

CHAPTER 15

COMMITTEE OF THE WHOLE HOUSE

A committee of the whole House consists, as its name implies, of all members of the House. It is the House itself presided over by the Chair of Committees (SO 17(2)) instead of the President. In committee of the whole House the President, like any other member, may take part in debate and vote. Before the reform of the Council in 1978, it was rare for the President to take part in debate and vote in committee of the whole.¹ Nowadays it occurs frequently. Members may also speak more than once to any question before the Chair, making it a more relaxed forum for debate than the House itself.

A committee of the whole House can only consider those matters that have been referred to it by the House (SO 173(1)). Most commonly these are bills, although other matters may also be referred to the committee of the whole.

ORIGINS OF COMMITTEE OF THE WHOLE

As discussed in Chapter 12 (The Legislative Process), the practice of petitioning the King originated during the reign of King Edward I (1239-1307), providing a method of seeking redress from the King by virtue of his prerogative power where none could be sought through the ordinary course of law. Over time collective petitions from the Commons developed into public bills as the Commons petitioned the King to secure the enactment of their petition as a form of statute, and judges drafted the statute by combining the petition with the response.

The development of the committee of the whole House occurred during the reign of James I (1603-1625), apparently based on a desire on the part of the ordinary members to deal in open House with the petition process which until that time had occurred behind closed doors. During this period the Speaker acted as an intermediary between the House and the King, and was the manager of the King's business in the chamber. As such, not only was he not allowed to participate in debate, he was actually a constraining presence on debate by other members. His removal from committee, together with the ability of members to speak more than

¹ See, for example, *LC Debates* (22/4/1936) 3165, 3172.

once, meant that the committee of the whole House provided an opportunity for fuller and freer debate on bills.

In modern Parliaments, including in the Council, the Presiding Officer is no longer seen as a representative of the Monarch and hence there is no restriction on the President participating in debate during committee of the whole House.

APPOINTMENT OF A COMMITTEE

A committee of the whole House is appointed by resolution of the House that it resolve into a committee of the whole to consider a bill or other matter, either immediately or at a future time. When an order of the day is read for the House to resolve itself into a committee of the whole, the President leaves the Chair without putting any question and the Chair of Committees takes the chair at the centre of the Clerk's table.

While the majority of matters referred for consideration by committee of the whole are bills, the House may also refer other matters to committee of the whole for detailed consideration. Early examples of such matters include: adoption of the recommendations of the report of a conference of Council and Assembly Library committees,² consideration of a report of managers of a free conference on amendments to a bill,³ and consideration of amendments to the standing orders.⁴

During the 1890s when the issue of federation was under consideration by the colonies there are examples of matters being referred to committee of the whole for consideration. In 1890, when the House was considering the resolutions adopted by the Australian Federation Conference and appointment of delegates to the National Australasian Convention, an amendment was agreed to, when the order of the day was read for resumption of debate, for the matter to be considered in committee of the whole.⁵ Interestingly, the Council's delegates to the convention were selected by ballot in committee of the whole.⁶ In 1897 the draft of the Constitution of the Commonwealth of Australia under the *Australian Federation Enabling Act 1895*⁷ and a message from the Assembly with suggested amendments to the draft⁸ were both referred to the committee of the whole for consideration.

Another example occurred in 1904 when the House agreed to a motion to consider in committee of the whole the Act passed by the Commonwealth Parliament for the federal territory for the seat of government.⁹

2 *LC Minutes* (19/12/1856) 37.

3 *LC Minutes* (7/10/1891) 103, (16/6/1897) 50.

4 *LC Minutes* (19/11/1895) 117 concerning repeal of standing order 210; (30/8/1938) 54 concerning the Assembly's message inviting Council to amend standing order 281.

5 *LC Minutes* (11/6/1890) 57-58.

6 *LC Minutes* (8/10/1890) 306; *LC Debates* (8/10/1890) 4332, 4350.

7 *LC Minutes* (14/7/1897) 81.

8 *LC Minutes* (12/8/1897) 116.

9 *LC Minutes* (13/12/1904) 108.

