



Legislative Assembly of the Northern Territory

STANDING ORDERS COMMITTEE

**SECOND REPORT
OF THE EIGHTH ASSEMBLY**

AUGUST 1998

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MEMBERSHIP

Madam Speaker (Chairman)

Mr Bailey

Mr Balch

Mr Coulter

Mr Stirling

SECOND REPORT OF THE STANDING ORDERS COMMITTEE OF THE EIGHTH ASSEMBLY

INTRODUCTION

The Standing Orders Committee has the honour to present its Report to the Legislative Assembly.

At the first meeting of the Standing Orders Committee held on 26 November 1997, the appointment of membership was announced. Membership comprises Mr Bailey, Mr Balch, Mrs Braham, Mr Coulter and Mr Stirling.

The Honourable Loraine Braham MLA was nominated as Chairman and duly appointed.

During of the 7th Assembly and previous Assemblies the Committee has had under consideration a wide range of matters. During the 8th Assembly, to date, the Committee has undertaken a comprehensive review of Assembly Standing Orders, Sessional Orders and Procedural Orders and Resolutions of the Assembly relating to practice, procedure and privilege and which have continuing effect.

As part of that review the following Report is submitted for consideration by the Assembly. The Report covers a range of procedural matters and recommendations for changes to relevant Standing Orders are contained at Appendix A.

1. AMALGAMATION OF STANDING COMMITTEES—PUBLICATIONS COMMITTEE AND THE SUBORDINATE LEGISLATION AND TABLED PAPERS COMMITTEE NEW STANDING ORDER 20

Your Committee has considered a proposal for amalgamating the functions of the Publications Committee and the Subordinate Legislation and Tabled Papers Committee. This matter was first raised by the Leader of Government Business (Mr Coulter) during the first sittings of the 8th Assembly.

Your Committee has considered the proposal and concluded that the role of the Publications Committee has diminished as a result of the decision to discontinue the production and publication of the Parliamentary Papers Series and the increased use of electronic publication of parliamentary documents.

It is considered that the Subordinate Legislation and Tabled Papers Committee has a capacity to effectively undertake the responsibilities of the Publications Committee.

It was also submitted that the amalgamation of the two Committees will enable a more efficient use of the time available for Committee meetings during the suspension of sittings of the Assembly.

Both Committees have considered the above matter and agreed with the proposal to amalgamate.

Accordingly, it is recommended that Standing Orders 20 and 21 be replaced by the new draft Standing Order 20, below.

Following the adoption of the proposed Standing Order by the Assembly, a motion should be moved to appoint the new members of the Committee and to provide a transitional provision to enable the "new Committee" the power to access and use the papers and records of the previous Publications Committee and Subordinate Legislation and Tabled Papers Committee.

Recommendation

It is recommended that Standing Orders 20 and 21 be rescinded and new Standing Order 20 be adopted as follows:

20. SUBORDINATE LEGISLATION AND PUBLICATIONS COMMITTEE

- (1) A Standing Committee on Subordinate Legislation and Publications to consist of five Members shall be appointed at the commencement of each Assembly. The Committee shall examine and report upon all instruments of a legislative or administrative character and other papers which are required by statute to be laid upon the Table.
- (2) The Committee shall, with respect to any instrument of a legislative or administrative character which the Legislative Assembly may disallow or disapprove, consider—
 - (a) whether the instrument is in accordance with the general objects of the law pursuant to which it is made;
 - (b) whether the instrument trespasses unduly on personal rights or liberties;
 - (c) whether the instrument unduly makes rights and liberties of citizens dependent upon administrative and not upon judicial decisions;
 - (d) whether the instrument contains matter which in the opinion of the committee should properly be dealt with in an Act;
 - (e) whether the instrument appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made;

- (f) whether there appears to have been unjustifiable delay in the publication or laying of the instrument before the Assembly; and
 - (g) whether for any special reason the form or purport of the instrument calls for elucidation.
- (3) The Committee, if it is of the opinion that an instrument ought to be disallowed or disapproved—
- (a) shall report that opinion and the grounds thereof to the Assembly before the end of the period during which any notice of the motion for disallowance of that instrument may be given to the Assembly; and
 - (b) if the Assembly is not sitting, may refer its opinion and the grounds thereof to the authority by which the instrument was made.

For the purposes of these Standing Orders, “instrument of a legislative or administrative character” has the same meaning as that defined in the *Interpretation Act*.

- (4) The Committee, if it is of the opinion that any matter relating to any paper which is laid upon the Table of the Assembly should be brought to the notice of the Assembly, may report that opinion and matter to the Assembly.
- (5) All petitions and papers presented to the Assembly which have not been ordered to be printed shall stand referred to the Committee, which shall report from time to time as to what petitions and papers ought to be printed and whether wholly or in part.
- (6) The Committee shall inquire into and report, from time to time, on the printing, publication and distribution of publications or such other matters as are referred to it by the Speaker or the Assembly.
- (7) The Committee shall have power to send for persons, papers and records, to sit in public or private session notwithstanding any adjournment of the Assembly and to adjourn from place to place.

2. HOUSE COMMITTEE—AMENDMENT TO TERMS OF REFERENCE—STANDING ORDER 19

Your Committee considers that, to more appropriately reflect the present operations of the Legislative Assembly, the Terms of Reference of the House Committee be amended to include functions related to the present operation of the Assembly in the Parliament House precincts together with information technology services for Members.

