

NEW SOUTH WALES LEGISLATIVE COUNCIL

HOUSE IN REVIEW



Volume 55/9

*Sitting period
23 to 26 August 2011*

The *House in Review* provides a summary of the New South Wales Legislative Council's activities for each sitting week. 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.

Condolence motion – The Honourable James Miltiadis Samios AM MBE

On 2 August 2011, the President reported to the House the death on 20 July 2011 of the Hon James Miltiadis Samios AM MBE, aged 77 years, a member of the House from 1984 to 2003.

Subsequently, on 24 August 2011, the Leader of the Government, Mr Gallacher, moved that the House place on record its deep regret at the loss sustained to the State by the death of Mr Samios. Members from all sides of the House in speaking to the motion praised Mr Samios' support of multiculturalism and his distinguished contribution to community harmony in NSW, his championship of the arts, and his distinguished parliamentary career. The motion was agreed to unanimously.

The condolence motion was attended by Mrs Rosemary Samios, wife of Mr Samios who was welcomed by the President into his gallery.

Vacancy in the representation of the State in the Senate

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 Helen Coonan on 22 August 2011.

The President subsequently reported a message from the Legislative Assembly to advise that it had resolved to meet with the Legislative Council for the purposes of a joint sitting of both Houses to chose a replacement for Senator Coonan, and requesting that the Council fix the time and place of the joint sitting.

Select Committee on the Kooragang Island Orica Chemical Leak

The House appointed a select committee to inquire into the circumstances surrounding the Orica chemical leak that occurred at Kooragang Island, together with the Government's response to the incident.

Retirement of the Clerk of the Parliaments

The President advised that he had received with regret a letter from the Clerk of the Parliaments, Ms Lynn Lovelock, advising of her retirement on 7 October 2011. The President further advised that following an external recruitment process, the Governor, with the advice of the Executive Council, had approved the appointment of the Deputy Clerk, Mr David Blunt, as Clerk from 8 October 2011.

Government business

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

Transport Legislation Amendment Bill 2011

The bill originated in the Legislative Council.

Summary: The bill amends the *Transport Administration Act 1988* and other Acts to establish new arrangements for the administration of public transport in NSW. In particular, the bill establishes Transport for NSW (TfNSW), which will be responsible for the delivery of transport services and infrastructure by public transport agencies. The bill also establishes Roads and Maritime Services, which will be the principal roads authority in NSW. These new agencies will take over the functions previously performed by RailCorp, the Roads and Traffic Authority, the State Transit Authority, Sydney Ferries, the Maritime Authority of New South Wales, the Transport Construction Authority and the Country Rail Infrastructure Authority. The Director General will exercise (on behalf of the Government) employer functions in relation to transport employees.

Proceedings: The bill was introduced, read a first time and declared urgent. In his second reading speech, the Minister (Mr Gay) indicated that the bill fulfils a long-standing commitment by the Liberal-National Coalition to improve public transport services by ensuring that the transport system is designed around the needs and expectations of customers. The measures contained in the bill are designed to deliver better integration across transport modes, greater accountability and transparency in the delivery of transport services, greater efficiency in the delivery of transport infrastructure and greater environmental sustainability. The Minister also cited

widespread support from all sections of the community for the reforms, including businesses.

The Opposition, while not opposing the bill, raised serious concerns about the entitlements and conditions of transport workers in NSW. The Opposition argued that while the bill stipulates that the base salaries of transport employees will be maintained, other terms and conditions of employment are not guaranteed. Particular reference was made to those clauses of the bill which allow the terms and conditions of transferred transport staff to be varied by the Director General. The Opposition also raised concerns that the bill removes the requirement that 'priority' be given to passenger rail services over freight rail services, substituting instead 'reasonable priority', contrary to the purported purpose of the bill to meet the needs and expectations of passengers.

The Greens supported the bill, arguing that an integrated transport authority is needed, and that transport decision making needs to be integrated in the interests of the community. However, the Greens raised some concerns, such as how the new TfNSW will integrate with the new Infrastructure NSW, and the resources devoted to bicycle lanes and cycle ways within the new TfNSW. The Greens also reiterated the concerns of the Opposition in relation to the terms and conditions or employment of transport workers and the lesser priority to be given to passenger rail services, potentially in favour of coal freight.

The Christian Democratic Party supported the bill, welcoming the opportunity for better coordination of transport services.

