



**Legislative Council**

**Standing Orders Committee**

**Report upon**

**Answers to Questions on Notice**

**March 1990**

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Ordered to be printed

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**EXTRACTED FROM THE MINUTES OF THE PROCEEDINGS  
OF THE LEGISLATIVE COUNCIL**

**Tuesday, 15 November 1988**

- 14 STANDING ORDERS COMMITTEE** - The Honourable Evan Walker moved, by leave, That the Honourables the President, W. R. Baxter, B. A. Chamberlain, J. V. C. Guest, R. M. Hallam, C. J. Kennedy and W. A. Landeryou be members of the Select Committee on the Standing Orders of the House; three to be the quorum.

Question - put and resolved in the affirmative

**Wednesday, 1 November 1989**

- 6 QUESTIONS ON NOTICE - ANSWERS** - The Honourable M. A. Birrell moved, That the Standing Orders Committee -

- (a) investigate and make recommendations as to the Standing Orders which should be adopted to ensure that prompt replies to questions on notice are furnished to the Council; and
- (b) investigate and report on the time limits and other conditions which should be imposed on Ministers in relation to the provision of such answers,

and report back to the House on the first sitting day in 1990.

Debate ensued.

The Honourable Evan Walker moved, as an amendment, That the expression "conscious of the fact that both questioner and questioned have responsibilities in regard to questions placed on notice" be inserted to follow the word "Committee".

Question - That the expression proposed to be inserted be so inserted - put and resolved in the affirmative.

Question - That the Standing Orders Committee, conscious of the fact that both questioner and questioned have responsibilities in regard to questions placed on notice -

- (a) investigate and make recommendations as to the Standing Orders which should be adopted to ensure that prompt replies to questions on notice are furnished to the Council; and
- (b) investigate and report on the time limits and other conditions which should be imposed on Ministers in relation to the provision of such answers,

and report back to the House on the first sitting day in 1990 - put and resolved in the affirmative.



## REPORT

The Select Committee of the Legislative Council on Standing Orders, appointed pursuant to resolution of the Council on 15 November 1988, has the honour to report as follows:

1. On 1 November 1989 the Legislative Council resolved as follows:

That the Standing Orders Committee, conscious of the fact that both questioner and questioned have responsibilities in regard to questions placed on notice -

- (a) investigate and make recommsendations as to the Standing Orders which should be adopted to ensure that prompt replies to questions on notice are furnished to the Council; and
- (b) investigate and report on the time limits and other conditions which should be imposed on Ministers in relation to the provision of such answers -

and report back to the House on the first sitting day in 1990.

This reference to the Committee was initiated by the Honourable M.A. Birrell and the debate on the motion is recorded at pages 1102 to 1109 of Hansard of 1 November 1989.

2. To assist it in considering the reference, the Committee undertook an analysis of the time taken to provide answers to the 139 questions placed on notice during the period from 26 October 1988 until the last day of the Spring sitting on 17 November 1989. The results appear in Appendix "A" to this Report. In addition, a survey was carried out as to the position in other Australian Houses of Parliament in relation to both questions on notice and questions without notice and its results appear in Appendix "B".

All Members of the Council were invited to make submissions or comments to the Committee on this reference. The Honourables W.R. Baxter, M.A. Birrell, M.A. Lyster, R.A. Mackenzie G.A. Sgro and K.I.M. Wright responded to that invitation and their comments were taken into account by the Committee.

3. In addressing the terms of reference the Committee first had regard to the responsibilities of both "questioner and questioned".

The purpose of a question is to obtain information or press for action (May 20th ed. p. 337) and it is well established that a Member has the right to ask any question provided that it is within the rules. Just as the "questioner" has this right the "questioned" also have rights. It is established practice that Ministers cannot be required to answer questions and, whilst outright refusal to answer a question is uncommon, it is not unusual for questions to remain unanswered on the Notice Paper for a considerable period of time, or even until they lapse at prorogation. Generally, however, Ministers appear to accept that they have a responsibility to answer where reasonably practicable and it is therefore useful to note that the U.K. House of Commons has endorsed the view that they should endeavour to do so within one working week [May 20th ed. p.334].

4. The provision of answers to questions can involve the commitment of scarce and costly resources and, on occasions, it is not unusual for an answer to be provided to the effect that "the cost involved in obtaining the information cannot be justified". In addressing the responsibilities of "questioners" the Committee had regard to this factor and gave consideration to the desirability of limiting the number of questions which can be placed on notice by a Member at any particular time. No such provision exists in the largest of the Australian Houses of Parliament, the House of Representatives, or even the U.K. House of Commons (a House in excess of 600 Members). The Committee does not favour imposition of a limit for the following reasons:

- A limitation on the number of questions would diminish the existing rights of each Member.
- Imposition of a limit could lead to questions simply being submitted in the names of other Members and no consequent reduction in the number of questions on notice.
- The addition of further questions in the name of one Member could be unfairly prevented if questions in the name of that particular Member were deliberately left unanswered for an undue length of time.

