



**Legislative Council
Standing Orders Committee**

**Interim Report on the Establishment
of new Standing Committees
for the Legislative Council**

Ordered to be printed

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

Tuesday, 17 April 2007

8 PARLIAMENTARY COMMITTEES — Mr Lenders moved, That —

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(2) Standing Orders be suspended to the extent necessary to enable—

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(c) **STANDING ORDERS COMMITTEE** — A Select Committee of 7 Members to be appointed on the Standing Orders of the Council.

(3) Each Committee referred to in paragraph (2) will consist of 3 Members from the Government Party nominated by the Leader of the Government, 2 Members from the Opposition nominated by the Leader of the Opposition, 1 Member from The Nationals nominated by the Leader of The Nationals and 1 Member from the Australian Greens nominated by the Australian Greens Whip.

(4) 4 Members will constitute a quorum of each Committee referred to in paragraph (2).

(5) Members will be appointed to each Committee by lodgement of the names with the President by the persons referred to in paragraphs (1b) and (3) no later than 4.00 p.m. on Thursday, 19 April 2007.

Question — put and agreed to.

Tuesday, 1 May 2007

3 APPOINTMENT TO COMMITTEES — The President announced that he had received from the Party Leaders and the Australian Greens Whip, within the time set by the Resolution of the Council, advice of appointments to the following committees:

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Standing Orders Committee — The President, Mr Dalla-Riva, Mr P.R. Davis, Mr Hall, Mr Lenders, Ms Pennicuik and Mr Viney.

Tuesday, 9 September 2008

7 COMMITTEE MEMBERSHIP — Mr Theophanous moved, by leave, That —

(1) Mr P.R. Davis be discharged from the Standing Orders Committee and that Mr D.M. Davis be a member of that Committee in his place;

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Question — put and agreed to.

REPORT

The Select Committee of the Legislative Council on Standing Orders, appointed pursuant to the resolution of the Council on 17 April 2007, has the honour to report as follows:

1. On 10 September 2008, the Legislative Council agreed to the following Resolution:
That, the Standing Orders Committee be required to inquire into and report no later than 30 November 2008 on the establishment of new standing committees for the Legislative Council, including —
 - (1) the number, composition, structure and functions of those committees; and
 - (2) the staffing and resources required for the effective operation of those committees.
2. On 13 November 2008, the Council further resolved to amend that Resolution to require the Committee to present its report by 31 March 2009.
3. On 31 March 2009, the Council agreed to a further amendment of the Resolution to require the Committee to present its report by 31 July 2009.
4. The Standing Orders Committee held its first meeting on 8 October 2008 and, as at 7 May 2009, has met on six occasions.
5. On 25 February 2009, the Committee formed a sub-committee of its members, consisting of representatives of the Government, Opposition and the Australian Greens, to conduct an interstate study tour to review the structure and operations of upper house parliamentary committees in those jurisdictions. This sub-committee visited the Australian Senate on 25 March 2009 and the New South Wales Legislative Council on 26 March 2009. During these visits, meetings were conducted with various Committee Chairs and other Members, as well as with senior parliamentary staff.
6. On 2 April 2009, the Committee determined that the standing committee system in the Western Australian Legislative Council was also worthy of study.
7. The Committee has resolved to provide an Interim Report to the Council concerning progress on its inquiry, an account of the visits to interstate jurisdictions in Canberra and Sydney and an outline of the more prominent issues that have been considered up to this point.

BACKGROUND TO THE REVIEW

8. The first Legislative Council to be elected via the proportional representation voting method (in November 2006) is composed of five political parties (Australian Labor Party, Liberal Party, The Nationals, Australian Greens and Democratic Labor Party) and is a House in which the Government does not hold an absolute majority. The House's changed dynamic has led to a greater inclination on the part of the Council to establish its own select and standing committees than was the case in previous parliaments. These committees and their establishment dates have been the following:
 - Select Committee on Gaming Licensing (14 February 2007).
 - Select Committee on Public Land Development (2 May 2007).
 - Standing Committee on Finance and Public Administration (21 November 2007).
 - Select Committee on Train Services (11 March 2007).
9. The formation of these Council-only committees, alongside the 12 joint investigatory committees to which Council Members are also appointed, has prompted the Council to require the Standing Orders Committee to review the most effective manner in which future Council standing committees should be established and function. Central to the Committee's inquiry is the assumption that upper house standing committees are likely to be an ongoing feature of subsequent parliaments. Therefore, the Committee will consider whether the current approach, in which Council committees are established on a gradual, occasionally *ad hoc* basis, should continue, or whether a more structured approach is preferable, in which possibly several Council standing committee are established early in the Parliament, followed by any select committees thought appropriate during the remainder of that term.
10. During the Committee's discussions, background research and study tours, a number of specific issues have emerged that the committee believes are notable and worthy of further consideration. These are examined in the following paragraphs:

