

NEW SOUTH WALES LEGISLATIVE COUNCIL

HOUSE IN REVIEW



Volume 55/10

*Sitting period
6 to 9 September 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 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.

2011-2012 Budget

On 6 September 2011, the Minister for Finance and Services, Mr Pearce, tabled the Budget Papers for the financial year 2011-2012. Mr Pearce then moved that the House take note of the Budget Estimates and related papers. Following incorporation of the Budget speech into Hansard, the debate was adjourned.

Mr Pearce also tabled a report entitled 'NSW 2021: A plan to make NSW number one'.

The Appropriation Bill 2011 was received from the Legislative Assembly on Thursday, 8 September 2011 and is currently before the House.

Condolence motion – 10th anniversary of the September 11 terrorist attacks

The Leader of the Government moved a condolence motion to mark the 10th anniversary of the September 11 terrorist attacks in the United States of America. The Leader of the Government and Leader of the Opposition spoke to the motion, which was unanimously agreed to.

Condolence motion – 1st anniversary of the passing of Detective Constable Bill Crews

The Leader of the Government moved a condolence motion noting that 9 September 2011 marked the first anniversary of the passing of Detective Constable William "Bill" Crews, the 250th police officer killed in the line of duty in NSW. The motion conveyed to the family, friends and colleagues of Bill Crews the best wishes of the House, and expressed the House's gratitude to all police men and women for their dedication to protecting the community. The motion was agreed to without debate.

Government business

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

Government Advertising Bill 2011

Summary: The bill creates the *Government Advertising Act* to regulate Government advertising. The Act will prohibit party-political material in government advertising; prohibit advertising campaigns designed to benefit a

political party; protect the independence of heads of government agencies authorising advertising campaigns; provide a role for the Auditor General to scrutinise government advertising; and make governing political parties liable to pay back the costs of advertising campaigns that breach these new laws. The Act will also require that cost benefit analyses and peer reviews be carried out for Government advertising campaigns costing more than specified amounts; and that an advertising compliance certificate – which attests to the campaign's necessity, cost-efficiency and compliance with regulations – be issued before a campaign is commenced.

Proceedings: The bill was received from the Legislative Assembly on 11 August 2011 and read a first time. Debate resumed on 7 September 2011. In his second reading speech, the Minister (Mr Gallacher) said the bill delivers on the Government's election commitment to introduce legislation to eliminate taxpayer-funded political advertising. The Minister noted that arrangements captured in the bill already exist in the current NSW Government Advertising Guidelines. However, he argued that Guidelines on their own lack an adequate compliance mechanism – a shortcoming the bill rectifies.

The Opposition, Greens and Christian Democratic Party all supported the thrust of the bill. However, the Opposition and the Greens both indicated they would seek to strengthen and improve the effectiveness of the bill by way of amendments. The second reading was agreed to.

In the committee stage, the Opposition moved a number of amendments to establish a Government Advertising Committee for the purposes of reviewing and regulating government advertising campaigns. The proposed committee would comprise three members: the Information Commissioner (Chair) and two other members being persons with knowledge or experience of advertising. For advertising campaigns likely to exceed \$200,000, the proposed Government Advertising Committee would review the campaign before its commencement. The Committee would also be empowered to make recommendations with respect to government advertising campaigns that breached the guidelines. The amendments also included a provision that peer reviews of campaigns include a reviewer

independent of the public sector. The amendments were negated (Division 16:18).

The Greens moved a number of amendments that would require the Auditor General to issue the advertising compliance certificate for advertising campaign exceeding \$200,000. For campaigns with a likely cost of less than \$200,000, the compliance certificate would continue to be issued by the relevant agency head. The Auditor-General would be empowered to determine complaints, which could be raised with the Auditor-General by any person, and take costs recovery action if advertising campaigns breach prohibitions. The amendments were negated (Division 16:18).

