

Hon Norman Moore; Hon Sue Ellery; President; Hon Wendy Duncan; Hon Lynn MacLaren; Hon Liz Behjat;
Hon Ed Dermer; Hon Giz Watson; Hon Nick Goiran; Hon Adele Farina; Hon Matt Benson-Lidholm; Hon Kate
Doust; Hon Max Trenorden; Hon Philip Gardiner

STANDING COMMITTEE ON PROCEDURE AND PRIVILEGES

Twenty-second Report — “Review of the Standing Orders of the Legislative Council”— Motion

Resumed from 20 October on the following motion moved by Hon Norman Moore (Leader of the House) —

That the twenty-second report of the Standing Committee on Procedure and Privileges in relation to the review of the standing orders of the Legislative Council do lie upon the table and be printed and adopted and agreed to.

As to Committee

HON NORMAN MOORE (Mining and Pastoral — Leader of the House) [5.06 pm] — without notice: I move —

That the house adopts the time limits relating to Committee of the Whole for the consideration of this order of the day.

The reason for that motion is so that members can have the normal 10-minute speaking time under the Committee of the Whole arrangement. Of course, with the Committee of the Whole being chaired by you, Mr President, it will enable us to have a debate about the standing orders that does not constrain members to a 40-minute speech and to being able to speak only once. I move that motion so that the time limits will be as would apply in the Committee of the Whole.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [5.07 pm]: We will agree with this motion. This will provide the most flexible way for all members to be able to contribute to the debate. I just want to raise one point, and I will use this opportunity, because it is the only way I am able to get to my feet to raise it. There is a series of motions that may well be put before the house. The document that I now have in front of me is probably the same document that you have in front of you, Mr President. I wonder whether that document might be circulated, because that would help members understand how we might proceed, bearing in mind that these motions might change at some point.

The PRESIDENT: Yes, the document will be circulated very shortly. The question is that the motion be agreed to. If I could just say, implied in the motion moved by the Leader of the House is that I as President will take the Chair in the Committee of the Whole.

Question put and passed.

Committee

The President (Hon Barry House) in the chair.

Amendment to Motion

Hon NORMAN MOORE: Mr President, maybe we could hang on a tick until everybody gets a copy of this motion, because I would like to read the whole motion out; it is actually an amendment to the motion that was moved when the report was tabled. I think it would be helpful to all members if they had a copy of this before I move it.

The PRESIDENT: Members, if everybody is ready, we will begin the committee stage. I indicate that we will be working principally off the proposed standing orders of the Legislative Council, which was a tabled paper when the report was tabled. Supplementary to that, of course, there were two other documents: the report entitled, “Review of the Standing orders”, which is a descriptive of how the Standing Committee on Procedure and Privileges went about its business; and a comparative table—a large, A3-sized document—which details a comparison between the current standing orders and the proposed new standing orders, with some brief analysis in parts. In addition to that, we have the paper that has just been distributed, which we can consider as a supplementary notice paper. At other stages there may be other pieces of paper floating around as well.

We have got to this stage after two and a half years of consideration by the Standing Committee on Procedure and Privileges, firstly in an enlarged form, and then in subcommittee form; the subcommittee prepared the report that was tabled in the house just recently. There has been extensive discussion on many aspects of the standing orders and we have now got to the stage where the final discussion will take place about what the house elects to adopt, and how it will do so.

Hon NORMAN MOORE: The motion we have before the house is that the report do lie upon the table and be printed and adopted and agreed to; I would like to move an amendment to that. I will read it out, because it is important that I then explain what it all means. I move —

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To delete all words after “That” and substitute —

- (1) the report do lie upon the table and be printed;
- (2) in relation to the proposed standing orders tabled in the house by the Standing Committee on Procedure and Privileges, the house adopts proposed standing orders 1 to 4, 6, 8 to 14, 16, 18 to 20, 22, 24 to 36, 38 to 50, 52, 54 to 76, 78 to 91, 94 to 99, 101 to 106, 108, 109, 111 to 124, 126, 128 to 173, 175 to 178, 181 to 186, 188 to 239, schedule 1 parts 1 to 4 and 7 and 8, and schedules 2 to 4;
- (3) in relation to the proposed standing orders tabled in the house by the Standing Committee on Procedure and Privileges, the house adopts —
 - (a) proposed standing order 5;
 - (b) proposed standing order 7;
 - (c) proposed standing order 15;
 - (d) proposed standing order 17;
 - (e) proposed standing order 21;
 - (f) proposed standing order 23;
 - (g) proposed standing order 37;
 - (h) proposed standing order 51;
 - (i) proposed standing order 53;
 - (j) proposed standing order 77;
 - (k) proposed standing order 92;
 - (l) proposed standing order 93;
 - (m) proposed standing order 100;
 - (n) proposed standing order 107;
 - (o) proposed standing order 110;
 - (p) proposed standing order 125;
 - (q) proposed standing order 127;
 - (r) proposed standing order 174;
 - (s) proposed standing order 179;
 - (t) proposed standing order 180;
 - (u) proposed standing order 187;
 - (v) proposed schedule 1 part 5 — Standing Committee on Uniform Legislation and Statutes Review; and
 - (w) proposed schedule 1 part 6 — Joint Standing Committee on Delegated Legislation;
- (4) the current standing orders be repealed and replaced by the proposed standing orders adopted by the house, effective from the first sitting day in 2012;
- (5) the Clerk be authorised to make clerical amendments to the proposed standing orders adopted by the house;
and
- (6) the Standing Committee on Procedure and Privileges conducts an inquiry into the operation of the new standing orders and reports to the house during the spring sittings in 2012.

Mr President, if I can just explain to the house how I think this should be managed; I think it will be the most effective way to proceed with this. Rather than starting off at clause 1 and working our way through the standing orders, which would take us a very long time, we propose under part (2) of the amendment to the motion that we agree to all those standing orders for which the leadership team has not encountered any issues of concern to any of the parties, so they can be fundamentally agreed to in bloc form. Under part (3), from (a) through to (w), are

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standing orders, identified by the leadership team, on which members wish to raise issues. It is our intention to deal with each of those standing orders separately, and if amendments are necessary, for them to be dealt with in the committee stage.

Once we have dealt with all that, and in the event that we come to the conclusion that we have a new set of standing orders that meets the wishes of the house, we then go to part (4), which will repeal the existing standing orders and replace them with the proposed new standing orders. It will require an absolute majority firstly to get rid of the old standing orders and then to put the new standing orders in their place. Part (5) is a procedural matter that will allow the Clerk to make any Clerk's amendments, as is necessary. Part (6) is a requirement for the Procedure and Privileges Committee to sit down during the spring session of 2012 and look at any obvious errors or mistakes that have become apparent during the first half of 2012, once the new standing orders have been put in place and trialled for a period of time.

That is the procedure I hope we might be able to adopt; I hope, Mr President, that we can make progress on this and that we can between now and the end of tomorrow have a set of standing orders that are agreeable to the house, and that we can go forward in the next session of Parliament based on these new standing orders. It may be necessary from time to time, Mr President, for you to leave the chair until the ringing of the bells so that there can be some conversations held in respect of any matters that might be raised that can best be resolved behind the Chair in conversation; I think that might help. I guess we will just start off with parts (1) and (2), and then work our way through.

The PRESIDENT: The question before the house is that the report do lie upon the table and be printed and adopted and agreed to, to which the Leader of the House has moved the amendment that he read out and is documented on the supplementary notice paper. Do members want me to go through that again, or is it sufficiently clear? It is my intention, then, to take the amendments in order. The first question before the house is —

the report do lie upon the table and be printed;

Hon SUE ELLERY: I take the opportunity to indicate that the opposition will support that amendment, but also to put on the record at the beginning of the debate a few comments about the process that has got us to this point. I want to start by thanking the staff for their forbearance during the past two years because it has been a difficult process; it has been stop-start a little from time to time. It has also been the case that members of Parliament are not always good at doing their homework, and we have had to revisit some of the conversations we have had a couple of times because members have forgotten what we agreed the last time we met or have not read the material they were supposed to read as homework between meetings. I want to thank the staff—the Clerk, Deputy Clerk and Clerk Assistant in particular—for their forbearance during that process. I also flag that I have no intention of being part of the review in about 12 months' time!

Hon Norman Moore: Join the crowd!

Hon SUE ELLERY: When it started, I think we genuinely thought it would not take anywhere near as long as it has. I think the report states that it is the first time a review of this magnitude, if members like, of standing orders has been conducted for about 60 years, so there was considerable work to be done. We started from the premise that we wanted to modernise the language to make it, as much as possible, language that if not the ordinary person in the street, then perhaps the ordinary member of Parliament might be able to get their head around. We wanted to get rid of anything that had become redundant or fallen away by nature of changes in technology or all sorts of things, and, where possible, we wanted to reach agreement on a better way of doing the business of the house to ensure that members had the opportunities they needed to participate in the goings-on of the business of the house. Those were the guiding principles we adopted. I do not think there is any question—we will not have got it all right. Sometimes when people are immersed in the minutiae, it becomes difficult to see the broader context. No doubt, there will be things that we did not get right.

There are also things we were not able to agree to, and for that reason the debate has been structured in the way it has today. Again, I want to thank the Clerk, Deputy Clerk and Clerk Assistant. I particularly thank Nigel Lake for the work he has done in preparing the amendments before the chamber that members might be relying on during the course of the debate to address whatever issue they have with the particular matter that has not been agreed. It, potentially, could be a difficult debate, but I am sure under your guidance, Mr President, there will be as little difficulty as possible, and at each point, depending on the progress of matters, we will be able to make a decision about how far we will actually be able to progress in the next two days. I trust and hope that we are able to progress to an outcome satisfactory to the house in the next two days; there have been some conversations behind the Chair today already, and I suspect there will need to be a few more. It is important note too that the Leader of the House put on the record fairly early on in the process that he hoped we would be able to achieve a

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consensus on the changes that we made, and that is the kind of approach we tried to adopt during the course of the review.

I also think it is worth putting on the record that the bulk of the changes in how we do our everyday business actually occurred when we agreed to the temporary sessional order. The bulk of changes in how we do our ordinary everyday business are enshrined in the new standing orders by virtue of us incorporating into the standing orders the provisions in the temporary sessional order. The major changes relate to the bulk of how we do our business, and have done our business over the past two and a half years, although it is certainly the case that there are some other changes before the house today. With those few words, for the first proposition put before the house we have agreement.

The PRESIDENT: Just to make one other thing clear, if I could, it is that the major motion requires an absolute majority, but the amendments, which I will put one by one, require only a simple majority because they are really just adopting the words or amending the words of a committee report. The question is that the report do lie upon the table and be printed.

Hon WENDY DUNCAN: I, too, rise to say that the National Party will support this first part of the business of the day. I would also like to take the opportunity to reflect on the process we have been through.

We started in September 2009, with the aim of completing our task by March 2010. As Hon Sue Ellery commented, I think it was probably a much larger task than was originally envisaged, but considering that the standing orders have not been reviewed in a major way since 1952, it is probably not surprising that it was a large task. In 2011, the Standing Committee on Procedure and Privileges appointed a subcommittee of the leaders of each party in this place so that we could concentrate on finishing the job. From my point of view, it was certainly a very valuable experience. As a newer member of this chamber, it certainly was a great education on the standing orders and a lot of the principles and the philosophy that underlies them, and I really appreciated the indulgence of the other members of the committee when I needed to ask fairly simple questions. I must also say that I have a great deal of respect for their experience, wisdom and knowledge of the standing orders, and, in particular, their commitment to endeavouring to arrive at standing orders that provide a fair working of the rules of this place. I guess when working on something like this, there is the understanding that, although one person putting their point of view may be in government at that point in time, there will inevitably be a time when they are on the other side of the house. I think everyone who took part in this exercise endeavoured to view the standing orders from all sides so as to result in the best outcome.

The principles of the process are worth reflecting on. They are to streamline and simplify the procedures of the house and its committees; to rationalise the priority of business considered by the house; to adopt successful practices from the recent temporary and sessional orders trialled by the house; to incorporate current practices of the house into the standing orders; to eliminate obsolete and unnecessary standing orders; to ensure that the rights of all members to contribute to proceedings in the house and its committees are retained or strengthened; to use plain English; and to use gender-neutral language. On that particular point I think that, with three female party leaders on the subcommittee, Hon Norman Moore was always going to find that if consensus was to be reached, we needed gender-neutral language! The final principle was, of course, to reorder the standing orders in a more user-friendly sequence. I will, in addressing some of the matters later today, refer to some of those principles.

