



## LEGISLATIVE ASSEMBLY

# Procedural Digest

## Fifty-eighth Parliament, First Session

No. 3/2023: 1 – 24 August 2023

*This document provides a summary of significant procedural events and precedents in the Legislative Assembly. It is produced at the end of each sitting period. Where applicable the relevant Standing Orders are noted.*

### August 2023

M	T	W	T	F
	1	2	3	4
7	8	9	10	11
14	15	16	17	18
21	22	23	24	25

## Chamber

### Appointment of Joint Select Committee

On 3 August 2023, the House agreed, on the voices, to suspend standing and sessional orders to permit the Leader of the House, the Hon. Ron Hoenig, to move a motion forthwith regarding the appointment of a Joint Select Committee.

Mr Hoenig then moved, and the House agreed on the voices, that a Joint Select Committee on Protecting Local Water Utilities from Privatisation be appointed to inquire into and report, by 30 November 2023, on how the Government can prevent and stop privatisation of local water utilities with reference to protection against privatisation, forced amalgamations and sell-offs and to reviewing governance and other legislation.

There were some interesting elements of the resolution appointing the Committee. The Committee is to consist of five members of the Legislative Assembly, including two Government members and three non-Government members, at least one of which must be a crossbench member, and five members of the Legislative Council, including two Government members and three non-Government members, at least two which must be crossbench members.

Notwithstanding that the Committee will be administered by the Legislative Assembly the resolution provided that the Chair shall be a Government member from the Legislative Council and that that member shall be the Honourable Stephen Lawrence MLC.

Rather than nominate the Legislative Assembly members of the Committee and include their names in the message to the Legislative Council, the resolution provided that the Assembly members would be nominated in writing, by the Government and Opposition Whips, to the Clerk of the Assembly by 18 August 2023.

It was anticipated that the Assembly members of the Committee would be determined prior to receipt of a message from the Council responding to the Assembly's proposal to appoint the Committee.

The Assembly's message was reported in the Legislative Council later in the day on 3 August and its consideration was set down as an order of the day for the next sitting day, 22 August 2023. Ultimately, however, the Council did not consider the Assembly's message until 24 August 2023.



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In the afternoon on 24 August 2023, just prior to the commencement of Community Recognition Statements, the Temporary Speaker Mr David Layzell, reported a message from the Legislative Council agreeing to the appointment of the Joint Select Committee on Protecting Local Water Utilities from Privatisation.

The message from the Legislative Council stated the names of the members who had been appointed to the Committee and requested, notwithstanding anything to the contrary in the Council's standing orders, that the Clerk of the Assembly set the time and place of the first meeting.

The Legislative Assembly had not reported its members of the Committee prior to the House rising on 24 August 2023.

*Votes and Proceedings: 3/8/2023 p. 219; 24/8/2023 p. 255.*

Standing Orders 319 (Joint Committees names stated), 320 (first meeting), 339 (report of messages) and 340 (consideration of messages).

### Procedural note

Standing Order 319 provides that if the House proposes a joint committee, the message shall state the names of the Members to be appointed (the Legislative Council has an identical standing order 227(1)). However, in this case standing orders were suspended and the message from the Assembly stated the number and party composition of the Assembly members but not the names of the members to be appointed.

Standing Order 320 provides that the House originating the message for the appointment of a joint committee shall not nominate the time and place of the first meeting (the Council's identical standing order is 227(5)). This long-standing practice is a signal of courtesy and comity between the Houses. In its message, the Council noted that notwithstanding its own Standing Orders it was requesting that the Assembly, via the Clerk, set the first meeting of the Committee.

Standing Order 339 provides that messages from the Council shall be handed to the Speaker for report when other business is not before the house. Messages from the Legislative Council may simply be reported or, if they are requesting the Assembly to take some action, they also need to be considered. Standing Order 340 provides that, once reported, messages from the Council may be considered either forthwith, at a later hour, the next sitting day or on a future day.

As a matter of practice, if a message from the Legislative Council concerns a matter of Government Business then the message is considered only during time set aside in the routine of business for Government Business, unless standing orders are suspended to provide otherwise.

