



# Legislative Council

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5 February 2020

The Hon Matthew Swinbourn MLC  
Committee Chair  
Standing Committee on Environment and Public Affairs  
Legislative Council Committee Office  
Parliament House  
4 Harvest Terrace  
WEST PERTH WA 6005  
Email: [env@parliament.wa.gov.au](mailto:env@parliament.wa.gov.au)

Dear Hon Swinbourn

**Re: Invitation to provide written submission – Inquiry into the functions, processes and procedures of the Standing Committee on Environment and Public Affairs**

Thank you for the opportunity to provide a submission to your committee. I apologise for the lateness of this submission. I hope the brief submission attached with this letter is of use to the committee in its deliberations. Please contact me if you or your committee staff require any further information on this. I look forward to reading the committee's report in due course.

Thank you again for the invitation to make a submission. I wish you well with your timely and important Inquiry.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Andrew Young'.

Andrew Young  
Clerk of the Legislative Council

*Attach.*

## Response to request for submission

Thank you for the invitation to submit some information to the Committee. I understand that there are two areas the Committee seeks input on:

1. Petitions in the Legislative Council – our procedures for tabling, our rules, any controversies of note. I understand you do not wish to receive information on our e-petitions system.
2. Environment committees in the Legislative Council – procedural information relating to and any points of notes. I understand that you do not require information on specific inquiries.

### 1. Petitions

#### Procedure

The right to petition parliament is a longstanding Westminster tradition. The procedures within the Legislative Council is at once informed by conventional practice as well as by Chapter 10 of the Legislative Council of Victoria Standing Orders.

Standing Order (SO) 10.01 allows for petitions to be presented to the House by a Legislative Council Member. However a member may not table a petition which they have signed. Petitions are presented to the Council during Formal Business<sup>1</sup> and no debate upon presentation of the petition will be allowed<sup>2</sup>. In 2014 the President sought leave of the House for members to table two petitions later in the day than is normal. The delayed tabling of one petition was due to an administrative error and the other due to a Member been absent from the Chamber during Formal Business<sup>3</sup>.

Members may at the time of presenting a petition move that the petition be taken into consideration on the next day of meeting. This question will be decided without amendment or debate<sup>4</sup>. By moving this question, the petition will be made an order of the day on the Notice Paper and may therefore be brought on for debate on a future sitting day. The last time the Legislative Council brought an order of the day, related to a petition, on for debate was in the 57<sup>th</sup> Parliament, during General Business on Wednesday, 15 October 2014<sup>5</sup>.

Petitions are addressed to the Legislative Council and outline firstly, a grievance and secondly, an action or remedy. As the petition must be addressed to the Legislative Council of Victoria, the remedy sought must also be within the powers of the Legislative Council. By convention, members with ministerial responsibilities will not sponsor petitions as they form the Government. Consequently, the majority of petitions are sponsored by opposition or minor party members. Where members of the party in government do present a petition to the Legislative Council, it is rare that they would move the petition be taken into consideration. On an occasion in the 57<sup>th</sup> Parliament, a government party member presented a petition to the Legislative Council, an

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<sup>1</sup> Legislative Council of Victoria Standing Orders, 59<sup>th</sup> Parliament, SO 10.05.

<sup>2</sup> *Ibid.*, SO 10.07.

<sup>3</sup> *Minutes of the Proceedings* No. 194, 57<sup>th</sup> Parliament, 18 September 2014, *Petitions*, pp. 1112 – 1113.

<sup>4</sup> Legislative Council of Victoria Standing Orders, 59<sup>th</sup> Parliament, SO 10.07.

<sup>5</sup> *Minutes of the Proceedings* No. 196, 57<sup>th</sup> Parliament, 15 October 2014, *Jumps Racing Petition*, p. 1135.

opposition member subsequently moved that the petition be taken into consideration on the next day of meeting<sup>6</sup>.

