11. Rules of debate and the maintenance of order

Introduction

11.1. 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 is negatived.

11.2. The vast majority of the Assembly's time is spent debating proposals before the Assembly and reaching decisions on those proposals.[1] 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 under the heading, 'Opportunities for members to speak' in this chapter), the debates in the Assembly are of prime importance for its contribution to the governance of the Territory.

11.3. 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 that proposed laws are examined and assessed, as are the executive's administration and 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 nearly corresponds to the wish of all.[2]

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

11.5. The Speaker has the authority to preside at meetings of the Assembly[3] and the responsibility for maintaining order in the Assembly.[4] 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, they must be heard in

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1 Generally, a proposal is put before the Assembly in the form of a motion, with the Assembly being asked the question 'That the motion be agreed to' or variations of that.

2 See *Redlich*, Vol III, pp 43-44.

3 Self-Government Act, s 18(4).

4 Standing order 37—Order shall be maintained in the Assembly by the Speaker.

silence and without interruption.[5] The Speaker also determines whether words used are offensive or disorderly and rules on any question of order.[6]

Opportunities for members to speak

11.6. 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.

11.7. 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 leave has been obtained from the chair to explain matters of a personal nature, although there may be no question before the Assembly; and[7]
- when two or more candidates have been proposed for the election to the positions of Speaker, Deputy Speaker, Chief Minister or Leader of the Opposition.[8]

11.8. Committee chairs may make statements to the Assembly[9] and ministers may make ministerial statements.[10] The Assembly also grants leave to members to make statements on occasions, often following the presentation of papers or committee reports. In addition, the Assembly grants leave to members to make their inaugural speeches[11] or valedictory statements[12] and, on occasion, the Speaker may permit members to speak with the indulgence of the chair.[13]

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5 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.

6 Standing orders 57 and 73.

7 Standing order 46.

8 Pursuant to standing orders 2(c), 3(c), 5 and 5B. These proceedings are unusual as, in the event of there being two or more candidates proposed for any of the positions, more than one motion is moved. The mode of decision between candidates is by ballot.

9 In accordance with standing order 246A.

10 Standing order 74.

11 Inaugural (formerly termed 'maiden') speeches have been made in the course of debate (see Assembly Debates, 1 May 1990), p 1439. Inaugural speeches have been made during a single sitting (see MoP, No 2, 11 December 2001, p 11) or over the course of several sittings (see MoP, No 2, 9 December 2008, p 12; MoP, No 3, 10 December 2008, p 33; MoP, No 4, 11 December 2008, p 41).

12 For example, MoP, No 147, 11 August 2016, p 1702 and MoP, No 139, 27 August 2020, p 2153.

13 For example, ministers adding to answers after the conclusion of questions without notice.

11.9. 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 under the heading, 'Motions not open to debate' in this chapter);
- a member who has spoken to a question may again be heard pursuant to standing order 47 'to explain where some part of that Member's speech has been misquoted or misunderstood' subject to certain restrictions (see under the heading 'Explaining words' in this chapter);
- a member who has moved a substantive motion or moved that a bill be agreed to in principle is allowed a reply (see under the heading, 'Speaking in reply' in this chapter);
- 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 or co-sponsor in charge of any other bill may speak; and
- a minister in charge or a minister responsible for a directorate or appropriation unit can speak for unlimited periods during the detail stage of an appropriation bill for the ordinary annual services for the year.

11.10. During a debate, a member is not permitted to speak again after resuming their 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.[14]

11.11. 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 their 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.

11.12. No member may speak to any question once the chair puts the question and the voices have been declared in the affirmative or negative.[15]

Motions not open to debate

11.13. Some motions are not open to debate and may only be moved, pursuant to 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;

14 See, for example, MoP, No 15, 8 May 2002, p 135.

15 Standing order 50. See Assembly Debates, 6 May 2003, pp 1556-1557.

- 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.[16]

11.14. 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 without debate, the Speaker is obliged to do so.[17] Again, should the motion 'That executive business be called on' be moved pursuant to standing order 77(e) or 'That the time allotted to Assembly business be extended by 30 minutes' be moved pursuant to standing order 77(f), the Speaker is required to put the questions forthwith and without amendment or debate.

11.15. Though the motion for the adjournment of debate is not open to debate,[18] 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.[19]

11.16. 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'.[20] The practice of the Assembly was initially that the motion was not debated,[21] nor was it open to debate.[22] 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.[23]

Moving motions and amendments

11.17. A member may speak 'when moving a motion that is open to debate'.[24] The current practice followed in the Assembly is that, upon a notice of motion being called upon by the Clerk, the member in charge rises and, after being called on

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16 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.

17 Standing order 34 (b).

18 Standing order 65.

19 Assembly Debates, 8 December 1998, pp 3178-3179.

20 Standing order 69(f).

21 MoP, No 24, 18 October 1989, p 97; MoP, No 140, 4 December 1991, p 631; MoP, No 141, 5 December 1991, p 647; MoP, No 16, 25 June 1992, p 83.

22 See rulings at Assembly Debates, 18 October 1989, p 1771; Assembly Debates, 5 December 1991, p 5675.

23 MoP, No 51, 24 February 1993, p 295; Assembly Debates, 24 February 1993, pp 407-408. Standing order 69(f).

24 Standing order 45.

by the Speaker, moves the motion immediately.[25] In the case of co-sponsored motions, the first co-sponsor speaking will formally move the motion, with other co-sponsors able to speak after the Speaker has proposed the question.

11.18. Similarly, when a bill has been presented and the title read by the Clerk, the member presenting the bill shall move 'That this bill be agreed to in principle'[26] and they commence 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.

11.19. When moving a motion for which notice is not required (see Chapter 10: Motions) and which is open to debate, it is expected that the Speaker would require the motion to be moved at the outset. The question would then be proposed by the Speaker[27] and the member could proceed to address the Assembly on the merits of the motion. Although not usual practice, 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.

11.20. Should a member moving a motion or presenting a bill not speak to that motion, it must be assumed that, with the exception of responding to any amendments that might be moved, the only other occasion on which they could speak would be when exercising their right of reply, pursuant to standing order 48.[28]

11.21. Members may address the Assembly when moving an amendment; usually, 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 or co-sponsor speaks in reply.[29]

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25 In earlier Assemblies it was not unusual for a member to speak to their motion and formally move it at the completion of their speech. At that time the Speaker would then propose the question to the Assembly. Assembly Debates, 13 August 1992, pp 1667-1668. In that example, note that the motion for the closure cannot be moved until the Speaker proposes the question.

26 Standing order 171.

27 Standing order 129.

28 The provisions of standing order 69(c), (d), and (i) contemplate the mover (and (ga), co-sponsors) 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 495-496.

29 However, during consideration of legislation at the detail stage, when a member moves an amendment at the conclusion of their speech and the question on the amendment is proposed after the member has concluded their 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 April 1999, pp 1046-1048 and 1056-1059.

Conflict of interest

11.22. Section 15 of 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.

Explaining words

11.23. Standing order 47 provides that a member who has already spoken to a question may be heard to explain where some material part of their speech has been misquoted or misunderstood; however:

- 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.[30]

11.24. The provisions of standing order 47 cannot be utilised after the relevant debate has concluded or if there is another matter before the Assembly[31] and, clearly, may be used by a member only in relation to a misquotation or misunderstanding of their speech on the question before the Assembly.[32]

Personal explanations

11.25. 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.[33]

11.26. The matter must be of a personal nature (the member may be directed to resume their seat if that is not the case)[34] and the leave granted cannot be used as an artifice to continue the debate on an issue.[35]

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30 See Assembly Debates, 5 May 2005, p 1853.

