

NEW SOUTH WALES LEGISLATIVE COUNCIL

HOUSE IN REVIEW



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2 to 4 April 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 sitting week, the last before the Easter holiday break, saw the House sit late on consecutive nights as it dealt with a number of key Government bills, notably the Public Sector Employment and Management Bill, dealing with the management of excess public sector employees, and the Local Government Amendment (Members of Parliament) Bill, dealing with the question of a person holding the dual roles of a Member of Parliament and a councillor or mayor of a council.

The House passed five Bills, all of which originated in the Legislative Assembly. Notwithstanding that three of the bills were considered in committee of the whole, all five were returned to the Assembly without amendment.

The House also resumed, but did not conclude, the second reading debate on the Industrial Relations Amendment (Industrial Representation) Bill.

Despite its rapid passage through the Assembly and introduction into the Council, the House did not commence debate on the Retail Trading Amendment Bill.

Government business

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

Bills

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 industrial representation of the same classes or groups of employees by one or more industrial organisations or associations, subject to safeguards relating to demarcation disputes.

Proceedings: Debate on the second reading of the bill resumed on 2 April 2012 from 6 March 2012 (see Vol 55/20 of *House in Review* for earlier debate).

Members of both the Government and the Christian Democratic Party spoke in support of the bill, arguing

that the bill introduces important reforms that will bring choice and healthy competition to union representation.

Both the Opposition and the Greens opposed the bill and characterised it as being ideologically driven rather than addressing any practical need. The Greens posited that the introduction of competition principles into industrial relations is an attack on the solidarity of workers. The Opposition argued that the introduction of further representation in the system would add complexities that will prove unworkable when put into practice.

Both parties raised concern over the lack of safeguards in the bill to ensure that representative bodies are independent, capable of representing and furthering the interests of the workers, and free from the improper influence or control of employers. Similarly, attention was drawn to the absence of guidance to assist an applicant or the Industrial Registrar to decide which body would effectively represent a group of workers. Both parties referred to amendments to the bill they had circulated to address what they viewed as certain shortcomings in the bill, but emphasised they remained steadfastly opposed to the bill overall.

During the Minister's speech in-reply, the Government successfully moved to adjourn debate until a later hour of the sitting (Division 19:17).

Public Sector Employment and Management Bill 2012

The bill originated in the Legislative Assembly.

Summary: On 1 August 2011 the Government introduced a new policy for the management of excess public sector employees, which, amongst other things, abolished the previous Labor Government's policy of 'no forced redundancies'. The new arrangements contained in the policy were challenged in the Industrial Court of New South Wales. In November 2011 the Court handed down its decision that an excess employee cannot be made redundant as long as 'useful work' of any kind exists across the public sector.

The bill seeks to amend the *Public Sector Employment and Management Act 2002* by to address the Industrial Court's decision by revising the provisions of that Act relating to excess officers and the circumstances in which the

services of those officers may be dispensed with and by excluding the unfair contracts jurisdiction of the Industrial Relations Commission in connection with any such excess officers. The bill also requires the heads of public sector agencies to develop and implement performance management systems for their staff and the Public Service Commissioner to issue guidelines for that purpose.

Proceedings: The bill was received from the Legislative Assembly on 2 April 2012 and read a first time. Debate on the second reading of the bill commenced on 3 April 2012.

The second reading speech of the Minister (Mr Gallacher) was incorporated into Hansard. In that speech the Minister said that the Industrial Court's decision rendered the Government's excess employee policy unworkable, resulting in a de facto return to the 'no forced redundancies' policy, which this bill reverses. The Minister concluded that the proposed changes in the bill will support the Government's policy for managing excess employees and will improve agencies' ability to deliver better public services in line with community expectations.

Members of the Government spoke in support of the bill taking the opportunity to note that the excess employees policy does not apply to essential front-line employees working under separate industrial arrangements, and that the policy was in particular intended to address those instances where employees had remained on the displaced officers list for up to seven years.

The Opposition and the Greens were opposed to the bill, which both parties described as the latest in a line of attacks by the Government on public sector employment conditions. Both parties criticised the bill for further weakening the steps that have to be taken before a public servant can be declared excess and have their employment terminated. Both parties argued the Government was seeking to further reduce public sector positions and that the bill was designed to support them in that aim. The Greens also argued that the section relating to developing performance management systems was unnecessary and simply included as 'window-dressing' to mask the impact of the other elements of the bill.

