



STANDING ORDERS COMMITTEE

REPORT ON VARIOUS MATTERS

PRESENTED BY HON J M BROWN MLC
DECEMBER 1991

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The committee has considered a number of matters and its findings and recommendations are now presented for consideration by the House.

1. Custody of, and access to, committee documents - LA message #70

This matter arises from the Assembly's formal request that the Council pass a resolution in terms similar to that of the text set out in the attached message.

The general provision in the Legislative Council relating to the custody and control of documents is chapter V. No specific reference is made in SO 38 to committee records, but by implication the words "*The custody of the Minutes and all records relating thereto or incorporated therein shall be vested in the Clerk ...*" extend to include committee documents that are tabled. It is likely that SO 38 includes committee documents that are not brought up with a report to the extent that they remain records relating to the Minutes.

Specific reference to committee documents is found in SO's 313, 324, 325, 351, 352, 353, 358(d), and 389.

SO 325 provides that documents received by the Government Agencies Committee remain in the possession of the Council once the inquiry to which the documents relate is completed.

None of the orders applying to standing committees is framed in the traditional form contained in SO 389. That order is confined to select committees.

Overall, the scheme of the standing orders cited is directed towards balancing public interest and private rights by permitting evidence to be taken in closed session and thereafter dealt with, ultimately, as the House thinks fit.

It follows that where the House has made a specific direction as to how committee documents are to be treated, that order would be observed at least until by effluxion of time, the document's release would cause no harm.

Where documents are not subject to order, ie, they have not been brought up and tabled, access for a bona fide purpose, eg, academic research has been permitted.

So far as the Assembly's resolution is concerned-

- (1) the Council's existing standing orders meet the custody requirement. Unlike the Assembly, the Council has never had a practice of destroying confidential documents or private session transcripts of evidence;
- (2) adoption of this rule would need to be made subject to the Council's standing orders. If it was not so subject, there is potential for conflict. For example, SO's 352, 358(d) (standing committees) are part of a scheme designed to ensure that evidence can be given, and remain, on a confidential basis but the general policy, stated in SO 350, is directed towards open hearings.

This scheme contrasts with SO 389 (select committees) where publication without prior order of the House is prohibited. In recent years, some of the Council's select committees have been required to conduct open hearings subject only to the committee's discretion to take evidence privately.

- (3) This provision and also that in para (4) are similar to that made by the Commonwealth Houses in 1984¹.

The general trend is for parliamentary committee proceedings to be held in public with appropriate safeguards for the occasions when private evidence is deemed necessary².

The committee believes that each individual committee is well placed to determine

¹ Adopted by Senate on recommendation of SO's Cttee Sep 6 1984; concurred in by HR Oct 11 1984.

² *cf* May 21st ed, 636; McGee *NZ Parliamentary Practice* (1985), 202, 203; *The Table* (1990) 24, 145

the classification of evidence or documents given to the committee. The safeguard lies in the House retaining the power, at all times, to reverse a committee's judgment hours or years later.

The question must also be asked whether a blanket prohibition for 10 or 30 or 100 years is desirable or whether a more flexible approach designed to balance private rights and the public interest is preferable.

2. Questions

A. Answers by reference to LA answers

In a letter to the President (May 7 1991) Hon Peter Foss objected to answers to questions being given by referring a member to an answer given in the Assembly. Mr Foss states:

This practice seems objectionable for a number of reasons-

1. *it takes notice of proceedings in the other place;*
2. *it is not a proper answer because it requires research in Hansard - both for the member concerned and any person looking at the record of proceedings of the House;*
3. *frequently the question in the Legislative Assembly is not exactly the same and the answer is either lacking full information or requires the member to draw inferences as to the answer.*

As to item 1, SO 94 prohibits references to Assembly debates, not proceedings. Whether the answer is "proper" (item 2) depends on reading "proper" as meaning "adequate". There is no obligation on a minister to answer any question, nor is there an obligation to answer in a particular manner or form.

Item 3 also relates to adequacy. Whether or not an answer is adequate is a matter of opinion. The answer may be deficient so far as a member is concerned, but there is danger in the House adopting a standing order that attempts to draw a line between "sufficient" and "deficient" - that will always be a matter of opinion and it can be argued strongly that the House should not attempt to substitute its judgment for that of the minister.

A member who believes that an answer is wrong, misleading, deficient or generally unsatisfactory has the right to move for an order directing the minister to provide the information sought. The House is then in a position to judge the case on its merits after debate on the motion.

The committee recommends against any change to standing orders, but expresses the view that ministers, to the extent possible, should always provide a narrative answer rather than answer by reference to external data.

B. Time taken to reply

Hon David Wordsworth has requested that the committee give consideration to ways the House might adopt to oblige answers being given within a time certain.

The committee notes that there has been a substantial increase in the number of questions placed on the notice paper in recent years. It is not unreasonable to suggest that the number of questions asked each sitting day by members of both Houses has slowed down the rate of ministerial responses. Moreover, imposition of time limits cuts across the right of a minister to decline to answer a question without having to state reasons.

