



PROCEDURAL DIGEST

Legislative Assembly

FIFTY-FIFTH PARLIAMENT, FIRST SESSION

NO. 9/2013: 12 NOVEMBER – 28 NOVEMBER 2013

November 2013				
M	T	W	T	F
11	12	13	14	15
18	19	20	21	22
25	26	27	28	29

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

BILLS

Divisions declared by the Acting Speaker

On 13 November 2013, two divisions were called during the second reading debate on the *Casino Control Amendment (Barangaroo Restricted Gaming Facility) Bill* that were declared by the Acting Speaker with the number in the minority having their names recorded.

The first division was on a non-government amendment moved by Mr Greenwich to defer the second reading of the bill to a later time. Mr Greenwich moved that the motion “That this bill be now read a second time” should be amended by leaving out the word “now” and adding the words “on 25 February 2014”. Under Standing and Sessional orders the question on an amendment to read a bill at a later time must be put at once without debate.

Because this type of amendment proposes to leave out words with a view to inserting others, the question of whether words should be left out is dealt with first; then if a “gap” has been created, the question of inserting words is put.

So the question put was whether the Minister in charge of the Bill’s motion that “That this bill be now read a second time” be left out stand (i.e. no words left out). There being only three members challenging his opinion that the “Ayes” had it, the Acting Speaker, Mr John Barilaro, declared the question to be negatived.

The second division followed the resumption of the debate when the question was put “That this bill be now read a second time” there again being only three members challenging his opinion that the “Ayes” had it, the Acting Speaker, Mr John Barilaro, declared the question to be agreed to.

(NB: There are three procedural matters here of interest:

- Firstly, in terms of moving the amendment, an anomaly in the Sessional Order (SO 80(13)) meant that there was no debate on Mr Greenwich’s amendment, which was put to a vote at the conclusion of the member’s speech;
- Secondly, the form of the amendment. An amendment may be moved to leave out words with a view of inserting others. This type of amendment requires two questions. The first is "That the words proposed to be left out stand". If this is agreed to, the amendment is disposed of. If the question is negatived, i.e. the House decides to leave out the words, the way is then open to insert words. Hence the maxim "first create the blank". The blank having been created, the second question is proposed, "that the words proposed to be inserted, be so inserted". When it is proposed to insert words in place of words left out, the words proposed to be inserted are themselves open to amendment – see Standing Order 157 on forms of amendments
- Thirdly, Standing Order 181 provides that where there are five or fewer Members on a side on a division, without completing the division, the Speaker shall declare the question resolved and the number in the minority and their names shall be recorded).

Votes and Proceedings: 13/11/2013, pp. 1946-47

Hansard: 13/11/2013, pp. 25609-25610 and p.25613.

Standing Order 80(13)

Standing Order 157

Standing Order 181

Standing Order 200

Part of an amendment ruled out of order

During the second reading debate on the National Disability Insurance Scheme (NSW Enabling) Bill on 20 November 2013, part of an amendment was ruled out of order.

Mr Greg Piper had moved that the motion that the Bill be now read a second time be amended by “leaving out the word “now” and adding the words “on 25 February 2014 to allow for consultation with affected residents, family, carers and other interested parties prior to, rather than after, the carriage of the legislation.”

Standing Order 200 provides for amendments to be moved deferring a question to a later time; but not for the inclusion of any reasons for the deferral. The reasons for an amendment may be given during a member’s speech. Accordingly the Acting Speaker, Mr Lee Evans, ruled that all words in the amendment after “25 February 2014” were out of order and would not form part of the question.

Votes and Proceedings: 20/11/2013, pp. 1982-83.

Hansard: 20/11/2013, p.26094

Standing Order 80(13)

Standing Order 200

BUSINESS

Member gives two Private Members' Statements

On 12 November 2013, Mr Stephen Bromhead gave a second Private Members' Statement during the time made available in the routine of business.

Up to 47 PMS' may be made each sitting week and whilst the giving of two statements is uncommon; it is entirely within the practice and procedure of the House, provided that it does not deny another member, who has not spoken, the opportunity to do so – as was the case in this instance.

(NB: The provisions for the making of Private Members' Statements are by discussion, not by debate of a question which is before the House. Accordingly, during Private Members' Statements as there is no question before the House, the making of a second statement does not infringe standing orders 61 (1) and 64, which preclude members speaking a second time, in the House, except in certain specified circumstances. See *Votes and Proceedings* 24/11/2010, 2495-2496).

Votes and Proceedings: 12 November 2013, p.1931

Hansard: 12/11/2013, p.25380 and p.25382.

