



LEGISLATIVE COUNCIL

MANUAL ON

JOINT SITTINGS

TO FILL A CASUAL VACANCY IN THE

LEGISLATIVE COUNCIL

AND

THE SENATE

January 2016

PREFACE

This publication covers the most common procedures and practices used for joint sittings to fill a casual vacancy in the Legislative Council and the Senate.

The attachments to this manual provide templates for the necessary correspondence, messages and programs for the filling of both types of casual vacancy. They are drawn from the most recent “straightforward” single vacancies. The procedures and precedents remain applicable and appropriate to both straightforward and multiple vacancies.

I wish to acknowledge the contribution and assistance of the staff of the Department of the Legislative Council in the preparation of this publication, together with the cooperation and assistance of the Legal Branch of the Department of Premier and Cabinet.

David Blunt
Clerk of the Parliaments
January 2016

Manual on Joint Sittings to fill a casual vacancy in the Legislative Council and the Senate

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PROCESS FOR FILLING A CASUAL VACANCY IN THE LEGISLATIVE COUNCIL

Legislation covering the filling of a casual vacancy in the Legislative Council

A casual vacancy in the Legislative Council occurs when the place of a member becomes vacant (by death, resignation, expulsion or disqualification) before the expiration of his or her term of office.

The filling of a casual vacancy is provided for by section 22D of the Constitution Act 1902 (see Attachment 1). The key features of this section are:

- When a vacancy occurs the Governor convenes a Joint Sitting of the Legislative Council and Legislative Assembly to elect a person to fill the vacant seat.
- The person nominated for election to fill a vacant seat must be a member of the same political party as the member he or she replaces at the time that member was elected.
- A person may not be nominated for election to fill a vacant seat if he or she is disqualified from sitting or voting as a Member of the Legislative Council.

Resignation

In the case of a resigning member, a letter of resignation must be addressed to the Governor, or the Lieutenant-Governor or Administrator as the case may be in the absence of the Governor from the State (see Attachment 2). The resignation will take effect on receipt of the letter by the Governor. Section 22J of the Constitution Act 1902 states:

- 22J.** Any Member of the Legislative Council may, by writing under his hand, addressed to the Governor, resign his seat therein, and upon the receipt of the resignation by the Governor, the seat of that Member shall become vacant.

The Governor writes to the President informing him that the member has resigned (see Attachment 3), and as protocol requires, the President acknowledges receipt of the Governor's letter (see Attachment 4).

The Premier also writes to the political party of the resigned member asking for the nomination of a replacement. An officer of the party should inform the Premier of the name and address of the person selected by the party. As a matter of courtesy the Clerk of the Parliaments should also be informed.

Procedures in the House

The President reports a casual vacancy to the House on the first day that the House sits following receipt of the Governor's letter. The President also informs the House that the Governor's communication has been acknowledged, and that an entry recording the resignation of the member has been made in the Register of Members of the Legislative Council. The President normally further reports the receipt of a message from the Governor convening a Joint Sitting of both Houses to elect a person to fill the vacant seat in the Legislative Council (see Attachment 5).

Joint Sitting

The time and place of the Joint Sitting is designated by the Governor, on the advice of the Executive Council and contained in a message to both Houses. As a matter of practice, the Joint Sitting takes place in the Legislative Council Chamber. Prior to the time designated for the Joint Sitting, the President leaves the Chair in the House until the conclusion of the Joint Sitting. The Legislative Council Chamber is then reconfigured for the Joint Sitting.

The Rules for the Joint Sitting are circulated to members as they arrive for the Joint Sitting. The Rules are those contained in Clause 12 of Schedule 4 to the Constitution and Parliamentary Electorates and Elections (Amendment) Act No. 75 1978 (see Attachment 6 and 6A).¹ The main points of the Rules are:

- At the Joint Sitting of Members the President or in the absence of the President the Speaker presides.
- For the purpose of filling more than one vacant seat, each vacant seat will be filled separately, by the votes of members present.
- A member, at the time he/she proposes or seconds an eligible person to fill a vacant seat may speak on the proposal for 10 minutes and no other person may speak at that time.
- If only one eligible person is proposed, without the question being put, the person is elected to fill the vacant seat.
- If two or more eligible persons are proposed, the motion is put in respect of each person in the order in which they have been proposed, and any member may move the motion.
- The presiding person has only a casting vote.

¹ The rules were originally provided for under Clause 12 of Schedule 4 of the Constitution and Parliamentary Electorates and Elections (Amendment) Act 1978. While this act has since been repealed, Clause 12 of Schedule 4 remains in force as it is a transitional provision, in accordance with section 30 (2)(d) of the Interpretation Act 1987 which provides that the repeal of an Act does not affect the operation of any transitional provisions.

The Legislative Council bells are rung for two minutes during which time the members of both Houses assemble in the Council Chamber. The President takes the Chair and the Speaker takes a seat to the right of the President on the dais (see Attachment 7 for details of placement of members and officers in the chamber for the Joint Sitting).

The President declares the Joint Sitting open and calls on the Clerk to read the message from the Governor convening the Joint Sitting. The President then receives proposals to fill the seat in the Legislative Council from the Leader of the Party of the resigned member.

As described in the Rules above, if only one person is proposed to fill a vacancy, the President declares the person elected to fill the vacant seat and declares the Joint Sitting closed. If more than one person is proposed the members vote on each person starting with the first proposed person, until a majority of members agree on a person to fill the vacancy (see Attachment 8 for procedural logs for electing a person).

If more than one seat is to be filled, vacancies are considered in the order they arose. Once all seats are filled the President declares the Joint Sitting closed.

Aftermath of the Joint Sitting

Following the resumption of the sitting, the President resumes the Chair and announces to the House the name of the person elected to fill the vacant seat. The President then tables the Minutes of the Proceedings of the Joint Sitting (see Attachment 9), and the House orders the Minutes to be printed.

The President also writes to the Governor advising the name of the person elected to fill the vacant seat at the Joint Sitting (see Attachment 10).

Under section 22E (1) of the Constitution Act 1902, the person elected cannot take the oath or affirmation until the expiration of two days after being elected. Further, under section 22E (2), if the elected person ceases to be a member of the political party, membership of which was necessary for nomination at the Joint Sitting, before taking and subscribing the oath or affirmation, he or she is deemed not to have been elected.

When the House next sits on or after the third calendar day after the election, the person chosen to fill the vacancy presents him or herself at the Table, takes the pledge of loyalty or oath or affirmation of allegiance before the President and signs the Roll of the House.

Should the House not be sitting, the person chosen to fill the vacancy may also be sworn before the Governor, which is reported to the House on the next sitting day.

PROCESS FOR FILLING A CASUAL VACANCY IN THE SENATE

Federal legislation covering the filling of a casual vacancy in the Senate

Under section 15 of the Commonwealth of Australia Constitution Act 1900 (see Attachment 11) a casual vacancy in the Senate occurs when the place of a Senator becomes vacant before the expiration of his or her term of office. The key features of this section are:

- The person who is to fill the casual vacancy is to be chosen by the Houses of Parliament of the State for which the Senator was chosen, sitting and voting together.
- The person chosen must be a member of the same political party as the Senator he or she is to replace at the time that Senator was chosen.
- The person chosen to fill the vacancy holds office until the expiration of the term of the Senator he or she is chosen to replace.
- If the State Parliament is not in session when the vacancy is notified to the State Governor, the Governor may, with the advice of the Executive Council of the State concerned, appoint a person to hold the place until the expiration of 14 days from the beginning of the next session of the Parliament of the State, or until the expiration of the term.

When a casual vacancy arises in the Senate in the representation of New South Wales, the President of the Senate writes to the Governor advising of the vacancy (see Attachment 12). The Governor then writes to the President advising of the vacancy (see Attachment 13). The Premier may write to the President advising of the time and date for the Joint Sitting to elect a replacement Senator. But usually, as with vacancies in the Legislative Council, the time for the Joint Sitting is decided in consultation with the Leader of the Government and the Premier or the Department of Premier and Cabinet and the Legislative Council advised accordingly (see Attachment 14).

Procedures in the House

When the House next sits after receiving the Governor's message, the President reports the Governor's message to the House. The message is ordered to be taken into consideration on the receipt by the House of a message from the Legislative Assembly requesting a Joint Sitting.

Upon receiving a message from the Legislative Assembly (see Attachment 15), the Leader of the Government moves that the House agrees to meet the Assembly for the purpose of sitting and voting together to choose a person to fill a vacancy in the Senate.

Subject to the agreement of the House a message is then forwarded to the Assembly agreeing to its message, and indicating the time and place for the Joint Sitting (see Attachment 16).

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Prior to the designated time, the President interrupts the proceedings of the House, and leaves the Chair until after the Joint Sitting. The chamber is reconfigured for the Joint Sitting.

Joint Sitting

The Legislative Council bells are rung for two minutes during which time members of both Houses assemble in the Council Chamber (see Attachment 17 for details of placement of members and officers in the chamber for the Joint Sitting).

The first business of the Joint Sitting is the election of a Chair. The Clerk calls for nominations as Chair, and the practice is for the Premier to move that the President take the Chair. Advice received from the Crown Solicitor in 2006 indicated that the Deputy President would preside in the absence of the President, and not the Speaker of the Legislative Assembly.

The draft rules and program are circulated to members as they enter the chamber.