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

Independent Commission Against Corruption Amendment Bill 2011

Summary: The bill amends the *Independent Commission Against Corruption Act 1988* to strengthen and clarify the ambit and powers of the Independent Commission Against Corruption and the Inspector of the Commission. Of note, the bill makes it clear that the Commission has power to gather, assemble and furnish evidence to the Director of Public Prosecutions for use in prosecutions after the discontinuance or completion of its investigations. The bill also broadens the power of the Inspector of the Commission to report findings, including through reports to the Parliament at any time.

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 the bill is a further step in the series of measures that the Government is taking to improve accountability and ethical standards in public administration. The bill implements many of the recommendations from two reports released in 2010 by the Parliamentary Committee on the Independent Commission Against Corruption.

The Opposition did not oppose the bill, noting that the amendments are consistent with the recommendations of the Committee. The Christian Democratic Party supported the bill, also acknowledging the work of the Committee. The Greens supported most of the provisions of the bill, but raised concerns at the removal of the recourse of employees of the Commission to unfair dismissal protection under the *Industrial Relations Act 1996*. The second reading was agreed to.

In the committee stage, the Greens moved amendments to remove from the bill those clauses that restrict access to unfair dismissal protection for Commission employees. The Government did not support the amendments on the basis that the Commission is a small specialist organisation handling sensitive material, and if the Commissioner has lost confidence in an employee, the Commissioner should be able remove that employee without the employee having recourse to unfair dismissal provisions. The amendments were negated (Division 5:31).

The third reading of the bill was agreed to and the bill was returned to the Assembly without amendment.

Public Interest Disclosures Amendment Bill 2011

Summary: The bill amends the *Public Interest Disclosures Act 1994* to strengthen the protection of public sector whistleblowers and improve the public interest disclosures regime.

Proceedings: The bill was received from the Legislative Assembly and read a first time. In her second reading speech, the Parliamentary Secretary (Mrs Pavey) noted that the *Public Interest Disclosures Act 1994* plays a critical role in maintaining the integrity of public administration in the State by protecting public officials who disclose wrongdoing in the public sector. The measures contained in the bill improve the protections afforded to persons who make public interest disclosures and expand the types of disclosures that can be made relating to wrongdoing by local councils.

The Opposition, the Greens and the Christian Democratic Party all supported the bill and acknowledged the importance of effectively protecting public sector whistleblowers in NSW so that they can continue to expose corrupt and criminal practices without suffering personal reprisal. Particular reference was made to the case of Ms Gillian Sneddon, an electorate officer of the former Aboriginal Affairs Minister Milton Orkopoulos. Members noted the bill contained sensible and moderate changes that will serve to strengthen the legislation.

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

Residential Parks Amendment (Register) Bill 2011

Summary: The bill amends the *Residential Parks Act 1998* by providing for the establishment of a register of residential parks which contains information such as the name and contact details of park owners, managers and resident representatives, and the number and usage of sites within each residential park. The bill also provides mechanisms to ensure the register is kept up to date and makes it an offence for any person to provide false or misleading information in relation to the register.

Proceedings: The bill was received from the Legislative Assembly on 25 August 2011 and read a first time. Debate resumed on 6 September 2011. In his second reading speech, the Minister (Mr Pearce) indicated that the bill was the first important step in meeting the Government's election commitment of improving the governance of residential parks. The establishment of the register will provide accurate statistical data on the size and scale of the residential park industry, and will assist the consultation process during the Government's review of its residential parks policy. The Minister thanked Ms Barham (The Greens) for her involvement in the matter and indicated the Government would move some minor amendments to the bill that were developed in consultation with members of the cross-bench.

The Opposition, Christian Democratic Party and the Greens supported the bill, acknowledging that the establishment of a register was an important step in the

task of improving the overall governance of residential parks. Members referred to the importance of permanent residential parks to residents, the need to strike an appropriate balance between the rights of both owners and residents of residential parks, and the importance of having accurate data on this expanding part of the housing market in NSW.