31 Assembly Debates, 18 October 1995, p 1794.

32 Assembly Debates, 26 June 2003, p 2646; Assembly Debates, 5 May 2005, p 1853.

33 Standing order 46.

34 Assembly Debates, 5 March 2002, pp 560-561.

35 Assembly Debates, 18 August 2005, pp 2911-2912; Assembly Debates, 9 May 2000, pp 1238-1239; Assembly Debates, 5 March 2002, pp 560-561.

11.27. Should a member believe that they have been misquoted or misunderstood in a debate, the proper course to follow is for the member to avail themselves of the provisions of standing order 47 in the course of that debate.[36] The Speaker has requested members to 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.[37]

11.28. 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 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.

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36 Assembly Debates, 21 February 1996, pp 118-119.

37 Assembly Debates, 19 September 1990, p 3455.

> 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.[38]

Speaking in reply

11.29. A member who has moved a substantive motion, (see Chapter 10: Motions) 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,[39] and the reply closes the debate.[40] In the case of co-sponsored bills, no objection has been taken to the co-sponsors being able to speak in reply, despite not being explicitly provided for in standing order 48.[41]

11.30. 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.[42] In the House of Representatives, a member's right of reply is confined to the movers of substantive motions, with proposers of subsidiary motions—for example, a motion to adjourn debate—having no such right. Contemporary practice in the Assembly is that the chair, in relation to allowing a right of reply, does not always distinguish between substantive and subsidiary motions and has permitted the mover of a motion a right of reply.[43]

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38 Assembly Debates, 4 September 1996, pp 3042-3043.

39 Standing order 48.

40 Standing order 49.

41 MoP, No 80, 27 November 2018, p 1148; Assembly Debates, 27 November 2018, pp 4883-4889; MoP, No 139, 27 August 2020, p 2152; Assembly Debates, 27 August 2020, pp 2253-2258.

42 May, p 316; *House of Representatives Practice*, p 289.

43 MoP, No 30, 25 August 2009, pp 326, 330; MoP, No 33, 15 September 2009, p 366. In an earlier Assembly, 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). Assembly Debates, 16 November 2005, pp 4186-4187.

11.31. The practice in the Assembly is that the chair declines to give the call to the mover of a motion when any other members who have not spoken in the debate seek the call.[44]

11.32. 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).[45] On occasions, debate having been closed by the reply of the mover of a substantive motion, debate has, by leave, continued.[46] Should the mover of a substantive motion wish to speak again without closing the debate, they 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, they may do so but must confine their remarks to the amendment.[47]

11.33. 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.[48]

Indulgence of chair

11.34. By indulgence of the chair, ministers are 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 are made at the completion of question time. These additions and corrections need not necessarily relate to questions asked on the same day.[49] The chair has also granted indulgence to members to speak briefly in regard to Assembly-related matters.[50] The exercise of indulgence is completely at the chair's discretion; it may be withdrawn.[51]

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44 See Assembly Debates, 14 May 2004, pp 2091-2092; Assembly Debates, 8 March 2007, p 412.

45 In the House of Representatives a member speaking in reply is precluded from proposing an amendment. See *House of Representatives Practice*, p 496.

46 See, for example, MoP, No 13, 11 April 2002, p 119.

47 See, for example, MoP, No 108, 23 August 2007, p 1103. A member who had moved amendments to a government bill was given leave to address the minister's comments on those proposed amendments.

48 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 (by now the then 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 February 1990, p 175.

49 See, for example, Assembly Debates, 3 May 2007, p 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.

50 MoP, No 83, 28 October 2010, p 1005; MoP, No 139, 20 March 2012, p 1798; MoP, No 141, 22 March 2012, p 1821; MoP, No 136, 30 July 2020, p 2063.

51 Assembly Debates, 11 May 1995, p 466; Assembly Debates, 7 March 2007, pp 290-291. And see *House of Representatives Practice,* p 498.

Manner of speech

11.35. Members wishing to speak must rise and address the Speaker[52] from the place allocated to them in the chamber.[53] Should two or more members seek the call, the Speaker must call upon the member who, in the Speaker's opinion, was first to seek the call.[54] However, the Speaker may have regard to the alternation of the call. Should a member be unable to rise, they are permitted to speak whilst sitting.[55]

11.36. Members may, when called by the chair, speak in a language other than English. To do so, the member must provide to the Assembly an oral translation in the English language immediately beforehand and also provide a written translation in both English and the other language to the Clerk within one hour following the relevant contribution.[56]

11.37. Remarks should be addressed through the chair. It is considered that remarks directed at other members across the chamber could lead to disorderly behaviour.[57] It is also not in order for a member to turn their back to the chair to address party colleagues or to address the listening public, either in the galleries or while proceedings are being broadcast.[58] Members have been referred to the practice of the House of Representatives whereby 'members will address the chair, … members will not address the house in the second person … and it is not in order for a member to turn his or her back on the chair'.[59] 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.[60]

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52 Standing order 42. The current provisions of standing orders 42, 43 and 44 were adopted following recommendations of the Standing Committee on Administration and Procedure in its 2018 report *Review of the standing orders and continuing resolutions of the Legislative Assembly* (Report 8, October 2018), the committee noting, at pp 10-11, that a number of the standing orders relating to the manner and right of speech did not provide for members with a disability or those who may be physically unable to stand to speak.

53 However, during the COVID-19 pandemic members were permitted to speak from any place on the floor of the chamber.

54 Standing order 44.

55 Standing order 43.

56 Standing order 42A. And see (prior to the insertion of standing order 42A), Assembly Debates, 13 September 2017, pp 3645-3646.

57 Assembly Debates, 24 September 2003, p 3591.

58 Assembly Debates, 4 June 2002, pp 1892-1893. The Speaker did add 'This is not to say … that we have to have our gazes locked together for the entire debate'. See also Assembly Debates, 15 March 2007, pp 635-636; Assembly Debates, 17 November 2010, pp 5579-5582; Assembly Debates, 17 September 2014, p 2807.

59 Assembly Debates, 17 November 2010, p 5582. *House of Representatives Practice*, p 514, notes that the purpose of the requirement to address the chair is to 'make debate less personal and avoid the direct confrontation of Members addressing one another as 'you'.

60 Assembly Debates, 22 November 1989, p 2835.

11.38. The Speaker 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 first 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, Miss 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.[61] A member may also be referred to as the member for their electorate.[62]

11.39. Whilst it is not a formal practice of the Assembly to require members to refer to political parties by their proper name, members have been encouraged to do so.[63]

11.40. Members may not interrupt another member who is speaking other than to:

- call attention to a point of order;[64]
- call attention to the want of a quorum;[65]
- move a closure motion;[66] or
- move 'That executive business be called on' during consideration of Assembly business.[67]

11.41. It is not in order for a member to thump the desk whilst speaking,[68] nor to converse or make any noise or disturbance to interrupt a member.[69]

Reading speeches and presentation of documents quoted from

11.42. There is no prohibition on members reading their speeches in the Assembly. However, should a member quote from a document, they 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.[70] 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.[71]

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61 Assembly Debates, 22 November 1989, p 2835. And see Assembly Debates, 16 November 2005, p 4224.

62 In the Ninth Assembly, where there were two members with the same surname, the chair and the Clerk would also use their first initial when referring to them.