If the proposals recommended later in this Report are adopted the Committee expects that they would, in effect, operate to impose some discipline on the numbers and types of questions placed on notice and to prevent abuse of the process.

5. The Senate is the only Australian House of Parliament which has made some attempt, through the adoption of a Sessional Order on 28 September 1988, to ensure that answers are provided in a timely manner. That Sessional Order provides as follows:

(1) That, if a Senate Minister does not answer a question on notice asked by a Senator within 30 days of the asking of that question, and does not, within that period, provide to the Senator who asked the question an explanation satisfactory to that Senator of why an answer has not yet been provided, then -

(a) at the conclusion of Question Time on any day after that period, the Senator may ask the relevant Minister for such an explanation; and

(b) the Senator may, at the conclusion of the explanation, move without notice 'That the Senate take note of the explanation'; or

(c) in the event that the Minister does not provide an explanation, the Senator may, without notice, move a motion with regard to the Minister's failure to provide either an answer or an explanation.

(2) That the provisions of the foregoing resolution, so far as they are inconsistent with the Standing Orders, have effect notwithstanding anything contained in the Standing Orders.

6. Since its adoption, the Sessional Order has been used on only four occasions. Whilst its effect has not been quantified, there is evidence to suggest that there have been some significant reductions in the number of days taken to answer questions. The Committee also understands that an informal practice has developed whereby Ministers are usually alerted when a Senator is contemplating the use of this procedure. Such a practice appears to be in keeping with the spirit of the Order.

7. On two of the four occasions on which Senators took advantage of the Sessional Order a motion to take note of the explanations was moved. On another occasion an explanation was not provided and a motion was moved and passed requiring that the answer to the question, together with an explanation for the delay, be tabled within five days. On the other occasion a motion was moved and passed censuring the Minister for Defence and his Senate counterpart and requiring a detailed answer within three sitting days.

8. The results of the survey referred to in Appendix "A" indicate that the average time taken to provide answers to questions on notice in the Legislative Council is approximately 150 days. The Committee is concerned that delays of this nature are in the best interests neither of Members nor of the effectiveness of the House as a whole. It is therefore convinced of the need for the introduction of a mechanism designed to ensure that answers are provided in a more timely manner. Two possible models as the basis for such a procedure have been suggested: firstly, the Senate Sessional Order previously referred to and, secondly, the proposal advanced in debate on the reference by the Honourable M.A. Birrell - that any Minister failing to provide an answer to a question after twelve weeks be required to explain to the House during Government business on the Tuesday of every sitting week why the answer is unavailable. Having considered those alternatives the Committee believes that the Senate Order would, with some modifications, be the more useful model for the Legislative Council to follow.
9. Although the Senate Sessional Order provides that a Senator "may, without notice, move a motion with regard to the Minister's failure to provide either an answer or an explanation", the Committee does not favour a situation where a censure motion can be moved without notice as has occurred on one occasion in the Senate. It is the Committee's view that any similar procedure in the Legislative Council should take account of established practice where substantive motions of this nature require notice.
10. The Committee's terms of reference required it "to make recommendations as to the Standing Orders which should be adopted". However, whilst accepting the need that some steps should be taken, the Committee considers that it may be preferable to adopt a Sessional Order in the first instance so that an assessment can be made of its operations. Before the conclusion of the Spring sittings in 1991 the Committee should review that Order and settle on firm changes to the Standing Orders.
11. In the light of the foregoing comments, the Committee recommends that the following Sessional Order, drafted along similar lines to that of the Senate but so as to preclude the moving of a motion of censure without notice, be adopted on a trial basis:

That -

- (a) If a Minister does not furnish an answer to a question on notice within 30 days of the asking of that question and does not, within that period, provide to the Member who asked the question an explanation satisfactory to that Member as to why an answer has not been provided -



- (i) at the conclusion of the normal time for answering questions on notice on any day after that period the Member may ask the relevant Minister for an explanation; and
  - (ii) at the conclusion of any such explanation the Member may move, without notice, "That the Council take note of the explanation".
- (b) In the event that a Minister does not provide an explanation, notice may be given of a motion regarding the Minister's failure to provide either an answer or an explanation and precedence shall be given to such a motion at the conclusion of the business under consideration at the expiration of two hours after the giving of the notice or at the end of the sequence prescribed in Standing Order No. 86, whichever last occurs.
- (c) The provisions of this resolution, so far as they are inconsistent with the Standing Orders, shall have effect notwithstanding anything contained in those Standing Orders.

Adoption of this Order would, amongst other things, mean that notice of a censure or other motion could be given forthwith. The notice would then be listed on the Notice Paper under "Business to take Precedence" after other business under that heading and the motion could be moved on the next day of meeting.

