

NEW SOUTH WALES LEGISLATIVE COUNCIL

HOUSE IN REVIEW



Volume 55/60

*Sitting period
12 to 14 November 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

As expected, this sitting week the focus of the House was on the consideration of legislation. During the previous sitting week the House suspended debate on committee reports and the Budget Estimates for the remainder of the year. This week, the House also agreed to commence sitting earlier on the Wednesday while also sitting late into the night on both Tuesday and Wednesday.

Against that background, the week saw the introduction, debate or consideration of 19 Government bills. The House amended four of the six bills that it considered in detail in committee of the whole. Just before the House rose on Thursday afternoon, the House received a message from the Legislative Assembly advising that the Assembly did not agree with the House's amendment to the Work Health and Safety Amendment Bill. Consideration of the Assembly's message stands as an order of the day for next week.

Thursday 14 November marked the cut-off date for the consideration of Government bills. Fourteen Government bills were introduced this week. The second reading debate has not yet commenced for eight of these bills. From next week, any bill introduced by a Minister or received from the Assembly will, after the conclusion of a Minister's second reading speech, be further considered on the first sitting day in 2014, unless the House considers the bill to be urgent.

Also of note this week, Thursday saw the resumption and conclusion of the second reading debate on the Same-Sex Marriage Bill. The debate again drew a large audience to the public gallery. On Wednesday a joint sitting of the Legislative Council and the Legislative Assembly was held to fill a vacancy in the Senate.

Message of condolence – floods in the Philippines

At the start of the sitting week, the President informed the House that, on behalf of the members of the Legislative Council, he had sent a message to the Consul General of the Philippines expressing sympathy and condolence to the relatives and friends who have suffered the loss of loved ones during the floods caused by Typhoon Haiyan.

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

Death of staff member – Mr Trevor McDonald

On 12 November 2013, the President informed the House of the death, on 9 November 2013, of Mr Trevor McDonald, a long serving and valued member of the Hansard reporting staff. The President drew attention to the presence in his gallery for this tribute, of Trevor's son, Matthew McDonald.

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

Vacancy in the representation of the State in the Senate

As reported in the previous edition of *House in Review* a vacancy had occurred in the representation of the State in the Senate through the resignation of Senator the Hon Bob Carr. Senator Carr expressed his resignation as applying to both the current Senate up until 30 June 2014 and his seat in the next Senate commencing on 1 July 2014, for which he was elected at the recent half-Senate election. Advice was sought from the Crown Solicitor on whether there was any impediment to both vacancies being filled at one joint sitting of the two Houses, or whether two joint sittings were required.

At the start of the first sitting day of the week, the President tabled in the House the advice of the Crown Solicitor, dated 1 November 2013. Later that day the House fixed the time and place for a joint sitting with Assembly for the purpose of electing a person to hold the place in the Senate rendered vacant by the resignation of Senator Carr. Based upon the legal advice received, the joint sitting filled the vacant position which expires on 30 June 2014.

In accordance with section 15 of the Commonwealth Constitution, a joint sitting of the two Houses was held on Wednesday 13 November 2013 at which Ms Deborah O'Neill was elected to fill the vacated seat, which expires on 30 June 2014.

2014 sitting calendar

On 12 November 2013 the House agreed to the sitting calendar for 2014. The calendar provides for 51 sitting days in 2014.

Government business

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

Mining Amendment (Development Consent) Bill 2013

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Mining Act 1992* to clarify the requirement for appropriate development consents for activities carried out under mining leases. The bill makes it clear that nothing in the Act permits an activity to be carried out under a mining lease without any required development consent under the *Environmental Planning and Assessment Act 1979*. The bill will have the effect of quashing a current legal challenge regarding the Newcrest Mining Limited mine in the Cadia Valley. Gold and Copper Resources has brought an action that some mining development work undertaken by Newcrest is not allowed under the type of lease held by Newcrest over the land concerned.

Proceedings: Debate on the second reading of the bill resumed on 12 November 2013 from 30 October 2013 (see previous edition of *House in Review* for earlier debate). The Opposition supported the bill on the basis of the advice it had received that the court action, if successful, would have the potential to call into question the majority of existing mining leases in the State. The Opposition noted that it was a very rare occurrence for a Parliament to consider the introduction of retrospective legislation while a court action relating to that legislation is in progress. However, the Opposition were of the view that the current court action, while part of a long running series of disputes involving the two companies relating to the extent of their respective mining titles, did not primarily relate to the underlying dispute between the two parties. The Christian Democratic Party also stated its general concern with retrospective legislation, but indicated that it would support the bill on the basis of its overriding concern over the potential for damage to regional employment should the court action be successful.

In reply, the Minister (Mr Ajaka) said that the purpose of the bill was to address a systemic issue that had been brought to light by the current court action, and thereby ensure the integrity of the mining titles framework in the State. The Minister argued that the magnitude of the risk posed by the possible outcome of the current court action demanded that the Government take the action that it had.

The second reading was agreed to (Division 33:5) with the Greens voting against the motion. The third reading was agreed to and the bill was returned to the Assembly.