I would like to complete my remarks by, along with Hon Sue Ellery, thanking the staff, particularly Nigel Lake, Paul Grant and the Clerk, for their work in this exercise. At times it was quite a complex challenge, having the chart up on the whiteboard and endeavouring to incorporate our amendments as we worked along. I think that was done very efficiently, and the support we had as members of the committee was excellent. We have arrived where we have today, and I sincerely hope that we complete this exercise. I commend the Leader of the House for his courage in deciding to undertake this exercise —

Hon Norman Moore: It was a courageous decision, parliamentary secretary!

Hon WENDY DUNCAN: — and I look forward to the conclusion of our deliberations.

Hon LYNN MacLAREN: The Greens support amendment (1) that the report do lie upon the table and be printed. Whilst I was not participating in this crack team of specialists with knowledge of standing orders, I can impart on behalf of Hon Giz Watson, who is out of the chamber on urgent parliamentary business, that we participated fully with the skills and wisdom that Hon Giz Watson has gained over her 15 years in this place and worked diligently to achieve that consensus over time. We know how long it takes to achieve consensus, so it is not a surprise to us that this report came much later than originally expected. I know that we also appreciate the diligence and wisdom that the staff showed in their advice to this specialist team. I also express my personal appreciation to the members who worked long and hard over such detail. Although Hon Giz Watson kept us

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abreast of what was going on, I can tell members that she did not go over the very careful and important detail that I am sure she went over in the meetings together with the other leaders. We support the amendment that the report do lie upon the table and be printed.

Hon LIZ BEHJAT: I am just not sure, but I know there will be some leniency with things. I know that this is dealt with in amendment (4), but before I make my decision to vote on anything with regard to the standing orders, I seek some clarification on the timing of the standing orders. I seek clarification, first, on which standing orders will prevail during this forthcoming recess for the committees that have inquiries underway and will meet during the recess. Second, if the new standing orders are adopted today and they substantially change the way in which a particular committee operates, which standing orders will prevail at the start of the new session with regard to the work that those committees currently have underway and will continue to do into next year?

The PRESIDENT: Perhaps I may be able to clarify that. You have alluded to amendment (4), which we will come to. You will notice in that amendment that the proposed words to be substituted state —

the current standing orders be repealed and replaced by the proposed standing orders adopted by the house, effective from the first sitting day in 2012;

That is the critical phrase. In the meantime, any committees operating operate under the existing standing orders.

Hon Liz Behjat: Standing or sessional orders?

The PRESIDENT: Standing orders; the sessional orders expire at the end of this calendar year. The sessional orders do not impact on any committee inquiry and the committees will continue as normal.

Therefore, I put the question that the report do lie upon the table and be printed, so the question is that that amendment be agreed to.

Amendment (1) put and passed.

The PRESIDENT: Now I will put amendment (2), which states —

in relation to the proposed standing orders tabled in the house by the Standing Committee on Procedure and Privileges, the house adopts proposed standing orders 1 to 4, 6, 8 to 14, 16, 18 to 20, 22, 24 to 36, 38 to 50, 52, 54 to 76, 78 to 91, 94 to 99, 101 to 106, 108, 109, 111 to 124, 126, 128 to 173, 175 to 178, 181 to 186, 188 to 239, schedule 1 parts 1 to 4 and 7 and 8, and schedules 2 to 4;

I will not repeat that again, but I will say that the question is that the amendment be agreed to.

Amendment (2) put and passed.

Amendment (3)(a) —

The PRESIDENT: We now move to amendment (3), and I propose to take these as amendment (3)(a), (3)(b), (3)(c) and so on. The amendment states, in part —

in relation to the proposed standing orders tabled in the house by the Standing Committee on Procedure and Privileges, the house adopts —

(a) proposed standing order 5;

The question is that proposed standing order 5 be adopted.

Hon NORMAN MOORE: Standing order 5 was raised by another party and I cannot recall exactly what the issue was that they wished to discuss. However, subsequent to some conversations that have been held today, I want to move an amendment to standing order 5. Just as a bit of quick background, there is concern, in the mind of the government at least, that with members' statements being limited to 40 minutes, during which time members are constrained to 10 minutes each, there are occasions when a member can make a speech—perhaps they are the fourth person speaking—in which they make allegations or assertions about another member and that other member then is unable to respond because the time for members' statements has expired. That particularly concerns the government, obviously, if the opposition wants to attack a minister and the minister does not have a chance to respond to that attack. Mr President has at his discretion in the past sought to deal with that. The process has worked quite well until now if the person making the speech is the first, second or even the third to do so, but if they are the fourth speaker, there is no right of reply for a member to respond.

I put that matter to our party room and it agreed that we should perhaps have, at the discretion of the President, another 10 minutes for any member who feels that they have not had a chance to be heard during the 40 minutes and who needs to respond to matters raised by another member. I think, however, we might need to ensure that there is only one of these opportunities. This particular amendment would allow a number of those, but perhaps that is fair. The concern I have is that members who are in some way or another maligned by another member

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are unable to respond, bearing in mind that there could be members' statements on Thursday and the house adjourns for a week and therefore the smell hangs around for a whole week before anybody can do anything about it; it is reported in the media and there is no capacity for a member to respond. I do not imagine this will happen very often because Mr President has used his discretion in the past, but I think a provision of this nature is better than an alternative that I suggested at one time, which was that we go back to having an adjournment debate with an unlimited number of speakers. That was not well regarded or received by a number of members on the basis that we have tried in the past to have some certainty about when the house rises at the end of the day, unlike the old days when we sat until the government decided to stop sitting.

Hon Ken Travers: They're going soft, aren't they, Mr Moore?

Hon NORMAN MOORE: That is what I said. I said, "If you just want to go into your warm bed, that's fine."

Hon Kate Doust interjected.

Hon NORMAN MOORE: I do not know—it was not actually, but I had no enthusiasm either to go through another period in which we sit all night. Therefore, this is a compromise that will allow, in certain circumstances, the President the discretion to decide whether somebody has been maligned in such a way that they should be given the right of reply, and make available another 10 minutes to any member who is in that category. I move —

In section (5) — To insert —

- (a) at the discretion of the President, a further ten minutes of Members' Statements, during which a Member who has not made a Members' Statement may respond to a matter raised by another Member during Members' Statements;

It will go under proposed standing order 5(5) and become a new paragraph (a), which means that it will read —

- (5) At the conclusion of Members' Statements, no further business shall be transacted by the Council, except —
 - (a) at the discretion of the President, a further ten minutes of Members' Statements, during which a Member who has not made a Members' Statement may respond to a matter raised by another Member during Members' Statements;

There are a dreadful number of "members" in that; however, that is the only way to put it. The existing standing order 5(5)(a) will become 5(5)(b) and the existing 5(5)(b) will become 5(5)(c), which just means that there are three items that can be dealt with at the conclusion of members' statements.

The PRESIDENT: I put the question that the words to be inserted be inserted, with the understanding from everybody that we are referring to the words that have been circulated

Hon ED DERMER: I listened carefully to the Leader of the House's explanation for his proposal. I seek clarification. Prior to the current practice of members' statements, I witnessed an event in this place—in fact, I was involved in the debate that followed—during an adjournment debate in which a member of this place savaged a member of the Legislative Assembly. I took the opportunity, in an adjournment speech, to speak in defence of the member of the Assembly who was savaged by a member of this place. When I look at the wording of the proposal moved by the Leader of the House, it is not clear to me whether the reference would refer to a member of either house being subject to an attack in the way that the Leader of the House described or whether it would apply only if a member of the Legislative Council was the subject of an attack.

Hon NORMAN MOORE: I think there is another standing order that says we are not allowed to attack members of the other house. It is already not an acceptable practice. That should have been ruled out of order, but I do not recall the occasion.

Hon Ken Travers: Or members of this house, for that matter. Except by way of motion, a member is not allowed to directly attack another member. We can have a policy debate.

Hon NORMAN MOORE: I hope Mr Travers might take that on board!

Hon Ken Travers: I only ever go after the policy, never the individual!

Hon NORMAN MOORE: I think that is a wonderful admission from the member that this will not happen in the future. We can all sit back, relax and enjoy the flight from now on!

We of course know what has to be done. This means that if a matter is raised by any member about any issue that is within the standing orders, and another member asks Mr President, at the conclusion of the 40 minutes, if

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he or she can respond to that matter raised by that member, the President, at his discretion, would allow that member 10 minutes to respond. That is what it is basically about.

Hon SUE ELLERY: I rise to indicate that the Labor Party supports this. This has been the subject of some conversations behind the Chair. It represents a compromise. It is an effort to address a situation that does not happen very often, which sometimes will not be necessary because a person standing to make a 10-minute speech might use only five minutes, so the house can fit more than four members' speeches in that period. It is proposed as a compromise. Hopefully it is not the kind of thing we will need to rely on very often. It gives discretion to the President. It will be a bit of "suck it and see", if I can be so crude. The President no doubt will set precedents as we travel along after the implementation of a new standing order such as this one.

Hon GIZ WATSON: The Greens (WA) are happy to support this amendment. Again, I appreciate that there has been some conversation prior to this. This seems to be a reasonable compromise. I want to confirm where that would sit in proposed standing order 5. I assume we are looking at page 10 of the standing orders. It is a bit confusing because, in this process, we have not got "at line blah, blah, blah."

The PRESIDENT: It is on page 2.

Hon GIZ WATSON: I am still lost; sorry. Okay, that is in effect the same. It just has a different page number. Under standing order 5, "Days and Times of Meeting", subsection (5), this would be a new paragraph (a), and (a) would subsequently be reordered.

The PRESIDENT: That is correct. The Clerks make those adjustments automatically, if the chamber adopts that point.

Hon WENDY DUNCAN: The National Party has also been involved in the negotiations behind the Chair on this matter. We support this as a reasonable compromise to meet the needs of those who raised it. The Nationals support this amendment.

Amendment on the amendment put and passed.

Amendment (3)(a), as amended, put and passed.

The PRESIDENT: We now move to proposed standing order 7, which is amendment (3)(b).

Amendment (3)(b) —

Hon NICK GOIRAN: This is one of two sections that I would like to make a contribution to. I understand from my colleagues it might be considered to be rather pedantic, but I have had several conversations with my good friend the Leader of the House. As I indicated, I noted with interest that the report of the Standing Committee on Procedure and Privileges Subcommittee states —

- 1.3 This review of the Standing Orders is the first comprehensive review of all the Standing Orders undertaken by the Legislative Council, with the last major review being conducted in 1952.

Given the lapse of time and the fact that I am the youngest member of the Liberal team in this place, with hopefully an intention to hang around for a little while, I thought it appropriate to mention a couple of things. As I say, they might be regarded as pedantic but I hold the view if we are going to do this only every 60 years, we may as well do it correctly. I will move an amendment to standing order 7 in a moment to insert two words—that is, after the word "meeting" to insert the words "or resumption". The purpose of that is simply to indicate that, obviously, the bells ought to be rung for five minutes prior to the meeting of the Legislative Council and its resumption. A good example of that will be in the not-too-distant future when we adjourn for the dinner recess and the bells will ring at 7.25 pm. I was just going to insert a couple of words, but perhaps I will do something slightly different. I move —

To delete "time appointed on each day for the meeting of the Council." and substitute —

- (a) time appointed on each day for the meeting of the Council; and
(b) resumption of the proceedings following a suspension of the Council.

I am obliged to the Deputy Clerk for his most excellent words.

The PRESIDENT: The question is that the words proposed to be deleted be deleted.

Amendment on the amendment (deletion of words) put and passed.

The PRESIDENT: The question is that the words proposed to be substituted be substituted.

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Hon ADELE FARINA: Having overheard Hon Giz Watson, I suggest that we move an amendment to this amendment because we do not suspend the Council; we suspend the proceedings of the Council. If we are being pedantic, we may as well get it absolutely right. I move —

To insert after “suspension of” —

the proceedings of

The PRESIDENT: Before we proceed, in proposed schedule 3, “Definitions”, of the standing orders —

“**Council**” means the Legislative Council of Western Australia or the Council sitting as a House in contradistinction to sitting as a Committee of the Whole House.