During the early 1990s when there were joint estimates committees, the reports from the committees when tabled in the House were referred to the committee of the whole on the Appropriation Bill for adoption.¹⁰

The most recent instance of a matter other than a bill being referred to committee of the whole was in 1994 on receipt of a message from the Assembly proposing a joint standing committee to be known as the Parliamentary Management Board. When the President reported the message, the Leader of the Government moved that consideration of the message (in the House) stand as an order of the day for the next sitting day. An amendment by the Hon Liz Kirkby, a cross-bench member, that the message be considered in committee of the whole, was agreed to on division.¹¹

There have also been unsuccessful attempts to have matters other than a bill considered in committee of the whole. For example, in 1861 it was proposed that the report of the select committee on the proposed Address-in-Reply to the Governor's opening speech be considered in committee of the whole, but after debate the motion was withdrawn.¹²

CHAIR OF COMMITTEES

In the first session of each parliament and whenever a vacancy occurs, the House, by motion without notice, elects one of its members to be the Chair of Committees of the whole House (and Deputy President) (SO 15). A sessional order adopted in 2007 provides for the House to also elect one of its members to be Assistant President.¹³ Both elections are conducted in a similar manner as the election of the President, except that the President conducts the election and, where there is an equality of votes, exercises a casting vote.

In committee of the whole House, the Chair of Committees has the same authority as the President (SO 173(7)), and may appoint the Assistant President or one of the Temporary Chairs¹⁴ to take the Chair, or if none is present, any other member.¹⁵ On 4 December 1990 the Temporary Chair (Mr Reed) acquainted the committee of his desire to leave the chair and, in the absence of all other Temporary Chairs, appointed the Hon Stephen Mutch to take his place.¹⁶

In 1948 an interesting situation arose in the House when, during consideration of the Landlord and Tenant (Amendment) Bill, neither the Chair of Committees nor

10 See, for example, *LC Minutes* (19/11/1991) 283.

11 *LC Minutes* (2/12/1994) 467-470.

12 *LC Minutes* (11/1/1861) 8.

13 *LC Minutes* (28/6/2007) 178, 179.

14 Nominated by the President each session under standing order 18.

15 Standing order 174. A Temporary Chair or other member acting has the same powers as the Chair.

16 Under former standing order 217, *LC Minutes* (4/12/1990) 744.

any Temporary Chairs were in the House when the House resolved to go into committee. While the standing orders allowed the Chair, when in committee, to appoint another member to take the Chair in the absence of the Temporary Chairs, there was no provision for the President to do so from the House. This continues to be the case under current standing order 174.

In the absence of the Chair of Committees, due to illness, the President called the names of the three Temporary Chairs then appointed and, when none answered, the President left the Chair at 8.30 pm, inviting the Representative of the Government and the two whips to consult with him in his chambers. On resuming the Chair at 9.00 pm, the President stated that, in the absence of the Chair of Committees and the three Temporary Chairs, he would retain the Chair. The Representative of the Government then moved that the necessary action, consequential on the House having resolved to form a committee, be postponed and stand an order of the day for a later hour of the sitting. The President left the Chair again at 9.01 pm until 12.30 am when, a Temporary Chair being present, the House was able to resolve into committee on the bill.¹⁷

The Chair of Committees may make rulings in committee to interpret and apply the standing orders. If a member wishes to object to a decision of the Chair, the objection must be taken at once. The member must then give their reasons in writing to the Chair (SO 178). A motion to report the matter to the House is then put before the committee. If the committee agrees, the Chair leaves the Chair and places the matter before the President. Although there are some precedents to the contrary,¹⁸ unless the committee agrees that the matter should be put before the House, the dissent motion is lost and the Chair's decision stands.¹⁹

INSTRUCTIONS TO A COMMITTEE

The House can give an instruction to a committee of the whole under standing orders 179 to 182, authorising it to consider matters which have not otherwise been referred to it, or to extend or restrict the committee's authority.

The most common instructions agreed to relate to the power of the committee to consider amendments not relevant to the subject matter of the bill.²⁰

17 *LC Minutes* (4/8/1948) 178.

18 On occasion in the past, when an objection has been taken and stated in writing to the Chair, the Chair has immediately left the Chair and placed the matter before the President, *LC Minutes* (30/9/1941) 67.

19 *LC Debates* (30/4/2003) 80-82.

20 See, for example, the Charter of Budget Honesty (Election Promises Costing) Bill 2006, *LC Minutes* (14/11/2006) 336; the Snowy Hydro Corporatisation Amendment (Parliamentary Scrutiny of Sale) Bill, *LC Minutes* (7/6/2006) 102; the Defamation Amendment Bill, *LC Minutes* (5/12/2002) 570; and the Anti-discrimination (Heterosexual Discrimination) Amendment Bill, *LC Minutes* (14/11/2002) 483.

