

70 5

**NSW PARLIAMENTARY LIBRARY
RESEARCH SERVICE**

**The Legislative Assembly of New
South Wales: 1941 to 1991**

by

David Clune

Occasional Paper No 1 Feb 1993

The Legislative Assembly of New South Wales: 1941 to 1991

by

David Clune

NSW PARLIAMENTARY LIBRARY RESEARCH SERVICE

Dr David Clune (230 2484) Manager

Dr Gareth Griffith (230 2356) Senior Research Officer, Politics and Government

Ms Vicki Mullen (230 2768) Research Officer, Law

Ms Jan Newby (230 2483) Senior Research Officer, Statistics

Mr Stewart Smith (230 3002) Research Officer, Environment/Science

Ms Marie Swain (230 2003) Research Officer, Law

Mr John Wilkinson (230 2006) Research Officer, Economics

ISSN 1039-8732

ISBN 0 7240 9556 1

©1993

Except to the extent of the uses permitted under the *Copyright Act 1968*, no part of this document may be reproduced or transmitted in any form or by any means including information storage and retrieval systems, without the prior written consent from the Librarian, NSW Parliamentary Library, other than by Members of the NSW Parliament in the course of their official duties.

The views expressed in this paper are those of the author and do not necessarily reflect those of the NSW Parliamentary Library.

Originally published in Legislative Studies Vol. 7 No. 1, Spring 1992.

Foreword

Despite the plethora of written material flowing from, through, and around the New South Wales Parliament, all too little has been written of its history, and even less analysing what may have been the driving forces behind its deliberations.

Most commentators have succumbed to the lure of the sensational, and most have failed to apprise themselves of a thorough working knowledge of the Parliament upon which to base their evaluation of events.

David Clune has a deep appreciation of the Parliament and its history. He has a scholarly mind and a talent for research. In his latest offering he has traced an interesting thread of facts and provoking observation on those who strut the centre stage and those who endeavour to keep the peace.

There are no short cuts to learning the craft of parliamentary representation. There is only the long hard road of experience, a path which, in New South Wales, is now considerably shorter for most Members than for their predecessors. The average length of service in our Parliament is currently under six and a half years, scarcely long enough to sustain a strong corporate memory.

David Clune's contribution, originally published in *Legislative Studies*, gives us an absorbing look into part of that memory. If we cannot give ourselves the time to learn from experience we can learn by studying material such as this.

It is my sincere hope that we have not seen the last of David Clune's windows on the past.

Hon Kevin Rozzoli, MP
Speaker of the Legislative Assembly

The New South Wales Legislative Assembly during the half-century from 1941 to 1991 would seem to have had a number of principal functions:

an arena for party political conflict;

a means of enacting the government of the day's legislative programme;

the traditional role under the Westminster system of a body of elected representatives responsible to the people overseeing the actions of the executive;

a forum where Members could promote and protect the interests of their constituents.

While each of these functions is legitimate and defensible, the former two roles were usually, though not inevitably, dominant at the expense of the latter. The story of the Assembly from 1941 to 1991 can, indeed, largely be seen as a struggle by the last two functions to make some headway, or to find a more equal balance, against Government and Party dominance.

The early 1940s saw a new Government in power in New South Wales. Labor, under W J McKell, had in May 1941 at last regained the Treasury benches, having been in Opposition since 1932.¹ The twenties and thirties had been times of fierce party conflict and prolonged procedural struggle in

¹ For a detailed account of the 1941 election see Clune, D. 'The NSW Election of 1941' in Australian Journal of Politics and History, Vol 30, No 3, pp 337-347.

the Legislative Assembly.² A major factor in this was the belligerent and unyielding approach of J T Lang (Premier of New South Wales 1925-27, 1930-32; Leader of the Parliamentary Labor Party 1923-1939) to politics in Parliament.

McKell had a different style as Opposition Leader and Premier.³ Both by temperament and conviction he preferred consensus and cooperation to conflict and confrontation. McKell (who had been a Member of the Assembly since 1917) also had a respect for and devotion to the institution of Parliament. In practice he attempted to make the Assembly work effectively rather than to dominate it. For example, McKell did not use Question Time to attack the Opposition, or as a forum to display his mastery of the House. Instead, he made a genuine attempt to provide the information sought by questioners in a straightforward and courteous manner. The gag and guillotine were not used during his term, and time for debate on both legislation and private Members' business was maximised.

McKell worked hard at creating an atmosphere conducive to cooperation, and relations between Government and Opposition were generally good. He often informally consulted the Opposition about proposed major bills, thus allowing Opposition Members to have some input before the legislation was introduced into the House. The Government also showed a willingness to genuinely consider Opposition amendments and to try to accommodate them. This is not to say that there was not vigorous Party conflict in Parliament. McKell was, however, able to show that this was not incompatible with a freer, more effective Legislative Assembly.

This brief golden age (relative to what was to follow) came to an end with McKell's departure from politics in February 1947. The beginning of the 1950s saw the Assembly moving towards its nadir in the period under examination.

In spite of the fact that Premier James McGirr had promised to abolish the gag in his policy speech for the May 1947 election, it was used for the first time in Labor's term on October 30th 1947, and soon re-established itself as a permanent feature of Parliamentary life.

