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# One Member Seizing an Opportunity! A Case Study in the Transformation of Parliamentary Practice<sup>1</sup>

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**Abstract:** The second of December 2024 marked the 30th anniversary of the last sitting day of the Legislative Assembly of New South Wales during the 50th Parliament (1991-1995). The general election held in May 1991 resulted in a hung Legislative Assembly. This provided the political circumstances for the negotiation of a Memorandum of Understanding for a Charter of Reform (the Charter) between the government and key independent members. The Charter aimed 'to provide stable Government in return for broader accountability reforms 'to enhance Parliamentary democracy'. Practice in the Legislative Assembly prior to 1991 gives the context that shaped the motivation for one member to seize an unexpected opportunity to consolidate and transform parliamentary practice through the Charter. The Charter frames this case study by analysing the accountability measures implemented through sessional orders, amendments to the standing orders and practice. The analysis in this article will show how the Charter curbed and reversed the tide of executive dominance in parliament, demonstrating why 'procedure matters'. Most of the transformed parliamentary practice from the 50th Parliament remains. The evidence shows that the changes have strengthened the parliamentary means available to members to both hold the executive to account as well as to directly raise issues in the House. Looking back over the 30 years, the Charter has had an ongoing positive impact on the procedural culture of the Legislative Assembly.

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## INTRODUCTION

The 1991 general election for the 50th Parliament of New South Wales resulted in a minority government. The government, seeking to remain in office, entered negotiations with the four independent members who held the balance of power in the Legislative Assembly. This gave

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<sup>1</sup> This article expands on the post '*Parliamentary Procedure and Responsible Government*' contributed to the online book forum, Benjamin B. Saunders, *Responsible Government and the Australian Constitution: A Government for a Sovereign People*, Hart Publishing, 2023. Accessed at: <https://www.auspublaw.org/blog/2024/6/parliamentary-procedure-and-responsible-government-responsible-government-and-the-australian-constitution-book-forum>.

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the independents a bargaining chip. In return for their support, the government agreed to a programme of reforms to both government administration and parliamentary procedure to enhance responsible government.

In the introduction to his book *Responsible Government and the Australian Constitution*<sup>2</sup> Benjamin B. Saunders distilled the essence of responsible government as:

*the principle that the government is a creature of, and accountable to, Parliament, which is supposed to play a key role in scrutinising the actions of the executive and holding it to account.*<sup>3</sup>

The proposed programme of reforms to parliamentary practice and procedure aimed to redress the imbalance between the executive and parliament by targeting executive accountability measures and creating more opportunities for members in the parliament. The subject of executive accountability is a perennial theme for legislatures. Best parliamentary practice measures are transferrable, as those tried and tested in one jurisdiction are regularly adapted by other jurisdictions.

With the perspective of 30 years, this article highlights the Legislative Assembly of the 50th Parliament (1991-1995) with the central focus on the outcomes arising from the procedural reforms. The article will outline the source of the power inherent in parliamentary procedure, the context of the reform principles of the Charter of Reform, the specific reforms to the standing orders, their application and impact on procedure as sessional orders,<sup>4</sup> and their outcomes.

## THE IMPORTANCE OF PARLIAMENTARY PRACTICE

In the article *Playing by the Rules*,<sup>5</sup> Philip Norton, the Director of the Centre for Legislative Studies, and a Member of the House of Lords, explores how parliamentary procedure has evolved and why the rules have endured,<sup>6</sup> and the ‘institutional attributes which cannot be

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<sup>2</sup> Benjamin B. Saunders, *Responsible Government and the Australian Constitution: A Government for a Sovereign People*, Hart Publishing, 2023.

<sup>3</sup> Saunders, *Responsible Government and the Australian Constitution A Government for a Sovereign People*, p. 2.

<sup>4</sup> Under Standing Order 364, approved February 2023 and previous standing orders, the Legislative Assembly may make sessional orders that override and amend existing standing orders or to provide for new practice and procedure. Sessional orders are temporary and only have force for the duration of the session in which they are adopted. They need to be re-adopted each new session.

<sup>5</sup> Philip Norton, ‘Playing by the Rules: The Constraining Hand of Parliamentary Procedure’, *The Journal of Legislative Studies* 7(3), 2001, pp. 13-33. Accessed at: <https://doi.org/10.1080/714003882>.

<sup>6</sup> Norton, *Playing by the Rules*, pp. 21-24.

easily unpicked'.<sup>7</sup> He states that details in the rules are important and have consequences. He illustrates his argument with the examples of the Scotland and Wales Bill in 1977, the Wild Mammals (Hunting with Hounds) Bill in 1997 and the European Communities (Amendment) Bill (referred to as the Maastricht Bill) in 1992-93 as significant government legislation<sup>8</sup> that faced 'the constraining hand of parliamentary procedure'<sup>9</sup> in the House of Commons.

However, standing orders and practice are not set in stone. Norton adds that long established standing orders are adapted and amended over time. He concludes that while rules may not constrain government as some would like, nonetheless procedure is a constraint. Therefore, attention to detail is important as 'procedure matters'.<sup>10</sup>

The *Constitution Act 1902* (NSW) (the *Constitution*) provides the authority for the Legislative Assembly and the Legislative Council (the Assembly and Council respectively) to each 'prepare and adopt' rules and orders to 'regulate' the conduct and proceedings of the Houses.<sup>11</sup> The scope of the power is limited to matters internal to the Houses or matters permitted by other Acts to be regulated by the standing orders. However, it is with the stipulation that once adopted by the House, the standing rules and orders must be laid before the Governor for approval.

The *Constitution* does not dictate how the Houses are to conduct their functions. As one of the key functions of parliaments is to hold the executive to account it follows that the power to make standing rules and orders is a key element of the doctrine of responsible government. Rules and practice also evolve over time to redress any short comings, facilitate procedure to meet the challenges of new circumstances, adapt practices from other jurisdictions and to reflect the values, expectations, diversity and demographic changes in the membership of the House.

The last occasion a government had a majority in the Council was 1988. Since then, it has increasingly asserted itself against the executive through adopting new practice and standing orders. Likewise, the Assembly, arising from a hung House, had its own opportunity to

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<sup>7</sup> Norton, *Playing by the Rules*, p. 21.

<sup>8</sup> Norton, *Playing by the Rules*, pp. 22-24. The Scotland and Wales Bill was not defeated but did not proceed when the vote on a timetabling motion for its passage was lost. The Wild Mammals (Hunting with Hounds) Bill was subject to procedural hurdles, as was the 'Maastricht Bil' before that bill's eventual passage. In more recent times the Brexit related legislation had a long and tortured passage as the politics played out within many procedural permutations.

<sup>9</sup> The subtitle of Norton's article.

<sup>10</sup> Norton, *Playing by the Rules*, p. 30.

<sup>11</sup> *Constitution Act (No. 32) 1902* (NSW) s 15.

transform parliamentary practice to strengthen the ability of members to make the executive more responsible to parliament.

## JOHN HATTON

John Hatton was the independent member for South Coast in the Legislative Assembly from 1973 until 1995. Prior to entering parliament, he was engaged in community activism and joined the South Coast Villages Progress Association, before being elected to Shoalhaven Shire Council, and later becoming the Shire President.<sup>12</sup>

Frustrated at ministers not taking notice of representations made by the council Hatton decided to contest the 1968 general election for the seat of South Coast. Running against the sitting member, who was the Minister for Conservation, Hatton reduced the minister's majority. At the third attempt in 1973 Hatton won the seat when the incumbent minister chose not to seek re-election and, the opposition strategically did not contest the seat.

