



LEGISLATIVE COUNCIL FACT SHEETS

FACT SHEET 8: THE ROLE OF THE PRESIDENT AND OTHER OFFICE HOLDERS

The Legislative Council relies on a number of key office holders who perform specific functions to enable the orderly and regular conduct of proceedings: the President, the Deputy President and Chair of Committees, the Assistant President, Temporary Chairs. In addition, ministers, assistant ministers, parliamentary secretaries, party leaders and party whips also have functions in relation to the House.

President

Role and functions

Section 22G of the *Constitution Act 1902* provides:

There shall be a President of the Legislative Council, who is the Presiding Officer of the Legislative Council and is recognised as its independent and impartial representative.

The President's role in the House is to maintain order, put questions after debate and conduct divisions. In maintaining order the President interprets and applies the standing orders and practice of the House by making rulings and decisions.

The President's decisions are subject to the will of the House and may be challenged on a motion of dissent (SO 96).

The President may also issue practice notes on the procedures and practice to be followed under any standing order. These practice notes are also subject to disallowance, in whole or in part, by motion on notice (SO 3). The President is also charged with upholding the rights and privileges of the House and its members.

The President is also the spokesperson of the House. For example, the President communicates messages from the House to the Governor, to the Assembly and to persons outside of the Parliament. In addition the President performs various ceremonial duties relating to the opening of Parliament and visits from foreign Heads of State, receives foreign delegations, leads some parliamentary delegations overseas and represents the Council at various national and international conferences.

The President is also an ex officio member of the Procedure Committee and is usually elected Chair of the Committee (SO 205(3)).

The President must take the chair of the House whenever present in the House,¹⁵ and exercises a casting vote only during divisions.¹ Under section 22G of the *Constitution Act 1902*, the President may take part in any debate or discussion in the House. When the President takes part in debate, they do so from the floor of the House (SO 86). The President may also participate in proceedings in committee

¹ *Constitution Act 1902*, s 22I and standing order 116.

of the whole and vote as an ordinary member. The President may leave the chair at any time to suit the convenience of members, such as for lunch and dinner breaks (SO 23).

The President also has extensive administrative functions within the Parliament and is responsible, with the Speaker, for the overall operation of the Parliament. Under the *Parliamentary Precincts Act 1997* the President and Speaker are jointly responsible for the control of the parliamentary precincts. The President has sole responsibility for the operation of the Department of the Legislative Council, including the appointment and dismissal of staff.

Members should not direct questions in the House to the President relating to the administration of the Department of the Legislative Council. Such questions may be addressed to the President privately.²

The President is entitled to use the title ‘Honourable’ and when leaving office after three years service the title may be retained if authorised by the Governor. The President is ranked 10th in the State table of precedence.

Election

A person is to be chosen as President of the Council before the Council proceeds to the dispatch of business at its first meeting following any periodic Council election⁴ and at any other time when the office becomes vacant.⁵ The conduct of the election is governed by standing orders 12 and 13.

Under section 22G of the *Constitution Act 1902*, the person chosen as President ceases to hold office:

- immediately before the Council assembles for the dispatch of business at its first meeting following a periodic Council election;
- if the person ceases to be a member of the Council;
- if the person is removed from office by a vote of the Council;
- if the person resigns from office in writing addressed to the Governor.

If the President’s term of service as a member expires under section 22B(2) of the *Constitution Act 1902* – that is on the expiry of their elected term of service being two terms of the Assembly – they cease to hold the office of President.⁶ This means that on occasion the Council can be without a President from early March before a periodic Council election until the House meets again after the election, which can be as late as early May.

Whenever the office of President becomes vacant the Clerk acts as Chair of the House for the election of the President, with the powers of the President under the standing orders while acting.

² *LC Debates* (11/10/1995) 1541, (2/11/2000) 9585.

⁴ *Constitution Act 1902*, s 22G(2)(a). This provision was inserted by the *Constitution (Legislative Council) Further Amendment Act 1991*, Sch 1(1). Before this amendment the President held office until the office became vacant.

⁵ *Ibid*, s 22G(2)(b).

