



THIRTY-EIGHTH PARLIAMENT

REPORT 22
STANDING COMMITTEE ON PROCEDURE AND
PRIVILEGES
SUBCOMMITTEE
REVIEW OF THE STANDING ORDERS

Presented by Hon. Barry House MLC (Chairman)

October 2011

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

Date first appointed: 24 May 2001

Terms of Reference:

6. Procedure and Privileges Committee

- 6.1 A *Procedure and Privileges Committee* is established.
- 6.2 The Committee consists of the President and the Chairman of Committees, the Deputy Chairmen of Committees (*all ex officio*), and any members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chairman, and the Chairman of Committees is the Deputy Chairman, of the Committee.
- 6.3 With any necessary modifications, SO 326A applies to a co-opted member.
- 6.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the House and its committees, and recommend to the House 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 House or its committees.
- 6.5 Unless otherwise ordered any rule or order under which a matter of privilege stands referred, or is referred, to a committee (however described) for inquiry and report is a reference to the Committee.”

Members as at the time of this inquiry*:

Hon. Barry House MLC (Chairman)	Hon. Helen Morton MLC *
Hon. Matt Benson-Lidholm MLC (Deputy Chairman)	Hon. Max Trenorden MLC *
Hon. Jon Ford MLC	Hon. Ken Travers MLC
Hon. Michael Mischin MLC	Hon. Giz Watson MLC (Co-opted Member)
Hon. Wendy Duncan MLC (Co-opted Member)	Hon. Norman Moore MLC (Co-opted Member)
Hon. Sue Ellery MLC (Co-opted Member)	

* Membership ceased as at 14 December 2010 (Hon. Helen Morton) and 26 May 2011 (Hon. Max Trenorden)

Staff as at the time of this inquiry:

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**REPORT OF THE SUBCOMMITTEE OF THE
STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES**

IN RELATION TO THE

REVIEW OF THE STANDING ORDERS

1 REFERENCE AND PROCEDURE

1.1 On 15 September 2009, the Legislative Council resolved the following motion:

That the Standing Committee on Procedure and Privileges be required to undertake a comprehensive review of the Standing Orders of the House with a view to modernising the procedures of the House.

1.2 The motion further prescribed that the Committee would report to the House on 2 March 2010, and that the Leader of the House, the Leader of the Opposition, Hon. Giz Watson and Hon. Wendy Duncan be co-opted members for the purpose of the review. The Committee conducted its first meeting following this referral on 25 November 2009.

1.3 This review of the Standing Orders is the first comprehensive review of all the Standing Orders undertaken by the Legislative Council, with the last major review being conducted in 1952.

1.4 The reporting date for the Committee's inquiry was extended by motion of the House on seven occasions, with the final extension being to 20 October 2011.

1.5 On 23 February 2011, the Committee resolved to create a Subcommittee to complete the review of the Standing Orders. The Subcommittee comprised the President, Deputy President and the four party leaders: Hon. Norman Moore, Hon. Sue Ellery, Hon. Wendy Duncan and Hon. Giz Watson. On 24 February 2011, the House resolved that this Subcommittee be empowered to report directly to the House in relation to this inquiry.

1.6 On 25 March 2010, the House adopted a set of Temporary Orders, covering matters such as the days and times of meeting and different business proceedings including Non-Government Business time. The operation of these Temporary Orders was also extended over this period, and the proposed Standing Orders include the majority of these temporary arrangements.

2 SUBMISSIONS

- 2.1 Upon the initial reference from the House, the Committee called for submissions from current Members of the Legislative Council and a number of former Members. Twelve submissions were received by the Committee (see list at Appendix 1). Further correspondence was received by the Committee from Members during the course of the inquiry and was duly considered by the Committee.

3 PRINCIPLES ADOPTED BY THE COMMITTEE

- 3.1 An initial consideration for the Committee was a set of principles to apply to its inquiry. In this regard, the Committee determined that it would revise the Standing Orders with a view to:
- streamline and simplify the procedures of the House and its Committees;
 - rationalise the priority of business considered by the House;
 - adopt successful practices from the recent Temporary and Sessional Orders trialled by the House;
 - incorporate current practices of the House into the Standing Orders;
 - eliminate obsolete and unnecessary Standing Orders;
 - ensure that the rights of all Members to contribute to proceedings in the House and its Committees are retained or strengthened;
 - use plain English;
 - use gender neutral language; and
 - re-order the Standing Orders into a more user-friendly sequence.