Building and Construction Industry Security of Payment Amendment Bill 2013

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Building and Construction Industry Security of Payment Act 1999* to introduce reforms that will provide greater protection for subcontractors and promote cash flow and transparency in the contracting chain.

Proceedings: Debate on the second reading commenced on 12 November 2013. The second reading speech of the Parliamentary Secretary (Mr Mason-Cox) was incorporated into Hansard. That speech stated that over the three financial years to 2011-12 insolvencies in the New South Wales construction industry accounted for at least 50 per cent of insolvencies across all States and Territories. These insolvencies are not only confined to the failed company; the effects are felt by other parties, including unsecured creditors along the contract chain. The speech also indicated that the reforms represented the Government's first tranche of reforms in response to a 2012 Independent Inquiry into Construction Industry Insolvency, chaired by Bruce Collins, QC. Specifically, the reforms strengthen the existing legislative framework regarding penalties for non-payment and provide prompt payment provisions for subcontractors to be paid within 30 days.

The Opposition did not oppose the bill, supporting its aims of promoting payments and cash flow in the construction industry and better protecting subcontractors. The Opposition did, however, express concern that the Collins Inquiry recommendation regarding the establishment of a retention trust fund scheme was not included in the bill. The Opposition foreshadowed that it would seek to amend the bill to include provision for the establishment of such a scheme. Both the Greens and Christian Democratic Party supported the bill, while also indicating their support for the Opposition's amendment.

In reply, the Parliamentary Secretary stated that the retention trust fund scheme had not been included in the bill because the Government was planning to first consult with industry regarding its development.

The second reading was agreed to.

In the committee stage the Opposition amendment was agreed to (Division 23:18).

The third reading of the bill was agreed to and the bill was returned to the Assembly with an amendment.

Residential (Land Lease) Amendment Bill 2013

The bill originated in the Legislative Assembly.

Summary: The bill seeks to improve the governance of residential parks. The bill repeals and replaces the *Residential Parks Act 1998* following a review of that Act. The bill sets out the rights and obligations of operators of residential communities and home owners in residential communities; establishes procedures for resolving disputes between operators and home owners; protects home owners from bullying and unfair business

practices; and encourages the continued growth and viability of residential communities.

Proceedings: Debate on the second reading of the bill commenced on 12 November 2013. The second reading speech of the Parliamentary Secretary (Mr Mason-Cox) was incorporated into Hansard. That speech indicated that the bill which was developed over a comprehensive two year review of the existing Act implements the Government's pre-election commitment to improve the governance of residential parks. The speech noted that the bill included a statutory five-year review to ensure that the legislation continues to meet its policy objectives.

The Opposition argued that the bill did not strike a fair balance and favours the interests of residential park operators over those of residential park owners and tenants. The Opposition said that numerous stakeholders had expressed anxiety at the prospect of the changes contained within the bill and in recognition of this community disquiet, the Opposition moved that the bill be referred to General Purpose Standing Committee No 5 for inquiry and report.

The Greens, while acknowledging that the bill contained many provisions that improved the governance of residential parks, argued that the bill lacked adequate protections for residential community home owners and, in particular, tenants. The Greens foreshadowed amendments to address what they viewed as the bill's shortcomings. The Christian Democratic Party acknowledged that the broad changes in the bill will no doubt cause some confusion and anxiety for residents. However, the Christian Democratic Party indicated that it supported the bill, apart from one element which it foreshadowed it would seek to amend in the committee stage.

The Opposition proposal to have the bill referred to a Committee was negatived (Division 18:22), with the Government, the Christian Democratic Party and the Shooters and Fishers Party voting against the motion. The second reading was agreed to.

In the committee stage the Opposition and the Greens each moved several series of amendments that sought to address their respective concerns with various aspects of the bill. In each case, while supporting each other's amendments, neither the Opposition nor the Greens could garner the support of the Government or the other cross-bench parties. The amendments were all defeated on the voices, apart from an Opposition amendment that sought to remove the provisions relating to voluntary sharing agreements whereby park operators could secure a financial interest in residential homes in return for reduced ongoing site fees, which was negatived on division (17:20). In contrast, the Christian Democratic Party amendments to ensure that the conditions of individual existing property contracts are not affected by a change in ownership of a residential park were supported by the Government.

The bill was reported to the House with amendments, read a third time (Division 20:17) and returned to the Assembly.

Combat Sports Bill 2013

The bill originated in the Legislative Assembly.

Summary: The bill replaces the *Combat Sports Act 2008* to strengthen the regulation of combat sports in order to promote the health and safety of combatants and the integrity of combat sports contests.

Proceedings: Debate on the second reading of the bill commenced on 13 November 2013. The second reading speech of the Minister (Mr Ajaka) was incorporated into Hansard. That speech stated that the reforms in the bill were developed in response to a review of the current Act, which found that new combat sports continue to emerge and should be regulated until such time as it can be demonstrated that they are sufficiently safe to not require regulation. The speech further noted that the growth and commercialisation of combat sports had significantly altered their structure and operation and that the bill will ensure that New South Wales will have a modern and flexible regulatory framework that reflects the current and future needs of stakeholders while better protecting the health and safety of all combat sport participants.

