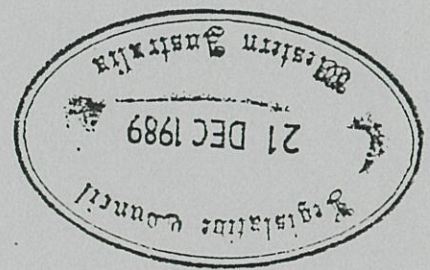


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REPORT OF THE  
  
STANDING ORDERS COMMITTEE  
  
on  
  
CHAPTER XXI – BILLS



Western Australia  
Legislative Council

**REPORT OF THE**  
**STANDING ORDERS COMMITTEE**  
**on**  
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December 1989

## STANDING ORDERS COMMITTEE

Report on Order of Reference Wednesday September 27 1989

### Standing Orders, Chapter XXI – Bills

#### 1. Reference

On motion of the Leader of the House, the House referred to the committee proposed new standing orders intended to replace those now in force relating to the introduction and passage of bills. The proposed rules would replace existing SO's 222 – 267.

The committee was granted an extension of time within which to report on November 23 and met on 2 occasions to discuss the proposals.

#### 2. General observations

Before commenting on each of the proposals, the committee takes this opportunity to restate the time-honored intention underlying the various stages through which proposed laws are put, viz, to ensure that the passage of legislation allows for time to reflect on what has been done at the previous stage and, where necessary or desirable, enable changes to be made in accordance with Parliament's wishes.

The committee approached the proposals from the viewpoint that changes should not interfere with the overall balance that the various stages of passage create.

The committee will deal with the proposals *seriatim*:

#### 3. Proposed SO 222

##### Private Bills

**222. The joint standing rules and orders relating to private bills\* are suspended.**

*[\*see 1969 print of Standing Orders of Council]*

##### *Comment:*

The committee understands that this proposal stems from the fact that private legislation is rarely brought forward and past indications from the Legislative Assembly's Standing Orders Committee that consideration be given to repealing the joint rules governing the introduction and passing of private bills last printed in the 1969 reprint of standing orders.

The extension of the state, particularly in the course of this century, has done away with the need for private legislation in many areas such as utility undertakings, banking, divorce and adoption. Nevertheless, the committee is not persuaded that private legislation is totally outmoded. In some cases, it may yet supply a citizen with an avenue of redress when all else fails. It should be remembered that private Acts are the product of this Parliament's inherited judicial powers; private legislation is dealt with as a trial (if the subject matter is contested) and the decision is handed down in the form of an enactment.

The committee agrees that the current rules are unduly complex to a bill's promoter and need review, but it is not convinced that it is a burden on Parliament to retain this species of legislation.

*Recommendation:*

That the proposal be rejected.

4. Proposed SO 223

(a) Subclause (1)

**Introduction and first reading**

223. (1) Bills originating in the Council may be introduced at any time, but not so as to interrupt any proceeding, by the Minister or member having charge of it moving *That a bill for an Act [long title] be introduced and read a first time.*

*Comment:*

Standing Order 223 now provides 2 methods of originating bills in the Council. First by giving notice of motion for leave to "bring in" the bill and, secondly, by motion to appoint a committee of at least 2 members to "prepare and bring in" a bill. Invariably, bills are introduced by leave after notice. There seems little point in providing for an alternative that has fallen into disuse.

The routine of business prescribed by SO 115 makes specific provision for the giving of notices for leave to introduce a bill. The motion is then dealt with on the next sitting day at the appropriate time. The committee believes that SO's 224–226, and 229 reinforce the importance of specifying the [long] Title in the notice and the fact that notice is required.

The committee does not support the abolition of the notice requirement in the proposal but sees no reason to oppose the introduction of bills at some time during the next day's proceedings.

*Recommendation:*

That the proposed subclause (1) be adopted in the following form (words added double underlined):

**Introduction and first reading**

223. (1) Bills originating in the Council may be introduced at any time by motion after notice, but not so as to interrupt any proceeding, by the Minister or member having charge of it moving *That a bill for an Act [long title] be introduced and read a first time.*

(b) Subclause (2)

(2) Bills originating in the Assembly are introduced by message.

*Comment:*

This subclause retains the current provision without change.

*Recommendation:*

That subclause (2) be adopted.

