

**41ST PARLIAMENT**



## **Report 62**

# **STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES**

*Interim Report—Review of Standing Orders (Speaking Times)*

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Presented by  
Hon Alanna Clohesy MLC (Chair)

June 2021

## **Standing Committee on Procedure and Privileges**

### **Members as at the time of this inquiry:**

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Hon Martin Aldridge MLC (Deputy Chair)

Hon Tjorn Sibma MLC

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## Note

Report 62 of the Procedure and Privileges Committee consists of a Report, and a Minority Report of the Hon Martin Aldridge and Hon Tjorn Sibma.

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# 1 Speaking time limits in the Legislative Council

- 1.1 On 3 June 2021 the Council agreed to the following motion:
- (1) That the Standing Committee on Procedure and Privileges be required to undertake a review of the Standing Orders with a view to —
    - (a) modernising the procedures of the House; and
    - (b) reviewing and adopting best practice from other Upper House Chambers in Australian Parliaments, including the Australian Senate.
  - (2) The Committee make recommendations for new and amended Standing Orders.
  - (3) The Committee is to report to the House no later than 10 August 2021.
  - (4) The Committee is to provide an Interim Report on recommendations in respect to speaking time limits by 22 June 2021.
- 1.2 This interim report addresses only sub-paragraph (4) of the referral.
- 1.3 The Standing Orders of the Legislative Council contain 33 individual time limits spread over thirteen different categories.<sup>1</sup> The Standing Orders also provide for an extension of time in some circumstances.<sup>2</sup>
- 1.4 The Committee notes the short reporting deadline for this Interim Report. In this short period, the Committee has not been able to consider all 33 time limits in comparison with the other Upper Houses in Australia. Consequently, the Committee has had to carefully consider the scope of this Interim Report.
- 1.5 The Committee notes that the overwhelming majority of debate in the Council on the referral motion, from a range of parties, related to speaking time limits as they apply to Bills.
- 1.6 This Interim Report only considers time limits in relation to the legislative process, namely time limits that relate to the question for the first, second and third reading of a Bill and the time allocated to Committee of the Whole House. The Committee will consider speaking times for other procedures in its broader review.

## History of speaking time limits for Bills in Western Australia

- 1.7 Prior to 1986 there were no speaking time limits imposed on any Member in the Council.<sup>3</sup> In June 1986 the Council referred three proposed sessional orders to the Standing Orders Committee for consideration and report. The sessional order sought to impose:
- A 30 minute limit on each Member for any debate before the House.
  - A time limit of ten minutes for each contribution in Committee of the Whole House.
- 1.8 The time limits were not intended to apply to a Minister or Member in charge of the relevant business, the Leader of the Opposition, the Leader of the National Party, or any Member speaking on behalf of the said Leaders.<sup>4</sup> The proposed sessional order provided that a Member could, by leave, extend their speaking time up to 60 minutes for general debate in the Council.
- 1.9 The Standing Orders Committee considered the proposed sessional order and while not all Members agreed with the concept of limiting debate times, the Committee recommended

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<sup>1</sup> SO 21, The Standing Orders of the Legislative Council, reprint November 2016, pp 13-15.

<sup>2</sup> SO 22, Ibid., p. 16.

<sup>3</sup> The Liberal Party, Australian Labor Party, National Party and Country Party were represented in the Legislative Council in 1986.

<sup>4</sup> David Dans, Leader of the House, WA, Legislative Council, *Parliamentary Debates (Hansard)*, 12 June 1986, p 137.

the limiting of time limits as proposed with some minor adjustments for the Address in Reply, Budget Debate and ability to seek leave to extend a contribution.<sup>5</sup>

- 1.10 The Standing Orders Committee's recommendations were debated in the Council on 24 June 1986. After lengthy debate the Council agreed to the Committee's recommendations with an amendment to increase the general speaking time limit from 30 minutes to 45 minutes. That sessional order provided as follows:

**Sessional Order in relation to speaking times – Adopted 24 June 1986**

- 1.1 A member may not speak in the House for more than 45 minutes, and in a committee of the whole for more than 10 minutes each time, on any motion, amendment, or amendment to such amendment:

Provided that on a motion to adjourn the Council, no member shall speak for more than 10 minutes and the whole debate shall not exceed 40 minutes.