The Opposition did not oppose the bill but held concerns regarding the apparent shift towards self-regulation, particularly in the amateur sphere where, the Opposition argued, problems with safety and integrity are more likely to emerge. The Opposition foreshadowed amendments. The Greens stated that they did not condone the promotion of a culture of combat sport, but acknowledged that it was preferable to regulate the sport rather than to potentially push it underground. The Greens stated that the bill contained many worthwhile provisions, but also foreshadowed amendments to strengthen the bill's focus on protecting the health and safety of combatants. The Christian Democratic Party also stated its reservations regarding the nature of combat sports and the impact on society of their increasing prevalence. The Christian Democratic Party stated that the bill was an improvement on the current regulatory regime and in particular noted with approval the new penalty for referees who do not stop contests in certain circumstances.

The second reading was agreed to.

In the committee stage, the Greens with the support of the Opposition and the Christian Democratic Party inserted a new object into the bill that combat sport contests be regulated on a harm minimisation basis. The Greens moved a number of other amendments regarding the approval of amateur combat sport bodies; establishment of panels of approved medical practitioners and referees for attendance at amateur events; and the assurance that the Combat Sport Authority did not promote or advocate for combat sports. While the Opposition supported most of the amendments, the Government and the Christian Democratic Party did not, in the main arguing that the amendments were either not necessary or unduly restricted the required flexibility of the bill. The amendments were negatived on the voices. The Opposition unsuccessfully sought to amend the definition of a combat sport contest (Division 18:21)

with the Government, Christian Democratic Party and the Shooters and Fishers Party voting against the amendment. The Opposition also moved three other amendments that sought to restrict combat sport inspector roles to employees from the relevant government department, which were negated.

The bill was reported with an amendment, read a third time and returned to the Assembly.

Work Health and Safety Amendment Bill 2013

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Work Health and Safety Act 2011* to clarify the validity of that Act's provisions as they relate to the District Court's jurisdiction to hear prosecutions under the previous *Occupational Health and Safety Act 2000*. The bill also confirms that a legal practitioner acting on behalf of an inspector or the regulator in proceedings under the previous *Occupational Health and Safety Act 2000* or the *Work Health and Safety Act 2011* may sign an initiating process on behalf of a prosecutor.

The clarifications are required due to recent technical legal challenges which have arisen following the repeal of the *Occupational Health and Safety Act 2000* which was replaced by the *Work Health and Safety Act 2011* as New South Wales transitioned into the nationally harmonised system of occupational health and safety.

Proceedings: Debate in the committee stage commenced on 13 November 2013 (see the previous edition of *House in Review* for the second reading debate). The Opposition moved an amendment to have proceedings for a Category 2 offence brought under the *Work Health and Safety Act 2011* to be dealt with summarily before the Industrial Court rather than the District Court. The Opposition stated that the amendment would only apply from the bill's date of assent, thereby not effecting Category 2 offence cases currently before the District Court. The amendment was agreed to (Division 20:18), with the Greens and the Shooters and Fishers Party supporting the amendment, and the Government and the Christian Democratic Party opposing.

The bill was reported to the House with an amendment, read a third time and returned to the Assembly.

On 14 November, the House received a message from the Assembly that it had disagreed with the Council's amendment, on the grounds that the amendment is in direct conflict with the policy that underpinned the enactment of the *Work Health and Safety Act 2011*. Consideration of the Assembly's message was set down for the next sitting day.

Board of Studies, Teaching and Educational Standards Bill 2013

The bill originated in the Legislative Assembly.

Summary: The objects of the bill are to constitute the Board of Studies, Teaching and Educational Standards and to confer on it functions currently exercised by the Board of Studies under the *Education Act 1990* and the NSW Institute of Teachers under the *Institute of Teachers Act 2004*; dissolve the Board of Studies and the NSW

Institute of Teachers and make consequential and other amendments of an administrative nature to the *Education Act 1990* and the *Institute of Teachers Act 2004*.

Proceedings: The bill was received from the Legislative Assembly on 12 November 2013 and read a first time. Debate on the second reading commenced the following day. The second reading speech of the Minister (Mr Ajaka) was incorporated into Hansard. The speech stated that the bill gives effect to the Government's recently announced policy of merging the Board of Studies and the NSW Institute of Teachers to create a new body, the Board of Studies, Teaching and Educational Standards. The speech noted that the move to bring curriculum, student assessment and teacher quality under the one education body was driven by a belief that these three components should not exist in isolation and that the data and experience associated with each has relevance and bearing on the others and that the merger should lead to improved student outcomes and better teacher quality.

The Opposition supported the bill agreeing with its stated objectives. The Opposition sought assurances from the Minister that the merger was not primarily a cost saving measure and that any savings would remain with the new organisation so that they may be invested in promoting improved student outcomes.

