



THIRTY-SEVENTH PARLIAMENT

REPORT 8
STANDING COMMITTEE ON PROCEDURE AND
PRIVILEGES

Presented by Hon Nick Griffiths MLC (Chairman)

November 2005

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

Date first appointed: May 24 2001

Terms of Reference:

The following is an extract from Schedule 1 of the Legislative Council Standing Orders:

“6. Procedure and Privileges Committee

6.1 *A Procedure and Privileges Committee* is established.

6.2 The Committee consists of the President and the Chairman of Committees, the Deputy Chairmen of Committees (all *ex officio*), and any members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chairman, and the Chairman of Committees is the Deputy Chairman, of the Committee.

6.3 With any necessary modifications, SO 326A applies to a co-opted member.

6.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the House and its committees, and recommend to the House such alterations in that law, custom, or rules that, in its opinion, will assist or improve the proper and orderly transaction of the business of the House or its committees.

6.5 Unless otherwise ordered any rule or order under which a matter of privilege stands referred, or is referred, to a committee (however described) for inquiry and report is a reference to the Committee.”

Members as at the time of this inquiry:

Hon Nick Griffiths MLC (Chairman)

Hon Simon O’Brien MLC

Hon George Cash MLC (Deputy Chairman)

Hon Louise Pratt MLC

Hon Graham Giffard MLC

Hon Ken Travers MLC

Hon Ray Halligan MLC

Hon Giz Watson MLC (co-opted Member)

Hon Murray Criddle MLC (co-opted Member)

Staff as at the time of this inquiry:

Malcolm Peacock, Acting Clerk of the Legislative Council

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ISBN 1 9208 8658 3

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**RECOMMENDATIONS FOR THE EIGHTH REPORT OF THE STANDING COMMITTEE ON
PROCEDURE AND PRIVILEGES**

RECOMMENDATIONS

1 Recommendations are grouped as they appear in the text at the page number indicated:

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Recommendation 1: The Committee draws to the attention of Members the implications of the case of *Buchanan v Jennings* in relation to “effective repetition” and parliamentary privilege. The Committee recommends that Members be mindful of the fact that they may not be covered by parliamentary privilege when making comment outside of the House and its committees in relation to matters canvassed in parliamentary proceedings.

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Recommendation 2: The Committee recommends that SO 153 be amended by deleting paragraph (c) and inserting instead -

“

(c) Where:

- (i) at the expiration of 10 sitting days (exclusive of the day on which the motion was first moved); or
- (ii) on the proposed last sitting day prior to a general election,

the question remains unresolved, then, in case (i) the question shall be put and determined without further adjournment on the next succeeding sitting day, and in case (ii) the question shall be put and determined without further adjournment on that last sitting day.

”.

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Recommendation 3: The Committee recommends that the House return to its former practice of listing on the *Business Program* all disallowance motions that have moved *pro forma* under SO 152(b) so as to adhere to the requirement of SO 153(a).

Recommendation 4: The Committee recommends that SO 125A be amended in the following manner -

1. Subclause (1) - To insert after “order” -

“ :

(a) ”.

2. Subclause (1) - To insert after “invite” -

“

; and

(b) “**party**” means the political party in Government; the political party in official Opposition; any other political party represented in the House and any Independent Member of the House

”.

3. After subclause (3) - To insert -

“

(4) Where a standing committee’s terms of reference allow, the Committee may refer a Bill or other matter to that standing committee (other than a joint committee) for inquiry and report to the House. Unless otherwise ordered or specified by the Committee:

- (a) a committee is to report to the House on the first sitting day following 42 days after the referral (exclusive of the referral day); and
(b) the referral of a Bill results in its discharge from the Notice Paper.

(5) A motion for a referral under subclause (4) may only pass in the affirmative:

- (a) if all parties are represented at the relevant meeting and there is no dissent; or
(b) if a party is not represented at the relevant meeting, the party has provided written notice to the Committee agreeing to the proposed referral and its terms.

(6) Where a referral has been made under subclause (4), the Leader of the House is to inform the House of the referral within 2 sitting days and the referral is then to be published on the Notice Paper.

”.

[Clerks’ amendment: change existing subclause “(4)” to “(7)”].

Recommendation 5: The Committee recommends that Schedule 1 of the Standing Orders be amended in the following manner -

1. Clause 1.3 - To delete “(b) any Bill referred by the House; and”.
2. Clause 1.3 - To insert after “petitions” -

“

; and

(c) any Bill or other matter relating to the foregoing functions referred by the House or under SO 125A

”.
3. Clause 2.3(c) - To insert after “House” -

“ or under SO 125A ”.
4. Clause 7.3(d) - To insert after “House” -

“ or under SO 125A ”.
5. Clause 8.3(f) - To insert after “any” -

“ Bill or other ”.

[Clerks’ amendment: renumbering of paragraphs in clause 1.3 required].

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Recommendation 6: The Committee recommends that the Standing Orders be amended in the following manner -

After SO 230A to insert a new standing order as follows -

“Inquiry into policy of a bill

230B Unless otherwise ordered, a standing committee is not to inquire into the policy of a bill.

”.

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Recommendation 7: The Committee recommends that SO 230A be amended in the following manner -

To delete subclause (5).

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Recommendation 8: The Committee recommends that Schedule 1, clause 4 of the Standing Orders be amended in the following manner -

To delete subclauses 4.4(a) and 4.5.

[Clerks’ amendment: deletion of “(b)” in clause 4.4 required].

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Recommendation 9: The Committee recommends that the Standing Orders be amended in the following manner -

After SO 324 to insert a new standing order as follows -

“

Reporting of resolution to commence own motion inquiry

325. Where a committee initiates an inquiry of its own motion, notice of that inquiry shall be reported to the House within 2 sitting days of the committee's resolution.

”.

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Recommendation 10: The Committee recommends that SO 3 be amended in the following manner -

To insert after the definition of “ “Bell” or “Bells” ” the following definition -

“

“Chairman” includes the term ‘Chairwoman’, ‘Chairperson’, or ‘Chair’.

”.

Recommendation 11: The Committee recommends that SO 230A be amended to provide that uniform legislation stands referred at the conclusion of the second reading speech of the Minister or Member in charge and to clarify the calculation of the period of time.

To effect this recommendation SO 230A should be amended as follows -

1. SO 230A(2)

To delete - “, or commence where SO 230(b) applies,”.

To delete - “Bill’s first reading” and insert instead -

“ adjournment (exclusive of that day) ”.

2. SO 230A(3)

To delete - “when read a first time”.

To insert after “Committee” -

“

at the conclusion of the second reading speech of the Minister or Member in charge

”.

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Recommendation 12: The Committee recommends that SO 230A(4) be amended to alter the period of referral and to clarify the calculation of the period of time.

To effect this recommendation SO 230A(4) should be amended as follows -

To delete - “30 days of the day of the reference” and insert instead -

“

the first sitting day following 42 days after the referral (exclusive of the referral day)

”.

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Recommendation 13: The Committee recommends that SO 433 be amended by deleting “*In cases which in the opinion of the President are of urgent necessity*”.

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Recommendation 14: The Committee endorses a change in the custom of the House and its committees to allow members of the public who are attending proceedings to take notes in a discrete manner so long as it does not disrupt proceedings.