63 Assembly Debates, 17 June 2009, p 2457.

64 Standing order 72.

65 Standing order 61(b).

66 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 August 1992, p 1668.

67 Standing order 77(e).

68 Assembly Debates, 13 May 2015, p 1678.

69 Standing order 39.

70 Standing order 213. See also MoP, No 129, 19 June 2001, pp 1466-1467.

71 Standing order 212.

11.43. 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.[72]

11.44. 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.[73] 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.[74] For further information on the tabling of quoted documents see Chapter 14: Papers and documents of the Assembly, under the heading 'Tabling of quoted documents'. See also a statement made by the Speaker during the Seventh Assembly.[75]

Display of articles to illustrate speeches

11.45. 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'.[76] 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.[77] A member having displayed a solar panel during debate on a matter related to climate change mitigation, the Speaker later advised the Assembly that, whilst she did not think the member had displayed any irresponsibility in his actions, members should exercise judgement and responsibility when displaying material to illustrate and add to their speeches, referring to practice in the House of Representatives. The general attitude of the chair has been that visual props are tolerated but definitely not encouraged.[78]

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72 Assembly Debates, 21 June 1991, pp 2357-2358; Assembly Debates, 25 November 1993, pp 4165-4156. And see Assembly Debates, 17 October 1995, p 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.

73 See also Chapter 14: Papers and documents of the Assembly, under the heading 'Tabling of quoted documents'.

74 MoP, No 15, 23 August 1995, p 122; Assembly Debates, 23 August 1995, pp 1388-1389. The question was resolved in the affirmative and the document was presented. For earlier discussion on the convention see Assembly Debates, 9 May 1995, pp 315-317.

75 MoP, No 84, 16 November 2010, p 1017; Assembly Debates, 16 November 2010, pp 5421-5422.

76 *House of Representatives Practice*, p 508.

77 Assembly Debates, 17 October 1995, p 1746.

78 Assembly Debates, 16 February 2017, p 620. And see Assembly Debates, 1 April 2009, pp 1655-1656 (display of a newspaper headline); Assembly Debates, 22 March 2017, p 934 (member asked to remove a

Incorporation of unread material into the Assembly Hansard

11.46. 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, the Speaker 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 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.[79]

11.47. In establishing guidelines for the incorporation of unread material into the Assembly debates, the Speaker in 1989 indicated that he would not allow the incorporation of printed material other than petitions, answers to questions on notice or other matter, 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 was unsatisfactory and to be avoided.[80] These 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.[81]

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prop during debate); Assembly Debates, 31 October 2018, p 4571 (by indulgence, a member displayed a collapsible coffee cup); Assembly Debates 13 February 2019, p 185 (member asked to remove a prop).

79 Assembly Debates, 4 July 1989, pp 622-630.

80 Assembly Debates, 4 July 1989, pp 622-623.

81 Assembly Debates, 9 December 2004, p 215. And see Assembly Debates, 1 July 2010, p 3037.

11.48. Should leave be granted to incorporate unread material it must be provided to Hansard as soon as possible. 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.

11.49. 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.[82]

Question may be required to be read

11.50. 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.[83]

Allocation of the call

11.51. Standing order 44 provides that when two or more members seek to speak, the Speaker shall call on the member who, in the Speaker's opinion, was first. The chair, however, will often alternate the call between government, opposition and crossbench members.

Rules of debate

Relevancy

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

11.53. 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;[84] and
- matters related to public affairs may be debated on the motion for the agreement in principle to main appropriation bills (the budget).

11.54. 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

82 Assembly Debates, 1 May 1990, p 1467.

83 Standing order 60. This standing order is rarely used.

84 This does not mean that other standing orders can be transgressed; see, for example, Assembly Debates, 10 April 2002, pp 967-968; Assembly Debates, 16 November 1989, p 2697.

select appropriations.[85] 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.[86]

11.55. 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.[87] Should the chair permit irrelevant matters to be raised, the subsequent debate can be distorted. Where a member has inadvertently been allowed to discuss irrelevant matters, the Speaker has felt obliged to permit other members the opportunity to do likewise,[88] undermining the relevancy rule.

Irrelevance or tedious repetition

11.56. 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.[89]

Cognate debates

11.57. It is common practice that, when two or more related orders of the day (usually, but not always, 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.[90] If there is no objection, the chair allows that course to be followed and a cognate debate ensues.[91] 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.

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85 Assembly Debates, 3 May 2001, pp 1425-1426.

86 Assembly Debates, 4 May 2006, p 1196.

87 Assembly Debates, 17 November 1998, p 2571.

88 Assembly Debates, 5 July 1989, p 664. And see Assembly Debates, 23 September 2003, pp 3521-3522; Assembly Debates, 26 August 2009, p 3644; Assembly Debates, 22 August 2012, pp 3133-3134. On one occasion, a minister, who was the subject of a censure motion which was expressed in quite specific terms about a particular administrative matter, raised concerns that irrelevant contributions had been made about his character following the minister's own remarks; Assembly Debates, 23 September 2003, pp 3521-3522. However, on this occasion, the Speaker implored members to 'contain their discussion of the issue to the matter which is the subject of the censure motion in order that the minister is treated fairly with regard to his ability to contribute to the debate on that subject'.

89 Standing order 62. See MoP, No 38, 7 December 1989, p 160, for an example.

90 Though it would be uncommon, the procedure can also be utilised in the consideration of notices and orders of the day.

91 Leave is not invariably granted. See, for example, Assembly Debates, 8 December 1998, p 3178.

11.58. 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 a single 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 from moving an amendment.

Allusion to previous debates or proceedings

11.59. There is now no provision in the standing orders prohibiting allusion to previous debates or proceedings in the same calendar year. Standing order 51 was omitted on the recommendation of the Standing Committee on Administration and Procedure, that committee being of the opinion that it had not been enforced and to do so would impede many debates, concluding that the standing order was not required and could safely be removed.[92]

Anticipation of discussion

11.60. 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 shall consider whether the matter anticipated is likely to be brought before the Assembly within a reasonable time.

11.61. 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.[93] 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.[94]

11.62. 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.[95]

11.63. 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.[96] The fact that the Assembly is debating the question 'That the Assembly do now adjourn'

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92 Standing Committee on Administration and Procedure report, *Review of the standing orders and continuing resolutions of the Legislative Assembly* (Report No 8, October 2018), p 12.

93 *House of Representatives Practice*, p 512, but see comment where it is stated that the origin of the rule is unclear in the introduction to *May (*23rd edition*)* at p 4.

94 *House of Representatives Practice*, p 512.

95 The Speaker has ruled that all the matters proposed for discussion by both opposition and government members anticipated debate and thus were out of order. There was no discussion of a matter of public importance that day. MoP, No 45, 8 December 2009, pp 497 and 500.

96 Assembly Debates, 18 November 1992, p 3209.

does not permit anticipation of the debate on legislation listed for consideration on the *Notice Paper*.[97]

Reference to committee proceedings

11.64. Standing order 241 effectively prohibits the disclosure in the Assembly of any committee evidence, documents, proceedings or reports unless they have been (a) reported to the Assembly or (b) authorised for publication by the committee or by the Assembly.[98]

11.65. 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 presiding member 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.