4 OVERVIEW OF THE REPORT

- 4.1 This report is one of three documents presented to the House by the Subcommittee. The other two documents are a comparative table, detailing both the current Standing Orders and the new, proposed Standing Orders. The table also contains notes relating to the changes that are being proposed by the Subcommittee. In many instances, where the proposed changes are minor, these notes constitute the Subcommittee's explanation of the change. However, for a number of more significant changes, the notes are expanded upon in this report, and the two documents should be read in conjunction with each other. Finally, the Subcommittee has presented a 'clean' copy of the proposed Standing Orders for the information of Members.
- 4.2 The sequence of the proposed Standing Orders varies significantly from the current Standing Orders. This report is written in corresponding order to the proposed Standing Orders.

5 OVERVIEW OF THE PROPOSED STANDING ORDERS

5.1 The proposed Standing Orders comprise 21 chapters and four schedules. These chapters and schedules are -

- Chapter I: General
- Chapter II: Sitting and Adjournment of the Council
- Chapter III: Order of Business
- Chapter IV: Time Limits
- Chapter V: Conduct of Members
- Chapter VI: General Rules of Debate
- Chapter VII: Notices of Motion
- Chapter VIII: Motions, Questions and Votes
- Chapter IX: Amendments
- Chapter X: Parliamentary Privilege
- Chapter XI: Formal Business Procedures
- Chapter XII: General Business Procedures
- Chapter XIII: Committee of the Whole House
- Chapter XIV: Bills
- Chapter XV: Committees
- Chapter XVI: Witnesses
- Chapter XVII: Opening of Parliament
- Chapter XVIII: President and Officers
- Chapter XIX: Records of the Council
- Chapter XX: Communication between the Houses
- Chapter XXI: The Sovereign and the Governor
- Schedule 1: Committees
- Schedule 2: Joint Standing Rules and Orders of the Legislative Council and the Legislative Assembly
- Schedule 3: Definitions
- Schedule 4: Contempts of the Council

5.2 Each of these chapters and schedules, and the major changes being recommended by the Subcommittee, are expanded upon in the following sections of this report.

6 ANALYSIS OF THE PROPOSED STANDING ORDERS

6.1 Chapter I: General

6.1.1 New Chapter I is comprised of four Standing Orders. These proposed Standing Orders reflect current practice, provide the statutory source for the Standing Orders and a definition of Temporary Orders, and include proposed Standing Order 4, which underscores and reinforces the authority of the President.

6.2 Chapter II: Sitting and Adjournment of the Council

6.2.1 New Chapter II is comprised of nine Standing Orders, specifying the days and times for the meeting of the Council and the quorum provision. Proposed Standing Order 5 reflects the current Temporary Orders arrangement.

6.2.2 Proposed Standing Order 6 provides for an annual sitting schedule to be tabled in the House each year by the Leader of the House. While an annual sitting schedule is currently tabled as a matter of custom and practice, the intent of this new Standing Order is to formalise this process and provide greater certainty regarding the sitting schedule for the House.

6.2.3 The proposed Standing Orders pertaining to quorum represent no substantial change to current arrangements.

6.3 Chapter III: Order of Business

6.3.1 New Chapter III is comprised of seven Standing Orders. These proposed Standing Orders largely reflect the current Temporary Order arrangements and the custom and practice of the House, and formalise the production and usage of a daily Business Program for the House.

6.3.2 Proposed Standing Order 17 (*Business Program*) parts (4) and (5) replace the form and practice surrounding current Standing Order 128. The Subcommittee was divided regarding the continuation of these arrangements, as the operation of the current Standing Order potentially takes control of the business of the House out of the hands of the Government. However, as the Subcommittee could not resolve this division of opinion, the proposed Standing Order reflects the current practice of the House.

6.3.3 The Subcommittee does not, however, support current Standing Order 125A regarding a Business Management Committee, and proposes that this Standing Order be deleted.

- 6.3.4 Further, the Subcommittee proposes that the weekly time allocated for the consideration of Committee reports and ministerial statements be amended, with ministerial statements being removed from this category. Proposed Standing Order 15 accordingly varies the current Temporary Order arrangements.
- 6.3.5 The Subcommittee notes and concurs with the comments made by a number of Members regarding the slow progress made by the House in considering Committee reports. This focus upon considering Committee reports only during this weekly business period is proposed to assist with the timely consideration of these matters. The Subcommittee notes the other opportunities for debating ministerial statements, such as questions, motions and Members' Statements, and considers these opportunities should be used for this purpose. The Subcommittee also proposes that the current requirements regarding Ministerial Statements (that the statements impart factual information relating to public affairs and must not contain debateable matter other than matter that is inherent in the content of the statement) be maintained (see proposed Standing Order 102(2)).

