

NEW SOUTH WALES LEGISLATIVE COUNCIL

HOUSE IN REVIEW



Volume 55/31

*Sitting period
21 to 23 August 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 was most notable for the resolution of the almost year-long disagreement between the Houses regarding the Graffiti Legislation Amendment Bill 2011 (see below).

Also of note was the volume of legislation considered by the House in only the second week of the new sitting period. Overall, the House debated ten bills during the week, four of which originated in the Assembly, three of which originated in the Council and three private member's bills. The House completed consideration of five Government bills, two of which (Graffiti Legislation Amendment and Crimes Commission) were considered in committee of the whole.

President's commission – pledge of loyalty or oath of allegiance

The President reported the receipt of a Commission from Her Excellency the Governor authorising him as a person before whom the Pledge of Loyalty or the Oath of Allegiance, required by law to be taken by every Member of the Legislative Council before that Member shall be permitted to sit or vote in the Legislative Council, may be taken.

The President further reported the receipt of similar Commissions for the Deputy President and Chair of Committees and for the Assistant President, for use in the absence of the President or the President and Deputy President respectively.

The new commissions were necessitated by the enactment of the *Constitution Amendment (Restoration of Oaths of Allegiance) Act 2012*, which allows members to take the Oath of Allegiance as an alternative to the Pledge of Loyalty.

Death of former member

The President reported to the House the death of the Hon Delcia Ivy Kite, a member of the House from 1976 to 1995. The President further reported that on behalf of the House he had extended to the family the deep sympathy of the Legislative Council in the loss sustained.

Members and officers of the House stood as a mark of respect.

Government business

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

Graffiti Legislation Amendment Bill 2011

The bill originated in the Legislative Assembly.

Summary: The bill amends various acts to require a court making a community service order against a person guilty of a graffiti offence to impose a condition requiring the person to remove the graffiti where practical. The bill, as introduced, also empowers the courts to make certain orders with respect to the driving licence of an offender, including suspending the licence for up to six months. In addition, the bill removes the power of police and specialist youth officers to deal with young offenders by way of a caution, warning or youth justice conference instead of court proceedings.

Proceedings: As reported in edition 55/9 of *House in Review*, on 25 August 2011, the Council made a number of amendments to the Graffiti Legislation Amendment Bill 2011 and returned the bill, together with the amendments, to the Assembly. The amendments allowed a caution to be given for a first time graffiti offence. They also removed from the bill the provisions to enable a court to make certain orders with respect to the driving licence of an offender, and which require a court making a community service order to require offenders to remove their graffiti.

On 26 August 2011, the Assembly sent a return message to the Council disagreeing with the Council's amendments.

Subsequently, as reported in edition 55/11 of *House in Review*, on 13 September 2011, the Council resolved to request a free conference between the two Houses on the bill. A free conference is an opportunity for members appointed by the Council to meet directly with members appointed by the Legislative Assembly in an attempt to seek a resolution to a disagreement. Sending a request for a free conference is rare, but not unprecedented, the last free conference in New South Wales in 1978 playing a vital role in the eventual resolution of disagreement as to the reform of the Legislative Council.

On 21 August 2012, the Council received a further message from the Assembly rejecting the Council's request for a free conference.

Later that day, the Council considered the Assembly's message rejecting the Council's request for a free conference, and the previous message of the Assembly disagreeing with the Council's amendments to the bill, in committee. To enable the committee to consider both messages, the House gave an instruction to committee of the whole to make it abundantly clear that the committee had power to consider the message of the Legislative Assembly of 26 August 2011 disagreeing with the Legislative Council's amendments, and any further amendments which directly arise from that disagreement.

On the House resolving itself into committee of the whole, the Minister (Mr Gallacher) moved that the Council not insist on its original amendments to the bill. Two amendments were moved to this question. The Shooters and Fishers Party moved amendments to again remove from the bill those provisions that enable a court to make certain orders with respect to the driving licence of an offender. In support of their amendments, the Shooters and Fishers Party argued that removing the driving licence of an offender would only make an offender more likely to offend. The Greens moved a separate amendment for the House to insist on its original amendments of 25 August 2011. In support of its amendment, the Greens argued that the House should insist on all of its previous amendments, including the amendments restoring the power of police and specialist youth officers to deal with young offenders by way of a caution.