11.66. 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. Committee members may discuss a committee report with other members on a confidential basis in the time between the substantial conclusion of a committee's deliberations on the report and its presentation to the Assembly.[99]

11.67. In relation to the procedures adopted by the Assembly for citizen's right of reply (see under the heading 'References to persons—freedom of speech and citizen's right of reply' below in this chapter) should the Standing Committee on Administration and Procedure not present to the Assembly all or part of a submission received, members are constrained in any references they can make to that submission in the Assembly.[100]

11.68. In December 2002, the Speaker made a statement concerning a matter of public importance that had been proposed for discussion and which covered matters raised in a report of the Auditor-General presented the preceding day. The

97 Assembly Debates, 16 November 1989, p 2697; Assembly Debates, 10 April 2002, pp 967-968.

98 See Assembly Debates, 12 May 1992, pp 277-278.

99 Standing order 241(ba). Similarly, it is not a breach of the standing orders for disclosure to Assembly staff in the course of their duties. See also Chapter 17: Committees under the heading 'Disclosure to Assembly employee'.

100 Assembly Debates, 19 August 2004, pp 3907-3908.

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,[101] 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.[102]

Reflections upon votes

11.69. Standing order 52 prohibits the adverse 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,[103] was that 'reflect' was taken to apply as reflecting adversely. The basis 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.[104]

11.70. Ruling on a matter in 1992, the Speaker stated that not only do reflections revive discussion upon questions already decided but that they are also 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.[105]

11.71. A member has been asked to withdraw a description of action taken by the Assembly by way of a vote as 'an appalling situation'[106] 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. [107] 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.[108]

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101 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'.

102 MoP, No 43, 12 December 2002, pp 491-492; Assembly Debates, 12 December 2002, pp 4397-4398.

103 MoP, No 132, 6 March 2009, pp 1388-1389.

104 *Redlich*, op. cit. Vol III, p 58. *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'.

105 Assembly Debates, 13 August 1992, p 1656.

106 Assembly Debates, 18 May 1993, p 1563.

107 Assembly Debates, 27 August 2003, p 3310.

108 Assembly Debates, 27 June 1996, pp 2229-2230.

11.72. In August 1996, the Speaker, 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.[109] The Speaker has also stated that there is nothing to stop a minister being asked, and the minister answering, a question about recent developments,[110] and this would not be a reflection on a previous vote.

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

11.73. 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.[111]

11.74. 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 fact by a minister concerning the Sovereign or debate on the constitutional position of the Crown.[112] During debate on a motion critical of the then Commonwealth Government's inclusion of Knights and Dames in the Order of Australia honours system, reference was permitted to the award of a knighthood to the Queen's husband, the Duke of Edinburgh.[113]

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109 Assembly Debates, 27 August 1996, pp 2567-2568. And see Assembly Debates, 31 August 1999, pp 2568-2569; Assembly Debates, 1 December 1994, p 4447; Assembly Debates, 27 June 1996, pp 2223-2230. See also Assembly Debates, 6 March 2007, p 191 and Assembly Debates, 9 April 2014, p 849, where rulings have been made during questions without notice.

110 Assembly Debates, 9 April 2014, pp 848-849.

111 Standing order 53. See also *House of Representatives Practice*, pp 518-519.

112 *House of Representatives Practice*, pp 518-519. For background to the rule see *May*, p 494, and *Redlich*, Vol II, p 220 and Vol III, p 60. *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 stated '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'.

113 Assembly Debates, 19 February 2015, pp 574-575.

Offensive or disorderly language

11.75. 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.[114]

11.76. All imputations of improper motives and all personal reflections on members must be considered highly disorderly.[115]

11.77. 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; [116]
- 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.[117]

11.78. If a charge is made against a member of the Assembly to a committee, standing order 259 applies.[118]

11.79. Criticism of the courts has been permitted in debate as long as members do not reflect on individual members of the judiciary.[119] For example, a member was required to withdraw a suggestion that magistrates did not understand the concept of the separation of powers.[120] As addressed in Chapter 7: The courts, the Assembly

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114 Standing order 54.

115 Standing order 55.

116 Such charges have been permitted on an amendment to such a motion. For example, a motion condemning a minister for certain action has been moved, followed by the moving of an amendment to censure the relevant shadow minister (the shadow Attorney-General) 'for his blatant and repeated misleading of the people of Canberra and this Assembly'. The motion, as amended, was agreed to. See MoP, No 32, 24 August 2005, pp 313-315; Assembly Debates, 24 August 2005, p 3188.

117 Assembly Debates, 16 May 1996, p 1348. And see Assembly Debates, 25 March 1999, pp 862-863.

118 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, No 23, 25 June 2002, p 210.

119 Assembly Debates, 26 November 2003, p 4755. The Assembly was considering the Sentencing Reform Amendment Bill 2003.

120 Assembly Debates, 13 October 1999, pp 3100 and 3102-3103. The Assembly was considering the

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 that:

- 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.[121]

11.80. Members have been reminded of the practice of respectfully referring to members of other parliaments by their titles or surnames.[122]

11.81. Citing continuing resolution 7, the chair has ruled that a reference that would be considered unparliamentary if directed to a member of the Assembly would be also unparliamentary if directed against another member of another [Australian] parliament[123] and the chair has ruled out of order certain remarks concerning a Royal Commissioner who was a former judicial officer.[124]

11.82. 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 their attention is drawn to words used, the Speaker is required to determine whether or not they are offensive or disorderly.[125]

11.83. 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;

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 alluded to the lack of commitment by the Magistrates Court to earlier legislative changes made by the Assembly. And see Assembly Debates, 8 December 2004, p 155; Assembly Debates, 9 December 2004, p 215.

121 Judicial Commissions Act, s 14(3). For a full outline of these procedures see Chapter 7: The courts.

122 Assembly Debates, 17 March 2005, pp 735-736.

123 Assembly Debates, 14 May 2014, pp 1530-1531.

124 Assembly Debates, 5 August 2015, pp 2346-2348 and Assembly Debates, 10 February 2016, p 141.

125 Standing orders 56 and 57.

> 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.[126]

11.84. 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.[127] Though it is considered better to draw the attention of the Speaker to words used at the time they are used,[128] members have been required to withdraw imputations of improper motives and personal reflections after the Speaker has reviewed the Hansard record.[129]

11.85. It is not in order to use quotations as a vehicle to employ unparliamentary language,[130] nor is it permissible to use words in a dissenting report to a committee's inquiry which would be regarded as unparliamentary.[131] 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[132] and the Speaker has advised the Assembly that they intended to rule as unparliamentary any statement which they deemed to be so, 'regardless of its veracity'.[133]

11.86. It is disorderly to imply that a member is racist[134] and to canvass a previous decision of the Assembly where a member was found to have misled the Assembly.[135] 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.[136]

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126 *McGee*, p 229

127 MoP, No 107, 22 June 2011, p 1333.

128 Assembly Debates, 6 April 2005, p 1432.

129 Assembly Debates, 28 November 1990, p 4773; Assembly Debates, 25 March 1999, pp 862-863; Assembly Debates, 14 November 2002, p 3667.

130 Assembly Debates, 28 November 2013, pp 4460-4461.

131 Assembly Debates, 13 August 2013, p 2849.

132 MoP, No 88, 11 May 2000, pp 852-853; Assembly Debates, 11 May 2000, pp 1520-1538. And see Assembly Debates, 27 June 2002, p 2380; Assembly Debates, 25 August 2005, p 3258.

133 Assembly Debates, 16 June 1992, p 803.

134 It has been ruled as disorderly. Assembly Debates, 25 August 2005, pp 3257-3258.

135 Assembly Debates, 15 June 1994, p 2003.

136 Assembly Debates, 10 December 2003, p 5187. And see Assembly Debates, 11 February 2004, p 246; Assembly Debates, 15 February 2005, pp 381-382, and Assembly Debates, 7 April 2005, p 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 May 1997, pp 1544-1548.

