

New South Wales Parliament Chronicle — The 54th Parliament (2007 – ongoing)*

**Prepared for the Australasian Parliamentary Review by staff
of the two Houses of the New South Wales Parliament**

Introduction

The 54th New South Wales Parliament, which commenced after the March 2007 elections and continues to the March 2011 elections, has been marked by the frequency with which the governing party has changed Premiers – three since March 2007. There have been other, less high-profile, developments however, which will have a lasting impact on the way in which the Parliament operates. This article provides a summary of those developments.

The Election of an Independent Speaker and Subsequent Amendment to the Constitution Act 1902

Unveiling his proposed Cabinet on 29 March 2007 shortly after the election, Premier Iemma surprised many when he announced that the independent member for Northern Tablelands, Mr Richard Torbay had been offered, and accepted, nomination for the position of Speaker. Mr Torbay accepted the nomination on the condition that the Government establish a Rural and Regional Taskforce to meet with and listen to the concerns of NSW rural and regional communities in relation to Government service delivery.

The Speaker also obtained agreement from the Premier that he be able to take part in discussions in the House, particularly on matters that specifically affected his electorate. The *Constitution Amendment (Speaker) Bill* was therefore introduced to amend the *Constitution Act 1902* to enable the Speaker of the Legislative Assembly to participate in debates (as the President of the Legislative Council is able) and to cast a deliberative vote when another member is presiding. As the Constitution stood prior to amendment, the Speaker was able to exercise a casting vote in the event of an equality of votes, however the instances where this occurs are rare.

* Because there has been no NSW chronicle since 2006 this report has been extended beyond the normal word limits.

Since the amendment, the Speaker has made private members' statements each sitting week. In addition the Speaker has introduced two private members' bills, both of which have been assented to during the second half of 2009 — the *Parliamentary Remuneration Amendment (Salary Packaging) Bill*, and the *Food Amendment (Meat Grading) Bill*.

Three Years, Three Premiers

The 54th Parliament has seen three Premiers to date. The Labor Government was elected for its fourth term in 2007 under the leadership of the Hon Morris Iemma MP, Premier since August 2005. The fate of Premier Iemma was tied with the Government's push to privatise the electricity industry, covered in greater detail later in this article.

In August 2008, the Government requested that Parliament be recalled to consider legislation to privatise the electricity industry. The legislation was introduced in the Legislative Council but debate was adjourned by the Government after it became clear that the Opposition and cross-bench would not be supporting the legislation. Accordingly, the legislation was never introduced into the Legislative Assembly.

The failure of the Government to pass its legislation culminated in the resignation of Premier Iemma and the Treasurer, the Hon Michael Costa MLC. Nathan Rees MP was subsequently elected by his Labor Party colleagues as the new Premier and was sworn in on Friday 5 September 2008.

Premier Rees's term of office lasted just over one year, before he resigned from office. The demise of Premier Rees was the consequence of a number of cabinet reshuffles in late 2009. The first reshuffle occurred on 11 September 2009 when the Premier demoted a number of key Ministers who were purportedly working to undermine his leadership. This reshuffle was an early indication of the instability that would feature in the last couple of months of the Rees Premiership.

Two months later, on 14 November 2009, the Australian Labor Party State Conference conferred on the Premier the power to decide his own Cabinet. The following day Mr Rees dropped both the Primary Industries Minister, the Hon Ian Macdonald MLC, and the Finance Minister, the Hon Joe Tripodi MP, from his Cabinet. The new Ministers appointed were the Hon Peter Primrose MLC, who at the time was the President of the Legislative Council, and the Hon Paul McLeay MP. The Legislative Council subsequently elected the Hon Amanda Fazio MLC as the Council's third female President.

While the Premier had been given the power to decide his own Cabinet, the fate of the Premier was left in the hands of the parliamentary caucus. On 3 December 2009, the caucus forced a spill motion and elected Kristina Keneally MP as the first female Premier in the State's history. Premier Keneally made only minor changes to the Cabinet, including re-appointing the Hon Ian Macdonald MLC as a Minister.

