# 10 Rules of Debate and the Maintenance of Order

## Introduction

10.1 The proceedings in the Assembly that occur between the Chair proposing the question on a motion (and thus eliciting the will of the Assembly) and the decision of the Assembly on the question constitute debate. Debate concludes when the Chair puts the question and ascertains whether it is resolved in the affirmative or the negative.

10.2 The vast majority of the Assembly's time is spent debating questions before the Assembly and reaching decisions on those questions. Though there are other occasions when Members may address the Assembly which do not constitute debate, such as asking and answering questions and discussing matters of public importance (see paragraph 10.7 &10.8), the debates in the Assembly are of prime importance to the governance of the Territory.

10.3 In performing its functions, the executive is obliged to present its proposals to the Assembly and must be ready to defend its conduct and actions. It is through debate in the plenum that proposed laws are examined and assessed, as are the executive's administration and its revenue and expenditure proposals. To paraphrase Redlich, the only constitutional form of ascertaining the will of the Territory as to legislation is that of going through a process of speech and reply in the Assembly so as to discover what most closely corresponds to the wishes of all.[1]

10.4 The Assembly has in place a number of rules governing the conduct of debate, primarily set out in Chapter 6 of the standing orders, which, together with those set out in Chapter 17, give to the Assembly and the Speaker the power to enforce those rules.

10.5 The Speaker has the authority to preside at meetings of the Assembly[2] and the responsibility for maintaining order in the Assembly.[3] Standing orders reinforce that authority with a range of provisions imposing rules on the manner in which Members address the Assembly, the occasions on which they may address the Assembly, and the form and content of their speeches. If the Speaker interrupts proceedings, he or she must be heard in silence and without interruption.[4] The Speaker also determines whether words used are offensive or disorderly and rules on any question of order.[5]

## Opportunities for Members to speak

10.6 Standing order 45 defines the occasions on which Members may speak in the Assembly. Every Member has the right to speak to any question that is open to debate. Members may also speak when moving a motion that is open to debate; when moving an amendment; when asking or answering a question seeking information; when taking or speaking to a point of order; and on a matter submitted under standing orders.

1 See Redlich, Vol III, pp. 43-4.
2 Self-Government Act, subsection 18(4).
3 Standing order 37—Order shall be maintained in the Assembly by the Speaker.
4 Standing order 38—Whenever the Speaker rises during proceedings, Members shall be silent and be seated, so that the Speaker may be heard without interruption.
5 Standing orders 57 and 73.

**10.7** Standing order 45 is not definitive. Other circumstances in which Members may address the Assembly are:

- when discussing a matter of public importance submitted pursuant to standing order 79, there being no question before the Assembly;
- when two or more candidates have been proposed as Speaker, Deputy Speaker, Chief Minister or Leader of the Opposition,[6] again there being no question before the Assembly; and
- when leave has been obtained from the Chair to explain matters of a personal nature although there may be no question before the Assembly.[7]

**10.8** Committee chairs may make statements to the Assembly[8] and Ministers, by leave, may make ministerial statements after the presentation of papers.[9] The Assembly has accepted the practice that other Members may also address the Assembly, by leave, to make statements following ministerial statements. The Assembly also grants leave to Members to make statements on other occasions, often following the presentation of papers or committee reports. In addition, the Assembly grants leave to Members to make their inaugural speeches[10] and, on occasion, the Speaker may permit Members to speak with the indulgence of the Chair.[11]

**10.9** Generally, Members may speak only once on any question before the Assembly. However, again there are exceptions:

- no Member may speak to the question on a motion designated as one not open to debate (see paragraphs 10.13 - 10.16);
- a Member who has spoken to a question may again be heard under standing order 47 'to explain where some part of that Member's speech has been misquoted or misunderstood' subject to certain restrictions (see paragraphs 10.23 and 10.24);
- a Member who has moved a substantive motion or moved that a bill be agreed to in principle is allowed a reply (see paragraphs 10.29 to 10.33);
- during the consideration of the detail stage of a bill, Members may speak twice on any question and there is no limitation on the number of times the Minister in charge of an executive bill or the Member in charge of any other bill may speak; and
- a Minister in charge or a Minister responsible for a department or appropriation unit can speak for unlimited periods during the detail stage of the main appropriation bill.

**10.10** During the course of a debate, a Member is not permitted to speak again after resuming his or her seat (subject to the exceptions outlined above), or to move an amendment, unless leave of the Assembly has been granted to enable the Member to do so.[12]

**10.11** A Member who speaks for the first time in a debate after the question on an amendment has been proposed is taken to be addressing his or her remarks to both the original question and the question on the amendment. Should any further amendment(s) be moved, the Member would be permitted to speak again, but only on the new question proposed.

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6 Pursuant to standing orders 2(c), 3(c), 5 and 5B.
7 Standing order 46.
8 In accordance with standing order 246A.
9 Standing order 74.
10 Inaugural (formerly termed 'maiden') speeches have been made in the course of debate (see Assembly Debates (1.5.90) 1439. For later practice see MoP 2001-04/11).
11 For example, Ministers adding to answers after the conclusion of questions without notice.
12 See, for example, MoP 2001-04/135.

10.12 No Member may speak to any question once the Chair puts the question and the voices have been declared in favour of the ayes or noes.[13]

## Motions not open to debate

10.13 Some motions are not open to debate and may only be moved, under standing order 63, 'without argument or opinion offered'. The questions on such motions must be put forthwith from the Chair, without amendment. The motions are those:

- for the adjournment of the debate;
- to extend the time for debate and speech;
- that the question be now put (the closure);
- that the bill be agreed to or that the bill, as amended, be agreed to; and
- that a Member be suspended from the service of the Assembly.[14]

10.14 On the Speaker proposing the question 'That the Assembly do now adjourn' (the automatic adjournment), should a Minister require that the question be put forthwith and without debate, the Speaker is obliged to do so.[15] Again, should the motion 'That executive business be called on' be moved pursuant to standing order 77(d) or 'That the time allotted to Assembly business be extended by 30 minutes' be moved pursuant to standing order 77(e), the Speaker is required to put the questions forthwith and without amendment or debate.

10.15 Though the motion for the adjournment of debate is not open to debate,[16] should the question be resolved in the affirmative, debate may ensue on the subsequent question to fix the time for the resumption of the debate, which the Chair must propose pursuant to standing order 65. That question is also open to amendment.[17]

10.16 In addition, standing order 192 provides that, should a Member in charge of a bill, or a Member acting on behalf of that Member, declare that a bill is urgent, the question on the motion 'That this bill be considered an urgent bill' shall be put. However, standing orders also provide that debate on the motion shall 'not exceed 15 minutes'.[18] The practice of the Assembly was initially that the motion was not debated,[19] nor was it open to debate.[20] In February 1993, clarification having been sought on the contradictory provisions by way of a point of order, the Speaker ruled that the question on the motion to declare a bill urgent was open to debate.[21]

13 Standing order 50. See Assembly Debates (6.5.2003) 1556-7.
14 Standing order 63. In addition, standing order 64 provides that should any of the questions on these motions be negatived, no similar proposal shall be received by the Speaker if the Speaker is of the opinion that it is an abuse of the orders or forms of the Assembly or is moved for the purpose of obstructing business.
15 Standing order 34.
16 Standing order 65.
17 Assembly Debates (8.12.1998) 3178-9.
18 Standing order 69(f).
19 MoP 1989-91/97-8, 631, 647-8; MoP 1992-94/83-4.
20 See rulings at Assembly Debates (18.10.1989) 1771; Assembly Debates (5.12.1991) 5675.
21 MoP 1992-94/295; Assembly Debates (24.2.1993) 407-8.

## Moving motions and amendments

10.17 A Member may speak 'when moving a motion that is open to debate'.[22] The usual practice followed is that, upon a notice of motion being called upon by the Clerk, the Member in charge moves the motion immediately. Another option which does not often occur is when the Member speaks to the amendment and moves it during or at the conclusion of his or her speech. If the motion is moved when the Member rises to speak, the Speaker proposes the question and the Member then speaks to the motion. Should the Member move the motion during or at the completion of his or her remarks, the Speaker proposes the question once the motion is moved and debate may take place. [23]

10.18 Similarly, when a bill has been presented and the title read by the Clerk, the Member presenting the bill usually moves 'That the bill be agreed to in principle' and he or she commences speaking immediately. However, there have been occasions when the Member speaks to the motion before actually moving it. In the former case, the Speaker should propose the question and the Member speaks to the motion.

10.19 When moving a motion for which notice is not required (see Chapter 9: Motions) and which is open to debate, it would be expected that the Speaker would require the motion to be moved at the outset. The question would then be proposed by the Speaker and the Member could proceed to address the Assembly on the merits of the motion. If the terms of the motion the Member was proposing to move were clear to all Members—having been circulated to them in the Chamber, for example—the Speaker could allow the Member to speak before moving the motion.

10.20 Should a Member moving a motion or presenting a bill not speak to that motion, it must be assumed that the only other occasion on which he or she could speak would be when exercising his or her right of reply pursuant to standing order 48.[24]

10.21 Members may address the Assembly when moving an amendment; in principle, a Member may address the Assembly only once on each question. The exceptions are when legislation is considered at the detail stage, when a Member utilises the provisions of standing order 47 and when a Member speaks in reply.[25]

## Conflict of interest

10.22 The Self-Government Act and standing order 156 preclude a Member who is party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority from taking part in a discussion of a matter or vote on a question in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract. It is the Assembly that must decide any question concerning the application of this provision, which is addressed in full in Chapter 4: Membership of the Assembly.

22 Standing order 45.

23 Assembly Debates (13.8.1992) 1667-8. The motion for the closure cannot be moved until the Speaker proposes the question.

24 The provisions of standing order 69(c), (d) and (i) contemplate the mover being the first to speak in a debate. Standing order 48 gives the mover of a motion a right of reply to finish a debate. See also *House of Representatives Practice*, pp. 480-1.

25 However, during consideration of legislation at the detail stage, when a Member moves an amendment at the conclusion of his or her speech and the question on the amendment is proposed after the Member has concluded his or her remarks, the Member who moved the amendment has been permitted to later address the Assembly on the question 'That the amendment be agreed to'. See Assembly Debates (21.04.1999) 1046-8, 1056-9.

## Explaining words

10.23 Standing order 47 provides that a Member who has already spoken to a question may be heard to explain where some material part of his or her speech had been misquoted or misunderstood, but:

- the Member is precluded from introducing any new matter;
- the Member may not interrupt a Member speaking;
- the Member may not bring forward any debatable matter; and
- no debate may arise upon the explanation.[26]

10.24 The provisions of standing order 47 cannot be utilised after the relevant debate has concluded or there is another matter before the Assembly[27] and, clearly, may be used by a Member only in relation to a misquotation or misunderstanding of his or her speech on the question before the Assembly.[28]

## Personal explanations

10.25 Having obtained leave from the Chair, under standing order 46, a Member may explain matters of a personal nature, even though there is no question before the Assembly. Such matters may not be debated.[29]

10.26 The matter must be of a personal nature (the Member may be directed to resume his or her seat if that is not the case)[30] and the leave granted cannot be used as an artifice to continue the debate on an issue.[31]

10.27 Should a Member believe that he or she has been misquoted or misunderstood in a debate, the proper course to follow is for the Member to avail himself or herself of the provisions of standing order 47 in the course of that debate.[32] The Speaker has requested that Members desist from seeking to utilise the provisions of standing order 46 until the conclusion of a particular debate (but rather utilise the provisions of standing order 47) because of the fact that the personal explanations made under standing order 46 are usually lengthy and detract from the flow of the debate.[33]

10.28 In September 1996, Speaker Cornwell was asked whether he had a particular interpretation of what constituted 'a matter of a personal nature'. In response, he made a considered statement on the practice in relation to personal explanations in the following terms:

> Personal explanations are made pursuant to standing order 46. Provided that no other Member is addressing the Assembly, the Member wishing to make a personal explanation obtains the leave of the Chair, not the Assembly, to explain a matter of a personal nature. The Member must not debate the matter. … *House of Representatives Practice states*:
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> > In making a personal explanation, a Member must not debate the matter and may not deal with matters affecting his or her party or, in the case of a

26 See Assembly Debates (5.05.2005) 1853.
27 Assembly Debates (18.10.1995) 1794.
28 Assembly Debates (26.6.2003) 2646; Assembly Debates (5.5.2005) 1853.
29 Standing order 46.
30 Assembly Debates (5.3.2002) 560-1.
31 Assembly Debates (18.8.2005) 2911-2; Assembly Debates (9.5.2000) 1238-9; Assembly Debates (5.3.2002) 560-1.
32 Assembly Debates (21.2.1996) 118-19.
33 Assembly Debates (19.9.1990) 3455.

> Minister, the affairs of the Minister's department; the explanation must be confined to matters affecting the Member personally. A Member cannot make charges or attacks upon another Member under cover of making a personal explanation.
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> ... It should also be remembered that Members may make use of other opportunities during proceedings, especially the adjournment debate, to raise issues of concern.

