

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

REPORT ON STRENGTHENING GOVERNMENT AND PARLIAMENTARY ACCOUNTABILITY IN VICTORIA

APRIL 2008



78th REPORT TO PARLIAMENT





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Parliament of Victoria

Public Accounts and Estimates Committee

*Report on strengthening government and
parliamentary accountability in Victoria*

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PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE MEMBERSHIP – 56TH PARLIAMENT

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Executive Officer: Valerie Cheong

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The Committee would like to thank Dr Vaughn Koops, and Ms Yuki Simmonds of the Economic Development and Infrastructure Committee, for their special assistance.

¹ Ms J Graley MP resigned from the Committee on 26 February 2008

² Mr W Noonan MP was appointed to the Committee on 27 February 2008

DUTIES OF THE COMMITTEE

The Public Accounts and Estimates Committee is a joint parliamentary committee constituted under the *Parliamentary Committees Act 2003*.

The Committee comprises ten members of Parliament drawn from both Houses of Parliament.

The Committee carries out investigations and reports to Parliament on matters associated with the financial management of the state. Its functions under the act are to inquire into, consider and report to the Parliament on:

- any proposal, matter or thing concerned with public administration or public sector finances;
- the annual estimates or receipts and payments and other Budget Papers and any supplementary estimates of receipts or payments presented to the Assembly and the Council; and
- any proposal, matter or thing that is relevant to its functions and has been referred to the Committee by resolution of the Council or the Assembly or by order of the Governor in Council published in the *Government Gazette*.

The Committee also has a number of statutory responsibilities in relation to the Victorian Auditor-General's Office. The Committee is required to:

- recommend the appointment of the Auditor-General and the independent performance and financial auditors to review the Victorian Auditor-General's Office;
- consider the budget estimates for the Victorian Auditor-General's Office;
- review the Auditor-General's draft annual plan and, if necessary, provide comments on the plan to the Auditor-General prior to its finalisation and tabling in Parliament;
- have a consultative role in determining the objectives and scope of performance audits by the Auditor-General and identifying any other particular issues that need to be addressed;
- have a consultative role in determining performance audit priorities; and
- exempt, if ever deemed necessary, the Auditor-General from legislative requirements applicable to government agencies on staff employment conditions and financial reporting practices.

CHAIR'S FOREWORD

The Public Accounts and Estimates Committee is pleased to present this report on strengthening government and parliamentary accountability, an inquiry referred to it by the Parliament, as part of the government's election commitment for reforms of current practices and procedures. Specific investigations, findings and recommendations relate to:

- Parliamentary committees;
- Question time;
- Parliamentary behaviour;
- Overseas travel;
- Modernisation of Parliament; and
- Petitions.

A number of significant changes are recommended including ones aimed at improving question time and parliamentary behaviour, video webcasting of Parliament, simplifying the passing of laws, and modernising the opening of Parliament.

While the Committee has focused on the six areas of the inquiry, it was also appreciative and cognisant of additional issues raised within submissions received on this inquiry, for example, in relation to the development of a Ministerial code of conduct and the regulation of lobbying. These supplementary issues are addressed within the report, noting initiatives of the new federal government.

Other ancillary issues raised within submissions are considered beyond the scope of this inquiry, perhaps requiring future references to the Committee, if appropriate.

The Committee looks forward to Parliament's and the government's consideration and implementation of its recommendations in the near future.

The Committee has been heartened by the high level of interest shown by the community on the matters raised by the terms of reference of this inquiry and wishes to thank those that have provided submissions and kindly invested their time and efforts at the Committee's hearings.

I particularly thank my fellow colleagues on the Committee for their constructive consideration of the issues and who are in unanimous support of the findings and recommendations.

I wish to acknowledge and thank the research and administration support provided by the PAEC Secretariat, as well as additional research assistance provided by the Economic Development and Infrastructure Committee Secretariat, in light of resource constraints.



Bob Stensholt, MP

Chair

RECOMMENDATIONS

The Public Accounts and Estimates Committee recommends that:

Chapter 2: Parliamentary committees

Recommendation 1: Adequate funds be provided to the parliamentary joint investigatory committees via the annual Appropriation (Parliament) act. *Page 20*

Recommendation 2: Joint investigatory committees ensure that four weeks be the minimum time provided for calls for public submissions. *Page 22*

Recommendation 3: The Victorian Government amend the *Parliamentary Committees Act 2003* so as to require that government responses to inquiry reports include individual responses to recommendations. Statements should indicate whether government supports the recommendation in question and detail the process for its implementation. An explanation should be provided for those recommendations not supported by government. *Page 23*

Recommendation 4: Where interim responses to specific Committee recommendations are provided by government, a further response should be provided within 3 months of the tabling of the government's reply. A final response by the government to any outstanding recommendation should be provided within nine months of the original tabling date. *Page 23*

Chapter 3: Question time procedure

Recommendation 5: The Legislative Assembly Standing Orders Committee revise its standing orders to allow supplementary questions without notice. *Page 29*

Recommendation 6: The Legislative Assembly Standing Orders Committee revise its standing orders to allow questions without notice and questions on notice to be put to a member representing a Minister from the Legislative Council.
Page 30

Recommendation 7: The Legislative Assembly Standing Orders retain points of order during question time, but note a reduced tolerance for frivolous points of order in light of the availability of supplementary questions.
Page 32

Recommendation 8: That the Legislative Assembly Standing Orders Committee revise the standing orders to incorporate time limits on replies to individual questions without notice (for example, four minutes).
Page 33

Chapter 4: Standards of parliamentary behaviour

Recommendation 9: The Victorian Government update reporting requirements for members of Parliament contained within the *Parliament (Register of Interests) Act 1978*.
Page 42

Recommendation 10: The Victorian Government update the code of conduct for members of Parliament contained within the *Parliament (Register of Interests) Act 1978*.
Page 43

Chapter 5: Overseas travel by members of Parliament

Recommendation 11: Travel guidelines for parliamentary members be updated consistent with federal practice in order to allow:

- (a) increased flexibility for allowable trips per parliamentary term;
- (b) accommodation expenses to be met from international travel budget allocations; and
- (c) a budget set at a rate of 21.5 per cent of the Category A electorate office budget.

Page 47

- Recommendation 12:** The Presiding Officers of the Victorian Parliament amend the policy relating to overseas travel by members of Parliament to require all members to give prior notice to their Presiding Officer before expending a portion of their Category A electorate office budget on overseas travel.
Page 47
- Recommendation 13:** The Presiding Officers of the Victorian Parliament amend the policy relating to overseas travel by members of Parliament to provide an appropriate report to the Presiding Officers with 45 days of their return from overseas.
Page 48
- Chapter 6: *Modernisation of Parliament including the permanent abolition of wigs and other archaic practices***
- Recommendation 14:** Regional sittings of each house of Parliament should occur at least once in the life of every Parliament.
Page 50
- Recommendation 15:** Funding should be provided in the near future for the video webcasting of all sessions of the Legislative Council and the Legislative Assembly. Video webcasting of other parliamentary proceedings (for example, Committee meetings) could also be considered.
Page 51
- Recommendation 16:** The Victorian Government amend Part Two Section 6 of the *Parliamentary Salaries and Superannuation Act 1968 (Vic)* to allow the Opposition Leader of Government Business in the Legislative Assembly an additional salary of 11 per cent per annum of basic salary.
Page 53
- Recommendation 17:** Consideration be given to the appropriate resourcing of other parties or formal groupings including through the possible amendment of the *Parliamentary Salaries and Superannuation Act 1968 (Vic)*.
Page 54

- Recommendation 18:** The Legislative Assembly Standing Orders Committee and the Legislative Council Standing Orders Committee modernise and simplify the process for considering and passing legislation.
Page 57
- Recommendation 19:** The Legislative Assembly Standing Orders Committee revise its procedures for notices of motion so that they are lodged with the Clerk and incorporated in the notice paper.
Page 57
- Recommendation 20:** The Legislative Assembly Standing Orders Committee revise its standing orders so that Ministers who are not present in the Legislative Assembly when matters are raised during the adjournment debate relating to their portfolios are required to provide a response in writing within 30 days and that a copy of the response is to be given to the member who raised the issue and all responses be incorporated in *Hansard*.
Page 58
- Recommendation 21:** The Legislative Assembly Standing Orders Committee and the Legislative Council Standing Orders Committee revise their respective standing orders so as to modernise the opening of Parliament, whilst retaining traditional elements.
Page 59
- Recommendation 22:** The Victorian Government introduce legislation to amend the Second Schedule of the *Constitution Act 1978 (Vic)* to include an additional oath or affirmation of choice and incorporate the following wording:
Oath
I swear by Almighty God that I will be faithful and bear true allegiance to Australia and the people of Victoria according to the law.
Affirmation
I do solemnly and sincerely affirm that I will be faithful and bear true allegiance to Australia and the people of Victoria according to the law.
Page 60

Recommendation 23: The Legislative Assembly Standing Orders Committee revise its standing orders to allow for a fixed one hour adjournment in the event of the death of a member of the Legislative Assembly or a former member who was a nominated office holder.

Page 60

Chapter 7: Reform of the process for dealing with petitions

Recommendation 24: The Legislative Assembly Standing Orders Committee revise the standing orders to allow petitions to be presented directly to the Legislative Assembly, through the Speaker as well as through individual members of Parliament.

Page 63

Recommendation 25: The Legislative Assembly Standing Orders Committee revise the standing orders to allow members to present petitions during the adjournment debates in the Legislative Assembly and the Legislative Council, and during the grievance debate in the Legislative Assembly.

Page 63

Recommendation 26:

- (a) The Legislative Assembly Standing Orders Committee and the Legislative Council Standing Orders Committee consider revisions to the standing orders requiring the relevant Minister to give a response to a petition lodged or presented by a member to the Clerk of the House.
- (b) Such ministerial responses should be provided to the Clerk of the House and should be published in Hansard within 90 days of presentation of the petition to the house.

Page 68

Recommendation 27: The Legislative Assembly Standing Orders Committee, the Legislative Council Standing Orders Committee and the House Committee examine procedural and technical requirements for the implementation of an e-petitions facility in Parliament, and produce a report describing how implementation of the facility might proceed.

Page 69

Chapter 8: *Supplementary issues*

Recommendation 28: **The Premier of Victoria implement a ministerial code of conduct in line with the Commonwealth and other states.**

Page 71

CHAPTER 1: STRENGTHENING GOVERNMENT AND PARLIAMENTARY ACCOUNTABILITY

1.1 Inquiry submissions and scope

The Committee was provided with a reference on strengthening government and parliamentary accountability by the Victorian Parliament in the Assembly on 1 March 2007. The terms of reference for the inquiry required the Committee to focus particularly on six matters:

- (a) parliamentary committees;
- (b) question time procedure;
- (c) standards of parliamentary behaviour;
- (d) overseas travel by members of Parliament;
- (e) modernisation of Parliament including the permanent abolition of wigs and other archaic practices; and
- (f) reform of the process of dealing with petitions.

The Committee received 28 submissions from a wide range of interested parties including past and present members from the Parliament of Victoria and other jurisdictions, academics, community organisations, jurists and members of the public. The Committee also met with 14 witnesses over the course of two public hearings conducted in August 2007.

Many submissions referred to or supported the original or revised version of the paper prepared by the informal group associated with the Australasian Study of Parliament Group (ASPG), led by Associate Professor the Hon. Ken Coghill.³ In evidence provided to the Committee, the original version of this paper was submitted to the leadership of the parliamentary wing of the Australian Labor Party in the lead-up to the 2006 election. Mr John Lenders MLC, then Minister for Finance, Major Projects and WorkCover, in a letter to Dr Coghill, stated that the Labor Party if returned would refer accountability matters to a parliamentary committee.⁴ Subsequently this was incorporated into a pre-election policy document that included the six matters outlined above.⁵

The submission from the group led by Dr Coghill canvassed a wide range of issues including ministerial responsibility, freedom of information and reforms to Parliament. In particular, it contained extensive proposals for a ministerial code of conduct. While this issue was not encompassed by the terms of reference for this inquiry, the Committee has considered this as a supplementary issue in Chapter Eight of this report.

The Committee recognises that in addition to the six issues covered in this report, there are many other issues in relation to strengthening government and parliamentary accountability that are important and would benefit from investigation and reform.

The cost of this inquiry was approximately \$47,500.

³ Associate Professor K Coghill PhD, Monash University, Department of Management, submission no.8

⁴ Associate Professor K Coghill PhD, Department of Management, Monash University, submission no.8

⁵ Australian Labor Party, Policy for the 2006 Victorian Election, *Strengthening our Democratic Institutions*

CHAPTER 2: PARLIAMENTARY COMMITTEES

2.1 Introduction

Parliamentary committees are an important component of the Victorian Parliament and have a key role promoting accountability in governance. In Victoria there are three types of parliamentary committees: domestic, select and joint investigatory. The principal focus of this chapter is on the role of joint investigatory committees in the Victorian Parliament.

Joint investigatory committees are established under the *Parliamentary Committees Act 2003*, which describes their roles, functions and terms of appointment. Joint investigatory committees are appointed at the commencement of each new Parliament. Each committee receives terms of reference through a resolution of either House of Parliament or an Order of the Governor in Council that set out what the committee is to investigate and timelines for reporting findings to Parliament. Joint investigatory committees also have the capacity under the act to initiate inquiries under certain circumstances (see section 2.6).

Domestic committees are responsible for the maintenance and operation of Parliament and are generally re-appointed each parliamentary term. The Standing Orders Committees of the Houses of Parliament are both domestic committees. They are responsible for reviewing procedural rules in each house and, where necessary, making recommendations for change. The Assembly and the Council each have Privileges Committees that examine and report to each house on breaches of parliamentary privilege. General operations of Parliament, including human resources, finance and building maintenance, are considered by the House Committee, which is comprised of the Presiding Officers and members representing both Houses of Parliament.

Select committees are appointed at various times to investigate specific and topical issues and cease to exist once the final report is tabled in Parliament. Select committees are appointed by a resolution of either or both houses, or an act of Parliament, and are governed by the standing orders of the respective houses. On establishment, select committees are usually empowered to summon witnesses and send for evidence. In recent Parliaments, select committees have typically been established in the Council. At present there are two committees in operation, both established in the Council: the Gaming Licensing and Public Land Development Committees. On 31 October 2007, the Council also voted to establish another select committee, the Finance and Public Administration Committee. Given the recent establishment and operation of these select committees this inquiry has not sought to comment on them, recognising that that more time will need to elapse before the effectiveness of these committees can be usefully evaluated.

The Committee noted the work of the Victorian Parliament's Scrutiny of Acts and Regulations Committee, which in 2002 tabled a report of the inquiry into *Improving Victoria's Parliamentary Committee System*.⁶ The Committee conducted an extensive analysis of the parliamentary committee system and made key recommendations that contributed to development of the *Parliamentary Committees Act 2003*. The report made 38 recommendations, 31 of which were supported fully or partially by the Victorian Government, and resulted in major improvements to Victoria's parliamentary committee system, some of which are discussed below. A number of these changes have only recently been implemented.

⁶ Scrutiny of Acts and Regulations Committee, *Improving Victoria's Parliamentary Committee System*, Parliament of Victoria, May 2002

Consequently, the Committee has noted changes to the operation of parliamentary committees, but has not made any recommendations on issues addressed by the earlier inquiry.

2.2 Victoria's parliamentary joint investigatory committee system

The Victorian parliamentary committee system is nearly as old as the Victorian Parliament, with the first select committee established after a motion was carried in November 1856.⁷ In 1895, the concept of an ongoing investigatory committee was introduced with the appointment of the Public Accounts Committee. In 1982, the Joint Investigatory Committee system was established with the following four committees:

- Economic and Budget Review Committee;
- Legal and Constitutional Committee;
- Natural Resources and Environment Committee; and
- Social Development Committee.

Over time a number of changes have been made to the joint investigatory committee system in Victoria. In the 56th Parliament, the joint investigatory committee system comprises twelve committees. Responsibility for administration of the committees is shared between the Council and the Assembly.

Joint investigatory committees administered by the Department of the Legislative Council:

- Economic Development and Infrastructure Committee (EDIC);
- Education and Training Committee (ETC);
- Environment and Natural Resources Committee (ENRC);
- Law Reform Committee (LRC);
- Outer Suburban/Interface Services and Development Committee (OSISDC); and
- Road Safety Committee (RSC).

Joint investigatory committees administered by the Department of the Legislative Assembly:

- Drugs and Crime Prevention Committee (DCPD);
- Electoral Matters Committee (EMC);
- Family and Community Development Committee (FCDC);
- Public Accounts and Estimates Committee (PAEC);
- Rural and Regional Committee (RRC); and
- Scrutiny of Acts and Regulations Committee (SARC).

⁷ *Hansard*, 25 November 1856, p.12, quoted by Scrutiny of Acts and Regulations Committee, *Improving Victoria's Parliamentary Committee System*, Parliament of Victoria, May 2002

In recognition of the central work of PAEC and SARC, amendments to the *Parliamentary Legislation Act 2007* recognised that SARC and PAEC had higher workloads and this was recognised in the remuneration of the Chairs and Deputy Chairs of these two Committees.

Membership of the joint investigatory committees is drawn from all political parties (including independent members) represented in the Victorian Parliament. Each joint investigatory committee comprises not more than ten members, with a minimum of two members drawn from each house. The quorum of each committee is the majority of members appointed to it, with at least one member from each house present.

The Committee noted that over the years there have been calls for the joint investigatory committee system to be restructured. The inquiry into *Improving Victoria's Parliamentary Committee System* recommended that the organisation of committees reflect key department areas within the Victorian Government.⁸ While the government did not support this recommendation, it did establish four additional joint investigatory committees in the 55th Parliament – the Education and Training Committee, Outer Suburban/Interface Services and Development Committee, Rural and Regional Services Development Committee (now the Rural and Regional Committee) and Electoral Matters Committee.