- 1.2 Rule 1.1. shall not apply to:

- (a) the Minister or member in charge of the business comprising the subject matter of the debate or to the leader of the Opposition, or the Leader of the National Party of Australia, or to any member speaking on behalf of the said leaders;
- (b) any member when speaking in the address in reply debate or on any motion moved under SO 152(c).

And, for the purposes of paragraph (a), no time limit shall be imposed, and in the case of paragraph (b) each member may speak for not more than 60 minutes.

- 1.3 By leave, a member's time may be extended by 15 minutes, but no extension shall be sought or granted in a committee of the whole House.

- 1.11 The sessional order was renewed at the commencement of subsequent sessions.
- 1.12 On 19 September 1989 the Council referred proposed Standing Order 63A to the Standing Orders Committee. This new Standing Order sought to permanently enshrine the speaking times under the sessional order in the Standing Orders. The Committee recommended that proposed Standing Order 63A be adopted but that unlimited speaking times should be removed and that all Members should be subject to a specified speaking time limit.<sup>6</sup> The Council accepted the Committee's recommendations with the exception of the recommendation to abandon unlimited speaking times.<sup>7</sup>
- 1.13 In the 1990s further clarification was provided that unlimited speaking times applied to both the Minister with carriage of the matter and the Leader of the House.<sup>8</sup>
- 1.14 On 15 August 2002 the Leader of the House proposed to limit speaking times for all Members to 45 minutes and limit adjournment debate contributions to 10 minutes. The matter was referred to the Procedures and Privileges Committee on 21 August 2002.

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<sup>5</sup> Western Australia, Legislative Council, Standing Orders Committee, *Report on Proposed Sessional Orders Related to Limited-Time Speeches, Sitting Times, and the Precedence of the Address in Reply Debate*, 19 June 1986, p 3.

<sup>6</sup> Western Australia, Legislative Council, Standing Orders Committee, *Address in Reply Debate, Time Limits on Speeches and Sitting and Adjournment Times of the House*, November 1989, p 2.

<sup>7</sup> Western Australia, Legislative Council, *Parliamentary Debates*, 5 December 1989, p 5904-15.

<sup>8</sup> Hon Clive Griffiths, President's Ruling, Western Australia, Legislative Council, *Parliamentary Debates*, 29 November 1995, p 11794

- 1.15 The Committee tabled its report on 26 September 2002. It recommended that a 45 minute time limit be imposed but that it should not apply to second reading debate contributions from the Minister or Member in charge of a Bill, the Leader of the Opposition or the Opposition Lead Speaker.
- 1.16 The PPC's report and recommendations were debated on a number of occasions and after eight months the report was discharged from the Notice Paper and referred to the House Management Committee for consideration.
- 1.17 When the Standing Orders were rewritten in 2011, the existing speaking times remained, including an express right for the Opposition to have two Members with unlimited time – the Lead Member and the Party Leader or Member deputed.
- 1.18 The current effect of Standing Order 21 is that nine of thirty-six Members have unlimited speaking time on the second and third reading of a Bill:
- The Mover of the motion
  - The lead Government Member
  - The lead Opposition Member
  - The Leader of the House or Member deputed
  - The Leader of the Opposition or Member deputed
  - The Leader of The Nationals WA or Member deputed
  - The Leader of The Greens WA
  - The Leader of the Daylight Saving Party
  - The Leader of the Legalise Cannabis WA Party or Member deputed<sup>9</sup>
- 1.19 The remaining Members have 45 minutes to speak on the second and third reading of a Bill.
- 1.20 All Members have unlimited 10 minute opportunities to make contributions during Committee of the Whole House.

### **Speaking times in other Australian jurisdictions**

- 1.21 Appendix 1 sets out the speaking time limits applicable in other Upper Houses in Australia. It also sets out the speaking time limits that apply in the Legislative Assembly.
- 1.22 The following discussion sets out the Committee's views on the Council's current time limits as they apply to the stages of a Bill.

### **First reading**

- 1.23 Since the new Standing Orders were adopted in 2011 there has been no debate permissible on the first reading of a Bill. Prior to this, a Member could only speak to the first reading of a Bill that the Council did not have the power to amend.
- 1.24 The Committee notes the consistent approach of Australian Upper Houses to first reading debates. The Committee is of the view that no change is required to the existing practice in the Council regarding first reading debates.

