



FIRST SESSION OF THE THIRTY-SIXTH PARLIAMENT

REPORT OF THE

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

IN RELATION TO PROPOSALS —

- 1. TO ALTER THE MEMBERSHIP AND FUNCTIONS OF THE LEGISLATION COMMITTEE AND ESTABLISH A NEW STANDING COMMITTEE AS A CONSEQUENCE;**
- 2. TO REPEAL SO 72 AND SUBSTITUTE A NEW SO 72.**

Presented by Hon John Cowdell (Chairman)

Report 3
March 2002

STANDING COMMITTEE 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:

- 5.4 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.
- 5.5 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 of the Committee:

Hon John Cowdell MLC (Chairman)	Hon George Cash MLC (Deputy Chairman)
Hon Barry House MLC	Hon Simon O'Brien MLC
Hon Jon Ford MLC	Hon Murray Criddle MLC
Hon John Fischer MLC	Hon Kate Doust MLC
Hon Adele Farina MLC	Hon Robin Chapple MLC

In attendance:

L B Marquet, Clerk of the Legislative Council
Mia Betjeman, Principal Advisory Officer
Malcolm Peacock, Deputy Usher

1 THE LEGISLATION COMMITTEE

- 1.1 A significant change was made last year to the structure of the committee when the number of committees was reduced while at the same time increasing the number of members appointed to each committee. Currently, all Council committees have 7 members.
- 1.2 In most cases, functions of the former committees were redistributed among those newly-appointed. The Legislation Committee was given the scrutiny of bills enacting uniform legislation formerly the task of the Constitutional Affairs Committee. It was also handed a watching brief over the development of agreements between the State Government and other Australian governments where implementation of the agreements would necessitate complementary legislation being enacted by the legislatures of the jurisdictions involved.
- 1.3 It was anticipated that the increased membership of the Committee, from 5 to 7 members, would enable it to accommodate the increased workload without compromising its effectiveness. The projection took account of the number of bills that had been introduced as uniform legislation in the previous Parliament.
- 1.4 Last year, the number of bills referred as uniform legislation showed a marked increase. Offshore mining and the referral to the Commonwealth of the State's corporations power required the Committee, in each case, to consider 3 or 4 separate but interrelated bills. At the same time, the House had referred other legislation with reporting dates that imposed severe strain on the Committee members and its officers. The 2 electoral bills left the Committee with no choice but to delay consideration of other bills.
- 1.5 Independently of the issue of workload and associated time constraints, the Committee members had concluded that a "legislation" committee should deal with bills in the course of their passage through the House. Issues such as law reform and the formation of intergovernmental agreements that at some future time may require the enactment of uniform legislation were peripheral to the discharge of the Committee's primary function.
- 1.6 Having considered the functioning of the Legislation Committee over the past 9 months, this Committee recommends the establishment of a new Uniform Legislation and General Purposes Committee that will assume the roles of the Legislation Committee on uniform legislation, consider the implications for the State of international agreements that require the Commonwealth to enact domestic law, and report on various matters that the House refers particularly where the subject does not fit easily within the scope of the other committees.

Recommendation 1: That Schedule 1 of standing orders be amended as follows —

Clause 1 — Legislation Committee

§1.2 — delete “7” and substitute “5”;

[reduces membership to 5]

§1.3 — in ¶(a):

- insert after “bill” the words “or other matter”;

[states expressly that the House may refer a matter that is not a bill]

- delete ¶(b) – (d);

[removes uniform legislation, law reform and related matters from the Committee’s terms of reference so that it will deal with bills referred.]

§1.5 — delete the subclause.

[removes the power to monitor proposals that would require uniform legislation for their implementation]

New clause 7

Insert after clause 6 the following —

7. Uniform Legislation and General Purposes Committee

7.1 A Uniform Legislation and General Purposes Committee is established.

7.2 The Committee consists of 3 members with power in the Committee to co-opt 2 additional members for a specific purpose or inquiry.

[3 members reflects the former Constitutional Affairs Committee. The power to coopt allows flexibility in dealing with workloads and being able to use available expertise of other members.]

7.3 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;

[(a) and (b) are transferred from Legislation Committee without any change in wording]

(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;

[new provision arising from agreements with committees in other States that treaties and other international agreements that will lead to Commonwealth legislation and the effect on the States of such legislation should be reported on by parliamentary committees]

(d) to consider and report on any matter referred by the House.

- 7.4 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.

[the Committee's functions relate in large part to the interests of the States and their relationship to the Commonwealth. The Constitutional Affairs Committee was an active participant in conferences, seminars, and less formal exchanges among state parliamentary committees having similar functions. This provision recognizes existing practice.]

2. Standing order 230A is amended by deleting “Legislation Committee” and substituting “Uniform Legislation and General Purposes Committee”.

2 URGENCY MOTIONS — SO 72

- 2.1 To those unfamiliar with the traditional forms of parliamentary procedure, it must appear odd that the debate under SO 72 is on a motion for the adjournment of the House to a day and time on which it is not scheduled and which is never referred to by the speakers who devote themselves to arguing the merits of a matter that has no relationship to the proposition.
- 2.2 The Committee takes the view that the forms of the House should describe their purpose or intent and thus illuminate rather than confuse members and public alike. It is difficult to try and explain that the motion in its present form is no more than a procedural device that enables the House to consider a matter that might otherwise not receive the House's attention.
- 2.3 The Committee is recommending that the adjournment motion be discontinued and replaced by a motion that asks the House to consider the matter which is what is intended by the member.
- 2.4 The Committee has taken the opportunity to recast the rule incorporating previous alterations and break the text into subclauses.

Recommendation 2: That SO 72 be repealed and the following substituted —

72. Matter of urgency — procedure

- (1) This order applies to a sitting of the Council on a Tuesday.
- (2) An urgency motion must be delivered in writing to the President at least 2 hours before the time appointed for the Council to meet on that day. Only 1 motion under this order may be moved on a sitting day and where 2 or more notices are received, the President is to accept the first of them received that is otherwise in order.
- (3) Standing order 125 is modified to the extent that before calling for motions without notice, the President is to read the terms of the motion received under subclause (2).
- (4) If 4 or more members then rise in their places to indicate their agreement to the Council debating the motion, the member may move: That the Council consider, as a matter of urgency,
- (5) A debate under this order —
 - (a) cannot exceed 60 minutes, the mover having a maximum of 15 minutes and each subsequent speaker 10 minutes;
 - (b) cannot be adjourned; and
 - (c) no amendment may be offered to the motion.
- (6) The question lapses at the conclusion of the debate.