The obstacles, difficulties, and technicalities Hatton faced when running for election and then as a member strengthened his resolve to:

*follow small procedural details of the political process, knowing that to ignore them would restrict his freedom to act or even silence him.*<sup>13</sup>

In Hatton's first term, on a crossbench of three independents, he was an outsider who took the opportunity to observe proceedings and gain an understanding of procedure, as:

*Increased knowledge on parliamentary procedures allowed him greater influence in Parliament.*<sup>14</sup>

This knowledge and experience were to serve Hatton well. In those years the atmosphere of the Assembly was combative with 'no quarter asked, none given'. For instance, in the year of Hatton's election, the opposition dubbed the Leader of the House 'Stainless Steel'<sup>15</sup> for his proclivity to apply the guillotine<sup>16</sup> on the consideration of government legislation. Living up to the Assembly's sobriquet of the 'Bear Pit'.

<sup>12</sup> Ruth Richmond, *The Little Bloke: an authorised biography of John Hatton, OA*, Master of Arts research thesis, School of History and Politics, University of Wollongong, 2007. See chapter 2: 'Making the Politician'. Accessed at: <http://ro.uow.edu.au/theses/666>.

<sup>13</sup> Richmond, *The Little Bloke*, p. 63.

<sup>14</sup> Richmond, *The Little Bloke*, p. 63.

<sup>15</sup> Frank Walker, *NSW Parliamentary Debates*, Legislative Assembly, 23 November 1973, p. 328.

<sup>16</sup> The guillotine is effected when a closure motion is carried at or after the time nominated in a notice given in the House by the executive to put the question on the nominated stages of legislation without any further debate.

Hatton was shaped by his near 20 years' experience in a House dominated by Liberal-Country, Labor and Liberal-National governments to build a reputation for integrity and probity. Noting the limited opportunities, he questioned how the House worked and how it might be improved. To him:

*it seemed that parliamentary procedures were aimed directly at silencing those in opposition to government and particularly those outside the party structure.<sup>17</sup>*

Prime examples being non-answers in question time, questions on notice left unanswered, the use of the gag<sup>18</sup> and the guillotine and the lack of opportunities for backbenchers in the House.

Presciently, ten days before the 1991 election, Hatton was asked what he would do in the case of a hung House.<sup>19</sup> His answer was an outline of the principles that would go on to form the basis of the Charter.

## THE HUNG HOUSE AND THE CHARTER OF REFORM

The election did result in a hung Assembly. The Greiner Liberal-National Party Government had won the most seats but lost its absolute majority. This prompted the government to explore assorted options to continue in office, including negotiating with the independent members: John Hatton,<sup>20</sup> Peter Macdonald,<sup>21</sup> Clover Moore<sup>22</sup> and Tony Windsor.<sup>23</sup>

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<sup>17</sup> Richmond, *The Little Bloke*, p. 65.

<sup>18</sup> The carrying of the closure motion, 'That the question be now put' closes debate on the question then before the House, is known as the gag.

<sup>19</sup> Richmond, *The Little Bloke*, pp. 85-86.

<sup>20</sup> John Hatton, Member for South Coast, 1973 to 1995. Parliamentary service and other details accessed from <https://www.parliament.nsw.gov.au/members/formermembers/>.

<sup>21</sup> Peter Macdonald, Member for Manly, 1991 to 1995. Parliamentary service and other details accessed from <https://www.parliament.nsw.gov.au/members/formermembers/>.

<sup>22</sup> Clover Moore, Member for Bligh, 1988 to 2007 and Member for Sydney, 2007 to 2012. Parliamentary service and other details accessed from <https://www.parliament.nsw.gov.au/members/formermembers/>.

<sup>23</sup> Tony Windsor, Member for Tamworth, 1991 to 2001. Parliamentary service and other details accessed from <https://www.parliament.nsw.gov.au/members/formermembers/>. Windsor resigned from the Assembly to contest and win the seat of New England in the House of Representatives. Following the 2010 general election which resulted in a hung House he was at the centre of negotiations, along with two other rural independents, that led to support for the ALP to continue in government.

Windsor concluded his own agreement to support the government 'in return for a series of concessions to his electorate'.<sup>24</sup> While the other three, dubbed the 'unaligned' independents, took longer to negotiate the basis for their support to the government.

John Hatton is elevated as the 'one member' referred to in the title of this article because he was into his seventh and last term, Moore only her second term and Macdonald his first. This is not to dismiss the role of Moore and Macdonald. For without them Hatton would have had a diminished influence in the negotiations.

When negotiating with the government the three independents did not miss their opportunity! In return for voting with the government on appropriation, supply and no confidence motions (not involving corruption or gross maladministration), there was agreement on a *Memorandum of Understanding for a Charter of Reform* (the Charter).<sup>25</sup>

The preamble stated the aim of the Charter was 'to enhance Parliamentary democracy and open and accountable Government in New South Wales'.<sup>26</sup> To achieve this, the Charter proposed major accountability reforms, including:

- Constitutional reform and protection of the independence of the Parliament
- Reform of the Procedures of the Parliament
- Reform of the Legislative Process
- Scrutiny of the Election Process Guaranteeing Open and Accountable Government through strengthening the Freedom of Information Act and greater scrutiny of statutory authorities and Rights of Citizens through whistleblower protection, defamation law reform, scrutiny of the legal profession, strengthening the roles of the Ombudsman and the Auditor-General and third party rights.

The Charter also expressed concerns that:

*the Legislature and the procedures of the Legislative Assembly provide too few opportunities for real participation by Members in the shaping and enactment of legislation, ...and that much more can and should be done to enhance the ability of*

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<sup>24</sup> David Clune and Gareth Griffith, *Decision and Deliberation The Parliament of New South Wales 1856–2003*, The Federation Press, 2006, pp. 540-541.

<sup>25</sup> *Charter of Reform*, October 1991. Accessed at: <https://www.parliament.nsw.gov.au/researchpapers/documents/minority-governments-in-australia-texts-of-accor/3 nsw 1991.pdf>.

<sup>26</sup> *Charter of Reform*, p. 1.

*Members to make the Executive Government ... more accountable to the Legislature.*<sup>27</sup>

Thus the Charter set out proposals to be trialled as sessional orders with a view to incorporating them in the standing rules and orders and becoming established parliamentary practice. The ‘unaligned’ independents also sought the conversion of the standing orders into plain English.<sup>28</sup>

The parliamentary aspects of the Charter are the focus of this article. It set in train the transformation of Assembly practice to improve its capacity to scrutinise the government and to increase opportunities for members. The Charter will frame this case study to assess its impact on parliamentary practice.

## **PROTECTION OF THE INDEPENDENCE OF THE PARLIAMENT**

The first principle in the Charter stated the independence of the parliament was fundamental to ensuring ‘the accountability of executive government to the parliament’.<sup>29</sup> The key elements of this section, implemented by statute together with additional support services for members, will show how the independence of the parliament has augmented responsible government.

### *Fixed Four Year Terms*

On 31 October 1991, immediately after the Memorandum of Understanding was signed, Tim Moore, the Leader of the House for the Government, introduced the Constitution (Fixed Terms Parliament) Amendment Bill and the Constitution (Fixed Terms Parliament) Special Provisions Bill. This legislation fixed the date for general elections to be held on the fourth Saturday in March every fourth year.<sup>30</sup> Should a vote of no confidence ever be carried, provision was made for a ‘baton change’ to first test whether an alternate government could be formed.<sup>31</sup> These amendments have been entrenched in the *Constitution*.

The significance of the bills as stated by the Leader of the House, when introducing the bills and in reply to close the second reading debate was:

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<sup>27</sup> *Charter of Reform*, p. 4.

<sup>28</sup> *Charter of Reform*, p. 7.

<sup>29</sup> *Charter of Reform*, p. 3.

<sup>30</sup> *Constitution Act (No. 32) 1902 (NSW)* s 24A.

<sup>31</sup> *Constitution Act (No. 32) 1902 (NSW)* s 24B (6).