It has also been the practice for the Premier to propose draft rules (see Attachment 18 for the Joint Sitting Rules). The main points of the Rules are:

- The Standing Orders of the Legislative Council apply to the Joint Sitting.
- The member proposing any person to fill the Senate vacancy must state that the person is willing to hold the vacant place, and is a member of the same political party as that to which the Senator vacating the seat belonged to when elected.
- If only one person is proposed and seconded, the Chair must put the question: “That [name of person] be chosen to hold the place in the Senate rendered vacant by the resignation of [Senator]” and, if the question is passed in the affirmative, must declare the person elected.
- If more than one person is proposed, the person to fill the vacant seat must be chosen by open voting.
- In the case of an equality of votes in any division the Chair must give a casting vote.

After the adoption of rules at the start of the Joint Sitting, the Chair then calls for nominations.

The Leader of the Party whose Senator caused the vacancy will propose a person, and if there are no other proposals the Chair will put the question, and if the question is passed in the affirmative the Chair will declare the person elected to fill the Senate vacancy. If there is more than one person proposed, the Chair will put the question in accordance to the order of persons proposed, until a person has received a majority of votes in the House (see Attachment 19 for procedural logs for electing a person).

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Following the election of a person to fill the Senate vacancy the Chair declares the Joint Sitting closed.

Aftermath of the Joint Sitting

When the House resumes the President announces to the House the name of the person elected to fill the vacancy in the Senate. The President tables the Minutes of Proceedings of the Joint Sitting (see Attachment 20) and the House orders the Minutes to be printed.

The President also writes to the Governor advising the name of the person elected at the Joint Sitting of both Houses to fill the Senate vacancy (see Attachment 21).

TASKS OF PARLIAMENTARY OFFICERS FOR JOINT SITTING

The following is a list of tasks together with those areas responsible for undertaking the various tasks for a Joint Sitting to fill a vacancy in the Senate and a vacancy in the Legislative Council.

1. Rules

The Procedure Office normally prepares the following:

- (a) Rules for the regulation of the proceedings at the Joint Sitting of the two Houses under section 22D of the Constitution Act 1902 to choose a person to fill a seat in the Legislative Council.
- (b) Rules for the regulation of the proceedings at a Joint Sitting of the two Houses to choose a person to hold the place in the Senate rendered vacant. (A Joint Sitting to fill a Senate vacancy is held in accordance with the provisions of section 15 of the Commonwealth of Australia Constitution Act).

2. Procedural Programs

- (a) The Procedure Office has responsibility for the preparation of the procedural program for the Joint Sitting to fill a vacancy in the Legislative Council or in the Senate.
- (b) The Office of the Clerk will distribute the procedural program to the President, the Speaker and to the Party Leaders prior to the Joint Sitting.
- (c) The Procedure Office will make copies of the program and rules available to Chamber and Support for distribution during the Joint Sitting.

3. Messages for Senate vacancies.

The Procedure Office prepares the message to be sent from the Legislative Council to the Legislative Assembly setting the time and place for the Joint Sitting.

4. Division Lists and Lists of members

Chamber and Support ensure that division lists and the List of members for both Council and Assembly members are available to the Clerks.

5. Floor Plan

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The Usher of the Black Rod prepares and distributes the floor plan to members and officers to the Joint Sitting.

6. Seating and furniture arrangements

Chamber and Support are responsible for the following seating and furniture arrangements for the Joint Sitting.

- (a) ensure that members of the public are directed to the Upper Gallery, allowing the lower gallery to be used by nominated guests;
 - (b) Usher's chair removed;
 - (c) placing a table and two chairs at the front mid-left of the lower gallery for use by the Usher and the Sergeant-at-Arms;
 - (d) fifteen chairs placed in front of the Government benches and fifteen chairs placed in front of Opposition benches;
 - (e) Chairman of Committees Chair is moved to dais for Speaker;
 - (f) For Senate vacancy, two square-backed chairs to be placed at front of Government benches for President and Speaker;
 - (g) Chamber and Support ring division bells for two minutes prior to Joint Sitting.
 - (h) Chamber and Support distribute Rules to Council and Assembly members as they enter the Chamber.
- ### 7. Furniture arrangements after the Joint Sitting
- (a) return Chairman's chair to floor of the House;
 - (b) remove chairs;
 - (c) Usher's chair returned to floor of the House;
 - (d) table and two chairs removed from lower gallery;
 - (e) re-open lower gallery to the public.

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8. Minutes of Proceedings

- (a) Clerk Assistant Procedure records manuscript Minutes of Proceedings;
- (b) The Procedure Office is responsible for the following as soon as the Joint Sitting has concluded:
 - (i) preparing a final set of struck-off Minutes which is signed by the Clerk for immediate tabling by the President;
 - (ii) a second original signed by the Clerk is forwarded to the Clerk of the Legislative Assembly for tabling;
 - (iii) the Joint Sitting Minutes are entered on Lotus Notes for publication online.

9. Tabling of Minutes of Proceedings

At the recommencement of sittings after the Joint Sitting, the President announces the outcome of the Joint Sitting and tables the Minutes of Proceedings. The Procedure Office is to prepare the tabling loq.

10. Advice to Governor

The President writes to the Governor advising of the decision of the Joint Sitting.

- 11. Copies of all correspondence, loqs, programs, rules and plans are to be placed on the appropriate Trim file.
- 12. For Legislative Council vacancies, the Office of the Clerk maintains a record of all documentation relating to the vacancy which is bound as a casual vacancy volume and kept in the Legislative Council Elections series.
- 13. For Legislative Council vacancies, the Procedure Office maintains a statistical list of all members elected to fill a casual vacancy.
- 14. For Senate vacancies, the Office of the Clerk updates the schedule of filling vacancies.
- 15. Following Legislative Council casual vacancies the Procedure Office needs to prepare the oath/affirmation/pledge for the newly elected member to swear in with, and there are also a significant number of administrative tasks which need to be undertaken to induct the member into Parliament. For further information refer to the new and exiting member checklist.

ATTACHMENTS

Attachment 1—Section 22D, NSW Constitution Act 1902

Constitution Act 1902 No 32 [NSW]
Part 3 The Legislative Council and Legislative Assembly

- (5) In this section, *long-term continuing Member* means:
- (a) a member of the Legislative Council who was one of the first 12 Members elected at the third-last periodic Council election held before the commencement of the 1991 reconstitution Act, or
 - (b) a Member of the Legislative Council who was one of the first 6 Members elected at the second-last periodic Council election held before that commencement, or
 - (c) if the seat of a Member referred to in paragraph (a) or (b) has become vacant since the periodic Council election concerned—a Member of the Legislative Council who is the successor (whether immediate, intermediate or ultimate) of that Member.

22C (Repealed)

22D Filling of casual vacancies in seats of Members of Legislative Council by joint sitting of both Houses

- (1) Whenever:
- (a) a vacancy occurs in the seat of a Member of the Legislative Council otherwise than by reason of section 22B (1) (c), or
 - (b) a vacancy occurs in the seat of a Member of the Legislative Council by reason of section 22B (1) (c) and that vacancy is not filled by reason that insufficient Members of the Legislative Council are elected at the periodic Council election next following the occurrence of the vacancy,
- the Governor, by message to both Houses of Parliament, shall convene a joint sitting of the Members of the Legislative Assembly and the Members of the Legislative Council to be held at a place and time specified in the message for the purpose of the election of a person to fill the vacant seat.
- (2) A person may not be nominated at any such joint sitting for election to fill a vacant seat of an elected Member of the Legislative Council if he is not eligible to be so nominated under subsection (3) or, if applicable, subsection (4).
- (3) A person is not eligible to be so nominated if, were he a Member of the Legislative Council, he would be disqualified from sitting or voting as such a Member.
- (4) Where:
- (a) a Member of the Legislative Council was elected at a periodic Council election and was, at the time of his election, publicly recognised by a particular political party as being an endorsed candidate of that party and publicly represented himself to be such a candidate, and
 - (b) the vacancy (not being a vacancy referred to in subsection (1) (b)) to be filled is in the seat of that Member or of the successor (whether immediate, intermediate or ultimate) of that Member,
- a person is not eligible to be so nominated unless he is a member of that party, except where there is no member of that party available to be so nominated.
- (5) This section does not apply to or in respect of a vacancy that occurs by reason that a periodic Council election is declared void in accordance with law.

22E Members elected at joint sittings of both Houses of Parliament

- (1) The oath or affirmation required to be taken and subscribed or made by a Member of the Legislative Council under section 12 shall not be taken or made by a person elected at a joint sitting to fill a vacancy referred to in section 22D (1) (a) until the expiration of 2 days after his election.

Attachment 2–Letter of resignation from Member to the Governor*



CATE FAHRMANN MLC
Member of the Legislative Council
THE GREENS NSW

The Honourable Thomas Frederick Bathurst QC
Lieutenant-Governor
Office Of The Governor
Level 3, Chief Secretary's Building
121 Macquarie Street, Sydney

BY FAX: (02) 9242 4266

RE: Resignation from NSW Legislative Council

Dear Lieutenant-Governor

I intend to nominate as a candidate for the upcoming federal election due on September 14.

Therefore, I hereby tender my resignation from the NSW Legislative Council effective immediately.

Yours sincerely

Cate Fahrman
13 June 2013

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Parliament House, Macquarie Street, Sydney NSW 2000 | Phone: 02 9220 3320 | Fax: 02 9220 2420 | Email: cate.fahrman@parliament.nsw.gov.au

*In the absence of Her Excellency the Governor from the State of New South Wales, the Lieutenant-Governor was responsible for the administration of the State, hence the relevant correspondence and message were to and from the Lieutenant-Governor in relation to this vacancy.

