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# An Unprecedented Election of a President

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**Abstract** The surprise resignation of the President of the NSW Legislative Council, Liberal John Ajaka, in February 2021, resulted in a critical situation when a deadlock between the Government and most of the non-Government MLCs meant that a replacement could not be elected. Eight MLCs lodged informal votes in the ballot to fill the vacancy, leaving the Government's candidate short of an absolute majority. The Council could not function without a President and the NSW Parliament could not legislate without the upper house. This article traces the increasing politicisation of the election of the President since 1991 that formed the background to this crisis. It sets out the controversy over the status of the informal votes and the meaning of 'a majority' in the Standing Orders relating to the election of the President. While the crisis was eventually resolved, none of the MLCs involved can escape blame for an unedifying spectacle likely to damage the standing of the NSW Parliament.

## INTRODUCTION

The President of the NSW Legislative Council, Liberal John Ajaka, in a surprise move, announced in February 2021 that he was resigning. He stepped down as President on 24 March, having been in that office since 2017, and resigned as a Member of the Legislative Council on 31 March. What should have been a relatively smooth transition to a new presiding officer proved to be a bitter, unedifying and unprecedented conflict.

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## BACKGROUND

The office of President of the Legislative Council is one of the most venerable and distinguished in NSW politics. After the advent of responsible government, upper house Members were nominated by the Governor on the advice of the Premier. Similarly, the President was nominated, and could be removed, by the Governor. It was a non-political appointment and governments nominated presiding officers who commanded the respect of most MLCs. The list of occupants of the Chair reads like an honour roll of distinguished parliamentarians: William Charles Wentworth, Terence Aubrey Murray, John Hay, John Lackey. Most Presidents served lengthy terms and were respected for their impartiality. From October 1862-May 1903, there were four Presidents. An indication of the status of the office is that Lackey at one point acted as Deputy Governor.<sup>2</sup>

When the Council was reconstructed into an indirectly elected house in 1933, MLCs elected the President. The tradition of selecting respected, impartial presiding officers who remained in office under succeeding governments continued. Between 1934 and 1978 there were only four Presidents: John Peden (1929-46), Ernest Farrar (1946-52), Bill Dickson (1952-66) and Harry Budd (1966-78). The Presidency was contested for the first and last time in this period in 1934.<sup>3</sup> Things changed little after the Council became directly elected in 1978. Labor's highly respected John 'Johno' Johnson served as President from 1978-91. He was elected unopposed in 1978 and the Coalition did not oppose his continuation in office after the 1981 and 1984 elections.

A significant development occurred when the incoming Greiner Government attempted to remove Johnson from the Presidency. While the first attempt in April 1988 failed, the Government succeeded in dislodging him in 1991. Moving the motion on 3 July 1991, the Leader of the Government in the Council, Ted Pickering, said: 'We believe it is in the best interests of the house and honourable members that the President be drawn from the ranks of the Government parties; we refute the suggestion that there is some law or convention that grants security of tenure to a

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<sup>2</sup> D. Clune and G. Griffith, *Decision and Deliberation: The Parliament of NSW, 1856-2003*. Leichhardt: Federation Press, 2006, pp. 82-8.

<sup>3</sup> *NSW Legislative Council Practice*, 2<sup>nd</sup> ed, 2021, pp. 263-4.

presidential incumbent for his or her full parliamentary term'. Pickering denied it was a motion of no confidence in Johnson who had presided with 'scrupulous impartiality'.<sup>4</sup>

The Leader of the Opposition in the Council, Michael Egan, responded:

What is at stake with this motion today is not the future of the Hon. John Johnson: what is at stake is the future of this house, the future of the office of Presidency, its impartiality, independence, integrity and standing. Whether it is intended or not, this motion, if successful, will destroy the impartiality, independence and standing of the Presidency. The position quite simply will be up for grabs whenever the numbers change. It will be reduced in stature. It will become no more than a mere job for the boys and girls. This house has a long tradition of impartial Presidents, not of Presidents I would hasten to point out who have no political commitments or no political passions, but Presidents who, when they go into the chair or, indeed, perform any of the functions associated with the Presidency, completely put aside those partisan commitments and act as loyal servants of the whole house.<sup>5</sup>

The motion to remove Johnson was passed 22 votes to 19 with the support of Christian Democrats Fred and Elaine Nile. Veteran Liberal MLC Max Willis was then elected President.