1 INTRODUCTION

- 1.1 The *Procedure and Privileges Committee (Committee)* was first appointed by the Legislative Council (**Council** or **House**) on May 24 2001.
- 1.2 During the Thirty-Seventh Parliament the Committee first met on August 31 2005. At that meeting Hons Murray Criddle and Giz Watson MLCs were appointed as co-opted Members.
- 1.3 The Committee has met on three occasions to progress a number of matters that arose out of:
- a) the Committee's standing mandate to keep under review the law and custom of Parliament, the rules of procedure of the House and its committees, and recommend to the House such alterations in that law, custom, or rules that, in its opinion, will assist or improve the proper and orderly transaction of the business of the House or its committees;
 - b) the referral of the May 2005 report of the Chairman of Committees (**Cash Report**);¹ and
 - c) matters drawn to the Committee's attention during debate in the House.
- 1.4 The Committee's inquiries and recommendations to date are presented in this first report for the Thirty-Seventh Parliament.

2 PARLIAMENTARY PRIVILEGE: THE CASE OF BUCHANAN V JENNINGS

Background

- 2.1 The principal immunity afforded by parliamentary privilege is the freedom of parliamentary debates and proceedings from question and impeachment in the courts, the most significant effect of which is that Members of Parliament cannot be sued or prosecuted for anything they say in debate in the House.
- 2.2 Conversely, Members who repeat their remarks outside the House, as Members may be challenged to do from time to time, enjoy no legal protection against defamation or any other liability. The protection afforded to Members and participants in parliamentary proceedings by the operation of parliamentary privilege and Article 9 of

¹ Western Australia, Legislative Council, Hon George Cash MLC, *Reflections on the Legislative Council Committee System and its Operations During the Thirty-Sixth Parliament: Discussions with the Chairs and Deputy Chairs of Parliamentary Committee (Cash Report)*, Tabled paper 367, May 19 2005.

the *Bill of Rights 1689*² has been considerably affected by the 2005 Privy Council decision in *Buchanan v Jennings*.³

- 2.3 The principal question in *Buchanan v Jennings* was whether a Member of Parliament may be held liable in defamation if the Member makes a defamatory statement in the House - a statement that is protected by absolute privilege - and later affirms the statement (but without repeating it) on an occasion which is not protected by privilege. The majority of the New Zealand Court of Appeal and a unanimous Privy Council held that a Member may be held liable in defamation in those circumstances.
- 2.4 The Attorney General, Hon Jim McGinty MLA forwarded advice from the Solicitor General dated April 14 2005 to the former President Hon John Cowdell in relation to the case. That advice, reports of the New Zealand Parliament in relation to the case and implications of the case for parliamentary privilege were considered by the Committee.

Discussion

Buchanan v Jennings

- 2.5 The case concerned a defamation action brought against Mr Owen Jennings, a Member of the New Zealand House of Representatives at the time, for a comment he had allegedly effectively repeated outside the House. In the course of debate in the House in late 1997, the Member had criticised activities of the New Zealand Work Board, in particular the actions of an employee relating to arranging some sponsorship. In February 1998 the Member renewed his criticism of the Board without repeating his allegations against the employee. However the Member was reported by a journalist as stating in an interview that “*he did not resile from his claim about the official’s relationship*”.
- 2.6 In the defamation action against the Member the plaintiff alleged that in the interview the Member has “*adopted, repeated and confirmed as true*” what the Member had said earlier in the House (although the Member had not *actually* repeated the statement). This became known (as the litigation proceeded) as the principle of “effective repetition” and has been examined in previous Australian cases.
- 2.7 The New Zealand Court of Appeal held that freedom of speech in debate was not infringed when a Member was sued on later unprivileged statements which either affirmed or effectively repeated earlier parliamentary remarks. The Court held that this was so even where a record of those parliamentary statements was essential in

² Article 9 of the *Bill of Rights 1689* provides “*That the freedom of speech, and debates or proceedings in Parliament, ought not to be impeached or questioned in any court or place out of Parliament*”.

³ [2005] 1 AC 115.

order to give meaning to the statements made outside the House. The decision was upheld by the Privy Council.

New Zealand consideration

- 2.8 The matter was considered by the Privileges Committee of the New Zealand House of Representatives (**New Zealand Privileges Committee**).⁴ It considered that the effective repetition principle did involve courts in examining and making judgments on parliamentary proceedings, thereby endangering the principle of mutual restraint between the courts and the legislature whereby one does not interfere in the work of the other.
- 2.9 The New Zealand Privileges Committee noted that the effective repetition principle would adversely affect the willingness of Members and witnesses to contribute to parliamentary proceedings and would have a “*potentially ‘chilling effect’ on public debate, whereby members and witnesses are reluctant to submit themselves to subsequent interviews for fear of losing their parliamentary immunity.*”⁵
- 2.10 The New Zealand Privileges Committee considered four broad approaches for legislation to deal with the court decision. It recommended that relevant New Zealand legislation be amended to provide that no person may incur liability for making a statement that affirms, adopts or endorses statements made in proceedings in Parliament where the statement would not, but for the proceedings in Parliament, give rise to liability.

Committee’s view

- 2.11 The Committee is concerned about the implications of the case on freedom of speech and parliamentary privilege in Western Australia for both Members and participants in parliamentary proceedings, such as witnesses. The Committee endorsed the approach taken by the New Zealand Privileges Committee.
- 2.12 On September 9 2005 the President wrote to the Attorney General advising of the Committee’s resolution that the following amendment to the law be considered -

no person may incur criminal or civil liability for making any oral or written statement that affirms, adopts or endorses words written or spoken in proceedings in Parliament where the oral or written statement would not, but for the proceedings in Parliament, give rise to criminal or civil liability.

⁴ New Zealand, House of Representatives, Privileges Committee, Report 1.17G, *Question of privilege referred 21 July 1998 concerning Buchanan v Jennings*, May 2005.

⁵ *Ibid*, p5.

2.13 As at November 10 2005 the Committee awaits a response.

Recommendation

Recommendation 1: The Committee draws to the attention of Members the implications of the case of *Buchanan v Jennings* in relation to “effective repetition” and parliamentary privilege. The Committee recommends that Members be mindful of the fact that they may not be covered by parliamentary privilege when making comment outside of the House and its committees in relation to matters canvassed in parliamentary proceedings.

3 STANDING ORDER 153(C) - DISALLOWANCE OF REGULATIONS UPON PROROGATION

Background

- 3.1 Standing order 153(c) provides for the deemed passing of a resolution of the House disallowing an instrument upon prorogation.
- 3.2 The deeming provision was inserted to avoid a situation in which prorogation prevented a disallowance motion from being resolved in the current session or revived in the next session or Parliament. This would occur where a disallowance motion had not moved, or had been moved, but the question had not been resolved prior to the House being prorogued. The *Interpretation Act 1984* provides for notice of a disallowance motion to be given within 14 sitting days after the instrument is tabled. This 14 day period may extend into the next session or new Parliament following prorogation. However, if notice had been given in one session and the 14 day period had expired prior to prorogation of that session, the opportunity to give notice of a motion to disallow in a subsequent session or Parliament would be lost.
- 3.3 The deeming provision in SO 153(c) is a procedural device to encourage resolution of a disallowance motion by debate in the House. This is because a failure to deal with the motion results in the motion being deemed to have passed in the affirmative on prorogation and the instrument disallowed by operation of section 42(2) of the *Interpretation Act 1984*.
- 3.4 In the period since the proclamation of the *Interpretation Act 1984*, the Office of Parliamentary Counsel⁶, the (then) Crown Solicitor’s Office⁷ and the Solicitor General⁸ have at various times questioned the validity of the deeming provision contained in SO 153(c).

