



LEGISLATIVE COUNCIL

SELECTED RULINGS OF THE CHAIR OF THE LEGISLATIVE COUNCIL

May 1995

(Commencement of the First Session of the Fifty-First Parliament)

to

December 2015

FOREWORD

A compiled volume of significant rulings of the President of the Legislative Council has been published by the Procedure Office for many years, however the rulings of the Chair of Committees and Temporary Chairs have not, to date, been included in those volumes.

This document contains significant rulings of the Chair of Committees between 1995 and 2015. This volume has been published as a separate addendum to the Selected Rulings of the President as a temporary measure; the rulings of the Chair will be incorporated into the next published volume of Selected Rulings of the President.

As observed in the foreword to the 2014 publication of the Rulings of the President, it is the role of the member presiding in the Chair to see that the powers and immunities of the House are observed. Whilst rulings are not strictly binding, Presidents and Chairs tend to follow the decisions of their predecessors unless rules or orders of the House have changed or particularly important new factors or considerations arise. In this way a consistent body of practice and precedent develops over time.

It is envisaged that the publication of this volume of Selected Rulings of the Chair of Committees will assist in the interpretation of the rules and practices governing proceedings in committee of the whole in the Legislative Council. I would like to acknowledge the diligent work of the Procedure Office in the Department of the Legislative Council in the compilation of this inaugural volume.

David Blunt
Clerk of the Parliaments
July 2016

CHAIRS OF COMMITTEES

The Hon. Duncan John Gay – 3 July 1991 to 10 May 1999

The Hon. Anthony Bernard Kelly, A.L.G.A – 11 May 1999 to 28 February 2003

The Hon. Amanda Fazio – 30 April 2003 to 24 November 2009

The Hon. Kayee Griffin – 24 November 2009 to 4 March 2011

The Hon. Jennifer Ann Gardiner BBus – 3 May 2011 to 5 May 2015

The Hon. Trevor John Khan B Juris LLB (UNSW) – 5 May 2015 to present

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AMENDMENTS

SO 175

Where the committee has before it two sets of amendments that occur at the same point in the bill which are designed to achieve the same result but are couched in different terms, the amendments of the member with carriage of the bill will be considered first, even though another sheet was lodged with the Clerk first. However, as the amendments refer to the same items, both sets of amendments will be considered concurrently. The Chair will then put the question relating to the amendments of the member with carriage of the bill first. The question relating to the second set of amendments will be put only if the amendments of the member with carriage of the bill are negatived.

03/12/1997 PDp. 3041 *Gay*

Standing order 102 (4) states that a member may request that amendments that have more than one part be dealt with sequentially.

28/06/2007 PDp. 2038 *Fazio*

Technically, a member may move amendments separately or together, even if by doing so the result may render the bill nonsensical. However it may assist the committee if related amendments are moved in globo.

26/11/2008 PDp. 11749-50 *Fazio*

Conflicting amendments

SO 144 (2)

The Committee is not precluded from agreeing to an amendment that is inconsistent with another amendment that has already been agreed to. A member cannot, however, move an amendment that is in conflict with an amendment that has been agreed to.

28/06/2007 PDp. 2096 *Fazio*

Content of amendments

An amendment is not out of order simply on the grounds that if it were agreed to the bill would be unusual.

11/03/2009 PDp. 13239 *Fazio*

It is not in order to move that a clause be deleted. However, a member can argue that members should not vote in favour of the clause standing a clause of the bill.

24/06/2009 PDp. 16726 *Fazio*

The Chair referred to Erskine May and reminded members that an amendment is out of order if it is vague, trifling or tendered in a spirit of mockery. However, the Chair advised members that she proposed to allow the amendments to be moved to enable members to speak to them.

20/10/2010 PDp. 26361 *Griffin*

10/11/2015 PDp. 5498 *Khan*

Lodging amendments

The Chair can only deal with the amendments that have been lodged with the Chair and that the Clerks have had the opportunity to collate...

12/12/2001 PDp. 20014 *Hatzistergos (Temporary)*

Amendments may be ruled out of order if lodged after the commencement of the Committee stage.

26/05/2005 PDp. 16251 *Fazio*

The general rule is that once the House resolves itself into Committee no further amendments are accepted.

17/10/2006 PD 2641 *Fazio*

Amendments received after the House has resolved into committee of the whole will only be accepted at the discretion of the Chair.

10/11/2015 PDp. 5498 *Khan*

Must not reverse principles of bill

The principle of the bill as contained in the long title and reflected in the schedules is to make discrimination and vilification on transgender grounds unlawful. The bill will do this through registration at birth. The Opposition amendments propose omitting the reference to transgender grounds and inserting instead the grounds of sexual preference which is done by omitting recognition of a change of sex on the register on a birth certificate. This reverses the principle of the bill.