In responding to [the Member's] request as to whether I had a particular interpretation of what constitutes 'a matter of a personal nature', it is somewhat difficult to give an absolute definition. Having considered the practice here and elsewhere, I propose to use the following criteria, which all Members might like to listen to. The matter must be personal to the Member and the explanation confined to the matter that is personal to the Member and should not be debated or not be used to commence a debate. I would envisage that explanations would be made by Members in instances where they have discovered that they may have inadvertently misled the Assembly, or have been accused of improper practices or conduct either inside or outside the Assembly, or where a Member's word has been doubted or impugned. A Member could also use the procedure to explain where they had been misquoted or misunderstood, though I remind Members that during debate they should make use of the provisions of standing order 47, where leave of the Assembly or the Chair is not required.

I also remind Members that, should they wish to go beyond the terms of a personal explanation and enter into a debate on the matter or take issue with another Member, the leave of the Chair will be withdrawn, as is the case in the House of Representatives. If a Member proposes to go beyond the confines of standing order 46 it may be better for the Member to seek leave of the Assembly to make a statement or use other forms of the Assembly that may be available.

I intend to follow the practice of the House of Representatives in asking that Members inform the Speaker before seeking leave to make a personal explanation, which in fact happens now; not allowing personal explanations to be made during question time, usually allowing them to be made only at the conclusion of question time, although there may be other occasions between items of business where circumstances require them, which again is something which happens already; and, finally, if the Member uses the personal explanation to enter into a general debate the leave granted by the Chair will be withdrawn. If Members follow these guidelines I am sure it will lead to more orderly debate in the Assembly.[34]

34 Assembly Debates (4.9.1996) 3042-3.

## Speaking in reply

**10.29** A Member who has moved a substantive motion (see paragraph 9.7) or moved that a bill be agreed to in principle is allowed a reply, though the reply must be confined to the matters raised during the debate,[35] and the reply closes the debate.[36]

**10.30** A substantive motion is a self-contained proposal submitted for the approval of the Assembly. It is drafted in a form capable of expressing a decision or opinion of the Assembly.[37] An amendment is not a substantive motion and there is no provision for a reply for the mover of an amendment.[38] A motion to take note of a paper which is moved as a vehicle to enable debate, rather than for putting a matter to the Assembly for decision, is not regarded as a substantive motion.[39]

**10.31** The practice in the Assembly has been that the Chair has declined to give the call to the mover of a substantive motion when any other Members who have not spoken in the debate seek the call.[40]

**10.32** The provisions of standing order 48 would most likely preclude a Member speaking in reply from moving an amendment (unless the amendment was in response to a matter raised in the debate).[41] On occasions, debate having been closed by the reply of the mover of a substantive motion, debate has, by leave, continued.[42] Should the mover of a substantive motion wish to speak again without closing the debate, he or she would need to obtain the leave of the Assembly to do so. Should the mover of the substantive motion seek the call to speak to an amendment without closing the debate, he or she may do so, but must confine his or her remarks to the amendment.[43]

**10.33** In unusual circumstances in February 1990, the provisions of standing orders 48 (right of reply) and 49 (reply closes a debate) were waived in respect of the debate on three executive business orders of the day, the Speaker having ascertained that it was the wish of the Assembly to do so.[44]

## Indulgence of Chair

**10.34** By indulgence of the Chair, Ministers have been permitted to correct or add to answers given during questions without notice. The Minister does not seek leave in this case; it is an established practice of the Assembly that additions and corrections to questions may be made at the completion of question time. These additions and corrections need not necessarily

35 Standing order 48.

36 Standing order 49.

37 May, p. 316; *House of Representatives Practice*, p. 285.

38 See, for example, Assembly Debates (16.11.2005) 4186-87. The Speaker reminded the mover of an amendment that she should speak to that amendment immediately and that she would not get another opportunity in the debate (unless she sought and was granted leave).

39 *House of Representatives Practice*, p. 482.

40 See Assembly Debates (14.5.2004) 2091-2, (8.3.2007) 412.

41 In the House of Representatives a Member speaking in reply is precluded from proposing an amendment. See *House of Representatives Practice*, p. 482.

42 See, for example, MoP 2001-04/119.

43 See, for example, MoP 2004-08/1103. A Member who had moved amendments to a government bill was given leave to address the Minister's comments on those proposed amendments.

44 The circumstances were that the orders of the day were for the consideration of the questions on the agreement in principle of three executive bills that had been introduced in the preceding year by an executive that had subsequently lost office and the bills were still being considered by the Assembly. Should the Member who had introduced the bills (now the Leader of the Opposition) have chosen to speak on the question before the Assembly at the resumption of the debate on each of the questions, she would have closed the debate. Assembly Debates (15.2.1990) 175.

relate to questions asked on the same day.[45] The exercise of indulgence is completely at the Chair's discretion; it may be withdrawn.[46]

## Manner of speech

10.35 Members wishing to speak must rise and address the Speaker[47] from the place allocated to them in the Chamber; should two or more Members rise, the Speaker must call upon the Member who, in his or her opinion, rose first.[48] However, the Speaker may have regard to the alternation of the call.

10.36 Remarks should be addressed through the Chair. It is considered that remarks directed at other Members across the Chamber could lead to disorderly behaviour.[49] It is also not in order for a Member to turn his or her back to the Chair to address party colleagues or to address the listening public, either in the galleries or whilst proceedings are being broadcast.[50] In November 1989 Speaker Prowse reminded Members of the provisions of standing order 42, adding:

> Whilst in the cut and thrust of debate comments may occasionally be directed across the chamber, the proper form is that all remarks should be directed through the Chair.[51]

10.37 Speaker Prowse also advised the Assembly of the form in which Members may refer to another Member. Until the Assembly otherwise directs, Members should not use the Member's Christian name, given name or versions thereof when referring to another Member. A Member may refer to a Member by title, such as Minister, Chief Minister, or Leader of the Opposition, or may use the prefix Mr, Mrs or Ms. Where a Member is entitled to use a substantive military, academic or professional title, this title will be used if the Member so wishes.[52] A Member may also be referred to as the Member for his or her electorate.

10.38 By indulgence of the Assembly, a Member unable to conveniently stand, by reason of sickness or infirmity, will be permitted to speak sitting.[53]

10.39 Members may not interrupt another Member who is speaking other than:

- to call attention to a point of order;[54]
- to call attention to the want of a quorum;[55]
- to move a closure motion;[56] or
- to move 'That executive business be called on' during consideration of Assembly business.[57]

45 See, for example, Assembly Debates (3.5.2007) 944. The Chief Minister provided additional information with regard to a question asked the previous day and the Minister for Education and Training corrected an answer given on that day and provided some additional information.
46 Assembly Debates (11.5.1995) 466; Assembly Debates (7.3.2007) 290-1. And see *House of Representatives Practice*, p. 484.
47 Standing order 42.
48 Standing order 44.
49 Assembly Debates (24.9.2003) 3591.
50 Assembly Debates (4.6.2002) 1892-3. The Speaker did add 'This is not to say … that we have to have our gazes locked together for the entire debate.'.
51 Assembly Debates (22.11.1989) 2835.
52 Assembly Debates (22.11.1989) 2835. And see Assembly Debates (16.11.2005) 4224.
53 Standing order 43. MoP 2004-08/916, 935.
54 Standing order 72.
55 Standing order 61(b).
56 Standing order 61 and standing order 70. A Member cannot interrupt another Member who is speaking to move a motion to suspend the standing orders—Assembly Debates (13.8.1992) 1668.
57 Standing order 77(d).

## Reading speeches and presentation of documents quoted from

10.40 There is no prohibition on Members reading their speeches in the Assembly. However, should a Member quote from a document, he or she may be ordered to present the document. In accordance with standing order 213, a motion requiring the document to be presented may be moved without notice immediately upon the conclusion of the speech of the Member who quoted from the document.[58] The motion is open to debate and amendment. The implication of having to present a document is that it becomes available for perusal by all Members and the public.

10.41 The practice in the Assembly has been that the provisions of standing order 213 do not encompass documents that, though they may have been referred to in the course of a Member's speech or comments, are not directly quoted from.[59]

10.42 In August 1995, a motion having been moved pursuant to standing order 213 'That the document the Minister quoted from be tabled', reference was made in debate to an informal agreement or convention that 'Members are entitled to read from briefs or speaking notes without having to table those notes'. It was disputed whether the document was a speaking note or a statement by the Minister.[60] The Speaker ruled that it was for the Assembly to decide whether the document should be tabled, whatever the document was, and the question was put.[61]

## Display of articles to illustrate speeches

10.43 Speakers of the House of Representatives have accepted that Members may display material to illustrate speeches but 'hoped that Members would use some judgement and responsibility in their actions'.[62] The Assembly has adopted a similar approach. On an occasion when a Member displayed electoral material to illustrate a point with regard to electoral legislation that was before the Assembly, a point of order was taken suggesting that the display was in breach of standing orders. The Speaker ruled that, since the Member had not 'displayed any irresponsibility in his action', there could be no objection to his action.[63]

## Incorporation of unread material into the Assembly Hansard

10.44 In certain circumstances, leave has been granted to Members to incorporate unread material in *Hansard*. However, it is a practice that the Assembly does not encourage. In July 1989 Speaker Prowse stressed the need for Members to remember that the *Hansard* reports of the Assembly debates are the reports of the speeches made by Members in the Assembly. The Speaker referred to the practice in the House of Representatives where the consistent aim is to keep the *Hansard* as a true record of what is said in the House, and he

58 Standing order 213. See also MoP 1998-2001/1466-7.

59 Assembly Debates (21.6.1991) 2357-8; Assembly Debates (25.11.1993) 4165-6. And see Assembly Debates (17.10.1995) 1746. However, the basis of the rule was that the full text of a document quoted from had to be tabled, the rule being founded upon the analogy between the houses of parliament and the courts of justice—the principle that no document must be quoted in court without being produced being held to apply to parliament as well as to an ordinary judicial tribunal. See *Redlich*, Vol III, pp. 59-60.

60 See also Chapter 13: Papers, records and publications of the Assembly, paragraph 13.16.

61 MoP 1995-97/125; Assembly Debates (23.8.1995) 1388-9. The question was resolved in the affirmative. For earlier discussion on the convention see Assembly Debates (9.5.1995) 315-7.

62 *House of Representatives Practice*, p. 493.

63 Assembly Debates (17.10.1995) 1746.

outlined the reasons for discouraging the practice of incorporating printed material as follows:

- unread material may offend the rules requiring relevance and decorum of expression;
- unread matter may contain offensive or libellous statements to which a Member may have taken objection had the words been spoken;
- a Member could, in effect, make a longer speech than the time limit allows for;
- delays, technical problems and increased costs of production of *Hansard* could result; and
- the practice was unnecessary because printed material and public documents may be tabled and included in the papers of the Assembly for Members to view.[64]

10.45 In establishing guidelines for the incorporation of unread material into the Assembly debates, Speaker Prowse in 1989 indicated that he would not allow the incorporation of printed material other than petitions, answers to questions on notice or other matters, such as tables and graphs, which need to be seen in visual form for comprehension. As is the case in the Commonwealth Parliament, the Speaker stated that he would exercise final authority over the incorporation of unread matter. He asked all Members to consider carefully before seeking to incorporate material in *Hansard*, believing that the practice generally was unsatisfactory and to be avoided.[65] Speaker Prowse's guidelines have been followed by subsequent Speakers. In fact, the current practice, given that *Hansard* is now principally an electronic publication, is that all material incorporated in the record, with the exception of petitions, must be provided in an electronic form suitable for electronic and hard copy publication. [66]

10.46 Should leave be granted to incorporate unread material it must be provided to *Hansard* as soon as possible in an electronic form suitable for publication. The incorporated material is not reproduced in the uncorrected proof transcript but is published at the end of the proof daily *Hansard* and the official weekly *Hansard*.

10.47 It is out of order to incorporate material at the end of a speech given that it would, in effect, extend a Member's speaking time.[67]

## Question may be required to be read

10.48 Except for occasions where the terms of a question or matter have been circulated to Members, any Member may require that the question or matter under discussion be read by the Speaker at any time during a debate, but not so as to interrupt the Member speaking.[68]

## Allocation of the call

10.49 Standing order 44 provides that when two or more Members rise to speak, the Speaker shall call on the Member who, in his or her opinion, rose first. The Chair, however, will often alternate the call between Members in favour of the question and those against it.

64 Assembly Debates (4.7.1989) 622-30.
65 Assembly Debates (4.7.1989) 622-3.
66 Assembly Debates (9.12.2004) 215.
67 Assembly Debates (1.5.1990) 1467.
68 Standing order 60.

## Rules of debate

### Relevancy

10.50 The fundamental rule on the content of speeches, and that which underpins many of the rules of debate, is the relevancy rule.

10.51 Standing order 58 provides that a Member may not digress from the subject matter of any question under discussion, subject to two provisos:

- irrelevant matters may be debated on the motion to adjourn the Assembly;[69] and
- matters related to public affairs may be debated on the motion for the agreement in principle to appropriation bills (the budget).