⁶ Letter from Parliamentary Counsel to the Attorney General dated November 9 1984.

⁷ Opinions of the (then) Crown Solicitor’s Office to Department of Local Government and Regional Development dated November 9 1999 and June 6 2000 (both provided to the *Joint Standing Committee on Delegated Legislation*).

⁸ Opinion of the Solicitor General to Clerk of the Legislative Assembly dated June 27 2005.

- 3.5 The most recent view is contained in an opinion of the Solicitor General, Robert Meadows QC dated June 27 2005 which concluded that SO 153(c) was invalid as being inconsistent with section 42(2) of the *Interpretation Act 1984*. The Solicitor General argued that the reference in section 42(2) of the *Interpretation Act 1984* to a House of Parliament passing a resolution disallowing an instrument implied a requirement that an actual vote of the Members present and voting occurred. A purported disallowance by deeming a resolution passed when prorogation occurred was, in the Solicitor General's opinion, of no legal effect. As a result, an instrument purportedly disallowed by the Council would remain in force.

Discussion

- 3.6 One of the privileges of the House is that it has exclusive cognisance to regulate its own proceedings. It has the power to make standing orders for the "*regulation and orderly conduct of their proceedings and the despatch of business*" under section 34 of the *Constitution Act 1889*. The House has exercised these powers by absolute majority in providing for SO 153(c). However, the Committee acknowledges that standing orders do not have legislative effect and to the extent that they are inconsistent with the existing law, will be invalid.
- 3.7 The resolution of this matter turns on whether a standing order that deems a resolution to pass in the affirmative on the happening of an external event, without an actual vote of Members present in the House, is permitted by law. The Committee has concluded, for reasons different from those submitted by the Solicitor General, that the deeming provision in SO 153(c) is not permitted by law and invalid.

Deemed resolution not permitted by law

- 3.8 The *Interpretation Act 1984* provides for disallowance in the event that either House "*passes a resolution*" to that effect. The 'question' that an instrument be disallowed (that is, that the motion be agreed to) is formed when the motion moves *pro forma* under SO 152. The motion is agreed to (that is, a resolution is passed) by reason of a deeming provision in SO 153(c) resolving the question in the affirmative upon prorogation.
- 3.9 Due to the House having exclusive cognisance in respect of its own procedures, a House of Parliament, in the absence of a legal requirement to the contrary, could deem a resolution to be passed on the happening of an external event such as prorogation. The Committee was not satisfied that the *Interpretation Act 1984*, of itself, implied such a requirement.
- 3.10 However, an express legal requirement is contained in section 14 of the *Constitution Acts Amendment Act 1899*. Section 14 puts beyond doubt that an actual vote of Members present in the Chamber is a necessary requirement to resolve all questions before the House. Section 14 provides in part:

14. Quorum — division, casting vote

The presence of at least one-third of the members of the Legislative Council, exclusive of the President, shall be necessary to constitute a quorum for the despatch of business; and all questions which shall arise in the Legislative Council shall be decided by a majority of votes of the members present, other than the President, and when the votes are equal the President shall have the casting vote: [Emphasis added].

Recommendation

3.11 As a result of its conclusion, the Committee recommends that SO 153(c) be amended so that it is consistent with the law:

Recommendation 2: The Committee recommends that SO 153 be amended by deleting paragraph (c) and inserting instead -

“

(c) Where:

(i) at the expiration of 10 sitting days (exclusive of the day on which the motion was first moved); or

(ii) on the proposed last sitting day prior to a general election,

the question remains unresolved, then, in case (i) the question shall be put and determined without further adjournment on the next succeeding sitting day, and in case (ii) the question shall be put and determined without further adjournment on that last sitting day.

”.

3.12 The above wording merely replaces the deeming provision with a new paragraph (ii). This provides for the question on all disallowance motions listed on the Notice Paper to be put and resolved on the proposed last sitting day before a general election of the Council or Assembly.

3.13 This will maintain a degree of certainty as:

a) the “proposed last sitting day” can be identified by the published official sitting schedule or by a custom of the House; and

-
- b) all disallowance motions would be disposed of by a vote of the House in compliance with section 14 of the *Constitution Acts Amendment Act 1899*.⁹

Listing of disallowance motions on the Business Program

- 3.14 After disallowance motions have moved *pro forma*, SO 153(a) grants them precedence over all other business of the House, other than condolence motions, vote of thanks and leave of absence motions. This is the reason why disallowance motions moved under SO 152 are listed on the Notice Paper as orders of the day before all other orders of the day.
- 3.15 A practice has developed whereby only those disallowance motions where the Standing Orders require that the question be put (that is, on the 11th sitting day), or are to be discharged that day, are listed as orders of the day on the *Business Program*. This practice is contrary to the requirement of SO 153(a). An adherence to the requirement of SO 153(a) would mean that all disallowance motions, once moved, would be listed on the *Business Program* first under orders of the day.
- 3.16 Sessional order 5 provides, amongst other things, that subject to SO 127, orders of the day are to be taken in the order in which they are listed on the *Business Program*. If the Leader of the Government did not wish to deal with disallowance motions listed as orders of the day in priority to other orders of the day, it would require the Leader to move an ‘Order of Business’ motion seeking to have these orders of the day taken at some other time. This occurs frequently with disallowance motions that are listed on the *Business Program* for debate that day (the 11th day).
- 3.17 The rationale behind the priority accorded to disallowance motions by SO 153(a) is to provide the House with an opportunity to deal with a disallowance motion at any time after it has moved *pro forma* and not merely on the 11th sitting day. The current practice of omitting disallowance motions from the *Business Program* that have not reached the 11th sitting day (other than those to be discharged) prevents the House from voting against an Order of Business motion so as to bring on debate on the disallowance motion. The House may wish to bring on the debate earlier than the 11th day if, for example, a prorogation was pending.
- 3.18 The recommended new wording of SO 153(c) provides a requirement to put the question on a disallowance motion on the proposed last sitting day before a general election notwithstanding that it is not the 11th day. This resolves the issue of prorogation thwarting disallowance motions if the Government maintains its current policy of only proroguing the Houses prior to a general election. However, it will not result in all disallowance motions being resolved in the event that prorogation occurs

⁹ This is dependent upon the Government maintaining its current policy of only proroguing prior to a general election and not each year as was previously the case. This policy may alter or be abandoned resulting in motions for disallowance being thwarted by prorogation.

at other times. An adherence to SO 153(a) provides the House with an opportunity to deal with a disallowance motion prior to the 11th day for any reason, including a return to the practice of proroguing the Houses annually.

Recommendation

Recommendation 3: The Committee recommends that the House return to its former practice of listing on the *Business Program* all disallowance motions that have moved *pro forma* under SO 152(b) so as to adhere to the requirement of SO 153(a).

