —proposed—electronic copies

Amendments to motions can be quite lengthy as most tend to include a global "omit all words and substitute". To ensure the accuracy of these amendments in the Minutes of Proceedings, it is proposed to require that they also be provided electronically to the Office of the Legislative Assembly

Proposed amendment

In standing order 139, after "mover.", insert "an electronic copy is also to be provided to the Office of the Legislative Assembly."

Standing order 152A – Removal of private Members' business orders of the day from the *Notice Paper* – Include the removal of certain items of Executive business and update title to reflect contents of standing order

Standing order 152A allows for private members' business orders of the day (excluding bills), and Assembly business orders of the day to take note of papers or reports, to be removed from the *Notice Paper* if they have not been called on for four sitting weeks. The Office proposes that Executive business orders of the day to take note of papers be included within the terms of this standing order. Recent practice of adjourning the question "that the Assembly take note of the paper" has resulted in the inclusion of a large number of items appearing under Executive business orders of the day that are then not further debated by the Assembly but continue to appear on the *Notice Paper*. The Office also suggests that the heading be updated to reflect the terms of the standing order.

Proposed amendment

Omit standing order 152A and heading, substitute the following:

"**Removal of certain orders of the day from the *Notice Paper***

152A. After notifying the member in charge, the Clerk shall remove from the *Notice Paper* any:

(a) private Members' business order of the day, excluding bills;

(b) Assembly business order of the day to take note of a paper or report; and

(c) Executive business order of the day to take note of a paper;

which has not been called on for four sitting weeks.".

Standing order 160 and 161 – Question stated — Members present must vote – Presiding Member has deliberative vote—nomenclature of Members

Currently, when the Clerk reads out Members names when a division has been called, a gender-identifying term is used. In step with other proposed amendments to remove words that may be regarded as discriminatory, it is proposed that the following options be considered:

Option 1 First Name, Surname

Option 2 Minister Surname and Member Surname

Option 3 Members to nominate preferred reference (provided that a uniform approach is adopted.

Alternatively, the Office is unaware that any of the current Members identify as non

-binary, transgender, intersex etc so one approach could be to remain with the status quo, amending the standing orders when such a member is elected and indicates a preference.

Standing order 168 – Notice of presentation - timing of and electronic versions to be allowed

Standing order 168 provides the process for presentation of a notice of intention to present a bill. Similar to proposed changes to standing order 101, the Office suggests that this standing order be amended to allow for such notices to be delivered on a Tuesday of a sitting week, if the Monday is a public holiday. This has been the practice and this amendment formally reflects the practice in the standing orders. The Office also proposes that the standing order be amended to allow for signed electronic copies of notices to be provided to the Clerk on a non-sitting day.

Proposed amendment

Standing order 168, omit 168(a)(i), substitute the following:

"168(a)(i) to the Clerk's Office, either in signed hard copy or signed electronic copy, by 12 noon on a Monday of the sitting week of which a bill is proposed to be introduced or, in instances where the Monday is a public holiday, no later than 12 noon on the Tuesday of the sitting week at which it is proposed to be moved;".

Standing order 168—Notice of presentation—inclusion of a statement of public interest in explanatory statements to bills

One of the primary functions of the Assembly is to consider and pass laws for the 'peace, order and good government of the Territory'.[4] It is generally accepted that operating in the 'public interest' as opposed to narrow, individual or sectional interests, is an important feature of good legislation and 'good government' more generally. That is:

> The institutions of government and the officials and agencies of government exist for the public, to serve the interests of the public.[5]

[4] Section 22 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth)

[5] Chris Wheeler, The Australian Institute of Administrative Law Forum, *The public interest we know it's important but do we know what it means*, No 48, 1 April 2006, p 13.

To assist its members in making informed decisions about the extent to which public interest considerations have been incorporated into government bills, the NSW Legislative Council has, through its current sessional orders, made provision for its Selection of Bills Committee to include in its report to the House:

> Any government bill, other than an appropriation bill for the ordinary annual services of the government, that is not accompanied by a completed Statement of Public Interest that addresses each of the following questions:
>
> - Need: Why is the policy needed based on factual evidence and stakeholder input?
> - Objectives: What is the policy's objective couched in terms of the public interest?
> - Options: What alternative policies and mechanisms were considered in advance of the bill?
> - Analysis: What were the pros/cons and benefits/costs of each option considered?
> - Pathway: What are the timetable and steps for the policy's rollout and who will administer it?
> - Consultation: Were the views of affected stakeholders sought and considered in making the policy? [6]

In response to the sessional order, a Premier's Memorandum was issued, making it a requirement that all government bills (other than an appropriation bill for the ordinary annual services of the government) must be accompanied by a Statement of Public Interest before proceeding to the Legislative Council.[7]

The NSW model for 'statements of public interest' adapts and combines 'good practice' criteria, developed by Professor Kenneth Wiltshire AO, and have been adopted by the Institute of Public Administration of Australia, to assess the quality of federal legislation.[8] The Evidence-Based Policy Research Project, along with other public policy stakeholders from across the political spectrum, has advocated for the inclusion in explanatory statements/memoranda of statements of public interest across all Australian Parliaments.[9]

The inclusion of a standardised framework in explanatory statements have the potential to improve members' evaluation of—and debates about—legislative proposals and the extent to which they advance the public interest. A similar approach could be adopted by the Assembly through the introduction of particular requirements in relation to the content of explanatory statements associated with government bills.

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[6] See Sessional Order 136A.

[7] M2022-03 Statements of public interest; see, https://arp.nsw.gov.au/m2022-03-statements-of-public-interest/, accessed on 9 December 2022.

[8] https://www.evidencebasedpolicy.org.au/wp-content/uploads/2021/10/Wiltshire-Criteria-and-Evaluation-Questionnaires-27.9.2021.pdf, accessed 9 December 2022. Wiltshire's 10 criteria have been compressed and combined to six.