Recommendation

It is recommended that the Standing Order 19 be amended to read as follows:

19. HOUSE COMMITTEE

- (1) A House Committee to consist of the Speaker and four other Members shall be appointed at the commencement of each Assembly to advise the Speaker on matters relating to the operation of Parliament House and its precincts including:
 - (a) building operations;
 - (b) repairs, renewals, and alterations to the Parliament House and all fittings and furniture;
 - (c) information technology services for the Assembly and Members;
 - (d) the library services provided to the Assembly and Members;
 - (e) allocation of rooms;
 - (f) catering for Parliament;
 - (g) maintenance and upkeep of gardens, parking areas and associated roadways;
 - (h) any other matter referred to it by the Speaker or the Assembly.

- (2) The Committee shall have power to –
 - (a) meet and transact business in public or private session;
 - (b) send for persons, papers and records;
 - (c) sit during any adjournment of the Assembly; and
 - (d) move from place to place.

3. RESPONSES TO PETITIONS

During the 7th Assembly the Standing Orders Committee agreed that Ministers should formally respond to petitions presented in the Assembly. The matter had not been reported on at the time of the prorogation of the 7th Assembly.

Current provisions of Standing Orders provide that the only “follow-up” procedure relating to petitions presented is that the “terms of every petition tabled shall be referred by the Clerk to the Minister responsible for the administration of the matter which is the subject of the petition”.

Any response by a Minister is discretionary. The Committee has considered the matter again and is of the opinion that a process by which Ministers are obliged to respond should be implemented.

When this matter was initiated during the 7th Assembly it was submitted that there was a perception in the community that petitions presented to Parliament—especially those with a large number signatures—carry some weight and are considered by the Government as relevant in reaching public

policy decisions concerning the matter which is the subject of the petition. There was no evidence under the present arrangements that due consideration was given to such petitions. The proposed requirement for a required response would give this evidence and would possibly enhance the image of accountability by the Government through the Parliament to constituents.

Recommendation

It is recommended that the following new Standing Order be adopted.

100A. RESPONSE

A Minister shall respond to a petition referred to him pursuant to Standing Order 100 within 12 sitting days of it being forwarded to him. The response will be lodged with the Clerk for presentation to the Assembly, such response being announced at the end of the time for presentation of petitions. There is no requirement for response by a Minister to a petition which is in similar terms to a petition previously presented to the Assembly and which has been responded to.

4. CONDUCT OF QUESTION TIME

During debate on the motion for the re-appointment of the Standing Orders Committee on 26 November 1997 the Deputy Leader of the Opposition, (Mr Bailey), moved an amendment to the effect that the following matter be referred to the Standing Orders Committee:

"The need for time limits to be placed on answers to questions without notice."

The purpose of such proposals in other Parliaments was to improve the process of question time by imposing a time limit to questions and/or answers so as to ensure that a minimum number of questions and answers are transacted in each Question Time.

This matter was considered during the 7th Assembly by the Committee and was not resolved at the time of prorogation.

Conclusion

Your Committee has further considered the matter and considers that 12-14 questions is a reasonable number of questions to be asked and answered at each Question Time. While no specific regulatory provision should be included in Standing Orders or Sessional Orders at this time your Committee is of the opinion that the matter should be monitored and reviewed in 12 months.

5. **QUESTIONS TO MEMBERS OTHER THAN MINISTERS**
STANDING ORDER 110

In Question Time on 29 April 1997, 30 April 1997 and 17 June 1997, questions were asked of the Leader of the Opposition, pursuant to Standing Order 110. The practice of asking questions of Members other than Ministers has been used infrequently in the Assembly.

In 1996, a number of questions having been asked in the House of Representatives under a similar Standing Order (S.O.143), the then Government suspended the operation of that Standing Order and the Procedure Committee of the new Parliament inquired into the operation of House of Representatives Standing Order 143.

The Committee (House of Representatives) recommended that Standing Order 143 be retained in its present form as the Standing Order upheld an important the concept—

"that private members must be responsible for business they bring before the House and should be able to be questioned about it".

Your Committee has also concluded that the Standing Order has been sparingly used and not been abused.

Recommendation

That Standing Order 110 be retained in its present form.

6. **DISSENT FROM RULING/DECISIONS**

Your Committee is aware that there is an apparent anomaly between the provisions relating to dissent motions, in that Standing Order 82 refers to "*any ruling or decision of the Speaker*" where Standing Order 220 refers only to a "*ruling*" of the Chairman.

It would appear that, in 1985, the Standing Orders Committee recommended the inclusion of the word "decision" in Standing Order 82 for the purpose of "making the Standing Order more precise", thus creating the above anomaly.

It is submitted that the capacity to dissent from decisions of the Chair should be consistent with practice in other relevant Parliaments.

For example, in the House of Representatives, the capacity to dissent from decisions of the Chair was removed from the Standing Orders in 1950 so that dissent could be moved only to rulings and not routine decisions of the Chair on matters of order such as, a direction to a member to return to the subject matter; the naming of a member; or other straightforward matters of order and procedure, such as announcing the result of a Division.

Recommendation

That the words "*or decision*" be omitted from Standing Order 82.

7. **COMMITTEE OF PRIVILEGES
STANDING ORDER 18**

Following the changes to Standing Orders, Chapter VIII and Standing Orders 83, 84 and 85 being adopted, the reference in Standing Order 18 to the Speaker referring complaints of breach of privilege to the Committee of Privileges is now redundant.

Recommendation

It is recommended that Standing Order 18 be amended by omitting the words "by the Speaker or" to achieve consistency with the provisions of Standing Order 83.