In his reply, the Minister argued that transport staff will not suffer any decreased pay or conditions, and that this is guaranteed in the bill. The Minister also defended the decision to provide greater access to the rail network for freight providers and emphasised that TfNSW will work cooperatively with Infrastructure NSW. The second reading was agreed to.

In the committee stage, the Greens moved a series of amendments to redefine 'transport customers' as 'transport users' and to ensure the definition of transport users incorporates cyclists and pedestrians. The amendments were negated. Separate Greens amendments to define 'customer' in the bill, and to insert reference to ecologically sustainable development into the bill, were also negated.

The Opposition moved a series of amendments to address their concerns in relation to the terms and conditions of employment of transport workers. The Government opposed the amendments, disputing the claim that workers' rights will not be protected. The amendments were agreed to with the support of the Greens and the Shooters and Fishers Party (Division 19:17). The Opposition also successfully moved to delete a clause of the bill providing the Director General with discretion to dismiss a person who refuses transfer with no valid reason (Division 18:16). Further Greens amendments in relation to the powers of the Director General to fix wages and conditions (Division 17:19) and in relation to workers thought to be unfit for work were negated.

The Opposition also moved an amendment to delete the clause of the bill that downgrades the priority currently given to rail services over freight rail services. The Government opposed the amendment, arguing that any rail system should give reasonable consideration to both passenger and freight services. The amendment was negated (Division 16:18).

The bill was reported to the House with the amendments, read a third time and forwarded to the Assembly for concurrence.

Gaming Machine Tax Amendment Bill 2011

Summary: The bill amends the *Gaming Machine Tax Act 2001* to reduce the gaming machine tax rate payable by registered clubs, with the top rate of gaming machine profit reduced from 30.9 per cent to 28.4 per cent. The bill also renames the community development and support expenditure (CDSE) tax rebate scheme as 'ClubGRANTS' and increases the tax rebate available to a registered club from 1.5 per cent to 1.85 per cent of the club's prescribed profits (being a club's gaming machine profits that exceed \$1,000,000 during any tax year). The bill also creates a new category of funding expenditure for large scale community projects associated with sport, health and community infrastructure, and applies 0.4% of registered clubs' prescribed profits towards a state-wide fund for such projects.

Proceedings: The bill was received on 11 August 2011 and read a first time. Debate resumed on 25 August 2011. In his second reading speech, the Parliamentary Secretary (Mr Mason-Cox) argued that the bill implements two important election commitments: a reduced gaming machine taxation rate and an expanded community development and support scheme (ClubGRANTS). Together the amendments will benefit registered clubs by approximately \$300 million over a four-year period to 2015, which is an important contribution to the sustainability of the club industry and an expansion of its role in developing and supporting the community.

The Opposition acknowledged that the bill fulfils an election commitment of the Government. However, it questioned the Government's priorities in returning \$300 million in tax receipts at a time when it is seeking to cut expenditure in government service areas. It also cautioned that it was essential to ensure that the method for distribution of funds from the new ClubGRANTS remained fair and socially equitable. The Greens did not oppose the bill but also questioned the decision to forego tax receipts which could be better used elsewhere, noting in particular the number of teachers that could be employed in the education system for \$300 million.

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

Restart NSW Fund Bill 2011

Summary: The bill establishes the Restart NSW Fund for the purpose of setting aside funding for the delivery of major infrastructure projects and other necessary infrastructure.

Proceedings: The bill was received from the Legislative Assembly and read a first time. In his second reading

speech, the Parliamentary Secretary (Mr Mason-Cox) indicated that the establishment of the Restart NSW Fund will ensure that funding is available for infrastructure projects identified and prioritised by Infrastructure NSW, such as hospital upgrades and road works. The Parliamentary Secretary noted that the establishment of the Fund is consistent with a Government election commitment.

The Opposition did not oppose the bill, recognising that it was an election commitment, while questioning whether the establishment of the Fund needed legislation – it could equally be implemented by Treasury by administrative means. The Opposition also questioned where deposits into the Fund will come from, arguing that while the Government has indicated that windfall tax revenue will be allocated to the Fund, it is not clear how windfall revenue is any different from normal budget surpluses. The Opposition also noted the record \$16.6 billion spending on infrastructure in the last budget of the former Government.