Transgender (Anti-Discrimination and Other Acts) Bill

The Chairman: The question of whether the Opposition's amendments are admissible is subject to the meaning of Standing Order number 175. There are three distinct points covered by that standing order. The first deals with relevance, the second is concerned with reversing the principle of a bill as read a second time, and the third aspect is amending the title if an amendment is not within the scope of the bill. Concerning these amendments the question of reversing the principle of the bill arises. Standing Order 175 in part states:

Provided that no amendment or new clause shall be inserted which reverses the principle of the bill as read a second time.

May, on page 492, states:

An amendment which is equivalent to a negative of the bill, or which would reverse the principle of the bill as agreed to on the second reading, is not admissible. Where the scope of a bill is very restricted, the extent to which it may be amended at all may thus be severely limited.

Sir John Peden ruled in 1937 on amendments proposed in the Committee of the Whole as follows:

The House has passed the second reading of the Bill and to allow the proposed amendment to be inserted would, in my opinion, reverse the principle of the Bill as read a second time. Accordingly, I think this proposed amendment is out of order.

The principle of the bill as contained in the long title and reflected in the schedules is: "to make discrimination and vilification on transgender grounds unlawful". The bill will do this through registration at birth. The Opposition amendments propose omitting the reference to "transgender grounds" and inserting instead "the grounds of sexual preference" which is

done by omitting recognition of a "change of sex" on the register or a birth certificate. This in my view reverses the principle of the bill. I therefore rule the amendments, as distributed, out of order on the grounds that they reverse the principle of the bill as provided for under Standing Order 175.

05/06/1996 PDp. 2482/83 **Gay**

No amendment or new clause may be inserted which reverses the principle of the bill as read a second time.

30/03/2004 PDp. 7662-63 **Fazio**

12/10/2005 PDp. 18430 **Fazio**

16/11/2005 PDp. 19778 **Fazio**

The Opposition amendment on sheet c2013-111 seeks to amend the provisions of the Ports and Maritime Administration Act 1995 as it applies to all ports. However, the long title of the bill, and in particular the explanatory note, makes it clear that the intent of the bill is only to extend the provisions of the Port Assets (Authorised Transactions) Act 2012 and the Ports and Maritime Administration Act 1995 to the operation of the Port of Newcastle. For this reason the Opposition's amendment No. 1 on sheet c2013-111 goes beyond the intended scope of the bill and is out of order.

26/06/2013 PDp. 22036 **Gardiner**

Must be within leave of long title

In accordance with standing order 175, amendments relating to matters outside the leave of the bill are out of order.

07/06/1995 PDp. 741 **Gardiner (Temporary)**

Given the narrow scope of this bill, as determined by its long title, the proposed amendments are beyond the scope of the bill.

State Environmental Planning (Permissible Mining) Bill

The Chairman: The admissibility of amendments to bills is governed by Standing Order 175, which states:

Any Amendment may be made to a clause, provided the same be relevant to the subject matter of the clause, and a new clause or schedule may be proposed if relevant to the subject matter of the Bill, or pursuant to any instruction, and be otherwise in conformity with the Rules and Orders of the House; provided that no Amendment or new clause shall be inserted which reverses the principle of the Bill as read a second time; but if any Amendment shall not be within the scope of the title of the Bill, the Committee shall extend the title accordingly.

The issue that must be determined here is relevancy. In determining relevancy, recourse must be had to the long title of the bill. The long title of the State Environmental Planning (Permissible Mining) Bill is very specific. It is a bill "to validate a State environmental planning policy regarding permissibility of mining". The amendment of the Opposition proposes to insert in the bill a new clause 5 relating to the Lake Cowal goldmine. In essence the amendment seeks to vacate the Minister's determination of the development application by North Coal (WA) Limited for a goldmine at Lake Cowal, and to require the commission of inquiry to make further findings and recommendations in accordance with the Environmental Planning and Assessment Act 1979. Given the narrow scope of this bill, as determined by its long title, the proposed amendment is clearly beyond the scope of the bill. Indeed, the foreshadowed second amendment of the Opposition, by seeking to extend the long title of the bill to encompass the object of Opposition amendment 1, reinforces the fact that that amendment is outside the scope of the bill. For this reason I rule both amendments out of order.

18/06/1996 PDp. 3018 **Gay**

In determining relevancy of an amendment, recourse must be had to the long title and the objects of the bill. The objectives of this Bill are quite concise, and the amendment to appoint a parliamentary joint committee is irrelevant to the bill.

Sydney Organising Committee for the Olympic Games

Further Amendment Bill

The Chairman: The admissibility of amendments to bills is governed by Standing Order 175, which states:

Any amendment may be made to a clause, provided the same be relevant to the subject matter of the clause, and a new clause or schedule may be proposed if relevant to the subject matter of the Bill, or pursuant to any instruction, and be otherwise in conformity with the Rules and Orders of the House; provided that no Amendment or new clause shall be inserted which reverses the principle of the Bill as read a second time; but if any Amendment shall not be within the scope of the title of the Bill, the Committee shall extend the title accordingly.