During the course of this inquiry, the Committee received a submission proposing the establishment of two new committees: a public works committee and a major events committee.⁹ However, the Committee does not recommend the establishment of any more joint investigatory committees at this time. An increased number of committees would place additional pressure on members' existing workload, particularly those already involved in committee work. Furthermore, there is existing provision within the current joint investigatory committees to conduct inquiries into infrastructure and major events, should Parliament or Governor in Council so determine, through committees such as the Economic Development and Infrastructure Committee, the Rural and Regional Committee, and the Public Accounts and Estimates Committee.

2.3 The role of joint investigatory committees in the Victorian Parliament

The Committee is of the opinion that the joint investigatory committee system has an important role in the promotion of accountability in the Victorian Parliament. The joint investigatory committee system contributes to Victorian policy by providing a forum for debate on matters of interest to stakeholders and the broader community. This is principally facilitated by the extension of parliamentary privilege to inquiries conducted by joint investigatory committees. Under the *Constitution Act 1975* and the *Parliamentary Committees Act 2003* no legal action can be taken against a person when they provide evidence to a parliamentary committee. Any information provided in a public hearing cannot give rise to any course of action in law or be subject to any court proceedings. Written submissions to parliamentary committees are also protected. Parliamentary privilege encourages the freest possible flow of information to committees, enabling members of the public to express their views and participate in the parliamentary process.

⁸ Victorian Government, Response to Scrutiny of Acts and Regulations Committee, *Improving Victoria's Parliamentary Committee System*, tabled 20 May 2003, pp.5–6

⁹ Mr G Hodge, submission, no.18, June 2007, p.2

While the core outcome of committee investigations is recommendations for various actions by government, the Committee is of the opinion that the value of the joint investigatory committee system cannot be solely determined by the quality and substance of its recommendations, or by the number of recommendations adopted by the government of the day. As noted in a recent paper on parliamentary committees:¹⁰

[there are] other outcomes from an inquiry rather than just how the government responds to certain recommendations ... Maybe the fact that there has been an inquiry has shaken up the bureaucracy or changed the Minister ... into a different policy channel. Or it's made an issue into a public issue.

2.4 Legislation committees

Arising from consideration of the report of the Council Standing Orders Committee on the appointment of a Legislation Committee, the Council voted to establish a Legislation Committee on a trial basis.¹¹ On 14 September 2006, the Council adopted standing orders allowing for the establishment of a Legislation Committee at the commencement of each parliamentary session. Finally, on 17 April 2007 the Council voted to allow establishment of the Legislation Committee.¹²

The purpose of the Legislation Committee is to:¹³

... consider in detail a bill or series of related bills referred to the committee by the Council and to report to the Council on the committee's consideration of the bill, which may include any recommendations for amendments to the bill(s).

The process for the Council referring legislation to the Legislation Committee is:¹⁴

At any time after the second reading and before the third reading stage the Council may, on motion without notice of any member, resolve that all or part of a bill or a series of related bills be referred to the Committee. The time allowed for debate on such motion is as prescribed for procedural motions by standing order 5.04.

During the course of the inquiry, the experience of legislation committees in other parliaments was brought to the attention of the Committee. A number of submissions highlighted the comprehensive nature of the legislation committee system operating in the New Zealand Parliament.¹⁵ Several submissions referred to such systems and processes for more detailed examination of new legislation and of policy changes that might be incorporated in legislation.¹⁶

¹⁰ J Halligan, *Parliamentary Committee Roles in Facilitating Public Accountability at the Commonwealth Level*, paper presented to the Australasian Study of Parliament Group 2007 Conference, Adelaide, 23–25 August 2007, p.12

¹¹ *Hansard*, 8 February 2006, pp.63–83

¹² *Hansard*, 17 April 2007, p.731

¹³ Legislative Council of Victoria, *Standing Orders together with Joint Standing Orders and Joint Rules of Practice of the Parliament of Victoria*, Parliament of Victoria, 2006, standing order 16.02, p.55

¹⁴ Legislative Council of Victoria, *Standing Orders together with Joint Standing Orders and Joint Rules of Practice of the Parliament of Victoria*, Parliament of Victoria, 2006, standing order 16.06, p.56

¹⁵ Associate Professor K Coghill PHD, submission, No. 8, May 2007, p.31; Dr P Larkin and Professor M Sawyer, submission, no.21, July 2007, p.3

¹⁶ Associate Professor K Coghill PHD, submission, No. 8, May 2007, p.31; Dr P Larkin and Professor M Sawyer, submission, no.21, July 2007, p.3

While it is too early to determine the value of the Legislation Committee, the Committee is of the opinion that the Legislation Committee's role to consider legislation enhances the Council's traditional role as a house of review and strengthens the accountability function of the parliamentary committee system. The Committee noted, however, the limited capacity of Parliament and its members to resource additional committees.

The Committee also noted that similar systems of legislative review already exist in Parliament, and that the establishment of a legislation committee is not the sole means by which legislative review can be achieved. Political parties have the opportunity to internally consider legislation by way of policy or caucus committees or in party room meetings. Furthermore, SARC provides a more formal parliamentary review of legislation and is required to report to the Houses of Parliament on bills before they are debated. SARC provides specific comment on bills, and also seeks responses from responsible Ministers. The Committee also noted that in 2008 the Assembly adopted a new procedure with the Premier making a Statement of Legislative Intent, in turn debated by the Parliament, during the first sitting week of every calendar year.

2.5 Resources for joint investigatory committees

The Committee noted that the funding of parliamentary committees is a matter for the government of the day. However, it is undeniable that it is difficult for Parliament in general – and committees in particular – to fulfil their role of keeping the executive accountable if not adequately resourced. Indeed, one witness suggested to the Committee that:¹⁷

... the best way to get proper accountability in the Parliament – proper accountability in terms of both the executive and the legislature – is to provide parliamentarians with the resources they need... The trouble is that the legislature is totally under resourced compared to the executive.

Each joint investigatory committee is supported by a secretariat funded from the annual appropriation. Each secretariat is comprised of an executive officer, an administrative officer and at least one research officer. The two joint investigatory committees with the most staff, biggest workload and largest budgets are PAEC and SARC. Unlike the other joint investigatory committees, these two committees have substantial statutory oversight functions, in addition to conducting inquiries.

The government supported the recommendation contained in the report *Improving Victoria's Parliamentary Committee System* that parliamentary committees be funded by an appropriation made under the Appropriation (Parliament) act each year. The Committee noted that the separate appropriation makes it easier to assess the level of resources available to Victoria's parliamentary committee system.

The Committee noted that the appropriation for parliamentary committees, determined under the Appropriation (Parliament) act, has resulted in relatively stable levels of average funding for joint investigatory committees over the period 2000-01 to 2007-08. However, the Committee also noted that in 2004-05 staffing reviews conducted within Parliament led to reclassification of roles across the parliamentary committees, resulting in an increase of approximately 15 per cent in staffing salaries and on-costs. The Committee is concerned that the combination of increased staffing costs with static budget allocations may affect funding available to joint investigatory committees for the conduct of inquiries, for expenses such as

¹⁷ Former Senator, B Cooney, transcript of evidence, 2 August 2007, p.2

advertising (call for submissions and notices for public hearings), travel, and for obtaining outside research expertise. The Committee also noted that the tighter employment market and requirements for specific skills for some committees (for example, legal, accounting, economics) has meant that the recruitment of suitable secretariat staff is proving difficult. While short-term contracts can meet staffing gaps, they are considerably more expensive.

Without adequate funding for conduct of inquiries by joint investigatory committees, it is difficult for committees to undertake their duties effectively and so fulfil their accountability function. This view is shared by a recent report by KPMG on Public Accounts Committees in Australia and New Zealand, which included the following comment, applicable to any investigatory committee of Parliament:¹⁸

The PAC's ability to undertake inquiries is limited by two factors, the availability of its members (who are also serving members of Parliament) and the level of staffing resources available to assist the PAC.

The current government has recognised the need to adequately resource the Public Accounts and Estimates Committee by providing in the 2007-08 budget ongoing additional support of \$359,000 per year.

The Committee finds that, in order to effectively fulfil their accountability function, Victoria's joint investigatory committees would benefit from an adequate level of funding, particularly to take account of increased staffing costs and the additional committee.

The Committee recommends that:

Recommendation 1: **Adequate funds be provided to the parliamentary joint investigatory committees via the annual Appropriation (Parliament) act.**

2.6 Inquiry references

Section 33 of the *Parliamentary Committees Act 2003* requires joint investigatory committees to inquire into and report to the Victorian Parliament on matters that have been referred from either House of Parliament or by Order of the Governor in Council. References received from Parliament take precedence over matters received from the Governor in Council, which are generally understood to be referred by the government of the day. PAEC and SARC undertake inquiries and other activities as required by their statutory obligation. PAEC has traditionally initiated its own inquiries, although in the 56th Parliament it has received several references from Parliament.

¹⁸ KPMG's Government Advisory Services, *The Parliamentary Public Accounts Committee: an Australian and New Zealand perspective*, November 2006, p.7

SARC's inquiry into *Improving Victoria's Parliamentary Committee System* recommended that all committees be allowed to initiate their own inquiries. This was not supported by the Victorian Government on the basis that this would undermine their accountability to Parliament. The Committee noted that joint investigatory committees are already able to initiate inquiries, as Section 33 (3) of the *Parliamentary Committees Act 2003* states that committees may inquire into and report to Parliament on any annual report or other document tabled in Parliament.

The Committee considers the current procedures for initiating inquiries by joint investigatory committees adequately maintain the accountability function of committees within Parliament.

2.7 Gathering evidence for inquiries

Witnesses

When conducting inquiries, the joint investigatory committees adopt two key methods for gathering evidence: seeking submissions from relevant stakeholders and members of the community; and receiving evidence from key witnesses during public hearings or briefings. It is not uncommon for committees to request that members of the public service, Ministers and members of Parliament provide evidence for the purposes of an inquiry. For example, the Premier, Ministers and the Presiding Officers all appear at the estimates hearings of PAEC. Under the *Parliamentary Committees Act 2003*, joint investigatory committees have the power to summon anyone to appear before a committee to provide evidence. Convention dictates, however, that public servants that appear before committees answer matters of fact only, and are not compelled to comment on any matter of policy or opinion.

Improving accessibility of committee processes to the community

In order to strengthen the accountability of the Victorian Parliament, the Committee is aware of the need for the activities of the joint investigatory committees to become more accessible to the general community. Inquiries provide useful opportunities for public engagement and enable citizens to participate in a parliamentary process. Gathering evidence also exposes members to a range of perspectives within the wider community, which is not only useful to inquiries, but also improves members' knowledge of their constituents' views on a range of matters.

One of the key mechanisms for improving the accessibility of inquiry processes to the community is making greater use of advanced technology. The Committee noted that the report of the inquiry into *Improving Victoria's Parliamentary Committee System* recommended that committees:¹⁹

- *regularly make submissions available on the internet when appropriate;*
- *encourage the public to lodge submissions and comments electronically;*
- *conduct public hearings via video links where appropriate; and*
- *enable committee meetings to be held electronically.*

¹⁹ Victorian Government, Response to Scrutiny of Acts and Regulations Committee report on *Improving Victoria's Parliamentary Committee System*, tabled 20 May 2003, p.10

The Committee also noted the suggestion of the former NSW Speaker, Hon. Kevin Rozzoli, to make greater use of online forums. The Committee supports the expanded use of such internet based activities as a way of extending the involvement of stakeholders and the general community in the work of Parliament. There is significant scope for committees to utilise the internet, by way of online forums, blogs and making evidence available online.

A number of submissions highlighted poor understanding in the community about the work of the Victorian Parliament, including the role and functions of the joint investigatory committees. Many submissions advocated for cultural change in this area. Former senator Barney Cooney noted that parliamentary committees were usually poor publicists and could benefit from having dedicated publicity officers. While the Committee does not recommend that specialised staff be employed for this purpose, it does accept the argument that committees should take increased advantage of current technology for the purpose of promoting the work of committees and gathering evidence. This could considerably enhance community involvement in and understanding of the work of Parliament.

The Committee noted that significant progress has been made in this area by various joint investigatory committees. For example, most committees routinely make submissions available on their website and encourage members of the public to lodge their submissions and comments electronically. Committees have also been using innovative ways to encourage community participation in inquiries, which in the case of the Education and Training Committee includes online surveys, student hearings and community forums.²⁰

With regard to formal submissions, the Committee heard from Liberty Victoria that deadlines for submissions were generally too short. While this issue was raised particularly in reference to inquiries conducted by the Australian Parliament, the Committee accepts that adequate notice and reasonable deadlines should be provided by all committees when calling for public submissions. The Committee regards four weeks as the minimum period that should be provided between announcement of a call for submissions and the formal submission deadline.

The Committee recommends that:

Recommendation 2: **Joint investigatory committees ensure that four weeks be the minimum time provided for calls for public submissions.**

2.8 Government response to committee inquiries

Section 36 of the *Parliamentary Committees Act 2003* outlines the responsibility of the government of the day to respond to the recommendations of joint investigatory committees:

If a Joint Investigatory Committee's report to the Parliament recommends that the government take a particular action with respect to a matter, within six months of the report being laid before both Houses of the Parliament or being received by the Clerks of both houses of the Parliament, the appropriate responsible Minister must provide the Parliament with a response to the committee's recommendations.

²⁰ Interview with the Executive Officer of the Education and Training Committee, 4 October 2007

The Committee considers that government responses to inquiry recommendations should be consistently more detailed than they are at present. The *Parliamentary Committees Act 2003* should be interpreted as requiring government to provide individual responses to each recommendation proposed in an inquiry report. To date, it is not unusual to find government responses to committee recommendations that are more generic than specific in their tenet and intent. This is contrary to the principles of transparency and accountability.

Section 19 of the *South Australian Committees Act 1991* demands a specific response to each recommendation.

Where a report, or part of a report, is referred to the responsible Minister under subsection (1), the Minister must, within four months, respond to the report or part of the report and include in the response statements as to –

- (a) which (if any) recommendations of the Committee will be carried out and the manner in which they will be carried out; and*
- (b) which (if any) recommendations will not be carried out and the reasons for not carrying them out.*

The Committee finds that government responses to joint investigatory committee recommendations should require a statement in response to each particular recommendation.

The Committee recommends that:

Recommendation 3:

The Victorian Government amend the *Parliamentary Committees Act 2003* so as to require that government responses to inquiry reports include individual responses to recommendations. Statements should indicate whether government supports the recommendation in question and detail the process for its implementation. An explanation should be provided for those recommendations not supported by government.

In reviewing recent government responses, the Committee noted that the Victorian Government occasionally advises that some recommendations require further consideration and as a consequence only provide an interim response. The Committee believes that in these cases the responsible Minister should provide an additional response on such recommendations within nine months of the original tabling date of the inquiry report.

The Committee recommends that:

Recommendation 4:

Where interim responses to specific Committee recommendations are provided by government, a further response should be provided within 3 months of the tabling of the government's reply. A final response by the government to any outstanding recommendation should be provided within nine months of the original tabling date.

The Committee also noted the importance of establishing procedures whereby, subsequent to government supporting its recommendations, the joint investigatory committees follow up with the relevant government departments to confirm that the changes recommended have been implemented.

CHAPTER 3: QUESTION TIME PROCEDURE

3.1 Introduction

Question time refers to a set period during Parliament sitting days when members are given an opportunity to ask ‘questions without notice’. Question time is a unique feature of the Australian parliamentary system and plays a vital role for ensuring government accountability and for testing the mettle of parliamentary leaders, Ministers, party spokespersons and members. However, the role of question time for ensuring government accountability has diminished over the years due to changing party tactics and parliamentary practices.

Formally there are two main types of questions permitted in the Victorian Parliament – ‘questions on notice’ and ‘questions without notice’. Questions on notice are written questions that are placed on record (in the Assembly’s question paper, and the Council’s notice paper) and seek a response from the appropriate Minister at a later time. Prior to being placed on record, questions on notice are checked by the clerks (on behalf of the Presiding Officers) to ensure that they comply with the rules of the relevant house. Responses to written questions from the appropriate Minister are tabled in Parliament and are incorporated into *Hansard*.

By contrast, questions without notice are oral questions asked directly of a Minister (or other responsible person) while Parliament is sitting. These are not provided as written questions to the clerks, and consequently the Presiding Officers are responsible for ensuring the questions comply with the rules of the house. There is an expectation that a response to the question will be provided immediately. As a result, there is considerable pressure on the Minister to be aware of issues within his or her portfolio.

The conduct of question time is characterised by lively exchanges, political attacks and constant points of order. To some members of the public this may give the impression that question time is purely political theatre and that it does not serve the purpose of keeping the executive accountable for its actions. By the same token, the high theatre of question time, which is attended by all MPs and covered by the press, arguably provides the greatest opportunity for public scrutiny of the conduct of Ministers and MPs. Party leaders, Ministers and party spokespersons are certainly held accountable for their performance, which can make or break careers or governments.

However, it is important to remember that question time only forms a small part of each day in Parliament. Parliament sits for around 12 hours on a normal sitting day, with most of that time used in less visible, but equally important, activities such as passing legislation, tabling and discussing reports and raising issues on behalf of constituents. Question time only lasts between 30 and 60 minutes in each house, but – due to its media coverage – usually has the highest profile in each day of parliamentary business.

The Committee noted that the practice of asking oral questions without notice in parliaments within the Westminster tradition has developed as a particular feature of Australian parliaments and that the practice has become an important part of the Australian political culture. It is not the intention of the Committee to change this culture; rather its review and recommendations are aimed at improving the accountability function of questions without notice.

3.1.1 **History of questions without notice in the Victorian Parliament**

The Australian House of Representatives has permitted questions without notice since early in the first Parliament, and is undoubtedly the principal jurisdiction on which question time in the Victorian Parliament was based.²¹ In the House of Representatives, questions without notice originated during time allocated for Ministers to respond orally to questions on notice. During the first Parliament the Speaker ruled that because the Minister had not received prior notice of the questions, he or she could not be compelled to answer the question. This convention still applies to responses to questions without notice.

Question time is regarded as an important mechanism to ensure government accountability in the Australian House of Representatives:²²

It is fundamental in the concept of responsible government that the executive government be accountable to the house. The capacity of the House of Representatives to call the government to account depends, in large measure, on its knowledge and understanding of the government's policies and activities. Questions without notice and on notice (questions in writing) play an important part in this quest for information.