The next NSW general election is to be held on 26 March 2011.

The Recall of Parliament to Debate Electricity Privatisation

On 28 August 2008, the New South Wales Parliament was recalled to consider bills to enable the Government to privatise the New South Wales electricity industry. The former Premier, the Hon Morris Iemma MP, had in June 2008 introduced in the Legislative Assembly bills to provide for the restructuring of part of the New South Wales electricity industry, and to establish a fund into which the net proceeds of the restructuring would be paid and from which funds for capital works projects would be drawn. Following the introduction of the bills, the media reported that a number of Government members would cross the floor to vote against their passing, raising doubts as to whether the bills would pass the Assembly without the support of the Opposition.

On 19 June 2008, before the Houses adjourned for the winter recess, the Parliament passed a bill to require the Auditor-General to review aspects of the Government's program for restructuring the New South Wales electricity industry. On 21 August 2008, the Auditor-General tabled his report with the Clerks, and the next day the Parliament was recalled. The two Houses sat again on 28 August 2008.

In the Legislative Council, the Treasurer gave notice of two new cognate bills for the privatisation of the electricity industry. Following a 30-minute adjournment debate, the House adjourned until 12.17 pm the same day. This would allow the electricity bills to be introduced on the 'next sitting day' as required by the standing orders.

Subsequently, the Treasurer introduced the bills and declared them to be urgent, allowing them to proceed through all stages during the sitting. The Electricity Industry Restructuring Bill (No 2) 2008 was identical to the electricity industry bill introduced by the Premier in the Assembly in June. In his second reading speech, the Treasurer advised that the Government had decided to introduce the bill in the Council because 'the investment community requires certainty ... It is the vote in this place that will determine whether the electricity industry restructuring will occur. So it is desirable that this House is the first to vote on this package of bills'.

Following the Treasurer's second reading speech, the Leader of the Opposition in the Council indicated that the Opposition would not support the bills. In recognition that the bills would not pass the House, the Leader of the House moved that the debate be adjourned. The motion was carried, with members of The Shooters Party and a member of the Christian Democratic Party voting with the Government, and the House then adjourned well before the time set down for Question Time. While there is no standing order or other statutory requirement for Question Time to be conducted each sitting day, it is only on very rare occasions that it has not been conducted.

With the defeat of the Government's bills, the program for restructuring the electricity industry was not pursued by the Government. When the House next sat

on 23 September 2008, the architects of the program had gone — the Hon Nathan Rees MP had replaced the Hon Morris Iemma MP as Premier, and the Hon Michael Costa MLC had resigned from the House.

New Standing Orders in the Legislative Assembly

The Legislative Assembly adopted new standing orders on 21 November 2006. These new standing orders came into effect at the commencement of the 54th Parliament in May 2007. The key changes were as follows:

An amendment to the *Constitution Act 1902* during 2006 necessitated an amendment to the standing orders regarding the swearing in of Members. Members no longer swear or affirm allegiance to the Queen but are required to take a Pledge of Loyalty to Australia and the people of New South Wales before they are permitted to take a seat in the Parliament.

Provision has been made for an Acknowledgement of Country to be read at the commencement of each sitting after the prayer, acknowledging the traditional owners of the land, both where the Parliament resides and in the electorates Members represent. It has been the practice of the Speaker since November 2005 to acknowledge the traditional owners of the land the Parliament sits upon.

The procedure to amend bills has been streamlined with the House considering the amendments rather than resolving into a committee of the whole. Under the new consideration in detail stage there is no need for the Speaker to be replaced by a Chairman of Committees or for a report to be made to the House.

In addition to the committee of the whole being replaced with the consideration in detail stage, there are no longer be three ‘readings’. The first reading has been replaced with the introduction of the bill, the second reading with the agreement in principle and in the majority of cases the third reading has been dispensed with. If there is no consideration in detail stage the Speaker will declare a bill to have passed the House unless a motion has been passed ‘That the bill be not passed.’

