



***PROCEDURE AND PRIVILEGES  
COMMITTEE***

**CHANGES TO PROROGATION AND  
EXTENDED SESSIONS**

**Report No. 4**

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***PROCEDURE AND PRIVILEGES  
COMMITTEE***

**CHANGES TO PROROGATION AND  
EXTENDED PARLIAMENTS**

**Report No. 4**

Presented by:  
Mrs Dianne Guise, Deputy Speaker of the Legislative Assembly  
Laid on the Table of the Legislative Assembly  
On 23 October 2003

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Speaker of the Legislative Assembly

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## COMMITTEE'S FUNCTIONS, POWERS AND TERMS OF REFERENCE

Legislative Assembly Standing Order No. 282 provides the following functions, powers and terms of reference to the Procedure and Privileges Committee -

### **Procedure and Privileges Committee**

**282.** (1) A Procedure and Privileges Committee will be appointed at the beginning of each session to —

- (a) examine and report on the procedures of the Assembly; and
- (b) examine and report on issues of privilege; and
- (c) wherever necessary, confer with a similar committee of the Council.

(2) The Procedure and Privileges Committee will have the powers of a select committee.

(3) Membership of the committee will consist of the Speaker and four other members as the Assembly appoints.

(4) Standing Order 278 will apply except that where possible any report of the committee will be presented by the Deputy Speaker.

(5) When consideration of a report from the committee is set down as an order of the day it will be considered using the consideration in detail procedure.

The Leader of the House during a Brief Ministerial Statement, made in the Legislative Assembly on Wednesday 25 June 2003, about the prorogation of Parliament advised members that it was not the intention of the Government to ask His Excellency the Governor to prorogue Parliament on an annual basis. In so doing, he also requested the Procedure and Privileges Committee to take the announcement as a reference for the Committee to consider whether any modifications to the Legislative Assembly's Standing Orders are required following this change to parliamentary procedure.

Accordingly, your Committee agreed to investigate and report to the Legislative Assembly on this matter.



PROCEDURE AND PRIVILEGES COMMITTEE

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## RECOMMENDATIONS

### *Recommendation 1*

Your Committee recommends –

To insert the following new Standing Order 8A -

“

#### **Premier’s Statement**

**8A.** (1) On the first sitting day of each calendar year, the Premier will make a statement to the Assembly outlining the Government’s legislative and other policy intentions for the next 12 months.

(2) No Premier’s Statement is to be made when the first sitting day of a year is the first sitting day of a session of Parliament.

(3) Following the Premier’s Statement a question will be proposed, That the Premier’s Statement be noted.

(4) No other business that is not of a formal or procedural nature will have priority until after 4 sitting days (including the remainder of the first sitting day) have been dedicated exclusively to the debate on noting the Premier’s Statement.”.

### *Recommendation 2*

Your Committee recommends,

To amend Standing Order 74 by inserting after “ removed. ” the following -

“ A member may renew a notice of motion only once. ”.

The Standing order will now read -

#### **Notice lapses**

**74.** If a notice of motion has remained on the Notice Paper for 30 sitting days without being moved the Speaker will announce it will be removed from the Notice Paper on the next sitting day. A member may require the notice given by them to be continued by written notification to the Clerk prior to it being removed. A member may renew a notice of motion only once. ”.

*Recommendation 3*

Your Committee recommends,

To delete in line 3 of Standing Order 126 “session” and substitute the following -

“ year commencing 1 January ”.

The Standing Order will now read -

**Same question not to be put**

**126.** A question will not be proposed which is the same as any question which has been resolved in the affirmative or negative during the same year commencing 1 January.

*Recommendation 4*

Your Committee recommends,

To insert new Standing Order 144A as follows -

“

**Order of the Day lapses**

**144A.** (1) If an Order of the Day on the Notice Paper has not been debated for more than twelve calendar months it will be removed from the Notice Paper and on the next sitting day the Speaker will announce its removal from the Notice Paper.

(2) A bill removed from the Notice Paper under this Standing Order may be restored by motion to the point it reached prior to its removal. ”.

*Recommendation 5*

Your Committee recommends,

- (1) That section 42 of the *Interpretation Act 1984* be amended to provide that at the expiration of 15 sitting days after notice of a motion to disallow any regulation has been given in either House of Parliament, being a notice given within 14 sitting days after the regulation has been laid before the House, the notice has not been withdrawn or called on and finally determined, the regulation specified in the notice of motion will be deemed to have been disallowed.
- (2) That the Attorney General arrange for the tabling in the Legislative Assembly of a schedule detailing disallowance provisions in Acts other than the *Interpretation Act 1984* and outlining the changes necessary to bring them within the spirit of the amendments proposed in recommendation 5 (1).

