

NEW SOUTH WALES LEGISLATIVE COUNCIL

HOUSE IN REVIEW



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19 to 21 February 2013*

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

Welcome to the first edition of *House in Review* for 2013. This was the first sitting week of what promises to be a long parliamentary year, with the sitting pattern adopted by the House at the end of 2012 scheduling 21 sitting weeks, in addition to budget estimates hearings. This is a high watermark for sitting weeks compared to recent years.

While *House of Review* tends to focus on the legislative and committee functions of the House, this week's edition diverts briefly to report on a rare procedural event: the consideration of a document, in this instance relating to Pacific Highway funding, under standing order 57. This was the first occasion that standing order 57 has been used, and was therefore something of a procedural highlight.

In keeping with previous starts to the year, the volume of Government legislation considered in this first week was relatively small, but with a number of bills on their way from the Lower House, this is likely to change in the next few weeks.

Death of former members

The President reported to the House the death on 8 February 2013 of the Honourable John Joseph Morris, aged 77 years, a member of the House from 1976 to 1984 and the death on 11 February 2013 of Mrs Florence Violet Lloyd OBE, a member of the House from 1973 to 1981.

The President further reported that, on behalf of the House, he had extended to the families the deep sympathy of the Legislative Council in the loss sustained.

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

Messages of condolence – Tropical cyclone in Samoa; Bushfires in Tasmania; Tsunami in Solomon Islands

The President informed the House that, following the recent natural disasters, he had written to representatives of Samoa, Tasmania and the Solomon Islands to express the sympathies and condolences on behalf of himself and members of the Legislative Council to the families of the victims.

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

Statement by the President

On the last sitting day of 2012, the House resolved that the Aboriginal flag be displayed in the Chamber. The President informed the House that from the first sitting day of 2013, the Aboriginal flag will now permanently be displayed in the House.

Consideration of document – Extract from House of Representatives Hansard of 21 October 2010

Summary: On 22 November 2012, the last sitting day of 2012, the Minister for Roads tabled an extract from the House of Representatives Hansard of 21 October 2010, to which he had made reference while answering a question during Question Time relating to the Federal and State Governments' funding commitments for the upgrade of the Pacific Highway. On tabling of the document, the House subsequently agreed, on the motion of Ms Voltz, that in accordance with standing order 57, the tabled document be considered on 19 February 2013.

This was the first occasion that the House had resolved to consider a document under standing order 57, and, as a consequence, there was no settled procedure for how such items of business should be conducted.

Proceedings: Prior to the item of business being called on, standing orders were suspended so that the House could agree on the procedure for consideration of the document. The House agreed that any member may

speak on matters relating to the document for not more than 20 minutes, and that the matter would proceed for up to two hours.

Members of the Government and the Christian Democratic Party argued that the current funding agreement was contained within a Memorandum of Understanding that was signed in 2009 and which provided for Federal funding of 80 per cent and State funding of 20 per cent. Members criticised the Federal Government for moving away from this commitment.

Members of the Opposition countered that the funding partnership agreement since its inception had been based on a 50:50 funding split, and that the 2009 agreement was an anomaly as it was a result of the Federal Government's Nation Building Economic Stimulus in response to the global financial crisis.

A number of members speaking to the matter took the opportunity to acknowledge the many victims of road accidents on the Pacific Highway and to acknowledge the urgent need for the completion of the duplication project. Members also acknowledged that the public was disillusioned by continuing disagreement between the Federal and State Governments over their respective funding contributions to the project.

Government business

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

Bills

Law Enforcement (Controlled Operations) Bill 2012

The bill originated in the Legislative Council.

Summary: The bill amends the *Law Enforcement (Controlled Operations) Act 1997* to provide for a secondary law enforcement officer to act as a principal law enforcement officer in authorised controlled operations whenever the principal law enforcement officer is unavailable. Presently an application to conduct a controlled operation must nominate a principal officer who conducts and is responsible for the operation. The bill also amends the *Surveillance Devices Act 2007* to permit the use of listening devices, without the need to seek a warrant, by authorised civilian participants in controlled operations.

Proceedings: Debate on the second reading of the bill resumed on 20 February 2013 from 21 November 2012 (see vol 55/39 of *House in Review* for earlier debate). The Opposition supported the bill, noting that it encapsulates the two recommendations that arose from a review of the Act that was concluded in August 2011. The Opposition sought clarification that the bill would not broaden the range of agencies that could be involved in controlled operations beyond those currently listed in the Act and regulations.

