

Chapter 10 Sitting and Adjournment of the House

10.1 Meeting and adjournment

10.1.1 In the House

Standing order 97, which sets out the routine of business on sitting days, is predicated on the fact that the sittings will commence in the afternoon on Tuesdays at 1.00 pm and in the morning on other days at 10.00 am.

A sessional order has been adopted for the current (55th) Parliament which has varied the routine of business to provide for the House to sit on Tuesdays, Wednesdays and Thursdays. Under this sessional order the House will commence sitting at 12.00 noon on Tuesday and at 10.00 on Wednesday and Thursday.

The Speaker leaves the Chair at 1.30 pm each day to allow for a lunch break. The Speaker may also leave the Chair at other times to allow members to attend particular events such as the presentation of the Address in Reply to the Governor or to attend a joint sitting or because of disorder.¹

The House automatically adjourns without a motion being proposed at certain times, or at the completion of certain business, each sitting day in accordance with standing order 46 as follows:

Tuesdays:	7.30 pm, or at the conclusion of the matter of public importance if earlier.
Wednesdays:	7.30 pm, or at the conclusion of the matter of public importance if earlier.
Thursdays:	6.30 pm, or at the conclusion of private members' statements if earlier.
Fridays:	At the conclusion of private members' statements.

The adjournment times have been varied by sessional order for the current (55th) Parliament as follows:

Tuesdays:	7.45 pm, or at the conclusion of the matter of public importance if earlier.
Wednesdays:	10.00 pm, or at the conclusion of the matter of public importance if earlier.
Thursdays:	at the conclusion of private members' statements.

Sittings may be extended by motion suspending the standing and sessional orders to vary the routine of business. When a sitting has been extended by a motion of the House and no alternative time for adjournment has been set, a question for the adjournment will be proposed by the Chair as follows:

The question is "That this House do now adjourn".

¹ Renaming ANZAC Bridge ceremony, VP 11/11/1998, p. 1049; respect for Port Arthur shooting victims, VP 01/05/1996, p. 84; visit of the President of USA, VP 21/11/1996, p. 648.

Under the standing orders, the question on the adjournment cannot be debated nor amended (SO 80(2)).

When agreed to, or if an automatic adjournment is provided for under the standing orders or by suspension of standing and sessional orders,² the Speaker states:

"The House now stands adjourned until"

If sitting days and hours have not been set by a Minister, it is necessary for a Minister to move a motion on every sitting day for a special adjournment which specifies a particular day and hour for the House to next meet.³ The question proposed by the Speaker would be, for example:

The question is "That the House at its rising this day, do adjourn until Tuesday 21 May 1995 at 2.15 p.m."

The House has been adjourned at irregular times for a variety of reasons. The House adjourns on the death of a sitting member as a mark of respect⁴ and on two occasions the House adjourned at 5.00 p.m. due to industrial action.⁵ In addition, motions to suspend standing and sessional orders have also provided for the adjournment of the House after the completion of a specified item of business.⁶

Under standing order 47, the Government may request (in writing to the Speaker) that the House meet at an earlier time than set down on adjournment.⁷ Similarly, a majority of Members may, in writing to the Speaker, request the House meet at an earlier time than that set down at adjournment (S.O. 48).

10.1.2 Suspending a sitting until the ringing of one long bell

The procedural device of suspending a sitting of the House until the ringing of one long bell in lieu of a formal adjournment often suits the convenience of the House and individual members by allowing the suspension of a sitting for special events⁸ or unusual meal breaks (such as breakfast). The business of the House is resumed later at the point where it was suspended. The practice of suspending proceedings to extend a sitting over more than one day allows the business of the House to be resumed without the requirement to observe a new routine of business. This practice also therefore makes more time available for pressing business before the House.

It is within the discretion of the Speaker to suspend a sitting over more than one day. A specific resolution authorising the Speaker to leave the Chair "until the ringing of

² VP 18/10/2005, pp. 1655-6; VP 22/06/2005, p. 1499; VP 23/03/2005, pp. 1305-6; 22/06/2004, pp. 884-5; VP 18/02/2004, p. 591; VP 10/11/1999, p. 222.

³ During 2000 and 2001 the House, having not set on the motion of the Minister the days and times of meeting and adjournment, agreed to special adjournments for all sitting days.

⁴ VP 15/09/2004, p. 973.

⁵ VP 16/06/1998, p. 728; VP 29/08/2006, p. 133.

⁶ VP 10/11/1999, p. 222.

⁷ See VP 15/12/2005, p. 1833 when the House was recalled prior to the date set at the last adjournment. Standing and sessional orders have also been suspended to provide that the House adjourn to a particular date and that should the Speaker be requested by the Leader of the House to call the House to meet for a stated specific purpose at other times the Speaker shall act on such advice and advise members accordingly, VP 17/08/2000, p. 755.

