

# NEW SOUTH WALES LEGISLATIVE COUNCIL

## *HOUSE IN REVIEW*



*Volume 55/67*

*Sitting period  
25 to 27 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](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).

### Overview

This week saw a number of procedurally interesting developments. Of note was the Council's consideration of the message from the Legislative Assembly that advised that the Assembly did not agree with the Council's amendments to the Crimes Amendment (Intoxication) Bill 2014. The Council resolved to insist on its amendments to the bill, and advised the Assembly by message accordingly. The Assembly late on Thursday evening again resolved to disagree with the Council's amendments, thereby setting up an interesting situation when the Council next sits and considers this message.

This week the House agreed to five orders for papers. Two of the orders were agreed to as formal business, while three were subject to debate and division within the House.

Although only two bills passed the House this week, they were both significant pieces of legislation. One was a government bill, namely the Child Protection Legislation Amendment Bill 2013. The other was the Crimes Amendment (Provocation) Bill 2014, introduced by Revd Nile. This was the fifth private members bill introduced in and passed by the House during the 55<sup>th</sup> parliament.

Finally, on Thursday 27 March, the Deputy Leader of the Government gave a notice of motion for the Budget Estimates, which includes the timetable for the initial round of hearings.

The House now stands adjourned until Tuesday 6 May 2014

### Cut-off dates for introduction of government bills in 2014

On Thursday 27 March 2014, the House adopted a sessional order setting two cut-off dates for the introduction of Government bills in the Budget and Spring sessions. The sessional order is designed to ensure that the House has adequate time to scrutinise legislation in the final weeks of a sitting period, which are often characterised by a high volume of legislation.

Under the sessional order, when Government bills are introduced after 29 May 2014, resumption of the second

reading debate on the bill is to be set down for the first sitting day after the winter recess.

In the Spring session, when Government bills are introduced after 13 November 2014, resumption of the second reading debate is to be set down for the first sitting day in 2015.

However, in both cases, when bills are declared urgent by the House the second reading debate and subsequent stages may still proceed.

### Attendance of the Speaker and Clerk of the New Zealand Parliament

On 26 March 2014, during Question Time, the President drew attention to the presence in his gallery of the Rt Hon David Carter, MP, Speaker, and Ms Mary Harris, Clerk, New Zealand Parliament.

### Government business

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

### Crimes Amendment (Intoxication) Bill 2014

The bill originated in the Legislative Assembly.

*Summary:* The bill, as originally introduced, amended the *Crimes Act 1900* to create aggravated intoxication offences by increasing the maximum penalty by two years for certain offences if committed in public by an adult offender intoxicated by alcohol or narcotic drug, and to require the courts to impose minimum sentences of imprisonment for certain serious aggravated intoxication offences. The bill also clarified the assaults to which the recently created offence of assault causing death when intoxicated applies. The bill further authorised police officers to require a breath test or blood or urine sample to confirm or disprove intoxication, and made it an offence to consume alcohol or a narcotic drug within 12 hours of assaulting a person in order to alter the presence or concentration of an intoxicating substance.

As reported in the previous edition of *House in Review*, the Council amended the bill by replacing the hierarchy of offences provided for in the bill with a single offence and by providing a set of exceptions to application of the new

offence. The Assembly advised that it disagreed with the Council's amendments, and the Council resolved to consider the Assembly's message in committee of the whole.

*Proceedings:* The Council considered the Assembly's message in committee of the whole on Wednesday 26 March 2014. The Government moved that the Council not insist on its amendments to the bill, on the grounds expressed in the message from the Legislative Assembly, that is, that the amendments fundamentally changed the intent of the bill. The Christian Democratic Party supported the motion. The Opposition opposed the motion and moved that it be amended to state that the Council did insist on its amendments. The Opposition argued that the House had fulfilled its role in seeking to improve the bill and criticised the Government for not offering an alternative constructive suggestion for consideration in the Council. The Greens opposed the Government motion on the grounds of their opposition to mandatory sentencing.