[9] https://www.evidencebasedpolicy.org.au/, accessed 9 December 2022

Proposed amendment

Insert new 168(ca) as follows:

An explanatory statement accompanying a government bill (except appropriation bills) shall include a Statement of Public Interest that addresses each of the following questions:

1. **Need**
   Why is the policy needed based on factual evidence and stakeholder input?
2. **Objectives**
   What is the policy's objective couched in terms of the public interest?
3. **Options**
   What alternative policies and mechanisms were considered prior to the finalisation of the bill as presented?
4. **Analysis**
   What were the pros/cons and benefits/costs of each option considered?
5. **Pathway**
   What are the timetable and steps for the policy's rollout and who will administer it?
6. **Consultation**
   Were the views of affected stakeholders sought and considered in making the policy? What stakeholder objections were encountered and how were these evaluated and incorporated in the finalised policy, or, on what grounds were they rejected?

Bill inquiries—Standing orders 174 and 176

Standing order 174 makes a general requirement that bills be referred to the relevant standing committee. Standing orders 175 and 176 place a "hold" on a bill proceeding through the Assembly while the relevant committee conducts its inquiry.

Committees' resolution of appointment provides more detail, including that committees must decide on conducting an inquiry within three weeks of the bill being tabled (extended from two weeks on 10 February 2022). A committee must complete its inquiry within two months of bill tabling, or three months if the bill is presented in the last sitting week of the year.

Experience to date is that:

- committees have been selective in conducting bill inquiries;
- in some cases, committees must decide whether to inquire into a bill without the Scrutiny Committee releasing its scrutiny report on the bill (extending the decision period from two to three weeks reduced the frequency of this);

- the Government tables responses to bill reports and bill amendments based on the Scrutiny Committee reports;
- the two-month limit increases peaks in committee work;
- committees have sometimes been interested in a bill inquiry but decided against it because of work pressures caused by other bill inquiries;
- bill inquiries can be either small or large in scale and are sometimes conducted without a public hearing;
- if the sittings finish with a sittings fortnight, bills presented in the penultimate week of the year have a two-month inquiry period, the bulk of which occurs over Christmas and New Year, limiting opportunities for the community to contribute; and
- committees are increasingly seeking extensions from the Assembly.

Bill inquiries are core business for committees in many legislatures and the Assembly is no exception. The Office is of the view that Assembly committees have made positive contributions to legislation and, with some adjustment, committee inquiries into bills can become a key Assembly function. Our proposals cover:

- committees accessing the scrutiny report prior to deciding on whether to inquire into a bill;
- committees having sufficient time to conduct bill inquiries, which will help manage workload; and
- the Assembly continuing to receive the government response to a committee bill report with sufficient notice to inform debate.

Proposed amendment

Omit standing order 174, substitute the following standing order:

"174. Upon a Bill being presented to the Assembly, the bill stands referred to the relevant Assembly standing or select committee for consideration, and:

(a) if the subject matter of the bill makes it unclear which committee it should be referred to, the Speaker will determine the appropriate committee;

(b) the committee must advise the Speaker of its decision to inquire into the bill within two weeks of its presentation, or one week after the relevant scrutiny report is tabled, whichever is greater;

(c) the Speaker must arrange for all members to be notified; and

(d) the committee must complete its report within four months of the bill's presentation."

Proposed amendment

Standing order 176, omit "and has been reported on", substitute ", has been reported on, and the Government has tabled its response to the report".

Standing order 211 — papers presented

The process adopted for the tabling and noting of papers presented by the Speaker and Ministers has been criticised by some members. At issue is that non-Executive members are being asked to advise which papers they wish to have noted so that a debate/discussion can occur. Members are not aware of the content of these documents and so cannot make an informed decision. It has recently become the practice of the Opposition to ask that all papers be noted and debate adjourned. This is time consuming and clogs up the Notice Paper. Debate on these orders of the day is at the discretion of the Executive and they rarely call the items on for debate.

This amendment provides for an electronic copy of all documents to be tabled by Ministers to be provided to all members by 12 noon on the sitting day with Members advising their Whips which papers they require to have a motion to have the paper noted so that they may debate the paper with some knowledge of its contents.

Proposed amendment

Omit standing order 211, substitute

"Papers Presented

211. Papers may be presented to the Assembly by a Minister or the Speaker. By 12 noon on a sitting day, electronic copies of all papers to be presented by the Executive will be made available to all members. Prior to Question Time, any Member may indicate to the Manager of Government Business which papers are to be noted, and, upon presentation of papers, the Manager of Government Business shall move a motion to take note of the relevant papers.".

E-tabling of documents

The requirement to table a hard copy of every paper remains despite the advances in technology and data storage solutions. Inquiries and solutions offered in the past have not satisfactorily addressed this issue to ensure the authenticity of documents and the requirement that these documents are forever records. The keeping of hard copy records poses difficulties for all jurisdictions having to safely store large quantities of paper. The Office submits that there would be a number of advantages in the Standing Committee on Administration and Procedure inquiring into e-tabling.

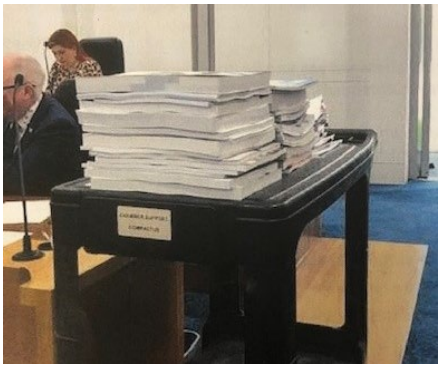

Figure 1: Documents scheduled to be tabled in a sitting by the Manager of Government Business

Proposed recommendation

The Committee recommends that the Standing Committee on Administration and Procedure inquire into and report on options to enable the e-tabling of documents in the Assembly, noting the requirements of the Territory Records Act, standing orders 25 and 26 and the practices and procedures of other Commonwealth jurisdictions, and any other legal requirement.