Question time is a relatively recent phenomenon in the 150 year history of the Victorian Parliament. Question time was first introduced to the Assembly on 30 April 1969, with 30 minutes allocated for members to ask questions without notice. In the Council question time was introduced on 27 April 1976, with ten minutes allocated for members to ask questions.²³

Question time practices in both houses of the Victorian Parliament have evolved substantially during the last four decades. For example, during the first question time in the Assembly there were 23 questions, all of which were from non-government members. All of the questions and answers were very succinct, which allowed a large number of questions to be asked. This pattern continued until the mid 1970s, when it was still common practice for 18 to 20 questions to be asked during a 30 minute period.

Over time, questions from government members became more frequent. Initially just one or two questions would be asked by government members each question time, but by the mid-1970s around six questions would be initiated by government members.

During the 48th Parliament a standard rotation of questions between parties was introduced, which resulted in the government (Liberal Party), the Country Party and the Labor Party each asking one third of the questions. In the 1980s and 1990s, there was a move towards a fifty-fifty division of questions between government and non-government parties. This is now the norm in most Australian parliaments including the Federal Parliament, and is the current practice of the Victorian Parliament.

²¹ Department of House of Representatives, Infosheet – Questions, No.1, December 2004, viewed 19 February 2008, <http://www.aph.gov.au/house/info/infosheets/is01.pdf>.

²² Department of the House of Representatives, House of Representatives Practice, Fifth Edition, 2005, p.527, quoted by Mr R Purdey, Clerk of the Legislative Assembly, submission no.24, p.1

²³ Mr W Tunnecliffe, Clerk of the Legislative Council, submission no.25, p.2

With the introduction of filming of question time, the length of Ministers' answers gradually began to increase, and as a consequence fewer questions were asked before question time expired. On some occasions in the 53rd Parliament as few as three or four questions were raised during the entire question time. At the beginning of the 54th Parliament the standing orders in the Assembly were amended with the introduction of the '30 minute or ten question' rule, which allows that ten questions are raised during each question time.

3.2 Current practice in the Victorian Parliament

3.2.1 General guidelines for questions without notice

The general guidelines currently applying to the conduct of question time in the Assembly can be summarised as follows (the guidelines for the Council are almost identical):²⁴

1. *The purpose of a question is to seek information, not to give information or to suggest its own answer; the only arguments, opinion or facts given should be those necessary to explain the question;*
2. *The matter must relate to public affairs and be directed to the Minister responsible;*
3. *Questions should not seek opinion, particularly a legal opinion, ask whether Press statements are correct, seek a solution to a hypothetical proposition, be trivial, vague or meaningless, raise matters sub judice, anticipate debate on an Order of the Day or raise questions of policy too large to be dealt with in an answer to a question;*
4. *In answering, Ministers should: confine themselves to the points contained in the question; be direct, factual and succinct; not introduce extraneous material; and should not debate the matter;*
5. *The Minister has discretion as to whether or not the question is answered;*
6. *Where a Minister refuses to answer, a reply cannot be insisted upon;*
7. *Points of order should not be used as a means of repeating a question;*
8. *Should a Minister wish to make a lengthy speech or statement, the proper form is via a ministerial statement; and.*
9. *Question time will last for 30 minutes or until 10 questions have been answered, whichever is the longer.*

These guidelines have been developed by reference to the relevant standing orders, rulings by the Chair, and in some cases by reference to precedents in other jurisdictions. The Committee noted that the clear intention of the guidelines, and by extension, the purpose of question time, is to provide members of Parliament with an opportunity to obtain specific information about matters pertaining to public affairs from the executive.

²⁴ *Hansard*, 2 October 1984, p.682 (for 1–6); *Hansard*, 29 February 2000, p.1 (for 1, 4, 7 & 8); Legislative Assembly of Victoria, *Standing Orders and Joint Standing Orders and Joint Standing Rules of Practice of the Parliament of Victoria*, Parliament of Victoria, December 2006, standing order 55, p.34

In practice, however, the Committee also noted that question time is now used for a range of political purposes, and that the principal purpose of many questions without notice is not to elicit specific information about public affairs, but rather to draw public attention to new government initiatives and policies (in the case of most government questions) or perceived government failures (in the case of most non-government questions).

3.2.2 Government and opposition questions

A notable feature of the development of question time is the tendency for Ministers to spend more time on responses to questions from government members than on questions from non-government members. While the original intention was for question time to provide an opportunity for members to obtain facts and information about specific matters from government, Ministers now use question time as an opportunity to publicise government initiatives or to attack the opposition.

The following table shows that since 1996, Ministers' replies to questions from government members in the Assembly have been substantially longer than replies to non-government members

Table 3.1: Average length of reply to questions without notice, government and non-government members, Legislative Assembly, 53rd to 55th Victorian Parliaments

Parliament	Average time taken to answer (minutes)	
	Questions from government members	Questions from non government members
53rd (1996-1999)*	5.6	2.2
54th (1999-2002)	5.2	2.2
55th (2002-2006)	5.1	1.6
Average	5.3	2.0

* Limited to a sample of question times where 10 questions were raised

Source: Analysis by the PAEC Secretariat of information supplied by Hansard

Table 3.1 shows that roughly 70 per cent of question time is spent answering government questions and 30 per cent answering non-government questions. These figures do not take account of the amount of time taken by points of order which tend to lengthen Ministers' answers.

The Committee accepts that it is now the norm in Victoria and in Australian parliaments for questions to be shared on a fifty-fifty basis between government and non-government members. However, it believes that significant improvements can be made in the conduct and processes of question time.

The proper and orderly conduct of question time depends not just on the management of it by the Presiding Officers, but also on the active cooperation of all members of Parliament, to conduct themselves properly in accordance with the guidelines and the generally accepted standards of parliamentary behaviour. The Committee is happy to reiterate this and call for improved behaviour during question time. It also seeks to suggest some procedural changes that might enhance the basic purpose of accountability, through the provision of information in a direct and succinct manner, while reducing opportunity for frustration and possible resulting parliamentary behaviour.

3.3 Recent changes to question time procedure in the Legislative Council

The Committee noted two changes to question time procedure in the Council in the current Parliament that have worked effectively and helped to improve government accountability.

The first change introduced in the Council is the introduction of supplementary questions, where the member who asks a question can follow-up with a supplementary question provided it is related to the original question and the Minister's answer.²⁵ This has allowed further scrutiny of the actions of the executive, as the questioner is able to follow-up any aspect of the original question that he or she feels was not adequately answered.

The use of immediate supplementary questions is a feature of question time in a number of Westminster-style legislatures. For example, such questions are common in both the United Kingdom's House of Commons and the Australian Senate.

The Committee finds that the practice of supplementary questions without notice, introduced in the Council in the last Parliament, strengthens the role of question time in holding the executive accountable for its actions.

The Committee recommends that:

Recommendation 5: **The Legislative Assembly Standing Orders Committee revise its standing orders to allow supplementary questions without notice.**

The second change in the Council is a new sessional order, adopted on 28 February 2007, that allows questions to be asked of Council members representing Ministers who sit in the Assembly.²⁶ Traditionally, most Ministers sit in the Assembly, and in the current Parliament, 17 of 21 Ministers sit in the Assembly. The sessional order allows questions regarding the majority of portfolios to be posed in either house, ensuring greater accountability on the part of Ministers.

The Committee finds that the practice of allowing questions to be asked of Council Ministers representing Assembly Ministers ensures greater executive accountability and strengthens the Council's role as a house of review. The Committee also noted that ministerial accountability in the Assembly could also be enhanced if similar provisions were made to allow questions to be asked of Assembly members representing Ministers who sit in the Council. While the Committee recognises that this power may not be exercised often, it would provide an appropriate reciprocation of measures introduced in the Council.

The Committee understands that there is already a practice in the Assembly to allow questions on notice to be put to a Minister from the Council. However, to give more emphasis to this practice, and to its possible use for questions without notice, this needs to be reflected in the standing orders.

²⁵ Legislative Council of Victoria, *Standing Orders together with Joint Standing Orders and Joint Rules of Practice of the Parliament of Victoria*, Parliament of Victoria, 2006, standing order 8.05, p.27

²⁶ Legislative Council, *Sessional Orders*, Parliament of Victoria, 2008, Sessional Order 14, p.9

The Committee recommends that:

Recommendation 6: **The Legislative Assembly Standing Orders Committee revise its standing orders to allow questions without notice and questions on notice to be put to a member representing a Minister from the Legislative Council.**

3.4 Minister's discretion in replies to questions

A number of submissions highlighted the fact that in both houses of the Victorian Parliament a Minister has the discretion to answer a question without notice.²⁷ These submissions argued that this ability undermined the power of Parliament to hold the executive accountable for its actions.

The practice of Ministers having discretion to choose whether to answer a question without notice dates from 1901, when during the first session of the House of Representatives the Speaker was asked if questions without notice could be asked. His reply, which allowed a Minister discretion as to whether he or she answered a question, informed question time practice in Victoria's Parliament:²⁸

There is no direct provision in our standing orders for the asking of questions without notice, but as there is no prohibition of the practice if a question is asked without notice and the Minister to whom it is addressed chooses to answer it I do not think I should object.

The ruling has formed the basis for all Australian parliaments' practice in relation to questions without notice. The relevant standing order in Victoria's Legislative Assembly states:²⁹

- (1) All answers to questions must:*
 - (a) be direct, factual and succinct;*
 - (b) not introduce matter extraneous to the question nor debate the matter to which the question relates.*
- (2) Subject to paragraph (1) and SOs 118, 119 and 120, a Minister will have discretion to determine the content of any answer.*

The Council's standing orders are silent on the responsibility of a Minister to reply to a question, though the convention that a Minister should not be compelled to answer a question was confirmed by the President, who recently ruled that:³⁰

²⁷ Hon. K Rozzoli, submission, no.4, May 2007; Associate Professor K Coghill PhD, submission, no.8, May 2007, p.22; Mr R Purdey, Clerk of the Legislative Assembly, submission, no.24, July 2007, pp.3–4; Mr W Tunnecliffe, Clerk of the Legislative Council, submission, no.25, p.3

²⁸ Speaker (1901) *Hansard* (Australia), 3 July Vol. 2 p.1954, quoted by Associate Professor K Coghill PhD, submission no.8, p.23

²⁹ Legislative Assembly of Victoria, *Standing Orders and Joint Standing Orders and Joint Standing Rules of Practice of the Parliament of Victoria*, Parliament of Victoria, December 2006, p.36

³⁰ *Hansard*, 1 March 2007, p.459

... it has been the practice of the house that Ministers are not required to answer questions but, if they chose to do so, these should be relevant and reasonably responsive.

The Committee is not of a mind to recommend a change to the long standing practice of ministerial discretion. It might not be appropriate for Ministers to answer questions where a security matter or cabinet confidentiality is involved. Generally speaking, Ministers do provide answers – the theatre of question time with the attendant media focus generally demands that they do.

3.5 Interruption of question time in the Legislative Assembly by points of order and interjections

A brief survey of *Hansard* indicates that in the Assembly during 2007 on most days the majority of replies to non-government questions were subject to points of order. Points of order were also taken during replies to government questions. Most of these referred to the excessive length of answers, Ministers debating the issue or the alleged failure of Ministers to directly respond to issues raised. Replies to questions from both non-government and government members are routinely interrupted by the Speaker ruling on points of order raised by non-government members. In the December 2007 sitting week, the Speaker intervened to make a ruling on a point of order on nine occasions.

Interventions by the Speaker of the Assembly calling for order, asking members to refrain from talking or interjecting, ensuring Ministers answer questions and not debate them, or suspending members, are more frequent than ruling on points of order. In the December 2007 sitting week, for example, the Speaker had to intervene over 70 times for these reasons.

The Committee noted the media coverage of question time and the lack of respect and courtesy displayed by members on opposing sides does not improve the image of Parliament in the eyes of the general public. The Committee noted, however, that excessive frivolous points of order may also have a similar effect.

One submission suggested that points of order should be banned during question time in the Assembly, as is the practice in the UK Parliament.³¹ This would allow question time to flow more smoothly, make question time less adversarial and improve its role in keeping the executive accountable to Parliament.

The Committee finds that unnecessary points of order reduce the usefulness of question time in holding the executive accountable, as well as diminishing the smooth functioning of Parliament in the eyes of the public.

The Committee noted the continued critical role of the Speaker in determining the appropriateness of a question and the relevance and succinctness of a reply, as well as in ensuring that frivolous points of order are not tolerated. The Committee recognises that on occasions points of order during question time may be necessary. However, the availability of supplementary questions should enable non-government members to seek clarification on a question without resorting to points of order.

³¹ Mr R Purdey, Clerk of the Legislative Assembly, submission, no.24, July 2007, p.4

However, the Committee also noted that, due to the distinct evolution and practice of question time in the Council, interruptions due to Points of Order do not unreasonably interfere with proceedings in that house. Consequently the Committee finds that rules pertaining to Points of Order during Question Time in the Council are currently satisfactory.

The Committee recommends that:

Recommendation 7: **The Legislative Assembly Standing Orders retain points of order during question time, but note a reduced tolerance for frivolous points of order in light of the availability of supplementary questions.**

3.6 Ministerial statements

The Committee noted that while question time is sometimes used by the government to publicise its actions and initiatives, its original purpose was to provide a means for scrutiny of the executive. Consequently, the aim for question time should be to provide information succinctly rather than to publicise government initiatives. The Committee noted that introducing brief ministerial statements before question time might provide a suitable alternative means for the government to publicise its initiatives.

The Committee noted that the standing orders of the Legislative Assembly of Western Australia currently makes provision for Ministers to make a brief statement each sitting day.³²

A Minister may make a statement, not exceeding three minutes, before the house proceeds to business on the Notice Paper and no debate shall take place on the statement.

3.7 Legislative Assembly time limits on individual replies

Currently, neither house of the Victorian Parliament places time limits on individual replies to questions without notice.

During the 55th Parliament, the Council limited replies to questions without notice to four minutes and replies to supplementary questions to one minute. However, these limits were removed by sessional order in the current Parliament.³³ The Committee understands that there is no call for the re-introduction of time limits in the Council.

In the Assembly the relevant standing order governing the time permitted for questions without notice states:³⁴

Question time will last for 30 minutes or until 10 questions have been answered.

³² Legislative Assembly of Western Australia, *Standing Orders*, Parliament of Western Australia, May 2007, p.67

³³ Mr W Tunnecliffe, Clerk of the Legislative Council, submission, no.25, p.2

³⁴ Legislative Assembly of Victoria, *Standing Orders and Joint Standing Orders and Joint Standing Rules of Practice of the Parliament of Victoria*, Parliament of Victoria, December 2006, standing order 55, p.34

In 2004 and 2005, the Speaker of the Assembly ruled that, while there is no defined limit on the length of replies, it is the tradition of the house that answers be given within four minutes.³⁵

A number of submissions referred to the desirability of limits on individual replies to questions without notice, noting that such limits would limit the potential for convoluted answers.³⁶ The Committee noted that in other jurisdictions time limits on answers can be far more succinct. In the Canadian House of Commons questions and answers are limited to 35 seconds each.³⁷

Given the concerns noted above that question time is largely taken up by responses to government questions, and that the Assembly has time limits on the duration of question time, the Committee finds that a time limit on individual replies to questions without notice would help ensure that all replies are succinct, directly respond to the question, and do not debate the issue. While not seeking to emulate Canadian practice, the Committee suggests that an appropriate time limit for responses in the Assembly is four minutes for questions without notice (similar to ministerial mini-statements), and one minute for supplementary answers.

The Committee recommends that:

Recommendation 8: **That the Legislative Assembly Standing Orders Committee revise the standing orders to incorporate time limits on replies to individual questions without notice (for example, four minutes).**

3.8 Conclusion

The Committee believes that question time has a particularly important place in Parliament and in the practice of politics. All parties use the media coverage of question time and resulting public interest to highlight their political agendas and achievements in contrast to their opponents. Question time also forms a vital part of Parliament's responsibility to hold the executive to account. The Committee considers that the purpose of the recommendations made in this chapter is to strengthen question time's accountability function, without undermining its central place in political debates.

The Committee is also aware that the conduct of question time can also be improved by the improved conduct of individual members of Parliament and concerted action by the Presiding Officer. This is further discussed in the next chapter.

³⁵ *Hansard*, 14 September 2004, p.307; *Hansard*, 26 May 2005, p.1497

³⁶ Mr R Purdey, Clerk of the Legislative Assembly, submission, no.24, July 2007, p.3; Mr W Tunnecliffe, Clerk of the Legislative Council, submission, no.25, p.3; Hon. K Rozzoli, submission, no.4, May 2007.

³⁷ Mr J Williams MP, Canadian Parliament, submission, no.23, July 2007, Attachment 6, p.19–20

CHAPTER 4: STANDARDS OF PARLIAMENTARY BEHAVIOUR

4.1 Introduction

The Victorian Parliament, like others throughout the world, is a place where politics is vigorously contested. It is also a public forum where the Victorian public forms views in relation to the behaviour of its elected representatives. As such, it is important that members of Parliament act appropriately in Parliament, and are seen to do so.

4.2 Members' responsibility for their own behaviour

Parliamentary behaviour is regulated by the standing orders of each house, which are interpreted by the respective Presiding Officers in their rulings from the Chair. While one submission argued that changes in parliamentary procedures and rules can affect parliamentary behaviour,³⁸ the Committee considers that the ultimate responsibility for members' behaviour in Parliament lies with the members themselves. Therefore, it is the responsibility of each member to ensure that his or her behaviour meets the standard required while they are a member of the Parliament.

As noted in the previous chapter, the public are most aware of parliamentary behaviour from what happens in question time (be it state or federal), which receives media coverage. It has become commonplace during question time in the Victorian Parliament (and it is not alone in this) for members to be rowdy, interject extensively, hold conversations, and otherwise detract attention from the Minister or the members asking a question. Indeed, it can sometimes be the strategy of the theatre of question time to interrupt speakers or to detract from their presentation by the loud manner of conversation or interjection. Such behaviour has been ruled time and again by the Presiding Officers as unparliamentary and disorderly. Persistent or egregious offenders are either warned, removed from the house for a period or, in extreme cases, 'named' (see below).