⁸ The Speaker, having received advice from the Leader of the House that some members were having difficulty attending the Parliament, left the Chair at 2.23 p.m. until the ringing of one long bell. The Speaker resumed the Chair at 5.16 p.m., VP 19/06/2001, p. 1277.

one long bell" is not required although on occasions a resolution of the House has provided for this to occur.⁹

Such extended sittings are sometimes resorted to towards the end of a Parliamentary sitting period to suit the convenience of the House when it awaits business to be returned from the Legislative Council. In more recent times the Legislative Assembly has availed itself of long suspensions, for example: November/December 1999¹⁰; June/July 1999¹¹; November/December 1998¹²; June/July 1998¹³; November/December 1997¹⁴; and November and December 1993.¹⁵

On most of these occasions some programmed sitting days were lost in conjunction with the events associated with extended suspensions of a sitting.

Perhaps in recognition of the argument that overuse of the long suspension may be prejudicial to the rights of members, the Leader of the House moved motions in the following years to allow certain items of regular business, such as Question Time, to take place notwithstanding that the House was resuming a suspended sitting: 1997¹⁶; 1998¹⁷; and 1999.¹⁸

10.2 Absence of quorum

A quorum of the Legislative Assembly is 20 members, exclusive of the member presiding (Const. Act, s 32).

If a quorum is not present at the commencement of a sitting the bells are rung for four minutes and if there is no quorum then, the Speaker adjourns the House to the next sitting day (S.O. 38). A quorum is not required to be formed to recommence business after the Speaker has left the Chair until an appointed time or the ringing of one long bell (S.O. 40), or after the usual suspension of a sitting for a meal time.¹⁹

A member generally may call the attention of the Speaker to the "state of the House" (that is, to the member's belief that a quorum is not present) at any time, even by

⁹ VP 26/11/1997; p. 344 where the sitting was suspended from 26 until 27 November 1997 without a specific resolution although a suspension of standing orders on 27 November 1997 provided, among other things, for the Speaker to leave the chair until the ringing of one long bell, see also VP 25/06/1998, p. 784.

¹⁰ Sitting suspended on 18 November until 23 November, again until 24 November and again until 2 December without a specific resolution. Three programmed sitting days, 23-25 November 1999 were not held, VP 18/11/1999, pp. 268, 291 and 302.

¹¹ Sitting suspended on 29 June until 1 July and again until 2 July without a specific resolution. Three programmed sitting days, 30 June and 1-2 July, were not held, VP 29/06/1999, pp. 192, 204.

¹² Sitting suspended on 25 November until 4 December without a specific resolution. Four programmed sitting days, 26 November and 1-3 December, were not held, VP 25/11/1998, p. 1147.

¹³ Sitting suspended on 25 June until 3 July 1998 in accordance with a resolution. There were no programmed sitting days during this period. VP 25/06/1998, p. 784.

¹⁴ Sitting suspended from 26 November until 27 November without a specific resolution and suspended again until 8 December in accordance with a resolution. Four programmed sitting days, 28 November and 2-4 December, were not held.

¹⁵ Sitting suspended twice overnight on 19 November before adjourning, VP 19/11/1993, pp. 608-9. Three programmed sitting days were not held. The House was summoned in accordance with the standing orders to meet on 14 December. The 14 December sitting was suspended three times and adjourned after midnight on 15 December, VP 14/12/1993, pp. 612, 626. On 15 December the sitting was suspended three times, the last at 12.05 a.m., to be resumed at 7.30 p.m. on 16 December, VP 15/12/1993, pp. 629, 634. There were no resolutions providing for these suspensions.

¹⁶ Private members' statements, questions without notice, consideration of urgent motions and the matter of public importance, VP 26/11/1997, p. 344.

¹⁷ Private members' statements, VP 25/11/1998, p. 1145; tabling of papers, committee reports, announcement of reports received out of session, statutory instruments, presentation of petitions and a ministerial statement, VP 25/11/1997, p. 1147.

¹⁸ Questions without notice (two occasions 24 & 25 November), VP 18/11/1999, pp. 271, 291. Provision was also made to allow members to lodge additional questions on notice, VP 18/11/1999, p. 296.

¹⁹ PD 10/03/1966, pp. 4109-10.

interrupting when another member is speaking. The Speaker then counts the House and if a quorum is not present the bells are ordered to be rung. The bells are rung for four minutes (or up until a quorum is formed). If there is still no quorum after the four minutes, the Speaker sets down the interrupted business as an order of the day for the next sitting day and adjourns the House until the next sitting. On any second or subsequent quorum call in any one sitting the Speaker has discretion to either proceed with business or to order the bells to be rung (S.O. 42). For example, on one occasion after a quorum call the Chair used his discretion and directed that the House continue to sit in its present state as a quorum had been called earlier, and the hour was late.²⁰

Standing order 45 provides that a member may not call attention to the want of a quorum before 10.30 am on days when the House meets at 10.00 am.²¹ The standing order also provides that quorums may not be called on Friday sittings or during private members' statements. A sessional order has been adopted that varies this standing order to remove the reference to Friday sittings and to provide that a quorum cannot be called during the discussion on matters of public importance or the discussion on a petition signed by 10,000 or more persons or during the establishment of and debate on any motion accorded priority in addition to during private members' statements and before 10.30 am.²²

Standing and sessional orders have also been suspended to prevent quorums being called on specified days²³, for a specified time²⁴, and while the House dealt with specific items of business.²⁵

It is disorderly to call attention to the want of a quorum when one is present and it is also disorderly to leave the Chamber after a quorum has been called for and the Speaker has ordered the bells to be rung.²⁶

If tellers in a division report that there is not a quorum present, the Speaker must adjourn the House until the next sitting day (S.O. 43).