The Government subsequently passed legislation to provide that the office of President became vacant before the first meeting of the house after an election. In effect, this gave the incoming Government an opportunity to elect its candidate—spoils to the victors. Opposing the change, the Leader of the Australian Democrats, Elisabeth Kirkby MLC, said:

The Australian Democrats support the independence of the Parliament. We believe that the maintenance of a presiding officer who, as far as possible, is politically independent, will contribute to that. A presiding officer secure for the length of his term brings continuity and stability to the position of President and therefore minimises any possible accusations of political bias which have bedevilled Speakers in another place. It is our

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<sup>4</sup> *NSW Parliamentary Debates (NSWPD)*, 3 July 199, p. 101.

<sup>5</sup> *NSWPD*, 3 July 1991, pp. 102-103.

belief that this bill is unnecessary, in that a procedure is already in place to remove the President. It is obvious that the incumbent may be removed by a vote on the part of the majority of members, or the incumbent may resign. Thus the intention of the bill is clear. It provides a means for the squeamish to avoid having blood on their hands if they want to change the President.<sup>6</sup>

This was the beginning of the politicisation of the election of the President. Ironically, at this time the Liberal Speaker of the Legislative Assembly, Kevin Rozzoli, was, ultimately unsuccessfully, advocating a continuing, non-party Speaker along the lines of the House of Commons.<sup>7</sup>

Max Willis was forced to resign on 29 June 1998 after television cameras in the chamber showed him in the chair obviously affected by alcohol. The election of a successor demonstrated that the process had descended into an undignified political squabble. The Carr Government did not want to elect a Labor MLC as it would lose a crucial vote on the floor of the house (the President has a casting not deliberative vote). Instead, the ALP nominated Helen Sham-Ho, until the morning of the ballot a Liberal MLC. Sham-Ho had resigned from the Liberal Party on the grounds that it had not done enough to counter Pauline Hanson's One Nation Party. The National Party nominated popular Labor MLC Bryan Vaughan. Christian Democrat Fred Nile re-nominated Willis. The Liberal Party put forward one of its own, Virginia Chadwick, an MLC since 1978 and a former Minister, who won the ballot with 21 votes to Sham-Ho's 19 and Willis' one (there were no votes for Vaughan).<sup>8</sup>

In an indication of how the situation had changed, there were five Presidents between 1999 and 2020, all from the governing party: Labor's Meredith Burgmann (1999-2007), Peter Primrose (2007-09) and Amanda Fazio (2009-11); Liberals Don Harwin (2011-17) and John Ajaka (2017-21).

Although there was thus a trend towards politicisation in the Council, it did not descend to the level of overt partisanship that had long characterised the Speakership in the Assembly. There the office almost invariably went to a Government MP and was often

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<sup>6</sup> *NSWPD*, 25 September 1991, p. 1712.

<sup>7</sup> Clune and Griffith, *Decision and Deliberation*, p. 559.

<sup>8</sup> *NSWPD*, 29 June 1998, pp. 6313-6317.

a consolation prize for a failed candidate for Cabinet. The Opposition regularly opposed the election or re-election of the Speaker as a political gesture. Well-regarded, even-handed presiding officers were a rarity, with Daniel Levy (1919-25, 1927-30, 1932-37), Kevin Ellis (1965-73) and Kevin Rozzoli (1988-95) notable exceptions. Speakers such as Bill Lamb (1947-59), Lawrie Kelly (1976-88) and John Murray (1995-2003) were notorious for their partisanship.<sup>9</sup>

The nadir in electing a Speaker occurred in 1911, when the first Labor Government lost its majority in the Assembly. Acting Premier WA Holman persuaded a renegade Liberal MLA, Henry Willis, to nominate as Speaker so Labor could remain in office. The Opposition was outraged and commenced a filibuster to prevent Willis taking the chair. According to HV Evatt:

Willis was duly nominated as Speaker by George Black and [Robert] Scobie, two Labor veterans. Then the Liberal barrage commenced. Under the Standing Orders, all that the Clerk was empowered to do was to point out the member who was next to speak. Unspeakably vile language was used by some Opposition members, and the Hansard staff was unable or unwilling to take down every insult. The attacks on Willis were continued without cessation throughout the night. Very few Labor members spoke. Leading Opposition members competed with one another in the violence of their epithets.<sup>10</sup>

There was, however, a weakness in the Opposition strategy in that they had neglected to nominate a candidate. Under the Standing Orders, if only one candidate was nominated, no vote was necessary and the nominee was called to the chair. To take advantage of this, a Labor MLA rose to speak but hesitated before commencing his address. According to Holman's account, every Labor Member used this crucial interruption to

howl out the word "Willis" at the top of his voice, to the astonishment of the few members of the Opposition present ... Black and Scobie, faithful to their instructions, had each seized Willis by one arm, and were more than two-thirds of the way which separated his modest seat in the

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<sup>9</sup> Clune and Griffith, *Decision and Deliberation*, pp. 558-559.