## Members

### Resignation of the Minister for Skills, TAFE and Tertiary Education and Minister for the Hunter



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On Thursday 3 August 2023 just before the commencement of Question Time, the Leader of the House on behalf of the Premier, advised the House that the Governor had earlier that day accepted the resignation of Mr Tim Crakanthorp as Minister for Skills, TAFE and Tertiary Education and the portfolio for the Hunter.

The Leader of the House further informed the House that the Governor had subsequently appointed Ms Pru Car as Minister for Skills, TAFE and Tertiary Education, and Ms Yasmin Catley as Minister for the Hunter.

*Votes and Proceedings: 3/8/2023, p. 217.*

*Hansard (Proof): 3/8/2023, pp. 7-8.*

### Speaker

#### Speaker gives notice of motion for a private Member's bill

Private Members may give notices of motion for bills during the time allocated in the Routine of Business for *Giving of Notices of Motions (Government Business, Bills and Business with Precedence under Standing Order 118)*, which is immediately prior to Question Time. On Wednesday 23 August the Deputy Speaker, Ms Sonia Hornery, announced that the Speaker, Mr Greg Piper, in his capacity as the Member for Lake Macquarie, would take the Chair for Question Time after giving a notice of motion for a private Member's bill. After the announcement, the Deputy Speaker called the Speaker to give his notice of motion, which he gave from the floor of the House. The Deputy Speaker then left the Chair to allow the Speaker to preside over Question Time.

The Speaker's notice of motion was for the Human Tissue Amendment (Ante-mortem Interventions) Bill which is intended to amend the *Human Tissue Act 1983*. The bill will allow antemortem procedures to be carried out to facilitate post-mortem tissue donation or for other therapeutic, medical, or scientific purposes and other related purposes. The full text of the notice of motion was published in the Legislative Assembly's [Business Paper](#) on Thursday 24 August 2023, and the bill's passage through the House can be followed on the Parliament's [website](#).

*Votes and Proceedings: 23/8/2023, p. 241.*

Standing Orders 9(1) (Speaker-Role), 97 (Routine of Business) and 133(1) (Notice given verbally).

#### Procedural note

Section 31(4) of the [Constitution Act 1902](#) provides that the Speaker, when not presiding, may take part in any debate or discussion, and vote on any question which may arise in the Legislative Assembly. The Speaker's ability to participate in House proceedings as a private Member whenever not presiding, as provided for in the *Constitution*, is reaffirmed in Standing Order 9(1).

### Business

#### Variation to order for papers and return of papers

As reported in [Digest 1/23](#) and [Digest 2/23](#), on 25 May 2023, the House resolved to order the production of State papers relating to investigations into money laundering in clubs and pubs. The resolution required the



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documents to be provided to the Clerk of the Legislative Assembly by 10.00 am, 23 June 2023. The resolution was subsequently amended on 21 June 2023 to change the return date to 10.00am, Friday 4 August 2023.

During the week leading up to the return date of Friday 4 August, the resolution was further varied.

### *Tuesday 1 August 2023*

On Tuesday 1 August, the House, on the motion of Mr Alex Greenwich agreed to amend the resolution to modify the scope of the documents to be returned. In speaking to the motion, Mr Greenwich advised that the NSW Crime Commission had assessed a large number of documents relevant to the order and identified a select number of these that should be produced to Parliament.

The resolution was also amended to make provision for documents to be produced in redacted form. Mr Greenwich indicated that the redactions were required to protect informants, criminal investigations and proceedings. The amendment to the resolution also removed the restriction on the inspection of the documents by members only. This meant that all documents returned would now be available for public inspection.

On the same day Mr Greenwich tabled two items of correspondence relevant to the order for papers and the motion to vary the resolution.

### *Wednesday 2 August 2023*

On Wednesday 2 August, the House, on the motion of the Leader of the House, Mr Ron Hoenig, agreed to amend the resolution further to restrict the inspection of some of the documents to be returned to members only. This restriction applied to documents identified in the return as intelligence profiles.