The issue that must be determined here is one of relevancy. In determining relevancy, recourse must be had to the long title and the objects of the bill. When amendment 11 is looked at, which is to appoint a parliamentary joint committee, the objects of the bill are quite concise. The object of the bill is to amend the Sydney Organising Committee for the Olympic Games Act 1993 (a) to designate the Minister for the Olympics as President of SOCOG, and (b) to provide for the shadow minister for the Olympics to be an ex officio member of the board of directors of SOCOG. As regards the object and the long title of the bill, it is a bill for an Act to amend the Sydney Organising Committee for the Olympic Games Act 1993 to make further provision with respect to the office of President of SOCOG and the director of the committee and for other purposes. As the long title and the object of the bill now stand amendment 11 is irrelevant to the bill. I therefore rule it out of order.

18/09/1996 PDp. 4264 **Gay**

In determining relevancy, reference must be made to the long title of the bill.

Chairman:The long title of the Price Exploitation Code (New South Wales) Bill is very specific: it is a bill that applies to “certain laws of the Commonwealth relating to the New Tax System Price Exploitation Code as laws of New South Wales”.

The Opposition’s amendment would insert a new section 313A headed “Valuation for duty purposes to exclude GST component”. Given the narrow scope of the bill, as determined by its long title, the amendment is clearly beyond the scope of the bill, and I therefore rule it out of order.

10/11/1999 PDp. 2574 **Kelly**

In considering what is included in the leave of the Bill one must look at the long title.

Chairman: The long title states that the Parliamentary Contributory Superannuation Amendment Bill amends the Act with respect to the payment and commutation of pensions and the preservation of lump sum benefits. It does not relate to investment strategies of the trustees of the superannuation fund. I therefore rule the amendment out of order.

30/11/1999 PDp. 3083 **Kelly**

In considering what is included in the leave of the Bill one must look at the long title.

The bill seeks to amend the Local Government Act 1993 with respect to the ordinary election of councillors and other persons to civic office, to facilitate a decrease in the

number of councillors of a council, and for other purposes. The amendment would have the effect of making division 2A, part 1, chapter 9 of the Act inoperable. The amendment is out of order.

01/07/2003 PDp. 2414 **Griffin**

It is not the decision of Parliamentary Counsel whether an amendment is within the scope of a bill. That is a matter for the Chair of Committees to determine.

23/05/2006 PDp. 78 **Fazio**

An amendment that is outside the leave of the long title of the bill will be ruled out of order.

10/11/2015 PDp. 5498 **Khan**

Correction of errors

I draw the attention of honourable members to certain statements contained in the Legislative Assembly's message:

There has unfortunately been some confusion in the recording of the decision of the Legislative Council in relation to Amendment No. 32.

Further, the message states:

The Government rejected this amendment. The Opposition did not support the amendment.

Further, it states:

Both the Government and the Opposition are in agreement that the Council did not agree to the amendment. Hansard and the records of the Parliamentary Clerks however show that the Council agreed to the amendment.

While the Government and Opposition may now agree that they opposed Greens amendment No. 16, during the Committee consideration of this amendment it was made clear to the Chair when the question was put. I have listened to the Hansard tape this morning. In a brief statement the Attorney General indicated that the Government opposed the amendment. No other member spoke to the amendment. When the question was put, voices were given for the ayes. No voices –not one – was given for the noes. On that basis, the call was given to the ayes and the amendment was carried. It is not the role of the Chair to second-guess the intention of the Committee. When a question is put, members must voice clearly their intention.

01/12/1998 PDp. 10876 **Gay**

DEBATE—RULES OF

Canvassing the Chair's ruling

Members may not canvass a ruling of the Chair.

19/10/2006 PDp. 3004 **Fazio**

Conduct of Member Speaking

SO 85

Members must direct comments through the Chair.

11/10/2000 PDp. 9007 **Kelly**
13/12/2001 PDp. 20231 **Hatzistergos** (*Temporary*)
26/06/2003 PDp. [32] **Fazio**
09/11/2005 PDp. 19269 **Fazio**
02/06/2011 PDp. 2084 **Gardiner**

Comments should be directed through the Chair and not across the Chamber.

28/03/2006 PDp. 21519 **Fazio**

The honourable member should direct comments to the Chair, not to the Minister.

23/11/2006 PDp. 4750 **Fazio**

Dissent from Chair's Ruling

SO 178

If a member wishes to object to a ruling of the Chair, they must comply with standing order 178, which requires that an objection must be stated at once in writing.

19/06/2008 PDp. 8866 **Fazio**

General

Matters being referred to by the member are outside the scope of the amendment under consideration. Greens amendment no. 5 is not being considered. Mr Ian Cohen should refrain from referring to it while Greens amendment No. 2 is under consideration.