Standing order 213A—Order for the production of documents—enabling members to access documents following the successful passage of an order

The power to order the production of documents is innately tied to parliament's function of scrutinising the Executive and remains an important means by which the legislature can enforce government and ministerial accountability. The Assembly's power to order the production of documents rests on a range of statutory, constitutional, and common law, including:

- section 24 of the *Legislative Assembly (Self-Government) Act 1988* (Cth) establishes general equivalence between the powers, privileges, and immunities of the Legislative Assembly with those of the House of Representatives;
- section 49 of the Australian Constitution gives the House of Representatives the same powers, privileges, and immunities as the Commons House of Parliament of the United Kingdom at the time of Federation. In 1901, the Commons undoubtedly had (and continues to have) the power to order the production of documents. *Erskine May* 10th Edition, states that 'Parliament is invested with the power of ordering all documents to be laid before it, which are necessary for its information';[10]
- in addition to its receipt of the Common's compulsory production power, House of Representatives Standing Order 200 gives the House the power to order documents to be presented to it; and
- section 21 of the Self-Government Act gives the Assembly the power to make standing rules and orders with respect to the conduct of its businesses.

Standing order 52 of the NSW Legislative Council (on which Assembly standing order 213A is based) was adopted following a serious of court cases[11] which confirmed the Legislative Council's power to compel the production by the Executive of documents.[12]

Former Clerk of the Australian Senate, Dr Rosemary Laing, has described standing order 52 and associated

[10] See David Blunt, *Orders for Papers and Parliamentary Committee An Update from the New South Wales Legislative Council*, 49th Presiding Officers and Clerks Conference, Wellington, New Zealand, 10 July 2018, p 16, https://www.parliament.nsw.gov.au/lc/articles/Documents/Paper%20%E2%80%93%20Mr%20David%20Blunt,%20Clerk%20of%20the%20Parliaments,%20NSW%20Parliament%20-%20Orders%20for%20papers%20and%20parliamentary%20committees%20.pdf, accessed 6 December 2022, accessed 6 December 2022.

[11] See *Egan v Willis and Cahill* (1996) 40 NSWLR 650, *Egan v Willis* (1998) 195 CLR 424, and *Egan v Chadwick* (1999) 46 NSWLR 563. The Legislative Council relied on the common law doctrine of 'reasonable necessity' to propound the validity of its power to compulsory gain access to documents as the Council had never declared in powers, privileges, and immunities in statute law.

[12] As noted, the Legislative Assembly is in a stronger position than the NSW Legislative Council (not having to rely on the common law) due to s 24 of the Self-Government Act, which links the powers of the Assembly to those enjoyed by the House of Representatives (including to the *Parliamentary Privileges Act 1988* (Cth)).

arrangements as 'the most effective regime for the production of documents of any Australian jurisdiction'.[13] Clerk of the Legislative Council, David Blunt, put the position as follows:

> *…the executive government is required at law to produce to the Legislative Council all documents despite any claim of privilege, including a claim of public interest immunity, the only exception being certain cabinet documents. Therefore, documents that are subject to a claim of privilege are in fact produced to the Legislative Council. The government has no choice; it has to do that. Standing order 52…then sets out the procedure that the house has put in place to deal with returns to order and to deal with privilege claims.*

In its present form, Assembly standing order 213A, makes provision for documents the subject of an order of the Assembly to be examined by an independent legal arbiter where a claim of 'privilege'[14] is made by the Chief Minister.

Where a claim is substantiated by the arbiter, any document the subject of the claim is returned to the 'Chief Minister's Directorate' and, importantly, inspection by MLAs is then not permitted. The standing order, in its present form, essentially allows an order of the Assembly to be negated by a third party (i.e., the independent legal arbiter). This represents a significant derogation from the underlying power of the Assembly to order the production of—and to receive access to—Executive documents.

In contrast, the NSW Legislative Council's approach proceeds from the basis that, irrespective of any privilege claim made by the Executive, a production order gives rise to a legally enforceable right of access by the chamber to a document that is the subject of an order. The Council's standing order 52 recognises that while the parliamentary chamber maintains its right to insist on production, there may be occasions where publication of certain material beyond Members of the Legislative Council (MLCs) may be damaging to the public interest.

In these cases, while the Executive must still comply with a production order of the Legislative Council and to make the documents available to MLCs, documents over which privilege has been substantiated to the satisfaction of the legal arbiter are not published.

Since the introduction of standing order 52, orders for papers have become commonplace and are largely considered uncontroversial. In the 57th Parliament (2019-2023), over 400 orders for papers/production of documents have been passed by the Legislative Council.[15]

Against this background, in order to remove the arbitrary limitation on the Assembly's power to gain access to documents the subject of an order of production, the Office recommends that standing order 213A be amended in order that:

- MLAs would be given access to documents the subject of a production order;
- claims of privilege made by the Chief Minister would continue to be assessed by an independent legal arbiter;
- where a claim is validated by the arbiter, any document (or part thereof) would not be authorised for publication but would, nonetheless, remain available to MLAs.

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[13] Senate Standing Committee on Legal and Constitutional Affairs (2014) *A Claim of Public Interest Immunity Raised over Documents*, p 19.

[14] Claims have tended to be advanced under the rubric of public interest immunity.

[15] Stephen Frappell, *Parliamentary privilege developments since 2019 and current issues*, Legalwise Seminar, Wednesday 2 November 2022, p 16. https://www.parliament.nsw.gov.au/lc/articles/Documents/Parliamentary%20privilege%20-%20Developments%20since%202019%20-%202%20November%202022.pdf, accessed 7 December 2022.

Proposed amendment

Delete existing SO 213A and insert the following:

(a) A Member may lodge a notice of motion ordering to be tabled in the Assembly any document or documents that are held by or in the control of the ACT Executive, its directorates or agencies, or any other government entity operating within the purview of Executive government or that is in direct receipt of Territory funding.

(b) The Clerk is to communicate to the Head of Service all orders made by the Assembly for a document or documents.

(c) The Chief Minister is entitled to make a claim of privilege in relation to any document—or part thereof—the subject of a production order of the Assembly.

(d) In accordance with any production order, the Head of Service must return to the Clerk within 14 calendar days of the date of the order:

a. all documents falling within the terms of the order;
b. an indexed list of all documents subject to the order, showing the date of creation of the document, a description of the document and the author of the document;
c. details of any privilege claims, including reasons for a claim, made by the Chief Minister in relation to any returned document or part thereof.

