



PROCEDURAL DIGEST

Legislative Assembly

FIFTY-SEVENTH PARLIAMENT, FIRST SESSION
NO. 3/2021: 4 – 13 MAY 2021

May 2021				
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This document provides a summary of significant procedural events and precedents in the Legislative Assembly. It is produced at the end of each sitting period. Where applicable the relevant Standing Orders are noted.

CHAMBER

Social distancing

On Tuesday 4 May, following a motion from the Leader of the House, the Hon. Mark Speakman MP, the House agreed to an altered seating plan which allowed all 93 Members to sit in the Chamber and galleries during Question Time. The change in seating arrangements followed an inspection of the Chamber by NSW Health.

In a Statement made before Question Time, the Speaker advised that there was designated seating for each Member and, to minimise risk, Members were not to move unnecessarily about the Chamber and were to moderate their voices. Additionally, measures had been introduced to increase airflow into the Chamber.

However, the expanded seating arrangements were short lived, and on Thursday 6 May, following a number of cases of locally acquired COVID-19 infections, the House agreed to a motion of the Leader of the House providing for Chamber seating to revert to the previous arrangement of 52 Members seated on the floor and in the galleries.

Votes and Proceedings: 4/5/2021, p. 1137 and p. 1138; 6/5/2021, p. 1162.

Hansard (Proof): 4/5/2021, p. 10.

SPEAKER

Deputy Speaker opening the sitting

Due to the absence of the Speaker, on Thursday 13 May the Deputy Speaker, the Hon. Leslie Williams MP, opened the sitting of the Legislative Assembly.

Later, the Deputy Speaker presided over Question Time, a role ordinarily performed by the Speaker.

Votes and Proceedings: 13/5/2021, p. 1181.

Standing Order 15.

Procedural note:

When the Speaker is absent from the Legislative Assembly, but not necessarily absent from the State, Standing Order 15 provides for the Deputy Speaker to perform the duties of the Speaker when the House is sitting.

Section 31A of the [Constitution Act 1902](#) provides for the Deputy Speaker to act as the Speaker when there is a vacancy in the office of the Speaker, the Speaker is absent from the State, or is otherwise unavailable.

BUSINESS

Death of His Royal Highness the Prince Philip, Duke of Edinburgh

On Tuesday 4 May the Speaker reported a letter from the Governor, advising of the death, on 9 April, of His Royal Highness the Duke of Edinburgh. Members and officers stood in their places as a mark of respect.

On Wednesday 5 May the Premier, the Hon. Gladys Berejiklian MP, moved that the House send an Address to Her Majesty the Queen, conveying its condolences on the passing of Prince Philip. The motion was seconded by the Leader of the Opposition, Ms Jodi McKay MP, and 19 Members spoke in support of the motion over the following four sitting days.

Votes and Proceedings: 4/5/2021, pp. 1138-9; 5/5/2021, p. 1153; 6/5/2021, pp. 1159-60; 11/5/2021, p. 1171; 12/5/2021, pp. 1175-6.
Standing Orders 247 and 356.

Lapsing of general business

On Tuesday 4 May the Speaker advised the House that a bill originating in the Legislative Council, the State Insurance and Care Governance Amendment (Employees) Bill 2020, had lapsed. The Speaker subsequently ordered that a message be sent to the Council advising of the lapsing of the bill.

Votes and Proceedings: 4/5/2021, p. 1147.
Sessional Order 105.

Procedural note:

When a Legislative Council private member's bill is received and reported by the Speaker it is placed on the Business Paper as an Order of the Day. Under Sessional Order 105, private members' bills which are not commenced or completed within six months of being placed on the Business Paper will lapse.

The State Insurance and Care Governance Amendment (Employees) Bill 2020 was a private member's bill which had already been passed by the Council, however as the Assembly did not complete consideration of the bill within six months, the bill lapsed.

Condolence motion – Councillor Lilliane Brady OAM

On Tuesday 4 May the Deputy Premier, the Hon. John Barilaro MP, moved a motion of condolence in relation to the death of Councillor Lilliane Brady OAM.

The motion was seconded by the Leader of the Opposition, Ms Jodi McKay MP, and supported by ten other members.

Votes and Proceedings: 4/5/2021, pp. 1147-8.

Standing Order 118(2).

Procedural note:

Condolence motions generally take place to commemorate the death of a sitting Member or prominent former Member. On occasion condolences are also extended to families of significant members of the community. Councillor Brady was NSW's longest ever serving female Mayor and received numerous awards and acknowledgements for her service to the people of NSW. Councillor Brady received a State Funeral on 19 February 2021.

Message from the Legislative Council regarding a referral to the Independent Commission Against Corruption

On Wednesday 5 May the Deputy Speaker reported a message from the Legislative Council proposing a referral to the Independent Commission Against Corruption. The matters for referral related to the Premier and the former Member for Wagga Wagga and matters relating to the Riverina Regional Conservatorium of Music.