8. **SITTING DAY: DEFINITION**

At its meeting in November 1997 the Committee directed the Speaker to write to the Attorney-General to seek a legal opinion and interpretation of the use of the term "sitting day" as it applied to a range of procedural issues, Standing Orders and the *Interpretation Act*.

The request and the legal opinion received from the Attorney-General are attached at Attachment A.

Your Committee has considered the legal opinion and resolved that the term "sitting day" be clarified for the purposes of calculating General Business days and related purposes to distinguish this interpretation from that which applies to a period of suspension of a Member from the Assembly.

Recommendation

- (a) That the definition of "A sitting" contained in Standing Order 2 be omitted and the following definition be inserted in its stead—"A sitting day means a meeting of the Assembly from the ringing of the bells at the appointed time until the adjournment of the Assembly", and
- (b) That this provision be cross-referenced with Standing Order 93.

The Committee notes that Standing Order 241 qualifies that definition specifically, in that "sitting day" does not exceed 24 hours in respect of the suspension of a Member.

9. **ASSEMBLY SITTING PATTERN**

Your Committee has considered options for an alternative sitting pattern for the Assembly. It was noted that since the change to the annual budget cycle during the last 5 years, the balance of periods of sitting has been changed with the effect that the consideration of the Annual Appropriation Bill in the April and June sittings restricts the capacity for the Assembly to consider other business during the first 7 months of the year.

Accordingly, the Committee agreed that a draft proposed 1999 sitting pattern be drawn up for consideration by both Government and Opposition parties. This pattern would include an additional sitting week in June and one week less in November/December, subject to the pressure of business before the Assembly at that time of the year.

The Committee also suggests that a pattern of frequency for General Business days be drawn up so as to best facilitate the conduct of business of the Assembly.

10. EXPLANATORY MATERIAL FOR BILLS

During the motion for the appointment of the Standing Orders Committee on 26 November 1997 the Deputy Leader of the Opposition moved an amendment that the following matter be referred to the Standing Orders Committee:

Committee notes be provided with legislation on presentation before Parliament.

While that amendment was negatived in the Assembly the Leader of Government Business (Mr Coulter) undertook to place the matter before the Standing Orders Committee for consideration.

Your Committee has considered the matter and noted that the issue was the subject of a reference to the Standing Orders Committee which reported during the 7th Assembly, and at that time, the Government indicated that it did not propose to publish explanatory notes, notes on clauses or committee notes as a matter of course.

The Standing Orders Committee, at that time, resolved not to further pursue the matter. It was noted that at that time the Government also undertook to provide more extensive and regular briefings to Opposition Members.

Your Committee notes that during recent sittings there has developed an occasional practice for Ministers to table explanatory materials relating to bills (possibly following recent amendments to the *Interpretation Act* relating to the use of a range of extrinsic materials). Your Committee is of the opinion that if such materials are to be tabled by Ministers, it would assist the Assembly in their consideration of legislation if such documents were tabled as early as possible during the consideration of Bills.

**11. PUBLIC ACCOUNTS COMMITTEE
STANDING ORDER 21 A**

The Committee noted that the promulgation of the *Financial Management Act* and *Audit Act* requires minor consequential amendments to the Terms of Reference of the Public Accounts Committee contained in Standing Order 21A.

Your Committee considered relevant correspondence from the Auditor-General and the Public Accounts Committee (Attachment B).

Recommendation

It is recommended that the Standing Order 21 A(2)(a) and (e) be amended respectively to read as follows:

21A PUBLIC ACCOUNTS COMMITTEE

- (2) The Duties of the committee shall be –
 - (a) to examine the accounts of the receipts and expenditure of the Northern Territory and each statement and report tabled in the Legislative Assembly, pursuant to the *Financial Management Act* and the *Audit Act*”

.....
 - (e) to examine the reports of the Auditor-General tabled in the Legislative Assembly with the accounts of an Agency of the Northern Territory, including any documents annexed or appended to those reports, pursuant to the *Audit Act*.”

12. OTHER MATTERS OF CONSIDERATION

During its deliberations in the 8th Assembly the Committee has considered matters which are briefly described below but which do not involve recommendations for any change to current practice and procedure.

- Broadcasting and re-broadcasting of parliamentary proceedings. The Committee has discussed a range of options for alternative arrangements for direct radio broadcast and televising and rebroadcast of Assembly proceedings.

The Opposition Members of the Committee (Mr Bailey and Mr Stirling) supported a proposal to make sound and vision recording of proceedings available to all electronic media but subject to guidelines similar to those in place in the Commonwealth Parliament. It was submitted that these guidelines had worked effectively and imposed appropriate restrictions and sanctions on broadcasters who failed to comply with them and were similar to arrangements in place in the Australian parliaments.

However the Committee after consideration resolved that no changes to the existing arrangements be made at this time.

- Self-referencing Powers

On the motion for the appointment of Standing Orders Committee on 26 November 1997 Deputy Leader of the Opposition (Mr Bailey) moved the following matter be referred to the Standing Orders Committee—*the ability of Standing and Sessional Committees to pursue matters of interest to Committees and at their own discretion.*

The purpose of this proposal was to enable Committees to pursue issues on their own account, such as Public Accounts Committee being able to examine financial management issues that arise as matters of public interest or the Environment Committee, for instance, to pursue particular current issues of topical interest without a specific reference from the relevant Minister or the Assembly.

This proposal was supported by the Opposition Members of the Committee Mr Bailey and Mr Stirling.

