

Western Australia

LEGISLATIVE COUNCIL

Standing Orders Committee

RECOMMENDATIONS

1. That the Council adopt the proposed rules set out in this report in place of Chapter XII (Petitions), Chapter XIV (Questions) and SO 117 (business after 11 pm);
2. That the new rules supersede the said Chapters and standing order for the duration of the second session of this Parliament.

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Western Australia

LEGISLATIVE COUNCIL

Standing Orders Committee

Report on the revision of standing orders

1. Introduction

1.1 - At its meeting on March 29 1983, your committee resolved to carry out a major revision of the Council's standing orders on a subject-by-subject basis. A major revision has not been undertaken since 1907 and, regrettably, the reasons for the changes recommended by the then Standing Orders Committee are not available.

1.2 - This report deals with the first 3 subjects considered under the revision and, for reasons stated in para 2.5 of this report, it is recommended that the proposed rules be adopted on a trial basis for the duration of a session before they are incorporated in standing orders.

2. Rationale for revision of standing orders

2.1 - Any organisation of human beings devises rules for the orderly and efficient conduct and despatch of its business. More often than not, such rules are committed to writing and their alteration or repeal made subject to defined procedures intended to discourage hasty or ill-considered change that might otherwise be made to the organisation's detriment. Written rules are subject to "reinterpretation" in the light of changing circumstances and, if not revised periodically, such rules may have little or no bearing on the proceedings they are deemed to govern.

The extreme position is where custom and practise supersede the rule which is ignored entirely.

- 2.2 - In the course of transacting the Council's business, resort may be had to statute and common law, standing orders, rulings from the Chair, and conventions. The primary source of procedure is standing orders and your committee submits that every effort should be made to ensure that they reflect accurately the needs and requirements of the House, i.e., they should not be impediments to the efficient conduct of the Council's business by reason of age, misuse or neglect.
- 2.3 - So too, standing orders should be clear, precise and unambiguous in their meaning and flexible in their approach. Standing orders do not "codify" the Council's proceedings and an attempted codification would be unwise if only because it would tend to stultify procedure and deny the very necessary element of flexibility. It follows that throughout this revision no attempt will be made to include every procedure or practise in the resulting redrafts. Your committee sees a need to reduce the number of standing orders and recommend the removal of those that have ceased to have any useful bearing on the work of the House.
- 2.4 - Conversely, your committee will recommend the adoption of new procedure designed to exploit available time efficiently but not at the expense of the minority.

2.5 - It is for this reason that your committee recommends that the proposed rules be adopted by sessional order thereby overriding the current rules for so long as the sessional order remains in force. The effectiveness of the new rules may be gauged in the course of a session and "fine-tuning" done (if required) before final incorporation into standing orders.

2.6 - The following parts of this report explain the recommended changes to standing orders governing questions, new business, and petitions.

3. Questions seeking information - SO's 153-157

3.1 - The basis of a parliamentary question is to elicit information from a minister of the crown or a non-official member relating to matters falling within the minister's/ member's official or parliamentary duties or responsibilities. Rules governing the manner, form, and content of a question and its answer should be designed in such a way as to maintain the twin concepts of responsibility and the provision of information.

3.2 - Standing Order 153 allows two types of question, viz, one on notice and one without notice. Each is answered orally in the House and both are subject to the same rules governing content (SO 154).

3.3 - Your committee considered a number of options, including retention of the current system, but it has taken the view that the abolition of oral notice and an oral reply, while it does not affect or impair a member's right to ask questions, would save time, given the large number of questions now being asked in the course of a session.

It should be pointed out that parliamentary questions are ancillary to the performance of a member's functions and should not be seen as an end in themselves.

Your committee will now discuss the proposed standing orders seriatim and compare them, where relevant, with the existing rules.

3.4 - 14.1 Questions to ministers and members

14.1.1 - Questions may be put to:

- (a) a minister relating to public affairs with which he is connected, to proceedings in the Council, or to any matter of administration for which he is responsible;
- (b) a member except the President relating to any Bill, motion, or other public matter connected with the business of the Council of which the member has charge.