6.4 Chapter IV: Time Limits

- 6.4.1 New Chapter IV is comprised of three Standing Orders. Proposed Standing Order 21 (*Time Limits on Speeches*) combines the debate time limits for all business into one Standing Order for ease of reference. Some minor changes are proposed to current speaking times, including the expansion of unlimited debate times for the second and third reading of Bills to all Party leaders (or Member deputed).
- 6.4.2 Proposed Standing Orders 22 and 23 reflect the current Standing and Temporary Order arrangements.

6.5 Chapter V: Conduct of Members

- 6.5.1 New Chapter V is comprised of 11 Standing Orders. The proposed Standing Orders do not constitute a substantial change to the current Standing Orders and the custom and practice of the House.

6.6 Chapter VI: General Rules of Debate

- 6.6.1 New Chapter VI is comprised of 24 Standing Orders. Many of the proposed Standing Orders do not constitute a substantial change to the current Standing Orders and the custom and practice of the House.

- 6.6.2 The wording of proposed Standing Order 37 (*Member's Right of Speech*) is substantially the same as current Standing Order 84, but custom and practice has developed differently from the current Standing Order in relation to amendments. The Subcommittee proposes that this practice revert to the previous practice as specified in both the current and proposed Standing Order, in line with 'standard meeting practice'.
- 6.6.3 The current practice of the House in relation to amendments is such that, once an amendment has been moved to a motion, subsequent speakers are both allowed to and are deemed to have spoken to both the amendment and the main motion. While the Subcommittee recognises the circumstances under which this practice has developed, it also recognises that this often creates confusion and can lead to an inequitable treatment of Members, depending on whether the Member speaks to the motion prior to or after an amendment is moved.
- 6.6.4 The Subcommittee proposes that the House revert to the practice under which when an amendment is moved, only the Member moving the amendment is deemed to have spoken to both the main motion and the amendment, and all other Members speaking subsequent to the moving of the amendment must speak to the amendment until the question for the amendment is resolved. Accordingly, a Member who has previously spoken to the motion may also speak to the amendment (other than the mover of the amendment), as the amendment is treated as a separate question. Any subsequent amendments will be dealt with in the same manner, with any amendment or amended form of a motion being treated as a separate question.
- 6.6.5 Proposed Standing Order 51 deals with *sub judice* matters, and reflects the custom and practice of the House. Importantly, the proposed Standing Order does not limit the right of the House to debate any matter that the House considers necessary or appropriate.
- 6.6.6 Proposed Standing Order 52 (*Matters Not Open to Debate or Amendment*) aligns with current Standing Order 109. The proposed Standing Order is intended as a guide to Members and users of the Standing Orders, and is not intended as a comprehensive, exclusive list of all matters.

- 6.6.7 Proposed Standing Order 53 (*Closure Motion*) varies the current Standing Order 110 in a number of ways. The current Standing Order provides effectively a ‘guillotine mechanism’, whereby if the closure motion is passed with the support of 10 or more Members, then the effect of this resolution is that not only the question immediately before the House is put without further debate but also any related question. This provision has been removed, as the Subcommittee considered that this ‘multiple effect’ should not occur and while a capacity to ‘close’ debate should be retained, this should not include a ‘guillotine’.
- 6.6.8 Proposed Standing Order 53 also removes the capacity for the President to decline to put the motion. The only circumstance under which this current provision has practical effect is when the President declines to put the closure motion and that this action is contrary to the majority view of the House (i.e. the majority of the House supports the closure motion). The Subcommittee considers that the principle of the President acting on all occasions in accordance with the will of the House is critical to the proceedings of the House and should not be set aside for any purpose.
- 6.6.9 Current Standing Orders 47 and 48 deal with the arrangements for tabling of documents quoted by Ministers and Members in debate. The current provisions specify different arrangements for these two groups. Proposed Standing Order 58 (*Documents Quoted in Debate*) provides a single arrangement regarding this matter for all Members, and removes the requirement for any Member to table a confidential document.
- 6.6.10 During its consideration of these arrangements, the Subcommittee formed the view that the operation of the current arrangements effectively represented a ‘trap’ into which occasionally a Member unwittingly stumbles, but which can be easily circumvented by a Member simply transposing a quote onto a separate piece of paper, then reading from those ‘speech notes’ rather than the original document. The Subcommittee also formed the view that the arrangements should be uniform for all Members.
- 6.6.11 Under the Subcommittee’s proposed arrangement, while a Member would not be forced to table any document by virtue of proposed Standing Order 58, the House retains the right to order the tabling of any document by separate motion. Where a Member opts not to table a document, the House will form a view as to the value it assigns to a quote from an undisclosed document, and may proceed to order the production of that document by separate motion if it deems necessary.