Your Committee has discussed this matter and resolved that no amendments be proposed to Standing Orders containing self-referencing powers in the Terms of Reference of Standing Committees, at this time.

- Conduct of Adjournment Debate

Your Committee considered a number of suggestions to curtail or regulate the time taken by the Assembly in debate on the motion "*that the Assembly do now adjourn*". Some of the options suggested and considered included a global time limit and automatic adjournment; reduced speaking time limits; the use of the present 'luncheon suspension' to reduce the extent of the length of the adjournment debate and the possible introduction of 90 second statements as adopted in recent years by the House of Representatives.

Your Committee has considered the range of alternatives and proposes that no change be made to the existing practice, procedures and Standing Orders.

- Conduct of Divisions

Your Committee has discussed a range of options presented for facilitating the conduct of divisions in the Assembly to reduce the time taken. Options included Members staying in their seats to vote; whips assisting in counting; ringing the bells for a shorter period of time and stopping the ringing of the bells when all voting Members are present. The Committee has considered the range of options and recommends that no changes be made to current practice, procedures or Standing Orders.

LORAINÉ BRAHAM
Chairman



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Office of the Speaker

GPO Box 3721
 Darwin N.T. 0801
 Telephone: (08) 8946 1431
 Facsimile: (08) 8981 3284

3 December 1997

Ms Margaret Lyons
 Secretary
 Attorney-General's Department
 GPO Box 1722
 DARWIN NT 0801

Ref: 14/17/24
 9/22/13

Dear Ms Lyons

The Standing Orders Committee presently has under consideration a range of procedural matters which require clarification and definition of the term "sitting day".

As described below there may be some related issues concerning the Interpretation Act and the statutory provisions for subordinate legislation. The Committee would be grateful for any comment or advice that you or your colleagues may be able to provide.

Background

You will be aware that, in recent years, the Legislative Assembly of the Northern Territory has used the procedural device of suspending proceedings rather than adjourning each day for the purpose of expediting the consideration of the annual *Appropriation Bill* in the Committee of the Whole.

The device of suspending rather than adjourning was borrowed from precedents in 1950 and 1953 when this procedure was used in the Australian Senate on the last day of a period of sittings to avoid time being taken on Questions.

(By way of marginal historical interest, the revival of this procedure by the Northern Territory Legislative Assembly led, in turn, to the renaissance of the procedure in the Australian Senate in November 1992 to facilitate consideration of the annual *Appropriation Bill* in the Committee of the Whole and again in December 1993, to accommodate the protracted proceedings of the *Native Title Bill 1993*. There were a



number of occasions where, in the first three decades of the Commonwealth, the House of Representatives sat for more than one calendar day in a sitting.)

Procedural Interpretation

Since 1992 the Legislative Assembly has been comfortable with an informal interpretation to the effect that, "Where one sitting continues over two or more calendar days without adjournment there would be only one sitting day." Effectively, a "sitting day" has been taken to mean a day on which the Assembly meets to begin a sitting and not any calendar day on which the Assembly sits.

Accordingly, the Notice Paper is issued only for each new sitting providing the agenda of business listed for consideration during that sitting. In the case of a Notice of Motion given on the first day of an extended sitting, such Notice would not be effective until the next Notice Paper is issued, pursuant to the subsequent adjournment of the Assembly.

To date this definition of "sitting day" has only been interpreted in its application in respect of determining the ultimate day for giving precedence to General Business items pursuant to S.O. 93.

Matter of Interpretation

The above general interpretation reflects House of Representatives and similarly, was endorsed in the 5th edition of *Odgers' Australian Senate Practice* practice at p.455 as follows:

"Another situation calling for interpretation of 'sitting day' is where 1 sitting extends over 2 or more full days, without the intervention of an adjournment, but by the process of suspension of the sitting. The view taken is that, if it is right to say that 'sitting day' means a day on which the House meets to begin a sitting, there would only be only 1 sitting day in these circumstances."

However, the current (7th Edition) of *Odgers'* states at page 181:

"The extension of one sitting over three days raised the question of the effect of statutory provisions for the tabling of delegated legislation. Those provisions



require delegated legislation to be tabled in the Senate within a specified number of sitting days, usually 15 sitting days, and legislation which is not tabled within the specified time ceases to have effect. **It has not been determined whether a sitting extending over more than one sitting day is one sitting day for the purposes of those statutory provisions.** On these occasions departments responsible for forwarding delegated legislation for tabling were advised that to avoid any doubts they should assume that the days to which sittings were suspended were separate sitting days for the purposes of statutory tabling requirements.”.

It is understood from recent consultations that the House of Representatives adheres to the original interpretation but that Senate officers are of the view, in respect of the provisions of the *Acts Interpretation Act* as it applies to the disallowance of statutory instruments, **for safety's sake it should be assumed that each calendar day should be counted as a sitting day.**

While the matter is unresolved in the Commonwealth Parliament there continues the absence of a consistent definition of “sitting day”. Similarly, there may also be some doubt regarding the application of the provisions of the *Interpretation Act* of the Northern Territory as it applies to the procedures for making and disallowing regulations, rules, by-laws etc. There are a number of provisions requiring the tabling of certain documents within a specified number of “sitting days” by Ministers and the Speaker.

Further, section 10 of the *Remuneration Tribunal Act* provides that the Assembly may resolve to disapprove part of a Determination within 6 sitting days of a Determination being tabled.