⁶ *Constitution Act 1902*, s 22G(3)(a).

If only one member is proposed as President, the member so proposed is declared elected without any question being put. If two or more members are proposed as President, a ballot is conducted under standing order 13 to elect a President.

Following the ballot, all members of the House call the President-elect to the chair by repeatedly calling out his or her name. He or she is escorted from the benches and conducted to the Chair by the member who proposed that nomination and another supporter. The President-elect makes a short speech expressing gratitude from the upper step of the dais, and then takes the Chair. Other members may make speeches of congratulations.

At a later date, the Council proceeds to Government House to present their President to the Governor. At that meeting, the President, on behalf of the House, claims the undoubted rights and privileges of the Council, particularly freedom of speech in debate.

Deputy President and Chair of Committees

Role and functions

Section 22G(7) of the *Constitution Act 1902* provides that the Chair of Committees shall act in the place of the President in his or her absence from the House, and may exercise and perform all the powers, authorities, duties and functions of the President.⁷ This is the only reference to the Chair of Committees in the *Constitution Act*. The Chair of Committees is also the Deputy President of the Council,⁸ although there is no reference to a Deputy President of the Council in the *Constitution Act*. However, the standing orders do refer to the position of Deputy President, and the office holder is referred to as Deputy President when presiding over the House in the absence of the President.

As indicated, when presiding in the House, the Deputy President exercises the same authority and has the same duties and powers as the President. As Chair of Committees, the Chair presides over all committees of the whole House, taking the Chair between the Clerk and the Deputy Clerk at the table of the House, and is responsible for the committee stage of bills and other matters referred to the committee of the whole House. If the Chair wishes to leave the Chair in committee, any Temporary Chair may take the Chair and, if no Temporary Chair is present, the Chair may appoint any other member to take the Chair (SO 174).

As with the President in the House, in committee of the whole the Chair exercises a casting vote only, and any reasons stated by the Chair when giving a casting vote may be entered in the proceedings of the committee (SOs 116, 119 and 173(7)).

The Chair is the sole judge in all matters arising in committee and may direct a member to discontinue speaking for continued irrelevance or tedious repetition, name a member for disorderly conduct, order the removal of a member repeatedly called to order and order the withdrawal of strangers in committee.

⁷ When the President is absent from the State, and the Chair of Committees is acting in the President's place under s 22G(7), the Chair of Committees must take the Chair as Acting President whenever present in the House.

⁸ See the *Parliamentary Remuneration Amendment (Miscellaneous Offices) Regulation 2007*, which changed the title of the Chair of Committees to Deputy President and Chair of Committees; *Government Gazette*, No 46/2007, 16 November 2007, pp 8511-8513.

However, there are certain restrictions on the authority of the Chair of Committees when presiding over a committee of the whole House. In the case of disorderly behaviour by a member in the committee, the Chair may not take action but must report the fact to the House, which then takes the matter into consideration (SO 175). Also, if there is objection (dissent) from a ruling by the Chair of Committees, the Committee may decide that the objection must be reported to the President in the House, who then makes a ruling on the matter (SO 178).

The Chair reports to the House all matters referred to the committee. No bill which has been considered in committee of the whole can be read a third time without a certificate from the Chair that the bill is in accordance with the bill as reported from the committee.

As amendments to bills can only be made during committee of the whole, it is the responsibility of the Chair to ensure that all amendments are relevant to the bill under consideration, and do not reverse the principle of the bill as read a second time. Clerical and typographical errors in a bill may be corrected by the Chair of Committees or the Clerk (SO 150).

Election

Unlike the election of the President, there is no reference in the *Constitution Act 1902* to the election of the Deputy President and Chair of Committees. The conduct of the election is governed by standing order 15.

The Deputy President and Chair of Committees is elected at the commencement of sittings following each periodic Council election and whenever a vacancy occurs. The election is conducted by ballot according to the rules for the election of the President, except that the President conducts the election, and where there is an equality of votes, exercises a casting vote (SO 15(2)).

The Deputy President holds office for the life of the Parliament in which elected and until a successor is elected (SO 16). However, if the Deputy President's term of service as a member expires under section 22B(2) of the *Constitution Act 1902*, they cease to hold the office of Deputy President.