6.7 Chapter VII: Notices of Motion

- 6.7.1 New Chapter VII is comprised of five Standing Orders. Proposed Standing Order 59 (*Giving Notice of Motion*) introduces a limit on the number of notices of motion a Member may deliver each sitting day, except for disallowance motions.
- 6.7.2 Proposed Standing Orders 61 and 62 continue the arrangements provided for under current Standing Orders 145 and 146 with a minor change. Under the proposed Standing Order, a Member may withdraw a notice of motion at any point up to that motion being moved in the House. The Subcommittee's view in this regard is underpinned by two principles: firstly, that a Member 'retains ownership' of a notice of motion up to the point where it is moved, whereafter the motion is in the possession of the House; and secondly, it is nonsensical for a Member to have to seek leave to withdraw a notice of motion, because if leave is denied the Member can simply refuse to move the motion when it is called upon and achieve the same outcome.
- 6.7.3 In proposing to delete the requirement for leave to withdraw a notice of motion, the Subcommittee emphasises to Members that if any Member wishes to have a motion considered by the House, that Member should give notice of motion to that effect and not rely on another Member's notice which may be withdrawn.

6.8 Chapter VIII: Motions, Questions and Votes

- 6.8.1 New Chapter VIII is comprised of 20 Standing Orders. The proposed Standing Orders represent no substantial change to the current Standing Orders and the custom and practice of the House.
- 6.8.2 Proposed Standing Order 64 (*No Motion without Previous Notice*) includes a list of all motions that may be moved without notice. Part (1) of the proposed Standing Order provides that other motions may be moved without notice pursuant to leave of the House.

6.9 Chapter IX: Amendments

- 6.9.1 New Chapter IX is comprised of eight Standing Orders. The proposed Standing Orders do not constitute a substantial change to the current Standing Orders and the custom and practice of the House.

6.10 Chapter X: Parliamentary Privilege

- 6.10.1 New Chapter X is comprised of eight Standing Orders. Proposed Standing Order 92 (*Matter of Privilege*) is a simplified version of current Standing Order 155. It removes the requirement for the establishment of a Select Committee and provides for privilege matters to be referred to the *Procedure and Privileges Committee*. The proposed Standing Order further provides for the President to advise the House of a privilege matter where the President becomes aware of the matter by means other than a Member raising the matter in the House.
- 6.10.2 Proposed Standing Order 93 (*Contempts of the Council*) is a new Standing Order arising from the recommendations of the former *Select Committee into the Appropriateness of Powers and Penalties for Breaches of Privilege and Contempts of Parliament*. The arguments in support of this arrangement are contained in the final report of that Committee. The proposed Standing Order links with new Schedule 4 (as recommended by the Select Committee), which details the criteria to be taken into account when determining matters relating to contempt of the House and provides examples of contempts of the House.
- 6.10.3 Proposed Standing Order 96 (*Strangers in the Council*) reflects the current Standing Orders and custom and practice of the House. The Subcommittee's intention is that the permission for Members of the Legislative Assembly to sit in the seats behind the President's Chair (other than during a division) is not affected by the proposed Standing Order.

6.11 Chapter XI: Formal Business Procedures

- 6.11.1 New Chapter XI is comprised of three Standing Orders, dealing with petitions and statements by Ministers and Parliamentary Secretaries. Proposed Standing Order 100 (*Form and Contents of Petitions*) is a simplified version of current Standing Order 133 and represents no substantial change to the current arrangements, other than that the promoter of a petition must be a resident of Western Australia. The Subcommittee is of the view that while petitions may contain signatures from persons external to the jurisdiction, the procedures associated with petitions, including the referral to a Standing Committee, warrant the requirement that the promoter should at the least be a person residing in the jurisdiction.

- 6.11.2 Proposed Standing Order 101 (*Procedure for Lodgement and Presentation of Petitions*) similarly produces no substantial change to the current arrangements, though the capacity for Members to submit petitions by delivery has been removed. The Subcommittee noted that the presentation of petitions by delivery was the only current mechanism via which a Member can have a matter included in the official proceedings of the House without the knowledge of any other Member, and considers this inappropriate.
- 6.11.3 The Subcommittee has further amended the proposed arrangements so that a Member may read a summary of the text of the petition, which the Subcommittee would envisage occurring when a Member presents a petition that is identical (or substantially the same) as a petition previously presented to the House. Finally, the Subcommittee has proposed a new provision to allow for the House to resolve that a petition not be received. In doing so, the Subcommittee envisages that this provision would only be used where the substance of the petition is considered unparliamentary.
- 6.11.4 The Subcommittee proposes that current Standing Order 134 related to petitions for relief be deleted and replaced by proposed Standing Order 112 (*Protection of Persons and Corporations Referred to in the Council*), which is based upon the current Senate practice.

