

Technical amendments

- 3.1 A number of oversights and inconsistencies have come to the attention of the Committee during the course of the 43rd Parliament. The Committee has proposed a range of technical amendments to rectify these issues and enhance the operation of the House. Additionally, the amendments recognise recently developed, but now firmly entrenched, House practice.

Referral of statements by indulgence

- 3.2 The Speaker or Chair may grant a Member indulgence to make a statement on a variety of matters.¹ In the 42nd Parliament it became the practice for further statements by indulgence to be referred to the Federation Chamber when other Members wished to speak on the same matter.² Such statements are at the Speaker's discretion in the House, but there is no provision covering them when continued in the Federation Chamber. They have therefore been treated as debates, even though technically they do not constitute debates.
- 3.3 At present, the standing orders only recognise the referral of bills and motions to the Federation Chamber. The practice of referring statements by indulgence to the Federation Chamber should be recognised and provided for in the standing orders.
- 3.4 Currently there is no time limit specified for these statements so time limits for debates 'not otherwise provided for' are imposed when they continue in the Federation Chamber. A time limit of 10 minutes for

¹ *House of Representatives Practice*, 6th edn, 2012, p. 498.

² *House of Representatives Practice*, 6th edn, 2012, p. 500 (fn 69).

Members wishing to make further statements in the Federation Chamber would be appropriate.

- 3.5 The following recommendations are expressed in general terms for ease of reference. They should be read in conjunction with the draft amendments at Appendix A (pages 28-40).

Recommendation 6

- 3.6 **The Committee recommends that:**

- a) **standing order 183 be amended to provide for the referral of statements by indulgence to the Federation Chamber; and**
- b) **standing order 1 be amended to provide for a time limit of 10 minutes for further statements by indulgence referred to the Federation Chamber.**

(See Appendix A, pages 29 and 36, for detailed proposed amendments.)

Committee and delegation reports

- 3.7 Standing order 39, which provides for announcements concerning inquiries and presentation of committee and delegation reports, contains two anomalies that the Committee wishes to be rectified.
- 3.8 Firstly, there is no provision for the referral of debate on committee and delegation reports to the Federation Chamber. Committee and delegation Members must, therefore, after moving that the House take note of the report presented, seek leave to move a 'take note' motion to the Federation Chamber.
- 3.9 Secondly, the standing order does not distinguish between committee and delegation reports with regard to the reports being made Parliamentary Papers. Committee reports are routinely made Parliamentary Papers when they are tabled whereas delegation reports are not. Whether or not delegation reports are made Parliamentary Papers is a decision for the Publications Committee.
- 3.10 The Committee recommends that these two anomalies be corrected by amending standing order 39 to reflect actual practice.

Recommendation 7

3.11 The Committee recommends that:

- a) standing order 39(d) be amended to provide for the resumption of debate on committee and delegation reports to be referred to the Federation Chamber; and
- b) standing order 39(e) be amended to clarify that committee reports (not delegation reports) shall be made Parliamentary Papers on presentation.

(See Appendix A, page 31, for detailed proposed amendments.)

Referral of bills to committees

3.12 Similarly the Committee has identified two anomalies in standing order 143.

3.13 The first is an unintended consequence of the changes to the standing order implemented at the beginning of the 43rd Parliament. Previously standing order 143 provided for a bill to be referred by the House to a standing or select committee for an advisory report.³ This was changed in the 43rd Parliament to accommodate the expanded role of the Selection Committee in referring bills to committees.⁴

3.14 This change inadvertently removed from standing order 143 the provision for a bill to be referred to a committee by a motion moved in the House, although provision for this still exists under standing order 215(b). The Committee wishes the provision to be restored to standing order 143 to provide consistency and clarity.

3.15 The second discrepancy has become manifest with the practical implementation of the bills referral provisions in standing order 143 during the 43rd Parliament. Committees have developed the practice – from time to time – of making a statement to discharge their obligation to provide an advisory report.⁵ This circumvents the necessity to provide a full report when a Committee determines that the bill is uncontroversial or

3 Standing order 143(b), 1 December 2008.

4 Standing order 143(b), 20 October 2010. See also standing order 222, 20 October 2010.

5 Standing Committee on Procedure, *Interim Report No. 3: Monitoring and review of procedural changes implemented in the 43rd Parliament*, February 2012, p. 15.

that to undertake an inquiry would be an unnecessary duplication of work by other committees.⁶

- 3.16 The Committee believes that this practice should be formalised in the standing orders.
- 3.17 Also, as the practice has evolved independently of the standing orders, there is no obligation for a Committee making a statement to discharge to present the minutes of the Committee's proceedings. (This is a requirement for the presentation of a Committee report under standing order 247(a).) In the interests of openness and transparency, standing order 143 should be amended to require that the minutes of the Committee's deliberations are presented with the statement to discharge the Committee's obligation to report.