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<sup>9</sup> The Legalise Cannabis WA Party has not indicated to the Council that it has a party leader and therefore neither of its Members currently have unlimited speaking time.

## Second and third reading debate

- 1.25 The second reading debate is a broad-ranging debate around the principles and policy of a Bill.<sup>10</sup> A second reading debate does not cover specific details or drafting of individual clauses, which is left to the Committee of the Whole House stage.
- 1.26 A third reading debate has a limited scope in that it must be limited to the contents of the Bill as agreed by the Council and must not introduce new arguments or otherwise expand the debate.<sup>11</sup>
- 1.27 The experience in the Council has been for expansive second reading debates and for limited, if any, third reading debates.
- 1.28 The Committee notes that two central issues arose in debate on the referral of the motion to the Committee about speaking time. The first is the existence of unlimited speaking times for some Members and the second is the time allocations for other Members and how much time is necessary to make a contribution on a second and third reading debate.

### Unlimited speaking times

- 1.29 The Committee notes that unlimited speaking times for all Members have been dispensed with in three jurisdictions — the Senate, New South Wales and Victoria.<sup>12</sup> Two jurisdictions have unlimited speaking times for all Members — South Australia and Tasmania. The Council is the only Upper House jurisdiction that provides unlimited speaking time to some Members and limited speaking time to others.
- 1.30 In those Houses that have removed unlimited speaking times, the initial decision to do so was heavily debated and subject to a division.
- 1.31 The Australian Senate abolished unlimited speaking times in 1919.<sup>13</sup>
- 1.32 After an extensive debate, the New South Wales Legislative Council implemented sessional orders in 2011 to remove unlimited speaking times.<sup>14</sup> Sessional orders containing restricted speaking times were implemented again in 2015 and 2019 with little to no debate on the issue.
- 1.33 The Victorian Legislative Council has removed, reinstated and then removed unlimited speaking times, beginning in 2003.<sup>15</sup>
- 1.34 There is a lack of empirical data on the impact of speaking times on the length of debates. The Committee notes some research conducted in New South Wales on the impact of removing unlimited speaking times in their Legislative Council. It showed that time limits made little difference to the length of the total debate on the second reading of contentious Bills but increased the number of speakers in the second reading debate. It also showed that the average time for consideration of contentious debates in Committee of the Whole House

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<sup>10</sup> R Rogers and R Walters, *How Parliament Works*, Pearson Longman, London, 2006, p 209.

<sup>11</sup> Standing Order 141, *The Standing Orders of the Legislative Council*, reprint November 2016, p 73.

<sup>12</sup> The New South Wales Legislative Council has not dispensed with unlimited speaking times through an amendment to its Standing Orders, rather a series of sessional orders have been implemented since 2011.

<sup>13</sup> Annotated Standing Orders of the Australian Senate, SO 189. See: [https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/aso/so189](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/aso/so189). Viewed 11 June 2021.

<sup>14</sup> New South Wales, Legislative Council, *Parliamentary Debates (Hansard)*, 3 August 2011, p 3448-80.

<sup>15</sup> Victoria, Legislative Council, *Parliamentary Debates (Hansard)*, 26 February 2003, p 34-107, 8 August 2007, pp 2291- 2310, 11 Oct 2011, pp 3380-3398.



did not appear to decrease, nor did the number of amendments moved decrease.<sup>16</sup> The paper observes that the existence of time limits on debate on government Bills eliminates the filibuster as a procedural option.<sup>17</sup>

- 1.35 The Committee explored a range of issues relating to unlimited speaking times. The Committee notes that the Council does not routinely collect data on the length of second reading debates and speeches.
- 1.36 The Committee recognises there may be additional sources of data that might inform consideration of best practice. These include personal experience, the impact on the length of debate, analysis of type or content of debate on speaking times, international jurisdictions and other influences such as political imperatives.
- 1.37 Appendix 1 shows that the speaking time limits for Ministers in charge of a Bill, Party Leaders and Lead Members, for second reading speeches in Australian Upper Houses that do not have unlimited time limits, range from 15 minutes to 40 minutes.
- 1.38 The passage of the motion referring this matter to the Committee demonstrates the will of the Council for this Committee to explore best practice relating to speaking times. The trend in recent times is for Upper Houses to implement shorter time limits for second reading speeches.
- 1.39 A majority of the Committee support the concept of limiting the length of Members' speeches.
- 1.40 A majority of the Committee is of the view that a 45 minute time limit should replace existing unlimited time limits for second reading speeches and the second reading reply. The Committee notes that this is at the upper end of time allocations for those jurisdictions that do not have unlimited speaking times. The Committee also notes that Standing Order 22 provides that a Member can seek leave for a further 15 minutes of speaking time when a 45 minute speaking time allocation has been exhausted.