Attachment 3–Letter from Governor* to President advising of resignation

The message from the Governor is tabled in the House and published in full in the Minutes of Proceedings.



*In the absence of Her Excellency the Governor from the State of New South Wales, the Lieutenant-Governor was responsible for the administration of the State, hence the relevant correspondence and message were to and from the Lieutenant-Governor in relation to this vacancy.

Attachment 4–Letter from the President to the Governor* acknowledging resignation



LEGISLATIVE COUNCIL

OFFICE OF THE PRESIDENT

18 June 2013

D13/15708 C13/55.01

The Honourable Thomas Frederick Bathurst
Lieutenant-Governor of New South Wales
Office of the Governor
Level 3, Chief Secretary's Building
121 Macquarie Street
SYDNEY NSW 2000

Your Excellency

I have the honour to acknowledge receipt of your letter dated 18 June 2013 informing me that you have received a communication from the Honourable Cate Faehrmann MLC, tendering her resignation as a member of the Legislative Council of New South Wales with effect from 18 June 2013, and that the resignation has been accepted.

Yours sincerely

The Honourable Don Harwin MLC
President

*In the absence of Her Excellency the Governor from the State of New South Wales, the Lieutenant-Governor was responsible for the administration of the State, hence the relevant correspondence and message were to and from the Lieutenant-Governor in relation to this vacancy.

Attachment 5–Message from Governor* convening Joint Sitting



Lieutenant-Governor

MESSAGE

I, the Honourable Thomas Frederick Bathurst, in pursuance of the power and authority vested in me as Lieutenant-Governor of the State of New South Wales, do hereby convene a joint sitting of the Members of the Legislative Council and the Legislative Assembly for the purpose of the election of a person to fill the seat in the Legislative Council vacated by Ms Cate Faehrmann, and I do hereby announce and declare that such Members shall assemble for such purpose on Wednesday the nineteenth day of June 2013 at 3.45pm in the building known as the Legislative Council Chamber situated in Macquarie Street in the City of Sydney; and the Members of the Legislative Council and the Members of the Legislative Assembly are hereby required to give their attendance at the said time and place accordingly.

In order that the Members of both Houses of Parliament may be duly informed of the convening of the joint sitting, I have this day addressed a like message to the Speaker of the Legislative Assembly.

Office of the Lieutenant-Governor
Sydney, 19 June 2013.

The Honourable the
President of the
Legislative Council

*In the absence of Her Excellency the Governor from the State of New South Wales, the Lieutenant-Governor was responsible for the administration of the State, hence the relevant correspondence and message were to and from the Lieutenant-Governor in relation to this vacancy.

Attachment 6–Rules for Joint Sitting to fill a casual vacancy in the Legislative Council



RULES FOR THE REGULATION OF PROCEEDINGS AT THE JOINT SITTING OF THE TWO HOUSES UNDER SECTION 22D OF THE CONSTITUTION ACT 1902, TO CHOOSE A PERSON TO HOLD THE SEAT IN THE LEGISLATIVE COUNCIL VACATED BY THE RESIGNATION OF THE HONOURABLE CATE FAEHRMANN.

WEDNESDAY 19 JUNE 2013 AT 3.45 PM

- (1) A reference in these rules to 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.
- (2) These rules apply only to and in respect of a joint sitting of the Members of the Legislative Assembly and the Members of the Legislative Council held pursuant to section 22D of the Constitution Act 1902.
- (3) At a joint sitting, the President of the Legislative Council or, if there is no such President, or if the President is absent from the sitting, the Speaker of the Legislative Assembly shall preside.
- (4) 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 this clause.
- (5) A Member, addressing the person presiding, shall propose some eligible person to fill the vacant seat of a specified person for the purpose of filling which the joint sitting was convened and move “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*)”, which motion must be seconded.
- (6) A Member proposing or seconding an eligible person to fill a vacant seat, may speak on the proposal for 10 minutes and no longer and no other Member may speak at that time.
- (7) If only 1 eligible person is proposed and seconded to fill the vacant seat, that eligible person is, without a question being put, thereupon elected as a Member of the Legislative Council to fill the vacant seat.

- (8) If 2 or more eligible persons are proposed and seconded to fill the vacant seat—
 - (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) the motion in respect of any of them having been resolved in the affirmative, the eligible person to whom that motion relates is thereupon elected as a Member of the Legislative Council to fill the vacant seat and the remaining motions shall lapse.
- (9) 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.
- (10) Any motion at a joint sitting shall be decided by open voting.
- (11) A Member may speak to any motion for 10 minutes and no longer.
- (12) At any time during the proceedings of the joint sitting any Member may move without notice or debate “That the Question be now put” and thereupon that motion shall be put without debate and, if it is decided in the affirmative, the person presiding thereupon shall, without debate, put the question which was, immediately before that motion, before the joint sitting, but allowing the Member who moved the motion which is the question to speak in reply for 10 minutes and no longer before that motion is put.
- (13) Except where these rules otherwise provide, the Standing Rules and Orders of the Legislative Council shall apply to and in respect of proceedings at a joint sitting.
- (14) Until a person is elected under these rules to fill each vacant seat for the purpose of filling which the joint sitting was convened, the person presiding shall not declare the joint sitting closed but after every such person has been elected the person presiding shall declare the joint sitting closed.
- (15) Forthwith after the joint sitting is closed, the person presiding shall in writing inform the Governor of the name of each person elected and the name of the person whose seat the person was elected to fill.
- (16) The records of the proceedings of a joint sitting shall be made and retained by the Clerk of the Legislative Council.

Attachment 6A—Clause 12 of Schedule 4 to the Constitution and Parliamentary Electorates and Elections (Amendment) Act No. 75 1978 providing the rules for Joint Sitting to fill a casual vacancy in the Legislative Council

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Act No. 75, 1978.

*Constitution and Parliamentary Electorates and Elections
(Amendment).*

SCHEDULE 4—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(3) If only 1 Member is proposed and seconded as President of the Legislative Council, he shall be called to the Chair of the House without a question being put.

(4) On his being called to the Chair, the Member shall stand up in his place, and express his sense of the honour proposed to be conferred upon him, and submit himself to the House.

(5) On his being again called to the Chair, the Member shall be conducted from his seat to the Chair by the Members who proposed and seconded his election.

(6) If 2 or more Members are proposed as President of the Legislative Council, a motion shall be made and seconded regarding each such Member, "That (*the Member proposed*) do take the Chair of this House as President", and each Member so proposed shall address himself to the House.

(7) The Clerk of the Legislative Council shall then, in the order in which the Members have been proposed, put the question, "That (*the Member proposed*) do take the Chair of this House as President"; and if resolved in the affirmative the Member shall be conducted to the Chair as provided in subclause (5) of this clause, but if in the negative, or in the event of the numbers being equal, the question shall then be put by the Clerk of the Legislative Council, "That (*the Member next proposed*) do take the Chair of this House as President", and so on until a majority has been recorded in favour of 1 of the candidates.

(8) Having been conducted to the Chair, the Member chosen in accordance with this clause, standing on the step, shall return his acknowledgments to the House for the honour conferred upon him and take the Chair.

(9) This clause shall have effect only until the Standing Rules and Orders of the Legislative Council otherwise provide.

12. (1) A reference in this clause to 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, or under that section as applied by clause 5.

(2) This clause applies only to and in respect of a joint sitting of the Members of the Legislative Assembly and the Members of the Legislative Council held pursuant to section 22D of the Constitution Act, 1902, or under that section as applied by clause 5.

Act No. 75, 1978.

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*Constitution and Parliamentary Electorates and Elections
(Amendment).*

SCHEDULE 4—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(3) At a joint sitting, the President of the Legislative Council or, if there is no such President or he is absent from the sitting, the Speaker of the Legislative Assembly shall preside.

(4) 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 this clause.

(5) A Member, addressing himself to the person presiding, shall propose some eligible person to fill the vacant seat of a specified person for the purpose of filling which the joint sitting was convened and move "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*)", which motion must be seconded.

(6) A Member, at the time he proposes or seconds an eligible person to fill a vacant seat, may speak on the proposal for 10 minutes and no longer and no other Member may speak at that time.

(7) If only 1 eligible person is proposed and seconded to fill the vacant seat, that eligible person is, without a question being put, thereupon elected as a Member of the Legislative Council to fill the vacant seat.

(8) If 2 or more eligible persons are proposed and seconded to fill the vacant seat—

- (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) the motion in respect of any of them having been resolved in the affirmative, the eligible person to whom that motion relates is thereupon elected as a Member of the Legislative Council to fill the vacant seat and the remaining motions shall lapse.

(9) 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.

(10) Any motion at a joint sitting shall be decided by open voting.

*Constitution and Parliamentary Electorates and Elections
(Amendment).*

SCHEDULE 4—*continued.*

SAVINGS AND TRANSITIONAL PROVISIONS—*continued.*

(11) A Member may speak to any motion for 10 minutes and no longer.

(12) At any time during the proceedings of the joint sitting any Member may move without notice or debate "That the Question be now put" and thereupon that motion shall be put without debate and, if it is decided in the affirmative, the person presiding thereupon shall, without debate, put the question which was, immediately before that motion, before the joint sitting, but allowing the Member who moved the motion which is the question to speak in reply for 10 minutes and no longer before that motion is put.

