

Issues

- 2.1 In assessing the events of 10 October 2006 the committee found it helpful to examine the nature and purpose of motions to suspend standing and sessional orders, and contrast this with the nature and purpose of censure motions. It also examined a number of previous suspension motions¹ and compared them with the motion moved by the Minister for Employment and Workplace Relations on 10 October.
- 2.2 The committee then considered a number of issues. While the House supported the Speaker's ruling that the original motion was in order, the question remains as to whether this is, on reflection, a desirable precedent. Such combined motions may be very practical in terms of ordinary machinery matters, but should their use be extended into matters as serious as condemnation of private Members?
- 2.3 The committee also considered whether all combined motions should be prohibited (that is, should there be a requirement for all suspension motions to deal only with the suspension, with a second motion then to be moved seeking specific agreement to the purpose for which standing orders have been suspended?) Alternatively should some special protection be built into the standing orders to prevent censure, condemnation or expression of a view of the actions

1 The Clerk's submission (p. 2) referred to a number of examples of recent motions to suspend standing and sessional orders. These were motions by the Member for Corio (8 December 2005; 6 (x2), 12 and 13 September 2006); the Member for Hunter (10 and 17 August 2006); the Member for Lilley (8 December 2005); the Member for Calare (30 May and 20 June 2006); and the Member for Griffith (8 December 2005).

of a private Member being done other than by means of a separate, substantive motion?

- 2.4 Finally the committee considered whether standing orders should be revised to more strictly enforce the directive that debate on a motion, moved without notice, to suspend standing orders, should only focus on the suspension rather than the purpose.

The use of motions to suspend standing and sessional orders

- 2.5 Proceedings in the House are governed by the standing orders and precedent. At times there is a need to vary the practice as set out in the standing orders. This can be done by a motion moved by leave or on notice. It can also be moved without notice 'in cases of necessity'.²

- 2.6 Standing order 47 governs motions for the suspension of standing orders. It specifies that if moved without notice, the motion must be relevant to any business under discussion, and must be carried by an absolute majority of Members. Part (d) states that 'any suspension of orders shall be limited to the particular purpose of the suspension'.

- 2.7 Time limits for suspension motions moved without notice are:

25 minutes for total debate, with

- first speaker on each side 10 minutes;
- seconder and other speakers 5 minutes.

- 2.8 *House of Representatives Practice* notes that:

A Member debating a motion to suspend standing orders may not dwell on the subject matter which is the object of the suspension. The Chair has consistently ruled that Members may not use debate on a motion to suspend standing orders as a means of putting before the House, or canvassing, matters outside the question as to whether or not standing orders should be suspended. **This rule is, however, not always strictly enforced.** (*emphasis added*)³

2 *House of Representatives Practice* (5th edition), p. 330.

3 *House of Representatives Practice* (5th edition), p. 333.

- 2.9 Recent practice demonstrates that the debate often extends into the substantive matter which is the object of the suspension motion, with some latitude generally being shown.

Censure motions

- 2.10 Censure or no confidence motions are more usually moved against a Government and their significance is recognised in such motions (if accepted by a Minister) taking precedence over all other business until disposed of. Motions of censure or no confidence in an individual Minister may also be moved, but are treated differently in terms of precedence and speaking times.
- 2.11 Standing order 48 refers to a motion of censure of or no confidence in the Government. Where accepted by the Government under standing order 48, the mover is allocated 30 minutes, the Prime Minister or his appointee also 30 minutes, with any other Member 20 minutes. There is no time limit for the whole debate. However, informal agreement is usually reached on the number of speakers in support and against the motion.
- 2.12 Where a censure motion is not accepted under standing order 48, or relates to censure of a Minister or a private Member, it is considered a motion 'not otherwise provided for', where the mover is allocated 20 minutes; and all other Members 15 minutes. Again, there is no time limit set for the whole debate, but informal agreement is usually reached on the length of the debate.
- 2.13 It has been the practice for the Opposition to move a motion to suspend standing orders to allow for a censure motion to be moved. On many occasions the Government agrees to the suspension motion, i.e. accepts the motion of censure, and debate then proceeds on the substance of the censure motion.⁴ In such cases, what is debated is the proposition that a particular Minister or Member should be censured or condemned, and the case is made in debate both for and against such a proposition.