16/11/2004 PDp. 12841 **Fazio**

It is disorderly for a member to seek the call on amendments and to then launch a tirade of abuse against others.

09/06/2005 PDp. 16809-10 **Fazio**

Members must speak so that responses are audible.

21/11/2006 PDp. 1483 **Fazio**

Quotations/Reading extracts

SO 91

It is reasonable for Honourable Members to ask the source of a document being referred to, and, for the purpose of Hansard, Members should source documents they refer to. However, there is no point of order if a member fails to reveal the nature of documents from which he or she seeks to quote.

21/06/2001 PDp. 14990 **Kelly**

If the quote is relevant to the amendments it is in order.

09/12/2004 PDp. 13766 **Fazio**

DIVISIONS

SO 114

A member must be on the desired side of the Chamber prior to the appointment of tellers for the division for their vote to be counted.

19/10/2006 PDp. 3004 *Fazio*

Ringling of bells for one minute only

Under standing order 114(4) the Chair may direct that the bells be rung for one minute if no member objects. Once the bells are ringing, there is no provision for a member to then take objection.

28/11/2007 PDp. 4524 *Fazio*

INTERJECTIONS

SO 95

Interjections are disorderly at all times.

09/12/2004	PDp. 13766	Fazio
03/05/2005	PDp. 15382	Fazio
09/11/2005	PDp. 19269	Fazio
14/11/2006	PDp. 3696	Griffin
23/11/2006	PDp. 4750	Fazio
28/06/2007	PDp. 2038	Fazio
23/10/2007	PDp. 3047	Fazio
04/12/2007	PDp. 4925	Fazio
24/06/2008	PDp. 9045	Fazio

Interjections are disorderly at all times, and...only tend to lengthen debates rather than shorten them.

25/06/2008	PDp. 9237	Fazio
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People may sit in the gallery as a consequence of a courtesy extended by the Committee, but they must not comment or interfere in proceedings.

30/11/2005	PDp. 20299	Fazio
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Members should cease interjecting when the Chair is putting a question to the House.

17/06/2008	PDp. 8460	Fazio
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Members should ignore interjections.

25/06/2008	PDp. 9237	Fazio
03/12/2008	PDp. 12405	Fazio

A member may not seek leave to respond to an interjection.

03/04/2012	PDp. 10465	Gardiner
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INSTRUCTION TO COMMITTEE

Once the House has referred a bill to the committee of the whole, there is no provision for a motion to refer the bill to another committee.

01/12/1998 *PDp. 10872* ***Gay***

If the House has agreed to an instruction motion the Committee is obliged to consider the matter and does not have the capacity to overturn that instruction.

07/06/2006 *PDp. 742* ***Fazio***

MEMBERS

Conduct

It is out of order to read newspapers in the chamber.

23/06/1997	PDp. 10937	Goldsmith (<i>Temporary</i>)
26/06/1997	PDp. 11197	Goldsmith (<i>Temporary</i>)
23/11/1999	PDp. 3564	Kelly

Conduct of – noise or interruption in chamber

Members may not use mobile phones in the Chamber.

19/09/1995	PDp. 1026	Gay
27/06/1997	PDp. 11306	Gay
27/06/1997	PDp. 11316	Sham-Ho
07/05/1998	PDp. 4614	Gay

If members wish to converse they should do so outside the chamber.

27/11/1997	PDp. 2817	Gay
12/08/2015	PDp. 2443	Khan

Members should not engage in conversation with one another across the Chamber.

23/11/2006	PDp. 4736	Fazio
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Members should not engage in private conversations during debate. The member with the call should be listened to in silence.

26/06/2007	PDp. 1676	Fazio
11/11/2009	PDp. 19307	Fazio

Members wishing to conduct a conversation should do so outside the Chamber.

26/02/2008	PDp. 5381	Fazio
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Members should direct their comments through the Chair.

21/05/1997	PDp. 8957	Gay
24/06/2008	PDp. 9045	Fazio
02/12/2008	PDp. 12184	Fazio

Members must not converse with visitors in the gallery.

16/06/1997	PDp. 10201	Gay
28/10/1998	PDp. 9157	Gay
11/11/2008	PDp. 11058	Fazio

Members must reduce the audible level of conversation.

03/12/2008	PDp. 12431	Fazio
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Members' attire

The size of a badge worn in this House should be no larger than the Legislative Council members' badge.

The Chairman: The standing orders of this House do not govern the dress of members in the House. In the absence of any standing orders, I have consulted Erskine May's *Parliamentary Practice*, twenty-first edition, which states at page 392:

Members are not permitted to wear decorations in the House. The wearing of military insignia or uniform inside the Chamber is not in accordance with the long-established custom of the House. The Speaker has also stated that it is the custom for Members to wear jackets and ties.