In the committee stage, the Government and the Greens moved a number of minor practical and drafting amendments that clarified the operation and intent of the bill, including the addition of 'park land owner' as a category of person that falls within the provisions of the register. The amendments were agreed to. A number of other amendments, moved by the Greens and supported by the Opposition, that sought to expand the range of information captured by the register were negated.

The third reading of the bill was agreed to and the bill was returned to the Assembly with amendments. The Assembly agreed to the bill as amended.

Fines Amendment (Work and Development Orders) Bill 2011

Summary: Under the *Fines Act 1996*, the State Debt Recovery Office may make a work and development order (WDO) to enable a fine defaulter who has an intellectual disability, a mental illness or a cognitive impairment, is homeless or is experiencing acute economic hardship to work off his or her fine by undertaking activities such as unpaid work, medical treatment or counselling. The scheme operates in partnership with a range of organisations and health practitioners, including Mission Australia, Youth off the Streets, and the Schizophrenia Fellowship.

The bill amends the *Fines Act 1996* to extend the categories of persons who are eligible to be the subject of a WDO to persons who have a serious addiction to drugs, alcohol or volatile substances. The bill also streamlines the WDO application process.

Proceedings: The bill was received from the Legislative Assembly on 25 August 2011 and read a first time. Debate resumed on 6 September 2011. In his second reading speech, the Minister (Mr Pearce) indicated that the WDO program was initially introduced in 2008 as a pilot scheme, and has been very successful, with over 80 per cent of WDO participants not having had another penalty or fine. Accordingly, the Government is proposing to extend it to persons who have a serious addiction to drugs, alcohol or volatile substances. It is anticipated that this will lead to reduced reoffending and rehabilitation at an early point of contact with the criminal justice system.

The Opposition supported the bill, noting that the bill extends the scheme successfully introduced by the previous Labor Government in 2008, and the findings of a very positive evaluation of the scheme concluded in 2011. The Greens also supported the bill, noting the real success of the WDO scheme, with reduced re-offending rates and emphatic support from scheme participants and stakeholders.

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

Crown Law Officers Legislation Amendment (Retirement Age) Bill 2011

Summary: The bill increases the retirement age from 65 years to 72 years of a Deputy Director of Public Prosecutions and the Solicitor for Public Prosecutions, together with a range of other office holders. This brings their retirement age into line with the retirement age for the Director of Public Prosecutions and the Solicitor General. Transitional arrangements are also put in place.

Proceedings: The bill was received from the Legislative Assembly on 25 August 2011 and read a first time. Debate resumed on 7 September 2011. In his second reading speech, the Parliamentary Secretary (Mr Clarke) indicated that there should be a consistent retirement age of 72 for all judicial officers.

The Opposition did not oppose the bill, agreeing that judicial officers should have the right to work beyond the age of 65, although suggesting that the number of officers likely to do so may be quite small. The Greens also supported the bill for removing unnecessary age discrimination, but suggested there may be merit in considering removing statutory retirement ages for judicial officers completely.

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

Courts and Other Legislation Further Amendment Bill 2011

Summary: The bill makes miscellaneous amendments to legislation affecting the operation of courts in NSW and other legislation administered by the Attorney General and the Minister for Justice.

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 the bill comes as part of the Government's regular legislative review and monitoring program and that the amendments will improve the efficiency and operation of both the courts and of the agencies within the Attorney General and Justice portfolios. He emphasised that the amendments contained within the bill were in each case subject to thorough consultation with key stakeholders.

The Opposition, Greens and Christian Democrats did not oppose the bill, and in some cases strongly supported it, noting that it contained sensible and welcome reforms. However, the Greens did raise concerns about the decision to defer the application of part 2A of the *Civil Procedure Act 2005*, following implementation issues. Part 2A contains measures to encourage the early resolution of civil disputes, including a requirement that parties take reasonable steps to resolve a dispute by agreement or to narrow the issues in dispute before commencing court action.