Present Situation

The Standing Orders Committee has the above matter under consideration and recently resolved to limit the extent of a “sitting day” for the purposes of suspension of a member in so as not to exceed 24 hours.

The issue of the interpretation of “sitting day” for determining the ultimate “General Business day” is presently on the Agenda of the Standing Orders Committee together with a favoured proposal that each calendar day should count as a sitting day.



In the event that the Committee recommends this interpretation it could then be endorsed by resolution of the Legislative Assembly.

It may then be considered whether the matter should be the subject of an amendment to the *Interpretation Act*, in the terms of the proposed resolution, for inclusion in "Part IV - WORDS AND REFERENCES IN ACTS."

Yours sincerely

LORAINE BRAHAM
Chairman
Standing Orders Committee

NORTHERN TERRITORY ATTORNEY-GENERAL'S DEPARTMENT

Crown Counsel's Chambers

Graham Nicholson (08) 8999 6953

Raelene Webb (08) 8999 6762

Fax: (08) 8999 5513

MEMORANDUM

To: DAVID ANDERSON

Our Ref: CC9706 GN:aw

Your Ref: DA

From: GRAHAM NICHOLSON

Date: 11 DECEMBER 1997

MEANING OF THE TERM "SITTING DAY" IN RELATION TO THE LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

I refer to your memo of 9 December 1997 requesting an opinion on the above matter. The request arises from a letter from the Speaker of the Legislative Assembly to the Secretary of this Department dated 3 December 1997, in which it is advised that the Standing Orders Committee has recently resolved to limit the extent of a "sitting day" for the purposes of the suspension of a member so as not to exceed 24 hours such that each calendar day (in which the Legislative Assembly is sitting) should count as a sitting day. The Speaker asks whether the matter should also be the subject of an amendment to the *Interpretation Act* to clarify the meaning of "sitting day", having regard to the provisions for disallowance of subordinate legislation in the *Interpretation Act* and for the disapproval of a determination in the *Remuneration Tribunal Act*.

In replying to this request, it is necessary to consider the relevant provisions of the *Northern Territory (Self-Government) Act 1978*, the existing Standing Orders of the Legislative Assembly, the practice in the Legislative Assembly and in other comparable legislatures (in particular in the Commonwealth Parliament), as well as the provisions of Northern Territory legislation that use the term "sitting day(s)". It is also necessary to consider the meaning which that term is capable of bearing at common law, having regard to its use in other contexts.

Northern Territory (Self-Government) Act 1978

This Act continues the Legislative Assembly of the Northern Territory, with plenary legislative powers in respect of the Northern Territory. It confers on the Legislative Assembly the power under section 30 to make standing rules and orders, not inconsistent with a law of the Territory, with respect to the order and conduct of its business and proceedings. It follows that, subject to the provisions of any relevant

Northern Territory legislation, the Legislative Assembly has very wide powers to determine its own procedure. This would, in my view, include the power to determine the meaning of the term "sitting days" in its own Standing Orders for the purposes of the procedure of the Legislative Assembly. Whether this power extends to determining the meaning of that term as already contained in Northern Territory legislation is a matter to be considered below.

It is to be noticed that the *Northern Territory (Self-Government) Act* has provisions as to the term of the Legislative Assembly (section 17) and for sessions of the Legislative Assembly and its prorogation (section 22), but it contains no provisions as to what are "sittings" of the Legislative Assembly, although it recognises that a member does "sit" in the Assembly (section 28), and that there is such a thing as "sitting days" (section 21(2)(c)).

Standing Orders

The term "sitting day(s)" is not defined, either in Northern Territory legislation nor in the Standing Orders of the Legislative Assembly. However the Standing Orders of the Assembly define "A sitting" as meaning the daily meetings of the Assembly from the ringing of the bells at the appointed time until the adjournment of the Assembly. The term "An Assembly" is defined therein as meaning the series of sittings comprised of one or more sessions from the calling together of the Legislative Assembly after a general election until it is prorogued prior to the next general election (Chapter 1, SO 2). The Assembly normally "sits" on each Tuesday, Wednesday and Thursday at 10:00am (Chapter VI, SO 31). The chair is taken at the time appointed "on every day fixed for the sitting of the Assembly", but if no quorum, the Speaker shall adjourn the Assembly to the "next sitting day" (Chapter VI, SO 32 and see SO's 35, 36, 37 and 43). There appears to be no express provision for the suspension of a sittings rather than its adjournment, although my instructions are that such a suspension does sometimes occur, so as to expedite certain business, the view being taken that a suspension does not bring a "sittings" to an end even if extending over more than one day. It is said that since 1992, the Assembly has been comfortable with the informal interpretation to the effect that, "Where one sitting continues over two or more calendar days without adjournment there would be only one sitting day". Thus a single sittings could either extend beyond midnight, or it might be suspended before midnight and continue the next day as the same "sittings". This approach was based on the practice in both Houses of the Commonwealth Parliament - see Odgers' *Australian Senate Practice*, 7th Ed., 180-181, 344; *House of Representatives Practice*, 2nd Ed., 277-279.

Importance of "sitting day"

A number of matters of importance depend upon the meaning of "sitting day(s)". Thus under Chapter XXIII SO 241 of the Legislative Assembly Standing Orders, as recently rewritten by Sessional Order dated 26 November 1997, a member held in breach can be suspended on the first occasion for 24 hours, on a second occasion for two sitting days excluding the day of suspension and for a third or subsequent occasion for three sitting days excluding the day of suspension. Should the

suspension prevent the member from attending the Assembly for "three or more consecutive sitting days", the member is deemed to be absent with Assembly permission for the purposes of section 21(2)(c) of the *Northern Territory (Self-Government) Act*, otherwise the member would automatically vacate his or her office as a member under that section.