### *Return of papers*

On Friday 4 August 2023, the documents were provided to the Clerk of the Legislative Assembly, albeit at 2.30 pm rather than at 10.00 am as specified in the order, and, where applicable, made available for public inspection. An additional public document was returned on 18 August 2023, and was also made available for public inspection from that date. On 22 August 2023, receipt of the documents was announced in the House by the Clerk.

In line with Legislative Council practice, the only documents uploaded to the [Tabled Papers](#) database are the items of correspondence addressed to the Clerk concerning the return; and the indexed list of documents showing the date of creation, description, and the author of each document returned.

Of further note, as reported in [Digest 2/23](#), the Legislative Council on 28 June 2023 made its own order for papers calling for exactly the same documents with the same return date and time as those stipulated by the Assembly. On Thursday 3 August, the Council varied its order in similar terms to the variation made by the Assembly on Tuesday 1 August.

### *Public inspection process*

Public inspection of the documents took place in the general Legislative Assembly office space on level 8 and was arranged by appointment. Before examining the documents, all persons are required to sign a register and abide by a few rules, such as ensuring that the documents remain in order, are not marked, and are not removed from the room. Those documents restricted to inspection by Members were kept in the Office of the Clerk .

*Votes and Proceedings:* 25/5/2023, pp. 84-85; 21/06/23, p. 137; 1/8/23, p. 196; 1/8/23, p. 202; 2/8/23, p. 211; 22/8/23, pp. 230-231

*Hansard (Proof):* 25/5/2023, pp. 3 – 5; 21/6/23, pp. 1-2; 1/8/23, pp. 20-22; 2/8/23, pp. 51-52.  
Standing Orders 269 (Papers ordered) and 267 (Restricted inspection).

## **Suspension of standing and sessional orders to permit additional time for consideration of general business**



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The Business Paper for Thursday 3 August had only two General Business Notices of Motions for Bills and only one General Business Order of the Day for Bills listed for consideration. With one of the General Business Notices of Motions subsequently being postponed when called on, consideration of the single General Business Order of the Day for Bills concluded before Question Time.

Typically, if the full allocation of time for consideration of Notices of Motions and Orders of the Day for Bills (20 minutes and 90 minutes respectively) is used this would see consideration of Orders of the Day for Bills resume after Question Time until around 1.30 pm.

Rather than have the House experience a much lengthier lunch break, the Leader of the House, at the conclusion of Question Time, moved a suspension of standing and sessional orders to permit additional time for the consideration of General Business Notices of Motions or Orders of the Day (not being bills) until 1.30pm, which was agreed to on the voices.

Typically, two to three general business motions are debated each sitting Thursday. In this case, the additional time (33 minutes) provided for debate to conclude on four motions, all of which would have lapsed before the next sitting day on which General Business would take precedence, 24 August 2023.

*Votes and Proceedings: 3/8/2023, p. 219.*

*Hansard (Proof): 3/8/2023, p. 21.*

Standing Order 97 (Routine of Business).

### Procedural note

Under Standing Order 97, the routine of business permits general business orders of the day (for bills) to be considered in the morning on sitting day Thursdays for a period of 90 minutes. This occurs directly before question time and any remaining time on the debate resumes immediately after. General Business Notices of Motions or Orders of the Day (not being Bills) commences at the set time of after the Speaker resumes the Chair at 2.30 pm and proceeds until 3.40 pm.

In the 57<sup>th</sup> Parliament the routine of business provided for under standing order 97, saw General Business Notices of Motions for Bills and General Business Orders of the Day for Bills proceed for up to 20 minutes and 90 minutes respectively followed by General Business Notices of Motions or Orders of the Day (not being Bills) which would proceed until 1.15 pm. This meant that any unused allocation of time for either Notices of Motions or Orders of the Day for Bills would consequentially see an increase in the amount of time allocated to General Business Notices of Motions.

### Private Member motion to suspend Standing and Sessional Orders

On 3 August 2023, following the conclusion of Question Time, the Manager of Opposition Business, Mr Alister Henskens, moved:

That standing and sessional orders be suspended to permit the moving forthwith of a motion, of which notice has not been given, relating to the making of an order for papers under Standing Order 269 relating to the sacking of the member for Newcastle as a Minister in the New South Wales Government and his referral by the Premier to the Independent Commission Against Corruption.



