



**THIRTY-EIGHTH PARLIAMENT**

**REPORT 24**  
**STANDING COMMITTEE ON PROCEDURE AND**  
**PRIVILEGES**  
**FURTHER REVIEW OF THE STANDING ORDERS**

Presented by Hon. Barry House MLC (Chair)

September 2012

## STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

**Date first appointed:** 24 May 2001

**Terms of Reference (as amended by the House on 1 December 2011):**

### **7. Procedure and Privileges Committee**

- 7.1 *A Procedure and Privileges Committee* is established.
- 7.2 The Committee consists of 5 Members, including the President and the Chair of Committees, and any Members co-opted by the Committee whether generally or in relation to a particular matter. The President is the Chair, and the Chair of Committees is the Deputy Chair, of the Committee.
- 7.3 With any necessary modifications, Standing Order 163 applies to a co-opted Member.
- 7.4 The Committee is to keep under review the law and custom of Parliament, the rules of procedure of the Council and its Committees, and recommend to the Council 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.

### **Members as at the time of this inquiry:**

Hon. Barry House MLC (Chair)	Hon. Nick Goiran MLC
Hon. Matt Benson-Lidholm MLC (Deputy Chair)	Hon. Giz Watson MLC
Hon. Wendy Duncan MLC	

### **Staff for this inquiry:**

Malcolm Peacock, Clerk of the Legislative Council  
Nigel Lake, Deputy Clerk                      Grant Hitchcock, Advisory Officer (Procedure)

### **Address:**

Parliament House, Perth WA 6000  
Tel: 08 92227222  
Email: [lcco@parliament.wa.gov.au](mailto:lcco@parliament.wa.gov.au)  
Website: <http://www.parliament.wa.gov.au>  
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**REPORT OF THE  
STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES**

**IN RELATION TO THE**

**FURTHER REVIEW OF THE STANDING ORDERS**

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**1 REFERENCES**

- 1.1 On 1 December 2011, the Legislative Council resolved a series of motions, adopting a new set of Standing Orders for the House, whilst at the same time resolving as follows:

*That the Procedure and Privileges Committee conduct an inquiry into the operation of the new Standing Orders and report to the House during the Spring sittings in 2012.*

- 1.2 On 23 August 2012, the Legislative Council resolved as follows:

*That the Procedure and Privileges Committee be instructed to draft a Standing Order that shall reflect the provisions of sections 20I to 20M of the Evidence Act 1906, as proposed to be inserted by clause 5 of the Evidence and Public Interest Disclosure Legislation Amendment Bill 2011.*

**2 BACKGROUND TO THE REFERENCES**

- 2.1 The resolution passed on 1 December 2011 (paragraph 1.1) was subsequent to the passage of a series of resolutions which implemented a new set of Standing Orders for the Legislative Council. As part of the debate on this matter, Members considered that it was prudent to provide for a further review of the new Standing Orders, in order that any unanticipated issues arising from the new Standing Orders, and any further minor amendments required, may be reviewed by the *Procedure and Privileges Committee* (“the PPC”).

- 2.2 The resolution of 23 August 2012 (paragraph 1.2) was passed subsequent to two amendments made to the *Evidence and Public Interest Disclosure Legislation Amendment Bill 2011* during the Committee of the Whole House stage, which amendments made clear that the amendment Act would not apply to the operations of the Parliament. In effect, the resolution required the PPC to recommend a Standing Order that adopted the principles contained in the Bill, and apply the procedures related to the disclosure of a journalist’s confidential source contained in the Bill to the proceedings of the Legislative Council.

### **3 APPROACH BY THE COMMITTEE**

- 3.1 Since the commencement of sittings in 2012, the PPC has kept the operation of the Standing Orders under general review, and has retained an ongoing record of Standing Orders-related matters that have arisen in the House and its committees. The PPC has also received informal feedback from a number of Members over this period, and has included those matters amongst its deliberations.
- 3.2 On 12 September 2012, the PPC circulated a paper to all Members in the House. As noted in the Deputy President's statement to the House at that time, the purpose of this paper was to inform all Members of the specific matters under review by the PPC, and seek further feedback from Members.
- 3.3 A proposal was submitted subsequently to the PPC, seeking that it consider a Standing Order dealing with a certain type of amendment. This report contains this proposal and a possible Standing Order for consideration by the House (paragraph 4.4). The PPC has also re-considered Standing Order 51 – *Sub judice* Matters, and recommends an amendment to that Standing Order (paragraph 4.3).

### **4 RECOMMENDED FURTHER CHANGES TO THE STANDING ORDERS**

#### **4.1 Standing Order 21 – Time Limits on Speeches**

- 4.1.1 The PPC has reviewed several matters in relation to Standing Order ("SO") 21, and proposes a number of changes.
- 4.1.2 Firstly, a matter arose during the budget debate earlier this year (debate on the motion moved under SO 68 that the budget papers be noted). As the business before the House was a motion, the applicable debate time limits were those of a motion (i.e. 45 minutes for all Members, with 15 minutes for the Mover-in-Reply). Pursuant to a suspension of Standing Orders, the House resolved to conduct the debate on the budget papers under the time limits for the second or third reading of a Bill (i.e. unlimited time for the Mover, Leader of the Opposition and several other 'principal' Members; and 45 minutes for all other Members).
- 4.1.3 This arrangement effectively mirrored the applicable time limits for this item of business under the old Standing Orders. The PPC proposes to amend SO 21 to formalise this arrangement for future years.
- 4.1.4 Further, in proposing that the budget debate be conducted in accordance with the Bills' time limits, the PPC also considers it appropriate that a 'reciprocal adjustment' be made to the arrangements when the principal Appropriation Bills (i.e. the Bills applicable to the budget debate) are debated in the House. The PPC proposes that an additional category be added to SO 21, making separate provision for the second and third reading debate of these Bills to be taken under identical time limits to those applying to motions.