The Senate has not laid down rules concerning the dress of senators. The matter of dress is left to the judgment of senators, individually and collectively, subject to any ruling by the President. Officers attending on the Senate, such as ministerial advisers, are also expected to maintain appropriate standards of dress. The House of Representatives similarly has ruled that the standard of dress in the Chamber is a matter for the individual judgment of each member, although the ultimate discretion rests with the Speaker. Various rulings of the Speaker have required neatness, cleanliness and decency, and the wearing of jackets and ties.

The only ruling in this Chamber of any relevance is that by President Johnson when in 1980 he ruled that political slogans should not be posted within the precincts of the Parliament. In my view it is inappropriate for members of this House to attend the Chamber wearing articles of clothing or items of decoration which reflect political views, commercial interests or similar things. However, the wearing of lapel badges such as members' badges is, I believe, discreet enough not to offend against the House. For this reason, and to ensure that the standard of dress in the Chamber is not eroded, I rule that only lapel badges the size of, or smaller than, the current members' badges may be worn in the Chamber.

03/12/1996 PDp. 6865, 6873 **Gay**
03/04/2001 PDp. 12965 **Kelly**

MONEY BILLS

Bills which impose any rate, tax or impost must originate in the Legislative Assembly, but they may be amended in the Legislative Council.

Business Franchise Licences (Tobacco) Amendment Bill

The Hon. M. R. Egan: On a point of order. This amendment is contrary to section 5 of the New South Wales Constitution Act 1972, which provides that all bills which impose any rate, tax or impost shall originate in the Legislative Assembly. On those grounds the amendment is out of order.

The Hon. Elisabeth Kirkby: On the point of order. The amendment proposed by Reverend the Hon. F. J. Nile is admirable in its intent and I fully appreciate what he is trying to do, but it would appear to me, as made clear by the Leader of the Government, that the amendment is out of order. Essentially it is an amendment to a money bill and unfortunately the Legislative Council is powerless to impose any amendments that could be considered as money bills. I am sorry about this, I wish we could, because I believe everything that Reverend the Hon. F. J. Nile has said. The licence fees are too low and this House should have the ability to make it more difficult for people to sell a drug as dangerous as tobacco. Such amendments can be introduced only in the other House. As the Government has a majority in the Legislative Assembly maybe the Treasurer could persuade his Cabinet colleagues in another place to introduce this sensible amendment.

Reverend the Hon. F. J. NILE: On the point of order. I indicated that the precedence I was relying upon, although there are others, is that the Treasurer moved a similar amendment on 8 August 1989. The Legislative Council cannot introduce a money bill and I do not propose to do that. I seek to amend a money bill.

The Hon. Elisabeth Kirkby: You can't do that either.

Reverend the Hon. F. J. NILE: We can, and that is the advice I have received. I am amending a licence fee. The Hon. M. R. Egan said in the Legislative Council on 8 August 1989, as reported at page 9531 of *Hansard*:

This amendment comes within the scope of the bill in that it seeks to increase the fees paid for licences under that Act from 30 per cent to 30.01 per cent or it gives the Government an option up to 35 per cent if the funds so obtained are used for health promotion and anti-smoking activities.

He foreshadowed almost what I am doing. My amendment is not an appropriation, it does nothing to remove funds. It would increase the fees but give the Government the option of increasing the fees further if it wants to allocate them to anti-smoking and health promotion activities. I submit that this is not an appropriation.

The Hon. R. S. L. Jones: The appropriation already exists.

Reverend the Hon. F. J. NILE: That is what I am saying; it has been introduced by the Government in the other place and I am simply amending it. It is not a new appropriation, it is not a money bill. The bill was introduced into the other place, which is the correct procedure. It would be unconstitutional for us to introduce a money bill, although perhaps that could be debated. I refer honourable members to the debate in the House on 2 April 1969 on the Consumer Protection Bill in which a similar issue was raised, when it was agreed that the House could amend bills in this way to increase a fee. The same matter was

raised on 20 November 1963 with the State Planning Authority Bill. So there are a number of precedents for my amendment. I ask the Chair to rule my amendment in order.

The Hon. R. T. M. Bull: On the point of order. It seems apparent, following the remarks of Reverend the Hon. F. J. Nile and other members, that a precedent has been set with regard to amending fees. The Opposition believes that the amendment of Reverend the Hon. F. J. Nile is in order and supports it.

The Temporary Chairman (The Hon. Ann Symonds): Order! The reference in section 5, part 2, of the Constitution Act to the appropriation of revenue states that all bills for appropriating any part of public revenue or for imposing any new rate, tax or impost shall originate in the Legislative Assembly. Perhaps the Leader of the House would like to speak further to the point of order.

The Hon. M. R. Egan: Further to the point of order. I have taken my point of order and I submit that the amendment is improper.

