

NEW SOUTH WALES LEGISLATIVE COUNCIL

HOUSE IN REVIEW



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15 to 17 March 2016*

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

The primary matter considered by the House this week was the Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Bill 2016, debate on which carried over two sitting days and well into the evening on Tuesday. Following the final passage of the bill on Wednesday, on Thursday the Opposition lodged a protest against the bill to be forwarded to His Excellency the Governor. The House also considered two additional government bills, a private member's bill, two private members motions and two disallowance motions.

Next week, in recognition of the upcoming Easter long weekend, the House will sit from Monday to Wednesday, rather than the usual Tuesday to Thursday, with the next edition of *House in Review* scheduled for Thursday.

Protest against bill

On Thursday 17 March 2016, the President reported receipt of a protest from members of the Opposition against the passage of the Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Bill. The bill had been strongly opposed by the Opposition, Greens and AJP.

Each protest received is inscribed in the Clerk's Protest Book, by hand, and then forwarded to the Governor. The protest book maintained by the Clerk has been used since the receipt of the first protest in 1857. To date, 53 protests have been received.

Return to order – Order directed to a non-government entity

In the [February edition of *House in Review*](#), it was noted that an order for papers regarding under-dosing of chemotherapy patients had been agreed to. The order was directed to the Minister for Health, NSW Health and St Vincent's Health Australia. [Last week's edition](#) then reported that correspondence had been received from the Department of Premier and Cabinet (DPC) advising that St Vincent's Health Australia is a group of not-for-profit companies and is not subject to direction or control by or on behalf of the Government. However, other documents were in the process of being collated in response to the order by the Government.

On Thursday 17 March 2016, a return to the order was received. Within the return was correspondence from St Vincent's Health Australia to DPC noting their receipt of legal advice that standing order 52 (which relates to the Council's powers to order documents) does not apply to St Vincent's Health Australia or any of its subsidiaries. Nevertheless, St Vincent's Hospital Sydney advised that it was fully co-operating with an independent review constituted by the Cancer Institute NSW and the Clinical Excellence

Commission on behalf of NSW Health, and complete and unrestricted access to St Vincent's Hospital Sydney's records and staff had been provided to the review. St Vincent's Health Australia expected that relevant documents would be provided in response to the return by NSW Health.

This is the first occasion on which an order for papers has sought documents from a non-government entity.

Disallowance motions

This week the House debated two motions to disallow the provisions of certain statutory instruments, utilising the powers afforded to the House under s 41 of the Interpretation Act 1984.

On Tuesday 15 March 2016, Dr Faruqi (The Greens) moved a motion to disallow item 2 of Schedule 2 of the [Road Transport Legislation Amendment \(Bicycle Riders\) Regulation 2016](#), which seeks to increase penalties for offences that relate to the use of bicycles or to persons riding bicycles. The new penalties were announced as part of the new 'Go Together' measures, which seek to enhance safety for both motorists and cyclists. In speaking to the motion, Dr Faruqi noted the significant increases in fines for cyclists who break road rules, and argued that the regulation would discourage people from cycling which is a cheaper, more sustainable form of transport. Opposition members supported the motion, opposing the penalty increases for cyclists and spoke of other countries around the world which have made moves to encourage cycling.

The Government opposed the motion, noting that with cycling injuries remaining high in New South Wales, the Government had to look at tougher deterrents and increased enforcement to improve safety for cyclists and other road users, such as pedestrians.

The motion was negatived (Division: 17/22).

Also on Tuesday 15 March 2016, Revd Mr Nile (CDP) moved a motion to disallow the [Passenger Transport Amendment \(Taxis and Hire Cars\) Regulation 2015](#), which regulates ridesharing services such as Uber, and removed certain regulations applying to the taxi and hire car industry. In speaking to the motion, Revd Mr Nile focused on the impact of the regulation on the taxi industry, including a significant reduction in the value of taxi plates, which would be particularly detrimental for drivers who intend to sell their plates to fund their retirement. The Shooters and Fishers Party supported the motion, with Mr Brown arguing that the Government's proposed taxi industry compensation package will not adequately offset the reduction in the value of taxi plates.