(e) All documents not the subject of a claim of privilege will be presented in the Assembly by the Clerk, or, if the Assembly is not sitting, will be circulated to Members and will be deemed to have been presented to the Assembly and authorised for publication; the Clerk will table such documents at the next sitting of the Assembly.

(f) Any document the subject of a claim of privilege, along with the Chief Minister's reasons for a claim, will be made available by the Clerk only to Members of the Legislative Assembly and will not be published or copied without an order of the Assembly.

(g) Any Member may, by communication in writing to the Clerk, dispute the validity of a claim of privilege made by the Chief Minister in relation to a document or part thereof. On receipt of such communication, the Clerk is authorised to release the disputed document or documents to an independent legal arbiter, along with the reasons for a claim and any reasons advanced by a Member disputing the claim, for evaluation and report.

(h) Where a dispute regarding a claim of privilege arises, an independent legal arbiter is to be appointed by the Speaker and must be a King's Counsel, Senior Counsel, or a retired judge of the Supreme Court, Federal Court, or High Court.

(i) A report of the independent legal arbiter is to be lodged with the Clerk setting out whether or not any privilege claim is substantiated and the reasons for the arbiter's

determination.

(j) A report from the independent legal arbiter is to be lodged with the Clerk and:
(i) made available only to Members; and
(ii) not published or copied without an order of the Assembly.

(k) Any document, or part thereof, over which a claim of privilege is made that is not substantiated by the independent legal arbiter will be laid on the table by the Clerk, or, if the Assembly is not sitting, will be circulated to Members and will be deemed to have been presented to the Assembly and authorised for publication.

(i) Any document, or part thereof, over which a claim of privilege is made and substantiated by the independent legal arbiter is:
to be made available only to Members; and
(ii) not to be published or copied without an order of the Assembly.

(l) The Clerk is to maintain a register showing the name of any person examining documents tabled under this order.

Government responses to dissenting reports and additional comments

Standing order 254B requires the government to respond to a committee report. There is no obligation for the government to respond to dissenting reports or additional comments. These documents can add value to a committee report because they are also informed by inquiry evidence. At the national level, government responses have agreed to adopt recommendations from minority reports, where they are put constructively. The Office proposes that governments also respond to dissenting reports and additional comments. To achieve consistency, we recommend changes to standing order 254A as well.

Proposed amendment
Standing order 254A, in the title, delete “to Committee report”.

Proposed amendment
Standing order 254A, after “presentation of the report” insert “and any dissenting reports and additional comments”.

Proposed amendment
Standing order 254A(a), delete “to the committee report”.

Proposed amendment
Standing order 254B, in the title, delete “to Committee report”.

Proposed amendment

Standing order 254B, after "A government response to a Committee report" insert "and any dissenting reports and additional comments".

Standing order 254B exempts scrutiny reports. The practice with these reports is that ministers submit responses to the Scrutiny Committee on individual pieces of legislation, rather than to reports. The Scrutiny Committee comments on these responses as appropriate.

If a committee inquiries into a bill, then its report will consider the scrutiny comments and the government response to the bill inquiry will, in a sense, be responding to the scrutiny report.

The Office does not propose making a significant amendment to this part of the standing order.

New Standing order 254BA— Content of government responses to committee reports

Government responses currently use some headings that do not add clarity. Headings such as "noted" and "agreed in principle" are sometimes used where the Government is not agreeing to implement a recommendation.

To improve transparency and accountability, the Office proposes that the standing orders include text similar to sub-section 19(2) of the South Australian *Parliamentary Committees Act 1991.* It requires government responses to state whether they are implementing a recommendation (and how) or not implementing a recommendation (and why).

Proposed amendment

After standing order 254B insert the following standing order:

"**Content of Government Responses**

254BA. A government response to a committee report and any dissenting reports and additional comments must include statements as to:

(a) which (if any) recommendations will be carried out and the manner in which they will be carried out; and

(b) which (if any) recommendations will not be carried out and the reasons for not carrying them out."

Continuing resolution 8AB-8AC—ACT Lobbying Code of Conduct and ACT Lobbyist Regulation Guidelines—amend

Integrity and corruption risks associated with undeclared or inadequately regulated lobbying activities have taken on additional significance since the last review of the standing orders. A recent report of the Victorian independent broad-based anti-corruption commission (ibac) has recommended the enactment of legislation and supporting legislative instruments to clarify and strengthen the regime operating in that state.[16] The Independent Commission Against Corruption (ICAC) has recommended appointing a dedicated lobbying

[16] Independent broad-based anti-corruption commission, *Special report on corruption risks associated with donations and lobbying*, October 202, p 49

commissioner to regulate lobbying activity in NSW.[17]

The ACT is the only Australian jurisdiction which regulates lobbying activities in relation to MLAs, their staff, and public servants solely by way of a resolution of the Assembly. The ACT is also the only jurisdiction in which the Clerk of the Assembly (whose primary statutory function is to advise and support the Assembly and its members) is responsible for maintaining a register of lobbyists and exercising certain other functions associated with public sector lobbying (including in relation to the ACT Public Service).

While resolutions and orders of the Assembly are the primary means by which the Assembly regulates its own proceedings and the conduct of MLAs, they are inapposite as a means by which to introduce legal obligations around lobbying activities so far as they apply to:

- private individuals or companies;
- the broader public sector.[18]

In their existing formulation, continuing resolutions 8AB and 8AC purport to establish certain obligations in relation to both these categories. For example:

- continuing resolution 8AC purports to affect a 'direction' to 'all ACT public service officers' not to 'knowingly or intentionally entertain any non-exempted communication' from certain persons in continuing resolution 8AC under the heading 'Prohibition on contact with unregistered Lobbyists');
- provisions at paragraph (2) of continuing resolution 8AB (the lobbying code of conduct) set out certain information that lobbyists 'must' provide public officials;
- provisions at paragraph (3) of the code set out principles that a lobbyist 'must follow'.