From the beginning of the sittings in 2008 a number of sessional orders came into effect to implement ‘family friendly’ sitting hours. These sessional orders were fine-tuned during 2008 and were adopted as standing orders in June 2009 together with some other amendments. Some key changes were:

The routine of business provides for ‘family friendly hours’, being the automatic adjournment of the House at 7.30 pm on Tuesday and Wednesday (or at the conclusion of the matter of public importance if before 7.30 pm) and at 6.30 pm on Thursday (or at the conclusion of private members’ statements), and at the conclusion of private members’ statements on Fridays (usually around 1.00 pm).

Petitions signed by 500 or more persons are to be referred to the responsible Minister for a response. The response is to be tabled in the House within 35 calendar days and published.

The restrictions on questions being ruled out of order for referring to debates of the current session and for anticipating debate have been removed.

There were also a number of amendments to the standing orders related to committees. For instance, the election of chairs and deputy chairs is to be reported

to the House; committees are authorised to conduct proceedings by electronic communication (e.g. video conferencing) with safeguards regarding quorums being present; committee chairs will report to the House inquiries that have been referred by a Minister or that the committee has resolved to conduct; and the Government is required to respond to recommendations made in committee reports within six months of the report being tabled.

A New Protocol for the Execution of Search Warrants on Members' Offices

Over the past six years the Privileges Committee of the New South Wales Legislative Council has conducted a number of inquiries concerning issues relating to the execution of search warrants on members' offices. Those inquiries concerned the seizure of documents from the office of a member of the Council (the Hon Peter Breen) by the ICAC (2003), a claim of privilege arising from the seizure of such documents (2004), and the development of a draft protocol for the execution of search warrants by law enforcement and investigative agencies (2006).

In September 2009, the respective Houses of the New South Wales Parliament gave references to the Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics and the Legislative Council Privileges Committee in relation to the issue of search warrants within the parliamentary precincts. These references required the respective committees to develop a memorandum of understanding between the Presiding Officers and the Commissioner of the ICAC concerning the execution of search warrants by the Commission on the Parliament House offices of members. This followed the adoption by the ICAC of its own *Operations Manual* concerning the obtaining and execution of search warrants which included procedures for the execution of search warrants on parliamentary offices (Procedure 9).

In its report on the Inquiry, dated 25 November 2009, the Legislative Council Privileges Committee noted that Procedure 9 of the Commission's *Operations Manual*, and in particular Section 10 which concerns parliamentary offices, incorporated the key measures recommended by the Committee in its draft protocol of 2006. The Committee proposed a Memorandum of Understanding between the Parliament and the Commission which provides that the agreed process for the execution of search warrants on members' offices is that set out in Procedure 9. The Committee recommended that the President enter into this Memorandum of Understanding with the Commissioner of the ICAC, and that the House request the Legislative Assembly to authorise the Speaker to join with the President in doing so.

On 25 November 2009 the Legislative Council adopted the Committee's recommendations and sent a message to the Assembly in the recommended terms.

The Legislative Assembly Standing Committee on Parliamentary Privilege and Ethics reported on the matter on 26 November 2009. This gave the Committee an

opportunity to consider the finding and recommendations contained in the Legislative Council Privileges Committee report and the message forwarded from the Legislative Council.

While agreeing with the recommendations of the Legislative Council Committee and the resolution of the Legislative Council regarding the adoption of a memorandum of understanding with the ICAC, the Legislative Assembly Committee recommended that any protocol adopted should be incorporated into a Memorandum of Agreement with the NSW Police and the Director of Public Prosecutions, in addition to the ICAC. The Committee also considered the issue of parliamentary privilege more generally and has recommended that the Government be requested to introduce legislation similar to s16 of the *Parliamentary Privileges Act* (Commonwealth) to confirm the protection of Article 9 of the Bill of Rights.

