

Procedure Committee

**Report relating to limiting
debate, tabling of papers
when the House is
prorogued, absence of a
quorum and rules in the
galleries**

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Chair's Foreword

The Committee takes this opportunity to update the House on the following four issues:

- Limiting debate when standing orders are suspended in order to bring on a motion forthwith (Chapter 1)
- Tabling of papers when the house is prorogued (Chapter 2)
- Conflict between standing order 106 and 176(4) (Chapter 3)
- Rules for visitors to the President's gallery and visitors' galleries (Chapter 4).

The Hon Peter Primrose MLC
President

Table of Contents

	Chair's Foreword	v
	Table of Contents	vi
Chapter 1	Limiting debate when standing orders are suspended in order to bring on a motion forthwith	1
Chapter 2	Tabling of papers when the House is prorogued	3
Chapter 3	Conflict between standing order 106 and 176(4)	7
Chapter 4	Rules for visitors to the President's Gallery and Visitor's Gallery	10
Appendix 1	Minutes	12

Chapter 1 **Limiting debate when standing orders are suspended in order to bring on a motion forthwith**

Introduction

- 1.1 Currently standing order 198 limits debate on the motion for the suspension of a standing or other order of the House to five minutes per speaker, with an overall debate time of 30 minutes. This allows both the mover and supporters to establish their case for why the standing orders should be suspended, and opponents to set out their reasons for not supporting the motion.
- 1.2 A loophole in the procedure was exposed during an attempt on 19 June 2008 to suspend standing orders to call on the Firearms Amendment Bill 2008 forthwith. While the motion to suspend standing orders was time-limited under standing order 198, the subsidiary motion to bring on the bill forthwith had no time limits.

The suspension of standing orders

- 1.3 In urgent cases, any standing order or other order of the House may be suspended by the House in whole or in part, either by a motion on notice or by leave of the House, in order to allow the House to transact business that would not otherwise be allowed. Standing orders can only be suspended by leave of the House, that is if no member objects, or by motion on notice (SO 198(1)).
- 1.4 Standing orders are more commonly suspended on motion than by leave. In order to overcome the requirement for notice to be given to move the suspension of standing orders, members routinely give contingent notices of motion. Contingent notices provide that contingent on a certain event occurring in the House, such as the President calling on the Clerk to read any order of the day, a motion may be moved that standing and sessional orders be suspended to allow the member to move a subsequent motion. The form of words used is:

I move, according to contingent notice: That standing and sessional orders be suspended to allow the moving of a motion forthwith: That ...
- 1.5 The motion for the suspension of standing orders has time limits attached. A member may not speak for more than five minutes, and if the debate is not concluded after the expiration of 30 minutes after the moving of the motion, the question on the motion will then be put (SO 198(2)).

Bringing on a motion forthwith

- 1.6 If the motion for the suspension of standing and sessional orders is passed, the member may then, in certain circumstances, move his or her substantive motion, such as taking note of a paper, an instruction to the committee of the whole, or the passing of a bill through all stages.
- 1.7 In some circumstances, however, a further intermediate procedural motion is required to allow the substantive motion to be called on forthwith. For example, it is necessary to suspend standing orders to allow a motion to be moved to call on an item of private members' business forthwith. The motion to suspend the standing orders is time-limited. The subsequent motion to call on the item of private members' business forthwith is not time-limited.

Comment

- 1.8 As indicated above, where standing orders are suspended, certain contingent notices require a further intermediate procedural motion to be moved that standing orders having been suspended, the substantive motion be called on forthwith. Currently, there is no time limit on this question, and it would be possible to abuse the procedures of the House by extending debate on the purely procedural motion for some considerable time when the House has already agreed to suspend the standing orders to allow the matter to be brought on.
- 1.9 To address this issue, it is proposed that debate on the question of the intermediate procedural motion be limited by requiring that the question be put 'without amendment or debate'. This would be achieved by way of a sessional order varying standing order 198. Picking up the language of standing orders 198(1) and (2), the sessional order would amend standing order 198 to further provide:

- (3) Where a standing order or other order of the House is suspended by the House in whole or in part, any subsequent procedural motion is to be put without amendment or debate.

Recommendation

- 1.10 That standing order 198 be amended by way of a sessional order to further provide:
- (3) Where a standing order or other order of the House is suspended by the House in whole or in part, any subsequent procedural motion is to be put without amendment or debate.

Chapter 2 Tabling of papers when the House is prorogued

Introduction

2.1 An issue has arisen in relation to the provisions of standing order 55(3) dealing with the tabling of documents when the House is prorogued. Standing order 55(3) provides:

Documents may not be lodged with the Clerk when the House has been prorogued.

2.2 As it reads, standing order 55(3) would prevent the tabling of any documents when the House is prorogued, which is clearly inconsistent with legislative requirements for the tabling of certain documents by government departments and agencies during prorogation.