The 1950 election led to a tense and unpredictable situation in the Assembly, with Labor under McGirr clinging tenuously to power through the support of two independent Labor Members. The Speaker, W H Lamb, incurred the displeasure of the Opposition by immediately announcing that, contrary to convention, he would use his casting vote to support the

² Hawker, G N, *The Parliament of NSW 1856-1965*, Government Printer, Sydney, 1971, pp 271-2, 296.

³ This account of McKell in Parliament is based on Clune, D. 'The Labor Government in NSW 1941-1965: a study in longevity in Government', unpublished PhD thesis, University of Sydney, 1990, pp 21-24.

Government whenever necessary, and that he would regularly vote with Labor in Committee.⁴

Early in 1952 an incident occurred that marked the extinction of what was left of the good relations between Government and Opposition that had existed in the McKell years. One of the independent Labor Members (J Geraghty) with Opposition support, proposed to bring on a debate about the Government's defiance of Labor policy in regard to abolition of the Legislative Council, a debate which would have greatly embarrassed the Government. To prevent this happening, Speaker Lamb suspended two Opposition Members during Question Time on the day Geraghty's motion was to be debated, allegedly for disorderly conduct (a claim strongly denied by the Members concerned). This gave the Government the numbers to outvote the combined forces of Geraghty and the Opposition and his motion did not proceed. Lamb was bitterly attacked by the Opposition over his action which, it was claimed, displayed gross partiality towards the Government.⁵

McGirr was succeeded as Labor Premier in April 1952 by John Joseph Cahill. In personal terms, Cahill was a tough and aggressive Parliamentary performer consistently able to outclass and outmanoeuvre the Opposition. Speaking on the condolence motion after Cahill's death, Country Party Member for Tamworth W A Chaffey said:

... not many years ago it was every cricketer's ambition to be able to bowl to Don Bradman. If there is any relationship between the game of cricket and this Parliament, some of us for many years have been bowling to the late Premier. If we bowled a loose one he hit it for six. He cut us through slips and glanced us to leg. He drove us to the on and to the off. If there was anything in the nature of a bumper or a body line ball bowled to him he let it pass over his head; nobody was more adept at blocking a googly. On many occasions, with the help of the Government Whip, he even successfully appealed against the light.⁶

P H Morton, who for 3 years faced Cahill across the Chamber as Leader of the Opposition, said on the same occasion:

I have often remarked to many of the newer Members of Parliament that I had never yet seen any Member score off the Premier with a question.⁷

⁴ Hawker, *op cit*, p 257.

⁵ Clune, *op cit*, pp 63-4.

⁶ NSWPD, 27.10.59, p 1560.

⁷ *Ibid*, p 1564.

Although, like McKell, Cahill was a Member of long standing (he had first been elected in 1925) he had scant respect for the institution of Parliament as such. It is interesting to compare in this regard Cahill's and McKell's comments at the end of their first Parliamentary sessions. McKell stated in November 1941:

We in this House are, in a sense, the keystone of the democratic arch. It is the duty of every one of us to make this an institution of respect and reverence in the eyes of the people of the State, and I feel that in no small measure we have taken a step along that road during the last few months.⁸

Cahill's comments in November 1952 were, by contrast, focussed on Parliament's role as a machine for efficiently enacting the Government's legislative programme:

I think that ... this session has been a record one for the number of measures passed. I say with a good deal of pride, that the work of the session has been carried out expeditiously.⁹ Under Cahill, Parliament became little more than another arena for party conflict of a rigorous, 'no holds barred' kind.¹⁰ Opposition initiatives aimed at making Parliament work more effectively, such as strengthening the Public Accounts Committee or reviving the long dormant Public Works Committee, were strenuously resisted.

The Government also on occasion took advantage of a partisan Speaker to manipulate the forms of the House to the Opposition's disadvantage. Opposition resentment at Speaker Lamb's behaviour in the Chair came to a head in November 1953 during turbulent scenes in the House. On November 3rd, the Opposition moved dissent from one of Lamb's rulings. The Speaker had previously ruled that a question by the Liberal Member for Eastwood, Eric Hearnshaw, was out of order on the grounds that it gave rather than sought information because Hearnshaw had used the phrase 'as recorded in the press'. Speaking to the motion Hearnshaw gave several examples of the use of the phrase in questions by Labor Members that had been allowed by the Speaker. He argued that if this ruling was upheld it would prohibit any future reference to the press in any question in the House. Opposition Leader V Treatt added that questions of this type had been permitted from "time immemorial" and that the ruling was a

⁸ *Ibid*, 19.11.41, p 2585.

⁹ *Ibid*, 20.11.52, p 2539.

¹⁰ This account of Cahill in Parliament is based on Clune, *op cit*, pp 97-100.

"dangerous precedent". The motion was defeated on party lines.¹¹

At the conclusion of the division A Landa (Labor, Bondi) reported that during the division C B Cutler (Country Party Member for Orange) had used a "foul and unbecoming epithet" and adopted a menacing attitude towards the Premier. He asked that Cutler be named by the Speaker. Cutler denied the allegation.