The Opposition amendment to the motion was agreed to, with the support of the Greens and the Shooters and Fishers Party (Division 20:19). The original motion, as amended, was then agreed to (Division 20:19).

A message advising that the Council insisted on its amendments to the bill was sent to the Assembly. The Assembly considered the message on Thursday 27 March and resolved to continue to disagree with the Council's amendments.

### **Child Protection Legislation Amendment Bill 2013**

The bill originated in the Legislative Assembly.

*Summary:* The bill amends the *Children and Young Persons (Care and Protection) Act 1998*, the *Adoption Act 2000*, the *Child Protection (Working with Children) Act 2012* and other legislation to implement miscellaneous reforms concerning the protection of children and young persons that are intended to promote good parenting and increase parental responsibility for children and young persons; achieve greater permanency for children and young persons in out-of-home care; modernise and create a more responsive and child focused system; and improve the transparency and accountability of child protection services.

*Proceedings:* The bill was received from the Legislative Assembly on 26 March 2014 and read a first time. The second reading speech of the Parliamentary Secretary (Mr Ajaka) was incorporated into Hansard. In that speech, the Parliamentary Secretary indicated that the bill's introduction follows twelve months after the release of a discussion paper and consultation process concerning child protection reform. The bill reflected that Government's belief that ideally, a child will live safely at home with his or her parents and Community Services will work alongside families to provide support. If children cannot live safely at home then the next best place for them is with family or kin—or in some circumstances with a non-relative carer—in a long-term, safe and secure placement. Where family or kin are unwilling and/or unable to assist then open adoption of the child should be considered and pursued so that the

child may receive security and a sense of belonging. The Christian Democratic Party supported the bill.

The Opposition questioned whether the bill would achieve the Government's stated aims and foreshadowed that it would seek to amend the bill to, among other things, ensure access to services for parents of at risk children; ensure a proper place for adoption in the system of out-of-home care; and prevent the reduction of financial support for children in out-of-home. The Opposition argued that the Government had not allocated sufficient resources to those support services for at-risk children and their parent, and that the Government's proposed legislative changes concerning permanency for children in out-of-home care were not supported by sufficient evidence and that the current system should continue to operate until such time as there was overwhelming evidence for change.

The Greens stated that while there was no doubt as to the commitment of governments of all persuasions to improve safety for at-risk children, policies had often placed too much emphasis on secondary services to the detriment of investing in prevention. The Greens also foreshadowed that they would be moving amendments to strengthen the bill's capacity to prevent the need for out-of-home care placements and to improve service delivery outcomes.

The second reading of the bill was agreed to.

In the committee stage, a number of amendments were moved by the Opposition and the Greens that sought to ensure adequate support for persons to meet the terms of any parental responsibility contract or parent capacity orders. The Opposition also sought to maintain the status quo whereby adoption was placed behind Ministerial parental responsibility in the hierarchy of permanent placement principles, while the Greens sought to have adoption removed entirely from the hierarchy. However, all of the amendments were defeated, either on the voices or on division, with the Christian Democratic Party and the Shooters and Fishers Party supporting the bill as presented.

The bill was reported to the House without amendment, read a third time (Division 31:5) and returned to the Assembly.

### **Courts and Other Legislation Amendment Bill 2014**

The bill originated in the Legislative Assembly.

*Summary:* The bill makes miscellaneous amendments to legislation affecting the operation of NSW Courts and other legislation administered by the Attorney General and Minister for Justice. The bill is part of the Government's regular legislative review and monitoring program, and similar bills are presented most years.

*Proceedings:* The bill was received from the Legislative Assembly on 26 March 2014 and read a first time. The second reading of the bill was set down for the next sitting day.

## Fair Trade Amendment (Ticket Reselling) Bill 2013

The bill originated in the Legislative Assembly.

*Summary:* The bill amends the *Fair Trading Act 1987* to provide greater protection and transparency to consumers who wish to sell or purchase tickets in the secondary marketplace, with minimal cost and disruption for event organisers.