In reply, the Minister stated that while the merger would present some opportunities for some corporate services savings, that was not its purpose and that any realised savings would be directed into education and the work of the new board.

The second and third readings of the bill were agreed to and the bill was returned to the Assembly.

Education Amendment (Non-Government School Funding) Bill 2013

The bill originated in the Legislative Assembly.

Summary: The objects of the bill are to facilitate the provision under the *Education Act 1990* of financial assistance to non-government schools, in accordance with the State's obligations under the National Education Reform Agreement.

Proceedings: The bill was received from the Legislative Assembly on 12 November 2013 and read a first time. Debate on the second reading of the bill commenced the following day. The second reading speech of the Minister (Mr Ajaka) was incorporated into Hansard. That speech indicated that the bill will allow important improvements to the way in which non-government schools are funded.

The Christian Democratic Party supported the bill, as did the Opposition who described the bill as an important step forward in implementing the Gonski school funding reforms. The Greens did not oppose the bill, as they strongly supported the National Education Reform Agreement. However, the Greens foreshadowed that they would seek to make substantial changes in the committee stage to address what they saw as the perpetuation in the bill of the deep flaw within the National Education Reform Agreement – the continued funding of wealthy non-government schools.

The second reading was agreed to.

In the committee stage, the Greens moved a set of amendments to preclude the wealthiest non-government schools from receiving any government financial assistance and for any funds that would have gone to such schools to be redirected towards supporting government school children with special needs. The Government opposed the amendments on the grounds that it would prevent it from meeting its commitments under the Agreement. Similarly, the Opposition opposed the amendments on the grounds that, if carried, it would mean New South Wales would no longer be compliant with the national agreement. The amendments were negatived (Division 5:29). The Greens moved five further amendments, all of which were negatived on the voices, that sought to establish circumstances (such as unlawful or discriminatory enrolment or employment practices, or an exemption from the payment of land tax) which would preclude or reduce funding to non-government schools.

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

Civil and Administrative Tribunal Amendment Bill 2013 and Civil and Administrative (Repeal and Amendment) Bill 2013 (cognate bills)

The bill originated in the Legislative Assembly.

Summary: The bills amend the *Civil and Administrative Tribunal Act 2013* to further provide for the establishment of the New South Wales Civil and Administrative Tribunal (NCAT). Specifically, the bills provide for the constitution and the practice and procedure of, and appeals from, the NCAT; provide for the abolition of the Vocational Training Appeal Panel and the transfer of its functions to NCAT; make further provision with respect to savings and transitional matters; and rename the *Administrative Decisions Tribunal Act 1997* as the *Administrative Decisions Review Act 1997* and confine its operation to the process for the administrative review by NCAT of certain decisions of administrators and to repeal and amend certain other legislation consequent on the amendments made to that Act.

Proceedings: The bills were received from the Legislative Assembly on 13 November 2013 and read a first time. Debate on the second reading commenced later that day. The second reading speech of the Parliamentary Secretary (Mr Clarke) was incorporated into Hansard. The speech stated that the NCAT will exercise the functions of more than 20 existing tribunals: the Consumer, Trader and Tenancy Tribunal, Administrative Decisions Tribunal and Guardianship Tribunal as well as a number of other smaller tribunals that will fall within its jurisdiction. The speech also argued that the NCAT provides an opportunity to improve the delivery of tribunal services by delivering a consistent and coordinated approach.

The Opposition supported the bills stating that their underlying principles were fundamentally sound. The Opposition foreshadow amendments to give the proposed jurisdiction of the NCAT over some occupation and equal opportunity matters to the Industrial Relations Commission instead. However, the

Opposition indicated that its support for the bill was not contingent on the passage of the amendments.

The Greens supported the bill noting it was implementing recommendations of the Standing Committee on Law and Justice and its inquiry into *Opportunities to Consolidate Tribunals in NSW*. The Christian Democratic Party supported the bill also acknowledging the work of the Standing Committee on Law and Justice.

The second reading was agreed to.

In the committee stage the Opposition amendment was negatived. A Government amendment to correct a typographical error in the bill identified during the second reading debate was agreed to.

In an unusual precedent, the Opposition voted against the motion to adopt the report of the committee of the whole. The motion was agreed to on division (25:13).

The third reading of the bill was agreed to without a division being called, and the bill was returned to the Assembly with an amendment.

Crimes Legislation Amendment Bill 2013

The bill originated in the Legislative Assembly.

Summary: The bill makes miscellaneous amendments to various Acts with respect to criminal offences and procedure.

Proceedings: The bill was received from the Legislative Assembly on 13 November 2013 and read a first time. Debate on the second reading commenced later that day. The second reading speech of the Parliamentary Secretary (Mr Clarke) was incorporated into Hansard. The speech stated that the bill makes miscellaneous amendments to criminal legislation, as part of the Government's regular legislative review and monitoring program. The speech also stated that the bill amends a number of Acts to improve the efficiency and operation of the State's criminal laws.