*Recommendation 6*

Your Committee recommends the Legislative Assembly adopt the following Temporary Order,

**“Temporary Order**

That until 31 December 2004 Standing Order 74 will not apply to any notice of disallowance motion given in accordance with section 42 of the *Interpretation Act 1984*. ”.

*Recommendation 7*

Your Committee recommends,

To amend Standing Order 255 by adding the following -

“

- (2) If no reporting date is specified in the motion for establishment of a select committee, it will report within 12 calendar months of its appointment. ”.

*Recommendation 8*

Your Committee recommends,

That section 38 (g) of the *Constitution Acts Amendment Act 1899* be amended to substitute the period of 12 months for the words “one entire session thereof”.

Depending on the form of drafting, section 38 (g) of the Act will then read something like -

“

.....If any member of the Legislature.....

- (g) fails to give his attendance in the House of which he is a member for 12 months without the permission of the House entered upon its journals,

his seat shall thereupon become vacant. ”.

*Recommendation 9*

Your Committee recommends,

That the Standing Orders be amended by -

- (a) Deleting from line 2 of Standing Order 1 “ sessional ” and substituting the following -

“ temporary ” ;

The Standing Order will now read -

**General rule**

**1.** In all cases that are not provided for in these Standing Orders or by temporary or other orders, or by the practice of the House, the Speaker will determine the matter and reference may be made to the rules, forms and practices of Parliaments operating under the Westminster System.

- 
- (b) In Standing Order 2 -

- (i) deleting in line 2 “ Sessional ” and substituting the following -

“ Temporary ” ;

- (ii) deleting in line 3 “ the duration of the session ” and substituting the following -

“ 12 calendar months ” ;

The Standing Order will now read -

**Temporary orders**

2. The Assembly may from time to time adopt Temporary Orders which will have effect for 12 calendar months, unless a lesser period is specified.

- 
- (c) deleting from line 1 of Standing Order 3 “ Sessional ” and substituting the following -

“ Temporary ” ;

The Standing Order will now read -

**Suspension of orders**

3. Any Standing or Temporary Order may be suspended at any time except during questions without notice —

- (a) on motion with notice; or  
(b) without notice provided that a motion has the concurrence of an absolute majority of the whole number of members of the Assembly.

- 
- (d) deleting from line 2 of Standing Order 23 “ Sessional ” and substituting the following -

“ Temporary ” ;

The Standing Order will now read -

**Assembly adjourns by its own resolution, with exceptions**

23. Except for cases provided for in Standing Orders 20, 21(4), 22, 50 and any Temporary Order, the Assembly may be adjourned only by its own resolution.

- 
- (e) deleting from line 1 in Standing Order 61 “ Sessional ” and substituting the following -

“ Temporary ” ;

The Standing Order will now read -

**When order of business no longer has precedence**

**61.** When under Standing or Temporary Orders an order of business under discussion no longer has precedence or the time has arrived for other business to take place, the Chair will adjourn the matter to a later stage of that day’s sitting without a question put.

\_\_\_\_\_

(f) deleting in Standing Order 115 (16) “ Sessional ” and substituting the following -

“ Temporary ”.

The Standing Order will now read -

**No motion without previous notice**

**115.** No member will move a motion unless notice was given at a previous sitting of the Assembly and entered on the Notice Paper. Prior notice is not needed to move —

.....

(16) Suspension of Standing or Temporary Orders (S.O.3);

.....

*Recommendation 10*

Your Committee recommends,

In Standing Order 127 to delete “ during the same session ”.

The Standing Order will now read -

**Rescission**

**127.** A vote of the Assembly may be rescinded.

*Recommendation 11*

Your Committee recommends,

That Standing Order 90, relating to anticipation of debate, be deleted.

*Recommendation 12*

Your Committee recommends,

In Standing Orders 120 and 144 by deleting “ in the same session ”.

The Standing Orders will now read -

**Motions withdrawn, again moved**

**120.** A motion that has been withdrawn by leave without a dissentient voice may be moved again.

**Order discharged**

**144.** When an order of the day has been read the Assembly may order that it be discharged. The subject of a discharged order may be reintroduced.

*Recommendation 13*

Your Committee recommends,

To amend SO 45 by -

(i) deleting from paragraph (1) “ in a session ” and substitute the following -

“ within a year commencing 1 January ”;

(ii) deleting from paragraph (2) “ in a session ” and substitute the following -

“ within that year ”; and

(iii) deleting from paragraph (3) “ the same session ” and substitute the following -

“ that year ”;

The Standing Order will now read -

**Duration of suspension**

**45.** If a member is suspended —

- (1) For a first time within a year commencing 1 January, the suspension will be for two sitting days.
- (2) For a second time within that year, the suspension will be for four sitting days.
- (3) On any subsequent occasion within that year, the suspension will be for 13 sitting days.

