Report 51

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

Review of the Standing Orders relating to motions on notice - Request for extension of reporting time and discussion paper

Presented by
Hon Kate Doust (Chair)
September 2018
**Standing Committee on Procedure and Privileges**

**Members as at the time of this inquiry:**

<table>
<thead>
<tr>
<th>Hon Kate Doust MLC (Chair)</th>
<th>Hon Simon O’Brien MLC (Deputy Chairman)</th>
</tr>
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<tbody>
<tr>
<td>Hon Martin Aldridge MLC</td>
<td>Hon Adele Farina MLC</td>
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<td>Hon Rick Mazza MLC</td>
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</table>

**Staff as at the time of this inquiry:**

<table>
<thead>
<tr>
<th>Mr Nigel Pratt, BA, BJuris, LLB (Clerk of the Legislative Council)</th>
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<tbody>
<tr>
<td>Mr Paul Grant, BA (Hons), LLB (Deputy Clerk)</td>
</tr>
<tr>
<td>Mr Grant Hitchcock, BA (Usher of the Black Rod)</td>
</tr>
</tbody>
</table>

**Address:**

Parliament House  
4 Harvest Terrace, West Perth WA 6005  
Telephone: 08 9222 7300  
Email: lcco@parliament.wa.gov.au  
Website: www.parliament.wa.gov.au

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Reference

1.1 On Tuesday, 26 June 2018, on the motion of the Leader of the House, the Legislative Council resolved the following motion:

(1) That the Standing Committee on Procedure and Privileges undertake a review of the Standing Orders relating to Motions on Notice with a view to modernising the procedures of the House.

(2) That the Committee is to report to the House no later than Thursday, 20 September 2018.

Request for extension of time in which to report

1.2 On Wednesday, 12 September 2018 the Committee met and resolved to seek an extension of time in which the Committee is to report on the referral.

1.3 The Committee considers an extension of its reporting time to 20 November 2018 is required to enable it to provide information to members and to seek further submissions from members on reforms to the motions on notice procedure.

1.4 Appended to this report is a discussion paper on motions on notice for the information of all members. The discussion paper provides an overview of the procedure, related procedures, and a statistical analysis of motions on notice in the previous five Parliaments since 1997.

1.5 Having provided this information, an extension of the reporting date will permit sufficient time for members to make any further submissions, to enable the Committee to consider them, and report to the Council on its recommended course of action. This will enable the Council to put in place any reforms to the procedure for the 2019 sittings.

1.6 The Committee makes the following recommendation:

RECOMMENDATION 1

That the reporting date for the Standing Committee on Procedure and Privilege’s inquiry into the motions on notice procedure be extended from Thursday, 20 September 2018 to Tuesday, 20 November 2018.
Discussion paper — submissions

1.7 The discussion paper aims to inform members about the motions on notice procedure and the various options for reform. The Committee seeks submissions from any interested members by close of business on Friday, 12 October 2018.

RECOMMENDATION 2

That members make any further submissions on the Standing Committee on Procedure and Privilege’s inquiry into the motions on notice procedure by close of business on Friday, 12 October 2018.

Hon Kate Doust MLC
Chair
APPENDIX 1

DISCUSSION PAPER — MOTIONS ON NOTICE

Issues for discussion

1.1 The motions on notice procedure has existed in the Council since the 19th century. In modern times, some members have questioned whether the procedure in its current form adequately fulfils its function. The primary function of the motions on notice procedure is to provide private members with an opportunity to put propositions to the Council on matters of concern to citizens of Western Australia, to inquire or scrutinise activities of Government, and make the executive accountable to the Parliament through its resolutions or orders.

1.2 The review of the Standing Orders in 2010 did not result in any material changes to the motions on notice procedure or Standing Orders. The review resulted in the Council adopting altered time limits for debate and speaking times previously implemented by the trial of various temporary and sessional orders. Prior to the review, and following the adoption of the new Standing Orders in December 2011, the procedure and practice related to motions on notice has operated relatively consistently since the commencement of the 35th Parliament in 1997.

1.3 The Procedure and Privileges Committee (PPC) has been referred the task of conducting a review of the Standing Order relating to motions on notice on the basis that the procedure is not functioning effectively, at least for some members. Several factors have contributed to this view and include:

- The increase in number of political parties represented in the Council;
- The limited number of opportunities each calendar year to progress items of business;
- The absence of an equitable mechanism to allocate precedence to notices of motions;
- The absence of prorogations to clear the notice paper of notices that are no longer relevant; and
- The absence of restraint by some members.

1.4 The PPC presents the following information to members to generate discussion. The PPC welcomes members’ feedback to inform its deliberations and recommendations and seeks submissions from members by close of business on Friday, 12 October 2018.

Motions on notice

What is a motion?

1.5 A motion is a proposal made for the purpose of eliciting a decision of the House.¹

1.6 The Council makes decisions or takes action in response to a proposal presented to it in the form of a motion. Motions are the primary vehicle that enables the Council to do something, and the foundation of parliamentary procedure inherited from the Westminster parliamentary tradition.

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1.7 Motions on notice are substantive, self-contained propositions used to generate debates and ultimately, a decision or opinion of the Council expressed as a resolution or an order.

**Private Members’ business**

1.8 The motions on notice procedure is an aspect of Private Members Business. A ‘private member’ in the traditional parliamentary use of that expression is one who is not a member of the Government. A private member therefore excludes all Ministers of the Crown. The practice of the Council as to whether a Parliamentary Secretary should be treated as a private member has varied. The Standing Orders exclude Parliamentary Secretaries from the Private Members procedure on sitting Thursday’s. However, Parliamentary Secretaries, unlike Ministers, are permitted to serve on committees and have been treated as private members for the purpose of the motions on notice procedure. A new procedure for motions on notice may need to consider whether Parliamentary Secretaries should be considered private members given that they are members appointed to that political office to assist Ministers.2

1.9 Unlike many other Australian jurisdictions where Private Members’ Business comprises one period in which private members may move notices of motion that can include introducing Private Members’ Bills, the Council has three distinct periods allocated for private members. Two of these, Non-Government Business and Private Members’ Business, are reserved for dealing with Private Members Bills, or motions without notice that do not result in an order or resolution of the Council.3

1.10 The Non-Government Business procedure is reserved for private members who oppose the Government and arose from the 2010 review of Standing Orders. This procedure replaced the one-hour urgency debate. Private Members’ Business was a novel procedure introduced to allow a period for private members supporting the Government. The third procedure of motions on notice deals solely with motions for which notice has been given and that do not involve Bills. Unlike motions without notice given during Non-Government and Private Members’ Business, the disposal of each item of business under motions on notice results in a resolution or order of the Council.

1.11 Notices dealt with during the motions on notice procedure are placed on the Notice Paper in the order they have been given. Each member may give up to two notices per sitting day unless the notice is one to disallow regulations.4 Notices given have precedence each day according to the order in which they appear on the Notice Paper.5 The Council may disturb this precedence by ordering that a notice be dealt with as motion No.1 for the next sitting of the Council.6

**Function of motions on notice**

1.12 Motions on notice is a procedure not required by Government. Certain machinery notices of motion may be given by the Leader of the House for the administration of the Council, such as notices of motion to establish committees, their membership or the appointment of Deputy Chairs of Committees. However, any notice of motion given by Government to progress Government business can be made an order of the day so that it appears under this heading on the Notice Paper. The Leader of the House controls the order of these items of business on the Business Program, while the procedure for motions on notice is the ambit of private members.

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2 See s.44A of the Constitutions Act Amendment Act 1899.
3 SOs 111 & 112.
4 SO 60.
5 SO 66.
6 SO 17(5).
1.13 The practice in the Council has been that motions on notice is a procedure primarily for use by members of the official opposition and other private members who do not support the Government to raise matters of public interest and to scrutinise the activities of Government. This use is illustrated by the trends in recent Parliaments (see figures 1 to 5 in paragraph 1.16), which is consistent with past use of the motions on notice procedure (see appendix 3). Motions are also the primary mechanism available to establish subordinate bodies such as committees, to order the production of state papers from Ministers, or for other proposals intended to inquire or scrutinise and make the executive accountable to the Parliament.

