
The Parliament of the Commonwealth of Australia

e-motions

The electronic transaction of questions, answers and notices of motion and related matters

**House of Representatives
Standing Committee on Procedure**

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Canberra

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Terms of reference of the committee

To inquire into and report on the practices and procedures of the House generally with a view to making recommendations for their improvement or change and for the development of new procedures



List of recommendations

Recommendation 1

The committee, in order to clarify the manner in which Members may put questions to Ministers, recommends that standing order 142 be amended to read as follows:

Questions to Ministers

142 Questions may be put to a Minister relating to public affairs with which the Minister is officially connected, to proceedings pending in the House, or to any matter of administration for which the Minister is responsible. Questions may be asked orally without notice for immediate reply or in writing on notice and placed on the Notice Paper for written reply.

Recommendation 2

The committee, in order to facilitate the electronic lodgment of questions on notice, recommends that standing order 148 be amended to read as follows:

Question on notice

148 A Member shall submit a question on notice to the Clerk in sufficient time, in the opinion of the Speaker, to enable it to be published in the next issue of the Notice Paper. The question shall be in writing and signed by the Member.

Recommendation 3

The committee, in order to facilitate the electronic lodgment of notices of motion, recommends that standing order 133 be amended to read as follows:

Notice of motion—how given

133 Notice of motion shall be given by a Member by—

- (a) delivering its terms in writing to the Clerk at the Table, or
- (b) stating its terms to the House during the period of Members' statements made under standing order 106A and delivering its terms in writing to the Clerk at the Table.

The notice must be signed by the Member and seconder and show the day proposed for moving the motion.

A notice of motion given by a Member in accordance with paragraph (a) which expresses a censure of, or want of confidence in the Government, or a censure of any Member, shall be reported to the House by the Clerk at the first convenient opportunity.

and that standing order 211 be amended similarly.

Recommendation 4

The committee, in order to simplify the manner in which Members may seek explanations for unanswered questions on notice, recommends that standing order 150 be amended to read as follows:

Replies to questions

150 The reply to a question on notice shall be given by delivering it to the Clerk. A copy of the reply shall be supplied to the Member who asked the question, and the question and reply shall be published in Hansard.

If after the expiration of 60 days of a question first appearing on the Notice Paper, a reply has not been delivered to the Clerk, the Member who asked the question may rise in his or her place at the conclusion of the question period and, without elaboration, request the Minister concerned to provide reasons for the delay in answering.

Recommendation 5

The committee, in order to remove the requirement that notices of motion be seconded, recommends that standing order 133 be further amended to read as follows:

Notice of motion—how given

133 Notice of motion shall be given by a Member by—

- (a) delivering its terms in writing to the Clerk at the Table, or
- (b) stating its terms to the House during the period of Members' statements made under standing order 106A and delivering its terms in writing to the Clerk at the Table.

The notice must be signed by the Member and show the day proposed for moving the motion.

A notice of motion given by a Member in accordance with paragraph (a) which expresses a censure of, or want of confidence in the Government, or a censure of any Member, shall be reported to the House by the Clerk at the first convenient opportunity.

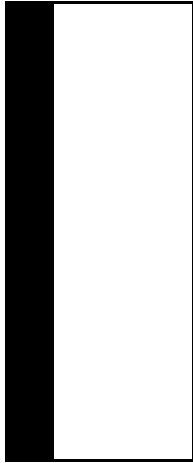
and that standing order 211 be amended similarly.

Recommendation 6

The committee, in order to ensure that the Notice Paper is available to Members before the House meets, recommends that standing order 100A be amended to read as follows:

Notice Paper

100A All business before the House shall be set down on the Notice Paper in accordance with the standing and sessional orders and the Notice Paper shall be published before each meeting of the House. A Notice Paper is not published before the first meeting of the House following a general election or prorogation.



The electronic transaction of questions, answers and notices of motion and related matters

Introduction

- 1.1 The *Electronic Transactions Act 1999* heralds an opportunity for the House to streamline some of its paper-based processes by better using the tools of information technology.
- 1.2 With sufficient safeguards, preparing, delivering and publishing questions on notice, answers to questions on notice and notices of motion can be made more efficient as well as more convenient for Members and others. It is proposed that, as an option, the submission of questions, answers and notices be permitted as electronic transactions.
- 1.3 An examination of the processes involved raises other issues not in themselves necessarily related to technological innovation but which nevertheless invite resolution. It is further proposed that:
 - the means by which Ministers may be requested to account for not providing timely responses to questions on notice be altered;
 - the requirement that notices be seconded be dispensed with; and
 - the documentary requirements for a meeting of the House be specified.

