



**WESTERN AUSTRALIA
LEGISLATIVE ASSEMBLY**

**PROCEDURE AND PRIVILEGES
COMMITTEE**

**Operation of the
Standing Committee System**

Presented by:
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Deputy Speaker

Laid on the Table of the Legislative Assembly
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INTRODUCTION

1. On 6 April, 2000, the Assembly adopted the following motion –

‘That this House -

- (a) supports the establishment of three portfolio-based Standing Committees to come into operation after the next election;
- (b) supports the retention of the Public Accounts Committee in its current form;
- (c) supports the amalgamation of the Joint Standing Committee on Delegated Legislation and the Standing Committee on Uniform Legislation and Intergovernmental Agreements, in accordance with recommendation 18 of the Final Report of the Select Committee on Procedure and subject to the concurrence of the Legislative Council; and
- (d) requests the Procedure and Privileges Committee to report by 15 June 2000 on the method of operation and Standing Orders which should apply to portfolio-based Standing Committees.”.

2. Much work in this area was done by the Select Committee on Procedure and your committee has used its reports, particularly the final report in 1996, (the 1996 report) as the base for its present proposals.

3. The issues addressed in this report include the powers of the committees, the distribution of portfolios and amalgamation of existing committees.

ESTABLISHMENT AND FUNCTIONS

4. General powers for standing and select committees are contained in current Standing Orders 248 to 281 and those are still appropriate. However, no provision for the establishment and functions of standing committees was included in the new Standing Orders, pending an in-principle decision by the House.

5. In the 1996 report it was proposed that the portfolio-related standing committees have power –

- for consideration of any matter referred by the Assembly, including a bill, motion, petition, vote or expenditure or other financial matter, report or paper;
- to initiate inquiries into matters including policy objectives and administration of departments, their annual reports, and the adequacy of legislation and regulations within the committee’s jurisdiction.

6. Your committee is not aware of opposition to most of these proposed powers, but the capacity to consider bills is an exception. Enabling committees to consider bills referred to them by the Assembly brings into play the power to take evidence on a bill which power is not available to legislation committees. In recommending this course of action, the 1996 report noted, at paragraphs 115 and 116 –

“Referral of Bills to Standing Committees

115. One of the most innovative and important features of the powers of the proposed standing committees will be the ability for the House to refer Bills to the portfolio-related standing committees. Your committee is of the view that standing committees should have the power to consider a Bill and, in the course of their investigations, should have the power to call for submissions and to hear evidence, and to propose amendments to the Bill. As stated below, Bills should only be referred to standing and legislation committees after the second reading speech on the Bill, that is, once the House has agreed to the principles of the Bill.

116. There are several advantages to equipping standing committees with the ability to consider and propose amendments to legislation. The referral of legislation to a standing committee could produce considerable time savings to the House, in particular where there are areas of the legislation that need clarification, or where the subject of the legislation is controversial or emotive. The referral of legislation to a standing committee whose members are up to date on the issues and who have developed a level of expertise in the portfolios covered by the standing committee will go a long way to ensuring that proposed legislation is given the careful consideration required to ensure that it fulfils the intended objectives. Further, it is hoped that by providing opportunities for public input and greater scrutiny of proposed legislation, it will better meet requirements and the need for subsequent amendments will be reduced. ”.

7. Your committee concurs with those views of the Select Committee on Procedure and in addition, considers that if a bill is referred to a Standing Committee, any Member of the House should have the right to attend a meeting where evidence is being taken in relation to a Bill and to ask questions of witnesses. That right to attend should not extend to deliberative meetings of the Committee. The recommendations include a provision to this effect and a table setting out the rights of various members appears at paragraph 31 of this report.

8. No change is proposed for existing non-portfolio-based committees, and members of the House who are not members of those other committees, will continue to have only the same rights as the public and the media.

