



Fifty-eighth Parliament, First Session

No. 4/2024: 4 – 6 and 18 – 21 June 2024

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.

June 2024

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Members

Valedictory speech and post-separation employment advice for the Hon Matt Kean

On Tuesday 18 June 2024, Mr Matt Kean announced in the public media his intention to resign as the Member for Hornsby, noting that he would not be returning when the House sits again in August.

The following day the Leader of the House, Mr Ron Hoenig, moved a suspension of Standing and Sessional Orders to provide for the interruption of business on Friday 21 June 2024 at approximately 11.00 am to allow Mr Kean to deliver his valedictory speech.

On Friday 21 June 2024, Mr Kean delivered his valedictory speech in the House. Once his resignation takes effect, Mr Kean will become the second member of the Legislative Assembly to resign during the 58th Parliament.

Post-separation employment advice

On Tuesday 24 June 2024, the Office of the Speaker received correspondence from the Parliamentary Ethics Adviser, Mr John Evans, concerning post separation employment advice provided to Mr Kean. The advice will be tabled in the House when it next sits in August.

Mr Kean sought advice on accepting part-time paid employment as Chair of the Climate Change Authority after ceasing to hold office as Treasurer and Minister for Energy on 28 March 2023. The Climate Change Authority is an independent statutory body established under the *Climate Change Authority Act 2011* (Cth) to provide advice to the Australian Government on climate change policy.

The advice concluded that Mr Kean's proposed employment did not raise concerns regarding potential impropriety or misuse of confidential information.

Votes and Proceedings: 19/6/2024, p. 689 and 21/6/2024, p. 713

Hansard (Proof): 19/6/2024, p. 21 and 21/6/2024, pp. 9-14

Constitution Act 1902 s.33

Resolution Established by Parliamentary Ethics Adviser, 17 June 2014, Clause 6



Procedural note

Section 33 of the *Constitution Act 1902* provides that any member of the Legislative Assembly may resign their seat by providing a written resignation letter to the Speaker. Once received by the Speaker, the resignation is effective immediately, which means a member may not nominate a time or date on which the resignation is to take effect.

Part 5, clause 24 of the Schedule to the NSW Ministerial Code of Conduct, which commenced on 20 September 2014, provides that a Minister who, within 18 months after ceasing to hold office, wishes to consider accepting an offer of post-separation employment must, if it relates to any of the portfolio responsibilities held during the last 2 years of Ministerial office, first obtain the advice of the Parliamentary Ethics Advisor.

Clause 6 of the resolution establishing the functions of the Parliamentary Ethics Adviser, first adopted on 17 June 2014, provides that where the Adviser becomes aware that a Minister or former Minister has accepted a position, or has commenced to provide services, in respect of which the Adviser has provided advice, the Adviser must provide a copy of that advice to the Presiding Officer of the House to which the Minister belongs or to which the former Minister belonged.

Business

State Apology for the criminalisation of homosexuality

2024 marks the fortieth anniversary of the passing of the *Crimes (Amendment) Bill 1984* which amended the *Crimes Act 1900* to end the criminalisation of homosexuality in NSW. To mark this significant anniversary, on Thursday 6 June 2024 the Premier, Mr Chris Minns, moved a State Apology for the criminalisation of homosexuality.

On Wednesday 5 June to facilitate the giving of the Apology, the Leader of the House, Mr Ron Hoenig, moved a suspension of Standing and Sessional Orders to reorder the routine of business for 6 June, to provide for the Apology to take place at the conclusion of Question Time. The suspension also provided for a set list of Members to speak to the motion: the Premier, Mr Chris Minns, the Leader of the Opposition, Mr Mark Speakman, the Attorney General, Mr Michael Daley, the Shadow Attorney General, Mr Alister Henskens, the Member for Sydney, Mr Alex Greenwich, and the Member for Newtown, Ms Jenny Leong. The suspension was agreed to on the voices.

On 6 June, after the Speaker made a statement in relation to the apology, the Premier moved that this House, on behalf of the people of NSW:

- (1) Apologises unreservedly to those convicted under discriminatory laws that criminalised homosexual acts,
- (2) Recognises and regrets this Parliament's role in enacting laws and endorsing policies of successive governments decisions that criminalised, persecuted and harmed people based on their sexuality and gender,
- (3) Recognises the trauma people of diverse sexualities, their families and loved ones, have endured and continue to live with, and



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- (4) Acknowledges that there is still much work to be done to ensure the equal rights for all members of the LGBTQIA+ community.