During the Minister's speech in-reply, leave was granted for him to table a copy of a proposed piece of legislation drafted by the former Government – the Public Sector Employment and Management Amendment (Displaced Employees) Bill 2005. The Minister argued this 2005 bill contained very similar provisions to those the Opposition was now objecting to in the current debate.

The second reading was agreed to on Division (20:18). The third reading was then agreed to and the bill was returned to the Assembly without amendment.

Centennial Park and Moore Park Trust Amendment Bill 2012

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Centennial Park and Moore Park Trust Act 1983* by: extending the maximum term of a lease over Trust lands that the Centennial Park and

Moore Park Trust may enter into from 20 to 50 years, and with the approval of the Minister up to 99 years; extending the power of the Trust to delegate its functions to authorised persons; and allowing the Trust to conduct its business without the necessity for a formal meeting.

Proceedings: The bill was received from the Legislative Assembly on 14 March 2012 and read a first time. The second reading of the bill commenced on 2 April 2012.

After introducing the bill, the Parliamentary Secretary (Mr Mason-Cox) incorporated the balance of his second reading speech into Hansard. In that speech Mr Mason-Cox said the bill will improve the administrative efficiency of the Trust and provide it with greater opportunities to seek enhanced revenue, and the resulting stronger financial position for the Trust will ensure the long-term management and maintenance of the parklands for the whole community.

Members of both the Government and the Christian Democratic Party spoke in support of the bill. Both the Opposition and the Greens raised concerns over the maximum lease provided for in the bill, arguing that too long a lease period would in effect amount to granting private freehold over public land. The Opposition supported extending the maximum term to 50 years, but balked at allowing longer periods of up to 99 years as proposed in the bill. The Greens supported extending the maximum term to 30 years but only with respect to the E.S. Marks Athletics Field, with the current 20 year maximum term to continue to apply to the rest of the parklands. The second reading was agreed to.

In the committee stage, as foreshadowed in the second reading debate, both the Opposition and the Greens sought to reduce the maximum term of lease allowed. The Opposition did not garner any support for its amendment, which was negated. The Greens amendment, while supported by the Opposition, was also defeated (Division 17:19).

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

Local Government Amendment (Members of Parliament) Bill 2012

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Local Government Act 1993* to prohibit a person holding the dual roles of a Member of the Parliament of New South Wales and a councillor or mayor of a council. In the March 2011 New South Wales State election, 29 councillors and mayors were elected to the Parliament.

Proceedings: The bill was received from the Legislative Assembly on 3 April 2012 and read a first time. In his second reading speech, the Minister (Mr Pearce) stated that the object of the bill is to remove the potential for conflicts of duties between State and local council matters and to bring New South Wales in line with many other Australian States where it is already prohibited to serve concurrently as a State member and councillor. The Minister also argued that the bill addresses community concerns regarding the difficulty for a person to effectively perform both roles.

The Christian Democratic Party and the Shooters and Fishers Party supported the bill but argued that the prohibition should also apply to Federal members of Parliament serving on councils in NSW. The Shooters and Fishers Party foreshadowed it would move a series of amendments in the committee stage to address this issue.

The Opposition and the Greens strongly opposed the bill arguing that there is no need to enshrine in legislation the approach adopted by most members elected to State Parliament in not seeking re-election to local government. Both parties took the position that it should be up to individual members to decide if they can perform both duties, and, ultimately, it is a matter for the electorate to decide whether a person can serve as both a councillor and Member of Parliament.

During debate, the Opposition and the Greens both claimed the bill was specifically aimed at forcing the Member for Sydney and current Lord Mayor of Sydney to relinquish one of her roles.

The second reading was agreed to (Division 20:18).

In the committee stage, the Shooters and Fishers Party sought to include the Federal Parliament and the parliaments of the other States and Territories within the purview of the bill. The Government argued that the conflict of duties, that the bill addresses, arise because local government is a creature of, and regulated by, State Government. The Government further argued that the relationship between the other parliaments and councils did not give rise to this conflict and thus the proposed amendment was not necessary. While attracting the support of the Christian Democratic Party, the amendment was negated on the voices

The Greens moved an amendment to defer the effects of the bill so as not to disadvantage current members of Parliament who have already committed to contesting the upcoming local government elections. The intention of this amendment was to avoid a potential by-election that would follow if a member of the Legislative Assembly was elected to local government and chose to take up that position, and to, in effect, prevent the current Member for Sydney from facing the prospect of having to resign from Parliament. The Greens were not able to obtain any additional support for their amendment, which was negated (Division 5:32).

