

NEW SOUTH WALES LEGISLATIVE COUNCIL

HOUSE IN REVIEW



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19 to 21 March 2013*

The *House in Review* provides regular updates of the activities of the New South Wales Legislative Council. 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 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.

Overview

This was the busiest sitting week of the year to date, with the House finalising consideration of eight Government bills, which included two sets of cognate bills. In addition, two other Government bills were introduced into the House this week.

Matter of privilege

The previous edition of *House in Review* reported on a serious matter of privilege: possible non-compliance with a 2009 Order for Papers by the Council concerning Mt Penny. As reported, the House referred the matter to the Privileges Committee for inquiry and report by 30 April 2013.

On 20 March 2013, the Chair of the Privileges Committee, the Hon Trevor Khan, released a media release on behalf of the Committee in which he indicated that the Committee had met the previous evening and resolved to seek advice from leading Senior Counsel whether certain documents should, *prima facie*, have been tabled in the House in the 2009 return to order. The documents have come to light as part of Operation Jasper being conducted by the ICAC.

Mr Bret Walker, an eminent Senior Counsel who represented the Legislative Council during the *Egan* cases in the mid to late 1990s, concerning the power of the House to order the production of State papers, has agreed to provide advice to the Committee.

The Committee is due to meet again on 16 April 2013, at which it will consider the advice from Mr Walker.

A copy of the media release is available [here](#).

Conduct of business – Monday 25 to Wednesday 27 March 2013

The House resolved that next week, in the lead up to Easter, it would depart from its normal practice of sitting Tuesday to Thursday and instead sit from Monday to Wednesday.

Next week the House will meet for the despatch of business on Monday at 2:30 pm, Tuesday at 11:00 am and Wednesday at 9:30 am. Questions will commence at

4:00 pm on Monday, and at 2:30 pm on Tuesday and Wednesday.

Government business

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

Evidence Amendment (Evidence of Silence) Bill 2013 and cognate Criminal Procedure Amendment (Mandatory Pre-trial Defence Disclosure) Bill 2013

The bills originated in the Legislative Assembly.

Summary: The Evidence Amendment (Evidence of Silence) Bill amends the *Evidence Act 1995* so that in proceedings for a serious indictable offence an unfavourable inference may be drawn from the defendant's failure or refusal to mention a fact during official questioning that the defendant could reasonably have been expected to mention and that is later relied on by the defence in the proceedings.

The Criminal Procedure Amendment (Mandatory Pre-trial Defence Disclosure) Bill amends the *Criminal Procedure Act 1986* in relation to mandatory pre-trial defence disclosure in indictable proceedings to expand the matters that must be disclosed by the defence and the prosecution before a trial and to enable the court to make proper comments in these trials in circumstances where the accused person fails to comply with pre-trial disclosure requirements.

Proceedings: The bills were received from the Legislative Assembly on 19 March 2013 and read a first time. Debate on the second reading of the bills commenced the following day. In his second reading speech, the Minister (Mr Gallacher) said the bills provide opportunities for an accused to provide information and thereby facilitate the course of justice, firstly when spoken to by police and, secondly, at a time when the prosecution will have outlined its case before trial. The Minister noted that juveniles and people who are incapable of understanding the consequences of remaining silent are exempt from the provisions of the Evidence Amendment (Evidence of Silence) Bill and that the bill does not remove any of the current protections afforded to vulnerable people. The Minister concluded

that the bills will help to promote fairness to both prosecutors and the accused, and will assist in breaking down the wall of silence put up by those accused at the higher end of criminal activity who seek to frustrate the criminal justice process and cause delay.

The Opposition and the Greens were opposed to both bills, arguing that the reforms proposed in the bills were wrong in principle and undesirable in practice. Both parties noted that the right to silence was a fundamental cornerstone of the legal system, and argued that the Government had not brought forward a sufficient case as to why it should be overturned. Both parties contended that the bills had only minimal support among judicial and legal stakeholders.

The second (Division 21: 19) and third (Division 22:19) readings of the bills were agreed to, with the Opposition and The Greens voting against the bills. The bills were returned to the Assembly.

Road Transport Bill 2013 and cognates Road Transport Legislation (Repeal and Amendment) Bill 2013 and Road Transport (Statutory Rules) Bill 2013

The bills originated in the Legislative Assembly.

Summary: The bills consolidate New South Wales road transport legislation and prepare for the eventual adoption of the Heavy Vehicle National Law in this State.

