



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Standing Orders Committee

Fourth Report of the 9th Assembly including

Procedural options for dealing with allegations against non-Members
Explanatory Memorandum / Statement
Amendments to Motions
Video Conferencing

February 2005

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LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Standing Orders Committee

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Members of the Committee as at February 2005

The Honourable Paul Henderson - Chairman
Mr Matthew Bonson MLA
The Honourable Loraine Braham MLA
Dr Chris Burns MLA
Dr Richard Lim MLA
Mr John Elferink MLA

Committee Secretariat

Mr Ian McNeill, Secretary
Ms Jane Gunner, Research/Administrative Officer

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Membership of the committee at the time of tabling of the Report:

The Honourable Paul Henderson - Chairman

Appointed 17 November 2002
Australian Labor Party
Member for Wanguri: First elected 31 July 1999
Leader of Government Business
Minister for Business and Industry
Minister for Police, Fire and Emergency Services
Minister for Defence Support
Minister for Asian Relations and Trade
Minister for Corporate and Information Services
Minister for Communications

Mr Matthew Bonson MLA

Appointed 16 October 2001
Australian Labor Party
Member for Millner: First elected 18 August 2001
Deputy Chairman of Committees
Other Committees: Estimates; Public Accounts; Legal and Constitutional Affairs; Environment and Sustainable Development

The Honourable Loraine Braham MLA

Appointed 16 October 2001
Independent
Member for Braiting: First elected 4 June 1994
Speaker of the Legislative Assembly
Other Committees: House; Legal and Constitutional Affairs

Dr Chris Burns MLA

Appointed 16 October 2001
Australian Labor Party
Member for Johnston: First elected 18 August 2001
Minister for Transport and Infrastructure
Minister for Lands and Planning
Minister for Parks and Wildlife
Minister for Essential Services

Dr Richard Lim MLA

Appointed 18 October 2001
Country Liberal Party
Member for Greatorex: First elected 4 June 1994
Deputy Leader of the Opposition
Other Committees: Estimates; Public Accounts

Mr John Elferink MLA

Appointed 25 November 2003
Country Liberal Party
Member for Macdonnell: First elected 30 August 1997
Deputy Chairman of Committees
Other Committees: Legal and Constitutional Affairs

Recommendations

1. The adoption of a resolution as follows:

Freedom of Speech

1. That the Assembly considers that, in speaking in the Assembly or in a committee, Members should take the following matters into account:
 - a. The need to exercise their valuable right of freedom of speech in a responsible manner;
 - b. The damage that may be done by allegations made in Parliament to those who are the subject of such allegations and to the standing of parliament;
 - c. The limited opportunities for persons other than members of Parliament to respond to allegations made in parliament;
 - d. The need for Members, while fearlessly performing their duties, to have regard to the rights of others; and
 - e. The desirability of ensuring that statements reflecting adversely on persons are soundly based.
 2. That the Speaker, whenever the Speaker considers that it is desirable to do so, may draw the attention of the Members to the spirit and the letter of this resolution.
2. The adoption of a new Standing Order 177A:

Standing Order 177A

In the case of a Bill presented by a Member other than an Appropriation Bill, an Explanatory Statement signed by the Member and including an explanation of the reasons for the Bill and a brief explanation of each clause of the Bill shall be presented to the Assembly at the conclusion of the Member's second reading speech.

3. The adoption of Procedural Guidelines for debate on Motions and Amendments to Motions as follows:

Procedural Guidelines for debate on motions and amendments to motions

The basic rule of debate which applies is that unless there is a right of reply (or in committee) no Member may speak more than once to the same question.

