

NEW SOUTH WALES LEGISLATIVE COUNCIL

HOUSE IN REVIEW



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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 one Government bill debated in the House this week was the Crimes Amendment (Intoxication) Bill 2014, the second part of the Government's plan to address alcoholic violence. The bill was considered in detail and returned to the Assembly with nine amendments. On Thursday afternoon, the Assembly advised that it disagreed with the Council's amendments, stating that they fundamentally changed the character of the bill. The Assembly's message has been set down for consideration in committee of the whole.

This week also saw debate on two private members' bills. Debate continued on the second reading of the Crimes Amendment (Provocation) Bill, which was introduced into the House last week by Revd Mr Nile; while debate commenced on the second reading of the TAFE Changes Moratorium (Secure Future for Public Provision of Vocational Education and Training) Bill which was introduced by Dr Kaye.

Two infrequent procedural events also occurred this week. Firstly during Question Time on Wednesday 18 March a question was asked not of a Minister but of a private member (the question related to a matter on the notice paper of which the member has charge). Secondly, on Thursday 19 March, a division on a question before the House resulted in an equality of votes. In accordance with the standing orders and the *Constitution Act 1902*, the question was decided by the casting vote of the President.

Ministerial statement

On 18 March 2014, the Minister for Police and Emergency Services (Mr Gallacher) made a statement concerning the passing on 12 March 2014 of former Commissioner of Police, Mr Cecil Abbott AO QPM. The Minister paid tribute to Mr Abbot's distinguished 43 year career in the NSW Police Force

The Leader of the Opposition (Mr Foley) made a statement in similar terms.

Ministerial statement

As reported in the previous edition of *House in Review*, on 6 March 2014, the Minister for Roads and Ports (Mr Gay) advised the House that he had directed Cootes Transport to show cause as to why its dangerous goods fleet should be allowed to continue to operate on New South Wales roads.

On 20 March 2014, the Minister for Roads and Ports made a statement updating the House on this matter, stating that Cootes Transport had submitted a corrective action plan, which includes the decommissioning of 50 older vehicles, and that it will be allowed to continue operating on New South Wales roads for the time being.

Mr Secord, on behalf of the Opposition, made a statement supporting the action taken and the continuing monitoring of the company.

Government business

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

Crimes Amendment (Intoxication) Bill 2014

The bill originated in the Legislative Assembly.

Summary: The bill amends the *Crimes Act 1900* to create aggravated intoxication offences by increasing the maximum penalty by two years for certain offences if committed in public by an adult offender intoxicated by alcohol or narcotic drug, and to require the courts to impose minimum sentences of imprisonment for certain serious aggravated intoxication offences. The bill also clarifies the assaults to which the recently created offence of assault causing death when intoxicated applies. The bill further authorises police officers to require a breath test or blood or urine sample to confirm or disprove intoxication, and makes it an offence to consume alcohol or a narcotic drug within 12 hours of assaulting a person in order to alter the presence or concentration of an intoxicating substance.

Proceedings: The bill was received from the Legislative Assembly on 18 March 2014 and read a first time. The second reading speech of the Minister (Mr Gallacher) was incorporated into Hansard. That speech indicated

that the bill complements the measures to combat serious drug and alcohol-fuelled attacks in public places introduced by the Government when it recalled Parliament in January. The speech further noted that while the decision to introduce mandatory sentences was in direct response to community concerns, it was not made lightly.

The Opposition indicated that it could not support the bill in its current form, citing a number of concerns, including perceived problematic application of the definitions of 'public place' and 'wounding'. The Opposition argued that the bill, as drafted, would not serve as an effective deterrent and would result in a significant increase of custodial sentences without a commensurate increase in judicial and court resources to meet the increased workload. The Opposition foreshadowed that it would be proposing amendments modelled on the 2012 Victorian legislation targeting gross violence that would, it argued, significantly improve the bill. The Greens opposed the bill as a matter of principle, arguing that the imposition of mandatory sentencing eroded the independence of the judiciary and undermined the doctrine of the separation of powers. The Greens particularly criticised the provisions within the bill for establishing intoxication that allowed for reliance on subjective observations of police officers, and cited concerns held by the Law Society and Bar Association regarding aspects of the bill.

Debate was interrupted for Questions and resumed the following day Wednesday 19 March 2014.

The Christian Democratic Party supported the bill on the grounds that its primary purpose was to improve public safety and that the mandatory sentences met community expectations. The Shooters and Fishers Party indicated that it held a number of concerns regarding the bill, particularly the provisions relating to establishing intoxication, and that it would consider the Opposition's proposed amendments in committee of the whole.

