

NEW SOUTH WALES LEGISLATIVE COUNCIL

HOUSE IN REVIEW



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*Sitting period
6 to 8 March 2012*

The *House in Review* provides regular updates of the activities of the New South Wales Legislative Council. Clicking on a hyperlink will take you to the relevant webpage. For further information refer to the NSW Parliament website www.parliament.nsw.gov.au or contact the Procedure Office on (02) 9230 2431. To be placed on the email distribution list of the *House in Review*, please contact us on council@parliament.nsw.gov.au.

Overview

This week was notable for the expeditious arrangement of a joint sitting of the two Houses relating to the vacancy in the representation of the State in the Senate (see report below).

Overall the sitting week was characterised not by the volume of bills dealt with (as was the case the previous sitting week) but by the level of scrutiny and review given to the matters considered by the House. The Mental Health Commission Bill being a case in point – the aim of the bill was unanimously supported, nevertheless debate on the second reading and consideration in committee of the whole carried over two days, ultimately resulting in the bill being returned to the Assembly with two amendments.

The fact that only two Government bills were completed this week means that 13 Government bills currently sit on the notice paper for consideration by the House in upcoming weeks.

Ministerial statement – Death of Senior Constable David Rixon

The Minister for Police and Emergency Services made a statement in the House regarding the tragic death last week of Senior Constable David Rixon in the line of duty. The Minister, on behalf of the Government and the people of New South Wales, expressed his deepest sympathy and condolences to the family, friends and colleagues of Senior Constable Rixon. Honour was paid to Senior Constable Rixon's courage, sacrifice and bravery in performing his duties; and to police generally for risking their lives on a daily basis in their dedication to the service and protection of the community. The Leader of the Opposition made a statement in similar terms.

Vacancy in the representation of the State in the Senate

At the start of business on the first sitting day this week, the President reported a message from Her Excellency the Governor notifying that a vacancy had occurred in the representation of the State in the Senate through the resignation of Senator the Hon Mark Arbib on 5 March 2012.

The President subsequently reported a message from the Legislative Assembly to advise that it had resolved to meet with the Legislative Council for the purpose of sitting and voting together to choose a replacement for Senator Arbib, and requesting that the Council fix the time and place of the joint sitting.

The House sent a message to the Assembly advising that it had resolved to meet with Assembly in the Legislative Council Chamber later that day.

In accordance with section 15 of the Commonwealth Constitution, a joint sitting of the two Houses was held on Tuesday 6 March 2012 at which the Hon Robert John Carr, former Premier of NSW, was selected to fill the vacated seat. It is understood that Mr Carr will take his place in the Senate and also be sworn in as Minister for Foreign Affairs in the Australian Parliament next week.

Government business

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

Mental Health Commission Bill 2011

The bill originated in the Legislative Assembly.

Summary: The bill establishes the Mental Health Commission of New South Wales. The Commission will be an independent statutory body with the objectives of championing mental health issues, ensuring better accountability of mental health services and the use of mental health funds, and nurturing innovation in the approach to mental health.

Proceedings: Debate on the second reading of the bill commenced on 6 March 2012. In her second reading speech, the Parliamentary Secretary (Mrs Pavey) indicated that the introduction of the Commission, based on best practice models from around the world, will improve the mental health system. The Commission will deliver strategic direction for mental health to ensure services are appropriately designed and targeted, and will review, monitor and report to the Government, the Parliament and the public on how funds are being used.

The Parliamentary Secretary noted that the Commission model as proposed in the bill was developed by the Mental Health Taskforce which undertook an extensive

consultation process with stakeholder groups and individuals. Mrs Pavey took the opportunity to recognise the important contribution the House itself has played in establishing mental illness as an issue in the community by acknowledging the 2002 report 'Inquiry into mental health services in New South Wales' of the Legislative Council Select Committee on Mental Health, chaired by the former member the Hon Dr Brian Pezutti.

Members of the Government, the Greens and the Christian Democratic Party supported the bill, while the Opposition did not oppose it. It was acknowledged that the bill was a step forward in the important issue of mental health and that there is broad professional and community support for the Commission to champion mental health and drive reform across the system. There was unanimous approval for the wide consultation undertaken in the drafting of the bill. The second reading was agreed to.

In the committee stage the Opposition and the Greens both moved a number of amendments which they respectively argued would provide simple enhancements to the functions and responsibilities of the Commission without detracting from its operations.

