



WESTERN AUSTRALIA

LEGISLATIVE ASSEMBLY

**PROCEDURE AND PRIVILEGES
COMMITTEE**

**Pecuniary Interests and Address in Reply
Standing Orders**

Presented by:
Hon. George J. Strickland, MLA
Speaker of the Legislative Assembly

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REPORT OF THE PROCEDURE AND PRIVILEGES COMMITTEE ON THE

INTRODUCTION

1. This report revisits the proposed pecuniary interests and Address in Reply Standing Orders originally submitted to the House on 13 May 1999 in the Standing Orders and Procedure Committee's *Report on the Modernisation of the Standing Orders*, and presents arguments for and against the changes to provide the Assembly with background information for a debate on the matter.

CHAPTER 1 – PECUNIARY INTERESTS

BACKGROUND INFORMATION

2. The original and current pecuniary interests Standing Order is –

- “128. (1) No member will be entitled to vote on any division upon a question in which that member has a pecuniary interest.
- (2) The vote of a member may not be challenged except on a motion moved immediately after the division is completed, and the vote of the member determined to be so interested will be disallowed.”.

3. The Standing Order proposed in the report of the Standing Orders and Procedure Committee is -

- “(1) Prior to a vote being taken, a member will declare any pecuniary interest which may not be held in general with members of the public, but that pecuniary interest or the failure to declare it will not invalidate that member's vote.
- (2) A disclosure in a return under the *Members of Parliament (Financial Interests) Act 1992* need not be declared again under paragraph (1).”.

4. On motion of the Leader of the House, the existing Standing Order was not altered. His reason was that this sort of major change to the procedures should only be adopted following full debate on a specific substantive motion. During the debate, at that time, the member for Midland proposed that the Government introduce its own pecuniary interest proposal to which the Leader of the House agreed.

5. The new pecuniary interest Standing Order 254 that applies to committee members was approved.

THE EXISTING PECUNIARY INTERESTS STANDING ORDER

6. Standing Order 128 is similar to the pecuniary interest Standing Orders used by many other Australian legislatures. Arguments for and against it are –

Arguments for retention

- Members with a direct pecuniary interest technically are prohibited from voting in a division. If there is a question of direct pecuniary interest, the Standing Order allows a member's vote in a division to be challenged and the House to make a decision as to whether the vote should be disallowed.
- Members may participate in debates *and vote* on any matter in which there is any element of public policy providing the interest is not immediate and personal.

Arguments against retention

- It is ineffective as the Legislative Assembly follows the precedent of the 1811 ruling of the House of Commons Speaker Abbott that an “interest must be a direct pecuniary interest, and separately belonging to the persons whose votes were questioned, and not in common with the rest of his Majesty's subjects, or on a matter of state policy.”. Standing Orders should clearly recognise that by not allowing a member's vote to be invalidated, it is now recognised that in the past, members with a pecuniary interest have been able to vote on any matter in which there has been an element of public policy. In reality, public policy is involved in virtually every question before the House and disallowance of a vote almost never happened. The only time members' votes on public policy were disallowed in the House of Commons was in 1892.
- It can alter the balance of voting in the House by allowing a procedure for disallowance of a member's vote which may cause great concern in small legislatures where the balance in the House can be easily upset.
- Prevents members during debate from deciding on an issue in which they may have expert knowledge.
- It does not take into account declarations made by members in the Members' Financial Interests Register.

THE PROPOSED NEW PECUNIARY INTERESTS STANDING ORDER

7. The Standing Order proposed by the Standing Orders and Procedure Committee is similar to that used by the House of Commons, U.K.

Arguments for the proposed new Standing Order

- Removes the procedure for disallowance of a member's vote so that constituents represented by the member can no longer be disenfranchised.

- This is also particularly important in small legislatures where the balance in the House can be easily upset.
- Recognises that in the past members have been able to vote on any matter that involves an element of public policy (see above for ruling by Speaker Abbott).
- Places the onus on a member to declare direct pecuniary interests before any vote.
- Takes into consideration the Members' Financial Interests Register because members will only be required to declare new items of pecuniary interest not already declared in the register.
- Allows members with expert knowledge to participate in decision making.

Arguments against the proposed new Standing Order

- The proposed new Standing Order doesn't provide for the disallowance of a vote.
- Members could inadvertently not declare an interest, during a debate, and consequently suffer political embarrassment.