(13) Except where this clause otherwise provides, the Standing Rules and Orders of the Legislative Council shall apply to and in respect of proceedings at a joint sitting.

(14) Until a person is elected under this clause to fill each vacant seat for the purpose of filling which the joint sitting was convened, the person presiding shall not declare the joint sitting closed but after every such person has been elected the person presiding shall declare the joint sitting closed.

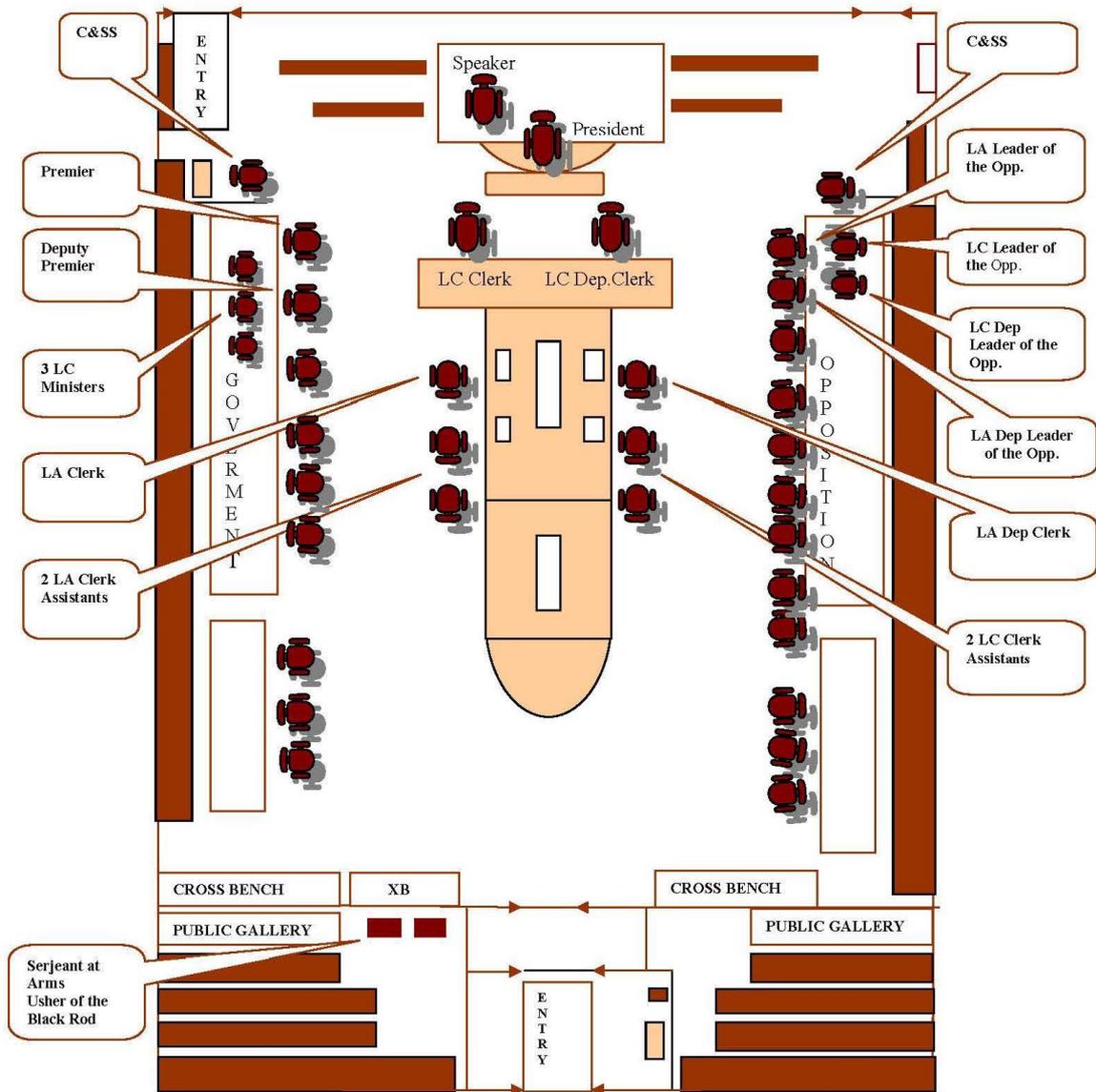
(15) Forthwith after the joint sitting is closed, the person presiding shall in writing inform the Governor of the name of each person elected and the name of the person whose seat he was elected to fill.

(16) The records of the proceedings of a joint sitting shall be made and retained by the Clerk of the Legislative Council.

(17) This clause shall have effect only until Standing Rules and Orders governing the proceedings at joint sittings held under section 22D of the Constitution Act, 1902, or under that section as applied by clause 5, have been adopted by both Houses of Parliament and approved by the Governor.

Attachment 7–Legislative Council Chamber–Joint Sitting Floor Plan–Council Vacancy

Legislative Council Chamber – Joint Sitting Floor Plan
Council Vacancy



Attachment 8—Program for Joint Sitting to fill a casual vacancy in the Legislative Council



PROGRAM

(Legislative Council vacancy)

JOINT SITTING OF THE HOUSES OF PARLIAMENT OF THE STATE OF NEW SOUTH WALES TO CHOOSE A PERSON TO HOLD THE SEAT IN THE LEGISLATIVE COUNCIL VACATED BY THE RESIGNATION OF THE HONOURABLE CATE FAEHRMANN.

WEDNESDAY 19 JUNE 2013 AT 3.45 PM

(The rules for the Joint Sitting will be circulated.)

The Legislative Council bells will commence ringing at 3.43 pm for two minutes during which time the President will take the Chair and the Speaker will take a seat to the right of the President on the dais.

Members of the Legislative Council and the Legislative Assembly will meet in the Legislative Council chamber at 3.45 pm.

On cessation of the bells—

President says—

“I declare the joint sitting open and call upon the Clerk of the Parliaments to read the Message from the Lieutenant-Governor convening the joint sitting.”

(Clerk reads Message)

PERSON TO FILL VACANT SEAT IN THE LEGISLATIVE COUNCIL CAUSED BY THE RESIGNATION OF THE HONOURABLE CATE FAEHRMANN.

President says—

“I am now prepared to receive proposals with regard to an eligible person to fill the vacant seat in the Legislative Council caused by the resignation of the Honourable Cate Faehrmann.”

Dr John Kaye MLC says—

“Mr President—

I propose Mehreen Faruqi as an eligible person to fill the vacant seat of the Honourable Cate Faehrmann in the Legislative Council for which purpose this joint sitting was convened.

Mr President—

I move: That Mehreen Faruqi be elected as a member of the Legislative Council to fill the seat in the Legislative Council previously vacated by the Honourable Cate Faehrmann.

Mr President, I indicate to the joint sitting that if Mehreen Faruqi were a member of the Legislative Council she would not be disqualified from sitting or voting as such a member, and that she is a member of the same party, The Greens, as Cate Faehrmann was publicly recognised by as being an endorsed candidate of that party and who publicly represented herself to be such a candidate at the time of her election at a joint sitting of the two Houses held on 7 September 2010.

Mr President, I further indicate that the person being proposed would be willing to hold the vacant place if chosen.”

(At the time of proposing or seconding an eligible person, the proposer and seconder may speak for 10 minutes and no longer)

The Honourable Jan Barham MLC says—

“Mr President—

I second the motion.”

President says—

“Does any other member desire to propose any other eligible person to fill the vacancy?”

If no other proposal is made—

President says—

“As only one eligible person has been proposed and seconded, I declare that Mehreen Faruqi is elected as a member of the Legislative Council to fill the seat previously vacated by the Honourable Cate Faehrmann.”

President says—

“I declare the joint sitting closed.”

President will leave the Chair. Members of the Legislative Assembly will depart.

Attachment 9—Minutes of Proceedings for Joint Sitting to fill a casual vacancy in the Legislative Council

PARLIAMENT OF NEW SOUTH WALES



FIRST SESSION OF THE FIFTY-FIFTH PARLIAMENT

MINUTES OF THE PROCEEDINGS

OF THE

JOINT SITTING

OF THE

HOUSES OF PARLIAMENT OF THE STATE OF
NEW SOUTH WALES

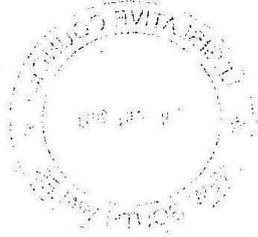
HELD ON WEDNESDAY 19 JUNE 2013

TO

CHOOSE A PERSON TO FILL THE VACANCY IN THE
LEGISLATIVE COUNCIL CAUSED BY THE RESIGNATION OF
THE HONOURABLE CATE FAEHRMANN

HELD IN ACCORDANCE WITH THE PROVISIONS OF SECTION 22D OF THE
CONSTITUTION ACT 1902

Ordered to be printed, 19 June 2013



PARLIAMENT OF NEW SOUTH WALES

**JOINT SITTING OF THE HOUSES OF PARLIAMENT OF THE STATE OF
NEW SOUTH WALES TO CHOOSE A PERSON TO FILL THE VACANCY
IN THE LEGISLATIVE COUNCIL CAUSED BY THE RESIGNATION OF
THE HONOURABLE CATE FAHRMANN.**

WEDNESDAY 19 JUNE 2013

The members of the Legislative Council and the Legislative Assembly met in the Legislative Council Chamber at 3.45 pm.