The second reading was agreed to (Division 33:5), with the Greens opposing the motion.

In the committee stage the Greens did not draw any support for their amendments that sought to remove the new definition of intoxication (Division 5:31). Subsequently, however, the Opposition successfully moved a set of amendments that replaced the hierarchy of offences provided for in the bill with a single offence of 'reckless grievous bodily harm when intoxicated in public and in circumstances of gross violence' and provided a set of exceptions to application of the offence (Division 20:19). The amendments were opposed by the Government and the Christian Democratic Party but drew the support of the Shooters and Fishers Party and the Greens.

The bill was reported to the House with the amendments. While the Greens supported the Opposition amendments, which they argued limited the negative impact of the bill, they still opposed the bill in its amended form. As such, the Greens opposed the third reading of the bill, which nevertheless was agreed to (Division 33:5). The bill was returned to the Assembly with the amendments.

On 20 March 2014, the House received a message advising that the Assembly had disagreed with the Council's amendments to the bill. Consideration of the Assembly's message in committee of the whole was set down for the next sitting day.

Criminal Assets Recovery Amendment Bill 2014 and cognate Mining and Petroleum Legislation Amendment Bill 2014

The bills originated in the Legislative Assembly.

Summary: The Criminal Assets Recovery Bill amends the *Criminal Assets Recovery Act 1990* to facilitate the recovery of proceeds of crime from a person who was not the direct perpetrator of criminal activity by introducing a new test under which the NSW Crime Commission will be able to apply for a recovery order against a secondary person. The provisions in the bill will apply to activities that were engaged in prior to the commencement of the bill.

The Mining and Petroleum Legislation Amendment Bill amends an array of Acts relating to mining and planning regulation. In particular, the bill removes the public interest test from the decision making process and re-inserts it as an aspect to take into account when approving a transitional Part 3A project under the *Environmental Planning and Assessment Act 1979*. The test is replaced by the 'fit and proper person' test on which decisions about mining rights and petroleum titles are made, the bill also sets out a non-exhaustive list of factors to be considered when determining whether an applicant is a fit and proper person. The provisions in the bill will apply to 'preserved conditions' of the exploration licences cancelled by the *Mining Amendment (ICAC Operations Jasper and Acacia) Act 2014*.

The bills were introduced as a further legislative response to the ICAC recommendations in relation to reducing opportunities and incentives for corruption in the management of the State's resources.

Proceedings: The bills were received from the Legislative Assembly on 19 March 2014 and read a first time. The second reading was set down for a later hour.

Travel Agents Repeal Bill 2014

The bill originated in the Legislative Assembly.

Summary: The bill repeals the *Travel Agents Act 1986* and makes consequential amendment to the *Administrative Decisions Review Regulation 2009* and inserts savings and transitional provisions into the *Fair Trading Act 1987*. The bill gives effect to part of the national Travel Industry Transition Plan which was agreed to by the Council of Australian Governments (COAG).

Proceedings: The bill was received from the Legislative Assembly on 19 March 2014 and read a first time. The second reading of the bill was set down for a later hour.

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

Crimes Amendment (Provocation) Bill 2014 (Revd Nile, Christian Democratic Party)

The bill originated in the Legislative Council.

Summary: The bill amends the *Crimes Act 1900* in relation to the partial defence of provocation to a charge of murder. Under section 23 of the Act, provocation is a partial defence to a charge of murder which will result in the accused being acquitted of murder and convicted of manslaughter instead. The bill repeals section 23 of the Act and replaces it with a section that provides a more limited partial defence of extreme provocation. Extreme provocation relates to the provocative conduct, not the words, of the deceased and is established by means of a four stage test. The new section excludes non-violent sexual advances from being provocative conduct. As with the existing section, the bill provides that the killing of the deceased need not occur immediately after the provocative act.

Proceedings: On 19 March 2014, standing orders were suspended to bring on the item of business and debate on the second reading of the bill resumed from 5 March 2014 (see the previous edition of *House in Review* for earlier debate). Members of the Government and the Greens spoke in support of the bill, noting that it was a complex reform which was very much indebted to the groundwork of the Select Committee on the Partial Defence of Provocation. Members argued that it is necessary to restrict the scope of the partial defence and that the bill will address community concern which has arisen following certain high-profile cases where the accused was acquitted of murder. One speaker took the opportunity to argue the case that the partial defence of provocation should be removed entirely as it was an historical construct that was no longer necessary.