<sup>10</sup> H.V. Evatt, *Australian Labour Leader: The Story of WA Holman and the Labour Movement*. Sydney: Angus and Robertson, 1940, pp. 290-291.

chamber from the Speaker's throne. For a moment a wild idea of resisting his occupancy of it by physical force was evidently contemplated by some members of the Opposition, but I had thoughtfully planted around the steps of the chair some members of our own party who by their physical dimensions and corporeal weight were qualified to discourage any effort of that kind ... In another moment Willis was in the chair.<sup>11</sup>

The Opposition never forgave Willis for taking the Speakership and his tenure of office (1911-13) was marked by constant disorder. He proved to be an unsuccessful, unpopular and unworthy presiding officer.<sup>12</sup> These disreputable events were in marked contrast to the more dignified and decorous proceedings in the Council.

## THE ELECTION OF A SUCCESSOR TO PRESIDENT AJAKA

If the Presidency is vacant, the Council must elect a presiding officer before proceeding with any other business. In the absence of a President, the Clerk acts in the role and is in control of the house during the election. The procedure for election of a President is summarised in the *Annotated Standing Orders of the Legislative Council*:

When two or more members are proposed as President under Standing Order 12, the election is determined by a ballot conducted under Standing Order 13. When a ballot is required, the bells are rung for five minutes and then the doors locked, as in a division. Ballot papers are distributed by the Clerks to all members in their places. Members must write on the ballot paper the name of the candidate for whom they wish to vote. The Clerk demonstrates to members in the chamber that the ballot boxes are empty, then locks the boxes before moving around the chamber allowing members in their places to deposit their ballot papers in the ballot boxes. When all members present have cast their vote, the Clerk asks the nominator of each candidate to act as a scrutineer during the counting of the votes. The ballot boxes are then opened in the chamber and the votes are counted by the Clerk witnessed by the scrutineers ... The candidate

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<sup>11</sup> M. Hogan (ed.), *The First NSW Labor Government 1910-1916; Two Memoirs: William Holman and John Osborne*. Kensington: UNSW Press, 2005, pp. 48-50.

<sup>12</sup> Clune and Griffith, *Decision and Deliberation*, pp. 216-221.

who has the greater number of votes is declared elected President, provided that the member also has a majority of the votes of the members present.<sup>13</sup>

The requirement that the successful candidate have a majority of votes cast was aimed at ensuring a presiding officer had widespread support in the house. It was to play a crucial part in the dramatic events surrounding the election of Ajaka's successor.

An early sign that machinations were under way came on 17 March when the Leader of the Opposition in the Council, Adam Searle, moved that a Sessional Order be adopted to amend the Standing Orders relating to the election of President. The effect was to remove the requirement that a candidate nominated for the position had to indicate that they consented. Traditionally, if a nominee did not acquiesce, their nomination lapsed. Under the Sessional Order, a Member elected without their consent would either have to take the chair or resign and precipitate a fresh election. In effect, the Sessional Order would provide cover for a Coalition defector to take the chair as a 'consensus' candidate who had not sought the office. The motion was successful with the support of all crossbenchers except Mark Latham and Rod Roberts from One Nation and Christian Democrat Fred Nile.<sup>14</sup>

When Ajaka announced his intention to resign, the early front-runner to succeed him was well-regarded Nationals Deputy President, Trevor Khan, who had support from the Opposition, crossbench and from some within the Coalition. However, Premier Gladys Berejiklian expressed a clear preference for Liberal Whip Natasha Maclaren-Jones.<sup>15</sup> This attempt to sideline Khan was a questionable strategy, as the Government lacked a majority in the Council. After the 2019 election, the Coalition had 17 MLCs and Labor 14. There were 11 crossbenchers: three Greens, two Shooters, Fishers and Farmers, two One Nation, two from the Animal Justice Party, Christian Democrat Fred Nile, and one Independent, former Green Justin Field. Post-election relations between the Government and crossbench had been strained.

