

**LEGISLATIVE COUNCIL**

**A PRÉCIS OF BUSINESS AND PROCEDURES**

**December 2004**

**(3rd Edition)**



## **PREFACE**

This publication has been prepared to assist members of the Legislative Council and their staff in understanding some of the most common procedures and practices used in the Legislative Council.

I wish to acknowledge the contribution and assistance of the staff of the Legislative Council in the preparation of the 3rd edition of this publication.

John Evans  
Clerk of the Parliaments

December 2004



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## 1. Sources of authority for the operation of the Legislative Council

The Legislative Council derives its powers from the provisions of the Constitution Act, 1902, the Standing Rules and Orders, sundry State statutes, convention and custom.

### *Constitution Act 1902*

The Constitution Act is an important feature of our system of representative and responsible government. While the Act provides the main source of powers it does not contain a definition of the word “Parliament”. However, section 3 defines “The Legislature” as: “His Majesty the King with the advice and consent of the Legislative Council and Legislative Assembly.”

Under section 5 of the Act the Legislature has the power, subject to the Commonwealth of Australia Constitution Act, “. . . to make laws for the peace, welfare and good government of New South Wales in all cases whatsoever...” The section further provides that “...all Bills for appropriating any part of the public revenue, or for imposing any new rate, tax or impost, shall originate in the Legislative Assembly”.

Section 5 of the Constitution Act 1902 provides that all bills appropriating any part of the public revenue or for imposing any new rate, tax or impost, known as “money bills” shall originate in the Legislative Assembly.

Sections 5A and 5B of the Constitution Act contain provisions for resolving deadlocks on bills between the two Houses.

Section 5A deals with disagreements between the Houses in relation to any bill “appropriating revenue or monies for the ordinary annual services of the Government”. These bills may be presented for assent despite the Council rejecting, failing to pass, or returning the bill to the Assembly suggesting an amendment with which the Assembly does not agree. The Council is taken to have failed to pass such a bill if it is not returned to the Assembly within 1 month after its transmission to the Council. If an appropriation bill becomes law under this provision, any sections in the Act dealing with matters other than appropriation for ordinary annual services have no effect. In other words the Assembly cannot tack on provisions not in the nature of appropriations for the ordinary annual services of the Government.

Section 5B provides a mechanism for the resolution of disagreements between the Houses with respect to all other bills. Briefly, the procedures involve the following steps:

- the Council rejects, fails to pass or passes a bill with any amendment to which the Assembly does not agree. The Council is taken to have failed to pass a bill if it is not returned to the Assembly within 2 months of its transmission to the Council during the same session,
- after a further 3 months, the bill is again passed by the Assembly (in the same or next session) and the Council again rejects, fails to pass or passes with any amendment to which the Assembly does not agree. Again the Council is taken to have failed to pass a bill if it is not returned to the Assembly within 2 months of its transmission to the Council during the same session,

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- a free conference of managers, usually 10 members from each House is held to discuss the bill and any amendments. No vote can be taken. The business of the House is suspended during the free conference, and the Managers must report their proceedings to the House immediately following the conference,
- if there is still disagreement the Governor convenes a joint sitting of both Houses to discuss the bill and any amendments. Again no vote can be taken,
- further communication may, if desired, take place between the Houses to bring about agreement,
- if there is still disagreement the Assembly can, by resolution, direct that the bill be submitted to a referendum of the people. The Governor can elect to hold the referendum either during the life of the Parliament or at the next general election,
- if a majority of electors approve the bill it may be presented to the Governor for assent.

Section 7A of the Constitution Act contains an important “manner and form” requirement in regard to abolition or alteration of the powers of the Council. The section requires a referendum for any bill which abolishes or dissolves the Council, alters its powers, or expressly or impliedly repeals or amends certain sections of the Constitution Act dealing with the special provisions relating to the Legislative Council contained in Division 2 of Part 3, before being presented to the Governor for assent. Bills also affecting the persons capable of being elected or of sitting and voting as members of either House and the circumstances in which the seat of a member becomes vacant must also be dealt with in accordance with section 7A. The Legislature appoints a day for the referendum during the life of the Parliament, not sooner than 2 months after the passage of the legislation through both Houses. Section 7B contains similar provision requiring a referendum on certain matters affecting the Legislative Assembly.

Division 2 of Part 3 of the Constitution Act specifically relates to the Council, and members should be aware of the following provisions: reconstitution of the Council (s. 17), eligibility of persons to vote at Council elections (s. 22), conduct of Council elections (s. 22A), term of service of members (s. 22B), filling of casual vacancies and system of election (s. 22D), and resignation from the House (s. 22J).

Certain other sections are also relevant to the Legislative Council and members include:

- Section 10: Powers of the Governor in respect to the prorogation of the Council and Assembly between sessions and the dissolution of the Assembly. The Council is a continuing House and is not dissolved.
- Section 11: At least one session of Parliament must be held in each year.
- Section 12: Members to take oath or affirmation before taking seats.
- Sections 13,13A: Disqualification of Members.
- Section 13B: Holding an office of profit under the Crown
- Section 14A: Disclosure of pecuniary interests.
- Section 15: Powers of the Houses to prepare and adopt Standing Rules and Orders.

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### *Other legislation*

Other Acts which have a direct effect on the role and functions of the Legislative Council and members, are:

- Defamation Act 1974 – privilege for the publication of the debate and proceedings of both Houses.
- Election Funding Act 1981 – public funding of parliamentary election campaigns and disclosure of political contributions.
- Legislation Review Act 1987 – appointment of a joint committee to consider and report to both Houses of Parliament on any bill introduced in Parliament.
- Independent Commission Against Corruption Act 1988 – appointment of a joint committee on the Independent Commission Against Corruption and requirement for the adoption of a code of conduct for members for the purposes of section 9.
- Other Acts appointing joint oversight committees including the Health Care Complaints Act 1993, Ombudsman Act 1974, Police Integrity Commission Act 1994, Commission for Children and Young People Act 1998
- Interpretation Act 1987 – disallowance of statutory rules and instruments.
- Jury Act 1977 – exemption of members and officers and their spouses or de facto partners from jury service.
- Parliamentary Committees Enabling Acts – enables specified committees to function during the prorogation of Parliament.
- Parliamentary Electorates and Elections Act 1912 – the conduct of parliamentary elections.
- Parliamentary Evidence Act 1901 – the summoning and attendance of witnesses before the House or committees.
- Parliamentary Remuneration Act 1989 – establishes a system under which members of Parliament are provided with salaries and certain allowances.

### *Standing Rules and Orders*

The standing orders are the written rules of procedure which provide for the conduct of proceedings of the House, the passage of bills, rules of debate, the preservation of order, the appointment of committees, and other matters affecting the operations of the House. The standing orders require the approval of the Governor before they become binding and in force.

Any wilful or vexatious breach of the standing orders by members may be dealt with by the House as disorderly conduct and the member may be suspended from the service of the House.<sup>1</sup>

Section 15 of the Constitution Act gives the Council power to adopt standing orders covering:

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<sup>1</sup> Standing orders 190 and 191.

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- orderly conduct of the Council,
- manner in which Council is presided over in absence of the President,
- communications between the Council and Assembly,
- manner in which notices of bills, resolutions and other business is published for general information,
- passing, entitling and numbering of bills introduced and passed,
- presentation of bills to the Governor for assent.

The standing orders of the Council adopted in 1895 remained in force, with only minor modification until 14 October 2003 when the House suspended all existing standing orders and, on the same day, adopted 234 proposed new standing orders as sessional orders. This provided an opportunity to trial various new procedures and to reveal any errors or omissions. The revised standing orders adopted plain English and gender-neutral language, updated some procedures and incorporated certain sessional orders which had been adopted over consecutive Parliaments.

The new standing orders were adopted on 5 May 2004 and received the Governor's approval on 31 May 2004.

New standing orders are first considered by the Procedure Committee, which is mainly comprised of the principal office holders in the House and is chaired by the President.

The standing orders do not cover all aspects of procedure in the House. Many matters are governed by practice and precedent.

The standing orders are not immutable and under standing order 198 they can be suspended, either in whole or in part, by a motion on notice given at a previous sitting, or, if there is no objection, by leave.

### ***Sessional Orders***

Sessional Orders, as their name implies are adopted for the duration of a session and are made under specific standing orders, for example, setting days and times of meeting of the Council under standing order 35, or are used to vary or suspend the operation of standing orders. Sessional Orders are also used to trial new procedures.

### ***Rulings of the President and the Chair of Committees***

Under standing order 2, in any case not provided for in the standing orders, any matter may be decided by the President or Chair of Committees as they think fit. In making any ruling the President or Chair may base their decision on the customs, usages, practices and precedents of the House and parliamentary tradition.

Rulings are given from time to time by both the President and Chair of Committees, generally in response to points of order raised by members during the debate in the House or committee of the whole. These rulings apply the standing orders to new cases or where the standing orders are silent. Rulings of the President and Chair of Committees form

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precedents for future practice in respect of a particular matter. Although they are persuasive authority only and not binding on future occupants of the chair, practice and precedent strengthens the traditions of the House without compromising the flexibility which the President has in exercising impartial control over proceedings.

The important rulings of Presidents of the Legislative Council are published by the Council Office as “President’s Rulings”.

### ***Other Reference Material***

There are a number of texts on parliamentary practice which may be consulted to determine the procedures followed in other Parliaments in both Australia and overseas.

#### *Erskine May’s Parliamentary Practice*<sup>2</sup>

The former standing order 2 specifically required recourse to *May’s Parliamentary Practice* in all cases not specifically provided for in the standing orders. Although the new standing order 2 recognises the wide range of contemporary authoritative sources in relation to parliamentary law and practice which are now available, *May* remains the major reference work on parliamentary practice in Westminster. *May* is now in its 23rd edition.

#### *Australian Senate Practice*<sup>3</sup>

First published in 1953 and currently in its 10th edition (2001), this work is increasingly relied on, especially as the Council’s new standing orders closely reflect those of the Senate.