Debate was interrupted for Questions, with members of the Opposition and the Shooters and Fishers Party yet to participate in the debate.

TAFE Changes Moratorium (Secure Future for Public Provision of Vocational Education and Training) Bill 2014 (Dr Kaye, the Greens)

The bill originated in the Legislative Council.

Summary: The bill seeks to freeze fees for TAFE courses and funding to private providers of vocational education and training at 2010 levels; maintain funding to the TAFE Commission at no less than its 2010–2011 level; and require the Minister to ensure that the TAFE Commission is the principal provider of technical and further education in New South Wales.

Proceedings: On 20 March 2014, standing orders were suspended to bring on the item of business. Leave was granted to bring in the bill. The bill was presented, read a first time and printed. In his second reading speech, Dr Kaye stated that his bill would reverse perceived damage to TAFE via government budget cuts and course fee increases. Dr Kaye argued that TAFE managers were having to cut courses, slash staff and destroy support programs so as to meet targets set by the Smart and Skilled market, which is scheduled to begin on 1 January

2015. Dr Kaye argued that the incoming Smart and Skilled market represented the privatisation of TAFE arguing that it takes hundreds of millions of dollars out its budget and makes those funds contestable. Dr Kaye indicated that his bill would freeze the process through which the Smart and Skilled market reforms were being introduced.

Debate was adjourned for five calendar days.

Motions

International Women's Day 2014 (Ms Ficarra, Liberal Party)

Summary: The motion calls on the House to note that International Women's Day, with the theme 'Inspiring Change', was held on 8 March 2014 and to note the nominees and recipients of the NSW Women of the Year awards and International Women's Day Awards for Local Government. The motion also calls on the House to congratulate and recognise all those nominated for awards for their contribution to the community and to acknowledge those involved in organising and supporting the awards.

Proceedings: Standing orders were suspended to bring on the item of business. In speaking to the motion, Ms Ficarra argued that the key to economic prosperity is raising the female participation rate in the workforce. Ms Ficarra drew attention to the fact that recent times have seen the election of the nation's first female Prime Minister and appointment of the first female Governor General and NSW Governor with at one stage all three holding their positions concurrently. Ms Ficarra outlined the achievements and contributions of some of the 2014 award winners and nominees.

In order to permit time for all interested members to speak, by concurrence of the House the debate time was extended by one hour. All members speaking in the debate supported the motion, paying tribute to those women nominated in the awards and those women who have fought for the rights of women and humanity. Members argued that it was important for these awards to highlight community work done by women as it often goes unrecognised and unrewarded. A number of members also took the opportunity to relate the achievements of various persons named in the motion.

Debate on the motion was adjourned.

Motions taken as formal business

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

- (1) Rockdale City Council flag raising ceremony (Mr Moselmane)
- (2) Mr and Mrs Yassine (Mr Moselmane)
- (3) Achievements of NSW Institute of Sport athletes at Sochi 2014 winter Olympics (Ms Ficarra)
- (4) Holodomor commemoration (Ms Ficarra)
- (5) VIEW Clubs of Australia 2014 International Women's Day Luncheon (Ms Ficarra)

- (6) Vigil prayer service for St Mary MacKillop (Mr Donnelly)
- (7) Diverse Australasian Women's Network (Ms Ficarra)
- (8) Wendy Hughes tribute (Ms Barham)
- (9) Blue Mountains Cancer Help Inc (Ms Ficarra)
- (10) Australian Human Rights Commission 'Equal Before Law' Report (Ms Barham)
- (11) Australian Assyrians (Revd Nile)
- (12) Autism Awareness Month (Ms Ficarra)
- (13) Bowel cancer (Dr Kaye)
- (14) Sydney Bus Museum Australia Day rides (Ms Ficarra).

Orders for papers

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

Orders made

- (1) **Documentation from the office of the former Minister for Finance and Services (Mr Searle):** The order relates to documents retrieved by the Department of Premier and Cabinet from the office of the former Minister for Finance and Services on or after 1 August 2013. The order excludes documents that contain cabinet information, office administration or personal files of the former Minister. Standing orders were suspended to bring on the item of business. The motion was agreed to on the voices. Due: 17 April 2014.

Petitions received

- (1) Tweed Byron Local Area Command – 131 signatures (presented Mr Secord)
- (2) National Broadband Network in Bungendore – 50 signatures (presented Mr Whan)

Debate on budget estimates

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

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'.