The Legislative Assembly agreed to a resolution to allow the Speaker to enter into a Memorandum of Understanding with the Commissioner of the ICAC on 2 December 2009. Both Presiding Officers and the Commissioner of the ICAC have since signed the Memorandum of Understanding.

Suspension of the Legislative Council for 69 Calendar Days

In the early hours of 25 June 2009, the President left the Chair of the New South Wales Legislative Council and suspended the House until the ringing of a long bell. The House did not sit again for over 69 days.

This was extremely unusual. While it is commonplace for the House to be suspended for short periods over the lunch and dinner break, or more rarely over the course of several hours while behind-the-scenes negotiations on a bill are conducted, the suspension of the House for 69 days over what is normally the winter long adjournment was unprecedented. In normal circumstances, the House is adjourned for the long adjournment by motion of the House.

The suspension of the House took place under the provisions of Standing Order 34, which requires that the House not meet unless a minister is present in the Chamber. The House was suspended when the last remaining minister in the House chose to leave the chamber rather than continuing with the Government's legislative agenda.

In the event, the House did not sit again until 1 September 2009. On that day, the President took the Chair at 2.30 pm and debate from 25 June 2009 resumed. The House subsequently adjourned at 3.16 pm, finally concluding the sitting day of 24 June 2009 which had continued for precisely 69 days, 4 hours and 16 minutes.

According to resolution, the President took the Chair again at 3.31 pm and the sitting day of 1 September 2009 commenced.

This precedent raised serious questions about the right of the House to control the conduct of its own sitting times and sitting patterns. It also raised questions about

the rights of individual members, as elected representatives of the people, to participate in debate and to represent the views of their constituents. By effectively walking out, the Government ensured that the House could not adjourn on its own motion nor be recalled by a majority of its members.

Highlights from Legislative Council Committees

Select Committee on Electoral and Political Party Funding and Inquiry into Badgerys Creek land dealings

Political donations were a matter of controversy during the 54th Parliament, particularly after the Independent Commission Against Corruption (ICAC) inquiry into corruption regarding Wollongong Council. A Select Committee into the matter was established in 27 June 2007, chaired by Revd the Hon Fred Nile MLC, and with representation of all parties in the Legislative Council except for The Greens. The Inquiry received 189 submissions, held five public hearings and one public forum. Its report of 19 June 2008 contained a comprehensive examination of political funding in NSW, including a proposed model for reform which would see political donations by corporations and other organisations banned, with only small donations by individuals permitted, and election spending capped.

In response to the recommendations of the Committee, the Election Funding Amendment (Political Donations and Expenditure) Bill and the Local Government and Planning Legislation Amendment (Political Donations) Bill were introduced into the Legislative Council by Attorney General the Hon John Hatzistergos MLC on 18 June 2008, which introduced some reforms but fell short of the overall model proposed by the Committee. The report continued to be debated over the following two years, with Premier Iemma indicating initial support. Premier Iemma's successor Premier Rees, on legal advice, decided that the Federal Government needed to take the lead in reform for the model to be effective.

Following the murder of property developer Mr Michael McGurk an inquiry in 2009 by General Purpose Standing Committee No. 4 into land dealings in Badgerys Creek drew upon the Select Committee report to highlight the need for reform of developer donations. The Election Funding and Disclosure Amendment (Property Developers Prohibition) Bill 2009 subsequently was passed by both Houses on 3 December 2009, while in the same week a further inquiry was referred by the then Premier Rees to the Joint Standing Committee on Electoral Matters to re-examine the recommendations of the Select Committee. The Committee reported on 26 March 2010, with a report that was in broad agreement with a number of the key recommendations associated with the model for reform proposed in the Select Committee report.

NSW Ambulance Service Inquiry — Protection of Vulnerable Witnesses

In May 2008, General Purpose Standing Committee No. 2 self-referred an inquiry into the management and operations of the NSW Ambulance Service. The Inquiry

dealt with a number of sensitive issues predominantly relating to bullying and harassment by colleagues and managers, which had in numerous cases led to depression, anxiety, self-harm and even suicide.