The Opposition did not oppose the bill noting it makes miscellaneous and comparatively minor amendments to various pieces of legislation regarding criminal justice. The Greens stated that they generally support such compendium bills which seek to remedy faults or inconsistencies in existing laws with what are, on the whole, reasonable amendments. The Greens argued that many of such legislative flaws are the result of rushed law-making in response to media pressure. The Christian Democratic Party supported the bill.

The second and third readings were agreed to and the bill was returned to the Legislative Assembly without amdt.

Police Amendment (Police Promotion) Bill 2013

The bill originated in the Legislative Council.

Summary: The bill amends the *Police Act 1990* to create exceptions to the general requirement that appointments by way of promotion to vacant non-executive police officer positions of a particular rank are to be made from the promotion list for that rank. The bill provides that promotion appointments to certain specialist positions may be made from outside the relevant promotion list, if the position has not been able to be filled after being

advertised to persons on the promotion list for the rank concerned. The current exception that enables appointments to specialist positions to be made from a promotion list otherwise than in accordance with the order of rankings on the promotion list is continued. The bill also provides for police officers to be promoted, following a selection process, to superintendent positions other than in accordance with the rankings on the relevant promotion list. Appointments of sergeants to senior sergeant positions will also be made following a selection process as there will no longer be a promotion list for the grade of senior sergeant.

Proceedings: Debate on the second reading of the bill resumed on 13 November 2013 from 30 October 2013 (see previous edition of *House in Review* for earlier debate.). The Opposition and the Christian Democratic Party supported the bill, noting that it would modernize the police promotions system. The Greens noted that the bill essentially adopts the recommendations of the review of the police promotions system undertaken by Mr Lance Wright QC, the report of which had been accepted by both the Government and the Police Association.

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

Government Sector Employment Legislation Amendment Bill 2013

The bill originated in the Legislative Assembly.

Summary: The *Government Sector Employment Act 2013*, which repealed and replaced the *Public Sector Employment and Management Act 2002*, was passed by both Houses in June this year. At that time, the Government indicated that a second bill would be introduced later in the year in order to align the employment arrangements for senior executives in the NSW Health Service, the NSW Police Force and the Transport Service of NSW and for certain statutory officers with the new employment arrangements in the Public Service.

This bill amends the *Government Sector Employment Act 2013* and other Acts to achieve that alignment of employment arrangements. The bill also aligns the employment arrangements for non-executive employees of the NSW Police Force who are not police officers, and also extends the misconduct provisions in the Act to findings of guilt in addition to convictions for offences.

Proceedings: The bill was received from the Legislative Assembly on 12 November 2013 and read a first time. The second reading of the bill was set down for a later hour.

Statute Law (Miscellaneous Provisions) Bill (No. 2) 2013

The bill originated in the Legislative Assembly.

Summary: The bill continues the longstanding statute law revision program. Bills of this kind have featured in most sessions of Parliament since 1984 and are recognised as an effective tool for making minor policy changes, repealing redundant legislation and maintaining the quality of the New South Wales statute book.

Proceedings: The bill was received from the Legislative Assembly on 12 November 2013 and read a first time. Debate on the second reading of the bill commenced on 13 November 2013. Shortly after the Parliamentary Secretary (Mr Clarke) commenced his second reading speech, debate was adjourned until a later hour.

Crimes (Appeal and Review) Amendment (DNA Review Panel) Bill 2013

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Crimes (Appeal and Review) Act 2001* to implement recommendations arising from a statutory review of the DNA Review Panel under section 97 of that Act. The bill abolishes the DNA Review Panel; imposes an ongoing duty on NSW Police and other authorities to retain biological material gathered in relation to convictions for certain offences; and enables a person convicted of an offence to request information about the biological material that may have been retained by NSW Police or other authorities.

Proceedings: The bill was received from the Legislative Assembly on 13 November 2013 and read a first time. The second reading was set down for a later hour.

Law Enforcement (Powers and Responsibilities) Amendment (Arrest without Warrant) Bill 2013

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Law Enforcement (Powers and Responsibilities) Act 2002* to extend police powers of arrest without warrant. The bill follows a review of the Act necessitated by police concerns with section 99 which sets out police powers to arrest without a warrant. The review found that poor drafting had resulted in differing interpretations regarding section 99, with some suggestions that police could only arrest without a warrant for an offence committed in the past if it was a serious indictable offence. The bill clarifies that police can arrest without a warrant for any offence they reasonably suspect a person is committing or has committed.

Proceedings: The bill was received from the Legislative Assembly on 13 November 2013 and read a first time. The second reading was set down for a later hour.

Casino Control Amendment (Barangaroo Restricted Gaming Facility) Bill 2013

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Casino Control Act 1992* to authorise the conduct of gaming in a restricted gaming facility to be situated at Barangaroo South. The following restrictions will apply regarding gaming in the Barangaroo restricted gaming facility: gaming is not authorised until 15 November 2019; the playing of poker machines is not authorised; minimum bet limits will apply, and only persons who, under the conditions of the licence for the facility, are members or guests of the gaming facility will be authorised to participate in gaming activities.

