

# NEW SOUTH WALES LEGISLATIVE COUNCIL

## *HOUSE IN REVIEW*



*Volume 55/63*

*2013 Summary*

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 edition of *House in Review* summarises the work of the Legislative Council during 2013, the third year of the 55<sup>th</sup> Parliament. The period covered by this summary extends from when the House first met in 2013 on Tuesday 19 February to its last sitting day on Wednesday 27 November.

As was the case in the previous year, 2013 was extremely busy, with the House considering over 100 Government bills and over 600 amendments. While just three private members' bills were introduced by members into the House this year, each attracted significant public attention. In addition the House received one private members' bill from the Assembly, on the second last sitting day of the year.

In many respects the year could be described as one of two contrasting halves.

In the first half of the year a number of significant pieces of Government legislation were passed either without amendment or with few amendments. Examples include the Ports Assets (Authorised Transactions) Bill, the Government Sector Employment Bill and the Victims Rights and Support Bill. The first half of the year also continued to be marked by relatively few orders for the production of state papers.

When sittings resumed in August, there was a different dynamic in the Legislative Council. While the House agreed to 20 orders for papers in 2013, two-thirds of these orders were made in the second half of the year. Similarly, the likelihood of Government bills being amended by the House rose in the second half of the year, culminating in the House's amendments to the Planning Bill made during the last two sitting days this year.

One thing that was constant throughout the year was the volume and the challenging nature of much of the Committee work undertaken.

### Procedural statistics for the 55<sup>th</sup> Parliament in 2013

The following statistics summarise the work of the Council in the dual roles of reviewing legislation and holding the executive government to account in 2013.

<b>Sitting days</b>	62
<b>Sitting hours</b>	480
<b>Average length of each sitting day</b>	7.7 hours

#### Bills

All bills passed by both Houses	112
- of which originated in the Council	9
Government bills passed in the Council	114
- of which were amended in the Council	24
Private members' bills passed by both Houses	0
Private members' bills introduced in the Council	3
Private members' bills received from the Assembly	1
- of which were passed by the Council	0

#### Amendments to bills

- circulated	629
- agreed to	147

<b>Notices of motion given</b>	681
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#### Formal business

- agreed to	350
- objected to	116

#### Petitions

Petitions received – general	48
Petitions received – irregular	14
Number of signatures	289,178

#### Questions

- on notice	2,266
- without notice	1,302

<b>Orders for papers</b>	20
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<b>Tabled papers</b>	1,245.
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### Legislation

#### Government legislation

Compared to 2012, while the total number of Government bills considered by the Council remained relatively steady, rising from 101 to 114, the percentage

of Government bills that originated in the Council dropped from approximately 20 to approximately 8 per cent. Perhaps the most striking comparison between the two years was the increase in 2013 of the number of bills amended and the overall number of amendments agreed to, rising from 15 to 24 and from 69 to 147 respectively.

The twenty-four Government bills amended in the Legislative Council were:

- (1) Road Transport Bill 2013
- (2) Small Business Commissioner Bill 2013
- (3) Health Legislation Amendment Bill 2013
- (4) Independent Commission Against Corruption and Other Legislation Amendment Bill 2013
- (5) Child Protection Legislation Amendment (Children's Guardian) Bill 2013
- (6) Victims' Rights and Support Bill 2013
- (7) Service NSW (One-stop Access to Government Services) Bill 2013
- (8) Statute Law (Miscellaneous Provisions) Bill 2013
- (9) Local Government Amendment (Early Intervention) Bill 2013
- (10) Local Land Services Bill 2013
- (11) Aboriginal Land Rights Amendment Bill 2013
- (12) Entertainment Industry Bill 2013
- (13) Skills Board Bill 2013
- (14) Residential (Land Lease) Communities Bill 2013
- (15) Building and Construction Industry Security of Payment Amendment Bill 2013
- (16) Combat Sports Bill 2013
- (17) Work Health and Safety Amendment Bill 2013
- (18) Civil and Administrative Tribunal Amendment Bill 2013
- (19) Crown Lands Amendment (Multiple Land Use) Bill 2013
- (20) Casino Control Amendment (Barangaroo Restricted Gaming Facility) Bill 2013
- (21) Cemeteries and Crematoria Bill 2013
- (22) Motor Dealers and Repairers Bill 2013
- (23) Statute Law (Miscellaneous Provisions) Bill (No. 2) 2013
- (24) Planning Bill 2013.