6.12 Chapter XII: General Business Procedures

- 6.12.1 New Chapter XII is comprised of 10 Standing Orders. Proposed Standing Order 104 (*Rules for Questions*) is a simplified version of current Standing Order 140. In considering the various criteria regarding questions, the Subcommittee came to the view that many of the criteria specified in current Standing Order 140 are adequately covered by the requirement that a question be concise, and that a range of other criteria, including unparliamentary language, anticipating debate and *sub judice* matters, were covered by other Standing Orders that dealt with these matters in relation to all proceedings of the House, and so separate expression in relation to questions was not required. The Subcommittee acknowledges that the maintenance of appropriate standards will require ongoing vigilance by the President.
- 6.12.2 The Subcommittee has also proposed Standing Order 105 (*Answers to Questions*), which places equivalent requirements upon answers to those relating to questions.

- 6.12.3 Proposed Standing Order 109 (*Consideration of Committee Reports*) is based upon the current Temporary Orders arrangement, but removes the consideration of ministerial statements from this category of proceedings. The Subcommittee has recommended this approach following the consistent critique of the process for considering Committee reports, and specifically the substantial delay between tabling a report and the subsequent consideration of that report by the House. Further to this, the Subcommittee has also recommended a ‘clean up’ mechanism by which older reports may be removed from the Notice Paper.
- 6.12.4 In relation to ministerial statements, the Subcommittee was of the view that the opportunities provided by a range of other mechanisms, including questions, motions and Members’ Statements, would remain available for Members to pursue matters of interest arising from these statements.
- 6.12.5 As outlined in the previous section of this report, proposed Standing Order 112 (*Protection of Persons and Corporations Referred to in the Council*) is a replacement for the current petition for relief process, and is based upon the current practice of the Senate, amended to include corporations.

6.13 Chapter XIII: Committee of the Whole House

- 6.13.1 New Chapter XIII is comprised of six Standing Orders. This is a new proposed chapter for the Standing Orders, aligning the operations of the Committee of the Whole House with that of the House unless otherwise specified by the Standing Orders. The proposed Standing Orders do not constitute a substantial change to the custom and practice of the House.

6.14 Chapter XIV: Bills

- 6.14.1 New Chapter XIV is comprised of 36 Standing Orders. The proposed Standing Orders remove the redundant distinction in the current Standing Orders between public and private bills. With the exception of proposed Standing Order 125 (*Uniform Legislation*), the proposed Standing Orders in this chapter make a number of minor changes to the current Standing Orders and the custom and practice of the House, as outlined in the Comparative Table.
- 6.14.2 Proposed Standing Order 125 (*Uniform Legislation*) contains a number of changes to current Standing Order 230A. The current Standing Order provides, in effect, that the Clerk advise the President whether a Bill is subject to Standing Order 230A, in accordance with the definition prescribed under 230A(1), and the President ‘rules’ accordingly. In some instances, whether a Bill falls within this definition (in particular 230A(1)(b)) is less than perfectly

clear. Further, the Subcommittee observes that the *Uniform Legislation and Statutes Review Committee* (SCULSR) is a Committee established by the House to undertake its work on behalf of the House. With these factors in mind, the Subcommittee considers it is appropriate that the decision-making process regarding which Bills are referred to the SCLUSR should be a matter exclusively for the House. As with other proceedings of the House, the Subcommittee envisages that officers of the House will continue to provide advice to Members regarding whether a Bill falls within the definition provided in proposed Standing Order 125(2).

- 6.14.3 Proposed Standing Order 124 (*Second Reading*) is also relevant to the consideration of proposed Standing Order 125. Proposed Standing Order 124 is based upon the current practice of the House in relation to Bills, whereby the debate is adjourned following the second reading speech of the Member in charge of the Bill and not resumed for a period of one sitting week. Proposed Standing Order 124 formalises this practice, and further provides that the debate on a Council Bill (a Bill that is introduced into the Council) will not be resumed for two sitting weeks.
- 6.14.4 Proposed Standing Order 125 provides in the first instance that a Member introducing a Bill must advise the House whether or not the Bill is a Uniform Legislation Bill. The definition of a Uniform Legislation Bill is contained in section (2), which is identical to the definition provided in current Standing Order 230A. Section (3) of proposed Standing Order 125 provides that the House may order that a Bill is a Uniform Legislation Bill notwithstanding the contrary advice of the Member in charge of the Bill.
- 6.14.5 A Bill identified as a Uniform Legislation Bill by the Member in charge of the Bill will be referred to the SCULSR at the conclusion of the Member's second reading speech. For all other Bills, debate will not resume for one or two weeks, during which period a Member may review the Bill and explanatory memorandum (each Bill must have one under proposed Standing Order 120), take advice and determine whether they consider the Bill should be ordered as a Uniform Legislation Bill. A Member may then move a motion in accordance with proposed Standing Order 125(3) without notice upon resumption of the second reading debate on the Bill. Proposed Standing Order 125(7) provides that the period for SCULSR's consideration of any Bill does not commence until the Bill is referred by the House.
- 6.14.6 Finally, proposed Standing Order 125(5) places the onus on the Member in Charge of a Bill referred to the SCULSR to provide the Committee with relevant documentation within three working days following referral of the Bill to the Committee.

