



**PROCEDURE AND PRIVILEGES
COMMITTEE**

**REPORT ON THE
TRIAL OF THE
MODERNISED STANDING ORDERS**

**Presented by
the Hon. George J. Strickland, MLA, Chairman**

18 November 1999

COMMITTEE MEMBERS

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(Speaker of the Legislative Assembly)

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INTRODUCTION

Following presentation to the Assembly on 13 May, 1999 of the Standing Orders and Procedure Committee's report on the Modernisation of the Standing Orders, the House resolved, on 7 September 1999, to trial the modernised Standing Orders. Those trial Standing Orders have effect from 8 September to 31 December, 1999.

As was foreshadowed, a survey was undertaken of Assembly Members, and Committees were separately invited to comment on the changes. Details of those responses and this committee's views on them follow.

On the survey evidence and from individual feedback to committee members and staff, acceptance of the changes has been widespread, and mainly enthusiastic.

In putting forward a motion for the trial, the Leader of the House moved to delete certain matters as proposed in the original report of the Standing Orders and Procedure Committee and those matters are reviewed in this report.

In short, your committee is proposing adoption of the trial Standing Orders with some minor fine tuning. And if you had to pick a date, 1 January, 2000 has great appeal.

CHAPTER 1 - SURVEY RESULTS

1. A survey of members on their attitudes to the major changes under the trial Standing Orders was undertaken from 19 to 28 October, 1999 and the results in detail, together with members' comments are attached as an appendix to this report.
2. Of the 35 members (61%) who returned the survey, 97% were in favour of making the trial Standing Orders permanent. The response to individual Standing Orders varied, with some members preferring to express no view on some of the trial changes.
3. Briefly, the results from the 35 members' returns are as follows -

New introduction procedure for Bills	97% in favour
Bill to be available at first reading	94% in favour 6% no response
Explanatory memorandum for Bill to be mandatory	97% in favour
3 week adjournment after second reading speech	77% in favour
Consideration in detail procedure	100% in favour
Unlimited 5 minute periods to be retained during consideration in detail stage of Bills	74% in favour
Elimination of seconding of motions	77% in favour 3% no response
Right of reply to every motion	100% in favour
Standardised speech times for motions	100% in favour
Changed wording for petitions	82% in favour 3% no response
Changed certification and presentation for petitions	71% in favour 6% no response
Interruption of business and automatic adjournment	88% in favour 6% no response
Immediate publishing of committee evidence	69% in favour
Higher quorum for committees taking evidence	74% in favour 3% no response
Committee requests for Ministerial response to be recorded on Notice Paper	97% in favour

Speaker to report non-compliance by Ministers to table response to committee report	94% in favour
Minority reports to be shown to committee	86% in favour 6% no response
Only deliberative vote for Committee chairman	77% in favour 6% no response
Casting vote for Speaker to be optional	80% in favour
Question for suspension of member to be proposed immediately by Speaker	77% in favour 3% no response
Miscellaneous other changes grouped together (Note: most concerns related to only one item - usually looking for clarification)	71% in favour 17% no response

CHAPTER 2 - SURVEY ISSUES CONSIDERED

4. While the figures overwhelmingly support the changes, with the lowest level of support being 69% for any change, those areas where the survey showed less than 75% in favour of an individual proposition have been revisited by the Committee.

Time limits applying during consideration in detail

5. Unlimited speaking opportunities during the consideration in detail stage brought the most comment. These speaking times are not a change brought about by the trial Standing Orders but were simply continued from the old Committee of the Whole stage. The main thrust of the comments against the unlimited speaking times was that debate could be repetitious, that it was open to abuse and that legislation could thereby be unreasonably delayed.

6. Your committee considered that these comments were valid in some cases, but it is also true that many of the Standing Orders can be used to delay if needs be. A number of alternatives were proposed, including “a generous limit on the number of times a member can speak”; “3 to 4 minutes per person”; “maximum 3 times”; “maximum of 20 minutes on each clause”; “3, 4, or 5 minutes for each clause”; “a limit on the amount of time (say 45 minutes) on each clause”; as well a suggested return to the previous regime in Committee of the Whole, which was 15 minutes, 10 minutes and 10 minutes. Two members noted that some Ministers were potential offenders in speaking at length during consideration in detail.