10.52 When a bill for an Act 'to appropriate additional money for the purposes of the Territory' has been considered by the Assembly at the in-principle stage, the Speaker has permitted discussion of matters not covered by the bill despite a Member taking a point of order that the bill was not a budget bill but for certain select appropriations.[70] It has also been ruled permissible, in debate on a motion to establish an estimates committee, to raise almost anything with which the estimates committee may concern itself.[71]

10.53 It can be difficult for the Chair to monitor the relevancy rule, especially if there is a gap of several sitting days or weeks in a particular debate.[72] Should the Chair permit irrelevant matters to be raised, the subsequent debate can be distorted. Where a Member was inadvertently allowed to discuss irrelevant matter, the Speaker has felt obliged to permit other Members the opportunity to do likewise,[73] undermining the relevancy rule. This was demonstrated when a Minister who was the subject of a censure motion which was expressed in quite specific terms with regard to a particular administrative matter, having already addressed the Assembly, believed that matters that were not the subject of the censure were being introduced into the subsequent debate.[74]

### Irrelevance or tedious repetition

10.54 The Speaker, having called the attention of the Assembly to the conduct of a Member who persists in irrelevance or tedious repetition of the Member's own arguments or those of other Members, may direct the Member to cease speaking.[75]

### Cognate debates

10.55 It is common practice that, when two or more related orders of the day (usually relating to bills) are listed on the *Notice Paper*, the Chair ascertains whether it is the wish of the Assembly that Members, in addressing their remarks to the first order of the day, may make reference to the related orders of the day.[76] If there is no objection, the Chair allows that

69 This does not mean that other standing orders can be transgressed; see, for example, Assembly Debates (10.4.2002) 967-8; Assembly Debates (16.11.1989) 2697.
70 Assembly Debates (3.5.2001) 1425-6.
71 Assembly Debates (4.5.2006) 1196.
72 Assembly Debates (17.11.98) 2571.
73 Assembly Debates (5.7.1989) 664. And see Assembly Debates (23.9.2003) 3521-2.
74 Assembly Debates (23.9.2003) 3521-2.
75 Standing order 62. See MoP 1989-91/160 for an example.
76 Though it would be uncommon, the procedure can also be utilised in the consideration of notices and orders of the day.

course to be followed and a cognate debate ensues.[77] When it is proposed that a cognate debate take place, this is indicated on the *Daily Program* as part of the programming process, after consultation with party and crossbench representatives and the Member in charge of the order of the day.

10.56 At the conclusion of the debate, separate questions on each order of the day are proposed as required. Though the rationale for a cognate debate is to have one debate on the issues covered by the orders of the day, the fact that a cognate debate has occurred does not preclude Members from addressing any question proposed that is open to debate or to debate an amendment.

## Allusion to previous debates or proceedings

10.57 A Member may not allude to any debate or proceedings in the same calendar year unless such allusion is relevant to the matter under discussion.[78] The basis of the rule is that it prevents the revival of a debate which has been brought to an end.[79]

## Anticipation of discussion

10.58 Standing order 59 prohibits a Member from anticipating the discussion of any subject that appears on the *Notice Paper*. In applying this standing order, the Speaker can consider whether the matter anticipated is likely to be brought before the Assembly within a reasonable time.

10.59 The rule is designed to ensure that matters which are scheduled for consideration and decision by the Assembly at a future date are not pre-empted by unscheduled debate.[80] As is the practice in the House of Representatives, the words 'subject which appears on the *Notice Paper*' are taken to apply only to the business section of the *Notice Paper* and not to 'matters listed elsewhere'—for example, under questions in writing or as subjects of committee inquiry.[81]

10.60 The rule is reiterated elsewhere in the standing orders. Standing order 130 provides that a matter on the *Notice Paper* may not be anticipated by a matter of public importance, an amendment or other less effective form of proceeding.

10.61 Having ascertained that it was the wish of the Assembly, the Speaker has permitted discussion of a matter of public importance to proceed even though the discussion anticipated debate on an executive business order of the day.[82] The fact that the Assembly is debating the question 'That the Assembly do now adjourn' does not permit anticipation of the debate on legislation listed for consideration on the *Notice Paper*.[83]

77 Leave is not invariably granted. See, for example, Assembly Debates (8.12.1998) 3178.
78 Standing order 51.
79 *Redlich*, Vol III, p. 58.
80 *House of Representatives Practice*, p. 497 but see comment where it is stated that the origin of the rule is unclear in the introduction to May at p. 4.
81 *House of Representatives Practice*, p. 497.
82 Assembly Debates (18.11.1992) 3209.
83 Assembly Debates (16.11.1989) 2697; Assembly Debates (10.4.2002) 967-8.

## Reference to committee proceedings

10.62 With certain exceptions, standing order 241 effectively prohibits reference in the Assembly to the evidence taken by any committee, the documents presented to a committee and the proceedings and reports of a committee until its report has been presented to the Assembly. These proceedings must remain strictly confidential to the committee and not be published or divulged by any Member of the committee (or any other person) until the presentation of the report.[84]

10.63 The provisions of standing order 241 do not apply to:

- proceedings of a committee that are public;
- any press release or public statement made by the Chair of a committee relating to an inquiry; and
- submissions, exhibits or oral evidence received by a committee that have been authorised for publication by that committee.

10.64 In practice, committees generally seek to conduct their hearings in public as far as possible and to publish written submissions and other evidence received at the earliest possible occasion. Thus, standing order 241 in effect applies only to the deliberative meetings of committees, draft reports, documents received on condition that they remain confidential to the committee and evidence taken in camera. The publication or divulging of any evidence taken or documents received in camera or on a confidential basis by a committee must be authorised by a resolution of the committee or the Assembly.

10.65 Should the Standing Committee on Administration and Procedure not present to the Assembly all or part of a submission received pursuant to the procedures adopted by the Assembly for *Citizen's right of reply* (see Chapter 2: Immunities and powers of the Assembly (Privilege), paragraphs 2.107 to 2.129), Members are constrained in any references they can make to that submission in the Assembly.[85]

10.66 In December 2002 the Speaker made a statement concerning the subject matter of a matter of public importance proposed for discussion which covered matters raised in a report of the Auditor-General presented the preceding day. The Speaker advised Members that, though the report stood referred to the Standing Committee on Public Accounts for inquiry, to prohibit reference to its contents until the committee reported, especially in relation to a report of that particular nature,[86] could unnecessarily stifle comments on matters in the public interest. He asked Members to bear in mind the fact that the committee would be inquiring into the report and not to refer to proceedings of the committee which had not been reported to the Assembly.[87]

## Reflections upon votes

10.67 Standing order 52 prohibits the reflection upon any vote of the Assembly except upon a motion to rescind the vote. The practice of the Assembly, up until 2008 when the standing order was clarified,[88] is that 'reflect' is taken to apply as reflecting adversely. The basis

84 See Assembly Debates (12.5.1992) 277.
85 Assembly Debates (19.8.2004) 3907-8.
86 Auditor-General Act, Auditor-General's Report No. 7 of 2002—*Financial Audits with Years Ending to 30 June 2002*, dated 10 December 2002. The MPI in question was 'The legality of the Treasurer's advance of $10 million to ACT Housing in June 2002.'
87 MoP 2001-04/491-2; Assembly Debates (12.12.2002) 4397-8.
88 MoP 2004-08/1388-9.

of the rule, as with that relating to allusion to previous votes or proceedings, is to prevent the revival of a debate which has been brought to an end.[89]

10.68 Ruling on a matter in 1992, Speaker McRae stated that the basis of the rule was that reflections not only would revive discussion upon questions already decided, but also were irregular inasmuch as every Member could be considered to be included in and bound by a vote agreed to by a majority. She did not believe, however, that the rule should be interpreted in such a way as to prevent a reasonable expression of views on matters of public concern.[90]

10.69 A Member has been asked to withdraw a description of action taken by the Assembly by way of a vote as 'an appalling situation'[91] and a Member referring to two earlier motions as 'unnecessary' and a 'waste of Assembly time' has been asked by the Chair not to mention the previous vote or the previous matter. [92] Upon a Member introducing a bill the same in substance as one that had been negatived by the Assembly during the preceding year, the Chair declined to uphold points of order that the Member sponsoring the bill was reflecting upon a vote of the Assembly.[93]

10.70 In August 1996, Speaker Cornwell, referring to points of order taken in accordance with standing order 52 over the preceding months, referred to the practice of the House of Representatives where the rule was not interpreted in such a way as to prevent a reasonable expression of views on matters of public concern and the practice of other parliaments where the standing order is interpreted more loosely. The Speaker advised the Assembly that he intended—subject to any direction of the Assembly—to allow references in debates and questions to previous votes of the Assembly, provided that they were clearly not critical of the vote or decision taken. He considered that to interpret the standing orders otherwise would simply invite points of order every time a Member made reference to a point of view which was contrary to that of a previous decision of the Assembly. He also advised that he intended to follow the House of Representatives practice and allow debate to proceed in such a way as to enable a reasonable expression of views on matters of public concern.[94]

## Use of the name of the Queen, the Governor-General or a Governor

10.71 Members are prohibited from using the name of the Sovereign or the names of her representatives in Australia disrespectfully in debate or for the purpose of influencing the Assembly's deliberations.[95]

10.72 This rule would not preclude discussion of the conduct of the Sovereign or her representatives by way of a substantive motion drawn up in proper terms and the rule does not exclude statements of facts by a Minister concerning the Sovereign or debate on the constitutional position of the Crown.[96]

89 *Redlich*, op. cit. Vol III, p. 58. Referring to Hatsell, Redlich states 'each vote ends the discussion which leads up to it, and binds the dissenting minority. Further opposition is therefore illogical, as it is taken for granted that a decision by majority expresses the will of the whole House'.

90 Assembly Debates (13.8.1992) 1656.

91 Assembly Debates (18.5.1993) 1563.

92 Assembly Debates (27.8.2003) 3310.

93 Assembly Debates (27.6.1996) 2229-30.

94 Assembly Debates (27.8.1996) 2567-8. And see Assembly Debates (31.8.1999) 2568-9; Assembly Debates (1.12.1994) 4447; Assembly Debates (27.6.1996) 2223-30.

95 Standing order 53. See also *House of Representatives Practice*, pp. 502-3.

96 *House of Representatives Practice*, pp. 502-3. For background to the rule see *May*, p. 436 and *Redlich*, Vol II, p. 220 and Vol III, p. 60 and footnote 2. Redlich states that there has been no surrender to the great principle maintained against Charles I in 1641 and against George III in 1783 that in matters of state the King can have no other views than those of his Ministers who bear the responsibility for them: 'Crown influence upon the proceedings of Parliament had under George III revived to an enormous extent and had produced most serious consequences for England'. The resolution of 1783 stating 'That to report any opinion or pretended opinion of His Majesty upon any bill or other proceeding depending in either house of parliament, with a view to influence the votes of the members, is a high crime and misdemeanour derogatory to the honour of the Crown, a breach of the fundamental privileges of Parliament and subversive of the constitution of the country'.

## Offensive or disorderly words

10.73 In addition to the prohibition on using the name of the Queen or of her representatives in Australia disrespectfully or for the purpose of influencing deliberations, Members are prohibited from using offensive words against:

- the Assembly;
- any Member of the Assembly; and
- any member of the judiciary.[97]

All imputations of improper motives and all personal reflections on Members must be considered highly disorderly.[98]

10.74 The practice of the Assembly has been consistently based on that of the House of Representatives and the United Kingdom House of Commons in that:

- Members can direct a charge against other Members or reflect upon their character or conduct only upon a substantive motion which admits of a distinct vote of the Assembly; [99]
- although a charge or reflection upon the character or conduct of a Member may be made by substantive motion, in expressing that charge or reflection a Member may not use unparliamentary words; and
- this practice does not necessarily preclude the House from discussing the activities of any of its Members.[100]

If a charge is made against a member of a committee, standing order 259 applies.[101]

10.75 Criticism of the courts has been permitted in debate as long as Members do not reflect on individual members of the judiciary.[102] For example, a Member was required to withdraw a suggestion that magistrates did not understand the concept of the separation of powers.[103] As addressed in Chapter 1, the Assembly has enacted legislation relating to the examination of complaints against judicial officers and their removal from office. It places specific and unusual restrictions on any Member who raises allegations relating to the behaviour or the physical or mental capacity of a judicial officer, including:

- the matter may be raised only by way of a motion to have a specific allegation in respect of the judicial officer (made in precise terms) examined by a judicial commission;
- the Member is obliged to give the Attorney-General not less than five sitting days notice of the motion; and
- the Member can proceed with the motion in the Assembly only if the Attorney-General declines to act on the complaint or, more precisely, if, within the period of notice, the Member has not been notified by the Attorney-General that the executive has been requested to appoint a commission to examine the allegation.[104]

97 Standing order 54.

98 Standing order 55.

99 Such charges have been permitted on an amendment to such a motion—A motion condemning a Minister for certain action having been moved, an amendment was moved censuring the shadow Minister '… for his blatant and repeated misleading of the people of Canberra and this Assembly', and agreed to. See MoP 2004-08/313-5; Assembly Debates (24.8.2005) 3188.

100 Assembly Debates (16.5.1996) 1348. And see Assembly Debates (25.3.1999) 862-3.

101 See Standing Committee on Legal Affairs, Report No 2, *'Standing order 259 and the inquiry into the operation of the Dangerous Goods Act 1975 with particular reference to fireworks*', dated June 2002, MoP 2001-04/210.

102 Assembly Debates (26.11.2003) 4755. The Assembly was considering the Sentencing Reform Amendment Bill 2003.

103 Assembly Debates (13.10.1999) 3100 and 3102-3. The Assembly was considering the Children's Services (Amendment) Bill (No.2) 1999, the key provision of which 'would enable the Chief Magistrate to assign another Magistrate in the event that the designated Children's Magistrate was unavailable or for other good reasons'. The comments made alluded to the lack of commitment by the Magistrates Court to earlier legislative changes made by the Assembly. And see Assembly Debates (8.12.2004) 155; Assembly Debates (9.12.2004) 215.