The Road Transport Bill 2013 consolidates in one Act most of the provisions of existing Acts dealing with road transport in New South Wales. The bill amalgamates the *Road Transport (Driver Licensing) Act 1998*, the *Road Transport (Vehicle Registration) Act 1997* and the *Road Transport (Safety and Traffic Management) Act 1999*, and the compliance and enforcement provisions of the *Road Transport (General) Act 2005* applicable to road transport legislation generally.

The Road Transport Legislation (Repeal and Amendment) Bill 2013 provides for the repeal of existing Acts and makes amendments to certain other Acts and statutory rules. The bill also renames the *Road Transport (General) Act* as the *Road Transport (Vehicle and Driver Management) Act* and confines its operation to matters relating to heavy vehicles. The Road Transport (Statutory Rules) Bill 2013 makes amendments to certain regulations under existing road transport legislation that will continue under the new Road Transport Act 2013.

Proceedings: Debate on the second reading of the bills commenced on 19 March 2013. In his second reading speech, the Minister (Mr Gay) indicated that the consolidation of legislation was part of the Government's commitment to reducing red tape, and that in addition to reducing the volume of road transport statutes, the bills remove anomalies, inconsistency and complexity from the legislation, making it more easily accessible and understood by road users and those who deal with road transport legislation in a professional capacity.

The Minister foreshadowed that the Government would move a set of amendments in the committee stage, as it had emerged that an unintended consequence of the

Road Transport Bill as drafted would be the introduction of an inappropriate penalty regime for certain offences.

The Opposition, Christian Democratic Party and the Greens all indicated their support for the bills and the amendments foreshadowed by the Government, variously noting the benefit of addressing the current complexity of the legislation, and their understanding that the bills contain no new policy initiatives or modifications. The Christian Democratic Party and the Greens both took the opportunity to note the need for a greater focus on development of an adequate rail transport system. Debate was interrupted for Questions.

On the resumption of debate on 20 March 2013, the second reading was agreed to.

In the committee stage, the amendments to the Road Transport Bill, foreshadowed by the Government in the second reading debate, were agreed to.

The Road Transport Bill was reported to the House with amendments, while the Road Transport Legislation (Repeal and Amendment) Bill and Road Transport (Statutory Rules) Bill were reported without amendment.

The following day, the third reading of the bills was agreed to and the bills were returned to the Assembly.

Royal Commissions Amendment Bill 2013

The bill originated in the Legislative Assembly.

Summary: On 11 January 2013, the Commonwealth Government established a Royal Commission into institutional responses to child sexual abuse. The NSW Government established an equivalent Royal Commission under the *Royal Commissions Act 1923* [NSW] to provide legal support for the operation of the Royal Commission. Under amendments to the *Royal Commissions Act 1902* [Cth], the chairperson of a Royal Commission is given certain powers, such as to authorise one or more of the commissioners to hold separate and concurrent hearings.

This bill amends the *Royal Commissions Act 1923* to give the chairperson of a Royal Commission in NSW similar powers to those given to the chairperson of a Royal Commission under the Commonwealth Act.

Proceedings: Debate on the second reading of the bill commenced on 20 March 2013. In her second reading speech, the Parliamentary Secretary (Ms Ficarra) said that the bill will assist the national Royal Commission in carrying out its inquiries expeditiously and ensure that it will have equivalent powers available to it under both the Commonwealth and New South Wales legislation if it needs to rely on the State's powers.

The Opposition, the Greens and the Christian Democratic Party spoke in support of the bill, noting that it contained sensible amendments that would ensure the current Royal Commission established by the Commonwealth and supported by New South Wales will be able to operate efficiently and effectively within this State.

The second and third readings of the bill were agreed to and the bill was returned to the Assembly.

Crimes (Sentencing Procedure) Amendment (Provisional Sentencing for Children) Bill 2013

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Crimes (Sentencing Procedure) Act 1999* to enable the provisional sentencing of children who are convicted of murder and for the court that imposes such a sentence to conduct progress reviews of the offender's case for the purpose of deciding whether it is appropriate to impose a final sentence on the offender.

Proceedings: The bill was received from the Legislative Assembly on 19 March 2013 and read a first time. Debate on the second reading of the bill commenced the following day. In his second reading speech, the Parliamentary Secretary (Mr Clarke) referred to the case of *R v SLD* in which Justice Woods noted the limitations of ordinary sentencing principles when determining the length of sentence for a child murderer, which prompted a review and subsequent report by the NSW Sentencing Council that recommended the introduction of provisional sentences. The Parliamentary Secretary said the bill will enable judges to make more informed decisions about the detention of young people convicted of murder and in doing so promote the rehabilitation of offenders and the protection of the community.

