



2010

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## **Legislative Council**

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# **STANDING ORDERS COMMITTEE**

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## **REPORT**

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### **Members of the Committee**

Hon Sue Smith MLC (Chair)

Hon Greg Hall MLC

Hon Paul Harriss MLC

Hon Doug Parkinson MLC

Hon Tania Rattray MLC

*Secretary: David Pearce*

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## BACKGROUND

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On Tuesday 12 October 2010 the House resolved to establish two Government Administration Sessional Committees in the following terms —

### 1. SESSIONAL COMMITTEE A ON GOVERNMENT ADMINISTRATION

- 1.1 The Sessional Committee A on Government Administration is established.
- 1.2 The Committee consists of not less than 5 members.
- 1.3 The functions of the Committee are to inquire into and report on any matter relating to —
  - (a) Any Bill or other matter referred to it by the Council;
  - (b) The administration, processes, practices and conduct of any department, agency, Government Business Enterprise, State-owned Company or other entity including entities established under the *Water and Sewerage Corporations Act 2008* for which the following Ministers are responsible —
    - i. The Deputy Premier
    - ii. The Attorney-General
    - iii. The Minister for Justice
    - iv. The Treasurer
    - v. The Minister for Industry
    - vi. The Minister for Economic Development
    - vii. The Minister for Infrastructure
    - viii. The Minister for Primary Industry and Water
    - ix. The Minister for Energy and Resources
    - x. The Minister for Local Government
    - xi. The Minister for Planning
    - xii. The Minister for Racing
    - xiii. The Minister for Veterans' Affairs
    - xiv. The Minister for Health.

- 1.4 And that —

*Ms Forrest*  
*Dr Goodwin*  
*Mr Hall;*  
*Mr Harriss;* and  
*Mr Wilkinson* be of the Committee.

### 2. SESSIONAL COMMITTEE B ON GOVERNMENT ADMINISTRATION

- 2.1. The Sessional Committee B on Government Administration is established.
- 2.2 The Committee consists of not less than 5 members.
- 2.3 The functions of the Committee are to inquire into and report on any matter relating to —

- (a) Any Bill or other matter referred to it by the Council;
- (b) The administration, processes, practices and conduct of any department, agency, Government Business Enterprise, State-owned Company or other entity including entities established under the *Water and Sewerage Corporations Act* 2008 for which the following Ministers are responsible —
  - i. The Premier
  - ii. The Minister for Innovation, Science and Technology
  - iii. The Minister for Human Services
  - iv. The Minister for Corrections and Consumer Protection
  - v. The Minister for Community Development
  - vi. The Minister for Climate Change
  - vii. The Minister for Sustainable Transport and Alternative Energy
  - viii. The Minister for Education and Skills
  - ix. The Minister for Children
  - x. The Minister for Police and Emergency Management
  - xi. The Minister for Tourism
  - xii. The Minister for Environment, Parks and Heritage
  - xiii. The Minister for Workplace Relations
  - xiv. The Minister for the Arts
  - xv. The Minister for Sport and Recreation
  - xvi. The Minister for Hospitality
  - xvii. The Secretary to Cabinet.

2.4 And that —

Mr *Dean*;  
Mr *Finch*;  
Mr *Gaffney*;  
Ms *Rattray*;  
Mrs *Taylor*; and  
Mr *Wing* be of the Committee.

The option to establish Government Administration Sessional Committees was identified in the Discussion Paper entitled “Committees of the Tasmanian Parliament” (Paper No. 8 of 2010) which was Tabled in the Legislative Council on Wednesday, 9 June 2010.

Certain proposed Sessional Orders appeared at Annexure A of that Discussion Paper. Those proposed Sessional Orders, with minor change only, were placed on the Legislative Council Notice Paper on 27 August 2010 as a Notice of Motion in the name of the Honourable Member for Murchison, Ruth Forrest MLC.

The Motion for the establishment of two Government Administration Sessional Committees was moved by the Honourable Member for Murchison, Ruth Forrest MLC on Tuesday, 31 August 2010. Amendments to the Motion were moved by the Honourable Member for Nelson, Jim Wilkinson MLC on Tuesday, 12 October 2010. These Amendments were agreed to by the House. Amendments moved by the Leader of the Government, Doug Parkinson MLC were not supported by a majority of Members.

As a consequence of the House's Resolution to establish two Government Administration Sessional Committees, a further Resolution was made in the following terms —

That the House request that the Standing Orders Committee consider appropriate Sessional Orders to govern the operation of the two Government Administration Sessional Committees and report to the Council by no later than Friday, 12 November 2010.

As a consequence of the agreement by the House to refer the matter of Sessional Orders to the Standing Orders Committee, the Notice was withdrawn at the direction of the Honourable Member for Murchison.

It was those proposed Sessional Orders which formed the basis for consideration by the Standing Orders Committee.

In a letter to all Members of the Legislative Council dated 13 October 2010 the President invited comment on the matter of Sessional Orders by 19 October 2010. No comment was received.

The Standing Orders Committee met on Wednesday, 20 October 2010 to consider the matter of Sessional Orders. At that meeting the Committee agreed to recommend thirty Sessional Orders to the House for adoption. The recommended Sessional Orders appear at Recommendation 4 of this Report.

A Table replicating the recommended Sessional Orders with an accompanying Explanatory Note appears at Annexure A of this Report.

In addition to the recommended Sessional Orders to govern the operation of the Government Administration Sessional Committees A and B, this Report also contains Recommendations concerning Standing Orders Nos. 10(2)(a), 27 and 49(c). These Standing Orders relate to the presentation of the State of the State Address, the 4.00 o'clock pm suspension of sitting and the duration of Question Time. The Standing Orders Committee took the opportunity to consider these respective matters and after deliberation agreed to recommend change.

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## RECOMMENDATIONS

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1. That Standing Order 10(2)(a) relating to the presentation of the State of the State Address to the Legislative Council on behalf of the Premier be amended to read —

The Leader shall present a State of the State Address to the Legislative Council on behalf of the Premier, within the first six sitting days of any calendar year in which the Governor has not opened the Parliamentary session and an Address-in-Reply debate has not ensued.

The current Sessional Order passed by the Legislative Council on 30 September 2010 is in the exact same terms as the above recommendation.