#### *House of Representatives Practice*<sup>4</sup>

This work (4th edition 2001) provides material on the Australian House of Representatives.

#### *Parliamentary Practice in New Zealand, D. McGee*

Now in its second edition (1994) this work comprehensively covers the field as far as New Zealand is concerned. (David McGee, *Parliamentary Practice in New Zealand*, 2nd ed., GP Publications Ltd: Wellington, NZ, 1994)

#### *House of Representatives Practice (Canada)*

Now in its 3rd edition, this work comprehensively covers the field as far as the Canadian House of Representatives is concerned.

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<sup>2</sup> Erskine May’s *Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, 23rd edn, Butterworths, London 2004.

<sup>3</sup> Odgers’ *Australian Senate Practice*, 10th edn, Australian Government Publishing Service Canberra 2001.

<sup>4</sup> *House of Representatives Practice*, 4th edn, Australian Government Publishing Service: Canberra 2001.

### *Legislative Council publications*

The Legislative Council has published a range of publications on parliamentary practice and procedure. These include:

#### *Fact Sheets*

A series of documents providing information about the Legislative Council and its procedures in summary form.

#### *Procedural Briefing Notes*

These are briefing notes prepared in relation to issues as they arise and include useful research material.

#### *Guide to Occupants of the Chair*

First published in 1995, this document contains valuable information for any member presiding over the House or the committee of the whole. It deals with, amongst other things, such matters as reporting messages, giving the call, putting questions, rulings and questions of order.

#### *Manual on Procedure in Committee of the Whole House*

This document includes detailed information about procedures in the committee of the whole, including the procedure for the consideration of amendments.

#### *Manual of Joint Sittings to fill a casual vacancy in the Legislative Council and Senate*

Outlines the procedures for the conduct of a joint sitting convened to fill a casual vacancy in either the Legislative Council or the Senate.

#### *Explanatory Notes for Scheme of Disclosure of Pecuniary and other interests of Members*

Notes to assist members to comply with the requirements of the Constitution (Disclosures by Members) Regulation 1983.

#### *Petitioning the Legislative Council*

This pamphlet provides practical guidelines for drafting a petition and submitting it to the House. (Currently being updated to reflect the standing orders adopted in 2004.)

#### *Brochures*

A series of brochures containing brief information, primarily for visitors to the Legislative Council and for participants in parliamentary committee inquiries.

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## 2. The parliamentary calendar

### *Parliaments*

Following a referendum held in conjunction with the general election on 25 March 1995, an amendment to section 24 of the Constitution Act 1902 by the *Constitution (Fixed Term Parliaments) Amendment Act 1992* fixed the term of the Parliament to four years, preventing the calling of early general elections.<sup>5</sup>

The Legislative Assembly, unless sooner dissolved, expires on the Friday before the first Saturday in March each 4 years and the general election is held on the fourth Saturday in March that year.<sup>6</sup>

Unlike the Legislative Assembly, the Legislative Council has continuing membership and is not dissolved. However, under section 22F of the *Constitution Act 1902* the Legislative Council cannot meet to dispatch business when the Legislative Assembly is dissolved or expires for a general election.

A Member's term of service expires on the day of the termination, either by dissolution or expiry, of the second Legislative Assembly following his or her election.<sup>7</sup> Half of the members of the Legislative Council (21 members) stand for election, or retire each four years. Members elected at a periodic Council election conducted the same day as the general election for the Legislative Assembly are elected for two terms of the Legislative Assembly. The term of service of a Member of the Council who was elected to fill a casual vacancy expires on the day the seat would have become vacant had the casual vacancy not occurred.<sup>8</sup>

The Governor may only dissolve the Assembly during its term in the circumstances set out in section 24B of the *Constitution Act 1902*:

- if a motion of no confidence in the Government is passed by the Assembly, and within 8 days of passage of the motion, the Assembly has not passed a motion of confidence in the Government,<sup>9</sup>
- if the Assembly rejects a bill appropriating revenue or moneys for the ordinary annual services of the Government or fails to pass such a bill before the time the Governor considers the appropriation is required.<sup>10</sup>

In deciding whether the Assembly should be dissolved, the Governor is to consider whether a viable alternative Government can be formed without a dissolution and is to have regard to any motion by the Assembly expressing confidence in an alternative Government.<sup>11</sup>

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<sup>5</sup> The amendment of the *Constitution Act 1902* was approved by a vote of: Yes: 2,449,796; No: 795,706.

<sup>6</sup> *Constitution Act 1902*, section 24A.

<sup>7</sup> *Ibid*, section 22B(2).

<sup>8</sup> *Ibid*, section 22B(4).

<sup>9</sup> *Ibid*, section 24B(2).

<sup>10</sup> *Ibid*, section 24B(3).

<sup>11</sup> *Ibid*, section 24B(6).

These provisions do not prevent the Governor from dissolving the Assembly in other circumstances if the Governor could do so in accordance with established constitutional conventions.<sup>12</sup>

### ***Opening of Parliament***

Traditionally, the opening of a new session of Parliament takes place in the Legislative Council chamber. There are two types of openings – official, involving the Governor, and commission, where the Governor appoints commissioners to open the Parliament on behalf of the Governor.

The Governor's opening is conducted under standing order 5. The Governor is introduced to the chamber by the Usher of the Black Rod and will direct the Black Rod to command the attendance of the Assembly in the Council Chamber. The Governor addresses both Houses of Parliament outlining the Government's legislative program for the session.

It has become common practice for the opening of the first session of a new parliament following an election to be conducted by commissioners appointed by the Governor. There appears to be two reasons for this. Firstly, the incoming (or re-elected) Government may not be in a position to have the Governor present its legislative program in a comprehensive fashion within the timeframe for the initial meeting of the new Parliament. Secondly, the swearing in of new members and the election of the President, which takes place at the opening of the first session, may be a lengthy and somewhat unpredictable processes. Commission openings are conducted under standing order 6.

### ***Sessions***

The duration of a Parliament is divided into sessions. Section 10 of the *Constitution Act 1902* gives the Governor power to prorogue<sup>13</sup> the Legislative Council and Assembly by proclamation published in the Government Gazette and to fix the time and place for holding every session of the Legislative Council and Assembly.<sup>14</sup>

The House is in recess after it is prorogued and cannot meet until summonsed by proclamation of the Governor. It is accepted practice that prorogation brings all parliamentary business to an end. An exception to this is provided by the passing of an Act to enable committees to continue to operate during prorogation of the House.<sup>15</sup> Under section 11 of the *Constitution Act 1902* at least one session must be held each year so that a period of 12 months does not intervene between sittings.

During a session the Council may, of its own motion, adjourn from one sitting day to the next.

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<sup>12</sup> *Ibid*, section 24B(5).

<sup>13</sup> "To prorogue Parliament means to bring to an end a session of Parliament without dissolving the [Lower House] or both Houses, and, therefore, without a subsequent election". Odgers, 10<sup>th</sup> edn, 2001, p. 168.

<sup>14</sup> The timing of sessions and prorogation of parliament is, in practice, decided on the advice of the government.

<sup>15</sup> See for example: *Parliamentary Committees Enabling Act 1996*.

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### *Sittings*

There are usually two distinct sitting periods in each calendar year, March to June and September to December.

In recent years, the budget has been presented in May with the budget “take note” debate and examination of the estimates by committees occurring in the second session of the year. The March-June session, when the budget is presented, is often referred to as the budget session.

The House does not normally sit during school holiday periods.

### *Sitting Days and Times*

Under the standing orders, the House determines the days and times of meeting in each sitting week. A sessional order adopted over consecutive sessions sets the time for meetings of the House as follows:

Monday	11:00 am
Tuesday	2.30 pm
Wednesday	11:00 am
Thursday	11.00 am
Friday	11.00 am

Although these are the appointed times of meeting, this does not prevent the House from adjourning to an earlier or later time on any of those days.

In general the House meets on Tuesdays, Wednesdays and Thursdays, with only the occasional Monday or Friday sitting depending on the Government’s legislative program.

## **3. Office holders**

### *The President*

The President is the Presiding Officer of the Council and is recognised as its independent and impartial representative, not only by tradition and convention, but also by law.<sup>16</sup>

The President of the Legislative Council is elected as the first item of business at the first meeting of the Legislative Council following a periodic Council election and unless resigning or being voted out of office, continues to hold office until immediately before the House meets for dispatch of business following the next periodic Council election. The rules for electing the President are set out in standing order 12 under which members nominate their candidate for President. If only one member is proposed, the member proposed is declared elected. If two or more members are proposed members elect the President by secret ballot under standing order 13.

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<sup>16</sup> *Constitution Act 1902*, section 22G(1).

Prior to the adoption of the new standing orders, the President was elected according to section 22G of the *Constitution Act 1902* as amended by the *Constitution (Legislative Council) Further Amendment Act 1991*. Section 22 provides that until its standing orders state otherwise, the Legislative Council will adopt current Senate procedures for electing the President.

In assuming the position of highest authority in the House the President is the servant of the House and represents the House in all its powers and proceedings. The President acts as the spokesperson of the House in its relations with the Governor, the Legislative Assembly, the executive government and other persons and organisations outside Parliament.

When directed, the President communicates to outside persons or bodies resolutions of sympathy or thanks or any censure or reprimand in the name of the House. Whenever a vacancy occurs in the seat of a member of the House, other than at the expiration of their term of office, it is the President's duty to inform the Governor of the vacancy.<sup>17</sup> The President also receives the speech from the Governor on opening of a session of Parliament and conveys any messages from the Governor or the Legislative Assembly to the House.

In presiding over the meetings of the House the President enforces the observance of rules for the orderly conduct of business of the House. The President maintains order in debate and applies and interprets the practices and procedures of the House, relying on the standing orders, precedents and various procedural authorities. The actions of the President must always be, and appear to be, impartial. Because of this the President seldom participates in debate, although the President enjoys the same rights as any other member, except in respect of voting. Section 22G of the Constitution Act provides that the President or other member presiding may take part in debate or discussion in the Council.