The Government opposed the motion, noting that the regulation was only the first component of wider reforms to modernise the point-to-point transport industry. The Opposition and The Greens also opposed the motion, arguing that disallowing the regulation would mean that ridesharing, a key part of the growing 'sharing economy', would not be able to operate legally in New South Wales.

The motion was negatived (Division: 4/35).

Government business

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

[Inclosed Lands, Crimes and Law Enforcement Legislation Amendment \(Interference\) Bill](#)

House of origin: Legislative Assembly

Debate commenced on Tuesday 16 March 2016 and carried over two sitting days. The bill implements an election commitment made by the Baird Government to legislate to address the risks to businesses, protestors and the public posed by protest activities by:

- Creating an aggregated offence of unlawful entry and interference with business on inclosed lands and increasing the maximum penalty from \$550 to \$5,500. Inclosed lands are defined as those on which a business or business like activity is being conducted.
- Applying a penalty of 7 years imprisonment for intentionally or recklessly interfering with equipment or other things associated with a mine, former mines and other locations associated with extraction, exploration and work construction sites for minerals, gas or other petroleum.
- Conferring additional search and seizure powers to police, without warrant, where a person is reasonably suspected of possessing equipment to be used to lock-on to a plant, equipment or structure.
- Allowing police to use move-on powers to prevent obstructions caused by demonstrations and protests.

In speaking to the bill, the Government highlighted the risks that some protestors take which threaten the safety of others and severely disrupt lawful business activity.

The Opposition and Greens opposed the bill. Both parties spoke to their overriding concern that the bill would prevent peaceful, non-violent protest actions and allow police to break up civil protests. They were also opposed to farmers being potentially prevented from protesting coal seam gas activities on their properties; the scope of the search, seizure and move-on direction powers afforded to police; the severity of the penalty of 7 years imprisonment for those who 'locked on' to equipment or trees to protect land; and the breadth of the activities that would fall within the definitions of the bill. Members cited concerns expressed by the Law Society and the Bar Association.

The Animal Justice Party (AJP) also opposed the bill, and argued that it would curtail the freedom to protest. The AJP highlighted the importance of protest activities to successful campaigns to improve animal rights and prevent cruelty.

The Shooters and Fishers Party (SFP) supported the bill, noting the high risk behaviour displayed by some protestors, and the subsequent risks to others, including police officers. The Christian Democratic Party (CDP) also supported the bill and highlighted concerns raised by many citizens that unsafe protest activities unnecessarily infringed on the safety of others. The second reading was agreed to (Division: 22/17).

During consideration in committee of the whole on Wednesday, four SFP amendments were unanimously agreed to. The amendments ensured that police powers to give move-on directions would not be broadened in relation to industrial disputes and inserted a requirement for a statutory review of the changes made by the bill within three years.

Additional amendments were also moved, but were not successful. The Greens moved amendments which sought to ensure that the penalty of imprisonment would only apply to damage, or attempted damage, of equipment, and that the penalty applied only to behaviour directly associated with a mine. The Greens, Opposition and AJP then voted against the inclusion of the imprisonment provisions (Schedule 2) in the bill. The Greens, Opposition and AJP also voted against the inclusion of Schedule 1, which creates a new offence of aggravated unlawful entry on inclosed lands.

The Opposition moved amendments that sought to limit the search and seizure powers of police by requiring officers to have a warrant and by removing reasonable suspicion grounds; to ensure that property seized by police could not be forfeited for destruction or disposal; and to remove the new move-on direction powers afforded to police. The Greens sought to limit the move-on powers by ensuring that directions could not be given without the authorisation of the Supreme Court to do so, where the Court was satisfied that it was in the public interest to grant such powers. The amendments were not successful.