2. That Standing Order No. 27 relating to the 4.00 o'clock pm suspension of sitting be deleted.
3. That Standing Order No. 49 (c) relating to the duration of Question Time be amended to read —

No Question shall be asked after the lapse of 30 minutes from the President calling on questions.

The current Sessional Order passed by the Legislative Council on 8 June 2010 is in the exact same terms as the above recommendation.

4. That the following Sessional Orders be adopted to govern the operation of the two Government Administrative Sessional Committees —

**(1) Ex officio Members**

The President shall be *ex officio* a Member of each committee.

**(2) Application**

This Part applies to Government Administration Sessional Committees A and B.

**(3) Membership of committees**

1. Members are appointed to serve on a committee by the Council.
2. Where the number of Members nominated for appointment exceeds the number of the available places, the Members are to be elected by ballot.

**(4) Casual vacancies - how created and filled**

1. A Member causes a vacancy in membership of a committee if —
  - (a) for any reason including periodical retirement, the Member's seat becomes vacant; or

- (b) the Member resigns from the committee by writing addressed to the President; or
  - (c) the Member is removed by the Council; or
  - (d) without the prior leave of the Council or the committee, the Member fails to attend three consecutive meetings at the places and times appointed by the committee.
2. The Member who caused the vacancy under subclause 1(b), (c) or (d) is eligible for reappointment under subclause (3) or (4).
  3. A vacancy is to be filled by an appointment under Sessional Order 3 made within six sitting days of the day on which the Council was made aware of the vacancy.
  4. The President is to fill a vacancy if —
    - (a) it occurs during a prorogation or an adjournment of at least 14 days; or
    - (b) the Chair of the committee certifies that an immediate appointment is necessary for the orderly and efficient transaction of the committee's business.

The President is to inform the Council of any appointment made under this subclause on the sitting day following the date of the appointment.

**(5) Quorum**

At any meeting of a committee a majority of Members is a quorum.

**(6) If no quorum proceedings to be suspended or Committee adjourned**

Proceedings in the absence of a quorum are to be suspended or the committee adjourned.

**(7) Committee to elect Chair and Deputy Chair**

As occasion requires, each committee shall elect a Chair and a Deputy Chair from its own membership.

**(8) Duties of Chair and Deputy Chair**

The Chair presides at meetings and the Deputy Chair presides in the Chair's absence.

**(9) Council to appoint where committee unable**

On report from a committee that it is unable to elect a Chair, the Council shall make an appointment.

**(10) Committee to elect Inquiry Chair**

1. As occasion requires, each committee may elect an Inquiry Chair to preside at all meetings where a specific reference is being considered by a committee.

2. An Inquiry Chair has all the powers of the Chair of a committee but shall not sign any summons for the attendance of witnesses or for the production of documents if required.
3. Any substitute Member, duly appointed, may be elected Inquiry Chair as occasion requires.

#### **(11) Minutes of proceedings**

For each meeting, the minutes shall record —

- (a) the date and place of meeting;
- (b) the names of Members attending;
- (c) each motion, amendment and the mover;
- (d) divisions and the way in which Members voted;
- (e) the identity of each witness;
- (f) resolutions,

and any information that the committee directs to be recorded.

#### **(12) Evidence**

In this Part –

“**evidence**” is information provided to, or obtained by, a committee that relates to a matter under inquiry, and includes —

- (a) a written or oral submission;
- (b) any document whether or not it forms part of a submission;
- (c) information provided by a person who is not a witness.

#### **Evidence may be disclosed or published**

1. The proceedings of a committee when taking oral evidence are open to accredited news media representatives and the public.
2. Written evidence not subject to subclause (4) may be disclosed or published in a manner and to an extent (if any) determined by a committee of its own motion or so as to meet a request made by the person providing that evidence.

#### **When evidence may be taken in private session**

3. Despite subclause (1), a committee may take oral evidence in private session of its own motion, or at the request of the witness, where it is satisfied that the nature of the evidence or the identity of the witness requires it.

#### **Private session evidence not to be disclosed or published**

4. Evidence, including written evidence, taken under subclause (3) must not be disclosed or published except by leave of the Council or the committee before which the evidence was given.

#### **Content of reports not affected**

5. Subclause (4) does not prevent a committee from disclosing such evidence for the purpose of complying with any rule or order, or quoting or referring to such evidence in a report on the matter to which that evidence relates.

**(13) Reporting of resolution to commence own motion inquiry**

Where a committee initiates an inquiry of its own motion, notice of that inquiry shall be reported to the Council within two sitting days of the committee's resolution.

**(14) Council Members may participate but not vote**

Any Member of the Council may participate in a committee's proceedings, and by leave of a committee, its deliberations, but may not vote and must withdraw if directed by the Chair. Leave can be given only for a specific inquiry, but a Member may be given leave in relation to more than one inquiry whether or not those inquiries are contemporaneous with one another.

**(15) Substitute Members**

1. A Member of a committee may be replaced by another Member ("substitute Member"). The substitute Member, subject to this order, is a Member of the committee for all purposes relating to a specific inquiry and may be elected an Inquiry Chair as occasion requires.
2. Substitution is made by leave of the committee.
3. A substitution must be for the purpose of a specific inquiry but a substitute Member, by further leave, may be a substitute Member on one or more committees at the same time and in relation to more than one inquiry being conducted at the same time.
4. Nothing in this order alters the capacity of the Member who is substituted to act as a Member of the committee in relation to any inquiry or matter that is unaffected by the substitution.
5. Where a committee —
  - (a) presents its final report on an inquiry for which a substitution was made; or
  - (b) for any reason, discontinues such an inquiry, the leave granted in relation to that inquiry lapses, and the substitute Member, subject to paragraph (3), ceases to be a Member of that committee.
6. When a substitution is made, the Chair shall cause the Clerk to be notified of the name of the Member being substituted, the substitute Member, and the purpose for which the substitution is made and the Clerk shall publish that information in the next available Notice Paper.

**(16) Committee Member not to participate in certain cases**

In relation to any matter or inquiry before a committee, a Member shall not participate in an inquiry in which the Member has a direct pecuniary or personal interest not held in common with the rest of the subjects of the Crown.



**(17) President may give procedural rulings**

The President may give procedural rulings if requested by writing signed by the Chair.

**(18) Proceedings not noticed until reported**

Proceedings of a committee are not noticed by the Council until reported, except by leave of the Council.