- removing the capacity for the government of the day ‘to manipulate the timing of an election to suit its own political purposes’<sup>32</sup> and
- to shift along the continuum ‘from the present dominance of the executive’ to greater accountability of the executive to the parliament.<sup>33</sup>

### *Constitutional Recognition of the Independence of the Presiding Officers and the Manner of the Election of the Speaker*

The powers, functions and duties of the Speaker are constitutional, ceremonial, statutory, procedural, employer and setting the direction in the administration of the Department of the Legislative Assembly.<sup>34</sup> As well as having joint responsibility with the President of the Council in regard to the administration of the Parliament and including the ‘control and management of the Parliamentary Precincts’.<sup>35</sup> However, the most visible function of the Speaker is presiding over meetings of the Assembly<sup>36</sup> for the orderly conduct of business, adjudicate on points of order, and otherwise intervene in proceedings to ensure order in the House.

As the office of Speaker is in the fiat of the government, some have seen the office as a consolation for those overlooked for ministerial appointment. At times there has also been criticism of partiality shown by some Speakers when in the Chair.

To overcome any concerns, the *Constitution* was amended by the Constitution (Amendment) Bill 1992,<sup>37</sup> introduced in the Assembly on 17 November 1992 by Premier John Fahey,<sup>38</sup> to recognise the Presiding Officers, being the Speaker and the President of the Council, ‘as the independent and impartial representatives of those Houses’<sup>39</sup> to the executive. This Bill also

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<sup>32</sup> Mr Moore, Second Reading Speech, ‘Constitution (Fixed Term Parliaments) Amendment Bill,’ *NSW Parliamentary Debates*, 31 October 1991.

<sup>33</sup> Mr Whelan, Second Reading Speech, ‘Constitution (Fixed Term Parliaments) Amendment Bill,’ *NSW Parliamentary Debates*, 31 October 1991.

<sup>34</sup> Russell D. Grove, editor, *New South Wales Legislative Practice, Procedure and Privilege*, Ligare Pty Ltd, 2007, pp. 25-32.

<sup>35</sup> *Parliamentary Precincts Act 1997* (NSW) s 7.

<sup>36</sup> *Constitution Act 1902* (NSW) s 31 (3).

<sup>37</sup> *Constitution Amendment Act 1992* (NSW) assent 8 December 1992.

<sup>38</sup> Second Reading Speech, *NSW Parliamentary Debates*, 17 November 1992, pp. 9004-9005.

<sup>39</sup> *Constitution Act 1992* (NSW) s 22G (1) and 31 (1).

included an amendment to provide ‘that the election of the Speaker be conducted by secret ballot’.<sup>40</sup>

The constitutional recognition of the Speaker as independent and impartial together with the method of election is significant for recognising and strengthening the position as above politics. Election by secret ballot also provides a veil for a potential cross-party vote for the speakership.

### *Power to Veto and Parliamentary Appropriation Legislation*

Parliamentary oversight committees received the additional function to give ‘approval of Cabinet nominations’<sup>41</sup> proposed to certain independent offices (such as the Commissioner of the Independent Commission Against Corruption and the Ombudsman among others). The amendment to the parliamentary oversight committees’ legislation<sup>42</sup> maintains the right of the executive to propose an appointee but requires the minister to refer to the relevant committee the proposed appointee which could veto the proposed appointment.<sup>43</sup> This legislative provision is a further moderating consideration for the executive when proposing appointees for such positions.

The Charter also led to the Parliament’s budget being removed from the annual appropriation for government services. Since 1993-94 The Legislature’s appropriation is contained in a separate bill, the Parliamentary Appropriation Bill. This is symbolic as the Parliamentary Appropriation Bill is a cognate bill considered together with the Government’s appropriation legislation.<sup>44</sup>

### *Additional Support Services for Members*

Through the Charter, all private members were granted access to the services of the Office of the Parliamentary Counsel to draft their bills. The Parliamentary Counsel had previously been the exclusive resource of the executive. Together with subsequent procedural changes in the routine of general business, there was a proliferation of private members’ bills. This enabled

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<sup>40</sup> *Constitution Act 1992 (NSW)* s 31B.

<sup>41</sup> *Charter of Reform*, p. 4.

<sup>42</sup> Statutory Appointments Legislation (Parliamentary Veto) Amendment Bill 1992.

<sup>43</sup> For instance, the *Independent Commission Against Corruption Act (No. 35) 1988* s 64A.

<sup>44</sup> *Votes and Proceedings*, NSW Legislative Assembly, 7 September 1993, no. 25, entry 35.

backbenchers to place legislative proposals before the House requiring the executive to consider its policy response and on occasion introduce its own legislation later.

The government also agreed to provide the savings from the reduction in the membership of the Assembly from 109 to 99 members available to the Assembly<sup>45</sup> and to the parliament including expanding the research services of the Parliamentary Library available to members as well as improving information technology for members.<sup>46</sup> The enhanced capacity of research services and technological resources have been most helpful to members in the House.

## REFORM OF THE PROCEDURES OF PARLIAMENT

The second principle of the Charter outlined the dual purposes of the reform to parliamentary procedure to provide more opportunities for members in shaping legislation and make the executive more accountable.<sup>47</sup> In each of the four sessions of the 50th Parliament the major elements of procedural reform were adopted as sessional orders.<sup>48</sup> These included:

- estimates committees
- legislation committees
- question time
- questions on notice
- broader opportunities for private members

How these sessional orders transformed the procedures and practice of the Assembly and their impact on both the Assembly and the parliament is discussed below. Legislation committees and other key elements referred to under the principle of reform of the legislative processes will be discussed in that section.

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<sup>45</sup> *Charter of Reform*, p. 6.

<sup>46</sup> *Charter of Reform*, pp. 5 & 6.

<sup>47</sup> *Charter of Reform* p. 4.

<sup>48</sup> *Votes and Proceedings*, NSW Legislative Assembly: 19 September 1991, no. 13, entry 8, at pp. 176-182; 24 September 1991, no. 14, entry 7; 13 November 1991, no. 27, entry 16 at pp 343-352; 14 November 1991, no. 28, entry 47; 20 February 1992, no. 1, entry 12, at pp. 8-27; 24 February 1993, no. 1, entry 21, at pp.23-36; 16 September 1993, no.30, entry 22; 1 March 1994, no, 1, entry 23, at pp. 22-40.

### *Estimates Committees*

Debate on the annual Appropriation Bill in the Assembly had become a stage for set piece speeches. Not just the Treasurer's but for the Leader of the Opposition in reply, ministers, shadow ministers and the parochial nature of private members' contributions. With a decline in committee of the whole stage of the bill the opportunity to closely examine the detail of the budget estimates for each ministry had become progressively inadequate.

Speaking in reply to the Premier's ministerial statement when tabling the Memorandum of Understanding for the Charter of Reform, John Hatton highlighted that:

*Neither the Parliament nor an individual member of Parliament had a role in the formulation of a budget.*

and

*The most important financial document each year, the Budget, has been a fait accompli and has never been amended, except by Executive Government, in my 18 years in this place.<sup>49</sup>*

To address this, a sessional order was adopted that during the second reading debate on the Appropriation Bill, a minister *shall* move a motion to appoint estimates committees for the purpose of examining and reporting on the expenditure proposed for each minister.

The Assembly when on to appoint estimates committees in each year of the 50th Parliament. The estimates committees met jointly with their counterpart Council committees for an allocated 3 hours to question each minister on their portfolios.

The creation of estimates committees has enhanced the parliament's ability to scrutinise the government beyond the second reading debate on the Appropriation Bill and the Budget Papers. At estimates committee proceedings members can directly quiz ministers along with senior departmental officers drilling down to seek explanations of expenditure in the past year and details of proposed expenditure for the coming year. The reports of each estimates committee are to be considered with the relevant clause of the Appropriation Bill during the committee of the whole stage.

