

NEW SOUTH WALES LEGISLATIVE COUNCIL

HOUSE IN REVIEW



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Sitting period
26 to 27 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

The focus of this sitting week, the last for the Council for 2013, was the detailed consideration of the Planning Bill 2013 and cognate Planning Administration Bill 2013. Proceedings concerning the bills in the House and in committee of the whole occupied the majority of Tuesday and Wednesday, with ultimately 51 amendments made to the Planning Bill.

Three new committee inquiries were also agreed to this week, relating to: murders in Bowraville; recommendations of the ICAC arising from its inquiries into mining matters; and a wide ranging inquiry into gambling in NSW.

The House has now adjourned until Tuesday 4 March, unless recalled earlier.

Next week, a final edition of *House in Review* will be published that will provide a summary of the work of the Legislative Council during 2013.

Death of former member

The President reported to the House the death on 24 November 2013 of the Honourable William Lloyd Lange, a member of the House from 1974 to 1986.

The President drew attention to the presence in his gallery of members of the Lange family. The President further reported that, on behalf of the House, he had extended to the family the deep sympathy of the Legislative Council in the loss sustained.

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

Government business

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

Planning Bill 2013 and cognate Planning Administration Bill 2013

The bills originated in the Legislative Assembly.

Summary: The bills repeal and replace the *Environmental Planning and Assessment Act 1979* and introduce a new

planning system for New South Wales. The objectives of the Planning Bill are to: promote economic development; protect the environment and quality of life; provide certainty for all users of the system; and deliver more housing, jobs and infrastructure in the right locations to cater for a growing population. The proposed new planning system was first outlined in the Government's April 2013 White Paper. Following public consultation, a number of changes were made to the proposed legislation to reflect the evidence and submissions received.

Proceedings: Debate on the second reading of the bill resumed on 26 November 2013 from 20 November 2013 (see previous edition of *House in Review* for earlier debate). The Shooters and Fishers Party noted, as did other contributors to the debate, the large volume of correspondence that members had received from stakeholders either in support or opposition to elements of the planning bill. The Shooters and Fishers Party argued that the introduction of code assessed development areas – in which there would be no grounds to object to, deny or restrict development that complied with the relevant code – was the community's greatest concern with the bill, and also foreshadowed that in the committee stage it would seek to amend the State Environmental Planning Policy (SEPP) related to mining.

Members of the Opposition continued to raise concerns with elements of the bill, arguing that it was skewed towards the interests of big business. The Opposition, while approving of the opportunity for up-front community involvement in the development of Local Environment Plans (LEPs), argued that it was a basic premise that individuals be given the opportunity to be heard on development that directly affects them. The Opposition noted with disapproval that it appeared the Government's proposal to define those areas in the State where code assessed development could apply precluded, in the Opposition's opinion, areas that comprised core government electorates. The Opposition stated it would vote for the second reading of the bills, so that amendments could be moved in committee of the whole to improve the bill.

The Christian Democratic Party stated that while the current planning system requires a complete overhaul, not everyone agreed on how the new system should operate. The Christian Democratic Party observed that it was impossible to create a perfect planning system, and that it was important that all stakeholders engage in constructive negotiation.

The Greens noted that the bills were critical pieces of legislation, as the planning system was fundamental to the operation of the State. The Greens reiterated their concerns that the bills did not seek to implement the primary recommendations of the Moore and Dyer review while replicating the worst elements of the current planning legislation.

In reply, the Minister (Mr Gay) again emphasized that the bills were the product of an unprecedented consultation and development process. The Minister cautioned that fundamental amendment to the bills would have the potential to obstruct necessary development in the State and replicate the stalled growth of the last decade.

The second reading was agreed to (Division 32:5), with the Greens voting against the motion.

The committee stage for the Planning Bill 2013 commenced early on the evening of Tuesday 26 November and continued until late Wednesday afternoon. The Government, Opposition, Greens, Shooters and Fishers Party and the Christian Democratic Party all circulated amendments to the bill. Ultimately, 51 amendments were agreed to.