The time limit of twenty minutes for each Member's contribution was provided for under Standing Order 85 'Debates not otherwise provided for'.

Following the Member for Newtown's contribution, the question on the motion was put immediately and agreed to unanimously. As also provided for in the suspension a take note debate on State Apology for the criminalisation of homosexuality was automatically set down as a Government Business Order of the Day for a later time.

NSW was the third State or Territory in Australia to enact legislation to decriminalise homosexuality, with Tasmania being the last State to do so in 1997.

Votes and Proceedings: 05/06/2024, p. 657; 06/06/2024, p. 669-670.

Hansard (Proof): 05/06/2024, p. 19; 06/06/2024, p. 19-29

Standing Orders: 85 (Maximum time limits), 365 (suspension of Standing Orders)

Change to the Routine of Business to allow for the consideration of Messages from the Legislative Council

The routine of business for Thursdays provides that the House only deals with Government business for a twenty-minute period from 3.40 pm. On Thursday 6 June, just prior to 3.40 pm, the Leader of the House, Mr Ron Hoenig, moved that that Standing and Sessional Orders be suspended to alter the routine of business to allow the House to consider at any time any messages from the Legislative Council regarding Government Business. Mr Hoenig also moved that the House, if necessary, continue to sit after the conclusion of Private Members' Statements, including the option of the Speaker leaving and then resuming the Chair on the ringing of a long bell, to receive any Council messages. The suspension further provided that if any messages from the Legislative Council regarding Government Business were received before or during Private Members' Statements, for business before the House to be interrupted for the consideration of the messages forthwith, and to resume once the consideration of the messages had concluded. The suspension was agreed to on the voices and without debate.

The suspension was moved as there were two Government bills in the Legislative Council that were likely to return to the Legislative Assembly later that day and the Government desired to deal with any messages that required consideration that day as the following week was a non-sitting week.

The routine of business continued until Community Recognition Statements were interrupted to deal with the first message regarding one of the Government bills. The Assistant Speaker, Mr Jason Li, reported a message from the Legislative Council returning the *Law Enforcement (Powers and Responsibilities) and Other Legislation Amendment (Knife Crime) Bill 2024* with an amendment. The Council amendment was taken into consideration forthwith and passed on the voices without debate.

Community Recognition Statements resumed, followed by Private Members' Statements. When Private Members' Statements concluded the Temporary Speaker, Ms Stephanie Di Pasqua left the Chair at 6.55 pm to await the ringing of a long bell.



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The long bell was rung and the Speaker, Mr Greg Piper, returned to the Chair at 7.32 pm to report a message from the Legislative Council returning the *Bail and Other Legislation Amendment (Domestic Violence) Bill 2024* without amendment. Both bills were sent to the Governor for assent, which occurred on Thursday 20 June.

Votes and Proceedings: 5/6/2024, p.657, 6/6/2024 p. 672-674

Hansard (Proof): 5/6/2024 p.19-20, 6/6/2024, p. 43-44, 55-56, 79.

Standing Orders 35 (Bells), 97 (Routine of business), 221 (Return of bill with proposed amendments) and 365 (Suspension of Standing Orders).

Multiple postponements of general business notices of motions

Each Thursday the Green Paper lists ten general business notices of motions for debate. In practice, as only 70 minutes is provided for debate, usually only the first two or three items on the list end up being called on. On Thursday 20 June 2024, in quite unusual circumstances, the first and last items on the Green Paper were called on for debate, with the intervening eight items all postponed by the Speaker in the absence, in each case, of the Member who gave the notice. The first item of business was no. 1355 'Koala Hospital' moved by the Member for Port Stephens, Ms Kate Washington. The House debated the motion which was then agreed to on the voices. The Clerk then called on the second item of business, no. 1356 'Tripoli Way Bypass', standing in the name of Member for Kiama, Mr Gareth Ward. After observing that Mr Ward was absent from the Chamber, the Temporary speaker, Mr Clayton Barr, postponed the Notice of Motion in accordance with Standing Order 141(2).