Section 22I of the Constitution Act provides that all questions arising in the Legislative Council must be decided by majority vote of the members present other than the President or other member presiding, who has a casting vote when the votes are equal. The President can vote in a division in committee of the whole House.

The President has administrative responsibilities relating to the Legislative Council and joint administrative responsibility with the Speaker of the Legislative Assembly on matters of joint administration of the Parliament.

### ***Deputy President and Chair of Committees***

Under the standing orders the Deputy President and Chair of Committees is elected by the House at the beginning of each Parliament and holds office for its duration, or until a successor is elected.<sup>18</sup>

The Deputy President, when presiding in the House, will exercise the same authority and have the same duties and powers as the President, but will give place to the President whenever the President arrives in the House.<sup>19</sup> Under section 22G(7) of the *Constitution Act*

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<sup>17</sup> *Ibid*, section 22G(8).

<sup>18</sup> Standing order 16.

<sup>19</sup> Standing order 17(1).

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1902, during the absence of the President from New South Wales, the Deputy President acts as President, with all the powers, authorities, duties and functions of the President.

The Chair of Committees presides over the proceedings in committee of the whole House, which has the function of considering all bills in detail and any other matter referred to it for consideration.

The Chair generally has the same authority as the President when the House is in committee. The exception is that the Chair does not have the power to deal directly with a disorderly member but must name the member, report the matter to the President and the matter is then dealt with by the House.<sup>20</sup>

### *Temporary Chairs of Committees*

At the commencement of each session the President nominates a panel of not less than three members who act as Temporary Chairs of Committees.<sup>21</sup> The Temporary Chairs deputise for the President or Chair of Committees when requested and exercise all the powers vested in the President or Chair. Generally, members from each of the groups, government, opposition and cross bench, are appointed as temporary chairs.

### *Whips*

The duties of the Government and Opposition Whips include liaising with their party leader in regard to the business of the House, ensuring the attendance of members in the House, especially in voting in divisions, arranging speakers for debates, arranging “pairs” for divisions and generally acting as intermediaries between the party leaders in the House and backbench members.

### *Table Officers*

The Clerk of the Parliaments is the procedural adviser to the President, Ministers and other members of the House. The Clerk is assisted in this role by the Deputy Clerk, Clerks Assistant and Usher of the Black Rod. These officers, known as the Clerks-at-the-Table, share duties at the Table of the House and are responsible for providing impartial advice to the President and other occupants of the Chair, as well as to all other members of the House as situations arise and in anticipation of events in the House.

The Clerks-at-the-Table are available to provide advice on procedure to members when requested. In the main, the Clerk of the Parliaments provides advice to the President and parliamentary office holders including Ministers, the Deputy President or Chair of Committees and Party Leaders. The Deputy Clerk (or Clerk Assistant on duty) acts as Clerk in Committee of the whole House, provides advice and assistance on the drafting of amendments to bills and complex notices of motions, and is responsible for the preparation of the President’s Program. The Deputy Clerk provides strategic direction to the Procedure Office in the preparation of the business papers and the conduct of procedural research, questions on notice, petitions and matters relating to the Notice Paper, including the drafting of notices of motions.

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<sup>20</sup> Standing order 175, 190(2).

<sup>21</sup> Standing order 18.

The Clerk Assistant Committees is responsible for providing advice to the Chairs of the Legislative Council committees, as well as assisting with procedural matters. The Clerk Assistant Corporate Support is responsible for members' entitlements, human resources, corporate planning, staff development, industrial relations and information technology and is also available to provide advice on matters of parliamentary procedure.

The Usher of the Black Rod is also on duty in the Chamber during sittings. Under the direction of the President, the Usher maintains order in the Chamber and galleries.

#### **4. Records of proceedings in the House**

##### ***Minutes of the Proceedings***

Under standing order 49, all proceedings of the House are to be recorded by the Clerk and published in the minutes of proceedings each sitting day. A "proof" issue of the minutes is published on the morning following each sitting day and a final copy is produced some days later. At the end of each session, the minutes are bound as the Journals of the House.

The minutes do not record proceedings in committee of the whole House. These are contained in the "committee bill", the official record of proceedings of debate and votes on each bill.

##### ***Notice Paper***

Under standing order 49 the Clerk also publishes a business paper, known as the Notice Paper. Except for the first sitting day of a new session when there is no business before the House, on each subsequent sitting day, the business paper contains notices of motions and orders of the day before the House and the order in which the House proceeds with its business.<sup>22</sup>

##### ***Daily Program***

A daily program listing the order of business before the House, both government and general, is prepared by the Clerk each sitting day. The program is not official and is issued as guidance only.

##### ***Questions and Answers Paper (written questions on notice)***

Detailed or lengthy questions to Ministers are usually put on notice by handing the question to one of the Clerks-at-the-Table during a sitting.

The rules for questions are contained in standing order 65. Ministers must lodge answers to questions on notice within 35 calendar days after the question is first published. Where answers are not provided within the timeframe, the Minister concerned is called upon in the House to explain, given 3 days to provide the answer, then called upon again to explain if an answer has still not been provided.

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<sup>22</sup> Standing order 49(2).

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Questions, together with the answers when they are received, are recorded in the Questions and Answers paper. This paper is published by the Clerk in full on the first sitting day in each week including all outstanding questions and answers received. On each other sitting day only new questions and answers received are published.

### ***Statutory Rules and Instruments Paper***

Section 40 of the *Interpretation Act 1987* requires that a written notice of the making of a statutory rule be tabled in each House within 14 sitting days after a rule has been published in the Government Gazette, which is published each Friday.

Members may give notice of a motion to disallow a statutory rule either before the written notice is tabled or within 15 sitting days after it is tabled.<sup>23</sup>

A Statutory Rules and Instruments Paper which lists the statutory rules or instruments, subject to disallowance, the date tabled and the last sitting day before notice of disallowance must be given, is published by the Clerk for the information of members on Tuesday of each week when the Council is sitting and the first Tuesday of each month when not sitting. A copy of each statutory rule and instrument is available for inspection in the Council office.

### ***Attendance of members***

Any member absent from the House on a sitting day is recorded in the Minutes of Proceedings. The number of days present in the House and the number of divisions attended by each member in the House and committee of the whole are recorded, and published in the official Journal of the House at the end of each session.

### ***Legislative Council Journals***

At the conclusion of each session of Parliament the indexed minutes of proceedings and other records and documents of the House are bound and published as the official Journal of the Legislative Council. In addition to the minutes, the Journal contains registers showing the history of the passage of bills, register of addresses and orders for papers, sessional and select committees appointed, an abstract of petitions presented and a return showing the attendance of members and other lists of members. The Notice Paper and Questions and Answers paper are also bound at the end of each session.

### ***List of members***

A list of members of the Council is prepared and distributed which shows member's full names and titles, party affiliation and representation in the House.

## **5. Categories of business**

Standing orders provide that the House may appoint the days and the hours on which government and general business is dealt with.<sup>24</sup> Under a sessional order adopted over

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<sup>23</sup> Interpretation Act 1987, Section 41.

consecutive Parliaments, government business takes precedence on Monday, Tuesday, Wednesday, Friday and after 5.00 pm on Thursday each week and general business takes precedence until 5.00 pm on Thursday each week<sup>25</sup>

### ***Government business***

Government business includes all matters initiated by a Minister, or Parliamentary Secretary exercising the powers of a Minister under standing order 25 and is mainly items related to the government's legislative program. Ministers may arrange government business notices of motions and orders of the day on the Notice Paper in the order they wish them to be taken.

### ***General business***

Notices of motions given by all members other than a Minister are known as private members' business and are referred to collectively as general business. The current sessional orders provide for general business to take precedence of government business on Thursdays until 5.00 p.m. On these days items of general business appear before items of government business on the notice paper. As noted above, private members' motions for the disallowance of a statutory rule or which relate to privileges or business of the House are accorded precedence of other business.

Although notices of motions and orders of the day are generally set down on the notice paper for the next sitting day, it does not necessarily mean they will be dealt with on that day. The House may, on motion without notice, postpone an item of business under standing order 45 or use other procedures, such as the suspension of standing orders, to bring on an item of business out of the order on the notice paper.

### ***Notices of motions***

Under standing order 73, a member who wishes to initiate a subject for discussion may only do so if notice was given at a previous sitting of the House, or by leave of the House, or as otherwise provided by the standing orders. Notices of motions are given before the House proceeds to the business on the Notice Paper, and only at other times by leave of the House.<sup>26</sup> The member gives notice by reading the notice of motion aloud, handing the Clerk a signed written copy and stating the day proposed for moving the motion.<sup>27</sup> Generally, members give notice for the next day, these notices being set down on the Notice Paper in the order in which they are given.<sup>28</sup> Members may also give notice for a specific day not more than four weeks from the day the notice is given.<sup>29</sup>

Under a practice first instituted in 1992 by the then President, Ministers may give consecutive notices whereas private members may only give one notice on each call from the Chair.<sup>30</sup> This procedure was adopted to give all private members an equal opportunity

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<sup>24</sup> Standing order 40.

<sup>25</sup> Sessional Order 2 - 1 June 2004, 1st Session, Minutes No. 57, item 3.

<sup>26</sup> Standing order 71(6).

<sup>27</sup> Standing order 71(1).

<sup>28</sup> Standing order 71(3).

<sup>29</sup> Standing order 71(7).

<sup>30</sup> 25 February 1992, Minutes No. 2, p12.

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to give notices. The President usually recognises the Leader of the Opposition immediately after Ministers, and then alternates the call between the government, opposition and cross bench members until all notices have been given.