4 This most recently occurred in the House on 16 and 31 October and 28 November 2006 where on each occasion the government granted leave for the Leader of the Opposition to move the censure motion, thus avoiding a debate on a motion to suspend standing and sessional orders to allow him to do so.

2.14 This is in line with the preferred approach expressed by the Clerk in his submission, namely:

- Member to seek leave to move [motion] of censure, condemnation etc. If leave granted, proceed with motion.
- If leave not granted, Member to move suspension of standing orders to enable motion of censure, condemnation etc to be moved.
- If suspension of standing orders agreed to, Member to move substantive motion (otherwise, 25 minute limit of total debate applies).⁵

2.15 The committee notes that censure motions against private Members and indeed the Opposition have no substantive effect. As *House of Representatives Practice* states:

A motion in the form of a censure of a Member ... not being a member of the Executive Government, is not consistent with the parliamentary convention that the traditional purpose of a vote of censure is to question or bring to account a Minister's responsibility to the House. Furthermore, given the relative strength of the parties in the House, and the strength of party loyalties, in ordinary circumstances it could be expected that a motion or amendment expressing censure of an opposition leader or another opposition Member would be agreed to, perhaps regardless of the circumstances or the merits of the arguments or allegations. It is acknowledged, however, that ultimately the House may hold any Member accountable for his or her actions.⁶

2.16 There have only been two examples of motions of censure of private Members (other than against Leaders of the Opposition) being agreed to. One was for misleading the House; the other for making 'economically subversive public statements'.⁷

2.17 There have been examples of censure motions against Ministers being amended to express censure of a private Member. *House of Representatives Practice* indicates that these may be considered 'bad precedents and undesirable'.⁸ The committee concurs with this view.

5 Mr I C Harris, *Submission No. 3*, p. 3.

6 *House of Representatives Practice* (5th edition), p. 322.

7 *House of Representatives Practice* (5th edition), p. 321.

8 *House of Representatives Practice* (5th edition), p. 322.

Comment

- 2.18 It is clear from the above that the two types of motions are designed for quite specific and distinct purposes: one to facilitate action in the House otherwise prevented by a standing or sessional order; the other to hold the Government (or an individual) accountable to the House for their actions. The hybrid motion of 10 October conflated the purposes, and in so doing, caused considerable confusion among Members and an undesirable change to long-standing House practice.

Was this motion the same as other combined motions?

- 2.19 In his submission on this matter the Clerk observed that:

It is reasonably frequent for a motion to be moved that seeks to suspend standing and sessional orders for a purpose contained within the same motion. ... (T)hese are mainly for procedural or machinery purposes. Motions of this kind have been moved:

- To vary the time for the commencement of question time;
- To put in place a special routine of business for a special day;
- To outline the arrangements for the consideration of Bills;
- To enable an Opposition Member to speak for an equal period of time as a Minister.⁹

- 2.20 The committee notes that these are largely 'housekeeping' motions, dealing with the mechanics of the House and how it proposes to deal with its business. The committee has no difficulty with such motions and does not see a need for splitting such motions into a suspension motion and then a second motion setting out the purpose for which the suspension of standing orders has just been granted.

- 2.21 The Clerk's submission went on to note that it has invariably been the practice of the Leader of the Opposition and Manager of Opposition Business to 'seek to move a motion to suspend standing and sessional orders in order to move a second, substantive motion'. The Clerk noted that this practice was, with one refinement, 'the technically sound, procedurally correct way to proceed in circumstances such as a motion ... challenging or questioning the behaviour or conduct of a

9 Mr I C Harris, *Submission No. 3*, p. 1.

Member, including a Minister or the Ministry'.¹⁰ However, the submission also indicated that many recent Opposition motions to suspend standing and sessional orders have not followed this procedure, and gave a number of examples where motions were moved to suspend standing and sessional orders to require or enable, as part of that same motion, a Minister to come into the House and make explanations or perform certain actions.