It became apparent that the next member whose motion was due to be called on was also not present in the Chamber. The Member for Auburn, Ms Lynda Voltz, took a point of order to clarify where postponed items are placed on the Business Paper, with the Temporary speaker clarifying that they would retain their place in the list. The Member for Campbelltown, Mr Greg Warren, then sought, but was denied, leave to make a Private Members' Statement. The next six items of business were each in turn called on by the Clerk, and then postponed by Mr Barr as the relevant Member was absent from the Chamber. It was clear that Members did not anticipate that their notices would be called on at the time that they were, prompting the Temporary Speaker to remark, "13 and a half years I've been here and haven't seen this before!".

The final item of business on the Green Paper, no. 1365 'Women's Health Centres' was called on and moved by Member for South Coast, Ms Liza Butler, with debate being interrupted at 3.40 pm.

Votes and Proceedings: 20/06/2024, p. 703, p. 705-706

Hansard (Proof): 25/06/2024, p. 33-38, p. 40-43

Standing Order 141(2) (Postponement or withdrawal of notices of motions)





Procedural note

Standing Order 141 (1) provides that a notice of motion can be postponed or withdrawn by the Member who gave the notice, or by another Member if are given written authority by that Member. Additionally, Standing Order 141 (2) states that the Speaker has discretion to postpone any notice of motion if the Member is absent from the Chamber.

If a motion is called on and the member is not present to move the motion, the motion would lapse immediately if the Speaker did not use their discretion to postpone.

First Friday sitting day in the 58th Parliament

For the first time in the 58th Parliament the Legislative Assembly sat on a Friday. The House resolved on 16 May 2024 to sit on certain Fridays throughout the remainder of 2024, and to have a specific routine of business apply on those days. You can read more about that resolution in the May 2024 Procedural Digest.

[<https://www.parliament.nsw.gov.au/la/proceduralpublications/Documents/Procedural%20Digest%20no%203%20-%20May%202024.pdf>]

On this first Friday sitting day, 21 June 2024, the routine of business was mostly followed, with the House proceeding to General Business Notices of Motions for Bills, Committee Reports (Take Note Debate), Government business, Community Recognition Statements and Private Members' Statements. However, there were no petition debates as the only petition scheduled for debate and listed on the Business Paper had been set down for debate on 8 August, prior to the House resolving to sit on Fridays. As it was, the time set aside for petition debates was instead used for the valedictory speech of the Member for Hornsby, Mr Matt Kean.

The new routine of business for Friday sitting days does not provide for a set period of time in which the House may consider Government Business. It is more fluid and allows for Government Business to commence after the conclusion of petition debates (if any) and to continue up until 1.30 pm (when Community Recognition Statements commence) if required. It is anticipated, and as did occur on Friday, that Government Business will conclude, or be adjourned, at some earlier time to provide for a lunch break before the House resumes at 1.30 pm.

Ultimately, a number of Government bills were dealt with prior to House rising for the winter recess. The House considered three messages from the Legislative Council returning Assembly bills with amendments. This crucially included the *Revenue Legislation Amendment Bill* which is cognate with the *Appropriation Bill*. In addition the *Water Management Amendment (Central Coast Council) Bill* was introduced and the *Government Sector Employment and Other Legislation Amendment Bill* was read a second and third time and returned to the Legislative Council.

Sitting on the Friday allowed the House to adjourn at 6.25 pm on Thursday 20 June 2024 as the Assembly did not have to wait overnight for bills to be returned from the Legislative Council and to consider any proposed Council amendments.



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Votes and Proceedings: 21/6/2024 and 19/6/2024 p. 689

Hansard (Proof): 21/6/2024 and 19/6/2024 p.21

Standing Orders 97 (Routine of business)

Bills

Delivery of the 2024-25 Budget

On Wednesday 5 June the Leader of the House, Mr Ron Hoenig, moved a suspension of Standing and Sessional Orders to set up the process by which the 2024-2025 Budget Bills would be delivered during the next sitting week. The suspension allowed the House to waive the usual steps that take place for the passage of legislation and provide for an expedited process. The expedited process for the passage of Budget Bills has been the practice of the Assembly for the past 13 years.

Similar to what occurred for the delivery of the 2023-24 Budget, the suspension also provided for the Treasurer, the Honourable Daniel Mookhey MLC, to be invited to the floor of the Legislative Assembly to speak in relation to the 2024-2025 Budget. The House agreed to the suspension on the voices.

