

Legislative Assembly for the Australian Capital Territory

Order of Private Members and Assembly Business

**Report by the Standing Committee on
Administration and Procedure
July 1998**

RESOLUTION OF APPOINTMENT

On 9 March 1995, the Legislative Assembly for the Australian Capital Territory adopted standing order 16 which established the Standing Committee on Administration and Procedure. This standing order was amended on 4 May 1995 to provide the following terms of reference:

16. (1) A Standing Committee on Administration and Procedure shall be appointed at the commencement of each Assembly to:
- (a) inquire into and report on, as appropriate:
 - (i) the Assembly's annual estimates of expenditure;
 - (ii) the practices and procedure of the Assembly; and
 - (iii) the standing orders of the Assembly;
 - (b) advise the Speaker on:
 - (i) Members' entitlements including facilities and services;
 - (ii) the operation of the transcription service (*Hansard*);
 - (iii) the availability to the public of Assembly documents;
 - (iv) the operation of the Assembly library; and
 - (c) arrange the order of private Members' business and Assembly business;

Membership

The Speaker (Presiding Member)
Mr S Corbell, MLA
Mr H Hird, MLA
Mr T Kaine, MLA
Mr P Osborne, MLA
Ms K Tucker, MLA

Secretary:	Mr M McRae
Deputy Secretary	Ms M Weeks

BACKGROUND

1. Meetings of the Legislative Assembly for the Australian Capital Territory are structured by the Standing Orders of the Assembly. There are standing orders which govern every action in the Chamber including Members' behaviour in debate, the giving of notices and the presentation and passage of bills and those that determine the order in which business is considered by the Assembly. These standing orders provide for the routine of business (ie when question time, the presentation of papers and matters of public importance will take place) and also the precedence of business (see standing order 77).
2. The business of the Assembly is divided into 3 categories by the Standing Orders -
 - Executive Business
 - Private Members' Business and
 - Assembly Business.

In each of these categories items of business are divided between notices and orders of the day. Notices are advice of a motion to be moved or a bill to be presented¹. As business yet to be considered by the Assembly they are, under the standing orders, able to be withdrawn or amended by the Member by writing to the Clerk. Orders of the Day are matters (either a motion or a bill) which have previously been considered by the Assembly (on one or more occasions) and debate has been adjourned until a date set by the Assembly. The ordering of all categories of business is provided for in the Standing Orders.

Standing Order 16(1)(c) states that the Standing Committee on Administration and Procedure shall be appointed to:

arrange the order of private Members' business and Assembly business.

Standing Order 78 provides:

Order of Executive business

78. Subject to standing order 77, the Manager of Government Business may arrange the order of Executive business notices and orders of the day on the Notice paper.

3. Under the standing orders the Manager of Government Business clearly has sole responsibility for organising on the Notice Paper, the items of Executive Business considered by the Assembly. This is further evidenced in standing orders 105 and 149 which state:

Order of notices

¹ House of Representatives Practice, Third Edition p. 269

105. Subject to the provisions of standing order 78, notices shall be entered by the clerk on the Notice Paper, in priority of orders of the day, in the order in which they were given.

Precedence of orders of the day

149. Subject to standing order 78, orders of the day shall have precedence of each other according to the order in which they appear on the Notice Paper.

In practice however, the Manager of Government Business consults with both the members of his/her party and over successive Assemblies has also negotiated with other Members and Parties to ensure that there is some level of agreement to considering an item of business before listing it on the Assembly's program. The Assembly may of course, by postponing notices or orders of the day, choose to consider business in an order other than that determined by the Manager.

4. The Standing Committee on Administration and Procedure, in order to fulfil its responsibilities under standing order 16(1)(c), meets each sitting Tuesday, when the Assembly suspends for lunch, to consider all items on the Notice Paper listed under Assembly and private Members' business. Following discussion the Committee makes a determination as to the order of business that is listed under Private Members' and Assembly business on the Notice Paper and what items of business should be considered the following day during Private Members' business and also what business will be undertaken by the Assembly during the 45 minutes of Assembly business on the Thursday of that week. The items of business identified for consideration on either the Wednesday or Thursday are subsequently listed on the Assembly's *Daily Program* (or blue) in accordance with the routine of business (standing order 74). With some exceptions, the Committee's practice has been to determine those items of business to be included on the *Daily Program* and to resolve that other notices and orders of the day remain listed on the Notice Paper in the order in which they appear. One notable exception was the resolution made by the Standing Committee on Administration and Procedure during the Third Assembly which ensured that, under Assembly business, orders of the day relating to the Government response to a specific Committee Report were listed immediately after the order of the day relating to the Committee report so that a cognate debate on the two items could be facilitated.
5. Although it is desirable to have all notices that Members want considered in either Private Members' or Assembly business available for the Committee to consider it is not always possible. As the Assembly continues to sit following the Committee's meeting and it is therefore possible that further notices can be delivered to the Clerk for entry on the Notice Paper, the Committee has adopted guidelines to assist in the ordering of any such business. These Guidelines are set out below and were adopted by the Standing Committee on Administration and Procedure at its meeting of 28 April 1998.