1.14 Examples of resolutions or orders arising from debates on motions on notice include:

- **Establishing standing** and select committees:
  - Select Committee into the Appropriateness of Powers and Penalties for Breaches of Parliamentary Privilege and Contempts Of Parliament (2009);
  - Select Committee on Aboriginal Constitutional Recognition (2015);
  - Select Committee into the operations of The Royal Society for The Prevention of Cruelty to Animals Western Australia (Inc) (2016);
  - Reestablishment of the Joint Standing Committee on Delegated Legislation for the 40th Parliament (2017);

- **Referring inquiries to standing committees**:
  - Legislative Council Prayer (2015);
  - Report on Recreational Hunting Systems (2015);

- **Resolutions of the Council** such as:
  - That the house authorises the special inquirer appointed to undertake the St Andrew’s Hostel special inquiry, or a person or persons nominated by the special inquirer, to —
    - view a copy of the submissions and transcripts, requested by the special inquirer in attachment 2 of his correspondence to the President dated 7 February 2012, in the office of the Clerk of the Legislative Council at a mutually convenient time to be arranged by the Clerk; and
    - take notes regarding the contents of the submissions and transcripts under (a), but not remove these documents from the office of the Clerk or take copies thereof (2012).

- **Orders summonsing a person(s) to the Bar of the House**:
  - That contingent upon the House's adoption of a report, from a committee of the whole Council, affirming the opinion (contained in a special report) of the select committee inquiring into the disposal of the Midland Saleyards, Mr Ellett be adjudged guilty of contempt and be summonsed to appear at the Bar to receive the judgement of the House.\(^8\)

\(^7\) In August 2005 the then Government gave notice of motion to repeal and substitute a number of standing committees and their terms of reference.

\(^8\) Notice of this motion was given on or prior to 14 October 1986. This contingent notice of motion arose out of Mr Ellett’s refusal to provide an answer to a question asked of him by the select committee. On 15 October 1986 the motion was agreed to by the Council and a subsequent motion without notice was moved giving effect to the order and setting a time for Mr Ellet’s appearance before the Bar of the House. On 21 October 1986 Mr Ellet was censured by the Council for his continuing failure to answer the question or apologise to the Council.
• Orders that a Minister or Leader of the Government table state papers:
  o That the Honourable D.K. Dans, Leader of the Government in the Legislative Council, be ordered, and is hereby so ordered, to lay on the Table of the House no later than 7 days from the day on which this order is made, on behalf of the Government of Western Australia, the information and documents hereinafter described, and that such documents be tabled without excision, alteration or defacement.

**Data on the 35th to 39th Parliaments**

1.15 In the 35th to 39th Parliaments, the majority of motions on notice debated in the Council were motions moved by members of the official opposition and members of minor parties that did not support the Government. The following tables and figures show statistical data on motions on notice in these five Parliaments, including the proportion of motions on notice moved by members of each party expressed as a percentage of total motions. Appendix 4 contains a full statistical overview of motions on notice for the 35th to 39th Parliaments.

1.16 Table 1 below shows the number of motions moved by members of the party in Government from the 35th to the 39th Parliaments. The average percentage of motions moved by Government members in each of the five Parliaments since 1997 has been just over 18 percent.

<table>
<thead>
<tr>
<th>Parliament</th>
<th>Party in Govt.</th>
<th>Motions moved by Govt (including Nationals)</th>
<th>Total of Motions moved</th>
<th>% Govt. Motions</th>
<th>Party in Government Membership</th>
<th>Party in Govt. % of Private Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>35th</td>
<td>Liberal/Nat</td>
<td>15</td>
<td>57</td>
<td>26%</td>
<td>50%</td>
<td>41%</td>
</tr>
<tr>
<td>36th</td>
<td>ALP</td>
<td>2</td>
<td>32</td>
<td>6%</td>
<td>38%</td>
<td>25%</td>
</tr>
<tr>
<td>37th</td>
<td>ALP</td>
<td>8</td>
<td>37</td>
<td>22%</td>
<td>47%</td>
<td>33%</td>
</tr>
<tr>
<td>38th</td>
<td>Liberal/Nat</td>
<td>4</td>
<td>42</td>
<td>10%</td>
<td>55%</td>
<td>40%</td>
</tr>
<tr>
<td>39th</td>
<td>Liberal/Nat</td>
<td>10</td>
<td>36</td>
<td>28%</td>
<td>61%</td>
<td>42%</td>
</tr>
</tbody>
</table>

Note: The percentage of private members of the party in Government to this Table and Figures 2 to 6 excludes Ministers, Parliamentary Secretaries and the President.
Table 2. 35th Parliament

<table>
<thead>
<tr>
<th>Number of Motions</th>
<th>Notices Given</th>
<th>% of Motions Debated where Notice was Given</th>
<th>Average Time Between Notice and Debate</th>
<th>Average Number of Speakers</th>
</tr>
</thead>
<tbody>
<tr>
<td>57</td>
<td>101</td>
<td>56%</td>
<td>75 days</td>
<td>5</td>
</tr>
</tbody>
</table>

Figure 1. 35th Parliament - proportion of motions on notice moved by party (%)

![35th Parliament - proportion of motions on notice moved by party (%)]

- ALP
- Liberals (Gov)
- National Party
- Greens (WA)
- Aust. Democrats

Table 3. 36th Parliament

<table>
<thead>
<tr>
<th>Number of Motions</th>
<th>Notices Given</th>
<th>% of Motions Debated where Notice was Given</th>
<th>Average Time Between Notice and Debate</th>
<th>Average Number of Speakers</th>
</tr>
</thead>
<tbody>
<tr>
<td>32</td>
<td>44</td>
<td>73%</td>
<td>135 days</td>
<td>7</td>
</tr>
</tbody>
</table>

Figure 2. 36th Parliament - proportion of motions on notice moved by party (%)

![36th Parliament - proportion of motions on notice moved by party (%)]

- ALP (Gov)
- Liberals
- National Party
- Greens (WA)
- One Nation Party
- Independent

35th Parliament – 29 private members:
- Liberals (Gov) – 10 members (34%)
- National Party (Gov) – 2 members (7%)
- ALP – 10 members (35%)
- Greens (WA) – 3 members (10%)
- Aust. Democrats – 2 members (7%)
- Independent – 2 members (7%)

36th Parliament – 28 private members:
- ALP (Gov) – 7 members (25%)
- Liberals – 11 members (39%)
- National Party – 1 member (3%)
- Greens (WA) – 5 members (18%)
- One Nation Party – 3 members (11%)
- Independent – 1 member (3%)
Table 4. 37th Parliament

<table>
<thead>
<tr>
<th>Number of Motions</th>
<th>Notices Given</th>
<th>% of Motions Debated where Notice was Given</th>
<th>Average Time Between Notice and Debate</th>
<th>Average Number of Speakers</th>
</tr>
</thead>
<tbody>
<tr>
<td>37</td>
<td>49</td>
<td>75%</td>
<td>163 days</td>
<td>6</td>
</tr>
</tbody>
</table>

Figure 3. 37th Parliament - proportion of motions on notice moved by party (%)

Table 5. 38th Parliament

<table>
<thead>
<tr>
<th>Number of Motions</th>
<th>Notices Given</th>
<th>% of Motions Debated where Notice was Given</th>
<th>Average Time Between Notice and Debate</th>
<th>Average Number of Speakers</th>
</tr>
</thead>
<tbody>
<tr>
<td>42</td>
<td>54</td>
<td>77%</td>
<td>377 days</td>
<td>6</td>
</tr>
</tbody>
</table>

Figure 4. 38th Parliament - proportion of motions on notice moved by party (%)
Table 6. 39th Parliament

<table>
<thead>
<tr>
<th>Number of Motions</th>
<th>Notices Given</th>
<th>% of Motions Debated where Notice was Given</th>
<th>Average Time Between Notice and Debate</th>
<th>Average Number of Speakers</th>
</tr>
</thead>
<tbody>
<tr>
<td>36</td>
<td>60</td>
<td>60%</td>
<td>579 days</td>
<td>7</td>
</tr>
</tbody>
</table>

Figure 5. 39th Parliament - proportion of motions on notice moved by party (%)

# See Appendix 4 for a full statistical overview of motions on notice for the 35th to 39th Parliaments.

**Factors affecting motions on notice**

**Increase in political groups represented**

1.17 The electoral reforms introduced by the Acts Amendment (Electoral Reform) Act 1987, which introduced a system of proportional representation in the Council, have resulted in the election of members of minor parties to the Council. The representation of diverse political groups has increased over time with seven parties currently represented in the Council. Members of each political group wish to progress their political objectives through the Private Members’ procedure of motions on notice. However, there are no mechanisms in the Standing Orders to distribute equitably the available periods between members.