The uncompleted portion of the sitting during which the member was suspended will count as one sitting day.



## MINISTERIAL RESPONSE

In accordance with Standing Order 277, the Committee directs that the Leader of the House and the Attorney General to report to the Legislative Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

|

## PART 1 - NECESSITY FOR PROROGATION

Section 4 of the Western Australian *Constitution Act 1889* enacts —

“

*There shall be a session of the Legislative Council and Legislative Assembly once at least in every year, so that a period of twelve months shall not intervene between the last sitting of the said Council and Assembly in one session and the first sitting of the said Council and Assembly in the next session.*

”

The question arises whether the requirement of this section is met if the interval between sitting periods of each House is less than 12 months, or whether the blocs of sittings must be divided by prorogation each year.

### 1. Practice in the Australian Federal Parliament

Section 6 of the Australian Constitution contains a provision identical to section 4 of the Western Australian Constitution. So far as section 6 of the Australian Constitution is concerned, *House of Representatives Practice*<sup>1</sup> observes —

“

This [requirement for annual sessions] has not been in practice interpreted to mean that a session cannot continue beyond a year but that there shall not be an interval of 12 months between consecutive sittings.

”.

It is also noted in the *House of Representatives Practice* that the Commonwealth Parliament has been prorogued 4 times between 1961 and 1997 apart from a prorogation that normally precedes dissolution of the House.

*Australian Senate Practice*<sup>2</sup>, after reciting section 6 of the Commonwealth Constitution, states —

“

The Parliament complies with the intent of this section in that each year it has two or three sitting periods of several months' duration. However, it has not been the practice to divide a parliamentary term into annual sessions by the annual use of prorogation, and consequently a session will normally last for the duration of the term of the House of Representatives.

”.

The 1997 annotated Australian Constitution<sup>3</sup> notes —

<sup>1</sup> *House of Representatives Practice*, (Barlin) 3<sup>rd</sup> ed. 1997, p 239.

<sup>2</sup> *Senate Practice*, (Evans) 10<sup>th</sup> ed. 2001, p 168.

<sup>3</sup> Constitutional Centenary Foundation, *The Australian Constitution* (Saunders), 2<sup>nd</sup> ed., p 26.

“ . . . the practice of holding separate “sessions” of Parliament has almost disappeared, but two major “sittings” of Parliament generally are held each year. ”.

Lane’s view of section 6<sup>4</sup> is —

“ Section 6 ensures that a year will not lapse between the last sitting of Parliament in one session and the first sitting in the next session. The section is concerned with a less-than-twelve-months-interruption rather than with a once-at-least-every-year-session. ”.

## 2. The Australian States

In respect to the practice of annual sessions of Parliament, the States may be categorised as either “strict constructionists” or “non-observant”. Until now, besides Western Australia, Queensland and South Australia are strict constructionists: it is worth noting that South Australia is currently reassessing the legal necessity for annual sessions. The “non-observants” are New South Wales, Victoria and Tasmania. While these States may, or do, prorogue from time to time within a parliamentary term, they do not feel constrained by their section 4 equivalents to separate their sitting periods into sessions by an annual prorogation. It may be argued that Western Australia is already in this category by not adhering to the requirement for a prorogation to occur at least once a year, eg, the 1<sup>st</sup> session of this Parliament commenced on 1 May 2001 and terminated on prorogation on 9 August 2002.

## 3. Section 4’s interpretation a matter for Ministers of the Crown

Section 3 of the Western Australian Constitution provides His Excellency the Governor with the power to set both the time and place for the meeting of the first and every other session and to also prorogue Parliament. The Governor would first seek the counsel of his Executive Council advisers regarding this matter and this inherently means the responsibility lies with both the Crown and its Ministers to determine how section 4 is to be read and applied.

The Western Australian Government recently announced in a Brief Ministerial Statement by the Leader of the House, that it was not the intention of the Government to ask His Excellency the Governor to prorogue Parliament on an annual basis. The continuing practice of annual prorogation was only seen to be warranted out of an abundance of caution. However, the Leader of the House believed there is now a respectable body of opinion that a provision such as section 4 of the *Constitution Act 1889* does not require the annual prorogation of Parliament.

Your Committee notes that His Excellency the Governor may still, from time to time, prorogue Parliament whenever it is considered necessary for the good management of Parliament.

<sup>4</sup> *Commentary on the Australian Constitution* (Lane), 1986, p 23.



## PART 2 - THE ISSUES

Your Committee recognises there are several issues, procedural and administrative, that need to be addressed to accommodate the move away from annual prorogation of Parliament.