104 *Judicial Commissions Act 1994*, subsection 14(3). For a full outline of these procedures see Chapter 1: The Legislative Assembly, its establishment, role and membership.

## Offensive and disorderly language

10.76 Should any offensive or disorderly words be used (whether by a Member addressing the Chair or any Member who is present), the Speaker is obliged to intervene and, when his or her attention is drawn to words used, the Speaker is required to determine whether or not they are offensive or disorderly.[105]

10.77 What is offensive or disorderly? As McGee points out in relation to New Zealand practice:

> There are some specific types of references which the Standing Orders hold to be unparliamentary – personal reflections and imputations of improper motives. These might equally be regarded as being offensive or disorderly; indeed, it may be very difficult to determine under which precise provision of the Standing Orders an expression is being ruled out of order.
>
> Whether a particular phrase is offensive or disorderly depends upon the context in which it is used, and an expression acceptable in one context may be unacceptable in another … [expressions] … may have been ruled to be unparliamentary because they could lead to disorder in the House, or because they are offensive in themselves, or because they are personal reflections.[106]

10.78 If it is determined that words used are offensive or disorderly, the Speaker will require that they be withdrawn. Should a Member refuse to withdraw offensive or disorderly words, the Member may be named by the Speaker pursuant to the provisions of standing order 202. Though it is considered better to draw the attention of the Speaker to words used at the time they are used,[107] Members have been required to withdraw imputations of improper motives and personal reflections after the Speaker has reviewed the *Hansard* record.[108]

10.79 Words contained in a quotation that make imputations of improper motives (matters that could be addressed only upon a substantive motion) and offensive words against a Member of the Assembly must be withdrawn[109] and the Speaker has advised the Assembly that he/she intended to rule as unparliamentary any statement which he/she deemed to be so, regardless of its veracity.[110]

10.80 It is disorderly to imply that a Member is racist[111] (it has been ruled as disorderly) and to canvass a previous decision of the Assembly where a Member was found to have misled the Assembly.[112] The Speaker, citing standing order 156, has disallowed imputations of conflict of interest, stating that they were matters for the Assembly to decide and that the same rule applied as would apply in relation to claims about people misleading the Assembly.[113]

10.81 A withdrawal must be unequivocal[114] and must be made unqualifiedly and immediately.[115] A Member may not decline to withdraw an imputation and seek to support it by moving a substantive motion on the matter; the imputation must be withdrawn.[116]

105 Standing orders 56 and 57.
106 David McGee, *Parliamentary Practice in New Zealand*, p. 187.
107 Assembly Debates (6.4.2005) 1432.
108 Assembly Debates (28.11.1990) 4773; Assembly Debates (25.3.1999) 862-3; Assembly Debates (14.11.2002) 3667.
109 MoP 1998-2001/852-3; Assembly Debates (11.5.2000) 1520-38. And see Assembly Debates (27.6.2002) 2380; Assembly Debates (25.8.2005) 3258.
110 Assembly Debates (16.6.1992) 803. In advising the Assembly the Speaker tabled a legal opinion she had received on the matter.
111 Assembly Debates (25.8.2005) 3257-8.
112 Assembly Debates (15.6.1994) 2003.
113 Assembly Debates (10.12.2003) 5187. And see Assembly Debates (11.2.2004) 246; Assembly Debates (15.2.2005) 381-2 and Assembly Debates (7.4.2005) 1489. On an earlier occasion a Member was named and suspended for refusing to withdraw an imputation that a Member had a conflict of interest; see Assembly Debates (15.5.1997) 1544-8.
114 Assembly Debates (9.3.2004) 892.
115 Assembly Debates (24.8.1989) 1375.
116 Assembly Debates (28.10.1998) 2348-50.

**10.82** After a range of serious charges had been made by a Member against another Member in a document tabled in the Assembly, the Speaker asked Members to be more aware in the future of the possible repercussions of tabling documents and asked Members to make themselves fully aware of the contents of documents before granting leave to table them.[117]

**10.83** The question of whether remarks that reflect upon a group rather than upon individual Members are out of order has arisen in the Assembly from time to time. In August 1996 Speaker Cornwell advised the Assembly that:

> In recent months points of order have been raised and rulings given concerning the use of unparliamentary words against a group or an organisation. For example, a member was prevented from accusing a Minister of being a liar, but subsequently accused the Government of being liars. In the past a remark having been made that reflects upon a group rather than an individual has not been ruled out of order.
>
> Having considered the matter, I intend to prevent such occurrences in future From now on, subject to any direction that the Assembly may give me, I intend to adopt the House of Representatives practice … which quotes the following ruling by Speaker Snedden in 1981 which has been applied by successive Speakers in that house:
>
> > I think that if an accusation is made against members of the House which, if made against any one of them, would be unparliamentary and offensive, it is in the interests of the comity of this House that it should not be made against all as it could not be made against one. Otherwise, it may become necessary for every member of the group against whom the words are alleged to stand up and personally withdraw himself or herself from the accusation.
>
> Accordingly, I call upon members to cease using unparliamentary expressions against a group or all members which would be unparliamentary if used against an individual.[118]

**10.84** Comments critical of the conduct of the Speaker are addressed in Chapter 5: Speaker and officers of the Assembly, paragraphs 5.39 to 5.44.

**10.85** The fact that Members are criticised in the Assembly does not necessarily mean that standing orders have been breached.[119] For example, the Chair has declined to rule that words complained of were offensive or disorderly, stating that he was reluctant to get involved in nuances and emphases in what, on the facts available, appeared to be essentially a political matter. In so ruling, he cited an observation made in the Senate by Deputy President Wood:

> When a man is in political life it is not offensive that things are said about him politically. Offensive means offensive in some personal way. The same view applies to the meaning of 'improper motives' and 'personal reflections' as used in the standing orders. Here again, when a man is in public life, and a member of this Parliament, he takes upon himself the risk of being criticised in a political way.[120]

117 Assembly Debates (10.12.2002) 4059-60. And see Assembly Debates (19.11.2003) 4279.

118 Assembly Debates (27.8.1996) 2568. And see Assembly Debates (20.10.92) 2748-50 (reference to an Assembly committee); Assembly Debates (15.5.1997) 1505; Assembly Debates (20.2.1997) 276-8; Assembly Debates (14.5.2004) 1958.

119 Assembly Debates (19.11.2002) 3774. And see Assembly Debates (3.3.2004) 666.

120 MoP 2001-04/285; Assembly Debates (27.8.2002) 2789. And see Assembly Debates (2.4.2003) 1259.

**10.86** In October 2003, Speaker Berry, in referring to a Member's comments about the issue of her being described as 'being guilty of hypocrisy', stated:

> … I have had a chance to reflect on the *Hansard*, and the decision and practice in this place over many years. On other occasions hypocrisy has been ruled out of order but I have formed the view that it is difficult in such a political hotbed to rule out discussion about the pretence of one's position, sometimes described as hypocrisy. That is not to say that I am going to allow it where an inventive use of the word could lead to disorder.
>
> I will not tolerate using name-calling in this chamber—for example, where a member is described as a hypocrite—because I know that is unacceptable and unparliamentary.[121]

Claims that Members have misled the community have not been ruled out of order.[122]

**10.87** The Assembly, noting earlier rulings on a matter concerning the use of a particular word, has called upon the Speaker, in a motion passed by the Assembly, to review the proof *Hansard* of proceedings to determine whether words used were offensive or disorderly and, if so found, direct that they be withdrawn. The motion also asked that the Speaker conclude his deliberations and report to the Assembly on his decision by a set time. The Speaker ruled that the use of the word complained of in the terms that it was used was unparliamentary.[123]

**10.88** Members have been reminded of the resolution of the Assembly regarding the exercise of freedom of speech when referring to public servants.[124] The Assembly has ordered that a notice containing imputations regarding the behaviour of a public servant be removed from the *Notice Paper* for the remainder of the year.[125]

**10.89** A Member had attempted to move an amendment to a bill which was clearly out of order and, in addition, contained words substantially the same as words the Speaker had earlier directed to be removed from a notice of motion because of their unbecoming nature (and which had also been contained in a question on notice ruled out of order).

**10.90** In advising the Assembly of her action, the Speaker concluded that, given her earlier rulings on the appropriateness of certain statements being included in notices of motions and questions, the recent order of the Assembly prohibiting the placing of a notice of motion containing certain allegations on the *Notice Paper*, and the disorderly manner in which the Member had sought to place those allegations on the record the previous evening, the comments made should not be included in the record, and she had directed accordingly.[126]

## Sub judice convention

**10.91** One significant limitation on the ability of the Assembly to consider and discuss matters is the restraint that it has placed upon itself in relation to matters that are under adjudication in the courts of law. This is commonly referred to as the sub judice convention (or

121 Assembly Debates (22.10.2003) 3885. And see earlier ruling at Assembly Debates (27.8.2003) 3252.
122 Assembly Debates (18.11.2003) 4221.
123 MoP 1995-97/775; Assembly Debates (4.9.1997) 2890-94. The word complained of was 'harlot'.
124 Assembly Debates (18.11.1998) 2608. And see Assembly Debates (24.6.1997) 1954, Assembly Debates (17.11.1998) 2562, Assembly Debates (8.12.1998) 3229-31 (public servants); Assembly Debates (27.8.2003) 3252 regarding comments about former administrations; and Assembly Debates (11.2.2004) 237-8 regarding a Commonwealth Minister.
125 MoP 1992-94/344-5. And see NP 60 (13.5.1993) 797.
126 Assembly Debates (19.5.1993) 1615-6.

sub judice rule).[127] It has three main components, namely that:

- proceedings in the courts are not prejudiced—by influencing juries or witnesses or undermining evidence that might be led—because matters before the court have been canvassed in the legislature;
- legislatures do not undermine public respect for the courts by the appearance of political interference in judicial processes; and
- the principle of 'comity'—that the legislature and the judiciary should, as far as is possible, avoid intruding in each other's areas of responsibility.[128]

**10.92** *Odgers'* quotes the remarks of Justice Spender of the Federal Court where he states that 'if the effect of a public prejudgement is to undermine public confidence in that judgement, even though it does not affect the process by which that judgement is reached, that equally is a contempt'.[129] It is of note that evidence received by the House of Commons Procedure Committee suggested that the principle of comity was as important as the risk of prejudice.[130]

**10.93** The elements of the convention are open to debate and interpretation. Issues to be considered include:

- how far advanced are the legal proceedings in question?
- how susceptible is the court to external influence?
- how detailed must the reference to the matter be before it can be considered prejudicial?
- by what mechanism will parliamentary debate or a committee inquiry actually interfere with judicial proceedings?
- does the convention apply only to courts of law, strictly defined, or does it have application in other quasi-judicial or inquisitorial tribunals?
- does the public interest in debating the matter outweigh concerns for the court's processes?

These questions must be considered by a legislature in reaching a decision on whether to apply the convention to a specific matter.

**10.94** Up until March 2008, when the Assembly adopted a resolution of continuing effect based on a similar resolution in the United Kingdom House of Commons, the Assembly had not adopted a standing order or other rule on the matter but has drawn on the practice of the House of Representatives (which itself draws on that of the House of Commons) and, increasingly in recent years, the Senate.[131]

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127 The rule developed in the House of Commons as a convention dependent upon Speakers' rulings since 1889 and first codified as a resolution in 1963. It was last updated in November 2001 following a recommendation of the Joint Committee on Parliamentary Privilege. See House of Commons Procedure Committee, *The Sub Judice Rule of the House of Commons*, First Report of Session 2004-05, HC 125, pp. 5–6 and 19. House of Commons Procedure Committee, *Application of the sub judice rule to proceedings in coroners' courts*, Second Report of Session 2005-06, HC 714, p. 7.

128 Assembly Debates (20.2.2002) 408; Assembly Debates (11.12.2002) 4203-4; and Assembly Debates (8.12.2004) 136. The Speaker of the Assembly has referred to this on a number of occasions, adding, on the last of these, that he expected the courts to observe similar caution when it comes to using Assembly proceedings in evidence that comes before them.

129 Odgers', p. 198. See also, House of Commons Procedure Committee, *The Sub Judice Rule of the House of Commons*, First Report of Session 2004-05, HC 125, p. 6 (Evidence to the committee by the Attorney General, Lord Goldsmith QC).

130 *Application of the sub judice rule to proceedings in coroners' courts*, Second Report of Session 2005-06, HC 714, p. 15.

131 See Assembly Debates (20.2.2002) 408; Assembly Debates (2.4.2003) 1199; Assembly Debates (8.12.2004) 127-55 and 182-95; Assembly Debates (16.2.2005) 469-70. In fact, the application of the convention in Australian legislatures at least varies from jurisdiction to jurisdiction. A July 1997 report of the Legislative Assembly of Queensland's Members' Ethics and Parliamentary Privileges Committee found that, whilst there were many similarities between the way legislatures apply the convention in their jurisdictions, there were also significant discrepancies (see *Report on the sub judice convention*, Report No. 7 of the Members' Ethics and Parliamentary Privileges Committee, Legislative Assembly of Queensland, July 1997, pp. 4-5.