9. The arguments for Standing Committee functions and power in relation to motions, petitions, votes or expenditures, self-referral, annual reports and the adequacy of legislation and regulations are contained in paragraphs 117 to 122 of the 1996 report. Those paragraphs are reproduced in Appendix 1 of this report. Those proposals have not been contested and are also endorsed by your present committee. For these reasons your committee has, with only minor changes, adopted the proposed Standing Orders in the 1996 report and is recommending accordingly.

DISTRIBUTION OF PORTFOLIOS

10. In its 1996 report, the Select Committee on Procedure produced an example of a portfolio distribution for the standing committee system. The principal divisions were –

- Education, Social Development and Community Affairs,
- Health and Justice, and
- Primary Industry, Resources, Transport and Trade,

with the Public Accounts Committee taking on the portfolio role in relation to Finance and Treasury.

11. In reviewing the proposal that the PAC would take the Finance and Treasury portfolios, your committee has reached two conclusions. Firstly, it is essential that the PAC retain its whole of government approach on issues connected with the receipt and expenditure of public moneys. Secondly, the obvious and close connection with treasury and finance issues suggests it is very well placed to take the portfolio role in relation to the departments under the responsibility of the Treasurer and any Minister Assisting the Treasurer. Although seemingly the same argument can be applied to the Auditor General's Department, it would be better to retain the existing relationship between the committee and the Auditor General and leave portfolio enquiries to another standing committee.

12. Allocating that portfolio-related responsibility to the PAC potentially increases its workload, but it may also be that the work undertaken by other standing committees will reduce the pressure on the PAC to investigate specific matters which fall in another committee's province. Given that the Assembly can only sustain a small number of committees, it is sensible to accept the 1996 suggestion that the PAC take on at least a small amount of portfolio work. As with all of the standing committee system, this aspect will need to be monitored over the initial year or two of operation.

13. Appendix 8 to the 1996 report allocated the departments between the committees as shown in the following table-

Table 1 – Sample allocation of departments to Committees – Procedure Committee 1996

PUBLIC ACCOUNTS AND EXPENDITURE REVIEW	EDUCATION, SOCIAL DEVELOPMENT and COMMUNITY AFFAIRS	HEALTH and JUSTICE	PRIMARY INDUSTRY, RESOURCES, TRANSPORT and TRADE
Finance	Aboriginal Affairs	Attorney General and Justice	Commerce and Trade
Treasury	the Arts	Emergency Services	Energy
	Disability Services	Federal Affairs	Fair Trading
	Women's Interests Youth	Housing	Fisheries
	Education	Health	Lands
	Employment and Training	Parliamentary and Electoral Affairs	Mines
	Environment	Police	Planning
	Family and Children's Services	Premier and Cabinet	Primary Industry
	Heritage	Public Sector Management	Regional Development
	Labour Relations	Racing and Gaming	Resources Development
	Local Government		Services
	Multicultural and Ethnic Affairs		Small Business
	Seniors		Tourism
	Sport and Recreation		Transport
			Water Resources
			Works

14. Criteria for allocation of departments between the committees should include natural relationships between portfolios, the size of departments, impact of departments on the community, and the financial resources allocated to them. With those in mind, the sample distribution in Table 1 was reviewed. Your committee has made only minor changes to the distribution, reflecting the current portfolios, and that is detailed in recommendation 3.

15. When a Government changes the organisation of departments, the Assembly will need to take account of that change and if necessary reflect it in the responsibilities of the standing committees. Your committee concurs with the Select Committee on Procedure's proposal that the Speaker determine a schedule of standing committee portfolio allocations and table it in the Assembly shortly after the opening of the first session of each Parliament. A fresh determination can be made as needs be, and the Speaker would normally consult with the committee chairmen before making an adjustment.

AMALGAMATION OF STANDING COMMITTEES

Standing Committee on Uniform Legislation and Intergovernmental Agreements and the Joint Standing Committee on Delegated Legislation.

16. There has been resistance to recommendations of the Select Committee on Procedure in 1996 and the Standing Orders and Procedure Committee in 1999 that the Uniform Legislation and Delegated Legislation committees be amalgamated.