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In speaking to his motion Mr Henskens referred to proceedings in the House on 25 May 2023, when the Member for Sydney moved a similar motion in relation to an Order for Papers relating to investigations into money laundering in pubs and clubs. Mr Henskens noted that his suspension motion and the procedural aspects of the substantive motion relating to the order for papers were modelled on those motions moved by the Member for Sydney and agreed to by the House. Mr Henskens noted that this was the first time that the Opposition had sought to initiate a call for papers in this Parliament.

In accordance with Standing Order 365, the Leader of the House spoke on behalf of the Government in response to the motion. The Member for Sydney and Member for Balmain were both granted leave of the House to also make a contribution.

The question was put and negatived on division 33 – 51.

*Votes and Proceedings* 3/8/2023 pp. 217-218.

*Hansard (Proof)*: 3/8/2023 pp. 18-21.

Standing Orders 269 (Papers ordered) and 365 (Suspension of Standing Orders).

### Procedural note

Standing Order 365 provides that a Member may, at any time after 10.30 am and up to 1.30 pm, move a motion to suspend Standing and Sessional Orders to deal with any matter. The mover, one other Member and the mover in reply are entitled to speak to the motion for up to five minutes each. When the mover is a Member not supporting the Government, the other Member entitled to speak shall be a Minister.

### Amendment of Sessional Order 97—Change to routine of business on Tuesdays

The routine of business is conducted according to standing order 97, which was last amended on 17 January 2022, and further amended by sessional order on 9 May 2023.

On 24 August 2023, the Leader of the House, Mr Ron Hoenig, moved a motion to amend sessional order 97 to alter the routine of business on sitting Tuesdays. In the current routine of business for Tuesdays, the giving of general business notices of motions (general notices) occurs directly before Question Time. However, this has posed a recurring issue of disruption as members enter the Chamber to take their seats for question time while other members are still giving their notices of motions<sup>1</sup>.

In order to alleviate this disruption, Mr Hoenig, by leave, moved:

*That for the remainder of the current session, unless otherwise ordered, the routine of business for sitting Tuesdays provided for in Sessional Order 97 be amended by moving general business notices of motion (general notices) from item 2 to item 11, with the Speaker to leave the chair at its conclusion.*

The motion aligned with a recommendation from the Standing Orders and Procedure Committee and was agreed to on the voices. This amendment moves the giving of general business notices of motions (general notices) to just before the lunch adjournment.

<sup>1</sup> See, for example, [Hansard](#), 1 August 2023.



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*Votes and Proceedings*: 24/8/2023, p. 22.

*Hansard (Proof)*: 24/8/2023, p. 253.

Standing Order 97 (Routine of Business).

### Committees

#### Standing Committee on Parliamentary Privilege and Ethics

The House resolved to refer two matters to the Standing Committee on Parliamentary Privilege and Ethics for inquiry and report.

On 23 August 2023, the Leader of the House moved, by leave, that the House provide the Committee with terms of reference for it to conduct an inquiries into the:

1. Findings and conclusions of Elizabeth Broderick & Co in its 2022 report entitled *Leading for Change Independent Review of Bullying, Sexual Harassment and Sexual Misconduct in NSW Parliamentary Workplaces 2022* (Broderick Report) and make recommendations for further action to be considered by the House, the Speaker, the Clerk and the Government, as appropriate. The Committee was given leave in accordance with Standing Order 311 to confer with the Legislative Council's Committee on Privileges.
2. The adequacy of current procedures to protect parliamentary privilege in circumstances where law enforcement and investigative bodies seek to use coercive, intrusive or covert investigatory powers". The Resolution establishing the inquiry provides that the Committee's "particular focus" should be the operation of the agreements currently in place with the Independent Commission Against Corruption as they pertain to the Legislative Assembly with a view to developing appropriate revised arrangements. The Resolution provides a non-exhaustive list of matters for the Committee to consider, including the ICAC's powers in relation to search warrants and the power to summon witnesses and take evidence. The Committee may also consider "any other related matter".