GUIDELINES FOR THE ORDERING OF PRIVATE MEMBERS' BUSINESS

Unless the Committee otherwise orders, notices be given priority over orders of the day.

Unless the Committee otherwise orders, priority be given to notices for the introduction of legislation in the order in which they are received.

GUIDELINES FOR THE ORDERING OF ASSEMBLY BUSINESS

Unless the Committee otherwise orders, notices be given priority over orders of the day.

NOTICES - Unless the Committee otherwise orders, priority be given to notices in the following order:

1. notices of a motion to amend, disallow, disapprove or declare void and of no effect any subordinate legislation, with consideration given to the number of days remaining for the resolution of that motion.
2. notices relating to the establishment or membership of a select or standing committee.

ORDERS OF THE DAY - Unless the Committee otherwise orders, priority be given to orders of the day in the following order:

1. orders of the day relating to a motion to amend, disallow, disapprove or declare void and of no effect any subordinate legislation, with consideration given to the number of days remaining for the resolution of that motion.
 2. orders of the day relating to the establishment or membership of a select or standing committee.
 3. orders of the day for the consideration of a motion moved upon the presentation of a committee report or the presentation of a government response to a committee report.
6. The Committee has also developed the practice where Members can indicate to the Committee their intention to move a particular notice or present a particular bill. Under this arrangement the Committee is informed that it is a Member's intention to deliver to the Clerk or lodge a notice of motion in relation to a particular subject and to achieve a stated objective and there is generally agreement that the terms of the motion should be available as soon as possible. The Committee generally agrees to have the notice listed on the *Daily Program* if it is provided to the Clerk in accordance with Standing Orders. A similar process is followed in relation to notices for the presentation of legislation.
7. In relation to the lodgement of notices with the Clerk after the Committee has concluded its deliberations on the order of business, the Committee noted that historically, in the House of Representatives notices were read "openly" when called on in the routine of Business. Although it is now rare, it is still possible in the House of Representatives for a Member to give notice by openly stating the terms of the motion to the House and "delivering a fair copy of its terms to the Clerk at the

Table”². Although the Assembly does not have the same provisions in its standing orders, the Committee is of the view that the Clerk should make available, on request, the terms of any motion that has been lodged pursuant to standing order 101. The Committee also noted that standing order 112 clearly stipulates when a notice of motion becomes effective. Standing order 112 states:

Operation of notice

112. a notice of motion becomes effective only when it appears on the Notice Paper.

8. There are, of course, occasions when notices are given in relation to either private Members’ or Assembly business which are not provided for in the Guidelines and have not been flagged with the Committee and the Committee will hold another meeting to consider such issues. However, particularly during a sitting week the demands on Members’ time is considerable and through these management procedures the Committee has been able to fulfil its responsibilities under standing orders and also avoid continual meetings.

ISSUES

9. In December 1996 the Assembly adopted amendments to standing order 77 to provide that private Members’ business have precedence over all other business for each sitting Wednesday. Although in practice the amended standing order has operated successfully, a potential problem has been identified. That problem relates to the suspension for lunch and the related practice of adjourning debate on a motion. The ordering of business in the afternoon where consideration has been interrupted prior to the calling on of Questions without Notice by either (a) debate being adjourned and the resumption of debate being set down as an order of the day for a later hour this day, or (b) debate being interrupted at 2.30 pm and the Speaker setting a future time for the consideration of the motion.
10. When a notice is moved by the sponsoring Member and the debate subsequently adjourned then it is moved from the category of notices to that of orders of the day. In moving categories the item of business should be listed at the end of orders of the day in the relevant category of Business, subject to the provisions of standing order 149. Any Executive notices that straddle the suspension of the Assembly for lunch (ie those that are moved in the morning as notices and which are adjourned at the suspension) can be listed in the afternoon as orders of the day (providing that the resumption of debate is made an order of the day for a later hour of the sitting) under the authority of the Manager of Government Business (standing order 78).
11. The authority for ordering private Member’s business however, lies with the Standing Committee on Administration and Procedure. If the Committee does not meet on the Wednesday lunch suspension to determine the order of business for the

² *ibid.*, p 301

afternoon, there is no authority to list the order of the day as the first item of private Members' business in the routine of business set down by standing order 74. In fact it could be argued that, in accordance with the resolution of the Standing Committee on Administration and Procedure stipulating the order of private Members' business for the Notice Paper, an order of the day not considered by the Committee should be entered onto the Notice Paper at the end of all other private Members' business. In practice the Assembly in some cases, by setting the resumption of debate as an order of the day for a later hour, has indicated its wish that consideration of the item of business be resumed in the afternoon of the sitting. The Speaker has sought clarification as to the Assembly's asking for an indication from the Assembly (before the Clerk calls on the order of the day) that it is indeed their intention that the matter of debate be resumed before any other business is called.