10.95 In its application in the House of Representatives, the convention is that, 'subject to the right of the House to legislate on any matter, matters awaiting adjudication in a court of law should not be brought forward in debate, motions or questions'.[132]

10.96 In the House of Representatives the 'right of the House to debate and legislate on matters without outside interference' is viewed as self-evident and the discretion exercised by the Chair 'must be considered against the background of the inherent right and duty of the House to debate any matter considered to be in the public interest'. The convention would not, for example, preclude the introduction of legislation 'to remedy a situation which is before a court'. [133]

10.97 The House has defined the application of the convention in the case of criminal matters as being 'from the time a person is charged until a sentence has been announced … [and if] … an appeal is lodged … until the appeal is decided'. In terms of civil matters, they 'should not be referred to from the time they are set down for trial or otherwise brought before a court'.[134]

10.98 The Senate has tended to take an approach at once more robust and more nuanced. It has given more emphasis to the balancing of the public interest with the principle of non-interference in judicial proceedings and also the examination of issues on a case-by-case basis to ascertain the real likelihood of prejudice having regard to all the circumstances surrounding a particular matter. *Odgers'* identifies three key principles:

- there should be an assessment of whether there is a real danger of prejudice in the sense of a court being unable to deal fairly with the evidence put before it or the possibility of a future witness being affected;
- the danger of prejudice must be weighed against the public interest in the matters under discussion; and
- the danger of prejudice is greater when a matter is actually before a magistrate or a jury.[135]

10.99 This last is an important consideration, endorsed by Justice Spender in his comments quoted above (see paragraph 10.92). A judge or judges of a superior court sitting without a jury are much less likely to be influenced in their deliberations than is a jury. Indeed, as *Odgers'* notes:

> The courts are now less concerned about such public discussion, having concluded that 'in the past too little weight may have been given to the capacity of jurors to assess critically … [and] … to reach their decisions by reference to the evidence before them'.[136]

10.100 The Clerk of the Senate has also counselled against applying the convention to a matter that is still under investigation in anticipation that it might lead to legal proceedings. Having noted that the existence of unexaminable evidence taken by a parliamentary committee might 'create difficulties' for subsequent legal proceedings, the Clerk commented that:

> If the Senate or its committees were to refrain from inquiries deemed to be in the public interest on the basis of mere possibilities or relevant legal proceedings in the future, there would be very few inquiries which they could pursue.[137]

132 *House of Representatives Practice*, p. 505.

133 *House of Representatives Practice*, pp. 57. In the United Kingdom the discretion is exercised by the Speaker personally, and in that jurisdiction only a few cases reach the Speaker. See House of Commons Procedure Committee, *The Sub Judice Rule of the House of Commons*, First Report of Session 2004-05, HC 125, p. 5 and pp. 14-5.

134 *House of Representatives Practice*, pp. 506-7.

135 *Odgers'*, pp. 199-200.

136 *Odgers'*, p. 203.

137 Advice to the Chair of the Senate Standing Committee on Rural and Regional Affairs and Transport, 3 July 2001, p. 3. Journals 1998-2001, p. 4831.

**10.101** A further consideration when applying the convention is that the practice of the media in avoiding discussion of matters before the courts has changed significantly in recent decades. Reporting of investigations leading up to a matter coming before a court is detailed, often sensationalised and intrusive. 'Judgements' as to guilt and innocence are freely offered. The merits of evidence are discussed, the strengths and weaknesses of defence and prosecution cases widely debated and likely outcomes canvassed. Even law officers and the police now routinely make statements to the media on the progress of investigations. Thus, judges, juries and witnesses are, potentially, subject to a barrage of information and comment before a case starts, and the legal system has had to adapt to that.

**10.102** Legislatures should not join a rush to the lowest common denominator of acceptable practice. However, they would be foolish to deny themselves the opportunity to debate important matters of public concern by the rigid application of a convention rendered redundant by the actions of others.[138]

**10.103** The Senate has also taken the view that royal commissions and boards of inquiry which are not courts and to which the convention does not strictly apply are unlikely to be influenced in their findings by parliamentary debate. However, similar issues can arise. Clearly, the potential for the appearance of political interference exists even if debate in the legislature had no influence on the process and findings of an inquiry.

**10.104** With regard to coronial inquests—a particular issue in the ACT—*Odgers'* takes the view that an inquest 'although an administrative inquiry … may be prejudiced by parliamentary debate'[139] and the legislature should avoid canvassing issues before such an inquiry. Perhaps more importantly, some potential exists to affect the evidence-gathering process.

**10.105** The Clerk of the Senate, in advice (see footnote 138) also considered this matter. It had been submitted that a committee should not conduct an inquiry into matters which were the subject of a coronial inquest because material taken in evidence by the committee would be a 'proceeding in parliament', and 'would be unexaminable in the coroner's inquiry and thereby might prevent the completion of that inquiry'.

**10.106** The advice argued that this was not the case, that there is nothing to prevent a document being submitted to both a legislature and a coronial or other inquiry and therefore 'nothing to prevent witnesses … being examined on the content of documents which had also been submitted to the committee'.[140] It was noted that oral evidence could present a real difficulty because parliamentary privilege would prevent a witness before a coroner or other tribunal being examined on evidence that they had given to a parliamentary committee.

**10.107** The Clerk advised that:

> … if a witness … gave evidence which appeared to be inconsistent with, or contradictory of, their evidence before a committee, they could not be cross examined … about the inconsistency or contradiction.[141]

Conceivably, the inability to resolve such a contradiction might mean that the inquiry 'could not be fairly completed'.[142] Thus, the legislature and its committees should have regard to that possibility, however small.

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138 Advice to the Chair of the Senate Standing Committee on Rural and Regional Affairs and Transport, 3 July 2001, p. 1. The Clerk of the Senate noted that a matter which the committee was examining and which was also the subject of a coronial inquest '… has been the subject of extensive public discussion which … weakens the case for restraint on the part of the Senate or its committees'.

139 Though in the Territory, the Coroners Court is a court of record. See paragraph 10.110.

140 Advice to the Chair of the Standing Committee on Rural and Regional Affairs and Transport, 3 July 2001, p. 2.

141 Advice to the Chair of the Standing Committee on Rural and Regional Affairs and Transport, 3 July 2001.

142 Advice to the Chair of the Standing Committee on Rural and Regional Affairs and Transport, 3 July 2001, pp. 2-3.

### Application of the convention in the Assembly

10.108 To date, the convention has been applied in the Assembly in relation to matters before the courts, both within the Territory and elsewhere in Australia (with a significant number, if not the majority of precedents, applying to matters subject to coronial inquiries and inquests) and, in limited circumstances, to boards of inquiry.

10.109 In the Territory, the *Coroners Act 1997* establishes the Coroner's Court as a court of record constituted by a single coroner (a magistrate) and with the person holding or occupying the office of Chief Magistrate being the Chief Coroner.[143] The jurisdiction of coroners is to:

(a) hold inquests into the manner and cause of deaths of persons in certain stipulated circumstances;

(b) hold inquiries into fires that have destroyed or damaged property as set out in the Act; and

(c) to inquire into the cause and origin of disasters at the request of or with the consent of the Attorney-General.[144]

The coroner has the power to subpoena witnesses,[145] to take evidence under oath[146] and to deal with contempt of court matters.[147] Inquests and coronial inquiries have certainly been viewed as judicial inquiries in the Assembly.[148]

10.110 The Assembly has also made legislative provision for both royal commissions[149] (to date, no royal commissions have been appointed by the executive) and boards of inquiry.[150] It is in connection with the proceedings of boards of inquiry conducted pursuant to the provisions of the *Inquiries Act 1991* that matters relating to sub judice have also arisen in the Assembly.

10.111 The danger of prejudicing proceedings in the courts, proceedings of inquests, and coronial inquiries and boards of inquiry concerning the conduct of individuals has led to the application of the sub judice convention in the Assembly with, perhaps, matters on occasion not being as straight forward as they may be in other jurisdictions. Discussion on significant issues of governance and the administration of the Territory has been delayed for considerable periods whilst inquests and coronial inquiries have been underway.[151] On separate occasions, the conduct of a board of inquiry and a coronial inquiry has been the subject of proceedings in the Supreme Court. The Speaker was obliged to seek to be represented on a privilege matter in the former[152] (there were also inquests underway on related matters) and motions were proposed in the Assembly to hold the Chief Minister and Attorney-General (who was also a witness before the particular coronial inquiry) to account for supporting an order seeking to prohibit a coroner from further conducting a coronial inquiry in the latter.

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143 *Coroners Act 1997*, Sections 4 to 6.

144 *Coroners Act 1997*, Sections 13, 18 and 19.

145 *Coroners Act 1997*, Section 43.

146 *Coroners Act 1997*, section 48. Thus falling within the definition of "tribunal" for the purposes of subsection 16(3) of the *Parliamentary Privileges Act 1987* (Commonwealth).

147 *Coroners Act 1997*, Section 99A.

148 See comments by Attorney-General Stanhope at Assembly Debates (5.3.2003) 509-10.

149 *Royal Commissions Act 1991*.

150 *Inquiries Act 1991*; and see paragraphs 2.38 to 2.41.

151 Following the demolition of the former Royal Canberra Hospital on 13 July 1997 and the consequent inquest into the death of a young girl, it was not until 24 November 1999 after completion of the inquest that the Assembly debated the matter fully in a motion of want of confidence in the Chief Minister; Assembly Debates (24.11.1999) 3549-62; and see comments by Chief Minister Carnell—Assembly Debates (27.8.1997) 2516-7. The delay in holding inquests was seen as one of the main sources of frustration with the application of the sub-judice resolution to coroners' courts in the United Kingdom; see House of Commons Procedure Committee, *Application of the sub judice rule to proceedings in coroners' courts*, Second Report of Session 2005-06, HC 714, p 21. There was also a considerable delay in the coronial inquest into the January 2003 bushfires.

152 See Chapter 2: Immunities and powers of the Assembly (Privilege).

10.112 An added layer or dimension to the application of the convention has also emerged, given the propensity for the Assembly to pressure and even force the executive to appoint boards of inquiry. One board of inquiry (the Smethurst inquiry), appointed after extensive consultation with Members, put into recess by the Chief Minister because of the possibility of it impacting on an inquest into the death of a young girl arising from the demolition of the old Royal Canberra Hospital.[153] This occurred after the Assembly had rejected motions calling for the appointment of a board of inquiry whilst a coronial inquiry was progressing.[154]

### Danger of prejudicing court proceedings

10.113 The sub judice convention has been invoked in the Assembly to ensure that the decisions of courts are not impeded or prejudiced. In early 1991, in what became known as the Westpac documents case,[155] the Speaker ruled that disclosure of certain documents to the Assembly, and their subsequent publication elsewhere could prejudice one of the parties in proceedings before the courts (elsewhere in Australia). This ruling confirmed an earlier ruling that the documents were not to be tabled nor their contents disclosed in the Assembly.[156] In making the ruling, the Speaker advised the Assembly that he had not done so lightly and that, having balanced the rights of the Assembly and the public interest against the interests of justice, he did not believe that disclosure of the contents of the documents at that stage in the legal proceedings would be prudent.

10.114 It might be argued that this was not a matter of sub judice. However, the legal proceedings in question were hearings seeking injunctions to prevent publication of the documents. Thus, their disclosure in the Assembly, and subsequent publication, would have pre-empted a decision of the court and denied the plaintiff the opportunity to present his case. The majority of the cases pending were of a civil nature with no jury consideration (although in one case it had become clear that subsequent criminal prosecutions may occur at a later stage). Accordingly, debate on the merits of suppressing the documents was likely to influence the courts.[157]

10.115 There have been other cases where the sub judice convention has been invoked due to there being a perceived danger of prejudicing the outcome of matters before the courts, for example:

- the Speaker directed the Clerk to withdraw two parts of a question placed on notice that may have prejudiced a coronial inquiry;[158]

153 See comments by Chief Minister Carnell at Assembly Debates (27.8.1997) 2516-7. The appointment of the boards of inquiry (there were actually two) and their termination and suspension occurred during the winter adjournment period though it is apparent from the Chief Minister's comments that extensive negotiation had taken place with Assembly members on their terms of reference.

154 MoP 2001-2004/550-2 and 580-1, and see comments by Chief Minister Stanhope at Assembly Debates (5.3.2003) 509-11.

155 See *Odgers'*, pp. 200-2; for a full account of the matter in the Assembly see *Sub judice: Recent Developments*, Paper by David Prowse, MLA, Speaker of the Legislative Assembly for the ACT at the 22nd Presiding Officers' and Clerks' Conference, July 1991.

156 The documents set out legal advice to Westpac about foreign currency loans which involved a Westpac subsidiary and were the subject of several injunction proceedings in the Supreme Court of New South Wales against newspaper companies, the Australian Broadcasting Corporation and a former bank employee preventing the disclosure of the letters.

157 MoP 1989-91/404; Assembly Debates (12.2.1991) 91-3, 96-7; Assembly Debates (13.2.1991) 251-4; Assembly Debates (14.2.1991) 329-35. The Member sought to table the documents on two occasions. The two major documents, advices from a law firm to Westpac Banking Corporation (believed to be the same documents which had been referred to in the media), were the subject of several interlocutory injunctions preventing their publication in the media and had been the subject of a ruling by the President of the Senate earlier in that week. One factor considered by the Speaker was the legal professional privilege that was attached to the documents—See *Sub judice: Recent Developments*, Paper by David Prowse, MLA, Speaker of the Legislative Assembly for the ACT, at the 22nd Presiding Officers' and Clerks' Conference, July 1991.