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<sup>13</sup> S. Want, J. Moore and D. Blunt, *Annotated Standing Orders of the Legislative Council*. Leichhardt: Federation Press, 2018, pp. 38-39.

<sup>14</sup> *NSWPD*, 17 March 2021, pp. 5239-5248.

<sup>15</sup> Under a factional deal, Maclaren-Jones from the Liberal right faction (run by Police and Emergency Services Minister David Elliott) was the nominee for President, while Peter Poulos from the Premier's left faction replaced Ajaka, also from the left, as MLC. Poulos was elected to the Council on 6 May 2021.

The Sessional Order was a ‘shot across the bows’ to persuade the Government to nominate Khan. The implied threat was that the Opposition and the majority of the crossbench would support a disaffected Coalition MLC if the Government was not prepared to back off. Khan stated publicly that he would be supporting the Liberal nominee but the Opposition was said to have another Coalition MLC in mind.<sup>16</sup>

On 24 March, the Council met to elect a new President. The Government nominated Maclaren-Jones and the Opposition former Labor President Peter Primrose. After the votes were counted, the Clerk, David Blunt, announced the result: ‘The Hon. Natasha Maclaren-Jones, 20 votes, the Hon. Peter Primrose, 14 votes, informal, eight votes. Honourable members, under Standing Order 13, in the absence of one of the two candidates receiving a majority of the votes of the members present, I am not in a position to declare either of the candidates elected’.<sup>17</sup> To try and resolve the deadlock, the Clerk held another ballot with the same result.

All of the crossbenchers except Latham, Roberts and Nile deliberately voted informal to prevent Maclaren-Jones being elected. Greens MLC Abigail Boyd later said that the rationale behind this strategy was that it would lead to ‘a process where we could have some collaboration and discussion about who a consensus candidate would be. That is why we voted that way on the basis of the advice that was given to us, and that was a valid and democratic thing to do’.<sup>18</sup> There was an expectation that the Government would accept the political reality and put forward Khan as a compromise candidate.

The Clerk then left the chair ‘until the ringing of a long bell’ which, in effect, meant that the sitting was suspended. The Council was not scheduled to meet again until 4 May.<sup>19</sup> Although little noted publicly, it was a critical situation, as the Council could not function without a President and the NSW Parliament could not legislate without the upper house.

The Government sought legal advice from the Crown Solicitor, who advised that Maclaren-Jones had been legitimately elected. The reasoning was that, as the

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<sup>16</sup> T. Rabe and A. Smith, ‘Berejiklian’s Pick for Coveted Position Dealt Significant Blow after Losing Vote’. *Sydney Morning Herald*, 17 March 2021.

<sup>17</sup> *NSWPD*, 24 March 2021(proof), p. 3).

<sup>18</sup> *NSWPD*, 24 March 2021(proof), p. 20).

<sup>19</sup> The following account is based on *NSWPD*, 24 March 2021. As procedurally the sitting of 4 May was considered a continuation of that of 24 March, it is contained in the *Hansard* for that date.



requirements that the successful candidate have a simple majority and an absolute majority of votes were in conflict, the former prevailed. The Clerk then sought advice from senior barrister Bret Walker SC, who regularly advises the Council. He also concluded that Maclaren-Jones had been legitimately elected. Walker argued, more subtly, that the eight informal votes did not constitute votes under the terms of the Standing Orders. Thus only 34 votes were cast, giving Maclaren-Jones a simple and an absolute majority.

When the Council resumed on 4 May, with the Clerk presiding, it became clear that the Government was determined to persist with Maclaren-Jones' candidacy. The Leader of the Government, Don Harwin took a point of order regarding the previous ballots. He argued that, on the basis of Walker's advice, the Clerk, contrary to his previous ruling, should declare Maclaren-Jones elected.