1. MESSAGE FROM HIS EXCELLENCY THE LIEUTENANT-GOVERNOR

The President directed the Clerk of the Parliaments to read the following message from His Excellency the Lieutenant-Governor convening the joint sitting. The message read as follows:

THOMAS BATHURST
Lieutenant-Governor

MESSAGE

I, the Honourable Thomas Frederick Bathurst, in pursuance of the power and authority vested in me as Lieutenant-Governor of the State of New South Wales, do hereby convene a joint sitting of the Members of the Legislative Council and the Legislative Assembly for the purpose of the election of a person to fill the seat in the Legislative Council vacated by Ms Cate Fahrman, and I do hereby announce and declare that such Members shall assemble for such purpose on Wednesday the nineteenth day of June 2013 at 3.45pm in the building known as the Legislative Council Chamber situated in Macquarie Street in the City of Sydney; and the Members of the Legislative Council and the Members of the Legislative Assembly are hereby required to give their attendance at the said time and place accordingly.

In order that the Members of both Houses of Parliament may be duly informed of the convening of the joint sitting, I have this day addressed a like message to the Speaker of the Legislative Assembly.

Office of the Lieutenant-Governor
Sydney, 19 June 2013.

The Honourable the
President of the
Legislative Council

2. PERSON PROPOSED TO FILL THE VACANCY IN THE LEGISLATIVE COUNCIL CAUSED BY THE RESIGNATION OF THE HONOURABLE CATE FAEHRMANN.

The President announced that he was now prepared to receive proposals with regard to an eligible person to fill the vacant seat in the Legislative Council caused by the resignation of the Honourable Cate Faehrmann.

Mehreen Faruqi was proposed by Dr John Kaye MLC. Dr Kaye moved: That Mehreen Faruqi be elected as a member of the Legislative Council to fill the seat in the Legislative Council vacated by the Honourable Cate Faehrmann. Dr Kaye stated that if Mehreen Faruqi were a member of the Legislative Council she would not be disqualified from sitting or voting as such a member, and that she is a member of the same party, The Greens, as Cate Faehrmann was publicly recognised by as being an endorsed candidate of that party and who publicly represented herself to be such a candidate at the time of her election at a joint sitting of the two Houses held on 7 September 2010. Dr Kaye further indicated that the person being proposed would be willing to hold the vacant place if chosen.

The Honourable Jan Barham MLC, seconded the motion.

The President inquired if any member desired to propose any other eligible person to fill the vacancy.

No other person being proposed, the President declared Mehreen Faruqi to be elected as a member of the Legislative Council to fill the seat previously vacated by the Honourable Cate Faehrmann.

The President, at 3.54 pm, declared the joint sitting closed.

Steven Reynolds
Deputy Clerk

Attachment 10–Letter from the President to the Governor* advising the name of the person elected to fill a casual vacancy in the Legislative Council



LEGISLATIVE COUNCIL

OFFICE OF THE PRESIDENT

19 June 2013

D13/16216 [C13/55.02]

The Honourable Thomas Frederick Bathurst
Lieutenant-Governor of New South Wales
Office of the Governor
Level 3, Chief Secretary's Building
121 Macquarie Street
SYDNEY NSW 2000

Your Excellency

I have the honour to inform Your Excellency that, at a Joint Sitting of the members of the Legislative Council and the Legislative Assembly held this day according to section 22D of the Constitution Act 1902, Dr Mehreen Faruqi was elected as a member of the Legislative Council to fill the seat vacated by the Honourable Cate Faehrmann.

Yours sincerely

The Honourable Don Harwin MLC
President

*In the absence of Her Excellency the Governor from the State of New South Wales, the Lieutenant-Governor was responsible for the administration of the State, hence the relevant correspondence and message were to and from the Lieutenant-Governor in relation to this vacancy.

Attachment 11–Section 15, Commonwealth of Australia Constitution Act 1900

Chapter I The Parliament

Part II The Senate

Section 15

15 Casual vacancies [*see Note 8*]

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 of the State 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.

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 so chosen, he was publicly recognized 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 consequence of that vacancy, or in consequence of that vacancy and a subsequent 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.

If the place of a senator chosen by the people of a State at the election of senators last held before the commencement of the

Constitution Alteration (Senate Casual Vacancies) 1977 became vacant before that commencement and, at that commencement, no person chosen by the House or Houses of Parliament of the State, or appointed by the Governor of the State, in consequence of that vacancy, or in consequence of that vacancy and a subsequent vacancy or vacancies, held office, this section applies as if the place of the senator chosen by the people of the State had become vacant after that commencement.

A senator holding office at the commencement of the *Constitution Alteration (Senate Casual Vacancies) 1977*, being a senator appointed by the Governor of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of the State, shall be deemed to have been appointed to hold the place until the expiration of fourteen days after the beginning of the next session of the Parliament of the State that commenced or commences after he was appointed and further action under this section shall be taken as if the vacancy in the place of the senator chosen by the people of the State had occurred after that commencement.

Subject to the next succeeding paragraph, a senator holding office at the commencement of the *Constitution Alteration (Senate Casual Vacancies) 1977* who was chosen by the House or Houses of Parliament of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of the State shall be deemed to have been chosen to hold office until the expiration of the term of service of the senator elected by the people of the State.

If, at or before the commencement of the *Constitution Alteration (Senate Casual Vacancies) 1977*, a law to alter the Constitution entitled “*Constitution Alteration (Simultaneous Elections) 1977*” came into operation, a senator holding office at the commencement of that law who was chosen by the House or Houses of Parliament of a State in consequence of a vacancy that had at any time occurred in the place of a senator chosen by the people of the State shall be deemed to have been chosen to hold office:

- (a) if the senator elected by the people of the State had a term of service expiring on the thirtieth day of June, One thousand nine hundred and seventy-eight—until the expiration or dissolution of the first House of

Chapter I The Parliament
Part II The Senate

Section 16

Representatives to expire or be dissolved after that law came into operation; or

- (b) if the senator elected by the people of the State had a term of service expiring on the thirtieth day of June, One thousand nine hundred and eighty-one—until the expiration or dissolution of the second House of Representatives to expire or be dissolved after that law came into operation or, if there is an earlier dissolution of the Senate, until that dissolution.

16 Qualifications of senator

The qualifications of a senator shall be the same as those of a member of the House of Representatives.

17 Election of President

The Senate shall, before proceeding to the despatch of any other business, choose a senator to be the President of the Senate; and as often as the office of President becomes vacant the Senate shall again choose a senator to be the President.

The President shall cease to hold his office if he ceases to be a senator. He may be removed from office by a vote of the Senate, or he may resign his office or his seat by writing addressed to the Governor-General.

18 Absence of President

Before or during any absence of the President, the Senate may choose a senator to perform his duties in his absence.

19 Resignation of senator

A senator may, by writing addressed to the President, or to the Governor-General if there is no President or if the President is absent from the Commonwealth, resign his place, which thereupon shall become vacant.

Notes to the *Commonwealth of Australia Constitution Act*

Note 7

State	Number	Short title	How affected
	No. 2399	<i>Senate Elections (Times and Places) Act 1912</i>	Repealed by No. 2723
	No. 2723	<i>Senate Elections (Times and Places) Act 1915</i>	Repealed by No. 3769
	No. 3769	<i>Senate Elections (Times and Places) Act 1928</i>	Repealed by No. 6365
	No. 6365	<i>Senate Elections Act 1958</i>	(still in force)
Queensland	64 Vic. No. 25	<i>The Parliament of the Commonwealth Elections Act and the Elections Acts 1885 to 1898 Amendment Act of 1900</i>	Operation exhausted
	3 Edw. VII. No. 6	<i>The Election of Senators Act of 1903</i>	Repealed by 9 Eliz. II. No. 20
	9 Eliz. II. No. 20	<i>The Senate Elections Act of 1960</i>	(still in force)
South Australia	No. 834	<i>The Election of Senators Act 1903</i>	(still in force)
Western Australia	No. 11, 1903	<i>Election of Senators Act 1903</i>	(still in force)
Tasmania	64 Vic. No. 59	<i>The Federal Elections Act 1900</i>	Repealed by 26 Geo. V. No. 3
	3 Edw. VII. No. 5	<i>The Election of Senators Act 1903</i>	Repealed by 26 Geo. V. No. 3
	26 Geo. V. No. 3	<i>Senate Elections Act 1935</i>	(still in force)

Note 7

Section 14—For the provisions applicable upon the increase in the number of senators to 12 made by the *Representation Act 1983*, see s. 3 of that Act.