The Office submits that a strong regime for regulating lobbying in the ACT Public Service / public sector ought to:

- be established in legislation to give it the force of the law, including the establishment of links between relevant provisions of the *Public Sector Management Act 1994* so far as public servants and public sector members are concerned (e.g., Div. 2.1) and the *Legislative Assembly (Members' Staff) Act 1989* in relation to staff of Members;
- incorporate a register of lobbyists administered by an appropriately resourced authority, separate from the wider ACT Public Service, which has the power and capacity to investigate, monitor and report on compliance (e.g., the ACT Integrity Commission).

Accordingly, the Office recommends that:

(a) a properly considered legislative framework for the regulation and registration of lobbyists be developed in line with best practice principles; and

(b) continuing resolutions 8AB-8AC be omitted.

Proposed amendment

Omit continuing resolutions 8AB-8AC.

[17] Independent broad-based anti-corruption commission, *Special report on corruption risks associated with donations and lobbying*, October 202, p 49

[18] Indeed, the making of standing rules and orders pursuant to s 21 of the Self-Government Act is linked to the 'conduct of [Assembly] business'.

Proposed recommendation
Accordingly, the Office recommends that a properly considered legislative framework for the regulation and registration of lobbyists be developed in line with best practice principles.

Continuing resolution 5A—Code of conduct—introduce provisions regarding bullying and harassment and Members' duties concerning workplace health and safety (WHS)

Bullying and harassment

Currently, the Code of Conduct for all Members of the Legislative Assembly requires that Members are to 'extend professional courtesy and respect' and 'act consistently with accepted workplace conduct standards' in their dealings with 'staff of the Assembly, staff of other Members and members of the ACT Public Sector'. However, in the course of a recent gender audit undertaken by Commonwealth Women Parliamentarians (CWP) it has been noted that the Assembly code does not make specific provision in relation to the prohibition of bullying or harassment, including in relation to sexual harassment.

Specific provision would provide a firmer basis on which the Legislative Assembly Commissioner for Standards could proceed to investigate a Member where relevant provisions of continuing resolution 5AA were also satisfied.

WHS duties

In its report, the Select Committee on Privileges 2022 recommended that the code of conduct be amended to make provision that members have a 'duty to act in a way that does not unreasonably place the health, safety and wellbeing of others at risk'.[19]

The Office submits that in the interests of consistency, it may be sensible to strengthen the provision to more closely align with the proactive duties of the WHS Act (i.e., that members have a duty to eliminate or minimise health and safety risks so far as reasonably practicable).

Proposed amendment
At paragraph (18) of continuing resolution 5 insert new subparagraphs as follows:
(d) not engage in bullying or harassing behaviour;
(e) ensure that their staff do not engage in bullying or harassing behaviour, including sexually harassing behaviour;
(f) acknowledge that they have to a duty to, so far as reasonably practicable, eliminate or minimise health and safety risks within the Assembly workplace.

[19] Recommendation 8, Select Committee on Privileges 2022.

New continuing resolution—Statement of principle concerning the independence of the Assembly and interactions between the ministers, their staff, ACT Public Servants, other agencies of government

The Office notes recommendations and commentary contained in the Select Committee on Privileges 2022 report (adopted by the Assembly on 1 December 2022) concerning the independence of the Assembly as a separate and distinct branch of government.

In addition to the implementation of recommendations contained in that report, there is an opportunity to give additional prominence and effect to the principles associated with the separation of powers and the independence of the Assembly, its committees and its Members. Accordingly, the Office recommends a standalone continuing resolution that states in clear terms the relevant issues.

Proposed amendment

Insert new continuing resolution 8AD as follows:

"Independence of the Legislative Assembly, its committees, and its Members from Executive government

That this Assembly:

(a) acknowledges that the Legislative Assembly is a distinct and separate branch of government responsible for a range of representative, accountability and legislative roles and functions that are exercised independently of the ACT Executive, ministers and their staff, and government agencies;

(b) acknowledges that the law of parliamentary privilege protects the ability of the Assembly, its committees, and its members to exercise their authority and perform their parliamentary functions and duties without improper external interference, including by the ACT Executive, ministers and their staff, and government agencies;

(c) acknowledges that the ACT Executive, ministers, and government agencies are subject to the scrutiny, inquiry and accountability functions performed by the Assembly and its committees;

(d) affirms the right of the Assembly and its committees to determine their own meetings;

(e) reminds the ACT Executive, ministers and their staff, and agencies of executive government that improper interference in the affairs of the Assembly, its committees or its members may constitute a contempt;

(f) calls on the ACT Executive, ministers and their staff, and agencies government agencies to, in the course of the exercise of their powers or functions, seek appropriate advice and to undertake appropriate consultation where the powers, privileges or immunities of the Assembly are potentially engaged; and

(g) calls on the ACT Executive, ministers and their staff, and government agencies to have appropriate regard to these matters in exercising their roles, powers, or functions."

Technical amendments to standing orders and continuing resolutions

Gender neutral language

The Office proposes that, to avoid words that can be interpreted as biased or discriminative, the following standing orders be amended as outlined.

Proposed amendment
Indulgence to Members unable to stand
Standing order 43, omit "he or she", substitute "they".

Proposed amendment
Time limits for debates and speeches
Standing order 69, first paragraph, omit "his/her", substitute "their".

Proposed amendment
Proceedings on question of order
Standing order 73, omit "his/her", substitute "their".

Proposed amendment
To be in English or accompanied by translation
Standing order 87, omit "his or her", substitute "their".

Proposed amendment
To be signed by persons themselves
Standing order 89, omit "his or her" (twice occurring), substitute "their" (twice occurring).

Proposed amendment
Answers to questions without notice
Standing order 118(c), omit "his/her", substitute "their".

Proposed amendment
Continuing resolution 5 – Code of conduct for all members of the Legislative Assembly for the Australian Capital Territory
Paragraph (22), omit "he or she makes", substitute "they make".
Paragraph (22), omit "he or she", substitute "they".

Proposed amendment
Continuing resolution 5AA – Commissioner for Standards
Paragraph (7)(a), omit "he or she has", substitute "they have".

Proposed amendment
Continuing resolution 6 – Declaration of private interests of members
Under the heading Records, paragraph (2), omit "his or her" and "his/her", substitute "their" (twice occurring).