**4 AMENDMENT TO STANDING ORDER 125A - BUSINESS MANAGEMENT COMMITTEE
- REFERRALS OF BILLS AND MATTERS TO STANDING COMMITTEES**

Background

Cash Report

4.1 The Cash Report observed that the scrutiny of primary legislation by Council committees during the Thirty-Sixth Parliament led to more informed debate in the House and better legislation. The report noted Members' suggestions that the scrutiny of primary legislation would be enhanced by using the *Business Management Committee*, established under SO 125A, to actively and regularly consider those bills that should be referred to particular committees.

4.2 The Cash Report recommended that:¹⁰

the Business Management Committee take a more proactive role negotiating a more efficient and effective flow of legislation through both the committee system and the House.

Schedule 1 changes

4.3 The August 17 2005 changes to committees in Schedule 1 of the Standing Orders included reference to SO 125A in the terms of reference for both the *Legislation Committee* and the *Uniform Legislation and Statutes Review Committee*.

4.4 The changes did no more than highlight the existing process under SO 125A(3) for the *Business Management Committee* to “*discuss the referral of Bills or other matter*”. Such discussion may lead to a report to the House by the Leader or *Business Management Committee* and a subsequent motion for referral. There is no present ability for the *Business Management Committee* to make direct referrals to committees.

¹⁰ Cash Report, p38, Recommendation 36.

Bills Selection Committees in other Parliaments

- 4.5 Parliaments make use of ‘Bills Selection Committees’ to assist the House in its scrutiny and referral of legislation. The manner in which bills are selected and the process of referral differs. Common features involve the selection committee identifying bills that could be referred and making a report to the House. The House then adopts the report or the report automatically takes effect unless a motion to alter an aspect of the referral is moved and agreed. It is unusual for the selection committee to refer a bill direct and the report to the House - rather the selection committee reports to the House before the referral takes effect, and the House has an opportunity to endorse or alter the recommendation.
- 4.6 For example: the Senate has a *Selection of Bills Committee* but it does not make referrals direct to committees. Rather the *Senate Selection of Bills Committee* reports to the House with recommendations about bills to be referred, the committees to which (and the stage at which) they are to be referred, and the reporting dates. Adoption of the report by the Senate has the effect of referring the bills as recommended. The motion for the adoption of the report may be amended to vary the details of the recommendations or to add or delete bills. This process is feasible under the current terms of SO 125A should the *Business Management Committee* make a report to the House after discussions have occurred under SO 125A.

The Legislative Council and Bills Selection Committees

- 4.7 Over the years the Council has established elements of ‘Bills Selection Committees’:
- a) 1997 Sessional Order (Bills Classification Committee); and
 - b) Business Management Committee (SO 125A - inserted June 24 1998).
- 4.8 With regard to a) - the Committee notes that sessional orders adopted by the Council on April 19 1997 included a Bills Classification Committee whose function was far wider than the *Business Management Committee* under SO 125A. That committee was required to classify bills, specify dates for any committee report and dates for the bill’s passage through the House and the determination was published in the Notice Paper.¹¹ Of particular relevance - if a bill was classified as Classification C (because the complexity of subject matter required consideration by a committee etc) then that bill stood referred after its second reading to the designated committee.¹² Before the question for second reading any amendment could be moved as to reclassification, the nominated committee and the reporting date.

¹¹ Sessional order 5(2).

¹² Sessional order 5(5).

- 4.9 With regard to b) - the Committee notes that the role and function of the *Business Management Committee* and proposed SO 125A was canvassed extensively by the then *Standing Orders Committee* in *Report No 2 on Proposed Amendments to Standing Orders Incorporating Sessional Orders Adopted April 10 1997* and later by a August 1997 report of a *Select Committee to Review the Legislative Council Standing Committee System* (appointed June 1997). The report of the *Standing Orders Committee* was debated on June 11 and 18 1998. On June 24 1998 the amendments recommended by that committee were adopted in an amended form resulting in SO 125A in its current form.
- 4.10 The Committee considered enhancing the operation of the *Business Management Committee* by amending the Standing Orders to enable that committee to directly refer a bill or other matter to a committee.
- 4.11 The Committee resolved that:
- a) the *Business Management Committee* may make direct referrals of bills (once introduced) and other matters to committees, such referral to have immediate effect;
 - b) referrals may be made to standing committees, but not to select or joint committees;
 - c) the *Business Management Committee* may only refer a bill or other matter to a committee where the committee's mandate empowers it to receive such referrals. For example, the terms of reference for the *Legislation Committee* contemplates referrals of bills from the *Business Management Committee* but not "any other matter";
 - d) a motion for referral by the *Business Management Committee* may only pass in the affirmative if:
 - 1. all parties are represented at the relevant meeting and there is no dissent; or
 - 2. if a party is not represented at the relevant meeting, they have provided written notice to the *Business Management Committee* agreeing to the proposed referral and its terms;
 - e) unless otherwise ordered, a committee is to report to the House not later than the first sitting day after 42 days of a referral (exclusive of the referral day). This is consistent with the period of time referred to in Recommendation 12; and

-
- f) unless otherwise determined the referral of a bill means that it is discharged from the Notice Paper.
- 4.12 The Committee's recommended amendments to SO 125A are marked up in **Appendix 1**. The amendments to the Standing Orders required to effect these changes are set out in Recommendation 4. If passed, a clerical amendment will be required to alter subclause "(4)" to read "(7)".
- 4.13 Consequential amendments to Schedule 1 are also required to align SO 125A referrals with each committee's terms of reference. Currently not all committees include reference to SO 125A and where they do so, it is in differing terms. The Committee's recommended amendments to Schedule 1 are marked up in **Appendix 2**. The amendments to the Standing Orders required to effect these changes are set out in Recommendation 5.

Recommendations

Recommendation 4: The Committee recommends that SO 125A be amended in the following manner -

1. Subclause (1) - To insert after “order” -

“ :

(a) ”.

2. Subclause (1) - To insert after “invite” -

“

; and

(b) “**party**” means the political party in Government; the political party in official Opposition; any other political party represented in the House and any Independent Member of the House

”.

3. After subclause (3) - To insert -

“

(4) Where a standing committee’s terms of reference allow, the Committee may refer a Bill or other matter to that standing committee (other than a joint committee) for inquiry and report to the House. Unless otherwise ordered or specified by the Committee:

- (a) a committee is to report to the House on the first sitting day following 42 days after the referral (exclusive of the referral day); and
- (b) the referral of a Bill results in its discharge from the Notice Paper.

(5) A motion for a referral under subclause (4) may only pass in the affirmative:

- (a) if all parties are represented at the relevant meeting and there is no dissent; or
- (b) if a party is not represented at the relevant meeting, the party has provided written notice to the Committee agreeing to the proposed referral and its terms.

(6) Where a referral has been made under subclause (4), the Leader of the House is to inform the House of the referral within 2 sitting days and the referral is then to be published on the Notice Paper.

”.

[Clerks’ amendment: change existing subclause “(4)” to “(7)”].

Recommendation 5: The Committee recommends that Schedule 1 of the Standing Orders be amended in the following manner -

1. Clause 1.3 - To delete “(b) any Bill referred by the House; and”.
2. Clause 1.3 - To insert after “petitions” -

“

; and

(c) any Bill or other matter relating to the foregoing functions referred by the House or under SO 125A

”.
3. Clause 2.3(c) - To insert after “House” -

“ or under SO 125A ”.
4. Clause 7.3(d) - To insert after “House” -

“ or under SO 125A ”.
5. Clause 8.3(f) - To insert after “any” -

“ Bill or other ”.