**(19) Powers of a committee**

In addition to any power conferred by law or order, a committee has power to —

- (a) send for persons, papers, and records;
- (b) adjourn its proceedings;
- (c) commission reports;
- (d) sit during any suspension or adjournment of the House; and
- (e) travel to gather evidence.

**(20) Witnesses entitlements**

Subject to order of the Council or of a committee any person examined before a committee is entitled to —

- (a) raise any matter of concern to that person relating to evidence to be given or documents produced;
- (b) benefit of legal counsel;
- (c) apply for all or part of that person's evidence to be given in private session and for an order restricting publication of, or access to, that evidence;
- (d) decline to answer a question or produce a document on the grounds that the question is outside the scope of the matters in issue or under inquiry;
- (e) be informed before evidence is given that if part of it might incriminate himself or another person, that fact should be made known to the committee before that part is actually given;
- (f) know of and, if desired rebut, any allegations made against the person whether or not those allegations amount to criminal conduct or dealing; and
- (g) provide supplementary or new evidence.

**(21) Evidence of public servants**

Where a committee examines a state public servant, questions of policy, other than to explain the manner in which a policy operates or was intended to operate, shall not be asked of that person but shall be directed to the responsible minister. A public servant is entitled to decline to answer any question on a matter of policy.

**(22) Chair and Inquiry Chair to sign report; Minority report may be added**

1. The Chair and Inquiry Chair as occasion requires shall sign the unanimous or majority report. A minority report or dissent, confined to issues in dispute, may be added to the report but may not be presented separately to the Council.
2. A minority report or dissent is to be prepared by the relevant member.

**(23) Presentation of Report**

A report is presented by the Chair, Inquiry Chair or other Member designated by the committee for the purpose.

**(24) Bill may be annexed to report**

In the case of Bills, a copy of the Bill showing amendments recommended by the committee may be annexed to a narrative report.

**(25) Procedure in Council on presentation of report**

1. On presentation of a report a question shall be put and decided without amendment or debate that the report be received and printed;
2. Consideration and noting of the whole of a tabled report and the next stage of a Bill so reported is to be made an order of the day for a future sitting.

**(26) Clerk shall send copy of a report to Government:  
Government to respond within three months**

After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible minister. The Leader of the Government or the minister (if a Member of the Council) shall report the Government's response within three months.

**(27) President may publish a report during adjournment of the Council**

The President may publish a report that is ready for presentation during an adjournment of more than 14 days. A report so published is deemed to have been tabled and ordered to be printed but shall be presented in accordance with these rules when the Council resumes its sittings.

**(28) Subcommittees, appointment and procedures**

1. A committee may appoint subcommittees of three or more Members;
2. Subcommittees have all the powers of a committee unless the committee restricts those powers or their use;
3. A subcommittee may conduct proceedings and deliberations jointly with a subcommittee of another committee where the subject matter of an inquiry relates to the terms of reference of each committee;
4. A subcommittee reports to the committee that appointed it;

5. A quorum of a subcommittee is two Members or a majority of Members where the subcommittee has more than three Members.
6. A subcommittee is to appoint a Chair to preside at meetings.

**(29) Operation of committees**

In all cases relating to the operation of the Government Administration Sessional Committees A and B, and not otherwise provided for in the Sessional Orders, the rules for Select Committees shall be followed as far as they can be applied.

**(30) Staff and resources**

In consultation with the President and subject to the provisions of any applicable written law, each committee shall be provided with staff and resources necessary for the performance of its functions.



**HON. SUE SMITH MLC (Chair)**  
**President**

*8 November 2010*

# ANNEXURE A

PROPOSED SESSIONAL ORDER	EXPLANATORY NOTE
<p><b>(1) Ex officio Members</b> The President shall be <i>ex officio</i> a Member of each committee.</p>	<p>It is not intended that the President have an active day to day involvement in the committees. The President's <i>ex officio</i> status is to provide an opportunity for Chairs and members of the committees to consult with the President in relation to any matter arising in a committee and to seek his or her advice. This reflects existing practice. The SeO links with SeO (17) which expressly provides that the President may give procedural rulings in relation to committee operations.</p> <p>It is not intended that <i>ex officio</i> members be counted for the purpose of quorum or to vote.</p>
<p><b>(2) Application</b> This Part applies to Government Administration Sessional Committees A and B.</p>	<p>This SeO provides that the Part which contains the proposed Sessional Orders has application to the two Government Administration Committees.</p>
<p><b>(3) Membership of committees</b></p> <ol style="list-style-type: none"> <li>1. Members are appointed to serve on a committee by the Council.</li> <li>2. Where the number of Members nominated for appointment exceeds the number of the available places, the Members are to be elected by ballot.</li> </ol>	<p>This SeO provides the means by which members of the two committees are appointed. It is the Council that appoints the membership. A ballot is required if the number of nominations for a position on a committee exceeds the number of positions available.</p> <p>This is a secret ballot in accordance with the usual practice of the Council.</p>
<p><b>(4) Casual vacancies - how created and filled</b></p> <ol style="list-style-type: none"> <li>1. A Member causes a vacancy in membership of a committee if — <ol style="list-style-type: none"> <li>(a) for any reason including periodical retirement, the Member's seat becomes vacant; or</li> <li>(b) the Member resigns from the committee by writing addressed to the President; or</li> <li>(c) the Member is removed by the Council; or</li> <li>(d) without the prior leave of the Council or the committee, the Member fails to attend three consecutive meetings at the places and times appointed by the committee.</li> </ol> </li> <li>2. The Member who caused the vacancy under subclause 1(b), (c) or (d) is eligible for reappointment under subclause (3) or (4).</li> </ol>	<p>1(a) A "periodical retirement" means that the seat of a member elected at an election becoming vacant at the expiration of the period of 6 years: s.19 <i>Constitution Act 1934</i>. A member's seat may also become vacant as a result of death or a serious illness or other matter resulting in resignation of his or her seat to the Governor.</p> <p>1(b) &amp; (c) The Council may remove a member from a committee for whatever reason – illness, expulsion from the Council etc. A member may also resign from a committee (because of work commitments, family etc). Resignations should be in writing to the President. The member will then be replaced on the committee under SeO (4)3 or 4.</p> <p>1(d) Attendance at scheduled committee meetings creates the same obligation on members as attendance required by the House. Few distinctions are drawn between the obligations of committee membership and those of the House (SO 33). Members must not miss more than three meetings in a row unless they have sought and obtained the prior leave of the committee (or obtained leave of the Council (SO 34). Leave means a majority resolution. An apology is not the equivalent to the granting of leave. Failure to obtain leave will result in the automatic creation of a vacancy in committee membership which should be reported to the Council to enable the vacancy to be filled under SeO 4(3) or (4).</p> <p>2. The member who has created the vacancy by missing three consecutive meetings without being granted leave is still eligible for reappointment to the committee under SeO(4)3.</p>