7. When in 1995 the change to the present unlimited 5 minutes system was proposed by the Select Committee on Procedure, it recorded in paragraph 21 of its Second Interim Report, the following -

“While this system may seem to create an opportunity for abuse of the system, the committee considers that there is sufficient maturity amongst members to ensure that any abuse of the system is uncommon”

and later at paragraph 22 -

“It must also be borne in mind that the Chairman has the discretion to apply Standing Order 142 as it relates to tedious repetition.”

8. The tedious repetition elements are reproduced in Trial Standing Order 179. Experience shows there is occasional use of speaking times to delay legislation but that is not frequent, and more practically speaking, it was available under the previous system as well. Inventive members will always be able to find a way to delay legislation if that is their intention and it is not the view of this committee that the debate time system which works well in relation to most legislation should be tightened.

9. Another suggestion was that during consideration in detail, members should be allowed, by leave of the Assembly, to speak for one period of 20 minutes and then revert to unlimited periods of 5 minutes. Your committee rejects this, mainly because consideration in detail is not intended to be a substitute for the second reading debate, allowing members who could not deliver their speech earlier to do so during consideration in detail. Some members have thought it was an acceptable practice to engage in a general second reading type of debate using as a vehicle the clause which contained the short title of the bill, but that is not intended and should not be allowed by the Chair. Members speaking to the short title are as restricted by the need to be relevant as on any other clause. The Chair has discretion to give a little latitude on any clause if it is likely to shorten proceedings or otherwise assist the debate and while the Chair will continue to have and exercise the capacity for flexibility if needed, that discretion should be exercised with considerable caution.

10. More attention should be paid to the matter of tedious repetition, and the Committee proposes that the Speaker encourage all those members who chair the House to be aware of the need to avoid tediously repetitive debate. There are some difficulties with this as it is highly probable that there will be different people in the Chair at various times during a lengthy debate, but nevertheless, it should be pursued where necessary. It is also foreseeable that some members are likely to complain and try to argue on the first few occasions when the Chair takes action in relation to tedious repetition but that will settle. The Chair must however be alert to the prospect that the proponent of a Bill may not wish to be drawn on some aspect of the legislation and it is then entirely legitimate for another member to press for an answer.

RECOMMENDATION 1

Your Committee recommends,

That the debate times in consideration in detail stage remain but that the Speaker, Deputy Speaker and Acting Speakers be alert for tedious repetition if that occurs and apply the Standing Order if necessary.

Changed certification and presentation of petitions

11. One member thought the new wording “We the undersigned say” is too restrictive as are the words “now we ask”. Your committee has reviewed the wording but has not devised a better wording. The new wording has the considerable advantage of being both modern and clear, asking petitioners both to state the problem and then to say what they would like done about it.

12. Another member thought that the new procedure eliminated the tabling of petitions but that is not so. Under trial Standing Order 66, the House automatically receives a petition unless the Assembly or Speaker determines otherwise. The petition automatically becomes part of the tabled papers of the House.

RECOMMENDATION 2

Your Committee recommends,

That the trial Standing Orders in relation to petitions not be altered.

Immediate publishing of committee evidence

13. Change to allow immediate reporting and publishing of evidence taken by Committees drew the most opposition of any of the trial Standing Orders, but still achieved the support of over two thirds of the members who responded.

14. Members' concerns mentioned in the survey included distortion created by evidence being taken out of context, potential discouragement of witnesses, potential pre-empting of a committee's report, and the capacity for a trial by media. Again, your committee considers there is some validity in these concerns. The original decision of this committee to recommend that evidence be immediately reportable was a decision which weighed up the advantages and disadvantages, including those mentioned earlier in this paragraph. The procedure adopted is still preferred however, not just because about 70% of members support it but because its more open nature gives the public better access to and education about the views and documentation available to a Committee, and exposes them to much more of the work of the Parliament. Any Committee may decide by simple resolution to close any session if necessary.

RECOMMENDATION 3

Your Committee recommends,

That evidence remain open and immediately publishable unless the Committee decides to the contrary.

Higher quorum for committees taking evidence

15. With 23% of the respondents against this change, the matter was reviewed and advice has been sought from each existing committee. Not all committees have responded at the date of this report, but informal advice was received that at least one committee considered that a quorum of two was sufficient and appropriate to take evidence.

16. Some members in their survey returns however expressed the view that more members should be present when evidence is taken rather than fewer.

17. The issue of subcommittees taking evidence was raised. Under the trial Standing Orders, subcommittees may not take evidence, that function being reserved for the committee as a whole. The question of a quorum for evidence thus does not relate to subcommittees, and the Procedure and Privileges Committee continues to take the view that most evidence taking is a matter for the committee as a whole and all members should be encouraged to attend and hear the evidence in person. As an aside, this comment also applies in large measure to committees which hear evidence outside Perth: it is usually important for all members of the committee to see and hear the evidence directly.

