

Chapter 19 Divisions and Bells

19.1 Divisions

A division is a method adopted to ascertain the view of the House when the Speaker's expressed opinion as to whether the "ayes" or "noes" have it, is challenged. In questions of any importance, it is usual for sections of the House to challenge the Chair's opinion by calling for a division. This is frequently done even though there can be no doubt that the division lists will support the Speaker's decision. Often the purpose of calling for a division is to place votes on record (S.O. 173-4). Speakers have adopted the practice of putting the question in favour of the side from which the motion came unless there is a distinct difference between the noes and the ayes.¹

A division can only be called by a member who gave voice against the majority as declared by the Speaker and one minority voice only is required (S.O. 174). The call for a division must be made before any new motion is proposed or other proceedings commenced.² The voice of the whip or other office holder is taken to be that of their colleagues as well.

Members may vote against a motion moved by them but cannot change their vote after challenging the Speaker's determination and a division is called (i.e. call "aye" but be recorded as voting "no").³ On one occasion a division was called off after the member who had called the division stated that he misunderstood the rules (that a division can only be called by a member in opposition to the Speaker's determination). The Acting Speaker ruled that, in view of the member advising that he had made a mistake in calling for a division, called off the division and restated the question.⁴

When a division has been demanded the division bells are rung and the timer activated by one of the Clerks-at-the-Table. At the expiration of the time allowed for the ringing of the division bells (4 minutes), the doors are locked and the Speaker then again restates the question. Every member present in the Chamber once the doors are locked must vote, "ayes" to the right and "noes" to the left of the Chair.

The Speaker appoints two tellers from each side who are by tradition the whips and their deputies. It is disorderly for a member appointed to act as a teller to refuse to do so unless excused by the Chair. To refuse is to disobey the Chair which is considered gravely disorderly and offenders may be removed by the Serjeant-at-Arms by direction of the Speaker or "named" in accordance with standing order 250.⁵ On one occasion the Speaker appointed tellers for the "noes" from the "ayes", when four members were excused by the Speaker after declining to act as tellers.⁶

The names of the members present are recorded by the tellers on lists handed to them by the Speaker. The endorsed lists are entered into the *Votes and*

¹ See comment by Speaker Rozzoli, PD 01/09/1992, p. 5302.

² See comments by Speaker Ellis where he made a definitive statement on the right of all members to call for a division, PD 25/10/1967, p. 2467.

³ See rulings by Speaker Ellis, PD 19/09/1967, p. 1322 and PD 23/11/1972, p. 3067 and ruling of Speaker Cameron, PD 03/03/1976, p. 3890.

⁴ PD 29/05/2002, p. 2185-6.

⁵ VP 18/08/1931, p. 698 and VP 12/03/1929, p. 295.

⁶ PD 12/11/1975, p. 2587.

Proceedings and Hansard. Pairs are recognised in the standing orders (S.O. 186) and enable members to be absent from the House during sittings by agreeing with a member from the opposite side of the House (through their Whip) that they will be absent at the same time. This effectively means that the votes are neutralised and any majority unaffected. Whilst pairs are recognised in the standing orders they are unofficial and organised by private arrangement with the whips.⁷ Speakers' rulings have held that:

- No point of order can be raised in relation to a matter of pairing;⁸
- The arrangement is purely one between the whips and is unofficial;⁹ and
- The Chair is not privy to any private arrangements made between the whips and other members of the House.¹⁰

Practice of the House has also been that:

- Divisions have been deferred for a few moments to allow a paired member to leave the Chamber;¹¹ and
- In instances where the Speaker's attention has been drawn to an irregularity in the pairing arrangements divisions have been called off and the question put again.¹² However, there have been occasions where the Speaker has not called a division off purely on account of an anomaly with the pairs.¹³

The same procedure is taken when the House is considering a bill or other matter in detail. Under the former committee of the whole procedure the same procedure was taken for divisions except that the names of members present during a division were only recorded in *Hansard* rather than in the *Votes and Proceedings*. As bills are now considered in detail by the House all divisions are recorded in both *Hansard* and the *Votes*.