2.22 While this distinction may be seen as splitting hairs, the committee agrees with the view that the procedurally correct way of proposing such motions is that followed by the Leader of the Opposition and Manager of Opposition Business, using the formula "That so much of the standing and sessional orders be suspended as would prevent (*person*) from moving immediately: That this House (*substance of motion*)....." and would encourage Opposition Members to use that formula in future suspension motions.

2.23 However, the committee does see a qualitative difference between those motions and the motion of 10 October. It can be argued that the combined motions moved by the Opposition largely sought information from the relevant Minister, explanation or in some cases an apology for certain action taken, but fell short of an explicit condemnation of their actions. Such motions could be seen as preliminary to a possible censure motion at a later time, or if passed, would have required further parliamentary action, for example the Minister coming into the House to explain or respond. The following two such motions illustrate their nature:

Mr Fitzgibbon moved—That so much of the standing and sessional orders be suspended as would prevent:

(1) the Treasurer coming in to the House to explain why he is prepared to extend a tax break to James Hardie, but not to the Asbestos Injuries Compensation Fund;

(2) the Treasurer explaining to the House why he will not ensure that payments by James Hardie to the fund will remain tax exempt in the hands of the fund, removing a tax liability to the fund of \$630m which will undermine the whole arrangement, and why he will not ensure that the \$160m tax liability on the earnings of the fund can be eliminated to guarantee that the victims and their dependants are properly provided for; and

(3) the Member for Hunter moving that order of the day No. 8, government business, on today's Notice Paper be brought on for debate forthwith to allow the Opposition to move its amendments to ensure that the Asbestos Injuries Compensation Fund is tax exempt.¹¹

And

10 Mr I C Harris, *Submission No. 3*, p. 2.

11 *Votes and Proceedings* No. 118, 17 August 2006, p. 1337.

Mr G. M. O'Connor moved—That so much of the standing and sessional orders be suspended as would prevent the Minister for Agriculture, Fisheries and Forestry from being required to:

- (1) confirm to this House that Australian fruit and vegetable growers suffer under a tyranny of poor transparency, accountability and market returns;
- (2) explain to this House the policy basis on which the Government made this solemn promise to Australia's fruit and vegetable growers that it would introduce a mandatory code of conduct within 100 days of the election;
- (3) confirm that even though the Government made this promise to growers it had no intention of delivering in full on its commitment;
- (4) explain to this House why he has chosen to break that clear promise to fruit and vegetable growers; and
- (5) apologise to all fruit and vegetable growers for this clear and serious breach of trust.¹²

- 2.24 In none of the cases cited in the Clerk's submission is the House asked to judge the action of the subject of the suspension motion in the same terms as that of the 10 October motion – in no case was a motion of condemnation proposed or passed.
- 2.25 As the Clerk noted in his submission, the combined motions moved by the Opposition are in effect 'a tactical measure to enable the motion to be moved and the substantive purpose of the motion debated without notice and without leave'.¹³ The committee notes that the use of a combined motion permits the Opposition to place on the record the substance of their concerns, in anticipation of debate on the motion being closed (as is invariably the case in recent times). This has led to long and detailed motions, the desirability of which is a matter for consideration at another time. However, should the procedurally correct formula be used it would still permit the Opposition to make its point, and foreshadow a second distinct motion should the suspension be agreed. In examples such as those above, a simple change of words would be sufficient to make the motions 'technically sound, procedurally correct'.
- 2.26 However, the committee does not believe the standing orders should be amended to specify the form that should be used by Members, or a particular group of Members such as the Opposition, when moving a motion to suspend standing and sessional orders. Precedent should be sufficient to ensure that the motions are procedurally correct, and if in doubt, the advice of the Clerk should be sought.

¹² *Votes and Proceedings* No. 121, 6 September 2006, p. 1363.

¹³ Mr I C Harris, *Submission No. 3*, p. 2.

A censure motion by another means?

