



LEGISLATIVE COUNCIL

STANDING ORDERS COMMITTEE

FINAL REPORT ON THE ESTABLISHMENT  
OF NEW STANDING COMMITTEES  
FOR THE LEGISLATIVE COUNCIL

REPORT – MAY 2010



**Legislative Council  
Standing Orders Committee**

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

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*Ordered to be printed*

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

**Tuesday, 17 April 2007**

**A. PARLIAMENTARY COMMITTEES** — Mr Lenders moved, That —

\* \* \* \* \*

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

\* \* \* \* \*

(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:

\* \* \* \* \*

**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;

\* \* \* \* \*

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.<sup>1</sup>
2. On the following occasions, the Council further resolved to amend that Resolution to extend the date by which the Committee was to present its report: 13 November 2008, 31 March 2009, 30 July 2009, 13 October 2009, 27 November 2009 and 11 March 2010.
3. On 15 April 2010, the Council agreed to a further amendment of the Resolution to require the Committee to present its report by 5 May 2010.
4. The Standing Orders Committee held its first meeting on 8 October 2008 and, as at 5 May 2010, has met on twelve occasions.
5. As advised in the Committee's *Interim Report* tabled in May 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 other 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 a significant number of 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. Although the Committee did not make a formal visit to that jurisdiction, research was conducted

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<sup>1</sup> For background details regarding the reasons for establishing this inquiry, see Legislative Council Standing Orders Committee, *Interim Report on the Establishment of new Standing Committees for the Legislative Council*, PP 197 (Session 2006-2009), May 2009, p. 6.

in relation to that committee system and a member of the Committee, Mr Matt Viney, visited on behalf of the Committee in July 2009 to obtain further information.

7. In September 2009, a discussion paper was distributed to Committee members. This outlined a possible new structure for Legislative Council standing committees, including proposed functions, membership size, party composition and the role of chairs. The Committee subsequently determined on 26 November 2009 that a sub-committee, comprising a representative of the Government, Opposition and the Australian Greens, should meet to refine the proposals contained in the discussion paper as well as considering other options.
8. The sub-committee, consisting of Mr Lenders, Mr Davis and Ms Pennicuik, reported back to the Standing Orders Committee on 11 March 2010. They advised that they had reached broad agreement on the standing committee system that they considered should be introduced. Following further review by the full Committee, it was agreed that the Australian Senate provided the best model for an upper house standing committee system and that this should form the basis of the Legislative Council's model. The Committee believed that the Australian Senate was an example of a well-established, effective upper house committee system in a house which, like the Legislative Council, was elected using a proportional representation voting method and one in which the Government often did not hold an absolute majority.
9. The Committee considers that the recommendations contained in its Final Report should not be implemented until after the commencement of the 57<sup>th</sup> Parliament of Victoria. Although consideration was given to establishing a new standing committee system on a trial basis during the final year of the 56<sup>th</sup> Parliament, it was determined that this would be inhibited by certain practical restrictions. Chief amongst these restrictions were financial ones, given that funding had already been allocated to the joint investigatory committees and Department of the Legislative Council for 2009-10 and additional funding was not available.

## RECOMMENDATIONS

### STRUCTURE OF PROPOSED STANDING COMMITTEES

10. As outlined in the Committee's *Interim Report*, the Australian Senate established a structure of eight pairs of Legislative and General Purpose standing committees in 1994, with each pair consisting of a references 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 Senate reintroduced the previous system on 13 May 2009. Under the twin committee structure, each legislation committee scrutinises bills, estimates, annual reports and the performance of agencies, while each references committee inquires into other matters within its subject area which have been referred to it by the Senate.
  
