

18 July 2017

Mr Tony Pasin MP  
Chair  
Standing Committee on Procedure  
House of Representatives  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

via email: [procedure.committee.reps@aph.gov.au](mailto:procedure.committee.reps@aph.gov.au)

Dear Mr Pasin

A handwritten signature in black ink that reads 'Tony'.

I refer to your letter dated 22 June 2017 inviting a submission from the New South Wales Legislative Council to the House of Representatives Standing Committee on Procedure's inquiry concerning provisions relating to disorder.

The most significant recent developments in the Council's provisions relating to disorder occurred in 2004 when the procedure for removing a member by order of the Chair was expanded and the procedure for suspending a member by resolution of the House was streamlined. Removal by order of the Chair is not infrequent but the new suspension procedure has yet to be applied. The most notable difference with respect to the procedures in the House of Representatives is that the period of exclusion either by the Chair or the House is not fixed in the Council but is determined by the Chair or the House subject to the parameters of the House's powers. In other respects the Council's procedures are similar to those in the House of Representatives.

A summary of the development and operation of the Council's provisions is provided below. The provisions are set out in full in the Appendix.

### **Use of certain names, offensive words, reflections**

The Council's standing orders governing the use of names, offensive words and reflections (SOs 91(2) and (3)) largely reflect those in the House of Representatives, although certain matters which are codified in the federal House are left to practice in the Council.<sup>1</sup> The most recent substantive change in relation to these provisions occurred in 2004 when the word 'irreverently' was replaced by 'disrespectfully' in the prohibition concerning references to the Queen or the Governor (SO 91(2)). The Council provisions also include a prohibition on reflecting on resolutions or votes of the House (SO 91(1)) which is however rarely applied.

<sup>1</sup> The rule prohibiting disrespectful references to the Queen and the Governor (SO 91(2)) in practice also extends to the Governor-General. Reflections on members of the judiciary and other Parliaments are considered disorderly by convention and practice though this is not specified in the standing orders.

## **Removal or suspension of members**

As in many other Houses the Council's standing orders provide for a disorderly member to be removed by order of the Chair, or suspended by resolution of the House.

### Removal by order of the Chair

Before 2004 the standing orders provided that a member who had been called to order three times in one sitting could be removed by order of the President or the Chairman of Committees. In 2004 this procedure was extended to include a member who acts in a grossly disorderly manner (SO 192). The period of the member's exclusion is decided by the President or the Chair in each case but may not extend beyond the end of the sitting. In practice members have been removed by order of the Chair during debate on a motion until 1.00 pm, during debate on the motion for the adjournment until the conclusion of the sitting, and during question time until the end of question time and until the end of the sitting.

According to a recent ruling by the President, if a member is removed during debate the member may not continue speaking after the period of exclusion has expired but may seek to make an additional contribution by leave or make a contribution if an amendment is moved before the debate concludes.

### Suspension by resolution of the House

A disorderly member who is named by the President may be suspended by the House by motion without notice after having an opportunity to make an explanation or apology (SO 190). The adoption of this procedure in 2004 altered the previous method for suspending a disorderly member by omitting a former requirement for the member to be found guilty of contempt before being suspended, removing any right to debate or amend the suspension motion, formalising the requirement for the member to be warned by the President before being named, and providing for the member to withdraw if required by the Chair.

A member may be suspended for any period of time the House decides, and any suspension may have effect until the House terminates the suspension, the submission of an apology by the offending member, or both (SO 191). As the Council does not have comprehensive punitive powers, any suspension and attached conditions should not exceed what is necessary to protect the functions of the House.<sup>2</sup> There are no recent precedents which illustrate the terms of suspension which may be imposed. However, under the former standing orders, disorderly members were suspended for 24 hours, the remainder of the sitting, and the remainder of the session (15 sitting days).<sup>3</sup> There were also cases in which a member was suspended for reasons other than disorder for various periods.<sup>4</sup>

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<sup>2</sup> When disciplining members the Council relies on its inherent powers as defined by the common law principle of reasonable necessity as there is no House of Commons equivalency in New South Wales.

<sup>3</sup> In the latter case the member had a lengthy history of defying the authority of the Chair which had already resulted in a previous suspension and repeated instances of removal by order of the Chair.

<sup>4</sup> In the 1990's the Treasurer was suspended for failing to table documents on three occasions, for the remainder of the sitting, five sitting days or until he complied, and the remainder of the session or until he complied. In 1998 the Council required a member to apologise for and withdraw imputations she had



A suspended member is excluded from the chamber and galleries, and may not serve on or attend any proceedings of a committee of the House during the period of suspension (SO 191(3)) but may access their office and other resources at Parliament House. Before the adoption of this provision in 2004 the standing orders specified that a member who was suspended was excluded from 'the House and all the rooms set apart for the use of members'. That phrase came into contention in 1996 when the Treasurer having been suspended for failing to table certain documents was escorted from the parliamentary precincts to the footpath of Macquarie Street. Subsequently the New South Wales Court of Appeal held that the standing order did not justify the exclusion of a member from more than the chamber and rooms set apart for the use of members and that the removal of the minister as far as the footpath amounted to an unlawful trespass to the person.