The Government and Opposition both supported the Shooters and Fishers Party amendments. The Christian Democratic Party supported the bill in its original form.

The amendment of the Greens was negated (Division 5:32), with only the Greens voting in support. The amendments of the Shooters and Fishers Party were agreed to. The original question of the Minister, as amended by the Shooters and Fishers Party amendments, was agreed to, and the bill was again returned to the Assembly with the further amendments.

On 22 August 2012 the House received a message advising that the Assembly had agreed to the Council's amendments to the bill.

Crime Commission Bill 2012

The bill originated in the Legislative Council.

Summary: The bill re-enacts, in a modernised form, the *New South Wales Crime Commission Act 1985* to implement certain recommendations of the Report of the Special Commission of Inquiry into the Crime Commission (the Patten Report).

Proceedings: Debate on the second reading of the bill resumed on 22 August from 15 August 2012 (see the previous edition of *House in Review* for earlier debate). Members of the Government spoke in support of the bill, noting that it fully implements 48 of the 57 recommendations contained within the Patten Report, while adopting effective alternatives to the remaining recommendations.

The Opposition supported the bill, noting that it contained some important innovations with respect to the management of the Crime Commission. The Opposition acknowledged concerns that had been raised regarding the breadth of powers provided in the bill to the Crime Commission, however, it noted with respect to these powers that the bill simply replicated existing provisions in the current Act.

The Christian Democratic Party supported the bill, but noted its concern over the decision to have criminal assets confiscation cases determined on a civil basis.

The Greens supported the bill, commending the Government for meeting its election commitment regarding review and reform of the Crime Commission. While signalling their strong support for the bill, the Greens foreshadowed a number of amendments to the bill during the committee stage.

The second reading was agreed to.

In the committee stage the Greens moved six amendments. An amendment to further ensure adequate staff and resources are available to the Inspector was agreed to. An attempt to modify the Commission's powers of detention, while drawing the support of the Opposition, was negated on division (17:20). The remaining amendments, relating to the Commission's power of veto over legal representation; ability to set conditions upon release from detention; investigation referral criteria; and scrutiny of asset confiscation consent orders, did not draw support from the other parties, and were all negated.

The bill was reported to the House with an amendment.

On 23 August 2012, the bill was read a third time and forwarded to the Assembly for concurrence.

Community Housing Providers (Adoption of National Law) Bill 2012

The bill originated in the Legislative Assembly.

Summary: The bill applies as a law of the State the Community Housing Providers National Law. The national law provides a national system of registration, monitoring and regulation of community housing providers. New South Wales is a signatory to an intergovernmental agreement which refers to the national law.

Proceedings: The bill was received from the Legislative Assembly on 15 August 2012 and read a first time. Debate on the second reading of the bill commenced on 21 August 2012. In his second reading speech the Parliamentary Secretary (Mr Mason-Cox) said that the community housing sector is an increasingly important player in the provision of social and affordable housing, and that the national law will provide a regulatory framework that will give confidence to community housing providers, their clients and investors and will ensure the viability, good governance and continued growth of the sector now and into the future.

Members of the Government spoke in support of the bill. The Opposition, the Christian Democratic Party and the Greens supported the bill, noting, among other things, that New South Wales has led the development of

the national regulatory system; that reform that grows the community housing sector is a way of increasing the stock of much need social housing; and that the bill will lessen the regulatory burden for multi-jurisdictional providers.

Debate was interrupted for Questions, and resumed on 22 August 2012. The second and third readings of the bill were agreed to and the bill was returned to the Assembly without amendment.

Fines Amendment Bill 2012

The bill originated in the Legislative Council.

Summary: The bill amends the *Fines Act 1996* to make further provisions with respect to fines and their enforcement, including extending the authority of the State Debt Recovery Office (SDRO) to obtain information about fine defaulters

Proceedings: Debate on the second reading of the bill resumed on 22 August 2012 from 15 August 2012 (see the previous edition of *House in Review* for earlier debate). Members of the Government and the Christian Democratic Party supported the bill, while the Opposition did not oppose the bill. The Greens also did not oppose the bill but expressed concerns regarding privacy and the impact on low-income households.

