

# NEW SOUTH WALES LEGISLATIVE COUNCIL

## *HOUSE IN REVIEW*



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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 the House pass four bills, including the Limitation Amendment (Child Abuse) Bill 2016, which removed the limitation period for an action for damages relating to death or personal injury resulting from child abuse, a recommendation made by the Royal Commission into Institutional Responses to Child Sexual Abuse. The House also considered three motions to disallow a statutory instrument and discussed the merits and risks of including images in notices of motions. The House concluded the week with the consideration of private members' motions highlighting the success of the Sydney Architecture Festival and recent developments in practices for the mulesing of sheep in the wool industry.

The House now stands adjourned until Tuesday 15 March 2016.

### **Ruling by President – Point of order concerning notice of motion**

On Tuesday 8 March 2016, Mr Shoebridge (Greens) gave a notice of motion regarding the recognition of women councillors. Unusually, the notice contained an image.

On Wednesday 9 March 2016, on the notice coming on for consideration, a point of order was taken that the notice was contrary to the long-standing practice of the House. Debate on the point of order ensued, with members speaking of the oral and written tradition of parliamentary business, the potential risks in relation to the possible inclusion of more controversial images in motions if a precedent is established, the limited inclusion of images in legislation, the capacity for images to make members' work more relevant, and the nexus between the image and the words contained in the motion in question. The President reserved his ruling.

Later in the day, the President ruled that, having considered the points raised, he was concerned about the potential risks if a precedent was established, particularly in the absence of careful consideration of this matter by the Procedure Committee. More immediately, he had been advised that it would not technically be possible to include the image in Hansard. The President directed the Clerk to remove the image and words referring to the image from the notice.

### **Disallowance motions**

This week the House debated a series of motions to disallow the provisions of certain statutory instruments, utilising the powers afforded to the House under s 41 of the Interpretation Act 1984.

On Wednesday 9 March 2016, Mr Secord (Labor) moved a motion to disallow paragraph [7](1)(b) of Schedule 1 of the [Public Health Amendment \(Miscellaneous\) Regulation 2016](#), which authorised premises

licensed for the purpose of providing skin penetration to perform eyeball tattooing procedures. In speaking to the motion, Mr Secord pointed to criticisms made by ophthalmology and optometry experts. Mr Secord suggested that the regulation would have the effect of legalising eyeball tattooing, a move that had 'horrified' doctors, and stated his intention to introduce legislation that would formally ban eyeball tattooing for decorative purposes in NSW. Other Opposition members also spoke to the inherent dangers of the practice, which they said can cause infection, blindness and cancer.

The Government opposed the motion, noting that eyeball tattooing was already legal but was previously unregulated, and that the regulation would ensure that the activity was subject to appropriate safety measures and sterilisation precautions, with a view to protecting public health and moving the activity away from the realm of backyard tattooists. The Greens and CDP also opposed the motion, stating that although they were opposed to the practice of eyeball tattooing, the effect of disallowing the provision would not be to prohibit the practice, but rather to revert back to an absence of regulation and protections. The motion was negatived (Division: 10/24).

On Thursday 10 March 2016, Mr Searle moved two motions to disallow multiple provisions of the [Mining Legislation Amendment \(Harmonisation\) Regulation 2016](#) which sought to vary the financial penalties that apply to various offences under the Mining Act 1992, and multiple provisions of the [Petroleum \(Onshore\) Legislation Amendment \(Harmonisation\) Regulation 2016](#) which sought to vary the financial penalties that apply to various offences under the Petroleum (Onshore) Act 1991.

In speaking to the motion, Mr Searle noted that the Opposition in principle supports a system of penalty notices as it makes administrative sense and provides flexibility for inspectors to issue on-the-spot fines and penalties for less serious offences. However, the Opposition argued that some of the penalties were too low. Mr Searle also noted that the penalty notice system offered an alternative to pursuing prosecutions in a court of law. Penalties for convictions in court were much higher than the penalties proposed in the regulation for on the spot fines. The Opposition was concerned that there may be increasing pressure on inspectors to not undertake difficult investigations or prosecutions and instead go down the path of administrative convenience by issuing a fine.