During the ensuing barrage of interjections and points of order, Speaker Lamb at one stage said: "Now keep quiet!". Ivan Black (Liberal, Neutral Bay) asked if Lamb was talking to the Opposition or to the whole House. Lamb replied "I am talking to the Honourable Member for Eastwood. He is an excitable little man", and added "I sat here during the whole of that division with the honourable member for Eastwood glaring at me most offensively." This was too much for Colonel Bruxner (Leader of the Country Party) who rose, "defiant and trembling" according to one report, and said: "Mr Speaker, you are turning this place into a bear garden ... I have been in this House for thirty-three years and I have never seen anything like it".

Bruxner, for the first time in his Parliamentary career, was duly removed from the House.¹²

The uproar continued as Cutler was suspended for two days. Opposition Members repeatedly attempted to take points of order and points of privilege. This resulted in the suspension of P H Morton. Lamb several times attempted to continue with normal business but was prevented by the Opposition. It took the suspension of another Liberal Member, Black, for order to be restored.¹³

The next day the Opposition moved a censure motion against the Speaker. The motion alleged that Lamb had

...displayed grave partiality in favour of Government members; improperly applied the Standing Orders to protect Government members from Opposition criticism; sought to intimidate and insult members of the Opposition in the discharge of their duties ... and frequently conducted himself as an implement of the Labor Party ...¹⁴

Murray Robson (Liberal, Vaucluse) was particularly aggressive in his attack

¹¹ NSWPD, 3.11.53, pp 1600-1603.

¹² *Ibid*, pp 1609-1610; SMH, 4.11.53, p 1.

¹³ NSWPD, 3.11.53, pp 1613-14.

¹⁴ *Ibid*, 4.11.53, p 1659.

on the Speaker:

We of the Opposition have heard you from time to time abuse honourable members, and having risen to your feet, which means that they must sit down, and poured a tirade of abuse on them, you then resume your seat, and on several occasions I and other members of the Opposition have noticed that you gave what could be described as a benign wink to the Minister in the chair or the Premier. We all know what it looks like - a cunning leer just to let those who put you in the chair know that you are playing their game.¹⁶

At one point during Robson's speech the following bitter exchange took place:

Robson: I say to you, Mr Speaker, you have not a fair mind and your judgment -

Lamb: I have a clean mind though.

Robson: And your judgment, increasingly over the last few months, has been far from impartial.

Lamb: I have a clean mind and nobody has seen me coming into this Chamber drunk. I say that to the honourable member.

Robson: That is a filthy lying statement and one that is absolutely typical.¹⁶

When Cahill rose to speak, his defence of the Speaker was lukewarm:

... in late years a practice has grown up of Mr Speaker during question time or debate occasionally interjecting ... I suppose that if the utmost decorum was observed that would not take place ... after what the Speaker has been subjected to this afternoon ... I think that in future he will preside in this Chamber and will not make any contribution, even if it will help someone, if it is not what a Speaker should do.

Cahill concluded:

... this debate will show you Mr Speaker, that in future when you are giving decisions you will see ... that such a charge cannot be laid at you.¹⁷

After the Premier resumed his seat the debate was gagged and the censure motion lost on Party lines.

Lamb was to be the subject of 5 Opposition censure motions during his

¹⁶ *Ibid*, p 1671.

¹⁶ *Ibid*, p 1670.

¹⁷ *Ibid*, pp 1674-5.

term of office (from 1947 to 1959), 3 of them in the years 1956 to 1959. The previous Labor Speaker, Dan Clyne, by contrast, had no such motions moved against him (see Appendix). Lamb was also opposed by the Opposition for re-election in 1953 (the first time this had happened since Labor came to power in 1941) and in 1956. His erratic career finally came to an end after the 1959 election when he was dumped by his own colleagues in favour of R S Maher.

After Cahill's death in October 1959 Labor's fortunes in New South Wales began to decline. The Government increasingly began to look tired, divided and out of touch. The Opposition under R W Askin, by contrast, was resurgent. Parliament exemplified all of these trends in microcosm.¹⁸ In the house, Premier Heffron was largely ineffectual, particularly when compared to Cahill who had been able to dominate the Assembly. The Premier was, in fact usually only active in Parliament during Question Time, leaving two senior Ministers, J B Renshaw and, to a lesser extent, P D Hills, to safeguard the Government's interests for most of the rest of the time.

Jack Lang's *Century* accurately enough said of Heffron's personal style in the House that he was "often prolix but on occasions proves that he can crack hard, giving several members of the Opposition the full treatment of his long experience and ready tongue".¹⁹

Journalist Richard Hall provided a similar description of Heffron in action:

In the House he tends to ramble on, recalling past glories as Minister for Education or Minister for Emergency Services in answer to questions. In an age where cliches cloak most politicians, Heffron throws them out as though they were devastating retorts, although occasionally the old radical has shown his teeth, flashed into anger, and for a few minutes reminded us that this was the great mob-orator who led many bitter strikes.²⁰

Askin, by contrast, proved to be competent and capable as Opposition Leader. Although he generally projected a low-key and temperate image, Askin pursued the Government relentlessly in Parliament. In this he was assisted by his Deputy, E A Willis, whose manner was much more abrasive and aggressive, and the Country Party leaders C B Cutler and W A Chaffey, both of whom were experienced and capable Parliamentary performers.

The result was a much more turbulent Parliament, with a revived

¹⁸ This account is based on Clune, *op cit*, pp 149-151.

¹⁹ *Century*, 11.11.60, p 3.

