

41ST PARLIAMENT



Report 71

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

Gendered language in the Joint Standing Rules and Orders of the Legislative Council and Legislative Assembly

Presented by
Hon Alanna Clohesy MLC (Chair)
October 2023

Standing Committee on Procedure and Privileges

Members as at the time of this inquiry:

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Hon Martin Aldridge MLC (Deputy Chairman)

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1 Introduction

The Joint Standing Rules and Orders of the Legislative Council and Legislative Assembly

- 1.1 The Joint Standing Rules and Orders of the Legislative Council and Legislative Assembly are the rules agreed by both Houses concerning the procedures to be followed when Bills have passed each respective House. The rules include procedures stipulating the certification by clerks following a Bill's passage, the assent process, the numbering of Acts, and which Clerk shall be the Clerk of the Parliaments, or in their absence, upon whom this duty falls.
- 1.2 The joint rules were incorporated in the overall suite of proposed new Standing Rules and Orders adopted by the Legislative Council on 10 February 1891¹ and approved by the Governor on 13 February 1891.²
- 1.3 As noted by the Hon John Winthrop Hackett in moving for their adoption, the rules owed much of their formulation to the advice of a former South Australian Clerk, and the rules then in place in the South Australian Parliament:

... the Committee had been greatly assisted by the extremely kind advice of a gentleman whose name stood high in connection with Legislative bodies — Mr Blackmore. That gentleman had served in both Houses of the South Australian Legislature, and there was probably no one better qualified to give the advice the Committee needed in preparing these Standing Rules and Orders than that gentleman. The Committee had taken the South Australian Rules and Orders, and had embodied in them such of Mr Blackmore's suggestions as they thought advisable.
- 1.4 Since 1891, the joint rules and orders have rarely been amended.
- 1.5 Other than the procedures relating to Bills, observers of parliament will be most familiar with the proceedings relating to the joint sittings of the Legislative Council and Legislative Assembly. Generally, the joint rules have facilitated the Houses meeting together in the Council Chamber to elect a Senator to the Federal Parliament.
- 1.6 On 21 July 1903 the rules relating to the Election of a Senator to the Federal Parliament were adopted and incorporated into the joint rules by the Legislative Council and approved by the Governor on 25 July 1903. The rules were likewise adopted by the Legislative Assembly on 22 July 1903 and approved by the Governor on 25 July 1903.
- 1.7 Further minor amendments were made in 1930 and 1969, and on 10 June 1998, joint rules 1 and 2 relating to the appointment of standing committees and the constitution of committees were repealed.

¹ Legislative Council, *Parliamentary Debates (Hansard)*, 10 February 1891, p 212.

² A similar process was followed in the Legislative Assembly. The joint rules were adopted by the Legislative Assembly on 2 February 1891, and approved by the Governor on 5 February 1891. Each House having adopted the same joint rules approved by the Governor, there was no additional requirement, as is the modern practice, to transmit messages between the Houses seeking the concurrence of the other House on the formulation of the joint rules and orders.

2 Gender neutral language

Review of Standing Orders

- 2.1 Between 2009 and 2011 the Standing Committee on Procedure and Privileges (PPC) undertook a comprehensive review of the Standing Orders of the Legislative Council. Amongst the principles applied by the PPC in recommending amendments to the Standing Orders was the principle to ensure the use of 'gender neutral language'.
- 2.2 As a result of the ascension to the throne of King Charles III in September 2022, various documents of the Legislative Council were updated administratively to substitute references to "Her Majesty" with the gender neutral term "the Sovereign".
- 2.3 The PPC notes that two important working documents of the Legislative Council remain to be amended in accordance with gender neutral principles. Those documents are:
 - the Joint Standing Rules and Orders of the Legislative Council and Legislative Assembly (including the Joint Standing Rules and Orders relating to Bills and the Election of a Senator to the Federal Parliament); and
 - the Legislative Council prayer.
- 2.4 The PPC recommends the amendment of these two documents.