The motion was opposed by the Government, which stated that the penalty notice system was simply a new tool in the toolbox of inspectors – a person or corporation could still be formally prosecuted, and penalty notices would provide a stronger alternative to the warning notices previously available to inspectors.

The Greens supported the motion, stating that the gulf between the penalty infringement notice and the court-imposed penalty is so massive that it undermines the force of the law and gives bureaucrats significant subjective powers, which is a potential corruption risk.

The motion was disagreed to (Division 16/21).

## **Government business**

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

### [Limitation Amendment \(Child Abuse\) Bill 2016](#)

House of origin: Legislative Assembly

The bill amends the Limitation Act 1969 to remove the limitation period for an action for damages relating to death or personal injury resulting from child abuse (sexual abuse or serious physical abuse to a person under 18 years). The changes will not permit an action to be reopened if it has already been determined by the court on merit, or settled by the parties. The bill gives effect to recommendations of the [Royal Commission into Institutional Responses to Child Sexual Abuse](#) and to submissions made to the NSW Department of Justice following the release of a [discussion paper](#) on limitation period reform options.

Members unanimously supported the bill, noting the significance of the evidence given to the Royal Commission and the subsequent recommendations made. Members noted that legislation which completely removed the limitation period for all relevant child abuse claims, regardless of the time or context of the alleged abuse, had been agreed to in Victoria in April 2015, and it was timely that NSW also remove the barriers victims face in pursuing justice. However, both the Opposition and the Greens raised concerns that the bill would only lift the limitations in relation to victims under 18 years old. The Greens and the CDP also observed that the bill went beyond the recommendation of the Royal Commission by not only removing limitation periods for claims of sexual abuse of a child but also for claims of serious physical abuse of a child. The Greens questioned the merits of limiting physical abuse to be ‘serious physical abuse’, arguing that it put in place another legal hurdle that victims and survivors will have to overcome in order to get their claims before the court. The second reading of the bill was agreed to on the voices.

During consideration in committee of the whole, the Greens moved four amendments which sought to alter the definition of child abuse from ‘serious physical abuse’ to ‘physical abuse’. Mr Shoebridge argued that the legislation agreed to by the Victorian Parliament did not have the qualification of “serious” relating to physical abuse, and in the interest of national consistency in laws and to prevent “insult to victims”, the qualifier should be removed. The amendments were supported by the Opposition but opposed by the Government, which argued that the definitions in the bill are broad enough to cover the kinds of abuse associated with non-reporting but not so broad as to cover trivial, accidental or other conduct where the usual expectation to bring an action in a timely way continues to apply. The amendments were disagreed to (Division: 15/20).

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

#### **[Transport Administration Amendment \(Authority to Close Railway Lines\) Bill 2016](#)**

House of origin: Legislative Council

The bill amends the Transport Administration Act 1988 (TAA Act) to authorise a rail infrastructure owner to close the railway line that runs from Balmain Road, Lilyfield, to Victoria Road, Rozelle (including the Rozelle rail yards). The bill also enables the Minister for Transport and Infrastructure to authorise a rail infrastructure owner to close any other railway line in the greater Sydney, Newcastle, Central Coast or Wollongong metropolitan region for the purposes of or in connection with development that is declared to be State significant infrastructure under the Environmental Planning and Assessment Act 1979. The bill also allows a railway line to be closed under s99A of the TAA Act if the land concerned is sold or otherwise disposed of or the railway tracks and other works concerned are removed.

While the CDP supported the bill, the Opposition and the Greens opposed the bill arguing that it effectively gives the Minister for Transport and Infrastructure the power to authorise rail infrastructure owners to close railway lines when previously an Act of Parliament was required for this purpose. Members also opposed the provision which would give the Minister discretion over which lines will be closed or will remain open.