The Greens raised concerns that the Government will likely sell assets, such as the desalination plant, electricity assets and rail assets, to finance the Restart NSW Fund. At the same time, the Greens criticised the Government for, in their view, squandering \$1.3 billion since coming to office through measures such as the gaming machine tax break.

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

Graffiti Legislation Amendment Bill 2011

Summary: The bill, as originally introduced, amended various acts to require a court making a community service order against a person guilty of a graffiti offence to impose a condition requiring the person to remove the graffiti where practical. The bill also empowered the courts to make certain orders with respect to the driving licence of an offender, including suspending the licence for up to six months. In addition, the bill removed the power of police and specialist youth officers to deal with young offenders by way of caution, warning or youth justice conference instead of court proceedings.

Proceedings: Debate on the second reading of the bill resumed from 11 August 2011 (see the previous edition of *House in Review* for earlier debate). On the resumption of the debate, the bill was read a second time.

In the committee stage, the Opposition moved a series of amendments to allow a caution to be given for a first graffiti offence. The amendments were agreed to (Divisions 18:16). The Opposition, Greens and Shooters and Fishers Party also successfully voted against those provisions of the bill that enable a court to make certain orders with respect to the driving licence of an offender, and which require a court making a community service order to require offenders to remove their graffiti (Division 15:18).

The bill was reported to the House with the amendments, read a third time (Division 29:5) and returned to the Assembly with the amendments.

The Assembly subsequently returned the bill to the Council with a message disagreeing with the Council's amendments. Consideration of the Assembly's message was set down for a future day.

Australian Jockey and Sydney Turf Clubs Merger Amendment Bill 2011

Summary: The bill amends the *Australian Jockey and Sydney Turf Clubs Merger Act 2010* by dissolving the existing trust managing Randwick Racecourse, which dates back to 1863, and creating a new corporation to be called the Randwick Racecourse Trust, which will have a modern corporate governance structure and will exercise the functions of the lessee of the Racecourse. The bill also requires the new Trust to obtain the approval of the Minister before selling, mortgaging or otherwise disposing of any of the racecourse land or buildings.

Proceedings: The bill was received on Tuesday 9 August 2011 and read a first time. Debate resumed on 23 August 2011. In his second reading speech, the Minister (Mr Gallacher) indicated that the main purpose of the bill is to replace the current life tenure provisions for Randwick Racecourse trustees with fixed terms and to ensure that the management of the Crown land at Randwick is in keeping with modern practice and community expectations, and is for the public benefit.

The Opposition and the Christian Democratic Party supported the bill noting its primary aim was to remove the current life tenure provisions for trustees. The Greens also supported the bill but indicated they would have preferred even greater restrictions on the capacity for sale, disposal or acquisition of any of the Racecourse. The second reading was agreed to.

In the committee stage, the Greens moved an amendment that would prohibit the Trust from selling, mortgaging or disposing of the whole or any part of the Racecourse, and that would disallow the compulsory acquisition of all or part of the Racecourse, without an Act of Parliament. The amendment was negated.

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

Private members' business

Note: Private members' business is business moved 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

Passing of Nancy Wake (Mrs Pavey, The Nationals)

Summary: The motion noted the passing of Australia's most decorated World War II servicewoman, Nancy Wake, also known as the 'White Mouse', and paid tribute to her heroic actions as part of the French Resistance.

Proceedings: Standing and sessional orders were suspended to bring on the item of business. Mrs Pavey described Nancy Wake as a citizen of the world, paid tribute to her wartime heroics and related anecdotes of her time as a

resident of the mid north coast of NSW in her later life. The motion was supported by all members of the House.

North-west rail link (Ms Ficarra, Liberal Party)

Summary: The motion congratulated the O'Farrell Government on its decision to fast track the north-west rail link; noted the need and support for the link and the action taken on the project to date; and called on the Federal Government to recognise the north-west rail link as Sydney's transport priority and to divert funding to the project from the Epping to Parramatta rail link.

Proceedings: Debate on the motion commenced according to precedence. Ms Ficarra advised that the north-west rail link represented the biggest expansion of the Sydney rail network since the 1930s, and noted that the north-west was a growing population centre with a heavy reliance on private motor vehicle use due to a history of unfulfilled promises regarding rail links to the area.

The Opposition supported the construction of the north-west rail link, but suggested that the motion was self-congratulatory and premature. Ms Sharpe on behalf of the Opposition moved an amendment to the motion to note rather than to congratulate the Government on the progress to date, to call on the Government to finalise the submission to Infrastructure Australia and to start building the Epping to Parramatta rail link.