11. The Standing Orders Committee recommends that a similar structure be adopted in the Legislative Council. However, given differences in the membership size of each jurisdiction (76 Senators *vis-à-vis* 40 Legislative Councillors),<sup>2</sup> consequent concerns about the obligations that would be placed on Members if there were too many standing committees, along with differences in the range of policy areas covered at the federal and state levels, the Committee recommends that only three pairs of committees be established. It is recommended that each pair of committees consists of a Legislation and References Committee, and that they be structured as follows:
  - Economy and Infrastructure
    - Legislation Committee
    - References Committee
  
  - Environment and Planning
    - Legislation Committee
    - References Committee

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<sup>2</sup> Under the Constitution, there is a minimum of four to six Ministers in the Council who will be unavailable for Committee work. In addition, the President would not be a member of a Legislative Council standing committee. Even if all parliamentary secretaries were involved, there would be a maximum of 33 to 35 Members available for committee work.



- Legal and Social Issues
  - Legislation Committee
  - References Committee

12. In broad terms, the Committee envisages that the Standing Committee on the Economy and Infrastructure will encompass policy areas including agriculture, commerce, infrastructure, industry, major projects, public sector finances and transport.
13. The Committee recommends that the Standing Committee on the Environment and Planning focus on policy areas including the arts, coordination of government, environment, and planning the use, development and protection of land.
14. It is recommended that the Standing Committee on Legal and Social Issues inquire into matters including community services, education, gaming, health, and law and justice.
15. Although the Standing Orders Committee considers that the allocation of the proposed standing committees into such policy areas provides useful guidance, it recognises that these still allow room for overlap between committees (for example, an environmental matter could also relate to agriculture policies). Therefore, to further delineate each committee's role, it is recommended that each standing committee be allocated the oversight of specific government departments. The Committee's recommended allocation is contained in Appendix A and has been done on the basis of the Victorian Government's current departmental structure.

#### **COMPOSITION OF PROPOSED STANDING COMMITTEES**

16. As outlined in the Standing Orders Committee's *Interim Report*, three key issues were identified for consideration in relation to the preferred composition of future Council standing committees. These issues related to: (a) Proportionality; (b) Chairperson; and (c) Membership Size.

### **Proportionality**

17. The Committee was attracted to the Senate's method of formalising the concept of proportionality, with standing committee memberships approximating the political balance in the Chamber and, therefore, recommends that in the Legislative Council:
- each standing committee consists of eight members, four nominated by the Leader of the Government in the Council, three by the Leader of the Opposition in the Council 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 Legislative Council, while allowing maximum participation by minor parties as desired.
  - committee memberships amongst minority groups and independents should be determined by agreements between them but, if this is not achieved, the Legislative Council will determine the matter.
18. The Standing Orders Committee acknowledges that, if there were significant changes in the complexion of the Council after the next general election (such as one party having an absolute majority of members in the Council, or the number of minority group/independent members altering substantially), the allocation of members to committees based on political groupings would most probably need to be modified. Nevertheless, should the current political balance in the Council, between Government, Opposition and minor groups/independents, remain similar in the 57th Parliament, then the model outlined is the Committee's recommended approach.

### **Chairperson**

19. In considering the role and political alignments of committee chairs, the Standing Orders Committee examined practices in both the New South Wales Legislative Council and the Australian Senate. In the case of the former, the chairs of the subject based standing committees, Law and Justice, Social Issues and State Development, are always from the governing party. In the normal course of events, the Council's five General Purpose Standing Committees, which cover

particular portfolio areas, have a non-government Chair. Committee chairs hold both a deliberative and casting vote.

20. As foreshadowed in the Committee's *Interim Report*, the Senate's return to a dual stream structure for its standing committees in mid-2009, resulted in the resumption of the previous practice in which legislation committees are chaired by government members and references committees by non-government members. Like New South Wales, Senate standing committee chairs may exercise both a deliberative and casting vote.
21. The Standing Orders Committee was advised during its visit to the Senate that it was considered desirable for a member of the governing party to be chair of legislation committees and to have a casting vote. This was on the basis that one of the central roles of legislation committees was to review government legislation and it was important for the government to maintain a reasonable level of control over the legislative process. Alternatively, it was appropriate for references committees, conducting broader and lengthier inquiries, to be chaired by a non-government member.
22. The Standing Orders Committee is attracted to the Senate model and recommends that the chair of each of its proposed legislation committees be a government member, that the chair of each references committee be a non-government member, and that chairs have both deliberative and casting votes.