### 1. Opening of Parliament, Governor's Speech and the Address in Reply.

#### *(a) Governor's Speech*

Currently, the Governor's Speech is a primary method used by the Government to announce its legislative program for the forthcoming session of Parliament and for the Opposition and private members to debate Government policy. Until now it could have been assumed that this would occur on four occasions during a 4 year Parliament. The Opposition is accustomed to moving amendments to the Address in Reply which are critical of specific Ministers or of Government policy. These form mini debates. If there is only one opening each Parliament, members will lose one general debating opportunity in each of the following three years after the opening.

The Commonwealth Parliament, which has single session Parliaments, does not have an alternative to the Governor's Speech in each year after the Opening of Parliament. The Federal Government relies upon ministerial statements, press releases, and other methods to provide the House with detail about the Government's legislative program.

However, in the New Zealand Parliament, at the beginning of each year following a formal opening of Parliament, Standing Order 338 provides for the Prime Minister to make a statement about the Government's program for the next 12 months to the House of Representatives in place of the formal speech from the Throne by the Governor General. Debate is limited to approximately 75% of the time allocated for an Address in Reply.

Your Committee considers that the retention of an annual capacity by the Government to provide the legislature, and co-incidentally the public, with an overview of the Western Australian Government's legislative program for the next 12 months is important. Therefore your Committee proposes that on the first sitting day in each calendar year after the Opening of a new Parliament, a Premier's Statement be presented by the Premier in the Legislative Assembly.

#### *(b) Address in Reply*

If the removal of yearly sessions of Parliament is implemented and the proposal for the Premier to present a Premier's Statement to the House in each calendar year after the Opening of a new Parliament is adopted, members will continue to have the general debate opportunity they currently have after it is proposed that the Premier's Statement be noted. The debate will have priority over all other business that is not of a formal or procedural nature for the next 4 sitting days (including the remainder of the first day).

The Address in Reply procedures in the Standing Orders will only apply when the Governor formally opens Parliament.

**Recommendation 1**

Your Committee recommends –

To insert the following new Standing Order 8A -

“

**Premier’s Statement**

**8A.** (1) On the first sitting day of each calendar year, the Premier will make a statement to the Assembly outlining the Government’s legislative and other policy intentions for the next 12 months.

(2) No Premier’s Statement is to be made when the first sitting day of a year is the first sitting day of a session of Parliament.

(3) Following the Premier’s Statement a question will be proposed, That the Premier’s Statement be noted.

(4) No other business that is not of a formal or procedural nature will have priority until after 4 sitting days (including the remainder of the first sitting day) have been dedicated exclusively to the debate on noting the Premier’s Statement.”.

*(c) Meeting for a new session*

Standing Order (SO) 5 provides for the procedure to be followed whenever His Excellency the Governor opens a new session of Parliament. Your Committee considers that no change to the Standing Orders is required.

**2. Clean up of the Notice Paper**

*(a) Notices of Motion*

Before August 1999, notices of motion were cleared from the Notice Paper either when members withdrew them or through the cessation of all business upon prorogation of Parliament. Standing Order 74 now allows notices to be removed from the Notice Paper after 30 sitting days providing the affected member doesn’t require the notice to be continued. This procedure is convenient for Legislative Assembly members because it allows a notice, which may serve no further purpose, to be taken off the Notice Paper in an administrative way without political difficulty. However, there is the potential that members could retain a notice of motion on the Notice Paper for up to 4 years. Your Committee therefore proposes that members may only be permitted to renew a notice of motion for one period of 30 sitting days. The total time a notice could potentially remain on the Notice Paper would equate to approximately one year.

**Recommendation 2**

Your Committee recommends,

To amend Standing Order 74 by inserting after “ removed. ” the following -

“ A member may renew a notice of motion only once. ”.

The Standing order will now read -

**Notice lapses**

**74.** If a notice of motion has remained on the Notice Paper for 30 sitting days without being moved the Speaker will announce it will be removed from the Notice Paper on the next sitting day. A member may require the notice given by them to be continued by written notification to the Clerk prior to it being removed. A member may renew a notice of motion only once. ”.

*(b) Questions on Notice*

Currently after prorogation, unanswered Questions on Notice (QONs) are not automatically reinstated onto the Notice Paper at the beginning of a new session. Members are required to resubmit their QONs if they want them reinstated onto the Notice Paper. Under SO 80(2), if answers haven't been received within three calendar months, members may ask Ministers why answers hasn't been received. They may then ask for an explanation from the Minister after each succeeding month that a question remains unanswered.

If the removal of yearly sessions of Parliament is implemented, your Committee believes members' unanswered QONs should remain on the Notice Paper until the Minister answers them. Your Committee expects to report on this and related matters shortly.

*(c) Bills including Private Members' Bills*

The same question rule (SO 126) exists to prevent the Legislative Assembly regularly being presented with the same matter for a decision. As it stands, the rule would effectively prevent the re-introduction of the same bill or motion for up to 4 years in single session Parliaments. If yearly sessions are to be removed, your Committee recommends the same question rule be amended to apply to each year commencing 1 January.