The bill was reported from committee with the SFP amendments. On the third reading being moved, the Opposition sought to refer the bill to the Standing Committee on Law and Justice for report. The amendment was supported by the Greens and AJP, but defeated on the vote of the Government, SFP and CDP (Division: 16/20). The third reading was agreed to (Division: 20/16), and the bill was returned to the

Assembly. On Thursday 17 March 2016, the House received a message advising that the Assembly had agreed to the Council's amendments to the bill.

On Thursday 17 March 2016, the President also reported the receipt of a protest against the bill, signed by members of the Opposition. The protest is discussed above.

[Drug Misuse and Trafficking Amendment \(Drug Exhibits\) Bill 2016](#)

House of origin: Legislative Assembly

The bill updates and streamlines the system for the testing, transportation and destruction of illegal drugs seized by the NSW Police Force, while seeking to decrease the time taken to finalise drug matters in courts and safeguard the rights of the accused by introducing additional rights of review. The bill responds to concerns raised in a performance audit by the NSW Auditor-General in February 2013, which found that while the police generally deal with drug exhibits well, there was scope for improvement to increase safety and efficiency and decrease costs.

The Opposition did not oppose the bill, noting the significant efficiencies and improvements to be achieved. The Greens also did not oppose the bill, citing examples of the poor storage and handling of evidence in the past and the significant protections the new procedures would put in place for police officers. The Greens noted that the poor ventilation of safes and storage facilities in local area commands remained an ongoing issue.

The CDP supported the bill, citing the party's ongoing concerns about health impacts on police officers who handle drug exhibits, and their support for new security measures that would apply to seized drugs.

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

[Electricity Supply Amendment \(Advanced Meters\) Bill 2016](#)

House of origin: Legislative Council

Debate resumed from 9 March 2016 (see [previous House in Review](#)). While members expressed varying support for the bill, all spoke to the problems experienced with the compulsory rollout of smart metering in Victoria, noting that the voluntary rollout proposed for NSW was a better alternative.

While the Opposition supported the concept of smart metering, they were concerned that households with solar energy would in effect be forced to install smart meters and pay a fee of up to \$700 unless they sign on for a long-term contract with a retailer. The Opposition was also concerned that consumers may have to pay up-front charges for the metering, applicable each time a customer changed retailer, or be paid less for the energy sold back to the grid under the new scheme. The Opposition foreshadowed amendments to the bill. The Greens expressed similar concerns, and emphasised the need to ensure that accredited installation providers were adequately trained in view of their concern that the scheme is being rolled out in haste.

The CDP supported the bill but suggested that the ownership of smart meters remain with the retailers, who would supply the meter free to the consumer and remove the meter if the consumer changed retailers. The CDP also emphasised the need for those installing meters to be adequately trained and qualified.

The second reading of the bill was agreed to and consideration in committee of the whole was set down for the next sitting day.

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. Private member's business takes precedence on Thursdays.

Bill

Steel Industry Protection Bill 2016 (Mr Shoebridge, The Greens)

The bill seeks to ensure, as far as practicable, that Australian steel is used in infrastructure or public works constructed by or on behalf of public authorities in projects where more than two tonnes of steel is required. This obligation extends to third parties contracted to construct public works on behalf of public authorities. Such contractors are required to provide a report to the public authority and the Independent Pricing and Regulatory Tribunal (IPART) verifying the quantity and origins of any steel used under the contract. The bill also contains certain exclusions from the obligation to use Australian steel, for example, where an item is made from a form or quality of steel that is not manufactured in Australia and could not be manufactured in Australia for a reasonable cost.

In speaking to the bill, Mr Shoebridge identified the significant challenges facing the steel industry in New South Wales, including a prolonged downturn in international steel prices and the dumping of cheap steel by foreign manufacturers. Mr Shoebridge argued that a commitment to use Australian steel in public infrastructure projects would secure the ongoing viability of the State's steel industry, protecting the jobs of workers and securing long-term investment in high quality steel production into the future.

Motions

New tolls on existing roads (Mr Mookhey, Labor Party)

The motion noted a commitment made by former Premier Barry O'Farrell that a Liberal Government would not put any new tolls on existing roads, and suggested that the Baird Government has broken that promise by placing tolls on existing roads, including the M4. The motion called on the Government to uphold its promise that there would be no tolls on an existing road as part of WestConnex construction.