11.87. A withdrawal must be unequivocal[137] and must be made unqualifiedly and immediately.[138] When a member is asked to withdraw comments they must stand in their place and do so.[139] 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.[140]

11.88. After a range of serious charges and imputations 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.[141]

11.89. 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.[142]

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137 Assembly Debates, 9 March 2004, p 892.

138 Assembly Debates, 24 August 1989, p 1375.

139 Assembly Debates, 12 August 2015, p 2673.

140 Assembly Debates, 28 October 1998, pp 2348-2350.

141 Assembly Debates, 10 December 2002, pp 4059-4060. And see Assembly Debates, 19 November 2003, p 4279.

142 Assembly Debates, 27 August 1996, p 2568. And see Assembly Debates, 20 October 1992, pp 2748-2750 (reference to an Assembly committee); Assembly Debates, 15 May 1997, p 1505; Assembly Debates, 20 February 1997, pp 276-278; Assembly Debates, 14 May 2004, p 1958.

11.90. Comments critical of the conduct of the Speaker are addressed in Chapter 5: The Speaker and other officers, under the heading 'Criticism of actions and conduct'.

11.91. The fact that members are criticised in the Assembly does not necessarily mean that standing orders have been breached.[143] 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.[144]

11.92. 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.[145]

11.93. Claims that members have misled the community have not been ruled out of order.[146]

11.94. 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 found to be so, direct that they be withdrawn. The motion also asked that the Speaker conclude his deliberations and report to the

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143 Assembly Debates, 19 November 2002, p 3774. And see Assembly Debates, 3 March 2004, p 666.

144 MoP, No 29, 27 August 2002, p 285; Assembly Debates, 27 August 2002, p 2789. And see Assembly Debates, 2 April 2003, p 1259.

145 Assembly Debates, 22 October 2003, p 3885. And see earlier ruling at Assembly Debates, 27 August 2003, p 3252.

146 Assembly Debates, 18 November 2003, p 4221.

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.[147]

11.95. Members have been reminded of the resolution of the Assembly regarding the exercise of freedom of speech when referring to public servants.[148] 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.[149] 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).

11.96. 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. The Speaker directed accordingly.[150]

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

11.97. 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.[151] The standing orders require notice to be provided when questions are critical of the character or conduct of 'other persons'.[152]

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147 MoP, 4 September 1997, p 775; Assembly Debates, 4 September 1997, pp 2890-2894. The word complained of was 'harlot'.

148 Assembly Debates, 18 November 1998, p 2608. And see Assembly Debates, 24 June 1997, p 1954, Assembly Debates, 17 November 1998, p 2562, and Assembly Debates, 8 December 1998, pp 3229-3231 (public servants); Assembly Debates, 27 August 2003, p 3252, regarding comments about former administrations; and Assembly Debates, 11 February 2004, pp 237-238 regarding a Commonwealth minister.

149 MoP, No 61, 13 May 1993, pp 344-345. And see NP, No 60, 13 May 1993, p 797.

150 Assembly Debates, 19 May 1993, pp 1615-1616.

151 Standing order 117(b)(i).

152 Standing order 117(d). Standing order 117(b) also prohibits questions that contain inferences or imputations. See comments by Speaker Cornwell at Assembly Debates, 13 May 1997, p 1273.

11.98. 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,[153] following a trial period. The resolutions and related procedures are discussed in Chapter 2: Parliamentary Privilege: The powers and immunities of the Assembly, under the heading 'Self-imposed limits on freedom of speech'.

Curtailment of speeches and debate

Time limits on speeches and debate

11.99. 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[154] 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.[155]

11.100. 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 their speech within a period of time that is half of the original period allotted.[156]

11.101. Standing order 69 bestows a discretion on the Speaker to direct that the speech timing clocks be stopped, for instance, during consideration of a point of order or some other interruption to proceedings (for example, the naming of a member). The clocks would not be stopped for a frivolous point of order.[157] A member desiring that the clocks be stopped should ask the Speaker in a polite and quiet manner.[158]

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153 MoP, No 4, 4 May 1995, pp 32-34.

154 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.

155 MoP, No 38, 18 February 1999, pp 322-323.

156 Standing order 69(j).

157 Assembly Debates, 12 February 2013, p 379.

158 Assembly Debates, 27 February 2013, p 793.

11.102. 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 the chair without amendment.[159] 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.[160]

11.103. On occasion, the Assembly has ordered that members speak without limitation of time,[161] standing orders have been suspended to allow members to address the Assembly for an unlimited time on a particular matter[162] and leave has been granted to members to speak without limitation of time.[163]

11.104. 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.[164]

Motion for the adjournment of debate

11.105. During a debate any member, other than a member who has spoken to the question or who has the right of reply, may move 'That the debate be now adjourned' (though they may not interrupt another member speaking to do so).[165] The member moving the motion must not 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.[166]

11.106. 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.[167] 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.

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159 Standing order 63. In addition, such motions cannot be moved for the purpose of obstructing business (see standing order 64).

160 Assembly Debates, 23 October 2003, p 4067; MoP, No 77, 23 October 2003, p 991.

161 MoP, No 64, 14 October 1999, p 567.

162 MoP, No 13, 6 July 1989, p 49.

163 MoP, No 27, 22 November 1995, p 195.

164 On occasion, especially on the last sitting prior to the summer adjournment and the final sitting of an Assembly, the adjournment debate has been extended by way of a motion to suspend the standing orders. See MoP, No 43, 12 December 2002, p 502.

165 Standing order 61. See Assembly Debates, 21 November 1989, p 2719; Assembly Debates, 19 October 1993, p 3575.

166 Standing order 65.

167 Standing order 67.

11.107. 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.[168] 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)[169] or a member had given an indication in moving the motion for the adjournment that they proposed a particular day, time or occurrence for the resumption of the debate.[170] 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.

11.108. 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*.[171]

11.109. Standing order 66 provides that the member who proposed that debate be adjourned by the Assembly shall be entitled to speak first on the resumption of the debate.

Closure of debate on a question

11.110. 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.[172] 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.

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168 Standing order 65.

169 For example, the presentation of a related report—as discussed in Chapter 10: 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 they 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.

170 See, for example, Assembly Debates, 8 December 1998, pp 3178-3179. 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.

171 See Chapter 10: Motions.

172 Standing order 70. The closure motion sometimes colloquially is referred to as the 'gag'.

11.111. 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,[173] and on many occasions the chair has declined to put the question if the moving of the motion has been perceived as an infringement of members' rights.[174]

11.112. 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.

11.113. 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 they are 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.[175]

11.114. 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 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', executive business being called on, or questions without notice being called on.[176]

11.115. Unlike in certain other legislatures, there is no provision to move for the closure of a member; that is, to move that a member 'be no longer heard'.

Other provisions relating to curtailment of debate

11.116. Other times when members' speeches and Assembly debate may be curtailed are as follows:

- on the interruption of debate at 6.30 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);[177]

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173 Assembly Debates, 13 August 1992, pp 1667-1668.

174 See, for example, Assembly Debates, 16 December 1992, p 3977; MoP, No 11, 15 March 2005, p 108.

175 Standing order 64.

176 Standing orders 34(a), 77(d) and 74(a).

177 Standing order 34. And see Chapter 8: Sittings of the Assembly.

- 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);[178]
- at the expiration of any time allotted by the Assembly for the various stages of a bill that is declared urgent;[179]
- when the Speaker adjourns 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
- when the Speaker adjourns the Assembly in the event of grave disorder.[180]

11.117. On each of these occasions there are procedures in place for the Speaker to fix a future time for the resumption of proceedings[181] except in the case of grave disorder.