### **Membership Size**

23. Appropriate membership size was the third element related to the composition of Council standing committees that was considered by the Standing Orders Committee. Most New South Wales Legislative Council general purpose standing committees consist of seven members each, while the subject based committees have a membership of six. All Senate legislation and references committees have six members (frequently, although not invariably, a senator is a member of both the legislation and references committee for a given subject/policy area). Despite this, the Committee has opted to recommend that Legislative Council standing committees consist of a membership of eight. This takes into account that the Council will have fewer standing committees than the Senate or New South Wales Legislative Council. In addition, it is envisaged that, in most cases, members will

be on both the legislation committee and its equivalent references committee, which increases the need for more members per committee.

24. The Committee determined that a membership of eight was preferable for several reasons. Prominent amongst these was the capacity of a membership of eight to reflect the political complexion of the house, with a wider range of parties or groups being represented within the committee. Thus, a larger membership stood a better chance of achieving the Committee's aim of proportionality. The Committee also noted that an even number of members was consistent with the preferred role for committee chairs, outlined in the preceding section, in relation to exercising a casting vote.
25. The Committee noted that the Australian Senate supplements committee memberships, and in the process enhances the flexibility of the system, by allowing members to be substituted onto a committee, with all the rights of other committee members to participate in the process including the right to vote. This assists colleagues with particularly onerous workloads or when a Senator can bring expertise to a specific inquiry. In addition, the Senate permits participating members to be appointed to committees. They too have the same rights as other committee members, with the key exception that they do not have the right to exercise a vote. The Standing Orders Committee views the inclusion of both substitute and participating members as a desirable approach that should be adopted by the proposed Legislative Council standing committees. The Committee also recommends that substitute or participating members be nominated by the member who is being temporarily replaced, or by the party leader or minority group who originally nominated that member.
26. In terms of achieving a quorum, the Standing Orders Committee recommends that that consist of five members and that substitute members be included for this purpose if a quorum cannot otherwise be achieved.

#### **SOURCE AND SCOPE OF STANDING COMMITTEE INQUIRIES**

27. As noted earlier in this report, the standing committee system established in the Australian Senate permits each legislation committee to scrutinise bills, draft bills, estimates, annual reports and the performance of departments and agencies. These committees have the additional capacity to self-reference inquiries in

relation to any matter relevant to their subject areas that emanates from annual reports or departmental/agency performance. The five general purpose standing committees in New South Wales' Legislative Council have a similar role, although they do not perform a legislative function by reviewing bills or draft bills.

28. The Committee recommends that the Council's proposed three legislation committees function similarly to their Senate equivalents, and that they be provided with the same type of self-referencing powers (for annual reports and departmental/agency performance only). In addition, the Committee believes each legislation committee should have the power to scrutinise bills if the House resolves to refer a bill to it. As a consequence, the legislation committees will, in large part, assume the functions of the Council's current Legislation Committee and the Committee recommends that the Legislation Committee be abolished by subsequent changes to the standing orders.
29. Senate references committees exercise no self-referencing powers and may only proceed with inquiries in accordance with resolutions made by the House. The Committee recommends that the Legislative Council adopt the same procedures in relation to its proposed references committees.

## RESOURCES

30. The Committee's reference also requires recommendations about the manner in which a standing committee structure will need to be resourced. As noted in the Committee's *Interim Report*, this encompasses issues such as:
  - 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.
31. The Committee gained valuable insights into the funding and staffing of upper house standing committees during its study tour in March 2009. As noted in its *Interim Report*, although there was a greater emphasis on funding upper house standing committees in the jurisdictions visited, this was largely due to considerably less participation in joint committees than occurs in Victoria. The committee's initial review indicated that overall committee funding did not vary

greatly (taking into account the number of Members and committees) and that continues to be the Committee's view.