Basically, it includes all committee proceedings of the house. It is really splitting hairs one way or the other way; it is whichever the chamber agrees is the most appropriate wording. I will put the amendment to the amendment.

Further amendment on the amendment put and passed.

Amendment on the amendment (insertion of words) put and passed.

Amendment (3)(b), as amended, put and passed.

The PRESIDENT: Now we move to proposed standing order 15, or amendment (3)(c).

Amendment (3)(c) —

Hon NORMAN MOORE: I put standing order 15 on the agenda in respect of a proposal that we delete non-government business and replace it with private members’ business. There has been some conversation about that, and it is not intended to proceed to change that. Non-government business will remain as it is currently included in the new standing orders. However, there has been conversation about a new part of weekly business that would relate to government backbench members being given an opportunity to raise issues in a one-hour slot, which is proposed to be every second Wednesday instead of consideration of committee reports. It is intended that the one hour every fortnight for government backbench members to raise issues would follow a similar process as that which applies to non-government business. Members have to give notice of it in advance and speaking times would be the same and so on. As I have not been able to get any wording to cover that just yet, I seek the approval of the chamber to defer consideration of standing order 15 until such time as we can draft some words that would cover that proposition.

The PRESIDENT: Effectively, the Leader of the House is seeking the approval of the chamber to postpone consideration of proposed standing order 15 until after amendment (3)(w), which is at the end of that long list.

Further consideration of amendment (3)(c) postponed until after consideration of amendment (3)(w), on motion by Hon Norman Moore (Leader of the House).

The PRESIDENT: Now we move to proposed standing order 17, or amendment (3)(d).

Amendment (3)(d) —

Hon NICK GOIRAN: This is the second matter to which I referred earlier. I have been asked to keep this brief, so I will. I draw members’ attention to sections (3), (4) and (5) of proposed standing order 17, in which the word “resolved” is used. In my view, the correct word to use is “put”. I refer members to proposed standing order 53, which deals specifically with a closure motion, and the terminology there is “put”. Therefore, rather than use the word “resolved”, which in my view is not the correct word to use, we should use the word “put”. I seek some guidance from you, Mr President, on whether it would be appropriate to move in sections (3), (4) and (5) to delete the word “resolved” and insert the word “put”, or whether you would prefer that be done individually.

The PRESIDENT: I will take that as an amendment moved by Hon Nick Goiran. It has been pointed out to me that there is at least one other incidence and perhaps others in the proposed standing orders that the word “resolved” is also used, so if the chamber agrees to substitute the word “resolved” with the word “put”, we can make that a Clerk’s amendment throughout the bulk of the proposed standing orders.

Hon SUE ELLERY: We would have to be sure it is in the right context.

The PRESIDENT: Yes, where it is absolutely in the same context. I am in the chamber’s hands. I will take Hon Nick Goiran’s suggestion that the word “resolved” be substituted with the word “put”.

Hon NICK GOIRAN: I move —

In section (3) — To delete “resolved” and substitute —

put

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In section (4) — To delete “resolved” and substitute —

put

In section (5) — To delete “resolved” and substitute —

put

Sitting suspended from 6.00 to 7.30 pm

The PRESIDENT: Members, we are considering the amendment on the amendment moved by Hon Nick Goiran—that in proposed standing order 17(3), (4) and (5), “resolved” is replaced by “put” on three occasions. I will put that question if everybody understands that the words proposed to be substituted, be substituted.

Amendment on the amendment put and passed.

The PRESIDENT: Just for members’ information, the only other point in the proposed standing orders where that situation occurs is in proposed standing order 31(3), so members might like to consider that when we come to it.

Amendment (3)(d), as amended, put and passed.

The PRESIDENT: It has just been pointed out to me that it is not proposed at this stage to deal with proposed standing order 31, so with the chamber’s concurrence, we can do that clerically with the Clerk substituting “resolved” with “put” in standing order 31(3). I will put that as a motion so that people have a chance to say anything if they want to. The question is that that be agreed to.

Hon GIZ WATSON: I am looking at standing order 31(3); could you just tell us how that would read with that change? “A question moved under (2) shall be put without amendment”; is that how that will be there, rather than “resolved”?

The PRESIDENT: Yes.

Hon GIZ WATSON: That is fine.

The PRESIDENT: So standing order 31(3) on page 12 of the proposed standing orders would read —

A question moved under (2) shall be put without amendment, debate or adjournment.

I will get the chamber’s concurrence that that change be made.

Question put and passed; clerical amendment agreed to.

The PRESIDENT: Now we will go to amendment (3)(e) relating to proposed standing order 21. The question is that proposed standing order 21 stand as printed.

Amendment (3)(e) —

Hon NORMAN MOORE: This relates to page 10 under the heading “Matter of Privilege (SO 92)”. That particular standing order provides that a member raising the matter gets 45 minutes to speak, and other members get 20 minutes. It is our view that members moving a matter of privilege should be given a right of reply. I move —

Under the heading “Matter of Privilege (SO 92)” — To insert —

Mover in reply 10 minutes

There is a consequential amendment required further down in standing order 39, which we may treat in the same way as we treated the previous consequential amendments because we have in fact dealt with standing order 39 already.

The PRESIDENT: Has that been circulated to members?

Hon Kate Doust: It is now.

The PRESIDENT: It is just coming now.

With that circulated, the question is that proposed standing order 21 stand as printed, to which the Leader of the House has moved the amendment —

Under the heading “Matter of Privilege (SO 92)” —

To insert —

Mover in reply 10 minutes

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The question I will put is that the words proposed be inserted.

Amendment on the amendment put and passed.

Amendment (3)(e), as amended, put and passed.

Hon NORMAN MOORE: Mr President, just a matter of procedure: proposed standing order 39 will need to have added to it “a matter of privilege is one of those motions where a right of reply is provided for”. It is not included in standing order 39 now. I am comfortable if the President wants to do with this particular proposition what he did for the last one—that is, to consider this to be a consequential amendment and allow the Clerk to make the necessary amendment.

The PRESIDENT: Okay, I am in the house’s hands. That proposition has been explained by the Leader of the House and I will put it as a question to the house for that matter to be agreed to.

Hon NICK GOIRAN: Just so I understand that, it perhaps should read “or a matter of privilege”, so if I were to read standing order 39(1) it would then say, “a member who has moved a substantive motion or a matter of privilege or the second or third reading of a bill may reply to that motion”. Or a comma?

The PRESIDENT: Or a comma, yes. But that can be a Clerk’s amendment. The question is that the matter be agreed to.

Question put and passed; clerical amendment agreed to.

The PRESIDENT: We now move to standing order 23 on page 10 of the report. The question is that proposed standing order 23 stand as printed.

Amendment (3)(f) —

Hon GIZ WATSON: Thank you, Mr President. I indicated that the Greens (WA) wanted to seek an amendment to proposed standing order 23, but having had some other conversations, we are now clear that this is covered elsewhere, therefore there is no need to seek to amend proposed standing order 23 and I withdraw any comments that we did have.

Hon DONNA FARAGHER: I do not normally get involved in these things, but I just question whether that will need to be amended in light of the amendment that we will be dealing with that was held over at standing order 15, because it only refers to consideration of committee reports, but given that we will require it every second Wednesday, and it will enable government backbenchers to have that hour, I am not sure whether that will need to be incorporated.

The PRESIDENT: I will get the house’s approval that when we deal with that matter, if the house decides on a certain course of action and there is a need for the insertion of a couple of extra words that that can be done by clerical adjustment. Does the house agree?

Question put and passed; clerical amendment agreed to.

The PRESIDENT: Now the question is that proposed standing order 23 stand as printed.

Amendment (3)(f) put and passed.

The PRESIDENT: We are dealing with proposed standing order 37, “Member’s Right of Speech”, which is on page 14 of the draft standing orders. The question is that proposed standing order 37 stand as printed.

Amendment (3)(g) —

Hon MATT BENSON-LIDHOLM: The issue here is in respect of amendments to motions on notice. My principal concern is I think quite simple: members need to be able to speak to the substantive motion, particularly—this is my issue—when an amendment is moved. I suggest that given the move to this standing order—as opposed to what might have happened years ago when a motion on notice was talked out over a number of days—it provides for only four hours of debate, comprising two days with two hours each. Therefore, technically a substantive motion can be put by the person who gets to their feet first, and if a government member were to stand and propose an amendment to that motion, there is no way sometimes that the substantive motion under these standing orders would even be debated if it was to go through the entire four hours. I think that that is almost counterproductive to, or defeats the purpose of, having a motion on notice. On a few occasions this year, an opposition member has stood to seek the call, put the motion and made their 20-minute presentation only to have a minister or parliamentary secretary stand and move an amendment to that motion. Under these standing orders, that amendment is the only thing that can be debated by the house. Technically, what I am saying is that that can then go for four hours and the substantive motion—which may have been 12 months or

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whatever in the making as a member got their thoughts together to make that presentation—is not debated and, therefore, that preparation time is then completely wasted simply because of what might amount to obfuscation or pure politics by the government of the day. Far be it from me, minister, to suggest that that might happen, but it does happen and we have seen that happen —

Hon Norman Moore interjected.

Hon MATT BENSON-LIDHOLM: Rest assured that it has happened. I am not looking at the minister in particular —

Hon Helen Morton: You look like you are!

Hon MATT BENSON-LIDHOLM: The minister may well be right, but that is the issue as I see it. I think that in the spirit of motions on notice, it becomes somewhat counterproductive that a motion on notice that has been on the notice paper for 12 months or thereabouts can, subsequently, by the movement of an amendment—I understand that another amendment can be moved after that—not be debated. My suggestion is that members at least need to be able to debate the substantive motion as well as the amendment. I move —

In section (1) — To insert before “A Member” —

Except as provided under (2)

After section (1) — To insert —

- (2) When debating a motion on notice under Standing Order 15(2), a Member may speak once -
 - (a) on the motion and any amendment thereon; or
 - (b) in reply.

I think that would be a much fairer way to address this issue, given that if the substantive motion was not debated in some instances, why on earth would a member put a contentious motion on notice in the first place? To my way of thinking, that is counterproductive to the spirit of this house. They are the two amendments that I intend to move.

Hon NORMAN MOORE: Just so I get this right, presumably (2) becomes (3)?

The PRESIDENT: Yes, that will be a clerical adjustment.

Hon NORMAN MOORE: That being the case, I am happy to support it.

Amendments on the amendment put and passed.

Amendment (3)(g), as amended, put and passed.

The PRESIDENT: Now we move over the page to proposed standing order 51 on page 17 of the report, “*Sub judice* Matters”.

Hon SUE ELLERY: If I could just indicate that there was an issue, but we sought advice from the Clerk and that advice has been satisfactory, so we do not need to pursue proposed standing order 51.

Amendment (3)(h) put and passed.

The PRESIDENT: We move to (3)(i), proposed standing order 53, which is on page 18 of the report, “Closure Motion”.

Amendment (3)(i) —

Hon NICK GOIRAN: In respect of proposed standing order 53, the issue I had was with what would occur in the event a motion is resolved in the negative. Would the mover of that motion still have a right to speak in the debate? The reason it is necessary, in my view, to prescribe that that can occur is that if members refer to standing order 55(2), they will see that it specifically mentions —

If a motion for the adjournment of the debate is resolved in the negative, the mover does not lose the right to speak in the debate.

I am merely ensuring that the same right to speak is maintained in proposed standing order 53. So, with that, I propose to amend proposed standing order 53(4) —

To delete — “debate is resumed” and substitute —

- (a) debate is resumed; and

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(b) the mover does not lose the right to speak in the debate.

The PRESIDENT: If I may from the chair, I think you have answered your own question in a sense. It is covered in standing order 55(2), but a closure motion is a procedural motion and, therefore, it is not part of the substantive debate. It supersedes the other question. So, your rights are preserved for the main question. Having heard the explanation, I believe you have an amendment drawn up. Do you wish to proceed?

Hon NICK GOIRAN: I will just seek clarification. If I have understood the President correctly, it is not necessary to move the amendment because the President has indicated that the mover of a closure motion, in the event that it was resolved in the negative, would still have a right to speak in the debate because of proposed standing order 55(2)?