Disorder

11.118. 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.

11.119. 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[182] and, having the same powers as the powers, for the time being, of the House of Representatives,[183] it has the power to treat disorderly behaviour as a contempt of the Assembly (see Chapter 2: Parliamentary privilege—The powers and immunities of the Assembly).

Maintenance of order

11.120. The standing orders provide that it is the duty of the Speaker to maintain order in the Assembly.[184] Whenever the Speaker rises during proceedings, members

178 Standing order 74.

179 Standing order 192.

180 Standing order 207.

181 Including when a quorum is unable to be formed. See standing order 68.

182 Self-Government Act, s 21(1).

183 Self-Government Act, s 24.

184 Standing order 37.

are required to be silent and seated to enable the Speaker to be heard without interruption, and the member speaking must resume their seat.[185]

11.121. Whenever a member is speaking, unless unable to stand, they must rise and address the Speaker[186] and no other member may converse or make any noise or disturbance to interrupt the member.[187] 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, unless taking their seat at the centre table.[188]

11.122. Whenever any offensive or disorderly words are used, whether by the member addressing the chair or any member present, the Speaker must intervene[189] 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.[190]

11.123. During a sitting, visitors are not permitted to be present in any part of the chamber appropriated to the members of the Assembly. There is an exception for an Auslan interpreter, and the Speaker has a discretion to allow infants being cared for by members to be present in the chamber for short periods[191] (see Chapter 19: Chamber and Assembly precincts).

Points of order and Speaker's rulings

11.124. 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.[192] Upon a question of order being raised, the member called to order must cease speaking and resume their seat.[193] 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',[194] 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.[195]

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185 Standing order 38

186 Standing orders 42 and 43.

187 Standing order 39.

188 Standing orders 40 and 41. Standing order 41 was amended to take account of the expanded membership of the Ninth Assembly and a reconfigured chamber. In the First Assembly, the Assembly occupied temporary premises where movement by members around the periphery of the chamber was very restricted and impossible in some sections. See Assembly Debates, 1 June 1989, p 354.

189 Standing order 56.

190 Standing order 57.

191 Standing order 210.

192 Standing order 72.

193 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 June 1996, p 2228. And see Assembly Debates, 27 March 1990, p 965.

194 Standing order 73.

195 See Assembly Debates, 9 March 2002, p 902; Assembly Debates, 28 March 2000, p 956; Assembly Debates, 19 October 2010, p 4589. In the latter instance, after considering the matter raised, the Speaker stated that 'it would not suit the dignity of the chamber to pursue this matter any further'.

11.125. 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.[196] 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.[197]

11.126. 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.[198]

Motions of dissent from Speaker's rulings

11.127. 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 on this issue and, consequently, motions of dissent were not permitted.[199] In recent years, however, the Speaker has accepted such motions after ascertaining whether leave is granted by the Assembly for the moving of such a motion, as there is no provision for them to be moved without notice.[200]

11.128. To move a motion of dissent, a member must obtain leave of the Assembly,[201] successfully move a motion to suspend the standing orders to enable the motion to be moved,[202] or give notice of such a motion.[203]

11.129. Notice has been given of a motion of dissent from a ruling of the Speaker[204] 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.[205] 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

196 Assembly Debates, 12 September 1990, pp 3095-3096.

197 Assembly Debates, 29 June 2005 p 2449; Assembly Debates, 22 September 2005, p 3533.

198 Assembly Debates, 17 August 2005, p 2835.

199 See, for example, Assembly Debates, 11 December 1990, p 5033.

200 See Assembly Debates, 25 September 1996, pp 3342-3345; Assembly Debates, 11 December 2002, pp 4203-4204; Assembly Debates, 22 June 1996, p 2155; Assembly Debates, 17 August 2005, p 2835. And see comments by Acting Speaker Stefaniak, Assembly Debates, 8 August 1990, p 2567.

201 MoP, No 115, 25 September 2019, p 1673.

202 MoP, No 18, 7 June 2017, p 253.

203 Assembly Debates, 23 November 1995, p 2506.

204 NP, No 10, 17 June 1992, p 108.

205 MoP, No 88, 11 May 2000, pp 852-853.

by leave and later withdrawn, by leave.[206] 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.[207]

11.130. 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.[208] A motion to suspend standing orders so as to move a motion of dissent has been withdrawn, by leave, following an Assistant Speaker reflecting on, then withdrawing, a ruling.[209] Similarly, a motion of dissent has been withdrawn following the Speaker's indication of a willingness to reconsider a ruling.[210]

11.131. It is pertinent to note that the standing orders grant the Speaker a number of discretions and requirements to act after forming an opinion on a matter.[211] In exercising these options, the Speaker is not making a ruling but instead is complying with their obligations under the standing orders. In such instances a motion to dissent from a ruling may not be appropriate.

Naming and suspension of a member who is disorderly

11.132. Standing order 202 identifies behaviour by members that constitutes disorderly conduct. It states:

> If any Member has:
>
> (1) persistently and wilfully obstructed the business of the Assembly; or
>
> (2) been guilty of disorderly conduct; or

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206 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, No 66, 8 August 1990, p 272.

207 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 August 1990, pp 2567-2568. The motion that the ruling be dissented from was moved by leave and later withdrawn, by leave; Assembly Debates, 8 August 1990, pp 2568-2569. And see Assembly Debates, 24 February 1993, p 433.

208 MoP, No 109, 2 May 1991, p 460; Assembly Debates, 2 May 1991, pp 1901-1908. The word used was 'furphy'. The motion having been agreed to, the Speaker thanked the Assembly for its direction on the matter.

209 MoP, No 128, 16 November 2011, p 1657.

210 MoP, No 31, 15 August 2013, p 303.

211 For example, standing orders 44, 64, 94, 107, 117(f), 118, 120, 135, 153, 155, 209, 233, 243, 276.

(3) used offensive words, which the Member has refused to withdraw; or

(4) persistently and wilfully refused to conform to any standing order; or

(5) persistently and wilfully disregarded the authority of the Chair –

that Member may be named by the Speaker.

11.133. 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.

11.134. 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'.[212] The Speaker may choose to warn a member concerning disorderly behaviour prior to naming but is not required to do so.[213]

11.135. Once a member has been named, they 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.[214] In naming or warning a member, the Speaker is not making a ruling; thus, there is nothing before the chamber to dissent from.[215]

11.136. 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.[216] 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.[217] The motion to suspend the named member was moved after the sitting resumed.

Speaker may order disorderly member to withdraw

11.137. In extreme cases (for example, where grossly disorderly conduct is at issue), 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

212 See *Redlich*, Vol III, p 72.

213 See Assembly Debates, 7 December 2000, p 3846; Assembly Debates, 24 November 2005, pp 4626-4627 and 4665.

214 Assembly Debates, 28 March 2000, pp 956-957. 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.

215 MoP, No 102, 3 May 2011, p 1273; Assembly Debates, 3 May 2011, p 1659.

216 Standing order 203.

217 MoP, No 21, 19 August 1992, p 120; Assembly Debates, 19 August 1992, p 1851. The sitting was suspended for some 50 minutes to let everybody 'calm down'.

officers of the Assembly to take any necessary action to ensure that the member withdraws.[218] The naming procedure then occurs. If the Assembly resolves the question in the negative, the member named may return to the Assembly.