**Reduced time and limited opportunities**

1.18 In 1870 an average of six hours per sitting week was allocated to motions on notice. From 1914 this average reduced to 3 hours per week due to the ‘1 hour rule’ and the Standing Order that stipulated that motions shall have precedence over all other business each day. Successive sessional and temporary orders adopted by the Council from the early 2000s have resulted in a further reduction of time allocated to motions on notice, and more time allocated to government business and orders of the day (see appendix 3, Figure 8).

1.19 Figure 6 illustrates how time allocated to motions on notice in the Council has reduced over time. Prior to responsible government in 1890 and in the century that followed, motions were debates with unlimited speaking times. In 1989 the introduction of speaking time limits

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Standing Orders 104 and 114 prescribed that motions were to have precedence each sitting day for the first hour.
for members had the additional effect of capping total debate time. The total debate time for motions on notice has since been regulated by successive sessional and temporary orders, and is now fixed by the Standing Orders.

Figure 6. Motions on Notice weekly debate time (1870 to 2018)

Currently the motions on notice procedure allows for approximately 10 opportunities per calendar year. This arises from the usual sitting schedule of approximately 20 weeks and the time allocated to each motion being dealt with over two consecutive sitting Wednesdays.

The mechanism to establish precedence of motions

The Standing Orders give precedence to notices in the order they are given. Unless this precedence is disturbed by the Council ordering that another motion has precedence as No. 1 under SO 17(5), each notice under motions on notice is dealt with on a ‘first come first serve’ basis. The absence of a mechanism for granting precedence in an equitable manner encourages members to give notices early in a Parliament for fear of missing out. The absence of a mechanism to equitably distribute turns amongst members of different political groups and the other factors have contributed to an ever increasing period between the giving of a notice and when it is first debated as shown in Table 7.

Sessions of Parliament - absence of prorogation or other mechanisms to clear the Notice Paper

From the 37th Parliament onwards, each succeeding Parliament has comprised one session for the entire Parliament. Prior to this arrangement, the practice in accordance with s. 4 of the Constitution Act 1889 (a session every year) was that each Parliament was held over a number of sessions; typically four. The prorogation ending each session had the effect of clearing the Notice Paper of all business. As a result, the Council commenced each new session with a cleared Notice Paper and new notices of motion would need to be given. Prorogation contributed to motions on notice retaining their relevance as a notice of motion would only survive approximately one year.

The move to one session Parliaments from the 37th Parliament onwards has meant that motions listed on the Notice Paper can potentially remain there for the life of the Parliament. In the absence of a mechanism to clear the Notice Paper of motions on notice, this move has increased the likelihood of motions losing relevance if and when they are called for debate, as was the case during the 39th Parliament.
1.24 In the Standing Orders of the Legislative Assembly of Western Australia a mechanism to clear the Notice Paper has been provided to the Speaker in the form of a discretionary power to remove motions not moved after 30 sitting days (SO 74). A similar discretionary power is not currently available to the President in the Standing Orders of the Council.

Amendments

1.25 Motions on notice are substantive motions capable of amendment. An amendment to a motion moved at a late stage in the debate had the effect of superseding the main question on the substantive debate while the Council turned its focus towards the amendment. This problem was temporarily resolved when the Council adopted a new Standing Order 37(2) arising from the debate on the 2010 review of the Standing Orders. Standing Order 37(2) specified that a member may only speak once on the motion and any amendment moved to it. This was consistent with the previous practice of the Council and had the benefit of curtailing debate. However, it prevented members who had already spoken to the main question from speaking to the amendment, whilst members who had not yet spoken were able to speak to both the substantive motion and the amendment concurrently.

1.26 This matter came to a head in late 2013 and was referred to the PPC. In this instance, the PPC recommended the repeal of Standing Order 37(2) and the return to standard meeting practice. The Council accepted this recommendation.

1.27 At that time, the PPC noted that a strict application of rule against irrelevant and repetitious debate (SO 47) would mitigate the capacity of a member who moved an amendment to divert the debate on the main question. However, the relatively generous time permitted to speak on any amendment (20 minutes) could result in members being denied the opportunity to speak to the main question due to the time-limited debate.

Events in the 39th Parliament

1.28 In June 2013 following the change in the Council’s membership on 22 May, a practice developed in which the procedure for motions on notice was used as a tool for a series of alternating debates either congratulating or condemning the Government. On 19 June 2013, 14 opposition notices of motion were given that condemned the Government for a variety of reasons. In response to those motions, members supporting the then ‘alliance government’ lodged a further series of 15 ‘counter’ notices of motions proposing to congratulate the Government. This occurred notwithstanding the capacity of Government members to defeat or amend the opposition motions when debated. In all, the series of motions lodged and the lack of restraint exhibited by members contributed to a backlog of motions on the Council Notice Paper that extended beyond the life of the Parliament.

1.29 This situation was briefly commented on during the debate on a PPC report recommending the trial of ‘family friendly’ hours (7.00pm adjournment on Wednesday evenings):

Hon KEN TRAVERS: … The issue with motions on notice that has occurred progressively over a number of years really needs to be looked at. Traditionally, motions on notice were moved by oppositions. It was one mechanism by which

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11 Western Australia, Legislative Council, Parliamentary Debates, 26 November 2018, p. 8799.
12 The ‘alliance government’ refers to the arrangement between the WA Liberal Party and the Nationals WA Party who formed Government in an alternative manner from the usual coalition arrangements seen at the Federal level.
the opposition could raise matters, because the government has plenty of ways in which it can raise its issues. In fact, we now have government members’ time so that members of the backbench get the opportunity to raise matters. However, motions on notice were traditionally a mechanism for the opposition to raise matters, with some exceptions at times when there was a legitimate reason for the government to move a motion.

I hope that in terms of looking at future reforms of this place we can start to move down that path. I agree with Hon Simon O’Brien that it has now got to a point of ridiculousness with his motion on congratulating the government on its excellence.  

1.30 In 2016 at the end of the sittings of the 39th Parliament, the Notice Paper had 25 notices listed under the Motions on Notice heading awaiting debate. None of these notices progressed as the Council was prorogued on 30 January 2017 in preparation for the state general election held on 11 March 2017.

1.31 Backlogs of motions on notice remaining unresolved have been common features of previous Parliaments. This was simply the outcome of a system in which there is limited time available for motions on notice and numerous calls by members on this time. The issue is not that some notices will not be debated but:

- how the limited time for debate on motions on notice should be distributed amongst members;
- that members have a reasonable opportunity to use motions on notice to achieve their political objectives; and
- that an adequate number of motions are debated in each calendar year of a four-year Parliament.

1.32 The recent performance of the Council over the previous five Parliaments (as illustrated in Table 7) and the advent of seven parties gaining representation in the 40th Parliament has contributed to concerns that the motions on notice procedure is not fulfilling its intended purpose for all members.

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14 Hon Ken Travers, Western Australia, Legislative Council, Parliamentary Debates (Hansard), 26 November 2014, p 8811-12.

15 Prorogation has the effect of clearing the Notice Paper.
Table 7. Summary of motions on notice moved — 35th to 39th Parliaments

<table>
<thead>
<tr>
<th>Parliament</th>
<th>No. of Motions Moved</th>
<th>Average Time Between Notice and Debate</th>
<th>Average No. of Speakers per Motion</th>
</tr>
</thead>
<tbody>
<tr>
<td>35th</td>
<td>57</td>
<td>75 days</td>
<td>5</td>
</tr>
<tr>
<td>36th</td>
<td>32</td>
<td>135 days</td>
<td>7</td>
</tr>
<tr>
<td>37th</td>
<td>37</td>
<td>163 days</td>
<td>6</td>
</tr>
<tr>
<td>38th</td>
<td>42</td>
<td>377 days</td>
<td>6</td>
</tr>
<tr>
<td>39th</td>
<td>36</td>
<td>579 days</td>
<td>7</td>
</tr>
</tbody>
</table>

Discussion points

1.33 A number of options for reforming the motions on notice procedure are canvassed in submissions. These include:

- reduced time allocated to each motion on notice;
- reduced speaking times under SO 21;
- a procedure that prohibits debate on amendments and provides that all questions on amendment(s) be put at the end of the debate;
- reducing the number of notices of motion permitted to be given by each member per sitting day;
- a new Standing Order similar to Legislative Assembly SO 74 providing the President with authority to remove ‘stale’ notices of motion; and
- a rotational mechanism for the allocation of ‘spots’ or ‘turns’ for motions on notice allocated on the basis of proportion of party representation or some other formulae.