The second reading was agreed to (Division: 20/17), and the bill was read a third time and forwarded to the Legislative Assembly for concurrence. The Assembly agreed to the bill.

#### **[Electricity Supply Amendment \(Advanced Meters\) Bill 2016](#)**

House of origin: Legislative Council

The bill removes responsibility for electricity meters from distribution businesses and establishes a metering safety and compliance regime under NSW Fair Trading. In response to the planned closure of the solar bonus scheme, the bill supports a voluntary, market-led roll out of smart meters in New South Wales by allowing retailers and new metering businesses to install smart meters. Smart meters are required for

customers to switch from gross metering – the current system – to net metering, so that they can monitor the electricity used to power their household from solar panels and sell any excess back to the grid. The voluntary nature of the rollout is a key feature of the NSW system, which stands in contrast to the system adopted in Victoria where the rollout of smart meters was made compulsory.

In speaking to the bill, the minister stated that NSW is the first jurisdiction nationally to start a competitive metering rollout and spoke to the many benefits of this arrangement. The minister also noted that the bill clarifies consumer protection measures under the new arrangements, providing for disputes between a consumer and a retailer relating to smart meters to be referred to the Energy and Water Ombudsman NSW.

Debate on the bill was adjourned for 5 calendar days.

### **[Health Practitioner Regulation National Law \(NSW\) Amendment \(Review\) Bill 2016](#)**

House of origin: Legislative Assembly

In 2009, New South Wales became a co-regulatory jurisdiction of the National Registration and Accreditation Scheme (NRAS) for health professionals. The NRAS operates as a national registration and accreditation scheme aimed at ensuring consistencies across Australia. The bill makes minor amendments to the Health Practitioner Regulation (Adoption of National Law) Act 2009 to amend the New South Wales specific provisions of the Health Practitioner Regulation National Law (NSW).

In speaking to the second reading of the bill, the Parliamentary Secretary noted that in late 2015, the Minister for Health tabled a report on the statutory review of the NSW National Law which made a number of recommendations, which the bill seeks to implement. Primarily, the changes are designed to promote consistency in the legislation, to give more flexibility and to ensure the smooth operation of the complaints handling processes.

Members did not oppose the bill, however the Opposition noted concerns expressed by the Nurses and Midwives Association regarding a lack of clarity around the notification process where a practitioner is found to be mentally ill. The Greens stated that their only objection to the bill was that it does not address the in-principle recommendation made in the statutory review that NSW should have the legal right to accept or reject changes to the Schedule of Health Practitioner Regulation National Law Act (2009), Queensland, by making any changes disallowable. The Greens noted that the minister had acknowledged that this recommendation had not been addressed, but may be revisited in the future. The second and third readings were agreed to and the bill was returned to the Assembly.

### **[Debate on Budget Estimates 2015-2016](#)**

This week the House commenced the take note debate on the Budget Estimates and related papers for the financial year 2015-2016. Members discussed funding for the Pacific Highway, funding for health, infrastructure and emergency services in regional New South Wales, the gender pay gap and initiatives to support women in the budget.

### **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*

#### **Sydney Architecture Festival (Mr Mallard, Government)**

The motion noted that the 2015 Sydney Architecture Festival, held from 2 to 5 October 2015, enabled the community to participate in and enjoy the history and architecture of Sydney and helped promote Sydney's cultural identity as a contemporary city of quality architecture. The motion congratulated the festival

directors and sponsors, and acknowledged those who had attended. The festival is an annual event presented by the Australian Institute of Architects NSW Chapter and the NSW Architects Registration Board.

In speaking to the motion Mr Mallard emphasised the importance of good architecture to the state and the centrality of architecture to good government in New South Wales, pointing to various examples of prominent architecture throughout Sydney. He also highlighted the opportunities the festival provided for discussion and reflection on the city's architecture from architects, non-architects and architecture students, bringing the community together to think about what the built environment has to offer.