11.138. 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 the support of members is retained in the chair. The power to 'name' is used sparingly in the Legislative Assembly and to date the members have always supported the Speaker.[219]

Speaker may adjourn Assembly or suspend sitting

11.139. 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.[220]

11.140. When there has been disorder in the public gallery, the Speaker has suspended the sitting.[221] 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.[222]

11.141. 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.[223]

11.142. 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 an absolute majority of members of the committee. This standing order was adopted in 1999 as a result of 'unruly' behaviour by a committee member in an estimates committee hearing.[224]

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218 Standing order 205. To date, this procedure has not been invoked in the Assembly.

219 There is an argument that the relatively generous amount of time devoted to private members' business and the prevalence of minority or coalition governments have minimised the frustrations of non-executive members and contributed to a cooperative approach in conducting the Assembly's business.

220 Standing order 207.

221 MoP, No 104, 16 April 1991, p 439; MoP, No 36, 21 February 1996, p 258 (2); MoP, No 38, 27 February 1996, pp 267-268 (2); MoP, No 58, 26 August 1999, pp 507-508; MoP, No 101, 13 May 2004, p 1333.

222 Assembly Debates, 7 June 1990, p 2335.

223 Assembly Debates, 11 December 1990, pp 4907-4908. The member whose behaviour had initiated the disorder having apologised immediately left the chamber, and 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.

224 Assembly Debates, 10 March 1999, pp 543-545.

Member ordered to attend the Assembly

11.143. 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 their conduct.[225]

Exclusion of suspended members from the chamber

11.144. A member who has been suspended from the Assembly is excluded from the chamber and the gallery. The Assembly follows the practice of the House of Representatives in that a member suspended from the Assembly is excluded from 'chamber-related' activities—the lodging of petitions, notices of motion, questions on notice and matters of public importance.[226] A member who is suspended from the chamber is not excused from duty on committees.

11.145. The standing orders specify the period of time for which a member can be suspended. 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.[227] On three occasions members have been suspended on a second occasion during the same calendar year.[228] The Assembly may make an order setting a different period of suspension.

Disorderly person may be removed

11.146. 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.[229] The Speaker or committee chair can also direct that a person responsible for disruption be removed.[230]

Sub judice rule

11.147. 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 awaiting or under adjudication in the courts of law. This is commonly referred to

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225 Standing order 208.

226 Standing order 206. See also MoP, 15 November 2011, p 1645.

227 Standing order 204. In the cases of the second and third occasions, the periods of the suspensions are in addition to the day of the suspension.

228 MoP, No 49, 22 March 1990, p 201; MoP, No 50, 27 March 1990, p 206; MoP, No 67, 17 June 1993, p 384; MoP, No 114, 3 December 1997, p 919.

229 Standing order 209. See also Precincts Act.

230 Standing order 209.

as the sub judice rule (or sub judice convention).[231] It has three main components, namely that:

- proceedings in the courts are not prejudiced—for example, due to the legislature having canvassed matters that may influence juries or witnesses or undermine evidence that might be led before the court;
- 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, so far as possible, avoid intruding in each other's areas of responsibility.[232]

11.148. *Odgers'* quotes the remarks of Justice Spender of the Federal Court: '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'.[233] 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.[234]

Application of the sub judice convention in comparable legislatures

11.149. Legislatures observing the sub judice convention,[235] may consider the following questions in considering the application of the rule:

- How far advanced are the legal proceedings in question?
- How susceptible is the court to external influence?

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231 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.

232 Assembly Debates, 10 February 2002, p 408; Assembly Debates, 11 December 2002, pp 4203-4204; and Assembly Debates, 8 December 2004, p 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.

233 *Odgers'*, p 260. 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).

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

235 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 Members' Ethics and Parliamentary Privileges Committee, Legislative Assembly of Queensland, *Report on the sub judice convention*, Report No 7, July 1997, pp 4-5).

- How detailed must the reference to the matter be before it is considered prejudicial?
- By what mechanism will parliamentary debate or a committee inquiry actually interfere with the 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?

11.150. 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'.[236]

11.151. 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'.[237]

11.152. 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 civil matters they 'should not be referred to from the time they are set down for trial or otherwise brought before a court'.[238]

11.153. Arguably, the Senate has tended to take an approach that is at once more robust and more nuanced emphasising the imperative to balance the possible public interest in the legislature raising a given matter with the principle of non-interference in judicial proceedings. It has tended to examine such matters 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

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236 *House of Representatives Practice*, p 521.

237 *House of Representatives Practice*, p 522. In the United Kingdom the discretion is exercised by the Speaker, 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 14-15.

238 *House of Representatives Practice*, p 523.

- the danger of prejudice is greater when a matter is actually before a magistrate or a jury.[239]

11.154. This last point is an important consideration, endorsed by Justice Spender in his comments quoted above. 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'.[240]

11.155. In 2001, the Clerk of the Senate 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.[241]

11.156. 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.

11.157. 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.[242]

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239 *Odgers'*, p 262.

240 *Odgers'*, p 266.

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

242 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'.

11.158. 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 has had no influence on the process and findings of an inquiry.

11.159. With regard to coronial inquests, *Odgers'* takes the view that an inquest 'although an administrative inquiry … may be prejudiced by parliamentary debate'[243] and the legislature should avoid canvassing issues before such an inquiry. Perhaps more importantly, some potential exists to affect the evidence-gathering process.

11.160. The Clerk of the Senate, in advice, also considered this matter.[244] 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'.

11.161. The advice of the Senate Clerk 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'.[245] 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.

11.162. The Senate 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.[246]

11.163. Conceivably, the inability to resolve such a contradiction might mean that the inquiry 'could not be fairly completed'.[247] Thus, the legislature and its committees should have regard to that possibility, however small.

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243 Though in the Territory, the Coroners Court is a court of record.

244 Advice to the Chair of the Senate Standing Committee on Rural and Regional Affairs and Transport, 3 July 2001, p 1.

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

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

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

Earlier application of the convention in the Assembly

11.164. 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.[248]

11.165. Up until March 2008, the Assembly had drawn on the practice of the House of Representatives (which itself draws on that of the House of Commons) and the Senate.[249]

11.166. Concerns about prejudicing proceedings in the courts, proceedings of inquests, and coronial inquiries and boards of inquiry concerning the conduct of individuals led to the sub judice convention at times being applied in the Assembly in an uncertain manner. Discussion on significant issues of governance and the administration of the Territory were delayed for considerable periods whilst inquests and coronial inquiries were underway.[250] On separate occasions, the conduct of a board of inquiry and a coronial inquiry had 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[251] (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.

11.167. The propensity for the Assembly to pressure and even force the executive to appoint boards of inquiry has added another dimension to the application of the convention. One board of inquiry (the Smethurst inquiry), appointed after extensive consultation with members, was 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.[252] This

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248 MoP, No 6, 20 February 2002, p 57.

249 See Assembly Debates, 20 February 2002, p 408; Assembly Debates, 2 April 2003, p 1199; Assembly Debates, 8 December 2004, pp 127-155 and 182-195; Assembly Debates, 16 February 2005, pp 469-470.

250 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 November 1999, pp 3549-3562; and see comments by Chief Minister Carnell—Assembly Debates, 27 August 1997, pp 2516-2517. 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.

251 See Chapter 2: Parliamentary privilege—The powers and immunities of the Assembly.

252 See comments by Chief Minister Carnell at Assembly Debates, 28 August 1997, pp 2516-2517. 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.

occurred after the Assembly had rejected motions calling for the appointment of a board of inquiry while a coronial inquiry was underway.[253]

11.168. For a fuller account of how the sub judice convention was applied in the Assembly prior to it being adopted as a continuing resolution in 2008, see Chapter 10 of the First Edition of the Companion.