1.34 One of the key risks in reforming motions on notice would be changes that alter its characteristic as a procedure predominantly used by members of opposition parties to raise matters of public interest, to inquire, scrutinise, and bring the Government to account through resolutions and orders of the House. The motions on notice procedure facilitates these activities, which remain the core business of a House of Review.

1.35 Conventions have developed in other procedures to facilitate the Council’s scrutiny and accountability functions. By way of example, in Questions Without Notice, private members supporting the Government are not allocated a proportion of questions equivalent to their representation in the House. The fact that private members supporting the Government are not regularly called to ask a question and the virtual elimination of ‘Dorothy Dix’ questions is a practical recognition that the scrutiny and accountability functions are best served by granting the vast majority of questions to private members who do not support the Government.

1.36 If an allocation is made based on membership of a party, members may wish to consider an allocation that reflects the historical function of the motions on notice procedure. This may involve determining which members are to be treated as private members. Certain categories of members such as Ministers, Parliamentary Secretaries or the President may be excluded from any definition and/or formulae used to calculate the allocation to members of each party.
Discussion Point 1: Rotational allocation based on a proportion of party representation

1.37 An allocation of ‘turns’ or ‘spots’ for motions on notice determined in accordance with the number of members of each party as a proportion of total membership of the Council, would result in:

- the largest proportion of turns for motions on notice being allocated to Government members; and
- a direct conflict with the capacity under the Standing Orders of a majority of members to determine the priority of a motion irrespective of its order on the Notice Paper.

1.38 This suggested reform reflects the initial discussions of the business management meeting of party leaders and the proposed pro-rata mechanism reflected in the Greens (WA) submission (see Appendix 2). This option retains the four-hour total debate time allocated for each motion on notice, resulting in each motion being dealt with over two sitting Wednesdays, and the current 45 minutes speaking times for all members. A rotational mechanism similar to Non-Government and Private Members’ Business would apply. The allocation of turns is based on each party’s representation in the chamber as a proportion of total membership of the Council. Under this arrangement, if all members speak for their total allotment of time (45 minutes) a total of 5.3 members will be able to contribute to the debate on each motion.

1.39 An allocation based on proportion of party representation would result in Government members being allocated the largest share of motions on notice opportunities (39%) contrary to historical practice (18%) (see figures 1 to 5 at paragraph 1.16). This may detrimentally affect the capacity of the Council to use the motions on notice procedure to undertake its scrutiny and accountability functions. Under this arrangement, and assuming the current 20 sitting weeks per year, not all parties will have an opportunity for one of their members to move a motion and one party will need to give up a turn to enable three minor parties to each have one motion on notice per year. Alternatively, the last two places could be allocated between the three parties with less than one turn by the drawing of lots.

1.40 To illustrate this point, Figure 7 shows the distribution between parties of motions on notice based on the current 20 week per annum sitting schedule should the Council adopt an allocation based on the number of members of each party as a proportion of total membership of the Council.
The allocation is based on a proportion of party representation in the Council resulting in the following number of motion opportunities per party:

**4 Government member motions (39%).**

**6 non-Government member motions (61%):**
(The Liberal Party will be allocated a minimum of 2 motions; the National Party and Greens (WA) will be allocated 1 motion each, leaving the last 2 motions to be negotiated amongst the 3 remaining parties).

For the purpose of comparison with the historical pie charts in Figures 1 to 5 in paragraph 1.16, the allocation in Figure 7 is represented in Figure 8 as a percentage of each party’s allocation of motions on notice opportunities in each calendar year. This is based on the assumption that 10 motions will be dealt with over 20 periods of motions on notice in each year.

**Figure 8. Pro-rata allocation of motions on notice based on party representation in the Council as a proportion of total membership – 40th Parliament**

**40th Parliament – 36 members:**
- ALP (Gov) – 14 members (39%)
- Liberals – 9 members (25%)
- National Party – 4 members (11%)
- Greens (WA) – 4 members (11%)
- PHON – 3 members (8%)
- SFF Party – 1 member (3%)
- Liberal Democrats – 1 member (3%)
1.42 The current arrangement under SO 17(5) permits a simple majority of members to agree to advance any motion on notice to No. 1 on the Business Program so that the motion is dealt with in priority to all other motions at the next sitting Wednesday. This Standing Order, which has been present since 1914, provides a mechanism to deal with a matter urgently arising. The use of SO 17(5) is likely to conflict with a temporary order that allocates turns for motions on notice. A member’s turn may be lost as a result of a majority decision to deal with another motion or series of motions of members of another party. The repeal of SO 17(5) to remove this conflict would mean that any motion to advance a motion to No. 1 contrary to the agreed rotation schedule would require the suspension of Standing Orders – an absolute majority of members.

1.43 Figure 9 shows the apportionment of turns for motions on notice based on a modified version of Discussion Point 1, with each motion being dealt with in one two hour period each sitting week. This apportionment permits all parties to have at least one opportunity for one of its members to move a motion on notice each calendar year. However, rounding to the nearest whole number will result in one more allocation than the number of sitting weeks.

Figure 9. Pro-rata allocation of motions on notice based on party representation in the Council as a proportion of total membership – 2 hours debate time per motion, 20 weeks

The allocation is based on a proportion of party representation in the Council resulting in the following number of motion opportunities per party (assuming 20 sitting weeks per year):
8 Government member motions (39%);
12 non-Government member motions (61%).

1.44 Figure 10 shows the apportionment of turns for motions on notice with each motion being dealt with in one two-hour period each sitting week but excluding Ministers and the President from the calculation.

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16 There may be good reasons to do so; for example, to ensure all relevant information is before the Council in its consideration of a Bill, to establish an urgent inquiry, or to censure a Minister or the Government.
Figure 10. Pro-rata allocation of motions on notice based on party representation in the Council as a proportion of membership excluding Ministers and the President – 2 hours debate time per motion, 20 weeks

Figure 11 below shows the apportionment of turns for motions on notice with each motion being dealt with in one two-hour period each sitting week but excluding Ministers, Parliamentary Secretaries and the President from the calculation

Figure 11. Pro-rata allocation of motions on notice based on party representation in the Council as a proportion of membership excluding Ministers, Parliamentary Secretaries and the President – 2 hours debate time per motion, 20 weeks
Discussion Point 2: Reduced debate time for motions on notice

1.46 One way of increasing the number of opportunities during motions on notice would be to reduce the total time for each motion. Options include a reduction from 240 minutes to 120 minutes so that each motion is dealt with in one period rather than as currently applies over two consecutive 120 minute periods. This would permit approximately 20 motions to be disposed of in a calendar year. An alternative would be for each motion to have a maximum period of 180 minutes and be dealt with over one or more consecutive weeks. This would permit approximately 13 motions to be disposed of in a calendar year.

1.47 To achieve this outcome, SO 23 would need to be amended by a temporary order to reduce the total time of debate from 240 minutes to 120 minutes or some other agreed time.

1.48 In the event that a 120 minute period is chosen, to avoid debate on another motion commencing in the event that it is disposed of prior to the expiry of the maximum time, a temporary order could provide that in this event the Council is to proceed to other business.

Discussion Point 3: Reduced speaking times

1.49 To achieve the outcome in Discussion Point 2 and ensure an adequate number of opportunities for members to speak would require the alteration of current speaking times in SO 21.

1.50 The alteration of speaking times could accord with those applying to Non-Government Business or some other limit that would give members adequate time for debate and to move amendments. Speeches of 20 minutes per member and for amendments either 5 or 10 minutes may suffice.

1.51 A temporary order could ensure that the mover of the motion exercises their right of reply. Currently this is rarely exercised given that the member on their feet will speak until the end of the time limited debate. A temporary order could provide for the President to interrupt the debate 5 or 10 minutes prior to the expiry of time to allow for a reply.

1.52 If 20 minutes speaking times were to apply and assuming no amendments, 6 speakers would make a contribution to a 120 minute maximum time debate. In the event that the Council elects a 180 minute period and applies the speaking times for Non-Government Business as per below, it is possible that 16.5 members will be able to contribute to the three hour debate.

<table>
<thead>
<tr>
<th>Role</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mover</td>
<td>20 minutes</td>
</tr>
<tr>
<td>Responsible Minister or Parliamentary Secretary</td>
<td>15 minutes</td>
</tr>
<tr>
<td>Other Members</td>
<td>10 minutes</td>
</tr>
</tbody>
</table>

1.53 If the speaking times for Private Members’ Business were applied as per below to a maximum 120 minute debate and if all categories of members speak for their total allotment of time it is possible that 11.5 members will be able to contribute to the debate.

