

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

*Fifty-sixth Report — “Parliamentary Privilege and Intrusive Powers —
Interim Report: Judicial Proceedings for Declaration Challenging the Validity of the Order
made by Legislative Council on 15 August 2019” — Tabling*

THE PRESIDENT (Hon Kate Doust) [1.05 pm]: I am directed to present the fifty-sixth report of the Standing Committee on Procedure and Privileges titled “Parliamentary Privilege and Intrusive Powers — Interim Report: Judicial Proceedings for Declaration Challenging the Validity of the Order made by Legislative Council on 15 August 2019”.

[See paper 2994.]

Made Order of the Day — Motion

HON SIMON O'BRIEN (South Metropolitan) [1.06 pm] — without notice: I move —

That consideration of recommendations 1 to 4 contained in the fifty-sixth report of the Standing Committee on Procedure and Privileges, “Parliamentary Privilege and Intrusive Powers — Interim Report: Judicial Proceedings for Declaration Challenging the Validity of the Order made by Legislative Council on 15 August 2019”, be made an order of the day for consideration in the Committee of the Whole House for the next day's sitting.

HON SUE ELLERY (South Metropolitan — Leader of the House) [1.06 pm]: As a matter of courtesy, I would think it would be appropriate that I get a copy of the motion.

The PRESIDENT: Thank you, Leader of the House. I understand that we are in the process of trying to provide that to you.

Hon SUE ELLERY: I think it is extraordinary that we are not being given the opportunity to consider how we deal with this. It may well be that I agree that we deal with this in Committee of the Whole House tomorrow, but I think debate on this motion should be deferred until I can have an opportunity to properly consider this. I think it is extraordinary, frankly, if I can be so bold, Madam President, that party leaders, for example, were not advised of an intention to debate it immediately today. We have not even read the report. What we are debating today is that we make this an order of the day for tomorrow. That is not an unreasonable thing for the house, but the house ought do that being fully informed, and the normal practice is that party leaders would be advised. If that cannot happen, I would like to defer consideration of this motion until later today. I do not mind doing it when we get to orders of the day, but I think to proceed immediately into a debate to make something an order of the day for tomorrow without us having the opportunity to consider it is unreasonable.

HON PETER COLLIER (North Metropolitan — Leader of the Opposition) [1.07 pm]: I am inclined to agree with the Leader of the House in this instance. I have no issue debating it tomorrow, if appropriate. I have not seen the report either. I suggest that we perhaps revisit this motion at the beginning of orders of the day, which is in a couple of hours, and that will give us a bit of time to digest the report and determine whether we are in a position to debate the recommendations. As I said, I am not averse to debating it tomorrow, but I would like to have access to the report first.

HON JACQUI BOYDELL (Mining and Pastoral — Deputy Leader of the Nationals WA) [1.08 pm]: I also tend to agree with that course of action. It may just be a procedural motion of the committee, but given the way the house has managed this in the very recent past, I would have thought that would be a sensible approach.

HON ALISON XAMON (North Metropolitan) [1.08 pm]: I concur with the comments that have already been made. I was unaware of this as well. It would be useful for us to consider this as part of orders of the day today, but I would also like some time to see the report.

HON SIMON O'BRIEN (South Metropolitan) [1.08 pm] — in reply: Members, of course, can be assured that there is nothing extraordinary in the motion that I have just moved—nothing at all. It is a procedural matter. It is always the case that the house and the members therein do not know of a report such as this until the moment it is tabled; therefore, it is perfectly natural in the case, for example, of a privileges committee report for the Deputy President to rise and move a procedural motion that consideration of the report be made an order of the day for the next sitting of the house. That is how we couch such motions for the next sitting of the house.

Hon Sue Ellery: What is not unusual is for the person moving that motion—for example, in your case—to say that you seek leave to continue your remarks at a later stage of today's sitting. Then we come back to the debate, so that we have had time to consider the motion to make it an order of the day. That is not unusual either.