The House agreed, on the voices and without debate, to both referrals. However, later that day following Question Time, the Member for Newtown sought leave to use the right to speak provided under the making of a personal explanation to express her "extreme disappointment" at the apparent lack of notice given and consultation with the cross-bench and others prior to moving the motion to refer the Broderick Report to the Standing Committee on Parliamentary Privilege and Ethics.

The Speaker allowed the contribution notwithstanding that its content did not truly conform with what may be included in a personal explanation and invited the Member for Newtown to raise any further issues of concern with him outside the Chamber.

On 24 August 2023, the Leader of the House moved, by leave, that the terms of reference for the inquiry referral regarding the Broderick Report be amended to clarify that the Committee would inquire into and report on the "four recommendations that directly refer to the Committee" in the Broderick Report. The House agreed, on the voices and without debate, with that amendment and to omit the clause allowing the Committee to consult "the Speaker, the Clerk and others as appropriate".

*Votes and Proceedings*: 23/8/2023, pp. 239–241; 24/8/2023, p. 255

*Hansard (Proof)*: 23/8/2023, pp. 5–6, 21; 24/8/2023, p. 62



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Standing Orders 62 (Personal explanation), 306 (Committee reports, tabling in the House and debate), 311 (Conference with Council committee).

### Procedural note

Unlike other inquiry referrals, no dates were fixed for the Committee to report back the House. Accordingly, the Committee will resolve when to table its reports in the House in accordance with Standing Order 306 upon completion of each inquiry. The Committee may also table interim reports during the course of its inquiries.

Standing Order 62 provides that a Member may, when there is no question before the Chair and with the leave of the Speaker, explain a matter of a personal nature. The Speaker has the discretion to withdraw leave at any time during a Member's explanation. Speakers have ruled that a personal explanation allows a Member to briefly explain any matter which reflects upon them in a personal way or upon their honour, character or integrity and could include refuting accusations made against them by other Members in the House.

## Bills

### Revenue, Fines and Other Legislation Amendment Bill 2023

The Revenue, Fines and Other Legislation Amendment Bill 2023 was introduced by the Attorney General, Mr Michael Daley, on 1 August 2023. The Bill made miscellaneous amendments to twelve Acts to address taxation, fines, revenue and other state based financial matters.

While eleven of the twelve Acts being amended are administered by the Minister for Finance (jointly with the Treasurer), the Bill was introduced in the Assembly by the Attorney General who represents the Minister for Finance in the Legislative Assembly. Section 5 of the [Constitution Act 1902](#) provides that all money bills (bills that appropriate any part of the public revenue, or impose any new rate, tax or impost) must originate in the Legislative Assembly.

Following the second reading debate, the Bill passed the Assembly without amendment and was transmitted to the Legislative Council for concurrence on Wednesday 23 August. Wednesdays are set aside solely for private members' business in the Legislative Council, so although the message concerning the Bill was reported it was not considered by the Council until the following day, Thursday 24 August.

On 24 August the Leader of the House moved that Standing and Sessional Orders be suspended to provide for the House to consider any messages relating to the Bill to be considered that day. The suspension was to facilitate the consideration of any amendments proposed by the Council before the House rose for a two week period, and did this by allowing:

- the time allocated for Government Business to be extended until the consideration of any Legislative Council messages is concluded



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- the House to continue to sit after the conclusion of private members statements to consider any messages from the Legislative Council, including the option for the Speaker to leave and resume the Chair on the ringing of one long bell
- the business of the House to be interrupted should any message from the Legislative Council be received before or during private members statements and the message considered forthwith.

At the conclusion of private members statements a message was reported from the Legislative Council returning the Bill with one amendment. The Attorney General moved forthwith that the amendment be agreed to, and the House agreed to the amendment on the voices.

The Bill was assented to on 4 September 2023.

*Votes and Proceedings:* 1/8/2023, p. 202; 24/8/2023, pp. 252-3, pp. 255-7.

Standing Orders 222 (return of bill with proposed amendments), 223 (consideration of Council amendments), 224 (form of question on Council amendments), and 365 (suspension of Standing Orders).