158 Assembly Debates (14.5.1996) 1188-9. See also NP 46 (14.5.1996) 550; NP 47 (15.5.1996) 568. The Speaker had first requested the Member to remove the parts from the question on the *Notice Paper.*

- reports of a board of inquiry having been tabled and there being related matters before both the coroner (concerning the deaths of two persons) and the Supreme Court (regarding the conduct of the board of inquiry), Members were directed to restrain their comments;[159]
- a matter of public importance submitted for discussion was ruled out of order, there being proceedings before the Supreme Court; pleadings had taken place and although the matter was not set down for trial, mediation was scheduled to take place in the very near future;[160]
- Members were asked not to stray into areas that may discredit witnesses or influence proceedings before the coroner;[161] and
- a question on matters that may be of interest to a coroner was disallowed.[162]

**10.116** The convention has not necessarily prevented the raising of matters of major concern regarding the administration of the Territory by the executive, though the parameters of debate have been curtailed on occasion.

**10.117** At the commencement of the Sixth Assembly, an order having been sought in the Supreme Court to prohibit a coroner from further conducting a coronial inquiry into the causes of the January 2003 bushfires in Canberra (on the ground of apprehended bias), and the ACT Government having joined the appeal (there were other respondents), two principal motions critical of the government's intervention in proceedings undertaken in the Supreme Court were permitted to proceed in the Assembly:[163]

- The first, in December 2004, purported to direct the Attorney-General to instruct lawyers representing him and the government to discontinue the appeal against the coroner in the Supreme Court and to affirm his and his government's confidence in the coronial process. It later transpired that there was a belief that there was a conflict of interest in the Attorney's role as Attorney and as a witness before the coronial inquiry.[164]
- The second, in February 2005, called upon the Attorney-General to stand aside until the coronial inquest into the January 2003 bushfires and other related court actions were concluded.[165]

**10.118** Prior to each motion being moved, the Speaker made statements to the Assembly on the application of the sub judice convention. On the first occasion, he referred to the motion's potential to create debate that would go to issues that would likely be before the court.

**10.119** The Speaker also referred to the public debate that was proceeding concurrently and the ability of the court to defend itself if that debate impinged on its proceedings. The Speaker argued that since the court had no similar power with regard to debate in the Assembly, the onus was on him to protect the court, adding:

> … I think there is a likelihood that this debate will be a very thin one because it is very hard to avoid questions of sub judice in dealing with this matter. I will err on the side of safety: if Members contributing to the debate touch on

159 Assembly Debates (20.2.2002) 408.
160 Assembly Debates (11.12.2002) 4203.
161 Assembly Debates (21.10.2003) 3850-3.
162 Assembly Debates (18.10.2005) 3741-2.
163 Inquests were also conducted into the deaths of four persons in the fires but interim findings on those matters had not been challenged. The inquiry had been stayed until further order of the court. See judgement of the Supreme Court at <http://www.courts.act.gov.au/supreme/judgments/doogan1.htm>.
164 A motion expressing lack of confidence in the Attorney-General was moved following the failure of the first motion; See MoP 2004-08/31-3; Assembly Debates (8.12.2004) 127-55, 182-95.
165 MoP 2004-2006/62-3; Assembly Debates (16.2.2005) 469-80, 497-503.

> issues that I feel may find their way to the court, I will prevent the debate from continuing along those lines.[166]

**10.120** The Speaker made a similar statement prior to commencement of consideration of the second motion in February 2005, advising the Assembly that he intended to follow the principles as set out in *Odgers*' in deciding whether to invoke the sub judice convention stating:

> In deciding whether to invoke the convention for debates, questions and motions concerning both proceedings in the Supreme Court and the Coroners Court, I intend to follow the same principles that are set out in the 11th edition of *Odgers*, namely, that there should be an assessment of whether there is a real danger of prejudice in the sense that it would cause real prejudice to the outcome of the trial or inquest; that the danger of prejudice must be weighed against the public interest in the matters under discussion; and that the danger of prejudice is greater when a matter is actually before a magistrate or a jury. And it should be noted that magistrates undertake the duties of a coroner in the ACT.[167]

The Speaker again referred to the inability of the courts to defend themselves when matters were discussed in the Assembly. He warned Members that, with regard to matters still before the coroner, they should restrain their comments about the cause of death of the four persons and, in relation to matters before the Supreme Court, asked Members to refrain from discussing the apprehension of bias in the conduct of the coronial inquest.[168]

**10.121** In both debates there was a tension between the Speaker's efforts to prevent prejudice to the proceedings in the Supreme Court and the coronial inquiry and inquest and the desire of Assembly Members to hold the executive to account for its intervention in and handling of the matter. During the course of both debates, the Speaker intervened on a number of occasions, calling Members to order where it was felt that court proceedings may be prejudiced. A motion of dissent from a Speaker's ruling was moved in the December 2004 debate (see paragraph 10.132) and, on another occasion, a Member was directed to resume his seat.[169]

**10.122** On one occasion, the mover of the motion was called to order when it was postulated that the Attorney-General had a conflict of interest specifically because he had appeared as a witness before the coronial inquiry. It was asserted that this was in conflict with the conventions and role of an Attorney-General. The Speaker called the mover of the motion to order. He stated that matters had been raised that were going to come before the courts; they would almost certainly be led in evidence. Accordingly, if the mover of the motion raised these issues in the Assembly, that would prevent their being raised in the courts.[170]

**10.123** It is of note that both in relation to the above precedent (and on a later occasion), the Speaker expressed a particular caution about matters in debate impinging on the proceedings in court—the perceived difficulty being that matters that are entered into in Assembly proceedings may become inadmissible in the courts.[171]

166 Assembly Debates (8.12.2004) 127. During the debate that followed the Speaker made a number of rulings invoking the convention and cautioning Members, and a motion of dissent was moved and negatived (see paragraph 10.121).
167 Assembly Debates (16.02.2005) 470.
168 Assembly Debates (16.2.2005) 469-70. In fact it was the coronial inquiry.
169 Assembly Debates (8.12.2004) 208.
170 Assembly Debates (16.2.2005) 469-71, 475, 479, 480.
171 Assembly Debates (16.2.2005) 471; Assembly Debates (17.8.2005) 2834-5.

10.124 The application of the convention in the Assembly has not prevented the Assembly from legislating on matters,[172] nor has it prevented the relevant Minister from responding to a question about criticism by the coroner of the Government Solicitor's Office (for withholding funds from counsel).[173] The Speaker has also expressed the view that Members can make passing reference to current court proceedings and that it was inappropriate for Members to attempt to stifle debate completely by taking points of order in relation to such references.[174]

### Need for comity

10.125 In addition to ensuring that the decisions of courts are not impeded or prejudiced by proceedings in the Assembly, the need for comity has also been a factor in the Chair exercising his or her discretion in the Assembly. In ruling on matters, the Speaker has referred to his concern to ensure that the judiciary and the legislature do not interfere with each other's proceedings.[175]

### Boards of inquiry and other tribunals

10.126 The sub judice convention has been invoked in relation to the operation of a board of inquiry where it was thought the propriety of the actions of a person may have been questioned. This arose in a supplementary question regarding a perceived conflict of interest relating to the public servant appointed as secretary to the Smethurst inquiry. The Speaker cited the practice in the House of Representatives and ruled the question out of order.[176]

10.127 The convention was not invoked in April 1994 when the Assembly considered a motion expressing lack of confidence in a Minister 'by reason of his deliberate or reckless misleading of the Assembly concerning matters relating to the ACTTAB's contract with VITAB Limited' whilst an inquiry established pursuant to the Inquiries Act was underway. It was claimed that the inquiry's terms of reference related directly to the conduct of the Minister and his involvement in the agreement.[177]

10.128 The Speaker considered invoking the convention in relation to a matter before the Refugee Review Tribunal (notice having been given of a motion relating to the proposed deportation of Timorese people living in Australia) but allowed the motion to proceed.[178] Whilst understanding that a matter before the Discrimination Commissioner was not subject to the sub judice convention, the Speaker asked Members to recognise the importance of exercising some restraint in this matter when it came to commenting on the situation of individuals.[179]

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172 See, for example, consideration of the Bushfire Inquiry (Protection of Statements) Bill 2003 (a bill aimed at protecting people making statements to an inquiry announced by the executive into the operational response to the January 2003 bushfires), MoP 2001-04/579, Assembly Debates (5.3.2003) 495, the Limitation Amendment Bill 2005 at MoP 2004-08/365, 513-4; Assembly Debates (21.9.05) 3425-8; and Assembly Debates (14.12.2005) 4792-800.

173 Assembly Debates (17.8.2004) 3700-1.

174 Assembly Debates (29.3.2006) 797.

175 Assembly Debates (20.2.2002) 408; Assembly Debates (11.12.2002) 4203-4; and Assembly Debates (8.12.2004) 136 (on the last occasion, the Speaker adding that he expected the courts to observe similar caution when it comes to using Assembly proceedings in evidence that comes before them).

176 Assembly Debates (26.8.1997) 2448-9.

177 Assembly Debates (12.4.1994) 569-71. In the course of the debate the Attorney-General drew the attention of the Assembly to the sub judice convention and the practice in the House of Representatives and the Senate in relation to royal commissions and advised the Assembly that the government had consciously not raised the sub judice convention (not wishing to be accused of trying to stifle debate).

178 MoP 2001-04/681; Assembly Debates (2.4.2003) 1199; NP 54 (2.4.2003) 944.

179 Assembly Debates (30.5.1995) 516-7. The Assembly was considering a substantive motion—That, in recognition of the seriousness with which the community regards sexual harassment and to ensure the continued good standing of the Legislative Assembly, this Assembly urges the Chief Minister to stand her Deputy Chief Minister aside until the sexual harassment allegations concerning him are resolved.

### Discretion of Speaker

**10.129** The discretion of the Speaker is a core feature of the operation of the sub judice convention. The Speaker has the discretion to invoke or waive the convention. In the 1991 precedent regarding the Westpac documents (see paragraphs 10.114 and 10.115) the Speaker even declined to ascertain whether the leave of the Assembly sought to table the document was granted until he had ruled on the matter.

**10.130** After the ruling on the Westpac documents matter, the Member who had sought to table the documents moved, by leave, a motion proposing that the Assembly, in the interests of the community, override the decision of the Speaker and that it order the tabling of and authorise the publication of the two letters concerned. Debate ensued on the motion and was then adjourned, the order of the day for the resumption of the debate being later discharged.[180]

**10.131** In the course of the debate on the December 2004 matter referred to above when particular reference was made to the role of the Attorney-General as a witness before the coronial inquiry (and a witness who had corrected his statement to the coroner), the Member addressing the Assembly was ordered to discontinue 'that line'. The Speaker repeated his comment that he was going to err on the side of safety and referred to the danger of prejudicing evidence what might go before the courts.

**10.132** A motion of dissent from the ruling was moved (by leave). Issues raised in the resulting debate included the potential conflict of interest in the Attorney-General's role as Attorney-General and his role as a witness before the inquiry (it being postulated that what was said was 'nowhere near getting into the evidence') and the application of the sub judice convention. The Assembly upheld the Speaker's ruling.[181]

**10.133** In October 2005 the Assembly considered a motion which indicated that some Members were concerned that the sub judice convention was being applied too widely. The motion proposed that the Speaker's discretion be removed and guidelines for debating matters before a court be adopted. The terms of the motion were as follows:

(1) The Assembly reinforces the basic principle that debate should be avoided which could involve a substantial danger of prejudice to proceedings before a court, unless the Assembly considers that there is an overriding requirement for the Assembly to discuss a matter of public interest.

(2) Debate shall be allowed in the Assembly on any matter before the courts unless it can be demonstrated by a Member of the Assembly that such debate will lead to a clear and substantial danger of prejudice in the courts' proceedings.

(3) Unless the matter before the Assembly could cause real prejudice to a trial or court hearing in the sense of either creating an atmosphere where a jury would be unable to deal fairly with the evidence put before it, or would somehow perhaps affect a future witness in the giving of evidence, whether for the prosecution or the defence, then the matter for debate or questioning before the Assembly should be allowed.

(4) Sub judice only applies to matters which are awaiting or under adjudication in a court.[182]

180 MoP 1989-91/404, 478; Assembly Debates (14.2.1991) 329-35. The documents in question were widely published elsewhere at the time the motion was discharged.

181 MoP 2004-08/32; Assembly Debates (8.12.2004) 136-47.

182 MoP 2004-08/418-9.

10.134 Later in the debate, in an effort to reach a compromise, an amendment was moved which would have preserved the Speaker's discretion. The questions on both the amendment and the motion were negatived.[183]

10.135 In the United Kingdom House of Commons, the 2001 resolution (as well as preceding resolutions) provides that application of the sub judice rule is 'subject to the discretion of the Chair'. This gives the Speaker absolute discretion to waive the rule in the Chamber as he or she sees fit. Over the years this power has been used sparingly and the rule has been relaxed only in exceptional circumstances. In 2006 the Procedure Committee of the House of Commons, whilst not expecting the rule to be waived habitually, referred to its inquiry highlighting some areas of concern. The committee stated that evidence and argument submitted to the inquiry led it to conclude that certain criteria may make a case more suitable for discretion than others, including cases where:

- a discussion of relevant policy matters is sought, rather than an exposition of the facts of the case themselves;
- the inquest has already been subject to a significant delay and proceedings are not expected to commence for a further lengthy period;
- it is thought important that the matters be debated in parliament, due to the need to influence current events (other than the case itself) or to press for government action (perhaps to prevent another death in similar circumstances);
- the likelihood of prejudice to a current inquest is very low (the view of the coroner may be sought in these cases); and
- the Speaker is satisfied that a debate would not violate the principle of comity, or interfere or be thought to interfere with the role of the judiciary.

