



***PROCEDURE AND PRIVILEGES
COMMITTEE***

**REVIEW OF THE
PREMIER'S STATEMENT
TEMPORARY ORDER
AND
OTHER MATTERS RELATING
TO
EXTENDED SESSION PARLIAMENTS**

Report No. 7

2006

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Procedure and Privileges Committee

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Report No. 7

Presented by:
Mrs Dianne Guise, MLA,
Deputy Speaker of the Legislative Assembly
on 23 November 2006

COMMITTEE MEMBERS

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Advisor

Mr Peter J. McHugh
(Clerk of the Legislative Assembly)

COMMITTEE ADDRESS

Procedure and Privileges Committee
Legislative Assembly
Parliament House
Harvest Terrace
PERTH WA 6000

Tel: (08) 9222 7222
Fax: (08) 9222 7818
Email: ppc@parliament.wa.gov.au
Website: www.parliament.wa.gov.au

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COMMITTEE'S FUNCTIONS, POWERS AND TERMS OF REFERENCE

Legislative Assembly Standing Order No. 282 provides the following functions, powers and terms of reference to the Procedure and Privileges Committee -

Procedure and Privileges Committee

282. (1) A Procedure and Privileges Committee will be appointed at the beginning of each session to —

- (a) examine and report on the procedures of the Assembly; and
- (b) examine and report on issues of privilege; and
- (c) wherever necessary, confer with a similar committee of the Council.

(2) The Procedure and Privileges Committee will have the powers of a select committee.

(3) Membership of the committee will consist of the Speaker and four other members as the Assembly appoints.

(4) Standing Order 278 will apply except that where possible any report of the committee will be presented by the Deputy Speaker.

(5) When consideration of a report from the committee is set down as an order of the day it will be considered using the consideration in detail procedure.

RECOMMENDATIONS

Recommendation 1

Your Committee recommends that -

The following new Standing Order 8A be inserted -

“

Premier’s Statement

- 8A.** (1) On the first sitting day of each calendar year, the Premier will make a statement to the Assembly outlining the Government’s legislative and other policy intentions for the next 12 months.
- (2) No Premier’s Statement is to be made when the first sitting day of a year is the first sitting day of a session of Parliament.
- (3) Following the Premier’s Statement a question will be proposed, That the Premier’s Statement be noted.
- No other business that is not of a formal or procedural nature will have priority until after 3 sitting days (including the remainder of the first sitting day) have been dedicated exclusively to the debate on noting the Premier’s Statement.”.

Recommendation 2

Your Committee recommends -

That SO 101 be amended in the entry for “Address in Reply” by -

- (1) inserting in the **Address in Reply** heading after “Reply” the following –
- “and Premier’s Statement ”**; and
- (2) deleting the time for “ Any other member” and substituting -
- “*20 minutes”.

(Note: * If the member so requests during or immediately upon expiry of a speech, the time for the speech will be extended by a further 10 minutes.)

The Standing Order will then read -

“.....

Address and Reply and Premier’s Statement (SO 8 and 8A)

Premier or one member deputed..... unspecified
Leader of the Opposition or one member deputed unspecified
Any other member *20 minutes
On any amendment, each member 20 minutes ”.

(Note: * If the member so requests during or immediately upon expiry of a speech, the time for the speech will be extended by a further 10 minutes.)

Recommendation 3

Your Committee recommends -

That SO 101 be amended in the entry “**Principal appropriation bill**” by deleting “ Any other member 45 minutes” and substituting -

“ Any other member *20 minutes ”.

(Note: * If the member so requests during or immediately upon expiry of a speech, the time for the speech will be extended by a further 10 minutes.)

Recommendation 4

Your Committee recommends -

- (1) That section 42 of the *Interpretation Act 1984* be amended to provide that at the expiration of 15 sitting days after notice of a motion to disallow any regulation has been given in either House of Parliament, being a notice given within 14 sitting days after the regulation has been laid before the House, the notice has not been withdrawn or called on and finally determined, the regulation specified in the notice of motion will be deemed to have been disallowed.
- (2) That the Attorney General arrange for the tabling in the Legislative Assembly of a schedule detailing disallowance provisions in Acts other than the Interpretation Act 1984 and outlining the changes necessary to bring them within the spirit of the amendments proposed in recommendation 5 (1).