Proposed amendment
Continuing resolution 6A – Ethics and Integrity Adviser
Under the heading Provision of advice, paragraph (1), omit "his or her", substitute "their".
Under the heading Records, paragraphs (2) and (5), omit "him/her", substitute "them".

Proposed amendment
Continuing resolution 8AC – Lobbyist Register—ACT Lobbyist Regulation Guidelines
Under the heading Registration Forms, first paragraph, omit "he or she", substitute "they".
Under the heading Registration decisions, paragraph (2)(a), omit "he or she believes", substitute "they believe".
Under the heading Handling of Complaints, paragraph (1), omit "he is", substitute "they are".

Proposed amendment
Continuing resolution 9 – Senator for the Australian Capital Territory—Procedures for election
Paragraphs (1) and (2)(a), omit "his or her", substitute "their".
Paragraph (2)(b), omit "he or she is", substitute "they are".

Standing order 6A — Absence of the Speaker

Standing order 6A sets out arrangements for when the Assembly is not sitting and there is a need to appoint an acting Speaker due to the absence, or impending absence of the Speaker and the Deputy Speaker. With to ability for Members to work remotely, there is a need to clarify the definition of absent in relation to this standing order. Members can be absent from the building, working from home or working remotely.

It is proposed to define absent as being absent from the Territory for more than 24 hours.

Proposed amendment

Standing order 6A, after "enactments." insert "In this standing order, absence means being away from the Territory for more than 24 hours.".

Standing order 16 – Administration and Procedure Committee – advice to the Speaker and other actions

Standing order 16 establishes the Standing Committee on Administration and Procedure and sets out the role and operation of the committee. The amendment to paragraph (a)(ii) removes reference to entitlements which reflected prior arrangements whereby OLA managed study travel and motor vehicles. Similarly, the removal of the Library from the list under (a)(ii)(D) reflects that when SO16 was first inserted in 1989, the Library was management by the Executive, whereas now it is administered by the Clerk.

The *Legislative Assembly Precincts Act 2001* states that the Speaker is responsible for the control and management of the Assembly precincts and may take any action the Speaker considers necessary for those purposes. As this relates to the safety and security of Members a new subparagraph relating to the management of the precincts should be included to more accurately reflect the Speaker's role in the management of the Precincts. In addition, the obligations of the Speaker and Members as PCBUs under the Work Health and Safety Act should be reflected in the Committee's terms of reference.

Proposed amendment

Standing order 16 (a)(ii)(A), omit "Members' entitlements including facilities and services", substitute "Members services and facilities;"

Standing order 16 (a)(ii)(D), omit "the operation of the Assembly library", substitute "management of the Assembly precincts including Work Health and Safety obligations;"

Standing order 100A (c) and (d)– Electronic petitions (e-Petitions)

With the implementation of a new e-petitions portal on the Assembly website, paragraph (c) of standing order 100A needs to be updated to reflect the new workflows.

Proposed amendment

Omit standing order 100A (c) and (d) and substitute"

"(c) A Member wishing to sponsor an e-petition must submit the details of the petition in the correct form, including the posting period and agreement to sponsor the petition.

(d) Once published on the Assembly's website an e-petition cannot be altered except to correct typographical errors."

Co-sponsored business

Standing order 101 – Notices of motion – how given

See proposed amendment above.

Standing order 104 – Given for absent Member

Standing order 110 – Terms altered

Standing order 111 – Withdrawal of notice

Standing order 168 – Notice of presentation

The wording of a number of standing orders referring to co-sponsored motions or bills assumes that any co-sponsored motion or bill has only two co-sponsors when, in fact, the Assembly has had a number of instances where there are more than two co-sponsors. The Office proposes that this wording be updated to reflect practice of the Assembly, that is, that more than two members may sponsor a motion or bill.

Proposed amendment
Standing order 104, omit "the co-sponsor", substitute "the co-sponsor/s" and omit "or co-sponsor's", substitute "or co-sponsor/s".

Proposed amendment
Standing order 110, omit "the co-sponsor", substitute "the co-sponsor/s".

Proposed amendment
Standing order 111, omit "the co-sponsor", substitute "the co-sponsor/s".

Proposed amendment
Standing order 168(b), omit "another", substitute "any".

Standing order 75 – Presentation of papers and reports – Amendment to heading

The Office proposes an amendment to the heading of this standing order to better reflect the wording of the standing order.

Proposed amendment
Standing order 75, heading, insert "committee" before "papers".

Standing order 77(k) – Business – precedence over – inclusion of Assembly related bills

In defining Assembly business, standing order 77(k) does not include notices for presentation of bills by the Speaker that relate to the administration of the Assembly or the manner in which the Assembly conducts its proceedings. The Office considers this an oversight and proposes to include notices to present bills in this standing order.

Proposed amendment
Standing order 77(k), insert after "any notice of motion", ", notice to present a bill".

Standing order 83A – Petitions which do not conform with the Standing Orders —change of process

With the introduction of the motion to note petitions and responses, the practice has become that a member will seek leave to table any out-of-order petition they have received. This amendment will change the standing order to reflect the new practice.

Proposed amendment
Omit standing order 83A and substitute the following:

"Petitions which do not conform with the standing orders, as determined by the Clerk, may be presented, by leave, by a Member in the 30-minute debate on the motion that petitions and

responses so lodged be noted. The Member may indicate the subject matter of the out-of-order petition and the number of signatories.

Standing order 92 – Petitions from corporations—clarification

Since the original standing orders were adopted, the use of a "common seal" for a corporation has changed to allow for the making of official documents without the need for a common seal. The proposed amendment would bring it up to date.

Proposed amendment

Omit standing order 92 and substitute the following:

"Corporations may make a petition by executing the documents by any method that would be lawful for the purposes of the execution of a deed."

Standing order 95 – Must be lodged by a Member—remove inconsistency

The e-petition process requires a member to be a sponsor for a petition prior to the petition being made public. Paper petitions should not have any indication that it may have been initiated by a member. As such the two styles of petition are inconsistent in relation to the involvement of a member in the development of a petition. The proposed amendment removes that inconsistency.