The Deputy Speaker ordered that the message be taken into consideration at a later time. Immediately afterwards the Leader of the House, the Hon. Mark Speakman MP, moved that Standing and Sessional Orders be suspended to:

- permit consideration of the message following the conclusion of the Public Interest Debate, and a resolution to disagree to the Council's proposal; and
- provide for up to six speakers (the mover, two Opposition members, one Government member, one Crossbench member in favour of the motion, and one Crossbench member against the motion).

The motion was agreed to on the voices. Later that day Mr James Griffin MP moved a motion for the Assembly to disagree with the Council's proposal and to send a message to the Council regarding the Assembly's decision. Debate ensued and the motion was agreed to on division.

Votes and Proceedings: 5/5/2021, pp. 1153-5, p. 1157-8.
Standing Order 365.

Casting votes

On Wednesday 12 May the House divided on a public interest debate motion regarding TAFE campus sales. The result of the division was an equality of votes, being 44 ayes and 44 noes. The Assistant Speaker cast his vote with the noes, and the motion was negated.

On Thursday 13 May the House divided on an amendment to a General Business motion regarding Hunter Region Code One Incidents (concerning ambulance and paramedic services in the Hunter). The result of the division was an equality of votes, being 43 ayes and 43 noes. The Temporary Speaker cast their vote with the ayes, and the amendment to the motion was agreed to. The amended motion was then agreed to without division.

Votes and Proceedings: 12/5/2021, p.1180, 13/5/2021, p. 1186.
Standing Order 184.

Procedural note:

When the votes in a division are equal, section 32(2) of the Constitution Act 1902 and Standing Order 184 provide that the Member presiding over the House shall have a casting vote.

Withdrawal of Written Question

On Thursday 13 May, at the time in the Routine of Business for 'Placing or Disposal of Business', the Member for Balmain sought the leave of the House to withdraw a written question he had submitted to the Minister for Better Regulation and Innovation regarding Racing NSW and the Australian Turf Club (Question No. 5875). The House granted leave and the question was withdrawn.

Votes and Proceedings: 13/5/2021, p. 1188.

Procedural note:

Standing Order 100 provides a procedure for Members to be able to withdraw any notice of motion in their name, or to a move a motion for an order of the day in their name to be withdrawn.

Standing Order 100 does not cover the withdrawal of written questions, and consequently Members need to seek the leave of the House for any written question standing in their name to be withdrawn.

'Leave' is the way the House gives permission for something to occur which otherwise could not be done at that time, or in that way. Leave can only be granted if all Members present agree; if just one Member objects when leave is sought, leave will not be granted.

ELECTIONS

By-election for the seat of Upper Hunter

On Tuesday 4 May the Speaker informed the House that, on 31 March, he had received a letter from Michael Johnsen resigning his seat as Member for the electoral district of Upper Hunter. The Speaker also informed the House that he had issued a writ for a by-election for the electoral district of Upper Hunter, with the following details:

Nomination day: Thursday 6 May 2021

Polling day: Saturday 22 May 2021

Return of Writ: Tuesday 29 June 2021

Later that day the Speaker further advised the House that a number of General Business notices of motions standing in the name of the former member for the Upper Hunter had been removed from the Business Paper.

*Votes and Proceedings: 4/5/2021, p. 1139 and p. 1147.
s. 76, Electoral Act 2017*

Procedural note:

A writ is a document instructing the Electoral Commissioner to hold an election. For general elections, writs are issued by the Governor and signed by the Premier. However, in circumstances where a Member of the Assembly has died or resigned, the Speaker will issue a writ for a by-election to fill the vacancy.

COMMITTEES

Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020 – report tabling and take note debate

On Tuesday 4 May the Clerk announced receipt of the report of the Joint Select Committee on the Anti-Discrimination Amendment (Religious Freedoms and Equality) Bill 2020, which had been tabled out of session on 31 March 2021.

The Committee was established in June 2020 to inquire into and report on the private member's bill introduced in the Legislative Council by the Hon. Mark Latham MLC in May 2020. The Committee made a number of findings and recommendations, including that the Government introduce its own bill providing protections for not-for-profit religious organisations from discrimination, by the end of 2021. The Government has six months in which to respond to the Committee's recommendations.

When a Committee report is tabled, a debate on the question 'That the House take note of the report' is set down for a future day. The debate on the Joint Select Committee report began and was interrupted on Wednesday 5 May, and concluded on Wednesday 12 May, with a division called on the question that the House take note of the report.

After the division was called, pursuant to Standing Order 181, the Temporary Speaker declared the question to be passed, as there were only four members in the minority who had challenged his decision.

Votes and Proceedings: 4/5/2021, p. 1142, 12/5/2021, p. 1177
Standing Orders 303a, 305, 306 and 181.

Procedural note:

Select Committees are appointed to investigate and report on specific matters; they cease to exist when they have concluded their inquiry or at a time specified by the House.

Standing Order 306 specifies that Committee reports are to be set down in the order they are received as an Order of the Day with the question 'That the House take note of the Report'. The Routine of Business provides that Committee report take note debates are held on Wednesdays at 12.45 pm, for up to 30 minutes.

