

16
MASTER COPY
USE FOR PHOTOCOPYING ONLY
DO NOT GIVE AWAY

STANDING ORDERS

COMMITTEE

REPORT ON

MOTIONS FOR DISALLOWANCE OF REGULATIONS
DOCUMENTS QUOTED FROM BY MEMBERS
UNIFORM LEGISLATION "120 DAY" RULE

presented september 1995

STANDING ORDERS COMMITTEE

REPORT ON

MOTIONS FOR DISALLOWANCE OF REGULATIONS DOCUMENTS QUOTED FROM BY MEMBERS UNIFORM LEGISLATION "120 DAY" RULE

1. Disallowance of Regulations - motions for

The Government's power to make laws is almost wholly derived from Acts of Parliament. Consistent with the principle that the exercise of powers by a delegate is subject to oversight and intervention by the grantor of the power, Parliament has provided in the *Interpretation Act 1984* s 42, and in other enactments, that either House may disallow certain types of subordinate legislation and, by agreement between the Houses, amend those laws.

Since 1989, the Joint Standing Committee on Delegated Legislation has undertaken the scrutiny of regulations, rules and bylaws, ie, those instruments that are subject to disallowance. While the committee may, and does, recommend disallowance on one or more of the grounds set out in its terms of reference, it remains the right of any member to move to disallow a regulation whether on those grounds or any other.

Over the past decade, the numbers of motions listed for consideration has increased. That increase, coupled with the use of SO 72 urgency motions on most sitting days, has brought about a situation where notices of motions for disallowance are not reached as part of the normal routine and their consideration depends on intervention by the House to enable the motion to be moved. Once moved, the motion takes precedence on each day until it is disposed of (SO 153). It should be recalled that in 1983 when the House agreed to the time limits imposed by SO 153 (c), it saw no problem associated with a member having the opportunity to move the motion in the first place. That, clearly, is now not the case.

The committee accepts the submission of the Hon Peter Foss, Minister for the Environment, that standing orders should be altered so that precedence is given to notices of motions for disallowance. The committee therefore **recommends** the following amendments to standing orders:

SO 143 - Order of notices on the Notice Paper

Add to SO 143 the following proviso:

Provided that a notice of a motion for the disallowance of a regulation has precedence of other notices to be given on that day, and for this purpose "regulation" includes any statutory instrument made subject to disallowance by a written law.

Explanation: This proviso:

- (a) requires the Chair, during the routine of business, to inquire separately whether there are any notices of motions for disallowance, in similar fashion to the inquiry made separately for notices of motions to introduce bills;
- (b) extends the meaning of "regulation" to include those statutory instruments that are made subject to disallowance by a written law apart from s 42 of the *Interpretation Act*, eg, certain planning schemes.

SO 152 - Precedence of motion(s)

Add to SO 152 a new paragraph (b):

- " (b) **If a notice of motion coming within the proviso to SO 143 has not been moved at the expiration of 2 sitting days after the day on which notice was given, that motion is deemed to have been moved *pro forma* on that expiration and SO 153 applies accordingly.** "

Explanation: Where a notice of motion for disallowance is not moved on either of the 2 sitting days immediately following the day on which notice was given, the motion is deemed to have been moved formally and SO 153 applies.

This amendment ensures that the question for disallowance is determined within the 12 day period some Acts, eg, *Port Kennedy Development Act*, mandate as the time within which a motion for disallowance must be resolved, and not, as is the case under s 42, simply placed as a notice.

2. Documents quoted by member - SO 48

During this session, the President was asked to consider the meaning of SO 48 and, in giving his ruling upholding the accepted interpretation and application of the rule, indicated that if it was thought that it was capable of having more than one meaning, the standing order should be rewritten to clarify its intent.

In its consideration, the committee agreed that the meaning explained in the President's ruling is what was intended. It therefore recommends that SO 48 be revoked and the following substituted:

48. (a) On request at the conclusion of a member's speech, a document quoted from by that member shall be tabled if it was identified by the member at the time of quotation, whether or not the identification is made in response to another member's request.
- (b) A document tabled under this order shall be returned to the member after the expiration of 72 hours.

3. Bills giving effect to Uniform Legislation or Intergovernmental Agreements

This reference arose from a proposal¹ of Hon Peter Foss. SO 230 (c)² delays the resumption for 120 calendar days of the second reading debate on a bill that gives effect to intergovernmental agreements or a bill introducing uniform legislation. The Minister's proposal maintains the 120 days' delay unless the bill, following the delivery of the second reading speech, is referred to the Legislation Committee. In such a case, the bill, having been reported back by that committee, would proceed under the normal rules for the passage of legislation. The period of time using this procedure could be considerably less than the 120 days. The second limb of the Minister's proposal provides that in calculating the 120 days:

the time during which a draft which substantially indicates the nature of the bill is before the Standing Committee on Legislation prior to the first reading . . .

is to be included. The committee takes this to mean that a "green paper", giving the salient features of the proposed legislation, referred to the Legislation Committee whether for inquiry or information purposes, would reduce the number of days the actual legislation would need to lie on the Table prior to resumption of the second reading debate where the bill was not sent to the Legislation Committee. The inclusion of the green paper in computing the 120 days could,

¹ Referred to Standing Orders Committee Jun 15 1995.

² inserted Oct 21 1992.

depending on how it was employed, defeat the purpose of delaying the passage of the "live" legislation.

Although the committee accepts the intent of the Minister that the enactment of uniform laws not be delayed excessively or unnecessarily, the actual proposal complicates the very simple principle contained in the current rule. It is the committee's view that 120 days is too long a period leading to suspension of the rule where it proves inconvenient. The committee **recommends** that SO 230 (c) be amended by deleting " 120 " and substituting " 30 " on the basis that 30 days should provide sufficient time within which members can identify perceived defects in, or unresolved issues arising from, the bill.

**Deputy Chairman
Standing Orders Committee**