A key Opposition amendment sought to ensure that directions from the Minister to the Commission are published in the Government Gazette. The Opposition argued that this would serve as a safeguard to deter a Minister from ever overruling a decision of the Commission to report on an important systemic issue. Both the Government and the Greens did not believe the amendment was necessary, arguing that the bill provided the Commission with an exemption from the direction or control of the Minister with respect to such reports. In an attempt to gain support from the Greens, the Opposition moved an amendment to its own amendment to omit the need to wait for a direction to be published before it comes into effect, this was agreed to. However, the amendment, as amended, was negated (Division 13:25).

The Opposition also sought to ensure that special reports by the Commission on significant systemic mental health issues should be provided to the Presiding Officers as soon as practicable, unless it contains material which is considered Cabinet in confidence. The Greens moved an amendment to this amendment to allow the Commission to deliver a report to the Minister without that report entering the public domain if the report is on a sensitive issue. The amendment to the amendment was agreed to. However, the amendment, as amended, was negated.

The Opposition moved four other amendments, firstly to strengthen the Commission's functions regarding reducing stigma and discrimination associated with mental illness; secondly to increase transparency and accountability in the process of finalising the strategic mental health plan by providing it to the Presiding Officers; thirdly by setting up parameters for the draft strategic mental health plan by providing a timeframe and stating it must include mental health services provided by government and non-government sectors; and fourthly broadening the Commission's capacity to develop other reports such as how the mental health system is

implementing the strategic plan. The amendments were all negated, either on division or on the voices.

The Greens successfully moved two amendments which provided the Commission with the capacity to prepare a report on firstly, progress in relation to preparation of the draft strategic plan, and secondly, the funding of mental health services.

A third Greens amendment requiring the Commission, in exercising its functions, to take into account the particular views and needs of people of different age groups, including children and young people, was negated (Division 18:20).

The bill was reported to the House with the two Greens amendments, read a third time and returned to the Assembly.

Crimes Amendment (Consorting and Organised Crime) Bill 2012

The bill originated in the Legislative Assembly.

Summary: The bill proposes a number of amendments to the *Crimes Act 1900*. It creates a number of new offences including firing at a dwelling-house in the course of an organised criminal activity, plus offences relating to directing or receiving material benefit from criminal groups. The bill amends the offence relating to participating in criminal groups, so that rather than requiring a person to have known that the group was a criminal group, a person will commit an offence where he or she ought reasonably to have known these things. It also modernises, so as to increase the likelihood of police being able to apply, the offence of consorting.

Proceedings: Debate on the second reading of the bill commenced on 7 March 2012. In his second reading speech the Parliamentary Secretary (Mr Clarke) said the bill will ensure the provisions of the *Crimes Act* remain effective in combating criminal groups in New South Wales. Mr Clarke stated the Government is determined to ensure that the NSW Police Force had adequate tools to deal with organised crime and that the bill represents part of a suite of reforms aimed at achieving that. He argued the bill sent an aggressive signal to criminal groups that their continued operation will not be tolerated and their members will be dealt with severely when they are called to account for their actions.

A number of members of the Government spoke in support of the bill arguing that the new and amended offences, particularly consorting, were necessary to combat organised criminals. The Shooters and Fishers Party supported the context of the bill on the basis it was trying to do something towards solving the problem of drive-by shootings. The Christian Democratic Party also supported the bill. While acknowledging there were some concerns about the modernised consorting offence, the CDP noted the bill was not designed to criminalise relationships and there were exemptions built into the bill.

The Opposition did not oppose the bill, noting that in its opinion most of the amendments were not substantive. The Opposition was skeptical that the new provisions would act as an effective deterrent. It took the opportunity to argue that the only effective response to

the spate of drive-by shootings in south western Sydney would be an increase in police resources in the area.

The Greens opposed the bill arguing that a number of its provisions represented a grave infringement on civil liberties. The Greens were critical of the discretionary power provided to police with respect to the application of the offence of consorting, which they believed was too broad and open to misuse. The Greens argued that the concerns expressed over the offence of consorting back in 1929 are still current, namely, that it has the potential to criminalise otherwise innocent behavior.

The second reading was agreed to (Division 31:5).

In the committee stage the Greens moved, but could not garner any support for, two amendments. The first sought to retract the proposed change to the participation in criminal groups offence. The second sought to insert a new defence to the offence of consorting, namely, consorting that occurs principally for the purpose of genuine advocacy, protest, dissent or industrial action. Both were defeated on the voices.

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

Industrial Relations Amendment (Industrial Representation) Bill 2012

The bill originated in the Legislative Council.