**Recommendation 1:**

That **Standing Order 21** be amended as follows [insertion of new text in red] –

Bills (Second and Third Reading) and Budget Debate (SO 68)

Mover	unlimited
Lead Member (Government or Opposition)	unlimited
Party Leader or Member deputed	unlimited
Other Members	45 minutes
Mover-in-Reply	unlimited

**Recommendation 2:**

That **Standing Order 21** be amended as follows [insertion of new text in red] –

Principal Appropriation Bills (Second and Third Reading)

All Members	45 minutes
Mover-in-Reply	15 minutes

4.1.5 Secondly, the PPC has noted some instances where confusion has arisen regarding debate time limits for Bills being considered during Non-Government Business and Private Members’ Business time. For the sake of clarity, the PPC proposes that the following footnote be added to the headings under SO 21 for “Non-Government Business Motion” and “Private Members’ Business Motion”.

**Recommendation 3:**

That **Standing Order 21** be amended by inserting a footnote linked to the heading “Non-Government Business Motion” and “Private Members’ Business Motion” –

\* These time limits apply to motions only. The time limits related to Bills apply to Bills debated during Non-Government Business and Private Members’ Business time.

- 4.1.6 Thirdly, the PPC proposes to include an opportunity for Committee Members to speak a second time when the Committee of the Whole House is considering a Committee report. The intent of such a capacity is to facilitate debate, by allowing a Member to speak a second time to clarify (on behalf of the Standing/Select Committee) any matters raised by other Members during the course of debate. In proposing this change, the PPC is cognisant that this is a limited debate. As such, the form of the amendment is proposed with the intent that a second opportunity to speak would only be afforded by the Chair of Committees when this would not preclude another Member from speaking on the report before the Committee of the Whole House.

**Recommendation 4:**

That **Standing Order 21** be amended as follows [insertion of new text in red] –

Consideration of Committee Reports

All Members                      one period of 10 minutes per report

*At the discretion of the Chair of Committees and when no other Member wishes to speak, a Member of the relevant Committee may be allocated a second period of 5 minutes per report.*

**4.2 Standing Order 23 – Maximum Time Limits for Certain Business Items**

- 4.2.1 The PPC has noted some confusion regarding the treatment of ‘incomplete’ business items when the matter is interrupted. As a consequence, the PPC proposes an addition to SO 23, to make it plain that when debate is interrupted in accordance with SO 15 and the maximum time limit for the item of business so interrupted has not expired, then the item shall be set down on the Notice Paper under the relevant heading as an order of the day, with the remaining total debate time being recorded against that item.

**Recommendation 5:**

That **Standing Order 23** be amended as follows [insertion of new text in red] –

23. (1) Unless otherwise ordered, the following maximum total debate time limits shall apply per item of business for the following categories -
- |     |   |             |
|-----|---|-------------|
| (a) | motions on notice (SO 15(2))                  | 240 minutes |
| (b) | consideration of Committee reports (SO 15(3)) | 60 minutes  |
| (c) | Non-Government Business motion (SO 15(4))     | 80 minutes  |
| (d) | Private Members' Business motion (SO 15(5))   | 60 minutes  |
- (2) **When an item of business under (1) is interrupted in accordance with Standing Order 15 prior to the expiration of the maximum total debate time limit outlined under (1), the item and the remaining total debate time will be listed on the Notice Paper for the next sitting of the Council.**
- (3) At the completion of the maximum total debate time prescribed for a motion on notice, the question for any amendments moved and the principal question (as amended) shall be put without further debate.

**4.3 Standing Order 51 – *Sub judice* Matters**

4.3.1 Current Standing Order:

***Sub judice* Matters**

51. Subject always to the right of the Council to debate any matter it deems appropriate, a matter before any court of record may not be referred to in any motion, debate or question (other than in relation to bills or ministerial decisions) if it appears to the President that there is a real and substantial danger of prejudice to the adjudication of the case.

*[emphasis added]*

4.3.2 SO 51 has effectively three components. The first component underscores the Council's right to debate any matter it deems appropriate, hence reinforcing the exclusive cognisance of the House over its own affairs. The third requires that the President will only act in relation to a *sub judice* matter if the President considers that the proceeding would cause "a real and substantial danger of prejudice to the adjudication of the case". The language used therein is deliberate. This SO is not intended to constrain a member from making reference to a matter simply because it is before a court – the President must form the view that there is a genuine and serious prospect of the proceeding interfering with the outcome of the court process before acting under this SO.