3.5 - No substantive change is proposed, but the rule has been recast to reflect more accurately the ambit of questions; "public affairs" is not an exhaustive expression and it is better to spell out the areas to which questions are intended to relate. So too, questions to non-official members should be tied to the Council's business of which the member has charge, rather than the more restrictive "business on the Notice Paper" which, for example, would preclude questions to committee chairmen.

3.6 - Your committee discussed whether questions should be addressed to the President but concluded unanimously that the present practice of private approach should be retained. Given the exception in 14.1.1(b), it is unnecessary to retain the more expansive prohibition in SO 154.

3.7 - 14.2 - Notice required

14.2.1 - Except as provided in SO 14.4, written notice of any question signed by or on behalf of the member giving notice shall be delivered to the Clerk's Office not later than one hour before the sitting of the House.

This proposal represents a marked departure from the current situation which requires oral notice of a question and an oral answer. Abolition of the oral notice/answer procedure does not violate the purpose of asking a parliamentary question or restrict a member's rights to ask such a question. On the other hand, the procedure occupies more and more time for no real advantage or benefit; time which could be used better on other items of business.

3.8 - 14.2.2 - Each notice shall be placed on the Notice Paper or a Supplementary Notice Paper in the order in which it was received by the Clerk's Office.

This preserves the current rule except provision is made for the use of supplementary notice papers.

The Clerk of the Council has told your committee that with the imminent introduction of word processors, in-house production of the notice papers is feasible and at less cost than currently is the case.

A specimen of a supplementary notice paper is appended to this report.

3.9 - 14.3 - Answers

14.3.1 - A written answer is given by delivering it to the Clerk's Office which shall supply a copy to the member who asked the question to which it relates.

This ensures that the member asking a question receives the reply before its publication.

3.10 - 14.3.2 - Questions and the written answers shall be printed in the Notice Paper or in a Supplementary Notice Paper.

Questions, according to date order, will remain on a supplementary notice paper until an answer is supplied.

Once published, the question and answer will be removed.

3.11 - 14.3.3 - Answers shall be concise, relevant, and free from argument or controversial matter.

Your committee has taken the opportunity to include this rule. Questions and answers are not vehicles for debate but the furnishing of information. Other avenues for debating the content of questions and answers are readily available and it is primarily for this reason that this rule has been included in place of SO 155.

3.12 - 14.4 - Oral questions without notice

14.4.1 - A member may ask an oral question without notice and the minister or member concerned, if it is one that in his opinion should be answered immediately, may thereupon answer the question and, if not, request that it be placed on the Notice Paper for written answer.

The oral question without notice is retained and the practise of giving notice, where a question is now answerable on the spot, formalised. Your committee decided against converting the Chair's ruling relating to questions without notice being directed to Council ministers representing a minister in the Assembly into a rule.

The practise of giving informal notice is well-known and is more a matter of courtesy than substantive law.

3.13 - 14.4.2 - The Leader of the House may terminate oral

questions on any sitting day by requesting the

President to proceed to the next item of business.

Your committee believes that a time limit on oral questions should be implemented but felt that the discretion should vest with the Leader of the House rather than the President. Similar rules are found in other Houses and it is submitted that such a provision would not be unduly restrictive of members' rights.

3.14 - 14.5 - Rules governing questions

14.5.1 - Questions shall be concise and not contain:

- (a) statement of facts and names of persons if they are predominantly descriptive and their omission does not affect the sense or render the question unintelligible;
- (b)
 - (i) arguments;
 - (ii) inferences;
 - (iii) imputations;
 - (iv) unnecessary epithets;
 - (v) ironical expressions;
 - (vi) hypothetical matter;
- (c) discreditable references to either House or its members, or any offensive or unparliamentary expression.

Paragraph (a) is a restatement of SO 154(a) and it is hoped that by recasting its language its purport becomes clearer. The authentication requirement has not been used and your committee believes that it can be dropped, the presumption being that a member would not ask a question based on names or facts that are fanciful or deliberately misleading. Authentication has never been interpreted as a warranty that the statement of fact or the names used are unimpeachable but rather that the source of the member's information does exist and is reproduced accurately.

