

Legislative Assembly for the Australian Capital Territory

**Standing Orders
and
Citizen's Right of Reply**

**Report of the Standing Committee
on Administration and Procedure
May 1995**

RESOLUTION OF APPOINTMENT

On 9 March 1995, the Legislative Assembly for the Australian Capital Territory adopted a standing order which established the Standing Committee on Administration and Procedure with 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;
- (2) The Committee shall consist of the Speaker and four other members;
- (3) The Speaker shall be the Presiding Member of the Committee;
- (4) The committee shall have the power to consider and make use of the evidence and records of the Standing Committee on Administration and Procedures appointed during the previous Assembly; and
- (5) The foregoing provisions, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders."

Membership

The Speaker (Presiding Member)

Mr W Berry, MLA

Mr H Hird, MLA

Mr M Moore, MLA

Ms K Tucker, MLA

Secretary: Mr M McRae

Deputy Secretary: Ms Maureen Weeks

1. Introduction

1.1 The Standing Committee on Administration and Procedure met on 28 March 1995 and in accordance with the provisions of standing order 16(1)(a)(iii) considered the temporary orders that had been operating during the First and Second Assemblies, as well as a number of procedural matters that the Committee was of the view warranted urgent consideration.

1.2 The Committee believes that the Standing Orders of the Assembly are necessary to provide the rules for debate and the backbone for the conduct of the Assembly. They link the procedures of the Assembly with those of the Commonwealth House of Representatives and continue the traditions of the Westminster system. It is in this context that the Committee undertook its consideration of these issues.

1.3 During its deliberations the Committee reviewed the work of its predecessor in the Second Assembly, the Standing Committee on Administration and Procedures, which in February 1993 agreed to review the standing orders. That Committee had circulated a Discussion Paper which reviewed and examined those standing orders that currently have temporary orders operating in relation to them. It had also prepared Reports which were adopted by the Assembly on *Assembly Business* and the *Citizen's Right of Reply*. These documents have made a significant contribution to the Committee's consideration of the issues.

1.4 Following its considerations the Committee identified the temporary orders and a number of other procedural matters, including the presentation of out of order petitions, the presentation of explanatory memorandum by Private Members when introducing bills, and the ability of Committees to present discussion papers and make statements to complete an inquiry and maintain the confidentiality of the information presented during an inquiry and a citizen's right of reply as in need of the Assembly's urgent consideration. At its meetings of 13 April 1995, 26 April 1995 and 28 April 1995, the Committee formally considered a number of proposals relating to the temporary orders and the other procedural matters and resolved that the Committee report to the Assembly with a number of recommendations on these issues.

2. Days and Hours of Meeting and Adjournment

2.1 Standing Order 27 set the days and hours of the meetings of the Assembly and standing order 34 sets the procedure for the adjournment of the Assembly. Throughout the First and Second Assembly, these standing orders of the Assembly have been suspended and temporary orders have operated. The effect of the temporary order 27 has been to regularise the sittings of the Assembly so that the Assembly commenced sitting at 2.30 pm on sitting Tuesdays and following a meal break resumed to sit on the Tuesday night. Sittings commenced at 10.30 am on sitting Wednesdays and Thursdays and continued in the afternoon after a meal break for lunch.

2.2 Temporary order 34 structured the adjournment times of the Assembly. It provided that at 9.30 pm on sitting Tuesdays and 4.30 pm on sitting Wednesdays and Thursdays, the Speaker proposed the question - That the Assembly do now adjourn. Further, that question had to be resolved without amendment by 10 pm (Tuesdays) and 5 pm (Wednesdays and Thursdays), unless a Minister requested that the debate be extended so that a response could be made to the issues raised by Members on the adjournment debate. Consequently, Members and the public had some idea of when the Assembly was going to be adjourned and could plan accordingly. This has also meant that where a Minister moved "That the Assembly do now adjourn" close to 10 p.m. (on sitting Tuesdays) or 5 p.m. (on other days), the Speaker interrupted debate at 10 p.m. or 5 p.m. respectively and, unless a Minister extended the debate for 10 minutes to reply to matters raised, the Speaker adjourned the Assembly immediately.

2.3 The Committee in considering the temporary orders agreed that their operation during the First and Second Assemblies had provided a well structured sitting day so that both the Members of the Assembly and the Government could plan their programs. However, a number of concerns were raised in relation to temporary order 27 and a number of options were discussed. The major concern related to the Tuesday night sitting. The cost of holding sittings after the meal break was regarded by some Members to be significant and it was felt that the savings of approximately \$20,000 per annum¹ could be better spent elsewhere in Program 1. Others argued that the community's access to the Assembly would be compromised if the Tuesday night sittings of the Assembly were halted. In reply, it was argued that a general observation of the public's attendance on a Tuesday night indicated that it was only used by a significant number of the community when a controversial issue such as abortion was under the Assembly's consideration and if such an issue were to be debated then the Assembly could make special provision to sit late. While a majority of the Committee agreed to abandon the Tuesday night sittings, there were several options put forward in relation to the new sitting times. Finally, the Committee agreed (with Ms Tucker dissenting and Mr Berry opposing) that the hours should be standardised over the three sitting days each week, with each sitting day commencing at 10.30 am and that this should be reviewed after a period of 3 sitting months.

2.4 The effectiveness of the nominated automatic adjournment times was also questioned by the Committee. It noted that in 1994, only 2% of the adjournments took place in accordance with temporary order 34, another 5% of the adjournments took place within one hour of the nominated adjournment time and only 1% of the adjournments took place before the nominated adjournment time. Further, the experience of the First Assembly was such that shortly after adopting temporary order 24 (24 May 1989), the Assembly amended the temporary order (on 28 June 1989) to alter the automatic adjournment time on a Wednesday and Thursday from 4 pm to 4.30 pm. The Committee agreed that the automatic adjournment time could usefully be altered from 4.30 pm to 5 pm to increase the time available in which to conduct business, again for the trial period of 3 sitting months.