*Proceedings:* The bill was received from the Legislative Assembly on 26 March 2014 and read a first time. The second reading of the bill was set down for a later hour.

## State Revenue Legislation Amendment Bill

The bill originated in the Legislative Assembly.

*Summary:* The bill makes amendments to certain State revenue legislation. The bill amends: the *Duties Act 1997* with respect to the rules, concessions and exemptions for landholder duties; the *Land Tax Management Act 1956* with respect to land tax to clarify exemptions and concessions and to prevent tax obligation avoidance practices; and the *Tax Administration Act 1991* to make further provision for the liability of directors for unpaid corporate tax.

*Proceedings:* The bill was received from the Legislative Assembly on 27 March 2014 and read a first time. The second reading was set down for a later hour.

## 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.

*Bills*

## Crimes Amendment (Provocation) Bill 2014 (Revd Nile, Christian Democratic Party)

The bill originated in the Legislative Council.

*Summary:* The bill amends the *Crimes Act 1900* in relation to the partial defence of provocation to a charge of murder. Under section 23 of the Act, provocation is a partial defence to a charge of murder which will result in the accused being acquitted of murder and convicted of manslaughter instead. The bill repeals section 23 of the Act and replaces it with a section that provides a more limited partial defence of extreme provocation. Extreme provocation relates to the provocative conduct, not the words, of the deceased and is established by means of a four stage test. The new section excludes non-violent sexual advances from being provocative conduct. As with the existing section, the bill provides that the killing of the deceased need not occur immediately after the provocative act.

*Proceedings:* On Tuesday 25 March 2014, standing orders were suspended to bring on the item of business and debate on the second reading of the bill resumed from 19 March 2014 (see the previous edition of *House in Review* for earlier debate). Members of the Opposition and the Greens supported the bill, both arguing the bill represented a significant, positive and long-overdue

reform of the law. However, both parties foreshadowed amendments to the bill aimed at increasing appropriate access to the partial defence to victims of long-term domestic violence. While supporting the bill, some members expressed disappointment that not all of the recommendations of the Select Committee on the Partial Defence of Provocation were embodied in the bill or adopted by the Government, with the Deputy Leader of the Opposition tabling the summary of the recommendations from the report of the Select Committee.

Debate was interrupted for Question Time, following which the House resolved that the debate resume and take precedence later in the evening.

When debate resumed, members from all sides continued to speak in support of the bill with some members arguing that the development of the bill was a testimony to the role and effectiveness of the House and its committee system. In reply, Revd Nile paid tribute to the work of the select committee and stated that the bill will ensure that the partial defence to murder may only be raised in appropriate circumstances in line with community expectations.

The second reading was agreed to.

Consideration of the bill in committee of the whole commenced the following day. The Opposition, with the support of the Greens, sought to remove the requirement for an offender to have lost self-control for the partial defence to apply, arguing that it was a gendered concept that disadvantaged long-term victims of domestic violence. The Christian Democratic Party and the Government opposed the amendment, on the grounds that the removal would serve to expand too far the use of the partial defence and open it up to abuse. The amendment was defeated, with the Shooters and Fishers Party joining the Christian Democratic Party and the Government in voting against the motion (Division 17:20). The Greens unsuccessfully moved amendments that sought to ensure that victims of domestic violence would continue to have the same access to the partial defence as is provided under the current law. Finally, the Opposition sought to insert provisions that would allow the admissibility of social framework evidence when determining extreme provocation that comprised or included domestic violence. While drawing the support of the Greens, the amendments were defeated on the voices.

The bill was reported to the House without amendment. The third reading was agreed to, with one member taking the opportunity to note his lack of support for the bill. The bill was forwarded to the Assembly for concurrence.

## Roman Catholic Church Trust Property Amendment (Justice for Victims) Bill 2014 (Mr Shoebridge, the Greens)

The bill originated in the Legislative Council.