Other matters in the standing orders governing notices of motions include:

- a member may give notice on behalf of any other member who is not present in the House;<sup>31</sup>
- a member may change the date for bringing on their motion by giving notice of the new date, but that date may not be earlier than the original date;<sup>32</sup>
- if a notice contains “unbecoming expressions”, the President may refuse to have it printed or the House may order that it be expunged from the Notice Paper.<sup>33</sup>

Notices of motions are not considered to be the property of the House until they are moved. Until moved a Member may withdraw it, change the date for bringing on the motion, or seek leave to amend the motion when first moving it.

#### *Contingent notices of motions*

In urgent cases, the House may suspend standing orders either by a motion on notice, or by leave of the House, to allow the House to proceed in a manner that would otherwise be contrary to the standing orders.

Contingent notices of motions have developed as a device to overcome the requirement for members to give notice of their intention to suspend standing orders. These notices indicate that, contingent upon a particular matter occurring, a member will move the suspension of standing orders to enable the moving of a subsequent motion to rearrange the business of the Council or to have some new item of business considered.

Contingent notices of motions currently on the Notice Paper include notices relating to the passage of a bill through all its stages during any one sitting of the House, the consideration of a particular item of business, censure of a Minister and contempt of the House.

#### ***Orders of the day***

An order of the day is a matter which has been moved and which the House has ordered be taken into consideration at a later hour or on a particular day.<sup>34</sup>

The House may adjourn the matter until a later hour of the same day, the next sitting day or to a specified day.<sup>35</sup> The majority of orders of the day are the stages of bills set down for consideration according to the standing orders. Unlike notices, an order of the day is in

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<sup>31</sup> Standing order 71(4).

<sup>32</sup> Standing order 72.

<sup>33</sup> Standing order 71(8).

<sup>34</sup> Standing order 80.

<sup>35</sup> Standing order 101(1).

possession of the House and cannot be withdrawn except by leave of the House<sup>36</sup> or discharged or postponed, except by agreement of the House on motion.<sup>37</sup>

## 6. Routine of business

Standing order 38 sets out the order in which categories of business are to be proceeded with each sitting day. It deals with items of business which occur on most sitting days but does not attempt to cover all items of business that arise in the House. On the basis of information contained in the relevant standing orders, together with precedents from the House, the routine or order of business each sitting day after prayers are read is as follows:

- Messages from the Governor
- Messages from the Legislative Assembly
- Reports tabled by President
- Formal business under SO 44
- Presentation of papers
- Petitions
- Notices of motions
- Postponements
- Matters concerning the privileges of the House under SO 77
- Urgency motion under SO 201
- Items of business of the House under SO 39
- Motions for disallowance under SO 78
- Matters of public interest under SO 200
- Ministerial statements
- Ministerial replies to matters raised on the motion for adjournment
- Motions and orders of the day, or vice versa, as set down on the Notice Paper

The standing orders provide that a number of these items of business can also be taken at other times during the sittings of the House, including: messages from the Governor;<sup>38</sup> messages from the Legislative Assembly;<sup>39</sup> presentation of papers;<sup>40</sup> matters concerning the privileges of the House under SO 77;<sup>41</sup> ministerial statements.<sup>42</sup>

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<sup>36</sup> Standing order 75(4).

<sup>37</sup> Standing order 45, 81(4), 140(1).

<sup>38</sup> (Under standing order 122 messages from the Governor must be reported to the House “as soon as practicable after receipt”.

<sup>39</sup> Under standing order 126 messages from the Legislative Assembly must be reported to the House “as soon as practicable, without interrupting any business before the House”.

<sup>40</sup> Under standing order 54 the President, Ministers or the Clerk may table documents “at any time when there is no other business before the House”. Other members may table documents by leave.

<sup>41</sup> Standing order 77 provides that a matter of privilege, “unless suddenly arising in proceedings before the House”, is to be dealt with according to the procedures set out in that standing order. As part of those procedures, under

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Once the House proceeds to consider motions and orders of the day, or vice versa, as set down on the Notice Paper, other items of business (such as Notices of Motions or Petitions) may not be dealt with “except by leave of the House”,<sup>43</sup> or upon the suspension of standing orders by resolution of the House.<sup>44</sup>

## 7. Private members’ business

In order to provide a more efficient and equitable method of dealing with private members’ business, the House adopted a sessional order on 8 September 1999 that varied the procedures in the standing orders for the consideration of private members’ business. The sessional order was adopted each subsequent session with some minor modification, and was adopted as a standing order on 4 May 2004.

Under standing orders 183-189, on days set aside for general business the House considers items of private members’ business in the sequence established by a draw conducted by the Clerk of the House at the beginning of the session. As items are disposed of by the House, further ballots are conducted to ensure there are sufficient items (up to a limit of 12) in the order of precedence.

Notices of motions when first given appear under “Private Members’ Business—Items Outside the Order of Precedence” in the order given. The items selected in the draw are shown under “Private Members’ Business—Items In the Order of Precedence”.

The establishment of an order of precedence for private members’ business does not prevent a member from giving further notice of motions that are then listed on the Notice Paper under items outside the order of precedence in the order given.

An item of private members’ business listed in the order of precedence may be postponed. However, under standing order 188, an item postponed for a third time is removed from items in the order of precedence and set down at the end of private members’ business items outside the order of precedence unless the House otherwise orders.

The procedure for conducting the draw for private members’ business under the standing orders is as follows:

- A random draw of 12 members’ names in the order of government, opposition and cross bench from items of private members’ business already placed on the Notice Paper establishes the order of precedence for 12 separate items.
- A member is not included in the random draw of names if the member already has an item listed in the order of precedence, or has previously been selected in a draw and had an item of business disposed of when there are other members in the same

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standing order 77(4) where the President determines that a motion relating to a matter should be given precedence of other business a member may “at any time when there is no business before the House, give notice of a motion to refer the matter to the Privileges Committee.”

<sup>42</sup> Under standing order 48 a Minister may make a statement regarding government policy “at any time when there is no other business before the House.”

<sup>43</sup> Standing orders 71(6), 68(8).

<sup>44</sup> However, there are some circumstances in which the standing orders specifically allow for a motion to be moved without notice (eg standing order 125).

group (government, opposition, cross bench) with notices on the notice paper who have not previously been selected in the draw.

- Each member whose name is drawn and who has more than one notice of motion on the Notice Paper notifies the Clerk which notice of motion is to be placed in the order of precedence. If a member does not notify the Clerk within two working days, the first motion standing on the Notice Paper in the name of the member is included in the order of precedence.

### *Time limits*

When an item other than a bill is being considered the total debate time is limited to 3 hours. The time limits for speeches are:

- 30 minutes for the mover;
- 20 minutes for any other member;
- 10 minutes for the mover in reply.

When a bill is being considered the following time limits apply:

- where there is debate on the question of leave to bring in the bill, there is a maximum of one hour debate, with the mover and any other member able to speak for up to 10 minutes and the mover in reply for not more than 10 minutes;
- if leave is granted to bring in the bill, there is no debate on the first reading and printing of the bill;
- where there is debate on the question of the second or third reading of a bill there is no time limit on the total debate time, but the mover may speak for 30 minutes, and any other member, and the mover in reply, may speak for 20 minutes.

Appendix One lists all time limits applying to debates.

## **8. Selected items of business**

### *Tabling of papers and other documents*

Before the House proceeds to the business on the Notice Paper, as part of the formal business conducted each sitting day the President calls for the tabling of papers.

Under the standing orders all papers and documents laid upon the Table by the President, a Minister or the Clerk are considered to be public, unless otherwise ordered by the House and the documents are available for inspection. The President, Ministers and the Clerk may table documents at any time when there is no other business before the House.<sup>45</sup> Other members may table documents by leave, and unless authorised by the House to be made

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<sup>45</sup> Standing order 54(1).

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public, these documents are available for inspection by members of the House only.<sup>46</sup> All members require leave to table a document during debate on bills or motions.

The House may order any tabled document to be printed. All papers ordered to be printed are bound and published by the Parliament in the Joint Volumes of Parliamentary Papers and form part of the permanent parliamentary record. The publication of papers presented to Parliament is subject to the protection of absolute privilege under the Defamation Act 1974.

Under standing order 59, on the first sitting day of each month, a Minister tables a list of all papers tabled in the previous month and not ordered to be printed. On tabling, a motion may be moved without notice, that certain papers on the list be printed taking into account such factors as availability of the documents elsewhere and public interest in the document

Papers regularly tabled in the House include:

- certain acts, including the *Ombudsman Act 1974* and the *Independent Commission Against Corruption Act 1988* require that certain reports be submitted to the President. After receipt, the President tables the report at the earliest opportunity. If the House is not sitting, the President receives the report and, under the act, authorises it to be made public forthwith. When the House next sits the President announces receipt of the report.
- annual reports of government departments and statutory authorities are required to be presented to Parliament under the Annual Reports (Departments) Act and the Annual Reports (Statutory Bodies) Act, these are tabled by a Minister.
- other reports and documents required or desired to be tabled by a Minister.
- committee reports tabled by the Chair of the committee.
- statutory rules and instruments subject to disallowance under the Interpretation Act 1987 and reports received when the House was not sitting, which are tabled by the Clerk.
- Standing order 55 provides that where an act requires that a Minister table a report or other document in the House, and the House is not sitting, that the report or document may be lodged with the Clerk. The report lodged with the Clerk is deemed to have been tabled in the House and is available to the public. The Clerk also tables committee reports received when the House was not sitting.

### ***Orders for the production of documents***

The Legislative Council has the power to order the production of state papers, that is documents held by the NSW Government. This power exists to assist the Legislative Council to fulfill its function of making of laws and holding the Government to account.<sup>47</sup>

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<sup>46</sup> Standing order 54(4).

<sup>47</sup> Egan v Willis [1998] HCA 71.

Standing order 52, which regularises the way in which the Legislative Council exercises this power, states that the House may order documents held by the New South Wales government to be tabled in the House and that the Clerk is to communicate to the Premier's Department, all orders for documents made by the House.

Documents provided by the government under these orders have ranged from a single letter to over one hundred boxes of documents on a particular subject.