4.3 Recent changes to standing orders regarding suspension of members

4.3.1 Legislative Assembly

Notwithstanding the responsibility members have for their own behaviour, it is worth looking at how changes to the standing orders in the Assembly have resulted in fewer members being 'named'. On 4 November 1999, the Assembly adopted sessional orders changing the way the house dealt with disorderly conduct. The changes were then adopted as standing order 124 on 29 March 2004.³⁹

³⁸ Associate Professor K Coghill PhD, transcript of evidence, 1 August 2007, p.42

³⁹ Legislative Assembly of Victoria, *Standing Orders and Joint Standing Orders and Joint Standing Rules of Practice of the Parliament of Victoria*, Parliament of Victoria, December 2006, standing order 124, p.57

Where the Speaker or Deputy Speaker considers the conduct of a member to be disorderly:

- (1) The Speaker or Deputy Speaker may order the member to withdraw from the house for up to one and a half hours. That order is not open to debate or dissent.*
- (2) The member, whilst suspended, may still return to the Chamber to vote in a division.*
- (3) If a member is ordered to withdraw under paragraph (1) and the house adjourns before the end of the suspension period, the member, subject to paragraph (2), will not return to the Chamber on the next sitting day until the remaining time has expired. Time is calculated from the end of the ringing of the bells.*

Prior to the introduction of this sessional order, disorderly members were ‘named’ by the Speaker, usually after at least one warning for disorderly behaviour. Naming resulted in suspension from the house until at least the end of the day (on two occasions, a member was suspended for a sitting week). Named members are not allowed to enter the house to vote on a division. The recent practice of ‘sin-binning’ disorderly members has allowed the Speaker to exercise a level of discipline before having to ‘name’ a member. This allows members time to cool off from the contested arena of the house, returning a short time later to resume their parliamentary responsibilities (members can return to the house for divisions while ‘sin-binned’). Since its introduction, members from the Assembly have been ordered to withdraw 72 times.

This practice has not removed the right of the Speaker to ‘name’ and suspend a member who repeatedly transgresses standing orders or who refuses to acknowledge the Speaker’s rulings. This is demonstrated by the naming and suspending in the Assembly in September 2007 of a member for refusing to withdraw comments that the Speaker ruled had breached standing order 118⁴⁰ – the first time this had happened since sessional order 10 was adopted.⁴¹

Data supplied by the Assembly’s procedure office demonstrates that the change in standing orders has reduced the number of members being named. The naming that occurred in September 2007 was the first instance in the eight years since the sessional orders were adopted. This compares with 12 instances in the eight years prior to 1999, and a total of 38 instances of members being named since 1897. However, the incidence of members ordered to withdraw since 1999 is significantly larger than those named in the previous eight years. Most orders occur during question time. While it does not automatically follow that parliamentary behaviour especially at question time is now worse than previously, it is clear that the Speaker has been forced to invoke sanctions more frequently.

⁴⁰ Legislative Assembly, standing order 118 *‘Imputations of improper motives and personal reflections on the Sovereign, the Governor, a judicial officer or members of the Assembly or the Council are disorderly other than by substantive motion’*, p.55

⁴¹ *Hansard*, 18 September 2007, p.3010

4.3.2 Legislative Council

Historically, suspensions from the Council are much less frequent than the Assembly. However, on 26 February 2003, the Council introduced the following sessional order:⁴²

- (a) *If the President or Chair of Committees consider the conduct of a member to be disorderly, they may order the member to withdraw from the Chamber for up to a maximum period of 30 minutes which order will not be open to debate or dissent; and*
- (b) *Such suspension will not prohibit a member from returning to the Chamber for the purpose of voting in a division; and*
- (c) *If a member is ordered to withdraw under paragraph (a) and the sitting concludes before the expiration of the time ordered by the President or Chair of Committees, the member will not take his or her seat in the Chamber on the next sitting day until after the remainder of the time has expired, to be calculated from the end of the ringing of the bells; and*
- (d) *If a member does not immediately withdraw from the Chamber when ordered to do so under paragraph (a), the President or Chair of Committees may name the member and a motion may be moved forthwith (no amendment, adjournment, or debate being allowed) that such member be suspended from the service of the Council during the remainder of the sitting (or for such period as the Council or Committee of the Whole may think fit).*

Since the implementation of the sessional order, which was adopted as part of the Council's standing orders at the start of the current Parliament,⁴³ only one instance of a member being named and suspended has occurred.⁴⁴ However, members have been asked by the President to withdraw on 60 occasions.

The Committee finds that the recent changes to the procedure governing suspension from the Victorian Parliament have resulted in fewer members being named, although more members have been ordered to withdraw.

4.4 Parliamentary Standards Commissioner

Late in 2006 a discussion paper entitled '*Why Accountability Must be Renewed*' was distributed by some commentators on parliamentary practice. The discussion paper was followed by a position paper, '*Renewing Accountable Government: Reforming government accountability in Victoria*'.⁴⁵ The papers reviewed the state of government accountability in Australia and made a number of recommendations for improvement. One of the paper's recommendations was the establishment in Victoria of a position of Parliamentary Standards Commissioner, similar to the Commissioner established in the United Kingdom.

⁴² Hansard, 26 February 2003, p.37

⁴³ Legislative Council of Victoria, *Standing Orders together with Joint Standing Orders and Joint Rules of Practice of the Parliament of Victoria*, Parliament of Victoria, 2006, standing order 13.02, standing order 13.02, p.42

⁴⁴ Hansard, 6 June 2006, p.2091

⁴⁵ Dr K Coghill et al, *Why Accountability Must be Renewed*, informal group associated with the Australasian Study of Parliament Group, 2006; Dr K Coghill et al. *Renewing Accountable Government: Reforming government accountability in Victoria*, informal group associated with the Australasian Study of Parliament Group, 2006

A number of submissions to this inquiry suggested that the Victorian Parliament establish a position of Parliamentary Standards Commissioner or explicitly endorsed the recommendation of the informal group to establish such a position.⁴⁶

4.4.1 Current Commissioners

The Parliamentary Standards Commissioner in the UK was established in the House of Commons in 1995, as a result of recommendations made by the Committee on Standards in Public Life. The Committee itself was established in October 1994, following a series of public scandals involving members of Parliament. The Commissioner is appointed by resolution of the House of Commons and is an officer of the house. The main responsibilities of the Commissioner are:⁴⁷

- overseeing the maintenance and monitoring the operation of the register of members' interests;
- providing advice on a confidential basis to individuals and to the Select Committee on Standards and Privileges about the interpretation of the code of conduct and guide to the rules relating to the conduct of members;
- preparing guidance and providing training for members on matters of conduct, propriety and ethics;
- monitoring the operation of the code of conduct and guide to the rules and, where appropriate, proposing possible modifications of it to the committee; and
- receiving and investigating complaints about members who are allegedly in breach of the code of conduct and guide to the rules, and reporting his findings to the committee.

The Queensland Government has established a similar position. The Integrity Commissioner is an independent statutory officer appointed under the *Public Sector Ethics Act 1994*. The Integrity Commissioner's role is narrower than that of the Parliamentary Standards Commissioner in that its role is to provide confidential advice about conflicts of interest to 'designated persons'. However, the Commissioner provides services to a broader group of public officials besides members of Parliament, as shown by the list of 'designated persons':⁴⁸

- the Premier;
- Ministers;
- parliamentary secretaries;
- government MPs;
- CEOs of government departments or public service offices;
- statutory office holders;

⁴⁶ Women's Electoral Lobby, submission, no.1, April 2007, p.2; Professor M Prior AO FASSA, submission, no.3, May 2007, p.1; Hon. K Rozzoli, submission, no.4, May 2007, p.1; Hon. AJ Hunt AM, submission, no.5, May 2007, p.1; Ms C and Mr R Money, submission, no.7, May 2007, p.1; Associate Professor K Coghill PhD, submission, no.8, May 2007, p.28; Dr R Matthews, submission, no.10, p.2; Mr H Glasbeck, submission, no.12, May 2007, p.1; Ms A Mancini and Mr J Gellie, submission, no.13, May 2007, p.1; Liberty Victoria, submission, no.26, August 2007, p.6

⁴⁶ Hon. K Rozzoli, submission, no.22, May 2007

⁴⁷ UK Parliament, *Parliamentary Commissioner for Standards*, viewed 30 October 2007, www.parliament.uk/about_commons/pcfs.cfm

⁴⁸ Queensland Government, *Requesting advice from the Integrity Commissioner*, viewed 30 October 2007, www.integrity.qld.gov.au/html/advice.shtml

- senior executive officers or senior officers employed in a government department or public service office;
- CEOs of a government entity or a senior executive equivalent employed in a government entity and is nominated by the Minister responsible for administering that entity;
- ministerial staff;
- staff of parliamentary secretaries; and
- other persons nominated by a Minister or parliamentary secretary.

It should be noted that non-government members are not listed as ‘designated persons’ and, therefore, cannot request advice from the Integrity Commissioner. The Committee considers this a weakness of the Queensland regime.

4.4.2 The independence of Parliament

While the model of a Parliamentary Standards Commissioner is becoming more popular, it is not clear that having a Parliamentary Standards Commissioner actually raises the standards of parliamentary behaviour. In fact, the evidence suggests that establishing such an officer results in higher levels of complaints against members. When the Welsh and Scottish Parliaments established Parliamentary Standards Commissioners, the level of complaints against members was greater than expected. The UK’s Commissioner between 1999 and 2002 is on record as saying that during her tenure she only found it necessary to investigate 13 per cent of the complaints that came to her.⁴⁹ This suggests a large proportion of complaints lodged with parliamentary standards commissioners are frivolous.

The growth in complaints, whether they are well-founded or not, when an ‘independent’ officer is placed in charge of regulating parliamentary standards can be viewed as an argument for internal regulation of members’ conduct. For example, when NSW established its Independent Commission Against Corruption in 1989, complaints of corruption soared. There is also the concern that once such a Commission is established, it could encourage complaints and investigations to justify its own existence.⁵⁰ The UK’s current Parliamentary Commissioner for Standards commented in oral evidence provided to the Committee on Standards in Public Life in 2002: ⁵¹

It is amazing but there seems to be a developing international industry in this kind of thing.

The major concern that the Committee has with an officer such as a Parliamentary Standards Commissioner is that it could undermine the independence of the Victorian Parliament. This independence is a fundamental tenet of the Westminster tradition of democratic government, enabling Parliament to operate independently of the government of the day. Historically, Parliament has had control over its own affairs; this privilege allowed members of Parliament to exercise complete freedom of speech. It also required Parliament to be self-regulating and to

⁴⁹ Oonagh Gay and Patricia Leopold (editors), *Conduct unbecoming: the regulation of parliamentary behaviour*, 2004, pp.332–334

⁵⁰ Oonagh Gay and Patricia Leopold (editors), *Conduct unbecoming: the regulation of parliamentary behaviour*, 2004, pp.332–334

⁵¹ Sir Philip Mayer, Parliamentary Commissioner for Standards, Eighth report, *Standards of Conduct in the House of Commons*, transcript of evidence, 18 September, 2002, p.379, viewed 30 October 2007, www.public-standards.gov.uk/upload/assets/www.public_standards.gov.uk/oralevidence.pdf

develop means to deal with members who offended against its rules or committed contempt against Parliament.

Evidence from several experienced parliamentarians in other jurisdictions counselled about the appointment of a Commissioner, especially one which might provide advice and then become the arbiter of any alleged breaches.

Former Senator Cooney argued strongly in evidence against such an appointment⁵² and John Williams, a Canadian member of Parliament and Chair of the Global Organisation of Parliamentarians Against Corruption (GOPAC) noted in his submission the possible conflict, of roles in having a Commissioner investigate alleged breaches.⁵³

Now you are giving the Commissioner power to be judge, jury and executioner. The Commissioner cannot have authority to give confidential advice on rules and also be the adjudicator when rules appear to have been broken. This is a serious conflict that will destroy the Commissioner, the office or both. We did it to our Commissioner in Canada.

Any attempt to regulate parliamentary behaviour by someone who is not a member of Parliament risks undermining the independence of Parliament and the freedom of speech of its members. The Victorian Parliament has worked well, with no major breaches of parliamentary conduct having been reported over the last decade. Any officer – such as a Parliamentary Standards Commissioner – appointed from outside Parliament to regulate the behaviour of members, risks undermining the independence of Parliament. Such an appointment could also give rise to a perception that the executive might not support the Commissioner, in order to reduce the ability of the Commissioner to hold the executive to account.⁵⁴

The Committee finds that it is not appropriate for the parliamentary behaviour of members of Parliament to be regulated by an authority that does not participate in Parliament.

In the Victorian Parliament, the main instruments for regulating the behaviour of members and for dealing with breaches of parliamentary privilege are the Privileges Committees of the Assembly and the Council. Both Committees are empowered to investigate alleged breaches of parliamentary privilege and to report to their respective houses. In extreme cases, the Privileges Committees have the power to recommend to Parliament that a member be expelled.

The Committee noted that members of Parliament – as elected representatives of the people – are subject to a mechanism for accountability that most other professions are not. If the public is dissatisfied with the performance or behaviour of their member of Parliament, it may register its dissatisfaction and not vote for the member when he or she next faces an election. In a similar way, a government that is seen to have dealt inadequately with allegations of inappropriate behaviour by any of its members is liable to be voted out of office.

⁵² Former Senator B Cooney, transcript of evidence, 2 August 2007, p.4

⁵³ Mr J Williams MP, Canadian Parliament, submission, no.23, July 2007, Attachment 6, p.21

⁵⁴ Oonagh Gay and Patricia Leopold (editors), *Conduct unbecoming: the regulation of parliamentary behaviour*, 2004, p.344

4.5 Training for members of Parliament in parliamentary behaviour, ethics and conflicts of interest

While the Committee considers that the Privileges Committees are the correct means by which to regulate parliamentary behaviour and investigate alleged breaches, it acknowledges that the UK Parliamentary Standards Commissioner plays an important role in providing training and advice to members relating to conduct, propriety and ethics. A career in the Victorian Parliament requires – like any other – information and training on its particular demands and responsibilities. The multiple demands of attendance in the house, the needs of constituents and party meetings do not leave much time for attending formal training, so the existence of a specifically developed training program would assist members better appreciate the intricacies of a parliamentary career. It is noted that this would also assist the Parliament fulfil its accountability function, by ensuring that members are conversant with all of the duties and responsibilities that accompany parliamentary office. The Committee noted that in July 2007, the Commonwealth Parliamentary Association held a professional development seminar in Melbourne for members of parliaments throughout Australia.

The Committee noted that the Victorian Parliament currently provides an induction program for new members following a general election which includes presentations on the register of members' interests and code of conduct (discussed below). Such a program has not always been available for members entering Parliament through by-elections. New members to Parliament are required to become familiar with a great number of procedures, practices and conventions on their introduction to Parliament. While the current induction program covers these topics sufficiently, there is often a great deal to be learnt by members over a short period. On this basis, members may benefit from the opportunity to refresh their memories after their initial induction. The Committee considers it useful for the Clerk of the Parliament, in conjunction with appropriate professionals, to provide ethics advice and to further develop the training program relating to ethics and conflicts of interest and make this available to members as a 'refresher' course from time to time. This could be done in association with an appropriate university centre. Parliament has access to a training budget which it can elect to use for such training.

The Committee also noted that when particular ethical matters arise, members are able to seek advice from the Clerk and as appropriate through the Clerk access any necessary professional services.

4.6 Register of members' interests

As a means of ensuring transparency and to minimise conflicts of interest, all Australian parliaments have adopted registers of pecuniary interests.⁵⁵ Victoria was the first Australian state to introduce such a register in 1978, when the *Members of Parliament (Register of Interests) Act 1978* (Vic) was passed. The act requires members to provide to the Clerk of Parliament initial and annual returns that outline their financial interests. The Clerk then tables the annual and supplementary reports in Parliament.

⁵⁵ Deirdre McKeown, *A survey of codes of conduct in Australian and selected overseas parliaments*, Parliament of Australia, Parliamentary Library, viewed 31 October 2007, www.apl.gov.au/library/intguide/POL/conduct.htm

The Committee noted that there was some reluctance among members to clearly identify property locations, with some only providing the suburb or town where they were located. It is assumed that this practice has developed because of privacy concerns of members. In reviewing the act and the operation of the register, it should be possible to require members of Parliament to provide full details of addresses of residences and properties to the Clerk while only the names of the suburb or postcode are tabled in Parliament.

The Committee recommends that:

4.7 Code of conduct

Not all Australian parliaments have a code of conduct, but since 1996 the NSW, Queensland, Western Australian and Tasmanian parliaments have all adopted such a code.⁵⁷ The codes vary in their length and level of detail: most (including Victoria's) are two to three pages long and general in nature, while Queensland's code of ethical standards runs to around 70 pages and is

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far more detailed than the other codes.⁵⁸ Queensland's code is the most recently developed by an Australian Parliament and reflects the changes in Australian society and politics since Victoria developed Australia's first code of conduct for members of Parliament in 1978.

A large number of submissions advocated a specific code of conduct, particularly for Ministers (see discussion in chapter one) but also for members of Parliament.⁵⁹ The Committee acknowledges that the existing Victorian code could be updated as it is now 30 years old. However, as noted above in section 4.4, the Committee holds fast to the longstanding Westminster tradition of the independence of Parliament and accordingly does not believe such a code should be policed by an outside body or appointee. Breaches of the code or any unparliamentary behaviour can be referred to the Privileges Committee for consideration and, if deemed necessary, recommendation to Parliament.

The Committee noted that a recent article by the Assistant Speaker of the New Zealand House of Representatives suggested that the New Zealand Parliament adopt a code of ethics. The proposed code covers areas such as: public duties; personal conduct; selflessness; integrity; confidentiality; objectivity; accountability; openness; honesty; leadership; and conduct in Parliament.⁶⁰ The code could be a useful guide for the update of the Victorian code of conduct for members of Parliament.