*Summary:* The bill seeks to amend the *Roman Catholic Church Trust Property Act 1936* to provide for the ability of victims of sexual abuse, where the abuser is found to be a member of the Catholic clergy and or another official or officer in the Church, to satisfy judgments awarded

against such abusers as a judgment debt payable from the assets of the Trust and for other related purposes.

*Proceedings:* On Thursday 27 March 2014, standing orders were suspended to bring on the item of business. Leave was granted to bring in the bill. The bill was presented, read a first time and printed. In his second reading speech, Mr Shoebridge indicated that the bill had been drafted in response to the failure of the Catholic Church to address claims of abuse and the mounting evidence of mismanagement within the organisation. Mr Shoebridge further argued that it is essential that lawmakers close the loopholes which enable the Church to escape accountability and thus ensure that civil claims against the church by victims of sexual abuse will be decided on their merits and not on a legal technicality. Mr Shoebridge stated that the bill had been drafted in consultation with victims and survivors, support groups, lawyers, and other stakeholders.

Debate was adjourned for five calendar days.

### **Transport Administration Amendment (Rail Trails Community Management) Bill (Mr Veitch, Australian Labor Party)**

The bill originated in the Legislative Council.

*Summary:* The bill seeks to amend the *Transport Administration Act 1988* to allow the Minister to enter into an agreement with not-for-profit organisations or local councils for the use of disused railway line corridors as recreational rail trails.

*Proceedings:* On 27 March 2014, standing orders were suspended to bring on the item of business. Leave was granted to bring in the bill, which was presented, read a first time and printed. In his second reading speech, Mr Veitch noted that there are more than 30 established rail trails across all jurisdictions in Australia with the exception of NSW and that rail trails have the proven capacity to unlock economic and social opportunity for rural and regional communities. Mr Veitch noted that there is widespread community support for rail trails, with a number of proposals in development, and that the bill will enable such proposals to be presented to the Government. Mr Veitch emphasised that the bill maintains the ownership of rail corridor land with Transport for NSW to allow for conversion back to a rail line if needed in the future.

Debate was adjourned for five calendar days.

#### *Motions*

### **International Women's Day 2014 (Ms Ficarra, Liberal Party)**

*Summary:* The motion called on the House to note that International Women's Day, with the theme 'Inspiring Change', was held on 8 March 2014 and to note the nominees and recipients of the NSW Women of the Year awards and International Women's Day Awards for Local Government. The motion also called on the House to congratulate and recognise all those nominated for awards for their contribution to the community and to acknowledge those involved in organising and supporting the awards.

*Proceedings:* Standing orders were suspended to bring on the item of business. Debate on the motion resumed on 27 March from 20 March 2014 (see previous edition of *House in Review* for earlier debate). Members speaking to the motion acknowledged the achievements of various women who serve as role models and who were mentioned in the motion, while focussing on the stronger role that women need to play at a corporate and political level in order for communities to reach their full potential.

The motion was agreed to.

### **National Broadband Network (Mr Whan, Australian Labor Party)**

*Summary:* The motion called on the House to note the Federal Government's actions with respect to the roll-out and configuration of the National Broadband Network (NBN). The motion further called on the State Government to lobby the Federal Government to implement the NBN in line with the original NBN model developed by the former Federal Labor Government.

*Proceedings:* Debate on the motion resumed according to precedence on 27 March 2014 (see *House in Review* Vol. 55/65 for earlier debate). Speakers to the motion argued the relative merits of both the federal Coalitions and federal Labor's respective national broadband policies. Supporters of the Coalition's policy emphasised its cost-effectiveness and efficiency while those in favour of the Labor policy argued that it would deliver faster speeds than those promised by the Federal Government.

The motion was negatived (Division 17:20).