Recommendations

- 2.5 The Joint Standing Rules and Orders are jointly held by the Legislative Council and Legislative Assembly and can only be amended by and with the agreement of both Houses.
- 2.6 The PPC consulted with the Legislative Assembly Procedure and Privileges Committee and received correspondence indicating agreement with the suggested amendments, and a considerably proposed resolution facilitating the amendment of the joint rules.
- 2.7 The PPC thanks the Legislative Assembly Procedure and Privileges Committee for its consideration and agrees with the proposed resolution as set out in Recommendation 1 below.
- 2.8 The PPC therefore makes the following recommendations:

RECOMMENDATION 1

That the Legislative Council agree to the following resolution, and invites the Legislative Assembly to concur with the resolution:

That the Joint Standing Rules and Orders of the Legislative Council and Legislative Assembly (including the Joint Standing Rules and Orders relating to Bills and the Election of a Senator to the Federal Parliament) be amended by –

- (a) deleting the words "Her Majesty" wherever they appear and substituting the words "the Sovereign";
- (b) deleting the words "His Excellency" wherever they appear;
- (c) deleting the word "him" where it appears and substituting the word "them";
- (d) deleting the word "himself" where it appears and substituting the word "themselves";
- (e) deleting the word "his" where it appears and substituting the word "their"; and
- (f) deleting the date "19...." where it appears and substituting the date "20...."

RECOMMENDATION 2

That the Legislative Council prayer be amended as follows:

To delete "His Majesty" and insert:

the Sovereign

A handwritten signature in blue ink, reading "Alanna Clohesy". The signature is written in a cursive style with a large, looping 'y' at the end.

Hon Alanna Clohesy MLC
Chair

APPENDIX 1

CORRESPONDENCE FROM THE LEGISLATIVE ASSEMBLY PROCEDURE AND PRIVILEGES COMMITTEE

PROCEDURE AND PRIVILEGES COMMITTEE

Your ref: A1036787
Our ref: 2023-2

13 September 2023

Hon Alanna Clohesy MLC
President of the Legislative Council
Chair
Legislative Council Standing Committee on Procedure and Privileges
Parliament House
West Perth WA 6005



Dear President

Gendered language in the Joint Standing Rules and Orders

I refer to your correspondence dated 2 August 2023 and my initial reply on 10 August 2023. The Legislative Assembly's Procedure and Privileges Committee (LA PPC) considered your correspondence at its meeting on 31 August 2023.

The LA PPC endorsed your suggestion of transitioning towards gender-neutral language within Parliament's Joint Standing Rules and Orders, and has approved a draft resolution (Draft Resolution), which is attached for your consideration.

If the Draft Resolution meets with the approval of the Legislative Council's Procedure and Privileges Committee, then I suggest the way forward may be for the Legislative Council to pass the Draft Resolution and transmit a message to the Legislative Assembly seeking the concurrence of the Legislative Assembly.

Alternatively, the Legislative Assembly could initiate the process if a message was not forthcoming from the Legislative Council, I suggest by 9 November 2023.

If the above is agreeable, a joint meeting between the two Committees may not be necessary.

I look forward to your response.

Yours sincerely

A handwritten signature in blue ink that reads "Michelle Roberts".

HON MICHELLE H. ROBERTS, MLA
CHAIR

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Draft resolution

DRAFT RESOLUTION

That the Joint Standing Rules and Orders of the Legislative Council and Legislative Assembly (including the Joint Standing Rules and Orders relating to Bills and the Election of a Senator to the Federal Parliament) be amended by –

- (a) deleting the words “Her Majesty” wherever they appear and substituting the words “the Sovereign”;
- (b) deleting the words “His Excellency” wherever they appear;
- (c) deleting the word “him” where it appears and substituting the word “them”;
- (d) deleting the word “himself” where it appears and substituting the word “themselves”;
- (e) deleting the word “his” where it appears and substituting the word “their”; and
- (f) deleting the date “19.....” where it appears and substituting the date “20.....”