The Greens did not oppose the bill but expressed some reservations regarding the potential for an unwarranted increase in the involvement of civilians using listening devices in controlled operations. The Greens took the opportunity to raise their on-going concern over the lack of public scrutiny of controlled operations and the

frequent failure of law enforcement agencies to adequately report on controlled operations.

The Christian Democratic Party supported the bill but also expressed concerns over any increase in the involvement of civilians in controlled operations and urged the Government to closely monitor this matter to ensure that civilians are used only in appropriate and necessary circumstances.

In reply, the Minister (Mr Gallacher) responded to a number of issues raised during the debate by advising that the decision to allow a civilian to use a listening device in a controlled operation must be vetted by the Chief Executive Officer or delegate of the agency involved, that action was being undertaken to improve processes to ensure that controlled operations statutory reporting requirements are met; and that civilians nominated on controlled operations applications are identified including by an assumed or code name. The Minister concluded by stating that he was satisfied with the range of oversight mechanisms that exist for controlled operations and civilian involvement.

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

Courts and Other Legislation Further Amendment Bill 2012

The bill originated in the Legislative Assembly.

Summary: The bill makes miscellaneous amendments to certain legislation administered by the Attorney General and the Minister for Justice with respect to courts and juries, civil and criminal procedures, the exchange of information by certain government agencies and the enforcement of fines. The bill also repeals the *Inebriates Act 1912*.

Proceedings: The bill was received from the Legislative Assembly on 19 February 2013 and read a first time. Debate on the second reading commenced on 20 February 2013. The second reading speech of the Parliamentary Secretary (Mr Clarke) was incorporated into Hansard and debate was adjourned until the next sitting day.

Property, Stock and Business Agents Amendment Bill 2012

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Property, Stock and Business Agents Act 2002* to make further provisions regarding agency agreements, trust accounts, unclaimed trust money and stock auctions with the intention of reducing red tape for small businesses.

Proceedings: The bill was received from the Legislative Assembly on 20 February 2013 and read a first time. The second reading of the bill was set down for a later hour of the sitting.

Motions

Emergency services

Summary: The motion noted the recent significant bushfire, flood and storm emergencies that occurred in New South Wales, congratulated the emergency services and government agencies for their first class response to those incidents and thanked volunteers for their outstanding contribution.

Proceedings: Debate on the motion commenced according to precedence. Members from all sides supported the motion. The Minister (Mr Gallacher) commended and thanked all those involved in responding to the many emergencies that affected New South Wales this summer. He praised the effective coordination in responding to the emergencies and highlighted the importance of communication between headquarters and people working on the ground. He particularly praised the NSW Rural Fire Service and State Emergency Service for their efforts.

Members speaking to the motion noted the calmness and dedication of emergency services workers in what was a very tough season and thanked volunteers for their invaluable support. It was noted that no lives were lost in New South Wales and that this can be attributed to the effective response to these emergencies.

The motion was agreed to.

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

Crimes Amendment (Zoe's Law) Bill 2013 (Revd Mr Nile, Christian Democratic Party)

The bill originated in the Legislative Council.

Summary: The bill amends the *Crimes Act 1900* to establish a separate offence for conduct causing serious harm to or the destruction of a child in utero and to extend the offence of dangerous driving causing death or grievous bodily harm to a child in utero.

Proceedings: Standing orders were suspended to bring on the item of business (Division 21:18). The bill was introduced, read a first time and printed on 21 February 2013. In his second reading speech, Revd Mr Nile stated that the name 'Zoe' in the bill title refers to a still born child that died in 2009 as a result of injuries sustained by her pregnant mother who was run down by a drug-affected driver. Pursuant to the *Crimes Act 1900*, the driver was charged with inflicting grievous bodily harm on the mother, but was not charged with the death of the child in utero as she was not legally regarded as a person. Revd Mr Nile said that the bill's purpose is to provide an appropriate response to incidents such as this and argued that the law currently fails to provide justice to mothers due to a failure to adequately acknowledge the loss directly.

Revd Mr Nile firmly stated that the bill will not apply to medical procedures or to actions by or with the consent of the mother of the child in utero.