10.3 Joint sittings

On occasion members of the Legislative Assembly hold joint sittings with members of the Legislative Council.

In the event of casual vacancies in the Legislative Council and in the Senate the two Houses sit together to elect persons to fill such vacancies. A casual vacancy occurs before the expiration of the member or Senator's term through resignation, death or otherwise. It does not include those vacancies that simply arise due to the expiration of a member's term of service. On one occasion a joint sitting was held for the purposes of electing both a member of the Legislative Council and a Senator.²⁷

²⁰ PD 08/04/1992, p. 2462. See also PD 06/06/1996, p. 2690.

²¹ Prior to the adoption of the current standing orders a sessional order first passed in September 1997 provided for this restriction on quorums VP, 17/09/1997, p. 38-9; VP 11/05/1999, pp. 37-42; VP 07/09/1999, pp. 22-7; VP 29/04/2003, p. 30.

²² VP 3/05/2011, p. 40 & VP 14/02/2012, p. 517

²³ VP 24/06/1999, p. 168

²⁴ VP 11/11/1999, p. 230

²⁵ VP 15/09/1999, p. 77; VP 10/11/1999, p. 222; VP 25/05/2000, pp. 504-5.

²⁶ The Acting Speaker drew the attention of the House to the standing orders and that when the last quorum was formed a member came into the Chamber and left. The Acting Speaker reminded that member that such conduct was disorderly. PD 30/12/2000, p. 11413.

²⁷ VP 17/09/1997, p. 48,

The two Houses may also meet together to resolve deadlocks over bills. Resolutions have also been passed by both Houses enabling them to sit together to hear addresses given by overseas dignitaries,²⁸ for condolence motions²⁹ and for public forums such as the seminar on the reform of the law of negligence.³⁰

10.3.1 Filling of casual vacancies in the Legislative Council

When a vacancy occurs in the Legislative Council the Governor convenes a joint sitting of both Houses under section 22D of the *Constitution Act 1902* to elect a new member.³¹ The legislation provides that a person may only be nominated for election if they belong to the political party of the outgoing member.

Any member elected to the Legislative Council at a joint sitting must wait at least two days after the joint sitting before they can make the pledge of loyalty and any member elect who ceases to be a member of his or her party before pledging loyalty will be deemed not to be elected.³² In addition, the legislation provides that more than one vacancy can be filled at the same joint sitting.³³

The conduct of any joint sitting to fill a casual vacancy in the Legislative Council is governed by provisions contained in the *Constitution and Parliamentary Electorates and Elections (Amendment) Act 1978*. It provides:

- The President of the Legislative Council presides at the joint sitting. If he or she is unable to do so, the Speaker of the Legislative Assembly shall preside;
- Where a joint sitting is convened for the purpose of filling more than 1 vacant seat, each vacant seat shall be filled separately, by the votes of the members present in accordance with these provisions;
- A member proposes some eligible person³⁴ to fill the vacant seat and moves "That (*the person proposed*) be elected as a member of the Legislative Council to fill the seat in the Legislative Council vacated by (*the person whose seat has become vacant*)". This motion must be seconded;
- The member proposing the new member may speak on his or her proposal for up to 10 minutes and no other member may speak at that time. Other members may speak to any motion for 10 minutes and no longer;
- If only 1 person is proposed and seconded that person is, without a question being put, elected as a member of the Legislative Council to fill the vacant seat;
- If 2 or more persons are proposed and seconded to fill the vacancy:

²⁸ VP 02/06/2000, p. 546 and VP 08/09/1998, p. 826.

²⁹ VP 22/10/2002, p. 500 where a joint sitting was convened to consider a motion of condolence to the families and friends of the victims of the Bali bombings.

³⁰ VP 17/09/2002, pp. 426-7 and VP 18/09/2002, pp. 433-4.

³¹ Joint sittings are convened to elect new members of the Legislative Council on the death of a sitting member or when seats become vacant for reasons other than the expiry of the member's term of service. For examples, see VP 30/08/2000, pp. 764-5; VP 01/11/2000, pp. 829-30; VP 06/09/2001, p. 1439; VP 03/09/2002, p. 391; VP 25/06/1998, p. 779; VP 30/04/1998, pp. 527-8; VP 17/04/1996, p. 36; VP 17/09/1997, p. 48; VP 19/10/1995, pp. 328-9; VP 19/09/1995, pp. 204-5; VP 12/09/1991, p. 148; VP 21/08/1991, p. 75.

³² Section 22E of the *Constitution Act 1902*.

³³ See section 22E of the *Constitution Act 1902*.

³⁴ An eligible person is a reference to a person who is eligible to be nominated for election under section 22D of the *Constitution Act 1902*.