²⁰ *Bulletin*, 15.2.64, p 7.

Opposition constantly harassing the Government. Prolonged disorder, heated procedural battles and barrages of interjections and points of order were commonplace.

Presiding over all this was Speaker Maher, who, in marked contrast to his predecessor, did genuinely try to uphold the tradition of the impartiality of the Speaker. However, Maher was hampered in this endeavour by two factors. One was his own temperament. He exhibited, on occasion, an uncontrollable temper, was over-sensitive to criticism and was inclined to pursue personal feuds, such as those he indulged in with Willis and Health Minister W F Sheahan.²¹

The other factor that told against Maher was the increased level of party conflict in Parliament during his tenure. In particular, the Opposition, after the excesses of Lamb, was no longer prepared to treat the Speaker as independent. He was seen, rather, as part of the Government and thus fair game for political attack. Willis, in particular, went out of his way to provoke Maher. The high number of dissent motions against Maher's rulings, and opposition to his re-election in 1962 (see Appendix) are signs of some dissatisfaction with his performance. However, the fact that there was only one censure moved against Maher, a much more serious form of protest than a dissent motion, would seem to indicate that he was regarded in a somewhat better light than his predecessor.

In May 1965 Labor was succeeded in office by a Liberal-Country Party coalition with R W Askin as Premier. Any hopes that the new Government would translate its criticisms of the operations of the Assembly under Labor into action were soon dissipated. As H B Turner, himself a long-serving State and Federal Liberal MP, wrote in 1970 of the Askin Government:

Unhappily ... some inveterate weaknesses in the style of New South Wales politics ... began to reappear.²²

The Public Works Committee was not revived and the Public Accounts Committee remained ineffectual. Askin had learnt the Parliamentary game

²¹ There were two celebrated clashes between Maher and Sheahan. In the first, Sheahan accused the Speaker of "preventing the ventilation of views in this Chamber", and Maher replied, "I do not know of any special rule that gives a divine right to Billy Sheahan" (*New South Wales Parliamentary Debates*, 15.2.61, pp 2400-2407; 16.2.61, pp 2445-2447; 22.2.61, p 2554; 23.2.61, p 2630; 28.2.61, p 2702). In the second clash, Sheahan accused Maher of not being impartial, and refused to return to the House while Maher was in the Chair until prevailed upon by Premier Heffron and ALP State President C Oliver to make his peace with the Speaker (*New South Wales Parliamentary Debates*, 6.2.63, p p 3085; 7.3.63, pp 3164, 3199; *Sydney Morning Herald*, 7.3.63, p 1; 8.3.63, p 1; *Daily Telegraph*, 14.3.63, p 43).

²² Turner, H B, 'New South Wales', in Rorke, J, ed, *Politics at State Level*, Sydney University, 1971, p 73.

under his Labor predecessors, and seemed to know no other rules to play by. In March 1970, a Sydney Morning Herald editorial once again voiced a familiar complaint:

Nothing highlights the dominance of executive government more than the rush of legislation through State Parliament last week ... The State Opposition had cause for complaint last week, when at the end of the session it was faced with an onslaught of Government bills, many of a major nature which required Parliament to sit until 4 o'clock one morning and 5 o'clock the next ... It is entirely unsatisfactory to have important and complicated legislation forced through Parliament without proper examination and discussion.²³

There was, however, a welcome improvement in the quality of the Speakership under Sir Kevin Ellis (Speaker 1965 to 1973). In terms of impartiality and procedural capacity, Ellis has been described, in company with the much respected Sir Daniel Levy (Speaker 1919-21, 1921-24, 1927-30, 1932-37), as approaching the ideal model.²⁴ This is confirmed by the fact that there were no censure motions moved against him, and only six motions of dissent from his rulings during his eight year term (see Appendix).

One of Ellis' main procedural improvements was in relation to the important *sub judice* rule. The rule had previously been interpreted in a narrow, legalistic sense so that

Parliament has not infrequently found itself in the ridiculous situation where all aspects of a matter have been reported in the press and discussed freely throughout the land without any embarrassment to any court - but could not be mentioned in Parliament because the matter was *sub judice*.²⁵

This had been a cause of complaint by the Opposition during the years of Labor Government. In 1954, for example, Opposition Leader Treatt moved dissent against Speaker Lamb's use of the *sub judice* rule to disallow an Opposition question without notice. He was supported by the Leader of the Country Party, M F Bruxner in the following terms:

Long experience in this House has taught me that a point of order taken that a matter is *sub judice* has very often prevented what would be quite a clear and proper discussion of public interest ... the House of Commons is by no means as exacting on this question as is this

²³ SMH, 23.3.70, p 2.

²⁴ Parker, R S, *The Government of NSW*, UQP, 1978, p 226. On Levy see Hawker, *op cit*, pp 256-7.

²⁵ Jackson, K., Commentary on Speakers' Rulings Legislative Assembly of N.S.W. May 1965 to March 1976, N.S.W. Parliament, Legislative Assembly Office, 1976, p.153.