Recommendation 5

Your Committee recommends the Legislative Assembly adopted the following Temporary Order until 31 December 2007 -

“Temporary Order

That until 31 December 2007 Standing Order 74 will not apply to any notice of disallowance motion given in accordance with section 42 of the *Interpretation Act 1984*. ”.

Recommendation 6

Your Committee recommends,

That section 38 (g) of the *Constitution Acts Amendment Act 1899* be amended to substitute the period of 12 months for the words “one entire session thereof”.

Depending on the form of drafting, section 38 (g) of the Act will then read something like -

“

.....If any member of the Legislature.....

- (g) fails to give his attendance in the House of which he is a member for 12 months without the permission of the House entered upon its journals,

his seat shall thereupon become vacant. ”.

MINISTERIAL RESPONSE

In accordance with Standing Order 277, the Committee directs that the Leader of the House and the Attorney General to report to the Legislative Assembly as to the action, if any, proposed to be taken by the Government with respect to the recommendations of the Committee.

1. REVIEW OF PREMIER'S STATEMENT TEMPORARY ORDER

The Premier's Statement Temporary Order is due to expire on 31 December 2006 and urgent consideration must be given as to whether the Premier's Statement procedure should be retained by the Legislative Assembly and, if so, whether the temporary order should be renewed or the procedure made permanent by adopting new Standing Order 8A.

Your Committee recommended in Report No. 2 of 2005 that a 'public affairs' debate be held at the commencement of each calendar year (following the Opening of a new Session) which would allow the Government to announce, on the first sitting day of the year, its legislative programme and planned activity for that year. This would then be followed by a general debate.

As part of the overall package, your Committee also proposed that the 'Any other member' debate times listed under Standing Order 101 for the Address in Reply and the proposed Premier's Statement be changed to 20 minutes plus 10 minutes on request of a member (total time of 30 minutes remains unchanged). Your committee also proposed as part of the same package and for consistency, that the 'Any other member' debate times for the budget debate (Principal appropriation bill) be reduced from 45 minutes to 30 minutes (20 minutes plus 10 minutes on request of a member). This would then make all 'Any other members' debate times consistent for second reading debates and motions. However, your committee noted that, if for some reason a member requires additional time during the budget debate, then subject to the agreement of the Assembly, an extension of time not exceeding 15 minutes under Standing Order 102 continues to be available to members (ie. shadow ministers).

Your Committee reviewed the operation of the temporary order and all committee members reported positive feedback from those members consulted regarding the Premier's Statement. Accordingly, your Committee proposes new Standing Order 8A and changes to Standing Order 101, as trialled in the temporary order, be adopted –

Recommendation 1

Your Committee recommends that -

The following new Standing Order 8A be inserted -

“

Premier's Statement

- 8A.** (1) On the first sitting day of each calendar year, the Premier will make a statement to the Assembly outlining the Government's legislative and other policy intentions for the next 12 months.
- (2) No Premier's Statement is to be made when the first sitting day of a year is the first sitting day of a session of Parliament.
- (3) Following the Premier's Statement a question will be proposed, That the Premier's Statement be noted.
- (4) No other business that is not of a formal or procedural nature will have priority until after 3 sitting days (including the remainder of the first sitting day) have been dedicated exclusively to the debate on noting the Premier's Statement.”

Recommendation 2

Your Committee recommends -

That SO 101 be amended in the entry for "Address in Reply" by -

(1) inserting in the **Address in Reply** heading after "Reply" the following –

“**and Premier’s Statement** ”; and

(2) deleting the time for “ Any other member” and substituting -

“ *20 minutes”.

(Note: * If the member so requests during or immediately upon expiry of a speech, the time for the speech will be extended by a further 10 minutes.)

The Standing Order will then read -

“.....

Address and Reply and Premier’s Statement (SO 8 and 8A)

Premier or one member deputedunspecified
Leader of the Opposition or one member deputed.....unspecified
Any other member *20 minutes
On any amendment, each member 20 minutes

(Note: * If the member so requests during or immediately upon expiry of a speech, the time for the speech will be extended by a further 10 minutes.)

Recommendation 3

Your Committee recommends -

That SO 101 be amended in the entry “**Principal appropriation bill**” by deleting “ Any other member 45 minutes” and substituting -

“ Any other member*20 minutes ”.

