



Procedure and Privileges Committee

Minor Adjustment to the Standing Orders: Notices of Motion to Disallow Subsidiary Legislation

Report No. 2
October 2013

Legislative Assembly
Parliament of Western Australia

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Report No. 2

Presented by

Ms Wendy Duncan, MLA
Deputy Speaker of the Legislative Assembly

Laid on the Table of the Legislative Assembly on 29 October 2013

Recommendation

That the Legislative Assembly amend Standing Order 74 by inserting the following sub-order:

(2) If a notice of motion is for disallowance in accordance with section 42 of the *Interpretation Act 1984* or any other Act, it may remain on the Notice Paper for 60 days without being moved. On the final day, the Speaker will announce it will be removed from the Notice Paper on the next sitting day.

The Standing Order will then read –

Notice lapses

74. (1) If a notice of motion has remained on the Notice Paper for 30 sitting days without being moved the Speaker will announce it will be removed from the Notice Paper on the next sitting day. A member may require the notice given by them to be continued by written notification to the Clerk prior to it being removed. A member may renew a notice of motion only once.

(2) If a notice of motion is for disallowance in accordance with section 42 of the *Interpretation Act 1984* or any other Act, it may remain on the Notice Paper for 60 days without being moved. On the final day, the Speaker will announce it will be removed from the Notice Paper on the next sitting day.

Disallowance Provisions for Subsidiary Legislation

Introduction

In the 36th, 37th and 38th Parliaments the Procedure and Privileges Committee reviewed Standing Order 74 which provides for the length of time a notice of motion can be listed on the Notice Paper. Notices of motion to disallow subsidiary legislation under the terms of section 42 of the *Interpretation Act 1984* cannot be renewed as the renewal does not fall within the 14-day period specified in the Act. Given the House has needed to adopt Temporary Orders on several occasions since 2005 to manage this situation, your Committee decided to revisit the issue with a view to recommending a permanent solution.

Background

Prior to August 1999 there was no mechanism in the Standing Orders to clear an obsolete notice of motion from the Notice Paper other than by a member seeking leave of the House to withdraw it, or through the automatic cessation of all business upon prorogation of Parliament—which at that time occurred annually.

The then Standing Orders and Procedure Committee recommended in 1999 the adoption of new Standing Order 74 which would provide for the removal of notices of motion which had sat unmoved on the Notice Paper for 30 sitting days, with provision for a member to 'require the notice given by them to be continued by written notification to the Clerk prior to it being removed'.¹ It was the Committee's view that this provision would be convenient for members by allowing 'a notice, which may serve no further purpose, to be taken off the Notice Paper in an administrative way without political difficulty'.²

In 2003 the Government announced, after reviewing legal opinion and practice in other jurisdictions, that it did not intend to ask the Governor to prorogue Parliament on an annual basis.³ This meant that a parliamentary session in Western Australia would normally last the duration of the four-year parliamentary term.

One consequence of moving to single-session parliaments was that the Notice Paper would no longer be automatically cleared on an annual basis, and that it would be possible for a notice of motion to remain on the Notice Paper for the full quadrennial term. More critically, extended sessions would have enabled a notice of motion to

¹ Standing Orders and Procedure Committee, *Report on the Modernisation of the Standing Orders*, Vol. 2: *Existing Standing Orders, Proposed Standing Orders and Notes*, 1999, Legislative Assembly, Western Australia, p. 81.

² Procedure and Privileges Committee, *Changes to Prorogation and Extended Sessions*, Report No. 4, 2003, Legislative Assembly, Western Australia, p. 5.

³ 'Prorogation of Parliament', Statement by the Leader of the House, Hon J.C. Kobelke, Legislative Assembly, Western Australia, *Parliamentary Debates*, (Hansard), 25 June 2003, p. 9228.

disallow subordinate legislation to remain on the Notice Paper for up to four years which, as your Committee noted in 2003, could result in subordinate legislation being disallowed by the Legislative Assembly after it has been in force for some considerable time.⁴ Such a situation could potentially lead, as your Committee further noted in 2009, to confusion in the administration of government.⁵

Given the undesirability of notices of motion remaining on the Notice Paper for such extended periods, your Committee recommended an amendment to Standing Order 74 whereby:

members may only be permitted to renew a notice of motion for one period of 30 sitting days. The total time a notice could potentially remain on the Notice Paper would equate to approximately one year.⁶

This recommendation was adopted by the House on 1 June 2005. Thus amended, Standing Order 74 now reads:

Notice lapses

74. If a notice of motion has remained on the Notice Paper for 30 sitting days without being moved the Speaker will announce it will be removed from the Notice Paper on the next sitting day. A member may require the notice given by them to be continued by written notification to the Clerk prior to it being removed. A member may renew a notice of motion only once.