Chamber. An examination of the debate in that Parliament will show that many questions are fully debated that would not be touched upon here because of the *sub judice* rule.²⁶

In August 1965, Speaker Ellis, in a landmark ruling, gave the *sub judice* rule a more liberal interpretation:

... in my view it should not necessarily follow that because a matter is before a court, every aspect of it must be *sub judice* and beyond the limits of permissible debate in Parliament. It has always troubled me to hear all aspects of a case before the court ruled out of order in Parliament whilst at the same time the press, without in any way offending the court or embarrassing it or, in my view, transgressing any rule of law or propriety, are able to deal with some aspects of the same matter ... some of my predecessors appear to have been constrained to apply the *sub judice* rule strictly and to have ruled accordingly ... In my view, however, this approach to the *sub judice* problem is too restrictive of debate and the Chair ought to endeavour to apply a more flexible ruling so as to allow maximum debate, stopping only at the point where there appears to be a real possibility of prejudicing the interests of the parties involved before the court or in any way embarrassing or influencing the court itself.²⁷

There were also, in the Liberal years, some modest attempts to reform the Standing Orders. In the whole of Labor's 24 year term, Standing Orders were amended on only three occasions (1942, 1953 and 1964). The first two changes were minor and, on the third occasion, the main effect was to abolish supplementary questions, obviously to the advantage of Ministers.²⁸ The Coalition Government, by contrast, introduced in May 1971 and March 1976 two packages of amendments to Standing Orders.²⁹ Most of these changes were in the nature of minor (though useful) fine-tuning and tidying-up. In 1976, however, provision was made for a regular grievance debate, thus going some way towards meeting a long-standing demand for more time for private Members to raise matters of concern to their constituents. Independent Member for South Coast, and long-time crusader for Parliamentary reform, John Hatton, was, however, critical of the scope of the debate:

The proposal to permit two hours debate on grievance day once every three weeks is a step forward, but as it includes the time that will be taken by Ministers replying, it is not good enough. I defy any member to convince his constituents that it is good enough.³⁰

²⁶ NSWPD, 6.4.54, pp 314-5.

²⁷ *Ibid*, 25.8.65, p 75.

²⁸ *Ibid*, 28.4.64, pp 8624-8637; Hawker, *op cit*, p 288.

²⁹ NSWPD, 6.5.71, pp 851-883; 30.3.76, p 4937ff.

³⁰ *Ibid*, 30.3.76, p 4952.

Much has been written about the high level of party conflict in the Legislative Assembly during Neville Wran's Premiership (1976 to 1986), and, in particular, about Wran's personal ability to completely dominate the Opposition for much of his term, through the strength of his own Parliamentary performances. While this is undoubtedly true, the level of party conflict was no greater than in the 1950s and, in some ways, as has already been noted, Labor under Cahill played a tougher and more unscrupulous game. As has also been mentioned earlier, the level of party conflict in the Assembly in the period under review never reached the intensity of the 1920s and 1930s.

This view of Wran has tended to distort perceptions of Parliament during Labor's term from 1976 to 1988, and obscure the fact that there were some small but significant reforms carried out during this time. Elaine Thompson, for example, in her survey of the New South Wales Parliament from 1978 to 1981, on the one hand, provides an excellent description of the role that Parliament plays in party conflict:

Parliamentary performance is a variable critical to the success or otherwise of a political party. If a party cannot demonstrate unity, direction and initiative in parliament, then its perceived weakness will affect its standing outside parliament. Party leaders must be able to function in parliament to attack opponents consistently and forcefully, and to demonstrate control of their own party members ... Effective parliamentary performance by a political party as a whole and especially by a party leader is a necessary, though not sufficient, prerequisite to political success.³¹

However, she then appears to misinterpret the effect of two changes to Standing Orders that, in fact, led to improvements in the way legislation is debated as helping to "explain the Wran government's ability to dominate Parliament".³² The first change involved what are known as cognate bills.

In 1977 a procedure was introduced to allow a number of bills to be debated together. The aim was not to allow legislation to be rushed through the House in bulk. Previously, a major legislative proposal involving changes to a number of Acts could only be dealt with in one omnibus bill or by a series of amending bills taken seriatim. Under the cognate bill procedure a group of such bills are able to be debated as a single entity. This makes for a more meaningful debate as each element in the package of legislative changes is clearly identified and the overall effects can be considered together. The cognate bill procedure also assisted users of legislation in that it ensured that amending Acts usually had the same name as the principal Act (which would not have been the case if all amendments were made by a single omnibus Act) thus making it easier to

³¹ Thompson, E, 'The NSW Parliament 1978-81' in Chaples, E, Nelson, H, and Turner, K, eds, *The Wran Model*, OUP, Melbourne, 1985, p 69.

³² *Ibid*, pp 70-71.

keep track of amendments. Subsequently, provision has been made to enable private Members also to introduce cognate bills.

The second change involved a new procedure for the introduction of public bills. The effect was not to limit the Opposition's time to prepare for debate but to achieve the exact opposite. Under the new procedure a bill is introduced by formal motion without debate, the Minister's second reading speech follows and the debate is then adjourned (under current procedures for a minimum five calendar days). The Opposition thus is given ample time to study the bill and prepare its response. Where the new procedure is open to abuse is a provision for a bill to be declared urgent and for the second reading to then proceed forthwith. This procedure has been frequently used, particularly towards the end of a sitting period.

A further change to Standing Orders in the Labor years gave private Members an increased chance to air matters of concern. The traditional adjournment debate was replaced by a provision that on at least two days in each sitting week forty minutes are provided for five Members to speak in what is, in effect, a minor grievance debate.