### **General time allocation**

- 1.41 Under our current Standing Orders, all Members without an unlimited speaking time have the ability to make a 45 minute contribution on a second and third reading debate.
- 1.42 Appendix 1 shows that the speaking time limits for Members who are not Ministers in charge of a Bill, Party Leaders and Lead Members, for second reading speeches in Australian Upper Houses that do not have unlimited time limits, range from 15 minutes to 20 minutes.
- 1.43 A majority of the Committee is of the view that a 30 minute time limit should apply to second reading speeches by Members who do not currently have unlimited speaking times. The Committee notes that this is at the upper end of time allocations for those jurisdictions that do not have unlimited speaking times.

### **Third reading debates**

- 1.44 Standing Order 21 does not differentiate between speaking time limits for second or third reading debates. However, Standing Order 141 has the effect of limiting the scope of a third reading debate. It provides:

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<sup>16</sup> David Blunt, 'The impact of the introduction of time limits on debate on government legislation in August 2011', paper presented at the 43<sup>rd</sup> Presiding Officers and Clerks Conference, Honiara, 24-26 July 2012, p 8. See: <https://www.parliament.nsw.gov.au/lc/articles/Documents/three-unusual-and-dramatic-recent-sitting-days-i/Three%20unusual%20days%20-%20David%20Blunt.pdf>. Viewed 17 June 2021.

<sup>17</sup> Ibid., p 9.

### 141. Scope of Third Reading Debate

The debate on the third reading of a Bill –

- (a) shall be limited to the contents of the Bill as agreed by the Council prior to that stage; and
- (b) shall not introduce new arguments or otherwise expand the debate.

- 1.45 Appendix 1 shows that other Upper House jurisdictions do not distinguish between speaking times for second and third reading debates.
- 1.46 The Committee is of the view that the Legislative Council should maintain the existing practice of having identical speaking times for second and third reading speeches depending on the type of Member.

### Committee of the Whole House

- 1.47 In the motion to refer this matter to the Committee, there was no suggestion during debate that the speaking times for consideration of a Bill in Committee of the Whole House were unsuitable.
- 1.48 A jurisdictional comparison shows that the Council's time limits for Committee of the Whole House are largely in line with other jurisdictions. The Committee notes that some jurisdictions limit the ability of a single member to make consecutive contributions to a single question in Committee of the Whole House.
- 1.49 The Committee notes the largely consistent approach of Australian Upper Houses to the Committee of the Whole process. The Committee is of the view that no change is required at this time to the existing time limits on speaking in the Council during Committee of the Whole House, which currently provide for unlimited periods of 10 minutes for all Members.
- 1.50 The Committee is also aware that there may be an interrelationship between the limiting of second reading speeches and the length of the Committee of the Whole stage and the Committee will undertake to monitor this in the remaining stages of this review.

### Recommendation

- 1.51 A majority of the Committee recommends:

#### RECOMMENDATION 1

That Standing Order 21 is amended by deleting the section headed "Bills (Second and Third Reading)" and inserting in its place:

#### **Bills (Second and Third Reading)**

Mover	45 minutes
Lead Member (Government or Opposition)	45 minutes
Party Leader or Member deputed	45 minutes
Other Members	30 minutes
Mover-in-Reply	45 minutes