<table>
<thead>
<tr>
<th>Role</th>
<th>Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mover</td>
<td>15 minutes</td>
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<tr>
<td>Responsible Minister or Parliamentary Secretary</td>
<td>10 minutes</td>
</tr>
<tr>
<td>Other Members</td>
<td>10 minutes</td>
</tr>
<tr>
<td>Mover-in-reply</td>
<td>10 minutes</td>
</tr>
</tbody>
</table>
Discussion Point 4: How to establish precedence of notices

1.54 Currently, the Standing Orders give precedence to notices of motion in the order in which they are given, subject to the Council altering this precedence under SO 17(5). This encourages members to give multiple notices of motions early in a Parliament. This contributes to the increased length of time notices remain on the Notice Paper prior to debate and often results in the item of business becoming out of date.

1.55 Other jurisdictions have mechanisms to allocate turns for Private Members’ Business more equitably amongst members. One possibility is to allocate turns by a draw of members names who have given notices. A quota set according to an agreed formula could determine the number of opportunities granted to members of each political group.

1.56 Fixed term Parliaments and the usual recesses for winter and summer give an opportunity to conduct a series of draws:
- At the commencement of a new Parliament;
- When members elected at a March general election take their seats in May for that parliamentary year; and
- At the end of the year and prior to the winter recess to establish the precedence of notices for each half of the year.

1.57 Draws have the benefit of avoiding a rush of notices as members of each political group are aware of their annual quota and the number of opportunities available. There is no benefit in giving multiple notices of motion early in a new Parliament.

Discussion Point 5: Authority provided to the President to remove ‘stale’ notices from the notice paper

1.58 The absence of prorogations has resulted in the Notice Paper containing considerably more notices of motion than can be dealt with in a Parliament. There is currently no mechanism to remove notices other than for a member to withdraw them. As a result many notices for Private Members’ Business that may no longer be contemporary or relevant remain on the Notice Paper.

1.59 The Legislative Assembly has dealt with this issue by permitting the Speaker to remove notices of motion from the Notice Paper after 30 sitting days. The Legislative Assembly Standing Order is replicated below:

Notice lapses

74. (1) If a notice of motion has remained on the Notice Paper for 30 sitting days without being moved the Speaker will announce it will be removed from the Notice Paper on the next sitting day. A member may require the notice given by them to be continued by written notification to the Clerk prior to it being removed. A member may renew a notice of motion only once.

(2) If a notice of motion is for disallowance in accordance with section 42 of the Interpretation Act 1984 or any other Act, it may remain on the Notice Paper for 60 sitting days without being moved. On the final day, the Speaker will announce it will be removed from the Notice Paper on the next sitting day.

1.60 This Standing Order provides a mechanism to ‘clear’ the Notice Paper from time to time, subject to the member requesting otherwise, and is intended to prevent motions that are no longer relevant from remaining on the Notice Paper.
1.61 Under SO 60(2)(1) a member, other than a Minister or Parliamentary Secretary, is limited to giving two notices of motion per sitting day. The Council may consider whether this should be reduced to one per sitting day.

Conclusion

1.62 The discussion points above may be translated into temporary orders that have the effect of:

- reducing the time limits on speeches and amendments;
- reducing total motion debate time which in turn ensures that motions are dealt with in a more timely manner;
- providing increased opportunities for members to participate in the debate;
- establishing an order of precedence of notices which is equitable and not reliant on ‘who gets in first’; and
- retaining the characteristics and function of motions on notice as predominantly for private members who do not support the Government.
## APPENDIX 2

### SUBMISSIONS RECEIVED

<table>
<thead>
<tr>
<th>Number</th>
<th>From</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Hon Alison Xamon MLC, on behalf of the Greens (WA)</td>
</tr>
<tr>
<td>2</td>
<td>Hon Peter Collier MLC, Leader of the Opposition in the Legislative Council, on behalf of the Liberal Party</td>
</tr>
<tr>
<td>3</td>
<td>Hon Sue Ellery MLC, Leader of the House in the Legislative Council, on behalf of the Australian Labor Party</td>
</tr>
<tr>
<td>4</td>
<td>Hon Jacqui Boydell MLC, on behalf of The Nationals WA</td>
</tr>
<tr>
<td>5</td>
<td>Hon Colin Tincknell MLC, on behalf of Pauline Hanson’s One Nation</td>
</tr>
</tbody>
</table>
Submission No. 1

Office of Hon Alison Xamon MLC
MEMBER FOR NORTH METROPOLITAN REGION

The Chair and Members
Procedure and Privileges Committee
By email: ghitchcock@parliament.wa.gov.au

Dear Madam President and Committee members,

Inquiry – Review of the Standing Orders relating to Motions on Notice

I refer to the current review of the Standing Orders relating to motions on notice and make the following submissions on behalf of the Greens WA:

1. That debate duration be halved to a maximum of two hours. We respectfully submit that this is sufficient time for debate.

2. That speaking time limits should be reduced accordingly. We submit therefore that the 45 minute speaking time limit should be reduced by approximately half to 20 minutes. The 15 minute speaking time limit for the reply should be reduced to 10 minutes; this is a third reduction rather than half, but we submit that less than 10 minutes would be insufficient time for reply.

3. That the current process for amendment, and speaking on amendments, should be amended. We submit that the following process should be adopted instead:
   a. Any proposed amendment to the motion be circulated before the debate (similarly to proposed amendments to Bills)
   b. All speakers during their 20 minute speaking time have the opportunity to address both the substantive motion and the proposed amendment
   c. The mover in reply similarly have the opportunity to address both the substantive motion and the proposed amendment during his/her 10 minute speaking time
   d. All voting occur at the end of the debate or the end of the two hours, whichever occurs first.

We submit that the advantages of such an approach are:
   e. Increased efficiency
   f. Better “flow” of the debate
   g. Those MLCs who have already spoken in relation to the motion do not get a further opportunity to dominate the debate by then making a second speech in relation to the proposed amendment
   h. Arising from (g), decreased chance that an MLC who wants to speak will miss out on the opportunity to do so within the debate time limit (this is a problem that occurs under the current arrangement)
i. Better quality debate – the elimination of surprises through providing advance notice of proposed amendments means all speakers will have the opportunity to make a considered contribution to the debate including any proposed amendment.

4. That if debate on a motion on notice is completed before the end of two hours Orders of the Day be resumed instead of the House moving on to debating the next motion. This increases certainty as to when a motion will be coming on, and therefore increases efficiency by assisting to ensure that all speakers are ready for the debate. Having a set time for debate also increases transparency by making it easier for stakeholders and interested members of the public who wish to watch the debate to do so.

5. That opportunities to put motions on notice be allocated pro rata between all current parties. We further submit that these should proceed in order over the course of the current Parliament, rather than being scheduled for a particular date/session. This avoids the difficulty that has arisen with non-government business scheduling, where the session can be lost due to the timing of the annual budget estimates hearings (as happened most recently with the non-government business session of 21 June 2018 allocated to the Nationals, and as has happened previously to other opposition parties including the Greens), or vacation of either the relevant session or the entire sitting week due to the demands of business before the House.

I look forward to receiving the Committee’s recommendations in due course.

Yours sincerely,

[Signature]

Hon Alison Xamon MLC
Member for North Metropolitan

06 August 2018
Submission No. 2

Hon Peter Collier MLC
Member for North Metropolitan Region
Shadow Minister for Disability Services; Housing
Leader of the Opposition in the Legislative Council

8 August 2018

Mr Grant Hitchcock
Usher of the Black Rod
Legislative Council of Western Australia
Parliament House
4 Harvest terrace
West Perth WA 6005

Dear Grant

Review of the Standing Orders relating to Motions on Notice

The Liberal Party is supportive of consideration being given to changes to the current format of Motions on Notice. In particular, the Liberal Party would be supportive of:

- A reduction from the current 45 minutes to 20 minutes for each member contribution
- Confining each Motion on Notice to two hours
- Resolving each Motion on Notice at the conclusion of the two hour debate

Discussion amongst all parties has also revolved around the possibility of a roster system by party for Motions on Notice, similar to that applied to Non-Government Business. While the Liberal Party is receptive to this proposal, we would be interested to have an indication of the weighting of Motions on Notice per party over recent parliaments (37th, 38th and 39th). It would be appreciated if this information were to be made available to the Standing Committee on Procedure and Privileges and to all parties for their consideration.

Thank you for providing the Liberal Party with the opportunity to make a submission into the review of Motions on Notice.