The Opposition, Greens and Christian Democratic Party all supported the bill, acknowledging its genesis and the agreed need for an alternative sentencing regime and noting that the regime proposed in the bill was carefully targeted. While reiterating their support for what they described as an important piece of law reform, the Greens foreshadowed that they would seek to make some minor amendments that would in their view improve the bill.

The second reading was agreed to.

In the committee stage the Greens moved amendments which sought to give the court a role in recommending specific programs to be included in an offender's case plan; to have the Ombudsman monitor and report on the scheme; and to increase the frequency of progress reviews of an offender's case. Notwithstanding the Opposition's support for the first two amendments, all three were negated on the voices.

The bill was reported to the House without amendment, read a third time and returned to the Assembly.

Criminal Procedure Amendment (Court Costs Levy) Bill 2013

The bill originated in the Legislative Assembly.

Summary: The bill primarily amends the *Criminal Procedure Act 1986* to make certain accused persons found guilty of offences in summary proceedings before the Local Court automatically liable to pay a court costs levy. The levy will replace the present system whereby the Local Court has the power to order an accused person to pay court costs if found guilty. The bill aligns the levy with the filing fee in the Local Court, which is currently \$83.

Proceedings: The bill was received from the Legislative Assembly on 20 March 2013 and read a first time. In his second reading speech, the Parliamentary Secretary (Mr

Clarke) said that the aim of the bill is to address the current inconsistency in the application of court costs, and that the levy will apply to most defendants found guilty of an offence in summary proceedings before the Local Court. The Parliamentary Secretary argued that it is reasonable that a proportion of the cost of conducting criminal proceedings should be borne by those found guilty of an offence.

The Opposition did not oppose the bill, but noted that it appeared to be entirely a revenue measure, with no deterrent or rehabilitative element. The Christian Democratic Party supported the bill, arguing that it is important that offenders take responsibility for the impact of their actions on the community, including the cost of bringing them to justice. The CDP cautioned that the 12 month review of the levy provided for in the bill should simply be a review of its operation and not used as an opportunity to justify an increase in its amount. The Greens were opposed to the bill, firstly on the principle that it was an unnecessary erosion of judicial discretion and, secondly, on the practical basis that they believed the costs of administering the scheme will exceed any revenue that it recovers.

The second (Division 35:5) and third readings of the bill were agreed to and the bill was returned to the Assembly.

Intoxicated Persons (Sobering Up Centres Trial) Bill 2013

The bill originated in the Legislative Council.

Summary: The bill facilitates a trial of sobering up centres as a place for the temporary detention and/or care of intoxicated persons to enable them to return to sobriety. The trial incorporates two types of centres, mandatory centres in Sydney City operated by the NSW Police Force and non-mandatory centres operated by accredited persons.

Proceedings: The bill was introduced on 19 March 2013. In his second reading speech, the Minister (Mr Gallacher) indicated that the bill is part of a wider Government initiative to address alcohol-related violence and antisocial behaviour in public places. Through the trial of three sobering up centres it is the Government's intention to test whether providing safe environments for individuals who are noticeably intoxicated to sober up has a positive flow-on effect for enhancing public safety. The Minister stated that in developing the model for New South Wales the Government considered in particular the operation of, and legislation supporting, Canberra's sobering up shelter. The trial will test two different approaches: mandatory and non-mandatory. These centres will operate on Friday and Saturday nights as well as other nights when major events occur.

Debate was adjourned for five calendar days.

Parliamentary Budget Officer Amendment Bill 2013

The bill originated in the Legislative Assembly.

Summary: In June 2011 a joint select committee was appointed to inquire into the purpose and the role of the Parliamentary Budget Office and whether the terms of the *Parliamentary Budget Officer Act 2010* are appropriate.

The Committee identified a number of areas for reform and this bill implements many of those changes and makes some additional amendments to the Act.

The bill amends the Act so that the sole function of the Parliamentary Budget Officer is to prepare election policy costings. The Officer is to be appointed every four years, for a term commencing on 1 September in the year prior to a State election and ending within three months following the election. During this time the Officer is to prepare election costings, table a report in Parliament and appear before the Public Accounts Committee.