PROPOSED SESSIONAL ORDER	EXPLANATORY NOTE
<p>3. A vacancy is to be filled by an appointment under Sessional Order 3 made within six sitting days of the day on which the Council was made aware of the vacancy.</p> <p>4. The President is to fill a vacancy if—</p> <p>(a) it occurs during a prorogation or an adjournment of at least 14 days; or</p> <p>(b) the Chair of the committee certifies that an immediate appointment is necessary for the orderly and efficient transaction of the committee’s business, and the President is to inform the Council of any appointment made under this subclause on the sitting day following the date of the appointment.</p>	<p>3. If a vacancy occurs, the President notifies the Council by reading the letter of resignation, which will in turn give rise to filling the vacancy within 6 sitting days of that notification.</p> <p>4. If however the Council is adjourned for more than 14 days (that is, 14 calendar days), or Parliament is prorogued, <i>or</i> the committee chair has certified that an immediate appointment is necessary, the President shall appoint a member to fill the vacancy.</p> <p>This power ensures that committees may continue to operate effectively with a full membership. The President would report such an appointment at the next available sitting day. It is envisaged that this power would not be exercised very often.</p>
<p>(5) <b>Quorum</b> At any meeting of a committee a majority of Members is a quorum.</p>	<p>This SeO provides that a majority of members constitute a quorum. The Order establishing the Committees provides for Membership of not less than 5 members. Under the current appointed membership of 5 members on each committee (excluding <i>ex officio</i> membership) the quorum of each committee would be 3 for all purposes. If the Leader were to be a member of one committee then the quorum for a 6 member committee would be 4 for all purposes.</p>
<p>(6) <b>If no quorum proceedings to be suspended or Committee adjourned</b> Proceedings in the absence of a quorum are to be suspended or the committee adjourned.</p>	<p>This SeO reflects current practice. It is only at properly constituted committee meetings that decisions are valid and proceedings are privileged. Only a “proceeding in Parliament” is protected by absolute privilege under the <i>Bill of Rights 1688</i>. Once a committee loses quorum the committee loses its status as a proceeding in parliament with possible dire consequences for both members and witnesses.</p> <p>This SeO makes it clear that a quorum is required not only for a meeting to begin, but for any committee proceedings to be carried out.</p>
<p>(7) <b>Committee to elect Chair and Deputy Chair</b> As occasion requires, each committee shall elect a Chair and a Deputy Chair from its own membership.</p>	<p>This SeO reflects current practice.</p>
<p>(8) <b>Duties of Chair and Deputy Chair</b> The Chair presides at meetings and the Deputy Chair presides in the Chair’s absence.</p>	<p>This SeO reflects current practice.</p>

PROPOSED SESSIONAL ORDER	EXPLANATORY NOTE
<p><b>(9) Council to appoint where committee unable</b> On report from a committee that it is unable to elect a Chair, the Council shall make an appointment.</p>	<p>This SeO provides that the Council elects a Chair when a committee is unable to do so.</p>
<p><b>(10) Committee to elect Inquiry Chair</b></p> <ol style="list-style-type: none"> <li>1. As occasion requires, each committee may elect an Inquiry Chair to preside at all meetings where a specific reference is being considered by a committee.</li> <li>2. An Inquiry Chair has all the powers of the Chair of a committee but shall not sign any summons for the attendance of witnesses or for the production of documents if required.</li> <li>3. Any substitute Member, duly appointed, may be elected Inquiry Chair as occasion requires.</li> </ol>	<ol style="list-style-type: none"> <li>1. This SeO is novel. It is intended to allow for individual members of a committee to be elected as an 'Inquiry Chair' for the purposes of an inquiry initiated by that member or another member of the Council who has been substituted for a committee member. This is the case whether or not the inquiry is one that is initiated by the committee's own motion or is referred to the committee by the Council on motion by any member. The Inquiry Chair, if present, is to preside at a meeting or part of a meeting at which a matter for which they are the Inquiry Chair is being considered. In the absence of the Inquiry Chair then the Chair will preside or Deputy Chair as the case may be.</li> <li>2. The Inquiry Chair has all the powers of a Chair but it is the Chair that is to sign any summons for the attendance of persons or production of documents. This is to accord with the requirements of s.2 of the <i>Parliamentary Privilege Act 1858</i> which requires that "any such order to attend, or to produce documents, before any such committee, shall be notified to the person required to attend, or to produce documents, by a summons under the hand of the chairman of the committee;"</li> <li>3. Provides for a substitute member (i.e. a member of the Council who is not a member of the committee who replaces a member of the committee for the purpose of a specific reference) to be an Inquiry Chair. This provides for a circumstance where the Council agrees to a motion referring a matter to a committee and the mover of the motion is not a member of the committee to which the matter has been referred. Alternatively a member who is not a member of a committee may write to the Chair requesting that the committee initiate an inquiry into a specific matter and that they seek to be a substitute member on the committee. If substituted for a member on that committee, the member who moved the motion may be elected an Inquiry Chair for that specific reference.</li> </ol>
<p><b>(11) Minutes of proceedings</b> For each meeting, the minutes shall record —</p> <ol style="list-style-type: none"> <li>(a) the date and place of meeting;</li> <li>(b) the names of Members attending;</li> <li>(c) each motion, amendment and the mover;</li> <li>(d) divisions and the way in which Members voted;</li> <li>(e) the identity of each witness;</li> <li>(f) resolutions,</li> </ol> <p>and any information that the committee directs to be recorded.</p>	<p>This SeO reflects the current practice.</p>