The PRESIDENT: That is correct.

Hon NICK GOIRAN: In which case, I seek leave to withdraw that amendment if it is necessary.

The PRESIDENT: You did not move it in the first place. You were just seeking clarification.

Amendment (3)(i) put and passed.

The PRESIDENT: Amendment (3)(j) relates to proposed standing order 77 on page 26.

Amendment (3)(j) —

Hon KATE DOUST: I query this. I would appreciate an explanation as to why this change is sought. I have always thought it operated fairly well in our chamber, where two voices are required to call a division; I note that it is different in the other place. Call me a traditionalist on this one, but I do not quite understand the need for the change on this occasion. I would be receptive to hearing the argument as to why it should be amended.

The PRESIDENT: I will give the call to Hon Giz Watson, who may be able to provide the answer.

Hon GIZ WATSON: Being a member of a party that has only a few members in this place, it seems to me that among other things it provides us with an opportunity to call a division without the complication of ensuring there is a second voice. For parties that have quite a few members and always have a second member in the chamber, it is not an issue; therefore we supported this amendment. It is pretty clear, when debating something, if it is an issue a member wants to divide on, and it seems an unnecessary restriction to say that two voices are required. Often, in our case, one of our members will be debating a piece of legislation and clearly wants to call a division, but we have to make sure a second voice is here. For practical purposes it seems reasonable to simply have one voice. That is why we support the proposed amendment to the standing order. We would prefer it stated “a single voice”.

The PRESIDENT: That is what the discussion in our committee revolved around.

Hon WENDY DUNCAN: The National Party has discussed this as well. We agree with the sentiments put by Hon Giz Watson. Of course there are also times when there may be an Independent member in the house, a single person, who may want to call a division and have their vote recorded. We believe that one voice is all that should be required.

Hon NORMAN MOORE: I have been overwhelmed by the arguments put forward by the Greens (WA) and the National Party. I think it is fair to say we may well have a situation here where there is one member representing one party, or an Independent. Regarding the capacity for that person to call a division, it does not make any difference whether it is one or two voices, fundamentally. We will go along with this proposition.

Amendment (3)(j) put and passed.

Amendment (3)(k) —

The PRESIDENT: We go to proposed standing order 92, “Matter of Privilege”, which is on page 30 of the draft standing orders. The question is that proposed standing order 92 stand as printed.

Hon NORMAN MOORE: This amendment relates to standing order 92, “Matter of Privilege”, which lists in sequence the events that take place when a matter of privilege is raised. I do not have an issue with the words contained in the proposed standing order. The only issue I have is in respect of proposed standing order 92(3) and its location in the sequence of events. I draw members’ attention to proposed standing order 92(1), (2), (4) and (5). Proposed standing order 92 states, in part —

(1) A Member may at any time raise a matter of privilege ...

Extract from *Hansard*

[COUNCIL — Wednesday, 30 November 2011]

p10098g-10125a

Hon Norman Moore; Hon Sue Ellery; President; Hon Wendy Duncan; Hon Lynn MacLaren; Hon Liz Behjat; Hon Ed Dermer; Hon Giz Watson; Hon Nick Goiran; Hon Adele Farina; Hon Matt Benson-Lidholm; Hon Kate Doust; Hon Max Trenorden; Hon Philip Gardiner

(2) A Member raising a matter of privilege under (1) may table any relevant documents.

Standing order 92(4) determines what the President does when that happens and he makes a judgement. Under proposed standing order 92(5), if the President rules that there is some substance to the matter, it goes to the Standing Committee on Procedure and Privileges. Proposed standing order 92(3), which relates to the President doing something different from this sequence of events, states —

If the President otherwise becomes aware of a matter of privilege that the President determines is of sufficient substance to warrant consideration by the Council, the President shall advise the Council.

I wonder whether proposed standing order 92(3) can be located in a different sequence so that members reading this will understand the sequence of events a member must go through to raise a matter of privilege. The issue of the President raising a matter of privilege is different. I believe that proposed standing order 92(3) should be either proposed standing order 92(1) or 92(5), whichever one the Clerks deem to be the most appropriate place to locate that particular standing order. Alternatively, it could be made proposed standing order 92(2), which says that if either a member or the President does something, this would be the sequence of events. Perhaps we can do it that way so that proposed standing order 92(2) would be renumbered standing order 92(3) and standing order 92(3) would be renumbered as proposed standing order 92(2). Proposed standing order 92(2) and (3) would just change places.

The PRESIDENT: Does everyone understand that proposal? Basically, proposed standing order 92(2) and (3) would be swapped over.

Hon WENDY DUNCAN: I am not convinced that that actually assists the house because we are talking about a member raising a matter of privilege—proposed standing order 92(1) and (2). Proposed standing order 92(3) is about when the President becomes aware of a matter of privilege and proposed standing order 92(4) and (5) are about what happens when a matter of privilege has been identified. To me, that order looks somewhere near right, but I may be reading it differently from other members.

The PRESIDENT: I think proposed standing order 92(1), (2) and (3) refers to raising whether an issue is a matter of privilege and proposed standing order 92(4) and (5) is the actions that take place as a result. I think 92(3) certainly must come before (4) and (5). It is just a matter of what the house determines the best order is for proposed standing order 92(2) and (3).

Hon MAX TRENORDEN: The chamber will be delighted to hear that I disagree with the Leader of the National Party.

Hon Wendy Duncan: That's unusual!

Hon MAX TRENORDEN: I think it is a matter of principle. If the standing orders are referring to the President in a natural progression, it is fair that the President should be number one. The President of the day is the person who controls the proceedings of the house. There may be occasions—frankly, there will be occasions—when the President becomes aware of something that is clearly a matter of privilege and that will be announced from the Chair. In most cases, a matter of privilege will be raised by a member. I believe that we should give precedence to the Chair. That is what the standing orders are about; we all defer to the Chair. Proposed standing order 92(3) should be proposed standing order 92(1), but that is just my opinion.

The PRESIDENT: I think the reasoning following the discussion in our committee was that, as Hon Max Trenorden said, most matters of privilege are raised by a member, but the provision is there for the President to raise a matter of privilege independently. It is because most matters are raised by members that that was put first in the order. I am in the hands of the house. Has the Leader of the House moved the amendment?

Hon NORMAN MOORE: I have been persuaded by Hon Max Trenorden. I think you could put the President's position first. All I am trying to achieve is to ensure that when a member raises a matter of privilege, they know what the order of events is. The President raising a matter is a slightly different issue, so it needs to be separated from the others in the proposition as put forward by Hon Max Trenorden to make section (3) the first one and to number the others accordingly. In fact, I will withdraw the amendment I moved and proceed down that path.

The PRESIDENT: Would you be prepared to remove “otherwise” from (3) in your motion, because it would not then apply?

Hon NORMAN MOORE: Yes. I move —

To delete the amendment and insert — In section (3) — To delete “otherwise” and that section (3) be re-numbered as (1)

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The PRESIDENT: The Leader of the House has moved to put section (3) at the top of that list of points, so it becomes section (1), and to remove the word “otherwise” in section (3).

Amendment on the amendment put and passed.

Amendment (3)(k), as amended, put and passed.

Amendment (3)(l) —

The PRESIDENT: Proposed standing order 93 is “Contempts of the Council”. The question is that amendment (3)(l) stand as printed.

Hon NORMAN MOORE: Standing order 93 relates to contempts of the Council, and members will be aware that it provides the fundamental basis for dealing with contempts, and that schedule 4 contains a list of potential contempts. It is an attempt to quantify what a contempt is, but it is not an exhaustive list. Quite by coincidence, this afternoon a former member of this house, who happens to also be a Queen’s Counsel, looked at this and suggested we might rewrite this particular clause in a way which I think the Clerk has found agreeable and which makes it clear that the chamber continues to maintain the capacity to decide what it considers to be a contempt, even if it is not covered by the schedule. I have just distributed the motion. I move —

To delete sections (1) and (2) and substitute —

- (1) The Council has power to determine that any particular act constitutes a contempt.
- (2) Criteria for the Council to take into account when determining whether a contempt has been committed and examples of conduct which may be treated as a contempt of the Council are provided in Schedule 4.
- (3) The list of examples in Schedule 4 is not exhaustive nor do they or the criteria derogate from the power of the Council to determine that any particular act constitutes a contempt.

It is an attempt to rewrite this to make it very clear that the house decides what is a contempt. Schedule 4 gives examples of the sorts of things that constitute a contempt but in no way can be considered to be the only issues that can be taken into account. It does not limit the Council in its capacity to decide what is a contempt.

The PRESIDENT: Even though section (2) in the proposed amendment is the same as section (1) in the proposed standing order, it will be neater if we agree to delete the whole proposed standing order and replace it with the proposal.

Hon SUE ELLERY: Bearing in mind that we have only just seen this, I wonder if I might just ask about an example. The second part of proposed standing order 93(2) states that those examples at schedule 2 “do not derogate from the Council’s power to determine that any particular act constitutes a contempt.” That is where the power is referred to in the standing order before us.

I am wondering why it was considered that we needed to express it in a new section. I would not mind a bit more of an explanation behind that. It seems to me that that power is already referred to in standing order 93(2). That is my first question. Is there some example where that power has been questioned, because it seems to me that it is expressed in standing order 93(2)?

The PRESIDENT: On page 92, in schedule 4, you will see a section headed “Matters constituting Contempts”. That principle is included in that section.

Hon NORMAN MOORE: If I may, the amendment seeks to make it very clear right up-front that —

- (1) The Council has power to determine that any particular act constitutes a contempt.

It makes it quite clear that the house has complete control over its own affairs, and it makes the decision about what is a contempt. It also then makes clear at schedule 4 a range of examples of the sort of conduct that could be considered a contempt, but in no way is that list exhaustive. I think it is just a neater way of putting it. The amendment makes it very clear right up-front in section (1) that the Council can decide what a contempt is without having to even refer to schedule 4 if it does not wish to.

Hon Sue Ellery: I understand what the Leader of the House is saying, that it makes it neater. Have some questions been raised about the house’s power to do that?

Hon NORMAN MOORE: No, other than Peter Foss, who I had a quick chat to this afternoon. He looked at this. He was a little concerned that we did not make it quite clear that the Council has the power to determine any particular act constituting a contempt. It does not make it quite as clear-cut as that. He had the view that, for

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example, Mr Easton, who was convicted of a contempt of this house, would not have qualified under proposed schedule 4, because it is not written within that that what he did was a contempt. The amendment is just an attempt to make sure that this is very clear; there is no dispute about the house's ability to determine that a particular act constitutes a contempt.

Hon MAX TRENORDEN: I particularly like the amendment by the Leader of the House. I am not concerned about sections (2) and (3). I see the wording has changed, and I do not really wish to get into debate about it. The simplicity of the amendment at section (1) is that it states —

(1) The Council has power to determine that any particular act constitutes a contempt.

That is an absolutely crystal-clear position of this Council. If a matter of contempt is put before us, we vote on it. That is the way it is. I believe the amendment at section (1) clarifies this standing order and makes it clear that we have a right to vote on a matter. If the vote is carried, it is a contempt.

Hon ADELE FARINA: The Parliamentary Privileges Act 1891 states —

... the privileges, immunities and powers by custom, statute or otherwise of the Commons House of Parliament of the United Kingdom and its members and committees as at 1 January 1989.

If members look at section 1 of the Parliamentary Privileges Act, they will see that it actually states what our immunities, privileges and powers are. Therefore, whatever was determined by the United Kingdom House of Commons at 1 January 1989 to be contempt of privilege, or whatever, has been adopted by this Parliament through this act. My concern is that the words in section 1 of the act are actually much broader than the words in the legislation and may therefore be inconsistent with the legislation. The legislation actually confines to a point in time—1 January 1989—those privileges, immunities and powers that the House of Commons of the United Kingdom and its members held to be privileges, immunities and powers. There is no qualification in section 1 of the Parliamentary Privileges Act 1891 or in that reference that we all know as the twenty-first edition of Erskine May's *Parliamentary Practice*. I am just worried that these words are actually broader than the words in the Parliamentary Privileges Act, and I would like clarification of whether that is the intention; and, if so, do we also require an amendment to the act?