Summary: The bill amends the *Industrial Relations Act 1996* to enable overlapping of industrial representation thereby providing greater choice for employees regarding the organisation they can choose to represent their industrial interests, subject to safeguards relating to demarcation disputes.

Proceedings: Leave was granted to bring in the bill on 6 March 2012. The bill was presented, read a first time and printed. In his second reading speech, the Minister (Mr Pearce) argued that the continuity of the current industrial representation system has created monopolies that are in danger of losing touch with their clients and becoming unresponsive to their needs. The Minister said that the amendments will engender healthy competition among representative organisations and end the notion that if there is an organisation to which employees can conveniently belong, then no other organisation is permitted to represent them. The Minister further noted that the amendments proposed in the bill are consistent with corresponding Commonwealth provisions in the *Fair Work (Registered Organisations) Act 2009*. Debate was adjourned for five calendar days.

Industrial Relations Amendment (Dispute Orders) Bill 2012

The bill originated in the Legislative Council.

Summary: The bill amends the *Industrial Relations Act 1996* by providing for an eleven-fold increase in the maximum fine amounts for industrial organisations contravening dispute orders issued by the Industrial Relations Commission (IRC) relating to industrial action. The bill also provides for the making of costs orders for proceedings relating to breaches of dispute orders, and

inserts a new appeal right relating to the penalties imposed by the Industrial Relations Commission.

Proceedings: Leave was granted to bring in the bill on 6 March 2012. The bill was presented, read a first time and printed. In his second reading speech, the Minister (Mr Pearce) said that the bill was necessary because current penalty provisions appear not to have a suitable deterrent effect, as evidenced by the willingness of some organisations to ignore direct orders from the IRC prohibiting industrial action. The Minister said that the increased penalties in the bill send a clear, unambiguous message that wilful disregard of the IRC will not be tolerated, and noted that penalties of the magnitude proposed in the bill already exist in other Australian industrial relations jurisdictions. Debate was adjourned for five calendar days.

Biofuels Amendment Bill 2012

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Biofuels Act 2007* to remove the requirement, which was to have begun on 1 July 2012, for primary wholesalers selling regular unleaded petrol to ensure that it is E10. The Act defines E10 as a petrol-ethanol blend that contains between 9% and 10% ethanol by volume.

Proceedings: The bill was received from the Legislative Assembly on 6 March 2012 and read a first time. The second reading was set down for the next sitting day.

Mining Legislation Amendment (Uranium Exploration) Bill 2012

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Mining Act 1992*, the *Uranium Mining and Nuclear Facilities (Prohibitions) Act 1986* and other Acts and instruments to remove the general prohibition on prospecting for uranium in New South Wales, to enable exploration licences and associated permits to prospect for uranium, to apply environmental planning policy applicable to other mineral exploration to uranium prospecting and to vest all uranium to the Crown and to exclude compensation for that vesting.

Proceedings: The bill was received from the Legislative Assembly on 7 March 2012 and read a first time. The second reading was set down for the next sitting day.

Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2012

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Births, Deaths and Marriages Registration Act 1995* to provide that certain restricted persons may not make an application to change their name unless the supervising authority has approved it, the Registrar may not register the change unless this approval, and for some persons, the approval of the Commissioner of Corrective Services and the Commissioner of Police has been obtained, and to provide a right of appeal in relation to decisions under these new provisions.

Proceedings: The bill was received from the Legislative Assembly on 7 March 2012 and read a first time. The second reading was set down for a later hour of the sitting.

Messages from the Assembly

The House received the following messages from the Legislative Assembly relating to bills forwarded to the Assembly by the Council in previous sitting weeks.

Marine Pollution Bill 2011: On 7 March 2012 the Assembly advised that it had agreed to the bill which it returned without amendment.

Criminal Case Conferencing Trial Repeal Bill 2011: On 7 March 2012 the Assembly advised that it had agreed to the bill which it returned without amendment.

Disallowance of delegated legislation

Note: The Legislative Council may disallow pieces of delegated legislation such as statutory rules and instruments under Part 6 of the *Interpretation Act 1987* or under the provisions of the primary act.

Gaming Machines Amendment (LIA Exemption for Certain Clubs) Regulation 2012 (Dr Kaye)

Summary: Under section 37A of the *Gaming Machines Act 2001* a club that is situated in a new development area is only required to provide a class 1 Local Impact Assessment (rather than a more stringent class 2 LIA) when it applies to increase its gaming machine threshold by up to 150 gaming machines. The club is also only required to forfeit one in six poker machine entitlements (rather than the usual one in two or three ratio) when it acquires entitlements to meet its increased threshold once the LIA is approved.