Hon SIMON O'BRIEN: I thank the Leader of the House for trying to find clarity, but with the greatest of respect, I think we are all getting a little ahead of ourselves. The motion that I have just moved is quite normal. In due course, later today, I intend to move without notice that the report that we are contemplating is brought on for

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consideration. Without fail, I will be doing that later today. But for now, I am simply moving the procedural motion that consideration of the report be made an order of the day for the next sitting of the house. There is nothing untoward about that; it has been done since time immemorial.

Hon Sue Ellery: Then the President called the motion, which is not usual.

Hon SIMON O'BRIEN: Before I resume my seat, if I were to move, and I intend to shortly move, another procedural motion, it would be quite in order for any of the house's leaders to move, if they felt so inclined, that the debate on that motion be adjourned for a later stage of this day's sitting. We have already heard a few members say that they would be happy to contemplate that during orders of the day. I am in the hands of the house.

The PRESIDENT: I have noted that there is an appetite to give some further consideration to this and there are two options here. Either somebody can adjourn the motion that we are currently dealing with or I can put the motion.

Adjournment of Debate

HON SUE ELLERY (South Metropolitan — Leader of the House) [1.12 pm]: I move —

To adjourn the motion.

Hon Simon O'Brien: I closed the debate.

The PRESIDENT: The question is that the motion be adjourned to a later stage of this day's sitting.

Hon SUE ELLERY: I want to make sure that we are clear what Hon Simon O'Brien just said. Have I written off my options to speak? That is not very sensible.

The PRESIDENT: No. Somebody else can stand and move that it be adjourned.

Hon Simon O'Brien: It is a perfectly straightforward motion.

Point of Order

Hon PETER COLLIER: In an attempt to try to move this forward, could I just get some clarification, because the motion does not state that? Should we agree with the motion before the house, we will still be addressing this motion at later stage of this day's sitting.

The PRESIDENT: You will be addressing a different motion.

Hon Simon O'Brien: I will move a further motion at a later stage, which you can then debate and consider until the cows come home.

Hon PETER COLLIER: Yes.

The PRESIDENT: The motion in front of us is simply about making the recommendations of the report an order of the day for consideration in Committee of the Whole at the next sitting of the house. It is a fairly straightforward motion. Hon Simon O'Brien is indicating that he will move an additional motion at a later stage today, which would have other matters which would be debatable.

Hon PETER COLLIER: Thank you, Madam President; that is exactly what I thought was the case. We will support that in this instance. As long as Hon Simon O'Brien has made it quite clear to the house that he will move another motion, I would assume at the beginning of orders of the day —

Hon Simon O'Brien: A motion without notice.

Hon PETER COLLIER: Yes. As long as we have that commitment from Hon Simon O'Brien, I am comfortable with that.

Hon SUE ELLERY: I do not think it is clear to the house what is being proceeded with. If I can say it again, this probably could have been avoided if we had just been spoken to, not about the contents of the report at all—that is not appropriate—but just about procedural matters. That would have been helpful.

The PRESIDENT: It may very well have been. Just to be clear, the motion that we have in front of us now is purely procedural, whereby Hon Simon O'Brien is seeking to have those recommendations that are in this tabled report, which has been provided to members today, made an order of the day for consideration in Committee of the Whole House for the next day's sitting. It is straight-up, as he has already said, and fairly standard. He then plans on moving a motion without notice—an additional motion that relates to standing orders 17(5), which says —

A Member may move without notice that an order of the day or a notice of motion listed on the Notice Paper in the Member's name be made order of the day No. 1 or motion No. 1 on the Business Program for the next sitting of the Council. Any such motion shall be put without amendment or debate.

That is where we are heading.

Hon MARTIN PRITCHARD: Is it still then open to any member of the house to adjourn debate on this motion?