The Greens stated their support for the fast tracking of the north-west rail link, and supported the Opposition amendments to the motion. The Christian Democratic Party supported the original motion, noting both the need for the rail link and its magnitude.

Debate was interrupted for Questions.

Motions taken as formal business

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

- (1) Mr Colin Allen, President of the World Federation of the Deaf (Ms Westwood).
- (2) His Grace Archbishop Issam John Darwish (Mr Ajaka).
- (3) Health benefits of not smoking (Dr Kaye).
- (4) Malek Fahd Islamic School (Dr Kaye).

Orders for papers

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

Orders made

- (1) **Orica Limited's Kooragang Island site (Ms Faehrmann):** The order related to the chemical release from the Kooragang Island site that occurred on 8 August 2011. The motion proceeded as formal business. Due: 8 September 2011.
- (2) **Impact of the Federal Government's proposed carbon tax legislation (Ms Sharpe):** The order related to modelling of the impact of the Federal Government's proposed carbon tax

legislation on public transport costs and fares. Due: 9 September 2011.

Return to order

- (1) **Industrial Relations Amendment (Public Sector Conditions of Employment) Bill 2011:** received 18 August 2011, one box public, one box privileged.

Petitions received

- (1) Moratorium on coal seam gas – 85 signatures (presented Mr Buckingham).
- (2) Coal seam gas exploration – 450 signatures (irregular, presented Mr Buckingham).
- (3) La Perouse Museum – 103 signatures (presented Dr Phelps).
- (4) Moratorium on coal seam gas – 67 signatures (presented Mr Buckingham).
- (5) Wentworth Falls railway station – 1,108 signatures (irregular, presented Dr Phelps).

Committee activities

Committee references

Budget estimates: The resolution referring the Budget estimates and related papers to the General Purpose Standing Committees for inquiry and report, adopted on 12 May 2011, was amended to alter the hearing schedule.

Committee membership

The following change to committee membership was reported:

Joint Select Committee on the Parliamentary Budget Office: Mr Secord in place of Ms Fazio.

Committee report tabled

Legislation Review Committee: 'Legislation Review Digest No. 2/55', 23 August 2011.

Reports tabled

Ombudsman: 'Report of Reviewable Deaths in 2008 & 2009 – Volume 1: Child Deaths', August 2011.

Adjournment debate

Tuesday 23 August 2011

Gunnedah Agquip Exhibition (Mrs Mitchell); Somalia famine (Mr Moselmane); National Disability Insurance Scheme (Ms Barham); Wallsend derelict building, Forest Science Centre (Mr Primrose); Armenian Genocide and Nagorno-Karabakh (Mr Shoebridge); Arncliffe Scots Junior Rugby League Football Club (Mr Ajaka).

Wednesday 24 August 2011

Equal Pay Day (Ms Sharpe); Mineral Exploration and Investment Conference (Mr Buckingham); Charles Sturt University doctor training (Miss Gardiner); Australian Local Government Women's Association Sixtieth Anniversary (Ms Westwood); Construction industry contracting (Ms Voltz); National disability insurance scheme (Mr Mason-Cox).

Thursday 25 August 2011

Cardiovascular disease (Mr Green); Workers' pay and conditions (Ms Cotsis); Australian Powerchair Football Association (Mrs Maclaren-Jones); Grey Nurse Shark protection (Ms Faehrmann); Andrew Chan and Myuran Sukumaran death sentence (Mr MacDonald); Minto mall (Mr Secord); Smoke detectors (Ms Voltz).

Friday 26 August 2011

Law Enforcement Against Prohibition [LEAP] Australia (Ms Fazio); Tribute to Simone Morrissey (Dr Kaye); Funeral industry (Ms Cusack); Tribute to Cardinal Patrick Moran (Mr Foley); Coal mining (Mr Borsak); Regional health (Mrs Pavey); Tri-Nations Rugby Test against the All Blacks (Dr Phelps).

Feedback on *House in Review*

We welcome any comments you might have on this publication.

We are particularly keen to know which parts of the *House in Review* you find most useful and whether you have any suggestions for improvement. Please email your comments to stephen.frappell@parliament.nsw.gov.au.

All responses will be kept strictly confidential.



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