- (a) the motion shall be put in respect of each of those persons in the order in which they have been proposed and seconded and any member may speak to any such motion; and
- (b) when a motion is resolved in the affirmative the person to whom the motion relates is elected as a member of the Legislative Council to fill the vacant seat and the remaining motions lapse;
- A motion at a joint sitting shall be decided by the majority of the votes of the members present other than the person presiding and when the votes on any motion are equal the person presiding shall have a casting vote;
- Any motion at a joint sitting shall be decided by open voting;
- The Standing Rules and Orders of the Legislative Council apply to and in respect of proceedings at a joint sitting;
- The person presiding will not declare the joint sitting closed until all vacancies for which the joint sitting was convened have been filled;
- Following the joint sitting the person presiding shall in writing inform the Governor of the name of the new person elected to fill the vacancy in the Legislative Council; and
- The records of the proceedings of a joint sitting shall be made and retained by the Clerk of the Legislative Council.³⁵

The legislation also provides that its provisions for joint sittings will only have effect until standing rules and orders governing the proceedings at joint sittings held under section 22D of the *Constitution Act 1902* have been adopted by both Houses of Parliament and approved by the Governor.³⁶ By convention joint sittings to elect a member to the Legislative Council to fill a casual vacancy are held in the Legislative Council Chamber.

A message convening a joint sitting of both Houses for the purposes of filling a casual vacancy in the Legislative Council can only be received from the Governor if both Houses are sitting. This is because there is no provision for a message to be given solely to either the Speaker or the President and in order to be effective a message needs to be received when the House is sitting so that it can be dealt with as appropriate.³⁷

10.3.2 Senate casual vacancy

Section 15 of the *Commonwealth of Australia Constitution* provides for the filling of casual vacancies in the Australian Senate. It provides:

If the place of a senator becomes vacant before the expiration of his term of service, the Houses of Parliament of the State for which he was chosen, sitting and voting together, or, if there is only one House of that Parliament, that House, shall choose a person to hold the place until the expiration of the term. But if the Parliament is not in session when the vacancy is notified, the Governor of the State, with the advice of the Executive Council thereof, may appoint a person to hold the place until the expiration of fourteen days from the beginning of the next session of the Parliament of the State or the expiration of the term, whichever first happens.

³⁵ See Schedule 4, clause 12 (1)-(16) of the *Constitution and Parliamentary Electorates and Elections (Amendment) Act 1978*.

³⁶ See Schedule 4, clause 12(17) of the *Constitution and Parliamentary Electorates and Elections (Amendment) Act 1978*. To date, the Legislative Assembly has not adopted standing orders in relation to joint sitting to fill vacancies in the Legislative Council.

³⁷ Advice received from the Crown Solicitor's Office re: Message to both Houses under s.22D, Constitution Act, dated 5 January 1996.

Where a vacancy has at any time occurred in the place of a senator chosen by the people of a State and, at the time when he was chosen, he was publicly recognised by a particular political party as being an endorsed candidate of that party and publicly represented himself to be such a candidate, a person chosen or appointed under this section in consequent vacancy or vacancies, shall, unless there is no member of that party available to be chosen or appointed, be a member of that party.

Where –

- (a) in accordance with the last preceding paragraph, a member of a particular political party is chosen or appointed to hold the place of a senator whose place had become vacant; and
- (b) before taking his seat he ceases to be a member of that party (otherwise than by reason of the party having ceased to exist), he shall be deemed not to have been so chosen or appointed and the vacancy shall be again notified in accordance with section twenty-one of this Constitution.

The name of any senator chosen or appointed under this section shall be certified by the Governor of the State to the Governor-General.

As with the filling of casual vacancies in the Legislative Council, any person proposed to fill a casual vacancy in the Senate must, if possible, belong to the same political party as that of which the Senator retiring or vacating the seat was a member.³⁸ If only one person is proposed and seconded the President shall declare that person to hold the vacant seat. However, if more than one person is nominated and seconded the person to fill the casual vacancy will be chosen by open voting.

The Governor can only appoint a person to hold the casual vacancy in the Senate when the House is “not in session”. This effectively means that the Governor can only make an appointment to the Senate during periods when the Parliament is prorogued.³⁹

There is little guidance provided by the Australian Constitution and the standing orders of both the Houses regarding the conduct of joint sittings to fill casual vacancies in the Senate. The first joint sitting convened to fill a vacancy in the Senate occurred on 8 October 1903⁴⁰ and established a basic pattern for the conduct of proceedings which has generally been followed.⁴¹ This pattern is somewhat similar to the conduct of a joint sitting to fill a casual vacancy in the Legislative Council and consists of the following steps:

1. On receipt of the Governor’s message to fill a casual vacancy in the Senate, the Legislative Assembly sends a message to the Legislative Council requesting a time and place to hold a joint sitting;
2. The joint sitting would then elect a Chair, the nomination being received and the question put by the Clerk of the Parliaments. Usually the President

³⁸ See section 15 of the Australian Constitution. The provision was introduced in 1977 following an incident when a Coalition member was elected to the Senate in the place of a Labor Senator as part of a political strategy by the NSW Coalition Government to attack the Federal Whitlam Labor Government. See PD 27/02/1975, pp. 3994-4011. See also Clune D and Griffith G, *Decision and Deliberation: The Parliament of New South Wales 1856-2003*, 2006, p. 442.

³⁹ Advice received from the Crown Solicitor’s Office re: Appointment to casual Senate vacancy pursuant to s.15, Constitution Act, dated 15 December 1986.