Recommendation 1: The Committee recommends that standing orders 27 and 34 be amended so that the Assembly commences to sit each sitting Tuesday, Wednesday and Thursday at 10.30 am and the question on the automatic adjournment should be proposed at 5.00 pm on each day.

¹ This figure has been based on the expenditure on salaries for Secretariat staff over the last 5 sitting Tuesdays and on the assumption that the Assembly will sit for approximately 15 weeks per annum. They do not include non-salary expenditure and overtime for Member's staff and that incurred by other Departments.

Recommendation 2: The Committee further recommends that these amendments to standing orders 27 and 34 and the subsequent amendments to standing orders 74, 77 and 79 be reviewed at the end of the August sittings.

3. Matter of Public Importance

3.1 Standing order 79 provides that a Member may propose a matter of public importance (MPI) for discussion in the Assembly. It sets out a number of requirements that need to be met, one of these being the deadline by which the MPI must be submitted to the Speaker. The standing order stipulates that the Speaker must receive the MPI 4 hours before the Assembly commences sitting. During the First and Second Assemblies, a temporary amendment was adopted that alter the deadline to 2 hours before the Assembly sat. This amendment arose from the alterations to the Assembly's sitting times. On a day that commenced at 10.30 am the 4 hour deadline required the MPI to be submitted before 6.30 am and this was considered to be unrealistic.

3.2 The Committee's proposal to trial a 10.30 am commencement for each sitting day has lead to the conclusion that this temporary amendment should also be enforced for that trial period. The Committee considers that given the length of some sitting days, it is not reasonable to expect that Members should be in the Assembly building to submit an MPI by 6.30 am, nor is it reasonable that the Speaker be in the building to accept it. The temporary amendment will continue the practice of an 8.30 am deadline which the Committee believes has operated well.

Recommendation 3: The Committee recommends that standing order 79 be amended to alter the deadline for the submission to the Speaker of written notice of a matter of public importance from 4 hours before the Assembly commences sitting to 2 hours.

4. Routine and Precedence of Business

4.1 When the First and Second Assemblies altered the sitting times with temporary orders, consequent temporary amendments were made to standing order 74 and standing order 77. Standing order 74 (as temporarily amended) set the routine of business to be followed each sitting day, while standing order 77 (as temporarily amended) detailed the precedence to be accorded to Executive business over private Members' business. Further temporary amendments were made to standing order 77 in May 1992, when the Assembly adopted the Standing Committee on Administration and Procedures report on *Assembly Business*. That report recommended that the Assembly adopt a temporary order which would provide for a category of business known as Assembly business which would take precedence over all other business for 45 minutes on a sitting Thursday, after the introduction of Executive legislation.

4.2 The Committee considered the inclusion of the Prayer in the routine of business, ie standing order 74. Some Members of the Committee were concerned that the wording of the Prayer in its current form did not reflect all the spiritual groups of the community which they represented. The majority of the Committee (with Mr Cornwell and Mr Hird opposing) considered that standing orders 74 and 30 could be amended to mirror this spiritual diversity. The amendment to standing order 74 would be the addition of the words "or reflection", after "Prayer". This amendment would then be included in the form of the Prayer read by the Speaker at the commencement of each sitting and included in standing order 30. The words read by the Speaker would be altered to "Members, at the

beginning of this sitting of the Assembly, I would ask you to stand in silence and reflect on our responsibilities to the people of the Australian Capital Territory.”. The Committee understands that the community may have some interest in this issue and therefore proposes that these amendments to standing orders 30 and 74 not be scheduled for debate in the Assembly until 1 June 1995.

4.3 In altering the time the Assembly commences sitting each Tuesday there will need to be some resultant restructuring to the routine of business for each Tuesday. The Committee agreed that the 2.30 pm time slot for Questions without notice (Question Time) had worked well and that it had become generally recognised that Question Time was held at this time each day. The items of business that routinely followed Question Time, ie Presentation of papers, Ministerial Statements, by leave and the Matter of public importance were also considered by the Committee to be best left to the order that existed in the First and Second Assemblies. The Committee therefore agreed that the Tuesday morning business should be that which had previously occurred on the Tuesday evening which was notices and orders of the day. The routine of business provided in standing order 74 therefore describes that for each sitting afternoon, rather than each sitting day.

Recommendation 4: The Committee therefore recommends that standing order 74 be amended so that notices and orders of the day are scheduled for each sitting morning and the following routine of business to be adopted for each sitting afternoon:

- Questions without notice,
- Presentation of papers,
- Ministerial statements, by leave,
- Matter of public importance, and
- Notices and orders of the day.

4.4 Having established the routine of business for each sitting day, the Committee turned to the precedence of business for each sitting day which in the First and Second Assemblies was provided in standing order 77 as temporarily amended. This standing order (as amended) resulted in private Members’ business having precedence over Executive business for the first two hours of sitting on Wednesday. The Committee considered that arrangement had worked well in the previous two Assemblies and saw no reason to alter it.

Recommendation 5: The Committee recommends that private Members’ business have precedence over Executive business for the first two sitting hours on Wednesdays and that standing order 77 be amended to reflect this.

4.5 The Committee also considered the question of Assembly business and when it should have precedence over Executive business. The category of Assembly business was established by temporary amendment to standing order 77, in May 1992. During the 1992 debate it was evident that there was not unanimous support for the proposal. Concerns expressed over the proposal included that:

- it would further formalise the Assembly’s proceedings and this was not necessary;
- the time allocated for the consideration of Assembly business was not long enough and the proposed extension (if required) into the regular lunch hour was not acceptable; and
- the items of business listed as Assembly business were not appropriate.