Paragraph (b) restates SO 154(b)-(g), and paragraph (c), although new, expands on the provision of SO 154 "The President may direct that the language of a question be changed if it seems to him unbecoming or not in conformity with the Standing Orders.

3.15 - 14.5.2 - Questions shall not.

- (a) seek an expression of opinion or a legal opinion;
- (b) quote or refer to speeches made in either House during the same session, or proceedings of a committee not reported to the Council;
- (c) refer to a case pending adjudication in a court of law;
- (d) anticipate discussion of an order of the day.

Paragraph (a) retains the current rules.

Paragraphs (b) and (d) restate existing rules, and paragraph (c) introduces the sub judice rule.

"Pending adjudication" in a criminal matter commences with the laying of a charge or indictment and, in civil cases, from the time a writ or other document commencing proceedings is issued.

3.16 - 14.5.3 - The President may disallow any question that is the same in substance as one already answered, disallowed or to which an answer has been refused in the same session.

The provision is self-explanatory.

3.17 - Your committee believes that the proposals will result in a more efficient and informative use of questions in the Council and recommends their adoption.

4. Business after 11 p.m. - SO 117

- 4.1 - Your committee has taken this early opportunity to redraft SO 117 so as to make clear what business may be transacted, as of right, after 11 p.m.
- 4.2 - Whether strictly within the current rule or not, the business described in paragraphs (c) and (d) has been accepted as properly dealt with after 11 p.m.
- 4.3 - The reason for the inclusion of (d) is that it could reasonably be argued that at the conclusion of business after 11 p.m., the Council stands adjourned without the need for a motion to adjourn being moved.
- 4.4 - Your committee recommends the adoption of the following rule in place of SO 117.

117. - Business after 11 pm - No business shall be transacted after 11 p.m. except:

- (a) business then under consideration;
- (b) the receipt of messages and, in the case of a Bill received from the Assembly, the moving of its second reading by the Minister or member in charge;
- (c) a motion to adjourn the Council to a date or time or both that is different from that already ordered;
- (d) a motion to adjourn the day's sitting.

5. Petitions - SO's 121-141

5.1 - The first question your committee had to decide was whether the right to petition the House should be retained in its present form given the creation of the office of Ombudsman and the development of judicial review in the field of administrative law. Your committee concluded that the opportunity to petition should remain subject to certain restrictions (cf 12.5).

5.2 - The modern form of petitions to one or other of the Houses of Parliament, principally to the Commons, grew up in the 17th century when Parliament had come to be regarded as a political and legislative body rather than as the highest court of justice.

5.3 - Public petitions may pray for an alteration of the general law or the reconsideration of a general administrative decision; they may also pray for redress of local or personal grievances.

5.4 - The rights of petitioners and the power of the House to deal with petitions were laid down by two resolutions of the Commons in 1669 -

"That it is the inherent right of every commoner in England to prepare and present petitions to the House of Commons in case of grievance, and the House of Commons to receive the same."

"That it is an undoubted right and privilege of the Commons to judge and determine, touching the nature and matter of such petitions, how far they are fit and unfit to be received."

5.5 - The procedures of the House of Commons imposed little restriction on the raising of debate on the presentation of petitions, which served as a method of introducing subjects from outside the House and could be used for obstructing other kinds of business. In view of the great increase of the number of petitions, a series of standing orders was adopted, which, as subsequently amended, made the presentation of petitions a formal proceeding incapable, except in rare cases, of giving rise to debate. This development was in keeping with the change which simultaneously took place in the relations between Parliament and the people as a whole. As the House of Commons grew more representative of all kinds of popular opinion, the need of the channel between the public and the House of Commons, which petitions had supplied, grew less urgent, and the number of petitions declined.

5.6 - In some Parliaments, petitions have fallen into disuse; in others, petitions continue to be numerous.

5.7 - Modern technical developments seem to diminish the importance of petitions. Grievances can often be more easily brought to the attention of a government by means of the press, grievance debates, urgency motions and adjournment debates.