Proposed amendment

In standing order 95 omit the words "Petitions shall be free from any indication that a Member may have initiated the petition."

Standing order 98A – Add heading and motion to note petitions

This standing order allows for a member to speak to a petition or government response for a maximum of 5 minutes. It is proposed that standing order 83A be amended to allow members to table, by leave, out-of-order petitions in this 30-minute debate. This amendment reiterates that procedure.

Proposed amendment

In standing order 98A, insert a new heading "Motion to note petitions" and add

"A Member may, by leave, table out-of-order petitions during the debate on the motion to note petitions."

Standing order 99 – Question on presentation

This amendment to standing order 99 clarifies that for a petition to be referred to a Committee, it must be done on the same sitting day.

Proposed amendment

In standing order 99, omit “or on the next sitting day”, substitute “or on that sitting day”

Standing order 179 – Title and preamble stand postponed – Clauses considered – Update wording to reflect intent of standing order

The wording of standing order 179 assumes that every bill contains a preamble, which is not the case. The Office proposes to amend the wording to make it clear that the terms of the standing order relate to those bills that do or do not have a preamble.

Proposed amendment

Standing order 179, omit “the preamble”, substitute “any preamble”.

Standing order 214 – Motion to take note or refer to a committee

Paragraph (b) of this standing order allows for a Minister, without notice, to move that a paper presented to the Assembly be referred to a committee for inquiry and report. This facility has rarely been moved with the Companion to the Standing Orders (2nd edition) noting that it was last used in 1999 with the subsequent report being presented in 2001.

Proposed amendment

Standing order 214- omit (b)

Video conferencing for committees

Standing order 229B states that committees can resolve to conduct proceedings using video or audio links, provided participants can hear each other at the same time. During COVID-19, it became common to conduct proceedings in this manner.

Committees meet in person at their first meeting to pass a resolution to enable virtual meetings. The practical effect of the standing order is that committees can hold all meetings virtually except for the first. The Office proposes that committees can hold all meetings by video or audio link.

Proposed amendment

Standing order 229B, omit “resolve to”.

Reference to scrutiny activities

Standing order 254B refers to government responses to Legislative Scrutiny Committee reports. There is no committee with this title. The committee that fulfils this function is the Standing Committee on Justice and Community Safety.

The Office proposes to identify the relevant reports through the activity, instead of committee title, which can change each Assembly.

Proposed amendment
Standing order 254B, omit the last paragraph and substitute the following:
"This standing order does not apply to government responses to legislative scrutiny reports."

Non-sitting circulation of report

Standing order 254C permits committee chairs to table reports with the Speaker when the Assembly is not sitting. The standing order requires chairs to also provide a copy of the report for each member of the Assembly. Reports are now provided electronically so the Speaker does not need copies of the report to circulate it. The requirement for copies is redundant.
The Office proposes that the standing order reflects current practice.

Proposed amendment
Standing order 254C, paragraph (a), omit ", and a copy for each member of the Legislative Assembly, to the Speaker" and substitute "electronically to the Speaker to authorise".

The standing order states that the report day is when "the Chair gives it to the Speaker". This implies an in-person transaction where giving and receipt happen simultaneously. Electronically sending the report to the Speaker represents the first half of the transaction.
The Office proposes that the standing order clarify that the transaction between the Chair and Speaker is complete when there is evidence that the Speaker has received the report and authorised publication.

Proposed amendment
Standing order 254C, paragraph (b), omit "the Chair gives it to the Speaker," and substitute "the Chair receives authorisation from the Speaker".

Questions arising from committee hearings

The Office proposes clarifying timelines around answering these questions. The principle is that the person who is answering the question has five business days to do this once they have the required information. This occurs when they receive the question in writing.
For questions on notice, we propose the following amendment, which will also address a typographical error.

Proposed amendment
Standing order 254D(a), omit "5 business day of receipt" and substitute "5 business days of the answering person or organisation receiving".

The Office proposes the following change for questions taken on notice.

Proposed amendment
Standing order 254D(b), omit "receipt of" and substitute "that member receiving".

The Office proposes the following change for questions taken on notice to insert a new (c) which reaffirms the practice that the time limit of 5 business days to provide an answer is unaffected by a redirection of a question to a different minister.

Proposed amendment
In Standing order 254D, insert (c)

"(c) The 5 business day time limit for the answering of a question remains in place in the event that the question is redirected to a different Minister."

Dealing with witnesses

Standing order 264A(c) gives some requirements to prepare witnesses for hearings, including a copy of the committee's terms of reference and a statement of the matters expected to be dealt with.
There is also a requirement that, where appropriate, a witness be supplied with any relevant transcript. In our view this is redundant because it will be covered by providing a statement of the expected matters of discussion. The Office proposes to remove this requirement.

Proposed amendment
Standing order 264A(c), omit "Where appropriate a witness shall be supplied with a transcript of relevant evidence taken."

Standing order 264A(g) describes a process where all witnesses are to be offered the opportunity to give their evidence in private session, and to be invited to give reasons for this. Reasons are to be given if a committee refuses the request.
In camera evidence is typically given by vulnerable witnesses. The Office supports vulnerable witnesses through its Vulnerable Witness Protocol, which we updated this year. We are of the view that this is a more effective way of assisting vulnerable witnesses than the legalistic process in the standing orders.

Proposed amendment
Omit standing order 264A(g).

Standing order 277 – Contempt – Matters constituting contempt – Remove duplicated heading

Standing order 277(j) and (k) have the same heading, and as they follow each other, the Office proposes that the heading to standing order 277(k) be deleted.

Proposed amendment
Standing order 277(k), delete heading “Interference with witnesses”.

Continuing resolution 3—Broadcasting guidelines

The committee has previously expressed the view that some simplification of the Assembly’s broadcasting guidelines is required to streamline relevant procedures and clarify applicable obligations. The Office is in the process of revising the relevant guidelines for consideration by the Speaker pursuant to continuing resolution 3.
In order to reduce the administrative overhead associated with the issuing of broadcasting approvals, the Office recommends extending the approval period from once each year to once each Assembly.