4.6 The Committee is aware that the broad base support for the concept that existed in 1992 has resulted in the success of this category of business despite the initial concerns expressed. It therefore favours the continuation of Assembly business. However, it did consider the concerns expressed in 1992 in relation to the time allowed for Assembly business. The temporary amendment to standing order 77 which established Assembly business provided that Assembly business be considered for a 45 minute period but also provided contingencies so that either Assembly business could be extended by an additional 30 minutes or that Executive business could be called on immediately. In 1994, the provision to extend Assembly business was used in 6 of the 14 days on which Assembly business was considered. In the same period, Executive business was called on during the consideration of Assembly business on 3 occasions. The Committee is of the view therefore that the time available to consider Assembly business is adequate and is enhanced by the flexibility originally provided and should continue.

Recommendation 6: The Committee recommends that standing order 77 be amended to provide for the consideration of Assembly business for a 45 minute period and that the amendment should provide procedures whereby Assembly business can be extended by 30 minutes and Executive business can be called on.

4.7 In considering the precedence of Assembly business over other business the Committee examined the practice of the Second Assembly. Under standing order 77, as temporarily amended, precedence was given to Assembly business on Thursday mornings following the consideration of any Executive notices to present bills. It is an awkward placing of Assembly business, but it appears to have worked well. The problems that may be encountered on mornings when a large number of Executive bills are being introduced have been overcome by the Assembly itself making special provisions. Further, it is difficult to find another time slot which would offer significant advantages over the existing one. The Committee therefore supports the initial time slot for Assembly business.

Recommendation 7: The Committee recommends that standing order 77 be amended to provide that Assembly business has precedence over other business on Thursday mornings following the consideration of any Executive notices to present Bills.

4.8 The temporary amendment to standing order 77 which established Assembly business also provided a definition of Assembly business. As well as all notices and orders of the day relating to committees and their work, included in this definition was the consideration of motions to disallow subordinate laws which the Assembly is empowered to do under the *Subordinate Laws Act 1989* or any other Act of the Territory. The Committee is aware that the Assembly now has the power to also amend subordinate laws and believes that consideration of any such motion by the Assembly should, for consistency's sake, be included in the definition of Assembly business. The Committee also supports the continuation of all notices and orders of the day relating to committees and their work being included in the definition of Assembly business.

Recommendation 8: The Committee therefore recommends that standing order 77 be amended to provide for a definition of Assembly business to include all notices and orders of the day relating to Assembly committees and their work and all notices and orders of the day relating to the Assembly's powers under the *Subordinate Laws Act 1989* or any other Act of the Territory.

5. Adjournment debate

5.1 During the First and Second Assemblies temporary order 69(b) operated so that the adjournment debate was limited to 30 minutes in total with each Member being granted a limit of 5 minutes for speaking. Standing order 69(b) provides only that the speaking time for each Member be limited to 5 minutes.

5.2 In relation to adjournment debates that occurred outside the context of temporary order 34 (automatic adjournments - as it operated), temporary order 69(b) reflected the provision that at a set time (half an hour after the motion to adjourn the Assembly was required to be put), the Speaker shall adjourn the Assembly. Temporary Order 34 also had the effect of truncating the adjournment debate under the 30 minute limit. If the motion to adjourn the Assembly put by the Speaker at the specified time is negatived, but a Minister moves another motion to adjourn the Assembly within the half hour then, as the times are specified in temporary order 34, when these times cut in (at 10.00 pm and 5.00 pm) then the Speaker automatically adjourns the Assembly, even if the debate has lasted for 1 minute. It would therefore appear that temporary order 69(b) has operated to bring some consistency to the time available for adjournment debate and is a complementary standing order.

5.3 The use of the 30 minute limit for the adjournment debate has not been extensive. Despite the fact that if every Member (other than the Speaker) was to use all of their allocated 5 minutes of speaking time the adjournment debate would continue for one hour and 20 minutes, Members have rarely used the full 30 minutes for the debate. In the first year of the Second Assembly when the Assembly sat for a total of 51 sitting days, that rule was only used once to enforce an adjournment and that was on the last sitting day of 1992. In the last year of the Second Assembly the Assembly sat for a total of 43 days and the rule was not applied once, although it should be noted that on the last sitting day of the year the Assembly agreed to the suspension of that temporary order.

5.4 It could be argued that as the temporary order is used so infrequently then it is not necessary to have the limit on the whole of the adjournment debate. However, as it mirrors the intention of temporary order 34 (previously discussed) and has operated without problems for two Assemblies then the Committee believes that it should be adopted.

Recommendation 9: The Committee recommends that former temporary order 69(b) as it operated in the First and Second Assemblies, be adopted as a standing order so that the adjournment debate is limited to a total of 30 minutes.

6. Questions - 30 day rule

6.1 On the 19 May 1993 the Assembly adopted temporary order 118A which required a response to any questions taken on notice to be provided to the Member who asked the question within 30 days of that question being asked. If a question was not answered within the 30 day period the Member who asked the question had the right to ask the responsible Minister for an explanation and move a motion in relation to that explanation or move a motion in relation to the lack of an explanation if the Minister failed to provide one.

6.2 The introduction of the temporary order did not receive the support of the whole Assembly. During the debate on the temporary order it was argued that there was no need to have it as questions were already answered in a timely fashion and there was a possibility that the Assembly would be involved "... in endless debates of purely political point scoring on the question of deadlines rather than debates on matters of substance ..." (*Hansard*, 16 December 1992, p 3977).