[Clerks’ amendment: renumbering of paragraphs in clause 1.3 required].

5 COMMITTEE INQUIRY INTO THE POLICY OF A BILL

Discussion

- 5.1 The major part of the Council’s sittings is devoted to the passage of legislation. The reference of bills to committees enhances the Council’s legislative role. Bills have been referred for inquiry to committees at many stages of their passage through the House. For example: referrals have occurred after the first reading (in the case of uniform legislation); after the second reading speech; and after the second reading has been agreed.
- 5.2 During the course of discussions regarding the August 2005 changes to the Council standing committee system, the matter of committee inquiry into the policy of bills

was canvassed. Although a small minority of bills may be referred to committees other than the *Legislation Committee* or the *Uniform Legislation and Statutes Review Committee*, the Committee considered whether or not the policy of a bill should be open to inquiry by any committee regardless of the time at which the House refers a bill for inquiry.

- 5.3 The consideration of the policy of a bill by committees has been a recurrent theme over the years. Previous procedural review by standing and select committees of this House have made observations on the scrutiny of policy by committees, particularly when considering proposals for the conduct of both pre-legislative scrutiny and the scrutiny of bills introduced into the chamber.¹³ Approaches have been influenced by the political landscape at the time; considerations related to the role of the chamber as an upper house and the desire to extend the amount of time available for legislative scrutiny by committees without unreasonably affecting the Government's legislative program.
- 5.4 In recent times in the absence of express provision otherwise¹⁴ the question of whether or not the policy of a bill is open for inquiry by a committee is determined by the stage at which a bill is referred. This approach reflects the consideration of policy by the House itself.
- 5.5 There are currently two references in the Standing Orders in relation to the consideration of policy by standing committees: SO 230A(5) and the terms of reference for the *Legislation Committee* in Schedule 1, clauses 4.4 and 4.5.
- 5.6 There are no other express restrictions on the consideration of the policy of a bill by other committees. Therefore:
- a) if a bill (not being uniform legislation) was referred to, say, the *Environment and Public Affairs Committee* before the second reading was agreed it could consider the policy of a bill. If the same bill was referred at that same stage to the *Legislation Committee* then under its terms of reference, unless otherwise ordered, it can only consider the policy of the bill in limited circumstances; and
 - b) any committee receiving a uniform bill for inquiry is precluded from considering the policy of a bill regardless of its stage of referral.

¹³ For example: *Select Committee to Review the Legislative Council Standing Committee System*, chaired by former President Cash (August 1997), p20; and report of a *Select Committee on a Committee System in the Legislative Council* chaired by Hon V J Ferry (September 1985), pp3, 4 and 6.

¹⁴ For example: a standing order, restriction in the terms of reference of a receiving committee or a resolution to the contrary.

- 5.7 The Committee is of the view that the Standing Orders should be amended to provide that unless otherwise ordered, a standing committee should not inquire into the policy of a bill regardless of the stage at which a bill is referred.

Recommendations

Recommendation 6: The Committee recommends that the Standing Orders be amended in the following manner -

After SO 230A to insert a new standing order as follows -

“Inquiry into policy of a bill

230B Unless otherwise ordered, a standing committee is not to inquire into the policy of a bill.

”.

- 5.8 Two matters are to be noted in relation to Recommendation 6:
- a) the restriction does not apply to a select committee; and
 - b) the standing order reflects the ability of the House, should the political landscape require, to order that a committee may inquire into policy in a particular case by providing for this in the referral. That is, the inclusion of “*Unless otherwise ordered*” enables this without the need to suspend Standing Orders.
- 5.9 Should Recommendation 6 be agreed, the following consequential amendments are required:
- a) amendments to Schedule 1 clauses 4.4(a) and 4.5 to remove the reference to the policy of a bill found in the terms of reference for the *Legislation Committee* (the restriction in proposed SO 230B would apply). The reference to policy in relation to proposed recommended amendments in clause 4.4(b) remains. The Committee’s recommended amendments to Schedule 1 clauses 4.4(a) and 4.5 are marked up in **Appendix 2**; and
 - b) amendments to delete SO 230A(5) (again the restriction in proposed SO 230B would apply).

Recommendation 7: The Committee recommends that SO 230A be amended in the following manner -

To delete subclause (5).

Recommendation 8: The Committee recommends that Schedule 1, clause 4 of the Standing Orders be amended in the following manner -

To delete subclauses 4.4(a) and 4.5.

[Clerks' amendment: deletion of "(b)" in clause 4.4 required].

6 COMMITTEES - OWN MOTION INQUIRIES

Discussion

- 6.1 In the Cash Report it was suggested that where committees commence an inquiry of their own motion they should report the commencement of that inquiry to the Council.¹⁵ Notification would inform the Council of the committee's workload. The Cash Report also mooted that the 'own-motion' resolution of the committee to conduct an inquiry could be subject to disallowance by the Council or require ratification by the Council within a certain period of time.
- 6.2 Committees are being encouraged, at an operational level, to table a report to the House when they resolve to commence an own motion inquiry. However the Committee is of the view that the Standing Orders should be amended to require notification to the House.
- 6.3 The Committee observes that its proposed amendment in Recommendation 9 does not alter which committees have the power to institute own motion inquiries. It requires those committees that already have the power to commence own motion inquiries to report the resolution to the House within two sitting days.
- 6.4 If at any future stage Schedule 1 is amended to change a committee's terms of reference interpretation of this proposed standing order will remain consistent without the need for further amendment.

¹⁵ Cash Report, pp6-7, Recommendation 3.

Recommendation

Recommendation 9: The Committee recommends that the Standing Orders be amended in the following manner -

After SO 324 to insert a new standing order as follows -

“

Reporting of resolution to commence own motion inquiry

325. Where a committee initiates an inquiry of its own motion, notice of that inquiry shall be reported to the House within 2 sitting days of the committee's resolution.

”.

7 TITLE OF COMMITTEE CONVENOR AND PRESIDING MEMBER IN COMMITTEE OF THE WHOLE

Discussion

- 7.1 The Standing Orders refer to the appointed convenor of a committee as a ‘Chairman’ and to the ‘Chairman of Committees’.
- 7.2 The title of a committee convenor was raised in the Cash Report with a recommendation that “*the reference in the Standing Orders to the convenor of a committee as ‘Chairman’ be considered by the Procedure and Privileges Committee with regard to the view expressed by some Members that the reference should be to ‘Chair’.*”¹⁶
- 7.3 The President communicated the Committee’s views on this matter in his statement to the House on October 13 2005 when he said:¹⁷

On Thursday, 19 May 2005, Hon George Cash tabled in the house a report entitled, “Reflections on the Legislative Council Committee System and Its Operations During the Thirty-sixth Parliament: Discussions with the Chairs and Deputy Chairs of Parliamentary Committees”. The report was referred to the Standing Committee on Procedure and Privileges for consideration and report. I advise members that the Standing Committee on Procedure and Privileges

¹⁶ Cash Report, Recommendation 40.

¹⁷ Hon Nick Griffiths MLC, President, Western Australia, Legislative Council, *Parliamentary Debates (Hansard)*, October 13 2005, p6271.

has met on two occasions to consider the matters raised in the report and other matters. As a result of the committee's deliberations on recommendation 42, which deals with the use of the title of "chairman", I make a statement to the house about future practice.