Most documents provided are made public without restricted access. However, under standing order 52 the Government may make a claim of "privilege", that is, that the document should not be made public on certain grounds such as legal professional privilege, or public interest. Such documents are made available for inspection by members of the Legislative Council only. Under the standing order any member may, by communication in writing to the Clerk, dispute the validity of a claim of privilege. On receipt of such communication, the Clerk is authorised to release the disputed document or documents to an independent legal arbiter for evaluation and report as to the validity of the claim. This may result in the document the subject of a claim of privilege being made public.

Only a member of the Legislative Council may initiate the process by which the production of state papers is ordered under standing order 52.

### ***Petitions***

The standing orders and practices of the Legislative Council provide a number of rules which are designed to ensure the authenticity of petitions and provide protection to the petitioner and the House.<sup>48</sup>

A petition can only be presented to the House by a member of the House. Members are not obliged to present a petition to the House but generally take the view that they should present any petition forwarded to them regardless of any disagreement they may have with its content.

Petitions must be respectful, decorous and temperate in its language, and must not contain language disrespectful to the House.

Before presentation, the member presenting must sign his or her name on the top of the first page of the petition.

Members are required to ensure that a petition is in the proper form before being presented to the House and that it conforms with the standing orders. It is the usual practice for members to refer petitions to the Legislative Council Procedure Office for advice on the petition's compliance with the standing rules and orders. The Procedure Office will prepare a form of words to be used by the member when presenting the petition to the House.

According to standing order 38, petitions are dealt with after the tabling of papers. Leave of the House is required to present a petition at any other time during proceedings.

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<sup>48</sup> Standing orders 68, 69, 70.

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The subject matter of each petition presented, and the number of petitioners is recorded in the official minutes of the House and the text of the petition is printed in Hansard that day.

Under standing order 68, the Clerk must refer a copy of every petition received by the House to the appropriate Minister.

### ***Question time***

According to sessional order, question time commences at 4.00 p.m. on Monday and Tuesday and at 12.00 noon on Wednesday, Thursday and Friday unless the House otherwise decides.

Standing order 64 permits questions to be put:

- to Ministers relating to public affairs with which the Minister is officially connected, to proceedings pending in the House, or to any matter of administration for which the Minister is responsible,
- to other members relating to any bill, motion, or other business on the Notice Paper of which the member has charge, and
- to a chair of a committee relating to the activities of that committee, but the question must not attempt to interfere with the committee's work or anticipate its report.

Ministers are responsible for answering not only questions on their own portfolios but on portfolios held by Ministers in the Legislative Assembly for which they have been allocated responsibility.

*Erskine May* describes the practice followed during question time as being not a time for debate, but one for seeking information. Questions should therefore be short and to the point and relate to the responsibilities of the Minister concerned. Questions must not contain unnecessary detail, or contain arguments, expressions of opinion, inferences or imputations, or offensive expressions. Questions also inadmissible are those which seek the solution of hypothetical propositions, raise questions of policy too large to be dealt with in an answer to a question, seek information on matters of past history for the purposes of argument, are multiplied with slight variations on the same point, or are trivial, vague or meaningless. Likewise, answers should be relevant to the question asked and should not be unduly lengthy.<sup>49</sup>

All questions, whether they are asked with or without notice, should be framed in interrogative terms. For example, what, where, will, why, when, does, is? The use of phrases such as "Is it a fact ...." suggests that the question is seeking an opinion or giving information.

Standing order 66 requires that in answering a question there be no debate on the subject matter of a question and the answer must be relevant to the question asked.

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<sup>49</sup> Erskine May, 23<sup>rd</sup> edn, 2004, pp 344-5

If a question is referred to a Minister in the other place, the Minister in the Legislative Council must provide the answer to the House within 35 calendar days after the question was first asked. If the answer is not provided within the timeframe, the Minister concerned is called upon in the House to explain, given 3 days to provide the answer, then called upon again to explain if an answer has still not been provided. This procedure continues until an answer is provided. If an answer to a question without notice is not provided within 35 calendar days but when provided is accompanied by an explanation of the reasons for the late provision of the answer, the late provision will not be reported to the House.

The standing orders limit the time taken by members in asking questions to one minute and an answer to four minutes. At the discretion of the President, one supplementary question to elucidate an answer may immediately be put by the member who asked a question. In asking a supplementary question the member has one minute and the Minister has two minutes to answer. Ministers sometimes object to a lengthy and involved question being asked without notice, particularly if it is outside their portfolio, and will suggest that the question be placed on notice on the Question and Answers Paper. The President has also directed members to place such questions on the Question and Answers Paper.

The standing orders do not limit the duration of question time each day but generally after one hour the Leader of the Government asks that all further questions be placed on the Questions and Answers paper.

### ***Adjournment debate***

Generally speaking, the House can be adjourned only by its own resolution. The adjournment of the House to terminate a sitting may be moved at any time by a Minister (or a parliamentary secretary under standing order 25).

Under standing order 31, the debate on the motion for the termination of the sitting of the House is limited to 30 minutes, during which time members may speak on almost any matter for up to five minutes. The normal rules of debate, other than relevancy, apply.

The debate provides members with an opportunity to bring pressing matters before the House and to the attention of the Government.

Under standing order 33 a Minister may, before the House proceeds to the business of the day, make a statement in relation to any matter raised on the adjournment at a previous sitting. There is no time limit imposed on the Minister in reply.

### ***Matters of public importance and motions of urgency***

The standing orders provide an opportunity for a matter of public importance to be debated by the House without any question being put to a vote, or the moving of a motion that the House is of a particular opinion or will take a particular action.

Under standing order 200 a member may give notice of their intention to raise a matter of public importance for discussion. Matters of public importance takes precedence of all other business set down on the notice paper for that day, except business taking precedence under standing order 74(3).

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Time limits apply to the debate on a matter of public importance. The overall debate is limited to one hour and 30 minutes; the member proposing the matter, the Minister first speaking and the Leader of the Opposition or member nominated by the Leader of the Opposition, when the matter is proposed by a member of the government have 15 minutes; and each other speaker, including the proposer in reply have 10 minutes.

Under the standing order, only one matter of public importance may be proceeded with on any sitting day.

Urgency motions under standing order 201 may be moved without notice. The member proposing that the House adjourn to discuss a particular matter of urgency must hand to the President, prior to the commencement of the sitting on the day to which the proposal relates, a written statement of the proposed matter of urgency. At the conclusion of formal business the President informs the House that the motion has been received and puts the question on urgency. If the House agrees that the matter is urgent debate commences immediately, time limits applying. At the completion of the debate, the motion lapses with no question being put.

### ***Debate on committee reports***

On the tabling of a report by a committee, a motion may be moved without notice “That the House take note of the report.” The debate provides an opportunity for members, particularly members of the committee, to discuss the report before the House. At the completion of the debate the question is put. In agreeing to the motion, the House is merely “taking note” of the report, not agreeing to, or adopting, any recommendations or opinion contained in the report.

Standing order 232 provides that debate on committee reports proceeds for one hour on each day the debate takes precedence. The standing order also provides that the member moving the motion has 15 minutes and a further 10 minutes in reply and all other members have 10 minutes in debate. The debate on any one report is not limited by time and will be set down on each succeeding day that debate on committee reports takes precedence until the question is put.

Under a sessional order, debate on committee reports takes precedence on Wednesdays after question time.

### ***Budget ‘take note’ debate and budget estimates process***

Section 5 of the *Constitution Act 1902* requires appropriation bills to be introduced in the Legislative Assembly. In recent years, as the current Treasurer is a member of the Legislative Council, the Legislative Assembly has requested, by message, the attendance of the Treasurer at the Table of the Legislative Assembly for the purpose only of giving a speech in relation to the budget. Simultaneously with the Treasurer giving his speech, a Minister in the Council tables the budget papers and moves that the House take note of the papers and gives the same speech as the Treasurer. Debate is then adjourned to allow members time to read the Budget papers.

The Chair allows considerable latitude in debate on the budget take note motion. Consequently, a wide-ranging debate occurs which usually takes several weeks to conclude.

In 2004 a sessional order was made introducing a specific time for the budget take note debate (two hours each Wednesday afternoon following debate on committee reports) and time limit of 15 minutes for each speaker other than the mover and the Leader of the Opposition. No determination is made on the actual expenditure until the appropriation bill is received from the Assembly.

Over recent years, the House has referred the Budget Estimates and related papers to the five General Purpose Standing Committees for inquiry and report. The committees have substantial powers to require answers to questions and have a number of mechanisms for obtaining information. The terms of reference of the budget estimates inquiry, the same in substance over consecutive years, also provides that the committees must hear all evidence on the budget estimates in public and that the committees may hold supplementary hearings as required.

### ***Address-in-reply debate***

The address-in-reply is a motion addressed to the Governor in response to the Governor's speech on opening a session of Parliament. As the speech given to the members of both Houses outlines the Government's proposed legislative program for the session, debate on the address-in-reply is traditionally not interrupted by other business until it is concluded, except in the case of urgent bills. However there has been a movement away from this practice in recent years.

The procedure for the address-in-reply is set out in standing order 8. The President reports to the House the speech of the Governor, following which a motion for an address-in-reply may be made forthwith or on a future day. The motion for the address-in-reply must be seconded. Consideration of the Governor's speech is dealt with as government business. Once the address-in-reply motion is agreed to, a motion is made that it be presented to the Governor, and the President, ministers, members and officers of the House proceed to Government House to formally present the motion agreed to by the House. The President then reports to the House the presentation of the address and the reply of the Governor.

## 9. Bills

According to *May's Parliamentary Practice* a bill is a draft of a legislative proposal and an Act of Parliament or statute is a bill which has passed through its various stages in both Houses of Parliament and received the royal assent.

The “passing” of a bill through both Houses means that procedures laid down in the standing orders for the first reading, second reading, committee stage and third reading have been complied with.