Proposed amendment
Amend continuing resolution 3, paragraph (a) to read:
“(a) persons or organisations intending to record for broadcast proceedings in the Legislative Assembly or its committees must seek the approval of the Speaker once per Assembly.”

Continuing resolution 8B — Public Interest Immunity – correction of cross reference

Paragraph (1)(b) of the Continuing resolution refers to standing order 264A (o). This reference is incorrect and should be 264A (l).

Proposed amendment
In continuing resolution 8B omit “264A (o)”, substitute “264A (l)”.

Other Matters

Condolence motions and members

The Victorian Legislative Assembly has in its standing orders the following:

> A member or former member may notify the Clerk that they do not want a condolence motion to be moved in the event of their death. On the occasion of their death the Clerk will advise the Speaker, Premier and Leader of the House of their wishes.

The Committee might like to consider a similar standing order.

Possible inclusion of a Glossary of terms and definitions

The Office proposes that a glossary of terms and definitions be included in the Standing orders to provide easier access and a quick reference point to some matters that are embedded in particular standing orders.

Examples of what might be included are:

Absolute majority—13 Members—Half the number of elected members rounded up to the nearest whole number

Special majority—17 Members—two thirds of the number of elected members rounded up to the nearest whole number

30 days—means 30 calendar days

Monday of the sitting week - if the Monday is a public holiday, substitute Tuesday of the sitting week

Month—pursuant to the Legislation Act 2001 month means a period beginning at the start of any day of one of the calendar months and ending—

(a) immediately before the start of the corresponding day of the next calendar month; or

(b) if there is no such corresponding day—at the end of the next calendar month.

For example, the period beginning at the start of 8 May 2022 and ending at midnight on 7 June 2022 is a month.

Non-executive government member is a member who is not a minister but who belongs to a party which includes a member who is a minister.

Non-government member is a member who is not a minister and who does not belong to a political party which has a member who is a minister.

Scrutiny Committee means the Standing Committee on Justice and Community Safety (performing its legislative scrutiny role.

Sitting day, of the Legislative Assembly—means a period that commences on a day the Assembly meets and continues until the Assembly next adjourns. Note: a sitting day may continue for 1 or more days.

Signed Electronic copy—means a PDF scan of a signed original documents

Electronic copy – Word version

Written notice (in relation to SO 24A)—signed hardcopy

A note on the honorific "The Honourable"

As outlined in the Office's submission to the Standing Committee on Administration and Procedure during the Ninth Assembly[20], over a number of years 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. And, notwithstanding the Government response to the committee's report[21] in which it stated that the ACT Government will not introduce the use of "The Honourable" into the Legislative Assembly, this matter continues to be raised and discussed by Members. 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.

A note on money proposals—standing orders 200 to 201A

Standing orders 200-201A—Money proposals and limitations on amendments—resumption of inquiry

In the Ninth Assembly, the Standing Committee on Administration and Procedure inquired into, among other matters, the financial initiative of the Crown' as embodied in s 65 of the Self-Government Act and related standing orders (see standing orders 200-201A).

[20] 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.

[21] Government response to Recommendation 7 of Report 8 of the Standing Committee on Administration and Procedure, *Review of the standing orders and continuing resolutions of the Legislative Assembly – Volume 1*, October 2018.

The terms of reference for the inquiry were as follows:

> On Thursday 20 September 2018 the Legislative Assembly resolved that the Standing Committee on Administration and Procedure inquire into, and report on the application of Section 65 of the Australian Capital Territory (Self-Government) Act 1988, specifically:
>
> 1. the ability for non-executive members to amend bills, move motions and introduce private members bills that have a monetary impact on the ACT;
> 2. the Assembly's application of standing order 201a and adherence to the principle of "the initiative of the crown" and how it relates to the Australian Capital Territory (Self-Government) Act 1988;
> 3. who is responsible or has jurisdiction to rule on what bills or amendments are compatible with the *Australian Capital Territory (Self-Government) Act 1988*; and
> 4. any other relevant matter.

Proposed recommendation
To ensure certainty and clarity in the operation of the standing orders, the Office recommends that the Standing Committee on Administration and Procedure of the Tenth Assembly consider resuming the committee's inquiry into these matters.

Size of the Assembly

Members would be aware that in 2013 an Expert Reference Group (ERG) appointed by the then Chief Minister undertook a Review onto the Size of the ACT Legislative Assembly, and subsequently the Assembly increased in size to the current 25 Member Assembly in 2016.

It should be noted that the ERG made the following points in its Executive Summary:

> 17. Of the available options incorporating 7 member electorates, only the 35-member Assembly consisting of 5 electorates each returning 7 members satisfies the ERG's guiding principles. However, the ERG is concerned that it would not be appropriate for the ACT Assembly to be more than doubled in size to 35 members as early as 2016.
>
> 18. In the longer term as the population of the ACT passes 400,000, the ERG considers that the size of the Assembly should be 35 members, consisting of 5 electorates each returning 7 members. This number would permit a ministry of 9, a significant government backbench, a robust opposition and opportunities for appropriate representation of minor parties and independents. The ERG considers it would be appropriate to enlarge the Assembly to 35 in either 2020 when the population is expected to reach 410,000, or in 2024 when the population is projected to reach 428,000.
>
> 19. With this long-term goal in mind, the ERG considers that it would be appropriate for the 2016 Assembly to be enlarged to a transitional number. Of the available 25 and 27 member options, the ERG considers that, on balance, it would be more appropriate to adopt a 25member Assembly. Of the 33 public submissions in favour of increasing the size of the Assembly, 13 supported a 25 member Assembly, while only one explicitly supported a 27 member Assembly.

20. However, should Assembly members be persuaded of the advantages of 9 member electorates over 5 member electorates, the ERG would also support the adoption of a 27 member Assembly as a transition towards a 35 member Assembly.

It is noted that the population of the ACT in 2022 (according to the latest ABS figures) is 4.65,000, which is well over the projected number of 428,000 predicted for 2024 in the report.

Given this and noting that there is now a minister of 9 members and 8 standing committees with some Green/Labour members sitting on up to 4 committees each, it may be timely to consider whether the Assembly should increase to 27 members at the 2028 election.