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

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

Protection of the Environment Operations Amendment (Notification of Pollution Incidents) Bill 2011 (Ms Faehrmann, The Greens)

Summary: The bill amends section 148 of the *Protection of the Environment Operations Act 1997* by requiring the immediate notification of pollution incidents that cause or threaten material harm to the environment. Currently the Act requires a pollution incident to be notified to the appropriate regulatory authority 'as soon as practicable' after the persons associated with the activity that has caused the incident become aware of the incident.

Proceedings: The bill was introduced and read a first time. In her second reading speech, Ms Faehrmann indicated that the bill is a response to the recent chemical leak at Orica Limited's Kooragang Island. She argued that in situations where there is a serious risk to the health of the community, immediate notification of an incident, rather than notification as 'soon as practicable' is appropriate. At the conclusion of Ms Faehrmann's speech, debate was adjourned for five calendar days.

Motions

North-west rail link (Ms Ficarra, Liberal Party)

Summary: The motion congratulated the O'Farrell Government on its decision to fast track the north-west rail link, noted the need and support for the link and the action taken on the project to date, and called on the Federal Government to recognise the north-west rail link as Sydney's transport priority and to divert funding to the project from the Epping to Parramatta rail link.

Proceedings: Debate on the motion resumed from 26 August 2011. An Opposition amendment to the motion to note rather than to congratulate the Government on the progress to date, to call on the Government to finalise the submission to Infrastructure Australia and to start building the Epping to Parramatta rail link was negated (Division 18:19). The motion was agreed to.

Equal pay case (Ms Fazio, Labor Party)

Summary: The motion noted that on 16 May, Fair Work Australia ruled in favour of the Australian Services Union (ASU) and partner organisations in their equal pay claim that social and community service workers in the not-for-profit sector are underpaid, in part due to gender. The motion further called on the O'Farrell Government to fully fund any resultant pay increases for social and community service workers.

Proceedings: Debate on the motion commenced according to precedence. Ms Fazio congratulated the ASU in bringing the case, and examined the argument made by the ASU and other parties, including the Commonwealth

and State Governments and employer groups, before Fair Work Australia. She argued that the work of social and community service workers has been undervalued for too long, but expressed concern that the O'Farrell Government has failed to indicate if it will fully fund pay rises for social and community service workers to remove gender inequality.

The Government opposed the motion as moved. The Government acknowledged the important contribution made by workers in the social and community service sector, supported equal pay for work of equal value, and supported the findings of Fair Work Australia in this case. However, the Government indicated that it will be in a better position to respond to the claim when it has an indication from the Commonwealth Government whether it will maintain its current proportionate share of funding for the sector. In the meantime, the Government will continue its full participation in the proceedings before Fair Work Australia.

The Greens supported the motion, arguing that work done predominantly by women, including in the social and community services sector, has always been undervalued in Australia, and expressing concern that the Government is not willing to commit to fund the outcomes of the equal pay case.

The Christian Democratic Party supported the motion, citing the necessity to society of work performed by workers in the social and community service sector and the right of women to equal pay for work of equal value.

The Opposition subsequently moved an amendment to the motion to call on the O'Farrell Government to fully fund only its proportion of any pay increases for social and community service workers from the equal pay case. The amendment was agreed to.

The motion, as amended, was agreed to.

Hawkesbury Agricultural College (Mr Blair, Liberal Party)

Summary: The motion noted that Hawkesbury Agricultural College was established in 1891 and that on 6 August 2011, current and former students and staff celebrated 120 years of education at Hawkesbury Agricultural College. The motion also noted the significant contribution that Hawkesbury Agricultural College has made to agricultural, horticultural and technological research in Australia and worldwide.

Proceedings: Debate on the motion commenced according to precedence. In speaking to the motion, Mr Blair outlined the significant contribution of the college and graduates of the college over the past 120 years, outlining its humble beginnings and many achievements. Other members, including members who attended the college and members with a background as agricultural scientists, spoke in favour of the motion, which 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) V8 supercars venue (Dr Kaye).

- (2) Condolence motion for ABC journalist Paul Lockyer, cameraman John Bean and helicopter pilot Gary Ticehurst (Miss Gardiner).
- (3) Smoke detectors (Mr Blair).