OTHER ISSUES

8. Under the proposed new Standing Order, it must be recognised that a member may inadvertently fail to declare an interest, however inadvertent transgression will never be viewed as seriously as a deliberate act. No penalty is spelt out, but it is plain that a deliberate disobedience to Standing Orders, especially one which is designed to mislead the House, is a contempt.

9. The critical issue is making public any interests members may have before participating in a debate or vote.

Recommendation 1

Your Committee recommends,

That the Leader of the House initiates a debate by proposing the following new Standing Order as previously recommended by the Standing Orders and Procedure Committee -

128. (1) Prior to a vote being taken, a member will declare any pecuniary interest which may not be held in general with members of the public, but that pecuniary interest or the failure to declare it will not invalidate that member's vote.

(2) A disclosure in a return under the *Members of Parliament (Financial Interests) Act 1992* need not be declared again under paragraph (1).

10. Your Committee has considered the existing register of members interests and considers steps need to be taken to help members guard against inadvertently failing to declare a pecuniary interest. The *Members of Parliament (Financial Interests) Act 1992* requires the registrar (the Clerk) to produce the register in a form which often involves some searching of past returns to determine a member's position as at the latest declaration. There would be a substantial benefit to members and people wishing to view it if the register was produced as a cumulative register with all of a member's current declarations available in the one document. When the Act is next reviewed, this proposition should be introduced.

Recommendation 2

Your Committee recommends,

That when the *Members of Parliament (Financial Interests) Act 1992* is reviewed, the Act be amended to allow the registrar to produce the register in a cumulative format.

CHAPTER 2 – ADDRESS IN REPLY

11. Limiting priority given to the Address in reply to two weeks at the First Session of Parliament following a general election and then one week at the commencement of subsequent sessions, was recommended in the 1999 report of the Standing Orders and Procedure Committee on the modernisation of the Standing Orders. In addition, it was proposed that after the first week, debate would resume at 7.00 p.m. after the dinner break on each succeeding Tuesday until the Address in Reply debate was completed.

12. The proposed Standing Order was adopted by the House but the provision to bring on the debate each Tuesday was deleted by an amendment moved by the Leader of the House. Your Committee has taken into account concerns that the whole of each succeeding Tuesday evening could be taken up with the Address in Reply debate and thereby usurp Government business time. An amendment is now proposed which makes it clear that, as is the case with other business, the debate can be adjourned at any time after one speech has been delivered each Tuesday if the House so wishes. In addition, the proposal has been changed to prevent any amendment being moved to the Address in Reply when it is being debated on those subsequent Tuesday evenings.

13. The advantage of these changes are –

- the House can be certain that the Tuesday evening opportunities will be for members' speeches only;
- the time cannot be used as a defacto second MPI in each week;
- the Government retains control of the business after 7.30 p.m. on Tuesday evenings; and
- with at least the period between 7.00 p.m. and 7.30 p.m. being devoted to members speeches, the Whips may feel freer to grant pairs to allow members to attend evening functions during the dinner break.

14. This proposal is effected by adding a paragraph (2) to existing Standing Order 59 so that the Standing Order would read as follows -

“Priority for Address in Reply

59. (1) Bills may be introduced and taken to the stage that the motion “That the bill be now read a second time” has been moved but no other business that is not of a formal or procedural nature will have priority until -

- (a) after 4 sitting days (including opening day) have been dedicated exclusively to the debate on the Address in Reply; or

- (b) immediately following a general election after 7 sitting days (including opening day) have been dedicated exclusively to the debate on the Address in Reply.
- (2) Unless otherwise ordered, after the 4 sitting days referred to in 59(1)(a) or the 7 sitting days referred to in 59(1)(b) -
- (a) no further amendment may be moved; and
 - (b) the Address in Reply shall be debated on Tuesdays from 7.00 p.m. with at least one member speaking prior to the matter being again adjourned.”.

Recommendation 3

Your Committee recommends,

That the following paragraph be added to Standing Order 59 –

- (2) Unless otherwise ordered, after the 4 sitting days referred to in 59(1)(a) or the 7 sitting days referred to in 59(1)(b) –
- (a) no further amendment may be moved; and
 - (b) the Address in Reply shall be debated on Tuesday from 7.00 p.m. with at least one member speaking prior to the matter being again adjourned.