Members of the Opposition spoke in support of the motion, but noted the need to acknowledge redevelopment and renewal projects underway outside of the Sydney CBD and the importance of preserving the many heritage properties found throughout the state. The Greens also supported the motion, noting that the festival provided the opportunity to present a world of not only beauty but function to deal with changing climate and likely future changes.

The motion was agreed to.

### **Wool growing industry (Mr Pearson, Animal Justice Party)**

The motion commended the 80 per cent of wool growers who are breeding sheep to be resistant to flystrike by breeding out skin wrinkles and using pain relief when mulesing sheep. Following an amendment moved by Mr Pearson, the motion further called on other wool growers to breed sheep to be resistant to flystrike and, in the interim, provide pain relief to sheep when mulesing.

In speaking to the motion, Mr Pearson highlighted the role of prominent wool buyers and fashion houses who had led the demand for cruelty-free wool. Mr Pearson also commended the work of Dr Meredith Schiel and the Australian Wool Growers Association for developing and promoting Tri-Solfen, an economical local anaesthetic and antiseptic gel spray for use on lambs to provide pain relief following mulesing, which also reduces blood loss and risk of infection to improve wound healing.

The Minister for Primary Industries supported recognition of the progress made in the industry in the treatment of farm animals, but stressed the importance of the prevention of flystrike to the Australian sheep industry. The minister noted that the Government does not support the mandating of sheep industry standards in New South Wales because the industry is already doing a good job in setting sheep standards and wool growers continue to make improvements, particularly in areas such as flystrike.

Debate on the motion was interrupted by sessional order and set down for resumption on a future sitting day.

### *Motions taken as formal business*

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

- (1) Wellness Walk (Mrs Maclaren-Jones).
- (2) Startup Week Sydney (Mrs Maclaren-Jones).
- (3) United Patriots Front (Dr Faruqi).
- (4) Group Captain Kevin Martin (Mr MacDonald).
- (5) HunterNet Future Leaders Program (Mr MacDonald).
- (6) Closing the Gap (Ms Barham).
- (7) Australia's Human Rights Record (Ms Barham).

- (8) Aunty Chris Burke (Ms Barham).
- (9) Deputy Commissioner Nick Kaldas APM (Mr Shoebridge).
- (10) International Women's Day (Dr Faruqi).
- (11) Recognition of Women Councillors (Mr Shoebridge).
- (12) Maitland Show (Mr MacDonald).
- (13) Newcastle's Surfest (Mr MacDonald).
- (14) Australian Bowl-Riding Championship (Mr MacDonald).
- (15) United Nations Educational, Scientific and Cultural Organisation (Mr Wong).
- (16) Screening of 'The Change' documentary (Mr Wong).
- (17) Tenants' Union of New South Wales (Mr Mallard).
- (18) Climate change heat (Ms Barham).
- (19) International Women's Day Ballina (Mr Buckingham).
- (20) Combined Services Club of Ballina (Mr Buckingham).

### Orders for papers

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

#### *Correspondence received*

- (1) **Under-dosing of chemotherapy patients:** On Tuesday 8 March 2016, the Clerk reported receipt of correspondence from the General Counsel of the Department of Premier and Cabinet advising that St Vincent's Health Australia, an organisation named in the order previously passed by the House, is a group of non-for-profit companies and is not subject to direction or control by or on behalf of the Government. However, certain other documents were being collated in response to the order by the other entities named

### Committee activities

#### *Committee membership*

**State Development Committee:** The following change to committee membership was reported: Mr Wong in place of Ms Cotsis.

#### *Committee reports tabled*

**Law and Justice Committee:** Report No. 57 entitled 'Remedies for the serious invasion of privacy in New South Wales', dated March 2016.

**Committee on the Independent Commission Against Corruption:** Report No. 1/56 entitled 'Review of the 2013-2014 Annual Reports of the

Independent Commission Against Corruption and the Inspector of the Independent Commission Against Corruption', dated March 2016.