5.8 - It is useful to examine petition procedures in countries like the United Kingdom and New Zealand, where parliamentary systems are comparable.

5.9 - In the United Kingdom, the presentation of a petition is no more than a formal act since no action can be taken, nor is there opportunity under standing orders for a debate to pursue remedial action.

5.10 - A Petitions Committee does exist, but its function is to record the number of petitions received during a session and to enumerate the number of valid signatures attached to each.

5.11 - Petitions complaining of a personal grievance requiring immediate remedy are not referred to the Committee on Public Petitions. However, in the United Kingdom grievances may be investigated by the Parliamentary Commissioner (Ombudsman). Broadly, the Commissioner is concerned with faults in administration; he does not criticize policy.

- 5.12 - In New Zealand petitions are given very serious consideration. A Petitions Committee investigates every petition that is presented to Parliament in a very thorough way. The committee has the power to call all evidence required, and to call on all departments of State to report whether the complaint made is a just one or otherwise.
- 5.13 - After New Zealand appointed an Ombudsman, standing orders were altered by requiring that before a petition can come to Parliament, the petitioner must have tried the Ombudsman. If the petitioner has placed it before the Ombudsman and still cannot get redress, as a last and final resort the petition may be presented to Parliament. With the appointment of the Ombudsman, the number of petitions has gradually decreased.
- 5.14 - Both the United Kingdom and New Zealand use the Parliamentary Commissioner or Ombudsman in tandem with the presentation of petitions and the number of petitions has decreased in both those countries with the advent of the Ombudsman. It would appear that this is not the situation in Western Australia.
- 5.15 - Despite the introduction of the Parliamentary Commissioner in 1971, the number of petitions presented to the Legislative Council has increased quite markedly. From 1964 to 1970, 8 petitions were presented, and from 1971 to 1982, 58 petitions were presented, although many were on the same subject matter.

5.16 - Current practice in presenting petitions to the Legislative Council has seen little change since 1891. Petitions, provided they have been lodged with the Clerk at least 3 hours before the House meets and bear the Clerk's certificate that they are in conformity with standing orders (they must be respectful, decorous and temperate in their language), are presented by members at the commencement of each day's proceedings and motions moved:

- (1) That the petition be received;
- (2) That the petition be read and ordered to lie upon the Table of the House.

5.17 - No discussion is allowed on presenting a petition, other than a statement by the member presenting it, confined to a reference to the parties, the number of signatures, the material allegations contained in it, and reading the prayer of the petition.

5.18 - Standing Order 139 provides for a petition to be printed or (in the case of a petition referring to any subject then under consideration by a select committee) referral to the select committee.

5.19 - In more recent times, petitions presented to the Legislative Council have been forwarded to the Parliamentary Secretary of the Cabinet to be directed to the responsible Minister for appropriate action.

Your committee recommends that the proposed rules, discussed in the following paragraphs, supersede those now in force.

5.20 - 12.1 - Manner of presentation

12.1.1 - A petition is presented by delivery to the Clerk or tabling in the Council, and in either case the member presenting it shall endorse his name across the petition before presenting it.

This marks a departure from the existing rule which allows presentation by tabling only. Your committee, given the requirements of 12.6.1, intends that members use the less formal "delivery to the Clerk" where the petition is identical to one already presented. This rule also incorporates the substance of SO 125.

5.21 - 12.1.2 - Where a petition is presented by tabling, the member presenting it shall confine himself to naming the parties promoting it, stating the number of signatories, its subject matter or a summary thereof. The petition shall then be brought to the Table without any question being put.

Your committee sees little point in retaining the formal motions (cf 5.16 and SO 139) if only by reason of the fact that the House, without prejudice to what subsequent findings it may make on the petition's merits, would not refuse to receive a petition.

Moreover, it would be unfortunate, albeit unlikely, were the House to refuse a petition only to find that an identical one had been presented by delivery. The proposed rule retains the requirements of SO 137.

5.22 - 12.2 - Members to present petitions

12.2.1 - No person other than a member shall present a petition, and no member shall present a petition from himself.

This preserves the rules in SO's 135 and 136.