RECOMMENDATION 4

Your Committee recommends,

That the quorum for evidence taking by a Committee remain at 3 members.

CHAPTER 3 - OTHER CHANGES ARISING FROM THE TRIAL

Interruption of debate

18. Trial Standing Order 61 provides that when an item of business no longer has precedence, the Chair will adjourn the matter without a question being put. This innovation has been applied to the change from Private Members' business to Government business and vice versa, at the commencement of Question Time, and at the time for members' statements (90 second statements). So far, the procedure has worked well but it is not clear whether the Chair should adjourn the matter to the same day or a future day. Your committee considers that any business so interrupted should be able to be resumed on the same day, and consequently interrupted business should automatically become an order of the day for a later stage of that day's sitting.

RECOMMENDATION 5

Your Committee recommends,

That Trial Standing Order 61 read as follows -

61. When under Standing or Sessional Orders an order of business under discussion no longer has precedence or the time has arrived for other business to take place, the Chair will adjourn the matter to a later stage of that day's sitting without a question put.

Urgent Bills

19. All Bills must be adjourned for three calendar weeks after the second reading speech. The debate can resume earlier if the Bill is considered urgent by the House. That has been reviewed and the Committee considers this adjournment period should remain, but should it continue to apply to Bills coming from the Council? There is good reason to suggest that members will be aware of the content of Bills coming from the Council, but that is not always so, particularly for members who do not belong to the larger parties. Your committee expects that in practice the consultation which is required on Bills coming from the Council is done and there is not the need to make the three week period mandatory for such Bills, but in recommending the removal of the requirement in relation to Council Bills, it is expected that the Leader of the House will continue to take into account any special need Members may have for more time to prepare themselves for dealing with legislation.

RECOMMENDATION 6

Your Committee recommends,

That Trial Standing Order 168 (1) be amended to read as follows -

168. (1) After a member has moved, “That this Bill be now read a second time” and had an opportunity to speak to the motion, the debate will be adjourned and if the Bill has originated in the Legislative Assembly, the debate will not be resumed for three calendar weeks.

Certification of Bills

20. The Clerk is required to certify that amended bills are in accordance with the bill as amended during consideration in detail stage. It is unnecessary for the Speaker to announce that to the House and it is proposed to eliminate that redundant requirement. Note that Trial Standing Order 196 (2) provides for an amended bill to be reprinted before the Clerk can certify it as correct.

RECOMMENDATION 7

Your Committee recommends,

That Trial Standing Order 195 (2) be amended by deleting the words “and before the bill is read a third time, the Speaker will announce that the bill has been so certified”, so it will appear as follows -

195. (1)

(2) The Clerk will sign each bill after the conclusion of the consideration in detail stage to certify that it is correct.

Time for providing explanatory memorandum

21. A member presenting a bill is required by Trial Standing Order 162 (2) to ensure that the bill is accompanied by an explanatory memorandum. The time for delivery of that memorandum to the House is at the first reading. In exercising flexibility with the introduction of the new procedures, the Speaker has not taken up the point of timing, especially as it has been most usual for an explanatory memorandum to be made available at the end of the second reading speech. Some explanatory memorandums have been provided later to the Papers office.

22. 97% of members responding to the survey wished the provision of the explanatory memorandum to remain mandatory, and the Procedure and Privileges Committee considers the timing and method of delivery of the memorandum should now conform to the Trial Standing Order. It is clear from the present wording of the Standing Order that the memorandum must

accompany the bill and the Clerk is therefore required to keep both the bill and the memorandum together in the records of the House. Consequently, the explanatory memorandum should be provided at the same time the bill is presented to the House, that is at the first reading.

RECOMMENDATION 8

Your Committee recommends,

That the Speaker remind members as necessary that when they are introducing a bill, they are required to present an explanatory memorandum with the bill at the first reading.

Notice for referral of bill to a committee

23. No notice is required of a motion to refer a bill to a standing, select or legislation committee and Trial Standing Order 171 needs adjusting accordingly. At the same time, it could be combined with Trial Standing Order 173 which relates to the time at which a bill can be referred to a committee. The terminology should be consistent with Trial Standing Order 183 dealing with referral of a bill to a legislation committee. The reference to a legislation committee in Trial Standing Orders 171 and 183 should remain for completeness and ease of understanding.