⁴⁰ The first NSW Senate vacancy was due to the resignation in 1903 of Senator Richard Edward O’Connor QC who became one of the initial appointees to the bench of the High Court of Australia.

⁴¹ See for example VP 04/05/2000, p. 458; VP 14/10/1998, p. 928; VP 17/09/1997, p. 48; VP 29/08/1991, pp. 116-7; VP 08/03/1994, p. 71; VP 10/05/1994, p. 240; VP 27/02/1976, p. 333; VP 16/03/1971, p. 17; VP 02/09/1965, p. 32.

- of the Legislative Council is nominated with the proviso that in the President's absence the Speaker would take the Chair;
3. The Premier proposes draft rules for the joint sitting and provision is made to conduct the joint sitting in accordance with parliamentary usage and the standing orders of either the Legislative Council or the Legislative Assembly. After the adoption of the rules the Chair calls for nominations.
 4. If only one person is proposed and seconded, the President declares that person to be elected to hold the vacant place in the Senate. If more than one person is proposed and seconded, the person to hold the vacant place shall be chosen by open voting;
 5. Before proposing the question, the President asks if any member desires to propose any other person to fill the vacancy, and, no other person being proposed, the first division is proceeded with;
 6. If on the first division the person proposed has an absolute majority of the whole number of the members voting, the President declares that the proposed person has been chosen to hold the vacant seat in the Senate. However, if the person proposed does not receive an absolute majority of the members voting, the name of such person is excluded from any subsequent division.
 7. Successive divisions are taken until one of the proposed persons obtains an absolute majority of the members voting. The President, in the case of an equality of votes in any division, gives a casting vote and any reasons may be entered in the records;
 8. When a person obtains an absolute majority of the members voting the President declares that person to be the new senator and the President will inform the Governor in writing of that; and
 9. The records of the proceedings and division lists are retained by the Clerk of the Legislative Council.

In 1975 a joint sitting brought on by the resignation of Senator Murphy who had been Attorney-General in the Whitlam Labor Government was quite contentious. Prior to the joint sitting the Premier announced that the vacancy would be filled by a non-Labor candidate flouting the convention that a casual vacancy in the Senate should be filled by a person from the same party as the Senator vacating the seat.⁴² When the Legislative Assembly resumed following the Christmas adjournment an endeavour was made by the Labor Opposition to have a joint committee appointed to draw up rules for the expected joint sitting. The motion was defeated on division.⁴³ The following day the Labor Opposition in the Legislative Council proposed a similar motion which was ruled out of order because the House had not yet been advised by message from the Governor that there was a vacancy. Furthermore, the motion contained an instruction which constituted a direction to Assembly members, who may be appointed to any joint committee established to draw up rules for a joint sitting, which was regarded as an infringement of the rights and privileges of the Legislative Assembly.⁴⁴

⁴² After this incident an amendment was made to section 15 of the Australian Constitution in 1977 to provide that any casual vacancy in the Senate must be replaced by a member of the same party to which the member who has left the vacancy belonged "unless there is no member of that party available to be chosen or appointed."

⁴³ PD 19/02/1975, p. 3611.

⁴⁴ PD 20/02/1975, p. 3697.

The rules to govern the conduct of the joint sitting were agreed upon by prior resolution of both Houses, rather than by the members present at the joint sitting.⁴⁵ In doing so, there was a departure from the practice established at the first such sitting in 1903 and followed on every occasion afterwards. As such, when the President of the Legislative Council took the Chair, declared the joint sitting open and sought nominations for the vacant senatorial position, Opposition members raised points of order that there were no rules governing the sitting unless they were adopted by the members themselves at the sitting. An unsuccessful endeavour was made to substitute rules for the sitting prior to the President putting the question for the appointment of the first candidate. When the question was put the result was 86 to 70 resulting in the selection of the government candidate, Cleaver Bunton, and the President declared him elected and closed the proceedings.⁴⁶

As an aftermath of the disorderly meeting, the Legislative Assembly Standing Orders Committee proposed a new standing order to provide for rules at future joint sittings to elect a senator. A copy of the proposed standing order was referred to an ad hoc Legislative Council committee which was at the time reviewing certain Council standing orders. This committee sought the opinion of the Clerk of the Parliaments, who advised against its adoption in view of section 15(1) of the *Constitution Act 1902*, which restricted the preparation and adoption of standing rules and orders concerning communication between the Houses to:

...the mode in which such Council and Assembly shall confer, correspond, and communicate with each other relative to Votes or Bills passed by or pending in such Council and Assembly respectively.

Following similar advice received from the Clerk of the Assembly the proposal was then abandoned.

10.3.3 Conferences between the Legislative Assembly and Legislative Council

The standing orders of both Houses provide for the holding of conferences between the two Houses. Conferences can be designated as either “ordinary” or “free” conferences with different rules and procedures applying to each. When motions are moved requesting a conference with the Legislative Council the motion must note the names of the members proposed to be the managers for the Assembly and a statement of the general objects of the conference (S.O. 344). The message which is delivered to the Legislative Council must also state the general objects of the conference and the number of members the Assembly will appoint (S.O. 345).