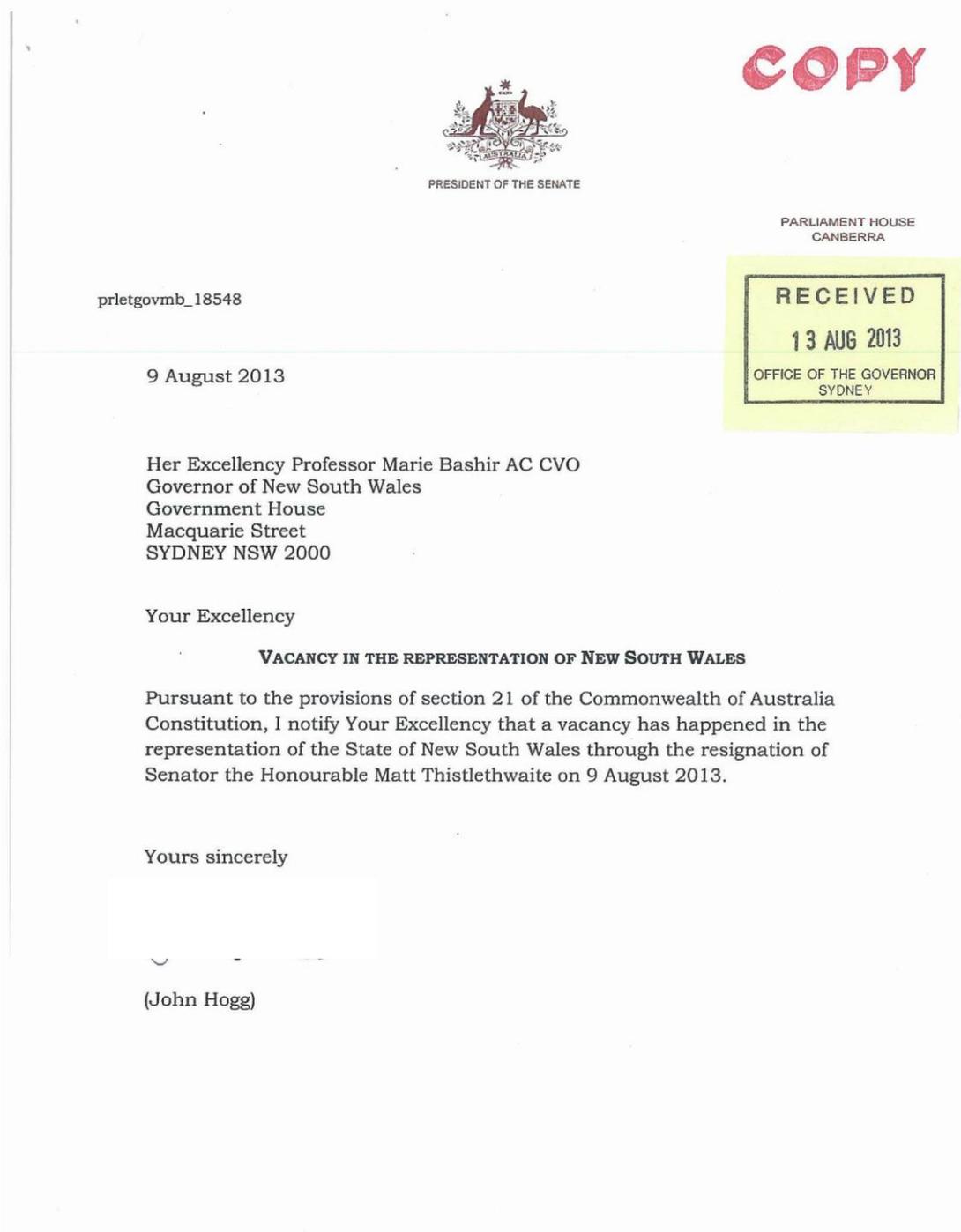
Note 8

Section 15—The proposed law to alter the Constitution entitled “*Constitution Alteration (Simultaneous Elections) 1977*” was submitted to the electors in each State of the Commonwealth on 21 May 1977: it was not approved by a majority of all the electors voting in a majority of the States. See *Gazette* 1977, No. S100.

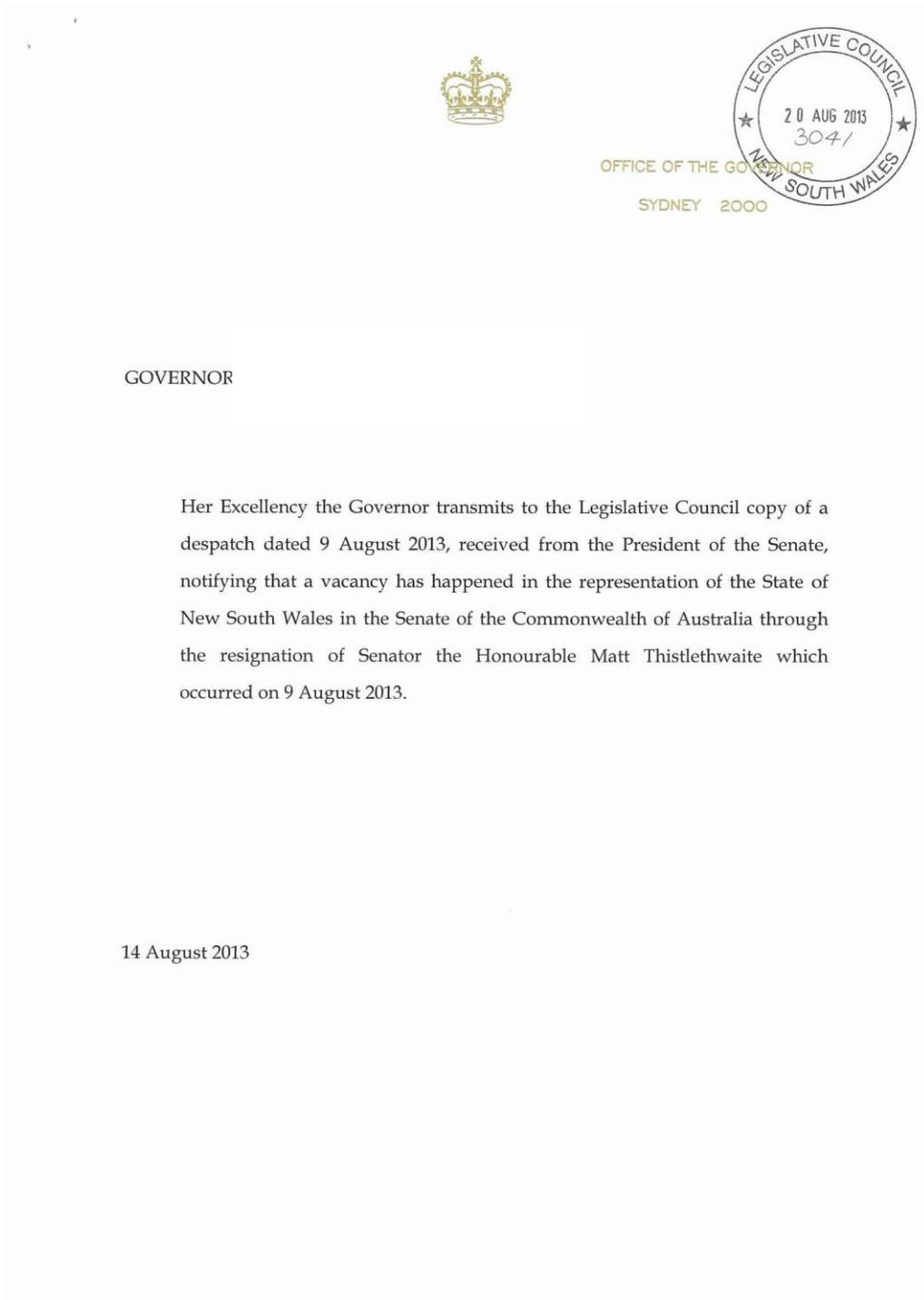
Note 9

Section 29—The following State Acts were passed in pursuance of the powers conferred by s. 29, but ceased to be in force upon the enactment of the *Commonwealth Electoral Act 1902*:

Attachment 12–Letter from the President of the Senate advising of vacancy in the representation of the State in the Senate



Attachment 13—Message from Governor to President enclosing letter from President of the Senate advising of vacancy in the representation of the State in the Senate



Attachment 14—Letter from Premier to Leader of the Government in the Legislative Council proposing the time for a Joint Sitting (copy provided to Clerk)



20 AUG 2013

The Hon Michael Gallacher MLC
Leader of the Government in the Legislative Council,
Minister for Police and Emergency Services,
Minister for the Hunter, and
Vice-President of the Executive Council
Parliament House
SYDNEY NSW 2000

Dear Mr Gallacher *Mike*

As you will be aware, a joint sitting will be necessary to fill the casual vacancy in the Senate caused by the resignation of Senator Matthew Thistlethwaite.

It is intended to convene a joint sitting on Wednesday, 21 August 2013 at 3.45 pm to fill the vacancy.

It would be appreciated if you would bear this in mind when preparing the Parliamentary program.