Though the sessional order was incorporated into the standing orders approved in December 1994, under majority governments the Assembly has not appointed estimates committees since. This has not been to the detriment of responsible government as the consideration of the budget estimates is now vigorously undertaken by the estimates committees of the Council

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<sup>49</sup> John Hatton, *NSW Parliamentary Debates*, Legislative Assembly, 31 October 1991, p. 4035.

over at least two rounds each year. In October 1996 the Assembly ceded the estimates function to the Council when it amended the standing order that on motion of a minister, the House *may* move appoint estimates committees.<sup>50</sup>

### *Question Time*

For the general public question time is the most well-known means of holding the executive to account in the House.<sup>51</sup> However, by 1991 it was losing its effectiveness. Question time had a hard cap of 45 minutes while ministers were not limited by time when answering questions. Questions could be answered in any manner so long as the answer was generally relevant to the subject of the question. Ministers had got into the habit of giving longer answers to ‘Dorothy Dix’ questions set up for government backbenchers and then giving short shrift to questions asked by the opposition as if not worthy of consideration.

Question time was then also the only time for oppositions to move procedural motions to suspend standing orders for the urgent consideration of motions. The speaking time taken to establish the urgent necessity of a motion and any subsequent division came out of the 45 minutes. Consequently, considerable time set aside for questions was frequently eroded. Oppositions had to assess the benefit of highlighting an issue by seeking an urgency debate at the cost of further decreasing already limited opportunities to hold the government to account. This made question time ripe for reform.

Sessional orders, and subsequent standing orders, adopted during the 50th Parliament to nullify time wasting has maximised the time available for questions to strengthen the House’s ability to hold the government to account. First, while question time remained at 45 minutes it was to continue until the answering (*not the asking*) of a minimum of ten questions. One supplementary question was permitted to be asked per question time, arising out of an answer, but only by the member who asked the original question. Supplementary questions count as one of the ten questions.<sup>52</sup> Question time was also preserved solely for questions as suspension motions were prohibited from being moved during question time.<sup>53</sup>

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<sup>50</sup> Standing Order 284 (1), Legislative Standing Rules and Orders, amended October 1996.

<sup>51</sup> In the Parliament of the Commonwealth of Australia, the House of Representatives Standing Committee on Procedure has since 1992 reported three times on inquiries regarding questions and question time: *The Standing Orders governing Questions Seeking Information*, June 1992; *About Time: Bills, Questions and Working Hours*, October 1993; *A window on the House: practices and procedures relating to Question Time*, March 2021.

<sup>52</sup> *Votes and Proceedings*, NSW Legislative Assembly, 13 November 1991, no. 27, entry 16 at p. 347.

<sup>53</sup> *Votes and Proceedings*, NSW Legislative Assembly, 13 November 1991, no. 27, entry 16 at p. 345.

It is noted that the opposition proposed a series of amendments to this tranche of the sessional orders moved by the government, including two specifically related to Question time.<sup>54</sup> One was to increase the answering of questions to 14 during question time was unsuccessful.<sup>55</sup> As from time-to-time governments had also ‘hijacked’ question time, the opposition successfully moved an amendment, without division, to include the convention that the Leader of the Opposition receive the call to ask the first question at question time.<sup>56</sup>

### *Questions on Notice*

A particular source of frustration for John Hatton and the opposition was that there was no compulsion for ministers to answer questions on notice. A sizeable number of questions remained on the paper unanswered<sup>57</sup> or answered in such an untimely manner that often rendered the information superfluous. To highlight the point some frustrated opposition members started asking questions on notice for the reasons for the delay in answering the substantive original question!<sup>58</sup>

A sessional order, a form of which was incorporated into the standing orders, required answers to questions on notice to be submitted within 15 sitting days after the question was first published. If an answer is not submitted by the due date, on the next sitting day the Speaker is to inform the House and call on the minister to explain the reason for non-compliance. Then on each subsequent three sitting days until an answer is lodged. The embarrassment of being called to account before the House has become a big incentive for ministers to lodge their answers in time.

As a trade-off for the mandatory answering of questions a limit was imposed on the number of questions on notice that members could ask. Previously unlimited, questions were restricted to ten per sitting week for the Leader of the Opposition and four per sitting week for other

<sup>54</sup> *Votes and Proceedings*, NSW Legislative Assembly, 13 November 1991, no. 27, entry 16 at pp. 348-352.

<sup>55</sup> *Votes and Proceedings*, NSW Legislative Assembly, 13 November 1991, no. 27, entry 16 at p. 350.

<sup>56</sup> *Votes and Proceedings*, NSW Legislative Assembly, 13 November 1991, no. 27, entry 16 at p. 352.

<sup>57</sup> For instance, see the paper *Business Undisposed of the Close of the Session 1990-91* which contains all the questions remaining unanswered at the end of that session. Accessed at: <https://www.parliament.nsw.gov.au/hansard/Documents/HHP/Pre1991/Votes/Papers/Sessional%20Papers%20-%2049th%20Parliament%201990.pdf>

<sup>58</sup> Examples being Questions on Notice numbers 126, 127 and 128 in *Business Undisposed of the Close of the Session 1990-91*. Accessed at: <https://www.parliament.nsw.gov.au/hansard/Documents/HHP/Pre1991/Votes/Papers/Sessional%20Papers%20-%2049th%20Parliament%201990.pdf>

members. A proposed amendment moved by the opposition sought to permit more questions per week and for answers to be submitted earlier was defeated.<sup>59</sup> For the second (1992) and third (1993) sessions, the limit on questions per week was increased to twelve for the Leader of the Opposition and five for other members.<sup>60</sup> By the fourth session (1994), when the sessional orders were being re-adopted by the House, the government increased the limit on questions to four per *sitting day* for the Leader of Opposition and three per *sitting day* for other members. In addition, the opposition successfully moved an amendment to reduce the time to lodge answers. As it can take as long as five sitting weeks to reach 15 sitting days, which together with non-sitting weeks could possibly span over months, answers must be lodged within 35 calendar days or five calendar weeks.<sup>61</sup>

### *Broader Opportunities for Private Members*

John Hatton's extensive experience made him acutely aware of the lack of opportunities for all backbench members, especially the then procedural roadblocks within general business (i.e. non-government business). New procedural pathways providing greater opportunities for private members adopted as sessional orders throughout the 50th Parliament, and incorporated into the standing orders, were:

- matters of public importance<sup>62</sup> and consideration of urgent matters<sup>63</sup>
- hours of sittings<sup>64</sup>
- routine of business on Thursdays<sup>65</sup>
- consideration of public bills introduced by private members<sup>66</sup> and order of general business<sup>67</sup>

<sup>59</sup> *Votes and Proceedings*, NSW Legislative Assembly: 19 September 1991, no. 13, entry 8, at pp. 181-182; 24 September 1991, no. 14, entry 7 at pp. 191-193.

<sup>60</sup> *Votes and Proceedings*, NSW Legislative Assembly, 20 February 1992, no. 1, entry 12, at p. 23; 24 February 1993, no. 1, entry 21, at p. 27.

<sup>61</sup> *Votes and Proceedings*, NSW Legislative Assembly, 1 March 1994, no. 1, entry 23, at p. 3.

<sup>62</sup> *Votes and Proceedings*, NSW Legislative Assembly, 13 November 1991, no. 27, entry 16, at pp. 345-346.

<sup>63</sup> *Votes and Proceedings*, NSW Legislative Assembly, 24 November 1992, no. 52, entries 12 & 14.

<sup>64</sup> *Votes and Proceedings*, NSW Legislative Assembly, 13 November 1991, no. 27, entry 16, at p. 345.

<sup>65</sup> *Votes and Proceedings*, NSW Legislative Assembly, 13 November 1991, no. 27, entry 16, at pp. 343-344.

<sup>66</sup> *Votes and Proceedings*, NSW Legislative Assembly, 13 November 1991, no. 27, entry 16, at pp. 346-347.

<sup>67</sup> *Votes and Proceedings*, NSW Legislative Assembly, 14 November 1991, no. 28, entry 46 at p. 357.

- reports from committees.<sup>68</sup>

Sessional orders for matters of public importance (MPI) and motions for urgent consideration were included in the House's routine of business to remedy previous problematic practice. These procedures were an opportunity to hold the executive to account by raising issues and debating policies. However, these procedures themselves later became questionable in government majority Houses.