STRUCTURE OF COMMITTEES

11. In the event that a Council standing committee structure is established, the nature of that structure, including its purpose, size and the ongoing roles and types of inquiries that these committees undertake, needs to be defined.
12. The Committee has noted that the Australian Senate established a structure of eight pairs of Legislative and General Purpose standing committees in 1994, with each pair consisting of a reference and a legislation committee, to cover major government policy areas. Although this structure altered in 2006, with each pair of committees merged into a single committee, the sub-committee was advised that the Senate is likely to reinstitute the separation of committees into pairs in the near future. Under the system of twin committees, the legislation committee scrutinises bills, estimates and the performance of agencies, while the reference committee inquires into other matters in its subject areas referred to it by the Senate.
13. A prominent issue raised during the sub-committee's visit to the Australian Senate, which will be considered in the Victorian context in the Committee's final report, concerns the considerable workload that a large number of committees imposes on Senators in a House consisting of 76 Members, some of whom are Ministers and, therefore, unavailable for standing committee work. These difficulties have been exacerbated by Senators' participation on various other committees including select, joint, legislative scrutiny and domestic committees. The Senators that the sub-committee met were very positive about the work done by committees and their respective participation in the committee system. Concerns were expressed about the obligations on Senators being required to serve on multiple committees. These difficulties are partly overcome by the Senate's standing committee system allowing members to be substituted onto a committee, with all the rights of other committee members except the right to vote. This assists colleagues with particularly onerous workloads or when a Senator can bring expertise to a specific inquiry.
14. Although the visit to the Australian Senate was most instructive, given the considerable differences in size and jurisdiction, the Standing Orders Committee believed it was important also to consider standing committees in a State jurisdiction of comparable size to the Victorian Legislative Council. Thus, the visit to Sydney, where the New South Wales Legislative Council has created two standing committee structures. There are three policy oriented committees (as

well as the Procedure and Privileges Committees): State Development and Social Issues (both created in June 1988) and Law and Justice (established in 1995). These committees function in a similar manner to the Victorian Parliament's joint investigatory committees as they may inquire into any proposal or matter referred to them by resolution of the House, a Minister or through self-generating an inquiry into any annual report or petition tabled in the Legislative Council.

15. The New South Wales Legislative Council also has a parallel structure of five General Purpose Standing Committees, simply numbered 1 to 5, with each committee responsible for scrutinising estimates and the expenditure and performance of government departments and agencies within a number of specific portfolio areas. These committees vary in workloads, with some far more active than others, and tend to receive references concerning topical issues that require short and sharp inquiries. Unlike Senate General Purpose Standing Committees, their New South Wales' equivalents do not also perform a legislative function by reviewing bills currently before the Parliament.
16. A number of the New South Wales' Legislative Councillors with whom the sub-committee met shared the reservations of their Senate colleagues about the number of upper house committees that had been created and the workload that this had created for a House comprising, in their case, 42 Members. They too expressed concerns that there may be too many committees and that Members sometimes felt that they were stretched too thin. Like the Australian Senate, the New South Wales upper house also participates in select and joint committees. However, there is less focus on joint committee work in those two jurisdictions than occurs in the Victorian Parliament and it was indicated to the sub-committee that their model was preferred in that jurisdiction.
17. Thus, in terms of structural issues, the Standing Orders Committee's inquiry into a new Council standing committee system has identified several issues for further consideration including:
 - the desirability of a single structure versus dual streams.
 - the appropriate focus of these committees (policy investigations, legislation, estimates, topical issues).
 - a desirable number of committees for a House consisting of 40 Members, some of whom (eg. Ministers and the President) are unavailable for committee work.

