

# NEW SOUTH WALES LEGISLATIVE COUNCIL

## *HOUSE IN REVIEW*



Volume 55/52

Sitting period  
20 to 22 August 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 was the first sitting week after the winter long adjournment. The House is due to sit for ten weeks over the coming months up until Christmas.

The week was notable for the occurrence of a number of unusual items of business – a joint sitting to fill a vacancy in the Senate, the inaugural speech of Dr Mehreen Faruqi, the discharge of a Government bill from the Notice Paper, and the consideration of three motions for the disallowance of regulations.

Next week there will be a special edition of *House in Review* which will report on the 2013-2014 Budget Estimates. The initial round of Budget Estimates hearings concluded on Friday this week.

### Vacancy in the representation of the State in the Senate

On 20 August 2013 the President reported a message from Her Excellency the Governor notifying that a vacancy had occurred in the representation of the State in the Senate through the resignation of Senator the Hon Matt Thistlethwaite.

The President further reported a message from the Legislative Assembly requesting that the Council fix the time and place for a joint sitting for the purpose of sitting and voting together to elect a replacement for Senator Thistlethwaite.

In accordance with section 15 of the Commonwealth Constitution, a joint sitting of the two Houses was held on Wednesday 21 August 2013 at which Mr Sam Dastyari was elected to fill the vacated seat.

### New member's first speech

On Wednesday 21 August 2013, during debate on the Marine Parks Amendment (Moratorium) Bill, Dr Faruqi gave her inaugural speech in the House.

The President acknowledged the presence in his gallery of Dr Faruqi's family, the Consul General of Pakistan, Mr Abdul Aziz, the Consul, Mr Shifaat Kaleem, and Counsellor of the Mission, Mr Balakh Sher Khosa.

### Ministerial statement — changes in administration

On the first sitting day of the week, Mr Gallacher informed the House that the following persons resigned as ministers on 2 August 2013:

- The Honourable Gregory Stephen Pearce, MLC as Minister for Finance and Services, and Minister for the Illawarra, and as a member of the Executive Council
- The Honourable Andrew James Constance, MP as Minister for Ageing, and Minister for Disability Services.

Mr Gallacher further informed the House that on the same day the following persons were appointed as ministers:

- The Honourable Andrew James Constance, MP as Minister for Finance and Services
- The Honourable John George Ajaka, MLC as a member of the Executive Council and as Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra.

Mr Gallacher further informed the House that on 14 August 2013, Mr Stuart Ayres, MP was appointed as Parliamentary Secretary for Transport and Roads.

### Temporary Chair of Committees

On 21 August 2013 the President nominated Ms Barham to act as Temporary Chair of Committees for the remainder of the present session of Parliament.

### Government business

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

### Road Transport Amendment (Licence Disqualification on Conviction) Bill 2013

The bill originated in the Legislative Assembly.

*Summary:* The bill amends the *Road Transport Act 2013* to provide that where a person is disqualified for a specified period from holding a driver licence as a consequence of

being convicted of serious driving offences and sentenced to imprisonment, the specified period of disqualification is extended so that the period is served after the person is released from detention.

*Proceedings:* Debate on the second reading of the bill commenced on 20 August 2013. In his second reading speech, the Minister (Mr Gay) stated that the intention of the bill is to remove an anomaly in the *Road Transport Act 2013* whereby a person convicted of a serious driving offence can serve part or all of their licence disqualification period while they are serving a period of imprisonment imposed for the same offence. The bill addresses community concerns following a recent case reported in the media where an offender was convicted of aggravated dangerous driving occasioning death and sentenced to five years imprisonment and concurrently disqualified from driving for five years.

The Opposition and the Christian Democratic Party supported the bill stating that it introduced practical measures to enforce a stronger regime for people who have been incarcerated for severe and reckless driving. The Opposition commended the bill for striking a good balance by distinguishing between serious and less serious driving offences.