- 4.3.3 The second component of the SO covers the proceedings of the House. During consideration of this SO by the PPC in its initial inquiry into the Standing Orders, the PPC opted to insert the words “other than in relation to bills or ministerial decisions”, based upon a view that matters before a court may be ‘legitimately’ referenced during proceedings on these types of matters.
- 4.3.4 However, whilst this may be the case, the point remains that mere reference to an ongoing court proceeding does not of itself mean the President will act under this SO. The SO as adopted (above) effectively means that if the House is considering a matter regarding a Bill or ministerial decision, then the President will not intervene to preclude debate that may seriously interfere with an ongoing court process.
- 4.3.5 This outcome is at odds with the entire premise of the Standing Order. Given this, the PPC proposes that the exclusion in relation to bills and ministerial decisions be removed from the Standing Order.

**Recommendation 6:**

That **Standing Order 51** be amended as follows [deletion of text in red] –

51. Subject always to the right of the Council to debate any matter it deems appropriate, a matter before any court of record may not be referred to in any motion, debate or question (~~other than in relation to bills or ministerial decisions~~) if it appears to the President that there is a real and substantial danger of prejudice to the adjudication of the case.

**4.4 Standing Order 86 – Amendment to be Relevant and Not a Direct Negative**

- 4.4.1 The PPC has noted recent debate, including a President’s ruling on Wednesday, 19 September 2012, regarding the issue of direct negative amendments.
- 4.4.2 Current SO 86 deals with direct negative amendments. It is also noteworthy that SO 86 applies to all amendments (i.e. including amendments moved to bills, not just amendments moved to substantive motions), and this should be considered by any Member proposing an amendment to the current practice regarding these amendments.
- 4.4.3 There have been a number of instances (including the instance in paragraph 4.4.1) where the President has been requested to rule whether an amendment is a direct negative amendment, based upon an argument that the amendment effectively seeks to reverse the meaning and intent of the original motion.

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- 4.4.4 The PPC notes that, whilst direct negative amendments have this effect (reverse the meaning and intent of the original motion), a genuine direct negative amendment has a number of other characteristics, including the capacity to cause confusion in the House and create uncertainty as to the outcome of a decision of the House, and the potential to produce unintended consequences in the possible circumstance of a tied vote. Accordingly, an amendment must meet all these criteria to be deemed a direct negative amendment.
- 4.4.5 Given this, it is not sufficient to successfully argue that an amendment reverses the meaning and intent of the original motion, in order that an amendment be ruled as a direct negative amendment and hence out of order. If the House is to prohibit such amendments from being moved, which for the purposes of this report are categorised as ‘negative amendments’, an amendment(s) would be required to the current Standing Order(s).
- 4.4.6 The PPC notes that SO 86, and the practice surrounding direct negative amendments in the House, is consistent with parliamentary practice across all Australian jurisdictions. If the Legislative Council adopts a Standing Order to prohibit negative amendments, it would be adopting an approach unique within Australian parliaments.
- 4.4.7 The PPC does, however, note that the moving of negative amendments in relation to substantive motions is a relatively recent source of frustration for the Member who moved the original motion and those other Members who support that original motion. The PPC does have sympathy for the view taken by these Members. To this end, the PPC would seek to discourage the moving of negative amendments, and encourage Members who take a contrary view to a substantive motion moved by another Member to express that view by voting against the motion.
- 4.4.8 **The PPC does not, at this stage, recommend that a change to Standing Orders be made to prohibit negative amendments, but that the matter remain under ongoing review by the PPC.** However, if a Member wishes to propose that Standing Orders be amended to address this matter, the following possible amendment to SO 86 is offered for the consideration of the House. In doing so, the PPC would also emphasise that such a change to the SO would not render the issue obsolete, but in the future would raise different challenges for the Chair as Members modify the form of proposed amendments to comply with an amended SO which precluded (and defined) negative amendments.

**Possible Amendment to Standing Order 86:**

**Standing Order 86** could be amended as follows [amendment of text in red] –

**Amendment to be Relevant and Not a ~~Direct~~ Negative**

86. An amendment shall -

- (a) be relevant to the question before the Council; and
- (b) not be a **negative\***, including a direct negative.

\* a negative amendment is an amendment that the President considers would, if agreed to, amend a question to reflect the opposite meaning and intent of the original question, and for which the Member moving the amendment can adequately express their view by voting against the original question.

**4.5 Standing Order 100 – Form and Content of Petitions**

4.5.1 The PPC has noted a minor issue regarding SO 100, in relation to the presentation of a petition by a corporation and in particular the requirement that such a petition “be made under [the corporation’s] common seal”. The PPC has become aware that, pursuant to the Commonwealth *Company Law Review Act 1998*, a corporation is not required to have a common seal. Given this, the Committee proposes that subsection (h) of SO 100 be adjusted accordingly.

**Recommendation 7:**

That **Standing Order 100** be amended as follows [subsection (1)(h) only - insertion of new text in red] –

100. (1) A petition shall –

.....

- (h) if from a corporation, be made under its common seal **or, if the corporation does not have a common seal, a copy of the corporation’s articles of incorporation must be attached to the petition.**

4.5.2 The PPC considered some additional matters in relation to petitions and, whilst proposing no further changes to the Standing Orders at this stage, advises Members of the following matters.