Kind regards

[Signature]

Honourable Peter Collier MLC
Leader of the Opposition, Legislative Council

Shop 23A Warwick Grove, Cnr Beach & Erindale Roads, Warwick WA 6024
PO Box 2636 Warwick WA 6024
Telephone: (08) 9203 9588 • Facsimile: (08) 9203 8785
Email: peter.collier@mp.wa.gov.au
Submission No. 3

Hon Sue Ellery MLC
Minister for Education and Training
Leader of the Legislative Council

Our Ref: 81.12044

Hon Kate Doust MLC
Chair, Procedure and Privileges Committee
President of the Legislative Council

Dear Ms Doust,

Thank you for your letter dated 28 June 2018 inviting me to make a submission to the Procedure and Privileges Committee’s (PCC) review of the Standing Orders relating to Motions on Notice.

It is our view that this should include reducing the time in which a motion is dealt with from four to two hours, and reducing speaking times. Accordingly, this would allow for a motion to be dealt with in its entirety on a single day.

It is our submission that this would allow for motions to be dealt with in a more efficient manner. I understand from my conversations with other Party Leaders that there is broad consensus for change.

I thank you for the opportunity to make a submission and look forward to the PCC’s findings.

Yours sincerely,

SUE ELLERY MLC
LEADER OF THE LEGISLATIVE COUNCIL

13th Floor, Dunas House, 2 Havelock Street, West Perth, Western Australia 6005
Telephone: +61 8 6552 5700 Facsimile: +61 8 6552 5701 Email: Minister.Ellery@dpc.wa.gov.au
Submission No. 4

Parliamentary National Party of Australia (WA)

Our ref: 160806/AW

10 August, 2018

Hon Kate Doust MLC
Chair, Procedure and Privileges Committee
President of the Legislative Council
Parliament House
4 Harvest Terrace
WEST PERTH  WA  6005

Via: ghitchcock@parliament.wa.gov.au

Dear Chair

REVIEW OF MOTIONS ON NOTICE

The Parliamentary National Party thank you for the opportunity to make a submission on this matter and gives their appreciation to the Clerks of the Legislative Council for presenting alternative options for parliamentary parties to consider.

The need for reform of Motions on Notice became evident in the last term of government, when Motions on Notice was flooded with motions that overtime became irrelevant and out-dated.

Quite frankly, this was a mistake by government members at the time, and an abuse of Motions on Notice as it should be a tool used predominately by non-government members to hold the government to account.

It is important to acknowledge the role that Motions on Notice has as distinct from Private Members Business and Non-Government Business. Motions on Notice provides an opportunity for individual members, mostly, non-government members, rather than political parties, to bring issues of relevance before the Legislative Council. This allows matters that are considered significant by the community to be dealt with by the Parliament.

Motions on Notice is unique in that it provides Parliament with a resolution determined by a vote and under Standing Order 17(5), gives capacity for members to re-order the motions to debate relevant and urgent matters.
During the height of the State Government's education cuts for example, the Parliamentary National Party was able to seek agreement from all relevant parties to advance the education cuts motion to be listed first on the notice paper when Parliament resumed. This allowed the issue to be dealt with expeditiously as a matter of public interest.

Members should have the opportunity to debate matters of importance on behalf of the community. However, if a roster gives government members 39 per cent of the opportunity, then Motions on Notice fails to deliver the required level of critique, which the House of Review is supposed to deliver on behalf of the community.

This is one of the key reasons why the Parliamentary National Party does not support the implementation of any of the three roster formats that were presented by the Clerk of the Legislative Council. Rosters impose limits on the opportunity and responsiveness of Motions on Notice, and severely restrict the ability of non-government members to hold the government to account.

Even if Standing Order 17(5) was maintained to permit flexibility within the roster, the Parliamentary National Party could not support a roster format that would impose severe limits on the opportunity for our members to use Motions on Notice.

For example, in versions 1 and 2, the Parliamentary National Party would only have one opportunity this year to raise a matter of importance for our regional constituency. Similarly, with option 3, we would only have one opportunity over a course of 12 months to use Motions on Notice to raise an important matter.

We hold the view that any roster system based on party representation is not a fair and equitable distribution and therefore fails to uphold the tradition of Motions on Notice. The Parliamentary National Party are therefore fundamentally opposed to the introduction of a roster format.

**MECHANISMS FOR REFORM**

The Parliamentary National Party are supportive of mechanisms that make Motions on Notice more efficient and effective, thereby allowing more non-government members greater opportunity to hold the government to account, which is the fundamental failing of any of the suggested roster formats.

One avenue of reform for Motions on Notice could be through the introduction of speaker time limits in conjunction with the requirement that debates are completed within the 120 minute total time allocation, which would allow for more motions to be debated.
For example, if the Motions on Notice assumed the following format, this would give most parties the opportunity to have a lead speaker on a matter.

**Mover** – 20 minutes

**Subsequent speakers** – 15 minutes each

**Mover-in-reply** – 10 minutes

**Total time** – 120 minutes on one sitting Wednesday

By limiting the debate to 120 minutes instead of 240 minutes, this would also allow for double the number of motions to be debated within the year. For example, with 20 sitting weeks scheduled for 2018, members would have the opportunity to debate 20 motions, instead of the current allocation of 10. This would provide non-government members with greater opportunity to move more motions of importance, which may appease some of the criticisms of the current arrangement.

While there seems to be an implicit understanding between the leaders of respective parliamentary parties in the 40th Parliament that we would not add unnecessary motions to the notice paper, it may be prudent to impose limits on the number of motions that can be listed on the notice paper at any one time. For example, by stipulating that each parliamentary party can only have two motions listed at any one time would eliminate the dominance of Motions on Notice by any one particular parliamentary party as witnessed in the last term of government.

The Parliamentary National Party is supportive of reform that improves the responsiveness and opportunities of non-government members to debate matters of importance during Motions on Notice.

In our role as the House of Review, it is incumbent on non-government members to hold the government to account on behalf of the community. This was the traditional role of Motions on Notice, and any new structure needs to reflect these fundamental principles. We therefore will only support a new format that maintains flexibility and responsiveness to significant issues of the day/week and increases the opportunity for non-government members to raise matters of importance on behalf of the community.

If you have any other questions, please do not hesitate to contact me.

Yours sincerely

[Signature]

Hon Jacqui Boydell MLC

**LEADER IN THE LEGISLATIVE COUNCIL**
Hi Grant

I would like to make it clear, that One Nation supports "Motions on Notice" that provides an equal opportunity to members of the crossbench and opposition that clearly reflects the numbers of members in the chamber.

If this is not clear, then I look forward to the opportunity to put our submission directly to the committee etc.

Kind Regards

Colin Tincknell MLC
PHON WA Party Leader

Sent from my iPhone
APPENDIX 3

A BRIEF HISTORY OF MOTIONS ON NOTICE

1.1 Motions on notice has been a significant and recurring item of business for the Council since its inception in 1832. The manner in which motions on notice has been dealt with and changes in practice is evident in the various standing, sessional and temporary rules and orders of the Council that have regulated proceedings since that time.

1.2 Historically, a consistent feature of the former versions of the Standing Orders (SOs) was that motions on notice was, unless otherwise ordered, to take precedence over orders of the day and was the first item of business to be dealt with by the Council on each sitting day.

1.3 The current practice in the Council is that motions on notice is dealt with as the first item of business on a sitting Wednesday immediately following formal business. The historical development of the motions on notice procedure is outlined below.

The 1 hour rule

1.4 Past Standing Orders have prescribed that unless otherwise ordered, the consideration of motions on notice on each sitting day was to take precedence over the orders of the day and the other items of business for a period of time following the conclusion of formal business.

1.5 This long standing practice is apparent in the Standing Orders as far back as 1870 where the Council commenced its proceedings on each day at 4.00pm (SO 2), and motions were to take precedence over orders of the day (SO 44) as the first item of business dealt with by the Council until 6.00pm:

[I]f all Motions shall not have been disposed of at six o’clock, the debate thereon shall be adjourned, unless otherwise ordered, and the orders of the day taken in rotations; but if there should be no order of the day, the discussion on motions may be resumed after the orders of the day as disposed of, on motion to that effect being put and carried. (SO 47).

1.6 SO 47 stipulated that the Council was to consider motions as the first item of business for (approximately) the first two hours. This Standing Order was the precursor for what later became known as the “1 hour rule”.

1.7 The 1914 SO 114 was the initial (recorded) formalisation of the one hour rule as follows:

Interruption of motions: If all motions shall not have been disposed of one hour after the time fixed for the meeting of the Council, the debate thereon shall be interrupted, unless the Council otherwise order, and the Orders of the Day shall be taken in rotation; but if there should be no Order of the Day, the discussion on motions may be continued. The consideration of motions may be resumed after Orders of the Day are disposed of.