More than a third (51) of the amendments to government legislation agreed to during the year related to a single bill, the Planning Bill 2013. Consideration of this bill in committee of the whole occupied the majority of the last two sitting days this year. The Government opposed the majority of the amendments agreed to, some of which significantly altered substantial elements of the bill. The Government has decided to consider its response to the Council's amendments during the summer recess.

Overall, the House passed 147 amendments to Government bills in 2013. To date, the Assembly has agreed with 95 of the amendments made by the Council. However, the Legislative Assembly did not agree with the one amendment made to the Work Health and Safety Amendment Bill 2013, and sent a message advising that it disagreed with the Council's amendment. The House, after consideration of the Assembly's message, resolved not to insist upon the amendment.

The House also received a message from the Legislative Assembly advising that it had agreed to the Council's amendments to the Crown Lands Amendment (Multiple Land Use) Bill but would also be seeking the concurrence of the Council for a further amendment to the bill. The House resolved itself into committee of the whole, agreed to the further amendment and sent a message to the Assembly advising it of the outcome.

Four Government bills sit on the Council Notice Paper for 2014. The second reading debate for two of these bills is yet to commence, namely the Government Sector Employment Legislation Amendment Bill 2013 which was introduced in the second last sitting week, and the Graffiti Control Amendment Bill, which was introduced on 15 October 2013.

The Petroleum (Onshore) Amendment Bill 2013 was introduced in May 2013. A number of amendments to the bill were circulated in anticipation of consideration of the bill in committee of the whole. The second reading debate commenced in November at which time the Minister advised that the Government had now also circulated proposed amendments to the bill. Overall, 89 proposed amendments to the bill have been circulated.

Finally, the Industrial Relations Amendment (Dispute Orders) Bill 2012 sits on the Notice Paper for 2014, as it did throughout 2013, awaiting resumption of the interrupted second reading debate from 2012.

#### *Disallowance of delegated legislation*

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.

In 2013, the Council considered the disallowance of a Regulation on seven occasions, a marked increase in frequency compared to the previous two years. On five occasions the motion to disallow was defeated. Two regulations were disallowed in August this year, both relating to the intent to include superannuation payments within the 2.5 per cent legislated wage increase cap.

#### **Private members' bills**

Three bills were introduced by private members of the Legislative Council in 2013. All three bills attracted significant public and media attention. It was reported that members of the Government and the Opposition were allowed to vote according to their conscience with respect to two of these bills, both of which ultimately were defeated at the second reading stage.

The Rights of the Terminally Ill Bill 2013 was introduced in the Legislative Council in early May by Ms Faehrmann (The Greens). The second reading debate concluded at

the end of the month, with the bill being defeated (Division 13:26).

The Same Sex Marriage Bill 2013 was developed by the NSW Cross-Party Marriage Equality Working Group, comprised of individual members from the Legislative Council and the Legislative Assembly. The bill was introduced into the Council by Ms Sharpe (Australian Labor Party) at the end of October. When the second reading debate concluded on 14 November, the bill was narrowly defeated (Division 19:21).

In the case of both bills, debate was attended by a large number of citizens in the public gallery.

At the start of the year, the Crimes Amendment (Zoe's Law) Bill 2013 was introduced to the Legislative Council by Revd Nile (Christian Democratic Party). Limited debate on the second reading of the bill ensued throughout the year, with the House last considering the bill in June. On the second last sitting day of the year, the Crimes Amendment (Zoe's Law) Bill 2013 (No. 2), also a private members' bill, was received from the Legislative Assembly. While the two bills seek to achieve a similar policy objective, they differ in some important respects.

## Accountability

### *Questions to Ministers*

While there was a slight increase in the number of oral questions asked of Ministers in the House during Question Time in 2013, the number of questions asked has remained comparatively stable over recent years.