The Greens expressed strong reservations about the bill and stated they would not support it in its current form, and foreshadowed they would seek to amend the bill in committee. The Greens had two primary concerns: first, they argued that there is no evidence that once someone has been sentenced to be imprisoned for five years that a further five-year disqualification of their licence would have any deterrent effect; and second, that the bill will detrimentally affect a person's reintegration into society once they have served their prison sentence.

The second reading was agreed to.

In committee, the Greens moved an amendment to empower judges to decide on a case-by-case basis if a person convicted of a serious driving offence should serve their licence disqualification after their imprisonment. This amendment would maintain the status quo as the default position unless a judge was persuaded that a person should serve the sentences consecutively. The amendment did not garner any support and was negated on the voices.

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

### **Police Legislation Amendment (Special Constables) Bill 2013**

The bill originated in the Legislative Assembly.

*Summary:* The bill repeals the *Police (Special Provisions) Act 1901* so as to abolish the office of special constable and amends the *Police Act 1990* to establish non-executive administrative officer (special constable) positions in the NSW Police Force.

*Proceedings:* The bill was received from the Legislative Assembly on 20 August 2013 and read a first time. Debate on the second reading of the bill commenced later that day with the Minister (Mr Gallacher) incorporating the majority of his speech in Hansard. The

speech indicated that the arrangements currently governing the office of special constable are out of date. Special constables currently have conferred upon them all the powers and immunities of a police officer of the rank of constable but are not subject to the same discipline, control or oversight as their sworn counterparts. The bill addresses these issues by clarifying employment conditions and the powers of special constables.

The Opposition, the Christian Democratic Party and the Greens supported the bill on the grounds that it modernises the role and powers of special constables. Members also acknowledged the important work conducted by special constables. In their contributions, members of the Opposition and the Greens addressed concerns raised by the United Services. The main concern was that removing the office of special constable from local council rangers would make them lose some protections they currently have from aggressive or violent people whilst carrying out their duties.

In reply, the Minister referred to a survey undertaken by the then Local Government and Shires Associations which ultimately concluded that having special constable status made very little difference to the number of physical assaults experienced by officers.

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

### **Marine Parks Amendment (Moratorium) Bill 2013**

The bill originated in the Legislative Assembly.

*Summary:* Currently, the *Marine Parks Act 1997* imposes a moratorium on the creation of new marine parks and the alteration or creation of sanctuary zones within existing marine parks. The moratorium was imposed for a period of 5 years on the commencement of the *Marine Parks Amendment (Moratorium) Act 2011*. During the moratorium period, the Marine Parks Authority must not conduct a review of a zoning plan for a marine park.

The bill amends the *Marine Parks Act 1997* to allow regulations to be made within the moratorium period to alter the areas of existing sanctuary zones, or to classify areas as new sanctuary zones, to provide for reviews of zoning plans at the direction of the relevant Ministers and to allow the Authority to conduct reviews of, or take other action in relation to, zoning plans.

*Proceedings:* Debate on the second reading of the bill commenced on 21 August 2013. In his second reading speech, the Minister (Mr Gay) said that the moratorium on the declaration of new marine parks will remain in place until advice on the issue is received from the soon to be established Marine Estate Expert Knowledge Panel. The Minister said the bill will allow some initial reforms to marine park management as part of the Government's new integrated, adaptive and evidence-based approach to managing the entire marine park estate. The bill is part of broader changes that will be made to the regulation of the marine estate which are being developed and which will be the subject of another bill.

The Opposition opposed the bill arguing that the primary purpose of the bill was to facilitate the removal of beaches and headlands from current sanctuary zones without waiting for advice from the Expert Knowledge Panel. The Opposition claimed that the bill represents another step taken by the Government to reverse the strong achievements in marine conservation made under the previous Labor government. The Greens also opposed the bill, arguing that the content of the bill does not reflect the findings of the recent Independent Scientific Audit of Marine Parks in New South Wales. The Greens criticised the Government for not taking the opportunity to engage in a true scientific discussion with the community on marine parks.

