



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Standing Committee on Administration and Procedure

Greg Cornwell MLA (Presiding Member)

Simon Corbell MLA; Harold Hird; MLA Trevor Kaine MLA;

Paul Osborne MLA; Kerry Tucker MLA

Report on

PROPOSED AMENDMENTS TO STANDING ORDERS RELATING TO DISORDER, QUESTIONS WITHOUT NOTICE AND VOTING

May 2001

Terms of Appointment

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

Membership of the Committee for the Fourth Assembly

The Speaker (Presiding Member)
 Simon Corbell MLA
 Harold Hird MLA
 Trevor Kaine MLA
 Paul Osborne MLA
 Kerrie Tucker MLA

Committee Staff

Mark McRae, Clerk of the Legislative Assembly (Secretary)
 David Pegram
 Stephanie Mikac

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

Terms of Reference for Inquiry

On 27 March 2001, the Legislative Assembly considered a motion proposed by Mr Moore, and amended by Mr Kaine, to amend standing orders relating to three issues:

- Disorder by a Member, additional powers for the Speaker;
- Time limits for the asking and answering of questions without notice; and,
- Voting procedure during a call of the Assembly.

Following debate on these issues, the Assembly resolved, on the motion of Mr Berry, – That:

- (1) Mr Moore's motion and Mr Kaine's amendments be referred to the Standing Committee on Administration and Procedure for inquiry and report on whether the proposed changes to standing orders are necessary;
- (2) Mr Moore's motion be set down as an order of the day, and the resumption of the debate not proceed until the Committee has presented its report;
- (3) The Committee report by 2 May 2001; and
- (4) The foregoing provisions of this resolution have effect notwithstanding anything contained in the standing orders.

Proposed Amendments

Mr Moore's proposed amendments –

1.

Standing Order 202

Disorder by member

Omit the words:

"that Member may be named by the Speaker",

substitute:

"that Member may be—

- (i) ordered by the Speaker to withdraw from the chamber for one hour, or
- (ii) named by the Speaker."

2.

New Standing Order 202A

After Order 202, insert the following new Standing Order:

"Member ordered to withdraw

202A. If a Member fails to leave the chamber immediately when ordered to withdraw from the chamber under Standing Order 202, or returns to the chamber contrary to such an order, the Speaker shall forthwith name the Member.

Notwithstanding an order to withdraw from the chamber under Standing Order 202, the Member may return for the duration of any vote, commencing with the declaration by the Speaker that a division is required, but shall withdraw immediately after the result of the vote is announced."

3.

Standing Order 203

Proceedings following naming

Omit the words:

"The Speaker shall forthwith put the question, on motion being moved",

substitute:

"When a Member is named by the Speaker, the Speaker shall forthwith put the question".

Mr Kaine's proposed amendments –

4.

To insert the following new Standing Order:

"Questions without notice – time limits

113B. The following time limits shall apply during the period when questions without notice has been called on:

- (a) The asking of each question shall not exceed two minutes and the answering of each question shall not exceed 5 minutes.

- (b) The asking of each supplementary question shall not exceed one minute and the answering of each supplementary question shall not exceed one minute."

5.

That Standing Order 160 be amended as follows:

Omit the words

"in alphabetical order"

substitute

", with the first call being in alphabetical order, and every alternate call being called in reverse alphabetical order,".

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Summary of Recommendations

- 1. The Committee recommends that the Assembly not support the adoption of standing orders that provide a discretionary power to the Speaker to order the withdrawal of a Member for disorderly conduct.**
- 2. The Committee recommends that the Assembly not support the removal of the requirement for a motion to be moved for the suspension of a Member from another Member**
- 3. The Committee recommends that the Assembly not support the imposition of time limits for the asking and answering of questions without notice.**
- 4. The Committee recommends that all Members make themselves more aware of their obligations in asking and answering questions without notice and support the Speaker in providing for the efficient and flexible operation of Question Time through adherence to the Standing Orders.**

Background

1. Before commencing its deliberations, the Committee wrote to all Members of the Legislative Assembly, who were not Members of the Committee, to seek their views on the proposed amendments. Only one response was received.
2. The Committee considered the proposed amendments at its meeting on 18 April 2001. Members were apprised of the standing orders and procedures of other jurisdictions in Australia, Canada, New Zealand and United Kingdom and noted that the proposed amendments concerning disorder and questions without notice could be found in a number of the procedures of these jurisdictions. The Committee also looked closely at the present standing orders of the Legislative Assembly and the powers that already exist within them.
3. This report is in three sections. Each section deals with a separate proposed amendment, these being:
 1. the proposal to amend standing orders to provide for an additional discretionary power for the Speaker to order the suspension of Members from the Chamber for a short period and to remove the need for a motion following naming;
 2. the proposal to set time limits for the asking and answering of questions without notice; and,
 3. the proposal to change the way votes are called during a call of the Assembly.