Reverend the Hon. F. J. NILE: Further to the point of order. The section just quoted makes it quite clear that money bills must originate in the other place exactly what happened with this bill. The Constitution states that we cannot initiate a bill. We are not initiating a bill; the bill was initiated in the other place, in accordance with the Constitution. But the Legislative Council has the right to move an amendment to a licence fee, and the other place can either accept or reject it. My amendment is in order.

The Temporary Chairman: Order! I do not uphold the point of order. The honourable member may proceed.

27/11/1996 PDp. 6675/76 *Symonds (Temporary)*

[On a point of order being taken, pursuant to section 5 of the Constitution Act 1902, that certain amendments were out of order because they purport to have material effect on a money bill]

Order! There being no further contributions to the point of order, I note that this matter has been the subject of extensive commentary in New South Wales Legislative Council Practice by Lovelock and Evans. I refer members to the section commencing on page 401 through to approximately page 412. I think the relevant matters commence on page 401, and they are as follows. First, as the Government Whip points out, these are matters dealt with in part 2 of the Constitution Act 1902. Section 5 of the Act provides that legislatures shall, subject to the provisions of the Commonwealth of Australia Constitution Act, have power to make laws for the peace, welfare and good government of New South Wales in all cases whatsoever provided that—and these are the relevant words—“all bills for appropriating any part of the public revenue or for imposing any new rate, tax or impost shall originate in the Legislative Assembly”. Section 5A was introduced into the Constitution Act in 1933 pursuant to the Constitution Amendment (Legislative Council) Act 1932. I will come to that later. Section 5A (1) provides that:

If the Legislative Assembly passes any Bill appropriating revenue or moneys for the ordinary annual services of the Government and the Legislative Council rejects or fails to pass it or returns the Bill to the Legislative Assembly with a message suggesting any amendment to which the Legislative Assembly does not agree, the Legislative Assembly may direct that the Bill with or without any amendment suggested by the Legislative Council, be presented to the Governor for the signification of His Majesty’s pleasure thereon, and shall become an Act of the Legislature upon the Royal Assent being signified thereto, notwithstanding that the Legislative Council has not consented to the Bill.

I will not read out sections 5A (2) and 5A (3). Lovelock and Evans note in the third paragraph on page 401:

However, since the beginning of responsible government in New South Wales in 1856, there has been dispute between the two Houses on the question of the Council's powers over money bills.

I editorialise here and observe that this is a money bill for this purpose. Lovelock and Evans continue:

The Assembly places a wide interpretation on the provisions of the Constitution Act 1902, jealously guarding its authority under the proviso in section 5 that money bills originate in the Assembly, and its authority under section 46 with respect to appropriations recommended by the Governor.

The Assembly's claims lie in "the financial initiative of the Crown" and the belief that sections 5 and 46 of the Constitution Act 1902 incorporate the principle that the government has control of public revenue. The basis of the Assembly's claims lies in the long history of struggle between the Commons and the Monarch for control of the financial affairs of the kingdom, particularly during the Tudor and Stuart period.

In the following paragraph Lovelock and Evans go on to observe:

This claim is not admitted by the Council, which has adopted a much narrower construction of sections 5A and 5B of the Act than the Assembly. The Council regards only those bills that fall within the terms of section 5A as not capable of amendment. This issue is discussed below.

Before I go on to refer to specific cases, I observe that comment was made at the time the Constitution Amendment (Legislative Council) Act 1932 was debated. The Hon. Henry Manning, the then Attorney General, stated:

I should like to point out ... the essential difference between a bill appropriating revenue or moneys for the ordinary annual services of the Government and a taxation measure ... An Appropriation Bill appropriates money for the ordinary services of the Crown, whereas a taxation bill does not appropriate money, but merely affirms that there shall be charged, levied, collected and paid a tax upon the incomes or whatever it may be of certain individuals. It may provide that incomes from personal exertion or incomes from property shall be subject to a tax. But it does not appropriate any money derived from such tax. That money is paid into consolidated revenue, and an Act of Parliament is required to appropriate it for the annual services of the Crown. [T]he language used in proposed new s 5A(1) has been employed for the express purpose of differentiating between those two things.

There was also comment in 1943 on the same matter by the Hon. William McKell, who was Premier at the time. It is dealt with at the bottom of page 503 of Lovelock and Evans. I do not wish to go through all the various examples contained in Lovelock and Evans. However, I will refer to the Consumer Protection Bill 1969, which is dealt with on pages 406 and 407. In that debate the then Leader of the Government, the Hon. John Fuller, said:

For many years there has been dispute between the Legislative Assembly and the Legislative Council on the powers of the Council, especially in relation to money bills. Almost every bill that comes before this Council from the Assembly has expenses associated with it in some way. It is almost impossible to say that a bill has no public expense associated with it. Even if a bill authorizes the employment of one extra individual in the public service it could be said to be to that extent a money bill ... Section 5A is a long provision with three subsections which, in brief, provide that the Legislative Council's powers to make any amendments whatever in the annual Budget or in any Supply Bill are very limited. However, to my mind section 5B covers the sort of money provision with which we are now concerned, which is not a straight-out Budget or Supply

Bill. This provision refers to general bills that involve expenditure, as this one does, but are not vital and do not impose new taxes or new imposts upon citizens of New South Wales. I consider that the Legislative Council can amend in any way that it deems fit any bill covered by section 5B of the Constitution Act.