Debate was adjourned until the next sitting day.

### **Motor Accident Injuries Amendment Bill 2013—Discharged**

The bill originated in the Legislative Assembly.

*Summary:* The bill sought to amend the *Motor Accidents Compensation Act 1999* by establishing a new scheme for the payment by insurers of no-fault statutory benefits for motor accidents.

*Proceedings:* On 21 August 2013 Mr Gay moved that the bill be discharged from the Notice Paper. The motion was agreed to and a message was forwarded to the Assembly.

### **Protection of the Environment Operations Amendment (Illegal Waste Disposal) Bill 2013**

The bill originated in the Legislative Assembly.

*Summary:* The bill amends the *Protection of the Environment Operations Act 1997* to provide additional powers to the Environment Protection Authority and increase sentencing and penalty provisions to prevent illegal waste disposal.

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

### **Security Industry Amendment (Licences) Bill 2013**

The bill originated in the Legislative Assembly.

*Summary:* The bill amends the *Security Industry Act 1997* to resolve an inconsistency between the Act and Australia's international trade commitments under the General Agreement on Trade in Services (GATS) by allowing persons who hold certain visas entitling them to work in Australia to apply for a licence under the Act.

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

### **Entertainment Industry Bill 2013**

The bill originated in the Legislative Assembly.

*Summary:* The bill repeals and replaces the *Entertainment Industry Act 1989* to regulate the entertainment industry

and provide protections for performers. It specifically implements recommendations from the 2010 final report of the review into the *Entertainment Industry Act 1989*.

*Proceedings:* The bill was received from the Legislative Assembly on 21 August 2013 and read a first time. The second reading was set down for a later hour of the sitting.

### **Messages from the Assembly**

The House received the following messages from the Legislative Assembly relating to bills forwarded to the Assembly by the Council in previous sitting weeks.

**Local Land Services Bill 2013:** On 27 June 2013 the Assembly advised it had agreed to the amendments made by the Legislative Council.

**Law Enforcement and National Security (Assumed Identities) Amendment Bill 2013:** On 14 August 2013 the Assembly advised it had agreed to the bill which it was returning without amendment.

**Road Transport Amendment (Obstruction and Hazard Safety) Bill 2013:** On 14 August 2013 the Assembly advised it had agreed to the bill which it was returning without amendment.

### **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 Industrial Relations (Public Sector Conditions of Employment) Amendment Regulation 2013 (Mr Searle, Australian Labor Party)**

*Summary:* The regulation, published on the NSW Legislation website on 28 June 2013, amends the *Industrial Relations (Public Sector Conditions of Employment) Regulation 2011* to require that the 2.5 per cent cap on public sector wage increases include the 0.25 per cent increase to the super guarantee contribution mandated by the Federal Government.

*Proceedings:* On 21 August the House agreed to consider the motion as business of the House (Division 19:18). The House then agreed to proceed with the motion forthwith. Mr Searle argued that the Opposition strongly opposed the Government's 2011 legislation that introduced the 2.5 per cent wages cap as it was bad policy and that the Government misled public sector workers when entering into the wage settlement reached in February 2013 by including superannuation as part of the 2.5 per cent cap. The matter proceeded to the Industrial Relations Commission, which handed down its decision on 25 June 2013, finding against the Government's construction of its wages cap regulation. Mr Searle argued that the Government made this regulation in order to bypass the Commission's decision, and further noted that the Government's own 2011 regulation states that federally mandated superannuation does not count towards the overall 2.5 per cent cap.

The Government opposed the motion, arguing that the 2.5 per cent wages cap is consistent with the Opposition's policy when they were in Government. The

Government further argued that it is a widely held view that superannuation is an employee-related expense.