Standing Order 61 (1)

Standing Order 64

Standing Orders 108

Resolution requires Address to the Governor

Following the tabling of a proposal to revoke a dedication of certain land as State forest on 12 November 2013 by Ms Katrina Hodgkinson, Minister for Primary Industries and Minister for Small Business; Ms Hodgkinson then moved, by leave, on 19 November 2013 that the House agree to the proposal and communicate that resolution to Her Excellency the Governor.

This was agreed to, with the Legislative Council giving its agreement to the proposal, by separate resolution, on 21 November 2013.

(NB: Section 15 of the *Forestry Act 2012*, requires that a proposal to revoke or alter a dedication of land as State forest must be tabled in each House of Parliament; and that each House must then pass a resolution that the proposal be carried out.

The Assembly's Standing Orders then provide for the Speaker, as the elected spokesperson for the House, to convey the resolution to the Governor by way of an "Address" or message.

The provision in the *Forestry Act*, which requires the House to affirm its approval, differs from the more common procedure whereby certain statutory rules are approved - unless the House passes a resolution to disallow them).

Votes and Proceedings: 12/11/2013, p.1933; and 19 November 2013 p.1978

Hansard: 19/11/2013, p.25940-25841

Standing Order 96

Standing Order 116

Standing Order 264

Standing Order 266

Standing Order 354

Reference to the Independent Commission Against Corruption

On 14 November 2013, the House agreed (following a division) to a motion moved by the Leader of the House, Mr Brad Hazzard, that the Legislative Assembly disagrees with the Legislative Council proposal that the Assembly pass a similar resolution to that passed by the Council in relation to Conrad Capital Pty Ltd.

(NB: Whilst either the Assembly, or the Council, may pass resolutions referring matters to the Independent Commission Against Corruption, it is only when both Houses of Parliament refer a matter to the Commission by resolution of each House, that it has a statutory duty to investigate that matter – see part 8 of the *Independent Commission Against Corruption Act 1988*).

Votes and Proceedings: 14/11/2013, pp.1963-1964 and p.1966.

Hansard: 14/11/2013, pp.25755 – 25766 and pp.25761-25767.

Standing Order 335-340

COMMITTEES

Select Committee on the Motor Vehicle Repair Industry

On 19 November 2013, the House agreed to a motion moved by the Leader of the House, Mr Brad Hazzard, that a select committee, to be known as the Select Committee on the Motor Vehicle Repair Industry, be appointed to inquire into and report on the motor vehicle repair industry. The committee is to report by 30 May 2014.

Further details (including the Committee's membership and terms of reference) may be viewed on the Committee's webpage

at: http://www.parliament.nsw.gov.au/motorvehiclerepairindustry?open&refnavid=CO3_1

(NB: A select committee may be appointed by either or both Houses to investigate and report on a specific matter. Select committees cease to exist when they have concluded their reports or at the time specified by the House).

Votes and Proceedings: 19 November 2013, p.1977

Hansard: 19/11/2013, pp.25939 - 25940

Standing Order 96

Standing Order 277

Standing Committee on Parliamentary Privilege and Ethics

On 21 November 2013, the House agreed to a motion moved by the Leader of the House, Mr Brad Hazzard, that the Committee inquire into and report on certain recommendations in the report of the Independent Commission Against Corruption entitled “Reducing the opportunities and incentives for corruption in the state’s management of coal resources”.

The Committee was given leave to meet together with the Legislative Council Privileges Committee during the current Parliament.

Further details on the committee and its inquiries may be viewed on the Committee’s webpage at: http://www.parliament.nsw.gov.au/laprivilegeandethics?open&refnavid=CO3_1

(NB: The Legislative Council Privileges Committee is also conducting an inquiry into aspects of the ICAC’s report; in order to confer with a Council committee, an Assembly committee requires the leave of the House).

Votes and Proceedings: 21 November 2013, pp.2004-2005

Hansard: 21/11/2013, p. 26263

Standing Order 96

Standing Order 277

Standing Order 311

CITIZEN’S RIGHT OF REPLY

A report of the Committee entitled “Citizen’s Right of Reply – Ms Lea Rosser” was tabled by the Speaker on 21 November 2013. The Committee’s recommendation that Ms Lea Rosser should be given a response to references made about her in the House by the Member for Cessnock, Mr Clayton Barr MP, is the first such recommendation since the procedure was first adopted by the House on 27 November 1996.

(NB: The Citizen’s Right of Reply procedure provides that, if a person or corporation is referred to in the Assembly by name or in such a way that they can be readily identified, and if the person considers that they have been adversely affected by that reference, that person may write to the Speaker to request that their response be published in Hansard.