The Committee finds that, given the changes in Australian society and politics since 1978, an update of the code of conduct for members of Parliament contained within the *Parliament (Register of Interests) Act 1978* should be conducted. The Committee recommends that the update take place as part of, or in conjunction with, the action described in recommendation 9.

The Committee recommends that:

Recommendation 10: **The Victorian Government update the code of conduct for members of Parliament contained within the *Parliament (Register of Interests) Act 1978*.**

⁵⁸ Parliament of Queensland, *Code of ethical standards*, viewed 1 November 2007, www.parliament.qld.gov.au/view/committees/documents/MEPPC/other/ethicalStandards/CodeOfEthicalStandards.pdf

⁵⁹ Hon A.J. Hunt A.M., submission, no. 5, May 2007; Associate Professor K Coghill PHD, submission, no.8, May 2007, p.8

⁶⁰ Mr R Robertson, *Code of Ethics: Generating Respect for Parliament and Parliamentarians, The Parliamentarian*, Journal of Parliaments, Issue 3, 2007

CHAPTER 5: OVERSEAS TRAVEL BY MEMBERS OF PARLIAMENT

5.1 Introduction

The Committee considered the issue of overseas travel primarily from the perspective of improving the approval and reporting mechanisms, to make the process more transparent and to ensure members of Parliament who travel overseas are accountable to the Victorian taxpayer. The Committee also recognises that travel by members, including overseas travel, can contribute to parliamentary accountability by exposing members to practices and innovations from other jurisdictions. On their return, members may compare these experiences with practices and institutions in Victoria, and identify ways in which Victorian institutions may be improved.

5.2 Importance of overseas travel

A number of submissions highlighted that travelling overseas was an important part of a member's responsibility.⁶¹ The following quote from Associate Professor Ken Coghill succinctly puts the case that overseas travel – if reported appropriately – can be beneficial for individual members and by extension, for the Parliament in general.⁶²

Travel by members of Parliament has the potential to bring enormous benefits to the Parliament and better governance of Victoria. These benefits are difficult to quantify and it is almost impossible to isolate the sources of information, understanding and innovation that Members contribute to the final form of policy, legislation and practice in the course of deliberations within parliamentary committee inquiries, political party debates and parliamentary proceedings.

Whilst much can be learned from documentary, Internet and other impersonal sources, there is no substitute for the effectiveness of direct observation and face to face discussion with people having expertise or other specialist knowledge of policy or governance issues. In many cases, this can only be accessed overseas.

However, these benefits can be enhanced and extended if members follow the practice of recording and reporting their travel experiences and make the reports generally available for the use of others having interests in similar issues.

The Committee agrees with the proposal that overseas travel can be beneficial to the Victorian Parliament and to the governance of the state, by providing members with experience to better critique, and suggest improvements to Victorian legislation, institutions, and governance. The Committee also noted that common sense, caution and value for money are important principles that should be applied consistently when deciding if a particular overseas trip is appropriate.

⁶¹ Hon. K Rozzoli, submission, no.4, May 2007; Former Senator B Cooney, submission, no.15, May 2007, p.3

⁶² Associate Professor K Coghill PhD, submission, no.8, May 2007 p.28

The Committee finds that, provided suitable reporting and accountability arrangements are in place, a reasonable amount of overseas travel by members is beneficial to the Victorian Parliament.

5.3 Current arrangements

Members of Parliament are able to use part of their electorate office budget to undertake overseas research visits or to pay for air travel costs of a parliamentary committee visit. Some members use their own funds for overseas visits or have their costs met by outside services (for example, Commonwealth Secretariat). Where the costs met by outside services exceed \$500, members are required to include this in their register of interests.

The following table from Parliamentary Services records shows the number of individual trips on overseas travel taken during the last three financial years by members and by the clerks of the Assembly and Council using state funding. It should be noted that the figure for 2006-07 is lower due to the state election held in November 2006.

	Members of Parliament	Presiding Officers	Clerks
2004-05	54	0	4
2005-06	56	5	3
2006-07	18	1	4

The Committee noted that in 2003, the Victorian Government acted to end the Commonwealth Parliamentary Association funded trips for members of Parliament. Overseas travel paid by the Parliament now largely consists of members travelling on committee business as part of a specific inquiry. Presiding officers, members and clerks are also required to participate in Commonwealth parliamentary conferences.

Where members use state funds for overseas travel, such travel should be properly accounted for.

The following extract from the 56th Parliament Members' Guide outlines the entitlements members currently have regarding overseas travel: ⁶³

Provided all other core budget requirements can be met in any financial year, the maximum amount which may be used for this purpose from the annual Electorate Office Budget is \$4,000. Provided surplus funds are available in their Budget, Members may elect to carry forward this air travel entitlement in whole or in part, but only into the next financial year (that is., up to \$8,000 might then be available for air travel that year).

The travel shall be utilised primarily for parliamentary purposes, including undertaking studies and investigations or researching matters related to the Member's duties, interests and responsibilities as a member of Parliament.

A number of submissions argued that the current arrangements regarding overseas travel for members are restrictive, and that such travel guidelines should be updated. For example, a former Speaker of the NSW Legislative Assembly submitted that every member should be

⁶³ Parliament of Victoria, *Members Guide*, viewed 5 November 2007, <http://dps.parliament.vic.gov.au/membersguide>

entitled to at least one publicly funded overseas trip, of at least three weeks, per parliamentary term.⁶⁴

The Committee noted that the amount of \$4,000 has remained at that level since 1997. The Committee finds that the funding available to members for overseas travel from their electorate office budget should be increased and thereafter indexed annually in line with the increase in the electorate office budget. Any carryover from one year to the next should be determined by the Treasurer in accordance with current practice. Members should also be permitted to purchase accommodation for international travel through their electorate office budget consistent with guidelines for Commonwealth members of Parliament.

The Committee recommends that:

- Recommendation 11:** **Travel guidelines for parliamentary members be updated consistent with federal practice in order to allow:**
- (a) increased flexibility for allowable trips per parliamentary term;**
 - (b) accommodation expenses to be met from international travel budget allocations; and**
 - (c) a budget set at a rate of 21.5 per cent of the Category A electorate office budget.**

5.4 Notification of overseas travel

As the current arrangements stand, members are not required to gain approval for overseas travel in advance; instead, on their return they are required to submit a report on their trip to the Presiding Officer and may seek reimbursement of their expenses. The Committee finds that, as an added accountability mechanism, each member should give prior notice for expending a portion of his or her electoral office budget funding on an overseas trip.

The Committee recommends that:

- Recommendation 12:** **The Presiding Officers of the Victorian Parliament amend the policy relating to overseas travel by members of Parliament to require all members to give prior notice to their Presiding Officer before expending a portion of their Category A electorate office budget on overseas travel.**

The Committee noted that approval for overseas travel for members as part of a parliamentary committee inquiry is obtained through a different process, in which the Presiding Officers have a more active role ensuring that expenditure is appropriately directed toward parliamentary business. Budgets and itineraries for all travel undertaken in the course of committee inquiries (including domestic and overseas travel) are assessed by either the Speaker or the President, depending on which house administers the committee, prior to the travel being undertaken. All

⁶⁴ Hon. K Rozzoli, submission, no.4, May 2007, p.9

overseas travel associated with parliamentary committees is approved jointly by both Presiding Officers, who then advise the Premier in writing.

5.5 Reporting of overseas travel

The current arrangements regarding reporting overseas trips not undertaken on committee business are as follows:⁶⁵

For travel outside Australia, members shall, within sixty days of their return, provide an appropriate report on the nature of their investigations to the relevant Presiding Officer. This report should include:

- *a statement of the member's objectives;*
- *a brief description of the Parliaments and other organisations visited;*
- *a list of those persons met on parliamentary business and the assistance or information obtained from such persons;*
- *reference to any documents or publications obtained or considered to be of interest in a parliamentary sense;*
- *brief summaries of the study areas pursued in the countries visited; and*
- *a summary of the results achieved; and any recommendations arising.*

A copy of the report will be deposited in the parliamentary library.

The Committee believes members of Parliament should report and 45 days is a reasonable period within which members can provide an appropriate report.

The Committee recommends that:

Recommendation 13:	The Presiding Officers of the Victorian Parliament amend the policy relating to overseas travel by members of Parliament to provide an appropriate report to the Presiding Officers with 45 days of their return from overseas.
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The Committee noted that a significant proportion of overseas travel undertaken by members is not paid for by the state. This may lead to confusion in the public where there can be an assumption that any travel conducted by members is at the taxpayers' expense. Consequently the Committee advises that expenditure of state funds on international travel by members be carefully documented, and that Parliament summarises this expenditure in its annual departmental reports.

⁶⁵ Parliament of Victoria, *Members' Guide*, viewed 5 November 2007, <http://dps.parliament.vic.gov.au/membersguide>

CHAPTER 6: MODERNISATION OF PARLIAMENT INCLUDING THE PERMANENT ABOLITION OF WIGS AND OTHER ARCHAIC PRACTICES

6.1 Introduction

While the overarching focus of this inquiry is on government and parliamentary accountability, the terms of reference also called on the Committee to examine whether there were any aspects of parliamentary practice that could be modernised, in order to improve perceptions about the relevance of Parliament to the lives of Victorians. In this context, the Committee was asked to consider traditional practices such as headgear worn by the Presiding Officers of Parliament (although the Committee noted wigs have not been worn in the Council since 2002, and have only been worn in the Assembly during seven of the last 25 years). While this issue is arguably trivial compared with issues surrounding accountability in governance, the Committee is pleased to consider this term of reference to facilitate a community perception of relevance of parliamentary proceedings in the 21st century.

This chapter noted a range of initiatives recently taken in the Parliament, which are discussed below, before looking at a number of other archaic parliamentary practices that could usefully be changed to improve the accountability and efficiency of the Victorian Parliament.

6.2 Recent reviews of standing orders

The Committee noted that the standing orders of both houses of the Victorian Parliament have recently been updated as a result of reviews by their respective standing orders committees. Therefore, a large amount of work has already been done relating to the removal of archaic practices.

The Legislative Assembly Standing Orders Committee's *Report on the Modernisation of Standing Orders*⁶⁶ suggested a complete revision of the standing orders by recommending use of plain English, gender neutral terms, streamlined procedures and the removal of obsolete practices. The house adopted the recommendations outlined in that report and agreed to a new set of standing orders on 4 March 2004.

The Council has completely revised its standing orders on two occasions following reviews by its Standing Orders Committee in 2002 and 2006.⁶⁷ As a result of the recommendations from the committee, 58 obsolete standing orders were omitted. The standing orders are now written in clearer and concise language and in gender neutral terms, improving the efficiency of the Council's business.

⁶⁶ Legislative Assembly Standing Orders Committee, *Report on the Modernisation of Standing Orders*, November 2003

⁶⁷ Legislative Council Standing Orders Committee, *Report on the Review of the Standing Orders*, September 2002; Legislative Council Standing Orders Committee, *Final Report on the Review of the Standing Orders*, August 2006

In the remainder of the chapter, the Committee focuses on issues relating to the modernisation of Parliament that were raised in submissions to the inquiry.

6.3 Parliament's regional sittings

The Committee is of the opinion that the recent practice of Parliament sitting in regional cities has brought the institution closer and made it more accessible and more visible, to the Victorian community, thereby increasing its accountability to Victorians in general. The purpose of regional sittings is to give people the opportunity to see their elected representatives at work and to educate the public about the processes of Parliament.

In order to provide visitors with an accurate indication of what normally occurs when Parliament sits, the proceedings at regional sittings were designed to reflect, as much as possible, a typical sitting day.

The first regional sittings were on 16 August 2001, when the Council sat in Ballarat and the Assembly in Bendigo. These were the Victorian Parliament's first sittings outside of Melbourne in its 145 year history and were the first meetings of any Australasian legislature outside a capital city.

Since 2001, the Council has sat at Benalla on 20 October 2002 and at Colac on 17 November 2005. The Assembly also sat at Geelong on 17 November 2005. Both houses will sit in Gippsland on Wednesday, 15 October 2008 (the Assembly at Churchill and the Council at Lakes Entrance). The Council will also sit in Lakes Entrance on Thursday 16 October 2008.

The Committee believes regional sittings enhance the accessibility and accountability of Parliament. Such sittings should occur at least once every Parliament.

The Committee recommends that:

Recommendation 14: **Regional sittings of each house of Parliament should occur at least once in the life of every Parliament.**

6.4 Media coverage of Parliament

An important accountability mechanism in modern democracies is media coverage in parliamentary chambers and parliamentary precincts in general. Allowing the general public to view the operation of Parliament increases transparency and accountability. It also helps to educate the general public in how Parliament works. There are four sets of guidelines that regulate media access to the Victorian Parliament. The first two concern filming proceedings inside the Assembly and the Council respectively, the third relates to the Legislative Council Committee Room, and the last set relates to media coverage in the broader parliamentary precinct, including outside committee rooms, in corridors and other public areas within Parliament House and on the steps of Parliament.

The standing orders of both Houses of Parliament include detailed guidelines for the filming and broadcasting of parliamentary proceedings. While each house has different guidelines, both sets regulate the broadcasting of parliamentary proceedings in sound or visual form, or by publishing on the Internet. Among other things, the guidelines stipulate that:⁶⁸

- media organisations must be accredited by the respective Presiding Officer;
- broadcasts within the Chambers cannot commence before the end of the prayer or end after the adjournment of the house;
- broadcasts must not be used for political party advertising, election campaigns, satire or ridicule; and
- coverage must provide equality between government and non-government members.

The guidelines regulating filming throughout the parliamentary precinct are approved by the Presiding Officers. These guidelines are currently being reviewed, and any decision on whether to amend the guidelines will be made by the Presiding Officers themselves.

The Committee noted the importance of appropriate media access to the parliamentary precinct for promoting transparency and accountability. It also noted that this needs to be balanced against the need for rules to regulate media behaviour to allow for orderly proceedings and for members and staff to conduct their work in the parliamentary precinct without undue disruption.

6.5 Webcasting of Parliament

As the technology to webcast parliamentary proceedings has become available, parliaments in Australia have taken advantage of the technology. At the date of the completion of this report, only the Victorian, Tasmanian and South Australian Parliaments had not done so.

As noted above, the standing orders of both houses of the Victorian Parliament allow their proceedings to be published on the Internet. The Victorian Government announced in August 2007 that in 2008, it will provide funding for an audio webcast of all sessions of the Council and Assembly, including question time.⁶⁹

The Committee finds that that the proposed audio webcasting of the proceedings of the Victorian Parliament will support transparency and accountability. Provision should be made in the near future for video as well as audio webcasting. Consideration should also be given in due course to offering video webcast services of other parliamentary proceedings.

The Committee recommends that:

Recommendation 15:

Funding should be provided in the near future for the video webcasting of all sessions of the Legislative Council and the Legislative Assembly. Video webcasting of other parliamentary proceedings (for example, Committee meetings) could also be considered.

⁶⁸ Legislative Assembly, standing order 232; Legislative Council, standing orders 21.01, 21.02

⁶⁹ Hon. J Brumby MP, Premier, *Brumby vows to strengthen accountability in Victoria*, media release, 7 August 2007

6.6 Wigs and other uniforms

The Committee considers that the issue of wigs is irrelevant to the inquiry's primary objective to improve the accountability of Parliament, but it has considered the issue in light of modernising Parliament. Wigs were originally the fashion of the day. Fashion moved on but wigs remained in Parliament and in the courts. The Committee noted that other institutions have recently moved to modernise their ceremonial uniforms. For example, in August 2007, Victoria's County Court announced that its judges would no longer wear ceremonial wigs when hearing civil cases, though they would continue to wear them when hearing criminal cases.⁷⁰

In their submissions to the inquiry, the clerks of the Assembly and Council made it clear that wigs or other ceremonial dress had not been worn in either house since at least 2002, and that there is little prospect of their return.⁷¹

In the lower house, the wigs have only been worn for seven years in the last quarter of a century. The parliamentary clerks in the lower house have no desire to wear the wigs and I do not see any likelihood of them ever being worn in the lower house again. While I am dealing with the chamber staff uniforms, I should also make reference to the full Windsor court uniform. This is a traditional uniform that was supplied to parliamentary clerks and the Serjeant-at-Arms for use on formal occasions. It was last worn by staff at the opening of Parliament in 1999. Recently appointed clerks have not been supplied with this uniform and it will not be worn again.

And,⁷²

Wigs have not been worn in the Legislative Council since 2002 and Windsor court dress was last worn in 2000. No wigs or Windsor court dress were worn at the 2003 and 2006 openings of Parliament which have traditionally been regarded as full ceremonial dress occasions. It is hard to conceive the reintroduction of such attire.

The Committee finds that wigs and other ceremonial uniforms are no longer worn in either house of the Victorian Parliament and are highly unlikely to be worn in the future.

6.7 Obsolete phrasing

Another archaic custom in the Westminster tradition is the practice of members of one house not referring to the other directly. In practice, this means that when members from the Council (for example) refer to the Assembly, they will refer to it as 'the other place' or 'another place'. Today this phrasing is used both by members in the house, or if they refer to the other chamber directly, the phrase 'another place' is introduced in *Hansard*. While there are standing orders that restrict comment on certain debates or other matters from the other house,⁷³ members are not prohibited from referring to the other house directly. The Committee advises that this practice is obscure and obsolete, and that the legibility and relevance of the language used in

⁷⁰ Hon. R Hulls MP, Attorney General, *Hulls welcomes abolition of wigs for judges*, media release, 30 August 2007

⁷¹ Mr R Purdey, Clerk of the Legislative Assembly, submission no.24, p.4

⁷² Mr W Tunnecliffe, Clerk of the Legislative Council, submission no. 25, p.3

⁷³ Legislative Assembly, standing order 107; Legislative Council standing order 12.17

Parliament would be facilitated if members, and *Hansard*, were encouraged to refer to the other house directly.

6.8 The title ‘The Honourable’

The title ‘The Honourable’ has a long tradition in Parliament. Until the 56th Parliament, all members of the Council were entitled to use this title as a matter of course. The title can also be used by members of the Executive and the Presiding Officers. While Ministers and the Presiding Officers are still able to use this title, this is no longer permitted to members of the Council unless they have been either Ministers or have served as President. The Committee noted, however, that an increasing number of Ministers now elect to forgo this title, and are referred to as, for example, ‘Mr’ or ‘Ms’ instead.