The second and third readings of the bill were agreed to and the bill was forwarded to the Assembly for concurrence.

Fiscal Responsibility Bill 2012

The bill originated in the Legislative Assembly.

Summary: The bill repeals the *Fiscal Responsibility Act 2005* and makes consequential changes to the *Public Finance and Audit Act 1983*. The bill sets out principles of sound financial management and incorporates fiscal targets for maintaining the State's AAA credit rating, such as ensuring that the annual growth in general government expenses is less than the long-term average general revenue growth, and eliminating the State's unfunded superannuation liability by 2030.

Proceedings: The bill was received from the Legislative Assembly on 15 August 2012 and read a first time. Debate on the second reading of the bill commenced on 22 August 2012. In his second reading speech, the Parliamentary Secretary (Mr Mason-Cox) indicated that the bill is aimed squarely at retaining the State's AAA credit rating in the long term, and that the previous Government's fiscal management left the State vulnerable to losing the AAA credit rating.

The Opposition did not oppose the bill, but questioned the legitimacy of legislating to protect a AAA credit rating, and argued that during the 16 years of the former government, there were only two or possibly three years in which a deficit budget was delivered. The Greens did not support the bill, also arguing that the legislation is aspirational and an attempt to impress the ratings agencies. The Christian Democratic Party supported the bill, citing the lack of fiscal responsibility in other jurisdictions and countries.

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

Emergency Legislation Amendment Bill 2012

The bill originated in the Legislative Council.

Summary: The bill amends the *Fire Brigades Act 1989*, the *Rural Fires Act 1997*, the *State Emergency and Rescue Management Act 1989* and the *State Emergency Service Act 1989* to make further provision in relation to the investigation of fires and to State emergency management.

Proceedings: The bill was introduced, read a first time and printed on 22 August 2012. In his second reading speech, the Minister (Mr Gallagher) said that the bill will enhance and strengthen the operation of emergency management legislation. The bill also seeks to give police officers necessary powers to enter land to investigate the cause or origin of bushfires; provide authorised officers the power to request a person's full name and address when issuing a penalty notice; ensures all emergency volunteers are covered by anti-discrimination protections; and clarifies the roles and responsibilities of each level of emergency management committee in preparing for and responding to emergencies across the State.

Debate was adjourned for five calendar days.

National Parks and Wildlife (Adjustment of Areas) Bill 2012

The bill originated in the Legislative Assembly.

Summary: The bill amends the National Parks and Wildlife Act 1974 to change the reservation status of certain lands under that Act. Of note, the bill changes the reservation of 3,876 hectares of the Berowra Valley Regional Park to a national park to be known as Berowra Valley National Park. In addition, the bill enables upgrades to the Pacific and Princes Highways by revoking around 38 hectares of land from reservation.

Proceedings: The bill was received from the Legislative Assembly on 22 August 2012 and read a first time. The second reading of the bill was set down for a later hour.

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.

Bills

National Parks and Wildlife Amendment (Illegal Forestry Operations) Bill 2012 (Mr Foley, Australian Labor Party)

The bill originated in the Legislative Council.

Summary: The bill amends the *National Parks and Wildlife Act 1974* to substantially increase the penalties for illegal forestry operations. Under this bill an offence will now attract a maximum penalty of \$220,000, or imprisonment for two years, or both.

Proceedings: Debate on the second reading of the bill resumed on 23 August 2012 from 14 June 2012 (see Vol 55/28 of *House in Review* for earlier debate). Members of the Opposition supported the bill, stating that audits had found evidence of systematic breaching of integrated forest operational licence agreements, which were endangering many populations of threatened species. Members of the Greens supported the bill, arguing that it had been evident for some time that there was a need for increased fines to apply to illegal logging activities.

Members of the Government did not support the bill, arguing that it would expose private individuals to fines of up to \$220,000 or two years imprisonment for minor offences. It was further noted that the Government was undertaking a regulatory review of forestry operations, which included an examination of the existing penalty regime.

Debate was adjourned until the next sitting day.

Alcoholic Beverages Advertising Prohibition Bill 2012 (Revd Mr Nile, Christian Democratic Party)

The bill originated in the Legislative Council.