When it is evident that there are five or fewer members on one side in a division, the Chair declares the question at once and the names of those members opposing the majority are recorded in the *Votes and Proceedings* (S.O. 181). If a minimal number of members vote on one side (five or more), to accommodate the large number of members who wish to vote on the other side, the Chair may nominate the back two rows of the Chamber of one side to be voting with the majority side.¹⁴

Divisions have been called off and conducted again due to problems with the lifts¹⁵ or irregularities in the pairing arrangements.¹⁶ Divisions have also been deferred for a short time to allow a paired member to leave the Chamber,¹⁷ or to a later time due to a disturbance in the House.¹⁸ The House has suspended standing and sessional orders to prevent divisions being conducted:

⁷ VP 30/10/1996, p. 543.

⁸ PD 10/09/1975, p. 946.

⁹ PD 28/09/1976, p. 1071.

¹⁰ PD 30/10/1996, pp. 5549-50.

¹¹ PD 08/09/1999, p. 180.

¹² PD 19/09/1991, p. 1433; PD 06/11/2001, p. 18130; PD 05/12/2001, p. 19591.

¹³ PD 10/09/1975, p. 946.

¹⁴ PD 20/06/1996, p. 3518.

¹⁵ PD 20/06/2002, p. 3543; PD 05/06/2002, p. 2609; PD 24/10/1996, p. 5328; PD 06/12/1995, p. 4294.

¹⁶ PD 22/09/1994, p. 3569.

¹⁷ PD 08/09/1999, p. 180.

¹⁸ PD 21/05/1997, p. 9014; also VP 23/05/1996, pp. 167 and 168; VP 30/05/1996, pp. 204 and 205-6.

- during private members' statements,¹⁹
- on specified days,²⁰
- for a specified time,²¹ and
- while the House dealt with specified items of business.²²

Divisions have been called off and the motion agreed to on the voices, however this requires the consent of the House.²³ On one occasion the Opposition claimed to have called a division inadvertently and asked for it to be called off. Government members did not agree and the Speaker stated that the Chair does not make the decision but acts in accord with the will of the House. As the House did not agree to call off the division it proceeded.²⁴

A member may not vote in a division on a question if the member has a direct pecuniary interest in the question under discussion. Such interest must be one of direct personal pecuniary benefit and not something which is shared in common with other citizens (S.O. 176-7). The fact that members have a pecuniary interest in a matter which the House is discussing does not prevent them from participating in the debate. It is only in division when a member must refrain from voting. In 1873, Speaker Arnold gave his opinion that the House was bound to accept a member's denial of having a pecuniary interest,²⁵ while earlier, in 1862, Speaker Hay said that "in the absence of proof as to the actual nature of the interest possessed by the Honourable Members, they would best be left to exercise their own discretion in giving or withholding their votes."²⁶

The votes of members have been challenged upon substantive motions without notice. For instance, in 1884 a motion was moved "That the vote of Mr Russell Barton be disallowed upon the ground of personal interest". The motion was negated.²⁷ In 1879 "That the vote of the Honourable Sir Henry Parkes, Member for Canterbury on the third reading of the *Lands Act Further Amendment Bill* be disallowed because the Honourable Member has a direct personal pecuniary advantage in the passing of the Bill." Mr Parkes made an explanation to the House and the motion was negated.²⁸ On one occasion when the question arose in committee,²⁹ the Chairman refused to accept the motion, giving his opinion that it must be moved in the House. The matter was referred to the House, where the Speaker supported the Chairman's ruling.³⁰ However, in 1909, the Chairman of Committees quoted from the House of Commons *Hansard Debates*, Vol. 145, p 1233, to show that a motion to disallow a vote could be moved in committee.³¹

¹⁹ VP 16/11/1999, pp. 239-40.

²⁰ VP 24/06/1999, p. 168.