An instruction may be given to a committee on a bill to divide a bill into two or more bills,²¹ or to consolidate several bills into one (SO 179(2)).²²

An instruction may also be given to a committee on a bill to amend an existing Act or to consider amendments which are not relevant to the subject matter of the bill but are relevant to the subject matter of the Act proposed to be amended (SO 179(3)). For example, in 1893 on the motion to adopt the report on the Small Debts Recovery Act Amending Bill, an instruction was agreed to that the committee have power to amend the bill to provide for amendment of the Small Debts Act.²³

In relation to bills, an instruction may be moved by motion on notice, either before the House resolves itself into a committee of the whole or when the order of the day is read for the resumption of a committee (SO 180(1)). An instruction may also be moved, without notice, as an amendment on the question for the adoption of the report of the committee (SO 180(2))²⁴ and as an amendment to the motion for third reading.²⁵

An unusual instruction occurred in 1864 on a private bill from the Assembly, the Bank of New South Wales Incorporation Act Amendment Bill, when on the motion for committal of the bill, an instruction was agreed to that the committee of the whole call the solicitor promoting the bill to appear before it and produce a copy of the Deed of Settlement of Company and be examined.²⁶

PROCEEDINGS IN COMMITTEE

With certain exceptions, the same rules are observed in committee of the whole as in the House in relation to the conduct of members and of debate, procedure and the general conduct of business.

Upon the House resolving itself into a committee of the whole, the Chair of Committees takes the Chair at the centre of the table. This allows for greater access to advice from the Clerks when dealing with amendments, but also indicates that the House is in committee and that different rules of debate apply.

Members may speak more than once in debate in committee of the whole House (SO 87(2), 173(5)).

21 See, for example, the motion for an instruction to the committee of the whole that the Appropriation Bill be divided into two bills to include a separate bill for 'the Legislature', negatived on division, *LC Minutes* (20/11/1990) 632; see also the Industrial Relations Bill, carried, *LC Minutes* (28/6/2000) 567; see also the Crimes (Amendment) Sexual Offences Bill, negatived on division, *LC Minutes* (27/5/2003) 125.

22 See also McKay W (ed), *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 23rd edn, LexisNexis, UK, 2004, p 597.

23 *LC Minutes* (9/6/1893) 347.

24 *LC Minutes* (20/11/1990) 632, (18/9/1996) 328.

25 *LC Minutes* (7/6/1893) 334.

26 *LC Minutes* (10/3/1864) 149.

Disorder in committee can only be censured by the House, on receiving a report from the committee. If any member offends in committee, the offending member may be named by the Chair. When this happens, the Chair suspends the proceedings of the committee and leaves the Chair to report to the President, who resumes the Chair of the House. After the House has dealt with the named member the committee resumes.

In 1915, the Hon James Wilson was named in committee and dealt with by the House in accordance with the standing orders. The member was both warned by the Chair in committee, and given an opportunity to make an explanation in the House, before being dealt with and suspended from the House.²⁷

A motion contradictory to the previous decision of a committee may not be made in the same committee (SO 173(3)).

A motion for closure of debate in committee, or for the Chair to report progress and seek leave to sit again, must be moved without debate and immediately put and determined. If defeated, neither motion may be moved again within 15 minutes, unless debate on the matter has concluded (SO 173(6)).

QUORUM IN COMMITTEE

The quorum in committee of the whole is also eight members, the same as for the House.

If notice is taken of the absence of a quorum in committee, the division bell is rung for five minutes.²⁸ If, within five minutes, a quorum is not formed, or it appears upon a division that a quorum is not present, the Chair of Committees is to leave the Chair without a question being put, and report to the House (SO 176(2)). The President then counts the House and, if a quorum of members is then present, the House again resolves itself into a committee of the whole without any question being put (SO 176(3)).²⁹

There are many examples since 1856 where the House was counted out and adjourned by the President, after the Chair of Committees reported a quorum was not present in committee of the whole House. The last occasion this occurred was in 1916.³⁰

Before 2004, if committee of the whole was interrupted through the lack of a quorum, the order of the day was dropped from the Notice Paper. Proceedings could be resumed on motion on notice on a subsequent day (not the same day) at the point where they were interrupted.³¹

27 *LC Minutes* (15/12/1915) 226; *LC Debates* (15/12/1915) 4748-4750.

