

Legislative Assembly for the Australian Capital Territory

**Addresses to the Assembly - Proposed
Temporary Orders**

**Report by the Standing Committee on
Administration and Procedure
September 1996**

RESOLUTION OF APPOINTMENT

On 9 March 1995, the Legislative Assembly for the Australian Capital Territory adopted standing order 16 which established the Standing Committee on Administration and Procedure. This standing order was amended on 4 May 1995 to provide the following terms of reference:

16. (1) A Standing Committee on Administration and Procedure shall be appointed at the commencement of each Assembly to:
 - (a) inquire into and report on, as appropriate:
 - (i) the Assembly's annual estimates of expenditure;
 - (ii) the practices and procedure of the Assembly; and
 - (iii) the standing orders of the Assembly;
 - (b) advise the Speaker on:
 - (i) Members' entitlements including facilities and services;
 - (ii) the operation of the transcription service (*Hansard*);
 - (iii) the availability to the public of Assembly documents;
 - (iv) the operation of the Assembly library; and
 - (c) arrange the order of private Members' business and Assembly business;

Membership

The Speaker (Presiding Member)
Mr W Berry, MLA
Mr H Hird, MLA
Mr M Moore, MLA
Ms K Tucker, MLA

Secretary to the Inquiry: Mr M McRae

BACKGROUND

1. On 28 February 1996 the Manager of Government Business, Mr Humphries, gave notice of a motion proposing temporary orders which would make provision for representatives of community groups or interests to directly address the Assembly on a regular basis from the bar of the Assembly. A copy of the notice is at Appendix 1.
2. On 28 March 1996, the Legislative Assembly agreed to a motion proposed by Mr Hird to refer the consideration of the temporary orders proposed by Mr Humphries to the Standing Committee on Administration and Procedure for inquiry and report. No reporting date was set by the Assembly.
3. The proposed temporary orders provide for addresses to the Assembly by representatives on behalf of a community group or community interests. Under the proposal, at 4.30 pm on the second sitting Wednesday of each sitting fortnight, the Speaker would interrupt the business before the Assembly in order that addresses to the Assembly by representatives on behalf of a community group or community interest may take place for a period not exceeding 45 minutes. Each representative would be given a period not exceeding 15 minutes to address the Assembly and would be subject to the standing orders of the Assembly and the protections afforded by the privilege of the Assembly. The temporary orders propose that the addresses be restricted to matters of ACT significance and be of communal rather than personal concern and should not contain private grievances. The proposed temporary orders also call on the addresses to be succinct and strictly relevant to the reasons for which it was requested, should not be offensive and should not refer to matters adjudication in a court of law. The Speaker is envisaged as bearing the normal responsibilities of maintaining order and if the standing orders are not being adhered to the representative addressing the Assembly is to cease and withdraw from the Chamber.
4. The proposal also envisages a significant role for the Standing Committee on Administration and Procedure. In the first instance, this Committee will have the responsibility of arranging the order of those who will be addressing the Assembly and also preparing guidelines to assist the Speaker and those appearing. The Committee may decide not to consider a request to address the Assembly if it considers that the letter is “not sufficiently serious, is frivolous, vexatious or offensive in character” and that decision must in turn be reported to the Assembly. The Committee must also report to the Assembly on all requests for addresses to the Assembly and can make either of the following recommendations - that the request not be permitted or that the request be permitted and specify the terms. If the report is adopted by the Assembly the representative will then be scheduled to address the Assembly in the terms specified.

WORK OF THE COMMITTEE

5. The Committee considered the proposal at its meeting of 21 August 1996 and agreed to the terms of the draft report. The draft report was considered on 17 September 1996 and a majority of the Committee adopted the report. At its meeting on 24 September 1996, Mr Hird informed the Committee that he wished to have a dissenting report included and provided that report for the Members information.

DISCUSSION

6. The proposal to have persons other than Members address the Assembly is almost without precedent and is uncommon in other legislatures. As far as is known it is without precedent for it to occur on a regular basis. There have been precedents in other legislatures when persons have been called to appear before the bar to receive the thanks of the House, to be reprimanded or admonished or to be examined as witnesses. The most notable and recent Australian example of a similar situation was Professor David Penington, AC addressing the Victorian Parliament on the Report of the Premier's Drug Advisory Council. Professor Penington made his address as chairman of the Council and at the invitation of the Legislative Assembly to address the House on the recommendations contained in the Council's report. Clearly, the circumstances in which it occurred were substantially different to the regular input from the community (who may or may not have a particular expertise in the issue they raise) which is proposed in the temporary orders. The Committee's prime consideration when examining the proposed temporary orders was whether there was a need to establish such a procedure. It was of the view that there was already an effective avenue through which the community's interests can be voiced in the Assembly - the Committee system.