The then Leader of the Opposition in the Council, the Hon. Reg Downing, claimed:

It seems to me that, as the Minister said, section 46 of the Constitution Act applies to the Legislative Assembly and that, subject to sections 5, 5A and 5B of that Act, this House is empowered to do what it desires in respect of any legislation, with the exception of a bill appropriating revenue for the ordinary annual services of the Crown ... Since the reconstitution of this House in 1934, the Legislative Council has very wide powers indeed, limited only by section 46 of the Constitution Act regarding the initiation of expenditure ...

However, once the Legislative Assembly sends a bill such as this to the Legislative Council for its view, it is within the power of this Chamber to do what it will.

However, I have strongly taken the view, both when in Government and in Opposition, that this Chamber should not reject any taxation measure, and this is a convention that should be observed by a House that is not directly elected by the people. However, my view, which has been held consistently is that there is no legal bar to the Council's rejecting, for example, the turnover tax.

Lovelock and Evans refer to a variety of bills that have come before this House, including the Government Railways (Free Passes) Amendment Bill 1934, the Stamp Duties (Amendment) Bills 1939 and 1952, the Fire Brigades (Amendment) Bill 1955, the State Planning Authority Bill 1963 and, as I referred to earlier, the Consumer Protection Bill 1969, and the Business Franchise Licences (Tobacco) Further Amendment Bill 1989 amongst others. There is precedent for rejecting consideration of the amendments. In particular, I note that that occurred in respect of the Business Franchise Licences (Tobacco) Further Amendment Bill 1989. The Deputy-President and Chair of Committees at that stage was Sir Adrian Solomons, who was my first employer. I have considered his counsel in the matter very carefully. However, on balance I am of the view that the position taken by the Hon. John Fuller and the Hon. Reg Downing in the Consumer Protection Bill 1969 is correct. I do not uphold the point of order.

24/06/2015 PDp. 1727-28 **Khan**

OFFENSIVE EXPRESSIONS

SO 91

To call a Minister of the Crown a mafioso thug is certainly unparliamentary.

04/12/1997 PDp. 3132 ***Gay***

When a member uses offensive words against another member, the member who has been offended must take the point of order.

30/11/1999 PDp. 3848 ***Kelly***

It is not offensive to suggest that somebody has done a deal.

29/11/2001 PDp. 19117 ***Saffin***

Offence taken to being called a liar and remark withdrawn.

02/06/2011 PDp. 2087 ***Gardiner***

PAPERS

Members are unable to table documents during the committee stage, however the document may be read onto the record.

21/05/1997 PDp. 8956 ***Gay***

23/09/1998 PDp. 7830 ***Gay***

Documents cannot be tabled in committee of the whole.

05/12/1997 PDp. 3219 ***Gay***

26/11/1998 PDp. 10792 ***Gardiner*** (*Temporary*)

21/06/2001 PDp. 14990 ***Kelly***

02/07/2003 PDp. 2566 ***Griffin***

25/08/2011 PDp. 4673 ***Gardiner***

POINTS OF ORDER

SO 95

Members should not use points of orders to make debating points. If they want a comment to be withdrawn they should ask for it to be withdrawn. Members should not seek to make a personal explanation under the guise of a point of order.

29/10/2003 PDp. 4296 *Fazio*

There is no standing order that allows as the basis of a point of order a claim by a member that he or she has been misquoted.

14/11/2007 PDp. 4077 *Fazio*

If a misrepresentation has occurred it should be dealt with not by point of order, but by way of personal explanation. Alternatively, if members are in committee of the whole, a misrepresentation can be addressed by way of the member addressing the chamber during debate.

12/08/2015 PDp. 2433 *Khan*

REFLECTIONS

SO 91

Members wishing to make imputations should do so by way of substantive motion.

11/11/2008 PDp. 11037 **Fazio**

Reflections on the House

If the House has agreed to an instruction motion the Committee it is not appropriate to canvass or attempt to change that resolution.

07/06/2006 PDp. 742 **Fazio**

Reflections on Members

Members should refer to other members by their correct title.

10/11/1999 PDp. 2564 **Kelly**

A remark that a member was telling lies or was a liar is out of order.

04/04/2001 PDp. 13083 **Kelly**

For words to be withdrawn, the offended member must be present to indicate that she is offended and to ask that they be withdrawn.

06/04/2005 PDp. 15064 **Fazio**

Members cannot raise imputations against another member unless by way of substantive motion.