APPENDIX 2

PROPOSED SCHEDULE 2: JOINT STANDING RULES AND ORDERS

Schedule 2: Joint Standing Rules and Orders of the Legislative Council and Legislative Assembly

STANDING COMMITTEES

1. Appointment of standing committees

Repealed by Resolution of the House 10 June 1998

JOINT COMMITTEES

2. Constitution of committees

Repealed by Resolution of the House 10 June 1998

BILLS³

3. Bills fair printed when passed

Every Bill shall be fair printed immediately after it shall have been passed in the House in which it originated, and the Clerk of the House in which the Bill shall have passed shall certify the passing thereof on such fair print, together with the day upon which the Bill did pass.

4. Bill printed on vellum⁴

When such Bill shall have passed both Houses of the Legislature, it shall be fair printed by the Government Printer, who shall

³ For Joint Standing Rules and Orders relating to Private Bills see the 1969 volume of the Legislative Council Standing Orders.

⁴ Amended, Votes and Proceedings 6 November 1930, p. 131.

furnish 3 fair prints thereof on vellum or other suitable material to the Clerk of the Parliaments.

5. Bills to be authenticated

Such 3 fair prints of each Bill shall be duly authenticated by the Clerk of the Parliaments.

6. Bills presented to Governor by Clerk of Parliaments

The 3 fair prints of all Bills, except the Appropriation Bill, shall, when passed, be presented to ~~His Excellency~~ the Governor for ~~Her Majesty's~~ the Sovereign's assent, by the Clerk of the Parliaments.

7. Disposal of Bills⁵

When ~~His Excellency~~ the Governor shall have assented in the name of ~~Her Majesty~~ the Sovereign to any Bill, one of the fair prints thereof, on vellum, or other suitable material, shall be deposited by the Clerk of the Parliaments in the Registry of the Supreme Court, another shall be delivered to the Private Secretary of ~~His Excellency~~ the Governor for transmission to ~~Her Majesty's~~ the Sovereign's Principal Secretary of State for the Colonies, and the third shall be registered and retained in the office of the Chief Secretary.

8. Title to set forth objects of Bill

The Title of every Bill shall succinctly set forth the general objects thereof.

⁵ Amended, Votes and Proceedings 6 November 1930, p. 131.

9. Numbering of Acts⁶

All public Acts assented to on behalf of ~~Her Majesty~~ the Sovereign, and all public Bills reserved for the signification of ~~Her Majesty's~~ the Sovereign's pleasure, shall be numbered by the Clerk of the Parliaments immediately before the Title, and shall have the date of such assent or reservation following the words "assented to" or "reserved" (as the case may be) immediately after the Title, commencing a new series of numbers in each calendar year.

10. Clerk of the Parliaments

The Clerk of the Legislative Council shall be Clerk of the Parliaments.

11. In case of absence of Clerk of the Parliaments

In case of the unavoidable absence or illness of the Clerk of the Parliaments, the duties imposed upon ~~him~~ them by these rules shall be performed by the Clerk of the Legislative Assembly.

12. Clerical Errors

Upon the discovery of any clerical error in any Bills which shall have passed both Houses of Parliament, and before the same be presented to ~~His Excellency~~ the Governor for the Royal Assent, the Clerk of the Parliaments shall report the same to the House in which the Bill originated, which House may deal with the same as with other amendments.

13. Interpretation

In any Joint Standing Rules and Orders of the Legislative Council and Legislative Assembly, the words "in writing" or "written" shall be deemed to mean and include either written or printed, or partly written and partly printed.⁷

⁶ Amended, Votes and Proceedings 30 September 1969, p. 199.

⁷ The aforementioned Joint Standing Rules and Orders were adopted by the Legislative Council on 10 February 1891 and were approved by ~~His Excellency~~ the Governor on 13 February 1891.

ELECTION OF A SENATOR TO THE FEDERAL PARLIAMENT⁸

1. Whenever Parliament has been informed by Message from **His Excellency** the Governor that the place of a Senator for the State of Western Australia has become vacant under section 15 of the *Commonwealth of Australia Constitution Act*, a motion shall be made that the President and Speaker do fix a day and place whereon and whereat the Council and Assembly, sitting and voting together, may choose a person to hold the place of the Senator whose place has become vacant as aforesaid. Such day shall be not more than 14 days after the date of such motion.
2. The President and Speaker shall, as soon as practicable, inform the Council and Assembly respectively of the date and place so fixed.
3. At the date and place so fixed the Members of the Council and Assembly shall sit together and proceed to the election of a Senator.