(Note: * If the member so requests during or immediately upon expiry of a speech, the time for the speech will be extended by a further 10 minutes.)

2. REVIEW OF THE TEMPORARY ORDER FOR THE SUSPENSION OF STANDING ORDER 74 IN RELATION TO DISALLOWANCE MOTIONS.

The temporary order for the suspension of Standing Order 74 in relation to disallowance motions is due to expire on 31 December 2006. As recommended by the previous Procedure and Privileges Committee, your Committee agreed to undertake a review of the temporary order before it expired.

The previous Committee reported in report No. 4 of 2003 that extended sessions will enable a notice of motion to disallow subordinate legislation to remain on the Notice Paper for up to four years. It is possible that subordinate legislation could be disallowed by the Legislative Assembly after it has been in force for some considerable time.

Disallowance occurs in more than one procedural way. An example is the *Metropolitan Region Town Planning Scheme Act 1958* where amendments under section 33 come into force when they are no longer subject to disallowance. If the House did nothing about a notice of motion given to disallow a proposed amendment, that amendment could not come into effect. In practice the Government will arrange to bring the disallowance motion on and then defeat it. The same question rule prevents the motion being again proposed and the amendment can then come into effect.

The previous Committee proposed the *Interpretation Act 1984* be amended to provide for disallowance motions to be dealt with in a timely manner. Section 48(5) of the Commonwealth's *Acts Interpretation Act 1901* provides:

“If, at the expiration of 15 sitting days after notice of a motion to disallow any regulation has been given in a House of the Parliament, being notice given within 15 sitting days after the regulation has been laid before that House:

- (a) the notice has not been withdrawn and the motion has not been called on;
- (b) the motion has been called on, moved and seconded and has not been withdrawn or otherwise disposed of;

the regulation specified in the motion shall thereupon be deemed to have been disallowed. ”.

The outcome of the provision is similar to the procedure embodied in the Legislative Council Standing Orders, but there is some doubt about whether the Standing Orders can be used in this way to modify a procedure set out in legislation. Making legislative changes to the *Interpretation Act 1984* will remove any doubt as to the legality of the procedure.

This can be achieved by amending the *Interpretation Act 1984* to provide for an automatic disallowance of subordinate legislation if a notice of motion is not debated within 15 sitting days after notice is given. This has several effects. It will -

- introduce a finite period for dealing with disallowance motions;
- effectively create an obligation on the relevant Minister in the Legislative Assembly to ensure a disallowance motion is dealt with; and

- potentially increase the number of these motions in the Legislative Assembly as the Legislative Assembly procedure will be as effective as the present Legislative Council arrangement.

However, it will be necessary to identify all the individual disallowance provisions presently in legislation, apart from the *Interpretation Act 1984*, to ensure they are also dealt with appropriately. The Attorney General's department is best placed to undertake this role, and it would be convenient if a schedule could be presented to the House detailing the provisions and what amendment is necessary to bring them into accord with the spirit of the proposed changes.

The previous Committee also recognised that it will be necessary to ensure that notices of disallowance motions are not affected by Standing Order 74 for the reasons previously outlined, ie. the Committee has serious doubts about the use of Standing Orders to modify procedures set out in legislation. Accordingly the previous Committee recommended that a Temporary Order be adopted as proposed in Recommendation 6 of Report No. 4 of 2003. This would allow time for the Attorney General to consider Recommendation 5 and to advise the Legislative Assembly as to the action he intends to take, and for the Legislative Assembly to consider what further action, if any, is required. The recommendations were as follows -

Recommendation 5 of Report No. 4 of 2003

The previous Committee recommended,

- (1) That section 42 of the *Interpretation Act 1984* be amended to provide that at the expiration of 15 sitting days after notice of a motion to disallow any regulation has been given in either House of Parliament, being a notice given within 14 sitting days after the regulation has been laid before the House, the notice has not been withdrawn or called on and finally determined, the regulation specified in the notice of motion will be deemed to have been disallowed.
- (2) That the Attorney General arrange for the tabling in the Legislative Assembly of a schedule detailing disallowance provisions in Acts other than the *Interpretation Act 1984* and outlining the changes necessary to bring them within the spirit of the amendments proposed in recommendation 5 (1).