The Electronic Transactions Act

- 1.4 The aim of the *Electronic Transactions Act 1999* is to facilitate ‘the development of electronic commerce in Australia by broadly removing existing legal impediments that may prevent a person using electronic communications to satisfy obligations under Commonwealth law’.¹ It does this by establishing a general rule that ‘a transaction is not invalid because it took place wholly or partly by means of one or more electronic communications’.²
- 1.5 Two important principles in the Act are those of *functional equivalence* and *technology neutrality*:
- The term functional equivalence means that transactions conducted using paper documents and transactions conducted using electronic communications should be treated equally by the law and not given an advantage or disadvantage against each other. Technology neutrality means that the law should not discriminate between different forms of technology—for example, by specifying technical requirements for the use of electronic communications that are based upon an understanding of the operation of a particular form of electronic communication technology.³
- 1.6 While the Act does not bear upon the internal workings of the Parliament, its intentions apply to the pursuit of best practice in the legislature. If it is accepted that there are real benefits in employing electronic transactions for certain processes in the House, then impediments should be removed and the principles of functional equivalence and technology neutrality observed.

Questions, answers and notices

Why change?

- 1.7 The case for augmenting the existing processes for preparing, delivering and publishing questions on notice, answers to questions on notice and

1 Electronic Transactions Bill 1999, Explanatory memorandum, page 1.

2 *Electronic Transactions Act 1999*, section 8.

3 Electronic Transactions Bill 1999, Explanatory memorandum, page 1.

notices of motion by adding the option of electronic transaction rests on two premises:

- it is often more efficient; and
- it is often more convenient.

- 1.8 The life cycle of questions, answers and notices is examined in more detail below but, in general, efficiency would derive first from more timely delivery and second from eliminating paper being used in intermediate stages of each process. Convenience would result from providing more options to those involved.
- 1.9 Typically a question, answer or notice is prepared on a word processor, printed and delivered as hard copy, transcribed into another word processor document and then incorporated into an electronically publishable format. Eliminating the hard copy delivery could not only reduce office workload but save paper and minimise the potential for transcription errors.
- 1.10 Questions, answers and notices are delivered in a number of ways. Usually the delivery systems are very reliable and it is rare for a document to go astray. It is still the case, however, that intermediaries are involved and this fact increases the potential for inefficiency or failure. A feature of an electronic transaction is its virtual immediacy. A document in hard copy must be transported physically. Transportation takes time. Deadlines may be missed. Members operating from remote locations or wishing to meet tight deadlines could use electronic transactions advantageously.
- 1.11 To implement electronic transactions effectively the impediments must be removed and the principles of functional equivalence and technology neutrality observed.

The potential impediments

- 1.12 Certain provisions of the standing orders may seem to impede electronic transactions. A standing order that prescribes that a document be 'fairly written' or that it 'be signed by the Member' seems to limit the affected process to the use of pen and paper.
- 1.13 Of course these prescriptions are neither arbitrary nor quaint relics of the quill. The requirement that a document be fairly written attempts to ensure that it is comprehensible and that its contents can be faithfully reproduced. That a document be signed by the Member attempts to ensure its authenticity. However, neither requirement guarantees the desired

outcome. Errors can occur in transcription; signatures can be forged. There are no guarantees to be sacrificed by introducing other methods.

- 1.14 In any event, sections 9 and 10 of the *Electronic Transactions Act 1999* generalise the meaning of the terms ‘writing’ and ‘signature’ to such an extent that if similar principles were observed with respect to the House’s transactions, changes to the standing orders might be unnecessary. Sections 9 and 10 of the Act are reproduced in Appendix A.
- 1.15 Given that there are probably no impediments in principle to the addition of electronic means for delivering questions, answers and notices, it is necessary to evaluate—with a view to eliminating—any practical problems.

Questions on notice

- 1.16 Standing order 148 is the main authority for placing questions on notice:

Notice of question

148 Notice of question shall be given by a Member delivering the same to the Clerk within such time as, in the opinion of the Speaker, will enable the question to be fairly printed. The question shall be fairly written, signed by the Member, and shall show the day proposed for asking such question.

- 1.17 Upon receipt by the Clerk—in practice, the Table Office as an agent of the Clerk—questions on notice are placed on the Notice Paper in accordance with standing order 149:

Order of questions

149 The Clerk shall place notices of questions on the Notice Paper in the order in which they were received by the Clerk.

