

# NEW SOUTH WALES LEGISLATIVE COUNCIL

## *HOUSE IN REVIEW*



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26 to 28 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](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).

### Overview

This week the House considered and returned three Government bills to the Assembly, while another three Government bills were introduced. The House also considered a motion to disallow a piece of delegated legislation (see report on page 3). This is a relatively uncommon event, with it being almost exactly a year since the last time the House considered such an item of business.

### Government business

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

#### *Bills*

#### **Civil and Administrative Tribunal Bill 2012**

The bill originated in the Legislative Assembly.

*Summary:* The bill establishes the New South Wales Civil and Administrative Tribunal (to be known as NCAT), which will consolidate and replace 23 existing tribunals, and provides for its membership and functions. The bill provides for the Tribunal to be structured into five divisions, namely: Consumer and Commercial; Administrative and Equal Opportunity; Occupational and Regulatory; Guardianship; and Victims' Support. NCAT is scheduled to commence operation in January 2014.

*Proceedings:* The bill was received from the Legislative Assembly on 26 February 2013 and read a first time. Debate on the second reading commenced the next day. In his second reading speech, the Parliamentary Secretary (Mr Clarke) indicated that the bill will address the inefficiencies of the current tribunal system where many tribunals maintain their own infrastructure, including separate facilities and separate administrative structures. NCAT will correct this by being a one-stop shop for tribunal services that is independent, transparent, accountable and places customers at the centre of service design.

The Parliamentary Secretary further stated that the bill draws from recommendations made by the Legislative Council's Standing Committee on Law and Justice

inquiry report entitled "Opportunities to consolidate tribunals in NSW". The Committee reported that stakeholders described the current tribunal system as "complex and bewildering" and called on the Government to pursue the establishment of a new tribunal to consolidate existing tribunals where it is appropriate and promotes access to justice.

The Opposition, Greens and the Christian Democratic Party supported the bill. Members spoke in appreciation for the cooperative and bipartisan way that the Law and Justice Committee operated in delivering its report, the recommendations of which were the foundation of the bill.

The Opposition gave specific mention to the long standing work of the former Attorney-General, the late Jeff Shaw, QC, who pioneered the introduction of the Administrative Decisions Tribunal in the mid-1990s. The Greens spoke of the necessity for such legislation as there are currently over 40 separate administrative tribunals in New South Wales operating according to idiosyncratic and ad hoc practices. The Christian Democratic Party, while supporting the bill, noted that further legislation will need to be introduced to add the necessary detail regarding the constitution and functions of NCAT and stated that the detailed provisions setting out the tribunal's functions and powers should be carefully developed in consultation with affected stakeholders.

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

#### **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:* Debate on the second reading of the bill resumed on 26 February 2013 from 20 February 2013 (see the previous edition of *House in Review* for earlier debate). Members of the Government, the Opposition, the Greens and the Christian Democratic Party spoke in support of the bill stating that it is an efficient way of making a range of minor amendments to various provisions.

However, the Opposition and the Greens did raise concerns over the proposed provision to prohibit the use of devices to transmit sounds and images from a courtroom. It was acknowledged that the provision is primarily designed to prevent someone sitting in a courtroom contacting the next witness and alerting them to the evidence currently being given. However, it was argued that the provision was drafted so widely that it would additionally capture a wide range of behaviours that are not objectionable. The Greens in particular argued that this provision will have the adverse effect of excluding citizen journalists from reporting on court proceedings.

The second reading was agreed to.

In the committee stage the Greens moved two amendments to address the concerns raised during the second reading debate. The amendments, despite the support of the Opposition, were negated on the voices.

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

### **Powers of Attorney Amendment Bill 2013**

The bill originated in the Legislative Council.

*Summary:* The bill makes a number of changes to the *Powers of Attorney Act 2003* to clarify sections and to simplify the process of appointing an attorney.

