



THIRTY-NINTH PARLIAMENT

REPORT 30

**STANDING COMMITTEE ON PROCEDURE AND
PRIVILEGES**

**APPLICATION OF STANDING ORDERS TO THE
JOINT STANDING COMMITTEE ON DELEGATED
LEGISLATION**

Presented by Hon Barry House MLC (Chair)

May 2014

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.”

Members as at the time of this inquiry:

Hon Barry House MLC (Chair)

Hon Adele Farina MLC (Deputy Chair)

Hon Nick Goiran MLC

Hon Colin Holt MLC

Hon Kate Doust MLC

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ISBN 978 1 922047 77 9

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REPORT OF THE STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

IN RELATION TO THE APPLICATION OF STANDING ORDERS TO THE JOINT STANDING COMMITTEE ON DELEGATED LEGISLATION

1 REFERENCE

- 1.1 On 4 December 2013, the Legislative Council resolved the following motion to the *Procedure and Privileges Committee* (“the PPC”):

That Order of the Day No. 20, Joint Standing Committee on Delegated Legislation — Report No. 69 — Report Seeking Clarification of the Application of the Standing Orders to the Joint Standing Committee on Delegated Legislation, be discharged and referred to the Standing Committee on Procedure and Privileges for inquiry and report.

2 BACKGROUND TO THE REFERENCE

- 2.1 On 31 October 2013, Joint Standing Committee on Delegated Legislation — Report No. 69 — Report Seeking Clarification of the Application of the Standing Orders to the Joint Standing Committee on Delegated Legislation was tabled in the House.¹
- 2.2 The Deputy Chair of the *Delegated Legislation Committee* (“the Joint Committee”) made the following statement upon presentation:

There are different standards for appointment as a participating member on the committee in both chambers. A Legislative Assembly member must be appointed by the Assembly, whereas a Legislative Council member may be appointed by leave of the Joint Committee. The Joint Committee is of the view that there is a lack of equity between Council and Assembly members in the rules for appointment as a participating member on the Joint Committee. Two issues arise: firstly, it is completely unclear which Standing Orders apply to the Joint Committee; and, secondly, regardless of which Standing Orders apply, they have different application between members of both Houses. This lack of equity between members of the Legislative Council and the Legislative Assembly suggests a contradiction of the principle of equality between members of Joint Committees.

¹ See Table Paper No. 936

The committee recommends that the Legislative Council and the Legislative Assembly clarify which Standing Orders are to apply to the Joint Committee. Further, the Houses should clarify how such Standing Orders are to be applied to ensure equitable treatment of members from both Houses.

- 2.3 Following the tabling statement, the Deputy Chair of the Joint Committee moved the corollary motion, “That the report be adopted and agreed to.” The corollary motion was then adjourned to the next sitting. On Wednesday, 4 December 2013, the debate on the corollary motion was resumed and was subsequently referred to the PPC on the motion of the Leader of the House.

3 APPROACH BY THE PPC

- 3.1 The PPC reviewed the reference from the House and considered the current and preceding arrangements regarding the administration and operation of the Joint Committee. The PPC sought advice from the Clerk and reviewed the Legislative Council resolution and message that was transmitted to the Legislative Assembly for the purpose of establishing the constitution, powers and procedures of the Joint Committee.
- 3.2 The PPC likewise considered the issue of ‘equity’ as it relates to members’ rights to participation in the proceedings of the Joint Committee, and the differing arrangements for participation provided for by the Standing Orders of each House.

4 APPLICATION OF LEGISLATIVE COUNCIL STANDING ORDERS TO THE JOINT COMMITTEE

- 4.1 The PPC observed that Report No. 69 of the Joint Committee raised the following two issues:
- (1) doubt as to which Standing Orders applied to the Joint Committee; and
 - (2) equity of members in relation to the right of participation in the proceedings of the Joint Committee.
- 4.2 The first of the Joint Committee’s concerns arises from an omission in the Legislative Council motion, and subsequent message to the Legislative Assembly, regarding the establishment and constitution of the Joint Committee. The PPC is of the view that a clause specifying that “the Standing Orders of the Legislative Council apply to the committee to the extent that they do not impinge on its operations” would have clarified the intent of the resolution and the application of Legislative Council Standing Orders.

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- 4.3 In the course of the PPC's consideration of the referral, the PPC agreed that the Standing Orders of the Legislative Council do apply to the operation and administration of the Joint Committee. Further, the PPC agreed that it has always been the intent that the Standing Orders of the Legislative Council would be applied to the operation and administration of the Joint Standing Committee on Delegated Legislation.
- 4.4 The PPC notes that the current arrangements between the two Houses provides for an even distribution of 'administrative jurisdiction' regarding Joint Standing Committees. To the extent that there may be any doubt as to the current arrangements, the PPC agrees that those arrangements, particularly in relation to the application of Legislative Council Standing Orders to the Joint Committee should be clarified for the benefit of both Houses.

5 RULES FOR PARTICIPATION ON THE DELEGATED LEGISLATION COMMITTEE

- 5.1 The PPC noted that the substantial issue in relation to Report No. 69 of the Joint Committee revolved around the issue of 'participation'.
- 5.2 The PPC agreed that there currently exists an 'inequitable inconsistency' created by the differing regimes contained in the Standing Orders of each House. The rules for appointment as a participating member on the Joint Committee, as they currently stand, have resulted in an ambiguity as to the standards of appointment between the Houses as a participating member.
- 5.3 The PPC consequently agreed that a mechanism to confirm the equality of members on the Joint Committee in relation to participation was appropriate in this instance.

6 RECOMMENDATION

- 6.1 The PPC considered a number of avenues to resolve the issues raised by the Joint Committee, including amendments to either the Standing Orders or the Joint Standing Orders. The PPC is of the view, however, that each of the concerns of the Joint Committee can be simply resolved by the Houses agreeing to a further resolution.
- 6.2 The PPC therefore makes the following recommendation to clarify the application of Legislative Council Standing Orders to the Joint Committee, and resolve the issue of equity in relation to a member of either House's ability to participate on the Joint Committee:

Recommendation 1: The Committee recommends that the Legislative Council agree to the following resolution, and invite the Legislative Assembly to agree to same:

In relation to the constitution, powers and procedure of the Joint Standing Committee on Delegated Legislation —

- (1) The Standing Orders applicable to committees of the Legislative Council will apply to the Committee's proceedings except to the extent that they impinge upon the functioning of the Committee.**
- (2) Legislative Assembly Standing Orders 249(1), (2) and (3), 252, 254, 262, 263 and 264 will apply to the Legislative Assembly Members of the Committee.**
- (3) Any Member of the Legislative Council or Legislative Assembly may participate in the taking of oral evidence by the Committee, and by leave of the Committee, its deliberations and proceedings but may not vote, move any motion, or be counted for the purpose of a quorum.**
- (4) Leave under (3) may be given only for a specific inquiry, but any Member of the Legislative Council or Legislative Assembly may be given leave in relation to more than one inquiry.**



**Hon. Barry House MLC
Chair
15 May 2014**