- 1.18 Some essential aspects of the existing process were outlined when a Member asked the Speaker in the House on 25 November 1998 whether he could transmit questions from his office to the Table Office by email and ‘assist the productivity of the individual who has to check and prepare those questions’.⁴ The Speaker responded later in the sitting:

Earlier today I was also asked by the honourable [M]ember for Chifley if questions on notice could be submitted by email. The Table Office does accept questions by email but also requests that a signed original be forwarded in accordance with standing order 148, which provides inter alia that:

The question shall be fairly written, signed by the Member and shall show the day proposed for asking such a question.

On the matter of signing questions, House of Representatives Practice remarks that:

In practice the Member's signature is not insisted upon when the Member delivers the question in person, the main purpose of the signature being to authenticate the question.

It is the need to ensure that questions standing in a [M]ember's name have indeed been approved by the [M]ember which presently limits the use of email as an exclusive means of lodging questions. When the authenticity of electronic signatures on documents lodged from computers is able to be quickly and indisputably verified, the House may wish to reconsider its practice.⁵

- 1.19 Members may forward questions in manuscript, in typescript or printed from a word processor. Questions faxed to the Table Office are generally accepted where it is reasonable to assume their authenticity. As an adjunct to the provision of any of these hard copy forms, the text may be sent by email.
- 1.20 The Notice Paper is composed in the Table Office and questions are included in the material which must be entered, edited and formatted before the document goes to press. Material which arrives in electronic format bypasses the first of these stages and expedites production of the Notice Paper.
- 1.21 It may be noted in passing that advances in technology over the last decade have brought significant economies by allowing the production of House documents—including the Votes and Proceedings and the Notice Paper—using internal facilities. Most of the pre-press functions are carried out in the Table Office and printing is performed by the Department of the House of Representatives printing unit. In the past almost the entire publishing process was performed by the Government Printing Office. This change has produced considerable financial and other benefits but these are counterbalanced to an extent by greater demands on staff and the risk of overloading internal publishing services during times of peak demand. Introducing further efficiencies may diminish these concerns.

Answers to questions on notice

- 1.22 Standing order 150 specifies the mechanism for answering a question on notice:

Replies to questions

150 The reply to a question on notice shall be given by delivering it to the Clerk. A copy of the reply shall be supplied to the Member who asked the question, and the question and reply shall be published in *Hansard*.

If after the expiration of 60 days of a question first appearing on the Notice Paper, a reply has not been delivered to the Clerk, the Member who asked the question may rise in his or her place at the conclusion of the question period and request the Speaker to write to the Minister concerned, seeking reasons for the delay in answering.

- 1.23 In most cases, staff in a Minister's Department scan each issue of the Notice Paper and extract questions directed to their Minister or Ministers. Each question is sent to the appropriate branch, division or agency for a draft response to be prepared. The draft response is forwarded to the Minister's office and when finalised is delivered by the Department to the Table Office. Table Office staff complete the process identified in the standing order.
- 1.24 A major issue in the receipt of electronic documents from a range of sources is the variability of proprietary formats. For example, text may be supplied in a number of word processor formats and tabulated data in different spreadsheet formats.
- 1.25 Most departments and agencies have entered into a cooperative arrangement with the Department of the Parliamentary Reporting Staff under which material is provided in electronic format to assist its incorporation in *Hansard*. Each answer is lodged with the Table Office in hard copy and on floppy disk. The Table Office retains and distributes the hard copy and forwards the floppy disk to the compilers of *Hansard*. It is the responsibility of the latter to convert the various proprietary formats into the format used for *Hansard*.
- 1.26 For most departments and agencies, the option of supplying answers only in electronic format would not be a major innovation. Indeed, it would be a simplification of existing procedures. Further, the potential for there to be a discrepancy between the answer supplied in hard copy and that in electronic format would be eliminated. There would be some additional overhead to the Table Office in ascertaining the form in which each

Member wished to receive answers and in printing the answer in hard copy if that was required.

Notices of motion

- 1.27 Standing order 133 specifies how notices of motion make their way to the Notice Paper.

Notice of motion—how given

133 Notice of motion shall be given by a Member by—

(a) delivering a fair copy of its terms to the Clerk at the Table,
or

(b) stating its terms to the House during the period of Members' statements made under standing order 106A and delivering a fair copy of its terms to the Clerk at the Table.