During the Inquiry, the Committee received several submissions in which the authors disclosed serious mental health issues, including suicidal thoughts or reported actual suicide attempts. In response, the Committee, with advice from the Centre for Mental Health, developed a 'Support Plan', prepared by a senior clinical psychologist, to assist Committee staff to communicate with vulnerable inquiry participants and to make appropriate referral to localised mental health services. The response plan was activated for 11 individuals over the course of the Inquiry.

Inquiry into Bullying of Children and Young People — Use of Facebook

In December 2008 General Purpose Standing Committee No. 2 initiated an inquiry into the bullying of children and young people. In a first for a NSW parliamentary committee, the Committee conducted an online survey to canvass young people's views on bullying. The survey, which was advertised on Facebook, was conducted from 14 to 31 August 2009 and generated over 300 responses.

The move to online consultation required consideration of a number of procedural issues such as the status of the communication as regards privilege. Issues were also raised as to the Committee's responsibility to support any vulnerable survey participants who had experienced bullying.

The survey responses painted a powerful picture of how bullying impacts on young people, and had a significant influence on the Committee's findings. The survey was also an excellent way to engage with the community, as it provided the means to reach hundreds of young people and introduce them to the work of Parliament.

Changes to the Administration of the Parliament

The administration of the New South Wales Parliament has recently undergone a major restructure, with the establishment of a new department responsible for the delivery of support services to members, the House departments, the community and other stakeholders. The establishment of the new Department of Parliamentary Services (DPS) was the initiative of the Presiding Officers to consolidate the existing joint services into one coordinated entity. On 2 June 2008, Mr Brian Ward commenced with the Parliament as Executive Manager, DPS.

A further change in January 2009 resulted from an independent review of the management of members' entitlements. A central recommendation of the review was the need for the management of members' entitlements (previously managed separately by the House Departments) for members of both Houses to be centralised into a single unit within DPS.

The Department of Parliamentary Services provides a range of centralised support services in the areas of financial management, members' entitlements, corporate and personnel services, the library, printing, information technology, Hansard, archives, building services, security, education and catering. Collectively DPS and the two House departments – the Department of the Legislative Assembly and the Department of the Legislative Council — are referred to as the Parliamentary Administration.

In October 2009 the Parliament published its first Strategic Plan for the whole of the organisation. The Plan contains both short term (to 2011) and longer term initiatives (to 2018).

The establishment of DPS has provided the House departments with the opportunity to focus on the core business of providing advisory, research and support services to the Houses and their committees, and provide administrative assistance with members' constituent duties - including the employment of members' staff and, in the Assembly, the management of members' electorate offices. In addition, the House departments have been able to explore a number of initiatives aimed at strengthening the institution of Parliament. The Council has established a Procedural Research and Training unit to develop and deliver a procedural training program for members and their staff, as well as external clients such as public servants, Ministerial staff, school students, university students and others. The unit is also exploring ways to improve access to information about the Legislative Council and its committees to enhance community awareness of the role of the Council.

During 2009, the Council developed two new publications to make the work of the Legislative Council more accessible to the community. The *Running Record* is a live written record of the decisions and actions of the Legislative Council as they happen each sitting day. It is accessible from the Parliament's website when the Council is sitting by clicking on the link 'Today's Legislative Council proceedings'. The *House in Review* is a weekly publication summarising the key events of the sitting week, including the progress of legislation, orders for papers and committee activities. It is published on the Parliament's website on the Friday afternoon of a sitting week.

The Legislative Assembly has reduced the number of administrative units from seven to three: the Office of the Clerk; Procedure and Chamber Support; and Committees. There has been a renewed focus on procedure research, resources (accessible publications and databases) and training for staff. During 2009 the Assembly undertook its first staff opinion survey and developed a response to the major issues raised. During 2010 and beyond the program called 'Building a Better Legislative Assembly' is being implemented with the assistance of the Organisational Development Section and both internal and external project resources.