At such sitting the President of the Council, or, in **his** **their** absence, the Speaker of the Assembly, shall preside.
4. On any debate arising, the same shall be conducted according to the standing orders and practice of the Legislative Assembly. On all points of order the ruling of the President shall be absolute and final.
5. At such meeting the following regulations shall be observed:
 - (a) A Member, addressing **himself** **themselves** to the President, shall propose a person to hold the vacant place in the Senate, and shall state that such person is willing to act if chosen.

⁸ Adopted by the Legislative Council on 21 July 1903 and approved by **His Excellency** the Governor on 25 July 1903.

- (b) If only one person be proposed and seconded, the President shall declare: "*That has been chosen to hold the vacant place in the Senate.*".
- (c) If more than one person be proposed and seconded, the person to hold the vacant place shall be chosen by ballot.
- (d) No person shall be proposed after the President has given directions to proceed with the first ballot.
- (e) When the President has directed the first ballot to proceed, each Member present shall be provided with a ballot paper, certified by the Clerks of the two Houses, and shall write thereon the name of one of the persons duly proposed, and shall place the paper in ballot box.
- (f) The President shall appoint a Member of each House to be scrutineers, who, with the Clerks of the two Houses, shall ascertain the number of votes for each candidate.
- (g) If any candidate shall have an absolute majority of the votes of the whole number of Members voting, the President shall forthwith declare such candidate elected.
- (h) If on the first ballot no candidate shall have received an absolute majority of such votes, a second ballot shall be taken; but the name of the candidate who shall have received the fewest votes at the first ballot shall be excluded.
- (i) Until one of the candidates obtains an absolute majority of such votes, successive ballots shall be taken, and at each ballot the name of the candidate who shall have received the fewest votes at the preceding ballot shall be excluded.
- (j) If on any ballot it shall be necessary to decide between two or more candidates as to which is to be excluded from a subsequent ballot through the number of votes for such candidates being equal, a special ballot shall be taken, and the name of the candidate having the smaller number of

votes at such special ballot shall be excluded from the subsequent ballot.

- (k) As soon as any candidate obtains an absolute majority of the votes of the Members voting, the President shall declare such candidate to be elected, and shall forthwith sign a certificate addressed to ~~His Excellency~~ the Governor in the following form:

With reference to your Excellency's Message to Parliament enclosing copy of a notification from ~~His Excellency~~ the Governor-General or the Honourable the President of the Senate of the Commonwealth, as the case may be, that a vacancy had happened in the representation of Western Australia in the Senate of the Commonwealth, I do myself the honour to inform you that at a joint sitting of the House of Parliament of the State of Western Australia, held at Perth on the day of, 19 20..... the Members of such Houses sitting and voting together, in pursuance of Section 15 of "The Commonwealth of Australia Constitution Act," did choose (name in full, occupation, and address) to hold the place vacated by

- (l) The President shall in all cases be entitled to vote.
- (m) The records of the proceedings and ballot papers shall be retained by the Clerk of the Parliaments of the State of Western Australia, who shall be the custodian thereof.
6. After the joint sitting the President of the Council and Speaker of the Assembly shall inform the Council and Assembly respectively of the result thereof, and the same shall be recorded.

Standing Committee on Procedure and Privileges

Date first appointed:

24 May 2001

Terms of Reference:

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

'1. Procedure and Privileges Committee

- 1.1 *A Procedure and Privileges Committee is established.*
- 1.2 The Committee consists of 5 Members, including the President and the Chair of Committees, and any Members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chair, and the Chair of Committees is the Deputy Chair, of the Committee.
- 1.3 With any necessary modifications, Standing Order 163 applies to a co-opted Member.
- 1.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the Council and its Committees, and recommend to the Council 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 Council or its Committees.'



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