The notice must be signed by the Member and seconder and show the day proposed for moving the motion.

A notice of motion given by a Member in accordance with paragraph (a) which expresses a censure of, or want of confidence in the Government, or a censure of any Member, shall be reported to the House by the Clerk at the first convenient opportunity.

- 1.28 The mechanism referred to in paragraph (b) has been used on only three occasions since it was introduced in May 1990. In all cases, however, notices, like questions on notice, arrive in the Table Office in hard copy form, be it manuscript, typescript or printed from a word processor.
- 1.29 Standing order 133 contains a provision which distinguishes notices from questions in one essential respect but this is a minor complication from a processing point of view: notices must be received by the Clerk at the Table. Technically, notices are received only while the House is sitting but in practice Members may forward notices at any time directly to the Table Office whence they are handed to the Clerk at the Table at the next opportunity.
- 1.30 Indeed from a processing point of view the only major difference between a notice of motion and a question on notice is the need for the former, in certain circumstances, to bear two signatures, those of the mover and seconder. In the absence of any change to the requirement for a seconder, such an electronically transacted notice would need to bear two levels of authentication.

- 1.31 Conceivably the delivery of an electronically transacted notice would vary from its hard copy analogue in the route it takes to the Table Office: instead of being delivered directly by the proposed mover, the electronic form would be passed from the proposed mover to the seconder, endorsed and then delivered to the Table Office and subsequently to the Clerk at the Table. The introduction of another intermediary may be seen as imposing an element of trust but in any case there is little to differentiate this situation from that already provided for in standing order 134:

Notice given for an absent Member

134 A Member, in the absence of another Member and at his or her request, may give a notice of motion for that other Member and shall put the name of such Member and his or her own signature on the notice.

- 1.32 Such minor difficulties as exist in implementing the electronic transaction of notices of motion would be eliminated by removing the requirement for notices to be seconded. It is not suggested that the requirements of the House be sacrificed at the altar of technological convenience. But in this instance, there are pre-existing reasons why the requirement might be dispensed with and these are examined later.

The problem of authenticity

- 1.33 A mechanism commonly associated with authenticating communication by electronic means is the digital signature. The term is sometimes misunderstood to mean a digitised form of a manual signature, in effect a computerised image, but is in fact a technically complicated method of certifying both the identity of the originator and the integrity of the content. A succinct description of the concept appears in Appendix A.
- 1.34 The overheads and benefits of digital signatures probably exceed the needs of the House. Section 10 of the Electronic Transactions Act deals at some length with the problem of authenticity in electronic transactions and deliberately avoids referring explicitly to digital signatures. The emphasis is on avoiding ossification:

... the signature method must be as reliable as appropriate for the purposes for which the information was communicated. This must be determined having regard to all the relevant circumstances at the time the signature method was used to sign the electronic communication. Technological advances may mean that signature

technology becomes unsuitable even though it was considered suitable for a particular transaction at an earlier time.⁶

- 1.35 As recipients of a question, answer or notice, Table Office staff are concerned primarily with the provenance of the document. Has the purported sender authorised its content? Further, once the document has been accepted, it soon becomes part of the published official record and is then immediately open to repudiation. There is no need to provide a facility for delayed authentication, for example several years later. Thus, the requirement is best expressed by its end, not its means:

Setting out the basic requirements for a signature method, rather than specifying detailed standards for particular types of signature methods, is consistent with the principle of technology neutrality and enables signature methods to meet the appropriate objective standards at the time they are used.⁷

- 1.36 There is no reason why the House cannot put in place a general requirement to ensure that questions, answers and notices are reasonably authenticable using means available at the time. However it is important that not only can the Table Office be reasonably assured of the document's provenance but that the Member is using a system which is reliable and convenient.

Enabling electronic transactions

- 1.37 The Clerk of the House and the Secretary of the Department of the Parliamentary Reporting Staff were invited to comment on procedural and practical aspects of enabling electronic transactions to proceed. Neither raised objections in principle but both identified a number of practical issues principally involving authentication and security. These issues were discussed earlier in this report. None is insuperable and none detracts from the principle that Members and others should have the convenience of using electronic transactions, if they wish, when going about certain of their parliamentary duties and that such transactions should have no less validity than those effected by paper. It is reasonable to expect that there will be difficulties in implementation, as there always are with anything to do with information technology, but that the outcome will be of benefit to Members and those who support them.