17. During the debate in the Legislative Assembly on Thursday, 6 April 2000 where the House supported the establishment of three portfolio-based committees and the amalgamation of the Delegated Legislation and Uniform Legislation Committees, the Chairman of the Delegated Legislation Committee, the Hon. Bob Wiese, argued against the amalgamation. Mr Wiese argued that it was not possible to amalgamate the committees and to do so would lessen the role of the Parliament in the scrutiny process because the workload of the proposed committee would preclude it from doing either job effectively.

18. There is no doubt that there is a significant workload undertaken by the Joint Standing Committee on Delegated Legislation. Mr Wiese suggested that the committee is already swamped by work. To take account of the combined work, it has always been envisaged that the existing staff for the committees be retained and combined. Staffing in the Standing Committee on Uniform Legislation and Intergovernmental Agreements at present is 1.5 full time equivalents with one full time position at Level 6, and 0.5 of a position at Level 4.

19. There already exists a relationship between the work of the Delegated Legislation Committee and Uniform Legislation Committee. On 6 April 2000, on the day Mr Wiese made his comments, he tabled, as Chairman of the Joint Standing Committee on Delegated Legislation, a report on the Meeting of the Working Group of Chairs and Deputy Chairs of Australian Scrutiny of Primary and Delegated Legislation Committees, which was called to discuss a proposal to form a national committee comprising representatives from all Australian jurisdictions for the purposes of scrutinising national schemes of legislation. He noted that participants were unable to agree on the proposal put before the conference but remain committed to the concept.

20. It is most important to note that much of the work undertaken in recent years by the Standing Committee on Uniform Legislation and Intergovernmental Agreements has been into the substance of particular issues rather than just the uniformity aspects. While it might be argued that in some cases the two are inseparable, your committee considers that the substantive aspects will be dealt with by the relevant portfolio-related committee, which will greatly reduce the call on the Uniform Legislation Committee. To the extent that it is necessary to consider the uniform legislation aspect, the committee will have very significant expertise available to it, and with other committees taking on the substantive issues, there would be more staff time to deal with delegated legislation matters. In summary, given that work on substantive issues will be greatly reduced and that the staffing levels will be retained, the amalgamated committee should well be able to cope with its combined responsibilities.

21. Your committee notes that the Assembly will be formally approaching the Council to make this change and maintains its support for the amalgamation on the basis outlined in this report.

Anti-Corruption Commission Committee

22. Your committee has considered whether the work of the Joint Standing Committee on the Anti-Corruption Commission should be subsumed into one of the portfolio-based committees and is satisfied that for the time being that it should remain as a separate committee. Its current form allows input from members of both Houses over a period when the Commission, its powers and its methods of operation, are subject to considerable public and political scrutiny.

OTHER ISSUES

Quorums and Subcommittees

23. Representations have been made to this committee from the Public Accounts Committee (PAC), that standing committees generally should have power to take formal evidence from a witness when only two members of Parliament are present, reversing a change which occurred in the new Standing Orders which now require at least three members to be present. Similarly, that committee takes the view that subcommittees should be able to take formal evidence with two members. Formal evidence is a term used to refer to the examination of witnesses according to the Speaker's procedural rules issued under Standing Order 267. When formal evidence is taken, Standing Order 268 requires that a transcript of that evidence must be taken unless the committee otherwise orders, which ensures that committee members who were not present when the evidence is given have an opportunity to review what was said.

24. In the May 1999 report on the Modernisation of the Standing Orders, this committee's predecessor said at paragraph 52 that it did not consider two members to be sufficient for taking evidence. Taking into account that three committee members are required for any resolution to be passed, it was noted that should any difficulty arise which requires a committee resolution during evidence taking, then that quorum would be present.

25. The PAC's arguments in favour of these changes are –

- evidence can be of a technical nature which does not require 3 members to be present;
- with small committees it can be difficult to get a quorum together;
- there has been no problem with resolutions being needed during evidence taking with only two members present;
- it can present difficulties for witnesses and the committee if the quorum of three is not present when a hearing is scheduled to start;

and in relation to subcommittees –

- subcommittees may need to take formal evidence to enable them to fully report to the main committee.