Thus while a suspension of a member will not cause vacation of office for the period of the suspension, any other absence by a member from the Assembly for "three consecutive sitting days" without the permission of the Assembly will cause a vacation of his or her office as member.

In addition, subject to the provisions of any other Northern Territory legislation in a particular case, under section 63 of the *Interpretation Act*, all Northern Territory regulations, rules or by-laws are to be laid before the Legislative Assembly within "three sitting days of that Assembly" after their making or notification in the Gazette, otherwise they are void and of no effect. The Assembly may then by resolution "within 12 sitting days" disallow those regulations, rules or by-laws.

A somewhat similar procedure applies under the *Remuneration Tribunal Act*, requiring a report or determination of the Tribunal to be tabled in the Legislative Assembly "within six sitting days" after receipt by the Administrator, and subject to disapproval by the Assembly "within ten sitting days" after tabling (section 9).

There are other references in Northern Territory legislation to "sitting days" of the Legislative Assembly - see, for example, section 184(1) of the *Local Government Act*.

Meaning of "sitting day"

Literally, it would seem that prima facie a reference to a "sitting day" should be interpreted as a reference to a "day", that is, a period of 24 hours, during which the Assembly is actually sitting, and which is not interrupted by an adjournment. The word "day" has been interpreted to mean a period of 24 hours - see *Rejman v Dunsmore* (1983) 32 SASR 151, *Taig v Fawcett* [1962] VR 58. This literal view would be consistent with the use of the word "daily" in the definition of "A sitting" in Chapter SO 2 of the Legislative Assembly Standing Orders, and would exclude the carry over of the same sittings from one day to another day if it extended over more than 24 hours, with or without the intervention of a suspension of the Assembly. It is also consistent, for example, with the meaning of "sitting day of Parliament" given in the Dictionary of Canadian Law, as being a day on which either House of Parliament sits.

However there is old authority for the proposition that a "sitting" can include a continuous period, even if extending over more than one day, and even if the "sitting" is broken into two for dinner (*Bones v Booth* 2 BI W 1226 per Blackstone J, cited in Stroud's Judicial Dictionary (5th Ed.) Vol 5, 2442, a gaming case). And in the context of courts, a "sitting" can have a variety of meanings depending on the context, from the first day of a new sittings which extends over a period of days, to the whole

period of days when the court sits (*Paul v R* [1982] 1 SCR 621 at 631, 634 per Lamer J and other Canadian cases cited in *Words and Phrases* (3rd Ed.) 192). Whether these cases can be applied to a "sitting day" in a Parliament is open to question. There appears to be no Australian cases directly on point, but in *Dignan v Australian Steamships Pty Ltd* (1931) 45 CLR 188, in interpreting section 10(c) of the *Acts Interpretation Act 1904* (Cth), the words "15 sitting days" and "15 days" were sometimes used by the Judges interchangeably - see Starke J at 202, Dixon J at 205-206.

However such a literal interpretation has not been accepted in practice by either House of the Commonwealth Parliament, nor by the Legislative Assembly, at least for the purposes of their own procedures. Nor is it unknown for a continuous sittings of the House of Commons to extend beyond 24 hours. This practice is no doubt relevant to the interpretation of the term "sitting day(s)". It follows in my view that an amendment to the Standing Orders to clarify the matter would be useful, and that such an express amendment would at least be effective for the purposes of those Standing Orders where they refer to a "sitting day".

This gives rise to the question whether an amendment made now to the Standing Orders of the Legislative Assembly would also be effective for the purpose of the term "sitting day(s)" in either section 21(2)(c) of the *Northern Territory (Self-Government) Act* or as used in any Northern Territory legislation mentioned above. On one view, the legal meaning of "sitting day(s)" in existing legislation is a matter for the courts, and arguably that meaning cannot be affected by subsequent amendments to the Standing Orders.

In this regard, doubts have been expressed as to whether the practice adopted by parliaments of carrying over one sittings into another day, with or without a suspension, is relevant in determining the meaning of "sitting day" in legislation (such as in disallowance provisions). The possibility has been flagged that a court might take a different view, and it has been suggested that it should be assumed for this purpose that where a sittings extend over several days with suspensions, that each day of those sittings are separate sitting days. There are no judicial authorities directly on point.

On the other hand, it is clear that the Commonwealth Parliament has entrusted matters of Legislative Assembly procedure to the Assembly itself (see above), and the definition of what constitutes a "sitting day(s)" of the Assembly may go to a matter of procedure. As a result, arguably the meaning of that term as adopted by the Assembly from time to time is relevant to, and is capable of affecting the meaning of the same term as used in Commonwealth or Northern Territory legislation. Courts faced with the question would on this view be entitled to have regard to, and perhaps may even be obliged to, take into account the definition of that term as determined from time to time by the Assembly in its Standing Orders.

In support of this view, there has for a long time been a common law rule, supported by the *Bill of Rights 1689*, that courts do not inquire into or question the proceedings in a parliament. Rather, parliaments have traditionally been free to regulate their

proceedings as they see fit, and to be the sole judge of the lawfulness of those proceedings. This view may be subject to the terms of any written Constitution, but subject thereto, and subject also to any legislation establishing the parliament or limiting its powers, a parliament will have the sole authority in matters of procedure. For this purpose, it has been said that while a resolution of the parliament cannot change the law, for the purposes of parliamentary procedure a parliament can "practically change or practically supersede the law" (Lord Coleridge CJ in *Bradlaugh v Gossett* (1884) 12 QBD 271 at 273-274).