Bills may originate in either House, provided that bills for appropriating any part of the public revenue, or for imposing any new rate, tax or impost, so called ‘money bills’, originate in the Legislative Assembly (section 5, *Constitution Act 1902*).

There are three categories of bills:

- public bills
- private bills
- hybrid bills

### ***Public bills (SO 136)***

A public bill is one which deals with a matter or matters of general public interest. Nearly all bills introduced are public bills.

#### *Government bills*

The majority of public bills are introduced by a Minister as part of the government’s legislative program. There are no time limits on debate of government bills.

#### *Private members’ bill*

A public bill introduced by a private member does not have precedence over other matters of private members’ business. Time limits apply to the debate of a private member’s bill at the introduction, second and third reading stages.

### ***Private bills (SO 164)***

A private bill, not to be confused with a public bill introduced by a private member, deals with a specific private matter which affects a private person or persons or applies to some particular locality. A private bill does not deal with public policy and is not sponsored by the government but by a private member. Certain special procedures are involved in the introduction and passing of private bills. Private bills are initiated by petition and referred to a select committee for consideration and report. The last private bill passed by both Houses was the *Tamworth Information Centre Bill 1992* introduced in the Legislative Assembly.

### ***Hybrid bills***

A hybrid bill is a public bill which affects particular private interests in a manner different from the private interests of other people or bodies in the same category or class. A hybrid bill affects partly public and partly private interests. The last bill regarded as a hybrid bill in the Legislative Council was the East Maitland Racecourse Enabling Bill in 1920 that related to the powers of the Trustees of the racecourse to deal with Crown land. It was introduced as a public bill, but on a point of order being taken the President ruled the bill a hybrid bill.

### ***Cognate bills***

Standing Order 139 provides for the simultaneous consideration of related bills to proceed through the various stages together, except in committee of the whole where they are considered separately.

### ***Stages in the passage of a bill***

The standing orders provide for the following stages:

- first reading (SO 137)
- second reading (SO 140)
- committee of the whole (SO 141)
- third reading (SO 148)

### ***Initiation, introduction and first reading***

#### *Legislative Council bill*

A bill other than a bill received from the Assembly is initiated in the Legislative Council by giving a notice of motion seeking leave to introduce the bill. The notice states the long title of the bill.

When the House has given leave for the introduction of a bill a copy is presented and a motion made that the bill be printed and read a first time. The question is put by the President immediately after the bill has been received, and determined without amendment or debate. The bill is then available to members and the public. Standing order 137 provides that after the first reading, the second reading may be moved immediately and following the second reading speech by the mover, the debate is adjourned until a future day which must be at least five calendar days ahead.

#### *Legislative Assembly bill*

A bill received from the Assembly proceeds in the same manner as bills introduced in the Council, except for initiation. After the President announces receipt of a message from the Assembly forwarding a bill for Legislative Council's concurrence the bill is read a first time and printed and the second reading set down for a later hour or the next sitting day. On

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announcing receipt of several messages forwarding bills from the Assembly, the President may, under SO 154(2), inquire if leave is granted for the first reading, printing, suspension of standing orders where applicable, and fixing of the day for the second reading, to be dealt with on one motion.

### ***Second reading***

The second reading is the stage at which the general principles of the bill are considered and to which lengthy debate may ensue. It is to this question that amendments are most frequently proposed. The amendments are normally directed at delaying the progress of the bill, for example, by referring it to a select committee for consideration and report.

Standing order 141(a) permits bills to proceed directly to the third reading immediately after the second reading is agreed, without going through the committee stage, if there is no objection. All other bills are considered in committee of the whole House.

### ***Committee Stage (SO 141)***

It is only in committee that the text of a bill may be modified. The function of the committee of the whole is to consider each clause, schedule (if any), preamble (if any) and the title of a bill separately and, if necessary, word by word to approve or amend the text. With large bills, the Committee may agree to consider a bill by parts rather than clause by clause.

An amendment may be moved to any part of a bill as long as it is in conformity with the standing orders. The same rules of debate which apply in the House are applicable in Committee, except that a member may speak more than once to the same question.

Once the bill has been considered in committee, the Chair reports the bill to the House with or without amendment.

### ***Third reading***

Under standing order 148 after the report of the committee of the whole is adopted, the third reading of the bill may be set down for a future day, usually the next sitting day.

In practice the third reading usually takes place immediately either by leave or contingent notice and this bill is then forwarded to the Legislative Assembly.

### ***Expedited passage of a bill***

The procedure for the passage of a bill set down by the standing orders may be expedited by the House agreeing to a motion to suspend standing orders to enable a bill to pass through all its stages during one sitting of the House. Contingent notices of motions, which are used to suspend standing orders on most bills received from the Legislative Assembly, overcome the requirement for members to give notice of a motion to suspend standing order at a previous sitting.

### *Urgent bills*

Standing Order 138 allows a Minister to declare a bill to be an urgent bill, and the question will be put immediately, without amendment. When a bill has been declared urgent, the second reading debate and subsequent stages may proceed immediately or at any time during any sitting.

## 10. Rules of debate and maintenance of order

### *Right to speak*

The right of members to speak is guaranteed by Article 9 of the Bill of Rights 1689 (Imperial), which applies in NSW by section 6 and schedule 2 of the Imperial Acts Application Act 1969. Article 9 states that

the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament.

Members' speeches within the Chamber are protected by a defence of absolute privilege. Absolute privilege also applies to the publication of the debates and proceedings of either House or both Houses of Parliament, under section 17(2) of the Defamation Act 1974.<sup>50</sup>

### *Seeking the call*

To exercise the right to speak members "seek the call" by rising in their place and addressing the President with the words "Mr/Madam President". It is necessary for a member to be recognised by the Chair calling the member's name before they may proceed to address the House. The decision as to who may speak is up to the President, despite any conventions or informal arrangements to ensure representation of all parties in the debate. If two members rise to address House, the President's choice may be altered by a motion that another member "be now heard". The motion must be moved before the member given the call has begun their remarks and is not debatable.<sup>51</sup>

The rules which must be observed by members when speaking and the power of the Chair to enforce these rules are governed by standing orders nos 83 to 101.

The place of speaking, under normal circumstances, is at the Table of the House. Members may speak from their place on the benches when asking a question without notice, taking a point of order or privilege, or if making a short speech. The House may give leave (agreement without dissent) in the case of sickness or infirmity for a member to speak while seated.<sup>52</sup>

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<sup>50</sup> Under section 21(1) of the Interpretation Act 1987 the phrase "Government Printer" includes any other person authorised by or on behalf of the Government to print any document. The Parliament has been authorised to publish its debates and proceedings by a delegation under the Interpretation Act 1987. Standing orders 49 and 51 specifically authorise the publication of the journals or the House and Hansard, including Hansard 'galley proofs'. This assists to clarify the privileged status of the Hansard 'galley proofs' published by the Parliament.

<sup>51</sup> Standing order 97.

<sup>52</sup> Standing order 85.

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The standing orders also require that members address their remarks to the Chair.<sup>53</sup> This must be done not only at the commencement of a member's remarks but throughout their speech. It is improper to direct remarks directly to other members in the Chamber. Remarks concerning other members of the House should be expressed in the third person. Members are referred to as "The Honourable (name of member)" or by the office they hold, "The Honourable the Minister for ..."; or "The Honourable the Leader of the Opposition."

Standing order 91 states that a member may not:

- reflect on any resolution or vote of the House, unless moving for its rescission;
- refer to the Queen or the Governor disrespectfully in debate, or for the purpose of influencing the House in its deliberations;
- use offensive words against either House, or any member of either House, and all imputations of improper motives and all personal reflections on either House, members or officers are considered disorderly.

### ***Reading of speeches***

Standing order 91 also provides that members may read reasonable lengths of extracts from books, newspapers and publications or documents.

Although the standing orders are silent on the reading of prepared speeches, points of order protesting against the practice have been taken in the past, usually based on the objection that the views of persons other than the member speaking are being presented or that a question is not being debated. The Chair has ruled that a member is not entitled to read a prepared speech, as this tends to reduce the "cut and thrust of debate". However, the use of copious notes when making a speech has been permitted. It is accepted that ministers and the Leader of the Opposition read prepared speeches at the second reading stage of a bill and that inaugural speeches may be read.

Under standing order 91, if objection is taken to the reading of a list of names of individuals or organisations who have made representations in relation to the matter the subject of debate, the member must confine their remarks to a statement of the comments or views of those individuals or organisations or to the number of individuals or organisations making similar representation.

### ***Relevancy and anticipation***

Standing Order 92 states that members may not digress from the subject matter of any question under discussion, referred to as "relevancy", and may not anticipate discussion on certain matters shown on the Notice Paper. The precise relevancy of remarks and their connection to the question before the House are not always apparent. The President will often call a member to order and remind them that their remarks must adhere as closely as possible to the question.

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<sup>53</sup> Standing order 85.

The rule of relevance insists that amendments be relevant to the main motion and applies to the various stages in the passage of bills. At the second reading, debate is limited to the principle of the bill and debate on individual clauses is out of order. At the third reading, although debate is rare, debate must be confined to the question that the bill be read a third time and not a general discussion of the content of the bill. Wider latitude is allowed on certain debates such as the debate on the budget estimates and related papers and debate on the Address-in-Reply.

In interpreting the anticipation rule the President's decision is guided by the principle that the most effective form of proceeding takes precedence. A descending scale is used for determining the more effective form of proceedings: bills precede motions, which precede amendments. In determining whether discussion is out of order on the ground of anticipation, the Chair will have regard to the probability of the matter anticipated being brought before the House in a reasonable time.

### ***Speaking once in debate***

Under standing order 87, a member may only speak once on any question before the House. There are two exceptions to this rule. Firstly a reply is allowed to a member who has moved a substantive motion or moved the first, second or third reading of a bill<sup>54</sup>. (A substantive motion is a motion which is self-contained and which normally requires notice, such as a general business motion.) Secondly, a member may explain or reply to some material point on which the member has been misquoted or misunderstood.<sup>55</sup>

When an amendment is proposed to a motion, any member who speaks subsequently, speaks to both the amendment and the main motion. A member who has spoken in the debate prior to any amendment being moved, may speak again to the amendment only.