The procedure and privileges committee is of the view that, regardless of formal nomenclature in the standing orders and legislation, the practice of the house is to acknowledge and endorse individual discretion in the form of address used for members who chair committees or who preside over the Committee of the Whole. The committee acknowledged that the house and committees of the house have in the past acquiesced in the use of different titles when members address chairmen; for example, "Chairman", "Chairwoman", "Chairperson" and "Chair" have all been used when addressing the Chairman and Deputy Chairmen of Committees presiding over the Committee of the Whole. Currently, a member convening a standing or select committee may elect to be known as "Chair", and that title is then used in all committee proceedings and in all committee communications, whether informal or formal. Accordingly, the practice of this house is that a convenor of a committee or a member presiding over the Committee of the Whole may be referred to as "Chair", "Chairperson", "Chairman" or "Chairwoman", as he or she so chooses. The same practice would apply to a member deputising. If a member occupying a position mentioned above does not make known his or her choice of title by which he or she should be addressed, the member may be referred to by whichever of the above titles that the member addressing that member considers appropriate.

The committee intends to give the matter further consideration.

- 7.4 The Committee has given the matter further consideration and is of the view that the Standing Orders be amended to reflect this practice.

Recommendation

Recommendation 10: The Committee recommends that SO 3 be amended in the following manner -

To insert after the definition of “ “Bell” or “Bells” ” the following definition -

“

“Chairman” includes the term ‘Chairwoman’, ‘Chairperson’, or ‘Chair’.

”.

8 STANDING ORDER 230A - APPLICATION OF SO 230A

Discussion

- 8.1 The introduction, in September 1992, of standing orders to provide for the scrutiny of uniform legislation has required that all bills introduced into the Council must be considered to determine whether or not the bill is uniform legislation. If so, an embargo on debate applies and the bill stands referred to a standing committee for inquiry and report.¹⁸ The most recent statement of this process is SO 230A.
- 8.2 It is not always readily apparent that a bill is subject to SO 230A. It is anticipated that recent initiatives by the *Uniform Legislation and Statutes Review Committee* and its predecessor committee¹⁹ will assist in this process. However there will still be occasions when the Department of the Legislative Council, usually through its Table Officers, must administratively determine the application of SO 230A to a bill, often in the absence of readily accessible information.
- 8.3 Identification of bills as uniform legislation has proved to be a significant challenge in dealing with uniform legislation and was discussed in detail in the *Uniform Legislation and General Purposes Committee, Report No 19: Uniform Legislation and Supporting Documentation*, August 2004.²⁰ Research is often required by Council and committee staff to determine whether or not uniform legislation is involved in a bill. This is required to ensure that the Council is in a position to consider the application of SO 230A and the President may make the necessary observation that a bill stands referred.

¹⁸ Referral to a committee for inquiry and report was first provided by amendments made in October 1997.

¹⁹ Western Australia, Legislative Council, Standing Committee on Uniform Legislation and General Purposes, *Report No 19: Uniform Legislation and Supporting Documentation*, August 2004.

²⁰ Ibid, see Chapter 3.

- 8.4 In the circumstances the Committee is of the view that it is desirable that any consideration of the application of SO 230A be in accordance with the practice of the House. The Committee's interest arises due to a difference in approach that has arisen over time - for example, in relation to bills that involve National Competition Policy (NCP). NCP has an impact on a wide range of legislation that comes before the House and the achievement of reforms under NCP are often linked to NCP payments. The broad application of SO 230A to bills reflecting NCP objectives would result in a significant volume of legislation standing referred. Therefore not all bills that reflect NCP have stood referred under SO 230A.
- 8.5 To promote continuity and consistency the Committee endorsed internal guidelines in relation to the application of SO 230A for use by the Department of the Legislative Council. The object of these guidelines is to reflect previous practice of the House to ensure, in the absence of any indication by the responsible Minister, SO 230A is applied in a consistent manner by, for example, departmental staff or the *Business Management Committee*.
- 8.6 A copy of the guidelines is attached at **Appendix 3**. In endorsing these guidelines which reflect previous practice, the Committee emphasises that the application of SO 230A in any given case is ultimately a matter for the House.

9 STANDING ORDER 230A - STAGE OF REFERRAL OF UNIFORM LEGISLATION AND REPORTING TIME FRAMES

Background

- 9.1 The operation of SO 230A with respect to the stage at which bills are referred to a committee for inquiry and the period for which they stand referred, has been the subject of two reports by the former *Uniform Legislation and General Purposes Committee*.²¹
- 9.2 On August 30 2005, that committee's successor, the *Uniform Legislation and Statutes Review Committee*, tabled a Special Report entitled *Standing Order 230A - Referral of Uniform Legislation and Reporting Time Frames (Special Report)*.²²
- 9.3 The Special Report concerns two aspects of SO 230A, namely:
- the process whereby a bill, when read a first time, stands referred to the Committee, unless otherwise ordered (SO 230A(3)); and

²¹ Ibid; and *Report 23: The Work of the Committee during the Second Session of the Thirty-Sixth Parliament - August 13 2002 to November 16 2004*, November 2004.

²² Western Australia, Legislative Council, Standing Committee on Uniform Legislation and Statutes Review, *Special Report: Standing Order 230A - Referral of Uniform Legislation and Reporting Time Frames*, August 2005.

-
- the requirement that the Committee present its final report not later than 30 days after the referral of the bill or such other period ordered by the House (SO 230A(4)).
- 9.4 The Special Report makes two recommendations which, if adopted by the House, the *Uniform Legislation and Statutes Review Committee* considers would clarify and assist with the scrutiny of uniform legislation.
- 9.5 The Committee has considered each of the recommendations separately. The Committee has also considered the calculation of the period of time referred to in SO 230A(2) and (4).

Calculation of the period of time

- 9.6 Standing orders 230A(2) and (4) refer to periods of time as being “*within 30 days of*” or “*not later than 30 days of*” a particular event. The calculation of time is important as it determines when an embargo on debate is lifted (SO 230A(2)) or when a committee is to report (SO 230A(4)).
- 9.7 It is not clear whether the day of the event is to be included in the calculation of time and the practice of the House should be consistent. The provisions of the *Interpretation Act 1984* (section 61) provide some guidance as to the interpretation of such matters in legislation, however does not apply to the interpretation of Standing Orders. The Committee observes that the Standing Orders do provide greater clarity in other matters, for example, SO 153(c) refers to “*the expiration of 10 sitting days (exclusive of the day on which the motion was first moved)*”.
- 9.8 The Committee considers it desirable that the Standing Orders are clear and promote a consistent approach. The Standing Orders should be amended to clarify that the date of the relevant event is not included in the calculation of time - that is “*(exclusive of that date)*” or “*(exclusive of the referral day)*”. These amendments are included in Recommendations 11 and 12.

Special Report Recommendation 1 - referral of uniform legislation

- 9.9 The Committee recommends that Recommendation 1 of the Special Report be agreed subject to refinements to:
- a) accommodate the second reading speech being given by a Member other than a Minister. This would be consistent with SO 230(a); and
 - b) clarify the calculation of time.
- 9.10 The Committee recommends a motion being moved in the terms indicated in Recommendation 11.