28/05/2003 PDp. 1293 **Fazio**

08/11/2005 PDp. 19099 **Fazio**

It is in order for a member to ask for a withdrawal if they find a term offensive. However, another member may not seek a withdrawal on their behalf.

23/11/2006 PDp. 4736 **Fazio**

RELEVANCY

SO 92

The Committee may debate a schedule without an amendment being before the Chair.

21/11/2000 PDp. 10372 **Kelly**

If amendments are moved in globo, members may speak about the amendments generally.

04/07/2001 PDp. 16273 **Saffin** (*Temporary*)

Members should address the amendments moved rather than seek to revisit the second reading stage of the bill.

05/12/1997 PDp. 3361 **Gay**

11/11/1998 PDp. 9664 **Gay**

29/10/2003 PDp. 4291 **Fazio**

I remind members that when they are given the call they should address only the amendments under consideration and not engage in an amplified conversation with other members across the Chamber.

08/06/2005 PDp. 16594 **Fazio**

When the committee is considering a Legislative Assembly amendment to a Legislative Council's amendment in a bill, debate is confined to the Legislative Assembly's amendment to the Council's amendment.

09/09/2010 PDp. 25561 **Griffin**

Members should confine their remarks to the amendments before the committee. Committee of the whole is not an opportunity to give a second read.

30/11/2005 PDp. 20302 **Fazio**

20/10/2015 PDp. 4515 **Khan**

21/10/2015 PDp. 4699,4706 **Khan**

10/11/2015 PDp. 5495 **Khan**

When speaking to amendments a member should avoid moving to a speech on the second reading, particularly by the use of excessive examples.

21/10/2015 PDp. 4724 **Khan**

Members should confine their comments to the substance of the bill being debated.

06/09/2006 PDp. 1483 **Fazio**

A member must be able to directly relate their contribution in debate to the amendments before the Chair.

25/10/2006 PDp. 3372 **Fazio**

It is reasonable to draw on examples to show why an amendment should be supported. However, members must not go into the level of detail that would be appropriate in either a second reading speech or in debate on a private member's motion.

22/11/2006 PDp. 4566 **Fazio**

Selected Rulings of the Chair: May 1995 to December 2015

Members should confine their remarks to the amendments before the Chair.

29/06/2004	PDp. 10414	Fazio
29/06/2004	PDp. 10380	Griffin
08/12/2004	PDp. 13511	Fazio
06/04/2005	PDp. 15063	Fazio
08/06/2005	PDp. 16594	Fazio
23/11/2006	PDp. 4750	Fazio
14/11/2007	PDp. 4076	Fazio
04/12/2007	PDp. 4912	Fazio
09/04/2008	PDp. 6648	Fazio
11/11/2008	PDp. 11037	Fazio
04/12/2008	PDp. 12598	Fazio
25/03/2009	PDp. 13704	Fazio
02/06/2011	PDp. 2099	Gardiner
25/08/2011	PDp. 4695	Green (Deputy)
07/09/2011	PDp. 5051	Gardiner
24/11/2011	PDp. 7855	Gardiner
02/05/2012	PDp. 10892	Gardiner
30/05/2012	PDp. 12186	Maclaren-Jones (Deputy)
20/10/2015	PDp. 4515	Khan

Members must confine their remarks to amendments under consideration and not make broad comments.

03/12/2008	PDp. 12428	Fazio
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Members should not use debate during committee of the whole to rebut comments made during the second reading debate.

22/05/2012	PDp. 11632	Mitchell (Deputy)
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Relevance of speech at committee stage

SO 174

In committee members must confine their remarks to the clause or other part of the bill that is being considered.

12/04/2000	PDp. 4489	Kelly
24/05/2000	PDp. 5635	Kelly
25/05/2000	PDp. 5771	Kelly
11/10/2000	PDp. 9008	Kelly
11/10/2000	PDp. 8997	Kelly
11/10/2000	PDp. 9005	Kelly
29/06/2001 (02/07/2001)	PDp. 15958	Saffin (Temporary)

STRANGERS

SO 196

Persons in the public gallery must not speak to honourable members in the chamber.

08/04/1998 *PDp. 3806* ***Gay***
21/11/2000 *PDp. 10386* ***Kelly***

It is not in order for people in the public gallery to participate in debate in any way, either by verbal contribution or by clapping. Such interruptions do not facilitate the efficient consideration of the bill.

28/06/2007 *PDp. 2097* ***Fazio***

People in the public gallery must not attempt to communicate with members who are seated in the Chamber.

26/11/2008 *PDp. 11750* ***Fazio***
02/12/2008 *PDp. 12124* ***Fazio***

People in the gallery are very welcome but they shall remain quiet so that the debate can proceed.

02/06/2011 *PDp. 2084* ***Gardiner***

People in the public gallery may not take photographs of the Chamber.

02/06/2011 *PDp. 2089* ***Gardiner***