

# NEW SOUTH WALES LEGISLATIVE COUNCIL

## *HOUSE IN REVIEW*



*Volume 55/12*

*Sitting period  
11 to 14 October 2011*

The *House in Review* provides a summary of the New South Wales Legislative Council's activities for each sitting week. Clicking on a hyperlink will take you to the relevant webpage. For further information refer to the NSW Parliament website [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au) or contact the Procedure Office on (02) 9230 2431. To be placed on the email distribution list of the *House in Review*, please contact us on [council@parliament.nsw.gov.au](mailto:council@parliament.nsw.gov.au).

### **Presentation of the Address-in-Reply**

The President and members of the Council attended Government House on Wednesday, 12 October 2011 to present to Her Excellency the Governor the Address-in-Reply to her Opening Speech to both Houses of Parliament on Tuesday, 3 May 2011. The Address expressed the thanks of members for Her Excellency's speech, together with loyalty to Australia and the people of New South Wales. The President read the address and formally presented it to the Governor who made a reply. The President then introduced accompanying members and officers to the Governor.

On returning, the President reported to the Council on the presentation and the reply of the Governor.

### **Vacancy in the Representation of the State in the Australian Senate**

On 22 August 2011, the Hon Senator Helen Coonan tendered her resignation as a member of the Australian Senate representing New South Wales.

In accordance with section 15 of the Commonwealth Constitution, a joint sitting of the Legislative Council and Legislative Assembly was held on Thursday, 13 October 2011 at which Mr Arthur Sinodinos AO was elected to fill the vacated seat.

### **Appointment of the Clerk of the Parliaments**

The President informed the House that Her Excellency the Governor had issued a commission under the public seal of the State appointing Mr David Blunt as Clerk of the Parliaments and Clerk of the Legislative Council from 8 October 2011.

Mr Blunt took the Official Oath and Pledge of Loyalty before Her Excellency at Government House on 11 October 2011.

### **Consideration of the removal of a judicial officer – Magistrate Maloney**

Under Part 9 of the *Constitution Act 1902* and the provisions of the *Judicial Officers Act 1986*, the Parliament is responsible for considering the removal of a judge or magistrate where the Conduct Division of the Judicial

Commission has provided a report expressing the opinion that the conduct of the officer could justify such action.

On 4 June 2011, a report of the Conduct Division concerning Magistrate Brian Maloney of the Local Court was tabled in the House along with a response from Magistrate Maloney. The report included a finding that Magistrate Maloney was and would remain incapacitated in the performance of his judicial duties by his medical condition, which could justify Parliamentary consideration of the Magistrate's removal.

On 21 June 2011, in accordance with a resolution of the House, Magistrate Maloney attended at the Bar of the House and delivered an address as to why he should not be removed from office.

The following day, the Leader of the Government in the House (Mr Gallacher) moved a motion for an Address to the Governor for the removal of Magistrate Maloney on the grounds of incapacity. In doing so, Mr Gallacher made it clear that the inquiry and report of the Conduct Division is a process that is entirely separate from the Government.

Debate on the motion resumed in the House on 13 October 2011 following the receipt of further material on behalf of Magistrate Maloney and other tabled papers. All members of the House were allowed a conscience vote on the matter.

Debate on the motion was marked by the earnest consideration that all members gave to the matter. Members spoke on issues such as the capacity of Magistrate Maloney to effectively perform his work, the address delivered by Magistrate Maloney at the Bar of the House in which he addressed his health issues, the need to uphold the independence of the judiciary and the details of the complains against Magistrate Maloney examined by the Conduct Division. Members also spoke of the appropriateness of the parliamentary process for the consideration of the removal of a judicial officer.

Ultimately, after extensive debate, the question for an Address to the Governor for the removal of Magistrate Maloney was resolved in the negative (Division 15:22).