5.23 - 12.3 - Clerk's certificate required

12.3.1 - A petition is not presented or capable of being presented unless the Clerk:

- (a) in a case of presentation by delivery, certifies at the time of delivery; or
- (b) in a case of presentation to be made by tabling, certifies not less than one hour prior to tabling;

that the petition complies in all substantive respects with the requirements of this Chapter.

Except for the need to cover both forms of presentation, no departure from the requirements of SO 121 is proposed. However, your committee suggests that in context of the Clerk having to certify that a petition complies with the applicable rules, the provisions of SO 126 are superfluous. If a petition is not in order, the Clerk will decline to certify and the petition returned to the member intending to present it with suggestions as to how it might be amended so as to make it comply.

5.24 - 12.4 - Rules governing petitions

12.4.1 - A petition shall be:

- (a) addressed to the President and members of the Council;
- (b) in English or accompanied by a certified English translation;
- (c) legible, and unamended whether by insertion or deletion or interlineation;
- (d) signed by the person or persons promoting it and if such person, or 1 or more of them, is a corporation, the common seal of the corporation or corporations shall be affixed to the petition;
- (e) couched in reasonable terms and devoid of, statements that would constitute a breach of the Council's standing orders or, irrelevant material.

Para (a) is new. There have been instances where members have sought to present petitions addressed to the Governor or a minister.

Para (b) preserves part of SO 124. Your committee submits that a "certified" translation should bear the translator's certificate rather than that of a member who may have little or no understanding of the particular language but who, nevertheless, is expected to warrant the accuracy of the English translation. In your committee's opinion the present requirement is a responsibility better placed on the person who did the translation.

Para (c) reflects SO 123. It seems unnecessary to specify how the petition is committed to writing provided it is legible and free from amendment. A petition that has been amended may give rise to a suspicion that it has been amended after persons had signed it, especially where the amendment changes the sense of the petition.

Para (d) amalgamates SO's 129, 130 and 131.

Para (e) restates SO 134 without substantive change.

- 5.25 - 12.4.2 - A petition shall state the number of signatories and contain a prayer or formal request at the end.

The first part of this rule places the onus of stating the number of signatories on the promoter(s) rather than the member presenting it (cf SO 125). Your committee suggests that the alteration is fair in so far as the member is acting as a channel between the House and the petitioner(s) and properly it is for the latter to state the number of signatures amassed.

- 5.26 - The requirement for a "prayer" caused some discussion. However, your committee accepts Common's practice (cf May 20th ed p.859) that a document without a prayer is not a petition. Some members wished to depart from the expression "prayer" as being archaic whilst others believed that, for traditional reasons at least, it should be retained. The result is expressed in the words "..... a prayer or formal request....." in the rule. Accordingly, a document would be a petition if the "prayer" were couched in language such as "Your petitioners therefore respectfully (or humbly) request that the Legislative Council".

5.27 - 12.4.3 - A petition shall not:

- (a) have any other document attached to it;
- (b) quote or refer to a discussion on any question considered by either House in the same session;
- (c) bear other than original signatures, or have signatures pasted on or otherwise attached to it or to sheets (if any) bearing additional signatures;
- (d) seek a direct grant of money from the Council.

Para (a) restates SO 132. All references to private bills have been deleted from the proposed rules. Your committee intends to bring down a separate report and recommendations on that subject. "Any other document" includes letters and affidavits.

Para (b) restates SO 133 in what is believed to be a more understandable form.

Para (c) restates SO 127.

Para (d) restates SO 141.

5.28 - Your committee sees no reason to retain the agency and illiterate provisions in SO 128. Agency, whatever the reason, can be dealt with in terms of the common law, and it is doubtful that a prospective petitioner in Australia would be illiterate. If such a case were to arise, agency principles would apply without need for special provision.

5.29 - 12.5 - Certain petitions not receivable

12.5.1 - The Council will not receive or consider a petition whose subject matter constitutes or discloses a cause of action and the promoter has not exhausted legal remedies otherwise available to him.