*Proceedings:* The bill was introduced, read a first time and printed on 27 February 2013. In his second reading speech, the Minister (Mr Pearce) indicated that the bill makes small but significant amendments to the Act that were developed after public consultation and assistance from the legal profession.

The Minister stated that the bill will substantially redesign the prescribed form of power of attorney from a single form to two forms as it was revealed that many people found the current single form confusing. The Minister indicated that the bill will introduce much needed flexibility in appointing attorneys by allowing a person to appoint family members jointly and by permitting the power of attorney to continue even if one of the attorneys dies or vacates office.

Debate was adjourned for five calendar days.

### **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:* Debate on the second reading of the bill commenced on 26 February 2013. In his second reading speech, the Minister (Mr Pearce) said that the bill is part of the Government's continued focus on reducing red tape for small businesses and follows on from a statutory review of the Act conducted in 2007 and 2008.

The Opposition did not oppose the bill, noting that the measures that it incorporates are consistent with the statutory review framework established by the previous Labor Government. The Opposition referred to concerns held by the Law Society of NSW with respect to a number of minor provisions in the bill regarding reporting requirements for trust licensees and the payment of commission or expenses to real estate agents in cases of minor breaches of agency agreements, but also noted that the Minister for Fair Trading had moved to address these issues.

Members of the Government spoke in support of the bill noting that it had been subject to extensive public consultation and that the amendments contained in the bill had received strong support from the majority of key stakeholders. The Greens supported the general thrust of the bill, noting that it will deliver real benefits to the concerned industries, particularly in rural and regional areas. However, the Greens foreshadowed that it would move three minor amendments to the bill in the committee stage.

The second reading was agreed to.

In the committee stage, the Greens moved amendments seeking to remove the provisions in the bill that reduced the reporting requirements of trust licensees. The amendments did not draw any support and were negated on the voices.

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

### **Road Transport Bill 2013 and cognates Road Transport Legislation (Repeal and Amendment) Bill 2013 and Road Transport (Statutory Rules) Bill 2013**

The bills originated in the Legislative Assembly.

*Summary:* The bills consolidate New South Wales road transport legislation and prepares for the eventual adoption of the Heavy Vehicle National Law in this State.

The Road Transport Bill 2013 consolidates in one Act most of the provisions of existing Acts dealing with road transport in New South Wales. The bill amalgamates the *Road Transport (Driver Licensing) Act 1998*, the *Road Transport (Vehicle Registration) Act 1997* and the *Road Transport (Safety and Traffic Management) Act 1999*, and the compliance and enforcement provisions of the *Road Transport (General) Act 2005* applicable to road transport legislation generally.

The Road Transport Legislation (Repeal and Amendment) Bill 2013 provides for the repeal of existing Acts and makes amendments to certain other Acts and statutory rules. The bill also renames the *Road Transport (General) Act* as the *Road Transport (Vehicle and Driver Management) Act* and confines its operation to matters

relating to heavy vehicles. The Road Transport (Statutory Rules) Bill 2013 makes amendments to certain regulations under existing road transport legislation that will continue under the new Road Transport Act 2013.

*Proceedings:* The bills were received from the Legislative Assembly on 27 February 2013 and read a first time. The second reading was set down for the next sitting day.

### **Crimes (Serious Sex Offenders) Amendment Bill 2013**

The bill originated in the Legislative Assembly.

*Summary:* The bill amends the *Crimes (Serious Sex Offenders) Act 2006* to provide for the continued supervision and detention of high risk violent offenders in appropriate cases, in addition to serious sex offenders, as is presently the case. The bill also permits orders to be made for the continued supervision and detention of an adult offender convicted of an offence as a child.

*Proceedings:* The bill was received from the Legislative Assembly on 28 February 2013 and read a first time. The second reading was set down for next sitting day.