Proceedings: The bill was received from the Legislative Assembly on 20 March 2013 and read a first time. The second reading speech of the Minister (Mr Gay on behalf of Mr Pearce) was incorporated into Hansard. In that speech, the Minister stated that the Government is committed to improving the operation and accountability of the Parliamentary Budget Office and that this bill contains a number of amendments to facilitate this. The bill mandates that the Leader of the Government and the Leader of the Opposition submit all election policies that are likely to impact on current and relevant forward budget estimates for costing by the Parliamentary Budget Office to ensure that the electorate has accurate, timely and independent information on the cost of election commitments prior to voting.

Debate was adjourned until the next sitting day.

Private members' business

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

Motions

Homelessness (Ms Barham, The Greens)

Summary: The motion called on the House to note the rate of homelessness and the characteristics of the homeless population in New South Wales, and to in turn call for: retention of the Premier's Advisory Council on Homelessness; all local councils to report annually on initiatives for addressing homelessness and to have a nominated officer tasked with ensuring adherence to the Homeless Persons Protocol; the conduct of a review of the ten Regional Homeless Action Plans developed in 2010; and identification of the balance of funds allocated to NSW under the 2009-10 National Partnership Agreement on Homelessness for a funding program to support local government to meet the needs of homeless people.

Proceedings: Debate on the motion resumed according to precedence on 21 March 2013 (see Vol 55/43 of *House in Review* for earlier debate). Mr Buckingham moved some amendments to the motion in order to recognise several developments in homelessness policy since the motion was moved in October 2012, including the continuation and expansion of membership of the Premier's Advisory Council on Homelessness.

The time for debate on the motion was extended by an additional 30 minutes, on motion of Ms Barham, to allow

all members who wished to do so the opportunity to speak.

Members continued to speak in support of the motion and the amendments, commenting on the seriousness of issue and the links between homelessness and mental health problems. Members stated that the problem affects Australia as a whole and debated what has been achieved on a Federal level under the National Partnership Agreement on Homelessness.

The amendments of Mr Buckingham were agreed to and the motion, as amended was agreed to.

Bulahdelah Hospital (Ms Voltz, Australian Labor Party)

Summary: The motion noted the importance of Bulahdelah Hospital and the negative impact that removing the position of Visiting Medical Officer (VMO) will have on the community, as the VMO services the emergency department and acts as the full time general practitioner to the local community. The doctor that has filled this role is retiring and without this position the emergency department at the hospital will cease to exist. The motion further called on the Premier to overturn the decision.

Proceedings: Standing orders were suspended to bring on the item of business. In speaking to the motion, Ms Voltz stated that this issue is of vital concern to the people of Bulahdelah as there are many elderly people living in the area, many of whom based their decision to move there on the fact that Bulahdelah has a hospital with an emergency department. Ms Voltz urged the Government not to remove this 24 hour service from the community.

The Greens supported the motion stating that it is a fundamental human right to have access to quality health care, including emergency health care. The Christian Democratic Party, while not supporting the motion, stated that as Australia's ageing population increases it will be important to have hospitals in strategic locations such as Bulahdelah to relieve pressure on major hospitals.

The Government was opposed to the motion stating that it is working on finding appropriate solutions within the community and assured the House that Bulahdelah hospital will continue to provide appropriate health care. The Government recognised that it is a challenging time for Bulahdelah but pointed to the positive sign that there is now a female general practitioner who has moved to the region to work three to four days a week.

The motion was agreed to (Division 19:17).

Motions taken as formal business

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

- (1) Constitutional recognition of Indigenous Australians (Ms Barham)
- (2) Election of new Pope (Mr Clarke)
- (3) General Purpose Standing Committee No. 4 - Extension of reporting date (Mrs Mitchell)

- (4) NSW Rugby League Indigenous initiatives (Ms Ficarra)
- (5) Father Atanasio Gonelli Charitable Fund (Ms Ficarra)
- (6) 'Women in Arts Expression – 2013' exhibition (Ms Ficarra)
- (7) True Blue Meet the Coaches Lunch (Ms Ficarra)
- (8) Australian Journalist of the Year (Ms Westwood)
- (9) 50th anniversary of LifeLine (Ms Ficarra)
- (10) Bully Free Australia Foundation (Ms Ficarra)
- (11) 60th Conference of the Australian Local Government Women's Association NSW Branch (Ms Ficarra)
- (12) Indigenous health inequality (Ms Barham)
- (13) Multicultural Media Conference (Mr Moselmane)
- (14) International Women's Day (Mr Moselmane)
- (15) World Down Syndrome Day (Mr Foley)
- (16) NSW Women in Local Government Awards (Ms Ficarra)
- (17) Mr John Grill (Ms Ficarra).