PROPOSED SESSIONAL ORDER	EXPLANATORY NOTE
<p><b>(12) Evidence</b>            In this Part –  <b>“evidence”</b> is information provided to, or obtained by, a committee that relates to a matter under inquiry, and includes —</p> <p>(a) a written or oral submission;            (b) any document whether or not it forms part of a submission;            (c) information provided by a person who is not a witness.</p> <p><b>Evidence may be disclosed or published</b></p> <p>1. The proceedings of a committee when taking oral evidence are open to accredited news media representatives and the public.</p> <p>2. Written evidence not subject to subclause (4) may be disclosed or published in a manner and to an extent (if any) determined by a committee of its own motion or so as to meet a request made by the person providing that evidence.</p> <p><b>When evidence may be taken in private session</b></p> <p>3. Despite subclause (1), a committee may take oral evidence in private session of its own motion, or at the request of the witness, where it is satisfied that the nature of the evidence or the identity of the witness requires it.</p> <p><b>Private session evidence not to be disclosed or published</b></p> <p>4. Evidence, including written evidence, taken under subclause (3) must not be disclosed or published except by leave of the Council or the committee before which the evidence was given.</p> <p><b>Content of reports not affected</b></p> <p>5. Subclause (4) does not prevent a committee from disclosing such evidence for the purpose of complying with any rule or order, or quoting or referring to such evidence in a report on the matter to which that evidence relates.</p>	<p>This SeO provides the committees with greater flexibility in dealing with evidence gathered by them during the inquiry process. It permits a committee to publish evidence prior to reporting to the Council.</p> <p><b>Definition of Evidence</b></p> <p>This is broadly defined to capture all information provided to a committee. The committee must still make a deliberative decision whether to accept any evidence.</p> <p><b>Evidence may be disclosed or published</b></p> <p>1. This provides that the default position for hearings is that they are open to the public and media representatives.</p> <p>2. This SeO covers written “evidence” as defined <i>unless</i> that written evidence is covered by subclause (4) - which deals with private evidence. This has the result that the disclosure or publication of all written documents or information tabled before or obtained by a committee, is within the control of the committee. A committee may, by majority resolution, determine the extent, if any, of disclosure or publication of written evidence:</p> <ul style="list-style-type: none"> <li>• of its own motion; or</li> <li>• so as to meet a request made by the person providing that evidence (i.e. witness entitlements).</li> </ul> <p><b>When evidence may be taken in private session</b></p> <p>3. Private evidence is generally received at a meeting that is private (in camera). Such evidence is usually confidential, secret or of great sensitivity. Oral evidence may be taken in private session of the committee’s own motion (majority resolution) or at the request of a witness. Note that there are two limbs to the exercise of discretion to take oral evidence in private session:</p> <ul style="list-style-type: none"> <li>(a) the nature of the evidence; or</li> <li>(b) the identity of the witness.</li> </ul> <p>The use of the phrase “<i>where it is satisfied</i>” provides that the committee must be satisfied that there is a need for the evidence to be taken in private. Thus it is for the committee to make a deliberative judgment (in the absence of strangers and media) each time that it decides to go into private session.</p> <p><b>Private session evidence not to be disclosed or published</b></p> <p>4. This SeO preserves the status of private evidence taken under subclause (3). Once a committee has exercised its discretion that certain evidence should be private, such evidence must not be disclosed or published except by:</p> <ul style="list-style-type: none"> <li>(a) leave of the Council; or</li> <li>(b) leave of the committee before which the evidence was given.</li> </ul> <p><b>Content of reports not affected</b></p> <p>5. This SeO reinforces the ability of a committee to disclose private evidence for the purpose of complying with any rule or order (for example an order of the Council to disclose evidence), or quoting or referring to such evidence in a report on the matter to which that evidence relates. For example, a committee may quote private evidence in its report in a way that preserves the confidentiality of a witness by not naming them.</p> <p>Current Sessional Order 3 (in lieu of SO 200) provides a similar flexibility.</p>

<b>PROPOSED SESSIONAL ORDER</b>	<b>EXPLANATORY NOTE</b>
<p><b>(13) Reporting of resolution to commence own motion inquiry</b></p> <p>Where a committee initiates an inquiry of its own motion, notice of that inquiry shall be reported to the Council within two sitting days of the committee's resolution.</p>	<p>This SeO requires a committee to report to the Council any own motion inquiry within two sitting days of the committee's resolution. This provides the necessary information for the Council to oversight committees which may initiate an inquiry by their own motion.</p> <p>The Council may alter the terms of reference or cease an inquiry via instruction to the committee if necessary.</p> <p>It should be noted that no similar power was provided in the orders which previously governed the Joint Standing Committees on ERD and CD, both of which had own motion inquiry powers.</p>
<p><b>(14) Council Members may participate but not vote</b></p> <p>Any Member of the Council may participate in a committee's proceedings, and by leave of a committee, its deliberations, but may not vote and must withdraw if directed by the Chair. Leave can be given only for a specific inquiry, but a Member may be given leave in relation to more than one inquiry whether or not those inquiries are contemporaneous with one another.</p>	<p>This SeO augments current practice. (SO 230(9) (GBEs).</p> <p>Participation would include:</p> <ol style="list-style-type: none"><li>1. participating in public sessions as of right, including asking questions of witnesses;</li><li>2. participating in the deliberations of a committee with the leave of the committee for a specific inquiry.</li></ol> <p>The Chair can request that a participating member withdraw at any time.</p> <p>With the leave of the committee a participating member could participate in a committee's deliberations. This would be uncommon but there may be occasions where no member is prepared to give up their place on an inquiry to permit a member to substitute for them but the committee could benefit from the participation of a member. For example, a member with particular legal skills may, with the leave of the committee, deliberate with a committee to assist it in its decision.</p>