6.14.7 The Subcommittee has further considered the period for which a Bill stands referred to the SCULSR. Given the proposed arrangements outlined above, including the requirement for the timely provision of documents to the Committee, the Subcommittee believes that the current 45 day period is adequate.

6.15 Chapter XV: Committees

6.15.1 New Chapter XV is comprised of 36 Standing Orders. The proposed Standing Orders dispense with the arrangement under the current Standing Orders whereby Standing Committees and Select Committees operate under different Standing Orders. Further to this change, there are a number of other proposed variations to the current Standing Orders for Committees.

6.15.2 Proposed Standing Order 161 (*Participation by Electronic Communication*) provides capacity for Members to participate in a Committee meeting and witnesses to give oral evidence to a Committee by videoconference or teleconference. The Subcommittee considers that this arrangement would only be used by exception, and the standard arrangement for Members and witnesses attending in person would remain, but that this additional capacity to conduct Committee business would be invaluable on occasions. The quorum provisions under proposed Standing Order 160 are also amended to include Members' participating in meetings in this way.

6.15.3 Proposed Standing Orders 173 to 177 inclusive (*Committee Evidence, Documentation, Deliberations and Proceedings*) prescribe four categories encompassing all Committee activity, and default positions for the status of each category (public or private). *In camera* evidence has also been included in the proposed Standing Orders, which include the capacity for the Committee to vary the default arrangements by motion (with the exception of *in camera* evidence, which can only be released by resolution of the House). The Subcommittee considers these arrangements will provide a greater degree of certainty to Members regarding these matters.

6.15.4 Proposed Standing Order 179 (*Requests and Orders for Evidence*) is largely a reflection of the current Standing Order, with one significant addition. The Subcommittee has recommended that Council Committees shall not seek evidence from an Assembly Member (which includes Ministers). As such, the proposed Standing Order will require Committees to direct all enquiries and requests for information to the representative Minister or Parliamentary Secretary in the Council. The Subcommittee's view is that the provision of Government information to a Committee is the responsibility of the representative Minister or Parliamentary Secretary in the Council and further, that directing these matters through those Members provides a capacity for the

Committee to pursue non-compliance or similar matters directly with the Members in the House; an opportunity that is not available in relation to Assembly Members. This proposed Standing Order does not preclude Committees receiving evidence from an Assembly Member where that evidence is unsolicited or pursuant to a general request (e.g. a call for submissions).

- 6.15.5 Proposed Standing Order 183 (*Procedural Rulings by the President*) is an expanded form of the current Standing Order, and provides the capacity for the President to provide procedural rulings to a Committee whenever the President considers such is necessary, as opposed to the current arrangement which requires a request from the Committee Chair. The proposed Standing Order further provides that all procedural rulings will be reported to the House.
- 6.15.6 Proposed Standing Order 186 (*Minority Report*) provides an additional requirement upon Members attaching a minority report to a Committee report, requiring Members to provide a copy of that report to the other Members of the Committee prior to the tabling of the report. The Subcommittee considers that it is appropriate the other Members view a minority report prior to tabling, in order that all Members are aware of the contents of the final document prior to its tabling in the House. The proposed Standing Order further provides that Members must be given a reasonable opportunity to present a minority report to the Committee.
- 6.15.7 Proposed Standing Order 187 (*Tabling of Report*) largely reflects the current Standing Order, with minor amendments. The current requirement at the time of tabling of the report for a motion “That the report do lie upon the Table and be printed” to be moved and agreed to, under which the House formally resolves that the report is a document of the House, has been replaced by proposed Standing Order 187(2)(a). The requirement under current Standing Order 338 for an adjournment of more than 14 days before a report can be presented to the President during a non-sitting period and deemed tabled has been removed, to provide for the tabling of urgent reports by this means. In recommending this change, however, the Subcommittee does not envisage that this capacity will be used in circumstances other than for urgent reports, and the standard practice of Committee reports being presented to the House during the course of a sitting should be maintained.
- 6.15.8 Proposed Standing Order 188 (*Chair’s Statement on Tabling of Report*) provides a capacity for the Chair to make a brief, ‘overview’ statement upon tabling a report. This statement is made on behalf of the Committee - hence the requirement under part (2)(a) that the Committee agree to the statement prior to delivery in the Council.