Section 1

The proposal to amend standing orders to provide for an additional discretionary power for the Speaker to order the suspension of Members from the Chamber for a short period and to remove the need for a motion following naming

Proposed Amendment

1.1 Below are the standing orders, as amended by the proposed amendments referred to the Committee. The amendments are shown in bold italics.

Disorder by Member

202. If any Member has:

- (a) persistently and wilfully obstructed the business of the Assembly; or
- (b) been guilty of disorderly conduct; or
- (c) used offensive words, which the Member has refused to withdraw; or
- (d) persistently and wilfully refused to conform to any standing order; or
- (e) persistently and wilfully disregarded the authority of the Chair -

that Member may be named by the Speaker —

- (i) ordered by the Speaker to withdraw from the chamber for one hour, or***
- (ii) named by the Speaker.***

Member ordered to withdraw

202A. If a Member fails to leave the chamber immediately when ordered to withdraw from the chamber under standing order 202, or returns to the chamber contrary to such an order, the Speaker shall forthwith name the Member.

Notwithstanding an order to withdraw from the chamber under standing order 202, the Member may return for the duration of any vote, commencing with the declaration by the Speaker that a division is required, but shall withdraw immediately after the result of the vote is announced.”.

Proceedings following naming

203. ***When a Member is named by the Speaker***, the Speaker shall forthwith put the question, ~~on motion being moved,~~ no amendment, adjournment or debate being allowed, “That such Member be suspended from the service of the Assembly”.

Present Practice

1.2 Chapter XVII of Assembly standing orders contain the current provisions for dealing with disorderly conduct by Members (and others). They make provision for the naming of a Member by the Speaker, a motion being moved for the suspension of the named Member and for the question on the motion being

put forthwith. They also make provision for the period of suspension on first, second, third and subsequent occasions and for a procedure whereby the Speaker can order a Member to withdraw prior to him or her being named when that Member's conduct is of a grossly disorderly nature.

1.3 These procedures appear to be based on those of the Australian House of Representatives in operation at the time of the adoption of the standing orders.

1.4 Before considering practice elsewhere it should be noted that the Speaker has a duty to maintain order in debate in the Assembly (see standing order 37) and does so on a regular basis. The Chair often draws the attention of Members to the provisions of the standing orders, calls on Members to withdraw offensive or disorderly words and on occasions warns Members he or she believes have been acting in a disorderly manner. It is only when disorder reaches a certain stage as set out in standing order 202 that the provisions in question are utilised.

Other legislatures

Suspension (Withdrawal) of Members

1.5 The proposed amendments to Standing Order 202 would provide an additional discretionary power to the Speaker to order the suspension of a Member from the service of the Assembly for one sitting hour. This power exists in many other jurisdictions.

1.6 Standing and/or Sessional orders providing the Speaker with an alternative to naming a Member can be found in the Australian House of Representatives, New Zealand House of Representatives, United Kingdom House of Commons, and the Legislative Assembly's of New South Wales, Victoria, Queensland and the Northern Territory.

1.7 In the Australian House of Representatives the procedure is utilised on a regular basis. During the 39th Parliament (up to 8 March 2001) there have been 84 instances of Members being suspended pursuant to Standing order 304A (which provides for the withdrawal of a Member from the Chamber). Some Members have been suspended more than once. Of the 84 suspensions, 76 were of Opposition Members and eight were of Government Members.

1.8 Generally, the practice used in those jurisdictions where this procedure is available is for the Speaker to clearly indicate when Members are on calls to order so that when the removal of a Member is directed it is not unexpected. If the Speaker considers that a Member has been given sufficient warning and still the conduct of a Member is disorderly, the Speaker, instead of naming the Member may order the member to withdraw from the Chamber for a specified period (eg. one hour; rest of the sitting day).

1.9 In New Zealand, Victoria, Queensland and the Northern Territory, a Member directed to withdraw from the Chamber may attend for the purposes of voting in any division during the period of the suspension/withdrawal.