6.3 The temporary order does appear to have encouraged a more timely response to the questions placed on the *Notice Paper*. The *Notice Paper* was cleared of all questions in the winter recess of 1994 and only 9 questions remained on it at the end of the Second Assembly. It should be noted that 1505 questions were asked on notice during that Assembly. These figures compare with 24 questions remaining on the *Notice Paper* at the end of the First Assembly out of a total of 648 questions asked on notice.

6.4 Furthermore, the initial concerns over the Assembly's time being taken up with debate over deadlines has not resulted. In 1994, Members asked the responsible Minister for an explanation as to why a response had not been received to 24 questions. Explanations were provided to the Assembly for all except five questions when the Minister was unavailable. On one other occasion a Member moved a motion in relation a question where an explanation had already been asked for. The motion was passed without debate.

6.5 The temporary order has achieved its objective without manifesting any of the problems that it was thought might initially occur and the Committee believes that the processes of the Assembly have become more effective since its operation.

Recommendation 10: The Committee therefore recommends that former temporary order 118A as it operated in the Second Assembly be adopted as a standing order.

7. Calling for a Vote

7.1 Temporary order 153A which provided that more than one Member must dissent from the Speaker's call of the Assembly's decision before a vote can be called was adopted by the Assembly on 26 August 1993. It had been considered by the Standing Committee on Administration and Procedures in two separate reports. The first report, *Standing Orders 79 and 153* which was presented to the Assembly on 13 May 1992 considered the issue in response to a proposal put forward by a Member. In speaking to his proposal on 8 April 1992, Mr Cornwell argued that the current requirement of standing order 153 for only one voice to challenge the Chair's opinion of the Assembly's decision on a question for a vote to be called can and, in fact, has resulted in "... an unnecessary waste of the Assembly's time."² and to support this contention offered an example of one sitting day when 14 votes were called by one Member and that one Member represented the minority. If the bells had been rung for the maximum of 4 minutes, that could have meant that up to 56 minutes of that day were spent on calling the Assembly to vote on these occasions alone. The Committee agreed to monitor the problem but did not recommend any immediate change in that report.

7.2 The Committee monitored the issue and recommended in its second report which was presented to the Assembly on 26 August 1993 (*Standing Order 153 - Calling for a Vote*) that the provisions for calling for a vote be amended so that more than one Member be required to challenge the Chair's call before a vote can be called.

² (*Hansard*, 8 April 1992, p 89)

7.3 This Committee considered the issue in the context of the membership of the Third Assembly. It is concerned that these former temporary amendments to standing orders 135, 153 and temporary order 153A could erode the rights of independent Members to call a vote. It acknowledges that there may be occasions where a Member may wish to have a call of the Assembly on an issue even though the eventual outcome is clear and believes that unless there is a clear indication that the relevant standing orders are being used to frustrate Assembly proceedings it should remain without the temporary amendments and temporary order.

Recommendation 11: The Committee recommends that standing orders 135 and 153 remain in their current form but indicates that it will continue to monitor the process of calling for a vote in the context of the Third Assembly.

8. Other Amendments

Standing Committee on Administration and Procedure

8.1 On 9 March 1995 the Assembly, in establishing this Committee, adopted a new Standing Order 16 and omitted standing order 16, 17, 18 and 19 that had been adopted by the First Assembly on its first sitting day. As the Assembly had not given any indication as to whether the temporary order relating to Assembly business was to be adopted during this Assembly, the provision to order Assembly business was omitted from the new Standing order. However, this report proposes a new standing order 77 which will include a category of business to be known as Assembly business and therefore if adopted it will be necessary to provide for a means by which this category of business can be ordered. In the Second Assembly the Standing Committee on Administration and Procedures had this responsibility as it was considered that it was appropriate that this Committee rather than the Executive order Assembly business and Assembly business has proceeded effectively since its inception.

Recommendation 12: It is therefore recommended that Standing Order 16 adopted on 9 March 1995 be amended by adding "and Assembly business" at the end of subparagraph (1) (c).

8.2 Standing Order 16 also requires a technical amendment. Paragraph (5) is now redundant and can therefore be omitted.

Recommendation 13: It is therefore recommended that standing order 16 be amended by omitting paragraph (5).

Business Committee

8.3 Standing Order 78 provides for the Business Committee to arrange the order of notices and orders of the day on the *Notice Paper*. The Standing Order was suspended throughout the term of the First and Second Assemblies, as was the standing order (18) which provided for the establishment of the Business Committee. In the resolution agreed to by the Assembly on 9 March 1995 which adopted standing order 16 to establish the Standing Committee on Administration and Procedure, Standing Order 18 was omitted. This renders standing order 78 ineffective as there is no Business Committee which can arrange the order of the business. Furthermore, the new Standing Order 16

provides that the Standing Committee on Administration and Procedure arranges the order of Private Members Business and if recommendation X is adopted by the Assembly, the order of Assembly business also.

8.4 To omit standing order 78 in its entirety (as happened when it was suspended in the First and Second Assemblies) means that there is no provision for the ordering of Executive business on the *Notice Paper*. The practice over the two Assemblies has been for the Manager of Government Business to have that responsibility as it was clearly inappropriate for the Standing Committee on Administration and Procedures to have it. The practice in the House of Representatives (provided by standing order 105) is for the Ministers to arrange the order of "...their notices and orders of the day on the Notice Paper...". The informal practice that developed during the First and Second Assemblies saw the Manager of Government Business arrange the order of the Executive business notices and orders of the day on the *Notice Paper*. Without provision for the ordering of Executive business in the standing orders it is possible that the order could be disputed. It is therefore advisable to include mention of the ordering of Executive business in the Standing Orders.