## Government responses to committee reports

Standing order 233 requires the Clerk to refer all committee reports which recommend that action be taken by the Government to the Leader of the Government for a Government response. The Government must, within six months of a report being tabled, report to the House what action, if any, it proposes to take in relation to each recommendation of the committee.

Following the change of Government at the commencement of the 55th Parliament in May 2011, the Clerk received correspondence from the Leader of the House advising that the Government would not respond to committee reports tabled in the last six months of the 54th Parliament, on the basis that the Government, which holds the confidence of the 55th Parliament, is not obliged to respond to reports which were tabled during the 54th Parliament. However, the Government offered to respond to any report to which the House resolved to require a response. The correspondence from the Leader of the House was based on advice from the Crown Solicitor. In correspondence in reply, the Clerk indicated that the application of standing order 233 is not limited to individual Parliaments and that as such, the Government is bound by its provisions.

In accordance with standing order 233(4), on Tuesday, 11 October 2011, the President informed the House that Government responses had not been received to nine committee reports tabled during the last Parliament. Subsequently, on 13 October 2011, on a motion moved by a member of the Opposition, the House resolved that responses to all nine reports be tabled within 60 days.

## Government business

**Note:** Government business includes Government bills introduced or carried by ministers in the Council.

### Public Sector Employment and Management Amendment (Ethics and Public Service Commissioner) Bill 2011

*Summary:* The bill amends the *Public Sector Employment and Management Act 2002* by establishing an ethics framework for the public sector; providing for the appointment of a Public Service Commissioner to lead the strategic development and management of the public sector workforce; and establishing the Public Service Commission Advisory Board to determine general policies and strategic directions for the exercise of the Commissioner's functions and to provide advice to the Premier on the management and performance of the public sector.

*Proceedings:* The bill was received from the Legislative Assembly and read a first time. In his second reading speech, the Minister (Mr Gallacher) noted that the establishment of a Public Service Commission was a long-standing commitment of the Coalition, and argued the reforms would strengthen the Westminster traditions of parliamentary democracy in NSW.

The Opposition and the Greens did not oppose the bill. However, the Greens noted a number of concerns

including the lack of any mechanism to provide training in ethics to the public sector. The Christian Democratic Party supported the bill.

The second reading debate was interrupted by Question Time.

### Thoroughbred Racing Amendment Bill 2011

*Summary:* Racing NSW is the governing body for the thoroughbred racing industry in NSW. The bill amends the *Thoroughbred Racing Act 1996* to increase the number of members of the Board of Racing NSW from five to seven and to make various provisions in relation to their appointment procedures and eligibility requirements.

*Proceedings:* The bill was received from the Legislative Assembly and read a first time. In his second reading speech, the Minister (Mr Gallacher) indicated that while the changes in the bill do not reflect on the current members of the Board, the Government is concerned that the existing eligibility criteria for membership of Racing NSW are not sufficient to ensure that the members of the Board can meet their duty to act in the public interest and in the interests of the thoroughbred racing industry. There are also concerns whether the current Racing NSW Board's membership of five is sufficient to manage the workload and to undertake the many reforms necessary to ensure the future viability and development of the industry.

The Opposition did not oppose the bill, although expressing concern about the enhanced role of the Minister in selecting Board members and the need to ensure that Racing NSW remains independent of Government. The Opposition also expressed concern about the consultation process on the bill. The Greens also did not oppose the bill, supporting the reforms to the regulation of the pecuniary interests of Board members, while also noting the additional powers of the Minister and the potential conflicts of interests that arise.

The second and third readings of the bill were agreed to and the bill was returned to the Assembly without amendment.

### Sporting Venues Authorities Amendment (Venues NSW) Bill 2011

The bill originated in the Legislative Council.

*Summary:* The bill amends the *Sporting Venues Authorities Act 2008* and repeals the *Parramatta Trust Act 1988* to constitute Venues NSW, to abolish existing regional sporting venue authorities in the Hunter and the Illawarra and the Parramatta Stadium Trust, and to transfer the assets and liabilities of those authorities to Venues NSW.