The Table Office reviews all petitions to ensure they conform with Standing Orders. For a petition to be tabled, the sponsoring member is required to lodge the petition in person or by post to the Table Office, with the front page signed and dated. The Table Office will then perform a check to ensure the petition complies with SO 10.02 below and if so, issue a certification of conformity<sup>7</sup>:

A petition will —

- (1) Be legible.
- (2) Be addressed to the Legislative Council of Victoria.
- (3) Be in English or accompanied by an English translation certified to be true and correct by the Member who presents it.
- (4) Be respectful and temperate in its language.
- (5) State the action or remedy sought from the Council on the top of every sheet.
- (6) Contain at least one signature.
- (7) Contain the original signatures, names and addresses of the petitioners. Only a petitioner incapable of signing may get someone else to sign for him or her.
- (8) Not contain signatures which have been pasted or in any other way transferred or attached to the petition.
- (9) If from a corporation, be made under its common seal.

On behalf of the Clerk, staff in the Table Office will focus on the form and content of the petition, whether the issue falls within state jurisdiction and whether the signatories are Victorian residents. These rules are uniformly applied to all petitions to ensure fairness and impartiality.

SO 10.06 also provides further guidance on the procedure for presenting a petition to the House. Subsection 4 gives members the option of requesting the full text of the petition to be read to the Council by the Clerk. This is a seldomly used standing order and last occurred in the Legislative Council in 2006 during the 55<sup>th</sup> Parliament<sup>8</sup>.

Once a petition is presented to the Legislative Council, the petition becomes a public document and will be made available to anyone who requests to view it. The Table Office keeps scanned copies of all petitions tabled in the House since the 57<sup>th</sup> Parliament. The public nature of petitions has caused some concern amongst certain members of the community, who may then wish to retract their signature. In another internal procedure not in Standing Orders, the Table Office does allow any signatory to request, in writing, that they be erased from a petition, provided it is done before tabling. Most requests have been from signatories who did not realise petitions are public once tabled.

SO 10.09 require the Clerk to refer the terms of the petition to the relevant Minister responsible for the administration of the subject matter of the petition<sup>9</sup>. The Clerk will send a letter electronically to the relevant Minister's email address along with the front page of the petition. Once the letter is sent, the House's involvement in the petition process is complete.

The Council does not have a Standing or Joint Committee that automatically considers or responds to petitions. However there have been petitions tabled in the past with a high volume of signatures which have brought up debate within the House. In the 59<sup>th</sup> Parliament, Sessional Orders were adopted

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<sup>6</sup> *Minutes of the Proceedings No. 103*, 57<sup>th</sup> Parliament, 12 December 2012, Primary School in Mernda, p. 587.

<sup>7</sup> Legislative Council of Victoria Standing Orders, 59<sup>th</sup> Parliament, SO 10.06.

<sup>8</sup> *Minutes of the Proceedings No. 163*, 55<sup>th</sup> Parliament, 4 May 2006, *Golden Plains Shire Council Plan*, p 730.

<sup>9</sup> Legislative Council of Victoria Standing Orders, 59<sup>th</sup> Parliament, SO 10.09.

which extend the breadth Statements on Reports and Papers<sup>10</sup> to include petitions. This allows for members to make a statement, no longer than 5 minutes per member, on a petition which has been tabled in the Council during the Session.

### **Presenting a Petition on the Opening of a New Parliament**

A petition was tabled for the first time on the opening day of a new Parliament during the Opening of the 59<sup>th</sup> Parliament<sup>11</sup>. The controversy lies in the fact that members of the Legislative Council are officially sworn in on Opening day, before this occurs there are no members and therefore, no House to petition.

However, the Standing Orders provides further guidance on business to occur on the opening day of a Parliament to include 'Formal Business to re-assert and maintain the rights of the Council'<sup>12</sup>. Formal Business is further defined to expressly include the presentation of petitions<sup>13</sup>. Therefore, a petition was permitted to be presented on the Opening day of the 59<sup>th</sup> Parliament to re-assert one of the basic cornerstones of Parliamentary democracy.

## **2. Environment and Planning Standing Committee – Legislative Council of Victoria**

### **Establishment**

Under the Standing Orders of the Legislative Council, at the commencement of each Parliament subsequently, legislative and reference standing committees shall be appointed as follows:

Environment and Planning

- Legislation Committee
- References Committee

The separation of the committee into two separate committees, the Legislation Committee and the References Committee, has its origins in the establishment of the committee system itself. Under the Standing Orders, each legislation and reference committee consists of eight members, and the chair of the two committees alternated between government and opposition or non-government members. The Legislation committees inquire into bills or draft bills and reference committees undertake inquiries into other matters referred to them by the Council. This was based on the Senate standing committee system.