#### *Motions taken as formal business*

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

- (1) New South Wales Art and Culture (Mrs Maclaren-Jones)
- (2) Mr Andrew Forrest – Global Freedom Network (Ms Ficarra)
- (3) Mr Malek Chamoun – Commonwealth Games (Ms Ficarra)
- (4) Way in Network Fundraiser 2014 (Ms Ficarra)
- (5) Crescent Funds Management (Australia) Ltd (Mr Moselmane)
- (6) Purple Day and epilepsy awareness (Ms Westwood)
- (7) Australian Foshan Association Inauguration Dinner (Ms Fazio)
- (8) Holi Mahotsav (Ms Fazio)
- (9) Pakistan Association of Australia gala dinner (Ms Fazio)
- (10) RSL ANZAC Art Awards (Mr Lynn)
- (11) St Joseph's Maronite Catholic Church Holy Mass (Mr Donnelly).

## Orders for papers

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

### *Orders made*

- (1) **Management of Crown caravan parks in Byron Shire (Ms Barham):** The order relates to the review, audit and dismissal of Byron Shire Council as managers of Crown Caravan Parks in Byron Shire during 2005 and 2006. The motion was agreed to as formal business. Due: 9 April 2014.
- (2) **Draft Protection of the Environment Operations (General) Amendment (Native Forest Bio-material) Regulation 2013 (Dr Kaye):** The order relates to submissions made by government agencies as part of the consultation conducted on the draft Protection of the Environment Operations (General) Amendment (Native Forest Bio-material) Regulation 2013. The motion was agreed to as formal business. Due: 9 April 2014.
- (3) **Acquisition of land for reserve system (Mr Borsak):** The order relates to documents created since 1 July 2013 relating to acquisitions of land for the reserve system. Standing orders were suspended to bring on the item of business (Division 21:16). The motion was agreed to (Division 21:16). Due: 16 April 2014.
- (4) **Reform of Planning Laws in New South Wales (Mr Shoebridge):** The order relates to documents created since 1 January 2012 concerning the reform of planning laws in New South Wales. Standing orders were suspended to bring on the item of business (Division 19:18). The motion was agreed to (Division 19:18). Due: 16 April 2014.
- (5) **Planning Proposal for Bronte RSL (Mr Foley):** The order relates to Winston Langley Burlington's planning proposal for the site of Bronte RSL at 109-113 Macpherson Street, Bronte. Standing orders were suspended to bring on the item of business (Division 22:17). The motion was agreed to (Division 22:17). Due: 16 April 2014.

### *Returns to order*

- (1) **WestConnex Business Case:** received 25 March 2014, 22 boxes public, 16 boxes privileged.

## Petitions received

- (1) Dutton Lane Car Park – 2,631 signatures (presented Mr Lynn); 359 signatures (presented Mr Lynn); 636 signatures (presented Mr Lynn).

## Reports tabled

**Auditor-General:** Financial Audit report: 'Volume One 2014: Areas of focus from 2013', dated March 2014.

## 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 references*

**Select Committee on the sale of the Currawong property at Pittwater:** On 26 March 2014, the House agreed to a motion of Dr Kaye that a Select Committee be appointed to inquire into and report on matters surrounding the alleged offer of a bribe in relation to a sale of the property Currawong, Pittwater by Unions NSW.

### *Committee membership*

**Select Committee on the Sale of the Currawong Property at Pittwater**

According to the resolution establishing the committee, membership includes Mr Brown (Shooters and Fishers Party) as Chair and Dr Kaye (The Greens) as a member of the committee.

The President informed the House on 27 March 2014 that the Leader of the Opposition nominated Ms Fazio and Mr Searle as the Opposition members and Mr Khan, Mr MacDonald and Mr Pearce as the Government members on the committee.

### *Committee report tabled*

**Legislation Review Committee:** 'Legislation Review Digest No. 53/55', date March 2014.

**The Joint Standing Committee on Electoral Matters:** 'Inquiry into the 2012 Local Government Elections', date March 2014.

### *Committee reports debated*

**General Purpose Standing Committee No. 2:** The House concluded the take-note debate on Report No. 41 entitled 'Budget Estimates 2013-2014', dated October 2013.

**General Purpose Standing Committee No. 3:** The House commenced the take-note debate on Report No. 28 entitled 'Budget Estimates 2013-2014' dated October 2013.