## (c) Subclause (3)

- (3) After introduction, the question for the first reading of a bill shall be put and decided without amendment or debate.

*Comment:*

This subclause retains the current provision except that it does away with the ability to debate the first reading of a money bill, ie "a bill that the Council may not amend". The committee makes the point that the reason for the House's ability to debate money bills stems from the fact that, being unable to amend it, it is not unreasonable for members to express grievances before agreeing to consider a bill requiring their assent. Before the recent introduction of the *Appropriation (Consolidated Revenue Fund) Bill 1989*, the committee was on the verge of saying that the provision was little used, or not used at all. However, the extensive first reading debate on that bill caused the committee to reconsider its inclination to agree to the abolition of the first reading debate. Bearing in mind that changes could be made to the duration of sessions within the life of a parliament and a consequent need to find a vehicle to substitute for the wide-ranging nature of the address in reply debate, the committee believes that a first reading debate on the first *Supply Bill* for the year would most likely fill the need.

*Recommendation:*

That subclause (3) be adopted in the following form (committee's amendment shown with double underline):

- (3) After introduction, the question for the first reading of a bill shall be put and decided without amendment or debate except where the bill is one which the Council may not amend in which case the question may be debated.

## (d) Subclause (4)

- (4) Copies of the bill may be distributed to members and otherwise published after the first reading.

*Comment:*

At present, copies of a bill originating in the Council are not released until motion for the second reading is made. Assembly bills, by contrast, are distributed either before or at the time that the message is read. Given that a bill, once introduced, is in the possession of the House, it seems illogical to delay distributing copies until the second reading. The proposal also removes the distinction drawn between Council and Assembly bills.

*Recommendation:*

That subclause (4) be adopted.

## (e) Subclause (5)

- (5) Each clause in a bill must relate to the title as it was given on introduction.

*Comment:*

This is a restatement of SO 226.

*Recommendation:*

That subclause (5) be adopted.

## 5. Proposed SO 224

### Temporary Laws

224. A bill providing for a temporary law shall state clearly, in a separate clause, the date on which the law is to expire.

*Comment:*

Existing SO 227 requires that a temporary law state the duration of that law in a clause at the end of the bill. This requirement mirrors English drafting format which is not followed in this State. The committee agrees that the principle should be maintained but the expiry provision should appear in the bill following parliamentary style.

*Recommendation:*

That the proposal be adopted.

## 6. Proposed SO 225

### Readings required

225. (1) Unless otherwise ordered, a bill shall be given a first, second and third reading and in each case the short title only shall be read.
- (2) A motion for any reading of a bill does not require seconding.

*Comment:*

At first blush, this is a curious provision in that it appears to be stating the obvious. However, the provision goes further than that. Attention is drawn to the introductory words "Unless otherwise ordered". The committee was told, and the committee accepts, that in the event that a standing committee system is introduced and operated successfully, it may well be that the House may wish to dispense with one or more of the readings/stages and, for example, vote on the question "That the bill do now pass".

The committee sees no harm in prospective flexibility given that it is for the House to make the decision on the merits of the circumstances as they arise.

The proposal also states that the *short* title is to be read as opposed to the title. Again, the committee has no complaint with this.

Finally, subclause (2) abolishes the need for seconding a reading. Modern usage has retreated from undue formality. While it may be argued that seconding is more than simple form, the fate of a bill is not determined by whether or not it is formally seconded but by a vote on whether it should proceed to the next stage or, finally, pass. The committee wishes it to be understood that it does not support the demise of seconding on the basis that the existence of political parties has rendered the requirement obsolete or redundant. Abolition of seconding favors Independents rather than party members.

*Recommendation:*

That the proposed standing order be adopted.

## 7. Proposed SO 226

### Cognate debates

- 226 By leave, interrelated bills may be debated cognately at 1 or more stages.

*Comment:*

Current rules (SO 231) provide for a cognate debate at the second reading stage only. The proposal seeks to extend cognate debates to any or all stages including committee of the whole. The committee sees merit in the proposal provided leave is obtained either when the bills are introduced or at a later stage of passage.

*Recommendation:*

That the proposed standing order be adopted.