6.15.9 Proposed Standing Order 190 (*Response to Recommendations*) provides a reduced timeframe for the Government to respond to a Committee report (two months as opposed to four months), and specifically excludes reports on Bills from the operation of this Standing Order, as the Government response to a report on a Bill will be provided to the House during the course of further debate on the Bill.

6.15.10 As outlined above, the current Standing Orders specifically related to Select Committees have been amalgamated with the Standing Committee Standing Orders. The comparative table provides a cross-reference of where the current Select Committee Standing Orders are incorporated into the proposed Standing Orders.

6.16 Chapter XVI: Witnesses

6.16.1 New Chapter XVI is comprised of nine Standing Orders. The proposed Standing Orders do not constitute a substantial change to the current Standing Orders and the custom and practice of the House.

6.17 Chapter XVII: Opening of Parliament

6.17.1 New Chapter XVII is comprised of six Standing Orders. The proposed Standing Orders do not constitute a substantial change to the current Standing Orders and the custom and practice of the House.

6.18 Chapter XVIII: President and Officers

6.18.1 New Chapter XVIII is comprised of 15 Standing Orders. The proposed Standing Orders do not constitute a substantial change to the current Standing Orders and the custom and practice of the House.

6.19 Chapter XIX: Records of the Council

6.19.1 New Chapter XIX is comprised of three Standing Orders. The proposed Standing Orders do not constitute a substantial change to the current Standing Orders and the custom and practice of the House.

6.20 Chapter XX: Communication between the Houses

6.20.1 New Chapter XX is comprised of 12 Standing Orders. The proposed Standing Orders do not constitute a substantial change to the current Standing Orders and the custom and practice of the House.

6.21 Chapter XXI: The Sovereign and the Governor

6.21.1 New Chapter XXI is comprised of four Standing Orders. The proposed Standing Orders do not constitute a substantial change to the current Standing Orders and the custom and practice of the House.

6.22 Schedule 1: Committees

6.22.1 New Schedule I contains the terms of reference for each current Committee of the House. Pursuant to proposed Standing Order 156(3), the Schedule will be amended to include the terms of reference for any Committee appointed by the House. The new Schedule proposes no substantial change to the terms of reference for the *Environment and Public Affairs Committee*, *Estimates and Financial Operations Committee*, *Public Administration Committee*, *Legislation Committee* and *Parliamentary Services Committee*. The Subcommittee proposes amended terms of reference for the *Uniform Legislation and Statutes Review Committee*, *Joint Delegated Legislation Committee* and *Procedure and Privileges Committee*.

Uniform Legislation and Statutes Review Committee (SCULSR)

6.22.2 The Subcommittee proposes several amendments to the terms of reference for the SCULSR. The Subcommittee considers that the primary focus of the SCULSR should be to advise the House regarding matters that impact upon the sovereignty and law-making powers of the Parliament of Western Australia. Accordingly, the proposed terms of reference provide that focus.

6.22.3 The Subcommittee further considers that, given the aforementioned proposed focus, the SCULSR, as a Committee created by the House to report to the House, should only consider matters that are referred to the Committee by the House. To this end, the capacity for own motion inquiries and references from a Minister under current term of reference 8.3(b) are proposed to be removed. The Subcommittee notes that the SCULSR has undertaken a large volume of work in recent years, almost exclusively as a consequence of Bills referred to the Committee under current Standing Order 230A, and considers the proposed removal of the ‘own motion’ inquiry and Ministerial referral capacities above will have only a minimal impact to the Committee’s workload, output and valuable contribution to the House.

6.22.4 In relation to SCULSR’s current term of reference 8.3(c), pertaining to the consideration of treaties, the Subcommittee notes the current Commonwealth parliamentary arrangements, whereby “all treaty actions proposed by the Government are tabled in Parliament for a period of at least 15 (or in some cases, 20) sitting days before action is taken that will bind Australia at

international law to the terms of the treaty”¹. Given this, the Subcommittee has proposed a minor amendment regarding proposed treaty instruments to reflect the tabling of those documents in the Commonwealth Parliament.

- 6.22.5 The Subcommittee also proposes to delete SCULSR’s current term of reference 8.4, related to consultation with like committees and participation in conferences, as all Committees have this capacity and there is no requirement for separate expression of this capacity in a Committee’s terms of reference.