**Recommendation 3**

Your Committee recommends,

To delete in line 3 of Standing Order 126 “session” and substitute the following -

“ year commencing 1 January ”.

The Standing Order will now read -

**Same question not to be put**

**126.** A question will not be proposed which is the same as any question which has been resolved in the affirmative or negative during the same year commencing 1 January.

*(d) Orders of the Day.*

Currently upon prorogation all business on the Notice Paper is removed. Orders of the Day for bills can be restored on motion. If no prorogation occurs, some Orders of the Day (private members, Legislative Council messages, etc.) could remain on the Notice Paper for several years. It is desirable to have a mechanism that allows an automatic clean up of stale Orders of the Day which are not being proceeded with and accordingly it is proposed that Orders of the Day which have not been debated for 12 months be automatically removed from the Notice Paper. In relation to Orders of the Day for bills, a member should still be able to move a motion to restore them to the point they had reached when they were automatically removed.

*Recommendation 4*

Your Committee recommends,

To insert new Standing Order 144A as follows -

“

**Order of the Day lapses**

**144A.** (1) If an Order of the Day on the Notice Paper has not been debated for more than twelve calendar months it will be removed from the Notice Paper and on the next sitting day the Speaker will announce its removal from the Notice Paper.

(2) A bill removed from the Notice Paper under this Standing Order may be restored by motion to the point it reached prior to its removal. ”.



**3. Governor’s Messages Recommending Appropriations (s.46(8) of the *Constitution Acts Amendment Act 1899*).**

Section 46(8) of the *Constitution Acts Amendment Act 1899* specifically precludes a vote, resolution or bill for appropriation of revenue or moneys being passed unless a Governor’s message recommending the purpose of the appropriation is received by the Legislative Assembly in the same session. It is part of a scheme which ensures the House in which the Government is formed retains the initiative for expenditure of public moneys and it prevents bills which appropriate revenue from proceeding without the consent of the Executive.

The lengthening of a session past one year does not alter these objectives. At present, if a bill appropriating revenue is carried over from one session to the next, a fresh message is sent from the Governor to the Legislative Assembly for the bill carried over. This will now occur less frequently.

Your Committee has reviewed this section of the Act and considers that no change is required.

**4. Disallowance of Subordinate Legislation (s. 42 of the *Interpretation Act 1984* and other Acts)**

An extended session will enable a notice of motion to disallow subordinate legislation to remain on the Notice Paper for up to four years. It is possible that subordinate legislation could be disallowed by the Legislative Assembly after it has been in force for some considerable time.

Disallowance occurs in more than one procedural way. An example is the *Metropolitan Region Town Planning Scheme Act 1958* where amendments under section 33 come into force when they are no longer subject to disallowance. If the House did nothing about a notice of motion given to disallow a proposed amendment, that amendment could not come into effect. In practice the Government will arrange to bring the disallowance motion on and then defeat it. The same question rule prevents the motion being again proposed and the amendment can then come into effect.

Your Committee proposes the *Interpretation Act 1984* be amended to provide for disallowance motions to be dealt with in a timely manner. Section 48(5) of the Commonwealth’s *Acts Interpretation Act 1901* provides:

“If, at the expiration of 15 sitting days after notice of a motion to disallow any regulation has been given in a House of the Parliament, being notice given within 15 sitting days after the regulation has been laid before that House:

- (a) the notice has not been withdrawn and the motion has not been called on;
- (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;

the regulation specified in the motion shall thereupon be deemed to have been disallowed. ”.

The outcome of the provision is similar to that of the procedure embodied in the Legislative Council Standing Orders, but there is some doubt about whether the Standing Orders can be used in this way to modify a procedure set out in legislation. Making legislative changes to the *Interpretation Act 1984* will remove any doubt as to the legality of the procedure.

This can be achieved by amending the *Interpretation Act 1984* to provide for an automatic disallowance of subordinate legislation if a notice of motion is not debated within 15 sitting days after notice is given. This has several effects. It will -

- introduce a finite period for dealing with disallowance motions;
- effectively create an obligation on the relevant Minister in the Legislative Assembly to ensure a disallowance motion is dealt with; and
- potentially increase the number of these motions in the Legislative Assembly as the Legislative Assembly procedure will be as effective as the present Legislative Council arrangement.

It will be necessary to identify all the individual disallowance provisions presently in legislation, apart from the *Interpretation Act 1984*, to ensure they are also dealt with appropriately. The Attorney General’s department is best placed to undertake this role, and it would be convenient if a schedule could be presented to the House detailing the provisions and what amendment is necessary to bring them into accord with the spirit of these proposed changes.