2.3 It is proposed that this issue be resolved by way of a sessional order amending standing order 55(3).

Tabling of reports when the House is prorogued according to legislation or under the authority of standing order 55

2.4 Reports or other documents from government departments and agencies may be received and made public by the Clerk out of session according to legislation or under the authority of standing order 55.

2.5 Examples of reports that may be received and made public out of session according to legislation are:

- Reports of watchdog bodies such the Independent Commission Against Corruption, prepared under the *Independent Commission Against Corruption Act 1988*.¹ The *Independent Commission Against Corruption Act 1988* provides that, if a report includes a recommendation that the report be made public ‘forthwith’, the President may make it public, whether or not the House is in session and whether or not the report has been laid before the House.² Similar provisions are included in the *Ombudsman Act 1974* at s 31AA(2) and the *Police Integrity Commission Act 1996* at s 103(3).
- Reports of the Auditor General, prepared under the *Public Finance and Audit Act 1983*,³ which must be received by the Clerk according to the legislative requirements. Reports of the Auditor General presented to the Clerk out of session are deemed to be published by order or under the authority of the House according to section 63C of the *Public Finance and Audit Act 1983*.

¹ *Independent Commission Against Corruption Act 1988*, s 78(1)

² *Independent Commission Against Corruption Act 1988*, s 78(3)

³ *Public Finance and Audit Act 1983*, ss 52A(2), 52B(2), 52F(2).

- Reports prepared under annual reporting legislation, namely the *Annual Reports (Departments) Act 1985* and the *Annual Reports (Statutory Bodies) Act 1984*, which must be received by the Clerk. Reports under these acts are deemed to have been tabled and made public by order or under the authority of the House under section 13(3)(c) of the *Annual Reports (Departments) Act 1985* and section 11(c) of the *Annual Reports (Statutory Bodies) Act 1984*.

2.6 Where legislation requires that a report or other document be presented to the House by a Minister but does not provide for the report's tabling out of session, the report can be presented to the Clerk under the authority of standing order 55(1), which provides:

Where, under any Act, a report or other document is required to be tabled in the House by a Minister, and the House is not sitting, such report or document may be lodged with the Clerk.

2.7 Such reports or other documents are in turn authorised to be made public under the authority of standing order 55(2), which provides that any report or document lodged with the Clerk is for all purposes deemed to be a document published by order or under the authority of the House.

2.8 Reports or papers from government departments and agencies tabled out of session and made public are subsequently reported to the House on the next day the House sits, and are recorded in the Minutes of Proceedings for that day.

2.9 The receipt of documents and other papers by the President or the Clerk according to legislation, even when the House is prorogued, was confirmed in advice from the Crown Solicitor to the Clerk of the Legislative Assembly in 1998 regarding the power of the Auditor-General to table reports under the provisions of the *Public Finance and Audit Act 1983*. The Crown Solicitor indicated that the statutory provisions permitting reports to be tabled when the Legislative Assembly is not sitting are mechanisms '...for securing all the things which are ordinarily achieved by presentation to the Legislative Assembly...in circumstances where, when presentation is sought, the Legislative Assembly is not sitting i.e. meeting to transact business.' The Crown Solicitor considered that statutory provisions providing for the tabling of a report with the Clerk when the House is not sitting include any day when the House is not meeting to transact business regardless of whether the House is adjourned or prorogued (or in the case of the Assembly, dissolved).⁴

2.10 There is also a large number of precedents where reports and other documents from government departments and agencies required under legislation to be presented to the House have been received and made public by the Clerk when the House has been prorogued:

- Most recently, the House was prorogued for the 2007 election on 15 January 2007, however the Clerk continued to receive papers right up until April, as reported in the Minutes for 9 May 2007.⁵
- For the 2003 election, the House was prorogued on 5 November 2002, however the Clerk continued to receive papers right up until April 2003.⁶

⁴ Crown Solicitor, 'Presentation of reports under *Public Finance and Audit Act 1983*', Advice provided to the Clerk of the Legislative Assembly, 2 November 1998, p 5.

⁵ *LC Minutes (9/5/2007)* 38-42

- For the 1999 election, the House was prorogued on 2 February 1999, however the Clerk continued to receive papers right up to April 1999.⁷

Reports that are not required to be presented to the House may not be received when the House is prorogued

- 2.11** Where there is no legislative requirement that a report of a government department or agency be presented to the House, the provisions of standing order 55 do not apply.⁸ In such cases, reports cannot be received by the Clerk out of session, including when the House is prorogued, and are held for tabling by a minister on the next sitting day.
- 2.12** Although there are few reports that fall into this category, there are instances where reports of some significance have not been tabled or made public despite the Government providing the report to the Clerk. For example, following the Special Commission of Inquiry into the Waterfall Rail Accident, the Government agreed that the Independent Transport Safety and Reliability Regulator would report quarterly on the implementation of the recommendations of the Special Commission. However, as there was no requirement under legislation that the reports of the Independent Transport Safety and Reliability Regulator be presented to the House, they could not be tabled out of session.