Sub judice convention and continuing resolution 10

11.169. In November 2001, the United Kingdom House of Commons adopted a resolution formalising rules on how the sub judice convention would be applied. Following a recommendation from the Assembly's Standing Committee on Administration and Procedure, in 2008 the Assembly subsequently adopted a resolution in almost identical terms, becoming continuing resolution 10.[254]

11.170. The resolution elevates sub judice from a convention to a rule. The resolution provides that cases that are active in the courts, including a coroner's court, 'shall not be referred to in any motion, debate or question'.

11.171. It goes on to define when a case is regarded as being active. Criminal proceedings are active when a charge has been made or a summons to appear has been issued and cease to be active when they are concluded by verdict and sentence or discontinuance, or in cases dealt with by courts martial, after the conclusion of the mandatory post-trial review.

11.172. Civil proceedings are active when arrangements for the hearing, such as setting down a case for trial, have been made, until the proceedings are ended by judgment or discontinuance. Any application made for the purposes of any civil proceedings shall be treated as a distinct proceeding.

11.173. Appellate proceedings, whether criminal or civil, are active from the time when they are commenced by application for leave to appeal or by notice of appeal until ended by judgment or discontinuance.

11.174. Further, should the Assembly refer a matter to any judicial body for decision and report, that matter shall not be referred to in any motion, debate, or question, from the time when the resolution of the Assembly is passed until the report is laid before the Assembly.

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253 MoP, No 46, 19 February 2003, pp 550-552; MoP, No 49, 5 March 2003, pp 580-581, and see comments by Chief Minister Stanhope at Assembly Debates, 5 March 2003, pp 509-511.

254 Standing Committee on Administration and Procedure, *Review of standing orders and other orders of the Assembly,* Report 2, December 2007. MoP, No 132, 6 March 2008, pp 1388-1389.

11.175. The resolution does foreshadow certain circumstances in which a matter may be referred to in proceedings. Where a ministerial decision is in question, or in the opinion of the Speaker a case concerns issues of national importance such as the economy, public order or the essential services, reference to the issues or the case may be made in motions, debates, or questions.

Discretion of Speaker

11.176. The discretion of the Speaker is a core feature of the operation of the sub judice rules. The preamble to continuing resolution 10 states:

> Subject to the discretion of the Chair, and to the right of the Assembly to legislate on any matter or to discuss any matter, the Assembly in all its proceedings (including proceedings of committees of the Assembly) shall apply the following rules on matters sub judice.

11.177. The Speaker has the discretion to invoke or waive the sub judice rules. In weighing up whether to invoke the rules and, in particular, against the competing 'right of the Assembly to legislate on any matter or to discuss any matter', the Speaker may be guided by the practice of the House of Representatives where 'Regard needs to be had to the interests of persons who may be involved in court proceedings and to the separation of responsibilities between the Parliament and the judiciary' and 'the Chair should have regard to the likelihood of prejudice to proceedings being caused as a result of references in the House'.[255]

11.178. In March 2012, the Speaker ruled that a matter was sub judice, as a sentence was yet to be imposed and thus the court proceedings were incomplete, and that statements made the previous week by two members had breached continuing resolution 10. A dissent motion was moved and defeated, after which a motion was passed reaffirming continuing resolution 10 and expressing grave concern over the actions of the two members.[256]

11.179. The chair has intervened in debate when it was considered that a member was transgressing the sub judice rules,[257] or, prior to the commencement of a debate, reminded members of the sub judice rules and the obligation to observe them.[258]

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255 *House of Representatives Practice*, p 521. See also under the heading 'Application of the sub judice convention in comparable legislatures', above in this chapter, for a description of the Senate's attitude.

256 MoP, No 142, 27 March 2012, pp 1827-1828; Assembly Debates, 27 March 2012, pp 1257-1289. When called upon to rule on comments made by the Chief Minister some seven and a half months earlier, the Speaker indicated that, while it was acceptable to raise matters within a reasonable time of them occurring, he was not prepared to establish a precedent whereby Speakers are called upon to make rulings a significant time after they have happened. MoP, No 144, 29 March 2012, p 1855; Assembly Debates, 29 March 2012, p 1560.

257 For example, Assembly Debates, 9 May 2012, p 2191.

258 MoP, No 107, 5 August 2015, p 1215; Assembly Debates, 5 August 2015, p 2338; MoP, No 27, 23 August 2017, p 367; Assembly Debates, 23 August 2017, p 3190; MoP, No 69, 22 August 2018, p 959; Assembly Debates, 22 August 2018, pp 3375 and 3378.

11.180. On one occasion, following a point of order, the Speaker allowed debate to take place on a motion, the subject matter of which in part was the subject of a very recently lodged appeal in the Federal Court of Australia by a Commonwealth authority against an Administrative Appeals Tribunal decision. The Speaker urged members 'to be very careful of their comments so as not to run afoul of continuing resolution 10'. When debate was resumed later that day, a further point of order was taken regarding whether a paragraph in the motion offended the sub judice rule. By leave, the sponsoring member amended the motion to remove the paragraph in question, and debate continued.[259]

11.181. When asked about the naming of individuals and the use of information in the public domain, the Speaker has stated:

> … within the constraints of the sub judice rules it is not inappropriate to mention the names of people whose evidence has been broadcast publicly. I do not think that it would be appropriate to speculate on evidence that has not come forward or what evidence might come forward. I think that that would be inappropriate. But to speak about evidence that has been heard in open court and has been reported upon is well and truly within the confines of the sub judice rules.
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> … It seems to me not to be improper [to discuss evidence]. I have a fair amount of discretion under the sub judice rules. I do not consider it improper to refer to evidence about particular people and to use their names. But in the same way I have to remind members that members of the public do not have the same rights to response as members of this Assembly do, except through a citizen's right of reply. I think that members need to be mindful of that.[260]

11.182. A member has asked the Speaker for a ruling on whether comments made by the Speaker in an earlier debate were contrary to continuing resolution 10. As the Speaker considered that it would be a conflict of interest for him to rule on the matter, he referred the request to the Deputy Speaker, who subsequently advised the Assembly that the Speaker's comments did not offend the continuing resolution.[261]

11.183. 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 they see 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, while 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

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259 MoP, No 106, 14 August 2019, pp 1583 and 1584; Assembly Debates, 14 August 2019, pp 2875-2876 and 2907-2911.

260 Assembly Debates, 5 August 2015, pp 2354-2355.

261 MoP, No 144, 29 March 2012, p 1851; Assembly Debates, 29 March 2012, p 1520.

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 a case;
- an 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 with, or be thought to interfere with, the role of the judiciary.

11.184. The committee stressed that it was not possible to set out hard and fast rules to determine in which cases it would be appropriate for the Speaker to exercise discretion. 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 the Speaker alone and must be based on a consideration of the specific circumstances of each case.[262]

Matters before committees

11.185. Continuing resolution 10 explicitly also applies to the proceedings of Assembly committees. *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.[263]

11.186. 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

262 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 26-27.

263 *House of Representatives Practice*, p 715.

coverage. The committee's legal advice indicated 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 predetermine 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.[264]

264 See Report of the Senate Rural and Regional Affairs and Transport Legislation Committee, *Administration of AusSAR in the search for the Margaret J*, August 2004, pp 1-2.