#### *Motions*

### **First anniversary of the passing of Senior Constable David Rixon**

*Summary:* The motion called on the House to note that 2 March 2013 marks the first anniversary of the passing of Senior Constable David Rixon after he was fatally shot while conducting a traffic stop, and that Senior Constable Rixon was the 251<sup>st</sup> police officer to have made the ultimate sacrifice in the line of duty in New South Wales. The motion also called on the House to convey its thoughts and prayers to the family and friends of Senior Constable Rixon and to express its deep gratitude to all police officers for their dedication to protecting the community.

*Proceedings:* The motion was called on according to precedence and moved by the Minister for Police and Emergency Services (Mr Gallacher).

The motion was agreed to without debate.

### **Disallowance of delegated legislation**

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

### **Disallowance of Parliamentary Remuneration Amendment (Acting Premier) Regulation 2013 (Mr Secord)**

*Summary:* Section 6 of the *Parliamentary Remuneration Act 1989* provides for holders of certain offices specified in Schedule 1 of that Act to receive a salary and expense allowance in addition to the basic salary to which they are entitled as members of Parliament. The additional salary and expense allowance to be received is expressed as a percentage of the basic salary.

The regulation amends the Act so that whenever the Deputy Premier is acting for and on behalf of the Premier as defined under section 36 of the *Constitution*

*Act 1902*, the Deputy Premier receives the salary and expense allowance specified for the office of Premier for that period.

*Proceedings:* The House agreed to consider the disallowance motion on 27 February 2013. Mr Secord argued that the establishment of a salary and expense allowance for when the Deputy is Acting Premier was unprecedented and should not be supported at a time when the Government has capped salary increases for public servants and consistently called for the State to work within its financial constraints. Other members of the Opposition supported the motion, in particular arguing that the establishment of any new allowance should have been by way of independent assessment by the Parliamentary Remunerations Tribunal. The Greens supported the motion, stating that the existing salary and expense allowance for the office of Deputy Premier anticipated the need to act on behalf of the Premier on occasion.

The Government opposed the disallowance motion, arguing that the regulation brings the State in line with Federal practice and that the principle of higher duties allowances was well established within the State's Senior Executive Service. The Government noted that typically the regulation would apply for about four weeks each year, representing a cost of approximately \$4,000 per annum.

The motion was negatived (Division 17:20), with the Christian Democratic Party and the Shooters and Fishers voting with the Government. The regulation remains in force.

### **Government representation in the Council**

During the week, the Leader of the Government informed the House that Mr Pearce would henceforth represent the Hon Michael Baird MP in the Legislative Assembly in his capacity as Minister for Industrial Relations.

### **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.

#### *Motions*

### **Sydney Gay and Lesbian Mardi Gras (Ms Faehrmann, The Greens)**

*Summary:* The motion called on the House to congratulate the Sydney Gay and Lesbian Mardi Gras for their 35<sup>th</sup> anniversary festival 'Sydney Mardi Gras 2013 – Generations of Love', and to thank those responsible for making this year's festival possible. The motion also called on the House to note the significant contributions the Sydney Mardi Gras has made to the lesbian, gay, bisexual, transgender and intersex (LGBTI) community and to the broader community.

*Proceedings:* Standing orders were suspended on 28 February 2013 to bring on the item of business (Division 33:4). In speaking to the motion, Ms Faehrmann

described the Mardi Gras as a celebration of diversity that has become one of New South Wales's and Australia's most famous and well-loved events. Many members speaking to the motion noted the importance of the event and how it had developed and what it had helped achieve since the initial parade in 1978. A number of members emphasised the importance of the involvement of families in the parade and how this further supports the celebration and message of acceptance. A few members commented that some aspects of the parade can be offensive to sections of the community.

During the debate two amendments were proposed to the motion. Mr Ajaka moved that paragraph 2 (c) of the motion be omitted. Mr Ajaka argued that the wording of the paragraph broadened the scope of the motion to encompass the issue of same-sex marriage, which was currently the subject of an inquiry by the Standing Committee on Social Issues.