In subsequent parliaments MPIs became discussions rather than debate on propositions contained in a motion requiring the House to express a view. The standing order for MPIs has been repealed. The gradual increase in the number of private members' statements available each sitting week provides somewhat of an alternate outlet for members.

The sessional order constraining the moving of motions to suspend standing orders<sup>69</sup> imposed a stern procedural restriction, particularly for the opposition to bring on debate on urgent matters. In 1992 the leave of the House was denied on 27 occasions when it was sought to move for the suspension of standing orders.<sup>70</sup> In response the opposition, on notice, moved for a new sessional order to provide a process for the consideration of urgent matters within the routine of business. Though the government voted against the motion it passed on division 47-45.<sup>71</sup> The independents supported the motion as a potential accountability measure within the principles of the Charter. However, as to whether urgent matters were to proceed to the substantive motion was still determined by a vote of the House. This worked well in a hung House where the independents performed a 'jury' like role. In the 50th Parliament, especially for the opposition, motions for the consideration of urgent matters became an effective 'work around' to the requirement for leave to effect suspension motions.<sup>72</sup>

After the 50th Parliament this procedure became motions accorded priority. Its use was overwhelming dominated by government members. While opposition members were relegated to making a statement of up to five minutes to establish the case for the priority of their motion. Invariably the allocated speaking time was eroded by points of order about

<sup>68</sup> *Votes and Proceedings*, NSW Legislative Assembly, 19 September 1991, no. 13, entry 16, at p. 180.

<sup>69</sup> *Votes and Proceedings*, NSW Legislative Assembly, 13 November 1991, no. 27, entry 16, at p. 345.

<sup>70</sup> *Index to the Votes and Proceedings, 50th Parliament – Second Session 1992-93*. Reference to the Votes and Proceedings, p. liii. Accessed at: <https://www.parliament.nsw.gov.au/hansard/Documents/1992-93%20Index.pdf>

<sup>71</sup> *Votes and Proceedings*, NSW Legislative Assembly, 24 November 1992, no. 52, entries 12 & 14.

<sup>72</sup> For instance, to consider Clover Moore's motion concerning construction of the Eastern Distributor going through her electorate, *Votes and Proceedings*, NSW Legislative Assembly, 3 March 1993, no. 4, entry 6 at p 60. The new procedure for the consideration of urgent matters was also used to establish select committees and call for returned to order.

straying from establishing urgency into the substantive matters of the motion. These factors combined to devalue the procedure as a means of holding the government to account. The procedure has itself evolved. In the 57<sup>th</sup> Parliament it evolved for the better into what is now called the public interest debate which provides a proportionate allocation of motions moved by government, opposition and crossbench members.

A sessional order amended the Assembly's sitting hours<sup>73</sup> provided for the House to meet at 9.00 a.m. on Thursdays. This thorough revamp of the routine of business for Thursdays<sup>74</sup>, together with the earlier starts, created more time for private members' business. Time was allocated for the consideration of each category of private members' business. Over the course of the 50th Parliament a set period was allocated to deal with notices of motions, debate on motions and non-government bills. The sessional order for the consideration of public bills introduced by members also provided for the potential passage of those bills through the Assembly.<sup>75</sup> Indeed, in the 50th Parliament, 16 private members' bills introduced in the Assembly passed both Houses.<sup>76</sup>

There was also a sessional order that turned the order for considering general business 'upside down'. Previous practice was for the freshest notices to appear at the top of general notices of motions while the oldest were pushed down the list and never moved. This simple amendment has seen items of general business retaining their relative places from the top down in the order they were given. This encouraged a rapid escalation in the number of notices given by private members. While there is only the most remote chance notices will come on for debate it has become well established practice for private members to simply highlight issues.

Prior to the 50th Parliament committee reports were often ignored to 'gather dust'. Under the Charter a sessional order introduced the take note debate.<sup>77</sup> Then the member tabling a committee report moved that the House take note of the report and another member, with a dissenting view, was permitted to make a statement immediately following. The take note debate was then set down to resume at the dedicated time in the routine of business on Thursdays. Take note debates give members the opportunity to discuss committee findings and debate the merits of committee recommendations.

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<sup>73</sup> *Votes and Proceedings*, NSW Legislative Assembly, 13 November 1991, no. 27, entry 16 at p 345.

<sup>74</sup> *Votes and Proceedings*, NSW Legislative Assembly, 13 November 1991, no. 27, entry 16 at pp 343-344.

<sup>75</sup> *Votes and Proceedings*, NSW Legislative Assembly, 13 November 1991, no. 27, entry 16 at pp. 346-347.

<sup>76</sup> *Decision and Deliberation*, Table 8.3, p. 555.

<sup>77</sup> Reports from Committees: *Votes and Proceedings*, NSW Legislative Assembly: 19 September 1991, no. 13, entry 8 at pp. 180; 24 September 1991, no. 14, entry 7; and sessional order amended 13 November 1991, no. 27, entry 16 at p. 347.

The provision of dissenting statements was subsequently not incorporated into the standing orders at the end of the 50th Parliament. Nor does the member tabling the report speak at the time of tabling. The debate now occurs when the order of the day is called on for the debate to take note of the committee report. In 2009 the standing orders were strengthened to require a written response from the government, within six months of a committee report being tabled. The response is to include what action the government proposes to take in relation to each committee's recommendation. Responses are reported to the House and published. These provisions remain.<sup>78</sup>

## REFORM OF THE LEGISLATIVE PROCESS

Means of making the executive accountable to the parliament include the range of procedural options to examine legislation at each stage of its passage. Opposition and independent members had long complained about legislation 'rammed' through the House by the government without adequate scrutiny and debate. They had called for the opportunity to consider bills in detail and to propose amendments. Thus, the third principle of the Charter focused on reforming the legislative process to include 'wider opportunity for community scrutiny of legislation involving major issues of public interest' to assist in evolving conventions for consultation.<sup>79</sup> This aspiration resulted in three new procedural measures.

### *Suspension of Standing Orders*

It had been routine for governments to suspend standing orders, use closure motions (the gag) and the allocation of time for debate (the guillotine) to maintain control of the House, manage the legislative programme and curtail debate. Practices that are the antithesis of the principles of government accountability to the House! Through the Charter the government acknowledged:

*that the use of these devices should be for the orderly management of the Parliamentary programme rather than to prevent adequate debate occurring.*<sup>80</sup>

The Charter aspired to seek alternatives to the use of the gag and guillotine but remained untouched. While there was no reference to suspensions of standing orders, a sessional order was adopted that incorporated the very powerful requirement of the leave of the House to

<sup>78</sup> Standing Order 303A, *Standing Orders*, NSW Legislative Assembly, February 2023.

<sup>79</sup> *Charter of Reform*, p. 8.

<sup>80</sup> *Charter of Reform*, p. 5.

move for the suspension of standing orders. By practice, suspension motions were exclusively in the hands and numbers of the government. A new sessional order provided standing orders could be suspended by any member *but* with the constraint, *including for ministers*, of obtaining the leave (that is unanimous consent) of the House.<sup>81</sup>

This was a fundamental shift in the power between the House and the executive as it only takes any one individual member to deny leave. This was a strong restraint on the government by preventing the abuse of the suspension procedure to ‘ride roughshod’ over the House. This meant the executive had to consult and make the case for the necessity of each suspension motion to secure the pre-requisite leave. Within seven sitting days of the return of a majority government in the 51st Parliament a sessional order soon restored the ability of ministers to move for the suspension of standing orders *without* first seeking leave.<sup>82</sup> Though, unlike pre-50th Parliament, the standing order retained that any member may also move to suspend standing orders provided the leave of the House is obtained. In the 58th Parliament the suspension pendulum has again swung to empower non-executive members. Any member now may, at any time between 10.00 am and 1.15 pm, move to suspend standing orders without seeking leave first.<sup>83</sup>

While the restraint of leave to move suspension motions is no longer in the standing orders its impact has contributed to a cultural shift in the way governments use the suspension procedure as outlined below under ‘Outcomes of the Charter’.