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Hon SUE ELLERY: Perhaps on the same point of order, I am comfortable, having now had it explained to me, which would have taken five minutes before we sat and then none of this would have happened, that later today when Hon Simon O'Brien moves a motion in accordance with standing order 17(5), the house will be able to debate whether it is listed as order of the day 1.

The PRESIDENT: Under standing order 17(5), it is not debatable.

Hon SUE ELLERY: Right. I think that the process is still consistent with how we dealt with the matter last time. Even though it is not debatable —

Hon Peter Collier: It leaves us time to consider it.

Hon SUE ELLERY: Yes.

The PRESIDENT: The report has been tabled. Consideration of the matters covered in that report and the recommendations is to be dealt with tomorrow in Committee of the Whole, and it is to be made order of the day 1, so that it can be dealt with. In regard to that last exercise, yes, you are correct in that regard; right now it is simply about putting in place the mechanisms to do that. It still gives you today and tonight to work your way through the report and come to a decision. All we are now asking the house to do is to agree to the process, the mechanism, to conduct that business tomorrow.

Hon SUE ELLERY: Thank you, Madam President. I will exploit the fact that I am standing on a point of order to make this point. Thank you for that clarification; I understand that. That is enough time, from my point of view, to consider it. I just make the point again that I think it would be courteous to advise the leaders of the respective parties what process a member proposes to follow, or that they propose to do something. No-one is suggesting—certainly not me—that we need to be consulted about the content of the report at all; I just think it would have been courteous and perhaps easier for the house if we had just been notified.

The PRESIDENT: I note your comments. Things can always be done differently or better. I am not making any excuses; I am just saying that the committee has been under significant time pressures in terms of getting this report into the house at this time.

Motion Resumed

The PRESIDENT: Members, I will go back and put the question on the motion moved by Hon Simon O'Brien. The question is that the motion be agreed to.

Question put and passed.

Made Order of the Day 1 — Motion

HON SIMON O'BRIEN (South Metropolitan) [1.19 pm] — without notice: I move —

That the order of the day regarding the fifty-sixth report of the Standing Committee on Procedure and Privileges, "Parliamentary Privilege and Intrusive Powers — Interim Report: Judicial Proceedings for Declaration Challenging the Validity of the Order made by Legislative Council on 15 August 2019", be made order of the day 1 for the next sitting of the house, and to remain as order of the day 1 until resolved.

This is a motion that now has to be put without amendment or debate, Madam President, but I am sure that you, on behalf of the house, will allow me to provide by way of brief explanation the following. Firstly, the Standing Committee on Procedure and Privileges has presented, through you, its fifty-sixth report together with its compliments to the house. At no time in this process is any discourtesy intended to the house or any of its members by Madam President or me. The fact of the matter is that it is a long-established procedure in this place that when a procedure and privileges committee report is tabled, the way the house deals with it is that it simply receives a procedural motion that it be made an order of day for the next sitting of the house. That is how items of business are made orders of the day. I again assure any members who are not aware that there is no discourtesy intended.

The reason I have just moved this motion is obvious. The house's procedure and privileges committee—our procedure and privileges committee—would not contemplate this course of action and would not authorise or, indeed, direct me, to go down that path unless it believed it was a matter that had to be dealt with some expediency, indeed great expediency. Nonetheless, this still has to wait for the next sitting of the house so members can familiarise themselves with what is proposed. But all of that is putting the cart ahead of the horse. The house still has to acquiesce to this motion I have just moved without notice, so it is always in control of its own destiny. I just want to reiterate that never is any discourtesy intended to any member or otherwise and I can only act in this capacity in the way that the committee has asked me to.

Question put and passed.