Debate on budget estimates

The House continued the take-note debate on the Budget Estimates and related papers for the financial year 2012-2013.

Committee activities

Note: Committee activities includes committee references, reports tabled, debate on committee reports, government responses received and any other significant committee activity in the House. Committee activity as part of a current inquiry is summarised in the following section entitled 'Inquiry activities'.

Committee membership

The following change to committee membership was reported:

Privileges Committee: Mr Donnelly in place of Mr Primrose.

Extension of reporting date

General Purpose Standing Committee No. 4: The reporting date for the Committee's inquiry into 'Use of cannabis for medical purposes' was extended to 17 May 2013.

Committee report tabled

Legislation Review Committee: 'Legislation Review Digest No. 33/55 of 2013', dated 19 March 2013.

Committee report debated

General Purpose Standing Committee No. 3: The House continued the take-note debate on Report No. 27 entitled 'Budget Estimates 2012-2013', dated November 2012.

Inquiry activities

Same sex marriage law in NSW

Submissions to the Standing Committee on Social Issues' inquiry into a proposed same sex marriage law in New South Wales closed on 1 March 2013. More than 10,000 submissions were lodged, the highest number ever received by a NSW parliamentary inquiry. The Committee held its final public hearing on Friday 15 March 2013 and is scheduled to report in July 2013.

Partial defence of provocation

The Select Committee on the Partial Defence of Provocation is in the final stages of its inquiry and is currently preparing its report. The Committee received 52 submissions, held three days of public hearings and received a number of responses to an options paper. The report is due to be tabled by 2 May 2013.

Use of cannabis for medical purposes

The General Purpose Standing Committee No. 4 inquiry into the use of cannabis for medical purposes held its second and final hearing on Monday 18 March 2013. Having sought a short extension on the reporting date from the House this week, the Committee will now report by 17 May 2013.

Racial vilification law in NSW

The Standing Committee on Law and Justice has received 29 submissions to its inquiry into racial vilification law in NSW. The Committee will hold public hearings on 5 and 8 April 2013.

Drug and alcohol treatment

The General Purpose Standing Committee No. 2 has received 45 submissions to its inquiry into the effectiveness of current drug and alcohol policies with respect to deterrence, treatment and rehabilitation. Hearings are scheduled for 3, 4 and 10 April 2013. The Committee has a reporting date of 29 August 2013.

Adequacy of water storages in NSW

The Standing Committee on State Development is continuing its inquiry into the adequacy of water storages in NSW. The final hearing will be held 3 May 2013, with the Committee intending to report by the end of June 2013.

Management of public land in NSW

The General Purpose Standing Committee No. 5 is continuing its inquiry into the management of public land in New South Wales and is currently preparing its report, which is due to be tabled in May 2013.

Strategies to reduce alcohol abuse among young people

The Standing Committee on Social Issues has received 43 submissions to its inquiry into strategies to reduce alcohol abuse among young people. The Committee's first hearing will be held on 29 April 2013.

Adjournment debate

Tuesday 19 March 2013

Southern Highlands events/ Tribute to Ian Reynolds (Mr Blair); Department of Primary Industries former employee Mr Paul Parker (Mr Veitch); Marine Park management (Ms Faehrmann); Eden-Monaro election campaign (Mr Whan); Landcare and local land services (Mr Buckingham); Australian Road Safety Awards (Mr Ajaka).

Wednesday 20 March 2013

International Women's Day celebrations (Ms Westwood); International Coalition for Women in Shooting and Hunting (Mr Borsak); Western Australia election result (Miss Gardiner); Judicial independence (Mr Searle); Local environmental plans (Mr Brown); First Australians (Ms Ficarra); Lennox Bridge, Parramatta (Ms Fazio).

Thursday 21 March 2013

Close the Gap campaign/ Tribute to Mickey Kay (Ms Barham); Paint the Town REaD (Mrs Mitchell); Multicultural Media at a Crossroads Conference (Mr Moselmane); Central Coast schools (Mr Donnelly); Metro strategy (Mr Shoebridge); Construction Forestry Mining and Energy Union advertising (Dr Phelps).

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.

All responses will be kept strictly confidential.



David Blunt
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