1.8 The purpose of the Standing Orders was to ensure that the Council dealt with motions on notice, unless otherwise ordered, as the first item of business on each sitting day for at least the first hour following formal business. In 1952 when the days of meeting were amended to formalise the Tuesday, Wednesday and Thursday sitting days, motions on notice occupied at least three hours each sitting week.

1.9 The 1 hour rule continued to operate in the Council until March 2003 when the Council first adopted the sessional orders specifying that motions on notice would be dealt with exclusively on a sitting Wednesday (see paragraph 1.19).
Time limits on speeches

1.10 One of the most significant developments relating to motions on notice was the limitations imposed on member speaking times in 1989.

1.11 On 5 December 1989 the Council adopted the following new Standing Order (later re-numbered to SO 73):

63A (a) A Member may not speak in the House for more than 45 minutes, and in a committee of the whole for more than 10 minutes each time, on any motion, amendment, or amendment to such amendment.

Provided that on a motion to adjourn the Council, no Member shall speak for more than 10 minutes and the whole debate shall not exceed 40 minutes.

(b) Subclause (a) shall not apply to:

(i) the Minister or Member in charge of the business comprising the subject matter of the debate or to the Leader of the Opposition, or the Leader of the National Party of Australia, or to any Member speaking on behalf of the said Leaders;

(ii) any Member when speaking in the address in reply debate or on any motion moved under SO 49(c); or

(iii) any Bill that the Council may not amend,

and for the purposes of paragraph (i), no time limit shall be imposed, and in the case of paragraph (ii) and (iii) each Member may speak for not more than 60 minutes.

(c) By leave, a Member’s time may be extended by 15 minutes, but no extension shall be sought or granted in a Committee of the whole House or on a motion to adjourn the House.

1.12 This Standing Order had been trialled in a sessional order and was adopted by the Council despite significant opposition to the proposal. The key feature of this Standing Order was that, for the first time, it removed a member’s entitlement to unlimited speaking time on motions and restricted all members to 45 minutes speaking time, except for the few members captured by subclause (b)(i).

1.13 Prior to the introduction of this Standing Order, the debate time on motions on notice was potentially unlimited. In reality, and as pointed out in the debate on the adoption of the Standing Order, motions were usually resolved at the natural conclusion of member contributions.

1.14 Following the introduction of the Standing Order, the speaking times effectively provided the first time limitation on motions by restricting the debate to a maximum of 1,485 minutes per motion. This time limit was later further restricted through the introduction of other sessional orders.

2003 sessional orders

1.15 In 2003 the Council commenced a process of trialling various sessional orders that would eventually lead to the review and modernisation of the Standing Orders in 2011.

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18 This figure assumes that all members (33 exclusive of the President) would speak for their full allotment of time.
1.16 The interim report of the Select Committee on Rules, Orders, and Usages of the House\textsuperscript{19} (select committee) was presented to the Council on 5 March 2003 and recommended the trial of the following changes relating to motions on notice:

3. Implementation of objectives

To achieve the objectives, the select committee will propose a series of orders that will make the following changes —

...  

Motions on Notice

Wednesdays 2.00 – 5.00pm  
Maximum debating time for any motion to be 2 weeks (5 hours 30 minutes).

1.17 The final report\textsuperscript{20} of the Select Committee made the following additional recommendation:

6. Motions on Notice — when debated — maximum time for debate

(1) Upon suspension of business under Order 5(5) on a Wednesday, motions on notice may be moved and debated until 5.00pm and a debate in progress at that time is adjourned until the next sitting Wednesday.

(2) The maximum time for debate on any motion on notice, including the mover’s reply where permitted, is 330 minutes at which time any debate is interrupted and the question must be resolved immediately.

1.18 The sessional orders implementing the proposed changes to motions on notice were adopted by the Council on Thursday, 20 March 2003.

1.19 While the objective of the Select Committee was for motions on notice to be dealt with in a more timely manner, one consequence when combined with SO 73, time limits on speeches, was to confine the maximum number of members able to participate in the debate. This was because only 7.3 speakers could speak if all members spoke for their full allotment of time — 45 minutes. In a Chamber with few parties, such a restriction would not necessarily pose problems. However, if party representation were to rise and the total time allotted to each motion be further reduced, Members of particular party groupings may have only limited opportunities to contribute to a debate. The sessional orders also specified a maximum time limit for debate of 330 minutes whereas previously the limit of a debate was determined by the number of speakers wishing to contribute.

1.20 A further feature of the 2003 sessional orders was the treatment of urgency motions. The sessional orders modified SO 72 to provide that urgency motions, or some other matter of “Non-Government Business”, be debated on a Thursday afternoon under a time designated as “Non-Official Business”. The speaking times allocated to members were set at 20 minutes per speaker (a 10 minute increase than that provided in the Standing Order) and the total debate time was not to exceed 135 minutes (2 hours 15 minutes). The weekly time allocated to non-official business and the determination of the weekly rotation among the political groups later became the forerunner for Non-Government Business in subsequent sessional orders, and was finally adopted as two separate Standing Orders in 2011.

\textsuperscript{19} Western Australia, Legislative Council, Select Committee on Rules, Orders, and Usages of the House, \textit{Interim Report}, 5 March 2003, p 2.

\textsuperscript{20} Western Australia, Legislative Council, Select Committee on Rules, Orders, and Usages of the House, Final Report, 12 March 2003, p 4-5.
2004 sessional orders and further sessional and temporary orders

1.21 In December 2003 the sessional orders adopted in March were extended in a modified form to apply for the 2004 calendar year and reduced the time allocated to motions on notice from 330 minutes to 270 minutes (4 hours and 30 minutes). This had the effect of confining the maximum number speakers in the debate to six, assuming speakers take their full allotment of 45 minutes.

1.22 Further versions of sessional orders adopted on 30 June 2005, 23 March 2006 and 5 June 2008 reduced the time allocated to motions on notice by a further 30 minutes to 240 minutes (4 hours). This had the effect of confining the maximum number speakers in the debate to 5.3, assuming speakers take their full allotment of 45 minutes. The time for urgency motions (non-official business) was also reduced from 135 minutes to 120 minutes.

1.23 Temporary orders adopted on 25 March 2010 continued the previous arrangements under sessional orders for motions on notice, and trialled the substitution of urgency motions/non-official business with Non-Government Business time.

1.24 Increasingly, the focus of Council business under the sessional and temporary orders has seen a shift toward greater time for the consideration of Government business and orders of the day, with less time devoted to the various and wide-ranging matters raised under motions on notice. This is shown in Figure 12.

Figure 12. Motion types and debate time (1870 to 2018)

1.25 Changes in total time for motions on notice and other procedures are shown in Figure 13.

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21 The Council did not adopt a sessional or temporary order for the 2007 calendar year and operated under its Standing Orders.

22 Non-official business remained at 135 minutes for 2005.

23 Extended by resolution of the Council on 1 July 2010, 7 September 2010, 24 November 2010 and 22 March 2011 to apply until 11 August 2011.
Figure 13. Changes in total time for motions on notice and other procedures (1870 to 2018)

~ 1485 minutes total debate time: due to the introduction of time limits on speeches (1989)
Non-Government and Private Members’ Business

1.26 Standing Orders relating to Non-Government and Private Members’ Business were adopted by the Council on 1 December 2011 following the review of the Standing Orders by the PPC. The Standing Order relating to Private Members’ Business was an additional and novel Standing Order not recommended by the PPC. However, the Council agreed to its adoption as it recognised that the definition of a non-government member was “a member that does not support the Government”. The significance of that amendment was that it provided backbencher members who supported the Government (at the time, National Party members) with a practical opportunity to raise issues and debate matters not directly related to the Government’s legislative or policy agenda.

1.27 In contrast to motions on notice, members have previously commented that motions dealt with during Non-Government or Private Members’ Business time have produced more succinct and relevant debates than those for motions on notice, where the subject matters have often lost relevance due to the length of time between notice being given and the debate. The procedure for Non-Government Business replaced the former procedure for urgency motions and the novel procedure for Private Members’ Business arose due to the unique nature of the alliance Government between the Liberal and National parties. Following the 2017 general election, this rationale for Private Members’ Business no longer applies. Non-Government Business remains relevant as a replacement for urgency motions and also to permit the introduction of Private Members’ Bills. In the rare event that a Government member sought to introduce a Private Members’ Bill, past practice was to negotiate for this to be done during Government time under orders of the day.

