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Hon John Cowdell; Hon Kim Chance; Hon Ken Travers; Hon Bill Stretch; Hon Norm Kelly; Hon Bruce Donaldson; Hon Murray Nixon; President

STANDING ORDERS COMMITTEE - CONSIDERATION OF REPORTS

Committee

The President (Hon George Cash) in the Chair.

Report on the Treatment of Evidence of Standing Committees

The PRESIDENT: Last week a report of the Standing Orders Committee was tabled in the Parliament for the information of members. Before I continue, I will need a motion so that we can discuss the committee's proposal.

Hon J.A. COWDELL: I move -

That Standing Orders Nos 322 to 325 be repealed and the following substituted -

322. "Evidence" In this Chapter -

"evidence" is information provided to, or obtained by, a committee that relates to a matter under inquiry, and includes -

(a) a written or oral submission;

(b) any document whether or not it forms part of a submission;

(c) information provided by a person who is not a witness.

323. Evidence may be disclosed or published

(1) The proceedings of a committee when taking oral evidence are open to accredited news media representatives and the public.

(2) Written evidence not subject to subclause (4) may be disclosed or published in a manner and to an extent (if any) determined by a committee of its own motion or so as to meet a request made by the person providing that evidence.

When evidence may be taken in private session

(3) Despite subclause (1), a committee may take oral evidence in private session of its own motion, or at the request of the witness, where it is satisfied that the nature of the evidence or the identity of the witness requires it.

Private session evidence not to be disclosed or published

(4) Evidence, including written evidence, taken under subclause (3) must not be disclosed or published except by leave of the House or the committee before which the evidence was given.

Content of reports not affected

(5) Subclause (4) does not prevent a committee from disclosing such evidence for the purpose of complying with any rule or order, or quoting or referring to such evidence in a report on the matter to which that evidence relates.

The PRESIDENT: The chairmen of the various standing committees drew to my attention the fact that the current standing orders, as they apply to the publication of evidence given to those standing committees, is not working in a manner that is conducive to witnesses giving sensitive information to the committees. I was advised by the chairmen of the standing committees that on occasions witnesses who appeared before committees had declined to give information on the basis that the committee could not guarantee the security - that is, the non-publication - of the evidence they were prepared to give to the committee. On other occasions witnesses gave evidence to committees on the understanding that, if necessary, a suppression order could be sought from the House to ensure the evidence was not made public. However, the bottom line is that the chairmen of committees were not in a position to make some witnesses comfortable about giving sensitive information.

As a result, last week I met with the chairmen of the various standing committees to discuss the current standing orders and proposed changes to them. The chairmen last week agreed to changes proposed by the Standing Orders Committee; that is, that Standing Orders Nos 322 to 325 be repealed and the substitute Standing Orders Nos 322 and 323, listed in my report, be agreed to. If the Legislative Council agrees to the recommendation of the Standing Orders Committee, chairmen will be able to guarantee that sensitive evidence given to committees need not be made public by the committee when it reports to the House; that is, there will be no need for a suppression order under the proposed standing order. However, the Legislative Council will retain the right to order that evidence be published if that is its desire. It would be a separate action and, obviously, the Legislative Council should always retain the ability to determine that if it so wishes.

Under the proposed new standing orders, in the first instance, guarantees could be given to witnesses about the non-publication of evidence, and that could be overturned only by a subsequent order of the Legislative Council. That would clearly enable substantial debate on the reasons that evidence should or should not be disclosed. In my view it is a much more efficient and effective way of dealing with the sensitive information provided by witnesses to committees. My advice from the chairmen of committees is that it would encourage some witnesses to provide further information to committees.

Hon J.A. COWDELL: As you, Mr President, have pointed out, the current position is clearly unsatisfactory. On the surface it appears to be balanced; that is, the policy in Standing Order No 322 that committees hearing evidence do so in public and the evidence may be reported by the media contemporaneously. There are two grounds on which a committee may take evidence in private session; that is, when the nature of the evidence or the identity of the witness makes such a course advisable. The decision is either made by the committee on its own motion or it is instigated at the request of a witness. It is evident that from time to time there is a need to invoke a private session to protect witnesses and give guarantees of protection or secrecy in order to obtain evidence that would not be obtained in other circumstances. There appears to be a balance.