Summary: The bill prohibits advertising aimed at promoting the sale of alcoholic beverages, with a view to reducing the incentive for people to consume alcohol. An Alcohol Advertising Prohibition Committee will be established to prepare a timetable for the removal of advertisements promoting alcoholic beverages. The bill also provides for the declaration of local option areas within which the purchase, sale or consumption of alcoholic beverages in a public place is an offence.

Proceedings: The bill was introduced, read a first time and printed on 23 August 2012. In his second reading speech, Revd Mr Nile indicated that the purpose of the bill is to limit the social and personal impacts of alcohol abuse in New South Wales. In support, Revd Mr Nile cited widespread community concern about the impact of alcohol on society, and particularly its contribution to violence in suburbs such as Kings Cross.

Debate was adjourned for five calendar days.

Small Business Commissioner and Small Business Protection Bill 2012 (Mr Searle, Australian Labor Party)

The bill originated in the Legislative Council.

Summary: The bill seeks to establish the office of Small Business Commissioner; to empower the Commissioner to protect small businesses; and to ensure that small businesses are treated fairly.

Proceedings: The bill was introduced, read a first time and printed on 23 August 2012. In his second reading speech, Mr Searle said that small business was the core of the economy, providing half of the employment opportunities in our society, and that research had shown that existing protections or rights for small business are not adequate or readily available.

Debate was adjourned for five calendar days.

Motions

DonateLife Week (Mrs Pavey, The Nationals)

Summary: The motion called on the House to note that Australia has one of the highest transplant success rates in the world, yet New South Wales has one of the lowest organ donation rates in Australia; that the Minister for Health released a discussion paper in December 2011 seeking comment on a range of proposals to boost donation rates; and that NSW Police and NSW Health have initiated a time saving system for coordination of urgent organ transportation.

Proceedings: Debate on the motion resumed on 23 August 2012 from 16 August 2012 (see previous edition of *House in Review* for earlier debate). Members continued to emphasise that, given only about 2.5 per cent of people who die in hospitals are physically eligible to be considered as donors, it is essential that as many people as possible consent to be donors and that this consent is honoured by families. A number of members related cases of families that had been involved in organ donation and the positive impact it had had upon them.

Debate was interrupted for Questions.

Motions taken as formal business

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

- (1) Mr David Liddiard (Ms Ficarra)
- (2) Oxfam Trail Walk (Ms Ficarra)
- (3) NSW Office of Fair Trading achievements (Ms Ficarra)
- (4) Eid-Ul-Fitr celebration (Mr Moselmane)
- (5) Regional Youth Service Awards (Mr Clarke)
- (6) 50th anniversary of the Australian Ballet (Mrs Maclaren-Jones)
- (7) SO52 – Nimmie-Caira System Enhanced Environmental Water Delivery Project (Mr Buckingham)
- (8) Harris Park preschool in Queanbeyan (Mr Whan)
- (9) Candidates for local government elections (Mr Whan)
- (10) Sri Lankan refugee (Dr Kaye).

Orders for papers

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

Orders made

- (1) **Nimmie-Caira System Enhanced Environmental Water Delivery Project (Mr Buckingham):** The order relates to the Nimmie-Caira environmental water delivery project and to related proposed changes to the Murrumbidgee Water Sharing Plan. The motion, as by leave amended, was agreed as formal business. Due: Date 20 September 2012.

Petitions received

- (1) Religious discrimination – 25 signatures (presented Mr Moselmane)
- (2) Opposition to euthanasia – 31 signatures (presented Revd Mr Nile)
- (3) The right to die with dignity – 161 signatures (presented Ms Faehrmann)
- (4) Support for an open Australia – 19 signatures (presented Revd Mr Nile)
- (5) Truth in labelling free-range eggs – 726 signatures (presented Dr Kaye)
- (6) Unborn child protection – 22 signatures (presented Revd Mr Nile)
- (7) Support for scripture classes – 14 signatures (presented Revd Mr Nile).

Debate on budget estimates

The House continued the take-note debate on the Budget Estimates and related papers for the financial year 2012-2013.

Committee activities

Committee membership

Joint Standing Committee on Electoral Matters: The election on 29 June 2012 of Mr Rowell MP as Chair in place of Mr Khan was formally reported to the House.