Recommendation 8

3.18 **The Committee recommends that standing order 143 be amended to:**

- a) restore there the provision for the referral of bills to committees by a motion moved in the House; and**
- b) provide for statements discharging the requirement to provide an advisory report when a committee finds no issue to report on and to require that the relevant minutes of proceedings be presented with the discharge statement.**

(See appendix A, page 34, for detailed proposed amendments.)

- 3.19 On a related issue, the Committee has identified an unnecessary provision: standing order 227. This provides for House Members of joint committees to be a committee for the purpose of considering bills referred by the House. In practice, this standing order has never been used.
- 3.20 Essentially, standing order 227 has been superseded in the current Parliament as the Selection Committee is authorised to refer bills to both House and joint committees for consideration and report.⁷

6 Standing Committee of Procedure, *Monitoring and review of procedural changes implemented in the 43rd Parliament: 4th Report*, November 2012, pp. 45-46.

7 Standing order 222(a)(iii), 20 October 2010.

Recommendation 9

- 3.21 **The Committee recommends that standing order 227 be deleted.**
(See Appendix A, page 40, for detailed proposed amendment.)

Committee audio and video links

- 3.22 The use of technology is transforming the ways in which committee inquiries are conducted. There is an ongoing need to update the standing orders to accommodate emerging practice.
- 3.23 The Committee perceives such a need in regard to the use of audio and video links. Currently, House committees need to resolve to conduct proceedings using audio or audio visual links with committee members or witnesses (standing order 235(b)). This reflects the experimental nature of the technology when the relevant standing order was drafted. However, the use of such technology is now routine and unremarkable. The need for such a resolution should be removed from standing order 235 to reflect current practice.

Recommendation 10

- 3.24 **The Committee recommends that standing order 235 be amended to remove the need for a committee to resolve to use audio visual links.**
(See Appendix A, page 40, for detailed proposed amendments.)

Six month amendments

- 3.25 Another anachronism, this time with regard to language use, has been identified by the Committee in standing orders 146 and 155. Standing order 146 has been designed to enable the disposal of a bill at the second reading stage and standing order 155 to enable the disposal of a bill at the third reading stage.
- 3.26 For example, standing order 146 states:
An amendment may be moved to the question –
That this bill be now read a second time –

By omitting 'now' and adding 'this day six months', which, if carried shall finally dispose of the bill.

- 3.27 Standing order 155 makes the same provision to dispose of a bill at the third reading stage. *House of Representatives Practice* notes that, in effect, if carried such an amendment is the equivalent of the House resolving, 'That this bill be not read a second (or third) time'.⁸
- 3.28 The practice of moving the '6 month amendment' derives from the United Kingdom (UK) House of Commons. Originally in the House of Commons the postponing of a bill for 6 months presupposed that the end of the parliamentary session would arrive within the six months and the bill would therefore lapse. This procedure has been regarded as obsolete by the House of Commons for many years.⁹
- 3.29 With regard to Australian practice, *House of Representatives Practice* notes:
It is now so long since this procedure has been used that it could, especially in its current wording, perhaps be regarded as obsolete.¹⁰
- 3.30 The Committee recommends that the wording of standing orders 146 and 155 be amended to ensure that each is self-explanatory and easily understood. The proposed clarification would not alter the effect of the provisions.

Recommendation 11

- 3.31 **The Committee recommends that standing orders 146 and 155 be amended to remove the unnecessary wording and state clearly that 'the bill be not read a second/third time'.**

(See Appendix A, page 35, for detailed proposed amendments.)

Authority of the Chair and Senators

- 3.32 Standing order 257(c) has also become inadequate in meeting the present needs of House practice. It provides for the admission of Senators to the

⁸ *House of Representatives Practice*, 6th edn, pp. 371-72 (fn 201) and 384(fn 335).

⁹ Sir William McKay, ed., *Erskine May's Treatise on the Law, Privileges, Proceedings and Usage of Parliament*, 23rd edn, LexisNexis UK, London, 2004, p. 583 (fn 7). (Note: The practice has been omitted from the current 24th edition, published in 2012.)

