

NEW SOUTH WALES LEGISLATIVE COUNCIL

HOUSE IN REVIEW



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3 to 5 May 2016*

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

Proceedings in the House were overshadowed this week by the sad news of the passing of Dr John Kaye MLC (The Greens), a member of the Legislative Council since 2007. Dr Kaye will be remembered as a passionate advocate who was liked and respected by his colleagues in the Chamber and parliamentary staff.

On Tuesday, having been informed of Dr Kaye's passing, as a mark of respect the House adjourned immediately and without debate. A condolence motion in memoriam of Dr Kaye is expected to be considered by the House in the coming weeks.

When the House resumed on Wednesday, proceedings primarily centred on the introduction of a number of new government bills and the consideration of the Crimes (Serious Crime Prevention Orders) Bill 2016 and cognate, discussed below. A motion commemorating Anzac Day and the further consideration of a bill to extend an exception to the rule against double jeopardy were the focus of private members' day on Thursday.

The House next sits on Tuesday 10 May 2016.

Transfer of items of business standing in the name of Dr Kaye

Following the passing of Dr Kaye, on Thursday the House agreed to a motion moved by Mr Shoebridge to reallocate several notices previously standing in the name of Dr Kaye to his colleagues in the Greens, to prevent their falling off the Notice Paper.

Change of party name – Shooters, Fishers and Farmers Party

On Wednesday, the President informed the House that he had received correspondence from the Hon Robert Brown advising that the Shooters and Fishers Party had changed its name to the Shooters, Fishers and Farmers Party.

Appointment of new Government Whip

Following Dr Peter Phelps' resignation as Government Whip ([see previous House in Review](#)), on Wednesday the President informed the House that on 21 April 2016, Mrs Natasha Maclaren-Jones had been elected Government Whip in the Legislative Council.

Appointment of Executive Manager, Department of Parliamentary Services

On Wednesday the President informed the House that Mr Mark Webb had been appointed to the position of Executive Manager, Department of Parliamentary Services. Mr Webb comes to the Parliament from senior executive positions held in the Public Service Commission, the NSW Department of Planning and Environment and the NSW Office of Environment and Heritage.

Government business

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

[Water NSW Amendment \(Staff Transfers\) Bill 2016](#)

House of origin: Legislative Council

The bill seeks to amend the *Water NSW Act 2014* to enable employees of the Department of Industry, Skills and Regional Development to be transferred by ministerial order to WaterNSW, a state-owned corporation that employs its own staff. The change follows on from the 2014 merger of the Sydney Catchment Authority and the State Water Corporation to become WaterNSW. The bill provides for continuity of service for employees who are transferred, and ensures that existing entitlements to superannuation and leave are preserved.

In speaking to the bill, the Minister noted that the water management reforms put in place a structure to ensure that the delivery of water in NSW is streamlined and effective, and that the bill provides an efficient mechanism to facilitate the transfer of staff in this new structure, while giving employees certainty that their job security and entitlements are protected. Debate on the bill was adjourned for 5 calendar days.

[National Parks and Wildlife Amendment \(Adjustment of Areas\) Bill 2016](#)

House of origin: Legislative Council

The bill changes the reservation of Bens Head Gap National Park to a nature reserve; changes the reservation of Khappinghat Nature Reserve to a national park; revokes the reservation of Gwydir Wetlands State Conservation Area; revokes the reservation of certain other areas of land, vesting the land under the authority of the minister and applying related compensation provisions; and revokes the reservation of certain land following its transfer to Illawarra Local Aboriginal Land Council.

Speaking to the second reading, the Minister argued that the adjustments made by the bill will facilitate upgrades and improve boundary accuracy and safety on Mona Vale Road West, the Pacific Highway and in the Snowy Mountains, and would ensure that sporting ovals and roads located within the boundaries of national parks are managed by the relevant local council. The Minister also noted that the bill reverses the inadvertent reservation of parks the subject of determined and yet to be determined Aboriginal land claims. Debate on the bill was adjourned for 5 calendar days.

[Fines Amendment Bill 2016](#)

House of Origin: Legislative Council

Debate resumed from 22 March 2016 ([see previous House in Review](#)).

The Opposition did not oppose the bill, noting the benefit of new provisions that allow a person to nominate the person driving a vehicle at the time of an offence after the fine has been paid and allow new fines to be added to existing payment arrangements. However, both the Opposition and Greens raised concerns that the bill will significantly extend the power of the Office of State Revenue to access information regarding an individual's bank account or credit report which the individual has not volunteered to the Government. The Greens also raised concerns that the process to nominate an offending driver was open to rorting, and questioned the implications of the reduction in the period in

which a garnishing process to recover unpaid fines can be commenced from 6 months to 21 days, but ultimately did not oppose the bill.