Opposition Leader Searle responded that neither the Clerk nor the house were compelled to take Walker's advice and could exercise independent discretion. He argued that there were a number of problems with Walker's opinion:

The first difficulty is that this was an electoral contest between two candidates. Mr Walker's advice appears to be inconsistent with electoral law. In electoral law there are total votes, which are divided into formal and informal votes. In the recording of how many votes were cast at an election, informal votes, although not counted towards any candidate's tally, are nevertheless given their appropriate status as votes that were cast.<sup>20</sup>

According to the Opposition Leader, Walker's interpretation had the effect of disenfranchising eight Members of the house:

It says they did not vote. I suggest that we ask those eight members, or all members, whether they think those eight members voted. That is a problem because in construing the meaning of the Standing Orders a view would not easily be reached that members opted out of the process of choosing a President of the chamber. If they were truly opting out of the process they would not have been in the room; they would not have bothered even to put in a blank ballot. What those members were doing

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<sup>20</sup> *NSWPD*, 24 March 2021(proof), p. 6).

was clearly expressing their dissatisfaction about the range of choices they had before them and they cast their ballot in a way to promote further discussion between members as to who would be an appropriate President of this chamber.<sup>21</sup>

Searle added that acceptance of Walker's advice would lead to

... a result where a President is elected without a majority, despite the rules which clearly try to elect a President who truly has the confidence of an absolute majority of members of the chamber ... Unlike the other place, this house requires a much-heightened level of trust between members, not just between the Government and the Opposition, but all members and the presiding officer. The presiding officer cannot rely on a majority of the Government to uphold those rulings, so any rulings made day to day must truly be accepted by all members, or at least an absolute majority, as being fair, reasonable and in accordance with the Standing Orders.

All of the crossbenchers except Latham, Roberts and Nile supported the Opposition. The Clerk suggested that, as there was no consensus in the house about the course that should be adopted, the way out of the impasse was a motion of dissent against his ruling on 24 March that Maclaren-Jones was not elected. The house then briefly adjourned.

When the Council resumed at 7.00pm, in a surprise move, Government Leader Harwin immediately rose in his place and declared that, as Maclaren-Jones had been properly elected according to Walker's advice, she should be conducted to the chair as was customary—two Liberal MLCs promptly did so. The Government argued that, as the Standing Orders did not specifically state that the Clerk should declare the winning candidate elected, it was open to any MLC to do so.<sup>22</sup>

The Government's gambit unleashed disorder and disruption unprecedented in the upper house. It was a reflection in a distant mirror of the 1911 election of Speaker Willis. The Opposition and Greens refused to accept the legitimacy of Maclaren-Jones

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<sup>21</sup> *NSWPD*, 24 March 2021 (proof), p. 6.

<sup>22</sup> Standing Order 13(2) says: 'When two members have been proposed as President, ballot papers will be distributed by the Clerks to all members in their places. Members must write on the ballot paper the name of the candidate for whom they wish to vote, and deposit it in the ballot box provided by the Clerk. The candidate who has the greater number of votes is to be declared elected President, and will be conducted to the Chair'.

taking the chair and described it as ‘a coup’. She vainly struggled to assert her alleged authority in the face of constant taunts, interjections and expressions of defiance. Members unrestrainedly attacked each other across the chamber:

Mr David Shoebridge: It is ridiculous.

The Hon. NATASHA MACLAREN-JONES: Order! Order!

Opposition Members and Crossbench Members: You have no authority! You have no authority! You have no authority! You have no authority!

The Hon. NATASHA MACLAREN-JONES: Order! Order!

Opposition Members and Crossbench Members: You have no authority! You have no authority! You are not the President! You have no authority!

The Hon. NATASHA MACLAREN-JONES: Order! I call this house to order!

The Hon. ADAM SEARLE: Mr Clerk, I seek the call.

Opposition Members and Crossbench Members: You have no authority! You are not the President! You have no authority in this house! We do not recognise you as the chair!

The Hon. NATASHA MACLAREN-JONES: Order! I call this house to order! I ask the Hon. Peter Primrose to resume his seat immediately.

The Hon. Penny Sharpe: No! What are you going to do? You are not elected.

The Hon. NATASHA MACLAREN-JONES: Order! I am trying to give the call to your leader. Take your seat!

The Hon. Peter Primrose: You are not the President!

The Hon. Mark Buttigieg: You cannot give the call; you are not the President.

The Hon. Peter Primrose: You are not the President. You are bringing this house into disrepute.

The Hon. NATASHA MACLAREN-JONES: Order! Order!<sup>23</sup>

Opposition Leader Searle moved as a matter of privilege suddenly arising:

- (1) The taking of the chair by the Honourable Natasha Maclaren-Jones is disorderly, as she has not been declared elected as President as required under standing order 13(2);
- (2) This House does not have confidence in the Honourable Natasha Maclaren-Jones as President; and
- (3) The Honourable Natasha Maclaren-Jones be removed from the Chair.