The Senate has adopted a procedure that enables a senator, whose question has not been answered within a certain time, to move a motion that virtually requires the offending minister to answer the question or explain why it has not been answered. Other Houses have imposed time limits for replies, eg, 3 sitting days, with the added requirement, in some cases, that an extension be sought or an explanation for the delay be given.

Rather than recommend adoption of such procedures, the Clerk has agreed, at the committee's request, to set in place administrative procedures whereby the office of the minister from whom an answer is sought will be asked when that answer might be forthcoming in cases where a question remains unanswered after 4 sitting days.

3. Deputy Chairmen of Committees

SO 35 provides for the election at the commencement of each session of a panel of 3 deputy chairmen of committees.

The House has appointed 4 to the panel since the early 1980's and if this pattern is to continue, the order should reflect current practice. Additionally, nothing prevents deputy chairmen being appointed for the duration of the Parliament.

Recommendation: Amend SO 35 by:

- (a) deleting "session" and substitute "Parliament";
- (b) deleting "3" and substitute "5".

4. Parliamentary Secretaries moving adjournment of the House

SO 71 enables a minister to move the adjournment of the House at any time. The words in the order "*or on behalf of [a minister]*" have always received a restrictive interpretation, viz, a minister moving the adjournment on the Leader's behalf. It has not been construed to permit a non-official member to move the adjournment.

The order was apparently framed in its current form to reflect the fact that there need be appointed no more than 1 minister who is a member of the Council (cf *Constitution Acts Amendment Act 1899 s 43(3)*) and there would no doubt be times when the minister was unavoidably absent at a time when the adjournment needed to be moved.

With the recent appointment of parliamentary secretaries, the committee has had to consider whether they should be able to move the adjournment motion. The committee has resolved that SO 71 should be read as including parliamentary secretaries, but they should only do so when all ministers are unavoidably absent from the House at the relevant time.

5. Privilege - production of newspaper statement

106. *Any member complaining to the Council of a statement in a newspaper as a breach of privilege shall produce a copy of the paper containing the statement in question, and be prepared to give the name of the printer or publisher, and also submit a substantive motion declaring the person in question to have been guilty of a contempt.*

Leaving aside the questions arising from the recommendations of the Parliamentary Standards Committee as to the appointment of a standing

committee of privilege (cf *Report of Parliamentary Standards Committee 1989*, paras 4.10, 4.11), the existing order needs to be redrafted to include other forms of media additional to the print medium.

As well, it has become the practice to move for the appointment of a committee of privilege rather than the substantive motion described in the order.

Accordingly, the committee is considering a redraft of the standing order designed to deal with both issues.

6. Smoking in Chamber

The Hon Tom Stephens in a letter of June 4 addressed to the President has suggested that the custom of allowing members to smoke behind and either side of the Chair be discontinued. The member bases his request on "increasing concern about the health impact of passive smoking" and associated discomfort to [some] non-smokers.

While not wanting to be drawn into a debate on the issue of tobacco use, the committee supports the member's request and commends it to the House.

7. Matters under consideration

For the information of the House, the committee advises that the following matters are under consideration, or are scheduled for consideration, by the committee:

- Urgency motions;
- Allocation of time for committee meetings;
- Allocation of time to debate committee reports;
- Procedural rules of the *Government Agencies Committee* and their rationalization with those applicable to the other standing committees;
- Section 46 of the *Constitution Acts Amendment Act 1899* (money Bills).

[Handwritten signatures and notes at the bottom of the page]

MESSAGE No. 70

Mr President,

The Legislative Assembly acquaints the Legislative Council that it has agreed to the following resolution -

The Legislative Assembly acquaints the Legislative Council that it has agreed to the following resolution -

"In Camera Evidence and Unpublished Committee Documents"

- (1) That all evidence submitted to committees or documents collected or produced by a committee shall remain in the custody of the House and shall not be destroyed or disposed of except by resolution of the House.
- (2) That this House authorises the Speaker to permit any person to examine and copy evidence submitted to committees or documents collected or produced by a committee, which documents are in the custody of the House, have not already been published by the House or its committees, and which have been in the custody of the House for at least 10 years, but evidence or documents taken *in camera* or submitted on a confidential or restricted basis, shall not be disclosed unless the evidence or documents have been in the custody of the House for at least 30 years, and, in the opinion of the Speaker, it is appropriate that such evidence or documents be disclosed.
- (3) That the Speaker shall report to the House any request for documents referred to in this resolution, the nature of the documents, the persons who made the request and whether access was allowed.
- (4) That, subject to the passing by the Legislative Council of a similar resolution, disclosure of evidence or documents of joint committees be authorised by the Speaker of the Legislative Assembly and the President of the Legislative Council under the same conditions as are provided for in paragraphs (1), (2) and (3) of this resolution.
- (5) That parts (1) to (4) of this resolution be forwarded to the Legislative Council with a request to pass a similar resolution.

and now presents the same to the Legislative Council with a request to pass a similar resolution.

Legislative Assembly Chamber

Ian Alexander
Deputy Speaker

Perth, 25 September 1990