The regulation broadens the application of these exemptions so as to also apply to clubs situated within one kilometre of a new development area.

Proceedings: Debate on the motion commenced according to precedence. Members of the Greens spoke in support of the motion arguing that the extension of the concession further allows registered clubs to increasingly concentrate their gaming machines in areas susceptible to problem gambling behaviour. Both the Government and the Opposition did not support the motion, noting that the aim of the concession, which was enacted in 2008, was to encourage registered clubs to establish themselves in new development areas thereby providing much needed local community facilities and that the regulation was simply a sensible amendment which ensured the intent of the concession could be maintained. It was further noted that any transfer of entitlements from one location to another made under the concession will still result in a net reduction in the number of gaming machines overall.

The motion was negatived (Division 5:30), the regulation remains in force.

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

Coal Seam Gas Moratorium Bill 2011 (Mr Buckingham, The Greens)

Summary: The bill prohibits coal seam gas exploration and mining in the Sydney metropolitan area and in the Sydney Catchment Management Authority's declared special area. In the rest of the State, the bill implements a 12-month moratorium on exploration and mining operations. The moratorium does not apply to existing projects already at the production stage.

Proceedings: Debate on the second reading of the bill resumed on 8 March 2012 from 11 November 2011 (see Vol 55/15 of *House in Review* for earlier debate). The members of the Government opposed the bill, arguing that a moratorium was unnecessary as the Government, which had not yet issued a single exploration or production licence, was developing an effective framework for the responsible and strategic development of the coal seam gas industry. In this regard the Government referred to the recent draft Strategic Regional Land Use Policy and the draft code of conduct for coal seam gas exploration licence holders. The Shooters and Fishers Party opposed the bill on the basis that it cut across the current General Purpose Standing Committee No. 5 inquiry into coal seam gas.

Members of the Greens cited what they described as the continuing and increasing widespread concern of the public over coal seam gas. The Greens argued that a moratorium would not pre-empt or disrupt the work of the current GPSC 5 inquiry and would satisfy the public's desire for immediate action.

The Opposition supported the bill primarily on the basis that it intended to move amendments in the committee stage that would, in their view, strengthen and improve the bill. The Opposition foreshadowed that it would firstly seek to remove the arbitrary 12 month period and have the moratorium apply to any area until such time as a regional water assessment of the area had been conducted by the Commonwealth Independent Expert Scientific Committee on Coal Seam Gas and Coal Mining. Secondly, it would seek to remove the distinction between the Sydney metropolitan area and the rest of the State.

Debate was adjourned until the next sitting day.

Motions

Order for papers—Star Casino (Mr Whan, Australian Labor Party)

Summary: The motion calls for all correspondence and records of phone conversations between Ministers, Ministerial Staff and their agencies, created since 26 March 2011, relating to Star Casino. This motion relates to recent allegations in the media.

Proceedings: Standing orders were suspended to bring on the item of business. In speaking to the motion, Opposition members argued that the order for papers was necessary to ascertain if there had been a breach of the ministerial code of conduct, and because the Furness Inquiry, currently inquiring into the issue, had a narrow terms of reference which did not focus on ministerial responsibilities and potential conflicts of interest.

The Greens supported the motion on the basis of the public's right to know the truth regarding the allegations. The Greens shared the view that the Furness Inquiry was not equipped to substantiate or disprove the allegations.

The Government opposed the motion, countering the proposition that the Furness Inquiry would not be able to fully investigate the matter. It argued that the terms of reference of the Furness Inquiry were broad and the powers to examine documentation at Ms Furness's disposal were robust as she was conferred powers under the *Royal Commissions Act 1923*.

The motion was negatived (Division 19:20).

International Women's Day (Ms Westwood, Australian Labor Party)

Summary: The motion noted that 8 March is International Women's Day, acknowledged the role women play regarding economic prosperity and highlighted the need to remove the barriers women face in achieving economic and social equality. The motion called on the Government and the corporate sector to take action to remove these barriers.

Proceedings: Standing orders were suspended to bring on the item of business. Members were unanimous in their support for the motion stating that International Women's Day has always been an occasion for asserting women's political and social rights, for celebrating their achievements, and for recognising the diversity of women and their interests. There was also an acknowledgment from all members who spoke that challenges and barriers must still be overcome to achieve equality for women. The underrepresentation of women in large sections of society needs to be examined thoroughly, for instance much more needs to be done at all levels of government as well as in private enterprise to ensure a higher proportion of women are in senior management and specialist positions.

