

# NEW SOUTH WALES LEGISLATIVE COUNCIL

## *HOUSE IN REVIEW*



Volume 55/3

*Sitting period*  
24 to 27 May 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](http://www.parliament.nsw.gov.au) or contact the Procedure Office on (02) 9230 2431. To be placed on the email distribution list of the *House in Review*, please contact us on [council@parliament.nsw.gov.au](mailto:council@parliament.nsw.gov.au).

### Vacancies in the Council

The Hon John Hatzistergos tendered his resignation as a member of the Legislative Council to Her Excellency the Governor on 19 May 2011. As reported in the previous edition of *House in Review*, the Hon Edward Obeid previously tendered his resignation on 10 May 2011.

A joint sitting of the Legislative Council and Legislative Assembly was held on 24 May 2011 to fill the vacancies. At that sitting, Mr Adam Searle and Mr Walt Secord were elected to fill the seats vacated by Mr Hatzistergos and Mr Obeid respectively.

On 27 May 2011, both Mr Searle and Mr Secord were sworn in as members of the House.

### New members' first speeches

The following members of the House, elected at the election on 26 March 2011, gave their first speeches:

- (1) The Hon Scot MacDonald (24 May 2011)
- (2) The Hon Paul Green (26 May 2011)
- (3) The Hon Sarah Mitchell (27 May 2011)
- (4) The Hon Niall Blair (27 May 2011).

To view the speeches, go to the Hansard link from the Parliament's website on the date listed.

### Ministerial statement

On 24 May 2011, the Leader of the Government in the Council (Mr Gallacher) gave a statement regarding the designation of certain ministers as senior ministers.

### Temporary Chairs of Committees

The President nominated the following members to act as Temporary Chairs during the present session of Parliament:

- (1) The Hon Cate Faehrmann
- (2) The Hon Paul Green
- (3) The Hon Natasha Maclaren-Jones

- (4) The Hon Sarah Mitchell

- (5) The Hon Helen Westwood.

### Conduct of business

During the sitting week, Government business took precedence of private members' business on Friday, to enable the House to conclude its consideration of the Work Health and Safety Bill 2011 and Occupational Health and Safety Amendment Bill 2011 (discussed further below).

### Government business

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

### Work Health and Safety Bill 2011 and Occupational Health and Safety Amendment Bill 2011 (cognate)

*Summary:* These bills harmonise occupational health and safety laws in NSW with nationally agreed laws developed by the Council of Australian Governments. The Work Health and Safety Bill 2011 harmonises NSW occupational health and safety laws with national laws from the commencement of the national scheme in 2012. The Occupational Health and Safety Amendment Bill 2011 implements transitional arrangements from now until the commencement of the national scheme in 2012.

The key reforms to occupational health and safety laws in NSW in the Work Health and Safety Bill 2011 are the removal of the reverse onus of proof on employers in court proceedings following a workplace accident (whereby employers have to prove they did everything reasonably practicable to prevent an accident); the transfer of the jurisdiction for dealing with cases away from the Industrial Court of NSW to the Local Court or District Court; and the prevention of unions from being able to institute prosecutions for an offence that concerns union members.

*Proceedings:* In his second reading speech on 11 May 2011, the Minister (Mr Pearce) indicated that the bills meet the Government's commitment to participate fully in a nationally consistent system of occupational health and

safety, and noted that the previous Government reversed its promise to pass harmonised occupational health and safety laws before the last election. The Minister argued that the new system will reduce complexity and red tape and provide greater certainty to employers and employees.