- 2.27 As noted above, although there has been a practice of moving suspension motions incorporating the purpose, they have been primarily for matters dealing with the conduct of House business, not with matters as serious as condemnation of an individual Member. The House has many years of practice and precedent to draw on when examining how reflections on the behaviour of its Members are handled.
- 2.28 *House of Representatives Practice* notes that one of our traditional parliamentary rules 'is the practice that a charge against a Member should only be made by means of a substantive motion which admits of a distinct vote of the House'.¹⁴ The principle is 'that charges of a personal character should be raised by way of substantive and direct motion'.¹⁵
- 2.29 The committee notes that two standing orders are relevant in this context also:
- 90 Reflections on Members**
- All imputations of improper motives to a Member and all personal reflections on other Members shall be considered highly disorderly.
- And
- 100 (c) (i)**
- [Q]uestions must not reflect on or be critical of the character or conduct of a Member....: their conduct may only be challenged on a substantive motion.
- 2.30 As noted earlier, the standing orders already contain a mechanism for expressing a censure of or no confidence in the Government (standing order 48). It appears to the committee that the 10 October suspension motion was an attempt to move a censure motion of a private Member by stealth. It was also not clear to the committee what purpose the motion sought to achieve, other than place on the record an expression of condemnation for action (unspecified in the

14 *House of Representatives Practice* (5th edition), p. 186.

15 *House of Representatives Practice* (5th edition), p. 322.

motion) by the particular Member. As the Second Deputy Speaker noted during the adjournment debate on 10 October 2006:

[*House of Representatives Practice* indicates that] ‘... charges of a personal character should be raised by way of substantive and direct motions’. In this case, there was no direct motion, there was no substantive motion; there was only the suspension of standing orders.

... If they [the government] had set out to achieve what they thought they were achieving, there are proper processes of this place, but those processes were ignored. They believe that they achieved the outcome that they wanted, but they did not, because it required that a substantive motion be moved, and it was not moved.¹⁶

2.31 The Deputy Speaker, in a submission to the inquiry, commented that:

I believe this issue falls in the same category as a member attempting to condemn another member where the Chair will rule that there must be a substantive motion. This [is] to protect members and allow them a right of reply. I therefore believe that the matter in question should be dealt with in the same manner.

The first issue should be to prove the need to suspend standing orders. The reasons can be stated but not debated. If the Parliament agrees to suspend standing orders then the substantive debate can proceed...¹⁷

Did this combined motion allow for a distinct vote?

2.32 A significant concern about the events of 10 October was the belief that criticism of a Member by the House should be made by way of a substantive motion.¹⁸ The standing orders define a substantive motion as ‘a self-contained proposal, drafted in a form capable of expressing a decision or opinion of the House’.¹⁹

2.33 The committee is concerned that combined motions such as that moved on 10 October restrict Members in how they might choose to vote. This point was made in a submission from Mr Bob McMullan

16 Mr H Jenkins, MP, House of Representatives *Hansard*, 10 October 2006, p. 98.

17 Hon I Causley, MP, *Submission No. 2*, p. 1.

18 See, for example, Ms J Gillard MP, *Submission No. 4*, p. 1.

19 Standing order 2, Definitions and application.

MP, who noted that ‘it denies members the right to vote FOR the procedural motion to allow the debate to proceed BUT against the substantive motion’.²⁰

- 2.34 While it is true that most Members will vote along party lines, there are also independent Members of the House. Their votes at present do not in and of themselves affect the outcome of any matter put to a formal vote, but this might not always be the case.
- 2.35 In addition, agreement to a suspension motion should not be taken to mean agreement with the purpose of the motion. For example, an Opposition might seek to suspend standing and sessional orders to move a censure motion against the Government. The Government may (and often does) agree to the suspension to allow for debate to focus on the issues surrounding the censure. The action of the Government in agreeing to the suspension is obviously not the same as them supporting the premise of the censure. Combined motions prevent all Members from exercising a similar judgement – agreeing to the need to deal with something as a matter of urgency; but then reserving their right to assess the arguments.
- 2.36 The submission from the Clerk also noted:
- Where a government indicates that it will accept a motion of censure, condemnation, leave etc, it is frequently taken to have been moved by leave. Such motions attract longer time limits for individual speeches and are unlimited by the standing orders in terms of overall time. They permit the House to make a clear decision at the end of the debate on the substantive matter alone, not the substantive matter and a procedural motion.²¹
- 2.37 The committee believes it is a core traditional practice to allow for all Members to vote on criticism of a Member separately and distinctly from any associated procedural motions.