Proceedings: The bill was received from the Legislative Assembly on 13 November 2013 and read a first time. The second reading was set down for a later hour.

Rural Fires Amendment Bill 2013

The bill originated in the Legislative Assembly.

Summary: The bill seeks to amend the: *Rural Fires Act 1997* to make further provision for bush fire hazard reduction; *National Parks and Wildlife Act 1974* to provide immunity from committing certain offences under that Act in the course of carrying out bush fire hazard reduction work; and *State Emergency and Rescue Management Act 1989* to create an offence for impersonating an emergency services organisation officer.

Proceedings: The bill was received from the Legislative Assembly on 13 November 2013 and read a first time. The second reading was set down for a later hour.

Cemeteries and Crematoria Bill 2013

The bill originated in the Legislative Assembly.

Summary: The bill reforms the Crown cemetery sector, provides strategic oversight and regulation of the interment industry, and promotes sustainable burial practices. The bill has been developed in response to an acknowledged need for a coordinated and strategic approach to management of the interment industry in order to address the critical shortage of burial space and to ensure the full range of interment options are accessible.

Proceedings: The bill was received from the Legislative Assembly on 13 November 2013 and read a first time. The second reading was set down for a later hour.

Mental Health (Forensic Provisions) Amendment Bill 2013

The bill originated in the Legislative Assembly.

Summary: The bill provides for extension orders to be made regarding a limited number of forensic patients in order to facilitate the continued supervision and review of those patients by the Mental Health Review Tribunal. The bill implements a recommendation of a NSW Law Reform Commission inquiry. The Tribunal can already make orders regarding the care, treatment and control of a forensic patient who is assessed as a mentally ill person at the expiry of their limiting term. However, the Commission found that there is a gap in the State's laws for dealing with forensic patients who pose an unacceptable risk of serious harm to others at the end of a limiting term but who may not come within the definition of a mentally ill person. The bill addresses that gap by ensuring that the Tribunal can continue its oversight of these forensic patients.

Proceedings: The bill was received from the Legislative Assembly on 13 November 2013 and read a first time. The second reading was set down for a later hour.

Motor Dealers and Repairers Bill 2013

The bill originated in the Legislative Assembly.

Summary: The bill establishes a scheme for the licensing and regulation of motor dealers, motor vehicle repairers,

motor vehicle recyclers and motor vehicle tradespersons; provides for remedies for customers of motor dealers and motor vehicle repairers who suffer loss as a result of illegal or unjust conduct by motor dealers or motor vehicle repairers; empowers the Consumer, Trader and Tenancy Tribunal to declare terms of contracts for the supply of motor vehicles by manufacturers to motor dealers unfair and to make orders for the protection of motor dealers; and makes legislative amendments of a consequential nature.

Proceedings: The bill was received from the Legislative Assembly on 13 November 2013 and read a first time. The second reading was set down for a later hour.

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 Native Vegetation Regulation 2013 (Dr Faruqi):

Summary: The regulation seeks to reform the management of native vegetation in NSW by facilitating changes to operation of the *Native Vegetation Act 2003*. Specifically the regulation makes provision for: development consent for clearing of native vegetation; the form and content of property vegetation plans (PVPs), the variation and termination of PVPs and a register of PVPs; the assessment of broadscale clearing, including the adoption of an assessment methodology for determining whether proposed broadscale clearing will improve or maintain environmental outcomes; clearing for private native forestry; routine agricultural management activities; and special provisions for vulnerable land.

Proceedings: On 12 November 2013 the House agreed to consider the motion. The Greens stated that the regulation will not improve or maintain environmental outcomes and undermined the integrity of the *Native Vegetation Act 2003*. The Greens indicated that their primary concern with the regulation was that it extends the types of routine agricultural management activities (RAMAs) that are permissible. RAMAs enable landholders to maintain their properties without formal approval. This maintenance is typically small-scale and low-risk; however the Greens argued that the regulation provides for an unacceptable expansion in RAMAs without requiring regulatory oversight, other than self-regulatory assessment codes.

The Government opposed the motion on the basis that the regulation had been made following extensive stakeholder consultation and that it enables a balance to be struck between environmental protection and efficient agricultural management. The Government stated the changes to RAMAs reduce unnecessary red tape and support sensible land management activities.

The Opposition supported the motion arguing that the regulation undermined the native vegetation protections introduced by the former Government through the *Native Vegetation Act 2003*. The Christian Democratic Party argued against the motion indicating that it

supported initiatives which reduce unnecessary red tape for farmers.

The motion was negatived (Division 19:22). The regulation remains in force.

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

Same Sex Marriage Bill 2013 (Ms Sharpe, Australian Labor Party)

The bill was developed by the NSW Cross-Party Marriage Equality Working Group, comprised of individual members from the Legislative Council and the Legislative Assembly.

Summary: The object of the bill is to allow for adults of the same sex to enter into a same-sex marriage. The bill sets out requirements for same-sex marriages, including, the grounds for eligibility, the need to be solemnised by an authorised celebrant, and the notices and declarations that must be given before solemnization. The bill also provides for the regulation of the dissolution or annulment of same-sex marriages and for the recognition in New South Wales of same-sex marriages made under the laws of other States and Territories.