*Proceedings:* The bill was introduced and read a first time. In his second reading speech, the Minister (Mr Gallacher) argued that the establishment of Venues NSW will increase the alignment and integration of regional sporting venues with the strategic priorities and objectives of the Government, while providing an opportunity to boost regional tourism, events, access and participation. A key objective of the bill is to maintain a high level of regional engagement to ensure local communities continue to have a say in how their sporting

venues are managed. The Minister noted that the governance and structural changes proposed in the bill would require no additional resources to implement.

Debate was adjourned for five calendar days.

### **Industrial Relations Amendment (Non-Operative Awards) Bill 2011**

The bill originated in the Legislative Council.

*Summary:* The bill amends the *Industrial Relations Act 1996* to enable the Industrial Relations Commission to rescind private sector State awards that have no current application to any employer or employee.

*Proceedings:* The bill was introduced and read a first time. In his second reading speech, the Minister (Mr Pearce) noted that in 2010, the former Government referred NSW's industrial relations powers to the Commonwealth. Subsequently, however, by the *Industrial Relations (Non-operative Awards) Amendment Act 2010*, the former Government required that non-operative private sector State awards be preserved and updated to give effect to any flow-on from a national industrial decision or the making of a State decision. The bill now before the House removes this requirement for the Commission to vary non-operative awards and allows them to be rescinded.

Debate was adjourned for five calendar days.

### **Aboriginal Land Rights Amendment (Housing) Bill 2011**

The bill originated in the Legislative Council.

*Summary:* The bill amends the *Aboriginal Land Rights Act 1983* to facilitate the entering into and management of residential tenancy agreements of less than three years, or periodic agreements, by boards of Local Aboriginal Land Councils.

*Proceedings:* The bill was introduced and read a first time. In his second reading speech, the Minister (Mr Pearce) indicated that the bill confers directly on the board of a local Aboriginal Land Council the functions of entering into, managing and terminating short term residential tenancy agreements, which can be delegated to the chief executive officer of the Council. The Minister argued that these amendments bring the *Aboriginal Land Rights Act 1983* more into line with the *Residential Tenancies Act 2010*; ensures the governance of local Aboriginal Land Councils is free of potential conflicts of interest; and empowers local boards to administer fair, consistent and financially viable housing policies.

Debate was adjourned for five calendar days.

### **Private members' business**

**Note:** Private members' business is business moved by members of the House other than Government ministers. There are two types of private members' business: private members' bills and private members' motions.

*Bill*

### **Truth in Labelling (Free-range Eggs) Bill 2011 (Dr Kaye, The Greens)**

*Summary:* The bill further regulates the labelling of eggs by prohibiting the sale of eggs as free-range eggs or barn eggs unless certain requirements have been complied with. In addition, the bill requires eggs that are not free-range eggs or barn eggs to be labelled as cage eggs and prohibits the use of any words or images in advertising or packaging of the eggs that suggests the laying fowls are not kept in cages.

*Proceedings:* Debate on the second reading of the bill resumed from 26 August 2011 (see *House in Review* Vol 55/7 for earlier debate). The Government does not support the bill. The Minister (Mr Gay) expressed concerns that the bill would place NSW out of step with national standards in relation to the production of eggs as set out in the *Model Code of Practice for the Welfare of Animals Domestic Poultry*. The Minister also noted existing regulation of food labelling in the *Food Act 2003* and industry concerns that the bill would make the industry in NSW unsustainable. The Opposition does not oppose the bill, noting examples where labelling of eggs has been misleading and inaccurate, and citing the conditions of cage hens. At the same time, the Opposition foreshadowed amendments to the bill to comply with existing national standards for the production of eggs, as outlined in the *Model Code of Practice for the Welfare of Animals Domestic Poultry*. The Shooters and Fishers Party supports the bill with the amendments foreshadowed by the Opposition.