Other rules include:

1. When a Member speaks and concludes the speech without moving an amendment, the Member cannot subsequently move an amendment.
 2. A Member who has spoken to a question, or has moved an amendment to the question, may not be called to move another amendment (or to adjourn debate) but may speak to a further amendment proposed by another Member.
 3. A Member who moves an amendment may not speak again on the original question after the amendment has been disposed of—having spoken to the original question when it was before the Assembly.
 4. After an amendment has been moved any Member speaking subsequently is taken to have spoken to the original question and the amendment – and therefore cannot speak again to the original question after the amendment has been disposed of.
 5. A Member who has already spoken to the original question prior to the moving of an amendment may speak to the question on the amendment—but must confine remarks to the amendment.
 6. A Member who has spoken to the original question and an amendment may speak to the question on any further amendment—but must confine remarks to the further amendment.
4. That the Procedural Guidelines for debate on motions and amendments to Motions to be circulated to all Members of the Assembly and a copy be available on the Speaker's desk for reference by the Chair.
 5. The adoption of new Standing Order 270A.

Standing Order 270A

A committee may resolve to conduct proceedings using audio visual or audio links with members of the committee or witnesses not present in one place. If an audio visual or audio link is used committee members and witnesses must be able to speak to and hear each other at the same time regardless of location.

6. That the following Guidelines to assist Assembly committees to decide whether to conduct meetings using audio visual or audio links, be adopted.
 1. Audio visual or audio links may be used for deliberative meetings or for hearing oral evidence from witnesses or any other proceeding described in Standing Order 270A, subject to formal resolution by the Committee.

2. Audio visual or audio links should only be used to hear evidence in camera if the committee is satisfied that the evidence will not be overheard or recorded by any unauthorised person and that the transmission is secure.
3. The following factors should be considered by a committee in deciding whether an audio visual or audio link is suitable for use in any particular circumstance:
 - a. Whether use of the link will confer any benefit not available using traditional meeting processes eg cost or time savings, access to evidence not otherwise obtainable;
 - b. Any benefit of traditional methods which may be lost. These may include the value of the committee being present at a location away from Darwin; the benefit of including regional, rural and remote areas in the work of the committee; the value of the public being able to observe the committee at work; or possible restrictions on the committee being able to interact freely with a witness;
 - c. Real cost comparisons of alternative means of evidence collection;
 - d. The type of evidence to be heard. Specialist or expert evidence may be suited to hearing in this way. Audio visual or audio links may make it feasible to hear evidence from witnesses located outside Australia, however the committee should take into account the fact that the protection afforded by parliamentary privilege would not extend beyond Australia; and
4. Any other factors which the committee considers relevant should be taken into account and a decision made appropriate to the particular circumstances of the proceedings, inquiry or witness.

Procedural options for dealing with allegations against non-Members.

Background

On 12 October 2004 the Legislative Assembly referred to the Standing Orders Committee for inquiry and report the following matter:

- a) whether the Assembly's Standing Orders need to be strengthened to provide persons other than Members of the Assembly with a mechanism to respond to allegations that they believe unfairly impugn their reputations;
- b) whether the Speaker can provide further guidance to Members on the appropriateness of Members of the Assembly using parliamentary privilege to advance such assertions; and
- c) that the Committee shall report to the Assembly during the first sittings of the Assembly in 2005.

Work of the Committee

The Committee met on 3 occasions and considered the following options:

- The possible application of existing Standing Orders, practice and procedure;
- The possible adoption of formal guidelines for the use of the privilege of freedom of speech by way of Standing Order, Sessional Order or Resolution; and
- The possible implementation of a formal "right of reply" process for aggrieved persons who are not members of the Assembly.