12. The Assembly clearly has developed de facto arrangements to ensure that the item of business be considered again in the afternoon of the sitting. Although this has worked satisfactorily to date, it is without a solid foundation in either the Standing Orders or by the Assembly clearly making such a determination. The arrangement works largely by default and is dependent on no Member raising an objection.
13. The Committee considered a number of options that would address the potential problem. Firstly, the Committee could undertake to meet during the lunch suspension of the Assembly on a Wednesday if there was a requirement (ie if there was a motion that had been moved as a notice that morning and had not been disposed of). However, such a meeting would clash with the Government organised Business meeting that takes place on the first sitting Wednesday of a sitting fortnight. It would also place additional time constraints on the members of the Committee and as it would not be clear until the Assembly suspended for lunch whether a meeting would be required would also mean that the Committee members would be setting aside a certain time with no guarantee that the time would be used for a Committee meeting.
14. The Committee also considered a proposal that the current arrangements be formalised. This could be achieved by the Assembly resolving to clearly indicate that it was their intention that any private Members' business motion adjourned to a later hour of a sitting or interrupted pursuant to standing order 74 should be given precedence over all other Private Member's business (for that sitting), in accordance with standing order 74 (the routine of business). The Committee considered that this proposal had a number of benefits. It would re-affirm the present practice and would therefore not require any adjustments to be made in the practice. As no change would be evident there also would be no potential for confusion. The arrangement provides a degree of flexibility which enables the Assembly to determine whether or not it wants to resume debate on a particular motion and whether it should be given precedence over other items that may be listed on the *Daily Program* and Notice Paper for that sitting day.

14. The Committee examined whether the standing orders of the Assembly should be amended to make provision for the arrangement. Its consideration of the proposal took in the context of the nature of the standing orders. They provide the framework for the operation of the Assembly and its committees. Within the framework the details are provided by resolutions of the Assembly, precedent and practice. Requirements relating to the membership of Assembly committees are, for example, provided for in the Standing Orders but the membership of each committee is determined by resolution of the Assembly. The procedures by which a citizen can seek to reply to comments made in the Chamber which are perceived to have had an adverse effect on either their reputation or their dealings with others, are provided by resolution of the Assembly rather than standing order as it impacts not only on the conduct of Members but also members of the community. The Committee was concerned that by making provision for the arrangement by way of standing orders they would be recommending that a matter of detail should be included in the standing orders and that if this were to become the practice the standing orders would potentially become unwieldy and the practices of the Assembly unmanageable. There was also some concern that such an amendment would also limit the flexibility of the arrangement.
15. The Committee also considered the issue in relation to notices under Assembly business. It was of the view, however, that as standing order 77 provides that Assembly business has precedence for a definite time limit (45 minutes with a possible extension of 30 minutes) then the possibility of an item of Assembly Business remaining under consideration in the afternoon is negligible. There have been instances where consideration of Assembly business orders of the day have resumed in the afternoon sitting but as Executive business has had precedence a suspension of standing orders has been required to enable the order of the day to be called on. As the suspension of standing orders requires an absolute majority of Members to support it the Assembly's wishes in relation to what business Members wish to consider has been made absolutely clear.

Recommendation 1

16. The Committee therefore recommends that the Assembly agree to the following motion:

That the order of the day relating to a notice of motion under private Members' business having been moved and debate either

- (a) adjourned pending the Assembly's suspension for lunch; or
- (b) interrupted pursuant to standing order 74 and the Speaker setting a later hour of the day for consideration of the matter;

such item of business has precedence over all other Private Members' Business, in accordance with standing orders 74 and 77, if debate has been adjourned by the Assembly until a later hour that day.

17. In considering the matter the Committee become aware of an anomaly in standing orders 105 and 149. Both standing orders relate to the ordering of business and while it is clear that they both operate subject to determinations by the Manager of Government Business (as provided for in standing order 78), it is not clear that they both should also operate subject to the resolutions of the Standing Committee on Administration and Procedure in relation to the order of private Members' business and Assembly business (as provided for in standing order 16 (1)(c)). The Committee believes that this is an oversight and should be corrected.

Recommendation 2

It therefore recommends that standing orders 105 and 149 be amended by omitting "standing order 78" and substituting "standing orders 16(1)(c) and 78".

Bill Wood, MLA
Acting Speaker

30 July 1998