Assistant President

On 28 June 2007, the Council adopted a sessional order with continuing effect for the House to elect a member to be Assistant President to hold office during the life of the Parliament in which elected.⁹

The Assistant President is elected in a similar manner as the President. In the absence of the President and Deputy President on a day the House is sitting, the Assistant President will perform the duties of the President.

⁹ The sessional order originally referred to the position of Assistant Deputy President rather than Assistant President. However, on 28 November 2007 the House passed a motion to change the name of the Assistant Deputy President. This followed the gazettal of the *Parliamentary Remuneration Amendment (Miscellaneous Offices) Regulation 2007* which referred to the Assistant President rather than Assistant Deputy President.

Temporary Chairs

At the beginning of each session, the President nominates a panel of not less than three members to be Temporary Chairs of Committees (SO 18). They act for the President, the Deputy President and Chair of Committees and the Assistant President on a temporary basis whenever required. Any one of the Temporary Chairs may be called to take the chair in the absence of the President, Deputy President and Assistant President.

When presiding over the House or committee of the whole, a Temporary Chair is referred to as Deputy President or Deputy Chair respectively, and exercises the full authority of the President or the Deputy President and Chair of Committees (SO 17(1)).

Ministers

Section 35 of the *Constitution Act 1902* provides for the appointment of the Premier and ministers of the Crown by the Governor from amongst the members of the Executive Council.

There is no requirement for a member of the Executive Council to be a member of Parliament, although to date no one has been appointed to the Ministry who has not been a member of either the Council or the Assembly. In *Egan v Willis* in the New South Wales Court of Appeal, it was noted by Gleeson CJ that it is a 'conventional requirement' that ministers be chosen from amongst the members of one or other of the Houses of Parliament.¹⁰ In practice, ministers are appointed on the advice of the Premier and continue to hold office until they resign or, in some cases, a new minister is sworn in.

In New South Wales all ministers are members of Cabinet. Cabinet is the name given to a meeting of the ministers, although Cabinet itself has no legal status.

Each minister has such powers as are vested in the office under those Acts administered by them, as allocated by the Premier and approved by the Governor and notified in the Gazette. Seniority of ministers is determined by the order in which the ministers are called by the Governor to take the oath of office. The portfolios themselves do not carry seniority.

Traditionally the Premier is a member of the Assembly. This is based on the convention that, since governments are formed by the party which commands a majority in the lower House the Premier, as the leader of the government, should reside in that House. There have, however, been instances of a Premier or Leader of the Government sitting in the Council. Most recently, in 1986, following the resignation of the Hon Neville Wran as Premier, the Hon Barry Unsworth, the then Leader of the Government in the Council and Minister for Health and Vice President of the Executive Council, was appointed as Premier. Later the same year, he resigned as a member of the Council, and successfully sought election to the Assembly at a by-election for the seat of Rockdale, although there was no legal or constitutional requirement for him to do so to remain as Premier.

There is also no constitutional requirement for any ministers to be members of the Council. However, since the advent of responsible government in New South Wales, there has always been a representative of the executive government, in the person of the Vice President of the Executive

¹⁰ (1996) 40 NSWLR 650 at 660.

Council, in the Council, although there have been a few occasions when there have been no ministers appointed from the House. In recent times a significant number of ministers have been members of the Council.

The standing orders give ministers certain exclusive powers concerning the management of government business in the House. Ministers may:

- arrange the order of their notices of motions and orders of the day on the Notice Paper (SO 43);
- move a motion connected with the conduct of government business at any time without notice (SO 37);
- declare bills urgent (SO 138);
- make statements regarding government policy (SO 48);
- table and publish documents (SO 55);
- reply to matters raised on the adjournment at a previous sitting (SO 33);
- move the adjournment of the House at any time (SO 31).

However, there are certain restrictions placed on ministers in the Council. They may not move the closure of debate (SO 99). Any document relating to public affairs quoted by a minister may be ordered to be laid on the table, unless the minister states that the document is of a confidential nature or should more properly be obtained by order (SO 56(1)).