Recommendation 14: The Committee recommends that standing order 78 be amended to provide that the Manager of Government Business arrange the order of Executive business notices and orders of the day on the *Notice Paper*.

9. New Standing Orders

Out of Order Petitions

9.1 Throughout the history of the Assembly, there have been a large number of petitions lodged with the Clerk for presentation but which have had to be ruled out of order as they did not conform with the standing orders. In 1994, for example, 10 petitions were presented which did conform with the standing orders and there were 7 which did not conform with the standing orders and these were presented by Members who first asked for leave of the Assembly to do so as there is no other provision for the presentation of such petitions. This is a time consuming process and further gives greater predominance to those petitions which do not meet the requirements of petitions as set out in the Standing Orders.

9.2 In an effort to address the problem of out of order petitions, a proforma was prepared and provided to Members to pass on to residents of the Australian Capital Territory who wished to exercise their right to petition their legislature. However, it is unrealistic to expect that all residents of the Territory who wish to petition the Assembly will seek advice from a Member before the petition is prepared. It is therefore likely that out of order petitions will continue to be lodged for presentation.

9.3 The Committee believes that to provide a process by which out of order petitions can be presented to the Assembly which did not involve the Assembly granting a Member leave would facilitate the smooth operation of the Assembly. However, the Committee was also concerned that in providing this process through the Standing Orders it did not grant any resident or group of

residents the power to abuse the Parliamentary Privilege which would be granted to the out of order petition if lodged. The Committee therefore determined that any process to enable out of order petitions to be lodged should be subject to the same restrictions as those which Members themselves are subject to by virtue of the Standing Orders. The Speaker plays a role in implementing the standing orders for Members and the Committee believes that it is therefore appropriate that the Speaker is responsible for determining whether an out of order petition can be presented to the Assembly or should be returned to Member who lodged it. To assist the Speaker in making such a determination the Committee believes that out of order petitions which are critical of a character or conduct of a person or are not respectful, decorous or temperate in language or contain unbecoming expressions or the subject matter is not within the ministerial responsibility of the Territory or offends any standing order other than those relating to petitions should not be presented to the Assembly.

Recommendation 15: The Committee recommends that a new standing order 83A be adopted to provide for a Minister to present out of order petitions with papers, and that the Speaker should determine that out of order petitions which are critical of a character or conduct of a person or are not respectful, decorous or temperate in language or contain unbecoming expressions or the subject matter is not within the ministerial responsibility of the Territory or offends any standing order other than those relating to petitions should be returned to the Member who lodged the petition and not presented to the Assembly.

Explanatory Memorandum

9.5 The *Interpretation Act 1967* recognises the use of Explanatory Memorandum as extrinsic material to be used in interpreting an Act (see paragraph 11B.(1)(da)). The Standing Orders of the Assembly make no such recognition of this documentation and nor do its procedures. Executive Bills are routinely introduced with a supporting Explanatory Memorandum and these are presented to the Assembly at the end of the Minister's presentation speech by virtue of their power to present a paper at any time (standing order 211). Private Members' do not normally present explanatory memoranda when introducing bills, but there have been occasions when they have done so. In 1994, for example, of the 18 private Member's bills introduced, 6 had an accompanying Explanatory Memorandum. If a private Member has prepared an Explanatory Memorandum to a bill then he/she must seek the leave of the Assembly to present it. This adds to the time required for a private Member to introduce their legislation.

9.6 The Committee was of the view that the statutory recognition of Explanatory Memorandum should be mirrored in the Assembly by formal recognition in the Standing Orders of the documents. At the same time the Committee considered that the presentation of Explanatory Memorandum could be facilitated by providing a more streamlined procedure for both Ministers and Private Members to use when introducing legislation. It therefore determined that provision should be made in the Standing Orders for Explanatory Memoranda to be presented to the Assembly at the same time that a Bill is presented to the Assembly.

Recommendation 16: The Committee recommends that standing order 168(c) be amended to include the presentation of any associated explanatory memorandum with the presentation of the Bill to the Assembly.

Committee Evidence taken in camera

9.7 During the Second Assembly, standing order 241 was the focus of some attention in relation to questions of privilege. That focus highlighted the fact that there was no provision made in the Standing Orders in relation to any evidence taken or documentation received by a committee of the Assembly on an in camera basis. In camera evidence is that which is given to the committee in confidence. Evidence or documents that are likely to be received by a committee on a confidential basis include “evidence which might incriminate the witness, industrial secrets, classified material, medical records and evidence which may bring advantage to a witness’s prospective adversary in litigation.”³

9.8 Standing order 241 provides that until the presentation of a report to the Assembly the evidence or documents presented to the Committee remain strictly confidential, unless it is exempted under the terms of standing order 242. Standing Order 236 which states “When a committee is examining witnesses, visitors may be admitted, but shall be excluded at the request of any member...”, by implication, provides that evidence may be given in camera. Such evidence could, in the terms of standing order 241, become public once the report has been presented to the Assembly. The Committee agreed that the Standing Orders should be amended to clarify whether evidence and documents received in camera continue to remain strictly confidential after the report of the inquiry has been presented to the Assembly.

9.9 The Committee believes that there should be some flexibility for committees and their witnesses in relation to the treatment of in camera evidence or documents as circumstances frequently change. A request by a witness appearing before a committee to give evidence or provide a document to the committee that will remain confidential may be agreed to by the committee, but on hearing the evidence the committee may believe that the reasons for granting the confidentiality are not sufficient for the evidence or document to remain confidential, or a witness may wish the evidence that they give in confidence in relation to a certain tender, for example, remain confidential only until the tender is determined. Other evidence will be such that the confidentiality granted should continue. The Committee therefore agreed that any evidence or documents taken in camera or on a confidential basis remain as confidential unless the Assembly or the committee resolve otherwise.