Debate on the two bills resumed on 25 May 2011, and dominated debate in the House for the week. The Opposition opposed the bills, noting that prior to the last election, they opposed the harmonisation of national work health and safety laws on the basis that such a move would water down NSW law to the detriment of workers of the State. It argued that NSW currently has the best occupational health and safety legislation in Australia, under which NSW has seen an ongoing fall in the rate of occupational deaths and injuries. The Greens, while supporting consistency in national occupational health and safety laws in principle, also opposed the bills for significantly undermining the safety of workers in NSW. Both the Opposition and the Greens criticised at length the removal of the reverse onus of proof on employers, the removal of the jurisdiction of the Industrial Court and the prohibition on unions bringing prosecutions. The Shooters and Fishers Party supported the removal of the reverse onus of proof on employers, but opposed the removal of the right of unions to bring prosecutions, and opposed the removal of the jurisdiction of the Industrial Court over certain category of offences. The Christian Democratic Party argued that the Government has the right to implement its legislative policy and supported the adoption of nationally consistent law, while indicating that it would work with the Shooters and Fishers Party in amendments concerning union prosecutions. In his reply, the Minister responded to the issue of union prosecutions, arguing that the right to initiate prosecutions should be limited to the regulator (WorkCover), on the basis that the prosecutions would be transparent and in line with clear, publicly available prosecutions guidelines. The Minister also noted that NSW is set to gain \$144 million in reward payments from the Commonwealth for implementing nationally consistent occupational health and safety and other reforms. The second reading was agreed to (Division 19:16).

In the committee stage, the Opposition, the Shooters and Fishers Party and the Greens all moved a significant number of amendments to the bills. Amendments were agreed to from the Shooters and Fishers Party to restore a limited role for the Industrial Court in relation to certain proceedings, and to restore a limited role for unions in bringing prosecutions. Amendments to those amendments from the Opposition and Greens to further broaden the role of the Industrial Court and of unions were negated. Amendments from the Greens and Opposition to retain the reverse onus of proof on employers were also negated.

The bills were reported to the House with amendments, read a third time (Division 20:19) and returned to the Assembly with the amendments.

## **Industrial Relations Amendment (Public Sector Conditions of Employment) Bill 2011**

The bill originated in the Legislative Council.

*Summary:* The bill amends the *Industrial Relations Act 1996* to require the Industrial Relations Commission, when making or varying any award or order relating to public sector conditions of employment, to give effect to aspects of government policy. The bill applies to proceedings that are pending in the Commission, including claims filed under the previous Government.

*Proceedings:* The bill was introduced and read a first time. In his second reading speech, the Minister (Mr Pearce) noted that the effect of the bill would be to require the Industrial Relations Commission to observe any regulations issued by the Government concerning public sector wage increases. The current policy of the Government is that wage increases beyond 2.5 per cent per annum must be funded by demonstrable employee-related savings that have already been achieved. The Minister argued that the previous Government's wages policy (that wage increases beyond 2.5 per cent must be funded by employee-related savings) was not achieved because the Industrial Relations Commission granted wage increase of 4.0 per cent, but that the necessary savings were not all subsequently delivered. Debate was adjourned for five sitting days.

## **Law Enforcement (Powers and Responsibilities) Amendment (Move on Directions) Bill 2011**

The bill originated in the Legislative Council.

*Summary:* The bill amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to enable police to give directions to intoxicated individuals to move on regardless of whether they are by themselves or part of a group. Currently, the move-on powers in the Act may only be used where intoxicated people are in groups of three or more.

*Proceedings:* In his second reading speech on 10 May 2011, the Minister (Mr Gallacher) indicated that the bill is part of the Government's election commitment to making the streets of NSW safe again. On the resumption of the debate on 24 May 2011, Government members argued that the bill will assist in combating alcohol and drug related crime. The Opposition did not oppose the bill, while arguing that police already have appropriate move on powers under section 197 of the Act. The Opposition also raised concerns that vulnerable groups such as the homeless, young people and indigenous people are more likely to be affected by the change of law than other community members. The Greens raised similar concerns, arguing that the bill gives enormous discretionary power to police to target individuals who are seen to be in a socially inappropriate place. The Christian Democratic Party supported the bill, citing concerns about alcohol-related violence and anti-social behaviour. In his reply, the Minister noted that the Ombudsman has oversight of the use of police powers, that there is a protocol in place for police when they encounter homeless people, and that the existing

move on powers under section 197 relate to people who are obstructing or harassing others, not intoxicated.

A Greens amendment for the bill to be referred to the Law and Justice Committee for inquiry and report was negatived (Division 15:20), and the second reading (Division 30:5) and third reading of the bill were agreed to. The bill was forwarded to the Legislative Assembly for concurrence.