However, the situation is not entirely satisfactory because it proves that the confidentiality provided is of a temporary nature only; that is, private session evidence loses its private character when a committee reports on the matter to which that evidence relates. Therefore, all evidence becomes public, including private session evidence.

That can cause difficulties under the current standing orders. However, we have a number of checks to this. Standing Order No 324 states -

> Unless a committee recommends, and the Council orders, that private proceedings not be disclosed, those proceedings may be disclosed or published when the committee reports on matters to which those proceedings relate.

I initially took comfort from the term "may", but it seems it has been interpreted to mean "shall". Committee office practice appears to allow some exercise of discretion with regard to releasing evidence, but that exercise of discretion is not available to the committee. Therefore, it is an exercise of discretion in an administrative sense by the secretariat. That is the first check on this process and it is very limited.

The other check available is for committees to define something as not being evidence to avoid its disclosure. A number of instances have arisen with committees - including the Legislation Committee of which I am a member. Because some things ought not be disclosed, debates have ensued about letters not being received and submissions not being accepted. In a recent instance of concern, the advisory officer provided three pages of detailed advice about devices that might be used to facilitate the business of the committee and to safeguard confidentiality when it is appropriate. The advice comprised a set of detailed legal interpretations of what or may not be done to achieve the desired result.

Beyond that, the third mechanism for maintaining confidentiality is, of course, the invoking of Standing Order No 324, which involves the committee's recommending a suppression order to the House. That has been used sparingly, but it was used recently at the request of Hon Mark Nevill. I suggest that that may happen more frequently. Hon Bruce Donaldson has requested such an order and other requests are in the pipeline because of the inadequacy of the current standing orders. The problem is that it may take on the nature of a federal case. One might ask: What is so startling that the whole Chamber has to consider a suppression order? What was the evidence of the Attorney General that had to be suppressed?

Hon Ken Travers: That is a very good question.

Hon J.A. COWDELL: It is not an appropriate instrument. We have three checks that might be used to maintain the offer of confidentiality that has been given legitimately by a committee of this Chamber. That is a limited protection in terms of committee office procedure. Protection might be provided by virtue of the definitions and procedures used by the committee in receiving or not receiving letters or evidence, or the invoking of the grand suppression order from the House, which always appears to be overkill.

On that basis, we must make some changes, including repealing the existing unsatisfactory standing orders. I have moved this motion on behalf of the Standing Orders and Procedure Committee. It involves the introduction of an alternate regime that will give committees the power to honour confidentiality when they have given that pledge to witnesses. Openness will be provided as follows -

(1) The proceedings of a committee when taking oral evidence are open to accredited news media representatives and the public.

However, that also provides committees with greater capacity. The motion continues -

> (2) Written evidence . . . may be disclosed or published in a manner and to an extent (if any) determined by a committee of its own motion or so as to meet a request made by the person providing that evidence.
>
> (3) Despite subclause (1), a committee may take oral evidence in private session of its own motion, or at the request of the witness, where it is satisfied that the nature of the evidence or the identity of the witness requires it.

We then come to the reversal of form. Subclause (4) provides -

> Evidence, including written evidence, taken under subclause (3) must not be disclosed or published except by leave of the House or the committee before which the evidence was given.

If the evidence is taken in private, it can be made available only by leave of the committee, and, if the committee is not in session, by leave of the House. We have two possible devices - by leave or by order of the House. One allows an individual member of the committee or the House to deny leave, which means the evidence remains secret for the requisite period; and the other involves an order - that is, it is determined by majority. The Standing Orders and Procedure Committee decided to pursue the leave option rather than the order option. That is why subclause (5) is important. It must be included because it provides -

> Subclause (4) does not prevent a committee from disclosing such evidence for the purpose of complying with any rule or order, or quoting or referring to such evidence in a report on the matter to which that evidence relates.

If evidence is taken in private, the committee must have the capacity by majority decision to include excerpts of it in its report. In addition, if it thinks on reflection that the evidence is so important or that there is not a question of confidentiality - although it was initially granted – there could be an appendix to the report. The committee will be able to utilise that device to disclose evidence. I commend the motion to the House on that basis. This considerably improves the current situation.