Proceedings in the committee stage were marked by lively debate on occasions and by the presence in the gallery throughout of the Minister for Planning monitoring the passage of the bills. The House divided on 17 occasions during the committee stage.

Throughout the committee stage, with a couple of exceptions, the Opposition and the Greens supported the amendments proposed by the other. The Government also supported a number of Opposition amendments which enhanced but did not substantively change elements of the bill. Where amendments sought to significantly change parts of the bill, the support or opposition of the Shooters and Fishers Party or the Christian Democratic Party proved to be crucial.

Notable amendments to the bill included Shooters and Fishers Party amendments which repealed provisions of the Mining, Petroleum Production and Extractive Industries SEPP which provided for the significance of a mining resource to be the primary consideration when considering consent to a development proposal, and which precluded similar provisions being included in any strategic plan (Division 20:15). The Opposition, with the support of the Greens and the Shooters and Fishers Party, successfully moved amendments to remove provision for code assessed development from the bill (Division 20:19) and to reinsert provisions for affordable housing contributions and levies (Division 20:19). The Opposition also successfully moved amendments to remove the ability for any modification to be made to a development consent, if the consent related to State significant development. (Division 22:17). The Christian Democratic Party drew unanimous support for its

amendment to ensure that biodiversity offset contributions are used in the same regional planning area.

Overall, 60 amendments were proposed but not agreed to by the House. These included the Opposition's attempt to reinsert the object of the original 1979 Act (Division 16:19), and the Greens' attempts to make planning policies disallowable instruments (Division 5:30) and to establish a scheme for the blind allocation of private certifiers (Division 5:31).

In the committee stage for the Planning Administration Bill, the Greens moved five amendments which sought to increase the number of council nominees on regional planning panels; to expand the areas of expertise for members of subregional planning boards and to ensure that there is a majority of council nominees on such boards. All of the amendments were negated on the voices.

The Planning Bill was reported to the House with amendments and the Planning Administration Bill reported without amendments. The Opposition and the Greens spoke in debate on the third reading of the bills. The third reading of the bills was agreed to (Division 33:5), with the Greens voting against the motion, and the bills were returned to the Assembly.

Postscript: On Thursday 28 November the Minister for Planning informed the Legislative Assembly that the Government would consider its response to the Council's amendments to the Planning Bill during the summer recess.

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: Consideration of the bill in committee of the whole resumed on 26 November 2013 from 20 November 2013 (see previous edition of *House in Review* for earlier debate and consideration of the bill). In the earlier debate, the Greens had moved amendments to lower the threshold for the requirement to store gathered biological material from being sentences of imprisonment of 20 years or more to sentences of 14 years or more. The Government argued that the amendments would impose an unwarranted cost burden on police and that they were unnecessary as police could still voluntarily store biological material where the circumstances of the investigation made it appropriate to do so. The amendments were negated (Division 17:20), with the Opposition voting with the Greens, and the Government, Christian Democratic Party and the Shooters and Fishers Party voting against the amendments. The Greens then sought to insert a

requirement for the storage of biological material gathered in relation to any sexual assault offence or criminal assault of a child offence. The amendments were negatived on the voices.

The bill was reported to the House without 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.

Proceedings: As reported in edition 55/60 of *House in Review*, on 13 November 2013, the Council made an Opposition amendment to the *Work Health and Safety Amendment Bill 2013* and returned the bill, together with the amendment, to the Assembly. The amendment enabled 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. On 14 November 2013, the Assembly sent a return message to the Council disagreeing with the Council's amendment. Consideration of the amendment was set down for the next sitting day.

On 26 November 2013, the Parliamentary Secretary (Mr Mason-Cox) moved that the Council not insist upon its amendment to the bill, arguing that Work Health and Safety offences should be heard by the District Court and that 70 prosecutions before that Court would be affected if the House did not pass the Government's original bill. The Opposition and Shooters and Fishers Party opposed the motion. The Greens indicated they would support the motion because if the Opposition amendment was insisted upon by the House, the Government had indicated it would not accept the amended bill. The Greens argued that this would put at risk the 70 prosecutions currently before the District Court. Accordingly, despite originally supporting the Opposition amendment they would not be insisting upon it. The Opposition subsequently moved that the motion of the Parliamentary Secretary be amended to enable proceedings for a Category 2 offence brought under the *Work Health and Safety Act 2011* to be dealt with summarily by either the Industrial Court or the District Court. The Opposition's amendment was negatived (Division 13:25). The original motion of the Parliamentary Secretary was agreed to. A message was subsequently forwarded to the Legislative Assembly stating that the Legislative Council had resolved not to insist on its amendment to the bill.