26. Arguments against the PAC view are these.

Formal evidence taking by a committee is always a serious exercise of the power of the Legislative Assembly. It should not be taken in a way which may lead to procedural difficulties. Nor should the fact that the evidence to be taken is of a technical nature mean that all members should not hear it, although the transcript is available to be read later. Ideally, all Committee members should be present to hear evidence given to a committee and the quorum of three means that in a committee of five, at least the majority of members hear the evidence. If the evidence does not need to be taken as oral evidence it should be obtained as a submission or as other documentary evidence, although that will not always be possible. The House should expect that committee members will commit themselves to hear evidence scheduled by the committee, and then meet that commitment.

27. In addition, although such options were considered, it is not practical or sensible to establish from the start a hybrid system with quorums of either two or three for taking evidence, depending on which committee is operating, the nature of the evidence, or whether the evidence is to be taken by a committee or a sub-committee.

28. Your committee has considered the arguments on each side and must choose the course that gives the standing committee system the best chance of operating well. In the development of standing committees, the relatively small size of the Legislative Assembly has always been regarded a major limiting factor, and it is this factor which has led to a reluctant decision to propose that the quorum for taking formal evidence be reduced to two. This proposed course is not without risk. It is likely that occasionally, evidence taking will have to be adjourned or postponed part way through a hearing because an issue has arisen which requires a quorum of three members to decide it, but hopefully that will be counter balanced by fewer occasions when witnesses have to be delayed or rescheduled because a quorum cannot be formed. Although this committee wishes to encourage other committees to take evidence with at least a majority of the members present, it is difficult to include that encouragement in the standing orders.

29. Your committee makes it clear that the quorum of two will only apply in circumstances where formal recorded evidence is being taken. At committee meetings where discussions are being held for general backgrounding, or perhaps where a committee is visiting a site and talking with individuals without formal evidence being taken, the quorum will remain at three.

30. Under Standing Order 260, subcommittees may not take oral evidence, but if the quorum for committees to take evidence is reduced to two, should subcommittees with their existing quorum of two be permitted to take oral evidence? The taking of formal evidence is a significant decision which should be taken by the committee as a whole rather than just two members. However, if the committee decides that evidence should be taken, there seems little reason to distinguish between a subcommittee taking evidence with a quorum of two members and the committee itself taking evidence with just two members present. Consequently a change to the evidence power of subcommittees is proposed.

Co-opted Members

31. From time to time, there will be members who have a significant interest or expertise in a particular inquiry being undertaken by a portfolio-based standing committee. While there ought to be an opportunity for the House to co-opt those members to enable them to participate, their participation should not disturb the balance of the committee for voting or other formal procedures, such as moving motions or forming a quorum. Your committee considered whether co-option should be left to the committee itself but rejected that proposition as there ought not to be any change in the rights of any member in relation to a committee without the House's consent. Consequently, this report does not recommend any provision for the Speaker to appoint an interim replacement for a co-opted member as there is for other committee members. Co-option of members should not extend to any select or standing committee other than the portfolio-based committees and the Public Accounts Committee when pursuing an inquiry in its portfolio-based role.

32. Under the various proposed changes in this report, Members could participate in portfolio-based committees in the following ways.