Hon KIM CHANCE: I seek only clarification. I support the motion because I have been impressed by the arguments offered in favour of this change. The Standing Committee on Public Administration, of which I am chairman, has never encountered a situation of this nature, although I can understand why other committees would, particularly those dealing with matters relating to criminal law or professional privilege. My question relates to one of the very rare occasions on which witnesses appearing before the Public Administration Committee sought to give evidence in private. The reason for seeking to give their evidence in private did not relate to the nature of their evidence, but to circumstances in which the evidence was to be given. They feared some degree of harassment if their evidence were given in open session. I think I understand the effect of the proposed change in the standing orders. However, for the sake of clarification, if the evidence itself is not of a confidential nature, but the witness seeks to give evidence in private for other reasons, including for personal security, is it likely to affect the ability of a committee to utilise the evidence?

The PRESIDENT: No, it will not inhibit the committee. Proposed standing order 323(3) reads -

> Despite subclause (1), a committee may take oral evidence in private session of its own motion, or at the request of the witness, where it is satisfied that the nature of the evidence -

The following are the important words -

> - or the identity of the witness requires it.

If the witness can convince the committee of a good reason that the evidence should be taken in private, not necessarily due to its sensitivity but for other reasons - Hon Kim Chance mentioned harassment - that opportunity is available to the committee.

Hon KEN TRAVERS: Mr President, when you briefly outlined the procedures, you suggested that if evidence were taken in private, this House could debate at a later time the substantive merits of whether it can be made public. My reading of subclause (4) suggests that would require leave of the House rather than debate.

The PRESIDENT: I am glad Hon Ken Travers raised that because I thought I may need to clarify my initial comments. He is correct. Proposed standing order 323(4) reads -

> Evidence, including written evidence, taken under subclause (3) must not be disclosed or published except by leave of the House or the committee before which the evidence was given.

In the first instance it can be published by leave, but one dissenting voice will prevent that publication. However, the House has the inherent capacity to order the publication of evidence. That will require a motion and obviously debate in the House.

Hon J.A. COWDELL: Proposed standing order 323(5) reads -

> Subclause (4) does not prevent a committee from disclosing such evidence for the purpose of complying with any rule or order, or quoting or referring to such evidence in a report on the matter to which the evidence relates.

I initially interpreted that to mean that a substantive motion could be moved here and, if a majority decided evidence could be made available, a motion could be carried to that effect. However, I understand that subclause (4) is the substantive clause; that leave of the House is required to make subclause (5) inoperative. A simple motion could not open up the evidence, and if a majority decision of the House were required, the standing order would need to be repealed before such a motion could be moved.

The PRESIDENT: Hon John Cowdell is correct. In the first instance it is by leave. However, it is possible for the House to order the publication of the evidence. That would require the suspension of this standing order to enable the evidence to be published.

Hon Ken Travers: Would it require a majority?

The PRESIDENT: An absolute majority would be required to suspend standing orders and the motion to publish certain evidence would be debated.

Hon W.N. STRETCH: Does that mean that the subject matter of the evidence could be discussed during debate on that order, or would it be impossible to raise any of the evidence during that debate?

The PRESIDENT: Obviously, two questions would be before the House. The first would be to suspend the standing order. That would not involve any discussion on the evidence as such. That would be left to the second motion - to publish the evidence. I have no doubt that some of the evidence would be required to be discussed, but not in great detail. Until the motion is agreed to, the House cannot agree to publication.

The argument would have to be made on that second motion without disclosing material at length or jeopardising the position of someone who sought the privacy. The Chairman would have to very carefully manage that, so that no-one was endangered if the House were to deny the motion. For example, one member may stand for the very purpose of trying to destroy the privacy sought by the witness. If that person could clearly not achieve the majority required, the Chairman would have to ensure that the arguments did not infringe the privacy of a witness.

Hon W.N. STRETCH: I am concerned that subclause (5) does not go far enough.

The PRESIDENT: In its present form the standing order will do everything that the chairman of the committee requests. I confirm what Hon John Cowdell said earlier. In the past 11 and a half years, suppression orders have been sought on only two occasions. They were granted by the House without discussion on the basis, I assume, that the House had confidence in the members of the committee who recommended the suppression order. That is obviously a trust that the House places in its committees at all times.

Hon NORM KELLY: You said in your opening remarks, Mr President, that a committee chairman could guarantee the privacy of a witness. I take it that would be due to the chairman's ability to use the veto of denying leave either in the committee or in the House. However, given that suspension of standing orders or subsequent changes to standing orders could limit that guarantee simply to the chairman's power of veto, it is important that witnesses be informed of the situation at the beginning of committee hearings so that they are in no doubt about the power of the House, although it may be unlikely, to subsequently make that evidence public.