²¹ VP 11/11/1999, p. 230.

²² VP 15/09/1999, p. 77; VP 10/11/1999, p. 222.

²³ PD 12/05/1999, p. 125.

²⁴ PD 28/10/1999, p. 2342.

²⁵ VP 22/01/1873, p. 115.

²⁶ VP 30/10/1862, p. 582.

²⁷ VP 07/08/1884, p. 654.

²⁸ VP 11/06/1879, p. 569.

²⁹ Under the current standing orders the House considers bills in detail and no longer resolves into a committee of the whole. Accordingly, a motion to disallow a member's vote is permitted on all divisions.

³⁰ VP 03/05/1876, p. 319. No motion to disallow the vote of any member was moved in the House.

³¹ VP 22/09/1909, p. 456. A motion was moved to disallow the votes of two members on the *Fire Brigades Bill* on the basis that the members were "interested parties, drawing salaries as members of the Fire Brigades Board". The Chairman ruled that the motion was not in order noting that a vote can only be challenged on the basis that a member had a private pecuniary interest. He considered that whilst the members might have an interest in the existing Board that they could have no private pecuniary interest in a board proposed to be established under the bill.

A member having voted by voice for one side cannot then vote on the other side in a division and, if satisfied that this has occurred, the Speaker will record the vote according to that originally called (S.O. 175). However, on one occasion a member who had been clearly heard call “the noes had it” after the Chairman determined in favour of the “ayes” denied it was his intention to call a division and when he did not vote with the “noes” no further action was taken.³² Members have also at times drawn the Chair’s attention to the fact that they have given their voice for one side but had inadvertently voted with the other side and the record has been corrected accordingly.³³ A member must not change seats (i.e. their vote) once the doors are locked.³⁴ Furthermore, a member may not vote if not present in the House when the doors are locked and if this occurs a motion may be moved for the vote not to be counted (S.O. 178-9).

19.1.1 Successive divisions

Under standing order 185, if a second division is called and the bells ordered to be rung following limited or no intervening debate after an earlier division, the Speaker may, with the leave of the House, order the doors to be locked and the vote taken, before the full four minutes has expired. The Chair will consult before doing this.

19.1.2 Taking points of order in a division

Members taking a point of order during a division must remain seated (S.O. 180(2)) and attract the attention of the Speaker.³⁵ The onus is on members to ensure that they attract the attention of the Chair when seeking the call to raise a point of order.³⁶

19.1.3 Error in the count

If there is confusion or error in the numbers reported, the House would proceed to another division (S.O. 182). Complaints about the accuracy of the record of a division in the *Votes* or *Hansard* must be raised as a point of order. The Speaker may correct the record if satisfied that an error has occurred (S.O. 183). In practice, errors are in the first instance corrected by seeking the advice of the whips.

19.1.4 Deferred divisions

Under standing order 187 divisions called before 10.30 a.m. on days when the House meets at an earlier time are deferred until 10.30 a.m. and any business then before the House is interrupted and recommenced after the division(s). The standing order also provides that on any Friday when the House sits divisions are deferred, set down as an order of the day for the next sitting day and determined after Question Time on that day.³⁷ If deferred divisions involve general business, the deferred divisions do not take place until the next general business day. However, if the questions involve government business, the deferred divisions would take place on the next government business day.³⁸ On occasions standing and sessional orders

³² PD 18/11/1999, pp. 3280-1.

³³ VP 20/11/1963, p. 718.

³⁴ PD 06/04/2006, p 22254.

³⁵ Prior to the adoption of the current standing orders in November 2006 members were required to cover their heads (e.g. place a piece of paper on their heads). This practice originated in the UK House of Commons in the 18th Century. See *An Introduction to the Procedure of the House of Commons*, by Lord Campion, 3rd edition, 1958, p. 184.

³⁶ See PD 30/04/1992, pp. 3280-1.

³⁷ See also S.O. 98. VP 26/02/2002, p. 16.