The Speaker then determines whether the matter should be referred to the Standing Orders and Procedures Committee.

If the request appears to be appropriate, the Speaker will refer the matter to the Standing Orders and Procedure Committee which then gives more detailed consideration to the request to ensure that it is a sufficiently serious matter and that it is not frivolous, vexatious or offensive. In doing so the Committee may meet with the person making the request or the member concerned. The Committee then reports to the House and recommends whether or not a response should be published).

Votes and Proceedings: 21 November 2013, p. 2005

Hansard: 21/11/2013, p.26264.

Standing Order 265
Sessional Order 551 - Citizen's Right of Reply

MEMBERS

Inaugural speech

On 13 November 2013 (in accordance with the resolution of the House agreed to earlier that day) business was interrupted for the inaugural speech of the Member for Miranda, Mr Barry Collier. During his speech, the Member received an extension of time.

(NB: Mr Collier was previously a member of the Legislative Assembly from 1999 to 2011. However, there is at least one precedent for a member, re-elected to the Assembly after a lapse in membership, then being accorded the courtesies associated with an inaugural speech (see the Acting-Speaker's ruling in relation to the Member for Swansea, Mr Donald Bowman, *Hansard*: 10 September 1991, p.931)).

Votes and Proceedings: 13 November 2013, p.1949
Hansard: 13/11/2013, p.25658-25662.

Standing Order 63

SENATE VACANCY

Senate Vacancy Legal Advice

The Speaker made a statement on 12 November 2013 in relation to legal advice which had been sought from Crown Solicitor regarding the vacancy in the representation of the State of New South Wales in the Senate caused by the resignation of the Honourable Robert John Carr.

The Speaker informed the House that the advice was that the Senate place which the Hon. Robert John Carr would hold from 1 July 2014 could only become vacant on or after 1 July 2014. Thus it was considered that the filling of the current casual vacancy and the filling of any casual vacancy that arises on or after 1 July 2014 would have to be dealt with separately.

The Speaker then tabled the full advice from the Crown Solicitor, dated 1 November 2013, together with the relevant instructions from the Clerks.

Votes and Proceedings: 12 November 2013, p.1933
Hansard: 12 November 2013, p.25404

Standing Order 264

Senate Vacancy Joint Sitting

On 12 November 2013 the Acting Speaker, Ms Gibbons, reported a message from the Legislative Council agreeing to the Assembly's request for a joint sitting to elect a person to the vacant seat in the Australian Senate and advising that the Joint Sitting would be held the following day at 3.45 pm.

At the appointed time, the House proceeded to the Legislative Council Chamber. Upon return, the Acting Speaker, Mr Barilaro, reported that Ms Deborah O'Neill had been elected to fill the vacancy and tabled the minutes of the proceedings of the Joint Sitting.

Votes and Proceedings: 12 November 2013, p.1940; & 13 November 2013 p.1951

Hansard: 12 November 2013, p. 25405 & p. 25434; & 13 November 2013 p.25636

Standing Order 339

(NB: Section 15 of the Australian Constitution provides that if the place of a senator becomes vacant before the expiration of their term of service, the Houses of Parliament of the State for which they were chosen, sitting and voting together shall choose a person to hold the place until the expiration of the term. Provision is also made for the Governor to appoint a person to hold the casual vacancy when the House is "not in session".

In this case, because the resignation applies in respect of the senator's current term and also to the new term to which he was elected at the recent half-Senate election, there are effectively two Senate vacancies, one for his current term expiring on 30 June 2014, and a second for the new six-year term to which he was elected on 7 September 2013, commencing from 1 July 2014).

PROCEEDINGS OF THE LEGISLATIVE ASSEMBLY

Record of Division corrected

On 14 November 2013, the Speaker advised the House that she had directed that the proof *Votes and Proceedings* for 13 November 2013 be corrected, following an error made in the recording of the division on the second reading of the *Cemeteries and Crematoria Bill*.

Votes and Proceedings: 14 November 2013, p.1968

Hansard: 14 November 2013, p.25774

Standing Order 183

Business of the House

On Thursday, 21 November 2013 the Legislative Assembly rose "on a long bell" with the Deputy Speaker resuming the chair at 10.45 am on Thursday, 28 November 2013.

(NB: This means that rather than adjourning on 21 November, the Legislative Assembly was technically still sitting during that period (and the Mace remained on the Table in the Chamber). When the House resumed after the ringing of one long bell on the morning of 28 November it was a continuation of the sitting from 21 November to deal principally with any remaining items of government business - though some Private Members' Statements and Community Recognition Statements were taken).