The 2024-2025 Budget Bills were considered by the House in the sitting week of 18-21 June.

On Tuesday 18 June Minister Paul Scully, on behalf of the Premier, moved that the *Appropriation Bill 2024*, *Appropriation (Parliament) Bill 2024* and *Revenue Legislation Amendment Bill 2024* be introduced. The Treasurer was then invited to the floor of the Chamber to deliver his speech in relation to the Budget.

While the Treasurer was invited to the floor of the Legislative Assembly to speak 'in relation to the NSW Budget', the Treasurer did not participate in any of the legislative procedures for the passage of the Budget Bills through the Assembly, such as introducing the Bills or moving that the Bills be read a second time.

At the conclusion of the Treasurer's speech, Minister Scully then moved that the bills be read a second time before tabling the 2024-2025 Budget Papers.

On Thursday 20 June, the Leader of the Opposition, Mr Mark Speakman, spoke on the 2024-2025 Budget Bills. At the speech's conclusion, Mr Scully, on behalf of the Premier, moved that the bills be read a third time. The bills were then sent to the Legislative Council for concurrence.

Mr David Mehan then moved that the House take note of the Budget Estimates and related papers for 2024-2025. This motion sets up the Budget Take Note Debate which gives all Members the chance to speak on the Budget in relation to their electorate.

On Friday 21 June, the Speaker reported messages from the Legislative Council agreeing to the *Appropriation Bill 2024* and the *Appropriation (Parliament) Bill 2024* without amendment. The Legislative Council returned the *Revenue Legislation Amendment Bill 2024* with a proposed amendment, which was agreed to by the House. The bills were assented to on 24 June.

Votes and Proceedings: 5/6/2024, pp. 657-8, 18/6/2024, pp. 677-8

Standing Orders 97 (routine of business), 188 (introduction of bills), 193 (procedure for cognate bills), 194 (second and third reading of cognate bills), 264 (tabled papers), 266 (tabling and printing of papers), 365 (suspension of Standing Orders)



Electoral Funding Amendment Bill 2024 – retrospective commencement date

On Tuesday 4 June the *Electoral Funding Amendment Bill 2024* was introduced by the Minister for Transport, Ms Jo Haylen. The bill was brought forward to address concerns relating to the Parliamentary Remuneration Tribunal's determination that had been in effect since July 1 2023. The determination set out what expenses could be claimed from the Administration Fund and had a greater impact on Independent members than on Government or Opposition members. The purpose of the fund is to reimburse political parties or independent members for administrative and operating expenditures.

The bill set out a new regulation-making power to allow flexibility in identifying administrative expenditure that might not clearly fall within the guidelines set out in the *Electoral Funding Act 2018*. Under those guidelines members were unable to claim allowances from the Administration Fund if the administrative expense could be claimed under the *Parliamentary Remuneration Act 1989*.

The bill was notable for having a retrospective commencement date of 1 April 2023. This retrospective date would allow members to re-submit claims that had already been determined under the original Act. The Minister explained that the date was chosen as it aligned with the date of the Parliamentary Remuneration Tribunal's determination and the financial year.

The Legislation Review Committee (LRC) generally comments on provisions with retrospective effect because they impact on the rule of law principle that a person is entitled to have knowledge of the law that applies to them at any given time. However, Ms Haylen acknowledged that the LRC had found there were no adverse impacts on rights or liberties caused by the retrospective start date. As the retrospective start date was intended to provide legislative clarity no further comments were made by the LRC.

The bill was sent to the Legislative Council on 18 June when it was declared urgent and returned to the Assembly without amendment on 20 June 2024. It was assented on Monday 24 June.

Votes and Proceedings: 4/06/2024, pp. 646-647, 18/06/2024 pp. 684-5

Hansard (Proof): 4/06/2024, pp. 25-26, 18/06/2024 pp. 46-50

Standing Orders 188 (introduction of bills) and 189 (procedure for urgent bills)

Proposed amendments to the Bail and Other Legislation Amendment (Domestic Violence) Bill 2024

On Wednesday 5 June after its second reading, the *Bail and Other Legislation Amendment (Domestic Violence) Bill 2024* was considered in detail. Amendments had been circulated by the Attorney General, Mr Michael Daley, the Member for Wahroonga, Mr Alister Henskens and the member for Ballina, Ms Tamara Smith. Interestingly, all three amendments occurred at the same point in the bill.

