



## LEGISLATIVE ASSEMBLY

# Procedural Digest

## Fifty-eighth Parliament, First Session

No. 6/2023: 21 – 30 November 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.*

### November 2023

M	T	W	T	F
20	21	22	23	24
27	28	29	30	

## Chamber

### Petition Debates

On Thursday 23 November the penultimate petition debate of the year took place. The paper petition signed by 10,000 or more persons was presented by the Member for Sydney, Mr Alex Greenwich, and concerned the professional recognition of NSW Ambulance and Paramedics regarding salaries.

Under Standing Order 125A, the presenting Member speaks to the petition after which four Members other than the Member can speak to the question, followed by a response from a Minister. The presenting Member will then speak in reply. In this instance, an additional four Members sought and were granted leave to speak for a total of eight contributions by Members other than the presenting Member and Minister. The question that the House take note of the petition was passed.

On Thursday 30 November the final petition debate of the year concerned the Regional Seniors Travel Card, presented by the Member for Northern Tablelands, Mr Adam Marshall. After four other Members spoke to the petition, leave was denied to the Members for Terrigal, Wollondilly, Clarence and Coffs Harbour. The Minister for Regional Roads and Transport, Ms Jenny Aitchison, rose to respond, upon which Mr Adam Crouch moved that the Minister be not further heard. A division was called, the motion was negatived and Ms Aitchison was able to give her response. During the debate the clock was stopped 11 times and five points of order were raised. The question that the House take note of the petition was passed.

*Votes and Proceedings:* 23/11/2023, p. 399, 30/11/2023, pp. 452-453

*Hansard (Proof):* 23/11/2023, pp. 45-52, 30/11/2023, pp. 47-55

Standing Orders: 58 (Motion "That the Member be not further heard"), 62 (Personal Explanation), 79

(Interruptions not allowed – exceptions), 97 (Routine of Business), 125A (Debate on petitions signed by 10,000 or more persons)

## Members

### Vacancy in the Senate of Australia

On Tuesday 10 October the Speaker reported a message from the Lieutenant-Governor notifying the House that a vacancy had occurred in the Senate following the resignation of the Hon. Marise Payne, one of 12 Senators for



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NSW. The House agreed to send a message to the Legislative Council requesting they fix a time and place for a joint sitting to elect a new Senator.

On Wednesday 29 November Temporary Speaker Mr Clayton Barr reported a message from the Legislative Council informing the Assembly that a joint sitting would take place on Thursday 30 November at 5.00 pm. Upon receiving the message, the Temporary Speaker ordered that the joint sitting be set down as an order of the day for the time specified in the message.

At 5.00pm on Thursday 30 November, the order of the day was read and debate interrupted for a procession of the Legislative Assembly to the Legislative Council for the joint sitting.

Following the opening of procedures in the Legislative Council, the Leader of the Opposition, Mr Mark Speakman, proposed a candidate from the Liberal Party of Australia, Mr Devanand (Dave) Sharma. The Hon. Damien Tudehope MLC seconded the motion and the nomination of Mr Sharma was agreed to unanimously.

As there were no other nominations, the joint sitting was declared closed by the President and the Legislative Assembly reassembled at 5.13 pm. Upon returning to the Legislative Assembly, the Temporary Speaker Ms Donna Davis reported to the House the election of Mr Sharma and the minutes of the proceedings of the joint sitting were tabled and ordered to be printed.

*Votes and Proceedings*: 10/10/2023, p. 311, 29/11/23, p. 429, 7/12/23 p. 454.

Legislation: *Commonwealth of Australia Constitution Act*, section 15.

### Procedural note

Section 15 of the *Commonwealth of Australia Constitution* provides for the filling of casual vacancies in the Australian senate. Person/s nominated to fill a Senate vacancy must be from the same political party as the departing Senator at the time of the election. On this occasion there were no other nominees as the nominee had already been determined by the Liberal Party. But if another nominee were proposed and seconded, there would be an open vote. If any debate arises during a joint sitting, the Standing Orders of the Legislative Council are followed.

The Minutes of the Proceedings of the joint sitting are prepared by the Legislative Council and tabled in the Legislative Assembly. The joint sitting is also recorded in the Votes and Proceedings for that day.

## Business

### Condolence motions for former Members Mr Stephen Bromhead and Ms Alison Megarrity

The last sitting period of 2023 saw the House agree to two condolence motions for former Members, Mr Stephen Bromhead, former Member for Myall Lakes and Ms Alison Megarrity, former Member for Menai.