There were also under Wran a number of important reforms that had the effect of improving Parliamentary scrutiny of public expenditure. In the 1982 Budget, for the first time, capital and recurrent allocations were included in the one measure instead of having separate Appropriation and General Loan Appropriation bills as was the traditional practice. In his Budget Speech, the Treasurer (K G Booth) told Parliament:

This consolidation ... is designed to improve the presentation of financial information to the Parliament and the public, as well as the Government itself, thereby making for better decisions in the allocations of Government financial resources, as well as clearer public understanding of the public finances of New South Wales.³³

Annual Reports legislation was introduced to require the full disclosure of the financial and operational performance of Departments and statutory authorities. The old Audit Act was replaced with a new Public Finance and Audit Act to take account of modern accounting systems and other contemporary financial requirements. The Budget Papers were presented in a new, more informative and accessible fashion.³⁴

Parliament's use of Committees went through a major revival between 1976 and 1988. An important change to the Assembly's standing orders

³³ NSWPD, 28.9.82, p 1266.

³⁴ For a detailed account of these and other financial reforms see Nicholls, D, **Managing State Finance : the NSW experience**, NSW Treasury 1991, pp 30-35.

occurred in 1982 with the adoption of a new provision to permit the establishment of standing committees. The then Attorney-General F J Walker explained the change this way:

... the proposed term of the standing committee is the term of the Parliament ... the nature of the business referred to standing committees differs from select committees. Select committees tend to deal with specific references, while the work of standing committees tends to be of a continuing nature ... the giving of such a reference to a standing committee means that the Parliament recognises that the nature of the task is long term and its importance is such that continuous attention should be given to it ...³⁵

The first such committee to be established, in 1982, was the Joint Standing Committee on Road Safety (the 'Staysafe' Committee). One of the Committee's early achievements was the introduction of random breath testing in New South Wales.

In 1981 a Joint Select Committee on the Public Accounts and Financial Accounts of Statutory Bodies produced a report which recommended a strengthened Public Accounts Committee with full-time staff and wide powers of investigation. This recommendation was implemented in November 1982. In introducing the legislation Treasurer Booth stated:

The first New South Wales [Public Accounts] Committee was established in 1902. For various reasons, it has not operated as effectively as it might have even within the limitation imposed on the scope of its inquiries under the present legislation. The new constitution for the Committee given by these bills will enable the Committee to operate effectively in relation to the accounts of the New South Wales public sector.³⁶

In May 1987, the Secretary of the New South Wales Treasury, Percy Allan, commented that this legislation

has resulted in the closer Parliamentary scrutiny of the financial operations of Government departments and authorities. The [Public Accounts] Committee has already prepared important reports on particular aspects of Government such as public hospitals' expenditure and accountability, statutory authorities' investment practices, and performance review practices in Departments and authorities. These have resulted in significant savings and improved procedures.³⁷

³⁵ NSWPD, 11.3.82, p 2477.

³⁶ *Ibid*, 4.11.82, p 2282.

³⁷ Allan, P, 'Improving the Financial Decision Making and Accountability of Government', in Report on the Biennial Conference of Public Accounts Committees, Sydney - May 1987, Thirty-Sixth Report of the Public Accounts Committee of NSW, NSW Parliamentary Papers, No 525 of 1986-87, p 59.

Another significant development in the committee area came about as a result of the recommendation of a 1986 Select Committee into small business. The Committee's report recommended the establishment of a joint Parliamentary Committee with adequate staff and resources to oversee and monitor the making of regulations in New South Wales. This recommendation was implemented in the following year by legislation setting up a permanent Regulation Review Committee. The function of the Committee was to review all regulations and, if it felt certain principles (laid down by the Regulation Review Act) had been infringed, to recommend that Parliament disallow the regulation.

In 1989 the Committee's role was further broadened to enable it to systematically review nearly all existing regulations in force.

In March 1988, Labor was convincingly defeated by the Liberal-National Parties under N F Greiner. Labor's controversial L B Kelly (as indicated by the fact that he had four censure and fourteen dissent motions moved against him between 1976 and 1988 - see Appendix) was succeeded in the Chair by K R Rozzoli. Speaker Rozzoli's conduct in the House has shown him to be very much in the Ellis tradition of the independent Speaker. Early in his term he took the virtually unprecedented step of removing a Minister from the House for disorderly conduct.³⁸

The fact that there were no censure or dissent motions moved against Rozzoli during the life of the Forty-Ninth Parliament, only the third Parliament in which this has happened since 1941 (see Appendix), is evidence of the even-handed way in which he has performed his duties.

Speaker Rozzoli also recently put forward wide-ranging proposals to depoliticise the Speakership, including: election of the Speaker (by secret ballot) for a period not exceeding ten years; that the Speaker on election resign from any political party of which he is a member; that the Speaker have a notional State-wide constituency; that a retiring Speaker should be ineligible to continue as a Member of the Assembly; a Speaker should only be able to be removed by a two-thirds majority vote in the House.³⁹ The Government subsequently rejected the Speaker's ideas on the grounds that: "We do not believe that, in a Parliament as small as the Legislative Assembly, it is possible to have a Speaker who takes a kind of monastic vow of independence."⁴⁰

³⁸ NSWPD, 20.10.88, pp 2748-9.