Recommendation 17: The Committee recommends that standing order 242 be amended to exempt evidence taken and documents received in camera or in confidence by a committee being published unless its publication is authorised by a resolution of the Assembly or the committee.

Discussion Papers and Statements by Committees

³ (House of Representatives Practice, Second Edition, pp. 668-669) .

9.10 The Committee believes that the Assembly's committee system plays a vital role in providing the members of the community which it represents with an opportunity to have a direct input into the proceedings of the Assembly. One way to further this role is to provide committees with the power to present to the Assembly discussion papers. These discussion papers could seek public comments on issues that were currently under inquiry by that committee and when the final report of the committee on the inquiry was made to the Assembly the public's view on the recommendations would be evident.

9.11 The proposal to provide committees with the power to present discussion papers to the Assembly is not new. The Committee is aware that during the First Assembly the idea was mooted and during the Second Assembly 2 committees presented a total of 4 discussion papers to the Assembly. To present the papers the Chairs of the committees required the leave of the Assembly.

9.12 The Committee believes that the proceedings on the floor of the Chamber could be improved if the Standing Orders provided for the Presiding Members of committees to present discussion papers. However, the Committee is concerned that if the Assembly grants a committee the power to present such discussion papers to the Assembly, then the paper should represent the work and thinking of the whole committee. These papers should canvass the range of issues on which the Committee is deliberating and if necessary the breadth of the committee's opinions on these issues. Therefore, the draft discussion papers should be subject to the committee's consideration in the same manner as a draft report is.

9.13 The Committee also believes that for the committee preparing the discussion paper to gain the maximum benefit of the debate that may result from the paper, the other Members of the Assembly should be able to debate the paper. To facilitate this, the Presiding Member, on presenting the paper, should be able to move a motion, such as the discussion paper be noted to enable other Members to debate it in a similar fashion to Committee reports. Any debate that is adjourned therefore would be an order of the day under Assembly business.

Recommendation 18: The Committee recommends that the Assembly adopts a new standing order 246B to provide for the preparation and consideration by a committee of discussion papers for presentation to the Assembly. On presentation of the discussion paper by the Presiding Member to the Assembly, the Presiding Member should be able to move that the discussion paper be noted so that the Assembly may debate the paper.

9.14 The Committee also is of the view that Presiding Members of committees should be able to make a statement to the Assembly in relation to an inquiry being conducted by the committee, without asking leave of the Assembly. In the First and Second Assemblies, Presiding Members routinely made statements to the Assembly to advise the Assembly of the work of their committees. In the Second Assembly, apart from these routine statements, two committees made statements *in lieu* of reports. The Committee supports this as an option to complete an inquiry where there are no major findings or recommendations that a committee wishes to report to the Assembly, but believes that where debate on an inquiry is likely to ensue then the committee

should follow the traditional means of presenting a written report to the Assembly.

9.15 The Committee is again concerned that these statements have the support of the committee and therefore believes that the committee should have the opportunity to peruse the Presiding Member's statement if it wishes to do so.

Recommendation 19: The Committee recommends that a new standing order 246A be adopted to give Presiding Members the power to make statements to the Assembly following a resolution of the committee.

10. Citizen's Right of Reply

10.1 In September 1993, the Second Assembly adopted for the term of that Assembly, two resolutions relating to the privilege enjoyed by Members with the parliamentary convention of freedom of speech. The adoption of these resolutions followed the presentation by the Standing Committee on Administration and Procedures on 26 August 1993 of their report *Citizen's Right of Reply*.

10.2 The first of the two resolution which became known as a citizen's right of reply provide a set of procedures which an individual or corporation may seek to use to reply to comments made about them or the company in the Chamber and which have had an adverse impact on that person or company. The second resolution relates to the exercise of freedom of speech and seeks to advise Members of some of the matters that should be taken into account when exercising this right.

10.3 The report had its genesis in the First Assembly when a Member identified an individual and made various allegations about his business activities. That individual waged a very strong campaign in attempt to clear his name and it was finally acknowledged by the Member that he had been misinformed in relation to the businessman. This Committee's predecessor was initially concerned that in a city the size of Canberra the Assembly would be inundated with requests to use the mechanisms provided by the resolutions. In fact, despite several inquiries, no one has actually written to initiate proceedings under the resolution. The Committee, however, is not concerned with its lack of use but rather believes that the mere existence of the resolutions act firstly to focus Members on the responsibility they have to exercise their freedom of speech with care and secondly to give those in the community a security by knowing that they do have access to the right of reply.

Recommendation 20: The Committee therefore recommends that the resolutions relating to a citizen's right of reply and exercising the freedom of speech be adopted by the Assembly.

11. Conclusion and Final Recommendations

STANDING ORDERS

11.1 The Committee has made a number of recommendations earlier in this report that suggest amendments to existing standing orders or new standing orders. Based on the recommendations 1 to 10 and 12 to 19, the Committee recommends that the Standing Orders be amended as follows:

- (1) Standing Order 16 relating to the Standing Committee on Administration and Procedure be amended by:
 - (a) adding the words "Assembly Business" to the end of subparagraph (1)(c); and
 - (b) by omitting paragraph (5).
- (2) Standing order 27 be omitted and the following standing order substituted:

"Days and hour of meeting"

Days and hour of meeting

27. Unless otherwise ordered, the Assembly shall meet for the despatch of business on each Tuesday, Wednesday and Thursday at 10.30 am."