10.3.3.1 Ordinary conference

Standing order 342 specifies the procedure for an ordinary conference. It provides that when an ordinary conference is held between the two Houses that there shall be at least five Assembly managers, that all communication between the managers shall be in writing and that the duty of the Assembly managers is confined to reading and delivering the reasons or resolutions to the Council managers or hearing and receiving reasons or resolutions from the Council managers. In other words the parameters of the debate are determined by the House. The Legislative Assembly has never held an ordinary conference with the Legislative Council.

⁴⁵ PD 25/02/1975, pp. 3765-809.

⁴⁶ PD 27/02/1975, pp. 3994-4011.

10.3.3.2 Free conferences and joint sittings under section 5B of the *Constitution Act 1902*

Section 5B of the *Constitution Act 1902* sets out the process that may be undertaken when the two Houses disagree on bills, other than those bills which appropriate monies for the ordinary annual services of the Government which are dealt with under section 5A. A disagreement occurs when a bill is introduced and passed by the Legislative Assembly, but rejected by the Council, not passed by the Council or passed with amendments to which the Assembly does not agree.

A bill is deemed to have not passed for the purposes of section 5B if the bill is not returned to the Legislative Assembly within two months after its transmission to the Legislative Council and the session continues during such period.⁴⁷ Advice received from the Crown Solicitor indicates that the “transmission” of a bill to the Legislative Council for the purposes of the *Constitution Act 1902* is best considered to have occurred when the bill is delivered to a member or one of the Clerks-at-the-Table while the House is sitting or to the Clerk of the Legislative Council if it is not sitting.⁴⁸

The first step in resolving disagreements between the Houses is to hold a free conference between managers appointed by each House. If no agreement is reached at this free conference the Governor may convene a joint sitting of both Houses to deliberate upon the bill as last proposed by the Legislative Assembly and upon any amendments made by the Legislative Council with which the Legislative Assembly does not agree.⁴⁹ No vote is taken at the joint sitting.

The *Constitution Act 1902* provides that if there is no agreement between the two Houses following the joint sitting or after further communication to bring about agreement, the Legislative Assembly may by resolution direct that the bill as last proposed by the House, with or without amendments made by the Legislative Council, be submitted to the electors of the State by way of a referendum at any time during the life of the Parliament or at the next general election of members of the Legislative Assembly. If the bill is approved by the majority of the electors voting it shall be presented to the Governor for assent even though the Legislative Council has not agreed to the bill.⁵⁰

Such a referendum occurred when a bill was before the Parliament which proposed to abolish the Legislative Council. In this instance, the Legislative Council refused to participate in a free conference and joint sitting as provided for in section 5B of the *Constitution Act 1902*. An injunction was sought to prevent the bill going to referendum.⁵¹ However, the High Court unanimously concluded that section 5B of the *Constitution Act 1902* was valid, due to the fact that the power to legislate for the peace, welfare and good government includes the power to change the *Constitution Act 1902*, and that the Council’s refusal to consider the bill for reasons of alleged privilege constituted a rejection of the bill under section 5B. The majority of the court considered that the requirement of a free conference was directory rather than imperative. Justice Kitto implied that the Council had an inability to prevent the process through non-cooperation and Justice Menzies made a similar

⁴⁷ See section 5B(4) of the *Constitution Act 1902*.

⁴⁸ Advice received from the Crown Solicitor re: s.5B(4), *Constitution Act 1902*, dated 3 May 1990.

⁴⁹ The Governor is provided with Ministerial advice that a joint sitting should be convened and the Governor is bound to act on this advice.

⁵⁰ See section 5B of the *Constitution Act 1902*.

⁵¹ *Clayton v Heffron* (1960) 105 CLR 214.

interpretation.⁵² The referendum which was held in April 1961 was rejected by a majority of over 250,000.

The Legislative Assembly standing orders specify that when a free conference is held there must be at least ten Assembly managers present and that the managers may confer verbally and without restriction with the Council managers (S.O. 343). The managers may be appointed by ballot if any member so requests although this is not a requirement under the standing orders.⁵³ In the case of an equality of votes the Speaker will determine which members are to be appointed as managers. If a ballot occurs the bells are rung as in a division and each member is required to hand in a list of ten members nominated by them to be appointed as managers. The practice of the House has been that a member's vote is considered to be informal if they do not mark ten members. In the Legislative Assembly there has been a precedent of appointing Government members as managers and in cases where significant legislation is to be considered Ministers are usually appointed as the managers. However, there are cases where the Government of the day has professed to have a desire to allow equal representation of both sides of the House although this has at times been thwarted by the Opposition's refusal to co-operate.⁵⁴

When there is disagreement between the Houses in relation to a bill one of the Houses (the House where the legislation originated) requests a free conference with the other House to discuss the subject of such disagreements. It does this by sending a message to the other House requesting a free conference and notifying it of the members who have been appointed as managers. A message is then received back from the other House agreeing to a time and place for the free conference. When the time arrives for the free conference the Clerk, by direction of the Speaker, calls the name of the managers⁵⁵ and they then proceed to the conference, attended by the Serjeant-at-Arms. The business of the House is suspended during their absence. On their return to their Chamber the managers hand up the report of the free conference and the Clerk, by direction of the Speaker, reads out the resolutions agreed to by the free conference. These resolutions are placed on the business paper as an order of the day forthwith, for a later hour, or for the next sitting day to be considered in detail.