Motion to suspend after Naming

1.10 In all of the jurisdictions investigated, where a member is 'named' by the Speaker, a motion must then be moved by another Member for the suspension of the named Member from the service of that House.

Committee Observations

Proposed Amendment Standing Order 202

1.11 While noting that the proposed amendments incorporate provisions found in many other jurisdictions, the Committee has misgivings over the merits of introducing this procedure into the Assembly. Although it recognises that the mechanism is used to defuse a situation before it deteriorates and to avoid disruption to proceedings by providing the Speaker with an extra, or alternative, disciplinary measure, the Committee is of the view that its adoption would be an over-reaction, unnecessary and would be sending the wrong messages to the community. It is felt that the adoption of the proposal would be seen as an admission that Members could not take responsibility for their own conduct.

1.12 The view is also expressed that the measure, being a lesser sanction than that of 'naming', could legitimise disorderly behavior being used by Members to draw inappropriate attention to themselves and the issues they support, particularly as the proposed amendments enabled the suspended Member to return to the Chamber in the event of a vote.

1.13 The Committee also held the view that any suspension of a Member should be considered as a serious penalty and should remain in the hands of the Members of the Assembly, decided by a distinct vote.

Proposed Amendment Standing Order 203

1.14 The Committee could find no instance where a jurisdiction did not use the procedure where another Member is required to move the motion for the suspension of a disorderly Member after being named by the Speaker. Investigations into the reason for this provision failed to find the reason behind its introduction. The Committee notes that when a Member has been named in the House of Representatives, it is sometime the practice for other Members to intervene and for the offending Member to be given an opportunity to apologise or retract. The motion may not then be moved if the Speaker is satisfied. The

practice does not have a basis in standing orders but is at the discretion of the Speaker.

1.15 The House of Representatives Standing Committee on Procedure reported in 1992¹ on this matter and recommended that following the naming of a Member the Speaker should propose a question for the suspension of the Member without a motion being moved. To date, the standing orders of the House have not been amended to reflect the recommendation.

1.16 The Committee can see little value in the removal of the requirement for a motion to be moved for the suspension of a Member from another Member. The motion moved from the floor of the Chamber or by the Speaker will still require a vote of the Assembly. The Assembly will decide if it will or will not support the Speaker in the naming of a Member, whether a motion is required or not from the floor of the Chamber.

1.17 The Committee notes the practice sometimes used in the House of Representatives that enables Members to apologise to the House before a motion is moved for their suspension. The Committee believes that this practice is one that could be used in the Assembly at the Speaker's discretion where a Member has shown remorse and taken account of his or her actions.

1.18 The Committee will keep a watching brief on these issues and will reconsider them if it considers it necessary.

Recommendations

1. **The Committee recommends that the Assembly not support the adoption of standing orders that provide a discretionary power to the Speaker to order the withdrawal of a Member for disorderly conduct.**
2. **The Committee recommends that the Assembly not support the removal of the requirement for a motion to be moved for the suspension of a Member from another Member**

¹ House of Representatives Standing Committee on Procedure - *The Standing Orders Governing Disorder and Strangers* - Report October 1992 pp 6-7.

Section 2.

The proposal to set time limits for the asking and answering of questions without notice

Proposed Amendment

2.1 This amendment to the standing orders proposes to insert a new order concerning time limits for the asking and answering of questions during the time set aside for questions without notice as follows:

113B The following time limits shall apply during the period when questions without notice has been called on:

- (a) The asking of each question shall not exceed two minutes and the answering of each question shall not exceed 5 minutes.
- (b) The asking of each supplementary question shall not exceed one minute and the answering of each supplementary question shall not exceed one minute.

Present practice

2.2 There are presently no time limits which apply to the asking and answering of questions during Question Time in the Assembly. However, standing orders do require that questions should be brief and relate to a single issue and that answers be concise, confined to the subject matter of the question and shall not be debated. The Speaker may also direct a Member to terminate an answer if in his or her opinion the Member is contravening the provisions stated above or the Member has had sufficient opportunity to answer the question.

2.3 Since the commencement of sittings this year there have been 12 Question Times of between 37 and 68 minutes each. The average duration of Question Time for this period is 52 minutes.

2.4 There have also been 129 questions without notice and 103 supplementary questions asked this year. This is an average of 11 questions without notice and nine supplementary questions asked per Question Time.