Hon Alanna Clohesy MLC  
**Chair**

# APPENDIX 1

## COMPARATIVE TABLE OF SPEAKING TIME LIMITS FOR BILLS

Business type	Description	Actor/Debate time/SO reference	WA LC	WA LA	Senate	NSW LC	NSW Sessional Orders	Notes
Bills - First Reading	To debate the question on the first reading of a Bill	Mover	Not debatable - See SO 124 and SO 53	Bills brought from the Governor or Council not debatable - SO 166	Not debatable except bills that the Senate may not amend; then 15 mins - SO 112(1)(2)	Not debatable - SO 137	N/A	
		Lead Member (Gov or Opp)						
		Party Leader or Member deputed						
		Other Members						
		Reply						
		Extension permitted?						
		Maximum debate time SO reference						
Bills - Second Reading	To debate the question on the second reading of a Bill	Mover	unlimited	60 mins	All Members 15 mins on 2R and 3R. No extensions possible - SO 189	Unlimited	40 mins	*60 mins Premier or deputed (if Opp bill) and 60 mins LOOP or deputed (if Govt bill)
		Lead Member (Gov or Opp)	Unlimited	20 mins			40 mins (lead speaker oppn)	
		Party Leader or Member deputed	Unlimited	60 mins*			40mins (first crossbench speaker only)	
		Other Members	45 mins	20 mins			20 mins	
		Reply	Unlimited	45 mins			20 mins	
		Extension permitted?	Yes, 15 mins by leave for 45 min and 60 min time limits	Yes - 10 mins under SO 101, a further 15 minutes under SO 102			10 mins	
		Maximum debate time	nil	nil			nil	
		SO reference	SO 21	SO 101, SO 102			TO 11(1)	
		Bills - Third Reading	To debate the question on the third reading of a Bill	Mover			Unlimited	
Lead Member (Gov or Opp)	Unlimited			30 mins	40 mins (lead speaker opp)			
Party Leader or Member deputed	Unlimited			30 mins	40mins (first crossbench speaker only)			
Other Members	45 mins			30 mins	20 mins			
Reply	Unlimited			30 mins	20 mins			
Extension permitted?	Yes, 15 mins by leave for 45 min and 60 min time limits			No	10 mins			
Maximum debate time	nil			nil	nil			
SO reference	SO 21			SO 101	TO 11(1)			
Private Members' business - Bill (2R and 3R)	To debate non-government Bills	Mover	As per Bills time limits	As per Bills time limits	All Members 15 mins on 2R and 3R. No extensions possible - SO 189	30 mins*	N/A	* Up to one hour debate on question of leave to bring in a private members' bill. All speakers 10 mins
		Responsible Minister or PS						
		Other Members						
		Reply						
		Extension permitted?						
		Maximum debate time						
		SO reference						
Committee of the Whole	When the Council forms itself into Committee to consider a Bill or question	All Members	Unlimited periods of 10 mins	Unlimited periods of 5 mins	Unlimited 10 mins, by leave one more 10 min period in a row	Unlimited periods	Unlimited 15 mins, by leave one more 15 min period in a row for Government bills	
		SO reference	SO 21	SO 101	SO 189	SO 173(4)	TO 11(2)	

Business type	Description	Actor/Debate time/SO reference	Victoria LC	VIC Sessional Order	SA LC	Tas LC	Notes
Bills - First Reading	To debate the question on the first reading of a Bill	Mover	Not debatable - SO 14.04	N/A	No first reading question put - SO 283	Not debatable - SO 259(7)	
		Lead Member (Gov or Opp)					
		Party Leader or Member deputed					
		Other Members					
		Reply					
		Extension permitted?					
		Maximum debate time					
SO reference							
Bills - Second Reading	To debate the question on the second reading of a Bill	Mover			Unlimited	Unlimited	^ Includes Independents
		Lead Member (Gov or Opp)	60 mins	30 mins			
		Party Leader or Member deputed	45 mins (lead speaker)	30 mins (lead speaker) ^			
		Other Members	15 mins	15 mins			
		Reply	15mins (2R)				
		Extension permitted?					
		Maximum debate time	nil	nil			
SO reference	SO 5.03, 12.09	TO 11					
Bills - Third Reading	To debate the question on the third reading of a Bill	Mover	Same time as Second Reading, no reply (by ruling)	N/A	Unlimited	Unlimited	
		Lead Member (Gov or Opp)					
		Party Leader or Member deputed					
		Other Members					
		Reply					
		Extension permitted?					
		Maximum debate time					
SO reference							
Private Members' business - Bill (2R and 3R)	To debate non-government Bills	Mover	See SO 5.07. Main Gov and Oppn speakers 60 mins, other lead speakers 45 mins, other Members 15 mins - SO5.03	As per Bills time limits	Unlimited	Unlimited	
		Responsible Minister or PS					
		Other Members					
		Reply					
		Extension permitted?					
		Maximum debate time					
SO reference							
Committee of the Whole	When the Council forms itself into Committee to consider a Bill or question	All Members	Unlimited periods	N/A	Unlimited	Unlimited	
		SO reference	SO 15.06	N/A			