Standing Order 181 provides that if there are five or less Members on one side on a division the Speaker shall declare the question resolved without completing the division, and the number of Members in the minority and their names are recorded in the Votes and Proceedings.

VACANCY

Joint sitting

On Wednesday 5 May the Temporary Speaker, Mr Greg Piper MP, reported a message from the Governor convening a joint sitting to elect a person to fill the vacancy in the Legislative Council caused by the retirement of former President, the Hon. John Ajaka.

Subsequently, on Thursday 6 May, Members of the Assembly attended the Legislative Council Chamber for the election. At the conclusion of the sitting Members returned to the Assembly Chamber and the Temporary Speaker reported that Peter John Poulos had been elected to the Council. Mr Piper then tabled the minutes of the proceedings of the joint sitting.

*Votes and Proceedings: 5/5/2021, p. 1151; 6/5/2021, p. 1160-1.
Section 22D, Constitution Act 1902.*

Procedural note:

In the NSW Parliament casual vacancies in the Legislative Council are filled by a person elected at a joint sitting of both Houses called by the Governor. Section 22 D of the [Constitution Act 1902](#) provides that if the casual vacancy was previously filled by a member of a political party, only another member of that party may be elected to fill the vacancy.

BILLS

Statute Law (Miscellaneous Provisions) Bill 2021

The Attorney General, Minister for the Prevention of Domestic Violence, and Minister for Families, Communities and Disability Services, the Hon. Mark Speakman MP, introduced and gave the second reading speech for the Statute Law (Miscellaneous Provisions) Bill 2021 on Wednesday 5 May.

Mr Jihad Dib MP, Member for Lakemba, subsequently circulated a proposed amendment to the bill which sought to insert an amendment to the *Technical and Further Education Commission Act 1990*. On Tuesday 11 May, when the order of the day for the second reading debate on the bill was read, Mr Speakman spoke again, pursuant to Standing Order 64, seeking a ruling from the Deputy Speaker regarding whether Mr Dib's proposed amendment was out of order. Mr Speakman said that Mr Dib's amendment was beyond the scope of amendments permitted by Standing Order 210.

Following debate between Members on the issue, the Deputy Speaker ruled that the circulated amendment was out of order because it was outside the scope of the Bill. The Deputy Speaker stated:

"... I rule that the Opposition's amendment is outside the scope of the bill. The practice of this House is that statute law bills are, one, of a minor nature and, two, contain non-controversial amendments to a number of bills, as is the case in the bill currently before the House. My view is that the amendment would effect a significant change to legislation, namely the Technical and Further Education Commission Act 1990. Accordingly, I uphold the point of order."

Votes and Proceedings: 5/5/2021, p. 1150, 11/5/2021, p. 1169.

Hansard (Proof): 11/5/2021, pp. 35-7.

Standing Orders 64, 188, and 210.

Procedural note:

In the House generally a Member may speak only once to a question. However, Standing Order 64 provides some exceptions, including that a Member in charge of the Order of the Day may speak again when the order is read.

Standing Order 210 relates to the relevancy of amendments to bills. 210 provides that amendments must be within the long title of the bill or relevant to the subject matter of the bill, and otherwise in conformity with the Standing Orders and practice.

Under the Statute Law Revision Program, the Government introduces approximately two Statute Law (Miscellaneous Provisions) Bills a year to make minor amendments, fix errors, update out-of-date references and repeal redundant legislation.

Local Government Amendment Bill 2021

On Thursday 13 May the Local Government Amendment Bill 2021 was returned from the Legislative Council with 14 Council amendments for the Assembly to consider.

Once the message regarding the Council amendments was reported by the Deputy Speaker and set down for consideration forthwith, the Minister for Local Government moved a motion 'That the Legislative Council amendments be agreed to'.

The Member for Campbelltown then moved that the motion of the Minister be amended by adding a further amendment to the bill, which sought to omit a section of the bill regarding intergovernmental projects. The amendment was put to a division, and the question was resolved in the negative.

The original motion by the Minister ('That the Legislative Council amendments be agreed to') was then put and passed on the voices, with the Council amendments therefore being agreed to by the Assembly and the bill passing the Parliament.

Votes and Proceedings: 13/5/2021, p. 1193-1194.
Standing Order 224.

Procedural note:

Standing Order 224 provides the Assembly with options for dealing with Council amendments to an Assembly bill, including by agreeing to the Council amendments with a further amendment or amendments.

Standing Order 225 provides that an amendment to a Council amendment must be relevant to the matter of the Council amendment, or consequential to the agreement or disagreement of an amendment of the Council.

STAFF

Retirement of Mr Leslie Eric Gönye, Deputy Clerk of the Legislative Assembly

On Wednesday 12 May the Speaker made a statement in the House in relation to the pending long service leave and subsequent formal retirement of Leslie Eric Gönye, the Deputy Clerk of the Legislative Assembly. The Premier and the Leader of the Opposition also addressed the House in relation to the Deputy Clerk's retirement.

At the completion of his long service leave, the Deputy Clerk will have completed exactly 45 years of service to the Legislative Assembly.

Votes and Proceedings: 12/5/2021, p. 1178.