The PRESIDENT: The member is right. All witnesses should be advised by the chairmen of the respective committees of the intent of the standing orders; that is, if the committee agrees, the sensitive information is kept private. However, the House has the overriding capacity to publish that evidence if it should so desire. That is quite different from the current situation. The guarantee that the chairman is obliged to give at the moment is that the current standing orders require the publication of the evidence unless there is a suppression order. We will at least put the chairmen and the committees in a position where they can manage witnesses and give what I think is a significant guarantee to witnesses that is about 100 times better than we have at the moment.

Hon Kim Chance: It is significant, but not absolute.

The PRESIDENT: Yes.

Hon NORM KELLY: The second point relates to proposed new Standing Order 323(4). If the House were to deny leave, it is my understanding there would be no limitation to when a motion to make public that evidence could be raised again. I doubt this would ever occur, but a scurrilous way to try to open up evidence would be available if a chairman of a committee were not present. There could be legitimate cases in which leave is denied, but at a future time - whether days, weeks or years - the House may wish to have that evidence made public. Is my understanding correct, that denial of a motion seeking leave is only binding until any subsequent motion of the same type is moved?

The PRESIDENT: Yes, if leave is denied, a motion to suspend the standing orders would be required in the first instance. That would require an absolute majority. That would be followed by a motion, if that were the intention of the member, that certain evidence be published. The member is right.

Hon B.K. DONALDSON: As a member of a committee I appreciate the swift response of the Standing Orders Committee. Evidence is taken in private session under the standing orders and, although the House can overrule the committee, if that evidence cannot be quoted in the report the only people who would know the nature of the evidence would be the members who sit on the committee. If the committee guaranteed that the evidence given in private session was not to be published etc, I would be interested to know which member of the committee would come over to this House and, for mischievous reasons, ask for it to be published. Would that not be a breach of parliamentary privilege, when the committee had determined that fact? The President probably has a very good answer for me.

Although we have seen only two suppression orders, I can assure members that if changes are not made we will possibly see another from the Legislation Committee in the near future, and this will continue. We all know the reason it is important that these changes occur. People's curiosity is aroused when a suppression order is sought. For example, with Hon Mark Nevill's evidence our minds automatically ticked over and we wondered what sort of evidence he gave. I am sure that when I sought the suppression order yesterday, members wondered what the Attorney General had said that was so important that it be kept private and confidential, and not be published. The real issue yesterday was what he did not give us, which was more important. We could not give any guarantee about the evidence, and the committee felt it would be improper to release some of the information. A suppression order automatically invites curiosity.

The issue of breaching parliamentary privilege is interesting. I presume the "Information for Witnesses" sheet will be updated. It is a good legal document because it entails a great deal of fine print.

Hon Ken Travers: They all say they have read and understood it.

Hon B.K. DONALDSON: I smile when I ask that question, because they all say, "Oh, yes."

Hon Kim Chance: I have had some witnesses who have said they did not understand it.

Hon B.K. DONALDSON: Yes. It has so much fine print I wonder whether we might not slip something in one day that might benefit all of us. I hope that form will be updated as a matter of course.

Hon M.D. NIXON: I endorse your opening remarks, Mr President, and the comments of my colleagues supporting the need for this amendment. As Chairman of the Constitutional Affairs Committee I realise the importance of committees being able to accept evidence in confidence. Although it is true that committees have the right to subpoena evidence, in many cases they do not know what evidence they require and they depend on people volunteering evidence. The power to subpoena is of no value if we do not know what evidence is there, so we must encourage people to give evidence.

In the second instance, this amendment seeks to ensure that the committee, which knows the value of the evidence received, is the primary judge of whether it should be released to the public. That is very important. The only difficulty I see is that while somebody may apply to the committee to give evidence in private, it is not until after the committee has heard the evidence that it can judge whether that evidence should have been received in public. I hope that point is made when the instructions to witnesses are re-written. In other words, the person giving evidence can request that his evidence be taken in private and remain private.

The committee, in the first instance, should be the judge of whether that is what should occur. That is the first problem I see. From reading the proposed amendments - and I ask for your correction if I am wrong - in the first instance, if one member of the committee believes the evidence should not remain private, it can be published. Proposed Standing Order 323(4) says

> . . . except by leave of the House or the committee . . .