## 8. Proposed SO 227

## Second reading

227. (1) After the first reading motion may be made—
- (a) *"That the bill be now read a second time"* and the speech of the minister or member in charge given. At the conclusion of that speech the debate is thereupon adjourned without question put. Resumption of the debate is an order of the day for the next sitting; or
  - (b) that the second reading be made an order of the day for the next sitting.
- (2) Where, in the case of a Bill received from the Assembly, the minister or member having charge of the Bill moves *"That the Bill be now read a second time"* it is in order to table a copy of the speech if it is the same in all substantive respects as that delivered in the Assembly. A speech so tabled is deemed to have been delivered orally.

*Comment:*

Apart from the intention to treat bills, whatever their House of origin, in the same way the proposal makes no substantive change except for that in subclause (2). The committee can readily understand why this provision has found its way into the proposals. There are times when the House would be very content to see the speech read into the record and proceed with other, more pressing or interesting business. However, the committee opposes the idea of recognizing or entrenching a procedure that may commend itself to the House on some occasions but which, essentially, cuts across the concept of the separateness of the 2 Houses. No matter how wearisome or boring or turgid second reading speeches may be, the principle remains that what is said in one place is not noticed, officially, in the other.

*Recommendation:*

The committee recommends that subclause (1) be adopted and that subclause (2) be rejected.

## 9. Proposed SO 228

## Amendments

228. (1) An amendment to the question for the second reading which, if passed, delays resolution of that question by deleting *"now"* and adding *"this day 6 months"* disposes of the bill.
- (2) An amendment is in order that—
- (a) does not have the effect of delaying the second reading by making it depend on the happening of a certain event; and

- (b) confines itself to an expression of opinion on a matter related to the content of the bill, or its intended administration or application, or is otherwise relevant to the bill.

*Comment:*

Although subclause (1) retains current usage (SO 237) it seems to the committee that the device of substituting 1 set of words for another on the basis that the substitution somehow magically means that the House will not be sitting 6 months later is a fiction that can be dropped. The House has to determine whether or not it will give a bill a second reading; delaying the question 6 months, 12 months or however long it may be does not avoid the issue.

Subclause (2) retains the right of the House to add a reasoned amendment (SO 238) to the question for the second reading. Such an amendment, as the proposal provides, does not delay the agreement to the second reading, but it does permit the House to ventilate its views about the bill or the Government or the need for something to happen without affecting the passage of the bill.

The proposal also does away with the ability to move the *previous question* on the second reading (*cf Chapter XVIII*). This form of closure has fallen into disuse mainly because its effects are difficult to appreciate. The primary advantage of the previous question is that it enables the House to dispose of business without having to express an opinion on it by a resolution. The committee has no strong views on whether or not the previous question should be abolished either in this case or generally.

*Recommendation:*

That subclause (1) be rejected and subclause (2) be adopted.

10. Proposed SO 229

Effect of defeating second reading

229. Notwithstanding any custom, usage or rule to the contrary, where the question for the second reading is negatived, the bill is disposed of.

*Comment:*

The committee was told that this provision has been inserted to put a matter beyond doubt. The question is put in the form that the bill be *now* read a second time. Strictly speaking, the form of the motion means that defeat on 1 day does mean that it cannot be proposed at a future time. Clearly, such an interpretation conflicts with the commonly accepted belief that defeat means defeat of the bill for all time.

*Recommendation:*

That the proposed standing order be adopted in the following form:

229. Notwithstanding any custom, usage or rule to the contrary, the bill is disposed of where the question for the second reading is negatived.

11. Proposed SO's 230, 231

Dispensing with committee of whole

230. By leave, the House may immediately proceed to the third reading after the second reading.



### Committal

231. Except as provided in order 230, a bill stands referred to a committee of the whole after its second reading.

#### *Comment:*

The committee is not persuaded that there is good reason for adopting this proposal despite its immediate attraction. The committee's objections are based on the guiding principle that time must elapse between the various stages. Moreover, while it may be that such a provision will become desirable as the House learns to deal with bills reported from a standing committee and the consequent expected diminution for the need to go into a committee of the whole on such bills, the committee believes that it would be premature to recommend adoption. While it may be argued that leave is required to activate the short cut, it should be remembered that leave is confined to the members present in the chamber at any time. Thus, it would still be possible for a minority of members to prevail by the granting of leave.