6 Electronic Transactions Bill 1999, Explanatory memorandum, page 28.

7 Electronic Transactions Bill 1999, Explanatory memorandum, page 28.

- 1.38 While the existing standing orders could be interpreted liberally to allow electronic transactions for questions, answers and notices to proceed immediately it would be preferable to remove potential impediments explicitly by amending certain standing orders. In addition, there would be some advantage in explicitly distinguishing questions on notice in the standing order which enables Members to ask questions.

Recommendation 1

The committee, in order to clarify the manner in which Members may put questions to Ministers, recommends that standing order 142 be amended to read as follows:

Questions to Ministers

142 Questions may be put to a Minister relating to public affairs with which the Minister is officially connected, to proceedings pending in the House, or to any matter of administration for which the Minister is responsible. Questions may be asked orally without notice for immediate reply or in writing on notice and placed on the Notice Paper for written reply.

Recommendation 2

The committee, in order to facilitate the electronic lodgment of questions on notice, recommends that standing order 148 be amended to read as follows:

Question on notice

148 A Member shall submit a question on notice to the Clerk in sufficient time, in the opinion of the Speaker, to enable it to be published in the next issue of the Notice Paper. The question shall be in writing and signed by the Member.

- 1.39 The provision in standing order 150 for replies to questions on notice is sufficiently general to accommodate electronic transactions and no change is required as a consequence. A minor change should be made to standing order 133 in respect of notices of motion.

Recommendation 3

The committee, in order to facilitate the electronic lodgment of notices of motion, recommends that standing order 133 be amended to read as follows:

Notice of motion—how given

133 Notice of motion shall be given by a Member by—

- (a) delivering its terms in writing to the Clerk at the Table, or
- (b) stating its terms to the House during the period of Members' statements made under standing order 106A and delivering its terms in writing to the Clerk at the Table.

The notice must be signed by the Member and seconder and show the day proposed for moving the motion.

A notice of motion given by a Member in accordance with paragraph (a) which expresses a censure of, or want of confidence in the Government, or a censure of any Member, shall be reported to the House by the Clerk at the first convenient opportunity.

and that standing order 211 be amended similarly.

Timely responses to questions on notice

- 1.40 The committee recommended in its 1992 report on questions seeking information that the standing orders be amended to enable Members to seek an explanation from the Minister concerned if an answer had not been received to a question on notice after 90 days of its first appearing on the Notice Paper.⁸ The committee reiterated the recommendation in its 1993 *About time* report on reforming the House of Representatives.⁹ The House adopted the procedure by sessional order in February 1994.¹⁰
- 1.41 The committee subsequently recommended in its review of the 1994 changes that the period of 90 days be reduced to 60. It also recommended that the Speaker provide a regular report to the House of the action taken by Ministers in response to the Speaker's letters to them.¹¹ The period of 60 days was incorporated in the amended standing order adopted by the House in May 1996.¹² The other recommendation was not adopted.
- 1.42 The intention of the procedure was to 'impose a level of discipline on the answering of questions on notice'.¹³ It is not clear that the procedure has had the desired, or indeed any, effect.
- 1.43 The average time taken to answer questions on notice has diminished significantly since 1990: over the life of the 36th Parliament it was 70.7 days, over the 37th 63.4 days and over the 38th 59.6 days. While this may suggest that the procedure adopted in 1994 has been effective, a closer examination of the statistics shows that there has been little change in the rate questions are being answered within specific time frames. Table 1 shows that 60 per cent of questions are answered within 60 calendar days, a rate that has remained constant since the procedure was introduced.

8 House of Representatives Standing Committee on Procedure, *The standing orders governing questions seeking information*, June 1992, page 18.

9 House of Representatives Standing Committee on Procedure, *About time: Bills, questions and working hours*, June 1995, page 29.

10 Votes and Proceedings, 1993-94-95/779.

11 House of Representatives Standing Committee on Procedure, *Time for review: Bills, questions and working hours*, June 1995, page 27.

12 Votes and Proceedings, 1996-97-98/25.

13 House of Representatives Debates, 10 February 1994, page 825.

There is slightly more variability within the period of 90 days but in fact the rate has slightly within both the 30 and 60 day periods.