In reality the committee would be the first to judge this, and not the second. In other words, the committee would make the decision in the first instance and then, subject to that decision, the House would make the

decision in the second instance. I do not believe it means it would be done by a member of the committee after it is returned to the House.

The PRESIDENT: In respect of a breach of privilege occurring, if a member of a committee subsequently sought to move to have public evidence published - that is, authorised - it can be done. It is not a contempt or breach. We must always remember that committees are subsidiary to the House.

In respect to the issue that Hon Murray Nixon raised, Standing Order 330 is titled "Witnesses entitlements" and reads -

> Subject to order any person examined before a committee is entitled to:
>
> . . .
>
> a) apply for all or part of that person's evidence to be given in private session and for an order restricting publication of, or access to, that evidence;

The committee has that discretion, whether it hears a matter in private or not. The member has aptly described the evidence as evidence in confidence. That would include sensitive and non-sensitive information.

Question put and passed.

Report on Standing Order No 155 - Procedure for Raising Matter of Privilege

Hon J.A. COWDELL: Pursuant to the report of the Standing Orders Committee on this matter, I move -

> That Standing Orders Nos 104 -106 and 155 be repealed, and that the following new Standing Order No 155 be substituted -
>
> **155. Procedure for raising matter of privilege**
>
> (1) A member may raise a matter alleging a breach of privilege at any time without notice whether or not other business is under consideration at the time.
>
> (2) The member raising a matter of privilege under this order -
>
> (a) must move for the appointment of a select committee to consider and report on the matter raised; and
>
> (b) in speaking to that motion, do no more than state succinctly the facts and circumstances said to constitute or show that a breach of privilege has occurred; and
>
> (c) table any relevant document;
>
> (d) cannot speak for more than 10 minutes.
>
> (3) At the conclusion of the member's speech the matter is adjourned without question put.
>
> (4) At the next sitting, and despite any other rule or order, the order of the day for further consideration of the matter is to be taken immediately after Prayers at which time the President shall rule whether the matter is one affecting the privileges of the House under the *Parliamentary Privileges Act 1891*.
>
> (5) A ruling given under subclause (4) is final.
>
> (6) Where the President rules -
>
> (a) that no matter of privilege is involved, the order of the day is discharged;
>
> (b) that there is a matter of privilege, the order of the day is to be called forthwith and the question must be determined at that day's sitting.
>
> (7) Debate under subclause (6)(b) must not exceed 1 hour and no member may speak for more than 10 minutes.
>
> (8) Any committee appointed under this order has power to send for persons, papers, and records.
>
> (9) In this order, **"document"** has the meaning given to that expression in s 5 of the *Interpretation Act 1984*.

(10) This order does not apply to proceedings taken under section 10 of the *Parliamentary Privileges Act 1891* or to proceedings dealing with a matter of privilege reported from a committee.

Members will be aware that Standing Orders Nos 104-106 and 155 are, not to put too fine a point on it, a dog's breakfast and provide no orderly format for dealing with matters of privilege. Standing Order No 104 states -

> Any Member may rise to speak "To Order", or upon a matter of privilege which has arisen since the last sitting of the Council.

That is not very instructive. Standing Order No 105 states -

> All questions of order and matters of privilege which have arisen since the last sitting of the Council shall, until decided, suspend the consideration and decision of every other question.

Standing Order No 106 refers to complaints against newspapers and states -

> Any Member complaining to the Council of a statement in a newspaper as a breach of privilege shall produce a copy of the paper containing the statement in question, and be prepared to give the name of the printer or publisher, and also submit a substantive motion declaring the person in question to have been guilty of contempt.

Members will see from the nature of these standing orders that they are outdated and give no clear advice or order to the House about how it should proceed on these matters.

Standing Order No 155 is similarly edifying and states -

> Whenever a matter or question directly concerning the privileges of the Council, or of any committee or member thereof, has arisen since the last sitting of the Council, a motion calling upon the Council to take action thereon may be moved, without notice, and shall, until decided, unless the debate be adjourned, suspend the consideration of other motions and orders of the day.

The repeal of these totally inadequate standing orders is justified. Proposed new Standing Order No 155 as outlined in the committee's report establishes a clear procedure and does not refer to newspapers as opposed to other media. It states -

(1) A member may raise a matter alleging a breach of privilege . . .

(2) The member raising a matter of privilege under this order -

(a) must move for the appointment of a select committee to consider and report on the matter raised . . .