On Wednesday 22 November a condolence motion was moved by Ms Tanya Thompson, the current Member for Myall Lakes, who moved that the House extend its sympathies to the family of Mr Bromhead and acknowledge his service and contribution. On Thursday 29 November a condolence motion was moved by Leader of the House, Mr Ron Hoenig, who moved that the House extend its deep sympathy to the family and friends of Ms



Alison Megarrity. For both motions the question was put and carried unanimously with Members and officers standing as a mark of respect.

*Votes and Proceedings*: 22/11/2023, p. 389, 29/11/2023, p. 429.

*Hansard (Proof)*: 22/11/2023, pp.34-47, 29/11/2023, pp. 29-40.

Standing Orders: 97 (Routine of Business), 118(2) (Business with Precedence) and 365 (Suspension of Standing Orders).

### Procedural note

Under Standing Order 118, condolence motions are considered 'business with precedence', that is, they can be accorded precedence over all other business before the House at a certain time in the Routine of Business.

In practice, the date and time for the giving of a condolence motion is arranged between the relevant Party Whip and the Leader of the House to allow the attendance of the family and friends of the person who is the subject of the condolence motion. The time allocated on a sitting day for the condolence motion is then agreed to by the House by way of a suspension of Standing and Sessional Orders.

## Committees

### Joint Select Committee on the NSW Reconstruction Authority

On Wednesday 29 November the House agreed to suspend Standing and Sessional Orders to permit the Leader of the House, Mr Ron Hoenig, to move a motion regarding the appointment of a Joint Select Committee on the NSW Reconstruction Authority. Mr Hoenig then moved, and the House agreed on the voices, that in accordance with section 93 of the NSW Reconstruction Authority Act 2022, the Committee be established.

The resolution of the House set out the terms of reference for the Committee, mirroring the requirements set out in section 93 of the Act. In accordance with the Act, the Committee is to review the Act to determine whether:

- the policy objectives of the Act remain valid; and
- the terms of the Act remain appropriate for securing the objectives.

The Committee is to complete its review of the Act after 12 months of the Act's assent and table a report of the review two years after the Act's assent.

The Committee also has an ongoing role to review the operations of the NSW Reconstruction Authority regarding any disaster in which the Authority exercises its functions. The Committee is to complete a review of the Authority as soon as practicable after any disaster and table a report of the review 12 months after the disaster to which the review relates.

The House resolved to appoint the following Members to the Committee:

- Mr Clayton Barr (Chair)
- Mr Philip Donato
- Ms Liza Butler
- Mr Warren Kirby
- Ms Tamara Smith



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- Mr Richie Williamson

A message was sent to the Legislative Council acquainting the Council of the House's resolution and requesting that the Council appoint four of its Members to serve on the Committee.

On Thursday 30 November the Assistant Speaker, Mr Jason Li, reported a message from the Legislative Council informing the House of the following Council Members appointed to the Committee:

- the Hon. Sam Farraway MLC
- Ms Sue Higginson MLC
- the Hon. Stephen Lawrence MLC
- the Hon. Emily Suvaal MLC

The message from the Legislative Council also requested that, notwithstanding anything contrary in the Council's Standing Orders, the Clerk of the Legislative Assembly set the time and place of the first meeting.

*Votes and Proceedings:* 29/11/2023, pp. 425-427; 30/11/2023, p. 459

*Hansard (Proof):* 29/11/2023, pp. 20-22; 30/11/2023, p. 80

Standing Orders: 319 (Joint Committees names stated); 320 (First meeting) and 365 (Suspension of Standing Orders)

Legislation: *NSW Reconstruction Authority Act 2022*, section 93

### 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 (Standing Order 227(1)). On this occasion, the resolution of the House establishing the Committee indicated the six Legislative Assembly Members appointed to the Committee, including who the Chair of the Committee shall be.

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 Legislative Council has a similar Standing Order that specifies that if the Council agrees to a proposal from the Legislative Assembly to appoint a Joint Committee, the Council must advise the Assembly by message of the time and place of the first meeting. As referred to in [Digest No. 3/2023](#), this long-standing practice is a signal of courtesy and comity between the Houses. However, on this occasion in its message to the Assembly the Council requested that, notwithstanding its own Standing Orders, the Clerk of the Legislative Assembly set the first meeting of the Committee.

## Bills

### Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill

The *Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023* is a private Members' bill introduced in the Legislative Assembly by the Member for Pittwater, Mr Rory Amon. The bill seeks to amend three Acts to prohibit offshore activities in NSW including drilling for petroleum. As we noted in



[Digest 2](#), on 29 June 2023 the House agreed to refer the bill to the Committee on Environment and Planning (the Committee) for inquiry and report.