6.9 Opposition Leader of Government Business

The Committee noted that, among the roles for members both in government and in opposition, the duties of the Opposition Leader of Government Business are onerous and require a great deal of time and effort. Currently a number of formal roles within the Parliament receive additional remuneration in recognition of the increased workload of those positions. However, while roles with comparable duties such as the Opposition Whip obtain additional remuneration, there is no additional salary for the Opposition Leader of Government Business. The Committee recommends that the important role of the Opposition Leader of Government Business in maintaining parliamentary accountability should be recognised through the introduction of provisions for increased remuneration.

The Committee recommends that:

Recommendation 16:	The Victorian Government amend Part Two Section 6 of the <i>Parliamentary Salaries and Superannuation Act 1968 (Vic)</i> to allow the Opposition Leader of Government Business in the Legislative Assembly an additional salary of 11 per cent per annum of basic salary.
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6.10 Resourcing of parties

Following changes to the constitution in the last Parliament, the 2006 election saw the introduction into the Council of elected representatives of two further parties, viz, the Greens and the Democratic Labor Party. The Victorian Nationals continue to enjoy ‘third party’ status by virtue of their combined numbers in the Assembly and the Council.

Currently, the *Parliamentary Salaries and Superannuation Act 1968 (Vic)* provides for ‘Ministers’, ‘the Opposition’ and ‘the third party’ as well as Presiding Officers. No specific provision is made for other parties or independents.

Within the act, a range of positions are delineated and various roles receive a pro-rata basis additional remuneration in recognition of the duties of various positions, for example, leader, deputy leader and whip from the three main parties. Funding has also traditionally been provided from the budget of the Department of Premier and Cabinet for additional resources

(for example, staffing and accommodation) for the opposition and third parties. It can be argued that the act endows defacto ‘party status’ which then attracts a further complement of staffing and other resources.

The Committee noted that the government has made additional resources available in the past to the independents.

The Committee believes that further consideration could be given to the appropriate resourcing of other parties or formal groups in Parliament, including through the possible amendment of the act. It noted that small parties need to respond to the full range of parliamentary legislation and proceedings, irrespective of their actual numbers. The Committee also noted that party resourcing issues (and the allocation of various positions such as committee chair) have traditionally been part of negotiations between all parties at the start of a Parliament.

The Committee recommends that:

Recommendation 17: **Consideration be given to the appropriate resourcing of other parties or formal groupings, including through the possible amendment of the *Parliamentary Salaries and Superannuation Act 1968 (Vic)*.**

6.11 Review of bills process

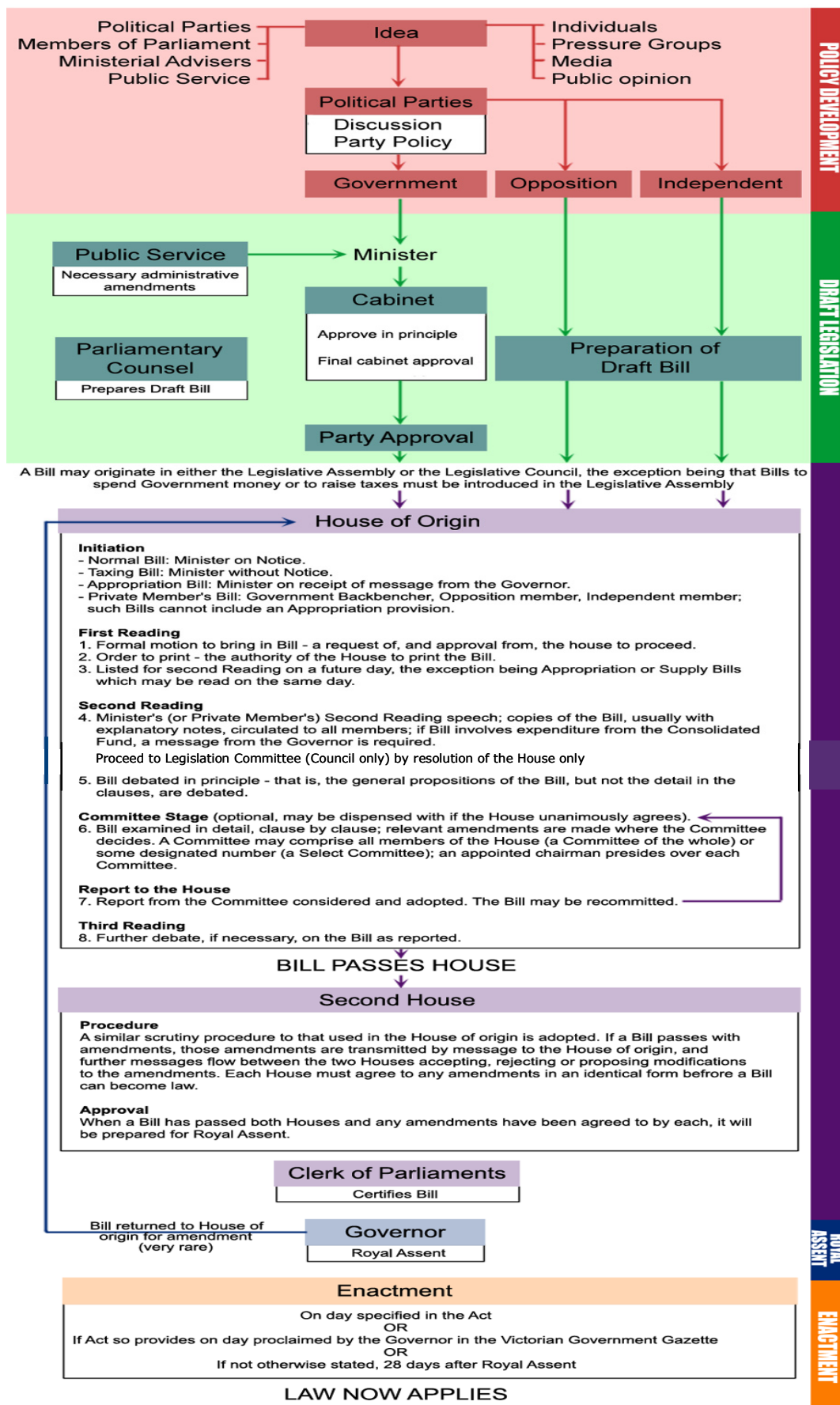
The Committee considers that the process involved in passing legislation should be as simple and as easy to follow as possible. By simplifying the process and making it more accessible to the general public, the Committee considers that it will improve the transparency of this vital function of Parliament and improve the accountability of the Parliament to the Victorian people.

The current process is long and complicated; it also contains steps that are no longer relevant in today’s modern Parliament. The standing orders of both Houses of Parliament include the procedural rules that apply to considering and passing legislation.⁷⁴ The Parliament’s website also contains information sheets, which explain the process in layman’s terms.⁷⁵ The following is an outline of the steps involved in a bill becoming law in Victoria. (It should be noted that most bills originate in the Assembly – bills can be referred in the Council to the Legislation Committee prior to consideration).

⁷⁴ Legislative Assembly, standing orders 59–86; Legislative Council, standing orders 14.01–14.37

⁷⁵ www.parliament.vic.gov.au/assembly/facts2.html, *Fact Sheet No.2, Stages of a Bill*, accessed 28 November 2007; www.parliament.vic.gov.au/council/info_sheets/Bills.htm, *Information Sheet No.10, Bills*, accessed 28 November 2007

Figure 6.1: How a Law is made in Victoria



A brief summary of the steps involved to pass legislation through the Victorian Parliament follows:

First house

- 1 Giving notice (Legislative Council only)
- 2 Introduction and first reading
- 3 Second reading
- 4 Legislation Committee (Council only) by resolution of the House only
- 5 Consideration in Detail (Assembly) or Committee of the Whole (Council). Not every bill requires this stage
- 6 Third reading
- 7 Message is sent to the second house

Second house

- 1 Message received from first house
- 2 Introduction and first reading
- 3 Second reading
- 4 Legislation Committee (Council only) by resolution of the House only
- 5 Consideration in Detail (Assembly) or Committee of the Whole (Council). Not every bill requires this stage
- 6 Third reading
- 7 Message sent to the first house

After passing both houses

- 1 Royal Assent and commencement

It is not clear that all these steps still serve a purpose. The convoluted nature of the process also makes it difficult for the Victorian public to understand and to follow the progress of particular pieces of legislation through Parliament. The Committee finds that the process involved in a bill becoming law is unnecessarily complicated, and can result in confusion and a corresponding lack of transparency and accountability.

Transparency would be enhanced by simplifying this process. The concept of ‘readings’ should be done away with as confusing and archaic. The stages should consist of:

- 1 Notice (except for taxing bills);
- 2 Introduction and tabling of bill and statement;
- 3 Debate, including detailed debate, or in the Council referral for the Legislation Committee as allowed for by standing orders; and
- 4 Vote.

A similar simplification should take place in the second house (usually the Council).

The Committee recommends that:

Recommendation 18: **The Legislative Assembly Standing Orders Committee and the Legislative Council Standing Orders Committee modernise and simplify the process for considering and passing legislation.**

6.12 Notices of motion

Members of Parliament in the Assembly are able, at the start of every day, to give notice of a motion that they wish to move at a future sitting. Such notices can be on any subject, and need to be submitted to the Clerk before they are presented to Parliament. They are then incorporated in the Notice Paper for the next sitting under general business. Notices that are not renewed after six months lapse.

Over the last few years there has been a substantial increase in the number of notices lodged as government and non-government members have vied with each other to take the time of Parliament to read out notices that are, more often than not, merely commendatory or congratulatory of the government or the opposition. As of 5 February 2008, there were 692 notices, few of which are likely to be debated. The main purpose of notices of motion appears to be to get certain matters ‘on the record’ – in this case on the notice paper.

The Committee is of the opinion that a mechanism should be introduced to the Assembly to allow members to place matters ‘on record’ – as is the current function of notices of motion – without taking up the time of the house unnecessarily. Similar to the House of Commons, this could be served by notices of motion being lodged with the Clerk by 10.00 am on the Tuesday of each parliamentary sitting week. Notices of motion could then be automatically included on the next day’s notice paper as is current practice. This revised procedure would provide the Assembly with additional debating time of up to 30 minutes a day. Notice of bills should continue to be given as at present.

The Committee recommends that:

Recommendation 19: **The Legislative Assembly Standing Orders Committee revise its procedures for notices of motion so that they are lodged with the Clerk and incorporated in the notice paper.**

6.13 Adjournment debate

The daily adjournment debate is a procedure whereby members can raise matters in Parliament on behalf of their constituents. The procedure is similar in some ways to question time, but the purpose of a question without notice is to seek information from the government, while the objective of raising an issue during the adjournment debate is to request that the government take action on a specific issue, which is often locally based.

In both Houses of Parliament, members raise matters for the attention of the responsible Minister. If the Minister is present in the house, he or she responds at the time. If they are not, the issues are referred to the Ministers for their attention. Currently, neither house's standing orders require that Ministers reply within a certain time, nor that the replies are tabled in the house or incorporated in *Hansard*.⁷⁶ The Committee considers that this omission undermines the important role of the adjournment debate, and reduces the accountability of the responsible Ministers to Parliament.

However, the Committee noted that on 31 October 2007, the Council voted to amend its sessional orders relating to the conduct of adjournment debates, which came into effect on 1 January 2008. The sessional orders stipulate that Ministers who are not present in the Council when the matter is raised are required to provide a response in writing within 30 days. A copy of the response is to be given to the member who raised the issue and all responses will be incorporated in *Hansard*.⁷⁷

The Committee recommends that:

Recommendation 20:	The Legislative Assembly Standing Orders Committee revise its standing orders so that Ministers who are not present in the Legislative Assembly when matters are raised during the adjournment debate relating to their portfolios are required to provide a response in writing within 30 days and that a copy of the response is to be given to the member who raised the issue and all responses be incorporated in <i>Hansard</i>.
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6.14 Modernising the opening of Parliament

The opening of Parliament and the address-in-reply are two parliamentary practices that could be seen as archaic. While they serve as a historical link from Westminster to the current Victorian Parliament, the Committee considers this inquiry provides an appropriate opportunity to review their operation.

The rules governing opening day procedures are quite detailed, and can be found in the standing orders of each house.⁷⁸ In his submission to the inquiry, the Clerk of the Legislative Assembly suggested a number of changes to opening day procedures, which are discussed below.

⁷⁶ Legislative Assembly, standing order 33; Legislative Council, standing orders 4.10-4.11

⁷⁷ *Hansard*, 31 October 2007, p.3278

⁷⁸ Legislative Assembly, standing orders 2-5; Legislative Council, standing orders 1.01-1.11

One of the traditions of opening day is for members of the Assembly to attend the Council Chamber to hear the reading of the commission from the Governor. Procedurally, it is not necessary for Assembly members to attend the Council Chamber. Consequently, the commissioner appointed to swear in members of the Assembly (normally the President of the Court of Appeal) could proceed directly to the Assembly Chamber and have the commission read to members by the Clerk.

The Committee agrees that the opening of Parliament should be simplified and supports this suggested procedure for opening day as described by the Clerk. However, the Committee believes that other aspects of opening day procedures and associated traditions are not relevant to Victoria in the 21st century. The opening of Parliament could be further simplified by requiring that each house meet separately for the reading of the commission, the swearing in of members and the election of Presiding Officers. When these activities are completed, the houses should adjourn without further formality to a joint sitting of the houses in Queens Hall. The joint sitting should commence with a welcome from the traditional owners, followed by a multifaith ceremony incorporated into the day, culminating in the presentation of the Governor's speech.

The Committee believes this program would prove superior to current procedures, as it provides a more practical venue for members to gather, and would also reflect equality between the houses, while acknowledging that the Parliament represents a diverse constituency: the citizens of Victoria.

The Committee recommends that:

Recommendation 21: **The Legislative Assembly Standing Orders Committee and the Legislative Council Standing Orders Committee revise their respective standing orders so as to modernise the opening of Parliament, whilst retaining traditional elements.**

In order to take their seats in Parliament, members are required to undertake an oath of allegiance to the Crown. The *Constitution Act 1978 (Vic)* requires the member to conduct an oath or affirmation defined in Schedule 2 of the act before the Governor or a person authorised by the Governor. The oath and affirmation currently described by Schedule 2 of the act follow:

Oath

I swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty and Her Majesty's heirs and successors according to law.

Affirmation

I do solemnly and sincerely affirm that I will be faithful and bear true allegiance to Her Majesty and Her Majesty's heirs and successors according to law.

[If circumstances so require, His Majesty is to be substituted for Her Majesty.]

The Committee received submissions suggesting that the oath currently undertaken by members in order to enter Parliament should be amended, so that allegiance currently offered to his or her Majesty and heirs should instead be offered to Australia and the people of Victoria. This is currently the form of oath taken by members of the New South Wales,

Western Australia and the ACT. The Committee is of the opinion that MPs should have a choice of form of oath or affirmation, that is, one that focuses on the members' responsibility to Australia and the people of Victoria, or the traditional format of swearing or affirming allegiance to the King or Queen.

The Committee recommends:

Recommendation 22: **The Victorian Government introduce legislation to amend the Second Schedule of the *Constitution Act 1978 (Vic)* to include an additional oath or affirmation of choice and incorporate the following wording:**

Oath
I swear by Almighty God that I will be faithful and bear true allegiance to Australia and the people of Victoria according to the law.

Affirmation
I do solemnly and sincerely affirm that I will be faithful and bear true allegiance to Australia and the people of Victoria according to the law.

6.15 Condolence motions

The standing orders of both houses of the Victorian Parliament allow for condolence motions in the event of a death of a member of the current Parliament; or a past or present Governor, Premier, Presiding Officer, Minister, or party leader in either house and any other office holder mentioned in the standing order.⁷⁹ The motions are then followed by an adjournment.

The Clerk of the Legislative Assembly noted in his submission to the inquiry that there is currently no standard period of adjournment in the Assembly following a condolence motion, and that he is often asked for an appropriate length of adjournment. This is in contrast to the Council, which has recently adopted the practice of a fixed one hour adjournment in the event of the death of an office holder mentioned in the standing order.⁸⁰ The Committee finds that a fixed one hour adjournment in the event of a death of an office holder mentioned in standing order 42 of the Assembly is an appropriate and respectful procedure.

The Committee recommends that:

Recommendation 23: **The Legislative Assembly Standing Orders Committee revise its standing orders to allow for a fixed one hour adjournment in the event of the death of a member of the Legislative Assembly or a former member who was a nominated office holder.**

⁷⁹ Legislative Assembly, standing order 42; Legislative Council, standing order 5.12

⁸⁰ Mr R Purdey, Clerk of the Legislative Assembly, submission no.24, pp.3–4; Legislative Council, standing order 5.04,

CHAPTER 7: REFORM OF THE PROCESS FOR DEALING WITH PETITIONS

7.1 History of petitions

Petitions have long played an important role allowing individuals or community groups to directly raise their concerns with their sovereign, government or Parliament. As such, the right to petition is seen as one of the most ancient and fundamental rights of citizens. In Roman times, citizens had the right to send written pleas, requests and complaints to the emperor. At this time, the practice was known as supplication, deriving from the Latin verb ‘supplicare’, meaning ‘to fall on one’s knees before someone’.⁸¹

While petitioning Parliament dates back to the 13th century, the Bill of Rights restated the right of citizens to petition Parliament in unambiguous terms in 1688, ‘... *it is the right of the subjects to petition the King, and all commitments and prosecutions for such petitioning are illegal*’.⁸² This right of petitioning was inherited by all Australian citizens and parliaments, and remains basically unchanged to this day.