At the end of Revd Mr Nile's speech, the usual motion to adjourn debate for five calendar days was moved. Debate is rare, but permissible on such a motion. On this occasion there was a brief debate before the motion was agreed to, with one member expressing concern about the possibility of the bill remaining on the Notice Paper for some time without the opportunity for members opposed to the bill to express their views on it.

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

The bill originated in the Legislative Council.

Summary: The bill, which was introduced in the Council on 23 August 2012, seeks to establish the office of Small Business Commissioner; to empower the Commissioner to protect small businesses by ensuring that they are treated fairly in their commercial dealings with other businesses and their dealings with government agencies through enforceable codes of practice, and to enable small businesses to obtain relief under the *Contracts Review Act 1980* in respect of unjust contracts.

On 21 November 2012, the Government introduced the Small Business Commissioner Bill in the Assembly. This bill also seeks to establish the office of Small Business Commissioner and to provide for the objectives and functions of that office.

Proceedings: Debate on the second reading of the bill resumed on 21 February 2013 from 18 October 2012 (see Vol 55/36 of *House in Review* for earlier debate). Members of the Opposition continued to support the bill, noting the need to establish some form of support for small businesses which are often vulnerable in their dealings with large corporations. The Greens supported the bill, arguing that it provides more effective powers to the Commissioner than those contained in the alternative bill proposed by the Government. The Christian Democratic Party acknowledged the merit in the bill and the fact that it had served to act as a catalyst for action by the Government, but indicated that on balance it would reserve its support for the anticipated Government bill.

The second reading was not agreed to (Division 17:20).

Motions

Community Building Partnership Grants (Mr Moselmann, Australian Labor Party)

Summary: The motion calls on the House to condemn the Government for the reduction in funding for Community Building Partnership Grants and for the Government to restore funding to pre-budget levels. The motion also calls on the House to note the number of diverse local community organisation in Rockdale that have benefited from these grants and the effects the reduction in funding will have on such organisations.

Proceedings: Debate on the motion resumed on 21 February 2013 from 18 October 2012. Opposition members again spoke in support of the motion, noting

the benefits of Community Building Partnership Grants to local communities and stating that the reduction in funds has increased pressure on councils.

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 Brad Manera (Mr Lynn)
- (2) Uncle David Williams (Mr Lynn)
- (3) Mr Darren Mitchell (Mr Lynn)
- (4) Joint Standing Committee on the Office of the Valuer-General membership (Mr Foley)
- (5) Select Committee on the Partial Defence of Provocation extension of reporting date (Revd Mr Nile)
- (6) Mrs Isa Wye MBE OAM (Ms Ficarra)
- (7) Professor Neville Hacker and Professor Michael Friedlander (Ms Ficarra)
- (8) Professor Sandy Middleton (Ms Ficarra)
- (9) Inner city schools (Dr Kaye).

Orders for papers

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

Correspondence regarding a return to order

Mount Penny exploration licence: On 4 December 2012 the Clerk received correspondence from Mr Buckingham expressing concern that relevant documents may not have been included in the documents returned in response to the November 2009 order for papers relating to the granting of an exploration licence at Mt Penny.

In accordance with practice, the correspondence was referred to the Director General of the Department of Premier and Cabinet.

The Clerk announced that a response from the Director General was received on 21 January 2013.

The Clerk tabled the correspondence from himself, Mr Buckingham and the Director General.

Petitions received

- (1) Medical and health facilities in Cobar: 63 signatures (presented Mr Whan).
- (2) Cuts to education funding in New South Wales: 266 signatures (presented Mr Whan).
- (3) Religious discrimination: 479 signatures (presented Mr Moselmane).

Reports tabled

Auditor-General:

- (1) Financial Audit report, Volume Seven 2012, focusing on Law, Order and Emergency Services, dated November 2012.
- (2) Financial Audit report, Volume Eight 2012, focusing on Transport and Ports, dated December 2012.
- (3) Financial Audit report, Volume Nine 2012, focusing on Education and Communities, dated December 2012.
- (4) Financial Audit report, Volume Eleven 2012, focusing on Health, dated December 2012.
- (5) Report, Volume Ten 2012, entitled 'Half-Yearly Review 2012-13 Engagement', dated December 2012.

Forestry Act 2012: Amendment 3 to the Integrated Forestry Operations Approval for the Southern region, dated 18 December 2012.