³⁸ VP 20/09/2001, p. 1470; VP 18/10/2001, pp. 1515 and 1516.

have also been suspended to enable divisions to be deferred until the next sitting day.³⁹

When a deferred division takes place the Speaker would not normally put the question again as it had already been done so earlier.⁴⁰ The Clerk reads the order of the day and the Speaker proceeds to appoint tellers.

19.1.5 Disorder during divisions

The practice of the House is for disorder arising in division to be dealt with immediately.⁴¹ The division in progress is halted, the doors unlocked and the bars raised; and the disorder having been dealt with, the House proceeds to another division.⁴²

19.2 Free votes or “conscience votes”

In modern times, when members vote in divisions in the House they tend to vote along party lines. However, on occasion members are able to have a free or conscience vote, particularly when matters of moral or religious character arise which may be contrary to, or not relevant to, party platform. Determination of which matters are considered as a conscience vote is a matter for the various political parties and are not covered by any procedure or standing order of the House.

In contrast, when a member votes against his or her own party on a matter not recognised as a “free vote” the member is deemed to have “crossed the floor”. In some parties if a member crosses the floor, and it has not been previously announced by the party leader that the vote in question was subject to a free or conscience vote, the member may be disciplined and may even be expelled from the party. For instance, in 1987 a member of the ALP, which formed the Government at the time, went against the party line and crossed the floor on the second reading of the *Workers Compensation Bill and cognate bills* and again in the Committee stage and the third reading.⁴³ By voting against the legislation the member was considered to have automatically expelled himself from the ALP.⁴⁴ He did, however, remain in his seat as a non-Government member until the next election.

A similar incident occurred in July 1956 when the Parliamentary Labor Party voted to recommend the expulsion of Mr Clive Evatt, Member for Hurstville, from the party. Mr Evatt had voted twice with the Opposition on motions to disallow train and tram fare increases.⁴⁵ Mr Evatt was subsequently expelled by the party’s State Executive and it was declared that he had “automatically expelled himself by voting against the New South Wales Labor Government and acting against the decisions of Caucus on several occasions.”⁴⁶

³⁹ The questions involved general business, as such, the deferred divisions did not take place until the next general business day. Had the questions involved government business, the deferred divisions would have taken place on the next government business day VP 20/09/2001, p. 1470; VP 18/10/2001, pp. 1515 and 1516.

⁴⁰ However, with consent the Speaker may put the question again. For example, the Leader of the House moved that standing and sessional orders be suspended to allow consideration of general business order of the day (general order) No 1 and general business notices of motions (general notices Nos 1 to 14). The question put and pursuant to sessional order the division was deferred. Later, by consent, the Speaker put the question again, and the motion was agreed to without a division occurring, VP 02/11/2000, p. 842.

⁴¹ VP 15/07/1924, p. 28.

⁴² VP 18/08/1931, p. 698.

⁴³ PD 27/05/1987, pp. 12657-67.

⁴⁴ See Petersen, George, *George Petersen Remembers: The Contradictions, Problems and Betrayals of Labor in Government in New South Wales*, 1998, p. 399.

⁴⁵ PD 13/06/1956, p. 515 and 04/07/1956, pp. 739-40.

⁴⁶ See the *Sydney Morning Herald*, 14 July 1956, p. 1.

Furthermore, on 2 December 1959, Labor lost control of the Legislative Council when seven Labor MLCs were expelled for crossing the floor on a bill to abolish the Council.⁴⁷

Pairs are usually recorded in all divisions including those subject to a free vote. However, on one occasion when a free vote was taken in the House no pairs were recorded. This meant that members who were not in Parliament on that day were not recorded as being paired for that particular division and as such it is not clear from the recorded results of the division whether members abstained from the vote or were absent from Parliament on that day. One of the members who had been absent from the House on that day made a personal explanation to the House in order to place on record that she had not abstained from the vote and noted which way she would have voted.⁴⁸

In recent times a number of bills have been subject to a free vote by all or at least one of the political parties in the House including:

