

**New South Wales
Legislative Council
Practice**



New South Wales Legislative Council Practice

Lynn Lovelock
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THE FEDERATION PRESS
2008

Published in Sydney by

The Federation Press

PO Box 45, Annandale, NSW, 2038.

71 John St, Leichhardt, NSW, 2040.

Ph (02) 9552 2200. Fax (02) 9552 1681.

E-mail: info@federationpress.com.au

Website: <http://www.federationpress.com.au>

National Library of Australia cataloguing-in-publication

New South Wales Legislative Council practice

Authors: Lynn Lovelock and John Evans

Includes index.

ISBN 978 186287 651 4 (hbk)

New South Wales. Parliament. Legislative Council. New South Wales. Parliament. Legislative Council - Rules and practice. Legislative bodies - New South Wales - Upper chambers. Parliamentary practice - New South Wales. State governments - New South Wales.

328.94405

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Typeset by The Federation Press, Leichhardt, NSW.

Printed by Ligare Pty Ltd, Riverwood, NSW.

PREFACE

This first edition of *New South Wales Legislative Council Practice* brings together the history, practice and procedure of the New South Wales Legislative Council – the Upper House of the New South Wales Parliament, and the first and oldest legislative body in Australia.

Since its formation in 1823, the New South Wales Legislative Council has been a contested institution, the focus of continuous struggle regarding its composition, powers, role and very existence. The colonial Council of 1823–1856 grew from a consultative body to the colonial Governor into the first representative body in Australia, central to the assertion of the colony’s independence from England. Following the achievement of responsible government in 1856, the reconstituted and once again unelected Council went through a tumultuous period as liberals and conservatives grappled with its role within the new bicameral system. After a period of failed reform, in the early 20th century, the Council was the subject of a series of attempts by the Labor movement to abolish it. In 1978, following exhaustive negotiations, the Council was reconstituted again as a fully elected House based on a system of proportional representation.

The reconstitution of the Council in 1978, which bought a strong element of minor party representation to the House, has seen the Council rediscover its identity as the ‘House of Review’, central to the revival of parliamentary democracy in New South Wales. The modern Council has both the power and democratic legitimacy to scrutinise executive government. This has entailed a re-assertion of the power of the House to call for government papers and to ask questions of ministers, to amend or reject government legislation and to disallow legislative instruments. It has also entailed the development of the Council’s modern and extensive committee system, which is a formidable instrument for the Council to scrutinise the executive government and conduct inquiries into matters of public concern.

The rich history of the New South Wales Legislative Council has brought with it a wealth of parliamentary precedent with which to guide modern practice and procedures in the House. In particular, the Council has led the way in a number of areas such as orders for the production of government papers and calling ministerial staff to give evidence before a parliamentary committee. It is anticipated that the bringing together of these precedents in a single publication, supplemented by reference to authorities such as *Erskine May’s Parliamentary Practice* and *Odgers’ Australian Senate Practice* as appropriate, will provide a valuable reference tool for members and staff of the Legislative Council. It is also hoped that it will provide a useful reference for commentators interested in parliamentary democracy in New South Wales.

PREFACE

We acknowledge the efforts of many of the staff of the Council in the preparation of this book. In particular we wish to thank Velia Mignacca whose research assistance has been invaluable since the inception of this work, and Stephen Frappell, who has been integral to the editing and publication of the final volume. Others who made a significant contribution are Julie Langsworth and Susan Want. We also thank Gareth Griffith from the Parliamentary Library for his research in relation to the privileges of the Parliament of New South Wales.

Lynn Lovelock

John Evans

May 2008

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ABBREVIATIONS

AC	The Law Reports, Appeal Cases
ALR	Australian Law Reports
ALJR	Australian Law Journal Reports
APR	Atlantic Providences Reports
cl	clause
CLR	Commonwealth Law Reports
Cth	Commonwealth
ed	editor
edn	edition
ER	English Reports of all decisions previous to 1866
FCR	Federal Court Reports
FLR	Federal Law Reports
GPSC	General Purpose Standing Committee
HL	House of Lords parliamentary paper
ICAC	Independent Commission Against Corruption
KB	King's Bench (law reports)
LA	Legislative Assembly
LC	Legislative Council
Legge	Legge's Supreme Court Cases, NSW, 1825-1862
LR HL	The Law Reports, House of Lords, English & Irish Appeals, 1866-1875
LR PC	The Law Reports, Privy Council Appeal, 1865-1875
LR QB	The Law Reports, Queen's Bench, 1865-1875
LR (NSW)	New South Wales Law Reports, 1880-1899
No	Number
NSWLR	New South Wales Law Reports, 1971-
NSWSC	New South Wales Supreme Court (law reports)
NZAR	New Zealand Administrative Reports
para	paragraph
paras	paragraphs
p	page
pp	pages
PRNZ	Procedure Reports of New Zealand
QBD	Queen's Bench Division, 1875-1890
Qd R	Queensland Reports
QSR	State Reports, Queensland
s	section
SASR	South Australian State Reports
SCC	Supreme Court of Canada
SCR	Supreme Court Reports (Canada)
Sch	schedule
SO	Standing Order
SR (NSW)	State Reports, New South Wales, 1901-1970

CONTENTS

ss	sections
Tas SR	Tasmanian State Reports
US	United States Supreme Court Cases
Vol	volume
VR	Victorian Reports
WAR	Western Australian Reports