



THIRTY-SEVENTH PARLIAMENT

REPORT 9
STANDING COMMITTEE ON PROCEDURE AND
PRIVILEGES
IN RELATION TO
SO 243: DAY FIXED FOR THIRD READING

Presented by Hon George Cash MLC (Deputy Chairman)

May 2006

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:

“6. Procedure and Privileges Committee

6.1 *A Procedure and Privileges Committee* is established.

6.2 The Committee consists of the President and the Chairman of Committees, the Deputy Chairmen of Committees (all *ex officio*), and any members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chairman, and the Chairman of Committees is the Deputy Chairman, of the Committee.

6.3 With any necessary modifications, SO 326A applies to a co-opted member.

6.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the House and its committees, and recommend to the House 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 House or its committees.

6.5 Unless otherwise ordered any rule or order under which a matter of privilege stands referred, or is referred, to a committee (however described) for inquiry and report is a reference to the Committee.”

Members as at the time of this inquiry:

Hon Nick Griffiths MLC (Chairman)

Hon Simon O’Brien MLC

Hon George Cash MLC (Deputy Chairman)

Hon Louise Pratt MLC

Hon Graham Giffard MLC

Hon Ken Travers MLC

Hon Ray Halligan MLC

Hon Giz Watson MLC (co-opted Member)

Hon Murray Criddle MLC (co-opted Member)

Staff as at the time of this inquiry:

Mia Betjeman, Clerk

Malcolm Peacock, Deputy Clerk

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ISBN 1 9208 8680 X

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REPORT OF THE STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

IN RELATION TO

SO 243: DAY FIXED FOR THIRD READING

1 REFERENCE AND PROCEDURE

- 1.1 On 11 May 2006 the Procedure and Privileges Committee (Committee) met to discuss a number of matters relating to the law and custom of Parliament and the rules of the procedure of the House.
- 1.2 This report canvasses the Committee's deliberations and recommendation in relation to *SO 243: Day fixed for third reading*.

2 BACKGROUND

The Standing Order

- 2.1 SO 243 provides:

Day fixed for third reading

When the report is finally adopted a subsequent day shall be fixed on motion for the third reading;

Provided that where a Bill passes through the Committee stage without opposition and has not been amended the third reading may immediately be moved and the Bill read a third time. (emphasis added).

Ruling of the President

- 2.2 On 13 April 2006, the House adopted the report of the Committee of the Whole's deliberation on the Yallingup Foreshore Land Bill 2005. The Bill had not been amended during the Committee of the Whole stage but the House had proceeded to division on several clauses of the Bill. After the adoption of the report, the Parliamentary Secretary with carriage of the Bill moved the motion "That the Bill be now read a third time". The application of the proviso to SO 243 then arose for consideration and ruling as follows:

Point of Order

Hon Norman Moore raised the following Point of Order -

My understanding of SO 243 indicates that when a Bill has been opposed in the committee stage, it cannot be moved to the third reading on the same day. It needs to be considered at a later date.

President's Ruling

The President ruled as follows -

Honourable Members, I have been asked to provide a ruling with regard to the application of SO 243 to the Yallingup Foreshore Land Bill 2005, which is the order of the day that is being considered by the House. The Yallingup Foreshore Land Bill 2005 passed through the committee stage and the report has been adopted. I am advised, and it is my understanding, that the Bill was not amended during the committee stage. However, there was debate and, more importantly, opposition to the Bill during the committee stage. SO 243 reads -

When the report is finally adopted a subsequent day shall be fixed on motion for the third reading;

Provided that where a Bill passes through the Committee stage without opposition and has not been amended the third reading may immediately be moved and the Bill read a third time.

The meaning of those words is plain. I will repeat them -

Provided that where a Bill passes through the Committee stage without opposition. . .

In this case there was opposition -

and has not been amended. . .

The Bill was not amended; however, we must consider the two ingredients involved, because clearly there has been opposition to the Bill. Therefore, the Bill cannot be read a third time at this day's sitting.

Ordered - That the third reading of the Bill be made an Order of the Day for the next sitting.¹

¹ Legislative Council of Western Australia, *Minutes of Proceedings*, 13 April 2006. See also *Parliamentary Debates (Hansard)*, 13 April 2006, pp 1677-1678.

History

- 2.3 The proviso to SO 243 was inserted on 18 August 1976 as a result of a report of the (then) *Standing Orders Committee*. Neither that committee's report nor debate in the House reveal the rationale behind the amendment. Prior to the amendment a subsequent day was always required to be fixed for the third reading regardless of whether or not the Bill was amended.

Meaning and Previous Practice

- 2.4 The Committee considered the meaning of "opposition" in the proviso. It was noted that the House had not previously considered the matter and that several interpretations are possible. For example, in the broad sense, "opposition" could mean the mere airing of opposing views in debate. A more narrow view could require the House to divide on questions put to agree to clauses or amendments.
- 2.5 The previous practice of the House reveals instances where there was opposition to a Bill in Committee of the Whole in the form of clauses or amendments being put and negated on division but the Bill emerged from the committee stage without amendment. In these cases the report was adopted on presentation and the third reading immediately moved and agreed.²

3 ADOPTION OF REPORT AND THE THIRD READING: CURRENT PROCEDURES

- 3.1 The Standing Orders and practice of the House provide the following framework for the adoption of reports and the third reading of Bills:
1. When a Bill passes second reading the House immediately resolves into Committee of the Whole unless:
 - a) the Minister/Member in charge of the Bill immediately moves a motion without notice to make consideration in committee an order of the day for the next day's sitting or for a later stage of this day's sitting (SO 235); or
 - b) if there is general agreement with the Bill and no Member wishes to debate individual clauses in Committee of the Whole, the Minister/Member may seek leave to proceed to the third reading forthwith. If granted, no Committee of the Whole stage takes place. It should be noted that this practice is not supported by an express provision in SO 235.