Accordingly, it seems to me that it is for the Legislative Assembly to determine what constitutes a "sitting day" of that Assembly, and when it does so, that definition will be effective not only for the purposes of the Standing Orders, but also for any legislation which refers to that term in relation to the Assembly without defining it, whenever that legislation may be enacted. That being so, if the Standing Orders were to be amended as proposed to define "sitting day", not only for the purposes of the suspension of a member but also generally, then that definition will also in my view be effective for the purposes of that term in any Territory legislation in which it is used without definition. Such an amendment to the Standing Orders, if expressed in general terms, would also be likely, in my view, to be effective for the purposes of section 21(2)(c) of the *Northern Territory (Self-Government) Act*, as that Act itself defers to the Assembly in matters of Assembly procedure. Hence it is probable that the term "sitting days" in that section will take its meaning from that determined by the Assembly.

It is not, on this view, strictly necessary to amend the *Interpretation Act* as suggested, although a parallel amendment of that Act to that proposed for the Standing Orders would not be objectionable. If, on the other hand, the amendment to the Standing Orders was only to be made for the purpose of the suspension of a member, then an amendment to the *Interpretation Act* could be considered for purposes of Northern Territory legislation in which the term "sitting day(s)" is used.

It occurs to me that a possible form of wording to define a "sitting day" in the Standing Orders of the Legislative Assembly, if it is to be of general application, and to replace the existing definition of "A sitting", could be as follows:

"'sitting day' means a period of time, which shall not in any case exceed 24 hours, and subject thereto, shall be calculated from the ringing of the bells at the appointed time on any given day until the next succeeding adjournment of the Assembly, and a "sitting" shall have a corresponding meaning."

This would need to be altered if it was only to apply to matters concerning the suspension of a member.

For your consideration.


GRAHAM NICHOLSON

ENTERED
48.78



Legislative Assembly of the Northern Territory PUBLIC ACCOUNTS COMMITTEE

Tele: (08) 89 461438
Fax: 81 2528

G.P.O. BOX 3721
DARWIN, N.T. 0801

Ref: 16/5/4

*CLERK
copy for [unclear] [unclear]
[unclear]*

~~27 May, 1998~~
15 JUNE '98

Mr Iain Summers
Auditor-General
Northern Territory Auditor-General's Office
GPO Box 4594
DARWIN NT 0801

Dear Iain,

I refer to your letter of 7 May 1998. Action is already in place to have Standing Order 21A(2)(a) amended to refer to the *Audit Act* and I thank you for bringing this to my attention.

The Secretary of the Public Accounts Committee has provided me with a full briefing on the previous Committee's responsibility under the *Audit Act* in determining the terms of reference for the recent strategic review of your office.

I would be more than willing to participate in the audit committee and you can contact my Electorate Secretary on 89 277655 to arrange a mutually convenient time.

Yours sincerely,

STEPHEN DUNHAM, MLA
CHAIRMAN



Legislative Assembly of the Northern Territory
PUBLIC ACCOUNTS COMMITTEE

Telephone (08) 89 461438
Fax (08) 89 81 6158

G P O BOX 3721
DARWIN, N T 0801

MEMORANDUM

REF: 16/5/4 DATE: 28 May, 1998

TO: CLERK

FROM: Secretary
PUBLIC ACCOUNTS COMMITTEE

RE: STANDING ORDER 21A AMENDMENTS

The Auditor-General has written to the Chairman of the Public Accounts Committee raising a number of issues including the inappropriate reference to the *Financial Management Act* within Standing Order 21A(2)(a).

As you are aware 21A(2)(a) identifies the requirement "to examine the accounts of the receipts and expenditure of the Northern Territory and each statement and report transmitted to the Legislative Assembly by the Auditor-General, pursuant to the *Financial Management* and the *Audit Act*".

The previous Financial Administration and Audit Act has now been replaced by the above two acts and any reference to reports submitted by the Auditor-General must only refer to the *Audit Act*. Section 24 of the *Audit Act* (copy attached) sets out the manner in which the Auditor-General shall report to the Assembly. Section 14 and 25 (copies attached) are also appropriate.

As a result of considering Mr Summers' query, there appears to be a duplication within sub-section (a) and sub-section (c) of the Standing Order. Sub-section (c) states "to examine the reports of the Auditor-General laid before the Legislative Assembly with the accounts of a Public Authority of the Northern Territory (including any documents annexed or appended to those reports)".

I am not sure if there was meant to be a difference in meaning between the words "transmitted" in (a) and "laid before" in (c) but I would assume that in the context of both paragraphs the same intent applies to both.

The Commonwealth Joint Committee of Public Accounts operates under Section 8(1) of the *Public Accounts Act 1951*. This Act outlines the Committee's duties and includes "to examine the accounts of the receipts of the Commonwealth including the financial statements transmitted to the Auditor-General under the *Audit Act 1901*".

There is a further sub-section which provides for the Committee "to examine all reports of the Auditor-General, copies of which have been laid before the Houses of the Parliament".

The only difference between the Commonwealth and Northern Territory Standing Order 2(a) is the responsibility by the Commonwealth to include the financial statements transmitted to the Auditor-General whereas we refer to statements and reports transmitted to the Legislative Assembly by the Auditor-General.