- (3) Standing order 34 be omitted and the following standing order substituted:

"Adjournment and next meeting"

34. At 5 pm on each sitting day, the Speaker shall propose the question - That the Assembly do now adjourn - which question shall be open to debate. No amendment may be moved to this question:

Provided that:

- (a) if a vote is in progress at the time for interruption, that vote, and any vote consequent upon that vote, shall be completed and the result announced;
- (b) if, on the question - That the Assembly do now adjourn - being proposed, a Minister requires the question to be put forthwith without debate, the Speaker shall forthwith put the question;
- (c) a motion for the adjournment of the Assembly may be moved by a Minister at an earlier hour;
- (d) any business under discussion and not disposed of at the time of the adjournment shall be set down on the Notice Paper for the next sitting; and
- (e) if the question - That the Assembly do now adjourn - is negatived, the Assembly shall resume the proceedings at the point at which they had been interrupted:

Provided further that, if at 5.30 pm on each sitting day, the question before the Assembly is - That the Assembly do now adjourn - the Speaker shall interrupt the debate, at which time:

Minister may extend debate:

- (f) a Minister may require that the debate be extended until 10.10 pm or 5.10 pm, as appropriate, to enable the Ministers to speak in reply to matters raised in the preceding adjournment debate; at 10.10 pm or 5.10 pm, as

appropriate, or upon the earlier cessation of the debate, the Speaker shall forthwith adjourn the Assembly until the time of its next meeting; or

- (g) if no action is taken by a Minister under paragraph (f), the Speaker shall forthwith adjourn the Assembly until the time of its next meeting.”.

- (4) Standing order 69(b) be omitted and the following standing order substituted:

“(b) Motion for adjournment of the Assembly to
 terminate sitting
 Whole Debateno more than 30 minutes
 Each Member5 minutes”.

- (5) Standing order 74 be omitted and the following standing order substituted:

“74. The Assembly shall proceed each day with its ordinary business in the following routine:

Prayer
 Presentation of petitions
 Notices and orders of the day
 Questions without notice
 Presentation of papers
 Ministerial statements, by leave
 Matter of public importance
 Notices and orders of the day:

Provided that at 2.30 pm on each day the Speaker shall interrupt the business before the Assembly in order that questions without notice shall be called on; and

- (a) if a vote is in progress at the time fixed for interruption, that vote, and any vote consequent upon that vote, shall be completed and the result announced; and
- (b) the Speaker shall fix the time for the resumption of the debate on any business under discussion and not disposed of at the time of interruption.”.

- (6) Standing order 77 be omitted and the following standing order substituted:

“Executive and private Members' business - precedence of

77. Executive business shall, on each day of sitting, have precedence of all private Members' and Assembly business, except that:

- (a) On sitting Wednesdays private Members' business shall have precedence of Executive business until two hours after the time fixed for the meeting of the Assembly;
- (b) On sitting Thursdays, Assembly business shall have precedence of Executive Business in the ordinary routine of business for 45 minutes from the conclusion of consideration of any Executive notices of intention to present bills;

Provided further that:

- (c) if a vote is in progress at the time precedence expires, that vote or any vote consequent upon that vote shall be completed and the result announced;
- (d) at any time during the consideration of Assembly business any Member may move that Executive business be called on and such motion shall be put forthwith without amendment or debate;
- (e) at the time precedence to Assembly business expires any Member may move that the time allotted to Assembly business be extended by 30 minutes and such motion shall be put forthwith without amendment or debate; and
- (f) the Speaker shall fix the next sitting Wednesday for the resumption of the debate on any business under discussion and not disposed of at the expiration of the time allotted to private Members' business and the next sitting Thursday for the resumption of the debate on any business under discussion and not disposed of at the expiration of the time allotted to Assembly business or at the time Assembly business is interrupted.

For the purpose of this standing order and standing order 16, Assembly business is:

- (g) any notice of a motion or order of the day relating to the establishment or membership of a committee or the referral of a matter to a committee;
- (h) any order of the day for the consideration of a motion moved upon the presentation of a discussion paper, committee report or the Government response to a committee report; and
- (j) any notice of motion to amend, disallow, disapprove or declare void and of no effect any instrument made under any Act of the Assembly which provides for the instrument to be subject to amendment, disallowance or disapproval of the Assembly or subject to a resolution of the Assembly declaring the instrument to be amended or void and of no effect or any other order of the day to consider such a motion.”.

(7) Standing order 78 be omitted, and the following standing order substituted:

“Order of Executive business

78. Subject to standing order 77, the Manager of Government Business may arrange the order of Executive business notices and orders of the day on the *Notice Paper*.”.

(8) Standing order 79 (Matter of public importance) be amended by omitting "4 hours" and substituting "2 hours".

(9) the following new standing order be adopted:

“Petitions which do not conform with the Standing Orders

83A. Petitions which do not conform with the standing orders may be lodged with the Clerk and may be presented by a Minister in accordance with standing order 74. The Minister may indicate the subject matter of the paper and the number of signatories. If, in the opinion of the Speaker, the subject matter is not within the

ministerial responsibility of the Territory or is critical of a character or conduct of a person, contains unbecoming expressions, is not respectful, decorous or temperate in its language or offends any standing order other than those relating to petitions, the paper shall be returned to the Member who lodged it.”.

(10) the following new standing order be adopted:

“Request for explanation concerning unanswered question

118A. If a Minister does not answer a question on notice (including a question taken on notice during questions without notice) asked by a Member, within 30 days of the asking of that question, and does not, within that period, provide to the Member who asked the question an explanation satisfactory to that Member of why an answer has not yet been provided, then:

- (a) at the conclusion of questions without notice on any day after that period, that Member may ask the relevant Minister for such an explanation; and
- (b) the Member may, at the conclusion of the explanation, move without notice “That the Assembly takes note of the explanation”; or
- (c) in the event that the Minister does not provide an explanation, the Member may, without notice, move a motion with regard to the Minister’s failure to provide either an answer or an explanation.”.