Members may speak more than once in debate in committee of the whole House.<sup>56</sup>

### ***Interruption of debate***

Standing Order 95 states that a Member may not interrupt another member speaking except to:

- call attention to a point of order, that is, that proceedings are not being conducted according to the rules and orders of the House;
- call attention to the lack of a quorum; or
- raise a matter of privilege.

### ***Disorderly and offensive words***

Presidents have often stated that the standing orders are designed to ensure that members exercise their privilege of free speech with good sense and good taste so as to maintain courtesy of language towards other members in debate. Personal references, unbecoming

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<sup>54</sup> Standing order 90(1).

<sup>55</sup> Standing order 89.

<sup>56</sup> Standing order 173(5).

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language and insults and accusations in debate, not only reduce the standard of debate, provoke retaliation and lead to disorder in the House, but degrade the Parliament in the estimation of the people.

The Chair will intervene where offensive or disorderly words are used, or if the Chair does not intervene, an aggrieved member may take a point of order.

When members take a point of order they should direct the attention of the Chair to the words which they consider offensive or disorderly. The Chair will then determine whether or not the words complained of are offensive or disorderly and whether they should be withdrawn. In a serious case the Chair may request an apology.

Objection to any words used in debate must be made when spoken, that is at once, and not some time afterwards. If a member states that they did not say what is alleged the member's word must be accepted.

The President has ruled that when a person is in political life it is not offensive that things are said about them politically. Offensive means offensive in some personal way, and the same view should be applied to the meaning of 'improper motives' and 'personal reflections'.

### *Decorum in the House*

As well as rules which must be observed when speaking, there are established rules relating to the conduct of members and decorum in the chamber. Some of these rules are contained in standing orders, others rely on the good sense of members and the application of common courtesies.

Members remove their head covering when entering or leaving the Chamber or moving to any part of the Chamber during debate. When entering or leaving the Chamber they bow their head to the Chair as a gesture of respect to the Chair.<sup>57</sup>

On sitting days, members stand when Black Rod announces the President, and remain standing until after the prayers have been read.<sup>58</sup>

It is discourteous for a member to leave the Chamber immediately after finishing a speech. In the "cut and thrust" of debate, it is usual for the next speaker to comment on the speech of the preceding member, and for that reason it is traditional for the member who has spoken to remain in the Chamber for a reasonable time.

The choice of appropriate dress is left to the good judgement of members and their sense of the dignity of the House.

### *Inaugural speeches*

It is a time-honoured custom that members making their inaugural speech to the House are heard without interjection or interruption. Members, however, should not strain the

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<sup>57</sup> Standing order 84.

<sup>58</sup> Standing order 28.

tradition by being unduly provocative. Speakers who follow should offer the traditional congratulations to the new member on their speech. A recent custom is for members, if they wish, to make their inaugural speech from the opposite side of the Chamber to the side where they would normally sit, so that they are facing their political colleagues.

Other customs include:

- the expression “Hear, hear” is permitted as a sign of approbation, but not the clapping of hands.
- the reading of books, newspapers etc unconnected with the business before the House, detracts from the dignity of debate.
- the practice of referring to the Legislative Assembly as “another place” rather than by name, has its origin in the ancient ill-feeling between the House of Lords and the House of Commons.

### ***Disorderly conduct***

The President and the Chair of Committees are responsible for ensuring that business is conducted in an orderly fashion in accordance with the standing rules and orders and principles of parliamentary practice. The Chair exercises a discretion in intervening in debate and will normally only intervene if a member’s right to speak or be heard is being infringed, if a breach of order has been committed, or if called on to decide a point of order.

The disorderly conduct of members is dealt with under standing orders 190 to 194. Under standing order 190 if a member, after being warned 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. If the offence is committed in committee of the whole House, the Chair is to suspend proceedings and report the offence to the President. A member who has been reported as having committed an offence may make an explanation or apology to the House and then, if required by the President, withdraw from the Chamber. A motion may then be moved without notice that the member be suspended from the House. Under standing order 191 the member may be suspended until the House terminates the suspension or until the submission of an apology by the offending member. 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 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 if the member conducts

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themselves in a grossly disorderly manner, the 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.<sup>59</sup>

The power to suspend or expel has been exercised infrequently.

In one case, the Member offered an apology, the House rescinded the resolution suspending him and the member was re-admitted. There have been judicial decisions upholding the power of the House to suspend one of its members for contempt (*Egan v Willis* (1998) HCA 71) or expel one of its members for conduct unworthy of a member of the House (e.g. *Armstrong v Budd* (1969) 71 SR (NSW) 386). Standing order 194 states that nothing in standing orders 190 – 194 affects the power of the House to proceed against any member for any conduct unworthy of a member of the House.

The House may also declare a member's seat vacant as a result of the operation of sections 13, 13A or 13B of the *Constitution Act 1902* regarding the disqualification of members. Such matters would be dealt with by the House referring a question to a Court of Disputed Returns for decision.

### ***Points of order***

The right to interrupt and draw attention of the Chair to what a member believes is a breach of order is provided by standing order 95, which states that a member may rise to speak upon a matter of privilege suddenly arising, to the lack of a quorum or to a point of order. Points of order are used by members to call attention to departures from either the standing orders or other practice of the House at any time during debate.

The attention of the Chair must be directed to a breach of order the moment it occurs and when a question of order is raised the member interrupted should immediately resume their seat. A member raising a point of order should state which standing order or practice they feel is being breached. A point of order may be raised at any time and any question then under consideration is suspended until the point of order is decided by the Chair. There is no limit on the number of members who may speak or how many times they may speak to a point of order, and after hearing argument the Chair decides on the question of order. The decision of the Chair can be appealed to the House under standing order 96 by a motion of dissent from the ruling.

A point of order cannot be raised when the President is addressing the House, and hypothetical questions on procedure should not be addressed to the President on the floor of the House. Further, members may not ask the President to rule on constitutional questions or decide a question of law.

A second point of order cannot be raised while one is already before the House and it is an abuse of the forms of the House to raise a point of order to merely contradict a statement made in debate.

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<sup>59</sup> Standing order 192

***Personal explanation***

Standing order 88 allows a member, if there is no objection, to make a personal explanation to the House. The subject of a personal explanation may not be debated. Rulings of the President state that a personal explanation only allows a member to explain, not debate, any matter which reflects upon the honour, character or integrity of that member, or reflects on the member in a personal way. Personal explanations should not be used to explain matters on behalf of another person. Members should advise the President of the circumstances prior to making the explanation.

A personal explanation cannot be made during the course of debate but only when there is no business before the House.

If a personal explanation goes beyond the limits for which leave has been given, the Chair calls the member to order. Leave may also be withdrawn after it has been given.

**11. Privilege**

*Erskine May* describes parliamentary privilege as “the sum of the peculiar rights enjoyed by each House collectively and by members of each House individually without which they could not discharge their functions; and which exceed those possessed by other bodies or individuals”.<sup>60</sup> Parliamentary privilege may also be described as those rights, powers and immunities which enable Parliaments to proceed with the business of legislation and review of the activities of the administration, and to protect them against unwarranted attacks against their authority.<sup>61</sup>

When any of these rights and immunities are disregarded or attacked, the offence of breach of privilege is committed. Examples include: disrespect to any member of the House by a person who is not a member of the House; disrespect to the House collectively, whether committed by a member or any other person; disobedience to orders of the House; and interference with the procedure of the House, with its members or officers in the execution of their duty, or with witnesses giving evidence before the House or a committee of the House. Disrespect to a member includes attempts to threaten or intimidate a member, or any libel concerning the member's conduct in the House.

Disrespect to the House collectively has been described as “the original and fundamental form of breach of privilege”. It includes libels on the House at large, on the President and on committees. Proceedings against a member or officer of either House in the courts for his or her conduct in obedience to the orders of Parliament are further instances of breach of privilege.

In addition, actions which, while not breaches of any specific privilege, obstruct or impede Parliament in the performance of its functions, are offences against its authority or dignity and constitute a contempt of Parliament. While the broad principles of the offence may be stated in this way, it is impossible to list every act which might be regarded as contempt.

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<sup>60</sup> *Erskine May*, 23<sup>rd</sup> edn, 2004, p 69.

<sup>61</sup> Enid Campbell, *Parliamentary Privilege in Australia*, Melbourne University Press, Carlton, 1966, p. 1.

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The Parliament of New South Wales is the only Parliament in Australia which has not legislated to define its privileges or to provide powers to deal with contempt. In the absence of a statute, the source of such privileges and immunities is the common law. A number of decisions of the Privy Council in the mid nineteenth century established that colonial legislatures have no inherent right to the privileges of the House of Commons, but only have such powers as are necessary to their existence and the proper exercise of their functions. These powers are protective and self-defensive only and not punitive.

### *Raising matters of privilege*

A member may only raise a matter of privilege, unless suddenly arising in proceedings before the House, according to the procedures set out in standing order 77.

A member intending to raise a matter of privilege must inform the President of the details in writing. The President determines whether the motion relating to the matter should have precedence of other business. If the President determines that the matter should have precedence, the member may give notice of a motion to refer the matter to the Privileges Committee, and that motion will take precedence of all other business on the day for which notice is given. If the House agrees to the motion, the Committee then investigates the matter and reports to the House.

## 12. Miscellaneous

### *Quorum*

The *Constitution Act 1902* provides that at least 8 members of the Legislative Council, in addition to the President or other member presiding, are necessary to constitute a quorum for the dispatch of business.<sup>62</sup> Under standing order 34 the quorum must include a Minister.