### *Legislation Committees*

The Charter proposed the appointment of legislation committees to consider and report on amendments to improve ‘landmark’ bills.<sup>84</sup> After the second reading of a bill, that is the House adopting the principle of the legislation, the minister may refer the bill to a legislation committee.<sup>85</sup> This is distinct from the traditional referral of a bill to a select committee by way of an amendment to the motion that a bill be read a second time which offers wider scope for inquiry, including the desirability of the legislation altogether. More often than not this procedure is used as a tactic to delay the bill should the referral be agreed to.

Legislation committees enhance the parliamentary scrutiny of a bill through the process of consultation with key stakeholders and the public, submissions, formal evidence, and

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<sup>81</sup> *Votes and Proceedings*, NSW Legislative Assembly, 13 November 1991, no. 27, entry 16 at p. 345.

<sup>82</sup> *Votes and Proceedings*, NSW Legislative Assembly, 1 June 1995, no. 7, entry 24 at p. 114.

<sup>83</sup> Standing Order 365, *Standing Orders*, NSW Legislative Assembly, February 2023.

<sup>84</sup> *Charter of Reform*, pp. 5 & 8.

<sup>85</sup> *Votes and Proceedings*, NSW Legislative Assembly: 19 September 1991, no. 13, entry 8, at p. 175.

recommendations to improve the bill. To not unduly delay a bill, legislation committees have a reporting deadline of six months.

The sessional order prescribed that the committee chair be a government member of the committee. However, within the parameters of the sessional order there are two powerful measures to fulfil aspects of the Charter, being accountability and participation in the shaping of legislation. The committee membership of six has a split of not more than three being members of the government and not more than three being non-government members. To compensate the lack of a committee majority, in the case of an equality of votes, the chair has a casting vote. Also, upon request from the committee, the minister having portfolio carriage of the bill is to provide the committee with 'drafting and support services'.

In effect, a legislation committee is an optional extra stage between the second reading debate and consideration in detail in the passage of legislation. During the 50th Parliament, at least 10 bills and their cognate bills<sup>86</sup> were considered by legislation committees. This produced some substantive reports, constructive amendments and even 'dissenting reports'.<sup>87</sup> However, since the 50th Parliament to the end of the 57th Parliament no bills have been referred to legislation committees.

### *Unproclaimed Legislation*

A particular annoyance for John Hatton were Acts, or parts of Acts, which had commencement provisions of 'on a date to be proclaimed', rather than upon Assent or a specified date. Waiting for proclamation may be for valid reasons, such as to ensure that administrative mechanisms are in place to support the operations of the Act. Or, at times, delays might be deliberate for political purposes. Undue delays are also contrary to the wishes of the parliament having passed the legislation. Hatton was also concerned about the lack of transparency when navigating through the maze of legislation to identify which provisions, especially of complex legislation, were in force.

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<sup>86</sup> See appendix 1 for the list of bills. Compiled from information under 'Committees – Legislation' in *References to the Votes and Proceedings, 50th Parliament*, being the Index to Votes and Proceedings for each of the sessions of the 50<sup>th</sup> Parliament. Accessed at:

<https://www.parliament.nsw.gov.au/hansard/Documents/HHP/Pre1991/Votes/indexes>.

<sup>87</sup> David Clune and Gareth Griffith, *Decision and Deliberation The Parliament of New South Wales 1856–2003*, The Federation Press, 2006, p. 547.

Therefore, a sessional order,<sup>88</sup> since made a standing order, requires the executive to forward to the Speaker a list of legislation or parts of legislation remaining unproclaimed 90 days after assent. The list is tabled on the second sitting day of a new session and then updated for tabling each subsequent 15th sitting day.

## REVIVAL OF CERTAIN PROCEDURE

The absence of a government majority in the Assembly not only presented opportunities for the transformation of practice but also for the revival in the use of existing standing orders. These existing accountability measures just needed the circumstances, not the need to make sessional orders, to fulfil elements of the Charter. The examples below well demonstrate Norton's contention that 'procedure matters' when holding the government to account.

### *Amendments to Bills*

At times, both before and after the 50th Parliament, the committee of the whole stage (now known as consideration in detail) to move amendments to bills in the Assembly had fallen out of use. For example, shadow ministers in the Assembly often used the refrain that the opposition reserved the right to move amendments in the Council. At times, even on bills that had originated in and had passed the Council! Basically, giving up knowing that their amendments would be lost.

The 50th Parliament saw extensive use made of the Committee of the Whole procedure. In the hung Assembly there was a great increase in the number of amendments proposed to government legislation. Amendments were moved by the independents, the opposition and the government itself. An extraordinary 75% of all amendments were carried.<sup>89</sup> So rather than impeding the government it demonstrates that the House made effective use of existing procedure to shape legislation.

### *Papers Returned to Order*

It was not until 1994 that the opposition came across the standing order, last used in the 1920s, to order ministers to table papers. The opposition, unable to move suspension motions, used the 1992 sessional order for the consideration of urgent matters as a procedural 'work around'

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<sup>88</sup> *Votes and Proceedings*, NSW Legislative Assembly: 19 September 1991, no. 13, entry 8, at p. 179; 24 September 1991, no. 14, entry 7 at pp. 191-193.

<sup>89</sup> 920 amendments of the 1,172 moved were successful. Clune and Griffith, *Decision and Deliberation*, p. 552, Table 8.2.

to move motions ordering ministers to table papers.<sup>90</sup> Successful motions for the return to order for papers to scrutinise executive decisions included: the tendering process for certain Sydney Water Board projects; the NSW Agent General in London; the relocation of the Royal Agricultural Society to Homebush Bay; land rezoning; and the authorised and actual numbers of police strength.<sup>91</sup> The Council has since made prolific use of its return to order power.

### *Expansion in the Use of Committees*

In addition to the work of legislation committees, estimates committees and the new veto power of statutory based committees referred to above, the executive was scrutinised through a sizeable increase in the number of select committees appointed. Committee inquiries were conducted into important issues such as: gun law reform; police administration; public sector superannuation; the government's home funding scheme; the Sydney Water Board; motor vehicle emissions; lead pollution; and bushfires.<sup>92</sup> Many of these committees were given very tight reporting deadlines by the House. In response the Assembly administration created a Committees Office to manage the significant increase in the staff necessary to service the additional workload of Assembly administered committees.

In 1992 the Tamworth Tourist Information Centre Bill, a private bill promoted by Tamworth City Council, passed. Through the quirks of archaic procedure this bill was the first private bill<sup>93</sup> to have originated in the Assembly and pass since 1910. This procedure opens the object of a bill to a process of community consultation and parliamentary scrutiny through a select committee. The government supported this bill as it had intentions of regaining the seat. Indeed, after the committee reported, the government facilitated passage of the remaining stages of the bill in the Assembly during time for government business and through the Council as government business.<sup>94</sup>

<sup>90</sup> *Votes and Proceedings*, NSW Legislative Assembly: 17 March 1994, no. 9, entry 19.

<sup>91</sup> For the subject of the 11 Order for Papers motions see *Index to the Votes and Proceedings, 50th Parliament – Fourth Session 1994*. Reference to the Votes and Proceedings, p. xxxii. Accessed at: <https://www.parliament.nsw.gov.au/hansard/Documents/HHP/Pre1991/Votes/indexes/Index%20-%2050th%20Parliament%20-%201994.pdf>

<sup>92</sup> See Appendix 2 for the details of those committees. Information compiled from the List of Committees accessed at: <https://www.parliament.nsw.gov.au/committees/listofcommittees/pages/committees.aspx?h=la>

<sup>93</sup> For the provisions governing private bills see Standing Orders 358-363, *Standing Orders*, NSW Legislative Assembly, February 2023.