Ministers in the Council represent one or more ministers who are members of the Assembly for the purposes of answering questions without notice, tabling documents and taking charge of bills. These ministerial arrangements are notified to the House by the Leader of the Government at the commencement of a session following a periodic Council election and whenever changes occur in the Ministry.

Any minister who is a member of the Assembly may, at any time, on motion agreed to by the Council under section 38A of the *Constitution Act 1902*, sit in the Council for the purpose of explaining the provisions of any bill relating to or connected with the department administered by that minister. While the minister may take part in debate or discussions, they may not vote. This has happened only once in the Council when in 1990 the Hon John Fahey, as Minister for Industrial Relations and Employment, sat in the Council during debate in committee of the whole on the Industrial Relations Bill and cognate bills.¹¹

Assistant Ministers

The Governor may appoint a minister or ministers to assist a minister with primary responsibility for a particular portfolio. For example, following the March 2007 election, appointments made by the Governor included a Minister Assisting the Minister for Finance, a Minister Assisting the Minister for Health (Mental Health), and a Minister Assisting the Minister for Health (Cancer).

¹¹ *LC Minutes* (4/6/1990) 275.

The appointment of assistant ministers dates back to the appointment of the first Greiner Ministry on 27 April 1988. There is no reference to assistant ministers in the *Constitution Act 1902* or the standing orders.

The appointment of assistant ministers with responsibility for a certain part of a portfolio raises the issue of whether questions concerning the assistant minister's responsibilities should be directed to the principal minister or the assistant minister. For example, should questions concerning mental health be addressed to the Minister for Health or the Minister Assisting the Minister for Health (Mental Health)?

The practice in the House has been that questions may be directed to either the principal minister or the assistant minister as the member asking the question thinks fit, but that the principal minister can refer a question to an assistant minister if the matter falls within the particular responsibilities of the assistant minister.¹² Assistant ministers who are asked a question in relation to their particular responsibilities may respond directly to the question.¹³ However, assistant ministers should be asked questions only in relation to their particular portfolio responsibilities. They should not be asked a question ranging across a whole portfolio in the manner that a principal minister may be asked.¹⁴

Parliamentary secretaries

Parliamentary secretaries are appointed by the Premier under section 38B of the *Constitution Act 1902*. They must be a member of one or other of the Houses of Parliament. Their functions are determined from time to time by the Premier, although under section 38C they may not perform functions reserved for a minister or Executive Council member under any Act, instrument or other law.

Parliamentary secretaries are appointed to undertake the sorts of tasks which may be delegated without affecting the essential responsibility and authority of a minister. These include such things as the answering of correspondence, dealing with delegations, assisting with written replies to questions and helping with the passage of legislation through the Parliament. The office lacks formal responsibility and authority, but is part of the executive government.

A parliamentary secretary may act as a minister in the House in all respects, except in relation to answering questions with and without notice (SO 25).

Party leaders

Party leaders in the Council are only recognised where there are two or more members of the party represented in the House (SO 26). Both the Leader of the Government and the Leader of the Opposition are ex officio members of the Procedure Committee (SO 205(3)) and may nominate their respective members to serve on Council committees (SO 210). The Leader of the Opposition, or their nominee, also has the right to respond to ministerial statements in the House (SO 48(2)).

¹² See, for example, *LC Hansard* (30/8/2006) 1095.

¹³ See, for example, *LC Hansard* (25/2/2004) 6496.

¹⁴ McGee D, *Parliamentary Practice in New Zealand*, 3rd edn, Dunmore Publishing, Wellington, 2005, p 558.

Party whips

The term 'whip', an abbreviation of 'whipper-in', derives from the 18th century vocabulary of fox-hunting, where a whipper-in kept the hounds from straying from the pack.¹⁵

The whips are responsible for liaising with ministers regarding the business of the House, for securing the attendance of members in the chamber, for arranging speakers for debates, for arranging 'pairs' and generally for acting as intermediaries between the party leaders in the House and backbench members.

¹⁵ Wilding N and Laundy P, *An Encyclopaedia of Parliament*, Cassell & Company, London, 1958, p 603.