The Shooters and Fishers Party, the Greens and the Christian Democratic Party supported the disallowance motion. The Shooters and Fishers Party stated that when in negotiations with the Government regarding the wage cap, the expectation was that 2.5 per cent related solely to salary. The Greens argued that the Government's attempt to take yet another 0.25 per cent from the wages of public sector workers was deeply unprincipled and condemned the Government for negotiating in bad faith with the Public Service Association.

The motion was agreed to (Division 21:16) and the regulation was disallowed.

#### **Disallowance of Statutory and Other Offices Remuneration (Judicial and Other Office Holders Regulation 2013 (Mr Searle, Australian Labor Party)**

*Summary:* The regulation, published on the NSW Legislation website on 21 June 2013, amends the *Statutory and Other Offices Remuneration Act 1975* by applying the Government's 2.5 per cent wages increase cap to judicial and other office holders.

*Proceedings:* On 22 August 2013, the House agreed to consider the motion as business of the House (Division 22:17). The House then agreed to proceed with the motion forthwith. Mr Searle stated that the Opposition opposed the regulation for the same reasons that it opposed the Government's actions in imposing a 2.5 per cent wage increase cap on general public sector workers. Mr Searle argued that the imposition of a wage cap on judges represented a fundamental interference with the doctrine of the separation of powers and was corrosive to judicial independence.

The Government opposed the disallowance on the grounds that it would jeopardise its wages policy and have a dangerous impact on the State budget. The Government also argued that all employees of the State should be covered by the same wages policy and that the disallowance would only create inequity and inconsistency in that regard. The Christian Democratic Party opposed the motion on the basis that it supported the Government's imposition of the 2.5 per cent public sector wage cap.

The Greens also did not support the motion on the grounds that the campaign against the Government's public sector wage capping policy would be weakened if the most influential section of the public sector was isolated from its impact.

The motion was negatived (Division 13:26), and the regulation remains in force.

#### **Disallowance of Statutory and Other Offices Remuneration (Judicial and Other Office Holders Amendment Regulation 2013 (Mr Searle, Australian Labor Party)**

*Summary:* The regulation, published on the NSW Legislation website on 9 August 2013, amends the *Statutory and Other Offices Remuneration (Judicial and Other Office Holders) Regulation 2013* to require that the 2.5 per cent cap judicial and other office holder wage increases

include the 0.25 per cent increase to the super guarantee contribution mandated by the Federal Government

*Proceedings:* On 22 August 2013, the House agreed to consider the motion as business of the House (Division 22:17). The House then agreed to proceed with the motion forthwith. All parties reiterated their respective positions on the question of whether superannuation benefits should be included in calculating any 2.5 per cent wage increase, which they argued the previous day during debate on the motion to disallow the Industrial Relations (Public Sector Conditions of Employment) Amendment Regulation. The Opposition, Greens, Christian Democratic Party and the Shooters and Fishers Party supported the motion, while the Government opposed the motion.

The motion was agreed to (Division 21:16) and the regulation was disallowed.

### **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*

#### **National Action Day against bullying and violence (Ms Cusack, Liberal Party)**

*Summary:* The motion calls on the House to note that Friday 15 March 2013 was the National Action Day against bullying and violence and to congratulate those who organised the day and those who registered and participated in the event which included 1,485 schools.

*Proceedings:* Debate on the motion commenced according to precedence on 22 August 2013. In speaking to the motion, Ms Cusack said that the devastation wrought by bullying among children is the most tragic preventable epidemic afflicting the country today. Ms Cusack commended the National Action Day initiative which started in 2011 and drew the House's attention to the website [bullyingnoway.gov.au](http://bullyingnoway.gov.au) which provides extensive resources on how to identify and deal with bullying for students, teachers and parents. Ms Cusack referred to research which showed that the single thing of most benefit to a student suffering from bullying is a teacher who they feel knows and likes them and to whom they can turn.