## Report 62

*Two sitting days in one day*

A minority report of the Hon. Martin Aldridge MLC and the Hon. Tjorn Sibma MLC

### 1. Referral to the Standing Committee on Procedure and Privileges

- 1.1. On 3 June 2021 the Council considered and ultimately supported a motion referring the Standing Orders to the Standing Committee on Procedure and Privileges (the PPC).
- 1.2. The resolution of the Council was as follows:
  - (1) That the Standing Committee on Procedure and Privileges be required to undertake a review of the Standing Orders with a view to —
    - (a) modernising the procedures of the House; and
    - (b) reviewing and adopting best practice from other Upper House Chambers in Australian Parliaments, including the Australian Senate.
  - (2) The Committee make recommendations for new and amended Standing Orders.
  - (3) The Committee is to report to the House no later than 10 August 2021.
  - (4) The Committee is to provide an Interim Report on recommendations in respect to speaking time limits by 22 June 2021.
- 1.3. The committee is required to review the Standing Orders with a view to modernisation and consideration of similar 'Upper House Chambers' across Australia.
- 1.4. The committee is required to make recommendations and report by 10 August 2021, with an interim report by 22 June 2021 in relation to 'speaking time limits' only.
- 1.5. A number of Members of the House when considering the referral of the Standing Orders to the PPC expressed concern that the interim reporting date presented practical challenges to adequately consult, receive submissions and analyse relevant information in making informed recommendations to the Council.
- 1.6. It should be further noted that timeframes for previous inquiries that have considered discrete standing order changes have taken some months.
- 1.7. In 2018 the Council referred the procedure for Motions on Notice to the PPC for inquiry and report which took four months to complete.
- 1.8. That same year, the PPC took three months to report on Standing Order 6(3) relating to the provisions by which the House is recalled.
- 1.9. An amendment moved by the Leader of the Opposition to extend reporting timelines in relation to this inquiry was defeated along party lines, notwithstanding that there was universal support for Standing Order review.
- 1.10. The PPC was afforded just eleven business days to inquire into and report on the matter of speaking time limits.
- 1.11. The PPC, constrained by the reporting dates, did not advertise its inquiry, or seek or receive submissions prior to reporting to the Council in this interim report.

## 2. Amending Standing Orders

- 2.1. The Council is empowered by section 34 of the *Constitution Act 1889*<sup>1</sup> to provide for the regulation and orderly conduct of their proceedings and the despatch of business by creating and enforcing 'standing rules and orders'.

### 34. Standing Rules and Orders

*The Legislative Council and Legislative Assembly, in their first session, and from time to time afterwards as there shall be occasion, shall each adopt Standing Rules and Orders, joint as well as otherwise, for the regulation and orderly conduct of their proceedings and the despatch of business, and for the manner in which the said Council and Assembly shall be presided over in the absence of the President or the Speaker, and for the mode in which the said Council and Assembly shall confer, correspond, and communicate with each other, and for the passing, intituling, and numbering of Bills, and for the presentation of the same to the Governor for Her Majesty's assent.*

- 2.2. Standing orders are the primary rules of the House, guided by statute law, rulings, custom and practice to regulate the conduct of the chamber and to facilitate its business.
- 2.3. According to *Odgers' Australian Senate Practice*<sup>2</sup> the Australian Constitution at Section 50 empowers the Senate '..... to make rules and orders with respect to the mode in which its powers, privileges, and immunities may be exercised and upheld, and the order and conduct of its business and proceedings. Standing orders and other rules made by the Senate embody procedures designed to ensure that parliamentary business, especially legislation, is conducted in an orderly, open and predictable manner devoid of surprise, haste or sleight of hand.'
- 2.4. Amending standing orders requires a motion with notice and a resolution supported by a simple majority of members present.
- 2.5. In recent times amending the Standing Orders of the Council has only been undertaken in a considered and careful way, typically following a committee inquiry and report and only where consensus is achieved.
- 2.6. The Leader of the House, the Hon. Sue Ellery MLC on 29 November 2017 articulated the following view in relation to the custom and practice of the Council in considering any proposal to amend standing orders.