Historically, in the UK Parliament, petitions often generated debate around the issues raised. However, during Victorian times, the number of petitions submitted to Parliament grew considerably and were sometimes used to obstruct parliamentary business. In 1841, for example, 18,648 petitions were tabled in Westminster. As a result, in 1842 debate on the merits of an individual petition was ruled out of order, except in cases of petitions of exceptional urgency.⁸³

7.2 Current situation in Victoria

For a petition to be presented to Parliament, the lead petitioner (the first signatory on any petition) must gain sponsorship for the petition by a member of the Assembly or Council. There are currently two methods by which petitions can be presented to the relevant house. The most common method is presentation by the Clerk during formal business. Another method is for the terms of a petition to be read to the house. A copy of each petition tabled is then forwarded to the responsible Minister for consideration.⁸⁴

While the rights of citizens to petition Parliament remain, the central role of petitions in initiating legislation or other actions has diminished as other methods of raising individual grievances have become more prominent. In the 21st century, citizens have a range of options to redress personal grievances, including approaching their member of Parliament to make representations on their behalf, making a complaint to the Ombudsman, or, bringing their

⁸¹ *From the history of petition law*, viewed 9 October 2007, www.landtag.sachsen.de/slt_online/en/infothek/index.asp?page=volksvertretung/buerger_und_parlament/petition/geschichte.html

⁸² House of Commons Information Office, *Public Petitions Fact sheet P7*, viewed 9 October 2007, www.parliament.uk/documents/upload/P07.pdf,

⁸³ House of Commons Information Office, *Public Petitions Fact sheet P7*, viewed 9 October 2007, www.parliament.uk/documents/upload/P07.pdf

⁸⁴ Legislative Assembly of Victoria, *Standing Orders and Joint Standing Orders and Joint Rules of Practice of the Parliament of Victoria*, standing orders 44–52, pp.31–33; Legislative Council of Victoria, *Standing Orders*, standing orders 10.01–10.09, pp.32–33

complaints before a court or tribunal.⁸⁵ These approaches are complemented by the media's role in publicising issues of more general concern.

Both houses of the Victorian Parliament recently adopted revised standing orders (the Assembly in March 2004 and the Council in December 2006), which modernised the process for lodging petitions. The new standing orders resulted in the removal of the requirement for the petition to end in a prayer and the prohibition of references to debates in Parliament.⁸⁶ No change was made to the method of presentation.

In light of these developments, the inquiry's sixth term of reference required the Committee to examine how the process of dealing with petitions could be improved in the Victorian Parliament. The Committee mainly focused on three areas: the presentation of petitions to Parliament, debating petitions in Parliament and the process of replying to petitions.

As a general principle, the Committee noted that petitions provide a direct avenue for the public to Parliament. They represent a clear measure of community views or feeling on a specific issue. As such, they are one of the few direct communications between the public, members and Parliament.

The Committee recognises that the way petitions are handled can be a test of the relevance and credibility of Parliament and the Committee agrees that it is appropriate that lead petitioners receive an answer from the government. It believes that accountability and the credibility of Parliament would be strengthened by Parliament ensuring that Ministers and departments consider the issues raised in a petition and respond to them in a timely manner.

It is important that processes for preparing and lodging petitions with the Parliament should be clear, easy to understand and simple to do. It should not be difficult to prepare and lodge a petition. Petitions that do not comply with the prescribed format cannot be lodged with Parliament, however, the recent simplification of the rules has resulted in fewer petitions being ruled out of order. Any further efforts to improve the accessibility of petitions, would be welcomed by the Committee.

7.3 Reception and presentation of petitions to the Legislative Assembly

Petitions are usually directed to individual members of Parliament by a lead petitioner. Often, MPs are asked to present similar or identical petitions. Standing orders dictate the format and acceptability of petitions. Members are required to sign the first page of a petition, and the petition is either presented by the Clerk to the house of the sponsoring member, or the sponsoring member reads the terms of the petition to the house during a member's statement.

The Committee is satisfied that the current system of presenting petitions through members of Parliament and assessment by the Clerk for compliance prior to presentation, is working well. The Committee noted, however, that the system could be made more accessible if petitions could also be made directly to the Assembly through the Speaker. The Committee had concerns about potential manipulation of this process, in that the Speaker could be flooded by

⁸⁵ K Ellingford, *The purpose, practice and effects of petitioning the Victorian Parliament*, paper prepared as part of the ANZACATT Parliamentary Law, Practice and Procedure Course, Queensland University of Technology, 2007, p.2

⁸⁶ Mr W Tunnecliffe, Clerk of the Legislative Council, submission, no.25, p.5

single petitions on a specific topic. Appropriate procedures might need to be developed for such eventualities.

On balance, the Committee recommends further efforts to improve accessibility.

The Committee recommends that:

Recommendation 24: **The Legislative Assembly Standing Orders Committee revise the standing orders to allow petitions to be presented directly to the Legislative Assembly, through the Speaker as well as through individual members of Parliament.**

Besides members' statements, there are other occasions when members can raise issues brought to their attention by constituents. These include, in both houses, the adjournment debate and in the Assembly, the grievances debate.

These debates afford a member more time for raising an issue than does a 90 second statement. It could be used by MPs to make a more extended presentation of issues raised in a petition.

The Committee agrees with the recent report of the Procedure Committee of the House of Representatives on petitions, which recommended that further opportunities be made available to members to present petitions.⁸⁷

The Committee recommends that:

Recommendation 25: **The Legislative Assembly Standing Orders Committee revise the standing orders to allow members to present petitions during the adjournment debates in the Legislative Assembly and the Legislative Council, and during the grievance debate in the Legislative Assembly.**

The Committee sees no need to change procedures in the Council.

7.4 Debate on petitions in the Victorian Parliament

Rules governing the debate of petitions in the Victorian Parliament mirror that of the UK system, where petitions are only debated in urgent situations. In the Assembly, standing order 51 states:⁸⁸

- (1) *When a petition is presented, the only questions the house can consider are 'That the petition is tabled' and 'That it be taken in consideration' (on a stated future day). These questions must be decided without amendment or debate.*

⁸⁷ *Making a difference – Petitioning the House of Representatives*, House of Representatives, Standing Committee on Procedure, August 2007, Canberra, p.24 [Note – Reference to be checked]? Notes written by Chair 22/01/08

⁸⁸ Legislative Assembly of Victoria, *Standing Orders and Joint Standing Orders and Joint Rules of Practice of the Parliament of Victoria, Standing Orders*, standing order 51, p.33

- (2) *The house may consider a petition immediately if it concerns a personal grievance which may require an urgent remedy.*

If a Minister asks that a petition be considered, it becomes a listed item of government business on the notice paper.

The corresponding Council standing order states:⁸⁹

Subject to standing order 10.08, the President will not allow any debate upon or in relation to a petition. The only questions which may be moved on the presentation of a petition will be 'That the petition do lie on the Table' and, if desired, 'That it be taken into consideration (on a future day to be named)', which will be decided without amendment or debate.

Following this, standing order 10.08 states:⁹⁰

The Council may consider a petition immediately if it concerns a personal grievance which may require an urgent remedy.

Despite standing orders providing the opportunity, during 2006, no petitions were considered in either house after their tabling.⁹¹ Notwithstanding the fact that there a variety of alternative ways for members of the public to raise issues in Parliament, the lack of debate in Parliament on petitions can be viewed as a weakness in Parliament's accountability to the public. In its recent report on petitions and early day motions, the UK House of Commons Procedure Committee recommended that there should be regular opportunities for members to initiate a debate on a specific petition.⁹²

The Committee noted however that in both the Assembly and the Council, issues raised by petitions can become the subject of parliamentary debate, for example, petitions relating to a bill before the house, or as a matter of public importance in the Assembly, or by way of a substantive motion on an issue in the Council.

7.5 Replies to petitions by the Victorian Parliament: current practice

The current situation in both houses of the Victorian Parliament is that there is no requirement for a petition to be replied to, either by the Parliament or by the Minister responsible for the administration of the particular issue raised in the petition.

⁸⁹ Legislative Council of Victoria, *Standing Orders*, standing orders 10.07, p.33

⁹⁰ Legislative Council of Victoria, *Standing Orders*, standing orders 10.08, p.33

⁹¹ K Ellingford, *The purpose, practice and effects of petitioning the Victorian Parliament*, paper prepared as part of the ANZACATT Parliamentary Law, Practice and Procedure Course, Queensland University of Technology, 2007, p.14

⁹² House of Commons Procedure Committee, *Public Petitions and Early Day Motions, First Report of Session 2006-07*, May 2007, p.17, viewed 30 October 2007
www.publications.parliament.uk/pa/cm200607/cmselect/cmproced/513/513.pdf

The standing orders of both houses stipulate that the Clerk refers copies of the terms of petitions to the Minister responsible for the administration of the issues raised in the petitions.⁹³ Once the relevant Minister receives the petition, there is no requirement that he or she tables a reply to the petition in Parliament.

The Committee considers that this lack of response potentially undermines public confidence in Parliament, especially as members of the public often invest a lot of time and energy collecting signatures and presenting petitions on issues the signatories may feel strongly about. The Committee finds that the lack of response to petitions is unsatisfactory, and undermines the important role of petitions and Parliament's accountability to the Victorian public.

7.6 Replies to petitions in other jurisdictions

7.6.1 Replies to petitions in Australian parliaments

Australian parliaments take a variety of approaches in replying to petitions. Most methods emphasise the primacy of the government, in that a reply is made by the responsible Minister. Most petitions ask for an action to be undertaken by the government of the day and this is considered a reasonable approach. However, given that petitions are presented to Parliament, Ministers should be accountable to Parliament for petition replies and through this, be accountable to the general public.

The ACT's Legislative Assembly and both houses of the New South Wales and the South Australian parliaments handle petitions in a similar fashion to both Victorian Houses of Parliament, in that petitions are tabled in the house and that no debate typically takes place on them. In all cases, the petitions are referred to the responsible Minister, who is not compelled to reply.⁹⁴

The Northern Territory's Parliament and both houses of Parliament in Tasmania take a similar approach to Victoria, but the responsible Minister is required to present a reply to the house where the petition was tabled. In the Northern Territory, the responsible Minister must lodge a reply with the Clerk of the Assembly within 12 sitting days of receiving the petition; in Tasmania, the text of each petition is communicated to the Premier and, in both houses, a government response must be tabled within 15 sitting days.⁹⁵

The Queensland Parliament publishes ministerial responses to petitions on its own website. While Ministers are not required to reply to petitions, this approach both promotes transparency and encourages community participation in the petitions process. It also seems to encourage a response by Ministers. As at October 2007, a total of 169 petitions had been presented during 2006 and 153 replies had been posted on the Queensland Parliament's

⁹³ Legislative Assembly of Victoria, *Standing Orders and Joint Standing Orders and Joint Rules of Practice of the Parliament of Victoria*, *Standing Orders*, standing order 52, p.33; Legislative Council of Victoria, *Standing Orders*, standing orders 10.09, p.33

⁹⁴ Legislative Assembly for the Australian Capital Territory, *Standing Orders and other Orders of the Assembly*, standing order 100, p.21; Parliament of New South Wales Legislative Assembly, *Standing Orders*, standing order 115, p.43; House of Assembly, *Standing Order for Regulating the Public Business for the House of the Assembly together with the Joint Standing Orders of Houses*, standing order 86; Legislative Council, *The Standing Orders of the Legislative Council relating to Public Business together with the Joint Standing Orders agreed to by both Houses*, standing order 93

⁹⁵ Legislative Assembly of the Northern Territory, *Petitions*, viewed 9 October 2007; www.nt.gov.au/lant/pub/ip4.shtml; Parliament of Tasmania, *Information and Guidelines – E-Petitions trial*, viewed 9 October 2007, <http://210.8.42.131/view/EPetitions%5FTAS%5FAssembly/forms/InformationBrochure.pdf>.

website, a response rate of 90 per cent.⁹⁶ This compares favourably with the Australian House of Representatives, which receives only one or two ministerial responses to petitions each year, or the ACT Legislative Assembly, where six ministerial responses were received between December 1995 and January 2007.⁹⁷ It is worth noting that this system of ministerial responses works in tandem with e-petitioning, which suggests that an online system of replying to petitions is an effective method of engaging the community.

The Parliament of Western Australia refers all its petitions to the Environment and Public Affairs Committee, the only Australian Parliament to involve a parliamentary committee in the petitions process. The committee, however, is a combined subject and petitions committee, not a dedicated petitions committee. The committee has appointed a sub-committee to deal with routine administrative matters and preliminary investigations of petitions.

On receipt of a petition, the sub-committee generally invites the tabling member, principal petitioner and, where it considers it appropriate, the relevant government Minister(s) to make a submission and provide information concerning the matters and issues raised in the petition. The sub-committee may make preliminary investigations to obtain background information on the issues from government agencies, private organisations and individuals.

The sub-committee considers the submissions and other information received and then reports to the full committee, usually with a recommendation to either:

- finalise the petition, that is, to not inquire further into the petition; or
- formally inquire into the petition.

If the Committee resolves to formally inquire into a petition, it may:

- arrange hearings at which discussion occurs on the various issues raised in the petition;
- gather additional information; or
- prepare a report on the petition for tabling in the Council.⁹⁸

Following the 2007 federal election, the new government through the Leader of the House, has announced that the new Parliament will establish a petitions committee.⁹⁹ The proposed House of Representatives petitions committee will receive and consider petitions lodged and report on appropriate action. The federal government sees this as a reform that ‘strengthens the democratic rights of citizens and ensures that Parliament is listening and responding appropriately’.¹⁰⁰

⁹⁶ Queensland Parliament, *Queensland Parliament Petitions*, viewed 10 October 2007, www.parliament.qld.gov.au/view/EPetitions%5FQLD/Default.aspx?LIndex=0

⁹⁷ K Ellingford, *The purpose, practice and effects of petitioning the Victorian Parliament*, paper prepared as part of the ANZACATT Parliamentary Law, Practice and Procedure Course, Queensland University of Technology, 2007, p.16

⁹⁸ Western Australian Legislative Council, *Report of the Standing Committee on Environment and Public Affairs Sessional Report: An overview of petitions and inquiries second session of the thirty-sixth parliament* (August 2002 to November 2004), report No. 14, November 2004, pp.2–3

⁹⁹ Hon. A Albanese MP, *New Parliament to establish new petitions committee to listen to millions of Australians*, media release, 11 January 2008, www.alp.org.au/media/0108/mslh110.php

¹⁰⁰ Hon. A Albanese MP, *New Parliament to establish new petitions committee to listen to millions of Australians*, media release, 11 January 2008, <http://www.alp.org.au/media/0108/mslh110.php>

7.6.2 Replies to petitions in non-Australian Parliaments

Parliaments throughout the world have adopted a number of approaches to ensuring that petitioners receive a reply. Approaches tend to either require a reply by the responsible Minister, or involve a reference for a standing committee or involve management of petitions by a dedicated parliamentary committee. The submission of the Federal Department of the House of Representatives to the inquiry on improving the effectiveness of the petitions process included the following survey of practice on other parliaments.¹⁰¹

Table 7.1: Practices of other Parliaments on petitions

Country	Presented petition referred?	Obligatory response time?	Responses printed/acknowledged?
Canada (House of Commons)	Referred to government for reply. If no reply within designated time referred to Committee of the house	Within 45 days	Each petition receives an individual response After being tabled in the house, a government response to a petition is recorded in the Journals
India (Lok Sabha)	Referred to Committee on Petitions. Can seek government responses, take evidence and suggest remedial action	None	Reports to the Lok Sabha
New Zealand	Relevant standing committee reports to the house if / when appropriate	If reported to the house, government must reply within 90 days	The clerk of the committee notifies petitioners of the committee's deliberations, following its report to the house
Scotland	Public Petitions Committee which then considers any further action to be taken	None If no observations are to be made, however, the presenting member is so advised	All petitions receive a written acknowledgement on lodgement; where follow-up is not pursued, a response explains why
UK (House of Commons)	Relevant government department and relevant select committee of the house	No obligation to reply, although MP must be advised if there is no reply	Any observations made by Minister are printed and circulated as a supplement to Votes and Proceedings and sent to the presenting member
Wales	The relevant Assembly Minister or, if appropriate, the relevant subject committee	None	Minister responds to main petitioner; copy sent to Petitions Clerk, receiving member and the Members' Library

Source: House of Representatives Standing Committee on Procedure, *Making a difference – Petitioning the House of Representatives*, August 2007, Canberra, p.11, Appendix F, submission no.1

7.7 Ensuring replies to petitions in Victoria

The Committee considers it appropriate that a Victorian citizen who commits the time and effort to organise a petition should receive a response through the House of Parliament where it was tabled. The current practice of referring the petition to the responsible Minister for

¹⁰¹ House of Representatives Standing Committee on Procedure, *Making a difference – Petitioning the House of Representatives*, August 2007, Canberra, p.11, Appendix F, submission no.1

possible reply is, in the opinion of the Committee, insufficient. A higher standard of accountability demands that all petitions be considered and replied to.

The Committee is aware that a number of jurisdictions have established a petitions committee or refer petitions to a standing committee. In many cases, such an approach includes the total management of petitions; for example, reception, assessment, referral and reporting. The Committee believes that the current management system of petitions in Victoria for a Parliament of its size and nature is appropriate while recognising that changes, especially to responding to petitions will improve accountability.

Accordingly, the Committee's view is that on the advice of the Leader of Government Business, petitions be referred to the appropriate Ministers and that Ministers should respond to all petitions lodged or presented by a member of Parliament.

Further, in recognition that petitions are presented to Parliament, such replies should be included in *Hansard* in the same way as questions on notice. A copy of the reply should automatically be sent by Ministers to the lead petitioner as well as to the sponsoring member of Parliament.

The Committee believes this will ensure that every petition is considered and answered by the government, whereas a petitions committee might only refer some petitions for review and reply. The Committee also believes that replies should be timely. Jurisdictions have varying requirements for responses, with Canada requiring responses be made in 45 days and New Zealand in 90 days. The Australian House of Representatives recommended 90 days.

The Committee believes responses should be made by Ministers within 90 days of presentation of a petition to the house. Responses should be lodged with the Clerk for inclusion in *Hansard* with copies sent to the lead petitioner and the sponsoring MP, Speaker or President.

A minor variation to the petition format will be required to ensure the inclusion of the contact details of the lead petitioner (that is, address or email).