In speaking to the motion, Mr Mookhey stated that the Government intends to apply a new toll on the M4 between Parramatta and Homebush, a strip of road that is currently toll free. Mr Mookhey noted that the toll will last for 43 years and expire in 2060, the funds from which will go towards the completion of stages two and three of the WestConnex project.

The Government opposed the motion, arguing that the Government had always said that tolls would be applied to new or improved roads. The Government moved an amendment to the motion to instead note the commitment made by former Premier O'Farrell that a Liberal Government would start work on a missing motorway link in its first term, that the Government had delivered on its promise to deliver new motorways including the M4, and that the Labor Government had failed to deliver the new motorway links during 16 years in office.

The Greens supported the motion in its original form, in keeping with their stated opposition to re-tolling the M4 and to the broader WestConnex project. The Greens also opposed the Government's amendment.

The CDP noted their concern about the impacts of tolling the M4, particularly the financial burden the toll would place on key workers such as nurses. The CDP noted that those who required affordable housing had traditionally moved to areas such as Penrith and the far western suburbs, and questioned where workers would now live given the need to factor in the cost of toll roads to their travel to work. The CDP voted in support of the Government amendment to the motion.

The Government's amendment to the motion was agreed to (Division: 21:16), and the motion as amended was agreed to (Division: 21:16).

Commonwealth Day (Mr Farlow, Liberal Party)

The motion noted that on 14 March 2016, Australia and other Commonwealth countries celebrated Commonwealth Day, an opportunity to acknowledge the strong and diverse family of nations that make up the Commonwealth and reflect on its successes and future ambitions.

In support of the motion, Mr Farlow spoke to the history of the Commonwealth and Commonwealth Day, including the change of name from 'Empire Day' to 'Commonwealth Day' in 1958. Mr Farlow noted that this change was made in recognition of the new post-colonial relationship between nations that were no longer part of the empire but were now the Commonwealth of Nations. Mr Farlow highlighted key features of the Commonwealth structure, including the Commonwealth Games; the Commonwealth Foundation, which aims to assist civil society organisations in promoting democracy; the Commonwealth of Learning, which encourages open learning and distance education; the Association of Commonwealth Universities; and the Commonwealth War Graves Commission.

The Nationals spoke in support of the motion, noting that there is no denying the Commonwealth's role in shaping Australia's identity. Mr Franklin noted that this year's theme, "An Inclusive Commonwealth", is a fitting theme for what is a fundamentally multicultural organisation.

The CDP supported the motion, noting that Commonwealth of Nations is an example of how nations can work together in harmony and that the Commonwealth plays an important role in promoting democracy and human rights throughout the world.

Subcontinental Community in New South Wales (Mr Primrose, Labor Party)

The motion recognises the enormous contributions made by those of sub-continental heritage in New South Wales, congratulates the community's commitment to social cohesion and interfaith dialogue, and thanks the community for sharing their rich and vibrant cultural traditions.

In speaking in support of the motion, Mr Primrose stated that the subcontinental community gives New South Wales the ability to maximise the economic, social and cultural opportunities that come from engagement with expanding and dynamic nations. Mr Primrose noted the extensive trading, export and sporting links between Australia and subcontinental countries, and spoke to the contributions and achievements of numerous members of the New South Wales subcontinental community.

Debate on the motion was interrupted by sessional order and set down for resumption next sitting day.

Motions taken as formal business

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

- (1) Climate change and global temperatures (Ms Barham).
- (2) Mr Quae Hung Ly (Mr Wong).
- (3) Close the Gap Day (Ms Barham).
- (4) Taya Evans, Leo of the Year (Mrs Taylor).
- (5) Festival of Chanukah celebrations at NSW Parliament (Mr Clarke).
- (6) Ballina High School Student Representative Council (Mr Buckingham).
- (7) Sergeant Geoffrey Graham Richardson (Mr MacDonald).
- (8) NSW Seniors Festival (Ms Barham).
- (9) Climate change and human health (Ms Barham).
- (10) Bangalow Historical Society (Mr Buckingham).
- (11) Ahmadiyya Community Australia Day celebration (Mr Clarke).
- (12) Park Lane Theatre, Lennox Head (Mr Buckingham).
- (13) Serbian Festival of Sydney (Mr Clarke).
- (14) Feast of Saint Maroun (Mr Clarke).