The PRESIDENT: The standing orders cannot be above the Parliamentary Privileges Act, as the member outlined. It is therefore a matter of how we express it in our standing orders. There is no argument, without derogating from our power as the Legislative Council; it is just a matter of do we have to find it on page 92 under a schedule, rather than having it spelt out very clearly in standing order 93, where I think most people would go in the first instance to look for it. I believe that is the real argument we are having at the moment.

Hon MAX TRENORDEN: We need to keep in mind what happens when a motion on privilege occurs. The process, as I understand it—I have seen it over many years but not all the years of this place—is that when a motion relating to privileges is proposed, it goes off to the Standing Committee on Procedure and Privileges. The procedure and privileges committee does its work and then comes back with a motion to put before the house. I understand the concerns of the honourable member, but her concerns would be dealt with in the deliberations of the procedure and privileges committee. Then a motion expressed by the privileges committee comes back to the house for us to act on. That motion can be amended and all those sorts of issues, but there is a process that occurs. It is not as though a motion is raised one moment and then voted on. That is not the process in our standing orders.

Hon GIZ WATSON: I have been following the discussion on this particular standing order with interest. I am fundamentally attracted to the new words; I think they are quite clear. But it is fairly late in this process and there are potential considerations that Hon Adele Farina has raised. I just wondered whether process-wise—I am not quite sure how far we are going to get tonight—we have the capacity to defer consideration of this amendment because I would like to get some further advice on it. That is not because I do not think it is a good idea but just that, given we have been discussing the form of words for two years, it might be worth pausing and deferring it to the end to see whether there are other matters that should be considered. Having heard what members have said about it—these words as opposed to those words—I think fundamentally it is saying the same thing but there might be something that we have missed and I would rather have the opportunity to take some further advice.

Hon NORMAN MOORE: I am not unhappy to defer this amendment for some further consideration, but I have to say that we do not have unlimited time to resolve these matters. I do apologise that this came up very late, but I think that it makes it far clearer by stating up-front the principle that the house has the power to determine what is a contempt. But, in the context of the comments made by Hon Adele Farina, it is understood that it is subject

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to any act of Parliament in place at the time. That applies to all our standing orders; they are subject to the law. This does not in any way suggest that we can ignore the Parliamentary Privileges Act. We are required to do that, but this is a statement of principle. We could put in “subject to the Parliamentary Privileges Act”, but I am told that we do not generally refer to acts in the standing orders. Perhaps we could defer this amendment until the end and ask members to have a quick look at it. The advice I have received from the table is that it is not necessary to have “subject to the Parliamentary Privileges Act” and that whatever we put in the standing orders is subject to that act anyway.

Hon LIZ BEHJAT: I want to seek a point of clarification from the Leader of the House. The Leader of the House just said that we generally do not refer to acts in the standing orders, yet proposed standing order 94(1), which we have already agreed to, states —

Any person declared guilty of contempt by the Council for an offence defined by section 8 of the *Parliamentary Privileges Act 1891* ...

I am confused about why the Leader of the House has made that comment.

Hon NORMAN MOORE: I hope to overcome the member’s confusion. The Parliamentary Privileges Act is mentioned in proposed standing order 94 because it specifically relates to section 8, whereas proposed standing order 93 relates to a general fundamental principle; that is, the house has the power to determine what constitutes a contempt and that, like every other standing order, is subject to the laws of the land.

Further consideration of amendment (3)(l) postponed until after consideration of amendment (3)(w), on motion by Hon Norman Moore (Leader of the House).

Amendment (3)(m) —

The PRESIDENT: We now move to proposed standing order 100, “Form and Contents of Petitions”, which is on page 33. The question is that amendment (3)(m) stand as printed.

Hon SUE ELLERY: We do not have an alternative set of words but we did want to raise the issue because a number of members felt that it was important that the Parliament keep abreast of technology. The Parliaments of Queensland and Tasmania, as I understand it, accept electronic petitions. We had the example last year, I think, or earlier this year—Hon Adele Farina might give us the details of that instance—in which a number of women were seeking policy changes about breastfeeding in public.

Hon Adele Farina: And some men as well.

Hon SUE ELLERY: Of course; well pointed out. Five thousand people signed an electronic petition. That is a huge number of people who wanted the Parliament to take certain action and, at the very least, to take note of their points of view. The Western Australian Parliament was not then in a position to accept electronic petitions, and we are not now. We do not have a form of words to put before the chamber now because it is not the kind of matter we should do on the run. But I think it needs to be put on the record that this is something that we ought look at in the future. There are clearly ways of dealing with this issue that have been dealt with by other Parliaments—Queensland and Tasmania—and elsewhere in the world. It is not impossible. I think one of my colleagues made the point that the only way that Western Australian citizens under the age of 30 do business is electronically. The notion of signing a piece of paper, taking that piece of paper into the local member of Parliament’s office and asking them to physically take that piece of paper to Parliament and then physically standing in Parliament to hand over that piece of paper is not the way that the generation of people under the age of 30 conduct themselves.

Although we do not have a proposal to put before the chamber tonight, we think it needs to be on the record that this is something that this Parliament ought to look at in the future, and we would certainly encourage the Parliament to do that.

The PRESIDENT: Just by way of information before we proceed, I point out that the concept of e-petitions is currently being considered by the Standing Committee on Environment and Public Affairs. That is the advice I have. Associated with e-petitions is a list of technology issues and resourcing issues. I will open it up for further discussion, while we are on the question that proposed standing order 100 stand as printed.

Hon LYNN MacLAREN: Thank you, Mr President. I am a member of the Standing Committee on Environment and Public Affairs. I can say that petitions are our business, and e-petitions are something that we have looked at. It is important that we have an accurate definition of e-petitions, and how they meet the important standards of a petition in order to be considered carefully with the seriousness of our committee. So, it is a direction that this Parliament has been working toward for many years. Hon Louise Pratt, when she was a member of this committee, did some research into it. I would love to see this incorporated into the standing

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orders. The Scottish Parliament had a delegation here recently, as members may recall, and in that Parliament they successfully accept e-petitions. It is really important that we enable younger Western Australians to access the Parliament and petition us for their interests, and e-petitions are an important part of that, so we would support that in future. It is regretful that we do not have it at this point to be able to add it to the standing orders, but I would hope that in the very short term we are able to include that in the standing orders. We support proposed standing order 100 as it stands.

The PRESIDENT: I indicate that the fact that it is being considered by the Standing Committee on Environment and Public Affairs is not a secret; it is not breaching any content of the deliberations of that committee, because it is on the committee's website.

Hon NORMAN MOORE: Mr President, this issue was not discussed at any length in the procedure and privileges committee hearings. I do not even remember it being discussed; I am told it was, so maybe I missed that meeting or something. I would like to know a whole lot more about this before I will put up my hand for it to go into the standing orders tonight. It may be a very good idea to have this, but I suggest that if that standing committee is already looking at it, we wait for the committee to report. If the committee is not already looking at it, it should look at it, because that is what we have been advised is the case, and let us have a submission next year. If there is a view that we should have e-petitions, give us a chance to understand what they mean, bearing in mind that we are fairly fastidious in this place about what a petition can and cannot do, and there are fairly substantial rules surrounding petitions, and that is appropriate. So I suggest that we delay any consideration of e-petitions until such time as we have a report from that committee.

The PRESIDENT: No amendment has been moved. It has been open for discussion. A couple of members have indicated that they want to say something. I will let those members who have indicated that intention have a say, and we will then bring the vote to a conclusion.

Hon KATE DOUST: Thank you, Mr President. I have been a member of the Standing Committee on Environment and Public Affairs for more than 10 years now. This committee predominantly looks at petitions. Although the issue of e-petitions was canvassed during the last Parliament, and some work was commenced formally to look at this matter. Hon Louise Pratt did provide, as part of imprest travel, a brief report on her visit to Scotland and the work that had been done there. Some preliminary work has been done by the committee, but, unfortunately, for the duration of this period of the term, the committee has not been able to appropriately address this matter. From time to time, it may be canvassed as something to be looked at in the future. But I am sure other committee members would agree that we certainly have not given this matter the appropriate time that it could be given. It is a very useful thing to look at, and I think the comments by Hon Sue Ellery that, in fact, there is a whole generation of people who use technology in different ways need to be taken into account. Those of us who were in this place during the daylight saving debate certainly received evidence of how people used e-petitions. When these matters are canvassed, people need to be very clear in their own minds what e-petitions are for the purpose of the Parliament because of the types of petitions utilised during that period. Even the model Hon Adele Farina referred to on breastfeeding may not necessarily have been in the appropriate format for presentation to Parliament in a conforming sense, if you like, so all those types of matters need to be considered. Tasmania and Queensland have been utilising this method of petitioning for a number of years and I think the federal Parliament may also have been considering it. I think it is part of the Parliament getting with the program and enabling a much broader group of people to put their views or their concerns to the Parliament. It may enable that particular committee to modify its processes in the way it deals with petitions.

I agree with the Leader of the House that this is a matter that should be looked at. I hope that in due course the committee can go back and find the time and the opportunity to review those matters and put forward an appropriate report to this chamber on how e-petitions could be utilised, what is actually appropriate, what is involved and how we deal with some of the concerns around, as I understand it, matters of privilege that have to be dealt with in electronic petitions. I think it is something that needs to be canvassed and, in due course, amendments to the standing orders raised to effect their introduction.

Hon MAX TRENORDEN: Mr President, we are breaking our agreement so I will not speak for very long. When I was in the other place I was on a committee that toured and looked into electronic petitions, and a report was tabled in the other place. I can tell members that the committee tried to work out how electronic petitions should come into the house, but came back and wrote a report against using them. I do not think anyone will argue in principle that it is not a fair way to communicate. What we have to work out is how it is done in practice. Someone could come to Hon Max Trenorden's Northam office and complain about a council fence and Hon Max Trenorden will say, "Don't worry I'll put a petition in." Ping, ping, ping; in goes the petition. The committee could then have 10 000 petitions a year to deal with, all containing a single petitioner. The Queensland system was an appalling mess. I must admit that is going back a number of years, but the one thing

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we can hold our heads up about in this chamber is that something is done about petitions. Just because we believe in principle that something is a good idea, we do not want a situation to arise in which all of a sudden the good work of that committee gets clogged up and just does not happen. I agree with e-petitions in principle but someone has to convince me, a person who has spent some time looking at this issue, that there is a mechanism for e-petitions that will work. Right now we do not have one, unless we move to a system such as the one in the Assembly where petitions are submitted and they go into a big, black hole.

Hon ADELE FARINA: I want to remind members that when I sought to table the breastfeeding petition, which was an e-petition, the promoter of the petition set it up on a website and people put their names on it. It had about 5 000 entries—I cannot remember the exact number. I was prevented from tabling that petition, at least initially, because there were no signatures on it. I actually had a hard copy of that report; I went to the website, printed it and brought it in. It did not require any additional resources of this Parliament, because it is quite easy to print something off a website and present a hard copy. We seem to be the only Parliament that struggles with these sorts of new technologies, but if that is the case, it can be done that way. Because the petition did not have the signatures, it was considered nonconforming, and therefore, on the voice of one person—namely, Hon Norman Moore—it was refused for tabling as a nonconforming petition. It was only after I indicated that I would stand and read every one of the 5 000 names and addresses on the petition that he relented and the petition was accepted. But the reaction in the community to this house not being willing to accept an e-petition was ferocious. A huge amount of effort had gone into collecting the signatories to that petition, and yet we were prepared to say, “We’re not going to accept those.” I think it is a real problem. At that time I raised my concern about it, and I called on the house to deal with it as a matter of urgency. It was suggested to me that the Standing Committee on Procedure and Privileges, which was undertaking a review of the standing orders, could consider that as part of the review, and I got an assurance that it would do that. I find it very disappointing, now that we have the report from that committee, that the matter has not transpired in the standing orders at all. I would hate for us to have to wait another 60 years before we do another review of the standing orders for us to be able to consider e-petitions. We have to keep up with the times; it is a big issue out there and we cannot keep sticking our heads in the sand and saying it is too hard or that we do not want to commit the time and resources to actually sort the problem out when other Parliaments in other jurisdictions have done so. I just find this extraordinary and very disappointing. If we want to be relevant, we have to be current.