A ruling of Speaker Meagher in 1916 indicates that only the matters referred to the free conference are to be considered by the managers and that no new matter can be dealt with at the free conference. Referring to *May* Speaker Meagher stated:

*May sets forth the usages of the Imperial Parliament in regard to the position of a joint conference which has taken upon itself to deal with a matter not specifically referred to it. The conference meets in order to find a solution of certain disagreements between the two Chambers respecting a bill, and the particular items of conflict form the basis of the deliberations of the conference. The reason why either House has agreed to the amendments made by the other House is not in issue. The only matter in issue is that in respect of which there is antagonism between the two Houses.*⁵⁶

⁵² See *Clayton v Heffron* (1960) 105 CLR 214.

⁵³ See ruling of Speaker Maher, PD 07/04/1960, p. 3845 where it was ruled that a request that managers for a free conference be elected by ballot must be made when a motion for a free conference is first proposed from the Chair.

⁵⁴ See for example, PD 07/04/1960, pp. 3838-9.

⁵⁵ For precedent when one of the members appointed as a manager does not answer to their name when called see *Public Roads Bill*, VP 09/06/1897, p. 118. See also VP 20/10/1879, p. 364, where two members did not answer when called and on motion of a Minister new members were appointed to serve.

⁵⁶ PD 29/11/1916, p. 3105-6.

Speaker Meagher went on to add that “clearly construing the procedure as laid down by *May*...there is no method by which a free conference could bring in new matter.”⁵⁷

Free conferences held by the two Houses are informal meetings and no official record of proceedings are kept – apart from what is reported to the House. In a free conference the managers may come to agreement among themselves but cannot bind their Houses to agree to any particular course of action.

On one occasion the Legislative Assembly sent a message to the Legislative Council following a free conference requesting advice as to what steps had been taken by the Council on the report of its managers of the free conference. The Legislative Council referred this message to a select committee to report on the practice of Parliament in sending messages from one House to the other requesting information as to their proceedings. The Legislative Council complied with the Assembly’s request but also re-iterated its select committee’s view that the message of the Legislative Assembly did not seem to be in accordance with the mode sanctioned by parliamentary usages of obtaining information with reference to any bill while it is pending in the Legislative Council and noted that its response should not set a precedent.⁵⁸

In response the Legislative Assembly passed a motion to remove the Council’s message from the records due to the fact that the “...said message not only manifests a disregard of the rights and privileges contended for by the representatives of the people, but surrenders the privileges with which the Council is separately invested, by accounting to this House how the members of the Council in their individual capacity have recorded their votes, a course not sanctioned by any precedent, and never desired by this branch of the Legislature, and one which, if acknowledged, would form a precedent dangerous to the independence of the Council itself.”⁵⁹ This action by the Assembly was arguably the proper course to adopt in that later legal advice received indicated that the Legislative Assembly was not out of order in requesting advice from the Council as to what it was intending to do with resolutions agreed to at a free conference and that the Assembly could even request the Council to respond to their request within a specified time period.⁶⁰ Given this advice, in future, if the Council’s position is not clear following a free conference between members of both Houses it could be wise for the Assembly to express its views by message to the Council and request an indication of the Council’s views within a time to be stated in the message.

There have been twenty four requests for free conferences in New South Wales since 1867. The purpose of these requests has been to resolve disagreements on legislation between the Houses. Twenty one free conferences have resolved the disagreements and the legislation (unamended or amended) has subsequently been enacted. The disagreements in the following bills were unresolved:

⁵⁷ *Ibid.* On this occasion the free conference had agreed to amend a section of the bill that had already been agreed upon by both Houses. The Speaker, whilst allowing the amendment, noted that it was a departure from accepted practice and that it was not to be regarded as a precedent.

⁵⁸ See the Minutes of Proceedings of the Legislative Council, 14/05/1879, pp. 220-1.

⁵⁹ VP 14/05/1879, p. 511 – Entry 12.

⁶⁰ Advice received from the Crown Solicitor in the matter of the Constitution and Parliamentary Electorates and Elections (Amendment) Bill 1977: Question to be followed in Free Conference and Joint Sitting, dated 12 January 1978.

- Parliamentary Powers and Privileges (1878-79): The Legislative Council did not consider the report of its own managers and the Assembly consequently discharged the order of the day for the bill;
- Crown Lands (1898): The Legislative Council refused the request for a free conference due to the lateness of the session. The bill lapsed on prorogation; and
- Constitution Amendment Legislative Council Abolition (1960): The Legislative Council refused to take part in the proposed joint sitting. This bill, as a result, was put to a referendum in April 1961 and rejected by a majority of over 250,000 votes.

Conferences or meetings can also be held between the committees of both Houses following the passing of resolutions by each House authorising the committees to do so. For instance, each House has a committee that deals with members' conduct and ethics and on a number of occasions both Houses have passed resolutions enabling them to confer with each other.⁶¹

10.3.4 Other joint sittings/meetings

The Legislative Assembly has, in recent times, held joint sittings with the Legislative Council for particular purposes in addition to filling vacancies in either the Legislative Council or the Senate and free conferences.