<sup>94</sup> NSW Parliament, 'Tamworth Tourist Information Centre Bill 1992', Bills Homepage, *Website*, Accessed at: <https://www.parliament.nsw.gov.au/bills/Pages/bill-details.aspx?pk=17897>

## THE STANDING ORDERS

One expectation under the ‘Reform of the Procedures’ was that the procedural elements would be trialled with the view of inclusion in the standing orders. The process for transforming practice before the end of the 50th Parliament was a ‘complete overhaul of the Standing Orders of the Legislative Assembly’.<sup>95</sup>

The Speaker and the Clerks-at-the-Table undertook the task of incorporating all the trialled sessional orders into the standing orders, as well as translating what some considered the impenetrable language of procedure into ‘plain’ English for clearer understanding and use by members.<sup>96</sup> One former member had described the language of the standing orders and procedure as ‘Clerks’ mumbo jumbo’.

The proposed new standing orders were recommended in a report to the Assembly by the Standing Orders and Procedure Committee, adopted by the House on 2 December 1994 and presented to the Governor. They were approved on 12 December, just over one hundred years after the previous edition was approved in 1894.

## OUTCOMES OF THE CHARTER

The debate on the last sitting of the 50th Parliament to adopt the report of the Standing Orders and Procedure Committee and to forward the new standing orders to the Governor for approval reflected positivity and constructively on the new standing orders. Particularly converting the standing orders into plain English. However, each of the four members who spoke in the debate made divergent and illuminating contributions not just on the standing orders but procedural culture.

Garry West, the Leader of the House, noted that:

*There was no sessional order that has not become a standing order.*<sup>97</sup>

Paul Whelan, the Shadow Leader of the House, predicted that:

*Undoubtedly, standing orders will be changed by future administrations to suit the government of the day or to suit the position of members of Parliament.*<sup>98</sup>

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<sup>95</sup> *Charter of Reform*, p. 7.

<sup>96</sup> Debate on the motion to adopt the new standing orders, *NSW Parliamentary Debates*, Legislative Assembly, 2 December 1994, pp. 6273-6275.

<sup>97</sup> *NSW Parliamentary Debates*, Legislative Assembly, 2 December 1994, p. 6274.

<sup>98</sup> *NSW Parliamentary Debates*, Legislative Assembly, 2 December 1994, p. 6274.

John Hatton cited the procedures that increased opportunities for private members and the new accountability measures. He expressed the hope:

*that as a result of these initiatives it will not be as easy for the Executive to regard Parliament as a convenience to serve its wishes or demands.*<sup>99</sup>

While the opposition back bencher ‘Mick’ Clough lamented that question time had become tedious and asked that consideration:

*be given to ensuring that Ministers do not read lengthy answers to prepared questions that are read...*<sup>100</sup>

The new standing orders have provided a tangible foundation for the transformation of parliamentary practice to continue beyond the 50th Parliament. However, the Charter also had an intangible component noting reform will:

*also need to evolve through convention and practise as it is not easy to encompass all changes in a written formula.*<sup>101</sup>

It is straight forward to track how the sessional orders, as adopted in the ‘written formula’ of the standing orders, have endured. Most of those reforms now continue as unquestioned routine proceedings. Others have been tweaked after not working as originally intended. Other procedures have not been abused or not used at all; only one element was reversed by a majority government, and two were repealed but replaced with a better alternate procedure.<sup>102</sup>

The impact in terms on the evolving nature of parliamentary culture is more subtle. Thirty years on is an appropriate time to assess the impact on the Charter’s stated aims of executive accountability and opportunities for members.

My insight is that the cultural shift reflects the behavioural response of both the executive and members as a direct consequence of trust in the implementation of the Charter. Steven Reynolds noted, in his article *The Role of Parliament: Handbrake or Oiling the Wheels of Good Government*,<sup>103</sup> the Charter as an agreement was not legally binding. He makes a comparison with the slightly earlier agreement, the Accord of 1988-1992, made between the Government

<sup>99</sup> *NSW Parliamentary Debates*, Legislative Assembly, 2 December 1994, pp. 6274.

<sup>100</sup> *NSW Parliamentary Debates*, Legislative Assembly, 2 December 1994, pp. 6274.

<sup>101</sup> *Charter of Reform*, p. 5.

<sup>102</sup> See appendix 3.

<sup>103</sup> Steven Reynolds ‘The Role of Parliament: Handbrake or Oiling the Wheels of Good Government’, *Policy*, Summer 1996-97 edition, pp. 34-37.

and the Greens in Tasmania. Citing Haward and Larmour, many regarded the Accord ‘as having failed because of lack of goodwill on both sides’.<sup>104</sup>

Unlike the Accord, the Charter provided for stable minority government in return for a transformation of parliamentary practice. The independents were mindful of balancing the right of the government to govern (‘within the doctrine of the separation of powers’)<sup>105</sup> against enhancing responsible government.

The initial motivation of the government may simply have been political pragmatism to remain in power. However, the second reading speech of Tim Moore referred to earlier and from my observation of his actions, reflects positively on that government for carrying through on its side of the agreement. The government’s commitment to the reforms in the long run were specifically mentioned by the Governor in his speech when opening the third session of the 50th Parliament in 1993.<sup>106</sup> Indeed, Hatton in his speech in supporting the new standing orders especially praised Tim Moore though:

*many of his suggestions were not adopted, his drive, vision and dedication with regard to the standing orders ... the formulation of the charter of reform shone through at all times.*<sup>107</sup>

Beyond the procedural reforms, the Charter gave a compass for a cultural shift in ‘the operations of and attitudes in the Assembly’. Expressing the hope that:

*the changes will assist in evolving conventions which will ensure that consultation on major issues becomes the practice for future Governments.*<sup>108</sup>

A cultural evolution has been discernible enduring beyond any given generation of members. Changes have been reinforced by the expectations and diversity that comes with each wave of new members. One example is the system of portfolio standing committee that stemmed not from a hung House but ironically from the landslide victory of a new government in 2011. Portfolio standing committees have boosted the Assembly’s ability to hold the executive to account by giving those committees terms of reference with wide scope to examine relevant policy, bill, regulation, financial matter, annual report and public works related to the portfolio area.

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<sup>104</sup> M. Haward and P. Larmour (eds), *Tasmanian Parliamentary Accord and Public Policy*, Federation Research Centre, 1993.

<sup>105</sup> *Charter of Reform*, p. 4.

<sup>106</sup> *Votes and Proceedings*, NSW Legislative Assembly: 24 February 1993, no. 1, entry 4 at p. 12.

<sup>107</sup> *NSW Parliamentary Debates*, Legislative Assembly, 2 December 1994, p. 6273.

<sup>108</sup> *Charter of Reform*, p. 8.

While it is open for a majority government to amend the standing orders at any time to suit itself there is an awareness that a government will eventually be in opposition. Since the 50th Parliament it is evident governments have been mindful to not abuse the use of procedure. Prime examples being the previous ruthless use of the suspensions of standing orders, the gag and guillotine. This is to lessen the risk of subsequent opposition payback and obstructionism.

Rather than ambush oppositions it is customary for most motions for the suspension of standing orders to be flagged with the opposition and the crossbench. As such, now few suspension motions require a division.

While right to raise concerns about the use of the gag and the guillotine the Charter found the complexities too difficult to consider at the time. Perhaps they need not have worried as those procedures are now rarely resorted to. It seems the Assembly has kicked the habit. This provides a clear indicator of a changing procedural culture. The gag is used infrequently. The last occasions debate on government legislation has been closed was eight times between September 2008 and March 2014.

The use of the guillotine has completely fallen out of favour. From the 51st Parliament, notices for the 'allocation of time for discussion' on legislation, as the procedural euphemism for the guillotine in the standing orders, were given on 18 occasions. Of those notices, the guillotine was moved 11 times. This was between June 1995 and June 1997,<sup>109</sup> within two years of John Hatton leaving parliament. The most 'recent' notices, given more than 20 years ago in June and November 2003, were not triggered at all. That legislation is no longer 'rammed' through by cutting off all remaining debate is a positive marker for responsible government.