The Christian Democratic Party (CDP) supported the bill, stating that any step towards a faster, simpler and more effective enforcement process is to be commended. Government members also spoke in support of the bill. The second and third readings were agreed to and the bill was returned to the Assembly without amendment.

[Coastal Management Bill 2016](#)

House of Origin: Legislative Council

The bill repeals the *Coastal Protection Act 1979* and the *Coastal Protection Regulation 2011* and provides a new integrated management framework for the coastal environment of New South Wales. The Parliamentary Secretary stated that the old framework was complex, difficult to navigate and reflected a one-size-fits-all approach. In contrast, the framework applied by the new bill will clarify and simplify the legislative and regulatory environment; and enable the Government to resolve issues arising from past settlement patterns, manage the unique values of the coast in a planned and strategic way, and provide better support for local councils as the custodians of the coast. Debate on the bill was adjourned for 5 calendar days.

[Norfolk Island Administration Bill 2016](#)

House of origin: Legislative Council

The bill seeks to authorise the NSW Government to enter into arrangements with the Australian Government for the provision of services and the exercise of functions in Norfolk Island by NSW. In May 2015 the Commonwealth Parliament passed legislation that reformed the legal and governance framework for Norfolk Island, with the Commonwealth assuming responsibility for the funding and delivery of services. At the Commonwealth's request, the NSW Government subsequently agreed to provide state-type services to the people of Norfolk Island in the areas of school education, local government and health.

The Parliamentary Secretary stated that NSW is in a unique position to leverage its expertise and deliver state-type services to the Norfolk Island community, providing stability as it transitions to a new period in the island's history. The Minister also noted that the arrangement is contingent on the Australian Government retaining responsibility for Norfolk Island and its citizens, and on any activity undertaken by NSW being wholly funded by the Commonwealth. Debate on the bill was adjourned for 5 calendar days.

[State Revenue Legislation Amendment Bill 2016](#)

House of origin: Legislative Assembly

The bill amends several Acts covering the functions of the Office of State Revenue relating to revenue and grants. The bill amends the *Duties Act 1997* to exempt or reduce duty payable for corporate reconstruction within a corporate group, and amends the *First Home Owner Grant (New Homes) Act 2000* to extend the availability of the first home owner grant to homes that have been substantially renovated or a home built to replace demolished premises.

The bill also amends taxation provisions in the *Land Tax Management Act 1956*, the *Payroll Tax Act 2007* and the *Taxation Administration Act 1996*, and amends the *Unclaimed Money Act 1995* to allow the Office of State Revenue to accept payment of unclaimed money amounts of less than \$100 and to allow for the claim of unpaid moneys over or under \$100 without time limit.

The Parliamentary Secretary argued that the proposed reforms will improve equity by ensuring clients in similar circumstances have similar outcomes, reduce red tape by removing uncertainty, and improve administrative simplicity. The Opposition and the CDP spoke in support of the bill, the second reading was agreed to, and the bill read a third time and returned to the Assembly without amendment.

Crimes (Serious Crime Prevention Orders) Bill 2016 and Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016

House of origin: Legislative Assembly

The Crimes (Serious Crime Prevention Orders) Bill 2016 (the principal bill) provides for the Director of Public Prosecutions (DPP), the Crime Commission or the Commissioner of Police to apply to the Supreme and District Courts to make serious crime prevention orders (prevention orders) to restrict the activities of persons or businesses that are involved in serious crime or terrorism offences. The Government noted that the bill is modelled on a similar system operating in the UK.

The Criminal Legislation Amendment (Organised Crime and Public Safety) Bill 2016 (the cognate bill) enhances the powers of the Supreme Court to make forfeiture orders and those of the Crime Commission to confiscate the assets of serious criminals, and strengthens money-laundering offences for dealing with the proceeds of crime. The bill also allows senior police to issue temporary public safety orders to prevent people from attending places or events where they are expected to engage in violence or present a serious threat to public safety or security. The Minister stated that the measures will provide law enforcement agencies with an effective means of reducing serious and organised crime by targeting the business dealings and restricting their behaviour.

The Opposition opposed the bills in the form as introduced, questioning the need and motivation for the bills, the far-reaching nature of the provisions, the lack of safeguards to protect the public or ensure rigour in decision-making, and the lack of consultation with expert bodies or other parliamentary parties in developing the bills. The Opposition foreshadowed that they would move a large number of amendments during committee of the whole to address their concerns.

The Greens also opposed the bills, acknowledging the criticisms and concerns made by various representative legal bodies. The Greens also expressed concern regarding the lack of protections and thresholds for proof of culpability required under the new framework, the process by which prevention orders would be obtained and communicated, and the removal of longstanding rules relating to hearsay evidence. The Greens moved an amendment to refer the bills to the Standing Committee on Law and Justice, which was subsequently defeated (Division 15:18).