Revd Mr Nile also moved to omit paragraph 2 (c) as well as paragraphs 2 (a), (b) and (d) to which he was also particularly opposed.

At the conclusion of the debate, the House agreed that the question on the omission of paragraph 2 (c) would be put separately from the question on paragraphs 2 (a), (b) and (d).

Subsequently, Revd Mr Nile's amendment (except as it related to 2 (c)) was negatived (Division 4:30), while the omission of 2 (c) was agreed to.

The motion, as amended, was agreed to (30:4).

### **Order for Papers—Former NSW Department of Primary Industries employee Mr Paul Parker (Mr Veitch, Australian Labor Party)**

*Summary:* The motion calls for all documents relating to the investigation of an alleged breach of departmental policy by the former Department of Primary Industries employee Mr Paul Parker in 2012, including documents relating to the private investigation agency engaged to examine his actions, departmental actions taken as a result of any investigation and all documents relating to disciplinary action commenced.

*Proceedings:* Standing orders were suspended on 27 February 2013 to bring on the item of business. Mr Veitch spoke in support of the motion and tabled, by leave, a letter by Mr Paul Parker consenting to the documents being released as part of this order for papers. Mr Veitch also thanked the Government for their support in agreeing to the order.

The motion was agreed to.

The documents are to be laid upon the table of the House by 13 March 2013.

### **Study mission to Israel (Mr Colless, The Nationals)**

*Summary:* The motion notes that the NSW Parliamentary Friends of Israel hosted a bipartisan delegation of New South Wales parliamentarians on a study mission to Israel from 6 to 10 January 2013 in order to understand the

complex and various issues affecting Israel and other jurisdictions in the Middle East.

*Proceedings:* Standing orders were suspended on 28 February 2013 to bring on the item of business. Mr Colless and members of the Opposition and the Christian Democratic Party that were part of the Parliamentary Friends of Israel delegation spoke in support of the motion. The members spoke of the wide range of delegates they met on the tour and the important areas and buildings they visited. Members further thanked the Jewish Board of Deputies for arranging the trip.

The Opposition spoke of the importance of such a visit as it not only builds relations with Israel, but also better relations with and understanding of the Jewish community in New South Wales.

The 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) Korea Town Festival (Ms Ficarra)
- (2) 2013 Sutherland Shire Community Awards (Ms Ficarra)
- (3) San Remo Neighbourhood Centre (Mr Donnelly)
- (4) Netball Central complex at Sydney Olympic Park (Ms Ficarra)
- (5) Muslim Women's Association (Ms Westwood)
- (6) 'Twenty-Five: Stories from Australia's First Parliament' exhibition (Mrs Maclaren-Jones).

### **Orders for papers**

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

### *Order made*

**Former NSW Department of Primary Industries employee (Mr Veitch):** Due 13 March 2013 (see previous entry this page for details).

### *Correspondence regarding a return to order*

**Mount Penny exploration licence:** The President informed the House that, following tabling of correspondence on Tuesday 19 February relating to the exploration licence at Mt Penny (see previous edition of *House in Review* for details), the Independent Commission Against Corruption (ICAC) advised of its intention to reconcile material that had been returned to the House with the Commission's holdings in order to assess whether there was material contained within those holdings that potentially should have been included in the return to the House.

The President advised the House that he had subsequently written to the Commissioner of the ICAC raising some issues concerning parliamentary privilege and requesting that the Commission confirm its intentions in relation to the matter. A response, dated 26 February 2013, was received from the Commissioner.

The President tabled the correspondence from himself and the Commissioner of the ICAC.

## Committee activities

**Note:** Committee activities includes committee references, reports tabled, debate on committee reports, government responses received and any other significant committee activity in the House. Committee activity as part of a current inquiry is summarised in the following section entitled 'Inquiry activities'.