Comment

- 2.13** Standing order 55(3) apparently seeks to capture the understanding that where legislation does not require that a report be presented to the House by a Minister, that report may not be received by the Clerk when the House is prorogued. However, it fails to do so effectively. As it stands, standing order 55(3) implies that no documents may be received by the Clerk when the House is prorogued, which is clearly contrary to legislation and the practice of the House.
- 2.14** Picking up the language of standing order 55(1), it is suggested that standing order 55(3) be amended by way of a sessional order to read (change underlined):

A report or other document which is not required to be tabled in the House according to legislation may not be lodged with the Clerk when the House has been prorogued.

- 2.15** It is also suggested that standing order 55(1), cited earlier, be amended by way of a sessional order to remove reference to the tabling of a report or other document ‘by a minister’, since not all legislation requires reports or other documents to be tabled by a minister (change in strikethrough):

(1) Where, under any Act, a report or other document is required to be tabled in the House ~~by a Minister~~, and the House is not sitting, such report or document may be lodged with the Clerk.

⁶ *LC Minutes* (29/4/2003) 14-15

⁷ *LC Minutes* (11/5/1999) 28

⁸ See, for example, reports under the *Privacy and Personal Information Act 1998*.

- 2.16** It is relevant to note that apart from the tabling of reports and other documents of government departments and agencies out of session, other types of documents and reports may also be tabled out of session. These include returns to order captured under standing order 52, committee reports under standing order 231, and government responses to committee reports under standing order 233.

Recommendation

- 2.17** That standing order 55(1) be amended by way of a sessional order to provide:

- (1) Where, under any Act, a report or other document is required to be tabled in the House, and the House is not sitting, such report or document may be lodged with the Clerk.

- 2.18** That standing order 55(3) be amended by way of a sessional order to provide:

A report or other document which is not required to be tabled in the House according to legislation may not be lodged with the Clerk when the House has been prorogued.

Chapter 3 **Conflict between standing order 106 and 176(4)**

Introduction

- 3.1** A conflict has become apparent between standing orders 106 and 176(4) concerning a question before the House or a committee of the whole interrupted by the lack of a quorum and subsequent adjournment of the House.
- 3.2** It is proposed to resolve this conflict by way of a sessional order amending standing order 106.

Interruption of business

- 3.3** Standing order 106 provides:
- (1) If the House is adjourned or committee of the whole is interrupted by the absence of a quorum, the question then under consideration lapses.
 - (2) Debate on a lapsed question may be resumed, by motion on notice, at the place where it was interrupted.
- 3.4** Under standing order 106(1), if a question before the House or a committee of the whole is interrupted by the lack of a quorum and is not resumed before the adjournment of the House, the question is deemed to have lapsed. In that instance, the question may only be resumed on a future sitting day by motion on notice.
- 3.5** By contrast, standing order 176(4) provides in relation to a question before a committee of the whole interrupted by the lack of a quorum:
- (4) If the proceedings of a committee are interrupted by lack of a quorum and consequent adjournment of the House, the resumption of the committee will be an order of the day for the next day of sitting, and when the order is called on the proceedings will be resumed at the point where they were interrupted.
- 3.6** Accordingly, where a question before the House or a committee of the whole is interrupted by the lack of a quorum and is not resumed before the adjournment of the House, standing order 106 provides that the question may only be resumed by motion on notice, whereas standing order 176(4) provides (in relation to committee of the whole) that the resumption of the committee is automatically made an order of the day for the next sitting day, the proceedings to be resumed at the point where they were interrupted.
- 3.7** There is a direct conflict between the two standing orders.

Standing order 106 derives from the previous standing order 101, in force from 1895 to 2004, and in turn from standing orders in force prior to 1895. By contrast, standing order 176(4)

derives from the senate standing orders, and was imported at the time of the adoption of the current standing orders in 2004. Senate standing order 147(3) is in identical terms.

Comment

3.8 To achieve consistency between standing order 106 and 176(4), it is proposed that a sessional order be adopted to insert a new standing order 106 and 106a as follows (changes underlined or struck through):

106 Lapsed question

- ~~1. If the House is adjourned or committee of the whole is interrupted by the absence of a quorum, the question then under consideration lapses.~~
- ~~2.~~ Debate on a lapsed question may be resumed, by motion on notice, at the place where it was interrupted.

106a Question interrupted by lack of a quorum

If the proceedings of the House are interrupted by lack of a quorum and consequent adjournment of the House, the resumption of the debate will be an order of the day for the next day of sitting, and when the order is called on the proceedings will be resumed at the point where they were interrupted.