**Legislation Review Committee:** 'Legislation Review Digest No. 14/56', dated 8 March 2016.

#### *Committee reports debated*

**General Purpose Standing Committee No. 4:** The House concluded the take-note debate on Report no. 31 entitled 'Progress of the Ombudsman's investigation "Operation Prospect"', dated August 2015.

**General Purpose Standing Committee No. 3:** The House concluded the take-note debate on Report No. 32 entitled 'Registered nurses in New South Wales nursing homes', dated October 2015.

**General Purpose Standing Committee No. 6:** The House continued the take-note debate on Report No. 1 entitled 'Local Government in New South Wales', dated October 2015.

**General Purpose Standing Committee No. 4:** The House continued the take-note debate on Report No. 32 entitled 'Budget Estimates 2015-2016', dated November 2015.

#### *Government response*

**Select Committee on the Closure of Public Schools in New South Wales:** The House received a response to the Report entitled 'The closure of public

schools in New South Wales', tabled 22 October 2015.

### **Inquiry activities**

#### **General Purpose Standing Committee No. 2**

*Inquiry into elder abuse in New South Wales*

On 7 March 2016 the committee in conjunction with the Law Society of NSW hosted a consultation to hear directly from Aboriginal elders about elder abuse in indigenous communities. Later that day the committee held its third hearing. The final hearing will be held on 18 March.

#### **General Purpose Standing Committee No. 3**

*Inquiry into reparations for the stolen generations in New South Wales*

The closing date for submissions was extended until 31 March 2016. The committee will hear from a further witness on 22 March 2016 and is in the process of drafting its report, which is due to be tabled mid-year.

#### **Select Committee on the Legislative Council committee system**

The committee has received 11 submissions to date and intends to hold its first hearing in April 2016.

#### **Law and Justice Committee**

*Inquiry into the security classification and management of inmates sentenced to life imprisonment*

The committee is in the process of drafting its report and expects to report in late March.

#### **State Development Committee**

*Inquiry into economic development in Aboriginal communities*

The committee held its first hearing in Sydney on 26 February 2016. The committee will visit Newcastle, Dubbo, Tamworth and the South Coast in coming months to take evidence in relation to both this inquiry and the inquiry into regional planning processes in NSW.

*Inquiry into regional planning processes in NSW*

The committee will hold its first hearing in Sydney on 11 March 2016 followed by site visits (see above).

### **Reports tabled**

**Independent Commission Against Corruption:** 'Investigation into the conduct of a TAFE NSW ICT manager', March 2016.

#### **Auditor General:**

- (1) 'Performance frameworks in custodial centre operations: Department of Justice, Corrective Services NSW', March 2016.
- (2) 'Managing unsolicited proposals in NSW: Department of Premier and Cabinet', March 2016.

### **Adjournment debate**

#### **Tuesday 8 March 2016**

International Women's Day (Ms Cusack); Broken Hill Water Supply (Mr Veitch); Farmers Land Rights (Mr Brown); International Women's Day (Ms Sharpe); Battle for Berrima (Mr Buckingham); Member for Gosford (Mr MacDonald).

#### **Wednesday 9 March 2016**

New South Wales community members (Mrs Houssos); Easter (Mr Green); Southern New South Wales (Mr Mason-Cox); Vocational education and training (Mr Donnelly); Identity Theft (Mr Shoebridge); Voluntary euthanasia (Mr Khan).

#### **Thursday 10 March 2016**

Drug policy and law reform (Dr Faruqi); BaptistCare Services (Mr Amato); International Women's Day and Nancy Wake (Ms Voltz); Syrian and Middle East Christian refugees (Revd Mr Nile); Fossil fuels and climate change (Mr Colless); Sydney Arts (Mr Secord).

### **Feedback on *House in Review***

We welcome any comments you might have on this publication, including those parts of the *House in Review* you find most useful and 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.



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