(b) in speaking to that motion, do no more than state succinctly the facts and circumstances . . .

(c) table any relevant document;

(d) cannot speak for more than 10 minutes.

(3) At the conclusion of the member's speech the matter is adjourned without question put.

(4) At the next sitting, and despite any other rule or order, the order of the day for further consideration of the matter is to be taken immediately after Prayers at which time the President shall rule . . .

(5) A ruling given under subclause (4) is final . . .

That procedure is clear and will provide a better regime for governing such matters in the House. Standing Orders 104-106 and 155 manifestly fail to provide a proper order for dealing with these matters. Proposed new Standing Order No 155 does provide that appropriate order.

Question put and passed.

Report on Standing Order No 134 - Right of Reply

Hon J.A. COWDELL: The report of the Standing Orders Committee recommended the inclusion of the following schedule to Standing Order No 134 -

(e) A petition that alleges, whether directly or by necessary inference, that a member of the Legislative Council or other person, in the course of a proceeding in Parliament has:

(i) attributed to the petitioner statements or acts that are denied by the petitioner; or

(ii) misrepresented the scope, purpose, or intent of any statement or act of the petitioner,

and the President, on a reference from the committee to which it stands referred (the **"committee"**), rules that the petition:

(iii) is one to which SO 133(c)(vii) applies; or

(iv) raises a matter of privilege,

the committee shall not further deal with the petition where subparagraph (iii) applies or, where subparagraph (iv) applies, shall not deal further with the petition except in the manner prescribed in the succeeding paragraphs. The committee must make and report its determination under this paragraph not later than 7 sitting days of the day on which the petition stood referred.

(f) For the purpose of its inquiry on a petition involving a matter of privilege, the committee is reconstituted by the appointment ex officio of the Leader of the House and the Leader of the Opposition or their respective nominees. The committee as so reconstituted may proceed to deal with the petition in the manner, and to the extent, as if it were a select committee of privilege appointed for the purpose and, unless otherwise ordered, shall report finally on the matter not later than 30 days of the days on which it was reconstituted.

(g) Where the committee's findings sustain the prayer of a petition that is subject to paragraphs (e)(iv) and (f), the committee:

(i) having regard to the nature and severity of the harm caused to the petitioner or other person, shall recommend what action the House or a person might take in order to mitigate that harm;

(ii) where a breach of privilege or a contempt is found, shall recommend what penalty might be imposed by the House.

(h) A member shall not sit as a member or as an ex officio member of the committee if -

(i) the member presented the petition; or

(ii) the subject matter of the petition involves or relates to the conduct of that member,

and in either case a substitution must be made under SO 326A. Leave cannot be granted under SO 326 and, except as provided in this paragraph, no substitution can be made under SO 326A in relation to a committee reconstituted under paragraph (f).

(i) A petition to which paragraph (e)(i) or (ii) applies but not paragraph (e)(iii) or (iv) may be dealt with as the committee thinks fit.

The PRESIDENT: For the information of members, the discussion on proposed Standing Order No 134 first occurred in March 1998. The committee considered the Standing Orders Committee report on proposed Standing Order No 134 again on 30 April 1998 and 17 September 1998. Due to time constraints, limited progress was made, and the Standing Orders Committee report has remained on the Notice Paper since that time, but no time has been found to deal with it. At a recent meeting of the Standing Orders Committee, it again considered proposed Standing Order No 134, agreed that some changes should be made to the original schedule as set out in its report, and recommended that we press the House to deal with this matter. That is where we are now, and that is the reason that Hon John Cowdell proposes to move for the deletion of the schedule in the original Standing Orders Committee report and seeks to incorporate the new schedule.

Hon J.A. COWDELL: I move -

That the schedule proposed by the Standing Orders Committee be deleted and the following schedule substituted -

Schedule — SO 134

(e) A petition that alleges, whether directly or by necessary inference, that a member of the Legislative Council or another person has, in the course of a proceeding in Parliament in the Legislative Council or in a committee —

(i) attributed to the petitioner statements or acts that are denied by the petitioner; or

(ii) misrepresented the scope, purpose, or intent of any statement or act of the petitioner,

stands referred to the President on presentation.

(f) The President must rule whether a petition referred under paragraph (e) is one —

(i) that is subject to SO 133(c)(vii); or

(ii) that raises a matter of privilege;

(iii) that is not subject to subparagraph (i) or (ii).