Greens Leader David Shoebridge moved an amendment which Searle accepted: 'That the Clerk proceed to a fresh election and call for nominations'.<sup>24</sup>

Searle argued:

No person can take the chair unless they have been declared elected by the Clerk. If the contention of the Government is that the Clerk should have declared someone elected, that is the motion that should be before this house—either a dissent in the chair's ruling or a positive motion that the Clerk declare her elected as, for example, set out in the advice of Bret Walker. But the Government has not chosen that course of action. Why? Because it knows that no matter how much it tries to dress it up, this house has not elected the Hon. Natasha Maclaren-Jones as President. She does not have the confidence of this house. The point is that no person can sit in that chair and uphold the best traditions of this house and maintain order unless they have the confidence of this house—the acceptance of the house that they are the rightfully and duly elected President of this chamber. What we have seen here is a stealing of the chair without being declared elected.<sup>25</sup>

Searle's motion, as amended by Shoebridge, was carried by 22 votes to 16. As before, the only crossbenchers supporting the Government were Latham, Roberts and Nile.

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<sup>23</sup> *NSWPD*, 24 March 2021 (proof), p. 14.

<sup>24</sup> *NSWPD*, 24 March 2021 (proof), pp. 15-16.

<sup>25</sup> *NSWPD*, 24 March 2021 (proof), p. 15.

The Clerk then called for nominations for President. The Government proposed Maclaren-Jones. With Khan out of contention, the Opposition and the majority of crossbenchers countered with a strategy of electing a dissident Liberal, Matthew Mason-Cox, who nominated himself:

I put my name forward tonight as a reflection of my view that in order to be in the position of President one needs the confidence of the house by way of a majority vote. As I listened to the debate tonight I was concerned that we would end up in this situation—with the shocking circumstances that occurred and a vote of no confidence in the chair. All that does is undermine this institution and it undermines all members. I hope that members can come together and understand that we are servants of this institution which, at the end of the day, is an incredibly important place for democracy in this State. It is the key plank of responsible government in this State. We are the servants of this institution and it is our duty to act in the interests of the people of NSW. From the start I have been in conflict in relation to this whole process. I state clearly that I am a most reluctant candidate for President. Many of those who came to see me would understand that that is not a position I coveted. I heard a range of conspiracy theories tonight but I will not dignify them by making any comment.<sup>26</sup>

There were no other nominations.

Mason-Cox had briefly been a Minister but was dropped in the reshuffle after the 2015 election. He became a forthright critic of the Government and used his vote to defeat his Party in crucial divisions.<sup>27</sup> Mason-Cox was prominent in the 2020 revolt against Berejiklian's decision to decriminalise abortion.<sup>28</sup>

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<sup>26</sup> *NSWPD*, 24 March 2021 (proof), p. 31.

<sup>27</sup> See A. Smith and L. Visentin, 'Rogue Liberal MP Crosses the Floor, Forcing Release of Documents'. *Sydney Morning Herald*, 12 April 2018; A. Smith, 'Rogue NSW Liberal MP Punished for Crossing the Floor'. *Sydney Morning Herald*, 1 May 2018; *NSWPD*, 5 June 2018, pp. 34-35.

<sup>28</sup> A. Smith and L. Visentin, 'Premier Delays Abortion Bill'. *Sydney Morning Herald*, 3 September 2019; L. Visentin and T. Rabe, 'Bill Debate Drags on in Wake of Abandoned Spill Bid'. *Sydney Morning Herald*, 18 September 2019; A. Smith, 'Abortion Bill Passes Upper House after Marathon Debate'. *Sydney Morning Herald*, 25 September 2019.

Labor and the Greens supported Mason-Cox. Searle stated that he that believed Mason-Cox would uphold the Council's tradition of impartial and independent presiding officers. Greens MLC Abigail Boyd thanked Mason-Cox for nominating as a 'consensus' candidate:

It is for this house to determine its own President on the basis of a majority vote and not for the government of the day to dictate its presidential choice and to try to force that decision upon the house. There were only a few consensus candidates that could have been put up at this time. If we were free from Government power-plays we would have been able to determine which of them had the most votes. We are incredibly grateful that one of those consensus candidates, the Hon. Matthew Mason-Cox, has agreed to nominate in these extraordinary circumstances. We have faith that he will uphold the powers of the house and he has our confidence.<sup>29</sup>