The CDP supported the bills, stating that police should be given the powers they need to protect society from serious crime. The second reading was agreed to (Division 28:5), The Greens and Animal Justice Party voting against the bill.

During consideration in committee, the Opposition moved 36 amendments to the Crimes (Serious Crime Prevention Orders) Bill 2016 that sought to ensure that prevention orders could only be made by the Supreme Court; that applications could only be made by the DPP; that prevention orders could not require a person to provide information that would self-incriminate; and that prevention orders could not be made in response to an offence for which the person had been acquitted, where the person had only facilitated (not engaged in) the offence, or where the order would constitute discrimination under the *Anti-Discrimination Act 1977*. The amendments also sought to extend the grounds for appeal; provide for additional defences made available under the UK model; and remove provisions that would enable hearsay evidence to be admissible in support of an application for a prevention order or would prevent individuals the subject of a prevention order from participating in non-violent advocacy/protest. All amendments were defeated.

The Opposition then moved an amendment to the cognate bill which sought to remove provision for public safety orders. On that amendment being defeated, the Opposition moved 24 amendments which sought to alter the framework for public safety orders by removing provision for the Commissioner of Police or Deputy or Assistant Commissioner of Police to make public safety orders; applying additional evidentiary requirements; extending the grounds for appeal against orders; providing for additional

defences; ensuring that a public safety order could not prevent non-violent advocacy; preventing orders being made against children or other vulnerable persons, or where the order would be discriminatory; and providing that a person the subject of an order be given a reasonable opportunity to be heard before the order is made. All amendments were defeated. A further attempt to remove the schedule that introduced those measures in its entirety was also unsuccessful, and both bills were reported from committee without amendment.

On the third reading being moved, the Opposition stated that, as their attempts to improve the bill had not been successful, they would oppose the bill. The Greens also spoke in opposition to the third reading. The third reading was agreed to (Division 18:15), the CDP voting with the Government, and the bill was returned to the Assembly without amendment.

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.

Motion

Anzac Day (Mr Green, Christian Democratic Party)

The motion noted that Anzac Day, 25 April, is one of Australia's most important national occasions, a day on which all Australians who have lost their lives in military and peacekeeping operations are commemorated. The motion acknowledged the service and sacrifice of Australia's war veterans and noted the ongoing relevance of the spirit of Anzac to our sense of national identity.

In speaking to the motion, Mr Green noted that Anzac Day marks the anniversary of Gallipoli, the first major military action fought by Australian and New Zealand Forces during the First World War. He commented that soldiers from every state of the newly federated Australia volunteered and fought in the war, and that the scale of casualties suffered has seared the event into the nation's conscience. Mr Green also reflected on the trauma of war service for those who returned home, including his own grandfather.

Other members also spoke in support of the motion, some taking the opportunity to share the war-time experiences of particular servicemen and women, including family members, and noting the long-standing impact those experiences had on families and communities. Members also noted the many events that are held each year to commemorate Anzac Day, allowing members of the public to pay their respects and remember the sacrifices made by Australia's military personnel.

Debate on the motion was interrupted by sessional order and set down for resumption on the next sitting day, after a motion was agreed to extending the time for debate by a further 90 minutes.

Bill

Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2015 (Mr Shoebridge, The Greens)

Debate resumed from 4 June 2015 (see [previous House in Review](#)).

The bill was prompted by evidence given during the Standing Committee on Law and Justice's inquiry into the family response to the murder of three children in Bowraville in the early 1990s, which suggested that extending an exception to the rule against double jeopardy in relation to an acquitted person where previously inadmissible evidence becomes admissible may allow new evidence to be accepted by the courts. This could in turn trigger a retrial of the Bowraville cases and ensure that evidence relating to all three murders was heard together for the first time. To achieve this, the definition of evidence "adduced" in a trial would need to be clarified by statute. Members of the families of the victims, Colleen Walker-Craig, Evelyn Greenup and Clinton Speedy-Duroux, were present in the gallery for the resumption of debate.

The Greens, the Shooters, Fishers and Farmers Party, CDP and Animal Justice Party spoke in strong support of the bill. The Greens noted that the changes in the bill were designed to give effect to what many thought were the intentions of double jeopardy reforms implemented in 2006. All four parties acknowledged the continued pain and suffering experienced by the Bowraville families as a result of the protracted delay in achieving a conviction for the murders.