(g) A petition that is ruled subject to paragraph (f)(i) must not be further considered.

(h) A petition that is ruled subject to paragraph (f)(ii) stands referred to the Standing Orders Committee for inquiry and report.

(i) A petition that is ruled subject to paragraph (f)(iii) stands referred to the *Constitutional Affairs Committee.*

(j) For the purposes of paragraph (h), the Standing Orders Committee has power to send for persons, papers, and records and those powers necessary or incidental to conduct and conclude its inquiry and, unless otherwise ordered, the Standing Orders Committee must report finally to the House not later than 30 days from the day on which the petition was referred.

(k) A member —

(i) who presented the petition; or

(ii) whose conduct is, or relates to, the subject matter of the petition,

must not sit as a member of the Standing Orders Committee throughout its inquiry, and in either case a substitution of that member must be made under SO 326A. Except for this purpose, SO 326 and SO 326A do not apply to the constitution of the Standing Orders Committee.

(l) Where the Standing Orders Committee finds that the petition shows that a breach of privilege or a contempt has been committed it may recommend, having regard to any mitigating or aggravating factors, what penalty might be imposed by the House.

(m) Where the Constitutional Affairs Committee sustains the prayer of a petition referred under paragraph (i) it may, having regard to the nature and severity of the harm caused to the petitioner or other person, recommend what action the House or a person might take in order to mitigate the effects or consequences of that harm.

Mr President, as you have pointed out, this matter was first considered in 1998, that report was noted, and we proceeded from there. This is an alternative version to what I first proposed. It is now about three years since the Assembly adopted some form of right of reply. We have not yet adopted a form of right of reply, and I do not believe we can conclude this session without providing a right of reply. The initial proposal that I put was defeated, and a proposal was put by other members, which enjoyed majority support and was in the form of the petition procedure. I said when this matter was subsequently considered in October 1998 that I accepted that this proposal was infinitely superior to what prevails at the moment, which is that there is no adequate right of reply; therefore, the Australian Labor Party will be supporting this alternative.

To go one step further, the reason that I have proposed an amendment to the schedule is not that the procedure has changed, but rather that under the initial proposal, the relevant committee to consider the matter was the Constitutional Affairs Committee, as augmented by an appointee of the Leader of the Government and the Leader of the Opposition. I considered upon reflection that that was not the appropriate destination and that the appropriate destination was the Standing Orders Committee, which should have both the time and the capacity to deal with such matters without being augmented. It still has in place all the other procedures of the President's determination and so on; it is just the destination that changes. On that basis, without wanting to unduly delay the Chamber, I commend the schedule, as amended, to the Chamber.

Hon B.K. DONALDSON: Am I hearing correctly? Is this just Hon John Cowdell's amendment or has this been considered by the Standing Orders Committee? When the Standing Orders Committee brings a report into the House, one hopes that it has been well and truly debated, and that it is a unanimous decision of the Standing Orders Committee to ask the Chamber to either support it or not support it. I hope there has been a general agreement across the board.

Hon J.A. COWDELL: In answer to Hon Bruce Donaldson, I make the point that some four or five months ago when this was last raised and contemplated, I gave a copy to the Leader of the House, and I also took the opportunity to circulate a copy and to provide it to members of the Standing Orders Committee. The member is correct. The Standing Orders Committee has not formally considered that one change. However, it is only a change at the end of the whole process. It does not alter the substantive process. It is just a question of the committee at which it ends up. I argue that it is not a substantive alteration in the manner of the right of reply that the Chamber has now considered for two years. However, clearly, it is a change in the committee of destination.

The PRESIDENT: Members have heard the comments. My view is that proposed Standing Order No 134, in its modified form, is a preferable way to deal with these matters. It will be more efficient and less clumsy, and the matter will come before a committee that has the capacity to deal with it fairly quickly. That is not to say that Hon Murray Nixon's committee would not be competent. However, in respect of the issues raised, it is proper that the Standing Orders Committee be the committee to which the petition is referred, where that is necessary.

Amendment (words to be deleted) put and passed.

The PRESIDENT: The question now is that the words proposed to be inserted be inserted.

Amendment (words to be inserted) put and passed.

The PRESIDENT: The question now is that the Standing Orders Committee's recommendation, as amended, be agreed to.

Question put and passed.

Report

Resolutions reported and the report adopted.

Sitting suspended from 1.00 to 2.00 pm