Yours sincerely

Barry O'Farrell
Premier

Attachment 15–Message from the Legislative Assembly regarding the vacancy in the representation of the State in the Senate



Attachment 16—Message to the Legislative Assembly from the Legislative Council regarding the vacancy in the representation of the State in the Senate

Joint sitting to fill the vacancy in the representation of the State in the Senate of the Commonwealth of Australia

Madam SPEAKER

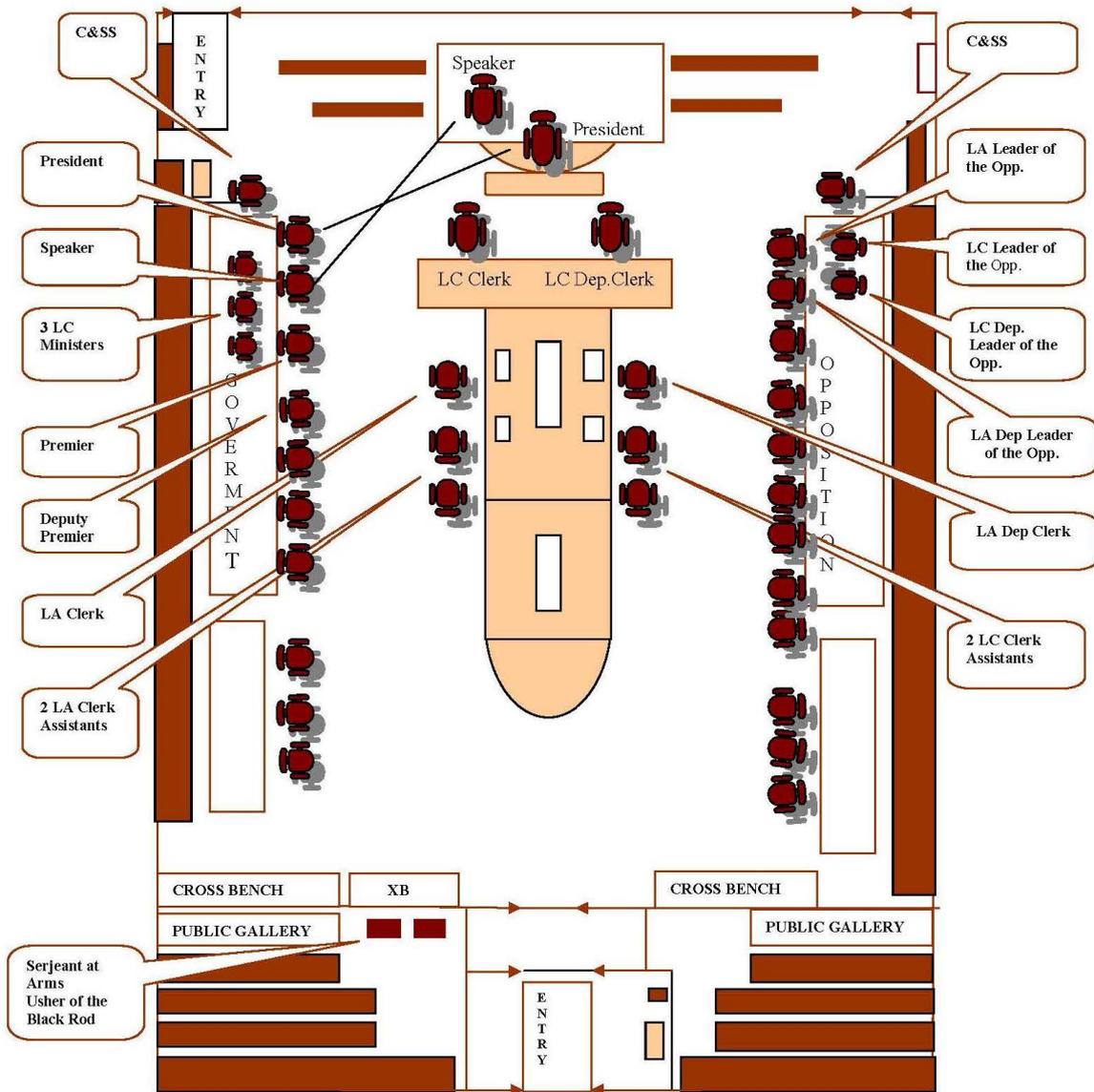
The Legislative Council, having taken into consideration the Legislative Assembly's message dated 15 August 2013, agrees to meet the Legislative Assembly for the purpose of sitting and voting together to choose a person to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Matt Thistlethwaite, in the Legislative Council Chamber, Wednesday 21 August 2013 at 3.45 pm.

Legislative Council

President

Attachment 17– Legislative Council Chamber–Joint Sitting Floor Plan–Senate Vacancy

Legislative Council Chamber – Joint Sitting Floor Plan
Senate Vacancy



N.B. President and Speaker will move to Dias once election has been conducted by the Clerk

Attachment 18—Rules for Joint Sitting to fill a vacancy in the representation of the State in the Senate

FIFTY FIFTH PARLIAMENT OF NEW SOUTH WALES

(Senate vacancy)

RULES FOR THE REGULATION OF THE PROCEEDINGS AT THE JOINT SITTING OF THE TWO HOUSES TO CHOOSE A PERSON TO HOLD THE PLACE IN THE SENATE RENDERED VACANT BY THE RESIGNATION OF SENATOR MATT THISTLETHWAITE.

1. In all cases not provided for, the proceedings and any debate arising is to be conducted according to the Standing Orders of the Legislative Council and Parliamentary usage.
2. A Member, addressing the President, must propose a person by name to hold the place in the Senate rendered vacant by the resignation of Senator Matt Thistlethwaite, and the proposition must be seconded. The Member proposing any person must state to the Members present that the person is willing to hold the vacant place if chosen. The proposer must further state that that person is a member of the same political party as that which the Senator was, at the time when the Senator was chosen by the people of the State, publicly recognised by that party to be an endorsed candidate, of the party of which the Senator, at that time, publicly represented himself or herself to be an endorsed candidate.
3. If only one person is proposed and seconded, the President must propose the Question "That (name of person) be chosen to hold the place in the Senate rendered vacant by the resignation of Senator Matt Thistlethwaite" and, if the Question is passed in the affirmative, must declare that person elected.
4. If more than one person is proposed and seconded, the person to hold the vacant place must be chosen by open voting.
5. Before proposing the Question, the President must ask if any Member desires to propose any other person to fill the vacancy and if no other person is proposed the first division must be 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 must at once declare "That (name of person) has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator Matt Thistlethwaite".
7. If on the first division the person proposed has not received an absolute majority of the Members voting, the name of that person is to be excluded from any subsequent division.
8. Until one of the persons proposed obtains an absolute majority of the Members voting, successive divisions must be taken, and at each division the name of the person who has not received an absolute majority of the whole number of the Members voting at the preceding division is to be excluded.
9. The President in the case of an equality of votes in any division must give a casting vote, and any reasons stated by the President may be entered in the records.
10. As soon as any person obtains an absolute majority of the Members voting, the President must declare "That (name of person) has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator Matt Thistlethwaite".
11. The President must inform Her Excellency the Governor as soon as practicable that (name of person) has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator Matt Thistlethwaite.
12. The records of the proceedings and any division lists must be retained by the Clerk of the Parliaments of the State of New South Wales, who is the custodian.

21 August 2013

Attachment 19—Program for Joint Sitting to fill a vacancy in the representation of the State in the Senate

PROGRAM

(Senate vacancy)

JOINT SITTING OF THE HOUSES OF PARLIAMENT OF THE STATE OF NEW SOUTH WALES TO CHOOSE A PERSON TO HOLD THE PLACE IN THE SENATE RENDERED VACANT BY THE RESIGNATION OF SENATOR THE HONOURABLE MATT THISTLETHWAITE.

WEDNESDAY 21 AUGUST 2013

The Members of the Legislative Council and the Legislative Assembly meet in the Legislative Council Chamber at 3.45 pm. (The Legislative Council division bells will ring for two minutes immediately before 3.45 pm.)

1. ELECTION OF PRESIDENT

The Clerk of the Parliaments says—

"I call for nominations for President of the Joint Sitting."

The Premier (The Hon Barry O'Farrell MP) addressing the Clerk of the Parliaments, says—

"Mr Clerk—

"I move: That the Honourable Donald Thomas Harwin, President of the Legislative Council, act as President of the Joint Sitting of the two Houses of the Legislature for the election of a Senator in place of Senator the Honourable Matt Thistlethwaite, resigned, and that in the event of his absence the Honourable Shelley Elizabeth Hancock, Speaker of the Legislative Assembly, act in that capacity."

**The Leader of the Opposition in the Legislative Assembly
(Mr John Robertson MP) says—**

"Mr Clerk, I second the motion".

QUESTION PUT.

The Honourable Donald Thomas Harwin, President of the Legislative Council, makes his acknowledgments to the Joint Houses and takes the Chair on the Dais.

The Honourable Shelley Elizabeth Hancock, Speaker of the Legislative Assembly, occupies a seat on the Dais at the right of the President's Chair.

2. **RULES OF PROCEDURE**

The Premier (The Hon Barry O'Farrell MP) says—

"Mr President—

"I present proposed Rules for the regulation of the proceedings at the Joint Sitting, which have been printed and circulated and move: That the proposed Rules, as printed and circulated, be now adopted."

The Leader of the Opposition in the Legislative Assembly (Mr John Robertson MP) says—

"Mr President, I second the motion."

QUESTION PUT.

3. **PERSON PROPOSED TO FILL THE VACANT PLACE IN THE SENATE CAUSED BY THE RESIGNATION OF SENATOR THE HONOURABLE MATT THISTLETHWAITE**

The President says—

"I am now prepared to receive nominations with regard to a person to fill the vacant place in the Senate caused by the resignation of Senator the Honourable Matt Thistlethwaite."

The Leader of the Opposition in the Legislative Assembly (Mr John Robertson MP) says—

"Mr President—

"I propose Mr Sam Dastyari to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Matt Thistlethwaite and I announce that the candidate is willing to hold the vacant place if chosen. Senator the Honourable Matt Thistlethwaite was, at the time he was chosen by the people of the State, publicly recognised to be an endorsed candidate of the Australian Labor Party and publicly represented himself to be an endorsed candidate of that party. Mr Sam Dastyari is a member of the same political party."

The Leader of the Opposition in the Legislative Council (The Hon Luke Foley MLC) says—

"Mr President, I second the motion."

The President says—

"Does any Member desire to propose any other person to fill the vacancy?"

If no other person is proposed—

QUESTION PUT: That Mr Sam Dastyari be chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Matt Thistlethwaite.

The President says—

"I declare that Mr Sam Dastyari has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Matt Thistlethwaite."