Other legislatures

2.5 In the Australian Senate, time limits are imposed on questions and answers at Question Time. Senate Standing Order 72(3) provides that:

- (a) the asking of each question not exceed 1 minute and the answering of each question not exceed 4 minutes;
- (b) the asking of each supplementary question not exceed 1 minute and the answering of each supplementary question not exceed 1 minute.

2.6 The standing orders prescribe no limit to the overall time allotted to questions without notice, however in practice it lasts for about one hour. At the expiration of the hour, the Leader of the Government in the Senate or the Minister at the table asks Senators to put any further questions on the Notice Paper. As Ministers are not obliged to answer questions without notice, this effectively terminates Question Time for that day.²

2.7 In the Australian House of Representatives, at least 45 minutes each sitting day is set aside for Question Time. It is entirely within the discretion of the Prime Minister or the senior Minister present as to whether Question Time will take place and, if so, for how long it will proceed. In order to bring Question Time to a conclusion the Prime Minister or the senior Minister present may, at any time, rise and ask that further questions be placed on notice, even if a Member has already received the call. The Speaker is then obliged to call on the next item of business.

2.8 In recent years the average length of Question Time has been between 50 and 60 minutes. This peaked at 74 minutes in 1996. At the commencement of the 38th Parliament, the number of questions averaged 19 per day.

2.9 The only jurisdiction in Australia, other than the Senate, that provides for time limits on questions without notice is the Queensland Legislative Assembly. Sessional Orders adopted by the Assembly for the First Session of the Fiftieth Parliament state:

69 General rules for answers

The following general rules shall apply to answers—

- (a) In answering a question, a Minister or Member shall not debate the subject to which it refers.
- (b) An answer shall be relevant to the question.
- (c) The answer to each question shall not exceed 3 minutes.

² *Odgers' Australian Senate Practice, 9th Edition* p. 482.

Speaker's general powers

2.10 Various jurisdictions in Australia provide the Speaker with a discretionary power under standing orders to rule questions out of order and to terminate answers to questions if, in his or her opinion, the Minister or other Member has had sufficient time to answer. Indeed this is the situation in the Legislative Assembly for the Australian Capital Territory. Standing Orders 117 and 118 read as follows:

Rules for questions

117. The following general rules shall apply to questions:

- (a) Questions shall be brief and relate to a single issue;
- (b) Questions shall not contain:
 - (i) statements of fact or names of persons unless they are strictly necessary to render the question intelligible and the facts can be authenticated;
 - (ii) arguments;
 - (iii) inferences;
 - (iv) imputations;
 - (v) epithets;
 - (vi) ironical expressions; or
 - (vii) hypothetical matters;
- (c) Questions shall not ask Ministers:
 - (i) for an expression of opinion;
 - (ii) to announce Executive policy, but may seek an explanation regarding the policy of the Executive and its application, and may ask the Chief Minister whether a Minister's statement represents Executive policy; or
 - (iii) for a legal opinion;
- (d) Questions shall not be asked which reflect on or are critical of the character or conduct of those persons whose conduct may only be challenged on a substantive motion, and notice must be given of questions critical of the character or conduct of other persons;
- (e) Questions shall not refer to:
 - (i) debates that have taken place during that calendar year; or
 - (ii) proceedings in committee not reported to the Assembly;
- (f) Questions may be asked to elicit information regarding business pending on the Notice Paper but discussion must not be anticipated;
- (g) The Speaker may direct that the language of a question be changed, if, in the opinion of the Speaker, it is unbecoming or does not conform with the standing order; and
- (h) A question fully answered cannot be renewed.

Answers to questions without notice

118. The answer to a question without notice:

- (a) shall be concise and confined to the subject matter of the question; and
- (b) shall not debate the subject to which the question refers, and the Speaker may direct a Member to terminate an answer if of the opinion that these provisions are being contravened or that the Member has had a sufficient opportunity to answer the question.

2.11 The discretion provided to the Speaker in the standing orders is important particularly in legislatures where the time for questions without notice is limited and opportunities to ask questions is restricted due to the number of Members seeking to ask questions.

2.12 For example the Canadian House of Commons has 301 Members but the period for questions without notice is restricted to 45 minutes each sitting day.