12. In recommending the adoption of this Sessional Order, the Committee is cognizant of the Senate experience where the procedure has been utilized on only four occasions. It believes that, like the Senate, such a procedure would best be used sparingly and selectively in the Legislative Council, its greatest value being that it should lead to quicker answers and the development of an informal process of negotiation between Member and Minister regarding unanswered questions. The Committee envisages that such an Order would work most effectively if the following broad guidelines applied as to its operation:

- Ministers accept that they have a responsibility to answer a question relevantly and within a reasonable time.
- It is recognized that Ministers have the right to restrict the answer to a question if provision of all of the information sought is too costly. However, in such cases they should contact the Member to determine whether a compromise may be possible by

withdrawing the question and substituting another in a mutually acceptable form.

- It is accepted that lack of justification of excessive costs and resources necessary to devote to preparation of an answer may constitute reasonable grounds for not answering a question, provided this is limited to genuine cases.
  - Immediately it is apparent to a Minister that it will be difficult to produce an answer to a question within 30 days the Minister should advise the Member accordingly.
  - If the information sought is considered by the Minister to be of a nature that is not normally provided (e.g. Cabinet documents), the Minister has the right to inform the Member of that view. The Member then has the option of using other means to obtain the information (e.g., Freedom of Information).
  - In view of the large number of Government documents being produced and the rule that questions should not ask for information available in accessible documents, Members should consider whether the information is readily available in known documents before placing a question on notice. When the question is asked and the information is found to be readily available in accessible documents, the questioner should be so advised.
  - A Member intending to ask for an explanation as to why an answer has not been provided should contact the Minister or his office the day before failure to supply an answer is to be raised in the House to discuss the likelihood of an answer being provided or the reasons for the delay, particularly in the case of complex questions.
13. The Minister will naturally retain the right to delegate any of the responsibilities referred to in the previous paragraph.
14. The Committee has given consideration as to the effect of the adoption of this Order on questions already on the Notice Paper. It recommends that those questions be treated as if they appeared for the first time immediately following the adoption of such an Order. This would ensure that Ministers and Departments have adequate notice of the new requirements.

**President's Suite  
6 March 1990.**

## LEGISLATIVE COUNCIL

ANALYSIS OF ANSWERS PROVIDED TO QUESTIONS ON NOTICE  
ASKED DURING THE PERIOD 26.10.88 - 17.11.89

## NO. OF QUESTIONS ASKED

139

PERIOD ON NOTICE PAPER BEFORE ANSWERS  
PROVIDED

Up to 7 days	3
Between 8 and 30 days	3
Between 31 and 60 days	10
Between 61 and 90 days	7
Between 91 and 120 days	10
Between 121 and 150 days	13
Between 151 and 180 days	9
Between 181 and 210 days	12
Between 211 and 240 days	4
Between 241 and 270 days	2
Between 271 and 300 days	3
Between 301 and 330 days	4
Between 331 and 360 days	1
Between 361 and 390 days	1

## NO. OF QUESTIONS ANSWERED

82

## NO. OF QUESTIONS REMAINING UNANSWERED

57

## QUESTIONS REMAINING UNANSWERED

## PERIOD ON NOTICE PAPER (AS AT 17.11.89)

Between 361 and 390 days	7
Between 331 and 360 days	11
Between 211 and 240 days	9
Between 181 and 210 days	3
Between 61 and 90 days	5
Between 31 and 60 days	9
Up to 30 days	13

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STANDING ORDERS COMMITTEE  
ANSWERS TO QUESTIONS ON NOTICE  
SURVEY OF SITUATION APPLYING IN OTHER PARLIAMENTS

The following questions were asked regarding the practice applying in each House in the other Australian Parliaments:

- (1) Is there any mechanism in place which requires prompt replies to questions on notice; if so, what are the details, particularly as to time limits and other special conditions.
- (2) How many questions on notice are asked per annum (on average).
- (3) What is the present practice in relation to provision of answers, i.e., how long does an answer usually take.
- (4) Do you have questions without notice; if so, how many per day (on average).

The responses are as follows:

Question No.	Vic		C'wealth		NSW		NT		QLD		SA		TAS		WA	
	C	A	S	HR	C	A	A	A	C	A	C	A	C	A	C	A
1	No	No	Yes. Sessional Order	No	No	No	No	No	No	No	No	No	No	No	No	No
2	100	250	600	1500	200	2000	200	200	600	50	400	70	600	100	2000	
3	5 mths	varies	6 wks	5 mths	varies	varies	varies	varies	Usually next day	3 mths	2 to 3 wks	3 wks	1 to 2 weeks	Usually next day	2 to 3 days	
4	Yes 14	Yes 10	Yes 21	Yes 12	Yes 20	Yes 14	Yes 12	Yes 12	Yes 12	Yes 12	Yes 14	No	Yes 28	Yes 12	Yes 10 to 14	