Proceedings: Debate on the second reading of the bill resumed on 14 November from 31 October 2013 (see previous edition of *House in Review* for earlier debate). A number of members stated that while they supported marriage equality, they would not support the bill on the grounds that marriage equality should be pursued through amendment to the federal *Marriage Act 1961*. Other members referred to the volume of correspondence that they and other members had received from individuals and organisations, arguing that support for and opposition to the bill appeared to be equal, prompting some members to suggest that the matter should be determined by a national referendum. A number of members stated that they opposed the bill on philosophical grounds and because they believed the bill posed a threat to traditional marriage and the traditional family unit.

Members who spoke in support of the bill argued that the denial of the right to marry on the basis of sexuality was legislatively sanctioned discrimination and should be removed. Members in support of the bill rejected the argument that the matter must be left for address at the federal level, arguing that New South Wales needed to take the lead, as it had often done in the past on other social and legal reform issues. Members also rejected the argument that the bill represented a threat to the notion of traditional marriage, arguing that marriage was already clearly in decline.

Throughout the debate, it was emphasised that it was important to respect the fact that members held quite different views on the matter, as did members of the community. Many members, including those who spoke

in support and those who spoke in opposition to the bill, acknowledged the aspirations of those who sought the opportunity to marry the person that they loved, and the pain and discrimination that many citizens had experienced because of their sexuality.

The House divided on the question of the second reading, with members allowed to vote according to their conscience. The second reading was narrowly defeated (19:21).

Motions

Reference to the Independent Commission Against Corruption (Mr Foley, Australian Labor Party)

Summary: The motion called on the House to, under section 73 of the *Independent Commission Against Corruption Act 1988*, refer to the ICAC for investigation and report the circumstances surrounding the Department of Premier and Cabinet's engagement of Conrad Capital Pty Ltd on a contract for services in March 2012. The motion also called on the House to send a message to the Assembly informing it of the resolution passed by the Council and asking it to pass a similar resolution; and to authorise the Clerk, in the event that the Assembly did not pass a resolution and inform the House within two sitting days, to forward the reference from the House to the ICAC.

Proceedings: Standing orders were suspended on 14 November 2013 allow Mr Foley to move the motion. The Government opposed the motion, arguing that it was being moved purely for political effect. The Government also argued that the Opposition had been raising the issue the subject of the reference for some time, during which it could have itself referred the matter to the ICAC.

The motion was agreed to (Division 20:19), with the Opposition, the Greens and the Shooters and Fishers Party voting for the motion, and the Government and the Christian Democratic Party voting against.

Later that day, the House received a message from the Assembly informing the House that the Assembly had disagreed with the House's proposal. Under the resolution of the House, the Clerk will now forward the reference to the ICAC as being from the Legislative Council only.

Motions taken as formal business

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

- (1) Liberation of Grenada (Dr Phelps)
- (2) Select Committee on greyhound racing in New South Wales – Extension of reporting date (Dr Kaye on behalf of Mr Borsak)
- (3) Violence motivated by racial, cultural or religious hatred (Ms Ficarra)
- (4) WOW Day (Mr Gallacher)
- (5) First National Asbestos Awareness Month (Ms Ficarra)

- (6) Maronite Catholic Society 25th Year Jubilee (Mr Clarke)
- (7) 100th anniversary of Emmaline Pankhurst's "Freedom or Death" address (Ms Cusack)
- (8) Wheelchairs for disabled Egyptian children (Mr Moselmane)
- (9) 2013 Women of Influence Awards (Ms Ficarra)
- (10) Palliative Care NSW forum (Mr Donnelly)
- (11) Remembrance Day (Mr Lynn)
- (12) Islamic Relief Australia (Mr Moselmane)
- (13) Review under the Convention on the Rights of Persons with Disabilities (CRPD) (Ms Barham)
- (14) 14th Annual Egyptian Festival (Mr Clarke)
- (15) The St George Monastery Appeal (Ms Cotsis)
- (16) Matthew Martin Time Out Trust Fund (Mr Lynn)
- (17) Netball NSW Annual Awards Dinner 2013 (Ms Ficarra)
- (18) Dame Monica Gallagher DBE DCSG CEP (Mr Clarke)
- (19) 2013 NSW Science and Engineering Awards (Ms Ficarra)
- (20) Exposition of Lebanese Heritage (Mr Clarke).
- (21) St George Hospital Emergency Department (Ms Ficarra)
- (22) Al Dostour [Constitution] Party first anniversary (Mr Moselmane)
- (23) 10th anniversary of the White Ribbon Foundation (Ms Ficarra)
- (24) Raduno Mondiale – di Associazione Nazionale Carabinieri (Ms Ficarra)
- (25) Pakistan Australia Association fundraising dinner (Mr Moselmane)
- (26) Dr Mustafa Barghouti (Mr Moselmane).