- 4.5.3 The PPC has noted that a number of petitions being presented by Members contain a substantial volume of text, and consequently consume significant time to present in the House. The PPC does not propose to limit the length of the text of a petition, but does draw Members' attention to SO 101 *Procedure for Lodgement and Presentation of Petitions*, subsection (3)(b), which provides that the Member may read a summary of the text when presenting the petition to the House, rather than the full text of the petition. When a Member presents such a petition, the PPC strongly endorses that Members use this capacity to summarise the petition, in order that the House progress with other business in a timely manner.
- 4.5.4 The PPC has also noted that a recent petition presented to the House was signed exclusively by children. The PPC notes that the current Standing Orders do not preclude children signing petitions, and considers that this arrangement should remain unchanged. Along with retaining a right for children to present matters to the House for its consideration, the PPC also is cognisant that any prohibition on children signing petitions would present difficulties for the Member presenting the petition and the Clerk certifying that it conforms with the Standing Orders, unless a further requirement regarding documentary proof of age accompanying petitions was stipulated.

#### **4.6 Standing Order 112 – Personal Explanation**

- 4.6.1 The PPC does not propose any change to the text of SO 112, but does propose that it be re-numbered and accordingly that it appear elsewhere in the Standing Orders. The PPC proposes that SO 112 be re-numbered as SO 40, which in effect would place the newly numbered Standing Order in Chapter VI: General Rules of Debate, immediately following SO 39 – Reply by Mover and immediately prior to SO 40 – Reflections on Vote of the Council.

#### **Recommendation 8:**

That **Standing Order 112 – Personal Explanation** be assigned a new number, and be **Standing Order 40 – Personal Explanation**.

#### **4.7 Standing Order 113 – Protection of Persons and Corporations Referred to in the Council**

- 4.7.1 The same minor issue arises with SO 113 as with SO 100 (above), in relation to the presentation of a submission by a corporation. The PPC proposes that section 9 of SO 113 be adjusted in similar terms.

**Recommendation 9:**

That **Standing Order 113** be amended as follows [section (9) only - insertion of new text in red] –

- (9) A corporation making a submission under this Standing Order is required to make it under its common seal **or, if the corporation does not have a common seal, a copy of the corporation’s articles of incorporation must be attached to the submission.**

**4.8 Standing Order 121 – Introduction in the Council**

- 4.8.1 SO 121 deals with the introduction of a Bill into the Council. Section (3) of the Standing Order provides that “[e]very Bill shall be accompanied by an explanatory memorandum”.
- 4.8.2 The PPC is aware that some confusion has surrounded this Standing Order, as to whether an explanatory memorandum (“EM”) should be tabled in the House and, if so, at what stage the tabling of this document should occur. The PPC considers that an important document such as an EM should be tabled in the House, in order that it formally is incorporated into the records of the House, and this should occur at the earliest practical opportunity in debate on the Bill.
- 4.8.3 The PPC considers that the most convenient opportunity for tabling an explanatory memorandum is when the Member in charge of the Bill moves the second reading motion. In order to facilitate this arrangement, the following amendments would be required to SO 121 and SO 124.

**Recommendation 10:**

That **Standing Order 121** be amended as follows [section (3) only - insertion of new text in red] –

- (3) Every Bill shall be accompanied by an explanatory memorandum, **which shall be tabled in the Council by the Member in charge of the Bill when moving the second reading motion under Standing Order 125.**

That **Standing Order 124** be amended as follows [section (3) only – deletion of text in red] –

- (3) After the first reading, copies of the Bill ~~and explanatory memorandum~~ shall be distributed, and the second reading may be moved immediately or ordered for a later stage of the sitting or the next sitting of the Council.

**4.9 Standing Order 160 – Ballot for Committee Membership**

4.9.1 SO 160 details the process by which the House conducts a ballot to elect the membership of a Committee. This process accords with similar processes in other Australian jurisdictions. However, the PPC proposes that a nomination process be inserted into the procedures, in order that it is clear to the House which Members are prepared to serve on the Committee. Accordingly, the following variation provides such a nomination process.

**Recommendation 11:**

That **Standing Order 160** be amended as follows [insertion of new text in red] –

160. (1) Any Member may request a ballot for the election of Committee members.
- (2) When a ballot has been requested -
- (a) the bells shall be rung as for a division;
  - (b) the President shall advise the Council of the number of Members to be elected to the Committee;
  - (c) the President shall invite nominations, which must be accepted by the nominated Member in order that the Member's name be considered for membership of the Committee;
  - (d) each Member shall write the names of the Members from those nominated and accepted under (c) for whom they wish to vote on a ballot paper, not exceeding the number of Members to be elected;
  - (e) the ballot papers shall be returned to the Clerk;
  - (f) the Clerk shall count the votes;
  - (g) the Members who receive the most votes shall be declared by the President to be elected;
  - (h) if 2 or more Members have an equality of votes for the last place or places on the Committee, a second ballot shall be conducted to determine that place or those places;
  - (i) only those Members who achieved an equality of votes for that place or those places shall continue as candidates in the second ballot; and
  - (j) further ballots shall be conducted as necessary.

#### 4.10 Standing Order 163 – Substitute Members

- 4.10.1 New SO 163 provides that a Member may be substituted “by **order** of the Committee” [*emphasis added*]. The old Standing Order made a similar provision by leave of the Committee. The amended terms of the Standing Order is deliberate, in that the PPC considered the more onerous requirement for leave under the previous arrangements meant that one Member could object to the proposed substitution and therefore defeat it. The PPC considered that this requirement for unanimous agreement was unnecessarily high, and that a simple majority should be sufficient for a Committee to determine a question of substitution.
- 4.10.2 However, this change had an unintended consequence. Implicit in the PPC’s view that a simple majority determine such matters was that the Member being substituted should agree to the arrangement. In its current form, the new Standing Order provides a capacity for the majority of Members on a Committee to substitute another Member ‘off’ the Committee without that Member’s agreement. Moreover, in making such a substitution, the majority could appoint a Member from a different political party.
- 4.10.3 This outcome was never the intention of the PPC, and accordingly the PPC proposes an amendment to the Standing Order to make that position clear.