The Government and One Nation claimed that it was a Machiavellian plot to create a situation where Mason-Cox could justify defying his Party. One Nation Leader Mark Latham said:

This has been an orchestrated exercise by the Hon. Adam Searle and Mr David Shoebridge trawling up and down the eleventh floor of this building to find the magic renegade Liberal or National Party member. Plan A was the Hon. Trevor Khan—*sans* hyphen—and that went out the window ... It is supposed to be a spontaneous outbreak of consensus and harmony in the chamber that Matthew Mason-Cox has come forward as a saviour to restore harmony.<sup>30</sup>

Mason-Cox was elected with both a simple and an absolute majority, 23 votes to Maclaren-Jones' 18.<sup>31</sup> At 9pm, he was escorted to the chair by two Members from the Shooters, Fishers and Farmers Party.<sup>32</sup>

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<sup>29</sup> *NSWPD*, 24 March 2021 (proof), pp. 28-29.

<sup>30</sup> *NSWPD*, 24 March 2021 (proof), p. 29.

<sup>31</sup> Although the ballot was secret, it seems likely that Mason-Cox had 14 ALP votes, eight from the crossbench, plus his own. Maclaren-Jones presumably had 15 votes from the Coalition (Ajaka's replacement had not yet been elected), two from One Nation and one from Nile.

<sup>32</sup> Alexandra Smith, 'Shameful Saga over Empty Chair'. *Sydney Morning Herald*, 6 May 2021.

The *Sydney Morning Herald*'s Alexandra Smith commented:

The Government wants a President who will be sympathetic to its position, while the Opposition and crossbenchers want the house of review to be chaired by someone who will show independence. They felt they had this with Ajaka. Labor and several of the crossbenchers, including the Greens, Animal Justice and Independent Justin Field, did not believe Maclaren-Jones would fit that bill and opposed her nomination ... Some within the Government, including Berejiklian and Minister for Women Bronnie Taylor, immediately seized on Mason-Cox's election and labelled it an issue of gender, accusing Labor and the crossbenchers of choosing a Liberal man over a Liberal woman ... Of course, Maclaren-Jones can still be promoted – to a different office. Berejiklian can install her into cabinet. If the Premier is serious about promoting women, she holds the power to do so within her own cabinet. She doesn't need to outsource the issue to a hostile chamber.<sup>33</sup>

The split amongst the right wing crossbenchers over the Presidency demonstrated that the crossbench does not always vote on predictable ideological lines: One Nation and Nile were at odds with the Shooters, Fishers and Farmers, who allied themselves with the Greens. The expectation of some observers after the 2019 election that the Government would usually have a majority with the votes of the five right crossbenchers has not been fulfilled. The political reality of minor party voting in the 57<sup>th</sup> Parliament is complex and uncertain.

## CONCLUSION

The struggle for the succession after Ajaka's resignation showed that the politicisation of the election of a President has reached an extreme level. Neither the Government, Opposition nor crossbench can escape the blame for this unedifying public spectacle, which further damaged the standing of the NSW Parliament at a time when it is already at a low ebb after a series of scandals. The Government should have consulted, listened and proposed a candidate for presiding officer who was generally acceptable. By mid-March it was evident that the Opposition and crossbench were unwilling to

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<sup>33</sup> Smith, 'Shameful Saga over Empty Chair'.

support the Liberal candidate, yet the Government not only persisted in nominating Maclaren-Jones and then attempted to install her as President by surprise against the wishes of the majority. The Opposition and Greens should have held aloof from Byzantine manoeuvring, which risked damaging the upper house in the long-term, to score a short-term victory over the Premier.

The crossbenches have had the balance of power in the Legislative Council since 1988. This has, on balance, been a positive development. The Council has developed an effective committee system, promotes accountability through orders for the Government to disclose state papers, and extensively debates and revises legislation. Governments have generally been able to work with the crossbench to implement their program.<sup>34</sup> Bipartisanship has been evident in improvements to the procedures of the house and in committee reports. The events of 4 May were in stark contrast to these positive trends. It is to be hoped that this does not set the direction for the future and, instead, a general awareness of the over-riding importance of the Council's role as an effective house of scrutiny and review will prevail.

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<sup>34</sup> See D. Clune, *At Cross-purposes? Governments and the Crossbench in the NSW Legislative Council, 1988-2011*, Legislative Council of NSW, History Monograph No 4, 2019.