Committee Work

7. Since self-government the Assembly's Committee system has played an active and vital role in the work and consideration of major issues by the Assembly. The committees have conducted numerous self-referred inquiries on such diverse issues as fuelwood heating and the establishment of a casino. Other inquiries have been at the direction of the Assembly including one on domestic and commercial waste and consideration of such legislation as the Adoption Bill 1992 and the Voluntary and Natural Death Bill 1993. The reports made by the committees' have provided valuable information for the Assembly and the community to debate. It is also interesting to note that in some cases the subject of committee reports have been reflected in new policies and financial commitments announced by governments over successive years. The Committee believes that it would not be unreasonable to assume a strong and direct link in the Territory between the work of the committee system in representing both community and expert opinion and the good government of the Territory.
8. The Committee is concerned that the proposed temporary orders if implemented would, in seeking to establish its own niche in the parliamentary system, actively undermine the very valuable work of the Assembly committees in providing a channel for the community's viewpoints. The work of the committees is already diverse, not only in the subject matters of the inquiries undertaken committees but also in how the inquiries are initiated and the work conducted. Reference has already been made to committee's developing their own inquiries and the Assembly referring a matter to a committee for inquiry and report. Committees, such as the

current Standing Committee on Planning and Environment, also have statutory responsibilities which recognise the unique roles that Assembly committees can play and stands as testimony to the flexibility that committees have to pursue a number of tasks on behalf of the Assembly. It is possible that the current relationship, which the work of the committee system represents, between the community, the field of expert opinion and the bureaucracy may be weakened if the new temporary orders were adopted by imposing another line of communication. The new line (direct addresses to the Assembly) of communication does not appear to create an avenue of input into the Assembly's consideration of issues for a clientele that is currently disenfranchised. In fact, it is more restrictive than those offered in the committee system as it limits addresses to representatives of community groups or community interests while committee's can and do receive submissions from any interested individual.

9. It could be argued that the proposal for addresses of the Assembly could provide a means of notification by the community of emerging problems which is not currently available. The work of the Standing Committee on Social Policy, as reported to the Assembly in the discussion paper *Community Consultation on Social Policy Issues* and the report *Social Policy Issues raised by Community Groups April 1995*, indicates there is already a wide range of avenues through which the Assembly is alerted of the emerging issues in the community. The majority of these have the flexibility and means by which to pursue the matter and discern the scope and significance of the issue before affording it the appropriate priority for investigation. The Committee believes that the addresses to the Assembly could only be followed up in the appropriate manner by referring the issue to an Assembly committee to consider and as suggested above the work of the Committee may be compromised by the implementation of the proposal.

The Temporary Orders

10. The Committee also considered that a number of inherent problems lay in the proposal. The issue of granting privilege to those who may not have an awareness of the responsibilities that freedom of speech brings with it was of concern to the Committee. In a similar vein the Committee was concerned of the Speaker's power to maintain order in the Assembly. Although the proposed temporary orders indicated that the representatives addressing the Assembly would be subject to the Assembly's Standing Orders, they would not be subject to the same sanctions as Members if they transgressed those standing orders. Admittedly, the Speaker can direct the address cease and the representative withdraw from the Chamber, but should he/she decide not to comply the Speaker is left in a vulnerable position resulting in significant disruption to Assembly proceedings. Furthermore, it may prove difficult to convey the requirements of all the Standing Orders, together with the requirements of precedence and practice to the representatives prior to their address to the Assembly.

11. The Committee notes that the temporary orders indicates that the proposal for addresses to the Assembly be trialed for the remainder of the Assembly. The Committee believes that, should the need arise, the Assembly currently has the powers to pass a resolution to either require a person to appear before the bar of the Assembly or to enable a person to do so. However, it is of the view that the proposal will not improve the effectiveness of the Assembly and the representation of the community and at the same time possible weaken one of the Assembly's strongest links with the community - the committee system. It therefore considers that such a trial would be a waste of the Assembly's limited resources.