28 *LC Minutes* (4/10/1967) 282.

29 *LC Minutes* (5/8/1909) 38, (4/11/1915) 142, (23/8/1967) 282.

30 *LC Minutes* (23/3/1916) 279 (no quorum in division on a bill).

31 *LC Minutes* (23/3/1916) 277, (27/3/1916) 283.

INTERRUPTION OF COMMITTEE PROCEEDINGS

Proceedings in committee of the whole can be interrupted if the House has ordered that another matter is to be considered at a specified time. This typically occurs if the House is in committee of the whole before Question Time, or to allow the adjournment of the House. Whenever the House is in committee of the whole at the time for interruption of business, the Chair interrupts proceedings, leaves the Chair without any question being put and reports progress to the House.³² Further consideration of the matter in committee is set down on the Notice Paper for a later hour of the sitting, or the next sitting day if the House is adjourned (SO 46(1)). A member speaking when proceedings are interrupted may continue speaking when proceedings are resumed.

A motion may also be made at any time during the proceedings of a committee that the Chair report progress and seek leave to sit again (SOs 173(6), 177(1) and (2)). When progress from committee is reported, the item is set down on the Notice Paper for further consideration in committee of the whole. When the committee proceedings resume, the President leaves the Chair without any question or debate. Before the order of the day is read it may be postponed to a later hour or future day.

DIVISIONS IN COMMITTEE

The procedure for divisions in a committee of the whole is the same as in the House (SO 119), as noted in Chapter 10 (Resolutions, Motions and Amendments). The Chair of Committees does not have a deliberative vote, only a casting vote. Any reasons given by the Chair when giving a casting vote are entered in the records of the proceedings of the committee.

Similarly, arrangements for free votes, pairing and a casting vote by the Chair are the same in committee of the whole as in the House. There are several recent examples of free votes in committee of the whole on proposed amendments to a bill, including the Anti-Discrimination (Heterosexual Discrimination) Amendment Bill 2001,³³ the Research Involving Human Embryos (New South Wales) Bill 2003³⁴ and the Human Cloning and Other Prohibited Practices Amendment Bill 2007.³⁵

TERMINATION OF COMMITTEE PROCEEDINGS

The proceedings of the committee of the whole may be terminated by agreeing to a dilatory motion 'That the Chair do now leave the Chair' (SO 177(4)). If resolved

32 *LC Minutes* (10/5/2007) 52-53.

33 *LC Debates* (14/11/2002) 6746, 6752-6753, 6767. The third reading of the bill was negatived on the casting vote of the President.

34 *LC Debates* (26/6/2003) 2217, 2221, (1/7/2003) 2431.

35 *LC Debates* (26/6/2007) 1684-1685, 1686, 1687, 1689, 1690 and 1692-1693.

in the affirmative, the motion, which does not allow for the reporting of progress nor leave to sit again, terminates the proceedings of the committee. The Chair of Committees leaves the Chair, makes no report to the House and the President resumes the Chair of the House, with the result that the item under consideration drops from the Notice Paper. Between 1856 and 1896 there were many occasions on which this occurred. The most recent example of this dilatory motion being used was in 1989 when amendments which were contrary to the Government's wishes had been made to the Ombudsman (Amendment) Bill.³⁶

Debate on a dilatory motion is strictly limited to the terms of the motion, that is, whether or not the Chair leaves the Chair.

The committee proceedings can be revived by motion on notice. If revived, the committee's proceedings are resumed at the point where they were discontinued (SO 177(5)).

REPORT OF A COMMITTEE

Where a committee of the whole has not completed consideration of a matter referred to it, the Chair reports progress, and seeks leave to sit again at a future time as directed by the committee. This typically occurs when proceedings in committee are interrupted to allow for the adjournment of the House or other business to be transacted.

When a committee of the whole has concluded consideration of a matter referred to it, the Chair reports to the House as directed by the committee (SO 177(1)). Resolutions reported from a committee may be agreed to or disagreed to by the House. Reported resolutions may be agreed to with amendment, be recommitted to the committee or further consideration of them can be postponed.³⁷

36 *LC Minutes* (2/5/1989) 620; *LC Debates* (2/5/1989) 7044-7045.

37 There are several examples between the 1850s and 1880s where the Chair was directed by the committee to seek leave to sit again this day six months. See, for example, *LC Minutes* (6/5/1886) 347.