² Bail Amendment Bill 1998, *Parliamentary Debates (Hansard)*, 22 October 1999, pp 2511-2519.

Acts Amendment (Student Guilds and Associations) Bill 2002, *Parliamentary Debates (Hansard)*, 19 December 2002, pp 4503-4524.

Occupational Safety and Health Legislation Amendment and Repeal Bill 2004, *Parliamentary Debates (Hansard)*, 9 November 2004, pp 7646-7659.

2. When a Bill passes through Committee of the Whole and has been amended:
 - a) the Minister/Member in charge moves that the adoption of the report be made an Order of the Day for the next sitting unless leave is granted to immediately adopt the report (SO 244(b));
 - b) when the report is adopted a subsequent day is fixed on motion for the third reading (SO 243). On occasion leave has been sought and granted to proceed to the third reading.³ As to this practice refer to the comments at paragraph 4.1;
 - c) before the motion to adopt the report is moved, the Minister/Member in charge seeks leave “to proceed through all remaining stages at this day’s sitting”. If leave is granted, the adoption of the report and third reading are then moved at that day’s sitting. As to this practice refer to the comments at paragraph 4.1.

3. When a Bill passes through Committee of the Whole and has not been amended:
 - a) the report may be adopted on presentation (SO 244(a));
 - b) when the report has been adopted a subsequent day is fixed for the third reading (SO 243);
 - c) provided that if there has been no opposition and no amendment, the third reading may be immediately moved (SO 243, proviso).

4 CONCLUSIONS

Amended Bills

- 4.1 The Committee considered the desirability for a delay to take place between the Committee of the Whole completing its deliberations and the third reading when the Bill has been amended. This is reflected in the requirements of SO 243 and SO 244. It was observed that:
- the current practice of permitting the Minister or Parliamentary Secretary in charge of the Bill to seek (and in most cases obtain) leave to proceed through all remaining stages of the Bill at the same day’s sitting, in circumstances where amendments had been made to the Bill, was contrary to SO 243; and

³ Barrow Island Bill 2003 (amendments put and negatived on divisions; Bill reported without amendment and report adopted on presentation; leave sought and granted to proceed forthwith to the third reading which was immediately moved and agreed on division), *Parliamentary Debates (Hansard)*, 14 November 2003, pp 13089 - 13104.

- SO 244(b) permits leave to adopt the report on the same day as deliberations on the Bill in Committee of the Whole are completed. However, if the House grants leave for the motion to adopt the report to be moved and the motion is carried, SO 243 requires the third reading of the Bill to be made an Order of the Day for a subsequent sitting. There is no reference in SO 243 that permits the House to proceed to the third reading at the same day's sitting as is the case with the adoption of the report. This is a practice that has been allowed to develop over time.

4.2 The Committee also observed that the practice of proceeding to the third reading of an amended Bill on the same day as the Committee of the Whole completes its deliberations on the Bill is not only contrary to the Standing Orders but increases the risk of error that the Standing Orders were designed to minimise. The Committee draws these matters to the attention of the House below.

4.3 The Committee considers that it is desirable that the third reading be delayed to the next sitting to enable:

- a) the preparation of a new printed version of the amended Bill. This is to ensure that the Clerks and Parliamentary Counsel have an opportunity to check that the amendments made are coherent;
- b) Clerks to ensure that the decisions of the Committee and the House are accurately reflected in the Bill's amendments and messages to the Legislative Assembly; and
- c) an opportunity for the Bill to be recommitted should further amendments be required. Recommittal is not available if leave is granted to proceed through all remaining stages of the Bill, including its third reading, immediately after the committee stage is concluded. The current practice of completing deliberation in Committee of the Whole and third reading an amended Bill on the same day raises a considerable risk of the House passing a Bill with errors and with no capacity to recommit the Bill to the Committee of the Whole for further consideration.⁴

In these circumstances any change will have to be effected by either an amendment by the Legislative Assembly in response to a Legislative Council Message or by an amending Bill. This matter was noted in the Department of the Legislative Council report *Work of the Legislative Council Chamber in 2005: 29 March 2005 to 1 December 2005*.⁵

⁴ SO 245 provides that a motion to recommit may be moved at any time after presentation of the committee's report and prior to the question being put for the third reading.

⁵ See Tabled Paper No.1487, tabled 3 May 2006, p19.

Unamended Bills

- 4.4 The Committee agreed that when a Bill was not amended it should be capable of being third read on the same day's sitting notwithstanding that there were opposing views aired in debate or divisions on clauses or proposed amendments during the committee stage. The Committee notes that prior to the President's ruling, this was a common practice. The proviso to SO 243 will enable the practice to continue if it is amended to remove the ambiguity caused by the reference to "opposition".

5 RECOMMENDATION

Recommendation 1: The Committee recommends that SO 243 is amended to provide that when a Bill has not been amended in Committee of the Whole the third reading may be moved immediately and that the reference to "opposition" be deleted. This is to be effected in the following manner -

To delete the words - "opposition and has not been amended" and insert instead "amendment".

- 5.1 SO 243 as amended, would then read:

Day fixed for third reading

1. *When the report is finally adopted a subsequent day shall be fixed on motion for the third reading;*

Provided that where a Bill passes through the Committee stage without ~~opposition and has not been amended~~ amendment the third reading may immediately be moved and the Bill read a third time.



Hon Nick Griffiths MLC
President of the Legislative Council
Chairman

30 May 2006