(11) standing order 168(c) be amended by adding at the end “and any associated explanatory memorandum”.

(12) standing order 242 be amended by adding the following paragraph:

- “(e) any evidence taken or documents received ‘in camera’ or on a confidential basis by a committee which will remain strictly confidential unless its publication is authorised by a resolution of the committee or the Assembly.”.

(13) the following new standing orders be adopted:

“Statement

246A. If a committee resolves that a statement should be made to the Assembly concerning an inquiry under the committee’s consideration or a matter within the committee’s terms of reference, the Presiding Member shall prepare for the committee’s consideration a statement in the terms of the committee’s resolution. Standing Orders 248, 249 and 250 apply to the consideration of a statement as if any reference to ‘draft report’ was a reference to ‘draft statement’. The Committee may resolve to dispense with the consideration of the statement under standing orders 248, 249 and 250.

The Presiding Member shall make the statement to the Assembly.

Discussion paper

246B. If a committee resolves to present a discussion paper to the Assembly on an issue under inquiry by the committee it shall be the duty of the Presiding Member to prepare a draft of the discussion paper. Standing Orders 248, 249 and 250 apply to

the consideration of a draft discussion paper as if any reference to 'draft report' was a reference to 'draft discussion paper'.

Every Discussion Paper will be signed by the Presiding Member and presented to the Assembly by the Presiding Member. Standing order 254 (a) and 254(d) apply to the presentation of a discussion paper as if any reference to 'report' was a reference to 'discussion paper'."

RESOLUTIONS

11.2 In accordance with recommendation 20, the Committee recommends that the Assembly passes the following resolutions in relation to the issues of a citizen's right of reply and freedom of speech:

That -

Protection of persons and corporations referred to in the Legislative Assembly:

- (1) Where a person or corporation who has been referred to by name, or in such a way as to be readily identified, in the Assembly, makes a submission in writing to the Speaker:
 - (a) claiming that the person or corporation has been adversely affected in reputation or in respect of dealings or associations with others, or injured in occupation, trade, office or financial credit, or that the person's privacy has been unreasonably invaded, by reason of that reference to the person or corporation; and
 - (b) requesting that the person or corporation be able to incorporate an appropriate response in the parliamentary record,

if the Speaker is satisfied:

- (c) that the subject of the submission is not so obviously trivial or the submission so frivolous, vexatious or offensive in character as to make it inappropriate that it be considered by the Standing Committee on Administration and Procedures; and
- (d) that it is practicable for the Standing Committee on Administration and Procedures to consider the submission under this resolution,

the Speaker shall refer the submission to that Committee.

- (2) The Committee may decide not to consider a submission referred to it under this resolution if the Committee considers that the subject of the submission is not sufficiently serious or the submission is frivolous, vexatious or offensive in character, and such a decision shall be reported to the Assembly.
- (3) If the Committee decides to consider a submission under this resolution, the Committee may confer with the person or corporation who made the submission and any Member who referred in the Assembly to that person or corporation.

- (4) In considering a submission under this resolution, the Committee shall meet in private session.
- (5) The Committee shall not publish a submission referred to it under this resolution or its proceedings in relation to such a submission, but may present minutes of its proceedings and all or part of such submission to the Assembly.
- (6) In considering a submission under this resolution and reporting to the Assembly the Committee shall not consider or judge the truth of any statements made in the Assembly or of the submission.
- (7) In its report to the Assembly on a submission under this resolution, the Committee may make either of the following recommendations:
 - (a) that no further action be taken by the Assembly or by the Committee in relation to the submission; or
 - (b) that a response by the person or corporation who made the submission, in terms specified in the report and agreed to by the person or corporation and the Committee, be published by the Assembly or incorporated in *Hansard*.

and shall not make any other recommendations.
- (8) A document presented to the Assembly under paragraph (5) or (7):
 - (a) in the case of a response by a person or corporation who made a submission, shall be succinct and strictly relevant to the questions in issue and shall not contain anything offensive in character; and
 - (b) shall not contain any matter the publication of which would have the effect of:
 - (i) unreasonably adversely affecting or injuring a person or corporation, or unreasonably invading a person's privacy, in the manner referred to in paragraph (1); or
 - (ii) unreasonably adding to or aggravating any such adverse effect, injury or invasion of privacy suffered by a person or corporation.
- (9) A corporation making a submission under this resolution is required to make it under their common seal.
- (10) This resolution have effect from the commencement of the Third Assembly and continue in force unless and until amended or repealed by this or a subsequent Assembly.

Exercise of Freedom of Speech:

- (1) That the Assembly considers that, in speaking in the Assembly or in a committee, Members should take the following matters into account:
 - (a) the need to exercise their valuable right of freedom of speech in a responsible manner;

- (b) the damage that may be done by allegations made in the Legislative Assembly to those who are the subject of such allegations and to the standing of the Legislative Assembly;
 - (c) the limited opportunities for persons other than members of the Legislative Assembly to respond to allegations made in the Legislative Assembly;
 - (d) the need for Members, while fearlessly performing their duties, to have regard to the rights of others; and
 - (e) the desirability of ensuring that statements reflecting adversely on persons are soundly based.
- (2) That the Speaker, whenever the Speaker considers that it is desirable to do so, may draw the attention of the Legislative Assembly to the spirit and the letter of this resolution.
- (3) That this resolution have effect from the commencement of the Third Assembly and continue in force unless and until amended or repealed by this or a subsequent Assembly.

Greg Cornwell, MLA
Presiding Member

28 April 1995