10.136 The committee stressed that it was not possible to set out hard and fast rules to determine which cases would be suitable for the Speaker to exercise his discretion over. The list above was intended as a guide to the factors which might weigh in favour of allowing a debate or question. However, the view of the committee was that the exercise of the Speaker's discretion must remain a matter for him or her alone, and must be based on a consideration of the specific circumstances of each case.[184]

### Matters before committees

10.137 In the House of Representatives the sub judice convention can also be invoked in respect of committee inquiries. *House of Representatives Practice* points out that, as committees have the ability to take evidence in private, they are able to guard against any risk of prejudice to proceedings as a result of evidence given or the reporting of such evidence by the media. An example given concerned the Standing Committee on Transport, Communications and Infrastructure inquiry into aviation safety in 1994–95. The committee decided that it should not receive evidence in public concerning two particular matters, one being the subject of a coronial inquiry and the other the subject of a judicial inquiry.[185]

10.138 In its report titled *Administration of AusSAR in the search for the Margaret J*, the Senate Standing Committee on Rural and Regional Affairs and Transport made reference to having resolved to defer its hearings on the inquiry at one stage. This followed the raising of issues concerning the inquiry's timing and potential to conflict with a coronial inquest and issues relating to speculation arising from media coverage. The committee's legal advice indicated

183 MoP 2004-08/418-9, 449-50; Assembly Debates (19.10.2005) 3894-9 and Assembly Debates (16.11.2005) 4181-94.

184 House of Commons Procedure Committee, *Application of the sub judice rule to proceedings in coroners' courts*, Second Report of Session 2005-06, HC 714, pp. 26-7.

185 *House of Representatives Practice*, p. 506.

that its inquiry might prejudice the conduct of the coronial inquest. Correspondence received from counsel had also outlined concerns that evidence obtained in the committee's inquiry could pre-determine the issue and undermine the coroner's determination. Based on this request, the committee resolved not to proceed with scheduled public hearings and deferred the inquiry pending the coroner's report.[186]

### References to persons—freedom of speech and citizen's right of reply

10.139 The standing orders listing the rules of debate (Chapter 6) contain no specific provisions relating to persons other than the Queen and her representatives in Australia, the judiciary and Members of the Assembly. Those standing orders relating to questions seeking information (Chapter 10) provide that questions may not contain statements of fact or names of persons unless this is strictly necessary to render the question intelligible and the facts can be authenticated.[187] The standing orders require notice to be provided when questions are critical of the character or conduct of 'other persons'.[188]

10.140 The Assembly has, however, adopted significant resolutions (a) calling upon Members to act responsibly in exercising the right of freedom of speech and to have regard to the reputations of others; and (b) adopting procedures to give persons or corporations that have been referred to or otherwise identified in the Assembly an opportunity to respond to such remarks in certain circumstances and to ask for their responses to be published in the Assembly record (citizen's right of reply). These resolutions, first proposed to the Assembly in 1991 and based on procedures of the Australian Senate, were adopted on a permanent basis on 4 May 1995[189] following a trial period. The resolutions and related procedures are discussed in Chapter 2: Immunities and powers of the Assembly (Privilege), paragraphs 2.107 to 2.129.

## Curtailment of speeches and debate

### Time limits on speeches and debate

10.141 Standing order 69 sets out in schedule form the maximum period for which a Member may speak on matters as listed in the standing order (the provision includes 'Debates not otherwise provided for') and the maximum period for certain debates[190] unless the Assembly were to otherwise order. The standing order has been suspended for the consideration of an executive business notice of motion on a particular day.[191]

10.142 There is provision for the extension of time of a Member's speech. On the interruption of a Member's speech (the maximum period having been reached), the Member may be granted leave by the Assembly to conclude his or her speech within a period of time that is one period half of the original period allotted.[192]

10.143 A motion to extend the time allotted for a debate or a speech is not open to debate, must be moved 'without argument or opinion offered' and must be put forthwith from

186 See *Administration of AusSAR in the search for the Margaret J*, Report of the Senate Rural and Regional Affairs and Transport Legislation Committee, August 2004, pp. 1-2 at <http://www.aph.gov.au/Senate/committee/rrat_ctte/completed_inquiries/2002-04/aussar/report/a01.pdf >.

187 Standing order 117(b)(i).

188 Standing order 117(d). Standing order 117(b) also prohibits questions that contain inferences, imputations or epithets. See comments by Speaker Cornwell at Assembly Debates (13.5.1997) 1273.

189 MoP 1995-7/32-4.

190 Motion for the adjournment of the Assembly, the question that a bill be considered an urgent bill, matter of public importance (a discussion rather than a debate) and suspension of standing orders.

191 MoP 1998-2001/322-3.

192 Standing order 69(j).

the Chair without amendment.[193] Though there is no formal provision preventing Members from seeking extensions of time on the adjournment debate and discussions of matters of public importance (where the whole debate and discussion are limited in time), it is not customary for them to do so.[194]

**10.144** On occasions, the Assembly has ordered that Members speak without limitation of time,[195] standing orders have been suspended to allow Members to address the Assembly for an unlimited time on a particular matter[196] and leave has been granted to Members to speak without limitation of time.[197]

**10.145** Though standing order 63(b) and the preamble to standing order 69 envisage that motions may be moved to extend the time allotted for a debate, there are no specific provisions within the standing orders for motions to extend the time for the debate on a motion for the adjournment of the Assembly, the question that a bill be considered an urgent bill, a motion for the suspension of standing orders or the discussion on a matter of public importance.[198]

## Motion for the adjournment of debate

**10.146** During the course of a debate any Member, with the exception of a Member who has spoken to a question or who has the right of reply, may move 'That the debate be now adjourned' (though he or she may not interrupt another Member speaking to do so).[199] The Member moving the motion must have been called by the Speaker in the course of the debate, the Speaker must put the question forthwith and the question must be determined without amendment or debate.[200]

**10.147** If the question on the motion is negatived, debate on the question before the Assembly continues and the Member who moved the motion for the adjournment is not precluded from addressing the Assembly later in the debate.[201] Standing order 64 provides that no similar proposal shall be received if the Chair is of the opinion that it is an abuse of the orders or forms of the Assembly or is moved for the purpose of obstructing business.

**10.148** If the question on the adjournment of the debate is resolved in the affirmative, the Chair must then put the question to fix the time for the resumption of the debate.[202] The Chair usually puts the question in the form 'That the resumption of the debate be made an order of the day for the next sitting,' though the Chair would not be precluded from nominating a different day or time if, for example, the Chair had ascertained that it was the wish of the Assembly that a debate be resumed on a particular day or time (or following consideration of a related item of business)[203] or a Member had given an indication in moving the motion for the

193 Standing order 63. In addition, such motions cannot be moved for the purpose of obstructing business (see standing order 64).
194 Assembly Debates (23.10.2003) 4067; MoP 2001-04/991.
195 MoP 1998-2001/567.
196 MoP 1989-91/49.
197 MoP 1995-97/195.
198 On occasions, especially on the last sitting prior to the winter and summer adjournment periods, the adjournment debate has been extended by way of a motion to suspend the standing orders. See MoP 2001-04/502.
199 Standing order 61. See Assembly Debates (21.11.1989) 2719; Assembly Debates (19.10.1993) 3575.
200 Standing order 65.
201 Standing order 67.
202 Standing order 65.
203 For example, the presentation of a related report—as discussed in Chapter 9: Motions. The fact that the order is made for the resumption of the consideration of a matter to be made an order of the day 'for the next day of sitting' does not mean that the item will necessarily be listed on that day or called upon on that day. Items are listed under Assembly, executive or private Members' business, according to the provisions of the standing orders and the status of their sponsors (whether he or she be a private Member or a member of the executive). Unless the Assembly specifically orders otherwise, their precedence is determined within those categories as provided elsewhere in the standing orders.

adjournment that he or she proposed a particular day, time or occurrence for the resumption of the debate.[204] A common occurrence is for the Chair to propose the question in the form 'That the resumption of the debate be made an order of the day for a later hour this day' when it is clear that this course is proposed by the mover of the initial motion.

10.149 The question on fixing the time for the resumption of the debate is open to both amendment and debate. Should it be negatived, the Assembly not having made an order for the resumption of debate, the item would drop from the *Notice Paper*.[205]

10.150 Standing order 66 provides that the Member, upon whose motion any debate is adjourned by the Assembly, shall be entitled to speak first on the resumption of the debate.

## Closure of debate on a question

10.151 Once a question has been proposed by the Chair, any Member may move, whether another Member is speaking or not, 'That the question be now put' and, unless it appears to the Chair that this closure is an abuse of the rules of the Assembly or an infringement of Members' rights, the question must be put forthwith and determined without amendment or debate.[206] A Member who has already spoken to a question or, indeed, a Member who is speaking to a question, is not precluded by the standing order from moving the closure.

10.152 Should there be no question before the Assembly—for example, during the discussion of a matter of public importance or during the election of a Speaker, Deputy Speaker, Chief Minister or Leader of the Opposition—the closure cannot be moved. The closure cannot be moved if a Member is moving a motion and the Speaker has yet to propose the question[207] and on many occasions the Chair has declined to put the question if the moving of the motion has been perceived as an abuse of Members' rights.[208]

10.153 In the event of the closure being moved and agreed to whilst a Member is moving an amendment prior to the question on the amendment being proposed by the Chair, the question that is put relates to the original question. If the closure motion is agreed to, the question that is then put always relates to the original question before the Chamber.

10.154 Should the question 'That the question be now put' be negatived, the Assembly resumes proceedings at the point at which they had been interrupted and the Speaker is precluded from receiving a similar closure proposal if he or she is of the opinion that it is an abuse of the forms of the Assembly or it has been moved for the purpose of obstructing business.[209]

10.155 Should a vote on the question 'That the question be now put' be in progress at the time fixed for the Speaker to propose the question 'That the Assembly do now adjourn' pursuant to the provisions of standing order 34, the time fixed for the expiration of Assembly business on sitting Thursdays pursuant to the provisions of standing order 77 or the time fixed for the Speaker to call upon questions without notice pursuant to standing order 74, that vote

204 See, for example, Assembly Debates (8.12.1998) 3178-9. In this precedent the motion for the adjournment of the debate was negatived. Should it have been resolved in the affirmative and the Speaker had chosen to put the following question in the terms 'The question now is—That the resumption of the debate be made an order of the day for the next sitting,' it would have been open to any Member to move an amendment to achieve the result desired.

205 See Chapter 9: Motions.

206 Standing order 70.

207 Assembly Debates (13.8.1992) 1667-8.

208 See, for example, Assembly Debates (16.12.1992) 3977.

209 Standing order 64.

and any vote consequent upon it shall be completed and the result(s) announced prior to the Speaker proposing the question 'That the Assembly do now adjourn,' or executive business being called on or questions without notice being called on.[210]

## Other provisions relating to curtailment of debate

10.156 Other times when Members' speeches and Assembly debate may be curtailed are:

- on the interruption of debate at 6 pm each sitting day when the Speaker proposes the question 'That the Assembly do now adjourn' (in this case there are specific provisions for the resumption of the interrupted debate);[211]
- on the interruption of debate on an item of Assembly business pursuant to the provisions of standing order 77 (either at the expiration of the time or extended time allotted or should the Assembly agree to the motion 'That executive business be called on');
- on the interruption of the business before the Assembly at 2 pm to call on questions without notice pursuant to standing order 74 (again there are provisions for the resumption of proceedings);[212]
- at the expiration of any time allotted by the Assembly for the various stages of the bill that is declared urgent;[213]
- should the Speaker adjourn the Assembly until the next sitting day, a vote having indicated a lack of a quorum or following a lack of a quorum having been noticed pursuant to the provisions of standing orders 31 and 32; and
- should the Speaker adjourn the Assembly in the event of grave disorder.[214]

10.157 On each of these occasions there are procedures in place for the Speaker to fix a future time for the resumption of proceedings[215] except in the case of grave disorder.

## Disorder

10.158 Disorder is quite simply any behaviour by Members or people in the public galleries which makes it difficult to conduct the business of the Assembly or its committees. The Assembly's powers to deal with disorder and discipline its Members (and others) are set out in Chapter 17 of the standing orders.

10.159 There are two sources of these powers. Subject to the provisions of the Self-Government Act, the Assembly has the power to make standing rules and orders with respect to the conduct of its business[216] and, having the same powers as the powers for the time being of the House of Representatives,[217] it has the power to treat disorderly behaviour as a contempt of the Assembly (see Chapter 2: Immunities and powers of the Assembly (Privilege)).