Orders for papers

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

Orders made

- (1) **Report on actions of former Workcover NSW employee:** The order relates to an investigation conducted by Ms Linda Pettersson, Investigator, Internal Audit Bureau, or any other person, regarding alleged bullying or harassment by a former employee of WorkCover NSW. Due: 19 November 2013.
- (2) **Windsor Bridge project:** The order relates to documents, created since 1 January 2012, excluding any documents published on the Planning and Infrastructure website concerning major projects, in the possession, custody or control of the Minister for Planning, the Department of Planning and Infrastructure or the

Premier relating to the Windsor Bridge replacement project. Due 28 November 2013.

Change to due date of order

- (1) **Former Officer of the Department of Planning and Infrastructure:** The House agreed to amend its resolution of 31 October 2013 regarding the order to now require the documents within 21 days. Due: 21 November 2013.

Returns to order – additional document

- (2) **Executive appointments:** On 14 November 2013, the Clerk tabled an additional document relating to the order, together with an index.

Petitions received

- (1) Sanctity of marriage – 29 signatures (presented Rev Nile)
- (2) National Broadband Network in Monaro – 80 signatures (presented Mr Whan)
- (3) Queanbeyan Showground and White Park – 65 signatures (presented Mr Whan)
- (4) Sanctity of marriage – 1,719 signatures (presented Mr Colless).

Reports tabled

Auditor General: Financial Audit report: Volume Four 2013: Focusing on Electricity, November 2013.

Auditor General: Financial Audit report: Volume Four 2013: Focusing on Education, November 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 Social, Public and Affordable Housing: The House referred to the Committee an inquiry into social, public and affordable housing.

General Purpose Standing Committee No. 5: Inquiry into the Wambelong fire (self-reference). The Committee self-referred an inquiry into the Wambelong fire. This will be reported to the House on Tuesday 19 November 2013.

Extension of reporting date

Select Committee into Greyhound racing in New South Wales: The reporting date for the Committee's inquiry into greyhound racing in New South Wales was extended to 28 March 2014.

Committee report tabled

Legislation Review Committee: 'Legislation Review Digest No. 48/55', 12 November 2013.

Inquiry activities

Removing or reducing station access fees at Sydney Airport

General Purpose Standing Committee No. 3 will be holding hearings on 2 and 3 December 2013. The closing date for submissions has now passed, and the Committee has received 25 submissions, which will be published shortly.

Motor Accidents Authority 12th Review and Lifetime Care and Support Authority Fifth Review

The Standing Committee on Law and Justice is conducting concurrent reviews into the MAA and LTCSA. The Committee has received eight submissions to the MAA and seven submissions to the LTCSA.

Greyhound racing in NSW

Submissions to the Select Committee closed on 6th November, and over 500 submissions have been received. The Committee held its first public hearing and public forum at Penrith Panthers on 15 November 2013, with a second hearing at Wallsend scheduled for 25 November 2013. The reporting date for the inquiry has been extended to 28 March 2014.

Allegations of bullying in WorkCover NSW

General Purpose Standing Committee No. 1 has received 90 submissions and over the past week held two hearings. The Chairman moved a motion in the House this week to order the production of papers relating to alleged bullying by a former WorkCover officer. The return to order is due next week.

Ministerial propriety in NSW

The Select Committee has received seven submissions. The first public hearing was held on Monday 14 October 2013 with representatives from the Department of Family and Community Services.

Tourism in local communities

General Purpose Standing Committee No. 3 has received 84 submissions. It has held three public hearings in Sydney, one public hearing in Queanbeyan and roundtable discussions in Ballina and Dubbo. The Committee expects to report in early 2014.

Reviews into the WorkCover Authority and Workers' Compensation (Dust Diseases) Board

The Standing Committee on Law and Justice is conducting its first reviews into the exercise and functions of the WorkCover Authority and Dust Diseases Board. The closing date for submissions for both reviews is 17 January 2014.

Racial vilification law in NSW

The Standing Committee on Law and Justice expects to table its report by 21 November 2013.

Adjournment debate

Tuesday 12 November 2013

Transport and fodder subsidies (Mr MacDonald); Tribute to Vince Bulger OAM (Mr Veitch); Nymboida and Macleay rivers (Mr Buckingham); Water bills (Mr Secord); Premier Barry O'Farrell (Mr Brown); Persecution of Christians (Mr Clarke).

Wednesday 13 November 2013

Early intervention for disadvantaged children (Mr Primrose); Industry excellence awards (Mr Mason-Cox); Bushfire hazard reduction (Mr Borsak); World Kindness Movement (Mr Wong); Social and affordable housing (Ms Barham); Women's political rights (Ms Cusack).

Thursday 14 November 2013

Cancer services in regional areas (Mrs Pavey); Blue Mountains bushfires (Mr Searle); Reparative therapy (Mr Searle); Child sexual abuse (Mr Shoebridge); National Indigenous and Multicultural Human Rights and Social Justice Awards (Mr Moselmane); Violence motivated by racial, cultural or religious hatred (Ms Ficarra).

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