With the introduction into the Northern Territory Parliament on 18 June 1986 of a provisional Standing Order to operate on a trial basis, the ensuing debate only emphasised the stand taken by Government to allow the Public Accounts Committee "to scrutinise, by annual inquiry and regular review, the manner in which Departments expend the monies allocated to them by this Assembly ... By this means, the work of the Auditor-General may not pass unnoticed, and various departments may be called to account for irregularities and defaults thus reported".

Unfortunately, there was no attempt to critically analyse or explain the individual sections of this Standing Order during the debate.

I would suggest that sub-section 2(a) be rewritten to delete any reference to the Auditor-General while sub-section 2(c) remain as is with the inclusion of the word "agency" in lieu of "public authority" (as per the definition contained within the *Financial Management Act*) and a reference to the *Audit Act*.

Sub-section 2(c) would then read "to examine the reports of the Auditor-General laid before the Legislative Assembly with the accounts of an agency of the Northern Territory (including any documents annexed or appended to those reports)" pursuant to the *Audit Act*.

There is within the *Financial Management Act* a reference to the preparation of financial statements by the Treasurer and accountable officer (Sections 9, 10 & 11). These financial statements are provided to the Auditor-General, and his subsequent report and a copy of the statement is tabled by the appropriate Minister.

As a result of the appropriate Minister tabling the agencies' financial statement in conjunction with the Auditor-General's report, it could be interpreted that sub-section 2(c) provides sufficient authority for the Public Accounts Committee to have access to these documents.

An alternative approach could be to adopt similar wording to the Commonwealth Standing Orders (which would then account for the previous use of the word "transmitted" in 21A{2}{a}) making specific reference to the *Financial Management Act*.

Sub-section 2(a) would then read "to examine the accounts of the receipts and expenditure of the Northern Territory including financial statements transmitted to the Auditor-General pursuant to the *Financial Management Act*."

If the first option is adopted, and sub-section 2(c) is considered sufficiently broad enough to include the tabling of financial statements by the Treasurer and agencies, sub-section 2(a) would only need to read "to examine the accounts of the receipts and expenditure of the Northern Territory".

I would recommend adoption of the latter version of sub-section 2(a).

TERRY HANLEY
SECRETARY

26
RECEIVED
4.3.98

Legislative Assembly of the Northern Territory
PUBLIC ACCOUNTS COMMITTEE

Telephone: (08) 89 461438
Fax: (08) 89 81 6158

CFO BOARD
DARWIN, NT 1300

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I would recommend adoption of the latter version of sub-section 2(a).

A handwritten signature in black ink, appearing to be 'Terry Hanley', written in a cursive style.

TERRY HANLEY
SECRETARY

PART 3 - AUDITS

13. DUTIES OF AUDITOR-GENERAL

- (1) Subject to this Act, the Auditor-General shall audit the Public Account and other accounts in such manner as he or she thinks fit having regard to the character and effectiveness of the internal control and recognised professional standards and practices.
- (2) Every audit under subsection (1) shall be performed at such times as the Auditor-General thinks fit but in any case not less than once in each year.
- (3) Notwithstanding subsection (2), the Auditor-General may, in any year, dispense with the audit of an Agency.
- (4) The Auditor-General shall, where he or she dispenses with an audit in accordance with this section, report that fact, and give a statement of the reason for the dispensation, in his or her report prepared under section 24.

14. SPECIAL AUDITS

- (1) The Minister may, either generally or in relation to a specific aspect, by instrument in writing, direct the Auditor-General to carry out an audit which the Auditor-General has power under this Act to carry out, in relation to an Agency specified in the instrument, within the time specified in the instrument or within such further time as is reasonably necessary to enable the audit to be completed, and the Auditor-General shall carry out the audit accordingly.
- (2) As soon as practicable after carrying out an audit as required under subsection (1), the Auditor-General shall furnish to the Minister a report on the audit.
- (3) The Minister shall, within 6 sitting days of the Legislative Assembly after receiving a report furnished to him or her under subsection (2), table a copy of the report in the Legislative Assembly.

PART 4 - AUDITOR-GENERAL'S REPORTS

24. REPORTS TO LEGISLATIVE ASSEMBLY AND SUPPLEMENTARY REPORTS

- (1) The Auditor-General shall, not less than once in each year, prepare and submit a report to the Legislative Assembly on those matters arising from the performance of his or her functions or the exercise of his or her powers that, in the Auditor-General's opinion, should be reported to the Assembly.
- (2) In subsection (1), "report" includes a report or reports, supplementary to a primary report, prepared and signed as soon as practicable after the preparation and submission of the primary report.
- (3) The Auditor-General may at any time make a special report to the Legislative Assembly on any matter or thing arising out of an audit to which, in his or her opinion, attention should be drawn.
- (4) The Auditor-General shall not make a report under this section unless -
 - (a) the Auditor-General has -
 - (i) not later than 10 working days before the report is made, given a copy of the report, or a summary of findings and proposed recommendations, to the Agency to which the report relates; and
 - (ii) in writing, asked the Agency for submissions or comments before a specified date, being not earlier than 7 days after the copy of the report is given to the Agency; and
 - (b) the Auditor-General has included in the report all submissions or comments received before the report is made from the Agency or a summary, in an agreed form, of such submissions or comments.

25. AUDIT OF TREASURER'S ANNUAL FINANCIAL STATEMENT

The Auditor-General shall, not later than 2 months after receiving the Treasurer's Annual Financial Statement, audit the Statement and prepare and sign a report to the Treasurer on the audit.