210 Standing orders 34(a), 77(c) and 74(a).
211 Standing order 34. And see Chapter 7: Sittings and adjournment of the Assembly.
212 Standing order 74.
213 Standing order 192.
214 Standing order 207.
215 Including when a quorum is unable to be formed. See standing order 68.
216 Self-Government Act, subsection 21(1).
217 Self-Government Act, section 24.

## Maintenance of order

10.160 The standing orders provide that it is the duty of the Speaker to maintain order in the Assembly.[218] Whenever the Speaker rises during proceedings, Members are required to be silent and seated to enable the Speaker to be heard without interruption.[219] The Member speaking must thus resume his or her seat.

10.161 Whenever a Member wishes to speak he or she must rise and address the Speaker.[220] Whilst speaking no other Member may converse or make any noise or disturbance to interrupt the Member.[221] Members are required to acknowledge the Chair when passing to or from their seats and may not pass between the Chair and a Member who is speaking.[222]

10.162 Whenever any offensive or disorderly words are used, whether by the Member addressing the Chair or any Member present, the Speaker must intervene[223] and when the Speaker's attention is drawn to words used, it is the Speaker who is required to determine whether or not they are offensive or disorderly.[224]

10.163 Whilst the Assembly is sitting a Member may not bring any visitor into nor may any visitor be present in any part of the Chamber appropriated to the Members of the Assembly[225] (see Chapter 18: Chamber and Assembly precincts).

## Points of order and Speaker's rulings

10.164 A Member may at any time raise a point of order which shall, until disposed of, suspend the consideration of and decision on every other question.[226] Upon a question of order being raised, the Member called to order must cease speaking and sit down.[227] After the question of order has been stated to the Speaker by the Member raising it, the Speaker is required to 'rule on the matter',[228] though on occasion the Speaker has undertaken to review the *Hansard* record and make a ruling at a later time or, after reviewing *Hansard*, has dealt with the matter at the next sitting.[229]

10.165 Before making a ruling the Speaker may hear other points of order on a matter (it is up to the discretion of the Chair), provided they are relevant to the issue being discussed and they are raised before a ruling has been made. The opportunity to raise points of order should not be used to disrupt proceedings or to enter into debate. Numerous or repetitive points of order have been seen as being disorderly in themselves.[230] The Speaker has seen fit to draw the attention of Members to standing order 202(a) (wilful disruption to the business of the Assembly) and to advise Members that he would not tolerate debates being interfered with by points of order which do not have substance.[231]

218 Standing order 37.
219 Standing order 38.
220 Standing order 42.
221 Standing order 39.
222 Standing orders 40 and 41. But see Assembly Debates (1.6.1989) 354. Whilst the Assembly occupied temporary premises movement by Members around the periphery of the Chamber was very restricted and impossible in some sections.
223 Standing order 56.
224 Standing order 57.
225 Standing order 210. The word 'visitor' in the standing order does not apply to a nursing infant being breastfed by a Member.
226 Standing order 72.
227 Due to an infirmity, a Member speaking when a matter of order was raised has been allowed to remain on his feet. Assembly Debates (27.6.1996) 2228. And see Assembly Debates (27.3.1990) 965.
228 Standing order 73.
229 See Assembly Debates (9.3.2000) 902 and (28.3.2000) 956.
230 Assembly Debates (12.9.1990) 3095-6.
231 Assembly Debates (29.6.2005) 2449; Assembly Debates (22.9.2005) 3533.

10.166 To reflect upon a ruling of the Chair is out of order. The Speaker has stated that, though a Member is entitled to move a motion of dissent once a ruling is made, it is disorderly to reflect continually upon it[232] (but see also paragraph 10.167).

## Motions of dissent from Speaker's Rulings

10.167 Assembly standing orders do not contain any provision for a Member to move a motion of dissent from a ruling of the Speaker. In the early days of the Assembly, Speakers were adamant about this matter and, consequently, motions of dissent were not allowed.[233] In recent years, however, the Speaker has accepted such motions, although there is no provision for them to be moved without notice.[234]

10.168 A Member wishing to move a motion of dissent, must obtain leave of the Assembly to do so, successfully move a motion to suspend the standing orders to enable the motion to be moved or give notice of such a motion.[235]

10.169 Notice has been given of a motion of dissent from a ruling of the Speaker[236] and a motion seeking to suspend so much of the standing orders as would prevent a Member from moving a motion of dissent has been negatived.[237] The Acting Speaker having ruled that there was no provision for moving without notice dissent from the Speaker's ruling, a motion of dissent from the ruling was moved by leave and later withdrawn, by leave.[238] In the course of responding to the matter, the Acting Speaker ruled that the provisions of standing order 275 (practice of House of Representatives to be observed, unless other provision is made) could not be used in the Assembly to adopt the House of Representatives practice of moving motions of dissent without notice.[239]

10.170 A motion of dissent from a ruling of the Speaker has been agreed to. In May 1991, the Speaker, having ruled that an interjection made by a Member was unparliamentary and having directed that it be withdrawn, the Member, by leave, moved that the ruling be dissented from. The motion was agreed to on the voices.[240]

232 Assembly Debates (17.8.2005) 2835.

233 See, for example, Assembly Debates (11.12.1990) 5033.

234 See, Assembly Debates (25.9.1996) 3342-5; Assembly Debates (11.12.2002) 4203-4; Assembly Debates (22.6.1995) 2155; Assembly Debates (17.8.2005) 2835. And see comments by Acting Speaker Stefaniak, Assembly Debates (8.8.1990) 2567.

235 Assembly Debates (23.11.1995) 2506.

236 NP 10 (16.6.1992) 108.

237 MoP 1998-2001/852-3.

238 In fact, the Acting Speaker having ruled that two bills (introduced earlier) contravened the provisions of [then] standing order 200, then ruled that there was no provision for dissent. A Member, after having moved his motion of dissent from the second ruling, by leave, then moved a motion to suspend so much of the standing and temporary orders as would prevent him from moving a motion of dissent from the ruling on the two bills (thus superseding consideration of the question on the first motion). The motion to suspend standing and temporary orders having been negatived, the motion of dissent was withdrawn, by leave. MoP 1989-91/272.

239 On the basis of precedents in the Assembly (notice having been required of a motion in the past and the Speaker having ruled a motion without notice out of order), Assembly Debates (8.8.1990) 2567-8. The motion that the ruling be dissented from was moved by leave and later withdrawn, by leave Assembly Debates (8.8.1990) 2568-9. And see Assembly Debates (24.21993) 433.

240 MoP 1989-91/460; Assembly Debates (2.5.1991) 1901-8. The word used was 'furphy'. The motion having been agreed to, the Speaker thanked the Assembly for its direction on the matter.

## Naming and suspension of a Member who is disorderly

10.171 Standing order 202 identifies behaviour by Members that constitutes disorderly conduct. It states:

> If any Member has:
> (a) persistently and wilfully obstructed the business of the Assembly; or
> (b) been guilty of disorderly conduct; or
> (c) used offensive words, which the Member has refused to withdraw; or
> (d) persistently and wilfully refused to conform to any standing order; or
> (e) persistently and wilfully disregarded the authority of the Chair –
> that Member may be named by the Speaker.

The last of these grounds gives the Speaker considerable discretion in deciding what is disorderly Thus, naming need not be on the grounds of a specific offence described in standing order 202.

10.172 Where a Member is disorderly, the Speaker may 'name' that Member and invite the Assembly to suspend the Member from the Assembly. The naming of a Member is in effect 'an appeal to the House to support the Chair, to remove the disturber'.[241] The Speaker may choose to warn a Member concerning disorderly behaviour prior to naming but is not required to do so.[242]

10.173 Once a Member has been named, he or she may not speak to the matter, nor may the Member seek to move a motion to suspend so much of standing orders as would prevent him or her from moving a motion of dissent from the ruling.[243] In naming a Member, the Speaker is not making a ruling; thus there is nothing before the Chamber to dissent from.

10.174 If a Member is named, the Speaker then proposes the question 'That such Member be suspended from the service of the Assembly.' This motion cannot be amended or debated and no adjournment is allowed until the question is decided.[244] On one occasion, the Speaker (with the concurrence of Members) suspended the sitting after the naming of a Member until the ringing of the bells.[245] The motion to suspend the named Member was moved after the sitting resumed.

## Speaker may order disorderly Member to withdraw

10.175 In extreme cases—'grossly disorderly'—the procedure for naming and suspending a Member set out in standing orders 202 and 203 may not be sufficient to deal with the situation. In such circumstances, the Speaker is empowered to order a Member to leave the Chamber immediately 'to ensure the urgent protection of the dignity of the Assembly', and to order officers of the Assembly to take any necessary action to ensure that the Member

241 See *Redlich*, Vol III, p. 72, footnote 1.
242 See Assembly Debates (7.12.2000) 3846; Assembly Debates (24.11.2005) 4626-7, 4665.
243 Assembly Debates (28.3.2000) 956-7. In this example, the Member, having been asked to withdraw offensive words, first sought to speak to the matter. On again being directed by the Speaker to withdraw the words, the Member tried to move a motion to suspend standing orders to allow him to move a motion of dissent but the Speaker required him to sit down and proceeded with the suspension.
244 Standing order 203.
245 MoP 1992-94/120; Assembly Debates (19.8.1992) 1851. The sitting was suspended for some 50 minutes to let everybody 'calm down'.

withdraws.[246] The naming procedure then occurs. If the Assembly resolves the question in the negative, the Member named may return to the Assembly.

10.176 In naming a Member, the Speaker is asking the Assembly to maintain appropriate standards of behaviour and to support the Chair in doing so. The considerable authority of the Speaker must be used judiciously so that Members will be ready support the Chair. The power to 'name' is used sparingly in the Legislative Assembly and to date the Members have always supported the Speaker.[247]

## Speaker may adjourn Assembly or suspend sitting

10.177 When faced with grave disorder arising in the Assembly, the Speaker also has the power to adjourn the Assembly without putting the question, or to suspend any sitting to a time to be named by the Speaker.[248]

10.178 When there has been disorder in the public gallery, the Speaker has suspended the sitting;[249] on one occasion, when the Chief Minister refused to withdraw an imputation that a Member had lied, the Speaker suspended the sitting for 10 minutes. On resumption of the sitting, the Chief Minister apologised to the Speaker and withdrew the imputation.[250]

10.179 On 11 December 1990, following Members' disorderly behaviour in the Chamber during the preceding sitting, the Speaker gave reasons for not invoking standing order 207 to adjourn the sitting because grave disorder had arisen.[251]

10.180 A similar power to adjourn a committee meeting in response to grave disorder is provided to the Chair of a committee by standing order 229A. The committee may be adjourned without the question being put and the chair may set a time for the committee to reconvene. The Speaker may also set a time for the next meeting of the committee if requested to do so by a majority of Members. This standing order was adopted in 1999 as a result of 'unruly' behaviour by a committee member in an estimates committee hearing.

## Member ordered to attend the Assembly

10.181 A Member who disobeys an order of the Assembly may be ordered by the Assembly to be present in the Chamber and to answer for his or her conduct.[252]

## Exclusion of suspended Members from the Chamber

10.182 A Member who has been suspended from the Assembly is excluded from the Chamber and the gallery.[253] The Assembly follows the practice of the House of Representatives in that a Member suspended from the Assembly is excluded from 'chamber-related'

246 Standing order 205. This procedure has not been invoked in the Assembly.

247 It has been suggested that the relatively generous amount of time devoted to private Members' business and, until the Sixth Assembly, the prevalence of minority or coalition governments have contributed to minimising the frustrations of non-executive Members and maintaining a cooperative approach to the conduct of the Assembly's business.

248 Standing order 207.

249 MoP 1989-91/439; MoP 1995-97/258 (2), 267-8 (2); MoP 1998-2001/507-8 and MoP 2001-04/1333.

250 Assembly Debates (7.6.1990) 2335.

251 Assembly Debates (11.12.1990) 4907-8. The Member whose behaviour had initiated the disorder having apologised and immediately left the Chamber, the Speaker chose not to name him. The Speaker also decided not to invoke standing order 207 and suspend or adjourn the sitting because he believed that it would provide a precedent whereby Members might close down any parliamentary debate to which they objected simply by creating disorder.

252 Standing order 208.

253 Standing order 206.

activities—the lodging of petitions, notices of motion, questions on notice and matters of public importance.[254] A Member who is suspended from the Chamber is not excused from duty on committees.

10.183 The standing orders specify the period of time for which a Member can be suspended.[255] Repeat 'offences' in the same calendar year attract a 'sliding scale' of suspensions, from three hours on the first occasion, two sitting days on the second occasion and three sitting days for a third or subsequent suspension. On three occasions Members have been suspended on a second occasion during the same calendar year.[256] The Assembly may make an order on the matter setting a different period of suspension.

## Disorderly person may be removed

10.184 The Assembly and its committees have the authority to maintain order among members of the public who attend their meetings. The Speaker or the chair of a committee can require a person who is behaving in an offensive or disorderly manner or who disrupts the proceedings in any other way to leave the public galleries of the Assembly, the meeting room of a committee and the precincts of these places. [257] The Speaker or committee chair can also direct that a person responsible for disruption be removed.[258]

254 See standing order 206.
255 Standing order 204.
256 MoP 1989-91/201, 206; MoP 1992-94/ 384; MoP 1995-97/919.
257 Standing order 209.
258 Standing order 209.