The second reading debate was interrupted by Question Time.

*Motion*

### **Coptic Christians in Egypt (Revd Mr Nile, Christian Democratic Party)**

*Summary:* The motion called on the House to recognise and condemn the ongoing and increasing persecution being suffered by Coptic Christians in Egypt; called on the Government to issue a public statement condemning the ongoing attacks and to make representations to the United Nations to end the persecution; and strongly urged the Egyptian Government to provide equal rights and protections for all of its citizens regardless of race or religion.

*Proceedings:* Standing orders were suspended to bring on the item of business. Revd Mr Nile indicated that while the sectarian violence against Coptic Christians over the last forty years was well documented, the catalyst for the motion was the recent attack by the Egyptian military on Coptic Christians in Cairo.

Members from all parties who spoke in the debate unanimously supported the motion, and voiced their gratitude for the opportunity to have this issue raised in the House. Members noted the proud history and contribution of the Coptic Christians to civilisation and emphasised their support for and solidarity with the Coptic community both in Egypt and Australia.

The motion was agreed to.



### *Motions taken as formal business*

The following items of private members' business were agreed to as formal business without amendment or debate:

- (1) Cootamundra sesquicentenary (Mr Veitch)
- (2) The Gasnier Foundation (Mr Moselmane)
- (3) Australian Arab Business Network (Mr Moselmane)
- (4) Mr Jihad Dib, Secondary Principal of the Year (Mr Moselmane)
- (5) Archbishop Issam John Darwish (Mr Moselmane)
- (6) Billy Ali Dib – IBF Featherweight Champion (Mr Moselmane)
- (7) UnitingCare Burnside (Ms Fazio)
- (8) Anti-Poverty Week (Ms Fazio)
- (9) Feros Care (Ms Fazio)
- (10) Mental Health Month (Ms Fazio)
- (11) Rona Tranby Trust (Ms Ficarra)
- (12) Ignite Volunteering Management Conference (Ms Ficarra)
- (13) Champion sportswomen (Ms Faehrmann)
- (14) Young Public School (Mr Veitch)
- (15) Royal Australian Navy (Dr Phelps)
- (16) Ms Gillian Snedden (Dr Phelps)
- (17) Lebanese Muslim Association (Mr Moselmane)
- (18) India Australia Friendship Fair 2011 (Mr Moselmane)
- (19) Anxiety Disorders Association of NSW Incorporated (Mr Moselmane)
- (20) New South Wales Waratahs Netball Team (Ms Ficarra)
- (21) Inaugural Supertag Community Gala Day (Ms Ficarra)
- (22) Diablo Dance Theatre from Taiwan (Ms Ficarra)
- (23) Dr Phil Lambert (Ms Ficarra)
- (24) NSW under 20's Weighlifting Team (Ms Ficarra)
- (25) His Grace Most Reverend Bishop Robert Rabbat (Mr Ajaka)
- (26) Australian Doctor's Orchestra (Ms Ficarra)
- (27) Warrane College (Mr Clarke)
- (28) The Big Exo Day (Mr Clarke)
- (29) Inaugural NSW Sports Volunteer Awards (Ms Ficarra)
- (30) Youth and Action Policy Association (Ms Ficarra)
- (31) Australian Council of Chinese Organisations (Ms Ficarra)
- (32) Gilad Shilat (Mr Clarke).

### **Orders for papers**

**Note:** The Council has a common law power to order the Government to produce State papers.

#### *Returns to order*

- (1) **2011-2012 Budget:** received 23 September 2011, 10 boxes public.
- (2) **2011-2012 Budget finances:** received 23 September 2011, four boxes public, one box privileged.
- (3) **Casino, Liquor and Gaming Control Authority:** received 30 September 2011, one box public, one box privileged.
- (4) **Tillegra Dam:** received 14 October 2011, three boxes public, three boxes privileged.