Table 1—Answers to questions on notice: 36th, 37th and 38th Parliaments

	36th Parliament 1990-91-92		37th Parliament 1993-94-95		38th Parliament 1996-97-98	
	No.	%	No.	%	No.	%
Total number of questions	2187	100.0	2831	100.0	3128	100.0
Withdrawn	11	0.5	15	0.5	18	0.6
Unanswered	168	7.7	140	5.0	127	4.0
Answered— <i>in total</i>	2008	91.8	2676	94.5	2983	95.4
<i>within 30 days</i>	388	17.7	717	25.3	754	24.1
<i>within 60 days</i>	1174	53.7	1662	58.7	1831	58.5
<i>within 90 days</i>	1590	72.7	2133	75.3	2497	79.8
<i>within 120 days</i>	1763	80.6	2407	85.0	2744	87.7
<i>within 150 days</i>	1855	84.8	2514	88.8	2857	91.3
<i>within 180 days</i>	1900	86.9	2560	90.4	2925	93.5

- 1.44 Even though the procedure seems to have had little effect, it should be retained in some form or other to enable Members to at least draw attention to delays in questions being answered. Just as the submission of questions or notices can be streamlined by eliminating intermediate ‘paper’ stages, the process of drawing attention to a delay in answering a question could be improved by no longer requiring the Speaker to write a letter to a Minister but instead by allowing the Member to ask the Minister directly for an explanation.

- 1.45 It might be argued that being asked directly would afford the Minister no time to provide detailed reasons for a delay. However, the Minister might ensure that he or she was apprised of the reasons for any delay by departmental officers before each question time. Alternatively the Minister could undertake to provide a detailed explanation at the next question time or in writing.
- 1.46 A stipulation that the Member requesting an explanation do so without elaboration would forestall temptation to abuse the new provision by, for example, making statements or gratuitous comments. A suitable procedure follows:
- SPEAKER: I call the Member for ...
- MEMBER: On [date] I placed question No. ... on the Notice Paper. In accordance with standing order 150, I request the Minister for ... to explain why I have not received an answer to the question.
- SPEAKER: I call the Minister for ...
- 1.47 The committee expects that in the event of abuse the Speaker would employ the sanctions appropriate for disorderly conduct.

Recommendation 4

The committee, in order to simplify the manner in which Members may seek explanations for unanswered questions on notice, recommends that standing order 150 be amended to read as follows:

Replies to questions

150 The reply to a question on notice shall be given by delivering it to the Clerk. A copy of the reply shall be supplied to the Member who asked the question, and the question and reply shall be published in Hansard.

If after the expiration of 60 days of a question first appearing on the Notice Paper, a reply has not been delivered to the Clerk, the Member who asked the question may rise in his or her place at the conclusion of the question period and, without elaboration, request the Minister concerned to provide reasons for the delay in answering.

Seconding notices of motion

- 1.48 As noted earlier, the need for notices of motion to be seconded presents a potential impediment to their submission by electronic transaction. A mechanism to authenticate two authorisations—that of the mover and that of the seconder—would be necessary. However in the spirit of observing functional equivalence—that is, between lodging a notice in paper form and transacting it electronically—it is not proposed to compromise existing requirements merely to overcome the deficiencies of a particular way of doing things.
- 1.49 The committee argued in its 1992 report on the seconding of private Members' business motions¹⁴ that seconding had become an unnecessary requirement.
- 1.50 Many notices are already exempted from the requirement either by standing order or by convention. Essentially, only private Members' notices of motion need be seconded under the existing practices of the House. Ministers, Parliamentary Secretaries and the Chief Government Whip when acting within the capacity of that office, are not required to obtain seconders for notices they lodge.
- 1.51 The need for a notice to be seconded serves no particular purpose and disadvantages independent Members especially. The committee noted in its 1992 report that the requirement "is too restrictive on the rights of individual Members to propose any matter to the House, irrespective of whether or not it has the support of other Members".¹⁵
- 1.52 In any case, there is no need to test private Members' business notices for prior support. Such notices are not considered by the House except:
- by leave,
 - pursuant to suspension of standing orders, or
 - having been accorded priority by the Selection Committee.
- 1.53 In each case a measure of support must be demonstrated and there is no need to anticipate it.
-

14 House of Representatives Standing Committee on Procedure, *Seconding of private Members' business notices of motion*, March 1992.

15 *ibid*, page 2.

- 1.54 The committee also noted in its 1992 report that while the requirement for notices to be seconded existed in comparable legislatures, it was not insisted upon in many and had been abolished in others.¹⁶ The standing orders of legislatures like the United Kingdom House of Commons, the New Zealand House of Representatives and the Canadian House of Commons contain no requirement for the seconding of notices of motion.
- 1.55 Finally, it must be stressed that this proposal relates only to the seconding of notices of motion. The provisions of the standing orders relating to motions themselves would not be changed and it would still be the case, subject to standing order 160, that a motion must be seconded immediately after it is moved.