This proposal is new and is designed to reinforce the fact that a petition is a means of last resort. It follows that the House should not be asked to intervene where the subject matter of a petition is litigious. The Council should not be placed in a position where it must needs adjudicate on facts and questions of law in lieu of a court of law. If, having exhausted legal remedies available which would include appeals to the Supreme Court or the Full Court, a person believes that the merits of the case deserve further but non-judicial consideration, then properly those perceived merits may be made a suitable subject for petitioning the House.

5.30 - Your committee sees no need to repeat in standing orders the provisions of s.15 of the Parliamentary Commissioner Act 1971-82 which empowers either House, its committees or a joint committee to refer matters to the Ombudsman for his inquiry and report. However, s.15 could be used more in the future. If the member presenting a petition or any member believes that the matter should be investigated by the Ombudsman, notice of a motion making the reference should be given.

5.31 - 12.6 - Petitions to be notified

12.6.1 - As soon as practicable after presentation, the following information shall be printed in the Notice Paper relating to a petition:

- (a) the name of the promoter;
- (b) the number of signatories;
- (c) a description of the subject matter;
- (d) the name of the member presenting it and the manner of presentation;
- (e) the date of referral (if any) to a committee;

and upon presentation of the committee's report, the same information, together with a summary of the committee's findings and recommendations (if any) shall again be printed in the Notice Paper.

Paragraphs (a) - (d) are self-explanatory.

Paragraph (e) and the subsequent provision have been included so that a petition may be referred to a committee should the House so order. Your committee understands that this is a matter currently under consideration by a select committee appointed to advise on the need for additional committees in the Council.

4. - Procedure for implementation

4.1 - Your committee submits that the existing Chapters XII and XIV and SO 117 should be superseded by sessional order commencing with the second session of this Parliament. If this is to be achieved, it would be desirable were the House to pass the necessary resolutions sometime during the current session always assuming that our recommendations are acceptable.

~~Not subject to report~~

APPENDIX TO STANDING ORDERS REPORT

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

=====

SUPPLEMENTARY NOTICE PAPER NO. 1

(QUESTIONS AND REPLIES)

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NOTICE GIVEN MARCH 22 1984

- 1. Hon. A.A. LEWIS, to the Minister for Planning representing the Minister for Regional Development:

Will the Minister table the South West Development Authority policy document?

Answer: Hon. PETER DOWDING replied:

Arrangements have been made for the document to be tabled today.

- 2. Hon. P.H. LOCKYER, to the Attorney General representing the Minister for Health:

(1) Is it correct that a legal complication may prevent the report on the inquiry into the Carnarvon Shire being made public?

(2) If so, will it affect the completion of the report?

Answer: Hon. J.M. BERINSON replied:

(1) Yes.

(2) No.

- 3. Hon. P.H. WELLS, to the Attorney General:

Can he tell us when we can expect to see legislation relating to strata titles introduced?

- 4. Hon. N.F. MOORE, to the Minister for Mines:

Does the Government agree that the owners of the Hampton area should continue to own the minerals?

Answer: Hon. PETER DOWDING replied:

I am not in a position to make any statement at this time.

NOTICE GIVEN MARCH 27 1984

1. Hon. A.A. LEWIS, to the Leader of the House representing the Minister for Forests:
 - (1) When is it expected that Dr. Manea's committee report on pine planting will be completed?
 - (2) Will it be tabled in the House?

Answer: Hon. D.K. DANS replied:

- (1) See answer to question 526 of 13 October 1983.
- (2) Yes.

2. Hon. G.E. MASTERS, to the Leader of the House:

If the Minister does not propose using inspectors in the ETU dispute, who would he use?

3. Hon. W.N. STRETCH, to the Minister for Planning representing the Minister for Housing:

Has the State Housing Commission sold all of its existing houses in Walpole?

4. Hon. A.A. LEWIS, to the Attorney General representing the Minister for Education:

How many students from the Boyup Brook area attend Narrogin Senior High School?

Answer: Hon. PETER DOWDING replied:

In 1983 there were four year 11 pupils and three year 12 pupils.

L B MARQUET,
Clerk of the Legislative Council.