RECOMMENDATION 9

Your Committee recommends,

That Trial Standing Order 171 be amended to read -

171. At any time after the second reading and before the third reading stage, a motion without notice “That this bill be referred to a standing (or select) committee” may be moved or the bill may be referred without notice to a legislation committee.

Consideration of Council’s amendments

24. Trial Standing Order 205 provides that when a Bill is returned from the Council with amendments, the message will be read and a day fixed for its consideration in detail.

25. For clarity, it would be better to record that a *future* day be fixed for its consideration. In addition, it is often the case that all members wish to deal with the amendments on the day the message is received, especially as they will normally be aware of the amendments made in the other place, and the reason for them. To enable this to occur without the need to obtain an absolute majority to suspend the Standing Order, leave of the House without a dissentient voice could be given to take the message into consideration on the day on which it is received.

RECOMMENDATION 10

Your Committee recommends,

That Trial Standing Order 205 be amended to read as follows -

205. When a Bill is returned from the Council with amendments, the message will be read, and a future day will be fixed for its consideration in detail unless leave is given without a dissentient voice to consider the message on the day it is received.

Quoting from official documents

26. Your committee has considered the requirements of Trial Standing Order 157 relating to the tabling of official documents quoted from and particularly noted the application of the rule in the Assembly on 22 and 23 September, 1999, when the Deputy Speaker advised Ministers that if they did not wish to have to table a document, they should write some notes for themselves and not hold the original document in their hands, noting that if Ministers stand holding the document they have read from, the House (on a Member's request) will require them to table the document.

27. In the past, Speakers have noted that if the document is a private document of the Minister's with his or her writing then that need not be tabled, but clearly the writing of some words on an official document does not make it any less official. Is a photocopy of an official document somehow less official, so that a Minister may quote from a photocopy but not an original? What if the Minister has a photocopy of one page but not all the document, is that copy less official? The answer to each question must be "no", but equally clearly the cutting and pasting of extracts copied from documents does not constitute an official document. If the Minister has speaking notes as opposed to an official document or a copy of an official document then they would not be required to be tabled. Similarly, if a Minister has brought only one page to quote from, that does not mean that the whole document can be required to be tabled as the focus of the House is on the actual document the Minister has read from. The matter will remain a question for the Chair to determine in cases of doubt, and the Chair will continue to take the word of the Minister in relation to the document read from, but there is no need to further elaborate on the Standing Order.

RECOMMENDATION 11

Your Committee recommends,

That Trial Standing Order 157 relating to the tabling of official documents remain.

Timing of Matter of Public Interest

28. The order of the Assembly's business is set down in Trial Standing Order 58, and item 7 is as follows -

(7) Matter of Public Interest (immediately after questions without notice); .

29. On Tuesdays, when the House meets at 2.00 pm, a matter of public interest is actually taken after petitions, papers and the giving of notices of motion, the reason being that in order to get question time close to 2.00 pm, the business commences with prayers, brief ministerial statements and then questions.

30. Standing Order 145 which provides for matters of public interest also has MPI's being taken after questions. To properly record the practice of the House, Trial Standing Orders 58 and 145 need minor adjustment.

RECOMMENDATION 12

Your Committee recommends,

(1) **That Standing Order 58 (7) be amended by deleting “(immediately after questions without notice)”.**

(2) **Standing Order 145 (1) be amended to read -**

145. (1) Consideration of a matter of public interest will be taken in the order determined by Standing Order 58, and only one matter may be discussed in any sitting week.

Notice for appointment of Members to Committees

31. The Assembly does not require notice for a corollary motion to appoint member to a committee which has just been established, but it does require notice for a change to be made at any other time. Trial Standing Order 249 needs adjustment to reflect that.

RECOMMENDATION 9

Your Committee recommends,

That Standing Order 249 (1) be amended to read -

249. (1) Members will be appointed to and may be discharged from committees by motion on notice. No notice is required of a motion for appointment of members if it immediately follows a motion which has established a committee.

Ministers ineligible to be on Standing or Select Committees

32. Under the general provisions relating to standing and select committees, no Minister may be appointed as a member of a committee unless otherwise ordered by the House. The Public Accounts Committee takes the view that there should be a blanket ban on a Minister being a member of that committee.

33. In recent times there has been good reason for a member to continue on a committee for a brief period after having been appointed as a Minister, usually where there was special involvement and knowledge in a particular issue and that work was about to be completed. The Standing Orders should not preclude that from happening but the Procedure and Privileges Committee agrees that there should be a more definite prohibition on *appointment* of Ministers to a standing or select committee. Consequently it is recommended that an adjustment be made to the Standing Order, which precludes a Minister being appointed unless the House actually suspends the Standing Order.