Rescission of Vote — Standing Orders Suspension — Motion

President; Hon Simon O'Brien; Hon Sue Ellery; Hon Peter Collier; Hon Jacqui Boyde; Hon Alison Xamon;
Hon Martin Pritchard

HON SIMON O'BRIEN (South Metropolitan) [1.22 pm] — without notice: I move —

That so much of the standing orders be suspended so as to enable me, during consideration in the Committee of the Whole House of recommendations 1 to 4 contained in the fifty-sixth report of the Standing Committee on Procedure and Privileges, "Parliamentary Privilege and Intrusive Powers — Interim Report: Judicial Proceedings for Declaration Challenging the Validity of the Order made by Legislative Council on 15 August 2019", to move the following motion without notice —

That in relation to recommendation 2 —

That the vote passed by the Legislative Council on 15 August 2019 adopting and agreeing to the order contained in recommendation 4 in the fifty-fifth report of the Standing Committee on Procedure and Privileges, "A Refusal to Comply with a Summons to Produce Documents", is hereby rescinded.

By way of brief explanation, as members will see as they examine the fifty-sixth report and contemplate recommendations 1 to 4 contained therein, one of the processes or courses of action being advocated by the committee involves the rescission of a previous decision and for it to be overtaken by another course of action. Of course, in order to do that I need to give notice of an intention to move a motion along those lines—that is, to rescind a previous vote. That is the purpose of this current motion.

HON SUE ELLERY (South Metropolitan — Leader of the House) [1.25 pm]: It would just be nice if we were provided with some explanation before these things occurred. I do not mean to be difficult, to hold up the house or in any way suggest that I might not agree that this is a perfectly reasonable thing to do, but if I am asked to vote on something without having the opportunity to consider it, I do not think it is an acceptable way for this house to proceed—I really do not. I would like from you, Madam President, an explanation of what I am voting on now.

The PRESIDENT: Leader of the House, what we are dealing with now is referred to in standing order 84, which is in relation to rescission of a vote. It says —

A vote of the Council may be rescinded by motion with notice, provided that 7 days' notice of the motion is given and the rescission is supported by an absolute majority.

Hon Simon O'Brien is proposing when we deal with the fifty-sixth report and the recommendations contained in it tomorrow in Committee of the Whole House as order of the day 1, that recommendation 2, which is in relation to recommendation 4 in the fifty-fifth report, be rescinded. You have to suspend standing orders, you have to have an absolute majority and you have to give notice that you intend to rescind the recommendation previously agreed to by the chamber. Hon Simon O'Brien is now seeking to give notice of what he anticipates doing tomorrow. He is simply suspending standing orders so he has the time to move that motion to rescind what we have already dealt with.

Point of Order

Hon SUE ELLERY: I will use a point of order just as a way of engaging in the discussion. The motion we are asked to now consider, which is extraordinary and which I do not even have in front of me, is that we suspend standing orders —

The PRESIDENT: Tomorrow, when we are in Committee of the Whole House.

Hon SUE ELLERY: I do not know that, because I have just got the motion. It says, "so much of standing orders be suspended". It does not say tomorrow. It says, "so much of standing orders be suspended"—as in now. That is how I read it.

The PRESIDENT: No, Leader of the House, if you read it, it says —

That so much of standing orders be suspended so as to enable me, during consideration in the Committee of the Whole House of recommendations 1 to 4 ...

We have already agreed that the fifty-sixth report and its recommendations 1 to 4 be dealt with as order of the day 1 at the next sitting of the house, which we assume would be tomorrow. That is what that relates to.

Hon SUE ELLERY: So the proposition is that tomorrow we suspend standing orders?

The PRESIDENT: When we are in Committee of the Whole House.

Hon SUE ELLERY: We suspend standing orders tomorrow?

The PRESIDENT: Yes.

Hon SUE ELLERY: I am not being asked to suspend standing orders now?

The PRESIDENT: No, you are not.

Hon SUE ELLERY: Is there any other motion contemplated that it would be polite for me to be given a copy of?

Extract from *Hansard*

[COUNCIL — Wednesday, 4 September 2019]

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Hon Martin Pritchard

The PRESIDENT: There is no further motion in relation to this report today.

Debate Resumed

Question put and passed with an absolute majority.