Your Committee also recognises that it will be necessary to ensure that notices of disallowance motions are not affected by Standing Order 74 (see Recommendation 3) for the reasons previously outlined, ie. the Committee has serious doubts about the use of Standing Orders to modify procedures set out in legislation. Accordingly your Committee recommends that a Temporary Order be adopted as proposed in Recommendation 6. This will allow time for the Attorney General to consider Recommendation 5 and to advise the Legislative Assembly as to the action he intends to take, and for the Legislative Assembly to consider what further action, if any, is required.

Your Committee will undertake a review of the temporary order before it expires.

### **Recommendation 5**

Your Committee recommends,

- (1) That section 42 of the *Interpretation Act 1984* be amended to provide that at the expiration of 15 sitting days after notice of a motion to disallow any regulation has been given in either House of Parliament, being a notice given within 14 sitting days after the regulation has been laid before the House, the notice has not been withdrawn or called on and finally determined, the regulation specified in the notice of motion will be deemed to have been disallowed.
- (2) That the Attorney General arrange for the tabling in the Legislative Assembly

of a schedule detailing disallowance provisions in Acts other than the *Interpretation Act 1984* and outlining the changes necessary to bring them within the spirit of the amendments proposed in recommendation 5 (1).

**Recommendation 6**

Your Committee recommends the Legislative Assembly adopt the following Temporary Order,

**“Temporary Order**

That until 31 December 2004 Standing Order 74 will not apply to any notice of disallowance motion given in accordance with section 42 of the *Interpretation Act 1984*. ”.

**5. Select Committees.**

Under the changed committee system concentrating on standing committees brought into effect at the commencement of the present Parliament, it is not expected that select committees will often be appointed.

Select committees cease to exist either upon presentation of the committee’s final report or upon prorogation. Prorogation thus applies some pressure on select committees to conclude their investigations within a year, but this changes substantially with the introduction of indeterminate session periods.

Under extended sessions, the Legislative Assembly may need to look more closely at the reporting date when appointing a select committee. To retain the essential character of select committees as relatively short, focussed inquiries, the Standing Orders should be amended to provide for a select committee life of 12 calendar months where none is specified in the motion establishing the select committee. This will not prevent a motion being moved at some later time to extend a committee’s reporting date.

**Recommendation 7**

Your Committee recommends,

To amend Standing Order 255 by adding the following -

“

(2) If no reporting date is specified in the motion for establishment of a select committee, it will report within 12 calendar months of its appointment. ”.

**6. Standing Committees.**

Standing Order 252 provides for a standing committee to continue for the life of the Legislative Assembly. While the time between prorogation and the opening of the next session is usually short, it does effectively prevent committees from meeting or conducting business during that time. Removal of yearly sessions will allow standing committees' activities to continue uninterrupted for up to 4 years.

Your Committee considers that no change to the Standing Orders is required.

**7. Sessional Committees.**

The Procedure and Privileges Committee and Parliamentary Services Committee are appointed at the beginning of each session and are terminated by prorogation. Reduced frequency of prorogation means only that the annual review of the membership of sessional committees will not necessarily occur. Changes to sessional committees' membership during a Parliament will be achieved by discharging one member and appointing another on motion. After each prorogation however, these committees still will need to be reappointed.

No change to Standing Orders is required in relation to Sessional Committees.

**8. Speaker's Panel of Acting Speakers.**

Until now, prorogation has provided an annual opportunity for the Speaker to review the panel of Acting Speakers appointed by the Speaker under SO 16. Extended sessions do not preclude the Speaker from making changes to the panel from time to time and then announcing the changes to the House.

Your Committee considers that no change to Standing Orders is required in relation to appointment of Acting Speakers.

**9. Absence of a member (SO 34 and s. 38 of the *Constitution Acts Amendment Act 1899*).**

*(a) Standing Orders*

Standing Order 34 provides that a member will not be absent for more than nine consecutive sitting days during a session without permission of the Legislative Assembly, and that any member who wilfully infringes the Standing Order is guilty of contempt. The critical factor is the nine consecutive days, rather than the session. In a way the change in sessions will mean the provision has slightly greater application when the days can accrue over an adjournment when the House would normally have been prorogued.

Your Committee considers that no change to Standing Order 34 is required.

(b) *Constitution Acts Amendment Act 1899, s. 38*

Section 38(g) of the *Constitution Acts Amendment Act 1899* provides that a member's seat becomes vacant if the member fails to attend the Legislative Assembly for an entire session without permission of the Legislative Assembly.

In the case of a single session Parliament, the period covered by section 38 would be extended from a period of approximately one year to a period of 4 years. Plainly it is unacceptable for a member not to attend the House for up to 4 years and in keeping with the intention of the section, a period of one year should be specified. Your Committee therefore proposes that the *Constitution Acts Amendment Act 1899* be amended to redefine the period as "12 months" instead of "one entire session".