Disallowance of Subsidiary Legislation

Section 42 of the *Interpretation Act 1984* directs with respect to subsidiary legislation that:

(1) All regulations shall be laid before each House of Parliament within 6 sitting days of such House next following publication of the regulations in the *Gazette*.

(2) Notwithstanding any provision in any Act to the contrary, if either House of Parliament passes a resolution disallowing any regulations of which resolution notice has been given within 14 sitting days of such House after such regulations have been laid before it or if any regulations are not laid before both Houses of Parliament in accordance with subsection (1), such regulations shall thereupon cease to have effect, but without affecting the validity or curing the invalidity of anything done or of the omission of anything in the meantime.

(3) Subsection (2) applies notwithstanding that the period of 14 days referred to in that subsection, or part of that period, does not occur in the same session of

⁴ Procedure and Privileges Committee, *Changes to Prorogation and Extended Sessions*, Report No. 4, 2003, Legislative Assembly, Western Australia, p. 8.

⁵ Procedure and Privileges Committee, *Disallowance Provisions for Subsidiary Legislation*, Report No. 6, 2009, Legislative Assembly, Western Australia, p. 1.

⁶ Procedure and Privileges Committee, *Changes to Prorogation and Extended Parliaments*, Report No. 4, 2003, Legislative Assembly, Western Australia, p. 5.

Parliament or during the same Parliament as that in which the regulations are laid before the House concerned.

Given the wording in s. 42(2) that a notice to disallow regulations is to be given within 14 sitting days of the tabling of the regulations in the relevant House, a member would be *unable* to renew the notice after the 30 sitting days had expired. As your Committee noted in its 2009 report on the issue:

This could potentially lead to the Government of the Day 'waiting out' the 30 sitting day period and allowing the notice of motion to be removed from the Notice Paper automatically without debate.⁷

To prevent notices regarding disallowance of subsidiary legislation from dropping off the Notice Paper, the House has since 2005 resorted on several occasions to adopting a Temporary Standing Order which provides that for the remainder of a (varying) stipulated period: 'Standing Order 74 will not apply to any notice of disallowance motion given in accordance with section 42 of the *Interpretation Act 1984*'.

While the use of these Temporary Orders has provided a practical means of dealing with the situation, it is the Committee's view that it would be preferable to remedy the situation permanently to provide greater certainty.

In the three previous reports on this topic your Committee has made recommendations which reflect the provisions of section 42 of the *Legislative Instruments Act 2003* (Cth) which stipulates a finite period for dealing with disallowance motions. The two recommendations were as follows:

- (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 1.

As securing amendment of the *Interpretation Act 1984* does not seem likely in the near future, an effective remedy within the means of the House is to amend Standing Order 74 permanently to achieve the main effect of the Temporary Orders which have worked well since 2005.

⁷ Procedure and Privileges Committee, *Disallowance Provisions for Subsidiary Legislation*, Report No. 6, 2009, Legislative Assembly, Western Australia, p. 4.

Your Committee accordingly submits the following recommendation to the Legislative Assembly for its consideration and adoption.

Recommendation

That the Legislative Assembly amend Standing Order 74 by inserting the following sub-order:

(2) If a notice of motion is for disallowance in accordance with section 42 of the *Interpretation Act 1984* or any other Act, it may remain on the Notice Paper for 60 days without being moved. On the final day, the Speaker will announce it will be removed from the Notice Paper on the next sitting day.

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Hon Michael Sutherland MLA
Chairman of the Committee
29 October 2013

Appendix One

Committee's functions and powers

Legislative Assembly Standing Order No. 284 provides the following functions, powers and terms of reference to the Procedure and Privileges Committee —

Procedure and Privileges Committee

- 284.** (1) A Procedure and Privileges Committee will be appointed at the beginning of each Parliament 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) Membership of the committee will consist of the Speaker and four other members as the Assembly appoints.
- (3) Standing Order 278 will apply except that where possible any report of the committee will be presented by the Deputy Speaker.
- (4) 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.