RECOMMENDATION 14

Your Committee recommends,

That Trial Standing Order 251 be amended by deleting the words “unless otherwise ordered by the Assembly”, so it will appear as follows -

251. No Minister of the Crown will be eligible to be appointed as a member of a committee.

Tabling of committee reports

34. Trial Standing Order 279 eliminated the requirement for a Chairman or other member tabling a report to move “That the report be printed”, as Trial Standing Order 278 (4) provided for the publishing of the report to be done by the Clerk at the request of the Committee. For greater clarity, Trial Standing Order 278 (4) should be renumbered as 278 (3).

35. Speaking time is provided for the Chairman and members of the Committee on the tabling of the report without the need for the usually redundant motion “That the report be printed”. Trial Standing Order 100 which lists matters not open to debate or amendment, therefore needs the reference to Standing Order 278 removed.

RECOMMENDATION 15

Your Committee recommends,

That Trial Standing Order 100 be amended by deleting -

“278 Presentation of Report of Standing or Select Committee”.

Special Quorum for Joint Standing Committee on the Anti-Corruption Commission

36. The Anti-Corruption Commission Committee consists of 4 members from each House. Its special quorum provision under trial Standing Order 287 requires a quorum of five members, “with the Assembly and the Council being represented by at least one member.”. Plainly, there is no alternative but for each House to be represented if the quorum is 5. Rather than eliminating what seems to be redundant words, your committee is proposing that the concept of joint quorums in the Standing Orders be retained by the insertion of the word “so”.

RECOMMENDATION 16

Your Committee recommends,

That on the next occasion the Assembly and Council establish the Joint Standing Committee on the Anti-Corruption Commission, Trial Standing Order 287 be amended to read -

287. A quorum for a meeting of the Joint Standing Committee will be five members, with the Assembly and the Council being so represented by at least one member.

Adoption of Trial Standing Orders

37. Not one member who responded to the survey was against the permanent adoption of the Trial Standing Orders. Even though not all members responded, the 35 who did should be a very reliable guide to the view of all members, and in any event represent more than an absolute majority of the members of the House.

38. Your committee is therefore very confident in proposing that with the few changes outlined in this report, the Trial Standing Orders should be adopted as the permanent Standing Orders of the Assembly, on and from 1 January, 2000. As part of that adoption, the House should authorise the Clerk to undertake a renumbering of the Standing Orders and to make such clerical and consequential amendments as are necessary, with a view to having the new Standing Orders renumbered, reprinted and available for the first sittings of the House in 2000.

39. The recommendation to make the trial Standing Orders permanent, is put forward with the intention of presenting a further report in March 2000, which will make recommendations on a number of issues which have arisen.

40. Several matters included in the report on the Modernisation of the Standing Orders were not included in the trial or were included in an amended form. Those matters were estimates committees, address in reply, pecuniary interests, and disallowance of delegated legislation. In addition, the committee deliberately did not address the matter of time management (the guillotine) in its previous report. This Committee is waiting a report from the Public Accounts Committee on the way the House should deal with the Estimates and has not yet had formal feedback from all committees regarding the trial Standing Orders. Further, the House has not yet conducted a debate on the Standing Committee system.

41. Comments were made by members in the survey on several matters, not necessarily directly relating to specific standing orders. Those comments included the following -

- specific restrictions proposed on time for Ministers' answers
- review of changes after 2 years
- time management to be applied to all bills
- education of members on procedure
- committee resourcing and travel
- start and finish times for the Assembly
- reading of speeches.

42. Each of the matters mentioned in the previous two paragraphs will be further reviewed over the next 3 months, and because some relevant information has not reached this committee, it is premature for the committee or the House to deal with them now. In the meantime, the trial Standing Orders expire on 31 December 1999. As the House will revert to the original Standing Orders unless the House takes action, it is proposed that the House adopt the trial Standing Orders, with the modifications proposed in this report, as permanent on and from 1 January 2000. The March 2000 report from this committee will allow the House to complete the process of modernisation.

RECOMMENDATION 17

Your Committee recommends,

- (1) That the Trial Standing Orders, amended as recommended in this report, be adopted permanently, to apply on and from 1 January 2000.**
- (2) That the Clerk be authorised to undertake renumbering as necessary and to make such clerical and consequential amendments as are necessary.**