1.28 In dealing with motions, both Non-Government and Private Members’ Business have distinct but deliberate disadvantages when compared to the procedure for motions on notice. Neither procedure permits the amendment of a motion which, like its urgency motion forbear, lapses without resolution at the expiry of the debate time and without any question put.

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25 Urgency motions debated in the Council for 60 minutes each sitting Tuesday were the precursor for the non-government business motions trialled from the 2003 sessional orders onwards to their adoption following the 2011 Standing Orders review.
## APPENDIX 4

### MOTIONS ON NOTICE — 35TH TO 39TH PARLIAMENTS

#### 35th Parliament – Motions on Notice

<table>
<thead>
<tr>
<th>No. of Motions</th>
<th>No. of Motions – Notice Given</th>
<th>% of Motions Debated where Notice was Given</th>
<th>Average Time Between Notice and Debate</th>
<th>Average No. of Speakers per Motion</th>
</tr>
</thead>
<tbody>
<tr>
<td>57</td>
<td>101</td>
<td>56%</td>
<td>75 days</td>
<td>5</td>
</tr>
</tbody>
</table>

![% of Total Motions Moved (57) Pie Chart]

- ALP (Official Opposition) 56%
- Lib (Govt.) 21%
- Nat 5%
- GWA 9%
- Aust Dem 9%
- 12
- 5
- 5

- ALP (Official Opposition) 32
- Lib (Govt.) 12
- Nat 5
- GWA 5
- Aust Dem 5

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36 Appendix 4 Motions on notice – 35th to 39th Parliaments
Appendix 4  Motions on notice – 35th to 39th Parliaments

% of Total Private Members (29)

- ALP (Official Opposition) 35%
- Lib (Govt.) 34%
- Nat 7%
- GWA 10%
- Aust Dem 7%
- Ind 7%

Spoke to Motion - Party Distribution (270)

- ALP (Official Opposition) 36%
- Lib (Govt.) 41%
- Nat 8%
- GWA 7%
- Aust Dem 7%
- Ind 1%
Motions - Total No. of Notice Given (101)

- ALP (Official Opposition): 59
- Lib (Govt.): 20
- Nat: 3
- GWA: 12
- Aust Dem: 7

- ALP (Official Opposition): 58%
- Lib (Govt.): 20%
- Nat: 3%
- GWA: 12%
- Aust Dem: 7%
### 36\textsuperscript{th} Parliament – Motions on Notice

<table>
<thead>
<tr>
<th>No. of Motions</th>
<th>No. of Motions – Notice Given</th>
<th>% of Motions Debated where Notice was Given</th>
<th>Average Time Between Notice and Debate</th>
<th>Average No. of Speakers per Motion</th>
</tr>
</thead>
<tbody>
<tr>
<td>32</td>
<td>44</td>
<td>73%</td>
<td>135 days</td>
<td>7</td>
</tr>
</tbody>
</table>

#### % of Total Motions Moved (32)

![Pie chart showing % of Total Motions Moved (32)]

- ALP (Govt.): 16%
- Lib (Official Opposition): 12%
- Nat: 3%
- GWA: 9%
- ONP: 10%
- Ind: 3%

#### % of Total Private Members (28)

![Pie chart showing % of Total Private Members (28)]

- ALP (Govt.): 25%
- Lib (Official Opposition): 18%
- Nat: 3%
- GWA: 11%
- ONP: 18%
- Ind: 3%
Spoke to Motion - Party Distribution (227)

- ALP (Govt.): 22%
- Lib (Official Opposition): 36%
- Nat: 3%
- GWA: 21%
- ONP: 15%
- Ind: 3%

Motions - Total No. of Notice Given (44)

- ALP (Govt.): 7%
- Lib (Official Opposition): 54%
- Nat: 2%
- GWA: 23%
- ONP: 7%
- Ind: 3%
### 37th Parliament – Motions on Notice

<table>
<thead>
<tr>
<th>No. of Motions Moved</th>
<th>No. of Motions – Notice Given</th>
<th>% of Motions Debated where Notice was Given</th>
<th>Average Time Between Notice and Debate</th>
<th>Average No. of Speakers per Motion</th>
</tr>
</thead>
<tbody>
<tr>
<td>37</td>
<td>49</td>
<td>75%</td>
<td>163 days</td>
<td>6</td>
</tr>
</tbody>
</table>

![Pie chart showing % of Total Motions Moved (37)](chart1.png)

![Pie chart showing % of Total Private Members (27)](chart2.png)

**NOTE:** One Nation were represented in the 37th Parliament from 29 March 2005 to 21 May 2005, during which time they moved 1 motion.
Speaking to Motions - Party Distribution (230)

- ALP (Govt.): 113
- Lib (Official Opposition): 74
- Nat: 2
- GWA: 13
- ONP: 1

Motions - Total No. of Notices Given (49)

- ALP (Govt.): 32
- Lib (Official Opposition): 9
- Nat: 1
- GWA: 6
- ONP: 1

Party Distribution:
- ALP (Govt.): 32%
- Lib (Official Opposition): 49%
- Nat: 5%
- GWA: 13%
- ONP: 1%

Motions Given:
- ALP (Govt.): 19%
- Lib (Official Opposition): 65%
- Nat: 2%
### 38th Parliament – Motions on Notice

<table>
<thead>
<tr>
<th>No. of Motions</th>
<th>No. of Motions – Notice Given</th>
<th>% of Motions Debated where Notice was Given</th>
<th>Average Time Between Notice and Debate</th>
<th>Average No. of Speakers per Motion</th>
</tr>
</thead>
<tbody>
<tr>
<td>42</td>
<td>54</td>
<td>77%</td>
<td>377 days</td>
<td>6</td>
</tr>
</tbody>
</table>

#### % of Total Motions Moved (42)

- **ALP (Official Opposition)**: 27 (64%)
- **Lib (Govt.)**: 4 (10%)
- **Nat**: 11 (26%)
- **GWA**: 11 (26%)

#### % of Total Private Members (25)

- **ALP (Official Opposition)**: 11 (44%)
- **Lib (Govt.)**: 7 (28%)
- **Nat**: 3 (12%)
- **GWA**: 4 (16%)
### 39th Parliament – Motions on Notice

<table>
<thead>
<tr>
<th>No. of Motions</th>
<th>No. of Motions – Notice Given</th>
<th>% of Motions Debated where Notice was Given</th>
<th>Average Time Between Notice and Debate</th>
<th>Average No. of Speakers per Motion</th>
</tr>
</thead>
<tbody>
<tr>
<td>36</td>
<td>60</td>
<td>60%</td>
<td>579 days</td>
<td>7</td>
</tr>
</tbody>
</table>

#### % of Total Motions Moved (36)

- ALP (Official Opposition): 20 (56%)
- Lib (Govt.): 8 (22%)
- Nat: 3 (8%)
- GWA: 2 (6%)
- SFFP: 1 (3%)

#### % of Total Private Members (24)

- ALP (Official Opposition): 11 (46%)
- Lib (Govt.): 6 (25%)
- Nat: 4 (17%)
- GWA: 2 (8%)
- SFFP: 1 (4%)
Spoke to Motion - Party Distribution (267)

- ALP (Official Opposition): 109
- Lib (Govt.): 107
- Nat: 27
- GWA: 21
- SFFP: 3

Party Distribution (267)
- ALP (Official Opposition): 41%
- Lib (Govt.): 40%
- Nat: 10%
- GWA: 8%
- SFFP: 1%

Motions - Total No. of Notice Given (60)

- ALP (Official Opposition): 32
- Lib (Govt.): 13
- Nat: 7
- GWA: 5
- SFFP: 3

Total No. of Notice Given (60)
- ALP (Official Opposition): 53%
- Lib (Govt.): 22%
- Nat: 12%
- GWA: 8%
- SFFP: 5%
Standing Committee on Procedure and Privileges

Date first appointed:
24 May 2001

Terms of Reference:
The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

'1. Procedure and Privileges Committee
1.1 A Procedure and Privileges Committee is established.
1.2 The Committee consists of 5 Members, including the President and the Chair of Committees, and any Members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chair, and the Chair of Committees is the Deputy Chair, of the Committee.
1.3 With any necessary modifications, Standing Order 163 applies to a co-opted Member.
1.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the Council and its Committees, and recommend to the Council such alterations in that law, custom, or rules that, in its opinion, will assist or improve the proper and orderly transaction of the business of the Council or its Committees.'