However, in 2012 there was a virtual doubling of written questions on notice. In 2013, the total of written questions again increased, from 2030 to 2266. The increase in the number of written questions in 2012 was most noticeable in the second half of that year. This trend appeared set to continue in 2013 with 1775 written questions being lodged in the first half of the year.

In May, the Government responded to the large volume of written questions by proposing that the House adopt a sessional order that would limit the number of written questions each member would be entitled to lodge each sitting week. The House commenced but did not conclude debate on the motion to adopt the sessional order, with resumption of the interrupted debate standing as an order of the day for the first sitting day in 2014. The rate of written questions being lodged decreased by more than two thirds in the second half of the year, with 491 questions lodged in this period.

### *Orders for papers*

2012 had been notable for a significant decrease in the number of orders for papers agreed to by the House, with only seven orders made that year. In 2013, there were twenty orders for the production of state papers made, a total in keeping with the annual average prior to 2012. Of the 20 orders made this year, 13 were agreed to in the second half of the year. Orders were made for documents relating to the following:

- (1) Former NSW Department of Primary Industries employee
- (2) Heritage order on "Penoomba" Warrawee

- (3) Heritage order on "Penoomba" Warrawee – further order
- (4) Yaralla Estate
- (5) 2013-2014 Budget
- (6) 2013-2014 Budget finances
- (7) Draft liquor promotion guidelines
- (8) Ernst & Young report "Department of Family and Community Services, Human Resources Capacity Calculation and Reporting
- (9) Yarralla Estate – further order
- (10) Department of Family and Community Services caseworker numbers
- (11) Lobbyists
- (12) Transport for NSW contracts
- (13) Bus contracts
- (14) NSW Health labour expenses cap
- (15) Executive appointments
- (16) Mr Matthew Daniel
- (17) Report on actions of former WorkCover NSW employee
- (18) Windsor Bridge
- (19) Racing agreements
- (20) Governance review of the Game Council.

Claims of privilege were made over documents relating to 13 orders. To date, none of the claims of privilege have been disputed by members.

### *The Mt Penny return to order*

An ongoing matter before the Privileges Committee throughout much of 2013 was the Mt Penny return to order of 2009.

In November 2009, the House ordered the production of State papers in relation to the 2009 Mt Penny mining exploration licence and tender process. A return was received from the Government later that month. However, in late 2012, following the publication of certain documents online by the ICAC as part of Operation Jasper, concerns were raised whether the 2009 Mt Penny order for papers had been fully complied with.

In March 2013, the matter was referred to the Privileges Committee for initial assessment of the documents identified by the ICAC. In April, the Committee found that certain documents identified by the ICAC should, *prima facie*, have been provided to the Parliament in the 2009 Mt Penny return to order. This was the first time the House had before it conclusive evidence that one of its orders for papers had not been fully complied with, as is required at law.

In May, the House referred a new inquiry to the Privileges Committee to investigate the reasons for the non-compliance. Following a significant inquiry over several months, the Privileges Committee reported in October 2013. The Committee found that the failure of

the Government to fully comply with the Mt Penny order for papers in 2009 was attributed almost exclusively to administrative failing within the former Department of Industry and Investment. However, the Committee did not find any evidence of deliberate actions to restrict the documents provided to the House in 2009.

## Petitions

In 2013, the House received 62 petitions, which represented a small increase on the previous year. However, the number of signatures increased dramatically rising from 23,837 to 289,178 signatures received this year. On two separate occasions, the House took receipt of a petition regarding international trafficking and harvesting of human organs, which contained 100,000 and 70,000 signatures respectively. The individual petition received that contained the next highest number of signatures related to the Government Sector Employment Bill, which contained 9,500 signatures.

The House received fourteen irregular petitions in 2013. Most frequently, these petitions were irregular because they were addressed to either the Legislative Assembly or to both Houses rather than to the Legislative Council. The House did not decline any petition presented to it during the year.