Joint Delegated Legislation Committee (JDLC)

- 6.22.6 The JDLC inquires into subsidiary legislation and, as such, its investigation can tend to become focused on technical, legal issues relating to procedural defects or problems with drafting. Unfortunately, not all organisations which are responsible for subsidiary legislation, and which deal with the JDLC on a regular basis, have staff with a legal or legislative drafting background.
- 6.22.7 The Subcommittee noted that the current wording of the JDLC’s term of reference 3.6 was unnecessarily complex and contained terminology and concepts not readily definable or understood by non-lawyers.
- 6.22.8 At its most basic, the role of the JDLC has always been to inquire into whether an instrument of subsidiary legislation is: made under an identified power; has no unintended effects; allows for a review where one would normally be expected; and is in all other respects appropriate as legislation made under a delegation by the Parliament. These are the key concepts that it is important that organisations dealing with the JDLC fully understand and are able to practically comply with. The Subcommittee therefore proposes to set these concepts out in as clear and plain language as possible.
- 6.22.9 The Subcommittee has therefore recommended a simplified, plain English, form of words that retains the substance of the current wording of term of reference 3.6. The recommended wording for new term of reference 6.6 is also based on the original terms of reference of the JDLC during the 1980s.
- 6.22.10 In practice, it is not anticipated that the proposed change in wording of its terms of reference will have any significant impact on the way that the JDLC scrutinises instruments of subsidiary legislation or the types of issues it brings to the attention of the Houses. The changes may, however, facilitate communication between the JDLC and the organisations responsible for making subsidiary legislation.

¹ Parliament of Australia; Joint Standing Committee on Treaties; Committee establishment, role and history at <http://www.aph.gov.au/house/committees/jsct/ppgrole.htm>, (viewed on 6 September 2011).

6.22.11 Members should be aware that, as the JDLC is a joint committee, any changes adopted by the Council will require Assembly concurrence to become effective.

Procedure and Privileges Committee (PPC)

6.22.12 The current terms of reference for the PPC provide that the Deputy Chairs of Committees, appointed by the House to act as President and Chair of Committees in the House and Committee of the Whole House, are *ex officio* members of the PPC. The Subcommittee proposes that the only Members who should be *ex officio* members of the PPC are the President and the Chair of Committees, and that the remaining membership (three members for a total membership of five) be determined separately by the House. The Subcommittee considers these roles as separate functions, and this proposal will provide the capacity for the House to select the most appropriate, separate membership for the panel of Deputy Chairs and the PPC.

6.23 Schedule 2: Joint Standing Rules and Orders of the Legislative Council and the Legislative Assembly

6.23.1 The Subcommittee has not reviewed the Joint Standing Rules and Orders of the Houses as part of its inquiry, and makes no recommended changes to these rules and orders.

6.24 Schedule 3: Definitions

6.24.1 Schedule 3 contains the definitions of terms used in the proposed Standing Orders.

6.25 Schedule 4: Contempts of the Council

6.25.1 Further to the explanation provided earlier in this report related to proposed Standing Order 93 (“Contempts of the Council”), the Subcommittee proposes to include Schedule 4 pursuant to the recommendation of the former *Select Committee into the Appropriateness of Powers and Penalties for Breaches of Privilege and Contempts of Parliament*. Schedule 4 is based upon similar provisions adopted by the Senate and, without limiting the powers of the House regarding matters of contempt, specifies the criteria to be taken into account by the House when determining matters relating to contempt of the House and provides examples of matters which would constitute a contempt.

7 RECOMMENDATION

Recommendation 1:

That, effective from the first sitting day in 2012, the current Standing Orders of the Legislative Council be repealed and the new Standing Orders as proposed by the Subcommittee of the Procedure and Privileges Committee be adopted by the House.

A handwritten signature in blue ink, appearing to be 'B. House', is centered on the page.

Hon. Barry House MLC
Chairman
20 October 2011

APPENDIX 1

SUBMISSIONS

Submissions were received by the Committee from the following persons as a consequence of the Committee's initial invitation for submissions in September and October 2009:

Hon. Nick Griffiths, former President of the Legislative Council

Hon. Liz Behjat MLC

Hon. Peter Foss QC, former Attorney General and Member of the Legislative Council

Hon. Phil Edman MLC

Hon. Philip Gardiner MLC

Hon. Ken Baston MLC

Hon. Simon O'Brien MLC

Hon. Nick Goiran MLC

Hon. Giz Watson MLC (on behalf of the Greens WA)

Hon. Brian Ellis MLC

Hon. Dr Sally Talbot MLC

Hon. Wendy Duncan MLC (on behalf of the Parliamentary National Party of WA)