

ADDITIONAL AMENDMENTS TO THE STANDING ORDERS

STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

AUGUST 2019

REPORT NUMBER 15

THE COMMITTEE

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RESOLUTION OF APPOINTMENT

In 1995 the Legislative Assembly for the Australian Capital Territory ('the Assembly') amended Standing Order 16, which established the Standing Committee on Administration and Procedure ('the Committee').

Standing Order 16 authorises the Committee to inquire into and report on, among other things, the practices and procedure of the Assembly.

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RECOMMENDATIONS

RECOMMENDATION 1

2.5 The Committee recommends that standing order 242 be amended as follows:

Omit paragraph 242(a)(iii), substitute:

“(iii) if the committee concludes that there has been potential or actual substantial interference it shall present a special report to the Assembly, detailing:

- (A) the nature of the alleged unauthorised disclosure;
- (B) the action it has taken to discover the source of the unauthorised disclosure and the conclusion it has reached;
- (C) how it has arrived at the conclusion that the disclosure has had a tendency to substantially interfere with the work of the Committee or of the Assembly, or actually caused substantial interference; .and;
- (D) any other relevant matter. The issues raised in the special report may be raised with the Speaker by the Chair of the committee, in accordance with standing order 276;

RECOMMENDATION 2

2.6 The Committee recommends that standing order 276 be amended as follows:

In paragraph 276(e), after "purpose", add "or, in the case of the unauthorised disclosure of proceedings of a committee, that committee".

RECOMMENDATION 3

The Committee recommends that Continuing Resolution 5AA be amended as follows:

In paragraph (5) omit “Members of the public, members of the ACT Public Services and Members of the Assembly may make a complaint to the Commissioner”

Substitute

“Anyone may make a complaint to the Commissioner”

RECOMMENDATION 4

The Committee recommends that Standing Order 99A be amended as follows:

Omit “A petition and/or e-petition” and substitute “Petitions and/or e-petitions in similar terms”.

1 BACKGROUND

- 1.1 Standing order 16, which establishes the Committee, authorises the Committee to undertake reviews of the standing orders to ensure they remain relevance and reflect best practice.
- 1.2 Throughout 2018, the Committee reviewed all the standing orders and continuing resolutions which resulted in over 70 recommended amendments.
- 1.3 The revised standing orders came into effect on 1 January 2019. Since that date, a number of matters have arisen which may require additional amendments. These include suggestions from the Commissioner for Standards and recommendations from the Select Committee on Privileges 2019.
- 1.4 There were also some issues relating to clarity of wording that required attention.

2 SELECT COMMITTEE ON PRIVILEGES 2019

- 2.1 On Thursday 4 April 2019, a Select Committee on Privileges was established to examine whether there had been a breach of privilege relating to the Standing Committee on Health, Ageing and Community Services in the release of unauthorised committee documents.
- 2.2 In its report, the Privileges Committee considered the Assembly standing orders relating to the procedures for investigating potential unauthorised disclosures. It found that there was potential for further refinement of the procedures with the affected committee being more involved.
- 2.3 In effect, the proposal from the Select Committee is for the affected committee to present a special report to Assembly on its investigation into the incident prior to a privileges committee being contemplated. This process is more likely to be able to make an assessment of the impact of the disclosure on the committee and to determine the source of the unauthorised disclosure than would occur with just utilising only a privileges committee.
- 2.4 The Select Committee proposed two amendments to the standing orders which the Committee was in agreement with.

Recommendation 1

- 2.5 **The Committee recommends that standing order 242 be amended as follows:**

Omit paragraph 242(a)(iii), substitute:

- “(iii) if the committee concludes that there has been potential or actual substantial interference it shall present a special report to the Assembly, detailing:**
 - (A) the nature of the alleged unauthorised disclosure;**
 - (B) the action it has taken to discover the source of the unauthorised disclosure and the conclusion it has reached;**
 - (C) how it has arrived at the conclusion that the disclosure has had a tendency to substantially interfere with the work of the Committee or of the Assembly, or actually caused substantial interference; .and;**
 - (D) any other relevant matter. The issues raised in the special report may be raised with the Speaker by the Chair of the committee, in accordance with standing order 276;**

Recommendation 2

2.6 The Committee recommends that standing order 276 be amended as follows:

In paragraph 276(e), after "purpose", add "or, in the case of the unauthorised disclosure of proceedings of a committee, that committee".

3 COMMISSIONER FOR STANDARDS

- 3.1 Pursuant to Continuing Resolution 5AA, the Clerk receives any complaints about the Code of Conduct, or about the rules relating to the declaration or registration of interests. Having dealt with a number of complaints, the Clerk formed the view that the definition of those people who may make a complaint to the Commissioner for Standards, is limiting.
- 3.2 Paragraph (5) of Continuing Resolution 5AA states:
- (5) Members of the public, members of the ACT Public Service and Members of the Assembly may make a complaint to the Commissioner via the Clerk of the Legislative Assembly about a Member's compliance with the Members' Code of Conduct or the rules relating to the registration or declaration of interests.
- 3.3 One example of how this is limiting would be relation to a Member's staff or staff of the Office of the Legislative Assembly (OLA), who are not members of the ACT Public Service. OLA staff are members of the ACT Public Sector under the *Public Sector Management Act 1994*, and staff employed under the *Legislative Assembly (Members' Staff) Act 1989* are in a different category altogether. In this instance, those staff would be required to rely on the provision that they were a member of the public.
- 3.4 Another possible limitation would be that, under the current criteria, it could be construed that if an MLA was travelling overseas on Assembly business and gave reason for a possible complaint, the host might not be able to make a complaint to the Commissioner for Standards.
- 3.5 The Clerk had discussed this matter with the Commissioner, who, in response stated:
- “I do not think that any organization or body should be prevented from making a complaint and would not wish to waste time on technical arguments about the construction of the section of the Continuing Resolution that establishes my role. Hence, I agree with your suggestion that the continuing resolution be amended to simply state that “Anyone may make a complaint to the commissioner....”
- 3.6 The Committee discussed the implications of the proposed amendment and were in agreement with the Clerk and Commissioners suggestion.

Recommendation 3

The Committee recommends that Continuing Resolution 5AA be amended as follows:

In paragraph (5) omit “Members of the public, members of the ACT Public Services and Members of the Assembly may make a complaint to the Commissioner”

Substitute

“Anyone may make a complaint to the Commissioner”

4 STANDING ORDERS 99A—PETITIONS REFERRED TO COMMITTEE

- 4.1 In the 2018 review of standing orders, amendments were made to incorporate the increasing use of electronic petitions (e-petitions). Standing Order 99A, which deals with the referral of petitions containing more than 500 signatures to the relevant Assembly committee was amended to allow the number of signatures on both paper and e-petitions tabled on the same day to be to be totalled to contribute to the 500 signatories required.
- 4.2 The standing order does not, however, specify that the petitions should be in similar terms and the proposed amendment seeks to clarify the matter.

Recommendation 4

The Committee recommends that Standing Order 99A be amended as follows:

Omit “A petition and/or e-petition” and substitute “Petitions and/or e-petitions in similar terms”.

Ms J Burch, MLA

Chair

19 August 2019