Status	Rights	Method of Appointment
Committee member	<ul style="list-style-type: none"> ▪ Fully involved in all committee meetings 	<ul style="list-style-type: none"> ▪ Motion in House ▪ Interim appointment may be made by the Speaker
Co-opted member	<ul style="list-style-type: none"> ▪ Attends and participates in all committee meetings, including deliberative meetings, in relation to the specific inquiry ▪ Can not vote, move a motion, or be counted for the purpose of a quorum ▪ Has the right to ask any relevant questions when the committee is taking evidence 	<ul style="list-style-type: none"> ▪ Motion in House ▪ Interim appointment may be made by the Speaker
Member of Assembly who is not a member of the Committee	<ul style="list-style-type: none"> ▪ May attend public evidence taking and, subject to the discretion of the Chairman, ask questions of witnesses ▪ May not attend deliberative meetings 	<ul style="list-style-type: none"> ▪ No appointment required

To complete the picture, the following applies to the public and the media –

Public and Media	<ul style="list-style-type: none"> ▪ May attend and listen to evidence taking ▪ May not attend deliberative meetings 	<ul style="list-style-type: none"> ▪ Not applicable
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33. Of course, if a committee is taking evidence in camera, only committee members and members who have been co-opted for the purpose of that inquiry, may attend the meeting.

RECOMMENDATIONS

Recommendation 1

Your committee recommends –

That the following Standing Orders be adopted by the House -

“Appointment and Functions

287. (1) At the commencement of every Parliament the Assembly will appoint three portfolio-related standing committees, namely -

- (a) Social Development, Education and Community Affairs;
- (b) Health, Justice and Government;
- (c) Primary Industry, Resources, Transport and Trade.

(2) The functions of each committee are to review and report to the Assembly on -

- (a) the outcomes and administration of the departments within the committee's portfolio responsibilities;
- (b) annual reports of government departments laid on the Table of the House;
- (c) the adequacy of legislation and regulations within its jurisdiction; and
- (d) any matters referred to it by the Assembly including a Bill, motion, petition, vote or expenditure, other financial matter, report or paper.

(3) At the commencement of each Parliament and as often thereafter as the Speaker considers necessary, the Speaker will determine and table a schedule showing the portfolio responsibilities for each committee. Annual reports of government departments and authorities tabled in the Assembly will stand referred to the relevant committee for any inquiry the committee may make.

(4) Whenever a committee receives or determines for itself fresh or amended terms of reference, the committee will forward them to each standing and select committee of the Assembly and joint committee of the Assembly and Council. The Speaker will announce them to the House at the next opportunity and arrange for them to be placed on the notice boards of the House.

General provisions of standing and select committees to apply

288. The general provisions for standing and select committees will apply to each standing committee. ”.

Recommendation 2

Your committee recommends –

That the Chapter of the Standing Orders relating to standing committees be re-ordered to commence with the Public Accounts Committee, followed by portfolio-related standing committees, the Joint Standing Committee on the Anti-Corruption Commission and the Joint Standing Committee on Delegated and Uniform Legislation.

Recommendation 3

Your committee recommends –

That the initial portfolio distribution between committees be as shown in the following table –

PUBLIC ACCOUNTS	SOCIAL DEVELOPMENT, EDUCATION and COMMUNITY AFFAIRS	HEALTH, JUSTICE and GOVERNMENT	PRIMARY INDUSTRY, RESOURCES, TRANSPORT and TRADE
Treasurer	Aboriginal Affairs	Attorney General	Commerce and Trade
	the Arts	Emergency Services	Energy
	Citizenship and Multicultural Interests	Fair Trading	Fisheries
	Disability Services	Federal Affairs	Forest Products
	Education	Housing	Lands
	Employment and Training	Health	Mines
	Environment	Justice	Planning
	Family and Children's Services	Parliamentary and Electoral Affairs	Primary Industry
	Heritage	Police	Regional Development
	Labour Relations	Premier	Resources Development
	Local Government	Public Sector Management	Services
	Seniors	Racing and Gaming	Small Business
	Sport and Recreation		Tourism
	Women's Interests		Transport
	Youth		Water Resources
			Works

Recommendation 4

Your Committee recommends –

That Standing Order 267 be amended by the addition of paragraph (3) as follows –

“(3) If a portfolio-related committee, or the Public Accounts Committee in relation to portfolio-related matters allocated to it, is examining a witness, any member of the Assembly, not being a Minister, may attend and at the discretion of the Chairman, ask questions of the witness. That member is not a member of the committee and may not vote, move any motion, be counted for the purpose of a quorum, or be involved in any deliberative part of the committee meeting.”.