The debate was adjourned until the next 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) Adoption of Citizen's Right of Reply (Leda Holdings Pty Ltd) (Mr Khan)
- (2) Australian Middle East Media Corporation (Mr Moselmane)
- (3) Australian Macedonian Medical Society (Mr Moselmane)
- (4) Royal Prince Alfred Hospital Gift of Life Ceremony (Ms Ficarra)
- (5) Christchurch earthquake (Mr Blair)
- (6) Indian Herald (Mr Moselmane)
- (7) St George Lebanese Joint Committee (Mr Moselmane)
- (8) Bhavan Australia (Mr Moselmane)
- (9) Mr Hassan Ghanem (Mr Moselmane)
- (10) International Women's Day (Ms Ficarra)
- (11) NRL domestic violence initiative (Ms Ficarra)
- (12) Father Atanasio Gonelli (Ms Ficarra)
- (13) 2012 Alan McGilvray Scholarship (Ms Ficarra)
- (14) Australian Muslims (Mr Moselmane)
- (15) Sargood Centre (Ms Ficarra)
- (16) 2012 Yeshiva Centre Gala Dinner (Ms Ficarra)
- (17) St Antonio da Padova Festa (Ms Ficarra)
- (18) NSW Grand Prix Cycling (Ms Ficarra)
- (19) Community Relations Commissioner (Ms Ficarra).

Orders for papers

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

Order made

- (1) **WorkCover prosecutions (Mr Shoebidge):** The order related to any directive or memorandum concerning a review or audit of WorkCover prosecutions. The motion was agreed to as formal business. Due: 14 March 2012.

Returns to order

- (1) **Aboriginal Cultural Heritage Advisory Committee:** received 28 February 2012, one box public.
- (2) **Ministerial Audit of the NSW Police Force:** received 29 February 2012, two boxes public.

Petition received

- (1) Religious discrimination – 608 signatures (presented Mr Moselmane)

Committee activities

Committee reference

Procedure Committee: The House referred to the Committee an inquiry into the procedures for giving, moving and publication of notices of motions.

Committee reports tabled

Legislation Review Committee: 'Legislation Review Digest No. 11/55', 6 March 2012.

Standing Committee on Social Issues: Report No. 45 entitled 'Transition support for students with additional or complex needs and their families', March 2012.

General Purpose Standing Committee No. 3: Report No. 26 entitled 'Rail infrastructure project costing in New South Wales', March 2012.

Committee reports debated

General Purpose Standing Committee No. 2: The House continued the take-note debate on Report No. 37 entitled 'Budget Estimates 2011-12', February 2012.

Joint Select Committee on the Parliamentary Budget Office: The House continued the take-note debate on Report No. 1/55 entitled 'Inquiry into the Parliamentary Budget Office', December 2011.

Privileges Committee: The House debated and adopted Report No. 59 entitled 'Citizen's Right of Reply (Mrs Julie Passas', February 2012.

Reports tabled

Auditor General: Financial Audit report Volume One 2012, focussing on themes from 2011, February 2012.

Unproclaimed legislation: Mr Gallacher tabled a list of unproclaimed legislation as at 6 March 2012.

Adjournment debate

Tuesday 6 March 2012

Mid North Coast Regional Plan (Miss Gardiner); NSW floods and State Emergency Services volunteers (Mr Whan); Institution of marriage (Revd Mr Nile); Putty Valley and coal seam gas exploration (Mr Foley); Tribute to Senior Constable David Rixon (Mr Secord); Regional mining (Mr Mason-Cox).

Wednesday 7 March 2012

Portrait Project (Ms Sharpe); Frenchs Forest Hospital project (Dr Kaye); Envite National Green Jobs Corps project (Ms Cusack); Nurse retraining (Mr Green); 101st International Women's Day (Ms Cotsis); University of New England School of Rural Medicine (Mrs Pavay); Visioncare (Ms Fazio).

Thursday 8 March 2012

Toxic substances (Ms Fachrmann); Gunnedah Hospital Paediatric and Maternity Support Committee (Mrs Mitchell); International Women's Day (Ms Barham); International Women's Day (Ms Westwood); Genetically modified wheat (Mr Buckingham); Textstyle Exhibition (Mrs Maclaren-Jones); Global warming predictions (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.



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