Independent Commission Against Corruption:

Report entitled 'Investigation into the smuggling of contraband into the Metropolitan Special Programs Centre at the Long Bay Correctional Complex', dated January 2013.

Inspector of Independent Commission Against

Corruption: Report entitled 'Report of an audit of applications for and execution of Search Warrants by the Independent Commission Against Corruption', dated November 2012.

Ombudsman:

- (1) Report entitled 'Oversight of the Public Interest Disclosures Act 1994—Annual Report 2011-2012', dated November 2012.
- (2) Special Report entitled 'Denial of rights: the need to improve accommodation and support for people with psychiatric disability', dated November 2012.
- (3) Report entitled 'Law Enforcement (Controlled Operations) Act 1997—Annual Report 2011-2012', dated December 2012.
- (4) Report entitled 'Responding to Child Sexual Assault in Aboriginal Communities: A report under Part 6A of the Community Services (Complaints, Reviews and Monitoring) Act 1993', dated December 2012.

Unproclaimed legislation: Mr Pearce tabled a list of unproclaimed legislation as at 19 February 2013.

Committee activities

Committee references

General Purpose Standing Committee No. 2: The Chair (Ms Ficarra) informed the House that on 21 November 2012, General Purpose Standing Committee No. 2 resolved to inquire into the effectiveness of current drug and alcohol policies with respect to deterrence, treatment and rehabilitation.

Standing Committee on Social Issues: The Chair (Mr Blair) informed the House that on 6 December 2012 the Standing Committee on Social Issues resolved to inquire into a proposed same sex marriage law.

Standing Committee on Law and Justice: The Chair (Mr Clarke) informed the House that on 17 December 2012 the Standing Committee on Law and Justice resolved to inquire into racial vilification law in New South Wales.

Committee membership

The following change to committee membership was reported:

Joint Standing Committee on the Office of the Valuer-General: Mr Searle in place of Mr Roozendaal.

Extension of reporting date

Select Committee on the Partial Defence of Provocation: The reporting date for the Committee's inquiry was extended to 2 May 2013.

Committee reports tabled

Legislation Review Committee: 'Legislation Review Digest No. 30/55 of 2013', February 2013.

General Purpose Standing Committee No. 1: Report No. 38 entitled 'Budget Estimates 2012-2013', February 2013.

General Purpose Standing Committee No 2: Report No. 39 entitled 'Budget Estimates 2012-13', December 2012.

General Purpose Standing Committee No 3: Report No. 27 entitled 'Budget Estimates 2012-13', December 2012.

General Purpose Standing Committee No 4: Report No. 26 entitled 'Budget Estimates 2012-13', December 2012.

General Purpose Standing Committee No 5: Report No. 36 entitled 'Budget Estimates 2012-13', December 2012.

Joint Standing Committee on Electoral Matters: Report No. 2/55 entitled 'Administration of the 2011 NSW election and related matters', December 2012.

Committee reports debated

Standing Committee on Social Issues: The House concluded the take-note debate on Report No. 46 entitled 'Domestic violence trends and issues in NSW', August 2012.

Committee on Children and Young People: The House concluded the take-note debate on Report No. 1/55 entitled 'Review of the 2009-2010 Annual Report and the 2010-2011 Annual Report of the Commission for Children and Young People and the 2009 Reports of the Child Death Review Team', September 2012.

Select Committee into the Closure of the Cronulla Fisheries Research Centre of Excellence: The House continued the take-note debate on the Report entitled 'Closure of the Cronulla Fisheries Research Centre of Excellence', October 2012.

Joint Select Committee on the Office of the Valuer-General: The House continued the take-note debate on Report No. 1/55 entitled 'Report on the Eighth General Meeting with the Valuer-General', October 2012.

Government responses

General Purpose Standing Committee No. 2: The House received a response to Report No. 38 entitled 'Education Amendment (Ethics Classes Repeal) Bill 2011', tabled May 2012.

Select Committee on the Closure of the Cronulla Fisheries Research Centre of Excellence: The House received a response to the Report entitled 'Closure of the Cronulla Fisheries Research Centre of Excellence', tabled October 2012.

Joint Select Committee on the New South Wales Workers Compensation Scheme: The House received a response to the Report entitled 'Report No. 1 New South Wales Workers Compensation Scheme', tabled June 2012.