Debating time

- 2.38 As noted earlier, the time allocated for a motion to suspend standing and sessional orders, moved without notice, is 25 minutes in total, with the first two speakers allocated up to 10 minutes each, and other remaining Members 5 minutes each. It is common for closure

20 Mr Bob McMullan MP, *Submission No. 1*, p. 2.

21 Mr I C Harris, *Submission No. 3*, p. 3.

motions to be moved on Opposition Members seeking to move or second such motions, with little time actually spent debating the motion itself.

- 2.39 By contrast, motions of censure of, or no confidence in, the Government, when accepted by the Government under standing order 48, have no set maximum time for debate; the mover and the Prime Minister or Minister representing the Government each have up to 30 minutes; and any other Member 20 minutes. Where the censure motion is moved against an individual Member (including the Prime Minister) the time allocated is the same as for “Other debates – not otherwise provided for” in the standing orders: no total time set for the debate; mover of the motion is allotted up to 20 minutes; and any other Members 15 minutes.
- 2.40 In the event of censure motions, informal agreement is often reached between the parties on the number of speakers and the time to be allocated to the debate. However, censures invariably last longer than the 25 minutes allocated to a motion to suspend standing and sessional orders. As of 24 November 2006, there have been 8 motions of censure/want of confidence moved so far this parliament, all against specific ministers (including the Prime Minister). Total time for the debates has averaged 1 hour and 7 ½ minutes.
- 2.41 It is apparent from this, that by combining what is in effect a censure motion in the terms of a suspension of standing orders motion, the time available to debate on all sides is much more limited (25 minutes total, as opposed to potentially unlimited, but in practice more than twice as long). Similarly individual speakers are limited in their opportunity to either argue for the censure, or defend themselves or their colleague against the accusations made. While it may suit the Government to restrict the amount of scarce House time on such matters, such motions are serious and should not be managed solely with an eye to the clock.

Nature of the debate

- 2.42 As noted earlier in this report, *House of Representatives Practice* notes that:
- A Member debating a motion to suspend standing orders may not dwell on the subject matter which is the object of the suspension. The Chair has consistently ruled that Members may not use debate on a motion to suspend standing orders

as a means of putting before the House, or canvassing, matters outside the question as to whether or not standing orders should be suspended. **This rule is, however, not always strictly enforced.** (*emphasis added*)²²

- 2.43 In his submission the Clerk commented on this, noting that in the case where the Government did not accept a censure motion and the Opposition was limited to 25 minutes to make its case for suspension:

...that debate was to be relevant to the motion of urgency or necessity to suspend the standing orders. This led to frequent interruption and points of order. However, it was the only opportunity available to an Opposition to make out its case.

In the instance of a combined motion, comments could be made on the substantive case. There have been a number of expressions of opinion that this should be the case.²³

- 2.44 Regardless of the 'expressions of opinion' indicating that debate on a combined suspension motion should be more wide ranging, the committee notes such a blurring of purpose by the use of combined motions makes adjudication by the occupant of the chair additionally complex. While it is true that more recent practice shows debate often extending into the substantive matter which is the object of the suspension motion, variations in latitude make it difficult for Members to determine how far that latitude might extend.
- 2.45 Combined motions make it very difficult to avoid commenting on the substantive matter, and indeed the committee believes total avoidance would be impossible. However, the committee supports the continued application of the principle that debate on a suspension motion should focus closely on the question as to whether or not standing orders should be suspended, rather than any wider issues associated with the purpose of the suspension.

The role of the Speaker

- 2.46 When these events occurred in the chamber there were calls for the Speaker to require that a separate motion be moved, or to rule the motion as proposed out of order.
- 2.47 The committee notes that, from a procedural perspective, the role of the Speaker is to be:
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²² *House of Representatives Practice* (5th edition), p. 333.