*This house has a history of how we change the standing orders and it has been done on the basis of consensus. It has been done for the most part by referral to the Standing Committee on Procedure and Privileges or an expanded version or subcommittee of the Standing Committee on Procedure and Privileges, so that everybody in the house has the opportunity to have a say.*

...

*If we do not get the rules right about how we do our business, it follows that we cannot guarantee that we will get the right policy outcome or the right budget outcome. If we do not have the right settings to make our decisions, we will be setting ourselves up to make poorly considered policy and budget decisions if we do not properly consider the ramifications of every change to the rules on how we do our business. That is why we have the process that has been in place in this place for a long time, irrespective of who has had the numbers, and I will talk about the man who put that most eloquently on the record— Hon Norman Moore—in a minute. That is why we have had a position irrespective of who had the numbers in this place that we would have a very deliberate and considered process for making changes to the standing orders.*

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<sup>1</sup>[https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc\\_37172.htm/\\$FILE/Constitution%20Act%201889%20-%20%5B06-f0-01%5D.html?OpenElement](https://www.legislation.wa.gov.au/legislation/prod/filestore.nsf/FileURL/mrdoc_37172.htm/$FILE/Constitution%20Act%201889%20-%20%5B06-f0-01%5D.html?OpenElement)

<sup>2</sup>[https://www.apf.gov.au/About/Parliament/Senate/Powers\\_practice\\_n\\_procedures/Odgers\\_Australian\\_Senate\\_Practice/Chapter\\_01#h14](https://www.apf.gov.au/About/Parliament/Senate/Powers_practice_n_procedures/Odgers_Australian_Senate_Practice/Chapter_01#h14)



*Although the Standing Committee on Procedure and Privileges may provide a consensus report, which everyone on the committee will have agreed to, the approach of this house has been and is now as we speak that that Standing Committee on Procedure and Privileges report will not be proceeded with if it does not have the consensus of the whole house. I will give an example. The Standing Committee on Procedure and Privileges has considered e-petitions and has made certain recommendations. Despite that report suggesting that the house go down a particular path, there is not consensus across the house, so we will not be proceeding with that. That is the time-tested method that we use to make changes to the way we do our business. We bring everybody with us. People will criticise us for that, and I am critical of doing that sometimes because I think we do not move fast enough; however, it ensures that everybody buys into the process and it ensures that we have the time and the opportunity to consider all ramifications and possible consequences, unintended or otherwise.*

- 2.7. Whilst often perceived as an inhibitor to standing order reform, the consensus approach taken by the Council has delivered stability and measure to any proposal advanced.

**Finding 1: A minority of the Committee supports the continuation of the practice whereby amendment to standing orders is only considered after the careful inquiry of the PPC and where a consensus of the Council is achieved.**

### **3. Review of Standing Orders (Speaking Times)**

- 3.1. As mentioned earlier, the PPC was constrained by the time limit applied by the Council in referring this matter.
- 3.2. This prevented the PPC from advertising and seeking submissions from relevant stakeholders.
- 3.3. The last substantial review of the standing orders was conducted between 2009 and 2011 and received submissions, predominantly from Members of the Council, but also included a former President and a former Council Minister.
- 3.4. It is likely that a range of stakeholders may be interested in the inquiry of the PPC including current and former Members, former Presiding Officers, political science academics, business, union and industry representatives as well as members of the general public.
- 3.5. The PPC also lacked important guidance from the referral of the Council due to the limited nature of debate with just eleven of thirty-six members contributing to the substantive motion.
- 3.6. The substantive referral motion attracted 3 hours and 21 minutes debate and the amendment just 33 minutes following an extraordinary adjournment motion and a second sitting day on the same calendar day (3 June 2021).
- 3.7. Despite almost four hours of debate, contributions varied in length and detail with only one government member contributing.
- 3.8. Whilst all speakers who contributed to the debate expressed their support for the referral, there was a variance in view articulated as to the merits or constraint of the short reporting timeframe proposed for this interim report.
- 3.9. Few contributions proved instructive in allowing the committee to confine its focus or even in defining the mischief or problem that ought to be remedied.
- 3.10. It is also worth noting that with seventeen new Members of the Council, this would have been a limiting factor in both contributing to the substance of the debate in the Council or by way of submission, a view that was expressed by several Members.
- 3.11. In the time available the PPC was able to consider a desktop comparison of upper house jurisdictions which is found at Appendix 1.
- 3.12. What was not possible was any meaningful engagement with those jurisdictions as to the manner in which their standing orders have evolved over time, other relevant orders that may interact upon speaking time limits or the impact whether positive or negative on the consideration of legislation and overall length of debate.
- 3.13. The PPC was also unable to engage fully with Clerks or Members from other jurisdictions to consider their views on the application and operation of their orders.
- 3.14. Furthermore, the PPC was unable to access and analyse relevant data from the Council to form a view even in a basic form as to the problem which ought to be addressed as data is not collected on the duration of second and third reading speeches.
- 3.15. The absence of available data to make assessments is not an insignificant problem.