Members from all sides of the House spoke in support of the motion, noting that bullying can take many forms and can occur in many settings including more recently on cyber and social networks. Members emphasised the importance of speaking up and taking action if people witness bullying at school or the workplace.

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) AMAZE: The Michael Crouch Gallery (Mrs Maclaren-Jones)
- (2) Jeannie Ferris Cancer Australia Recognition Awards (Ms Ficarra)
- (3) Dr Leonie Therese Crotty RSM (Ms Ficarra)
- (4) Extension of reporting date – Select Committee on the Agistment of Horses at Yaralla Estate (Mr Khan on behalf of Mr Borsak)
- (5) Achievements of women on the northern beaches (Ms Ficarra)
- (6) 20th anniversary of Dogs NSW (Ms Ficarra)
- (7) Select Committee into ministerial propriety in New South Wales (Mr Foley)
- (8) 97th Anniversary Commemoration Service for the Battle of Fromelles (Mr Lynn)
- (9) Mr Stephen Bergman (Ms Ficarra)
- (10) Diabetes Awareness Week (Ms Ficarra)
- (11) Order for Papers—Ernst & Young report (Mr Foley).

### **Orders for papers**

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

#### *Order made*

- (1) **Ernst & Young report: 'Department of Family and Community Services, Human resources capacity, calculation and reporting':** The motion was agreed to as formal business. Due: 5 September 2013.

#### *Returns to order*

- (2) **2013-2014 Budget:** Received 3 July 2013, 9 boxes public.
- (3) **2013-2014 Budget finances:** Received 3 July 2013, 13 boxes public, 2 boxes privileged.
- (4) **Draft liquor promotion guidelines:** Received 12 July 2013, 2 boxes public.

### **Petitions received**

- (1) Bulahdelah Hospital – 167 signatures (presented, Ms Voltz)
- (2) Hearing impaired access to emergency services – 144 signatures (presented, Ms Westwood)
- (3) Public libraries – 138 signatures (presented, Ms Barham).

### **Debate on budget estimates**

The House continued the take-note debate on the Budget Estimates and related papers for the financial year 2013-2014.

### **Reports tabled**

#### **Auditor-General:**

- (1) Performance Audit report entitled 'Managing operating theatre efficiency for elective surgery: NSW Health', dated July 2013.
- (2) Performance Audit report entitled 'Reducing ambulance turnaround time at hospitals: Ambulance Service of NSW, NSW Ministry of Health', dated July 2013.
- (3) Performance Audit report entitled 'Making the best use of public housing: Housing NSW, NSW Land and Housing Corporation', dated July 2013.
- (4) Performance Audit report entitled 'Cost of alcohol abuse to the NSW Government: NSW Treasury, NSW Police Force, NSW Ministry of Health, Department of Premier and Cabinet, Department of Attorney General and Justice', dated August 2013.

#### **Independent Commission Against Corruption:**

- (1) Report entitled 'Investigation into the conduct of Ian Macdonald, Ronald Medich and others', dated July 2013.
- (2) Report entitled 'Investigation into the conduct of Moses Obeid, Eric Roozendaal and others', dated July 2013.
- (3) Report entitled 'Investigation into the conduct of Ian Macdonald, Edward Obeid Senior, Moses Obeid and others', dated July 2013.

**Unproclaimed legislation:** Mr Gay tabled a list of unproclaimed legislation as at 20 August 2013.

### **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 references*

**Select Committee on ministerial propriety in New South Wales:** The House established a Select Committee to conduct an inquiry into ministerial propriety in New South Wales.

**Joint Select Committee on sentencing of child sexual assault offenders:** The House agreed to a resolution of the Legislative Assembly to conduct an inquiry into child sexual assault offenders, and proposed a date for the first meeting of the Committee.