The Speaker has often expressed concern that shorter questions and answers would allow more Members to participate. Since the Speaker retains the sole discretion in determining the time that individual questions and answers may take, the Chair may interrupt any Member consuming more than a reasonable share of time in posing or responding to a question. While it is not the Chair's responsibility to determine the length of answers given during Question Period, the Speaker has pointed out to the House that, in the interests of fairness, questions should be as concise as possible in order to encourage answers of similar brevity and thereby allow the Chair to recognise as many Members as possible.³

Committee's Comments

2.13 As noted above, from the start of sittings this year, there has been an average of eleven questions without notice and 9 supplementary questions asked during each Question Time in the Assembly. It is also noted the Standing Order 113A enables all non-Executive Members to ask at least one question each Question Time. This standing order provides non-Executive Members with a much greater opportunity to ask a question of a Minister compared with their colleagues in the Canadian House of Commons or indeed most other Parliaments. Given the high number of questions asked and the provisions of standing order 113A the Committee believes that the procedures already exist for the effective and efficient use of the Question Time period and further amendments to standing orders should not be necessary.

2.14 It is noted that under present standing orders, questions, *inter alia*, shall be brief and relate to a single issue. The Speaker can rule questions out of order if he or she is of the opinion that the questions breach the rules set out in

³ House of Commons Procedure and Practice, Chapter 11 Questions, Edition 2000 pp 421-2.

Standing Order 117. For example, a Member should only ask a question to elicit factual information, he or she should not debate the question.

2.15 The Speaker also has a discretionary power to terminate an answer if that answer is not concise, confined to the subject matter of the question or the Minister (Member) begins to debate the subject to which the question refers.

2.16 The Macquarie Encyclopedic Dictionary provides the following meaning for the word concise:

expressing much in few words; brief and comprehensive; succinct; terse.

The Committee draws this meaning to the attention of Members.

2.17 Members of the Committee considered the impact of the implementation of time limits on questions without notice. During deliberations, it was noted that the Question Time process had been abused at times. However, it was agreed that the operation of the Assembly and in more particular, Question Time, should not be restricted by the imposition of inflexible time restraints.

2.18 The Committee believes that the present standing orders provide the necessary direction and powers to enable the Assembly to improve the operation of Question Time without the imposition of time limits. A better understanding of the obligations placed on Members in the asking and answering of questions could only improve the efficiency and quality of Question Time. The Committee is of the view that the Speaker has the requisite authority to rule questions out of order or to terminate answers.

2.19 The Committee is also of the view that it would assist the orderly operations of the Assembly if Members were to make themselves more fully aware of their obligations in the asking and answering of questions and support the Speaker's right to intercede where necessary.

2.20 Again the Committee will keep a watching brief on this issue and may return to it if it considers it necessary.

Recommendations

- 3. The Committee recommends that the Assembly not support the imposition of time limits for the asking and answering of questions without notice.**
- 4. The Committee recommends that all Members make themselves more aware of their obligations in asking and answering questions without notice and support the Speaker in providing for the efficient and flexible operation of Question Time through adherence to the Standing Orders.**

Section 3.

The proposal to change the way votes are called during a call of the Assembly

Proposed Amendment

3.1 It is proposed that Standing Order 160 be amended to provide for Members names to be called in reverse alphabetical order on every alternate call of the Assembly.

Present Practice

3.2 Briefly, the provisions of the Self-Government Act and the Assembly standing orders provide for the Assembly to make its decisions via the following practice:

- by way of the voices when the outcome only is recorded. The vast majority of the Assembly's decisions are made this way, for example in one period over February and March 1999 – 174 decisions were made on the voices compared to 13 by call of the Assembly;
- by call of the Assembly (commonly referred to as a division or vote). Members names must be called in alphabetical order (SO 160) and each Member's vote is recorded; and
- by ballot (standing orders make provision for appointment of certain office holders and determination of committee membership by (secret) ballot).

Other legislatures

3.3 Methods utilised in other legislatures are as follows –

Unrecorded individual votes:

- voice voting (as in the Assembly);
- show of hands;
- standing and sitting; and
- ballot (names not recorded); and

Recorded individual votes:

- division (members physically move to one side of the Chamber to cast a particular vote, most commonly used in Australia);
- roll call (as in the Assembly);
- electronic voting; and
- use of voting papers (bearing the name of the Member who then places them in a receptacle).

Committee Comments

3.4 The Committee believes that there are positives and negatives in relation to this proposal. The Committee regrets that it can not reach a position in favour or against the proposal and is of the view that it is up to the Assembly to decide the matter.