On 18 September 2002 a joint sitting was held in the Legislative Assembly Chamber for the purpose of a seminar on reform of the law of negligence. The seminar was convened in order to set the context for proposed legislation by hearing about developments in the law of negligence, current legal developments and the financial and actuarial issues underpinning the need for reform.

The resolution, passed by the Legislative Assembly and agreed to by the Legislative Council, provided that the joint sitting would commence at 10.05 a.m. at the ringing of one long bell and that it would conclude at 1.00 p.m. without question being put. The resolution also provided that during the joint sitting the standing orders of the Legislative Assembly would apply.⁶²

A number of experts were admitted on to the floor of the House to address the members at the joint sitting including a Professor of Law, insurance specialists and the President of the NSW Bar Association. The resolution passed establishing the joint sitting therefore included a clause authorising these "strangers" to address members from the floor of the House.⁶³

On 22 October 2002, a joint sitting was convened by both Houses to consider a motion of condolence to the families and friends of the victims of the Bali bombings which occurred on 12 October 2002. Standing orders were suspended to give the joint sitting precedence over all other business and for the Houses to adjourn, as a mark of respect, without motion, after the joint sitting was concluded.⁶⁴ The joint

⁶¹ VP 20/09/1995, p. 221 and VP 03/04/2001, p. 1134.

⁶² VP 17/09/2002, pp. 426-7 and Minutes of Proceedings of the Legislative Council 17/09/2002, pp. 353-4.

⁶³ *Ibid.*

⁶⁴ VP 22/10/2002, p. 500.

sitting was held in the Legislative Assembly Chamber and, as with the joint sitting convened to consider the law of negligence, the rules of the Assembly applied.

Members of the Legislative Council have also been admitted into the Legislative Assembly Chamber to hear speeches from distinguished visitors. These joint meetings are somewhat different to other joint sittings where a vote on a particular decision is taken. However, resolutions are still required to be passed by each House authorising the attendance of Upper House members in the Legislative Assembly.⁶⁵ Resolutions have been passed to enable joint meetings to be convened to hear addresses from the First Secretary of the National Assembly of Wales⁶⁶ and the President of Ireland.⁶⁷

10.3.5 Meeting of the two Houses at the beginning of a new Parliament or a new session

As noted in Chapter 4 of Part One, members of the Legislative Assembly are requested to attend in the Legislative Council Chamber for the purposes of hearing the Governor's commission for the opening of Parliament.

On the first day of a new Parliament the House meets pursuant to the proclamation of the Governor. When the members are assembled the Clerk reads the proclamation summoning Parliament and the Usher of the Black Rod delivers a message from the Commissioners requesting the immediate attendance of the members of the Legislative Assembly in the Legislative Council Chamber to hear the Commission for the opening of Parliament read.

One of the Commissioners appointed by the Governor then reads out the following address on behalf of all the Commissioners appointed:

Her Excellency the Governor has been pleased to cause a Commission to be issued under the Public Seal of the State constituting us Commissioners with full power, in the name of her Excellency, to open this session of the Legislative Council and the Legislative Assembly and to deliver messages to the Legislative Council and the Legislative Assembly, and to do all such things as may be necessary to enable Parliament or the Legislative Council or Legislative Assembly to proceed to the despatch of business.⁶⁸

This in effect is a declaration opening Parliament. The Commissioner then informs the members of the Legislative Assembly that they must proceed to elect one of their number as the Speaker and that the Governor informs members that they are to take whatever measures deemed to be expedient to provide for the peace, welfare and good government of the State.⁶⁹ The members of the Assembly then proceed back to their Chamber and, once all members have taken the pledge of loyalty, proceed to elect a Speaker.

The Governor does not usually give an address at the beginning of a new Parliament although the Legislative Assembly standing orders provide that the Governor may set out the reasons for calling a new Parliament together.⁷⁰ This occurred for the commencement of the 55th Parliament in 2011, when the Governor made an address

⁶⁵ For example, see VP 02/06/2000, p. 546.

⁶⁶ VP 02/06/2000, p. 546.

⁶⁷ VP 08/09/1998, p. 826.

⁶⁸ For example, see PD 29/04/2003, p. 1.

⁶⁹ See PD 29/04/2003, pp. 1-2.

⁷⁰ S.O. 2(9) of the Legislative Assembly.

to a Joint Sitting of both Houses on the first sitting day after the usual commission opening.⁷¹

A similar procedure takes place at the beginning of each session where the two Houses meet to hear the Governor's speech⁷² or the commission read.⁷³ In accordance with the standing orders of the House, members assemble at the time and place specified in the Governor's proclamation and a message is received summoning the House to hear the Governor's speech opening the session with members of the Legislative Council in the Council Chamber. The members of the Legislative Assembly then proceed to the Legislative Council to hear the speech and after hearing it return to the House.⁷⁴

⁷¹ PD 3 May 2011, pp. 6-13.

⁷² For example, see PD 26/02/2002, pp. 1-9; PD 07/09/1999, pp. 1-6; PD 16/09/1997, pp. 1-5; PD 01/03/1994, pp. 1-7; and PD 24/02/1993, pp. 1-6.

⁷³ PD 16/04/1996, p. 1.

⁷⁴ Legislative Assembly S.O. 3.