- (15) Festival of Chanukah celebration in Martin Place (Mr Clarke).
- (16) 2016 Lunar New Year celebrations (Mr Wong).
- (17) Rural Fire Service Far North Coast (Mr Franklin).
- (18) Arab Women in the West Conference (Mr Moselmane).
- (19) Anglican Dean of Sydney (Mr Clarke).
- (20) Homelessness amongst older women (Ms Barham).
- (21) Greek Festival of Sydney (Mr Clarke).
- (22) Visit of His Holiness Patriarch Kyr Irinej (Mr Clarke).

Orders for papers

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

Return to order

- (1) **Under-dosing of chemotherapy patients:** received 17 March 2016, 11 boxes public, 2 boxes privileged.

Committee activities

Committee report tabled

Legislation Review Committee: ‘Legislation Review Digest No. 15/56’, dated 15 March 2016.

Committee reports debated

General Purpose Standing Committee No. 6: The House concluded the take-note debate on Report No. 1 entitled ‘Local Government in New South Wales’, dated October 2015.

General Purpose Standing Committee No. 4: The House concluded the take-note debate on Report No. 32 entitled ‘Budget Estimates 2015-2016’, dated November 2015.

General Purpose Standing Committee No. 5: The House concluded the take-note debate on Report No. 42 entitled ‘Budget Estimates 2015-2016’, dated November 2015.

Inquiry activities

Select Committee on the Legislative Council committee system

The committee has received 11 submissions to date and intends to hold its first hearing in April 2016.

General Purpose Standing Committee No. 2

Inquiry into elder abuse in New South Wales

The committee has now received a total of 115 submissions and will hold its final hearing on 18 March 2016. The report is expected to be tabled mid-year.

General Purpose Standing Committee No. 3

Inquiry into reparations for the stolen generations in New South Wales

The closing date for submissions has been extended until 31 March 2016. The committee will hear from a further witness on 22 March 2016 and is in the process of drafting its report, which is due to be tabled mid-year.

Law and Justice Committee

Inquiry into the security classification and management of inmates sentenced to life imprisonment

The committee is in the process of drafting its report which it expects to table in late March 2016.

State Development Committee

Inquiry into economic development in Aboriginal communities

The committee held its first hearing in Sydney on 26 February 2016. The committee conducted its first site visit to various sites on the Central Coast on Monday 14 March, and will visit Dubbo, Tamworth and the South Coast in coming months to take evidence in relation to both this inquiry and the inquiry into regional planning processes in NSW.

Inquiry into regional planning processes in NSW

The committee held its first hearing in Sydney on 11 March 2016 and will conduct regional site visits over the coming months (see above).

Adjournment debate

Tuesday 15 March 2016

Compulsory Third Party insurance reform (Mr Pearce); Local government amalgamations (Mr Primrose); Environment legislation (Dr Faruqi); Youth Frontiers Awards (Mrs Taylor); Deaths of people in residential care (Ms Cotsis).

Wednesday 16 March 2016

Affordable housing (Ms Barham); Regional health and western New South Wales (Mrs Mitchell); Monopolies and crony capitalism (Dr Phelps); Older women (Mr Wong); Gender equity (Mr Moselmane); Rural New South Wales (Mr Borsak).

Thursday 17 March 2016

Senate voting reform (Mr Brown); Alcohol lockout laws (Mr Mallard); Murray Darling Basin (Mr Buckingham); Essential Energy Enterprise Agreement (Mr Searle); Religious discrimination (Mr Farlow); Koala protection (Ms Sharpe).

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