**Recommendation 8**

Your Committee recommends,

That section 38 (g) of the *Constitution Acts Amendment Act 1899* be amended to substitute the period of 12 months for the words "one entire session thereof".

Depending on the form of drafting, section 38 (g) of the Act will then read something like -

“

.....If any member of the Legislature.....

(g) fails to give his attendance in the House of which he is a member for 12 months without the permission of the House entered upon its journals,

his seat shall thereupon become vacant. ”.

**10. Sessional Orders**

Sessional Orders cease to have effect upon prorogation. Sessional Orders are used as a method of trialing proposed new Standing Orders or to temporarily alter the operation of an existing Standing Order. Perhaps their most frequent use in recent times is to change the priority of business at certain times of the year.

With indeterminate session length, a period of operation will need to be determined in each Sessional Order and some default provision is desirable. Until now, the maximum period for which a sessional order could operate is the 12 months of a session and it therefore seems appropriate to provide for a default period of 12 calendar months. The term 'Sessional Order' should be changed to 'Temporary Order' to reflect more the changed nature of it.

Your Committee considered whether temporary orders should be allowed to take effect for a period greater than 12 months and concluded that as it is desirable that they retain their

temporary character, a period of operation greater than 12 months should not be allowed without a further motion in the Legislative Assembly.

Changes from 'Sessional Order' to 'Temporary Order' will be needed wherever that wording occurs in the Standing Orders.

### **Recommendation 9**

Your Committee recommends,

That the Standing Orders be amended by -

- (a) Deleting from line 2 of Standing Order 1 " sessional " and substituting the following -

" temporary " ;

The Standing Order will now read -

### **General rule**

1. In all cases that are not provided for in these Standing Orders or by temporary or other orders, or by the practice of the House, the Speaker will determine the matter and reference may be made to the rules, forms and practices of Parliaments operating under the Westminster System.

- (b) In Standing Order 2 -

- (i) deleting in line 2 " Sessional " and substituting the following -

" Temporary " ;

- (ii) deleting in line 3 " the duration of the session " and substituting the following -

" 12 calendar months " ;

The Standing Order will now read -

### **Temporary orders**

2. The Assembly may from time to time adopt Temporary Orders which will have effect for 12 calendar months, unless a lesser period is specified.

- (c) deleting from line 1 of Standing Order 3 " Sessional " and substituting the following -

" Temporary " ;

The Standing Order will now read -

**Suspension of orders**

**3.** Any Standing or Temporary Order may be suspended at any time except during questions without notice —

- (a) on motion with notice; or
- (b) without notice provided that a motion has the concurrence of an absolute majority of the whole number of members of the Assembly.

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(d) deleting from line 2 of Standing Order 23 “ Sessional ” and substituting the following -

“ Temporary ” ;

The Standing Order will now read -

**Assembly adjourns by its own resolution, with exceptions**

**23.** Except for cases provided for in Standing Orders 20, 21(4), 22, 50 and any Temporary Order, the Assembly may be adjourned only by its own resolution.

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(e) deleting from line 1 in Standing Order 61 “ Sessional ” and substituting the following -

“ Temporary ” ;

The Standing Order will now read -

**When order of business no longer has precedence**

**61.** When under Standing or Temporary Orders an order of business under discussion no longer has precedence or the time has arrived for other business to take place, the Chair will adjourn the matter to a later stage of that day’s sitting without a question put.

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(f) deleting in Standing Order 115 (16) “ Sessional ” and substituting the following -

“ Temporary ”.

The Standing Order will now read -

**No motion without previous notice**

**115.** No member will move a motion unless notice was given at a previous sitting of the Assembly and entered on the Notice Paper. Prior notice is not needed to move —

.....

(16) Suspension of Standing or Temporary Orders (S.O.3);

.....

**11. Rescission Standing Order.**

The view has always been taken that the Standing Order in relation to rescission of a vote operates effectively as an exception to the same question rule. Earlier in this report (Recommendation No. 3) it is proposed that the prohibition on the same question being put to the Legislative Assembly apply for each year, commencing on 1 January.

The change in the same question rule to a period of less than a session makes the words in the rescission Standing Order (SO 127), “during the same session”, redundant and therefore your Committee proposes that they be deleted.

**Recommendation 10**

Your Committee recommends,

In Standing Order 127 to delete “ during the same session ”.

The Standing Order will now read -

**Rescission**

**127.** A vote of the Assembly may be rescinded.

**12. Anticipation Standing Order.**

Standing Order 90 is currently suspended by a Sessional Order for the remainder of the Second Session of this Parliament. The Standing Order is as follows -

**Anticipating debate**

**90.** A member may not anticipate discussion of any general business or order of the day that has already been noted for consideration by the Assembly.