¹⁰ *House of Representatives Practice*, 6th edn, p. 372.

Chamber and obliges Senators to follow the Speaker's instructions regarding good order while in the Senators' gallery:

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(c) Senators shall have the privilege of being admitted into the Senators' gallery without invitation, but they must observe the Speaker's instructions regarding good order.

- 3.33 In reality Senators may also be present in the Distinguished Visitors' Gallery or, by invitation, on the floor of the House. The standing order does not cover either of these situations. To circumvent this deficiency and ensure that there is no misunderstanding regarding the authority of the Speaker when Senators are present in the Chamber, a separate provision has been included in recent resolutions of the House covering occasions when Senators are invited to attend the House. For example, the resolution to invite the Prime Minister of New Zealand to address the House in June 2011 included the provision (in bold for ease of reference) to extend the power of standing order 257(c):

Mr Albanese (Leader of the House), by leave, moved – That:

- (1) the House invite the Rt Hon John Key, Prime Minister of New Zealand, to attend and address the House on Monday, 20 June 2011, at 2.30p.m.;
- (2) unless otherwise ordered, at the sitting of the House on Monday, 20 June 2011:
 - a) the sitting commence at approximately 2.30p.m. when the proceedings shall be welcoming remarks by the Prime Minister and the Leader of the Opposition and an address by the Prime Minister of New Zealand, ... and
 - b) **the provisions of standing order 257(c) shall apply to the area of Members' seats as well as the galleries;**
- (3) a message be sent to the Senate inviting Senators to attend the House as guests for the welcoming remarks by the Prime Minister and the Leader of the Opposition and address by the Rt Hon John Key, Prime Minister of New Zealand...¹¹

- 3.34 Standing order 257(c) should make clear that when Senators are present anywhere in the Chamber or galleries, they must observe the Speaker's instructions regarding good order. This flows from a desire for clarity about the authority of the Speaker regarding the attendance by Senators

11 Votes and Proceedings No. 46, 14 June 2011, 620.

whether in the galleries or on the floor of the House, rather than any apprehension about good order not being maintained.

Recommendation 12

- 3.35 **The Committee recommends that standing order 257(c) be amended to state that Senators must observe the Speaker's instructions regarding good order wherever they are in the Chamber or galleries.**

(See Appendix A, page 40, for detailed proposed amendments.)

Federation Chamber timetable format

- 3.36 The Federation Chamber¹² was established in 1994 as an additional chamber of the House to assist in handling the House's increasing workload and allow more time for debate.¹³ While business is carried on concurrently in both Chambers, business in the House takes precedence over business being conducted in the Federation Chamber. Therefore, although an order of business for the Federation Chamber is provided in the standing orders, this order of business is only indicative, not prescriptive.
- 3.37 The presentation of Figure 4 in standing order 192 could be slightly amended to better reflect the indicative nature of the order of business for the Federation Chamber.

Recommendation 13

- 3.38 **The Committee recommends that the presentation of Figure 4 in standing order 192 be amended to clarify the indicative nature of the order of business for the Federation Chamber.**

(See Appendix A, page 37, for detailed proposed amendments.)

12 The Federation Chamber was originally known as the Main Committee. It was renamed the Federation Chamber in 2012. (Votes and Proceedings No. 85, 8 February 2012, 1177-1179.)

13 *House of Representatives Practice*, 6th edn, p. 113.

Minor corrections of inconsistencies

- 3.39 The Committee has identified two further minor inconsistencies in standing order 1 and standing order 198 that invite amendment.
- 3.40 Standing order 39 provides for Chairs and Deputy Chairs of committees to make announcements concerning inquiries and uses the phrase 'relating to an inquiry'. The correlating section of standing order 1 setting speaking times uses the phrase '(A)nnouncements of inquiries'. Standing order 1 requires a slight alteration in the wording to make it consistent with the wording in standing order 39 and clarify that such announcements may cover a range of matters relating to an inquiry, not just the announcement of an inquiry.

Recommendation 14

- 3.41 **The Committee recommends that standing order 1 be amended to remove the inconsistency in wording with standing order 39.**
(See Appendix A, page 29, for detailed proposed amendment.)
- 3.42 Similarly, the heading of standing order 198 'Report of bill to the House' should read 'Report to the House' as the standing order covers all reports from the Federation Chamber, not just reports on bills.

Recommendation 15

- 3.43 **The Committee recommends that the heading of standing order 198 be amended to read 'Report to the House'.**
(See Appendix A, page 38, for detailed proposed amendment.)