### **Petitions received**

- (1) Support for scripture classes – 1,445 signatures (presented Revd Mr Nile); 7 signatures (presented Mr Donnelly)
- (2) Opposition to euthanasia – 17 signatures (presented Mr Colless)
- (3) Correctional centres – 1,228 signatures (presented Mr Donnelly)
- (4) Old Balmain Leagues Club site – 545 signatures (presented Mr Shoebridge)
- (5) Religious discrimination – 1,013 signatures (presented Mr Moselmane)
- (6) Special religious education classes – 11 signatures (presented Mr Mason-Cox)
- (7) Game Council of NSW – 788 signatures (presented Mr Shoebridge).

### **Debate on budget estimates**

The House continued the take-note debate on the Budget Estimates and related papers for the financial year 2011-2012.

### **Committee activities**

#### *Committee reference*

**Privileges Committee:** The House referred to the Committee an inquiry into statements made by Mr David Shoebridge in the House on 15 September 2011.

### **Reports tabled**

**Auditor-General:** Performance Audit report entitled: 'Prequalifications scheme: Performance and management services – Department of Premier and Cabinet and Department of Finance and Services', September 2011.

**Inspector of the Police Integrity Commission and Police Integrity Commission:**

- (1) Annual report for the year ended 30 June 2011 (Inspector of the PIC)
- (2) Special report regarding publication of complaint reports by the Inspector of the Police Integrity Commission, October 2011.

- (3) Correspondence and advices relevant to the presentation and tabling of these reports.

**Legislation Review Committee:** Legislation Review Digest No. 5, October 2011.

**Ombudsman:**

- (1) Special report entitled 'Kariiong Juvenile Correctional Centre: Meeting the Challenges', October 2011.
- (2) Special report entitled 'Addressing Aboriginal disadvantage: the need to do things differently', October 2011.

**Unproclaimed legislation:** Mr Pearce tabled a list of unproclaimed legislation as at 11 October 2011.

### Adjournment debate

#### Tuesday 11 October 2011

Community pre-selections for the NSW Nationals (Miss Gardiner); The Nationals' policies (Mr Veitch); Migrant Resource Centres (Ms Faehrmann); Mining deaths (Ms Westwood); Self-defence laws (Mr Brown); Tribute to Phil Gould (Ms Ficarra); Tribute to Christine Harcourt (Ms Fazio).

#### Wednesday 12 October 2011

Land clearing (Mr Foley); Proactive fishing (Mr Borsak); Political education (Mrs Mitchell); Release of water into the Snowy River (Mr Whan); Solving the Jigsaw Anti-Bullying Program (Ms Barham); War Widows Guild of Australia New South Wales (Mr Lynn); Tribute to Keith Holman (Ms Voltz).

#### Thursday 13 October 2011

Native vegetation legislation (Mr MacDonald); Carbon tax legislation (Revd Mr Nile); Manufacturing industry (Mr Primrose); Coffs Harbour City Council (Mr Shoebridge); Rona Tranby Trust (Mr Secord); Mothers Milk Bank (Mrs Pavey); Australian-Italian community (Ms Ficarra).

#### Friday 14 October 2011

Mr Julian Burnside, QC (Dr Phelps); Eleventh Annual Global Banking Alliance for Women (Ms Cotsis); Homebush Bay and Coffs Harbour motor racing (Dr Kaye); Palliative care services (Mr Donnelly); Milk pricing (Mr Green); Dharawal National Park (Mr Secord); Stillbirth remembrance day (Mrs Mitchell); Carbon tax (Mr Mason-Cox).

### Feedback on *House in Review*

We welcome any comments you might have on this publication.

We are particularly keen to know which parts of the *House in Review* you find most useful and whether you have any suggestions for improvement. Please email your comments to [stephen.frappell@parliament.nsw.gov.au](mailto:stephen.frappell@parliament.nsw.gov.au).

All responses will be kept strictly confidential.



David Blunt  
Clerk of the Parliaments