#### **Recommendation 12:**

That **Standing Order 163** be amended as follows [section (2) only - insertion of new text in red] –

- (2) Substitution is made by order of the Committee, **subject to the consent of the Member being substituted**, and once ordered cannot be rescinded until the inquiry is completed.

#### 4.11 Standing Order 188 – Tabling of Report

##### **Standing Order 189 – Chair’s Statement on Tabling of Report**

##### **Standing Order 190 – Motions Following Tabling of Report**

- 4.11.1 Several matters have given rise to further consideration of new SOs 188 to 190 inclusive. The PPC considers it constructive to detail the intent of these three SOs as previously proposed by the PPC and adopted by the House, which are deliberately configured in the order in which business will proceed in the House.

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- 4.11.2 SO 188 prescribes that a Committee report is tabled in the Council by the Chair or other Committee Member on behalf of the Committee. Section (2) currently provides that all reports, with the exception of reports related to Bills, are listed for consideration during the time assigned for *Consideration of Committee Reports* on Wednesday afternoons. Sections (3) and (4) deal with ‘deemed tabled’ Committee reports.
- 4.11.3 Following the tabling of a report under SO 188, SO 189 then provides that the Chair or Committee Member tabling the report may make a three minute statement to the Council, providing other Members with an overview of the report.
- 4.11.4 Whether or not the Chair/Committee Member avails of this opportunity to make a statement under SO 189, SO 190 provides that any Member may then move a corollary motion in relation to the report. Examples of such motions include (but are not limited to) –
- “That the report be adopted and agreed to” [usually moved by the Committee Chair];
  - “That the recommendations contained in the report be adopted and agreed to” [also would normally be moved by the Committee Chair]; or
  - “That consideration of the report be made an Order of the Day for a later stage of the sitting/the next sitting of the Council” [moved by any Member].
- 4.11.5 Given this arrangement, where a Chair presents a Committee report to the House that contains recommendations for the consideration of the Council, and the Committee is seeking the Council’s adoption of those recommendations, the following sequence would apply –
- (1) the Chair tables the report [SO 188];
  - (2) the Chair makes a 3 minute statement to the Council summarising the report [SO 189]; and
  - (3) the Chair then moves “That the report be adopted and agreed to.” or “That the recommendations contained in the report be adopted and agreed to.” [SO 190].
- 4.11.6 Three specific matters have arisen in relation to these Standing Orders.
- 4.11.7 Firstly, as outlined above, SO 188 provides that all Committee reports except those pertaining to Bills are listed for consideration during the time assigned for *Consideration of Committee Reports* on Wednesday afternoons. The reason that reports pertaining to Bills were excluded is that matters arising from a Committee report dealing with a Bill can be debated by the House in the course of further debate on the Bill. As such, it was considered there was no useful purpose in providing two different business items for effectively the same matter.
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- 4.11.8 However, there are other examples of this ‘duplication’. Where a Member moves under SO 190 “That the consideration of the report be made an Order of the Day for a later stage of the sitting/the next sitting of the Council” and this motion is agreed to, then the consequent creation of that order of the day provides an item of business under which the contents of the Committee report will be debated. Similarly, when a notice of motion to disallow a statutory instrument is given pursuant to recommendation of the *Delegated Legislation Committee*, that notice of motion becomes an order of the day under SO 66. If the Committee then subsequently presents a report to the Council on the same matter, a similar issue of duplication occurs. However, the PPC recognises that in these specific instances, a subsequent withdrawal of that notice of motion or discharge of the order of the day ameliorates the issue of duplication.
- 4.11.9 Given all this, the PPC proposes that SO 188 section (2)(b) be amended as per below. In advancing this proposal, the Committee makes clear the intent that, in relation to *Delegated Legislation Committee* notices of motion and orders of the day to disallow subsidiary legislation that, where a report is not listed as a consequence of an item on the Notice Paper and then the relevant item is withdrawn or discharged, the Committee’s report will be (re)listed for consideration under SO 109.

**Recommendation 13:**

That **Standing Order 188** be amended as follows [section (2) only – amendments to text in red] –

- (2) Upon tabling in the Council, a Committee report shall be –
- (a) deemed printed and published under the authority of the Council; and
  - (b) except for reports ~~pertaining to Bills~~ for which a relevant notice of motion or order of the day is on the Notice Paper, listed for consideration by the Council in accordance with Standing Order 109.

- 4.11.10 The second issue that has arisen relevant to these Standing Orders relates to *Special Reports* presented by Committees.

4.11.11 As a matter of custom and practice, Committees currently ‘present’ a *Special Report* to the Council, without actually tabling a report, in a limited number of instances, such as –

- (a) when seeking an extension of time to report a matter to the Council;
- (b) when advising the Council of the terms of reference of an own-motion inquiry (SO 179) or a subsequent amendment to such terms of reference;
- (c) when seeking an amendment by the Council to the terms of reference of an inquiry referred to the Committee by the Council; or
- (d) with specific reference to the *Estimates and Financial Operations Committee* – when the Committee advises the House of its schedule for the Estimates hearings.