Recommendation 5

The committee, in order to remove the requirement that notices of motion be seconded, recommends that standing order 133 be further amended to read as follows:

Notice of motion—how given

- 133** Notice of motion shall be given by a Member by—
- (a) delivering its terms in writing to the Clerk at the Table, or
 - (b) stating its terms to the House during the period of Members' statements made under standing order 106A and delivering its terms in writing to the Clerk at the Table.

The notice must be signed by the Member and show the day proposed for moving the motion.

A notice of motion given by a Member in accordance with paragraph (a) which expresses a censure of, or want of confidence in the Government, or a censure of any Member, shall be reported to the House by the Clerk at the first convenient opportunity.

and that standing order 211 be amended similarly.

Documentary requirements for a meeting of the House

- 1.56 On 22 August 1990 following a delay in the delivery of the Notice Paper, a Member asked the Speaker immediately after prayers:

Mr Scholes—I raise a point of order, Mr Speaker. Is it in order for the House to meet without a Notice Paper?

Mr SPEAKER—There has been a hold-up in the production of the Notice Paper this morning. The blue daily program has been distributed to members, and that can act as the general guide for the proceedings until the Notice Paper is available. I am sure that even in the days when the honourable member for Corio was the Speaker, the Notice Paper was late from time to time.¹⁷

- 1.57 In this particular instance the Notice Paper was being distributed in the Chamber as the question was asked. However, the question itself has not been explicitly answered.

- 1.58 There are a number of reasons for believing that the Notice Paper is a *sine qua non* for a sitting of the House. Not least is the provision in standing order 141:

Operation of notice

141 A notice of motion becomes effective only when it appears on the Notice Paper.

- 1.59 One scenario in which this might become critical is where notice of intention had been given to present a bill and the bill was subsequently introduced before the notice had appeared in a published Notice Paper. It might be argued then, notwithstanding ensuing second and third readings that the bill could not be said to have passed the House because it had not been properly introduced.
- 1.60 Hypothetical cases aside, it would perhaps be prudent to modify the standing order which vests authority in the Notice Paper simply to guarantee a natural entitlement to Members that they be informed of the business of a meeting before that meeting begins.

17 House of Representatives Debates, 22 August 1990, page 1225.

- 1.61 In its current form, standing order 100A allows a certain flexibility in the contents of the Notice Paper and the mode of its publication. Thus, in an emergency, it would be possible to make available to Members before a meeting a listing of the notices and orders of the day for that meeting. The other non-core components of the Notice Paper could be held for a future issue.

Recommendation 6

The committee, in order to ensure that the Notice Paper is available to Members before the House meets, recommends that standing order 100A be amended to read as follows:

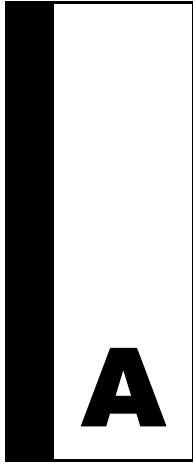
Notice Paper

100A All business before the House shall be set down on the Notice Paper in accordance with the standing and sessional orders and the Notice Paper shall be published before each meeting of the House. A Notice Paper is not published before the first meeting of the House following a general election or prorogation.

Conclusion

- 1.62 None of the proposals in this report is revolutionary in its impact. Each seeks to make an evolutionary improvement to the House's procedures or an adaptation to changes in the House's environment. Nor are the proposals presented as a package. The House may decide to allow electronic transactions for questions as an option but not answers; to change the way Ministers account for tardy responses to questions on notice but retain the requirement that notices be seconded; or to remain silent on the documentary requirements for a meeting of the House.

CHRISTOPHER PYNE MP
Chair
5 April 2000



Appendix A

Writing and signature

Sections 9 and 10 of the *Electronic Transactions Act 1999* deal with how the requirements of Commonwealth law relating to writing and signature, respectively can be met in electronic transactions.