### **Crimes Amendment (Murder of Police Officers) Bill 2011**

The bill originated in the Legislative Council.

*Summary:* The bill amends the *Crimes Act 1900* to provide for mandatory life sentences to be imposed on persons convicted of murdering police officers. A life sentence is a sentence for the term of a person's natural life without release on parole. The proposed change does not apply to convicted persons under the age of 18 years or suffering a significant cognitive impairment.

*Proceedings:* The bill was introduced and read a first time. In his second reading speech, the Minister (Mr Gallacher) stated that the bill fulfils a key election commitment by the Government. He noted that police officers put themselves at risk to protect the community, and argued that imposing life sentences on people who murder police officers would send a clear message about the seriousness of the crime. Debate was adjourned for five calendar days.

### **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 taken as formal business*

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

- (1) Cystic fibrosis clinics in New South Wales (Dr Kaye)
- (2) The passing of Bill Hunter (Ms Barham)
- (3) 2011 Local Government Cultural Awards (Ms Barham)
- (4) Strategic Regional Land Use Policy (Mr Buckingham)
- (5) Gosford Public School (Dr Kaye)
- (6) Pakistani news website (Mr Moselmane)
- (7) Death of Muslim community leaders (Mr Moselmane)
- (8) Rabitah International (Mr Moselmane)
- (9) Democracy in Burma (Dr Kaye).

### **Orders for papers**

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

#### *Order made*

- (1) **Shenhua Watermark Coal Project (Mr Buckingham):** The order related to the exploration license granted to Shenhua Watermark Coal Pty Limited to explore for coal at a site near Gunnedah. Standing orders were suspended to bring on the item of business. The motion was agreed to. Due: 9 June 2011.

#### *Return to order*

- (1) **Election of Mr John Frederick Flowers MP:** Received 20 May 2011, three boxes public, three boxes privileged.

### **Petitions received**

- (1) Part 3A of the Environmental Planning and Assessment Act 1979 – 55 signatures (presented Mr Shoebridge)
- (2) Opposition to euthanasia– 36 signatures (presented Miss Gardiner); 176 signatures (presented Revd Mr Nile)
- (3) Support for an open Australia – 75 signatures (presented Revd Mr Nile)
- (4) Unborn child protection – 36 signatures (presented Revd Mr Nile)
- (5) Support for scripture classes – 63 signatures (presented Revd Mr Nile)
- (6) Closure of the Newcastle rail line – 540 signatures (Ms Voltz).

### **Committee activities**

#### *Committee membership, chairs and deputy chairs*

The following membership and appointments of chairs and deputy chairs of committees were reported to the House:

#### **Privileges Committee:**

Government: Mr Khan (Chair), Mr Mason-Cox, Mr Ajaka, Miss Gardiner  
Opposition: Ms Fazio (Deputy Chair), Mr Primrose  
Crossbench: Revd Mr Nile.

#### **Procedure Committee:**

The President (Chair)  
Government: Miss Gardiner (Deputy Chair), Mr Gallacher, Mr Gay, Dr Phelps, Mrs Mitchell  
Opposition: Mr Kelly, Mr Foley, Ms Fazio  
Crossbench: Revd Mr Nile, Ms Fahrman, Mr Borsak.

#### **State Development Committee:**

Government: Mr Colless (Chair), Dr Phelps, Mr Lynn  
Opposition: Mr Veitch (Deputy Chair), Ms Fazio  
Crossbench: Mr Green.

#### **Social Issues Committee:**

Government: Mr Blair (Chair), Ms Cusack, Mrs Maclaren-Jones

Opposition: Ms Westwood (Deputy Chair), Mr Donnelly  
Crossbench: Ms Faehrmann.

**Law and Justice Committee:**

Government: Mr Clarke (Chair), Mr MacDonald, Mrs Mitchell

Opposition: Mr Primrose (Deputy Chair), Mr Moselmane  
Crossbench: Mr Shoebridge.

**General Purpose Standing Committee No. 1:**

Government: Ms Cusack, Miss Gardiner, Mrs Pavey

Opposition: Mr Veitch, Mr Roozendaal  
Crossbench: Revd Mr Nile, Dr Kaye.