General Purpose Standing Committee No. 4: Mrs Mitchell was elected Chair.

Committee reports tabled

Legislation Review Committee: 'Legislation Review Digest No. 22 of 2012', 21 August 2012.

Privileges Committee: 'Citizen's Right of Reply (Mr Brian Boyle), August 2012.'

Committee reports debated

Standing Committee on Social Issues: The House continued the take-note debate on Report No. 45 entitled 'Transition support for students with additional or complex needs and their families', March 2012.

Standing Committee on Law and Justice: The House continued the take-note debate on Report No. 49 entitled 'Opportunities to consolidate tribunals in NSW', March 2012.

General Purpose Standing Committee No. 5: The House concluded the take-note debate on Report No. 35 entitled 'Coal seam gas', May 2012.

General Purpose Standing Committee No. 2: The House continued the take-note debate on Report No 38 entitled 'Education Amendment (Ethics Classes Repeal) Bill 2012, May 2012.

Government response

Select Committee on the Kooragang Island Orica chemical leak: The House received a response to the Report entitled 'Kooragang Island Orica chemical leak', tabled 23 February 2012.

Inquiry activities

Standing Committee on Social Issues

The Committee adopted its final report on domestic violence trends and issues in NSW this week, and the report is expected to be tabled early next week.

Standing Committee on State Development

The Committee is currently accepting submissions to its inquiry into the adequacy of water storages in NSW, with a closing date for submissions of Friday 31 August 2012. The Committee held its first public hearing at Parliament House on Monday 20 August 2012, with representatives from organisations such as the Department of Primary Industries, NSW Office of Water and Sydney Catchment Authority appearing. The Committee will conduct its first site visits on Wednesday 29 and Thursday 30 August 2012, to the Shoalhaven and Goulburn areas.

Select Committee on the Partial Defence of Provocation

The Committee is continuing to receive submissions to its inquiry into the partial defence of provocation and related issues. The deadline for submissions is Friday 24 August 2012. The Committee has received 34 submissions to date. The Committee will hold two days of public hearings at Parliament House on Tuesday 28 and Wednesday 29 August 2012, with a third hearing day to be held on Friday 21 September.

Select Committee on the closure of the Cronulla Fisheries Centre

The Committee on the closure of the Cronulla Fisheries Centre was established by resolution of the House on 21 June 2012. The Committee has received 103 submissions to date. The Committee visited the Cronulla Fisheries site on Monday 6 August 2012, followed by a public hearing with representatives from the Department of Primary Industries. Further public hearings are scheduled for Monday 3 and Monday 10 September 2012. A public forum is also scheduled for the evening of Monday 3 September to allow persons affected by the closure to speak to the Committee. The Committee is required to table its final report by Tuesday 23 October 2012.

General Purpose Standing Committee No. 5

The Committee has extended the closing date for submissions to its inquiry into the management of public land in NSW to Friday 31 August 2012. The first Sydney hearings will be held on Friday 7 and Friday 14 September 2012 at Parliament House, after which the Committee will conduct further site visits in late September and early October.

Adjournment debate

Tuesday 21 August 2012

Northern Beaches Indigenous Community House program (Mrs Maclaren-Jones); Grafton Correctional Centre closure (Mr Veitch); Israel (Revd Mr Nile); China trade and investment (Mr Whan); Cobbora coalmine (Dr Kaye); Advance care directives (Mr Khan); Tribute to Bob Rowland-Smith (Mr Gay).

Wednesday 22 August 2012

Age discrimination (Ms Westwood); Friendly Faces, Helping Hands Foundation (Mr Green); Quad bike safety (Mr Blair); Women in local government (Mr Searle); Indigenous communities intervention (Ms Faehrmann); Illawarra TAFE Wollongong campus (Mr Ajaka); Sexual assault (Ms Cotsis).

Thursday 23 August 2012

Youngcare founder Shevaune Conry (Ms Barham); Weave Kool Kids Club (Ms Ficarra); Volgren and Custom Coaches manufacturing (Mr Primrose); South Coast Hunters Club Hunting Festival (Mr Brown); Pay equity (Ms Voltz); Chabad movement (Mr Clarke).

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