*Committee report tabled*

**Legislation Review Committee:** 'Legislation Review Digest No. 31/55 of 2013', 26 February 2013.

*Committee reports debated*

**Select Committee into the Closure of the Cronulla Fisheries Research Centre of Excellence:** The House concluded 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 concluded the take-note debate on Report No. 1/55 entitled 'Report on the Eighth General Meeting with the Valuer-General', October 2012.

**Joint Standing Committee on Electoral Matters:** The House continued the take-note debate on the Report entitled 'Inquiry into Administrative funding for minor parties', dated November 2012.

*Government response*

**Standing Committee on Social Issues:** The House received a response to Report No. 46 entitled 'Domestic violence trends and issues in New South Wales', 27 August 2012.

## Inquiry activities

### Same sex marriage law in NSW

As reported earlier, on 6 December 2012 the Standing Committee on Social Issues 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 5000 submissions.

### Strategies to reduce alcohol abuse among young people

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

### Partial Defence of Provocation

The Select Committee on the Partial Defence of Provocation 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.

### Management of public land in NSW

General Purpose Standing Committee No. 5 is continuing its inquiry into the management of public land in NSW and is currently preparing its report, which is due to be tabled in May 2013.

### Drug and alcohol treatment

General Purpose Standing Committee No. 2 will examine and report on the effectiveness of current drug and alcohol policies with respect to deterrence, treatment and rehabilitation. Submissions close on 1 March 2013, with eight submissions received to date. Hearings are scheduled for 3, 4 and 10 April 2013, and the Committee has a reporting date of 29 August 2013.

### Racial vilification law in NSW

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.

### Adequacy of water storage in NSW

The Standing Committee on State Development 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.

### Use of cannabis for medical purposes

The General Purpose Standing Committee No. 4 inquiry into the 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.

## Reports tabled

### Auditor General:

- (1) Financial Audit report, Volume One 2013, focusing on themes from 2012, February 2013.
- (2) Performance Audit report, entitled 'Managing drug exhibits and other high profile goods: NSW Police Force', February 2013.

## Petitions received

- (1) Commission of Inquiry into the Port of Newcastle: 120 signatures (presented Ms Faehrmann).
- (2) Unsupervised hunting: 112 signatures (presented Mr Shoebridge).
- (3) Funding cuts for the Snowy Region Visitor Centre: 13 signatures (presented Mr Whan).
- (4) Intersection of Macquarie Street and Stingaree Point Drive, Dora Creek: 141 signatures (Ms Voltz).

## Adjournment debate

### Tuesday 19 February 2013

Marrickville State Emergency Service Awards (Mr Ajaka); Tribute to David Sinnet Hamilton (Mr Roozendaal); Cronulla Fisheries Research Centre (Revd Mr Nile); Garden Island hammerhead crane (Ms Fazio); Ovarian Cancer Awareness Month (Mrs Maclaren-Jones); Serious violent offenders legislation (Mr Shoebridge).

### Wednesday 20 February 2013

Salvation Army Oasis Youth Support Network (Mr Green); Wyong coalmining/ Central Coast school maintenance (Mr Donnelly); Tribute to Graeme Drew and Kath Robinson (Miss Gardiner); Climate change (Ms Faehrmann); Asbestos mining in Canada (Mr Primrose); Tribute to Graeme Drew and tribute to Sharyn Treadwell (Mrs Pavey).

### Thursday 21 February 2013

Gas supplies (Mr Buckingham); Aviskills training education centre/ E-link electronic recycling solutions (Mrs Mitchell); Tribute to Ron Quilter-Feinburg (Ms Sharpe); Local government amalgamations (Mr Borsak); Industrial Relations Commission appointments (Mr Searle); Tribute to Andrew Habib Harb (Ms Ficarra); Rare disorders without borders (Mrs Maclaren-Jones).

## 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](mailto:stephen.frappell@parliament.nsw.gov.au).

All responses will be kept strictly confidential.



David Blunt  
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