PROPOSED SESSIONAL ORDER	EXPLANATORY NOTE
<p><b>(15) Substitute Members</b></p> <ol style="list-style-type: none"><li>1. A Member of a committee may be replaced by another Member (“substitute Member”). The substitute Member, subject to this order, is a Member of the committee for all purposes relating to a specific inquiry and may be elected an Inquiry Chair as occasion requires.</li><li>2. Substitution is made by leave of the committee.</li><li>3. A substitution must be for the purpose of a specific inquiry but a substitute Member, by further leave, may be a substitute Member on one or more committees at the same time and in relation to more than one inquiry being conducted at the same time.</li><li>4. Nothing in this order alters the capacity of the Member who is substituted to act as a Member of the committee in relation to any inquiry or matter that is unaffected by the substitution.</li><li>5. Where a committee —<ol style="list-style-type: none"><li>(a) presents its final report on an inquiry for which a substitution was made; or</li><li>(b) for any reason, discontinues such an inquiry, the leave granted in relation to that inquiry lapses, and the substitute Member, subject to paragraph (3), ceases to be a Member of that committee.</li></ol></li><li>6. When a substitution is made, the Chair shall cause the Clerk to be notified of the name of the Member being substituted, the substitute Member, and the purpose for which the substitution is made and the Clerk shall publish that information in the next available Notice Paper.</li></ol>	<ol style="list-style-type: none"><li>1. The practice of substitution enables members with special interests in certain areas to contribute to the work of committees of which they are not members. Substitute membership confers full membership rights on the member for the purposes of the matter for which they are a member, including the right to attend private hearings and deliberative meetings, make contributions to reports and vote.</li><li>2. A Committee must grant leave for the substitution.</li><li>3. A member of one committee can replace a member of another committee only for the purposes of an inquiry but may be a substitute member for more than one inquiry being conducted contemporaneously.</li><li>4. A member of committee A who substitutes for a member on committee B is still for all purposes a member of committee A.</li><li>5. Leave to a substituted member lapses upon final report or when that committee discontinues its inquiry for any reason.</li><li>6. Provides necessary oversight by the publication of substitute members of committees and the purpose of the substitution i.e for which inquiry the member has been included as a substitute member.</li></ol>

PROPOSED SESSIONAL ORDER	EXPLANATORY NOTE
<p><b>(16) Committee Member not to participate in certain cases</b>            In relation to any matter or inquiry before a committee, a Member shall not participate in an inquiry in which the member has a direct pecuniary or personal interest not held in common with the rest of the subjects of the Crown.</p>	<p>The difference between SO 103 and the sessional order is that the latter provides that the committee member shall not participate at all in a particular inquiry, whereas SO 103 permits the Council, other than the member concerned, to vote on whether or not to allow the member declaring a pecuniary interest to vote on a question.</p> <p>It should be noted that SO 174 relating to Select Committees provides that a member with a direct pecuniary interest shall not serve. This standing order applies to single issue Select Committees whereas the Sessional Committees are expected to deal with concurrent inquiries. Disqualifying a member of a committee because they have a declared conflict of interest in relation to one of several inquiries would result in significant difficulties, particularly if more than one member of the same committee were to declare a conflict of interest.</p> <p>The SeO is a sensible and ethical approach.</p>
<p><b>(17) President may give procedural rulings</b>            The President may give procedural rulings if requested by writing signed by the Chair.</p>	<p>This SeO is linked to SeO 1. It reflects the practice in the Council where the President may give rulings on Points of Order.</p>
<p><b>(18) Proceedings not noticed until reported</b>            Proceedings of a committee are not noticed by the Council until reported, except by leave of the Council.</p>	<p>The effect of this SeO is to prevent the Council, except in cases where leave of the Council is granted, from having any regard, or engaging in any discussion of committee consideration of a matter until such consideration has been reported to the Council. This embargo applies to any debates, any motions, the tabling of evidence heard by the committee etc.</p> <p>If leave is not granted the rule prevents any member from using evidence or information in debate, whether or not the debate has relevance to the inquiry, before the committee has assessed and weighed that evidence or information in its proper context. The House's interest is to receive a committee's findings and recommendations after proper deliberation. Were a member to be permitted to use evidence in a debate before a committee has reported, the focus of the debate could easily be shifted to the committee's inquiry, its conduct, adequacy and so forth, to the detriment of the debate itself and the committee's integrity.</p>

PROPOSED SESSIONAL ORDER	EXPLANATORY NOTE
<p><b>(19) Powers of a committee</b> In addition to any power conferred by law or order, a committee has power to —</p> <ul style="list-style-type: none"><li>(a) send for persons, papers, and records;</li><li>(b) adjourn its proceedings;</li><li>(c) commission reports;</li><li>(d) sit during any suspension or adjournment of the House; and</li><li>(e) travel to gather evidence.</li></ul>	<p>(a), (b), (c) &amp; (e) This SeO reflects existing Standing Orders governing the operation of Select Committees. SO 187; SO 188; SO 189; SO 191 and SO 199 and the statutory powers of committees under the <i>Parliamentary Privilege Act 1858</i>.</p> <p>s.1 of that Act provides:</p> <p><b>“1. Power to order attendance of persons</b></p> <p>Each House of Parliament, and any committee of either House duly authorized by the House to send for persons and papers, is hereby empowered to order any person to attend before the House or before such committee, as the case may be, and also to produce to such House or committee any paper, book, record, or other document in the possession or power of such person; and all persons are hereby required to obey any such order.”</p> <p>(d) The SeO reflects the practice of meeting during suspensions of sittings such as the luncheon or afternoon tea suspensions.</p> <p>SO 187(2) expressly provides that Select Committees may not sit when the Council is in session except by leave of the Council. The object of the SO is to ensure that committee commitments do not clash with a Member’s obligation to attend sittings.</p> <p>However, a suspension of a sitting is not the equivalent of an adjournment. The Council is not adjourned during a suspension of a sitting so the usual order applying to Select Committees – “That the committee have leave to sit during any adjournment of the Council” is not sufficient to deal with meeting during a suspension of sitting. The SeO rectifies this.</p>