32. The Victorian Parliament's twelve joint investigatory committees received funding of approximately \$6.4 million for the 2009-10 financial year. The total funds that would be available to the parliamentary committee system as a whole, if the proposed Council standing committee structure was established, is yet to be determined. Nevertheless, if committee funding was to remain at a similar level (in relative terms), there would need to be an allocation amongst a combination of joint investigatory and single-house committees. This would require spreading those funds more thinly amongst committees, which the Standing Orders Committee regards as undesirable as it believes each committee needs to be resourced sufficiently. An alternative means of financing the Council standing committees could be via a reduction in the number of joint investigatory committees.
33. The committee offices, in 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 specific joint or upper house-only standing committees as has occurred in Victoria. In general, those jurisdictions 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. The Committee is attracted, in-principle, to the greater level of staffing flexibility that applies to committees in the Australian Senate and New South Wales Legislative Council. The Committee noted that both members and staff that it met during its study tour were very supportive of this staffing arrangement.
34. In terms of the number and seniority of staff, the Committee has not drawn any firm conclusions, although it noted in its *Interim Report* that parallels existed between Victoria's joint investigatory committees and other jurisdictions examined. The Committee recognises that the three new standing committees will each have a dual function.

#### OTHER ISSUES

35. The Standing Orders Committee confirms that the establishment of a Council standing committee structure, along the lines outlined in this report, would have no affect on the house's right to establish select committees when and if it sees fit.

36. The Committee recommends that a motion be considered by the Council which outlines in greater detail the manner in which the proposed system is to operate. A draft motion is contained in Appendix B. Should this be passed, a significant number of additional changes to the standing orders will need to be considered by the Committee.

Committee Room,  
15 April 2010

## **APPENDIX A**

### **Council Standing Committees and Proposed Allocation of Government Departments for Oversight**

#### **A. Standing Committee on the Economy and Infrastructure**

- Department of Innovation, Industry and Regional Development
- Department of Primary Industries
- Department of Transport
- Department of Treasury and Finance

#### **B. Standing Committee on the Environment and Planning**

- Department of Premier and Cabinet
- Department of Planning and Community Development
- Department of Sustainability and Environment

#### **C. Standing Committee on Legal and Social issues**

- Department of Education and Early Childhood Development
- Department of Health
- Department of Human Services
- Department of Justice





## APPENDIX B

### Draft Motion concerning the establishment of a Legislative Council Standing Committee structure

- (1) At the commencement of the 57th Parliament of Victoria, and of each Parliament subsequently, legislative and reference standing committees shall be appointed as follows:
  - (a) Economy and Infrastructure  
Legislation Committee  
References Committee
  - (b) Environment and Planning  
Legislation Committee  
References Committee
  - (c) Legal and Social Issues  
Legislation Committee  
References Committee
- (2) The Standing Committee on the Economy and Infrastructure will inquire into and report on any proposal, matter or thing concerned with agriculture, commerce, infrastructure, industry, major projects, public sector finances and transport.
- (3) The Standing Committee on the Environment and Planning will inquire into and report on any proposal, matter or thing concerned with the arts, coordination of government, environment, and planning the use, development and protection of land.
- (4) The Standing Committee on Legal and Social Issues will inquire into and report on any proposal, matter or thing concerned with community services, education, gaming, health, and law and justice.
- (5)
  - (a) Legislation Committees may inquire into, hold public hearings, consider and report on any bills or draft bills referred to them by the Legislative Council, annual reports, estimates of expenditure or other documents laid before the Legislative Council in accordance with an Act, provided these are relevant to their functions.
  - (b) Reference committees may inquire into, hold public hearings, consider and report on other matters referred to them by the Legislative Council.
- (6) References concerning departments and agencies shall be allocated to the committees in accordance with a resolution of the Council allocating departments and agencies to the committees.
- (7) Each legislation and reference committee will consist of 8 members, with 4 members from the Government Party nominated by the Leader of the Government in the Council, 3 members from the Opposition nominated by the Leader of the Opposition in the Council and 1 member from among the remaining members in the Council nominated jointly by minority groups and independent members.
- (8)
  - (a) The committees to which minority groups and independent members make nominations shall be determined by agreement between the minority groups and independent members, and, in the absence of