## Inquiry activities

### **Select Committee on the impact of gambling**

The Committee has received 33 submissions. Hearings will be held on 10 and 11 April 2014. The Committee will also be undertaking site visits on 3 June, 5 June and 23 June 2014.

### **Wambelong fire**

On 13 February 2014 the Committee resolved to postpone the inquiry pending further advice from the Coroner's Office regarding the timeline for the coronial investigation. The Committee has since been advised that the Coronial hearings will conclude at the end of August

2014, and the Committee has rescheduled its site visit and hearings to early September 2014.

### **Social, public and affordable housing**

The Select Committee has received 235 submissions. The remainder of these submissions will shortly be published on the Committee's website. The Select Committee conducted its first Inquiry activities on 12 and 13 March 2014. Dates for further inquiry activity will soon be published on the website.

### **Ministerial propriety in NSW**

The Select Committee has received seven submissions. The reporting date for the inquiry is October 2014.

### **Regional aviation services**

The Standing Committee on State Development has received 56 submissions which have been published on the Committee's website. Dates for hearings and site visits will soon be published on the Committee's website.

### **Allegations of bullying in WorkCover NSW**

General Purpose Standing Committee No.1 has received 96 submissions and held two hearings. Its report is currently being drafted.

### **Greyhound racing in NSW**

The Select Committee on greyhound racing in NSW tabled its First Report on 28 March 2014, and the House has extended the Committee's final reporting date to 30 June 2014.

### **Standing Committee on Law and Justice**

The Standing Committee on Law and Justice is conducting its first reviews into the exercise and functions of the WorkCover Authority and Dust Diseases Board. The Committee has received 39 submissions for the WorkCover review and 7 submissions for the Dust Diseases review. The first hearing was held on 21 March, with a second hearing scheduled for 28 March 2014.

In addition, the Committee is conducting concurrent reviews into the exercise and functions of the Motor Accidents Authority (12th Review) and Lifetime Care and Support Authority (Fifth Review). The Committee has received 12 submissions to each review and held hearings on 7 and 17 March 2014.

The Committee is also conducting an inquiry into the family response to the murders in Bowraville, and has received 26 submissions to date. The Committee will be conducting a site visit to Bowraville on 31 March and will be holding hearings in Bowraville on 1 and 2 May and in Sydney on 12 May 2014.

### **Select Committee on the sale of the Currawong property at Pittwater**

On 26 March 2014, the House resolved to appoint a select committee to inquire into and report on matters surrounding the alleged offer of a bribe in relation to the sale of the Currawong property at Pittwater by Unions NSW. Submissions are currently being received with the reporting date 28 June 2014.

### **Privileges Committee**

The Privileges Committee is inquiring into recommendations made by the Independent Commission Against Corruption (ICAC) regarding aspects of *The Code of Conduct for Members*, the interest disclosure regime and a parliamentary investigator. The inquiry follows the publication of a report by the ICAC in October 2013 entitled 'Reducing the opportunities and incentives for corruption in the State's management of coal resources'. The closing date for submissions has now passed, however, to date, the Committee has not published any submissions.

## **Adjournment debate**

### **Tuesday 25 March 2014**

Turkish Consul General (Mr Khan); Cat Protection Society (Mr Secord); Child protection (Ms Barham); Surf lifesaving (Mrs Maclaren-Jones); Housing (Ms Cotsis); Planning laws (Mr Shoebridge).

### **Wednesday 26 March 2014**

Palliative care nursing (Mr Donnelly); Martins Creek Public School (Mr Green); Tribute to Max Woods (Mr Colless); Meat workers employment conditions (Mr Veitch); Energy market (Dr Kaye); NSW Interfaith Parliamentary Prayer Breakfast (Mr Mason-Cox).

### **Thursday 27 March 2014**

St Vincent De Paul Society (Revd Nile); Young Nationals annual conference (Miss Gardiner); Commercial fishing reform (Mr Whan); Environmental mining impacts (Dr Faruqi); ABC bias (Mr Clarke); WorkCover scheme finances (Mr Searle).

## **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