9 Writing

Requirement to give information in writing

- (1) If, under a law of the Commonwealth, a person is required to give information in writing, that requirement is taken to have been met if the person gives the information by means of an electronic communication, where:
 - (a) in all cases—at the time the information was given, it was reasonable to expect that the information would be readily accessible so as to be useable for subsequent reference; and
 - (b) if the information is required to be given to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that the information be given, in accordance with particular information technology requirements, by means of a particular kind of electronic communication—the entity's requirement has been met; and
 - (c) if the information is required to be given to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that particular action be taken by way of verifying the receipt of the information—the entity's requirement has been met; and
 - (d) if the information is required to be given to a person who is neither a Commonwealth entity nor a person acting on behalf of a Commonwealth entity—the person to whom the information is required to be given consents to the information being given by way of electronic communication.

Permission to give information in writing

- (2) If, under a law of the Commonwealth, a person is permitted to give information in writing, the person may give the information by means of an electronic communication, where:
- (a) in all cases—at the time the information was given, it was reasonable to expect that the information would be readily accessible so as to be useable for subsequent reference; and
 - (b) if the information is permitted to be given to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that the information be given, in accordance with particular information technology requirements, by means of a particular kind of electronic communication—the entity’s requirement has been met; and
 - (c) if the information is permitted to be given to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that particular action be taken by way of verifying the receipt of the information—the entity’s requirement has been met; and
 - (d) if the information is permitted to be given to a person who is neither a Commonwealth entity nor a person acting on behalf of a Commonwealth entity—the person to whom the information is permitted to be given consents to the information being given by way of electronic communication.

Certain other laws not affected

- (3) This section does not affect the operation of any other law of the Commonwealth that makes provision for or in relation to requiring or permitting information to be given, in accordance with particular information technology requirements:
- (a) on a particular kind of data storage device; or
 - (b) by means of a particular kind of electronic communication.

Giving information

- (4) This section applies to a requirement or permission to give information, whether the expression *give*, *send* or *serve*, or any other expression, is used.
- (5) For the purposes of this section, *giving information* includes, but is not limited to, the following:
- (a) making an application;
 - (b) making or lodging a claim;
 - (c) giving, sending or serving a notification;
 - (d) lodging a return;
 - (e) making a request;
 - (f) making a declaration;
 - (g) lodging or issuing a certificate;
 - (h) making, varying or cancelling an election;
 - (i) lodging an objection;
 - (j) giving a statement of reasons.

Note: Section 13 sets out exemptions from this section.

10 Signature

Requirement for signature

- (1) If, under a law of the Commonwealth, the signature of a person is required, that requirement is taken to have been met in relation to an electronic communication if:
 - (a) in all cases—a method is used to identify the person and to indicate the person’s approval of the information communicated; and
 - (b) in all cases—having regard to all the relevant circumstances at the time the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated; and
 - (c) if the signature is required to be given to a Commonwealth entity, or to a person acting on behalf of a Commonwealth entity, and the entity requires that the method used as mentioned in paragraph (a) be in accordance with particular information technology requirements—the entity’s requirement has been met; and
 - (d) if the signature is required to be given to a person who is neither a Commonwealth entity nor a person acting on behalf of a Commonwealth entity—the person to whom the signature is required to be given consents to that requirement being met by way of the use of the method mentioned in paragraph (a).

Certain other laws not affected

- (2) This section does not affect the operation of any other law of the Commonwealth that makes provision for or in relation to requiring:
 - (a) an electronic communication to contain an electronic signature (however described); or
 - (b) an electronic communication to contain a unique identification in an electronic form; or
 - (c) a particular method to be used in relation to an electronic communication to identify the originator of the communication and to indicate the originator’s approval of the information communicated.

Note: Section 13 sets out exemptions from this section.

Digital signatures

The following description of digital signatures appears at page 11 of *Strategies for a Peak Body for an Australian National Electronic Authentication Framework including a Public Key Authentication Framework (PKAF)*, April 1998, a report prepared by the National Public Key Infrastructure Working Group for the National Office for the Information Economy:

Digital signatures are a form of *electronic signatures*. Digital signatures allow messages to be "signed" in a way that undeniably associates the signer of a message with its content. Like its conventional counterpart, a digital signature links a particular person to an electronic document and so allows authentication of the identity of the person who sent the document. However, it offers greater security than a hand-written signature because it cannot be fraudulently applied to a different document. Furthermore, it can also verify that the document itself has not been altered in any way since it was digitally signed.

A digital signature is not a digitised image of a hand-written signature. It is a cryptographic checksum of the document. Public-key cryptography (see below) is used to generate and check digital signatures. To generate a digital signature, a private key of the sender is used. The matching public key of the sender can then be used by anyone to check the signature. The digital signature can be distributed with the document, typically by appending it.