The PRESIDENT: The issue of e-petitions was discussed in our committee discussions, but not perhaps canvassed in the way and in the depth that some members would have liked it to be. But that is really a pretty clear message to the Standing Committee on Environment and Public Affairs, which has indicated its interest in this issue, to canvass that issue at length and report back to this house, so that this house can get some guidance on where we go on e-petitions. That is the way I read it. If we can get back to the question, which is that proposed standing order 100 stand as printed.

Amendment (3)(m) put and passed.

Amendment (3)(n) —

The PRESIDENT: Proposed standing order 107, “Answers to Questions on Notice”, is on page 36. The question is that proposed standing order 107 stand as printed.

Hon SUE ELLERY: This was a matter that the Labor Party raised as one of the matters it wanted canvassed in the review of standing orders. We were not able to reach agreement in the course of the conversations we had about it during the review, but I just wanted to put the issues on the record for the house—I do not come before the house with a proposal to change it. The nine-sitting-day rule generally works reasonably well, except, of course, when there is a substantive non-sitting period; this year, I think there was a four-week period when we were not sitting that was different from the winter break and different from the summer break. What that means is that the actual period of time before we get an answer to the question on notice is of course significantly extended. This went into the too-hard basket; we really did not even try to find a way around that because it was apparent that we were not going to reach agreement. I want to put on the record that it is something we would like to consider in the future. When we break, for example, assuming we break tomorrow and assuming we do not come back the following week, we will not sit again until, I think, 9 March.

Hon Max Trenorden: The sixth.

Hon SUE ELLERY: It is 6 March next year. That is quite a long time. It means that we try to organise ourselves well, so we put in any questions on notice that we have at the beginning of a three-week sitting period, which is what we did. But it means that if matters arise or even—gosh—a minister gives an answer that says, “Please put that question on notice” —

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Hon Kate Doust: Or, “Go and check the website.”

Hon SUE ELLERY: No; I am advised there will not be any more “Go and check the website” answers.

When we get that answer, when we are beyond the nine sitting days before we resume, we will not get an answer to that question, and it might be a really pressing point.

Hon Helen Morton: We have delivered that.

Hon Peter Collier: Go and check with Mark McGowan.

Several members interjected.

Hon SUE ELLERY: That is why we raised it. I am just putting this on the record. It is not a matter that will be agreed; it was not agreed at the committee level, but we want to flag it as an issue that we will continue to raise.

Hon GIZ WATSON: On behalf of the Greens (WA), this is an issue that we discussed also. I guess we are in a similar situation, whoever is in government, in being at the mercy of the rules about when we get answers to questions. Again, I say this for the record, not because I will formally move an amendment, because I think it is probably a little late in the whole process to do so. We would suggest that, rather than a nine-sitting-day turnaround, a seven-sitting-day turnaround would be more reasonable. We note that on the day that we ask a question, nine sitting days become 11 sitting days, in effect, because of the way it works out. We just suggest that seven sitting days is a more reasonable turnaround period.

I notice that one of the ministers in the house is shaking her head.

Hon Helen Morton: I’ll get up and explain why!

Hon GIZ WATSON: Obviously, we will have different views depending on whether we are seeking answers from ministers or whether we are the minister in question, I am sure. As I say, we are not seeking to move an amendment, but we think a shorter period is not unreasonable.

Hon NORMAN MOORE: Just very quickly, I suggest that members need to start giving a bit of thought to how questions are answered in Parliament when Parliament is not sitting, because that is what they are; they are parliamentary questions asked in Parliament and the answers are provided in Parliament, and they are covered by parliamentary privilege. I do not know how a minister can give someone an answer to a question when the house is not sitting, so members might like to contemplate that if they want to get answers when the house is not sitting. This provision of nine sitting days was brought in by the Labor Party. Hon John Cowdell was the Chairman of Committees, I think, who moved that provision, and I think it has worked very well. All it says is that members will be told when an answer is coming—it might be that it will come in 10 years. It does not necessarily get members an answer; it just means that after nine days the government of the day has to give some response to what is happening. But work out how questions are answered without the Parliament sitting.

Amendment (3)(n) put and passed.

Amendment (3)(o) —

The PRESIDENT: Proposed standing order 110, “Non-government business”, is on page 37 of the report. The question is that proposed standing order 110 stand as printed.

Hon SUE ELLERY: The matter that has been brought to my attention here is that since we developed the temporary order that is in place now, the practice has been to include in non-government business the introduction and then the debate around private members’ bills. However, the proposed standing order does not reflect that explicitly. Therefore, I would like to move an amendment to proposed standing order 110(1). I move —

In section (1) — To insert after “notice” —

, Bills for Introduction

The standing order would then read —

Motions with notice, Bills for Introduction and orders of the day that are in the name of non-Government Members may be listed for consideration by the Council during the period prescribed under Standing Order 15(4).

Amendment on the amendment put and passed.

The PRESIDENT: Now the question is that amendment (3)(o), proposed standing order 110, as amended, be agreed to.

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Hon Ed Dermer; Hon Giz Watson; Hon Nick Goiran; Hon Adele Farina; Hon Matt Benson-Lidholm; Hon Kate
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Hon WENDY DUNCAN: I am not quite sure how we will deal this, but I know that there has been some talk behind the Chair regarding the issue of non-government business and private members' business and that is why we deferred debate on proposed standing order 15. I am not quite sure whether this is the appropriate time to put our point of view or whether there is another time.

Hon NORMAN MOORE: I suggest to the member that we leave proposed standing order 110 as it is because that deals with non-government business. The issue of providing time for government backbench members is a separate issue that will be dealt with as a separate proposal.

Hon WENDY DUNCAN: That is good as long as that happens, but I would like an opportunity to speak to it at some stage.

Hon Norman Moore: I gather there's agreement across the chamber on that.

Hon WENDY DUNCAN: Thank you.

Amendment (3)(o), as amended, put and passed.

Amendment (3)(p) —

The PRESIDENT: Proposed standing order 125, "Uniform Legislation", is on page 44 of the draft standing orders. The question is that amendment (3)(p), proposed standing order 125, stand as printed.

Hon SUE ELLERY: There may well be other members who will rise to speak to this proposed standing order, but I want to give notice of an amendment that I have just scribbled. Proposed standing order 125(1) states —

During the second reading speech of a Member in charge of a Bill, the Member shall advise the Council whether or not the Bill is a Uniform Legislation Bill.

I seek to amend that to add after "Uniform Legislation Bill" the words "and shall give reasons as to why", so that the member who advises the house whether the bill is uniform legislation will give the house a reason why they formed that view.

Proposed standing order 125(3) further provides that, irrespective of the advice that the member in charge of the bill has given the house —

The Council may order that a Bill is a Uniform Legislation Bill notwithstanding contrary advice from the Member in charge of the Bill.

If it is a Council bill, that bill will have been before the house for two weeks; if it is an Assembly bill, it will have been before the house for only one week. Therefore, if a member is to put to the house that it should consider ordering a contrary position, it would facilitate the debate a lot better if the starting point is that we already know the reasons why the member in charge of the bill has advised the house that it is or is not a uniform legislation bill. So, rather than having to start the debate before asking the house to consider taking a contrary view, let us start that debate knowing why the member in charge of the bill determined that it was or was not a uniform legislation bill.

I will move my amendment if it is appropriate, although I am not sure whether other members want to speak more broadly about this proposed standing order, but I am relaxed about that. I move —

In section (1) — To insert after "Uniform Legislation Bill" —

and shall give reasons as to why

The PRESIDENT: I put the amendment that the words proposed to be added be added.

Hon LIZ BEHJAT: My reading of the amendment moved by the Leader of the Opposition for standing order 125(1) to include "and shall give reasons as to why" is that for every bill that then comes before this place, we will have to say whether it is a uniform legislation bill. The reasons why a bill is or is not a uniform legislation bill are clearly stated in proposed standing order 125(2). The person introducing the bill would say that it was uniform legislation because it —

- (a) ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party; or
- (b) by reason of its subject matter, introduces a uniform scheme or uniform laws throughout the Commonwealth.

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Or, it does not do either (a) or (b). I cannot see how “and shall give reasons as to why” is necessary in proposed standing order 125(1), but I may be wrong; I do not know.

Hon NORMAN MOORE: I am not averse to the proposition put by the Leader of the Opposition. This is here, fundamentally, because of the problem that we have from time to time when a bill comes to the house and the government is of the view that a bill is not uniform legislation because only a very small part of it is uniform legislation. There are times when the house via the President decides that it is uniform legislation. This provides an opportunity for the house to know up-front what the government thinks. Then the house can decide what it might want to do with that bill once it is made aware of the consequences of that legislation and whether the bill has a bit or a lot of uniformity in it. I do not have a problem with this. It is a matter of the house knowing what the government or the person introducing the bill thinks it is in the context of a uniform legislation bill. Once it is a uniform legislation bill, it automatically goes to the Standing Committee on Uniform Legislation and Statutes Review. Therefore, this provides an opportunity for the house to say whether it should go there, as opposed to the current system whereby a bill automatically goes to the committee if the Clerk decides that it is a uniform legislation bill.

Hon ADELE FARINA: I did not propose to speak to this, but the comments of the Leader of the House have caused me to get up to speak. As I understand what he said—I am happy to be corrected if I am wrong—if only part of a bill is the result of a uniform scheme or agreement, the government can choose to not refer it to the Standing Committee on Uniform Legislation and Statutes Review. That is not how I read the provisions in proposed standing order 125.

Hon NORMAN MOORE: I did not say that. Those would be the reasons that would come under the amendment proposed by the Leader of the Opposition; that is, the government might say that only one clause has anything to do with uniformity, but the other 400 clauses are about something else. The government might not see it as a bill that is necessarily appropriate to go to the uniform legislation committee, but the house might decide quite differently that that is the case.

Hon ADELE FARINA: I think we have a problem here, because, as I read proposed standing order 125, it clearly states what is needed to be satisfied to identify whether a bill is a standing order 125 bill, and, once it is identified as such, the whole bill is automatically referred to the committee. If I understand him correctly, the Leader of the House suggests that if only one small part of the bill is uniform legislation, the government or the minister might decide that it will not go to the uniform legislation committee, which is contrary to proposed standing order 125. If the Leader of the House is suggesting something different, perhaps he could clarify it. I am somewhat confused now about the intent of proposed standing order 125.

Amendment on the amendment put and passed.

Amendment (3)(p), as amended, put and passed.

Amendment (3)(q) —

The PRESIDENT: Proposed standing order 127 is headed “Referral to Committee”. The substance matter of this is issues associated with committees inquiring into the policy of the bill.

Hon SUE ELLERY: There was a question raised about whether proposed standing order 127 is substantially different from what is currently in the standing orders, and whether it restricts the circumstance in which a committee may inquire into the policy of the bill. I wonder if we could seek advice from the Clerk, through the President, on the circumstances in which a committee can inquire into the policy of the bill.

The PRESIDENT: Existing standing order 230B states —

Unless otherwise ordered, a standing committee is not to inquire into the policy of a Bill.

That is quite definite. This proposal is to have the possibility of a graded reference from the house. If we read the referrals very carefully, proposed section (1) states —

At any time after the second reading has been moved and before the third reading has been moved, a motion without notice may be moved to refer the Bill to a Standing or Select Committee.

If it is moved after the second reading, we revert to the current standing orders, understanding that there is no inquiry into the policy of the bill. Proposed section (2) states —

Unless otherwise ordered, if a Bill is referred under (1) after the second reading of the Bill has been agreed, the Committee shall not inquire into the policy of the Bill.

That reasserts the current position. Proposed section (3) states —

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A motion to refer a Bill to a Committee may include an instruction to the Committee, including an instruction to divide the Bill into two or more Bills, or to consolidate several Bills into one Bill.

It provides the house with a slightly broader option than it currently has.

In summary, if the house agrees to refer the bill to committee before the second reading vote is taken in the house, the policy of the bill can be considered by the committee. Once the second reading vote is taken in the house, the policy cannot be considered unless otherwise ordered by the house.

Hon NORMAN MOORE: I think the President is perfectly right. Proposed section (1) says that, after the second reading motion has been moved basically through until the third reading is moved, a bill can be sent to a committee at any time. Proposed section (2) says that if it is sent after the second reading vote has been taken, we are not to look at the policy of the bill because, fundamentally, by agreeing to the second reading the house agrees to the policy. The house could make a decision to do otherwise if it wanted to because it says “unless otherwise ordered”. I think it is a perfectly sensible proposition.