The bill was reported to the House without amendment, read a third time (Division 19:17) and returned to the Assembly.

Local Government Amendment (Elections) Bill 2012

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Local Government Act 1993* and the *Local Government (General) Regulation 2005* by extending the system of continuous automatic enrolment so as to enable persons to be enrolled for a local government election during the period leading up to the polling day for the election; and by allowing persons eligible to enrol to do so and cast a provisional vote on polling day, provided the person can produce a New South Wales driver licence or Photo Card. The bill also

makes other miscellaneous amendments to improve the conduct of local government elections under the principal Act.

Proceedings: The bill was received from the Legislative Assembly on 2 April 2012 and read a first time. The second reading of the bill commenced on 3 April 2012.

After introducing the bill, the Parliamentary Secretary (Mr Mason-Cox) incorporated the balance of his second reading speech into Hansard. In that speech, Mr Mason-Cox said that the bill contains various amendments to the election procedure to apply to local council elections in September 2012, including application of the system of automatic enrolment (SmartRoll) which will avoid the disenfranchisement of significant numbers of electors as has occurred in past election years.

The Greens and the Opposition both supported the bill on the basis of its intent to ensure more people are able to participate in local government elections. However, the Opposition indicated that it will monitor the implementation and effect of these changes, particularly with respect to those councils that have elected to conduct their own elections in September this year.

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

State Revenue Legislation Amendment Bill 2012

The bill originated in the Legislative Assembly.

Summary The bill amends three State taxation Acts – the *Duties Act 1997*, the *Land Tax Management Act 1956* and the *Payroll Tax Act 2007* in order to either establish, limit, extend or clarify various tax concessions and exemptions under those Acts.

Proceedings: The bill was received from the Legislative Assembly on 3 April 2012 and read a first time. In his second reading speech the Minister (Mr Pearce) said that the various provisions in the bill will ensure that State tax concessions and exemptions apply fairly and equitably to taxpayers in circumstances where anomalies in the legislation might otherwise impose an unintended tax liability.

The Opposition indicated its support for the bill while noting the short notice it received in order to examine the range of provisions contained within.

The Greens did not oppose the bill overall, noting its stated intent of removing tax inefficiencies from the system, but were concerned that some of the bill's provisions may potentially cause a loss of revenue or create opportunities for individuals or corporations to avoid paying taxes. The Greens strongly opposed the provision for exempting from duty any government initiative in relation to the refinancing of the Sydney Desalination Plant, and foreshadowed they would seek to remove this provision during the committee stage.

In reply, the Minister said this type of bill, which is highly technical, occurs regularly as the commercial tax world tries to get the best result it can out of tax laws and governments try to produce revenue laws that protect their revenue and at the same time are fair and reflect changes to the way the community operates.

The second reading was agreed to.

In the committee stage the next day, a Greens amendment seeking to remove the provision for granting a duty exemption to the refinancing of the Sydney Desalination Plant was negated.

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

Retail Trading Amendment Bill 2012

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Retail Trading Act 2008* by easing the restrictions on shop opening hours on Good Friday, Easter Sunday, Anzac Day, Christmas Day and Boxing Day, on the condition that shops electing to open are staffed by persons who have freely elected to work on those days. The bill also makes similar provision with respect to retail banking businesses on the August Bank Holiday.

Proceedings: The bill was received from the Legislative Assembly on 3 April 2012 and read a first time. The second reading was set down for a later hour of the sitting.

Message from the Assembly

The House received the following message from the Legislative Assembly relating to a bill forwarded to the Assembly by the Council in the previous sitting week.

Local Government Amendment Bill 2011: On 29 March 2012 the Assembly advised that it had agreed to the Council's amendments to the bill.

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.

Motions

Pro-democracy protests in the Kingdom of Bahrain (Mr Shoebridge, The Greens)

Summary: The motion marked the one year anniversary on 14 February 2012 of pro-democracy protests in the Kingdom of Bahrain that called for constitutional, political and electoral reform. The motion also condemned human rights abuses being committed by the Government of Bahrain against protesters and other people in the Kingdom.

Proceedings: Standing orders were suspended to bring on the item of business. In opening debate on the motion, Mr Shoebridge praised the pro-democracy movement in the Kingdom of Bahrain for their peaceful protests and condemned the Government for their abuses of human rights.

A number of members spoke in support of the motion and acknowledged the presence in the public gallery of members of the Bahraini community. Members took the opportunity to note the importance of the right to democracy and religious freedom.