The Committee recommends that:

Recommendation 26:

- (a) The Legislative Assembly Standing Orders Committee and the Legislative Council Standing Orders Committee consider revisions to the standing orders requiring the relevant Minister to give a response to a petition lodged or presented by a member to the Clerk of the House.**
- (b) Such ministerial responses should be provided to the Clerk of the House and should be published in Hansard within 90 days of presentation of the petition to the house.**

7.8 E-petitions

A number of parliaments around the world, including those of Tasmania, Queensland, Scotland and Germany (Bundestag) currently use e-petitions. The Committee supports the establishment of an e-petitions system, as it would improve the efficiency and accountability of Victoria's petitioning system. During the last Parliament, the Scrutiny of Acts and Regulations Committee, in its May 2005 report, *Victorian Electronic Democracy*, recommended that:¹⁰²

The Parliament of Victoria should introduce an online petitions facility on a trial basis, subject to ongoing evaluation as to the benefits offered to Victorians. The Victorian online petition system should include a moderated discussion facility, similar to that provided by the Scottish Parliament.

The Committee finds that the possible implementation of e-petitions should be considered in parallel with an improved system of replying to petitions, and that an electronic system for petitioning and replying to petitions would result in a more efficient and accountable process.

The Committee recognises that the establishment of an effective e-petitions facility in the Victorian Parliament is a complex project, and requires careful consideration of procedural and technical issues. The Committee has serious concerns about the potential manipulation of any e-petitions systems, for example, potential 'flooding' from interstate or overseas or through the multiple presentations of single named petitions. The Committee also recognises that the Standing Orders Committee in the Assembly has commenced work on this issue. The Committee recommends that work commence within the Standing Orders Committees of both houses and the House Committee to examine how the implementation of e-petitions could best proceed.

The Committee recommends that:

Recommendation 27:

The Legislative Assembly Standing Orders Committee, the Legislative Council Standing Orders Committee and the House Committee examine procedural and technical requirements for the implementation of an e-petitions facility in Parliament, and produce a report describing how implementation of the facility might proceed.

¹⁰² Scrutiny of Acts and Regulations Committee, *Victorian Electronic Democracy*, May 2005, p.207

CHAPTER 8: SUPPLEMENTARY ISSUES

8.1 Supplementary issues raised by witnesses

As noted in Chapter One of this report, during the course of the inquiry, witnesses raised issues for consideration by the Committee that did not fall within the terms of reference. The principal matters presented for the Committee's consideration concerned the introduction of a ministerial code of conduct and examination of the conduct of present and former members of Parliament in regard to lobbyists. These issues are considered below.

8.2 Ministerial responsibility and code of conduct

Most submissions to this inquiry referred to the behaviour of Ministers, and many suggested that a code of conduct be developed for Ministers of the Victorian Government.

The Committee was presented with a range of ideas for a ministerial code of conduct and this was clearly seen by many witnesses as a key to increased transparency and accountability by government. However, this issue falls outside the inquiry's third term of reference, as that specifically relates to parliamentary behaviour, not that of Ministers being singled out in their roles as the executive. The Committee considers that, under the system currently operating in Victoria, the Premier, as the head of executive, should take political responsibility for the actions of the ministry, while all members are responsible, in the first instance, to Parliament for their behaviour.

Other jurisdictions, including the Commonwealth, Western Australia, South Australia, the United Kingdom and Scotland have ministerial codes of conduct. Such a code was in use by the federal coalition government and the newly elected Prime Minister, Hon. Kevin Rudd MP issued a revised code in December 2007.¹⁰³

The Committee agrees with evidence presented to it, suggesting that a ministerial code of conduct should be put in place by the Premier of Victoria.

The Committee recommends that:

Recommendation 28:	The Premier of Victoria implement a ministerial code of conduct in line with the Commonwealth and other states.
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¹⁰³ Prime Minister, Press Conference, 6 December 2007. See <http://www.alp.org.au/media/1207/pcpm060.php>. Also Standards of Ministerial Ethics December 2007 replacing Chapter 5 of the Guide on Key Elements of Ministerial Responsibility at http://www.pmc.gov.au/guidelines/docs/ministerial_ethics.rtf

8.3 Lobbying

The issue of political lobbying was raised in a number of submissions to the inquiry.¹⁰⁴ Most of these submissions argued for a register of lobbyists, as well as restrictions on the employment of members after their parliamentary career finished. Submissions argued that restrictions should be introduced to stop members working as lobbyists, or from receiving a benefit for lobbying, for organisations which the member had dealings with while in office. These restrictions would apply for a defined period from the end of a member's tenure in Parliament.

The Committee has not specifically taken up the issue of political lobbying as it was not among the six issues defined in the terms of reference for consideration by this inquiry.

The Committee noted however, the current government's commitment to 'work with the other states to implement a nationally consistent scheme for registration of political lobbyists'.¹⁰⁵ The pre-election policy noted that:¹⁰⁶

Victoria will join with Western Australia and other interested states to:

- *develop a central register of lobbyists and their clients available to the public;*
- *require a professional lobbyist (that is, a person who acts for payment) to be registered in order to pursue their vocation;*
- *require registered lobbyists to regularly update which companies or organisations they are representing;*
- *impose a clear onus on lobbyists to declare their interests when arranging meetings with state government officials;*
- *provide a code of conduct for lobbyists which covers their contact with Ministers, Ministerial offices or public servants; and*
- *provide a system for dealing with breaches of the code.*

The policy further stated that the issues underpinning such a proposed register 'will be considered by the all party Parliamentary Committee on Accountability'.

The Committee noted that the revised Commonwealth code of conduct for Ministers includes a section on contact with lobbyists by Ministers including a requirement that lobbyists register with the Department of Prime Minister and Cabinet.¹⁰⁷

8 Contact with Lobbyists

- 8.1 *Ministers will be approached by individuals and organisations, acting on their own behalf or on behalf of others, whose purpose is to seek to influence (lobby) government on a variety of issues*

¹⁰⁴ Women's Electoral Lobby, submission no.1; Professor M Prior AO FASSA, submission no.3; Hon. AJ Hunt, AM, submission no.5; P Vickery QC LL.B (Melb) LL.M (Lond.), submission no.6; C and R Money, submission no.7; Associate Professor K Coghill PhD, submission no. 8; Ms A Mancini and Mr J Gellie, submission no.13; Liberty Victoria, submission no.13

¹⁰⁵ Australian Labor Party, Policy for the 2006 Victorian Election, *Strengthening our Democratic Institutions*, p.8

¹⁰⁶ Australian Labor Party, Policy for the 2006 Victorian Election, *Strengthening our Democratic Institutions*, p.8

¹⁰⁷ Standards of Ministerial Ethics, December 2007, p.7, See www.pmc.gov.au/guidelines/docs/ministerial_ethics.rtf

- 8.2 *The Department of the Prime Minister and Cabinet will establish and maintain a Register of Lobbyists and make it available online. Lobbyists will be required to register their details on the Register before seeking access to Ministers or their offices*
- 8.3 *Ministers should ensure that dealings with lobbyists are conducted so that they do not give rise to a conflict between public duty and private interest*
- 8.4 *In dealing with a lobbyist who is acting on behalf of a third party, it is important to establish whose interests the lobbyist represents so that informed judgments can be made about the outcome they are seeking to achieve*
- 8.5 *Ministers should ensure that lobbyists with whom they have dealings are properly registered, and must report any instance of non-compliance with the requirements relating to lobbyists*
- 8.6 *In addition, as outlined earlier, Ministers will undertake that for an eighteen month period after ceasing to be a Minister, they will not lobby, advocate or have business meetings with members of the government, Parliament, public service or defence force on any matters on which they have had official dealings as Minister in their last eighteen months of office*
- 8.7 *Where representations are being made on behalf of a foreign government or the agency of a foreign government, special care needs to be exercised as foreign policy or national security considerations may apply. It may be appropriate in certain cases to advise the Minister for Foreign Affairs of representations received*

The Committee noted the recent initiative at the federal level deals specifically with Ministers and that it provides guidance for a similar code here in Victoria. Consideration would need to be given to how such a code in Victoria might have wider application to all members of Parliament and how it would relate to other codes in Australian states. It recognises that a national register would have advantages while recognising that some lobbyists will remain state based.

The Committee supports the principles for contact with lobbyists currently in place at federal level, and also noted and supports the commitment of the Victorian Government to introduce a parallel code of conduct.

This report was adopted by the Public Accounts and Estimates Committee at its meeting held on 26 March 2008 in the Legislative Council Committee Room in Parliament House, Melbourne.

APPENDIX 1: ACRONYMS AND ABBREVIATIONS

ASPG	Australasian Study of Parliament Group
DCPD	Drugs and Crime Prevention Committee
EDIC	Economic Development and Infrastructure Committee
EMC	Electoral Matters Committee
ENRC	Environment and Natural Resources Committee
ETC	Education and Training Committee
FCDC	Family and Community Development Committee
GOPAC	Global Organisation of Parliamentarians Against Corruption
LRC	Law Reform Committee
OSISDC	Outer Suburban/Interface Services and Development Committee
PAEC	Public Accounts and Estimates Committee
RRC	Rural and Regional Committee
RSC	Road Safety Committee
SARC	Scrutiny of Acts and Regulations Committee

APPENDIX 2: GLOSSARY

Accountability	The state of being accountable, liable, or answerable
Address in reply	The formal answer of each house to the speech made by the Governor (as the Queen's representative) at the opening session of each Parliament.
Adjournment debate	A debate held at the end of each sitting day in Parliament in which Members can raise a matter of government administration for a Minister's attention.
Bills	A proposed law (or statute, or piece of legislation) that is introduced into Parliament but has not yet been passed. If passed and granted Royal Assent, it becomes an act.
Clerk of the House	The most senior parliamentary officer in each chamber.
Code of conduct	A list of principles, values, standards, or rules of behavior that guide the decisions, procedures and systems of an organisation or group.
Commonwealth Parliamentary Association	An association of Commonwealth Parliamentarians who are united by community of interest, respect for the rule of law and individual rights and freedoms, and by pursuit of the positive ideals of parliamentary democracy.
Condolence motion	A formal motion in the event of a death of a member of the current Parliament, or a past or present Governor, Premier, Presiding Officer, Minister or party leader in either house.
Conflict of interest	A situation in which someone in a position of trust, has competing professional or personal interests.
Division	A vote taken in a House of Parliament when the names of Members are recorded individually according to how they vote.
Domestic committee	A parliamentary committee that is concerned with the maintenance and operation of Parliament.
Executive council	Current Victorian Ministers who advise the Governor in exercising his various powers.
Executive government	Executive government is made up of parliamentarians appointed as Ministers who manage government departments.
First reading	The stage in parliamentary proceedings at which permission is obtained to proceed with a bill.
Governor	The Queen's representative in Victoria.
Governor in council	The formal meeting of the Governor and the Executive Council.
Hansard	The written record of parliamentary debates.
House of review	A term applied to those second chambers and upper houses responsible for providing a second opinion or look at bills passed by the lower house; in Victoria, the Legislative Council.
Houses	Term used to refer to both the Legislative Council and the Legislative Assembly.
Joint investigatory committee	A parliamentary committees comprising members from both houses and all political parties represented in the Victorian Parliament. The committee is given terms of reference, which set out what the committee is to investigate and deadlines for reporting these investigations.
Legislation	Laws enacted by a Legislature or Parliament.
Legislative Assembly	The lower house of the Parliament of Victoria. (The party or group of parties that enjoys the support of the majority of members of the Legislative Assembly forms the government).

Legislative Council	The upper house of the Parliament of Victoria.
Lobbying	A concerted effort designed to effect influence, typically over government authorities and elected officials.
Minister	A member of the government responsible for one or more portfolios and/or government departments; he or she is also a member of Cabinet.
Ministerial statements	A short statement of government policy, delivered by a Minister to either house.
Naming of a member of Parliament	If a member persistently and wilfully disregards the authority of the Presiding Officer or obstructs the business of the house, the Presiding Officer can name and suspend the member. That means the member is referred to by name rather than by electorate or title of office.
Opening of Parliament	The ceremonial beginning to each session of Parliament.
Parliament	The Parliament of Victoria consists of the Queen, the Legislative Assembly, and the Legislative Council; also used to refer to the two houses.
Parliamentary committee	A group of Members of Parliament that considers matters referred to it and reports its findings to Parliament.
Parliamentary standards commissioner	A person appointed to advise and monitor the behaviour of members of Parliament.
Petitions & E-petitions	A petition is a parliamentary form that provides a direct means by which any citizen or group can place concerns before the Parliament. An e-petition is submitted to Parliament via email or the internet.
Points of order	A formal protest raised by a member when they believe that proceedings are not in accordance with the house's rules.
Premier	The Chief Minister of a state government in Australia.
President	The Presiding Officer of the Legislative Council.
Presiding Officers	The Members of Parliament elected to preside over meetings of their respective houses (the President and Speaker).
Questions without notice	Questions asked verbally of Ministers without notice during question time, which is a period set aside during the proceedings of each house each sitting day.
Register of interests	A register that outlines the financial interests of members of Parliament.
Second reading	The stage in Parliament at which the underlying principles of a bill are debated.
Select committee	A parliamentary committee appointed to conduct an investigation into a very specific issue.
Sessional orders	Temporary orders governing the conduct of proceedings for a parliamentary session, for example, sitting days and times.
Speaker	The Presiding Officer of the Legislative Assembly.
Standing orders	Permanent rules governing the conduct of business in the house, for example, the stages through which bills proceed, conduct of debate, etc.
Supplementary questions without notice	A question without notice that stems from the Minister's answer to a primary question.
Suspension of a member of Parliament	Where the Presiding Officer considers the conduct of a member to be disorderly, he/she may be ordered to leave the house for up to one and a half hours.
Terms of reference	A set out what the committee is to investigate and deadlines for reporting these investigations

Third reading	The final stage of a bill's progress in a House of Parliament before it is passed.
Webcasting	Distributing a media file over the internet using streaming media technology.
Westminster system	The system of government that exists in Great Britain and which has been copied, to a greater or lesser extent, by many Commonwealth countries; so called because it is named after the precinct of Westminster, where the House of Commons and the House of Lords meet.

APPENDIX 3: SUBMISSIONS

Submission no.	Date received	Contact/Organisation
1	11/04/2007	Kerry Lovering, WEL Vic Convenor Women's Electoral Lobby, Victoria
2	17/04/2007	Dr Greg Taylor Monash University
3	27/04/2007	Professor Margot Prior AO FASSA University of Melbourne, Department of Psychology
4	5/05/2007	Hon. Kevin Rozzoli
5	3/05/2007	Hon. A.J. Hunt, A.M.
6	7/05/2007	Peter Vickery QC LL.B (Melb) LL.M (Lond.)
7	9/05/2007	Catherine and Robert Money
8	10/05/2007	Associate Professor Ken Coghill PhD Monash University, Department of Management
9	11/05/2007	Michael Martin and David Crawford
10	11/05/2007	Dr Race Matthews
11	16/05/2007	Julia Thornton RMIT University, Social Science, School of Global Studies, Social Science and Planning
12	30/05/2007	Harry Glasbeek, Professor Emeritus and Senior Scholar York University, Toronto, Osgoode Hall Law School; and; Visiting Professional Fellow, Victoria University, Melbourne, Law School,
13	21/05/2007	Anne Mancini and John Gellie
14	31/05/2007	Former Senator Barney Cooney
15	31/05/2007	Former Senator Barney Cooney
16	01/06/07	Dr Julie Faulkner, Senior Lecturer, RMIT University Dr Michael Crowhurst, Lecturer, RMIT University Dr Gloria Latham, Senior Lecturer, RMIT University
17	20/06/2007	Glenn McGowan SC International Commission of Jurists, Victoria
18	26/06/2007	Professor Graeme Hodge, Professor of Law, Director, Centre for Regulatory Studies, Faculty of Law Monash University,
19	22/06/2007	Louis A Coutts
20	6/07/2007	Marcia Neave AO, Tim Smith , David Harper
21	6/07/2007	Dr Phil Larkin Australian National University, Democratic Audit of Australia, Political Science
22	1/05/2007	Hon. Kevin Rozzoli

Submission no.	Date received	Contact/Organisation
23	13/07/2007	John G. Williams MP, Chairman Global Organization of Parliamentarians Against Corruption (GOPAC) Canada
24	16/07/2007	Mr Ray Purdey, Clerk of the Legislative Assembly
25	16/07/2007	Mr Wayne Tunnecliffe, Clerk of the Legislative Council
26		Julian Burnside QC, Presidentm, Liberty Victoria Jamie Gardiner, Anne O'Rourke, Michael Pearce – Vice-Presidents, Liberty Victoria
27	20/12/2007	Martin Foley MP State Member for Albert Park
28	21/12/2007	David McKenna, Victorian Convenor Australian Republican Movement, Victorian Branch

APPENDIX 4: LIST OF INDIVIDUALS AND ORGANISATIONS PROVIDING EVIDENCE

Witnesses

Melbourne – Wednesday 1 August 2007

Mr P Vickery, QC

Mrs J Maddigan MLA, Chair, Victorian Chapter, Australasian Study of Parliament Group

Ms S Hyslop, Secretary, Victorian Chapter, Australasian Study of Parliament Group

Ms K Lovering, Victorian Convenor, Women's Electoral Lobby

Dr J Faulkner, Senior Lecturer, RMIT University

Mr A J Hunt, AM

Associate Professor K Coghill, Department of Management, Monash University

Professor M Prior AO, School of Behavioural Science, Department of Psychology, University of Melbourne

Melbourne – Thursday, 2 August 2007

Mr B Cooney

Mr G McGowan SC, International Commission of Jurists

Mr L Coutts

Professor G Hodge

Ms A Mancini

Dr R Mathews

Briefings

Melbourne – Monday, 16 July 2007

Mr R Purdey, Clerk of the Legislative Assembly, Parliament of Victoria

Mr W Tunnecliffe, Clerk of the Legislative Council, Parliament of Victoria

Melbourne – Monday, 29 October 2007 (telephone conference)

Mr H Evans, Clerk of the Australian Senate

Hon. K Rozolli, National President of the Australasian Study of Parliament Group