9.11 The Committee's recommended amendments are marked up in **Appendix 4**.

Recommendation

Recommendation 11: The Committee recommends that SO 230A be amended to provide that uniform legislation stands referred at the conclusion of the second reading speech of the Minister or Member in charge and to clarify the calculation of the period of time.

To effect this recommendation SO 230A should be amended as follows -

1. SO 230A(2)

To delete - “, or commence where SO 230(b) applies,”.

To delete - “Bill’s first reading” and insert instead -

“ adjournment (exclusive of that day) ”.

2. SO 230A(3)

To delete - “when read a first time”.

To insert after “Committee” -

“

at the conclusion of the second reading speech of the Minister or Member in charge

”.

Special Report Recommendation 2 - reporting time frames

9.12 The Committee considered Recommendation 2 of the Special Report, with particular regard to the period for which a bill stands referred. Recommendation 2 provides:

The [Uniform Legislation and Statutes Review Committee] recommends that the reporting time frame in standing order 230A(4) be amended to provide that a committee report on uniform legislation must be presented within 14 sitting days of the referral from the Legislative Council rather than 30 calendar days.

To effect this recommendation standing order 230A(4) should be amended as follows:

SO 230A(4) - To delete "30" and insert "14 sitting".

9.13 The Committee does not support Recommendation 2. The Committee agreed to a period of 42 days (meaning calendar days) with a further period of one sitting day.

9.14 The Committee's recommended amendments are marked up in **Appendix 4**.

Recommendation

Recommendation 12: The Committee recommends that SO 230A(4) be amended to alter the period of referral and to clarify the calculation of the period of time.

To effect this recommendation SO 230A(4) should be amended as follows -

To delete - "30 days of the day of the reference" and insert instead -

"

the first sitting day following 42 days after the referral (exclusive of the referral day)

".

10 STANDING ORDERS 433 - SUSPENSION OF STANDING ORDERS

Discussion

- 10.1 Standing Orders require when moving a suspension of standing orders under SO 433 for the President to provide an opinion if the motion is urgent.
- 10.2 The Committee notes the ruling of former President Cash on December 18 1998 where he stated, "*it has been the custom in the past in respect of SO 433 for the House itself to make that decision.*"
- 10.3 Former President Cowdell applied the same ruling on April 16 2002.
- 10.4 The ruling ensures the President does not have to make what might be perceived as political decision. Further, as stated by former President Cash the decision should be left in the hands of the House, which requires an absolute majority.

- 10.5 The Committee is of the view that SO 433 should be amended to remove the reference “*In cases which in the opinion of the President are of urgent necessity...*” to reflect the practice of the House.

Recommendation

Recommendation 13: The Committee recommends that SO 433 be amended by deleting “*In cases which in the opinion of the President are of urgent necessity*”.

11 NOTE TAKING BY THE PUBLIC

Discussion

- 11.1 The Cash Report observed that only accredited news media may take notes during committee hearings and it was suggested that this limitation be lifted to enable notes to be taken by the public in public hearings.²³ The report recommended that:²⁴

The Procedure and Privileges Committee consider whether practice and procedure should be amended to enable note taking by the public in Legislative Council committee hearings. It is noted that this may require consideration of the practice in the Chamber.

- 11.2 There is a traditional rule against anyone in the public gallery of the House making notes of the debate. This is an assertion by the Council of its rights to determine whether or not its proceedings are to be made public and who may report its proceedings - *Hansard* being the official provider of debates. The same rules have applied to committee proceedings.
- 11.3 In addition any notes taken by public are not covered by (absolute) parliamentary privilege. If any member of the media or the public reports proceedings to anyone else, they are covered only by qualified privilege. That means in essence that any report of proceedings receives the protection of privilege if it is a fair report, made in good faith, for the information of the public.
- 11.4 The advent of modern means of communication, including the Internet, means that most Parliaments have relaxed their rules and allow members of the public (including unaccredited news media) to take notes in a discreet manner.
- 11.5 The Committee is of the view that the rules of the House need contemporary relevance and considers that visitors to the gallery and committee proceedings should be permitted to write during proceedings.

²³ Cash Report, p30.

²⁴ Ibid, Recommendation 29.

Recommendation

Recommendation 14: The Committee endorses a change in the custom of the House and its committees to allow members of the public who are attending proceedings to take notes in a discrete manner so long as it does not disrupt proceedings.



**Hon Nick Griffiths MLC
President of the Legislative Council
Chairman**

November 16 2005

APPENDIX 1: STANDING ORDER 125A - AMENDMENTS

“Arrangement of Business

125A. (1) In this order:

- (a) “Committee” means a meeting of the Leader of the House with the Leader of the Opposition and such other Members as the Leader of the House may invite; and
 - (b) “party” means the political party in Government; the political party in official Opposition; any other political party represented in the House and any Independent Member of the House.
- (2) The Committee shall meet at a time and place fixed by the Leader of the House.
- (3) The Committee is to discuss with the Leader of the House:
- (a) the content, order, and routine of business for each sitting day in the following week;
 - (b) a day or days by which each or any of the remaining stages of a Bill might be completed;
 - (c) the referral of a Bill or other matter to a specified committee and, if desired, a date on which that committee report on the Bill or other matter;
 - (d) such things, consistent with the rules and orders of the House, as will facilitate the orderly conduct of business.
- (4) Where a standing committee’s terms of reference allow, the Committee may refer a Bill or other matter to that standing committee (other than a joint committee) for inquiry and report to the House. Unless otherwise ordered or specified by the Committee:
- (a) a committee is to report to the House on the first sitting day following 42 days after the referral (exclusive of the referral day); and
 - (b) the referral of a Bill results in its discharge from the Notice Paper.
- (5) A motion for a referral under subclause (4) may only pass in the affirmative:
- (a) if all parties are represented at the relevant meeting and there is no dissent; or
 - (b) if a party is not represented at the relevant meeting, the party has provided written notice to the Committee agreeing to the proposed referral and its terms.
- (6) Where a referral has been made under subclause (4), the Leader of the House is to inform the House of the referral within 2 sitting days and the referral is then to be published on the Notice Paper.
- ~~(7)-(4)~~ Nothing in this order affects the operation of SO’s 127 and 129.

APPENDIX 2: SCHEDULE 1 AMENDMENTS CONSEQUENTIAL UPON AMENDMENTS TO SO 125A AND INSERTION OF SO 230B

SCHEDULE 1

1. Environment and Public Affairs Committee

- 1.1 An *Environment and Public Affairs Committee* is established.
- 1.2 The Committee consists of 5 Members.
- 1.3 The functions of the Committee are to inquire into and report on -
- (a) any public or private policy, practice, scheme, arrangement, or project whose implementation, or intended implementation, within the limits of the State is affecting, or may affect, the environment;
 - ~~(b) any Bill referred by the House; and~~
 - ~~(b)(e) petitions; and~~
 - (c) any Bill or other matter relating to the foregoing functions referred by the House or under SO 125A.
- 1.4 The Committee, where relevant and appropriate, is to assess the merit of matters or issues arising from an inquiry in accordance with the principles of ecologically sustainable development and the minimisation of harm to the environment.
- 1.5 The Committee may refer a petition to another committee where the subject matter of the petition is within the competence of that committee.
- 1.6 In this order “**environment**” has the meaning assigned to it under section 3(1), (2) of the *Environmental Protection Act 1986*.