In the 58<sup>th</sup> Parliament, the separation between the two committees was removed by Sessional Orders. The Standing Committees then became a single committee, rather than the two committees (Legislation and Reference). Under this new format, the standing committee has undertaken enquiries into bills and into references without any change in chairmanship or membership.

Despite this change continuing into the 59<sup>th</sup> Parliament under new Sessional Orders, the Standing Orders themselves have not been changed and therefore should it be considered preferable to

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<sup>10</sup> Legislative Council of Victoria Standing Orders, 59<sup>th</sup> Parliament, SO 9.10.

<sup>11</sup> *Minutes of the Proceedings* No. 1, 59<sup>th</sup> Parliament, 19 December 2018, *Petition – Melbourne Sports and Aquatic Centre*, p 10.

<sup>12</sup> Legislative Council of Victoria Standing Orders, 59<sup>th</sup> Parliament, SO 1.09.

<sup>13</sup> *Ibid.*, SO 5.04.

continue the single committee in the next parliament, further Sessional Orders will need to be adopted.

### **Environment and Planning Committee**

The Standing Committee on the Environment and Planning inquires into and reports on any proposal, matter or thing concerned with the arts, coordination of government, environment, and planning the use, development and protection of land.

Under Sessional Orders for the 59<sup>th</sup> Parliament (commenced 2018), Standing Committees may inquire into, hold public hearings, consider and report on any matter, including on any Bills or draft Bills, annual reports, estimates of expenditure or other documents laid before the Legislative Council in accordance with an Act, provided these are relevant to their functions. Standing Committees could therefore inquire into a petition tabled in the House, however this does not happen.<sup>14</sup>

Each Standing Committee may only undertake a maximum of two own-motion inquiries each calendar year.

Membership of the Committee must have regard to the proportionality of parties and independents in the council, and the Environment and Planning Committee will consist of ten Members<sup>15</sup>, with Government Members nominated by the Leader of the Government in the Council, Opposition Members nominated by the Leader of the Opposition in the Council and Members from among the remaining Members in the Council nominated jointly by those minor parties and independent Members from which they are drawn.

Six Members of the Environment and Planning Standing Committee will constitute a quorum of the committee. The Committee itself elects its chair and deputy chair.

One of the key elements of the environment and planning committee in the 59<sup>th</sup> Parliament is the number of members of the committee. Currently, the committee has 15 members altogether, including 10 appointed members and five participating members. There are eight political parties represented on the committee.

The issue of numbers of members can complicate the process of hearing evidence and deliberating simply because there is more than a third of the population of the House on the committee. Of equal note, however, is the more practical element of simply accommodating that number of members at a meeting or in public hearings. Traditionally, committees were made up of approximately half this number of members and if all members attend a meeting or public hearing it can be logistically challenging to seat them comfortably.

Under Standing Order 23.05 (2), participating members can be appointed to the committees who can undertake all of the activities of the committee. Under the Standing Orders, participating members are taken to be members of the committee for the purposes of a quorum but may not vote. In the Sessional Orders adopted for the 59<sup>th</sup> Parliament, the quorum element has been removed and in this Parliament participating members neither vote nor count for quorum. They may participate in all other ways.

This Standing Orders also allow for a participating member to become a substitute member to take the place of a member of the committee who is unable to attend. The substitute member has the

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<sup>14</sup> There are 19<sup>th</sup> century examples of select committees of the Legislative Council inquiring into petitions. It is unclear when that practice ceased.

<sup>15</sup> Sessional Order. Standing Orders say eight.

same rights and powers as any appointed member of the committee, including voting and counting for quorum. The substitution takes place simply by a letter to the chair of the committee from the leader of the party or group who nominated the member being substituted.

The chair of the committee tables reports in the House. The chair is allowed to speak for five minutes at the tabling of the report, other members of the House receive two minutes and any other member may speak for two minutes by leave. Reports frequently contain minority reports attached by dissenting members.