²³ Mr I C Harris, *Submission No. 3*, p. 3.

... responsible for ruling whenever any question arises as to the interpretation or application of a standing order and for deciding cases not otherwise provided for. In all cases the Speaker shall have regard to previous rulings of Speakers of the House and to established practices of the House.²⁴

2.48 In his submission the Clerk noted:

... the Chair cannot have regard to the fact that a motion might be expected to be successful or unsuccessful in determining whether a motion is in order, the Chair's task is simply to assess whether the motion being moved is in order, the question of further action as in the case that gave rise to the current inquiry is not the Speaker's responsibility.²⁵

2.49 The committee acknowledges the difficult position the Speaker found himself in on 10 October. The motion was not specifically prohibited under the standing orders and a judgement on its validity had to be made in a highly pressured environment. *House of Representatives Practice* does point out that:

... Speakers are able to give rulings which take account of new factors or considerations. In this way rulings may be given which are inconsistent with previous rulings and interpretations, and which may be made in circumstances which do not allow sufficient opportunity for reflection. Even though such rulings may go unchallenged at the time, it would be incorrect to say that they are binding on future occupants of the Chair.²⁶

2.50 The committee believes that the ruling of the Speaker on 10 October to allow the motion was, with the benefit of hindsight, one such instance where the decision was not in accord with the role of the Speaker as defender of the rights of all Members.

2.51 Once the Speaker had allowed the motion, however, the matter was before the House. Calls for the Speaker to force the moving of a

24 Standing order 3(e). The Speaker has a number of other roles, including upholding the dignity and protecting the rights and privileges of Parliament and its members. As Speaker Snedden observed: 'the Speaker represents, in a very real sense, the right of freedom of speech in the Parliament which was hard won from a monarchical Executive centuries ago. The Parliament must constantly be prepared to maintain its right of ...freedom of speech, without fear or favour'. (Quoted in *House of Representatives Practice*, (5th edition), p. 162.)

25 Mr I C Harris, *Submission No. 3*, p. 2.

26 *House of Representatives Practice* (5th edition), p. 187.

separate motion condemning the Member for Perth were, in contrast, misguided. A suspension of standing and sessional orders is permissive but not necessarily compulsory. Theoretically, agreement to a suspension motion does not compel the necessary subsequent action for which the suspension was sought. Logic would dictate, however, that such a suspension would not be sought usually, and the time of the House wasted, if such action was not contemplated.

Conclusion and recommendation

- 2.52 While it is clear to the committee that the 10 October motion may have been technically within the letter of the standing orders, it has concluded that the combined motion moved on that date sets an undesirable precedent. The committee believes strongly that where the House is being asked to reflect on the conduct of a Member it should be done by way of a separate, substantive motion and not confused with the procedural mechanism for putting the motion before the House.
- 2.53 The committee does not support any change to the current way in which suspensions for machinery purposes are moved. Similarly, motions moved by the Opposition for suspension of standing orders seeking to require action by a Minister or the Government more generally, can still be moved by more careful drafting, using the formula “I move that so much of the standing and sessional orders be suspended as would prevent (*person*) from moving the following motion immediately: That this House (*substance of motion*)”.
- 2.54 Motions clearly seeking a decision of the House on the conduct of any Member should be made by way of a separate, substantive motion, and not combined in a motion to suspend standing and sessional orders. To ensure this, the Committee recommends a change to standing order 47 (Motions for suspension of orders).

Recommendation 1

- 2.55 **The committee recommends that standing order 47 be amended, to insert the following:**
- (e) When a suspension motion has been carried which provides for the alteration of the order of business and related machinery matters, the House’s agreement to the proposed alteration shall be understood,**

without any further motion being necessary.

(f) A suspension motion in itself is not effective as a device for declaring the opinion of the House on a matter, including criticism of the conduct of a Member. The purpose of the suspension motion must be to enable the moving of a motion for such a purpose.

**Margaret May MP
Chair**