Amendment (3)(q) put and passed.

Amendment (3)(r) —

The PRESIDENT: Proposed standing order 174, “Status of Evidence”, is on page 60 of the draft standing orders. The question is that proposed standing order 174 stand as printed.

Hon SUE ELLERY: The opposition put this matter on the list of amendments. The queries we had about the current practice have been satisfied and we do not have any issues that we need to raise about this amendment.

Amendment (3)(r) put and passed.

Amendment (3)(s) —

The PRESIDENT: Proposed standing order 179, “Requests and Orders for Evidence”, is on page 62 of the draft standing orders. The question is that proposed standing order 179 stand as printed.

Hon NORMAN MOORE: Proposed standing order 179 is “Requests and Orders for Evidence”. Proposed standing order 179(4) states —

A Committee shall not seek evidence directly from a Member of the Assembly.

As I understand it, that provision was included to avoid Council members seeking to have Assembly members give evidence before an upper house committee. However, it was raised with the leadership group last night that the Joint Standing Committee on Delegated Legislation, which is a joint house committee, may wish to seek evidence from a minister. I am not quite sure how we will deal with this because I have not had time to think about it, but I recognise the need for a committee to write to a minister seeking information, whereas proposed standing order 179(4) may take away that capacity.

Hon Sue Ellery: Subsequent to last night, I understand that it is not just the delegated legislation committee that writes to ministers in the other place. Deleting it entirely might be the best solution.

Hon NORMAN MOORE: It may be. Off the top of my head, I do not have a problem with deleting it. However, I want to avoid the situation we have had in the past when Legislative Council committees have sought to drag ministers from the other house before it to answer questions when in fact those ministers do not have to, and that becomes a political issue. We should accept the fact that members in the other house are responsible for their chamber and members of this house are responsible for this chamber, and never the twain shall meet. I do not know how that is covered. If it is covered by another standing order, that might satisfy the problem. If the Leader of the Opposition wants to delete proposed standing order 179(4) because of the reasons raised, I do not have a problem with that.

Hon GIZ WATSON: My colleagues and I had a conversation about this. The Standing Committee on Estimates and Financial Operations regularly writes to ministers, whether they are in either this place or the other place, seeking information. The way the proposed standing order reads at the moment, it would inhibit that practice. Members may be aware that the work of the Standing Committee on Estimates and Financial Operations deals with a bulk of correspondence. As the Leader of the House said, this proposed standing order seeks to deal with Assembly members potentially being called to give evidence before a Council committee. However, seeking evidence is a different thing. The Standing Committee on Estimates and Financial Operations writes to the Minister for Education or the Minister for Agriculture seeking information regarding our inquiries. It would be cumbersome to have to do that via a representative parliamentary secretary or minister in this place in terms of the timing of the committee’s work. I do not think that is the intention of the proposed standing order. Similarly,

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Hon Ed Dermer; Hon Giz Watson; Hon Nick Goiran; Hon Adele Farina; Hon Matt Benson-Lidholm; Hon Kate
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I understand that the Standing Committee on Environment and Public Affairs might well have its work constrained by not being able to write directly to ministers in the other place.

Hon Norman Moore: While you're standing up, why don't you move an amendment to delete (4)?

Hon GIZ WATSON: I am more than happy. On page 62, standing order 179, "Requests and Orders for Evidence", I move —

To delete — Proposed Standing Order 179(4)

The PRESIDENT: From my recollection that would solve the issue because the concern was about a minister from the Assembly appearing before a Council committee, but somehow or other the wording got lost in translation to encompass a broader principle.

Hon NORMAN MOORE: The Assembly's standing orders deal with their members and what they can and cannot do in respect of our committees.

Hon MAX TRENORDEN: This has been a problem for as long as Parliament has been around. I want to be clear what we are doing here. I am sure that Hon Giz Watson is not saying that her committee cannot seek information from a lower house member. The issue here is that we cannot compel them to appear. They are elected to their place and we are elected to ours. There is no question in law, let alone in our own practices, that this is our place and the other place is their place. I am trying to agree with members opposite, but I want to be sure that this does not mean that a committee cannot seek evidence because, as we all know, if that request is agreed to, there is not a problem.

Part of reason why we have the Leader of the House and three other ministers in this place is as a conduit to the other house through cabinet. Even though I have only been a member here for several years, I know that conduit has been used in this chamber on numerous occasions in the past, and when there has been difficulty the representative of government in this chamber has been directed by this chamber to get information. I want to be sure that that is what we are talking about.

Hon GIZ WATSON: It is fairly straightforward. Deleting section (4), by which committees shall not seek evidence directly from a member of the Assembly, will mean that a committee can seek evidence directly from a member of the Assembly.

Hon Max Trenorden: If that is the case, I am happy.

Amendment on the amendment put and passed.

Amendment (3)(s), as amended, put and passed.

Amendment (3)(t) —

The PRESIDENT: We move to standing order 180, also on page 62, "Witnesses Entitlements". This is amendment (3)(t).

Hon SUE ELLERY: Our query arises in relation to 180(h). As a whole, standing order 179 talks about what people who appear before a committee are entitled to, and lists those things from (a) to (g). Then (h) reads "any additional entitlements as determined by the Council". The question that arose for some of our members was about additional entitlements being determined by the Council. Is that distinguishing between the Council and committees, as in how those additional entitlements may be determined, and does that require that a committee has to come back to the house and ask if it can do certain things in respect of additional entitlements? I would appreciate, Mr President, if we could receive some advice from the Clerk through you, so that goes on the record as an explanation of how that will work.

The PRESIDENT: My understanding is that it is intentionally meant to be Council, not the committee. If there are any additional entitlements provided to a witness, they have to be brought to the house, and the house will make that decision. A motion from the committee might be brought to the house for the house to agree or disagree or qualify. It is a Council decision, not a committee decision. A committee is there to make a recommendation perhaps.

Hon SUE ELLERY: Thank you. I wonder if we could perhaps get on record, as it has been explained to me, that despite existing standing order 330 not explicitly saying the word "Council", it was never an order issued by a committee; it was always an order issued by the Council. That is the advice I was given informally, and I wonder if we can get that on the record.

The PRESIDENT: In terms of an explanation, the wording, as it is proposed, does not fundamentally change the current situation. The current situation has never really been tested, to the Clerk's knowledge. It is basically unstated in terms of a committee's current authority to do something like this. If there was a test case, it probably

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would have to be brought back to the house. In the proposed new standing orders, the house may wish to make it clearer so that it is beyond interpretation. The member might like to consider that sometimes committees are doing things that require them to get information from a witness under pretty urgent situations or perhaps in unusual circumstances such as in the case of the Corruption and Crime Commission committee. It may be for the house to consider to extend that authority to give additional entitlements to a witness to a committee, but that is up to the house.

Hon NORMAN MOORE: There is no suggestion in the existing standing order that anybody can give additional entitlements to anybody other than what is listed in the standing orders. This is a catch-all at the end, which I think ought to be a decision made by the Council as a whole. Who knows what additional entitlements might be asked for? Because it is such a broad proposition, it really is something that the house, not a committee, should decide.

Hon SUE ELLERY: I guess I would take a contrary view to that put by the Leader of the House. The advice that you have given us, Mr President, perhaps provides an example of a particularly contentious matter, and not even contentious by subject. I am talking about the confidentiality provisions, or whatever, that might apply to some matters that go before the Joint Standing Committee on the Corruption and Crime Commission. I have to say that the fact that this circumstance has not been tested suggests that it will not happen very often. However, from time to time it might, and a way around that would be to amend paragraph (h) to insert after “the” the words “Committee or the”. I move —

In section (h) — To insert after “the” —

Committee or the

Then after paragraphs (a) to (g), paragraph (h) would read —

any additional entitlements as determined by the Committee or the Council.

I appreciate the point the Leader of the House just made, and the house might hold the view that it does not want to go down that path. However, given that a couple of select committees of this place have from time to time taken evidence in quite heated and unusual circumstances, the committee might decide that, to protect itself or to protect the witness, it might need to offer some additional entitlements. I have therefore moved that amendment.

Hon Norman Moore: Can you give an example?

Hon SUE ELLERY: For example, witnesses who go before the joint standing committee on the CCC might be of such a nature that they need extra protection. I am not going to die in a ditch for the amendment, but I think the question has been raised, so let us give the committee some flexibility.

The PRESIDENT: I make the point that the Joint Standing Committee on the Corruption and Crime Commission is perhaps not a good example, as it operates under the Legislative Assembly standing orders.

Hon SUE ELLERY: A select committee maybe then.

The PRESIDENT: There are other joint committees, such as the Joint Standing Committee on Delegated Legislation, that operate under Council standing orders.

Hon GIZ WATSON: I also am trying to envisage the additional entitlements that might be afforded to a witness. I understand that the right already exists for witnesses to have counsel. I have heard what has been said and that this circumstance has not actually been tested. If it is something over and above the right to have counsel, I do not see why it should not come back to the house. I cannot really envisage what else we would offer to a witness.

Hon Liz Behjat: Maybe an interpreter.

Hon GIZ WATSON: But it would be within the committee’s capacity to provide an interpreter anyway.

Hon Liz Behjat: No, it’s actually not.

Hon Adele Farina: No.

Hon GIZ WATSON: Perhaps we could have some response to that. Would an interpreter be included as one of the provisions?

Would an interpreter be excluded as a witness’s entitlement under the provisions as they exist, in which case I would support the amendment as moved by the Leader of the Opposition? It would be better to have the capacity at the point at which the committee is dealing with it to make that additional entitlement.

Hon Nick Goiran: We’ve always got the capacity; the issue here is whether the witness is entitled to it.

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Hon GIZ WATSON: Sure.

The PRESIDENT: I just make the point that the example that has been used is an interpreter or a translator. We have had the instance in the full Council estimates committee of a member of a government department who had speech and hearing difficulties. It is normal administrative practice, not an additional entitlement, to provide that support or entitlement to a witness to be heard properly. That provision already exists. The question is that the words proposed to be added be added.

Hon NORMAN MOORE: Now that the honourable Leader of the Opposition has moved the amendment, I indicate that I do not support the addition of those words. I think if the Leader of the Opposition wants to identify the entitlements that people are entitled to have, they should be listed as specific entitlements that are agreed to by this chamber, as we have sought to do in paragraphs (a) to (g). But to simply give a committee the capacity to provide additional entitlements as it deems fit without the house ever knowing about them potentially creates some problems that may come back to bite us. So I would prefer to leave it as it is, and if some time down the track there are some entitlements that the committees think people should have, let us identify them and add them to paragraphs (a) to (g) in the standing order.

Hon MAX TRENORDEN: Committees say to witnesses who come before them words that basically say that they are in fact appearing in front of the Council. The committees are representatives of the Council. All of this has operated up to this date without difficulty. Why would we change that? The suggested amendment, moved with good intent, will actually mean that it will be a decision of the five people sitting in the room whether something occurs, which may be outside the bounds. As it stands, committees are representatives of the Council. For all intents and purposes, committees are the Council to the person sitting in front of them. I suggest that it would be wise to leave the proposed standing order as it stands.

Hon ADELE FARINA: From what has been said, I have a concern that an interpreter would be able to be provided to a person. The whole point of reviewing the standing orders was to make them clear and to expressly state what we intend. We have a list of paragraphs (a) to (g) that specify the sorts of things that are rights of witnesses. If it is the right of a witness to have an interpreter, a guide dog, a hearing aid or whatever, it should be specified in this standing order. I think expecting a committee to interpret from this standing order what the Council might or might not be lenient about is too big an ask. The committee may then find itself in contempt of the Council because it has not sought the Council's approval. The issue of an interpreter is one very good example in which we should put what we intend in the standing order. We are saying that the committee has to come back to the Council, which might say that it is all right for an interpreter and it may be fine for something else, but how is a committee supposed to make that judgement call?

Hon Nick Goiran: Are they entitled to a glass of water?

Hon ADELE FARINA: That is a good question. I do not know; it is not on the list.

Hon Nick Goiran: But you have the capacity to give it to them. You don't need to list it.