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

Government: Ms Ficarra, Mr Clarke, Mrs Mitchell

Opposition: Mr Moselmane, Ms Westwood  
Crossbench: Mr Green, Ms Barham.

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

Government: Mrs Maclaren-Jones, Mr Blair, Mr Ajaka

Opposition: Mr Foley, Ms Fazio  
Crossbench: Ms Faehrmann, Mr Green.

**General Purpose Standing Committee No. 4:**

Government: Mr Mason-Cox, Mr Khan, Mr Lynn

Opposition: Ms Sharpe, Ms Voltz  
Crossbench: Mr Borsak, Mr Shoebridge.

**General Purpose Standing Committee No. 5:**

Government: Mr Colless, Dr Phelps, Mr MacDonald

Opposition: Mr Primrose, Mr Donnelly  
Crossbench: Mr Brown, Mr Buckingham.

The Chair and Deputy Chair of the General Purpose Standing Committees will be elected by each Committee.

*Committee reports debated*

**Select Committee on Recreational Fishing:** The House commenced the take-note debate on the report of the Committee entitled 'Recreational Fishing in New South Wales', December 2010.

**General Purpose Standing Committee No. 1:** The House commenced the take-note debate on Report No. 36 of the Committee entitled 'The Gentrader transactions', February 2011.

**Reports tabled**

Report of an Inquiry by the Conduct Division of the Judicial Commission of New South Wales in relation to Magistrate Jennifer Betts, dated 21 April 2011.

Response of Magistrate Jennifer Betts to the report of the Conduct Division of the Judicial Commission of New South Wales, dated 12 May 2011.

**Auditor General:**

- (1) Performance Audit report entitled: 'Two Ways Together – NSW Aboriginal Affairs Plan:

Aboriginal Affairs NSW, Department of Premier and Cabinet', May 2011.

- (2) Financial Audits report Volume Two 2011, May 2011.

**Ombudsman:**

- (1) Special report entitled: 'Audit of the NSW Police Force handling of domestic and family violence complaints', May 2011.
- (2) 'Report under Section 49(1) of the Surveillance Devices Act 2007 for the 6 months ending 31 December 2010', April 2011.

**NSW State Coroner:** 'Report by the NSW State Coroner into deaths in custody/police operations: 2010', March 2011.

**Adjournment debate**

**Tuesday 24 May 2011**

Tribute to Maria Venuti, AM (Ms Ficarra); Coal seam gas (Mr Buckingham); National Labor Women's Conference (Ms Fazio); Port Macquarie Base Hospital redevelopment (Mrs Pavey); Maccabi Games (Ms Cotsis); Climate change (Mr Brown).

**Wednesday 25 May 2011**

Places of public worship (Mr Moselmane); Renewable energy (Mr Borsak); Pike River Mine Royal Commission (Mr Khan); Climate change (Ms Voltz); Hunting in State Forests (Mr Shoebridge); Geek Pride Day (Dr Phelps); Ruth and Vince Fazio 60<sup>th</sup> wedding anniversary (Ms Fazio).

**Thursday 26 May 2011**

Sri Lankan conflict (Mr Shoebridge); Messines Offensive (Mr Colless); Palliative care (Mr Donnelly); Armenian genocide and the Nagorno Karabakh Republic (Revd Mr Nile); Guyra Chamber of Commerce (Mr MacDonald); Solar bonus scheme (Mr Foley).

**Friday 27 May 2011**

Fatality Free Friday (Mr Ajaka); X-rated films in NSW (Ms Fazio); Braveheart Foundation (Revd Mr Nile); Parliament's Biggest High Tea in support of the Cancer Council New South (Ms Ficarra); Gambling (Dr Kaye); Tribute to Robert Gould (Ms Sharpe); Comments of the Hon Eric Roozendaal (Dr Phelps).

**Feedback on House in Review**

We welcome any comments you might have on this publication to [stephen.frappell@parliament.nsw.gov.au](mailto:stephen.frappell@parliament.nsw.gov.au). All responses will be kept strictly confidential.



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