The Committee tabled its [report](#) into the bill on 21 November 2023. The report made 10 findings and 2 recommendations, including that the Legislative Assembly not pass the bill and that the NSW Government work with the Commonwealth to review environmental assessment standards that apply to offshore petroleum and mineral activities.

The original motion to refer the bill to the Committee included that the bill be restored to the Business Paper on the tabling of the Committee's report. The bill was due to lapse on 2 December 2023, leaving only two General Business Days (23 and 30 November) for the House to consider the bill.

However, on 22 November the Leader of the House, Mr Ron Hoenig, moved to suspend Standing and Sessional Orders to:

- extend the lapsing date for the *Environment and Planning Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023* to Thursday 14 March 2024
- postpone consideration of all remaining stages of the *Environment and Planning Minerals Legislation Amendment (Offshore Drilling and Associated Infrastructure Prohibition) Bill 2023* to Wednesday 13 March 2024 at 2.30pm.

In speaking to the motion, Mr Hoenig noted that the existing permit for off-shore drilling for petroleum, known as a PEP11 permit, was currently under assessment by the Commonwealth-New South Wales Offshore Petroleum Joint Authority and may be determined before the March 2024 sittings.

Ms Kellie Sloane, Mr Alex Greenwich, Mr Rory Amon, Mr Adam Crouch, Mr Matt Cross and Mr Mark Speakman also spoke to the motion. The motion was agreed to on division, and all remaining stages of the bill will now be considered on 13 March 2024, during Government Business.

*Votes and Proceedings*: 21/11/2023, p. 376, 22/11/2023, pp. 390-1.

*Hansard (Proof)*: 22/11/2023, pp. 47-53.

Standing Orders 105(3) (Precedence and lapsing of General Business), 198 (Amendment - referral to committee), and 365 (Suspension of Standing Orders)

### **Motions to split cognate private Member's bills**

Earlier this year on 22 June, the Member for Sydney, Mr Alex Greenwich, gave notice that he would introduce the *Equality Legislation Amendment (LGBTIQA+) Bill* and its cognates the *Conversion Practices Prohibition Bill* and *Variation in Sex Characteristics (Restricted Medical Treatment) Bill*.

Before the bills were introduced by Mr Greenwich the House agreed to have the *Variation in Sex Characteristics (Restricted Medical Treatment) Bill* separated from and no longer considered cognate with the *Equality Legislation Amendment (LGBTIQA+) Bill* and the *Conversion Practices Prohibition Bill*.

Consequently, the cognates *Equality Legislation Amendment (LGBTIQA+) Bill* and the *Conversion Practices Prohibition Bill* were introduced and read a second time on 24 August. The *Variation in Sex Characteristics (Restricted Medical Treatment) Bill* was not introduced and is due to lapse on 23 December 2023.



On Tuesday 28 November Mr Greenwich moved that Standing and Sessional Orders be suspended to:

- permit the separation of the *Equality Legislation Amendment (LGBTIQA+) Bill* from the *Conversion Practices Prohibition Bill* and to no longer consider these bills cognate.
- extend the lapsing date for the *Equality Legislation Amendment (LGBTIQA+) Bill* until 15 March 2024.
- amend the routine of business for Thursday 8 February 2024 and, if required, for Thursday 14 March 2024 so that debate on the *Equality Legislation Amendment (LGBTIQA+) Bill* is given precedence at that time for considering general business orders of the day for bills.
- provide that, if not yet completed, all remaining questions for each remaining stage of the *Equality Legislation Amendment (LGBTIQA+) Bill* to be moved without further debate at the conclusion of the time allowed in the routine of business for general business orders of the day for bills on Thursday 14 March 2024.

Mr Greenwich's motion was agreed to. The *Conversion Practices Prohibition Bill* will lapse on 23 December 2023 while the *Equality Legislation Amendment (LGBTIQA+) Bill* lapsing date has been extended until 15 March 2024 and will be considered by the House on 8 February and, if required, on 14 March 2024.

*Votes and Proceedings*: 22/08/2023, p. 228–230; 28/11/2023, p. 407.

*Hansard (Proof)*: 22/08/2023, p. 15-18, 28/11/2023, p.15-16.

Standing Orders 193 (procedure for cognate bills), and 365 (suspension of Standing Orders).

### Procedural note

Cognate bills are bills which are related to each other and presented as a package to be considered together. One question is put in regard to, respectively, the introduction, second reading, consideration in detail and third reading of the bills together (SO 193).