The motion was agreed to unanimously.

Jimmy Little AO (Ms Voltz, Australian Labor Party)

Summary: The motion noted the recent passing of James Oswald 'Jimmy' Little AO of the Yorta Yorta people. The motion detailed the milestones and achievements of Mr Little's life and called on the House to express its sympathy to all of Mr Little's family and friends.

Proceedings: Standing orders were suspended to bring on the item of business. In opening debate on the motion, Ms Voltz said that Jimmy Little was first and foremost a Yorta Yorta man whose passing on 2 April 2012 represented a great loss to the nation.

A number of members spoke in support of the motion, noting Mr Little's long and successful music career. In describing his many achievements members paid particular reference to his work to promote healthy eating and lifestyles among remote indigenous communities and his work to assist those suffering kidney disease.

The motion was agreed to unanimously.

ANZAC Day and 70th anniversary of the War in the Pacific (Mr Lynn, Liberal Party)

Summary: The motion acknowledged the service and sacrifice of war veterans during the Second World War and that this year is the 70th anniversary of the War in the Pacific.

Proceedings: Standing orders were suspended to bring on the item of business. In opening debate on the motion, Mr Lynn hailed the heroism and bravery of Australian soldiers and commended the enduring ANZAC spirit.

A number of members spoke in support of the motion and discussed the important contribution Australian men and women of the armed services have made to various conflicts and the significance of ANZAC Day as a time to remember and reflect on the sacrifices made on behalf of the nation.

The motion was agreed to unanimously.

Motions taken as formal business

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

- (1) Mr Cameron Hammond (Mrs Mitchell)
- (2) UIA Annual Seniors Forum (Ms Fazio)
- (3) Holi Mahotsav (Ms Fazio)
- (4) Jindabyne Aero Club (Dr Phelps)
- (5) 100th anniversary of the Piltdown Man hoax (Dr Phelps)
- (6) Premier's Harmony Dinner (Mr Clarke)
- (7) Easter (Mr Green).

Committee activities

Committee reports tabled

Legislation Review Committee: 'Legislation Review Digest No. 14/55', 2 April 2012.

Privileges Committee: Report No. 60 entitled 'Citizen's Right of Reply (UNSW)', April 2012.

Committee reports debated

Standing Committee on Law and Justice: The House concluded the take-note debate on Report No. 47 entitled, 'Fourth review of the exercise of the functions of the Lifetime Care and Support Authority and the Lifetime Care and Support Advisory Council', December 2011.

Standing Committee on Law and Justice: The House concluded the take-note debate on Report No. 48 entitled, 'Eleventh review of the exercise of the functions of the Motor Accidents Authority and the Motor Accidents Council', December 2011.

Select Committee on the provisions of the Electoral Funding, Expenditure and Disclosures Amendment Bill 2011: The House concluded the take-note debate on Report No. 1 entitled, 'Inquiry into the provisions of the Election Funding, Expenditure and Disclosures Amendment Bill 2011', February 2012.

General Purpose Standing Committee No. 5: The House commenced the take-note debate on Report No. 34 entitled 'Budget Estimates 2011-2012', February 2012.

Report tabled

Unproclaimed legislation: Mr Pearce tabled a list of unproclaimed legislation as at 2 April 2012.

Adjournment debate

Monday 2 April 2012

Commonwealth war graves desecration (Mr Secord); New England and North West 2021 Community Forum (Mr Khan); Computers in Cells Program (Mr Shoebridge); Ethnic media (Mr Moselmane); National Parks Feral Animal Control (Mr Borsak); Kokoda Challenge (Mr Lynn); Expedia (Ms Fazio).

Tuesday 3 April 2012

Tribute to Jean Letaille, OAM (Miss Gardiner); Palliative care (Mr Donnelly); Free range hens (Dr Kaye); Numeralla Diggers Memorial Hall (Mr Whan); Good Friday (Mr Green); Tribute to Dennis Bucknell (Mr Khan); Hour of Power (Dr Phelps).

Wednesday 4 April 2012

Alison McLaren (Mr Searle); Climate change (Ms Faehrmann); Isurava memorial (Mrs Maclaren-Jones); Local government pecuniary interests disclosure (Mr Shoebridge); Senator Lee Rhiannon (Mr Roozendaal); Public transport (Mr Ajaka); The Honourable John Ajaka (Mr Foley); Queensland election (Mr Macdonald).

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