4.11.12 In effect, this practice of delivering a verbal report to the Council does not conform with SO 188, which is predicated upon a written report being presented and tabled. Further, the business item before the Council at the time of the delivery of these reports, *presentation of papers for tabling* (SO 14(1)(f)), is a further indicator of the non-conforming nature of this practice.

4.11.13 One option to remedy this situation is to create a separate business item to cover such oral reports (and subsequent motions) by Committees to the Council. However, the PPC considers that it is more prudent to require Committees to report in writing in all instances to the House, in order that all Members have the benefit of a written Committee report in all instances, and proposes that the following practice be endorsed by the House.

**Recommendation 14:**

That in all instances, a report by a Committee to the Council shall be a written report, which shall be tabled in the Council pursuant to Standing Order 188.

4.11.14 The third and final matter considered by the PPC in relation to these Standing Orders concerns the manner in which corollary motions are dealt with by the Council.

- 4.11.15 As outlined above, a corollary motion in relation to a Committee report may be moved pursuant to SO 190 after a report has been tabled and the Chair has made a statement to the Council providing an overview of the report. Some corollary motions often can be dispensed with immediately, such as a motion to extend the time for a Committee to report a Bill to the Council. Other corollary motions are moved with the specific intent that a debate ensue on the matter, such as a motion that consideration of the report be made an order of the day.
- 4.11.16 The PPC is mindful that these corollary motions are moved during the course of formal business in the Council, that the duration of formal business is not prescribed under the Standing Orders, and that the House cannot proceed with other business until formal business has concluded. Given this, the PPC proposes that, when a corollary motion is moved and the motion requires debate, that the matter be adjourned automatically and set down as an order of the day. This provision will allow the House to continue with other business, and for the corollary motion to be further debated at a later time.
- 4.11.17 The PPC proposes that the debate be adjourned “until a later stage of the sitting” in order that the matter **may** be resumed later on the same sitting day, if the Leader of the House moves a subsequent motion to resume the debate. If the debate was adjourned until the next sitting of the Council and the Leader of the House formed the view that the matter needed to be finalised prior to the House rising that day, a subsequent suspension of Standing Orders would be required.

**Recommendation 15:**

That **Standing Order 190** be amended as follows [insertion of new text in red] –

190. (1) When a Committee report has been tabled in the Council, any corollary motion without notice may be moved, including a motion that the recommendations contained in the report be agreed to.
- (2) When a motion is moved under (1), no debate shall ensue at that time. If any Member wishes to speak to the motion and therefore the motion cannot be resolved immediately, the President shall adjourn the debate until a later stage of the sitting.

**4.12 New Standing Order 195 – Protection of the Identity of Journalists’ Informants**

4.12.1 On 23 August 2012, the following resolution was passed by the Council –

*That the Procedure and Privileges Committee be instructed to draft a Standing Order that shall reflect the provisions of sections 20I to 20M of the Evidence Act 1906, as proposed to be inserted by clause 5 of the Evidence and Public Interest Disclosure Legislation Amendment Bill 2011.*

4.12.2 This resolution was passed subsequent to two amendments made to the *Evidence and Public Interest Disclosure Legislation Amendment Bill 2011* during the Committee of the Whole House stage, which amendments made clear that the amendment Act would not apply to the operations of the Parliament.

4.12.3 Two, alternative draft Standing Orders were considered by the PPC. The first of these draft SOs simply links the relevant operations of the House to the amendment Act.

**Recommendation 16A:**

That new **Standing Order 201**, as outlined below, be adopted by the Council –

**201. Protection of the Identity of Journalists’ Informants**

- (1) Where a journalist is examined before a Committee or the Council and, in the course of such examination, is asked to disclose the identity of the journalist’s informant and refuses, the Council shall consider whether to excuse the answering of the question pursuant to section 7 of the *Parliamentary Privileges Act 1891*.
- (2) In considering a matter under (1), the Council shall apply, to the extent possible, sections 20I to 20M of the *Evidence Act 1906* as amended by section 5 of the *Evidence and Public Interest Disclosure Legislation Amendment Act 2012*.

4.12.4 The second draft Standing Order incorporates the specific provisions of the amendments to the *Evidence Act 1906* into the Standing Order. In doing so, it is necessary to ‘adjust’ some of the provisions in the Bill, to align with parliamentary procedure. To the extent possible, these adjustments have been highlighted in the text of the proposed Standing Order.

- 4.12.5 **The Committee's view is to support Recommendation 16B**, as this option makes clear the considerations required by the House in these circumstances, without reference to an Act of Parliament.
- 4.12.6 To compare the draft Standing Order and the proposed statutory provisions, and assess these adjustments, an extract of sections 20I to 20M of the *Evidence and Public Interest Disclosure Legislation Amendment Bill 2011* is included as Appendix 1 to this report.