CONCLUSION AND RECOMMENDATION

12. The Committee, having considered the proposal for the Assembly to adopt temporary orders to provide for representatives of community groups or interests to address the Assembly, concluded that the proposal did not offer any advantage for the community over the existing committee system and has concerns that if implemented the proposal might detrimentally impact on the effectiveness of the work done by Assembly committees. Furthermore, the Committee considered that the proposal itself had inherent problems which would detract from the Assembly. Accordingly, the Committee **recommends - That the proposed temporary orders to provide for Addresses to the Assembly by representatives of community groups or community interests not be adopted and that the notice be withdrawn from the *Notice Paper*.**

Greg Cornwell, MLA
Presiding Member

25 September 1996

DISSENTING REPORT

by

Harold Hird MLA

1. I dissent from the Committee's recommendation.
2. The proposal by the Manager of Government Business to add new temporary orders would allow members of community groups to make statements to the Legislative Assembly on genuine matters of community concern. The Committee majority, in its report, opposed this concept on, fundamentally, two grounds.
3. Firstly, the majority says that to introduce such a system would weaken the Committee system of the Assembly¹. And secondly, the majority claims that the people who would seek to use this system would not be aware of their obligations under the Standing Orders of the Assembly².

Committee work

4. I disagree with the first conclusion. Rather than weaken the Committee system, this process would be a useful addition to it. Where a Committee makes a recommendation, or reaches a conclusion, that a large number of community groups did not propose, or that a majority of those who submit to the inquiry oppose, the right of address to the Assembly would provide a useful avenue for those people to argue their case before the wider Assembly.
5. I agree that, on the whole, the Committee system is the appropriate place for people to first make their submissions and for their arguments to be tested. But I do not concur that the community's voice should not be able to penetrate the walls of the Assembly, that people only be allowed to be heard in Committee rooms. In many cases, it may be appropriate for the Assembly as a whole to hear from those directly concerned by decisions or proposals being considered by its members. In other cases, it may be that the issue of community significance is not presently before an Assembly Committee.
6. The suggestion that the "current relationship, which the work of the committee system represents, between the community, the field of expert opinion and the bureaucracy may be weakened if the new temporary orders were adopted by imposing another line of communication"³ is not a valid reason not to proceed with the proposal, at least on a trial basis. The additional line of communication between the members of the Assembly, sitting as one, and the wider community would, in my view, strengthen the community will to participate in the democratic process.
7. The suggestion that the only course of action available to respond to a statement to the Assembly is to refer the matter to a Committee⁴ is a seemingly bureaucratic procedure. It is more likely that addresses by community representatives would be on issues presently before, or about to come before, the Assembly as a whole for its consideration. In such a case, the Assembly can choose to either accept or reject the argument in debate.

¹ Majority report - paragraphs 7-9

² Majority report - paragraphs 10-11

³ Majority report - paragraph 8

⁴ Majority report - paragraph 9

The Temporary Orders

8. The majority of the Committee is concerned by the possible "granting of privilege to those who may not have an awareness of the responsibilities that freedom of speech brings with it"⁵ is like saying that we are the elected members of the Assembly and the custodians of the standing orders which no-one else will understand. While some may approach the Assembly with a proposal to address members which is not suitable, the process recommended by the Manager of Government Business provides an appropriate mechanism to exclude such people. The absolute majority of those wishing to utilise the power to address the Assembly would wish to do so within the bounds of the standing orders, as well as within the bounds of civil human behaviour.
9. The majority of the Committee argues that a person addressing the Assembly would not be subject to the same sanctions as a member if he/she breaches the standing orders, and that the Speaker is left in a vulnerable position if the addressee does not comply. This is simply not a coherent argument. A person who breaches the standing orders would be ordered to cease his or her address and the Serjeant-at-arms could remove him or her permanently if disruption did occur. The same argument could equally be applied to members who disobey the intent of, or actual, directions from the Speaker during question time. Do we not have question time because of the fear that someone will breach the Speaker's ability to maintain order?

Governing Canberra

10. A report commissioned by the ACT Government and presented in December 1995, entitled "Governing Canberra", advocated the use of Committees mirroring portfolios meeting regularly and open to the public for presentations by them, and the placing of questions on notice by them⁶. This contrasts with the current process where Assembly Committee deliberations are usually held in private, papers are circulated confidentially and none of the Committee's actual deliberations are open to the public. The option of the people of Canberra addressing their elected members may be almost without precedent, but it is not without foundation. We are, after all, paid by them, elected by them and accountable to them. Listening to them is not such a bad idea.

⁵ Majority report - paragraph 10

⁶ "Governing Canberra", A Report to the ACT Chief Minister from the Government Advisory Group - December 1995 - page 14