³⁹ Rozzoli, K, 'A seat apart - proposal: an independent, continuing Speakership for NSW' in *Parliamentarian*, Vol 72 No 3, July 1991, pp 182-5.

⁴⁰ SMH, 30.12.1991.

In spite of the modest advances made, it must, however, be said that, at the end of the half century under review, many of the old problems that have undermined the effective functioning of the Legislative Assembly as a means of scrutinising the actions of the executive and as a forum for private Members, have continued to be in evidence in recent years: a last minute surge of legislation pushed through in a series of late-night sittings at the end of the session; important bills deliberately introduced and put through all stages in the early hours of the morning; Oppositions have rarely been able to resist the opportunity to score political points rather than assess issues on their merits; Governments have continued to reject out of hand Opposition suggestions regardless of value; Question Time has all too often been taken up by "Dorothy Dixers" and long-winded Ministerial replies; Private Members' time has been used up in set-piece debates which are, in reality, no more than a cover for Government and Opposition to attack each other.

Ironically, the period under discussion ends on perhaps the most positive note for Parliamentary reform for some time as a result of the upset election result in May 1991. The state of the House after the election was: Government 49, Labor 46 and Independents 4. The Government's position was further weakened in October when a senior Liberal (T Metherell) defected to join the ranks of the Independents. Three of this latter group (John Hatton, Clover Moore and Peter McDonald) have used their key position to extract a series of concessions from the Greiner Government.

High on the agenda is reform of the practices of the Legislative Assembly. In return for a guarantee of support on money bills and confidence motions (unless "corruption or gross maladministration" are involved) the Government has agreed to a wide-ranging package of reforms. In the Parliamentary context it has given commitments that: more notice will be provided of forthcoming legislation; time available to debate bills will be maximised; more opportunities will be provided for private Members business including legislation; Question Time will be reformed; Parliament will sit more regularly and that late night sittings will not occur.

During the 1991 Budget Session, as part of the deal with the Independents, major changes to the Assembly's procedures were adopted on a trial basis by way of Sessional Orders. They provide for: joint estimates committees; legislation to be referred to committees for detailed scrutiny; regular reporting to Parliament of legislation that remains unproclaimed; debate on committee reports in the House; Ministers to provide answers to questions on notice within fifteen sitting days; the last sitting day of every sitting week will be set aside for private members, as of right, to introduce a bill and make a second reading speech; debate on such bills will be able to be resumed so that they will be brought to a final resolution; Members will now have to give notice of motions on matters of public importance thus ending the possibility of an 'ambush' during Question Time; a minimum of ten questions without notice to be asked in Question Time; supplementary questions will be re-introduced. The Government also promised to consider amending the Constitution so that proposed amendments to Standing Orders will in future have to be passed

with more than just a simple majority.⁴¹

When introducing these reforms the responsible Minister T J Moore stated:

Given that this is the first stage - and only the first stage - of a radical overhaul of the way the Parliament is run, these proposed changes are experimental and I would expect will evolve both in their written form and in the custom and practice applied to them by members and Ministers over many years. Indeed, in my view, as I have expressed privately to the honourable member for South Coast [John Hatton], we will not be true beneficiaries of these changes to the standing orders. Those who will truly enjoy the benefits of a return of powers to this Chamber will be members who are here in 15 or 20 years time. We will merely be starting down the path that changes the rules. The attitudes and conventions will flow from that in the future.⁴²

Whether such expectations are fulfilled remains to be seen.

⁴¹ See NSWPD, 19.9.91, pp 1411-25; 13.11.91, pp 4476-4515 for major debates on these changes.

⁴² NSWPD, 19.9.91.

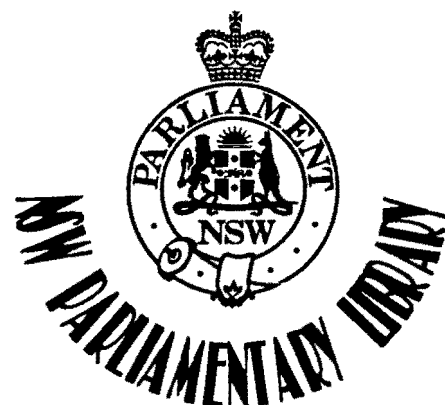
Appendix

Parliamentary protest against the Speaker:
thirty-third to forty-ninth Parliaments (1941 to 1991)⁴³

Parliament	Speaker	Motions of dissent from Speaker's ruling	Censure motions	Re-election opposed
1941-1944	Clyne	1	0	No
1944-1947	Clyne	0	0	No
		Total 1	Total 0	
1947-1950	Lamb	1	0	No
1950-1953	Lamb	1	1	No
1953-1956	Lamb	4	1	Yes
1956-1959	Lamb	1	3	Yes
		Total 7	Total 5	
1959-1962	Maher	5	0	No
1962-1965	Maher	5	1	Yes
		Total 10	Total 1	
1965-1968	Ellis	1	0	No
1968-1971	Ellis	0	0	Yes
1971-1973	Ellis	5	0	Yes
		Total 6	Total 0	
1973-1976	Cameron	8	0	Yes
		Total 8	Total 0	
1976-1978	Kelly	4	1	No
1978-1981	Kelly	2	0	No
1981-1984	Kelly	5	1	No
1984-1988	Kelly	3	2	No
		Total 14	Total 4	
1988-1991	Rozzoli	0	0	No
		Total 0	Total 0	