- 3.16. Debate in the House cited only a small number of examples where second reading contributions made by non-government members with an entitlement to speak for an unlimited time, were considered, subjectively, as excessive.
- 3.17. With respect to proceedings in the 40th Parliament, examples of subjectively excessive speeches made by non-government members with unlimited time were made in relation to two contentious bills subject to conscience votes (Human Reproductive Technology and Surrogacy Legislation Amendment Bill 2018 and the Voluntary Assisted Dying Bill 2019).
- 3.18. It is a reasonable assumption that over the course of any parliament, such Bills will be atypical.
- 3.19. There is no evidence available to support the hypothesis that the capacity for a limited number of members to speak for an unlimited time, is a systemic or insurmountable obstacle to a government's ability to manage its legislative program in an efficient or effective manner.
- 3.20. There are inherent risks associated with acting without information, without evidence and without first defining the problem that we seek to address.
- 3.21. A minority of the committee have formed the view that before any firm proposition can be presented to the Council for change, the following steps ought to be undertaken by the PPC:
  - 3.21.1. Advertise the inquiry publicly;
  - 3.21.2. Seek submissions from Members of the Council and external stakeholders;
  - 3.21.3. Collect and analyse relevant data pertaining to speaking time usage over at least the last two Parliaments;
  - 3.21.4. Engage with upper house Australian jurisdictions to establish a greater understanding of their relevant standing orders and any consequence of them; and
  - 3.21.5. Conduct a literature review to identify relevant articles and papers and possible solutions for consideration.
- 3.22. Acknowledging the way in which amendment to standing orders have been made in the past by consensus of the Council and the likely sensitivity of change, particularly as they relate to speaking time limits, a consultative approach must be taken by the PPC and ultimately the Council.
- 3.23. A minority of the committee recommends that the PPC should consider creating a discussion paper outlining its research and findings with a survey of Members seeking direct feedback on any change that may be considered.
- 3.24. This in our view presents the best way forward in taking an informed and considered approach prior to implementing temporary or permanent change.
- 3.25. This in our view presents 'best practice' for contemplating standing order change.

#### **Recommendation A**

A minority of the PPC recommends that the Council agree to an extension of time relating to the interim report and the final report with a reporting date of 3 December 2021.

#### **Recommendation B**

A minority of the PPC recommends that the Council directs the PPC to:

- a) Advertise the inquiry publicly;
- b) Seek submissions from Members of the Council and external stakeholders;
- c) Collect and analyse relevant data pertaining to speaking time usage over at least the last two Parliaments;
- d) Engage with upper house Australian jurisdictions to establish a greater understanding of their relevant standing orders and any consequence of them;
- e) Conduct a literature review to identify relevant articles and papers and possible solutions for consideration; and
- f) Consider the merits of releasing a discussion paper presenting options for change and surveying Members of the Council on their preferred options.



Hon Martin Aldridge



Hon Tjorn Sibma

## Standing Committee on Procedure and Privileges


### Date first appointed:

24 May 2001

### Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

#### **'1. Procedure and Privileges Committee**

- 1.1 *A Procedure and Privileges Committee is established.*
  - 1.2 The Committee consists of 5 Members, including the President and the Chair of Committees, and any Members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chair, and the Chair of Committees is the Deputy Chair, of the Committee.
  - 1.3 With any necessary modifications, Standing Order 163 applies to a co-opted Member.
  - 1.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the Council and its Committees, and recommend to the Council such alterations in that law, custom, or rules that, in its opinion, will assist or improve the proper and orderly transaction of the business of the Council or its Committees.'
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