Standing Committee on State Development: The House received a response to Report No. 36 entitled 'Economic and social development in central western New South Wales', tabled May 2012.

Inquiry activities

Note: Inquiry activities include committee activities as part of an active inquiry. It includes hearings, site visits and other meetings. This section also notes which committees are receiving submissions and upcoming committee inquiry activity.

Select Committee on the closure or downsizing of Corrective Services NSW Facilities

Submissions to the Select Committee on the closure or downsizing of Corrective Services NSW Facilities closed on 7 November 2012, with 52 submissions received. On 10 December 2012, the Committee visited Grafton where it toured the Grafton Correctional Centre and held a public hearing and a public forum. The final public hearing for this inquiry is scheduled to take place on Friday 1 March 2013 at Parliament House.

Standing Committee on Social Issues

As reported earlier, on 6 December 2012 the Committee adopted terms of reference referred by the Premier, the Hon Barry O'Farrell MP, to inquire into issues relating to a proposed same sex marriage law in New South Wales. The closing date for submissions is 1 March 2013 and hearings are scheduled for 6 and 15 March 2013. To date the Committee has received more than 1500 submissions.

The Committee is also receiving submissions to its inquiry into strategies to reduce alcohol abuse among young people. Submissions close on 1 March 2013.

General Purpose Standing Committee No 5

As part of its inquiry into public land management the Committee conducted a total of 11 public hearings and 3 regional site visits in 2012, and has received 518 submissions. The Committee is now preparing its report which is due to be tabled in May 2013.

Standing Committee on State Development

The Committee is continuing its inquiry into the adequacy of water storages in NSW. On March 5 and 6 the Committee will undertake its final site visits to the Inverell and Moree areas. The purpose of the visits is to inspect Copeton Dam and Keytah Farm, and be briefed on issues including water management and comparative irrigation practices. The Committee will also hold a public hearing in Moree.

General Purpose Standing Committee No 4

The inquiry into use of cannabis for medical purposes will consider the efficacy and safety of cannabis for medical purposes, if and how it should be supplied for such use, and the legal implications. Submissions closed on 15 February 2013, with over 100 submissions received to date. Hearings will take place on 11 and 18 March 2013, and the Committee has a reporting date of 14 May 2013.

Standing Committee on Law and Justice

As reported earlier, the Standing Committee on Law and Justice announced its inquiry into racial vilification law in New South Wales on 17 December 2012. The inquiry was referred to the Committee by the Premier, the Hon Barry O'Farrell MP. The Committee will examine the effectiveness of Section 20D of the Anti-Discrimination Act 1977, including whether it establishes a realistic test for the offence of racial vilification, and its implications for freedom of speech. The Committee is calling for submissions until 8 March 2013 and is planning to hold public hearings in April 2013.

Budget Estimates 2012-2013

The General Purpose Standing Committees have now all tabled their reports for Budget Estimates 2012-2013.

Select Committee on the Partial Defence of Provocation

The Committee has received 52 submissions, held three days of public hearings and received a number of responses to an options paper. On Wednesday 20 February 2013, the Chair obtained the agreement of the House for a second extension to the reporting date until 2 May 2013, to allow the Committee to properly consider the complex issues and evidence involved, and to develop appropriate recommendations.

Adjournment debate

Tuesday 19 February 2013

Drought assistance (Mr Whan); Parkes Elvis Festival (Mr Blair); Coal seam gas exploration (Mr Buckingham); Death of Douglas De Landelles (Ms Voltz); Australian poverty (Ms Barham); Climate change (Dr Phelps); Guyra Show (Mr MacDonald).

Wednesday 20 February 2013

Local government reform (Ms Cotsis); Water management (Mr Brown); Death of Professor John Steinke (Mr Khan); Gallipoli (Mr Secord); Media reporting (Mr Borsak); BlazeAid Coonabarabran (Mr MacDonald).

Thursday 21 February 2013

Coal seam gas (Dr Kaye); Fairfield City Council (Mr Lynn); Aboriginal recognition in the Constitution (Mr Moselmane); Anti-discrimination laws (Ms Fachrmann); Australian Labor Party reforms (Ms Cusack); Death of Mervyn Leslie Hunter, former member of the Legislative Council (Ms Voltz); Kurt Cobain (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.



David Blunt
Clerk of the Parliaments