Extension of reporting date

Select Committee on Greyhound Racing in New South Wales: The reporting date for the Committee's inquiry into 'Greyhound racing in NSW' was extended to 30 June 2014.

Committee reports tabled

Legislation Review Committee: 'Legislation Review Digest No. 52/55', date March 2014.

Joint Standing Committee on Road Safety (Staysafe): Report No. 3/55 of the Joint Standing Committee on Road Safety (Staysafe) entitled 'Report on non-registered motorised vehicles', dated March 2014.

Committee reports debated

General Purpose Standing Committee No. 2: The House concluded the take-note debate on Report No. 40 entitled 'Drug and alcohol treatment', date August 2013.

Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission: The House concluded the take-note debate on Report No. 7/55 entitled '2013 General Meetings with the Police Integrity Commission, the Inspector of the Police Integrity Commission, the NSW Crime Commission, the Information and Privacy Commission, the NSW Ombudsman and the Child Death Review Team', date October 2013.

General Purpose Standing Committee No. 2: The House continued the take-note debate on Report No. 41 entitled 'Budget Estimates 2013-2014, date October 2013.

Inquiry activities

Select Committee on the impact of gambling

The Committee has received 33 submissions. Hearings will be held on 10 and 11 April 2014. The Committee will also be undertaking site visits on 22 May and 12 June 2014.

Wambelong fire

On 13 February 2014 the Committee resolved to postpone the inquiry pending further advice from the Coroner's Office regarding the timeline for the coronial investigation. The Committee has since been advised that the Coronial hearings will conclude at the end of August 2014, and the Committee has rescheduled its site visit and hearings to early September 2014.

Social, public and affordable housing

The Select Committee commenced its inquiry by receiving a private briefing and conducting a site visit on 12 March 2014, followed the next day by its first public hearing. The Committee has received 235 submissions. Many of the submissions have been published on the website to date. The Committee is now considering further inquiry activity.

Ministerial propriety in NSW

The Select Committee has received seven submissions. The reporting date for the inquiry is October 2014.

Regional aviation services

The Standing Committee on State Development has received approximately 60 submissions. Submissions will be published on the committee's website over the next week. The Committee is now considering dates for hearings and site visits.

Standing Committee on Law and Justice

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 Committee has received 39 submissions for the WorkCover review and 7 submissions for the Dust Diseases review. Hearings will be held on 21 and 28 March 2014.

The Committee is also conducting concurrent reviews into the exercise and functions of the Motor Accidents Authority (12th Review) and Lifetime Care and Support Authority (Fifth Review). The Committee has received 12 submissions to each review and held hearings on 7 and 17 March 2014.

The Committee is also conducting an inquiry into the family response to the murders in Bowraville. The Committee has received 26 submissions to date. The Committee will be conducting a site visit to Bowraville on 31 March and will be holding hearings in Bowraville on 1 and 2 May and in Sydney on 12 May 2014.

Greyhound racing in NSW

The Select Committee on greyhound racing in NSW has received over 1,000 submissions and has held three hearings. The Committee intends to table its first report by 28 March 2014, and the House has extended the Committee's final reporting date to 30 June 2014.

Allegations of bullying in WorkCover NSW

General Purpose Standing Committee No.1 has received 96 submissions and held two hearings. Its report is currently being drafted.

Adjournment debate

Tuesday 18 March 2014

Review into agricultural education and training in NSW (Mr Blair); Light rail in Surry Hills (Ms Sharpe); Wind farms (Dr Kaye); Fairfield City Council land reclassification (Mr Lynn); Construction industry insolvencies (Mr Searle); Assyrian autonomous province proposal (Revd Nile).

Wednesday 19 March 2014

International Year of Solidarity with Palestinian People (Ms Fazio); Local government closed-circuit television systems (Mr Shoebridge); Asylum seekers (Mr Moselmane); Wind farming (Mr Buckingham); Ballina Shire koalas (Ms Cusack); Little Wings charity organisation (Mrs Pavey).

Thursday 20 March 2014

Construction industry insolvencies (Mr Borsak); Achieve Australia (Mrs Mitchell); Local Land Services elections (Mr Whan); Forest bio-materials for electricity generation (Mr Brown); Friedrich August Von Hayek/ Professional wrestling in the United States (Dr Phelps); Public holiday trading (Mr Donnelly); Major league baseballer Ryan Rowland-Smith (Mr Colless).

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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