4. NOTIFICATION OF FILLING OF VACANCY TO HIS EXCELLENCY THE GOVERNOR

The Premier (The Hon Barry O'Farrell MP) says—

"Mr President—

"I move: That the President inform Her Excellency the Governor as soon as practicable that Mr Sam Dastyari has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Matt Thistlethwaite."

The Leader of the House in the Legislative Council (The Hon Michael Gallacher MLC) says—

"Mr President, I second the motion."

QUESTION PUT.

THE PRESIDENT DECLARES THE JOINT SITTING CLOSED.

Attachment 20—Minutes of Proceedings for Joint Sitting to fill a vacancy in the representation of the State in the Senate

NEW SOUTH WALES

2013



FIRST SESSION OF THE FIFTY-FIFTH PARLIAMENT

MINUTES OF THE PROCEEDINGS

OF THE

JOINT SITTING

OF THE

HOUSES OF PARLIAMENT OF THE STATE OF
NEW SOUTH WALES

HELD ON WEDNESDAY 21 AUGUST 2013

TO

CHOOSE A PERSON TO HOLD THE PLACE IN THE SENATE
RENDERED VACANT BY THE RESIGNATION OF
SENATOR THE HONOURABLE MATT THISTLETHWAITE

HELD IN ACCORDANCE WITH THE PROVISIONS OF SECTION 15 OF THE
COMMONWEALTH OF AUSTRALIA CONSTITUTION ACT

Ordered to be printed, 21 August 2013

2

2013

NEW SOUTH WALES

**JOINT SITTING OF THE HOUSES OF PARLIAMENT OF THE STATE OF
NEW SOUTH WALES TO CHOOSE A PERSON TO HOLD THE PLACE IN
THE SENATE RENDERED VACANT BY THE RESIGNATION OF
SENATOR THE HONOURABLE MATT THISTLETHWAITE**

WEDNESDAY 21 AUGUST 2013

The members of the Legislative Council and the Legislative Assembly met according to resolution passed in each House, in the Legislative Council Chamber at 3.45 pm.

1. ELECTION OF PRESIDENT

The Premier, the Honourable B R O'Farrell MP, addressing himself to the Clerk of the Parliaments, moved: That the Honourable Donald Thomas Harwin MLC, President of the Legislative Council, act as President of the Joint Sitting of the two Houses of the Legislature for the election of a Senator in place of Senator the Honourable Matt Thistlethwaite, resigned, and that in the event of his absence the Honourable Shelley Elizabeth Hancock MP, Speaker of the Legislative Assembly, act in that capacity.

Mr J C Robertson MP, Leader of the Opposition in the Legislative Assembly, seconded the motion.

Question put and passed.

The Honourable D T Harwin MLC, President of the Legislative Council, standing on the dais, made his acknowledgments to the Joint Houses and took the Chair.

The Honourable S E Hancock MP, Speaker of the Legislative Assembly, occupied a seat on the dais at the right of the President's Chair.

2. RULES OF PROCEDURE

The Premier, The Honourable B R O'Farrell MP, presented proposed rules for the regulation of the proceedings at the Joint Sitting, which had been printed and circulated and moved: That the proposed rules, as printed and circulated, be now adopted.

Mr J C Robertson MP, Leader of the Opposition in the Legislative Assembly, seconded the motion.

Question put and passed.

RULES FOR THE REGULATION OF THE PROCEEDINGS AT THE JOINT SITTING OF THE TWO HOUSES TO CHOOSE A PERSON TO HOLD THE PLACE IN THE SENATE RENDERED VACANT BY THE RESIGNATION OF SENATOR THE HONOURABLE MATT THISTLETHWAITE.

1. In all cases not provided for, the proceedings and any debate arising is to be conducted according to the Standing Orders of the Legislative Council and Parliamentary usage.
2. A Member, addressing the President, must propose a person by name to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Matt Thistlethwaite, and the proposition must be seconded. The Member proposing any person must state to the Members present that the person is willing to hold the vacant place if chosen. The proposer must further state that that person is a member of the same political party as that which the Senator was, at the time when the Senator was chosen by the people of the State, publicly recognised by that party to be an endorsed candidate, of the party of which the Senator, at that time, publicly represented himself or herself to be an endorsed candidate.
3. If only one person is proposed and seconded, the President must propose the Question "That (name of person) be chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Matt Thistlethwaite" and, if the Question is passed in the affirmative, must declare that person elected.
4. If more than one person is proposed and seconded, the person to hold the vacant place must be chosen by open voting.
5. Before proposing the Question, the President must ask if any Member desires to propose any other person to fill the vacancy and if no other person is proposed the first division must be 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 must at once declare That (name of person) has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Matt Thistlethwaite.
7. If on the first division the person proposed has not received an absolute majority of the Members voting, the name of that person is to be excluded from any subsequent division.
8. Until one of the persons proposed obtains an absolute majority of the Members voting, successive divisions must be taken, and at each division the name of the person who has not received an absolute majority of the whole number of the Members voting at the preceding division is to be excluded.
9. The President in the case of an equality of votes in any division must give a casting vote, and any reasons stated by the President may be entered in the records.
10. As soon as any person obtains an absolute majority of the Members voting, the President must declare "That (name of person) has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Matt Thistlethwaite".
11. The President must inform Her Excellency the Governor as soon as practicable that (name of person) has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Matt Thistlethwaite.
12. The records of the proceedings and any division lists must be retained by the Clerk of the Parliaments of the State of New South Wales, who is the custodian.

3. PERSON PROPOSED TO FILL THE VACANT PLACE IN THE SENATE CAUSED BY THE RESIGNATION OF SENATOR THE HONOURABLE MATT THISTLETHWAITE

The President announced that he was now prepared to receive nominations with regard to a person to fill the vacant place in the Senate caused by the resignation of Senator the Honourable Matt Thistlethwaite.

- (1) Mr Sam Dastyari was proposed by Mr J C Robertson MP, Leader of the Opposition in the Legislative Assembly, to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Matt Thistlethwaite. Mr Robertson announced that the candidate was willing to hold the vacant place if chosen. He further announced that Senator the Honourable Matt Thistlethwaite was, at the time he was chosen by the people of the State, publicly recognised to be an endorsed candidate of the Australian Labor Party and publicly represented himself to be an endorsed candidate of that party, and that Mr Sam Dastyari is a member of the same political party.

The Honourable L A Foley MLC, Leader of the Opposition in the Legislative Council, seconded the proposal.

- (2) The President inquired if any member desired to propose any other person to fill the vacancy.

No other person being proposed—

Question: That Mr Sam Dastyari be chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Matt Thistlethwaite—put and passed.

- (3) The President then declared—That Mr Sam Dastyari has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Matt Thistlethwaite.

4. NOTIFICATION OF THE ELECTION TO HER EXCELLENCY THE GOVERNOR

The Premier, the Honourable B R O'Farrell MP, moved: That the President inform Her Excellency the Governor as soon as practicable that Mr Sam Dastyari has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Matt Thistlethwaite.

The Honourable M J Gallacher MLC, Leader of the Government in the Legislative Council, Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council, seconded the motion.

Question put and passed.

The President, at 3.53 pm, declared the Joint Sitting closed.

DAVID BIUNT
Clerk of the Parliaments

Manual on Joint Sittings to fill a casual vacancy in the Legislative Council and the Senate

Attachment 21–Letter from the President to the Governor advising the name of the person elected to fill a vacancy in the representation of the State in the Senate



LEGISLATIVE COUNCIL

OFFICE OF THE PRESIDENT

21 August 2013

D13/22138

Her Excellency Professor Marie Bashir AC, CVO
Governor of New South Wales
Level 3, Chief Secretary's Building
121 Macquarie Street
SYDNEY NSW 2000

Your Excellency

I have the honour to inform Your Excellency that, at a Joint Sitting of the two Houses of The Legislature of New South Wales held this day in accordance with the provisions of section 150 of the Commonwealth of Australia Constitution Act, Mr Sam Dastyari was chosen as the person to hold the place in the Senate rendered vacant by the resignation of Senator the Honourable Matt Thistlethwaite.

Yours sincerely

The Honourable Don Harwin MLC /
President

Attachment 22–Checklists

For a Legislative Council vacancy (see also new and exiting member checklist)

- Letter from Governor advising of resignation is reported to the House
- TRIM file created
- Message from Governor convening Joint Sitting is reported to the House
- Enrolment on the electoral roll of the nominated candidate is checked
- Rules are prepared and distributed
- Program is prepared and distributed
- Floor plan is prepared
- Division Lists and a List of members for each House is placed in Chamber
- Furniture and seating arrangements are prepared
- Minutes are prepared
- Tabling log for Minutes is prepared
- Letter to Governor is prepared
- Election Volume is prepared
- Staistical list of members elected to fill a casual vacancy is updated
- Register of Members is updated with resignation and election information
- New member is sworn and signs the Roll of the House

For a Senate vacancy

- Letter from Governor forwarding despatch from the President of the Senate advising of Senate vacancy is reported to the House
- TRIM file created
- Message from Legislative Assembly regarding Joint Sitting for the Senate vacancy is reported to the House
- Message from the Legislative Council to the Legislative Assembly is prepared
- Rules are prepared and distributed
- Program is prepared and distributed
- Floor plan is prepared
- Division Lists and a List of members for each House is placed in Chamber
- Furniture and seating arrangements are prepared
- Minutes are prepared
- Tabling log for Minutes is prepared
- Letter to Governor is prepared
- Schedule of filling vacancies is updated