## Committees

2013 was an extremely busy year for committee activity. Sixteen inquiry reports were tabled during the year, while work continues on a further 13 inquiries (not including the 2014/15 Budget Estimates inquiries which will commence in August 2014).

The inquiries conducted by the Legislative Council Committees covered a range of interesting policy and accountability issues, with unanimous reports tabled in respect of a number of controversial and challenging subjects. Set out below are some brief notes concerning some of the more important procedural issues to arise in relation to committee work during 2013.

Over the Christmas-New Year break, hundreds of submissions were received by the Social Issues Committee's Inquiry into Same Sex Marriage legislation, with 7,586 submissions ultimately received – the highest number of submissions to a Legislative Council committee inquiry.

The trend noted in last year's *House in Review* summary regarding the increased number of select committees and reduction in the number of general purpose standing committee (GPSC) inquiries continued in 2013. Last year the House established four select committees while this year five select committees were established compared with only four GPSC inquiries over the same period.

Other procedural highlights include the first attempt by a committee to utilise standing order 226. This standing order allows a committee, with the consent of the relevant Minister, to make use of the services of the Parliamentary Counsel's Office (PCO) to prepare a draft bill for incorporation in a report. The Chair of the Select Committee on the Partial Defence of Provocation wrote to the Premier (the relevant Minister) seeking this

approval for the PCO to prepare a draft bill. While consent was not granted on this occasion, the Government response received some months after the Committee tabled its report included a draft exposure Bill which drew heavily on the Committee's recommendations for reform.

This year has also seen increased attempts by committees to exercise their power to order papers from the Government. The Chairs of the Select Committee on Greyhound Racing and the GPSC 1 Inquiry into allegations of bullying in WorkCover sought various documents in relation to their inquiries under standing order 208. However in both cases the Executive refuted the power of committees to order documents. While the Chairs sought and received these documents by utilising standing order 52 in the House, the resolution agreed to by the House in relation to the second issue specifically stated the documents were being sought through the House, "notwithstanding the inquiry being conducted by the Select Committee on Greyhound Racing in New South Wales and the power of the committee to order the production of documents, under standing order 52".

The Budget Estimates inquiry this year was marked by an even smaller number of 'Dorothy Dix' questions than the previous year. In 2012 Government members chose not to ask questions in ten out of 23 hearings; this year Government members elected to not ask questions in 19 of the 24 hearings.

At last year's Budget Estimates hearing into the Police portfolio by General Purpose Standing Committee No. 4, a significant procedural issue arose when the Deputy Commissioner declined to answer a question about *Taskforce Emblems* on the grounds that it might be in breach of statutory secrecy provisions. The Committee sought legal advice, which subsequently advised that the Committee has the power to compel answers to questions that may otherwise be caught by statutory secrecy provisions. GPSC 4 ultimately resolved not to pursue the matter until the work of the Police Integrity Commission and the Ombudsman in relation to aspects of Operation Emblems is finalised. This year at the commencement of the GPSC 4 hearing into Police and Emergency Services the Acting Chair the Hon Robert Borsak advised the hearing that while the committee has the power to ask questions in relation to *Taskforce Emblems*, a separate question is whether it is appropriate in the particular circumstances given that the Ombudsman was still investigating the issue. The Acting Chair considered that it was not appropriate given the investigation by the Ombudsman had not been completed, and hence did not permit any more questioning on the matter at this point in time.

2013 was especially significant as we celebrated the 25<sup>th</sup> anniversary of the modern committee system in the Legislative Council with a series of events in September, including a seminar and debate in the House. Further details of the C25 events can be found here: <http://www.parliament.nsw.gov.au/prod/web/common.nsf/key/C25>.

## A message from the Clerk

This will be the last edition of *House in Review* until the House resumes sitting in the first week of March 2014.

I would like to convey my thanks to those involved in the preparation of *House in Review* throughout the year. Finally, may I take this opportunity to wish all readers of *House in Review* a merry Christmas, a safe holiday season and a happy new year.

A handwritten signature in black ink, appearing to read 'DB', with a large, sweeping flourish at the bottom.

David Blunt  
Clerk of the Parliaments