The Government and the Opposition opposed the bill, citing the findings of Justice James Wood AO, QC, who was commissioned to review current statutory provisions and consider possible options for reform in response to a recommendation made by the Standing Committee on Law and Justice. Justice Wood recommended that no change to the double jeopardy law be made as the consequent damage made to the principle of finality of prosecutions, and the uncertainty it would create, outweighed the potential of such amendment to aid justice. The Government and Opposition acknowledged the families' suffering and their desire for justice for their children, but stated that a weakening of the rule against double jeopardy posed dangers to the rule of law and protection of individuals beyond the Bowraville case.

The bill was negatived (Division: 8/25).

Motions taken as formal business

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

- (1) St Florian's Day awards (Mr Farlow).
- (2) International Day of Mourning (Mr Donnelly).
- (3) Ms Faye Druett OAM (Ms Cotsis).
- (4) The Battle of Crete and Greek campaign (Ms Cotsis).
- (5) Gosford Library (Mr MacDonald).
- (6) Renew Newcastle (Mr MacDonald).
- (7) Ethnic Communities Council of Newcastle and the Hunter Region (Mr MacDonald).
- (8) Newcastle Athletics Field (Mr MacDonald).
- (9) Items of Business on the Notice Paper in the name of Dr Kaye (Mr Shoebridge).
- (10) Mr Eugene Seeto OAM (Mr Wong).
- (11) 1050th Anniversary of the Baptism of Poland (Mr Clarke).
- (12) Poland's Constitution Day (Mr Clark).
- (13) Mr Li Huaxin, Consul General of the People's Republic of China in Sydney (Mr Wong).
- (14) National Volunteer Week (Mr Shoebridge).
- (15) 20th Conference of Clubs of Soroptimist International South West Pacific (Dr Faruqi).

Orders for papers

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

Return to order

Under-dosing of chemotherapy patients: Correspondence from Office of the General Counsel of the Department of Premier and Cabinet attaching a redacted version of a document and revised

Annexures A and B to the indexed list of documents, received 24 March 2016.

Petitions received

- (1) **CBD and South East Light Rail** – 507 signatures (presented Dr Faruqi).
- (2) **Extension of Gold Coast Airport** – 53 signatures (presented Ms Barham).

Committee activities

Committee report tabled

Law and Justice Committee: Report No. 58 entitled 'Security classification and management of inmates sentenced to life imprisonment', dated April 2016.

Legislation Review Committee: 'Legislation Review Digest No. 17/56', dated 3 May 2016.

Inquiry activities

Select Committee on the Legislative Council committee system

The committee has received 20 submissions and held a hearing on 29 April. The committee will meet in the coming weeks to consider options and recommendations for its report.

General Purpose Standing Committee No. 2

Inquiry into elder abuse in New South Wales

The committee has received 122 submissions and held its final hearing on 18 March 2016. The report is currently being drafted and is expected to be tabled on 23 June 2016.

General Purpose Standing Committee No. 3

Inquiry into reparations for the stolen generations in New South Wales

The committee held its final hearing on 22 March 2016 and is in the process of drafting its report which it expects to table by the end of June 2016.

General Purpose Standing Committee No. 5

Inquiry into water augmentation for rural and regional New South Wales

The closing date for submissions has been extended until 14 August 2016.

Law and Justice Committee

First review into CTP insurance scheme

The closing date for submissions is 13 May 2016. A public hearing will be held on 17 June 2016.

State Development Committee

Inquiry into economic development in Aboriginal communities and inquiry into regional planning processes in NSW

The committee conducted site visits to Dubbo, Brewarrina, Guyra and Tamworth in April 2016 for the inquiry into economic development in Aboriginal communities, and conducted hearings while in Dubbo and Tamworth in relation to both inquiries. The committee's next site visit and hearing for both inquiries will be to Eden and Narooma on 25-26 May,

while further hearings for the regional planning inquiry will be announced in the coming months.

Reports tabled

Auditor General: 'Reintegrating young offenders into the community after detention: Department of Justice/Juvenile Justice NSW', dated April 2016.

Register of Disclosures by Members of the Legislative Council: Supplementary Ordinary Returns for the period 1 July 2015 to 31 December 2015, and Discretionary Returns submitted since October 2015.

Adjournment debate

Wednesday 4 May 2016

Road safety remuneration tribunal (Mr Gay); Coalmining (Mr Buckingham); Ethanol fuel (Dr Phelps); Disability services (Ms Cotsis); Firearms ownership (Mr Borsak); Australian National Liver Transplantation Unit (Mrs Mitchell).

Thursday 5 May 2016

Biofuels (Mr Buckingham); Daily Telegraph (Mr Pearce); Stadia Policy (Ms Voltz); Port of Newcastle (Mr MacDonald); Death of Mr John Creighton (Mr Brown).

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
Clerk of the Parliaments