At its meeting on 1 December 2004 the Committee resolved that the preferred option of providing formal guidance for the Chair in respect of the responsibility of freedom of speech be considered at the next meeting

Formal Guidance for responsible use of freedom of speech

In 1988, following the enactment of the *Parliamentary Privileges Act* of the Commonwealth, the Senate adopted a series of resolutions which have become known as the "Privilege Resolutions of 1988". One such resolution enjoins senators to exercise their freedom of speech responsibly as follows:

Resolution No. 9—Exercise of Freedom of Speech

- (1) That the Senate considers that, in speaking in the Senate or in a committee, Senators should take the following matters into account:

- a. The need to exercise their valuable right of freedom of speech in a responsible manner;
- b. The damage that may be done by allegations made in Parliament to those who are the subject of such allegations and to the standing of parliament;
- c. The limited opportunities for persons other than members of Parliament to respond to allegations made in parliament;
- d. The need for Senators, while fearlessly performing their duties, to have regard to the rights of others; and
- e. The desirability of ensuring that statements reflecting adversely on persons are soundly based.

- (2) That the President, whenever the President considers that it is desirable to do so, may draw the attention of the Senate to the spirit and the letter of this resolution.

This Resolution¹ was adopted by the Senate after attention had been given to the possibility of members abusing the immunity which attaches to parliamentary speeches by grossly and unfairly defaming individuals who have no legal redress and who, unless they were themselves members, have no forum for making a public rebuttal.

At that time the Senate considered that unless the absolute immunity of parliamentary proceedings was to be modified, which would defeat the purpose of that immunity, the solution to the possibility of abuse of freedom of speech could lie in the way in which the parliament regulates its proceedings through its own procedures.

It was acknowledged that any proposals for new forms of internal regulation carried with it a danger of a majority using procedures designed to prevent defamation of individuals as a means of suppressing debate. The remedy which was favoured by the Senate included providing a formal guidance in the terms of Resolution No. 9. That Resolution provides the Chair with the capacity to warn or caution members who may appear to be abusing their privilege of freedom of speech.

Recommendation

The Committee at its meeting on 9 February recommended the adoption of a resolution which mirrors the provisions of the Senate Resolution No. 9, Exercise of the Freedom of Speech as follows:

Freedom of Speech

1. That the Assembly considers that, in speaking in the Assembly or in a committee, Members should take the following matters into account:

¹ Resolution No.9, dated 25 February 1988

- a. The need to exercise their valuable right of freedom of speech in a responsible manner;
 - b. The damage that may be done by allegations made in Parliament to those who are the subject of such allegations and to the standing of parliament;
 - c. The limited opportunities for persons other than members of Parliament to respond to allegations made in parliament;
 - d. The need for Members, while fearlessly performing their duties, to have regard to the rights of others; and
 - e. The desirability of ensuring that statements reflecting adversely on persons are soundly based.
2. That the Speaker, whenever the Speaker considers that it is desirable to do so, may draw the attention of the Members to the spirit and the letter of this resolution.

Explanatory Memorandum / Statement

On Tuesday 5 October 2004 the Assembly resolved, on the motion of the Member for Nelson, Mr Gerry Wood, MLA to refer the following matter to the Standing Orders Committee for inquiry and report:

The need and effectiveness for an explanatory memorandum/statement to be signed off and presented by the relevant minister or member when a bill is tabled in the Assembly.

At its meeting on 12 October 2004 the Committee agreed, in principle, that explanatory memoranda be issued at the time of presentation of bills.

The Committee met on 3 occasions to consider the reference.

At its meeting on 9 February 2005 the Committee agreed that the Committee Notes and Explanatory Memorandum circulated to Ministers be combined and called an Explanatory Statement. The Explanatory Statement will be available to the general public through the Table Office and electronically on the Internet.

Recommendation

The Committee at its meeting on 9 February 2005 recommended that a new Standing Order 177A be adopted as follows:

Standing Order 177A

In the case of a Bill presented by a Member other than an Appropriation Bill, an Explanatory Statement signed by the Member and including an explanation of the reasons for the Bill and a brief explanation of each clause of the Bill shall be presented to the Assembly at the conclusion of the Member's second reading speech.

Amendments to Motions

Background

During 2004 the Standing Orders Committee considered procedural options for debate on motions, amendments to motions and amendments to amendments. The Committee was assisted in its consideration by a paper prepared by the Clerk outlining options.