3.9 This amendment captures the understanding that where business before the House is interrupted for the lack of a quorum, rather than because the House takes a deliberate decision to proceed to the next item of business (ie a superseding motion), then the matter should be resumed by the House without the need to restore it to the Notice Paper by motion on notice.

3.10 Under this proposal, standing order 106a would cover the scenario where proceedings in the House are interrupted for the want of a quorum, and standing order 176(4) would cover the scenario where proceedings in committee of the whole are interrupted for want of a quorum.

3.11 Standing order 106 would continue to cover the scenario where proceedings lapse because the House takes a deliberate decision to proceed to the next item of business (ie a superseding motion).

Recommendation

3.12 That standing order 106 be amended by way of a sessional order to provide:

106 Lapsed question

Debate on a lapsed question may be resumed, by motion on notice, at the place where it was interrupted.

106a Question interrupted by lack of a quorum

If the proceedings of the House are interrupted by lack of a quorum and consequent adjournment of the House, the resumption of the debate will be an order of the day for the next

day of sitting, and when the order is called on the proceedings will be resumed at the point where they were interrupted.

Chapter 4 Rules for visitors to the President's Gallery and Visitor's Gallery

4.1 Recently, there has been concern expressed about excessive noise in the President's Gallery. On 18 June 2008, the President made the following statement before the commencement of Question Time:

On a number of occasions recently I have noted that the bulk of ambient noise in the Chamber emanates from the gallery behind the President's chair. People in the gallery should show courtesy to the House by taking their conversations outside the Chamber. I will allow some latitude during question time, but I make it very clear that during other proceedings I will have no hesitation in ordering that the gallery be cleared if the level of audible conversation is not reduced.

4.2 The President has also recently received complaints from members regarding the conduct of individuals within the President's Gallery.

4.3 Seating in the President's Gallery is at the discretion of the President. It is open to the President to exclude any or all strangers from the President's gallery, and to remove any person or persons who create a disturbance in the gallery (or anywhere within the precincts of the House).

4.4 However, it is also now proposed that the House adopt by resolution of continuing effect the following rules for visitors to the President's Gallery and Visitors' Galleries:

The following rules apply for visitors to the President's Gallery and Visitors' Galleries:

- Silence is to be maintained at all times, conversations must take place outside the chamber;
- Applause, jeering or any other gestures responding to the proceedings are not permitted;
- Visitors to the galleries are not to converse with members in the chamber;
- Visitors are not to trespass on the chamber floor or to impede the access of members entering or leaving the chamber;
- The use of mobile telephones, radios, iPods and other electronic equipment which creates sound in the chamber is not permitted in the galleries (the chamber is fitted with a hearing loop, which is disrupted by such devices);
- Food and drink is not permitted in the chamber at any time;
- Protests or other actions which interrupt the proceedings of the House are not permitted; banners, posters and clothing with messages that may be used to protest are not to be taken into the galleries;
- Photographs may not be taken, unless permission is granted by the President;
- Visitors in the President's Gallery or entering the chamber when the House is sitting are subject to the same dress code as applies to members;
- Visitors must comply with instructions given by chamber and support staff or other parliamentary staff.

Please note: this chamber is fitted with a hearing loop.

4.5 It is proposed that these rules should be made available on pamphlets available from Chamber and Support Services staff and at the entrance to the Visitors' Galleries.

4.6 It is anticipated that the availability of these rules will also allow Chamber and Support Services staff and other chamber officers to draw the attention of visitors to specific issues,

such as the use of mobile phones or impeding access to members entering the chamber, without the need for the President to become directly involved.

- 4.7** Failure by visitors to observe these instructions may result in removal from the chamber by the President or other member presiding.

Appendix 1 Minutes

Note: Asterisks indicate text which has been omitted as not relevant to the current inquiry.

Minutes No 3

Wednesday, 11 March 2009

President's Dining Room, Parliament House at 5.35 pm.

1. Members present

Mr Primrose (Chair)

Mr Harwin (Deputy Chair)

Mr Brown

Mr Donnelly

Ms Fazio

Mr Gay

Mr Kelly

Revd Mr Nile

Apologies: Mr Della Bosca, Mr Gallacher, Mr Macdonald

In attendance: Lynn Lovelock, Julie Langsworth, Stephen Frappell.

2. ***

3. Report relating to limiting debate, tabling of papers when the House is prorogued, absence of a quorum and rules in the galleries

The Committee considered the Chair's draft report, as previously circulated.

The report was read.

The Committee deliberated.

Resolved, on the motion of Revd Nile, that the draft report, as amended, be the report of the Committee and presented to the House according to standing order 226(1).

4. ***

5. ***

6. ***

7. Adjournment

The Committee adjourned at 5.43 pm *sine die*.

Lynn Lovelock

Clerk to the Committee