The anticipation rule is designed to ensure that the Legislative Assembly only deals with a matter once and then by the most effective method. Practice in the Assembly is to allow questions without notice to be asked regarding matters about to be brought on in a motion or Bill and to use various forms of the House to highlight different aspects of issues when they arise.

As Members seem to be comfortable with this arrangement and as the anticipation rule therefore has no useful application in the Assembly, it should be deleted.



**Recommendation 11**

Your Committee recommends,

That Standing Order 90, relating to anticipation of debate, be deleted.

**13. Withdrawal of Motions and Discharging of Orders of the Day.**

Standing Orders 120 and 144 allow motions that have been withdrawn to be moved again in the same session and allow the subject of a discharged Order of the Day also to be reintroduced in the same session. The lengthening of a session's time period by the removal of yearly prorogations will not have any effect upon these Standing Orders and your Committee considers those words referring to "the same session" to be redundant.

**Recommendation 12**

Your Committee recommends,

In Standing Orders 120 and 144 by deleting " in the same session ".

The Standing Orders will now read -

**Motions withdrawn, again moved**

**120.** A motion that has been withdrawn by leave without a dissentient voice may be moved again.

**Order discharged**

**144.** When an order of the day has been read the Assembly may order that it be discharged. The subject of a discharged order may be reintroduced.

**14. Bills Lapsed due to Prorogation.**

Standing Order 220 sets out the restoration procedure in a new session for Bills that have lapsed due to prorogation. As this procedure will continue whenever a new session of Parliament commences, your Committee considers that no change to the Standing Order is required.

**15. Contempt and Other Misconduct.**

Standing Order 45 provides for the suspension of members, after naming, for two sitting days (including the day of suspension) on the first occasion in a session, four sitting days on the second occasion in the same session and 13 sitting days on any subsequent occasions in the same session. The retention of " in a session " and " same session " time frame would

increase the penalty's severity by increasing the chance of members being named a second or more times during a session lasting up to 4 years and thereby incurring more severe penalties for misconduct when previously the first 'offence' in each 'one year' session would have been only 2 sitting days. Your Committee therefore proposes the time frame contained within SO 45 be changed from " session " to " a year commencing 1 January ".

Standing Order 55 contains a penalty for persons who commit contempts against the Parliament. Where a person refuses to pay a fine imposed by a House of Parliament, that person may be imprisoned for the remainder of the session. SO 55 implements the penalty contained in section 8 of the *Parliamentary Privileges Act 1891* and this section has not been used by the Legislative Assembly since the early 1900s.

Your Committee considers it would be more appropriate to conduct a review of this Standing Order and section 8 of the Act within the overall context of its current review of parliamentary privilege. Your Committee, therefore, proposes no action be taken on this matter at this time.

**Recommendation 13**

Your Committee recommends,

To amend SO 45 by -

- (i) deleting from paragraph (1) " in a session " and substitute the following -  
 " within a year commencing 1 January ";
- (ii) deleting from paragraph (2) " in a session " and substitute the following -  
 " within that year "; and
- (iii) deleting from paragraph (3) " the same session " and substitute the following -  
 " that year ";

The Standing Order will now read -

**Duration of suspension**

**45.** If a member is suspended —

- For a first time within a year commencing 1 January, the suspension will be for two sitting days.
- For a second time within that year, the suspension will be for four sitting days.
- On any subsequent occasion within that year, the suspension will be for 13 sitting days.

The uncompleted portion of the sitting during which the member was suspended will count as one sitting day.

## 16. Administrative Changes.

Your Committee has been advised by the Clerk that a number of administrative changes will be necessary as a result of the House not proroguing each year. These do not require any action on the part of the committee or the Legislative Assembly but are recorded for members information.

### (a) *Chamber documents; Parliamentary Digest; Tabled papers*

The Votes and Proceedings and Notice Papers will be bound on a calendar year basis. The Parliamentary Digest will be produced and published on a calendar year basis. Tabled Papers will be prepared and published on a calendar year basis in an appropriate medium.

It should be noted that whenever a Parliament is dissolved mid year, it will be necessary to bind hard copies of the above documents into two separate volumes in that year (one for each Parliament).

### (b) *Electronic databases*

Single session Parliaments of four years duration would result in large databases which will have a direct effect upon search performance particularly for external users who are limited by the speed of the link to the Internet and the variable capacity of their PCs. Splitting the databases on a calendar year basis will improve database performance and accessibility and users will still be able to search across more than one year if they so wish.

### (c) *Messages from the Governor in the Same Session*

Governor's Messages will be numbered consecutively for each calendar year.

### (d) *Hansard*

*Hansard* is currently bound on a sessional basis. In future *Hansard* will be bound on a calendar year basis and the database/Internet *Hansard* site will be divided into calendar years. If Parliament is dissolved mid-year, it will be necessary to bind two hard copy sets of *Hansard* in that year (one set for each Parliament).