⁴³ Source: Votes and Proceedings of the New South Wales Legislative Assembly

List of Research Service Publications



*To identify and fulfil the information needs of Members
of Parliament and the Parliamentary Institution.*

[Library Mission Statement]

- (A) BACKGROUND PAPER
- (B) BILLS DIGEST
- (C) BRIEFING PAPER
- (D) STATISTICS

(A) BACKGROUND PAPER

TITLE	NUMBER
<i>Comparisons of 1991 Census Characteristics: State Electoral Districts</i> by Jan Newby	1995/1
<i>Electing the New South Wales Legislative Council 1978 to 1995: Past Results and Future Prospects</i> by Antony Green	1995/2
<i>Euthanasia</i> by Gareth Griffith and Marie Swain	1995/3
<i>NSW Elections 1995</i> by Antony Green	1995/4

(B) BILLS DIGEST

TITLE	NUMBER
<i>National Environment Protection Council (New South Wales) Bill 1995</i> by Stewart Smith	001/95
<i>State Owned Corporations Amendment Bill 1995</i> by Vicki Mullen	002/95

(C) BRIEFING PAPER

TITLE	NUMBER
<i>Maritime Services in NSW: Issues for Reform</i> by Vicki Mullen	001/95
<i>Water Resources and Water Strategies</i> by John Wilkinson	002/95
<i>Fixed Term Parliaments, with a commentary on the Constitution (Fixed Term Parliaments) Amendment Bill 1992</i> by Gareth Griffith	003/95
<i>Water Quality in NSW - An Overview</i> by Stewart Smith	004/95
<i>Enterprise Bargaining in New South Wales: An Overview</i> by Vicki Mullen	005/95
<i>International Treaties</i> by Marie Swain	006/95
<i>Victim Impact Statements</i> by Gareth Griffith	007/95
<i>Recycling in NSW</i> by Stewart Smith	008/95
<i>The Independence of the Judiciary: commentary on the proposal to amend the NSW Constitution</i> by Vicki Mullen and Gareth Griffith	009/95
<i>Coal Production in New South Wales</i> by John Wilkinson	010/95
<i>The Greenhouse Effect: Ramifications for New South Wales</i> by Stewart Smith	011/95
<i>Urban Consolidation and Dual Occupancy Development</i> by Marie Swain	012/95

<i>Selecting a Presiding Officer: methods of election and the concept of independence</i> by Gareth Griffith	013/95
<i>The Individual's Right to Privacy: Protection of Personal Information in New South Wales</i> by Vicki Mullen	014/95
<i>Regional Development in New South Wales</i> by John Wilkinson	015/95
<i>Update on the Hilmer Report</i> by Jan Newby	016/95
<i>Sydney, Transport and Ecologically Sustainable Development</i> by Stewart Smith	017/95
<i>Domestic Violence: An Overview of the Legislative Changes in NSW</i> by Gareth Griffith	018/95
<i>Women in Parliament</i> by Marie Swain	019/95
<i>Commentary on the Electricity Legislation Amendment Bill 1995</i> by Vicki Mullen and Stewart Smith	020/95
<i>Sydney City Council: Moving Boundaries and a Changing Franchise</i> by Gareth Griffith	021/95
<i>Forensic Samples</i> by Marie Swain	022/95
<i>Government Debt and New South Wales: Past Development and Present Realities</i> by John Wilkinson	023/95
<i>Air Pollution in Sydney</i> by Stewart Smith	024/95
<i>Industrial Regulation in NSW: The Difficult Dichotomy of Judicial and Arbitral Power</i> by Vicki Mullen	025/95
<i>Coastal Protection</i> by Stewart Smith	026/95
<i>Prostitution in New South Wales: Law Reform Issues</i> by Vicki Mullen	027/95

(D) STATISTICS

TITLE	NUMBER
<i>Quarterly Statistical Bulletin</i> by Jan Newby	Vol 2 No 2 February 1995 Vol 2 No 3 May 1995

TITLE

Electorate Profile - <i>Murwillumbah</i> No 001/95	by Jan Newby
Electorate Profile - <i>Kogarah</i> No 002/95	by Jan Newby
Electorate Profile - <i>Drummoyne</i> No 003/95	by Jan Newby
Electorate Profile - <i>Moorebank</i> No 004/95	by Jan Newby
Electorate Profile - <i>Cessnock</i> No 005/95	by Jan Newby
Electorate Profile - <i>Hurstville</i> No 006/95	by Jan Newby
Electorate Profile - <i>Penrith</i> No 007/95	by Jan Newby
Electorate Profile - <i>The Entrance</i> No 008/95	by Jan Newby
Electorate Profile - <i>Bathurst</i> No 009/95	by Jan Newby
Electorate Profile - <i>Orange</i> No 010/95	by Jan Newby

Electorate Profile - *Bligh* No 011/95 by Jan Newby
Electorate Profile - *Southern Highlands* No 012/95 by Jan Newby
Electorate Profile - *Strathfield* No 013/95 by Jan Newby