The PRESIDENT: If I can help the debate—I am not sure that I can—a committee has to be able to communicate with a witness. If a witness has a disability or whatever, it is an administrative practice that the committee adopt the practices for communicating, and it has the resources to do that. I do not think there would be any argument administratively or policy-wise on that matter. But I still have the motion before the house that the words proposed to be added be added.

Amendment on the amendment put and negatived.

The PRESIDENT: The question now is that proposed standing order 180 stand as printed.

Hon PHILIP GARDINER: I just refer to paragraph (c), which states that the entitlement to witnesses is that they can request that the evidence be deemed private or in camera. My only concern is whether implicit in that is the suggestion that that should automatically be adopted by the committee, and whether there should be words after that to say, "subject to determination by the committee". It says "request", which allows the option for the committee to say yes or no to some extent. But I just wonder whether it needs any clarification.

The PRESIDENT: I believe it is implicit in the word "request" that the decision is then the province of the committee.

Amendment (3)(t) put and passed.

Amendment (3)(u) —

The PRESIDENT: The question now is that proposed standing order 187, "Tabling of Report", stand as printed.

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Hon SUE ELLERY: My notes are telling me that this needs to be amended to be consistent with standing order 109 by inserting the words “except reports pertaining to Bills”. I think an amendment may have been drawn up to that effect. Perhaps an amendment is being drawn up.

The PRESIDENT: I think it is happening as we speak.

Hon Norman Moore: Where would you put that?

Hon SUE ELLERY: I do not know; perhaps the Clerk is going to tell me where I put it, in very polite terms!

The PRESIDENT: I think what the Leader of the Opposition is proposing is no change in context—it is already there—but it is to make it much clearer in standing order 187. Am I correct?

Hon SUE ELLERY: I think you are, Mr President.

I move —

In section (2)(b) — To insert below the word “listed” —
except for reports pertaining to Bills,

Section (2) will then read —

Upon tabling in the Council, a Committee report shall be —

(a) ... ; and

(b) except for reports pertaining to Bills, listed for consideration by the Council in accordance with Standing Order 109.

Amendment on the amendment put and passed.

Amendment (3)(u), as amended, put and passed.

Amendment (3)(v) —

The PRESIDENT: The question is that proposed schedule 1, part 5 stand as printed.

Hon SUE ELLERY: I propose to delete 5.4. I am not sure whether any member wants to raise anything in clauses 5.1 to 5.3.

Hon LIZ BEHJAT: I am probably on a hiding to nothing, but I am going to have a go anyway. I propose that we delete 5.3(c) from schedule 1 clause 5, which reads —

to examine the provisions of any treaty that the Commonwealth has entered into or presented to the commonwealth Parliament, and determine whether the treaty may impact upon the sovereignty and law-making powers of the Parliament of Western Australia;

We have been talking all night about putting in order our standing orders, getting them right and making sure these things work properly. Since becoming a member of the Standing Committee on Uniform Legislation and Statutes Review, it has been put to me in the house and outside the house on more than one occasion that perhaps our committee should look at its provision to examine treaties. Given that has been said to us on a few occasions, we decided to do just that. The sixty-eighth report of the Standing Committee on Uniform Legislation and Statutes Review is the information report in relation to the scrutiny of treaties. I do not know how many members in the house have taken the time to read that committee report. Outlined in that report is what the committee determined on 31 August; namely, that —

pursuant to its Treaty Review term of reference, to inquire into the *Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization (Treaty)*.

And it set forth to do just that. Outlined in that report members will see what we did in relation to that, such as writing to the Department of State Development and the Department of the Premier and Cabinet asking them to give evidence to the committee.

Members will also note earlier that, in its twenty-third report of a previous iteration of that committee, the Standing Committee on Uniform Legislation and General Purposes also looked at the scrutiny of treaties function. Members can read there the findings of that committee, which said that that function should be removed from the committee. During our investigation in August, DPC and DSD informed the committee that they were unable to answer the committee’s questions because the advice provided by the state to the commonwealth and the negotiations between the state and the commonwealth on treaties is confidential.

The report continues —

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DPC further advised as follows.

- The DPC does not undertake its own independent analysis and research on treaties, it merely refers the treaties to the relevant government agencies for comment and collates their replies and provides them to the Standing Committee on Treaties (SCOT).

The Department of the Premier and Cabinet then suggested that —

- The Committee seek legal advice on treaties from the Attorney-General as well as the Commonwealth's Office of International Law.

So the committee did as it was told. It wrote to the Attorney General, requesting that a representative from the department attend a hearing to provide the answers to the questions on treaties, and as the report states —

The Attorney-General responded by stating:

It should be noted that the Solicitor General and solicitors engaged in the State Solicitor's Office are tasked with providing legal advice to the State Government, not Parliament or its committees. And further, such advice, should it be received by the Executive Government, is covered by legal professional privilege.

The report states a number of reasons why it would be impossible for the committee to carry out the treaties function that it has before it. I would like to point out that the most relevant part of the report is the conclusion. These are not my words; another honourable member's words were used in that conclusion. The conclusion reads —

During the consideration by the House of the Committee's Report 63 —

That is the Standing Committee on Uniform Legislation and Statutes Review's information report —

Hon Simon O'Brien MLC, a former Chairman of the Committee, in referring to the redrafting of the Committee's terms of reference as part of the review of the Standing Orders of the Legislative Council, stated:

There have been references for some years, and I believe there is proposed to be reference in the terms of reference under the new standing orders, to this committee having some overview of treaties. I remember that in a previous Parliament this committee actually did look at how it could deliver on this particular term of reference. It conducted some inquiries, communicated with other jurisdictions and so on, and came to certain conclusions. It could maybe review them after the fact, but that would be a forlorn and pointless exercise. I would rather that the house perhaps noted the committee's previous work on treaty scrutiny and the conclusions it formed after having spoken to a whole lot of sources, and perhaps come to the view that this committee's most valuable contribution is actually to be made in the scrutinising of intergovernmental agreements from the context of how much of Western Australia's future prerogatives are proposed to be done away with.

I could not have put it better myself. With those words, I move —

To delete section 5.3(c).

Hon NORMAN MOORE: I personally have a view that this particular committee should look at treaties because treaties are a vehicle through which the commonwealth can, by entering into agreements, have a consequential effect on the sovereignty of the state of Western Australia and the capacity of Parliament to make laws for Western Australia. The classic case was probably the Tasmanian dams case, when an international treaty was used to stop the state government building a dam. That was made obvious to everybody because it was a public issue, but who knows what other treaties the commonwealth is entering into that may in fact have some consequence for our sovereignty? I recognise that neither the committee nor the Parliament has power to stop that happening, but it would be nice to know. The "nice to know" means that if a political issue is attached to it, it can be dealt with politically and a solution may then be acquired. I have listened to the honourable member, I have taken note of the report that the committee produced—I have not read it in any detail, other than the conclusions—so if the chamber wants to take this out and the standing committee does not want to do this job, I could not care less.

Hon ADELE FARINA: It is not a case of the committee not wanting to do the work; the committee is more than happy to do the work. The situation is that on two occasions the committee has tried to undertake this work. The former committee, under the chairmanship of Hon Simon O'Brien, looked at how it would perform this

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function and provided a report to Parliament that stated that it could not see how it could perform this function, and recommended that the treaty term of reference be deleted.

Our committee also decided to take an independent look at whether we could implement this term of reference and this report details the extent to which we went to try to implement this term of reference. The bottom line is that there is an agreement between the state and the commonwealth that makes all negotiations between the state and the commonwealth confidential. Therefore, we cannot get information from the state, we cannot get any information from the commonwealth and even though the Attorney General provides legal advice to the committee when it suits him, he told us that he cannot provide legal advice to the committee in relation to treaties. It puts the committee in a situation in which we do not have anywhere to go to get an explanation of the intention of the treaty. Also, we asked the Department of the Premier and Cabinet how frequently a treaty that was entered into by the commonwealth required legislative response from Western Australia, and I quote the response from the representative of the DPC who said —

I did check with the Attorney General's Office to see whether, over a 15-year period, they had examples of cooperative legislative schemes that they could directly ascribe to treaties, and they could come up with only three over that 15-year period. Two of them are currently before the Western Australian Parliament—one is the Electronic Transactions Bill 2011, and one is the Commercial Arbitration Bill 2011—and one is some international wills uniform ... work, which is in the pipeline; it has not come through as legislation yet. So it is quite rare.

Therefore, the circumstances in which the committee would be able to examine the provisions of the treaty that the commonwealth had entered into or presented to the commonwealth Parliament and determine whether the treaty may impact on the sovereignty and the lawmaking powers for the Parliament of Western Australia are actually going to be pretty rare, because in 15 years there have been only three occasions, and we would have to search through every treaty only to find that in most cases they would not impact on the lawmaking powers of the state of Western Australia; therefore, all of that effort and work would result in nought. It just seems to me that when two committees under two separate chairmanships have provided two separate reports to the Parliament saying, “Look, despite our best endeavours we cannot see how we could possibly implement this term of reference”, it is clearly a commonwealth jurisdictional issue and we have got no ability to influence the commonwealth going into signing a treaty or not, and it seems really odd to me that the house would continue to insist that this is a term of reference for the committee. The house wants to present a face to the community that it listens and responds appropriately. We have had two committees under two separate chairmanships that have come back to this house and said that they have put their best endeavours into the implementation of this term of reference and it cannot be done. Under those circumstances I do not see why we would persist in keeping it as a term of reference. If it is there just for decorative purposes, fine, because we certainly cannot implement it. My advice to the Council would be: if it cannot be done, remove it from the standing orders. The whole point of this review of the standing orders was to make them current and to reflect what really happens. For the whole time that the committee has had this term of reference, it has not been able to implement it.

Hon GIZ WATSON: On behalf of the Greens (WA), having listened to the previous three speakers, we certainly support the deletion of this part of the standing orders. It is not that I am unsympathetic with the comments made by the Leader of the House that this is something that could be usefully done and could provide useful information, but if it is not technically possible to do it for various reasons, I think it is more appropriate that the committee does not continue to have to basically say that it cannot fulfil that part of its terms of reference. It is better that it goes.

Hon WENDY DUNCAN: The Nationals have considered this as well and listened to the argument on the floor of the chamber. Although the arguments may be compelling—Hon Adele Farina has indicated that there are three examples of consequential bills for which the Standing Committee on Uniform Legislation and Statutes Review could look into the implications of a treaty—the Nationals are inclined to not support Hon Liz Behjat’s amendment.

Hon ADELE FARINA: In relation to those three occasions, the Standing Committee on Uniform Legislation and Statutes Review ended up inquiring into those bills anyway because they were uniform bills by the very nature that they resulted from a treaty and needed to be implemented right across the nation.

Hon Nick Goiran: It’s only two; one’s not here yet!

Hon ADELE FARINA: Sorry, the member is right—correction, it is two times and one is yet to come. The reality is that the committee got to examine and inquire into the bills anyway. What the proposed standing order requires the committee to do is to also inquire into the treaty, but we have just explained—as the former incarnation of the committee explained—that we cannot get information on a treaty to provide to the house

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because it is confidential. Although I accept that there were two occasions with a third to come, we will get to inquire into the bill anyway. Some weeks 10 or 20 treaties are tabled. The question is: what additional benefit is brought to the house by inquiring into all those treaties in the likelihood that over the course of a year, we might get three or two or one bills resulting from them, and then we actually inquire into that bill anyway? It just makes no sense at all and certainly it is not an efficient use of resources.

Amendment on the amendment put and a division taken with the following result —

Ayes (14)

Hon Liz Behjat
Hon Helen Bullock
Hon Robin Chapple
Hon Kate Doust

Hon Sue Ellery
Hon Adele Farina
Hon Jon Ford
Hon Lynn MacLaren

Hon Ljiljana Ravlich
Hon Linda Savage
Hon Ken Travers
Hon Giz Watson

Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (17)

Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Wendy Duncan
Hon Brian Ellis

Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran
Hon Nigel Hallett
Hon Alyssa Hayden

Hon Col Holt
Hon Robyn McSweeney
Hon Norman Moore
Hon Helen Morton
Hon Simon O'Brien

Hon Max Trenorden
Hon Ken Baston (*Teller*)

Pairs

Hon Sally Talbot
Hon Matt Benson-Lidholm

Hon Phil Edman
Hon Michael Mischin

Amendment on the amendment thus negatived.

Committee interrupted, pursuant to temporary orders.