- agreement being notified to the President, representation on a committee shall be determined by the Council.
- (b) The allocation of places on the committees amongst minority groups and independent members shall be, as near as practicable, in proportion to to their respective numbers in the Council.
- (9) 5 Members of each committee will constitute a quorum of the committee.
  - (10) Each committee may proceed to the despatch of business notwithstanding that all Members have not been appointed and notwithstanding any vacancy.
  - (11)
    - (a) Members may be appointed as substitutes for other members on the legislative and reference standing committees in respect of particular matters before the committees.
    - (b) On the nominations of the Leader of the Government in the Council, the Leader of the Opposition in the Council and minority groups and independent members, participating members may be appointed to the committees.
    - (c) Participating members may participate in hearings of evidence and deliberations of the committees, and have all the rights of members of committees, but may not vote on any questions before the committees.
    - (d) A participating member shall be taken to be a member of a committee for the purpose of forming a quorum of the committee if a majority of members of the committee is not present.
    - (e) If a member of a committee is unable to attend a meeting of the committee, that member may in writing to the chair of the committee appoint a participating member to act as a substitute member of the committee at that meeting. If the member is incapacitated or unavailable, a letter to the chair of a committee appointing a participating member to act as a substitute member of the committee may be signed on behalf of the member by the leader of the party or group on whose nomination the member was appointed to the committee.
  - (12) A committee may appoint sub-committees consisting of 3 or more of its members, and refer to any such sub-committee any of the matters which the committee is empowered to consider.
  - (13)
    - (a) Each legislation committee shall elect as its chair a member nominated by the Leader of the Government in the Council, and as its deputy chair a member nominated by the Leader of the Opposition in the Council or by a minority group or independent member.
    - (b) Each references committee shall elect as its chair a member nominated by the Leader of the Opposition in the Council or by a minority group or independent member, and as its deputy chair a member nominated by the Leader of the Government in the Council.
    - (c) Members nominated as chairs and deputy chairs by the Leader of the Opposition or members of minority groups or independent members shall be determined by agreement between those groups and, in the absence of agreement duly notified to the President, any question of the allocation of chairs and deputy chairs shall be determined by the Council.

- (d) The deputy chair shall act as the chair of the committee when the member elected as chair is absent from a meeting of the committee or the position of chair is temporarily vacant.
  - (e) In addition to exercising a deliberative vote, when votes on a question before a committee are equally divided, the chair, or the deputy chair when acting as chair, shall have a casting vote.
  - (f) The chair, or the deputy chair when acting as chair, may appoint another member of a committee to act as chair during the temporary absence of both the chair and deputy chair at a meeting of the committee.
- (14) Each committee will advertise the terms of reference for an inquiry and call for submissions and all such submissions received by the committee will be treated as public documents unless the committee otherwise orders.
  - (15) Each committee shall be provided with all necessary staff, facilities and resources and shall be empowered to appoint persons with specialist knowledge for the purposes of the committee, with the approval of the President.
  - (16) The provisions of the Standing Orders relating to Select Committees apply to each committee as if it were a Select Committee.
  - (17) The foregoing provisions of this resolution, so far as they are inconsistent with the Standing Orders and Sessional Orders or practices of the Council will have effect notwithstanding anything contained in the Standing or Sessional Orders or practices of the Council.