If there is no quorum at the time of the meeting of the House the standing orders provide for the bells to be rung for five minutes. The House is counted and, if a quorum is still not present, the President adjourns the House to the next sitting day.<sup>63</sup>

Under the standing orders a member may call the attention of the President or the Chair of Committees to the “state of the House”, that is, to the fact that a quorum is not present at any time, even when another member is speaking. When a quorum is called the bells are rung by order of the President or Chair.<sup>64</sup>

### *Bells*

Electronic bells are located in all rooms and corridors in Parliament House. There are two distinct bells, one to summon members to the Chamber for a meeting or to indicate that the House has adjourned and another to summon members for a division or quorum.

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<sup>62</sup> *Constitution Act 1902*, section 22H.

<sup>63</sup> Standing order 29(1).

<sup>64</sup> Standing order 30.

Council bells do not ring in Assembly members' rooms, but do ring in common areas such as lifts, the dining room and the library.

On each sitting day fifteen minutes before the Council is due to meet, a warning bell sounds for 1 minute. The bells are rung again for the two minutes prior to the time the House is due to meet and also after a lunch or dinner recess.

The bells are rung for a division in the House and Committee for 5 minutes except when there is a subsequent division and there has been limited or no intervening debate, in which case, if there is no objection, the President or Chair may order that the bells be rung for only 1 minute.<sup>65</sup>

A short bell is rung after the House has adjourned each day.

### ***Divisions***

When debate on a motion has concluded in the House or Committee, the Chair puts the question on the motion and declares, in the opinion of the Chair, whether the majority of voices are for the “ayes” or “noes”. Members who have given their voices against the majority declared by the Chair can challenge that opinion. A division may only be called for by two or more members.<sup>66</sup> If only one member calls for a division, the member may ask for their vote to be recorded in the minutes of proceedings.<sup>67</sup>

A member may not vote in any division on a question if the member has a direct pecuniary interest in the matter not in common with other citizens, but this does not prevent the member from participating in the debate.

When a division has been demanded the division bells are rung for five minutes and simultaneously a minute glass is turned by one of the Clerks-at-the-Table. At the expiration of the time allowed for the ringing of the division bells the Chair requests that the doors be locked, and again states the question and directs members present to take their seats: the “ayes” to the right and “noes” to the left of the Chair. Every member then present must vote in accordance with the member's vote by voice and may not leave the House until the division is concluded. A member is not entitled to vote in a division unless the member is present in the chamber when the question is put with the doors locked.

The Chair appoints two tellers from each side, who record the names and total number of members voting on each side, sign their respective lists and present them to the Chair. The Chair declares the result of the division to the House.<sup>68</sup> The lists of members voting in a division are recorded in the minutes of proceedings and in Hansard. In the case of an equality of votes, the Chair must give a casting vote. Any reasons given for the casting vote by the Chair are recorded in the minutes of proceedings.<sup>69</sup>

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<sup>65</sup> Standing order 114(2) and (4).

<sup>66</sup> Standing order 112(4).

<sup>67</sup> Standing order 112(5).

<sup>68</sup> Standing orders 115(1).

<sup>69</sup> Standing order 116.

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If it appears that there is only one member voting on one side of the House in a division, the Chair declares the question at once.<sup>70</sup>

A member speaking to a point of order during a division must remain seated.<sup>71</sup> To attract the attention of the Chair it is practice for a member to place something on their head, such as a piece of paper.

If the numbers or names of members voting in a division are incorrectly reported, the House, on being informed of the error may order the record to be corrected.<sup>72</sup>

### ***Pairs***

If a member cannot be present for a vote they may arrange a “pair” with a member of the opposite side through the Whips. In this case neither member votes, but their names are recorded by the tellers and printed in the minutes of proceedings and Hansard.<sup>73</sup>

### ***Leave or unanimous consent***

With the unanimous consent of members present the House may proceed on a course of action which would otherwise be contrary to the standing orders or established precedent. Under standing order 198, in urgent cases as well as being able to suspend standing orders on notice, the House may suspend standing orders by leave of the House. The objection of any one member is sufficient to deny leave.

The most common procedure for which leave is sought, and is frequently given, is for the moving of a motion without the requisite previous notice. Leave can also be sought to give a notice of a motion after the House has proceeded to the business of the day (standing order 71), to proceed from the second reading to the third reading of a bill without considering the bill in committee of the whole House (standing order 141), to speak a second time in debate and, in committee of the whole House, to allow a member to move related amendments together (in globo) rather than separately (seriatim).

### ***Incorporation of material in Hansard***

The practice of incorporating in Hansard any unspoken matter is not encouraged since Hansard is meant to be a true record of what was said in the House. However, members may seek leave to have material incorporated in Hansard, a single objection being sufficient to prevent this from occurring.

Rulings of the President discourage the incorporation of material which is readily available in the Library or in general circulation.

This practice has permitted extracts from reports, documents, letters, diagrams, schedules and newspaper extracts to be incorporated as well as material which is not readily comprehensible in oral form, such as maps, graphs, tables and columns of figures.

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<sup>70</sup> Standing order 115(3).

<sup>71</sup> Standing order 117.

<sup>72</sup> Standing order 118.

<sup>73</sup> Standing order 115(5).

Material which can be better compared by sight rather than by listening, are usually permitted to be incorporated if technically possible.

It has become common practice for Ministers to seek to incorporate a second reading speech which was given in the Legislative Assembly or answers to questions supplied by other Ministers to questions asked in the Council, particularly when these answers are lengthy.

### ***Leave of absence***

Section 13A of the *Constitution Act 1902* provides that a Member's seat becomes vacant if that Member, among other things, fails to attend for a whole session, unless excused by the House.

Under Standing Order 63 permission of the House may be obtained by a motion on notice which must state the cause and period of absence. Leave granted does not extend from one session into the next.

### ***Sub judice***

In the interest of justice and the judicial process, a convention has developed in parliamentary practice that members refrain from making reference, either in debate or through motions, questions and committee proceedings, to matters before the courts, in order to avoid prejudice to court proceedings or harm to specific individuals.

There is no specific standing order or law preventing Parliament from considering a matter which is sub judice. For this reason it is called a convention – a voluntary restraint to protect participants in court proceedings against public discussion of the issue. The convention also recognises that the Parliament has an inherent right and fundamental duty to legislate on any issue or debate any matter in the public interest.

The President is the final arbiter in sub judice issues and has absolute discretion in making a ruling to prevent discussion. The Chair may intervene of its own volition or may be called upon to decide on a point of order. In determining any question regarding sub judice the President rules on the side of further discussion unless it is clear that to do otherwise could create prejudice. Even then the President may determine that the public interest on the matter outweighs possible prejudice.

The application of the sub judice convention was dealt with in a substantial ruling by President Johnson on 16 May 1990 (concerning a motion which dealt with the Mount Piper to Marulan power line, which was the subject matter of litigation in the Land and Environment Court).<sup>74</sup>

In criminal cases the convention applies from the moment a charge is made until the moment the verdict and sentence have been announced or judgement given. It becomes relevant again from the time notice of an appeal is lodged until the appeal is decided.

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<sup>74</sup> *LC Debates*, 19/10/1983, pp 18941/1846

In civil matters the convention applies when relevant documents are filed until judgement is entered. However regard is had to the likelihood of the matter coming before the courts in the reasonably foreseeable future. The mere issue of a writ should not lead to the automatic invoking of the convention and the curtailing of debate on a particular issue.

The convention is applied strictly only to prevent discussion of the precise issue before the courts, and not to prevent general discussion of collateral or related matters.

Questions sometimes arise concerning the possible application of the sub judice convention to royal commissions, the Independent Commission Against Corruption and similar inquiries. Despite some precedent to the contrary, the convention has no application to these “executive” bodies.

### *Citizen’s right of reply*

A consequence of the freedom of speech guaranteed to members is that private citizens who are referred to by members have no right of legal redress if they consider that the statements made about them are untrue and that they have been adversely affected by the statements.

A procedure exists under the standing orders for a person, an unincorporated association, a corporation or a body corporate, to make a submission in writing to the President claiming they had been adversely affected by a reference to them in the House. The President considers whether to refer the submission to the Privileges Committee for inquiry and report. Under standing order 203 the Privileges Committee may recommend that a response by the person who has made the submission, in a form of words agreed to by the person and the committee, be published in the Minutes of the Proceedings or incorporated in Hansard.

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## **Appendix 1 Time limits applying in debates**

**Time limits applying in debates**

<b>Adjournment</b>	<p>Debate 30 minutes  Speakers 5 minutes</p>
<b>Committee Report</b>	<p>Debate 60 minutes  Chair 15 minutes  Speakers 10 minutes</p>
<b>Private Members' Motion</b>	<p>Debate 180 minutes  Mover 30 minutes  Speakers 20 minutes  Debate interrupted 15 minutes before end of debate time  Mover 10 minutes in reply</p>
<b>Private Members' Bills</b>	<p><i>Leave to bring in Bill</i>  Debate 60 minutes  Speakers 10 minutes  Debate interrupted 10 minutes before end of debate time</p> <p><i>Second and third readings</i>  No debate time limit  Mover 30 minutes  Speakers 20 minutes</p>
<b>Disallowance</b>	<p>Debate 90 minutes  Mover/Minister 15 minutes  Speakers 10 minutes</p>
<b>Matter of Public Importance</b>	<p><i>Question of urgency</i>  Mover/Minister 10 minutes</p> <p><i>Debate</i>  Debate 90 minutes  Mover/Minister/Opposition 15 minutes  Speakers 10 minutes</p>
<b>Urgency motion</b>	<p><i>Question of urgency</i>  Mover/Minister 10 minutes</p> <p><i>Debate</i>  Mover/Minister/Opposition 15 minutes  Speakers 10 minutes</p>
<b>Ministerial Statements</b>	<p>Count up/count down</p>
<b>Suspension of Standing Orders</b>	<p>Debate 30 minutes  Speakers 5 minutes</p>
<b>Question Time</b>	<p>Question 1 minute  Answer 4 minutes  Answer to supplementary 2 minutes</p>