#### *Committee membership*

The following change to committee membership was reported:

**General Purpose Standing Committee No: 3** Mr MacDonald in place of Mr Ajaka.

**Privileges Committee:** Mr Clarke in place of Mr Ajaka.

#### *Extension of reporting date*

**Select Committee on the agistment of horses at Yaralla Estate:** The reporting date for the Inquiry was extended to 19 September 2013.

#### *Committee reports tabled*

**Legislation Review Committee:** 'Legislation Review Digest No. 40/55', dated 13 August 2013.

**Legislation Review Committee:** 'Legislation Review Digest No. 41/55', dated 20 August 2013.

**Standing Committee on Social Issues:** Report No. 47 entitled 'Same-sex marriage law in New South Wales', July 2013.

**General Purpose Standing Committee No. 2:** Report No. 40 entitled 'Drug and alcohol treatment', August 2013.

#### *Committee reports debated*

**General Purpose Standing Committee No. 2:** The House continued the take-note debate on Report No. 37 entitled 'Management of public land in New South Wales', dated May 2013.

**General Purpose Standing Committee No. 3:** The House continued the take-note debate on Report No. 27 entitled 'The use of cannabis for medical purposes', dated May 2013.

**Select Committee on the closure or downsizing of Corrective Services NSW facilities:** The House continued the take-note debate on the report entitled 'The closure or downsizing of Corrective Services NSW facilities', dated June 2013.

**Standing Committee on State Development:** The House continued the take-note debate on Report No. 37 entitled 'Adequacy of water storages in New South Wales', dated June 2013.

#### **Inquiry activities**

##### **The 2009 Mt Penny return to order**

The Privileges Committee has now held three hearings as part of its inquiry into the 2009 Mt Penny return to order. A fourth hearing is scheduled for Monday 26 August 2013.

##### **Racial vilification law in NSW**

The Standing Committee on Law and Justice has deferred consideration of its draft report.

##### **Strategies to reduce alcohol abuse among young people**

The Standing Committee on Social Issues has received 52 submissions concerning strategies to reduce alcohol abuse among young people. The Committee has held three public hearings, and is scheduled to conduct a site visit to Byron Bay in October.

##### **Tourism in local communities**

General Purpose Standing Committee No. 3 has received 79 submissions regarding tourism in local communities and has held one public hearing. The Committee is scheduled to hold another two public hearings in Sydney in August and September, and will be conducting site

visits to Ballina and Dubbo in October and Jindabyne in November.

##### **Agistment of horses at Yaralla Estate**

The Select Committee has received 54 submissions and held two public hearings. The Committee also conducted a site visit to Yaralla Estate and held a public forum at the Concord RSL Club, which was attended by over 120 people. The final report is now being drafted.

##### **Allegations of bullying at WorkCover**

This inquiry was referred by the Legislative Council to General Purpose Standing Committee No. 1 on 27 June 2013. Submissions close on 23 August 2013, and hearings will take place in November. The Committee expects to report in early 2014.

#### **Adjournment debate**

##### **Tuesday 20 August 2013**

Civility in politics (Dr Phelps); Combat sports regulation (Ms Voltz); Planning reforms (Mr Shoebridge); Australian Muslim community (Mr Moselmane); Mine subsidence (Mr Buckingham); Kokoda Trail (Mrs Pavey).

##### **Wednesday 21 August 2013**

Environmental Protection Authority contaminant testing (Mr Foley); Armenian, Assyrian and Greek genocides (Revd Mr Nile); National debt (Mr Colless); Victims compensation (Mr Searle); Homelessness (Mr Green); Tribute to Charles Copeman, AM (Mrs Maclaren-Jones).

##### **Thursday 22 August 2013**

Nurse to patient ratios (Dr Kaye); Federal election (Mr MacDonald); Public housing (Ms Cotsis); Gardens of Stone National Park (Mr Buckingham); Wear it Purple Day 2013 (Ms Sharpe); Egyptian Muslim Brotherhood (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](mailto:stephen.frappell@parliament.nsw.gov.au).

All responses will be kept strictly confidential.



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