Recommendation 5

Your Committee recommends –

That Standing Order 249 be amended by the addition of paragraphs (4) and (5) as follows-

“(4) The Assembly may on motion co-opt any member of the Assembly, not being a Minister, to participate for a specified inquiry, in meetings of a portfolio-related committee or the Public Accounts Committee in relation to portfolio-related matters allocated to it. That member is not a member of the committee and may not vote, move any motion or be counted for the purpose of a quorum, but in relation to that inquiry may ask questions of witnesses and participate in a deliberative meeting.

(5) When the Assembly is not sitting, the Speaker may appoint a member as a co-opted member until the Assembly can confirm the appointment or otherwise.”

Recommendation 6

Your Committee recommends –

That Standing Order 259 (1) be deleted and the following substituted-

“(1) A quorum for committees is two to take evidence and three to deliberate and pass resolutions.”

Recommendation 7

Your Committee recommends –

That Standing Order 259 (1) be deleted and the following substituted-

“260. (1) A committee may appoint a subcommittee of two or more of its members to inquire into and report to the committee upon any matter which the committee is empowered to examine, but may not take evidence unless the committee so decides in relation to each proposed witness.”

Appendix 1
(Refer paragraph 8)

Extract from Final Report of the Select Committee on Procedure - Powers of Portfolio-related Standing Committees

Motions, Petitions, Votes or Expenditures

117. In other Parliaments, it is a standard practice for a portfolio-related standing committee to have the function of reviewing and reporting on any motion, petition, vote, or expenditure referred to it by the House. Referral of motions to standing committees is discussed under the heading 'Select Committees'. Though it has never been the practice in the Legislative Assembly to refer petitions to committees for consideration it could have been done at any time and this will now formally continue as an avenue for action on petitions.

118. The Procedure Committee has given careful consideration to the issue of the Estimates and to whether these should be referred to the portfolio-related standing committees for scrutiny. The Estimates Committees provide a focused, coordinated and accessible means of processing the "committee stage" of the Budget Bill. Your Committee that budget scrutiny continue to occur in the current format of Estimates Committees A & B. This recommendation, however, does not preclude any additional investigations into areas of expenditure by the new standing committees.

Self-referral

119. Your Committee has suggested portfolio-related standing committees be given the power to initiate their own investigations. Portfolio-related standing committees, like the Public Accounts and Expenditure Review Committee, will be able to use their discretion to investigate issues within their realm of expertise. In allowing the proposed standing committees to initiate investigations, the House is encouraging committees to be proactive in carrying out their scrutiny and review functions.

Publicising Terms of Reference

120. At present there is no formal mechanism in place to alert the House to the self-referred activities of a standing committee. The Procedure Committee is of the view that where a standing committee has committed itself to pursuing an inquiry, perhaps after preliminary investigations determining there is a need for such an inquiry, the Terms of Reference of the inquiry should be forwarded to each other Committee and the Speaker who should announce them to the House. All Terms of Reference shall be placed on the Notice Boards in the Assembly. This will have the effect of advising Members and the public of the on-going activities of the standing committees and reduce any potential for duplication of work between the committees.

Annual Reports

121. It is desirable that annual reports of government departments and statutory authorities laid upon the Table of the House stand referred to the appropriate portfolio-related standing committee in accordance with a schedule determined and tabled by the Speaker to record the areas of responsibility of each committee. Any question concerning responsibility for a report or a part of a report should be determined by the Speaker. While it is recommended that Annual Reports laid on the Table of the House stand automatically referred to the appropriate portfolio-related standing committee, it shall remain at the discretion of the committee to determine whether further investigation is required.

Adequacy of Legislation and Regulations

122. Giving committees a capacity to review the adequacy of legislation and regulations will help to ensure that the legislation in place is adequate and is still achieving its intended objectives, and expand the knowledge of Members on the related issues.