PROPOSED SESSIONAL ORDER	EXPLANATORY NOTE
<p><b>(20) Witnesses entitlements</b> Subject to order of the Council or of a committee any person examined before a committee is entitled to —</p> <ul style="list-style-type: none"><li>(a) raise any matter of concern to that person relating to evidence to be given or documents produced;</li><li>(b) benefit of legal counsel;</li><li>(c) apply for all or part of that person’s evidence to be given in private session and for an order restricting publication of, or access to, that evidence;</li><li>(d) decline to answer a question or produce a document on the grounds that the question is outside the scope of the matters in issue or under inquiry;</li><li>(e) be informed before evidence is given that if part of it might incriminate himself or another person, that fact should be made known to the committee before that part is actually given;</li><li>(f) know of and, if desired rebut, any allegations made against the person whether or not those allegations amount to criminal conduct or dealing; and</li><li>(g) provide supplementary or new evidence.</li></ul>	<p>This SeO sets out the entitlements of witnesses appearing before the committees so as to provide witnesses with procedural fairness (natural justice).</p> <p>The current Standing Orders contain two references to entitlements as they relate to evidence (SO 202, SO 203 applying to Select Committees; and SO 232 applying to GBE Committees). However there is no specific Standing Order relating to witness entitlements.</p> <p>In the interests of natural justice and community awareness of the role and responsibilities of committees, a witness is entitled to be aware that they may defer questions, provide supplementary information, have legal counsel present, refuse to answer questions of policy, know of and rebut allegations against them, refuse to answer irrelevant questions etc. The entitlements in this SeO are subject to an order of the Council or a committee.</p> <ul style="list-style-type: none"><li>(a) Provides an opportunity for the witness to raise any matters of concern at the outset of their evidence.</li><li>(b) The role of legal counsel is one of assistance to the witness, and does not mean that legal counsel ‘represents’ the witness at the inquiry. This is a marked difference from the traditional role of legal counsel in litigation. Legal counsel may not answer questions for, or give evidence on behalf of, the witness.</li><li>(c) There may be some argument for amendment to this sessional order so that it would read “<i>apply for all or part of that person’s evidence <u>or both</u> to be given in private session <u>or</u> for an order restricting publication of, or access to, that evidence.</i>”</li><li>(d) Objections by witnesses to requests for the production of documents based on legal professional privilege and commercial confidentiality, like those based on executive/Crown privilege and public interest immunity are referred to a superior officer or minister and has been the practice in the past.</li><li>(e) The requirement that a person who is going to give incriminating evidence about themselves or anyone else <i>must</i> inform the committee of such likelihood before giving the evidence, is so the committee is <i>aware</i> of this possibility so that a decision can be made to take the evidence in private session so as to protect reputations. The witness is informed of this and other witness entitlements through provision of the witness information sheet.</li><li>(f) This is designed to prevent an ambush of a witness. If a committee is to make an adverse finding against a person in a report then this entitlement requires that they be given an opportunity in accordance with the rules of procedural fairness to give evidence with a view to rebutting such allegations.</li><li>(g) This provides a witness with an opportunity to provide supplementary or new evidence if relevant.</li></ul>

PROPOSED SESSIONAL ORDER	EXPLANATORY NOTE
<p><b>(21) Evidence of public servants</b>            Where a committee examines a state public servant, questions of policy, other than to explain the manner in which a policy operates or was intended to operate, shall not be asked of that person but shall be directed to the responsible minister. A public servant is entitled to decline to answer any question on a matter of policy.</p>	<p>The SeO reflects current practice.</p> <p>The Senate has passed a resolution relating to witnesses appearing before its committees. Public servants as witnesses are dealt with in Privilege Resolution 1(16). Odgers explains this as follows:            “An officer of the Commonwealth or a state public servant must not be asked to give opinions on matters of policy and must be given a reasonable opportunity to refer questions to a superior officer or to a minister.</p> <p>The rule relating to the giving of opinions on matters of policy is designed to avoid public servants becoming involved in discussions or disputation with committee members about the merits of government policy as determined by ministers. Public servants may explain government policy, describe how it differs from alternative policies, and provide information on the process by which a particular policy was selected, but may not be asked to express opinions on the relative merits of alternative policies.</p> <p>The rule concerning reasonable opportunity to refer questions to a superior officer or to a minister is designed to ensure that an officer is not required to answer a question where all the necessary information may not be available to the officer, and that, if there is any difficulty in answering a question, the difficulty is referred to a superior officer, and, if necessary, ultimately to a minister, for resolution. It is not the role of a public service witness to refuse to provide information to a committee.....A decision to decline to provide information to a committee is thereby made only at ministerial level by the office-holder who can accept political responsibility for any dispute between a committee and the executive government.” (Odgers, 12<sup>th</sup> Edition, p.431)</p> <p>See SO 225 – Ministerial and Departmental Advisers Re: Estimates Committees;</p> <p>See SO 233(5) – Proceedings Re: GBE Hearings.</p>
<p><b>(22) Chair and Inquiry Chair to sign report; Minority report may be added</b></p> <ol style="list-style-type: none"> <li>1. The Chair and Inquiry Chair as occasion requires shall sign the unanimous or majority report. A minority report or dissent, confined to issues in dispute, may be added to the report but may not be presented separately to the Council.</li> <li>2. A minority report or dissent is to be prepared by the relevant member.</li> </ol>	<p>This SeO is novel in that it provides for both the Chair and the Inquiry Chair to sign the Committee’s report.</p>
<p><b>(23) Presentation of Report</b>            A report is presented by the Chair, Inquiry Chair or other Member designated by the committee for the purpose.</p>	<p>This SeO reflects current practice but adds that an Inquiry Chair may also present a report.</p>

PROPOSED SESSIONAL ORDER	EXPLANATORY NOTE
<p><b>(24) Bill may be annexed to report</b>            In the case of Bills, a copy of the Bill showing amendments recommended by the committee may be annexed to a narrative report.</p>	<p>This SeO provides that on considering a Bill referred to a committee by the Council (own motion inquiries on Bills are not permitted) the committee may annex to the Bill a copy of the Bill showing amendments recommended by the committee.</p> <p>The committee may also annex a schedule of amendments which reflect its recommendations. This is a sensible practice as the next stage of the Bill's passage if, as usual, it is referred after the second reading will be the Committee of the Whole House stage. The Bill showing recommended amendments or a schedule of amendments will provide Members and the Government with notice of the committee's recommended amendments.</p>
<p><b>(25) Procedure in Council on presentation of report</b></p> <ol style="list-style-type: none"> <li>1. On presentation of a report a question shall be put and decided without amendment or debate that the report be received and printed;</li> <li>2. Consideration and noting of the whole of a tabled report and the next stage of a Bill so reported is to be made an order of the day for a future sitting.</li> </ol>	<p>This SeO reflects current practice.</p>
<p><b>(26) Clerk shall send copy of a report to Government: Government to respond within three months</b>            After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible minister. The Leader of the Government or the minister (if a Member of the Council) shall report the Government's response within three months.</p>	<p>This SeO reflects current practice.</p> <p>An additional innovation which could be instituted administratively is the appearance on the Notice Paper of a schedule showing reports tabled requiring a Government response and the date when a response is required. This is not unlike the information currently provided on the Notice Paper relating to 'Papers Issued' and 'Summary of Bills'.</p> <p>When a Government response is received, the matter is added to the Notice Paper. This is an accountability mechanism and provides Members of the House with details of when a Government response is required and if it has been received. A Member, for example, may wish to ask a question of the Leader or the responsible Minister as to why a response has not been provided within the 3 month time limit and/or when a response is to be provided.</p>