- *Superannuation Legislation Amendment (Same Sex Partners) Bill 2000* – members of the Liberal/National Coalition were allowed a free vote;
- *Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2002* – members of the Liberal/National Coalition were allowed a free vote;
- *Drug Summit Legislative Response Amendment (Trial Period Extension) Bill 2003* – members of the Liberal/National Coalition were allowed a free vote;
- *Human Cloning and Other Prohibited Practices Bill 2003* and *Research Involving Human Embryos (New South Wales) Bill* – all parties allowed members to exercise a free vote; and
- *Crimes Amendment (Sexual Offences) Bill 2003* – all parties allowed members to exercise a free vote.

19.3 Bells

Bells are located in all rooms and corridors in Parliament House and are rung to summon members to the Chamber for a meeting, division or quorum or to indicate that the House has adjourned.

Assembly bells do not ring in Council members' rooms nor in the lifts.

On each sitting day a warning bell, of 20 seconds duration, sounds fifteen minutes before the Assembly is due to sit or resume sitting (S.O. 35) and rung again prior to the time the House is due to meet.

The bells are also rung for four minutes when a division is called, except when there are successive divisions and there has been limited or no intervening debate, in which case the Speaker may order that the doors be locked and the vote taken forthwith.

⁴⁷ Hagan, Jim and Turner, Ken, *A History of the Labor Party in New South Wales 1891-1991*, 1991, p. 187.

⁴⁸ See for example, PD 27/05/2003, p. 1167.

In addition, the bells are also rung prior to the House proceeding to any ballot (S.O. 351) and two short bells are rung upon the House adjourning.

At times the House resumes sitting on the ringing of a long bell. Such occasions include when a quorum is called and one long bell rings continuously for up to four minutes until a quorum is formed⁴⁹ or when the House resumes a suspended sitting.⁵⁰ (See section 10.1.2 of Part One for further information on suspending a sitting until the ringing of one long bell).

In 1993, following concerns by members about access to the lifts within Parliament House during divisions a strategy was put in place to ensure that members are given priority use of the lifts during divisions.⁵¹ Under the system currently in place, there is a sign advising that in the event of a division that lights will flash outside of the lifts on each floor indicating that the lifts are for the use of members only at this time.

Members are also issued with pagers that can be activated by the Whips in the event of a division.

19.3.1 Timing for Bells

Under standing order 35 and the practice of the House the timing for bells is as follows:

Tuesdays (Government Business Day)

Bells are rung at 2.00 p.m. for 20 seconds; at 2.11 p.m. for $\frac{3}{4}$ of a minute, paused for a minute and a quarter and at 2.13 p.m. rung for one minute.

Other Government Business Days and General Business Days

Bells are rung at 9.45 a.m. for 20 seconds, at 9.56 a.m. for $\frac{3}{4}$ of a minute, paused for a minute, and at 9.58 a.m. rung for one minute.

After lunch

Bells are rung at 2.00 p.m. for 20 seconds. One bell at 2.13 p.m. for one minute.

After dinner

Bells are rung at 7.15 p.m. for 20 seconds. One bell at 7.28 p.m. for one minute.

Division

First bell 10 seconds, pause 10 seconds; second bell 10 seconds, pause 10 seconds; third bell 20 seconds. Members have four minutes from the time the first bell is rung to take their seat to vote in a division. This differs from Legislative Council practice, where the bells ring continuously for five minutes.

Quorum

One long continuous bell (for up to four minutes until a quorum is present in the Chamber).

⁴⁹ PD 15/10/1991, p. 2137; PD 20/09/1995, p. 1219; PD 08/04/1998, p. 3886.

⁵⁰ PD 22/03/2005, p. 14701; PD 6/12/01, pp. 19869-70.

⁵¹ See comment by Speaker Rozzoli, PD 21/05/1993, p. 2685.

House up (adjournment)

Two short bells (five seconds – pause five seconds – five seconds).