The Assembly is also implementing two programs to increase staff participation and engagement. A number of corporate projects and strategic initiatives are being

delivered through project teams drawn from across the Assembly. The aim is to flexibly utilise staff resources and provide staff with exposure to the corporate management and development issues the Assembly faces. The second initiative is the establishment of the Management Advisory Group as a second tier management group below the executive management group. The Management Advisory Group includes all committee managers and other senior staff and is part of wider participative and consultative arrangements with staff.

During 2010 the Legislative Assembly will undertake a wider and more formal review of its structure, focussing on alignment, service delivery and flexibility of resources to service high demand periods.

New Publications

New South Wales Legislative Assembly Practice, Procedure and Privilege

On 23 October 2007 the Speaker, the Hon Richard Torbay MP, launched the new publication *New South Wales Legislative Assembly Practice, Procedure and Privilege*, edited by Russell Grove, Clerk of the Legislative Assembly, with assistance from Mark Swinson, Deputy Clerk, and Stephanie Hesford, Parliamentary Officer — Research and Projects.

The book includes significant rulings of former Speakers, procedural precedents, discussion of the laws related to the Parliament and also includes reference to past practice where appropriate. The work also includes the new Standing Orders and those changes made to the *Constitution Act 1902* in July 2008, which enable the Speaker to participate in debate and vote in the House when not presiding in the Chair.

New South Wales Legislative Council Practice

In May 2008, the then President of the Legislative Council, the Hon Peter Primrose MLC, launched *New South Wales Legislative Council Practice* by Lynn Lovelock, the current Clerk of the Council, and John Evans, the former Clerk.

New South Wales Legislative Council Practice is a comprehensive account of the precedents, practices and procedures of the New South Wales Legislative Council, the upper House of the New South Wales Parliament and the oldest legislative body in Australia.

Building Relationships with Pacific Parliaments

The Commonwealth Parliamentary Association (CPA) has a twinning arrangement under which every Australian state and territory parliament is twinned with one or more parliaments in the Asia-Pacific region.

In 2007, the New South Wales Parliament was ‘twinned’ with the parliaments of the Autonomous Region of Bougainville (the Bougainville House of Representatives) and the Solomon Islands (the National Parliament of Solomon Islands).

The twinning agreements aim to strengthen the parliaments in the Solomon Islands and Bougainville, while providing opportunities for staff of the NSW Parliament to gain new skills and knowledge.

The NSW Parliament has an extensive history of working with emerging parliaments, particularly those in the Pacific region. In March 1995, the Deputy Clerk of the New South Wales Legislative Council undertook a review of the operations and administration of the National Parliament of Solomon Islands. Subsequently, the Legislative Council has been involved in phases one (2004–2007) and two (2008–2012) of the Solomon Islands Parliamentary Strengthening Project, implemented by the United Nations Development Program.

The NSW Parliament’s involvement with the Bougainville House of Representatives is relatively recent but there have already been some significant activities, including the secondment of an officer of the Bougainville House of Representatives to the Legislative Assembly Committees in April-May 2009, and a visit by senior officers to the Bougainville House of Representatives in June 2009.

The NSW Parliament has secured a grant from AusAID under its Pacific Public Sector Linkages Program to fund twinning activities over a three-year period. This provides an excellent opportunity to strengthen the Pacific parliaments and make them sustainable into the future. The planned activities include the exchange of staff between the parliaments and long-term secondment opportunities for staff of the Pacific parliaments to gain practical experience in the NSW Parliament.

Conclusion — and Looking to the Future

The 54th Parliament has not yet concluded, but a great deal has already occurred. 2010 will be an interesting year, as the major parties prepare for the March 2011 general election. Whatever the outcome of that election, there are likely to be challenges for the ongoing operation of both Houses. ▲