**Recommendation 16B:**

That new **Standing Order 201**, as outlined below, be adopted by the Council [amendments in red are amendments to the provisions contained in the Bill] —

**201. Protection of the Identity of Journalists' Informants**

- (1) Where a journalist is examined before a Committee or the Council and, in the course of such examination, is asked to disclose the identity of the journalist's informant and refuses, the Council shall consider whether to excuse the answering of the question pursuant to section 7 of the *Parliamentary Privileges Act 1891*.
- (2) In considering a matter under (1), the Council shall only order the disclosure of the identity of a journalist's informant if the Council is satisfied that, having regard to the issues to be determined in the proceeding, the public interest in the disclosure of the identity of the informant outweighs —
  - (a) any likely adverse effect of the disclosure of the identity on the informant or any other person; and
  - (b) the public interest in the communication of facts and opinions to the public by the news media and, accordingly also, in the ability of the news media to access sources of facts.
- (3) Without limiting the matters that the Council may have regard to for the purposes of this Standing Order, the Council must have regard to the following matters —
  - (a) the probative value of the identifying evidence in the proceeding;
  - (b) the importance of the identifying evidence in the proceeding;
  - (c) the nature and gravity ~~of the relevant offence, cause of action or defence and the nature~~ of the subject matter of the proceeding;
  - (d) the availability of any other evidence concerning the matters to which the identifying evidence relates;
  - (e) the likely effect of the identifying evidence, including the likelihood of harm, and the nature and extent of harm that would be caused to the informant or any other person;

*continued overleaf*

- (f) the means, ~~including any ancillary orders that may be made under section 20M,~~ available to the Council ~~person acting judicially~~ to limit the harm or extent of the harm that is likely to be caused if the identifying evidence is given;
- (g) the likely effect of the identifying evidence in relation to —
  - (i) a prosecution that has commenced but has not been finalised; or
  - (ii) an investigation, of which the Council is aware, into whether or not an offence has been committed;
- (h) whether the substance of the identifying evidence has already been disclosed by the informant or any other person;
- (i) the risk to national security or to the security of the State;
- (j) whether or not there was misconduct on the part of the informant or the journalist in relation to obtaining, using, giving or receiving information.




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**Hon. Barry House MLC**

**Chair**

**27 September 2012**



***APPENDIX 1***  
**EXTRACT FROM THE *EVIDENCE AND PUBLIC INTEREST***  
***DISCLOSURE LEGISLATION AMENDMENT BILL 2011***



**Evidence and Public Interest Disclosure Legislation Amendment Bill 2011**  
 Amendments to the Evidence Act 1906 about protection of confidential communications given in professional confidential relationships, and protection of journalists' sources **Part 2**

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- 1           **20H. Application of protection provisions (journalists)**
- 2           (1) The protection provisions (journalists) do not apply in
- 3           relation to a proceeding the hearing of which began
- 4           before the commencement of those provisions.
- 5           (2) The protection provisions (journalists) apply in relation
- 6           to information given by an informant whether given
- 7           before or after the commencement of those provisions.
- 8           (3) The protection provisions (journalists) apply to a
- 9           person acting judicially in any proceeding even if the
- 10          law by which the person has authority to hear, receive,
- 11          and examine evidence provides that this Act does not
- 12          apply to the proceeding.
- 13          (4) The protection provisions (journalists) are not intended
- 14          to exclude or limit the operation of section 5 or the
- 15          power that a person acting judicially has under any
- 16          other law of the State to take any action if it is in the
- 17          interests of justice to do so.
- 18          **20I. Protection of identity of informants**
- 19          If a journalist has promised an informant not to
- 20          disclose the informant's identity, neither the journalist
- 21          nor a person for whom the journalist was working at
- 22          the time of the promise is compellable to give evidence
- 23          that would disclose the identity of the informant or
- 24          enable that identity to be ascertained (*identifying*
- 25          *evidence*).
- 26          **20J. Direction to give identifying evidence**
- 27          (1) Despite section 20I, a person acting judicially may
- 28          direct a person referred to in that section to give
- 29          identifying evidence.
- 30          (2) A person acting judicially may give a direction only if
- 31          satisfied that, having regard to the issues to be

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- 1 determined in the proceeding, the public interest in the  
2 disclosure of the identity of the informant outweighs —
- 3 (a) any likely adverse effect of the disclosure of the  
4 identity on the informant or any other person;  
5 and
- 6 (b) the public interest in the communication of  
7 facts and opinions to the public by the news  
8 media and, accordingly also, in the ability of  
9 the news media to access sources of facts.
- 10 (3) Without limiting the matters that a person acting  
11 judicially may have regard to for the purposes of this  
12 section, the person acting judicially must have regard  
13 to the following matters —
- 14 (a) the probative value of the identifying evidence  
15 in the proceeding;
- 16 (b) the importance of the identifying evidence in  
17 the proceeding;
- 18 (c) the nature and gravity of the relevant offence,  
19 cause of action or defence and the nature of the  
20 subject matter of the proceeding;
- 21 (d) the availability of any other evidence  
22 concerning the matters to which the identifying  
23 evidence relates;
- 24 (e) the likely effect of the identifying evidence,  
25 including the likelihood of harm, and the nature  
26 and extent of harm that would be caused to the  
27 informant or any other person;
- 28 (f) the means, including any ancillary orders that  
29 may be made under section 20M, available to  
30 the person acting judicially to limit the harm or  
31 extent of the harm that is likely to be caused if  
32 the identifying evidence is given;

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- 1 (g) the likely effect of the identifying evidence in  
 2 relation to —  
 3 (i) a prosecution that has commenced but  
 4 has not been finalised; or  
 5 (ii) an investigation, of which the person  
 6 acting judicially is aware, into whether  
 7 or not an offence has been committed;  
 8 (h) whether the substance of the identifying  
 9 evidence has already been disclosed by the  
 10 informant or any other person;  
 11 (i) the risk to national security or to the security of  
 12 the State;  
 13 (j) whether or not there was misconduct, as  
 14 defined in section 20K(1), on the part of the  
 15 informant or the journalist in relation to  
 16 obtaining, using, giving or receiving  
 17 information.