Mr Henskens amendment was based on part of his previously introduced private members' bill, the *Bail and Other Legislation Amendment (Electronic Monitoring) Bill*, which proposed that a registrar cannot hear a bail application for a serious personal violence offence. Mr Daley's amendment required bail decisions to be made only by magistrates. Mr Daley's amendment went further than the amendment proposed by Mr Henskens as it prohibited registrars from making bail decisions altogether.

All three amendments sought to insert new sections in the *Bail Act 2013*. As Mr Daley was the member with carriage of the bill, his amendment was dealt with first, despite it being circulated last. Mr Henskens' amendment



was next, as it had been circulated first, but Mr Henskens chose not to move it as the previous amendment had superseded it.

Debate then proceeded to Ms Smith's amendment, which both the Government and Opposition supported. It required the Minister to review the provisions of the bill and to table in Parliament a report containing the findings of the review.

The bill passed the Legislative Council on 6 June without amendment and was assented on 20 June 2024.

Votes and Proceedings: 15/05/2024, p., 5/06/2024, p. 662-3

Hansard (Proof): 5/06/2024, pp. 72-4

Standing Order 203

Procedural note

When a number of amendments to a bill have been circulated by various members, the Clerks will prepare a loq or running sheet setting out the order in which amendments shall be moved. In determining this order, the following factors are taken into consideration:

- The point at which the amendments appear in bill (amendments appearing at an earlier point in a bill are considered before amendments appearing at a later point).
- The time the amendments were circulated.
- Whether they are proposed by the member with carriage of the bill.

In summary, the House considers amendments in the order in which they appear in the bill. Where more than one amendment occur at the same point in a bill, amendments proposed by the Minister or member with carriage of the bill take precedence. Otherwise the member who circulated their amendment earliest will have precedence.

In this particular case none of the three amendments were amending the existing text of the bill, but rather were proposing new sections of the principal Act. The amendments of Mr Daley and Mr Henskens both proposed a new section 71 be inserted in the Act, while the amendment of Ms Smith proposed a new section 102.

Reintroduction of a Private Members' Bill

On Thursday 19 October 2023, the Member for Kiama, Mr Gareth Ward, gave notice that he would introduce the *Automated External Defibrillators (Public Access) Bill*. On Thursday 21 March 2024 Mr Ward introduced the bill and delivered his second reading speech. However, debate on the bill never resumed prior to it lapsing, in accordance with Standing Order 105(3), on 20 April 2024.

On Tuesday 7 May Mr Ward once again gave notice that he would introduce the *Automated External Defibrillators (Public Access) Bill* and introduced his bill on Thursday 6 June. Mr Ward was able to re-introduce his bill as the House did not determine its position with respect to the bill prior to it lapsing.



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Mr Ward gave a very brief second reading speech in which he referenced his original speech. He noted, “I will not need a very long time to speak because I have introduced this bill... I refer members to the second reading speech I gave in this place on 21 March 2024. I ask members to reflect on that speech”.

Votes and Proceedings: 21/3/2024, p. 571; 6/6/2024, p. 668.

Hansard (Proof): 6/6/2024, p. 4.

Standing Order 105(3) (Precedence and lapsing of General Business)

Standing Order 154 (Same question not to be put).

Procedural note

Standing Order 154 provides that the Speaker may disallow any motion or amendment which is the same in substance as any question already determined in the affirmative or negative in the same session.

If a bill is negatived at the second or third reading, the application of SO 154 would prevent the introduction of any bill that was substantially the same during the remainder of the session.

Section 34 of the *Interpretation Act* provides for the use of extrinsic material in the interpretation of Acts and statutory rules. It is well known that s. 34(2)(f) provides that material that may be considered in the interpretation of a provision of an Act includes the second reading speech of the Minister or other member who moves that the bill be now read a second time. That is why the second reading speeches of Ministers introducing bills give very precise explanations of the intent and operation of the provisions of the bill.

Notably, s. 34(2)(h) also provides that consideration may be given to any relevant material in the *Votes and Proceedings* or in any official record of debate in the Assembly. On this basis, Mr Ward's original second reading speech when he first introduced his bill could be considered.