2. Estimates and Financial Operations Committee

- 2.1 An *Estimates and Financial Operations Committee* is established.
- 2.2 The Committee consists of 5 Members, 3 of whom shall be non-Government Members.
- 2.3 The functions of the Committee are to consider and report on -
- (a) the estimates of expenditure laid before the Council each year;
 - (b) any matter relating to the financial administration of the State;
 - (c) any Bill or other matter relating to the foregoing functions referred by the House or under SO 125A; and

- (d) to consult regularly with the Auditor General and any person holding an office of a like character.

3. Joint Standing Committee on Delegated Legislation

...

4. Legislation Committee

- 4.1 A *Legislation Committee* is established.
- 4.2 The Committee consists of 5 Members.
- 4.3 The functions of the Committee are to consider and report on any Bill referred by the House or under SO 125A.
- 4.4 Unless otherwise ordered -
 - (a) ~~the policy of a Bill referred under subclause 4.3 may be considered by the Committee but only to the extent that the Committee is satisfied the provisions of the Bill, as referred, are consistent with that policy and that the legislative intent can be given practical effect;~~
 - (b) any amendment recommended by the Committee must be consistent with the policy of a Bill.
- 4.5 ~~In this order “policy of a Bill” is its scope and purpose ascertained from the Bill’s provisions, but reference may be had to any document or statement or other information that may assist in clarifying the intended legislative effect or construing the application or interpretation of any provision.~~

5. Parliamentary Services Committee

...

6. Procedure and Privileges Committee

...

7. Public Administration Committee

- 7.1 A *Public Administration Committee* is established.
- 7.2 The Committee consists of 5 Members.
- 7.3 The functions of the Committee are to inquire into and report on -
 - (a) the structure, efficiency and effectiveness of the system of public administration;
 - (b) the extent to which the principles of procedural fairness are embodied in any practice or procedure applied in decision making;

-
- (c) the existence, adequacy, or availability, of merit and judicial review of administrative acts or decisions;
 - (d) any Bill or other matter relating to the foregoing functions referred by the House or under SO 125A; and
 - (e) to consult regularly with the Parliamentary Commissioner for Administrative Investigations, the Public Sector Standards Commissioner, the Information Commissioner, and any person holding an office of a like character.

7.4 The Committee is not to make inquiry with respect to -

- (a) the constitution, functions or operations of the Executive Council;
- (b) the Governor's establishment;
- (c) the constitution and administration of Parliament;
- (d) the judiciary;
- (e) a decision made by a person acting judicially;
- (f) a decision made by a person to exercise, or not exercise, a power of arrest or detention; or
- (g) the merits of a particular case or grievance that is not received as a petition.

8. Uniform Legislation and Statutes Review Committee

8.1 *A Uniform Legislation and Statutes Review Committee* is established.

8.2 The Committee consists of 4 Members.

8.3 The functions of the Committee are -

- (a) to consider and report on Bills referred under SO 230A;
- (b) of its own motion or on a reference from a Minister, to consider or review the development and formulation of any proposal or agreement whose implementation would require the enactment of legislation made subject to SO 230A;
- (c) to examine the provisions of any instrument that the Commonwealth has acceded to, or proposes to accede to, that imposes an obligation on the Commonwealth to give effect to the provisions of the instrument as part of the municipal law of Australia;
- (d) to review the form and content of the statute book;

- (e) to inquire into and report on any proposal to reform existing law that may be referred by the House or a Minister; and
 - (f) to consider and report on any Bill or other matter referred by the House or under SO 125A.
- 8.4 For a purpose relating to the performance of its functions, the Committee may consult with a like committee of a House of the Parliament of the Commonwealth, a state or a territory, and New Zealand and similarly, may participate in any conference or other meeting.

APPENDIX 3: SO 230A - GUIDELINES ON THE PRACTICE ON BILLS STANDING REFERRED

SO 230A - PRACTICE ON BILLS THAT MAY STAND REFERRED

Standing order 230A provides that uniform legislation is legislation that:

- (a) ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party; or
- (b) by reason of its subject matter, introduces a uniform scheme or uniform laws throughout the Commonwealth.

These notes are intended to provide further information on the practice regarding the standing referral of such bills to a committee pursuant to SO 230A.

National Competition Policy

National Competition Policy (**NCP**) has an impact on a wide range of legislation that comes before the House and the achievement of reforms under NCP are often linked to NCP payments. The broad application of SO 230A to bills reflecting NCP objectives would result in a significant volume of legislation standing referred. Therefore not all bills that reflect NCP have stood referred under SO 230A. In each case it is necessary to consider:

- (a) the manner in which NCP is reflected in the bill; and
- (b) whether or not the responsible Minister has identified the bill as a bill to which SO 230A may apply when introduced into the Council.

Bills that involve elements of NCP *have not stood referred* under SO 230A to a committee for inquiry where the changes have come about pursuant to a review required by NCP (for example, reviews of professional occupations and trade practices) rather than a separate or subsidiary agreement. One plank of the NCP reforms - the *Competition Policy Reform (WA) Act 1996* - gives effect to the general principles of national competition policy in the State.

Bills *have stood referred* if, although reflecting NCP, the changes being implemented are also required by a further separate agreement whether or not that agreement flows from NCP (for example, the impetus for road transport reforms stems from NCP but legislative changes are agreed in separate principles endorsed by ministerial councils).

Amendment bills

If uniform legislation has been implemented by a previous Act then bills that propose further amendments to that uniform legislation *have not stood referred unless* the particular bill implements additional uniform legislation. For example, the Home Owner Grant Bill 2000 which implemented uniform legislation stood referred pursuant to SO 230A but some subsequent amendment bills have not stood referred, even if identified by the Minister in the six-monthly audit.

It is worth noting that an intergovernmental agreement may lead to a number of distinct uniform schemes. If these schemes are addressed by separate legislation then the relevant 'amendment' bill may still fall within SO 230A.

Bills partially relating to uniform legislation

If a bill only partially relates to uniform legislation, the entire bill stands referred under SO 230A. When referred, the entire bill is open for inquiry and report - not just those parts relating to uniform legislation.

APPENDIX 4: STANDING ORDER 230A - AMENDMENTS

“Uniform legislation

- 230A. (1) This order applies to a Bill that —
- (a) ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party; or
 - (b) by reason of its subject matter, introduces a uniform scheme or uniform laws throughout the Commonwealth.
- (2) The second reading stage of a Bill is not to be resumed where SO 230(a) applies, ~~or commence where SO 230(b) applies,~~ within 30 days of the date of the ~~Bill's first reading adjournment (exclusive of that day)~~ or before it has been reported from a committee, whichever is the later.
- (3) Unless otherwise ordered, a Bill ~~when read a first time~~ stands referred to the Uniform Legislation and Statutes Review Committee at the conclusion of the second reading speech of the Minister or Member in charge.
- (4) The Uniform Legislation and Statutes Review Committee, or other committee, receiving a Bill under subclause (3) is to present its final report not later than ~~30 days of the day of the reference~~ the first sitting day following 42 days after the referral (exclusive of the referral day) or such other period as may be ordered by the House.
- (5) The policy of a Bill is not a matter for inquiry by a committee receiving it.²⁵

²⁵ Subclause 5 will be deleted if Recommendation 7 is agreed.