18 (4) A person acting judicially must state the person's  
 19 reasons for giving or refusing to give a direction.

20 **20K. Effect of misconduct as to directions**

- 21 (1) In this section —  
 22 *misconduct*, in relation to an informant or a journalist,  
 23 includes any of the following —  
 24 (a) an offence committed by the informant or  
 25 journalist;  
 26 (b) an act or omission on the part of the informant  
 27 or journalist that renders him or her liable to a  
 28 civil penalty;  
 29 (c) deceit, dishonesty, inappropriate partiality or a  
 30 breach of trust on the part of the informant or  
 31 journalist;

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- 1 (d) the informant or journalist acting corruptly, or  
2 corruptly failing to act, in any capacity;
- 3 (e) the informant or journalist corruptly taking  
4 advantage of his or her position to obtain a  
5 benefit for himself, herself or another person or  
6 to cause a detriment to another person;
- 7 (f) the informant or journalist engaging in conduct  
8 that adversely affects, or could adversely affect,  
9 directly or indirectly, the honest or impartial  
10 performance of the functions of any person in  
11 any capacity;
- 12 (g) misuse, on the part of the informant or  
13 journalist, of information or material that he or  
14 she has acquired in any capacity, whether the  
15 misuse is to obtain a benefit for himself, herself  
16 or another person or to cause a detriment to  
17 another person;
- 18 (h) conduct providing reasonable grounds for the  
19 termination of the informant or journalist's  
20 employment;
- 21 (i) conduct providing reasonable grounds for  
22 disciplining the informant or journalist in  
23 relation to unsatisfactory professional conduct  
24 or professional misconduct, or the breach of a  
25 professional standard, in relation to the  
26 informant or journalist's profession, whether or  
27 not he or she is a member of the body that  
28 prescribed the standard.
- 29 (2) A person acting judicially who finds that there was  
30 misconduct on the part of an informant or a journalist  
31 in relation to obtaining, using, giving or receiving  
32 information —
- 33 (a) may, but is not bound to, give a direction; and

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- 1 (b) must have regard to the principles set out in  
 2 subsection (3) when deciding whether or not to  
 3 give a direction.
- 4 (3) The principles mentioned in subsection (2)(b) are as  
 5 follows —
- 6 (a) that generally a direction should be given if —
- 7 (i) the misconduct was the commission of  
 8 an offence under *The Criminal Code*  
 9 section 81 or a breach of a public sector  
 10 standard, code of conduct or code of  
 11 ethics, as those terms are defined in the  
 12 *Public Sector Management Act 1994*  
 13 section 3(1); and
- 14 (ii) the offence or breach concerned the  
 15 disclosure of information that was  
 16 public interest information as defined in  
 17 the *Public Interest Disclosure Act 2003*  
 18 section 3(1); and
- 19 (iii) the information could have been, but  
 20 was not, disclosed in accordance with  
 21 the *Public Interest Disclosure Act 2003*;
- 22 (b) that generally a direction should be given if the  
 23 information given to a journalist could have  
 24 been provided, in a way that did not constitute  
 25 misconduct, to another person to deal with the  
 26 concern;
- 27 (c) that generally a direction should be given if the  
 28 information given to a journalist could have  
 29 been obtained by the journalist under the  
 30 *Freedom of Information Act 1992* or by other  
 31 lawful means;

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- 1 (d) that generally a direction should be given if the  
2 misconduct involved a breach of privacy that  
3 was not warranted in the circumstances, having  
4 regard to the value to be attached to —  
5 (i) the privacy of information regarding  
6 private citizens generally; or  
7 (ii) the privacy of information regarding  
8 matters which may be commercial in  
9 confidence; or  
10 (iii) the principle of Cabinet confidentiality;  
11 or  
12 (iv) the principle of public interest  
13 immunity;  
14 (e) that generally a direction should be given if a  
15 communication made to a journalist, if  
16 published, would give rise to a risk to national  
17 security or to the security of the State;  
18 (f) that it is otherwise in the public interest to give  
19 or refuse to give a direction.  
20 (4) For the purposes of this section, if the misconduct is a  
21 fact in issue and there are reasonable grounds for  
22 believing that there was misconduct on the part of the  
23 informant or the journalist in relation to obtaining,  
24 using, giving or receiving information, the person  
25 acting judicially in the proceeding may so find.  
26 **20L. Identifying informant with consent**  
27 The protection provisions (journalists) do not prevent  
28 the giving or adducing of identifying evidence with the  
29 informant's consent.  
30 **20M. Ancillary orders**  
31 Without limiting any action the person acting judicially  
32 may take to limit the possible harm, or extent of the

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- 1                   harm, likely to be caused by identifying evidence, the  
2                   person acting judicially may —
- 3                   (a) order that all or part of the evidence be heard in  
4                   camera; and
- 5                   (b) make such orders relating to the suppression of  
6                   publication of all or part of the evidence given  
7                   before the person acting judicially as, in the  
8                   opinion of the person acting judicially, are  
9                   necessary to protect the informant's safety and  
10                  welfare and are in the interests of justice.  
11

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