#### *Recommendation:*

That the proposal in SO 230 be rejected and that proposed SO 231 be amended to read:

### Committal

231. A bill stands referred to a committee of the whole after its second reading.

### 12. Proposed SO 232

#### Procedure in committee

232. (1) Unless the committee otherwise determines, or grants leave to consider the bill as a whole, a bill is considered as follows:
- (a) clauses as printed;
  - (b) postponed clauses;
  - (c) new clauses\*;  
\*[but see subcl (4)]
  - (d) schedules as printed and new schedules;
  - (e) preamble (if any);
  - (f) title.
- (2) Where a clause is amended, and subject to order 233(2), consequential amendments may be made to a clause already agreed to.
- (3) Intervening clauses on which no discussion is sought may be disposed of by putting a question "*That clauses ... stand as printed*".
- (4) Where it is proposed to delete a clause in order to insert a new clause, the question for the adoption of the new clause may be put immediately following that deletion.
- (5) If a clause is amended, a further question shall be put "*That the clause stand as amended*" but a clause may be postponed at any time prior to that question being put..

*Comment:*

The proposal restates the current position except for subclause (4). An amendment often appears on the notice paper *to delete the clause* which is the means whereby a member signifies his/her opposition to the clause. The actual procedure is to vote against the clause, not move the amendment as it is printed. The result is that where it is proposed to delete the clause so as to insert a new clause, the question for the insertion is deferred until all the clauses (including those postponed) as printed in the bill, have been dealt with. The committee agrees that this procedure is disjointed and can lead to confusion. It therefore supports the immediate substitution of a new clause for the one defeated.

*Recommendation:*

That the proposal be adopted.

**13. Proposed SO's 233-239****Amendments**

233. (1) Subject to standing orders, an amendment, otherwise relevant to the subject matter of the bill, may be made to any part of the bill.
- (2) In the same committee, no new clause or other amendment shall be proposed that is substantially the same as one already negated or that is inconsistent with a previous decision of the same committee.
- (3) Where an amendment is made that falls outside the title, the title shall be amended accordingly and reported specially to the House.

**House not to note committee proceedings until reported**

234. The proceedings of any select or standing committee or of a committee of the whole on a bill shall not be noticed by the Council until they are reported.

**Recommittal**

235. (1) A motion to recommit may be moved at any time after presentation of the committee's report and prior to the question being put for the third reading and that motion shall supersede any question then before the House in relation to the bill.
- (2) A motion for recommitment shall state the reasons.
- (3) On a recommitment of a bill the procedure shall be the same as that applied in the original committee.

**Progress**

236. At any time before consideration of a bill is completed and when so directed by resolution of a committee or by operation of any order or rule, the Chairman shall report to the House that progress has been made and seek leave to sit again.

**Final report**

237. When a committee's consideration of a bill is completed, the Chairman shall report to the House and state whether or not the bill has been amended.

**Adoption of report**

238. (1) The report on an unamended bill may be adopted on presentation.
- (2) Except by leave, consideration and adoption of the report on an amended bill shall be made an order of the day for a future sitting and the bill, incorporating the amendments, shall be printed meantime.
- (3) Subclauses (1) and (2) apply to the adoption of a report following a recommittal.

**Third reading**

239. (1) Subject to subclause (2), when the report on a bill is finally adopted, the question shall be put "*That the bill be now read a third time*" either then or at a future sitting.
- (2) Except to recommit the bill, no amendment to the motion for the third reading may be made.
- (3) After the third reading a bill has passed and no further question may be put in relation to it.

*Recommendation:*

Except that the President is required to state before putting the question on the third reading that the bill he holds is certified by the chairman as being a fair print of the bill as reported, the proposed orders do not alter current rules. There are times, particularly towards the end of a session when it could be said that the bill provided is not quite what it purports to be. The committee recommends their adoption.

**14. Proposed SO 240****Certificate, etc after third reading**

240. (1) The Clerk shall endorse bills originating in and passed by the House to that effect and arrange for their transmission by message to the Assembly.
- (2) A bill originating in the Assembly that fails to pass the Council shall be returned with a message to that effect.
- (3) Amendments of a formal nature and typographical or clerical errors in a bill may be made by the Clerk.

*Comment:*

This proposal is no different from the rules now in force except that the authority conferred on the Clerk to make the amendments described in subclause (3) is formalized. The committee agrees that the rules should recognize longstanding usage.

*Recommendation:*

That the proposal be adopted.