However, Standing Order 195 provides that a member may move a motion for the question on the second or third reading of cognate bills as separate questions. It is then up to the House to decide whether the question would be put separately on each bill.

Standing Order 197 requires that cognate bills shall not be presented for assent until all bills have been passed or otherwise disposed of. If cognate bills have been separated via a decision of the House SO 197 does not apply.

### Bill laid aside

On Tuesday 21 November the Member for Wyong and Minister for Gaming and Racing, Mr David Harris, introduced the *Thoroughbred Racing Amendment Bill* and gave his second reading speech. The intent of the bill was to extend the term of the chairperson of Racing NSW by an additional 24 months, both as an appointed Member and as the chairperson. The second reading debate resumed on Tuesday 28 November and passed on division (78 ayes; 7 noes). Later that same day, requests by Mr Alex Greenwich and Mr Kevin Anderson for the bill to be considered in detail were agreed to, with both Members proceeding to move amendments.

Mr Greenwich moved three amendments that related to the appointment of a selection panel and the statutory review of the Act. Mr Greenwich's three amendments were agreed to on the voices. Mr Anderson moved the Opposition's amendments. The first amendment sought to hold Racing NSW accountable to Parliament by way of Ministerial direction and control. The second amendment sought to empower the Auditor-General to audit





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Racing NSW's financial reports and statements. The Leader of the House, Mr Ron Hoenig, took points of order in accordance with Standing Order 210 to both amendments, stating that they were not relevant to the subject matter of the bill as it dealt explicitly with the extension of the appointment of a chairperson. The Speaker upheld both points of order and ruled the two amendments out of order.

Mr Anderson then noted that despite the previous circulation of three Opposition amendments, he would not move the third amendment, indicating that the Opposition would instead move them in the Legislative Council. The House agreed that the bill, as amended, be agreed to, and the bill was subsequently read a third time and passed the House on division (78 ayes; 7 noes). A message was sent to the Legislative Council for concurrence.

Near the conclusion of the House's final sitting day of the year on Thursday 30 November, the Speaker reported a message from the Legislative Council in the early hours of Friday morning, 1 December, stating that the bill had been agreed to with amendments, which required the concurrence of the Legislative Assembly. The Speaker ordered that the House consider the Legislative Council amendments forthwith. Mr Harris then moved that the bill be laid aside as the proposed amendments ran contrary to the intent of the bill. Mr Harris stated:

An amendment to the bill was agreed to in the other place to insert increased ministerial direction and control for the purposes of accountability to the parliament, provide for Racing NSW financial reports and statements to be subject to audit by the Auditor-General and extend the scope of the bill to cover for improvements in transparency and integrity. The Act has created Racing NSW as independent of Government, including independence in the way Racing NSW controls, supervises and regulates horseracing in New South Wales. Despite what has been claimed by some in the other place, Racing NSW is not a government entity.

[...]

In proposing the extension of the term of appointment for the current chair, the Government set clear public expectations for the board of Racing NSW, including those in relation to increased transparency around welfare and rehoming, greater support for provincial racing and continued commitment to supporting a responsible, sustainable and competitive racing industry. [...] The Opposition's amendments do not address the purpose of the Government's bill, which is to ensure Racing NSW retains the corporate knowledge and expertise to position for further success. That is why the Government cannot support the amended bill from the other place.<sup>1</sup>

Mr Alister Henskens spoke for the Opposition, disagreeing to the motion of Mr Harris. The Speaker put the question and the motion was agreed to on the voices. Mr Harris then moved that a message to be sent to the Legislative Council informing them that the bill had been laid aside. This motion was agreed to on the voices and the House adjourned, pursuant to resolution, until Tuesday 6 February 2024.

*Votes and Proceedings*: 21/11/2023, p. 379; 28/11/2023, pp. 414-19; 30/11/2023, pp. 462-464.

*Hansard (Proof)*: 21/11/2023, pp. 20-22; 28/11/2023, pp. 55-76; 30/12/2023, pp. 112-116.

Standing Orders 161 (amendments not considered), 210 (amendments relevant), 224 (forms of questions on Council amendments), 227 (Messages on Council amendments)

<sup>1</sup> [Hansard \(Proof\) Thursday 30 November 2023](#), pp. 113-115.