COMPOSITION

18. The Committee has, at this point, identified three key issues for consideration in relation to the preferred composition of any Council standing committees to be established in future. Those issues are linked to: (a) Proportionality; (b) Chairperson; and (c) Size.

Proportionality

19. The Committee is to consider the principle and desirability of the membership of committees being allocated to the parties (or independent members in future parliaments) as closely as possible in proportion to their representation in the Council. The alternative proposition is that, although proportionality has its attractions and should be taken into account, the Council committees also need to reflect the complexion of the House in terms of the range of parties represented, both major and minor. The Committee will examine the potential to develop a mechanism to accommodate both aims as far as possible.
20. The Committee has noted that, between 1970 and 1994, there was a tradition of Senate committees being composed of a government majority. However, that House's current Standing Orders have formalised the concept of proportionality with committee memberships approximating the political balance in the Chamber. The Standing Orders¹ ensure that:
- each committee consists of eight Senators, four nominated by the Leader of the Government, three by the Leader of the Opposition and one by minority groups/independents.
 - the allocation of positions to minority groups and independents should be as close as practicable in proportion to their numbers in the Senate.
 - committee memberships amongst minority groups and independents should be determined by agreements between them but, if this is not achieved, the Senate will complete the task for them².

There was agreement amongst the majority of Senators who met with the sub-committee that, in a return to a standing committee system comprising two

¹ Standing Order 25(5) and (6), Australian Senate, *Standing Orders and other orders of the Senate*, September 2006, http://www.aph.gov.au/Senate/pubs/standing_orders/standingorders.pdf

² A recent example of this process (although not related to a standing committee) involved Senators Fielding and Xenophon who both nominated for a position on the Senate's Select Committee on Climate Change. See *Senate Parliamentary Debates*, 18 March 2009, pp. 1936-37, <http://www.aph.gov.au/hansard/senate/dailys/ds180309.pdf>

streams, it was preferable for the government to control legislation committees (which, in the main, review government bills that the Executive does not want to see unduly delayed), while reference committees, which conduct broader and lengthier inquiries, should have a non-government majority.

21. In New South Wales, there is a tradition of the three issue based Council standing committees having a workable government majority in the form of three of the six positions, with one of these members being appointed as Chair. The Standing Orders provide the Chairs with a casting, as well as a deliberative vote, if there is an equality of votes.³
22. In the case of the Council's five General Purpose Standing Committees, which were created in 1997 with the specific aim of scrutinising the Government and related agencies, the non-government parties always hold a majority. At present, the Government has four of nine positions on four of the committees, and three of nine on the other.

Chairperson

23. The Chair's position will also be reviewed by the Committee both in terms of political alignment and powers. As noted in paragraph 21, the Chairs of the Law and Justice, Social Issues and State Development standing committees of New South Wales' Legislative Council are always from the governing party and hold both a deliberative and casting vote. In the normal course of events, the Council's five General Purpose Standing Committees have a non-government Chair. There is one exception at present, but her election occurred in unusual circumstances and is unlikely to be repeated.
24. It is prescribed under the Australian Senate's Standing Orders that the Government provides the Chair of each Legislative and General Purpose Standing Committee and that that member has a deliberative and, when required, casting vote. Under the previous dual stream structure, legislation committees were chaired by government members and reference committees by non-government members. It was indicated to the sub-committee that, if there is a return to the dual system, the previous arrangements concerning the chairs may also be reinstated.

³ Standing Order 211(4), New South Wales, *Standing Orders of the Legislative Council*, May 2004, <http://www.parliament.nsw.gov.au/prod/lc/lcprocedural.nsf/0/027BDBA9E475AD4ACA25734C00043D8E>

Size

25. The appropriate number of members on Council standing committees is the third element of committee composition for consideration by the Standing Orders Committee. The number of members on Australian Senate and New South Wales Legislative Council standing committees ranges from six to nine with eight or nine being the most common. However, it has been noted that the majority of Members who met the sub-committee in Canberra and Sydney warned of the pitfalls of creating a larger committee structure than the size of the House could accommodate effectively. Clearly, this is linked to several factors, one of which is the number of Members required to serve on each committee.
26. At this point, the Standing Orders Committee has not reached any conclusions on the issue. Various related matters will need to be determined including:
- the number of committees;
 - the potential number of Members available to serve on committees in a 40 seat House;
 - the degree to which the available Members should be “stretched” (taking into account their other responsibilities, including their electorate commitments and participation in other types of committees such as any select and joint committees);
 - proportionality; and
 - the role and powers of the Chair (potentially of particular relevance on committees with an even number of Members).