Orders for papers

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

Orders made

- (1) **2011 – 2012 Budget (Mr Searle):** The order related to all advice, correspondence, briefing papers and documents concerning the 2011-2012 Budget. Standing orders were suspended to bring on the item of business. The motion was agreed to. Due: 23 September 2011.
- (2) **2011 – 2102 Budget Finances (Mr Searle):** The order related to documented estimates, assumptions, risks and liabilities used in the preparation of the 2011-2012 Budget, together with forward projections. Standing orders were suspended to bring on the item of business. The motion was agreed to. Due: 23 September 2011.

Return to order

- (1) **Chemical Release from Orica Limited's Kooragang Island:** received 8 September 2011, 16 boxes public, 7 boxes privileged.

Petitions received

- (1) Moratorium on coal seam gas – 70 signatures (presented Mr Buckingham).
- (2) Coal seam gas operations – 75 signatures (presented Mr Buckingham).

Committee activities

Committee membership

Select Committee on the Kooragang Island Orica Chemical Leak:

The President informed the House of the following membership of the Committee:

Government: Mr Khan, Mr Mason-Cox, Mrs Pavey.

Opposition: Mr Foley, Mr Searle.

Cross bench: Mr Borsak, Ms Faehrmann.

The President further informed the House that Mr Borsak had been elected Chair and Ms Faehrmann elected Deputy Chair of the Committee.

Joint Select Committee on the Parliamentary Budget Office: Mr Secord in place of Ms Fazio.

Standing Committee on State Development: Mr Whan in place of Ms Fazio.

Committee report tabled

Legislation Review Committee: 'Legislation Review Digest No. 3/55', 6 September 2011.

Reports tabled

Independent Commission Against Corruption: 'Investigation into corrupt conduct involving alleged fraud on two Sydney Hospitals', August 2011.

Law Reform Commission: 'Cheating at gambling', August 2011.

Ombudsman:

- (1) 'Keep them Safe?', August 2011.
- (2) 'Report of Reviewable Deaths in 2008 & 2009 – Volume 2: Deaths of people with disabilities in care', September 2011

Other business

Personal explanation

Mr Buckingham made a personal explanation regarding the access of a constituent to his office and the siege at Parramatta Family Court the following day.

Adjournment debate

Tuesday 6 September 2011

Tribute to Alfred John Fulton (Mr Blair); GreenWay project (Ms Sharpe); Native vegetation legislation (Mr Brown); Not-for-profit sector (Mr Veitch); Foster care (Ms Barham); Tribute to Phil Bates, AM (Ms Ficarra); Tribute to Christine Harcourt (Mr Foley).

Wednesday 7 September 2010

Malignant mesothelioma (Mr Primrose); Homophobic bullying (Mr Khan); Government legislative program (Ms Voltz); Communism in Australia (Dr Phelps); The Greens representation in local government (Mr Shoebridge); Boycott, divestment and sanctions campaign against Jewish businesses (Revd Mr Nile).

Thursday 8 September 2011

Dubbo Collegiate education model (Dr Kaye); Australia New Zealand School of Government (Ms Cusack); Vale Sabina Van Der Linden-Wolanski (Mr Foley); Father's Day (Mr Green); Kokoda Trail (Mr Lynn); Centro Properties Group (Ms Westwood); Communism in Australia (Dr Phelps).

Friday 9 September 2011

Climate change (Mr Colless); Pakistan Association of Australia, Tribute to Father Atanasio Gonelli (Ms Fazio); National Threatened Species Day (Ms Faehrmann); Budget (Mr MacDonald); Trans-Pacific Partnership Free Trade Agreement on Public Health (Ms Sharpe); Domain rally (Ms Cotsis); Terrorist attacks on the United States of America (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.

A handwritten signature in black ink that reads "Lynn Lovelock". The signature is written in a cursive, flowing style.

Lynn Lovelock
Clerk of the Parliaments