At its meeting on 1 December 2004 the Committee resolved that the current practice and interpretation of the Standing Orders be more clearly defined by the issue of guidelines for use of the Chair. At its meeting on 9 February the Committee considered the following draft Guidelines.

Procedural Guidelines for debate on motions and amendments to motions

The basic rule of debate which applies is that unless there is a right of reply (or in committee) no Member may speak more than once to the same question.

Other rules include:

- When a Member speaks and concludes the speech without moving an amendment, the Member cannot subsequently move an amendment.
- A Member who has spoken to a question, or has moved an amendment to the question, may not be called to move another amendment (or to adjourn debate) but may speak to a further amendment proposed by another Member.
- A Member who moves an amendment may not speak again on the original question after the amendment has been disposed of—having spoken to the original question when it was before the Assembly.
- After an amendment has been moved any Member speaking subsequently is taken to have spoken to the original question and the amendment – and therefore cannot speak again to the original question after the amendment has been disposed of.
- A Member who has already spoken to the original question prior to the moving of an amendment may speak to the question on the amendment—but must confine remarks to the amendment.
- A Member who has spoken to the original question and an amendment may speak to the question on any further amendment—but must confine remarks to the further amendment.

Amendments – Putting the Question/s

The rules for putting of the question at the conclusion of the debate on an amendment are exactly the same as those for motions generally.

Where an amendment to an amendment is moved, the Speaker **first** puts the amendment to the amendment; then the amendment (as amended, if the amendment to the amendment is agreed to) and finally the original motion (as amended if any amendment has been agreed to).

Once the question on the amendment is decided the Assembly reverts to considering the main question.

To achieve this the Speaker restates the main question to the Assembly. If the amendment was agreed to, the Speaker propose the question that the original motion “as amended” be agreed to. If the amendment was negated, the original question is simply restated.

Recommendation

The Committee at its meeting on 9 February 2005 recommended that Procedural Guidelines for Debate on Motions and Amendments to Motions be circulated to all Members of the Assembly and a copy be available on the Speaker’s Desk for reference by the Chair.

Video Conferencing

At its meeting on 12 October 2004 the Committee resolved that the Clerk prepare a paper on procedural options to formalise and facilitate participation of members of Assembly committees by audio visual or audio links.

There have been numerous instances of Assembly committees using teleconferencing facilities to conduct business and interview witnesses.

The power to conduct such proceedings is allowed for in Standing Order 270. To more appropriately reflect the available communications technology options the Committee considered adopting a Standing Order to formally authorise Assembly committees to adopt this practice.

The Committee also resolved to adopt Guidelines that mirror guidelines issued by the House of Representatives Procedures Committee to assist Assembly committees to decide whether to conduct meetings using audio visual or audio links.

Recommendations

The Standing Orders Committee recommends:

1. That new Standing Order 270A be adopted.

Standing Order 270A

A committee may resolve to conduct proceedings using audio visual or audio links with members of the committee or witnesses not present in one place. If an audio visual or audio link is used committee members and witnesses must be able to speak to and hear each other at the same time regardless of location.

2. That the following Guidelines to assist Assembly committees to decide whether to conduct meetings using audio visual or audio links, be adopted.
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 - b. any benefit of traditional methods which may be lost. These may include the value of the committee being present at a location away from Darwin; the benefit of including regional, rural and remote areas in the work of the committee; the value of the public being able to observe the committee at work; or possible restrictions on the committee being able to interact freely with a witness;
 - c. real cost comparisons of alternative means of evidence collection;
 - d. the type of evidence to be heard. Specialist or expert evidence may be suited to hearing in this way. Audio visual or audio links may make it feasible to hear evidence from witnesses located outside Australia, however the committee should take into account the fact that the protection afforded by parliamentary privilege would not extend beyond Australia; and
4. Any other factors which the committee considers relevant should be taken into account and a decision made appropriate to the particular circumstances of the proceedings, inquiry or witness.