### Procedural note

The Standing Orders of both Houses establish procedures for dealing with amendments made to a bill by the other House. The amendment procedures, and provisions for negotiation by message, are designed to cover various situations that may arise as a result of each House's considerations. In instances where the two Houses cannot come to a consensus as to a bill's final form, the bill may be laid aside and not pursued further, pursuant to Standing Order 224. The Council's Standing Orders provide a similar provision allowing the House to order a bill originating in the Council to be laid aside, if the Legislative Assembly proposes amendments it does not wish to proceed with ([LC SO 163](#)). When a motion to lay a bill aside is agreed to, consideration of the bill effectively ends and it is removed from the Business Paper.

This option has existed in the Standing Orders since 1894, as an alternative to the outright rejection of Council amendments, while providing an opportunity to recommit the bill at a later time in the same session if required. An example of a bill being laid aside is the [Impounding Act Amendment Bill 1878](#) introduced by the Government in 1878. The bill was sent to the Council for concurrence on 1 October 1878 and passed with amendment by the Council on 20 March 1879. The Council sent a message to the Assembly for concurrence on the same day.

As the House was about to resolve into a Committee of the Whole to consider the Council's amendment, the Speaker took a point of order, noting that the Council's amendment inserted a new clause which involved a charge upon the public revenue and as such the House could only initiate it in a Committee of the Whole with a recommendation of the Crown. A motion was then moved and agreed to that the bill be laid aside given the nature of the proposed new clause. ([VP 4/4/1879, p. 412](#)).

### Rescission of LC amendments to the Industrial Relations Amendment Bill

On 23 November 2023, Ms Sophie Cotsis introduced the *Industrial Relations Amendment Bill 2023*. On Tuesday 28 November, following the second reading debate and consideration in detail, the bill was sent to the Legislative Council for concurrence.

On Thursday 30 November the bill was debated in the Legislative Council and considered by the House as a committee of the whole. (Committee of the whole is the Council's equivalent to the Assembly's consideration in detail). During this consideration, two separate Opposition amendments to the bill were moved by Mr Damien Tudehope; one was agreed to and the other was negatived on division. The bill, as amended, was agreed to and returned to the Legislative Assembly with a message and an accompanying schedule, seeking concurrence.

The Assembly consideration of the Legislative Council amendments happened as soon as the message was reported. Ms Cotsis moved that both amendments be agreed to and the question was put and passed. The





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House continued to sit until the Temporary Speaker left the Chair on the ringing of a long bell, pursuant to a resolution made earlier that day (the Speaker leaving the Chair on the ringing of a long bell is a way of 'pausing' proceedings, usually in situations where the Assembly is expecting a message from the Council).

When the House resumed on a long bell, the Speaker reported a message from the Legislative Council advising of an error in the schedule of amendments in the earlier message. The message forwarded a revised schedule with one amendment and requested the concurrence of the House.

The Leader of the House, Mr Ron Hoenig, moved a suspension of Standing and Sessional Orders to rescind the resolution agreeing to two Legislative Council amendments and instead agree to the revised schedule containing just one amendment. The suspension was agreed to and the revised schedule of one amendment was agreed to by the House.

The House's consideration of the first message with two amendments as originally received, and the revised message with one amendment, were both recorded in the Votes and Proceedings. The bill was assented to by the Governor on 5 December 2023.

*Votes and Proceedings:* 30/11/2023, pp. 455-456, 460-461.

*Hansard (Proof):* 30/11/2023, pp. 67-68, 109-110.

Legislative Council Minutes: 30/11/2023, pp. 812-816, 838-839

Standing Orders 222 (Return of bill with proposed amendments), 365 (Suspension of Standing Orders)

### Procedural note

As the bill had been passed by both Houses in different forms, the error required correction. There are three Standing Orders which anticipate the need for corrections:

- **SO 155** - A vote of the House, except a motion for the passing of a bill, may be rescinded during the same session after 7 clear days notice.
- **SO 156** - A vote or proceeding of the House containing irregularities or mistakes may be corrected at once by leave of the House or by notice of motion.
- **SO 219** - Amendments of a clerical, typographical, or formal nature and other obvious errors may be corrected in any part of the bill by the Clerk.

In this instance, the error was not a minor typographical mistake or irregularity and therefore could not be amended under SO 156 or SO 219. As the Government intended to deal with the bill before the end of the year, there was not 7 clear days notice. As such, the rescission could not be made under SO 155 either. Therefore, a suspension of Standing Orders was required.

Although rare, examples of decisions being rescinded have occurred previously. For example on 18 September 2003 a Member moved a motion on demountable classrooms which was agreed to and rescinded later that same day. This was done through a suspension of Standing Orders. Similarly, on 28 May 1997 a motion to suspend a Member from the House was rescinded.