### **Grave disorder**

Provision for the suspension or adjournment of the House in cases of serious disorder was first adopted by the Council in 2004 (SO 193). Before then there was no standing order on the subject and the practice of the House of Commons was followed. In the case of grave disorder in committee of the whole the Chair of Committees reports the matter to the House (SO 173(7)), or the President resumes the Chair without any question put (SO 175(4)), and the President may suspend the sitting or adjourn the House (SO 193).

### **Removal of visitors**

Before the adoption of the current standing orders there was provision for the Usher of the Black Rod to remove a stranger by order of the President. SO 196(5) now also explicitly recognises that in some circumstances the Usher of the Black Rod may need to act immediately to remove a person who enters the chamber, subject of course to any direction by the President.

The new standing orders adopted in 2004 omitted an earlier provision which permitted the President to order the withdrawal of strangers 'whenever he thinks fit'.

### **Conclusion**


The Legislative Council's provisions relating to disorder have remained relatively constant over the years although a number of changes were implemented in 2004 when a new set of standing orders was adopted. While proceedings for disorder are rare, to the extent that the new procedures have been applied, they appear to be working well.

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made in the House within five sitting days and stipulated that if she failed to comply she would be suspended until she did. The House later accepted a statement of regret instead.

Should you require any further information in relation to the Council's procedures please do not hesitate to contact the Clerk of the Parliaments, David Blunt, on \_\_\_\_\_ or the Clerk Assistant - Procedure, Stephen Frappell, on \_\_\_\_\_

Yours sincerely

 **The Honourable John Ajaka MLC**  
President

**APPENDIX**

**Legislative Council Standing Orders on disorder**

**91. Rules of debate**

- (1) A member may not reflect on any resolution or vote of the House, unless moving for its rescission.
- (2) A member may not refer to the Queen or the Governor disrespectfully in debate, or for the purposes of influencing the House in its deliberations.
- (3) A member may not use offensive words against either House of the Legislature, or any member of either House, and all imputations of improper motives and all personal reflections on either House, members or officers will be considered disorderly.

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**190. Disorderly conduct by members**

- (1) If a member, after warning by the President:
  - (a) continues to obstruct the business of the House, or
  - (b) continues to abuse the rules of the House, or
  - (c) refuses to comply with an order of the Chair, or
  - (d) refuses to comply with the standing orders, or
  - (e) continues to disregard the authority of the Chair, or
  - (f) otherwise obstructs the orderly conduct of business of the House,

the President may name the member and report the member's offence to the House.

- (2) If an offence indicated in paragraph (1) is committed by a member in committee of the whole, the Chair is to suspend the proceedings of the committee and report the offence to the President.
- (3) A member who has been reported as having committed an offence may make an explanation or apology, as the member thinks fit, and then, if required by the Chair, withdraw from the Chamber. A motion may then be moved without notice that the member be suspended from the service of the House. No debate or amendment is allowed on the motion, which must be put immediately by the President.

**191. Suspension of member**

- (1) A member found guilty of an offence under the standing orders may be suspended from the service of the House by motion moved without notice for any period of time that the House decides.
- (2) Any suspension may have effect:
  - (a) until the House terminates the suspension,
  - (b) until the submission of an apology by the offending member, or



- (c) both of the above.
- (3) A member who is suspended from the service of the House is excluded from the chamber and galleries, and may not serve on or attend any proceedings of a committee of the House during the period of suspension. If a member enters the chamber during the member's suspension, the President will order the Usher of the Black Rod to remove the member from the chamber.

**192. Member called to order**

If the President or Chair of Committees calls a member to order three times in the course of any one sitting for any breach of the standing orders, or a member conducts themselves in a grossly disorderly manner, that member may, by order of the President or Chair of Committees, be removed from the chamber by the Usher of the Black Rod for a period of time as the President or Chair may decide but not beyond the termination of the sitting.

**193. President may suspend sitting or adjourn House**

In cases of serious disorder in the House or in committee of the whole House, the President may suspend the sitting of the House for a time to be stated or adjourn the House until the next sitting day without any motion.

**194. Powers of House not affected**

Nothing in this chapter affects any power of the House to proceed against any member for any conduct unworthy of a member of the House.

**195. Distinguished visitors**

Distinguished visitors may be admitted to a seat on the floor of the House, by motion without notice.

**196. Conduct of visitors**

- (1) Visitors may attend in the galleries during a sitting of the Legislative Council, unless otherwise ordered by the House.
- (2) The President only may admit visitors to the seating in the gallery on either side of the President's Chair.
- (3) No person other than a member, a Clerk-at-the-Table or an officer attending on the House may enter any part of the chamber reserved for members, while the House is sitting.
- (4) Paragraph (3) does not apply in respect of a member breastfeeding an infant.
- (5) The Usher of the Black Rod, subject to any direction by the President, is to remove any person who enters any part of the chamber reserved for members while the House is sitting, or causes a disturbance in or near the chamber.

**197. Removal of strangers for disorderly conduct**

If a person, not being a member:

- (a) interrupts the orderly conduct of the business of the House,
- (b) obstructs the approaches to the House, or
- (c) creates a disturbance within the precincts of the House,

the President or Chair of Committees may order the Usher of the Black Rod to remove that person from the precincts of the House and to exclude them from the House for the period directed by the President or Chair.