## CONCLUSION

This article sets out the context and circumstances that resulted in the Charter before examining its impact in transforming parliamentary practice. In short, the outcomes of the Charter were: a strengthening of procedural mechanisms for the Assembly, and broadly the Parliament, to hold the executive to account; to provide greater opportunities for members to raise issues in the House; and, to improve the Assembly's 'procedural culture'. A demonstrated commitment to the spirit of the Charter formed the basis for an ongoing evolution of parliamentary practice. The procedural reforms have been consolidated and incrementally bolstered over the ensuing 30 years with the outcome of strengthening Norton's 'constraining hand' of procedure over the government to refine the guardrails for responsible government.

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<sup>109</sup> Figures collated from the *Index to the Votes and Proceedings of the Legislative Assembly*.

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The 2023 general election for the 58th Parliament of New South Wales resulted in a minority government. To date, faced with an Assembly of fewer members with a much larger crossbench of thirteen than in the 50<sup>th</sup> Parliament, the government has been able to both get on with governing and work with the crossbench. Some polls are predicting a minority government in the forthcoming Commonwealth general election due in 2025. Like the hung parliament between 2010 and 2013 it will be interesting to observe how a government might navigate the House of Representatives without a majority.

Despite the undue fears of chaos and an unworkable parliament, the example from the Legislative Assembly of the 50th Parliament resulted in an executive 'responsible to the Parliament in reality as well as theory'<sup>110</sup> together with a range of procedural reforms that have endured. With the impetus of key members, a hung House is not to be feared.

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<sup>110</sup> David Clune, *The NSW experience with minority government? It's an improvement*, The Sydney Morning Herald, 16 March 2019. Accessed at: <https://www.smh.com.au/nsw-election-2019/the-nsw-experience-with-minority-government-it-s-an-improvement-20190312-p513op.html>.

## APPENDIX 1: LEGISLATION COMMITTEES

<b>Legislation Committee</b>	<b>Appointed</b>	<b>Report Tabled</b>
<b>Committee on the Defamation Bill</b>	November 1991	7 May 1992 (Discussion Paper)
		14 October 1992 (Final Report)
<b>Committee on the National Parks and Wildlife (Aboriginal Ownership) Amendment Bill and cognate bills</b>	November 1991	25 November 1992 (Final Report)
<b>Committee on the Draft Local Government Bill and cognate bills</b>	December 1991	6 May 1992 (First Report)
		4 September 1992 (Second Report)
<b>Committee on the Government Publicity Control Bill</b>	March 1992	29 April 1993 (Final Report)
<b>Committee on the Natural Resources Management Council Bill and cognate bills</b>	June 1992	19 November 1992 (Final Report)
<b>Committee on the South East Forests Protection Bill</b>	September 1992	24 ember 1992 (Final Report)
<b>Committee on the Whistleblowers Protection Bill No.2</b>	November 1992	7 September 1993 (Final Report)
<b>Committee on the Endangered and Other Threatened Species Conservation Bill</b>	June 1992	1 December 1994 (Final Report)
<b>Committee on the National Parks and Wildlife (State Conservation Parks) Amendment Bill and cognate bill</b>	May 1992	29 October 1992 (Final Report)
<b>Committee on the Forestry (Amendment) Bill</b>	September 1992	11 March 1993 (Final Report)

## APPENDIX 2: LEGISLATIVE ASSEMBLY INITIATED SELECT OR JOINT SELECT COMMITTEES

Committee	Appointed	Terms of Reference	Report Tabled
<b>Joint Select Committee upon Gun Law Reform</b>	September 1991	Improve systems for licensing shooters and categories of gun licensing after the Strathfield Square shooting	15 October 1991
<b>Select Committee on the Legislative Assembly Budget Allocation</b>	16 October 1991	To report on the priorities of members regarding the expenditure of the Assembly's supplementary budget allocation	14 November 1991
<b>Joint Select Committee on the Management of the Parliament</b>	7 May 1992	To report on the management of the Parliament	25 November 1992
<b>Joint Select Committee upon Police Administration</b>	October 1992	Inquire into accountability issues in the Police Service	
		Interim Report on Disclosure of In Camera Evidence	26 February 1993
		First Report on Resignation of Minister for Police and Emergency Services	31 March 1993
		Second Report on Police Service (Management) Amendment Bill 1993	13 May 1993
		Final Report on Remaining Issues	8 October 1993
<b>Select Committee upon Public Sector Superannuation Schemes</b>	November 1992	Consider adequacy of existing public sector superannuation schemes and future benefits	9 November 1993
<b>Select Committee upon the Port Macquarie Base Hospital Project</b>	May 1992	Compare benefits of private vs. conventionally funded public hospital at Port Macquarie	1 March 1994
		Minutes of Evidence of the Committee	14 February 1994
<b>Select Committee upon Homefund and FANMAC</b>	April 1993	Investigate whether FANMAC Trusts breached the Commonwealth State Housing Agreement	11 May 1994
<b>Joint Select Committee upon the Sydney Water Board</b>	May 1993	Investigate water quality, pricing, catchment management, drainage, and accountability	19 April 1994
		Issues Paper on Sydney Water Board	23 June 1993
<b>Select Committee upon Bushfires</b>	March 1994	Report on summer bushfires and prevention measures	30 November 1994

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		Interim Report on bushfires	30 September 1994
<b>Select Committee upon Motor Vehicle Emissions</b>	April 1994	Report on systems for monitoring motor vehicle emissions and air quality	24 November 1994
<b>Select Committee upon Lead Pollution</b>	September 1994	Report on extent of lead pollution in New South Wales and its community impact	5 December 1994 (tabled with the Clerk)

### APPENDIX 3: TRACKING THE SESSIONAL ORDERS AND PRACTICE ARISING FROM THE CHARTER ADOPTED INTO STANDINGS ORDERS

<b>Subject</b>	<b>Standing Order (December 1994)</b>	<b>Standing Order (February 2023)</b>	<b>Key Changes/Notes</b>
<b>Legislation Committees</b>	363	323	Deputy Chair provision added for election, and the Deputy Chair must be a government member.
<b>Estimates Committees</b>	284	246	Substantively the same.
<b>Unproclaimed Legislation</b>	126	117	Wording unchanged.
<b>Reports from Committees</b>	347	306	Substantively the same, but with additional clarification: excludes reports from standing orders and procedure committee; flexibility to debate multiple reports; reduced time for debates.
<b>Questions on Notice</b>	141	132	Changes include clarification of timing for lodging questions and answers, provision for publishing answers received during non-sitting weeks, and codifying the Speaker's authority to amend non-conforming questions.
<b>Routine of Business</b>	110	97	More flexibility in the current standing orders, allowing for non-government business to proceed if government business is not required; updated procedure for public interest debates replacing motions for urgent consideration.
<b>Suspension of Standing Orders</b>	405	365	1994 version required a member to seek leave to move a suspension motion. While 2023 allows any member to move a suspension between 10 am and 1:15 pm and a minister may move a motion suspension at any time (excluding during question time).

<b>Consideration of Urgent Motions – Opposition, Matters of Public Importance</b>	120 (Urgent Motions)	121 (Matters of Public Importance)	Replaced with public interest debates and petition debate (standing orders 109 and 125A in 2023).
<b>Consideration of Public Bills introduced by Private Members</b>	118	106	The essence remains but now included in the broader scope of general business, allowing private members to reorder bills within the weekly routine.
<b>Questions Without Notice</b>	140	131	Enhanced accountability measures: 3-minute answers, 2-minute supplementary answers, 55-70 minutes for question time, and Speaker authority to stop the clock to counter time wasting.
<b>Re-ordering of General Business</b>	118	106, 107	New standing orders offer flexibility for managing general business, with reduced speaking time for private members' motions.
<b>Order of General Business</b>	117	105(1)	New standing order retains the same wording but adds lapsing provisions for incomplete general business.