Recommendation 6 of Report No. 4 of 2003

The previous Committee recommended the Legislative Assembly adopt the following Temporary Order,

“Temporary Order

That until 31 December 2004 Standing Order 74 will not apply to any notice of disallowance motion given in accordance with section 42 of the *Interpretation Act 1984*.”.

(On 1 June 2005 the temporary order was extended until 31 December 2006).

Government response to the recommendation Nos 5 and 6 in Report No. 4 of 2003

The Leader of the House in his response to the previous Committee's recommendations indicated that, in principle, the Government supported the recommendations and because

recommendation 5 affected both Houses it would be best pursued by the Attorney General in consultation with the President of the Legislative Council.

Your Committee having further considered the matter proposes the temporary order be renewed for a further period until 31 December 2007. It also strongly urges the Attorney General to expedite legislative changes recommended by the previous Committee in Report No. 4 of 2003 and as recommended below by this Committee -

Recommendation 4

Your Committee recommends -

- (1) That section 42 of the *Interpretation Act 1984* be amended to provide that at the expiration of 15 sitting days after notice of a motion to disallow any regulation has been given in either House of Parliament, being a notice given within 14 sitting days after the regulation has been laid before the House, the notice has not been withdrawn or called on and finally determined, the regulation specified in the notice of motion will be deemed to have been disallowed.
- (2) That the Attorney General arrange for the tabling in the Legislative Assembly of a schedule detailing disallowance provisions in Acts other than the *Interpretation Act 1984* and outlining the changes necessary to bring them within the spirit of the amendments proposed in recommendation 5 (1).

Recommendation 5

Your Committee recommends the Legislative Assembly adopted the following Temporary Order until 31 December 2007 -

“Temporary Order

That until 31 December 2007 Standing Order 74 will not apply to any notice of disallowance motion given in accordance with section 42 of the *Interpretation Act 1984*.”.

3. ABSENCE OF A MEMBER FOR ONE SESSION (S. 38 OF THE CONSTITUTION ACTS AMENDMENT ACT 1899).

Section 38(g) of the *Constitution Acts Amendment Act 1899* provides that a member's seat becomes vacant if the member fails to attend the Legislative Assembly for an entire session without permission of the Legislative Assembly.

In the case of a single session Parliament, the period covered by section 38 would be extended from a period of approximately one year to a period of 4 years. Plainly it is unacceptable for a member not to attend the House for up to 4 years and in keeping with the intention of the section, a period of one year should be specified. The previous Committee therefore proposed that the *Constitution Acts Amendment Act 1899* be amended to redefine the period as "12 months" instead of "one entire session". The recommendation was as follows -

Recommendation 8 of report No. 4 of 2003

The previous Committee recommended -

That section 38 (g) of the *Constitution Acts Amendment Act 1899* be amended to substitute the period of 12 months for the words "one entire session thereof".

Depending on the form of drafting, section 38 (g) of the Act will then read something like -

“

.....If any member of the Legislature.....

- (g) fails to give his attendance in the House of which he is a member for 12 months without the permission of the House entered upon its journals,

his seat shall thereupon become vacant. ”.

Government response to the previous Committee's Recommendation 8 in Report No. 4 of 2003.

The Leader of the House in his response to the previous Committee's recommendation indicated that, in principle, the Government supported the recommendation and because it affected both Houses it would be best pursued by the Attorney General in consultation with the President of the Legislative Council.

Your Committee having further considered the matter, agrees that it is unacceptable for a member to not attend the House for up to 4 years without losing his/her seat. Your Committee strongly urges the Attorney General to expedite the legislative changes

recommended by the previous Committee in Report No. 4 of 2003 and as recommended below by this Committee -

Recommendation 6

Your Committee recommends,

That section 38 (g) of the *Constitution Acts Amendment Act 1899* be amended to substitute the period of 12 months for the words “one entire session thereof”.

Depending on the form of drafting, section 38 (g) of the Act will then read something like -

“

.....If any member of the Legislature.....

- (g) fails to give his attendance in the House of which he is a member for 12 months without the permission of the House entered upon its journals,

his seat shall thereupon become vacant. ”.

HON. FRED RIEBELING, MLA
CHAIRMAN TO THE COMMITTEE
16 November 2006