PROPOSED SESSIONAL ORDER	EXPLANATORY NOTE
<p><b>(27) President may publish a report during adjournment of the Council</b>                      The President may publish a report that is ready for presentation during an adjournment of more than 14 days. A report so published is deemed to have been tabled and ordered to be printed but shall be presented in accordance with these rules when the Council resumes its sittings.</p>	<p>This SeO is not novel. Similar powers are provided in the Standing Orders of the Legislative Council of NSW (SO 231); the Legislative Council of Western Australia (SO 338); Legislative Assembly of Queensland (SO 215); Legislative Assembly of the Northern Territory (SO 280); The Senate of the Commonwealth Parliament (SOs 38(7) &amp; 166(2)).</p> <p>The <i>Constitution Act 1934</i>, s.17, provides for the power of each House of Parliament to make “such standing rules and orders as shall appear to it to be best adapted for the orderly conduct of the business of such House...” The Standing Orders are approved by His Excellency the Governor. Existing SOs 197 (Select Committees); SO 219 (Joint Committees); SO 228(6) (Estimates Committees); and the motion establishing Government Business Scrutiny Committees A &amp; B all provide for the capacity to present reports to the President and for their printing and publication in periods of adjournment of the Council.</p> <p>The <i>Bill of Rights 1688</i> provides the protection of absolute privilege to a “proceeding in Parliament”. A resolution of a House authorising its President to publish a document out of session and to deem that it has been tabled and ordered to be printed by the Council upon presentation would constitute a proceeding in parliament for the purpose of the applicable law.</p> <p>In addition, the <i>Defamation Act 2005</i>, s. 27 provides in part:</p> <p><b>27. Defence of absolute privilege</b></p> <p>(1) It is a defence to the publication of defamatory matter if the defendant proves that it was published on an occasion of absolute privilege.</p> <p>(2) Without limiting subsection (1), matter is published on an occasion of absolute privilege if –</p> <p>(a) the matter is published in the course of the proceedings of a parliamentary body, including (but not limited to) –</p> <p>(i) the publication of a document by order, or under the authority, of the body; and</p> <p>(ii) the publication of the debates and proceedings of the body by or under the authority of the body or any law; and</p> <p>(iii) the publication of matter while giving evidence before the body; and</p> <p>(iv) the publication of matter while presenting or submitting a document to the body;</p> <p>...</p> <p><b>4. Interpretation</b></p> <p>In this Act, unless the contrary intention appears –</p> <p>...</p> <p><b>"Parliamentary body"</b> means –</p> <p>(a) a parliament or legislature of any country; or</p> <p>(b) a house of parliament or legislature of any country; or</p> <p>(c) a committee of a parliament or legislature of any country; or</p> <p>(d) a committee of a house or houses of a parliament or legislature of any country;</p>

PROPOSED SESSIONAL ORDER	EXPLANATORY NOTE
<p><b>(28) Subcommittees, appointment and procedures</b></p> <ol style="list-style-type: none"> <li>1. A committee may appoint subcommittees of three or more Members;</li> <li>2. Subcommittees have all the powers of a committee unless the committee restricts those powers or their use;</li> <li>3. A subcommittee may conduct proceedings and deliberations jointly with a subcommittee of another committee where the subject matter of an inquiry relates to the terms of reference of each committee;</li> <li>4. A subcommittee reports to the committee that appointed it;</li> <li>5. A quorum of a subcommittee is two Members or a majority of Members where the subcommittee has more than three Members.</li> <li>6. A subcommittee is to appoint a Chair to preside at meetings.</li> </ol>	<p>Formal subcommittees cannot operate without an express resolution of the Council.</p> <p>“A select committee, having only a delegated authority, cannot, without the leave of the House, divide itself into subcommittees and apportion its functions among such subcommittees, or delegate to a subcommittee any of the authority delegated to it by the House.” (Erskine May, 22<sup>nd</sup> Ed. p.659.).</p> <p>Examples of when a subcommittee might be formed are:</p> <ul style="list-style-type: none"> <li>• to address, on an ongoing basis, one or more of the committee’s terms of reference;</li> <li>• to work on a specific inquiry or item of business; or</li> <li>• to attend hearings at some distance where the costs associated with the full committee travelling could not be justified.</li> </ul> <ol style="list-style-type: none"> <li>1. An appointment of subcommittee membership requires the committee to name specific members.</li> <li>2. A subcommittee can be appointed by the main committee for any purpose or function, provided that this purpose or function is within the committee’s powers and its terms of reference.</li> <li>3. A subcommittee has the power to confer with another subcommittee. This provision enables subcommittees to confer without the need for the subcommittee to revert to the main committee for consent.</li> <li>4. Subcommittees report back to the main committee. They cannot report direct to the Council. Its ‘report’ is in the form of a draft report (written as if by the whole committee). When the subcommittee is satisfied with the draft, it presents it to the main committee.</li> </ol> <p>5 Quorum requirements are a majority of Members.</p> <p>6. The subcommittee requires a Chair or ‘Convenor’ to preside at meetings. It is best practice for subcommittees not to meet at the same time as the main committee.</p>
<p><b>(29) Operation of committees</b></p> <p>In all cases relating to the operation of the Government Administration Sessional Committees A and B, and not otherwise provided for in the Sessional Orders, the rules for Select Committees shall be followed as far as they can be applied.</p>	<p>This SeO provides a ‘catch all’ provision in the event that a matter is not provided for in the Sessional Orders.</p> <p>For example, the Sessional Orders do not specify that the Chair has only a deliberative vote. In these circumstances the practice as applied by SO 185 will apply. This specifies that the Chair has only a deliberative vote and when the votes are equal, that question shall pass in the negative.</p>
<p><b>(30) Staff and resources</b></p> <p>In consultation with the President and subject to the provisions of any applicable written law, each committee shall be provided with staff and resources necessary for the performance of its functions.</p>	<p>This SeO reflects current practice.</p>