RESOURCES

27. The Committee’s reference also requires recommendations about the manner in which a standing committee structure will need to be resourced. The Committee envisages that these will encompass:
- the overall funding likely to be required by standing committees as a whole;
 - number and seniority of supporting research and administrative staff;
 - allocation and flexibility in the use of staff resources.
28. The Committee gained valuable insights into the funding and staffing of upper house standing committees during its study tour. It was notable that the funding of standing committees in the jurisdictions visited was quite substantial, certainly in comparison to Victoria’s Legislative Council. However, this funding occurs in the

context of committee structures in which there is considerably less participation in joint committees, where the principal focus is on upper house standing committees, and where there is a clear delineation between upper and lower house committees and their roles. The committee's initial review indicated that overall committee funding did not vary greatly (taking into account the number of Members and committees), although this is an issue that will be investigated in greater detail in the final report (*see Appendix A for additional details concerning committee budgets in each jurisdiction*).

29. The committee offices of both interstate jurisdictions that were visited provide staff to all committees for which the upper house has sole or joint responsibility: staff are not assigned on an ongoing basis to either joint or upper house-only standing committees. This contrasts with the Victorian Legislative Council's arrangements, where staff are assigned by the Clerk to the joint investigatory committees for which the Council has administrative responsibility or appointed to the Council Committee Office. Although interchange of staff between these two committee areas is technically feasible, in practice they operate quite separately. In general, the jurisdictions visited employ cross-committee support arrangements on a regular basis and it is common for committee staff to be reassigned to other committees on a needs basis.
30. In terms of the number and seniority of staff, there were parallels with Victoria's joint investigatory committees, with a comparable allocation of staff (a base allocation of an Executive Officer, or equivalent, Research Officer and Administration Officer).
31. The Committee would like to express its appreciation to the Senators and New South Wales Legislative Councillors, Clerks and other parliamentary staff from both jurisdictions who generously provided valuable assistance to the sub-committee during its study tour in March 2009.

Committee Room,
7 May 2009

APPENDIX A

Upper House Committee Budgets, 2006-07 to 2008-09

	SENATE	NSW LEGISLATIVE COUNCIL #
2006-07		
Total Committee Office Budget	\$5,361,000	\$2,424,000
Staff Salaries within Total	\$4,604,909	\$1,685,000
2007-08		
Total Committee Office Budget	\$5,330,000	\$2,489,000
Staff Salaries within Total	\$4,048,000	\$1,740,000
2008-09		
Total Committee Office Budget	\$6,910,000	\$2,459,000
Staff Salaries within Total	\$5,899,000	\$1,776,000

VICTORIAN LEGISLATIVE COUNCIL	
2006-07	
Six Council Joint Investigatory Committees	\$2,761,000*
Staff Salaries within Council Joint Committee budget	\$1,525,000
Council Select & Standing Committee budget (Non-Staff)	\$25,000
<i>(Total Parliament of Victoria Joint Investigatory Committee Budget, 2006-07)</i>	<i>(\$5,710,000)</i>
2007-08	
Six Council Joint Investigatory Committees	\$2,409,000*
Staff Salaries within Council Joint Committee budget	\$1,617,000
Council Select & Standing Committee budget (Non-Staff)	\$25,000
<i>(Total Parliament of Victoria Joint Investigatory Committee Budget, 2007-08)</i>	<i>(\$6,178,000)</i>
2008-09	
Six Council Joint Investigatory Committees	\$2,760,000*
Staff Salaries within Council Joint Committee budget	\$1,800,000
Council Select & Standing Committee budget (Non-Staff)	\$25,000
<i>(Total Parliament of Victoria Joint Investigatory Committee Budget, 2008-09)</i>	<i>(\$6,237,000)</i>

NSW Joint Standing Committees are administered by the Legislative Assembly

* An approximate figure based on the six Council administered Joint Investigatory Committees receiving half of the funds retained in the Joint Committee Administrative Office budget.