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: Debate on the second reading resumed on 26 November 2013 (see the previous edition of *House in Review* for earlier debate). During his resumed second reading speech the Parliamentary Secretary (Mr Clarke) foreshadowed that the Government would be amending the bill to remove provisions regarding the *Public Health Act 2010*, *Retirement Villages Act 1999* and *Telecommunications (Interception and Access) (New South Wales) Act 1987*, following the raising of objections to the provisions by the Greens and the Shooters and Fishers Party. The Opposition, Greens and Christian Democratic Party did not oppose the bill.

The second reading was agreed to.

In the committee stage the Government amendments to remove the provisions in the bill to which objections had been raised were agreed to.

The third reading was agreed to and the bill was returned to the Assembly with amendments.

Messages from the Assembly

The House received the following messages from the Legislative Assembly relating to bills forwarded to the Assembly by the Council in previous sitting weeks.

Cemeteries and Crematoria Bill 2013: On 26 November 2013 the Assembly advised that it had agreed to the Council's amendments.

Motor Dealers and Repairers Bill 2013: On 26 November 2013 the Assembly advised that it had agreed to the Council's amendments.

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.

Bill

Crimes Amendment (Zoe's Law) Bill 2013 (No.2)

The bill originated in the Legislative Assembly. On being received in the Council, procedural motions were moved by Mr Donnelly, on behalf of Ms Ficarra.

Summary: The bill seeks to amend the *Crimes Act 1900* to recognise the existence of the foetus of a pregnant woman that is of at least 20 weeks gestation so that proceedings for certain offences relating to grievous bodily harm may be brought against an offender who causes the unlawful destruction of or harm to any such foetus as proceedings for grievous bodily harm to the foetus rather than proceedings for grievous bodily harm to the pregnant woman. Section 8A (4) specifies that these offences do not apply or have any relation to anything done in the course of a medical procedure,

including medical treatment or anything done by or with the consent of the pregnant woman that causes harm to or the destruction of a foetus.

Proceedings: The bill was received from the Legislative Assembly on 26 November 2013 and read a first time. The second reading was set down for the first sitting day in 2014 upon which private members' business takes precedence.

Motions taken as formal business

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

- (1) Inaugural NSW Health Awards for Excellence (Mrs Maclaren-Jones)
- (2) 90th anniversary of Legacy (Mrs Maclaren-Jones)
- (3) Canterbury Girls High School (Ms Voltz)
- (4) UN Youth New South Wales (Dr Faruqi)
- (5) 75th commemoration of 'Kristallnacht' (Mr Clarke)
- (6) UWS student representative elections (Mr Moselmane)
- (7) Cyprus Red Cross (Mr Clarke)
- (8) Rockdale City Council Town Hall reopening (Mr Moselmane)
- (9) Australian Lebanese Association of NSW (Mr Clarke)
- (10) UN Human Rights Day (Mr Moselmane).

Orders for papers

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

Order made

- (1) **Greyhound racing agreements (Mr Borsak):** The order relates to the 1997 Racing Distribution Agreement and the 1998 Racing Inter-code Agreement, and any amendments since made to those agreements, in the possession, custody or control of the Office of Liquor, Gaming and Racing or Greyhound Racing NSW and any document which records or refers to the production of documents as a result of this order of the House. The order relates to the inquiry being conducted by the Select Committee on Greyhound Racing and noted that this order was being made "notwithstanding the power of the Committee to order the production of documents". The motion was agreed to as formal business. Due Date: 4 December 2013.

Returns to order

- (1) **Mr Matthew Daniel:** received 21 November 2013, 113 boxes public, 15 boxes privileged.

Petitions received

- (1) Meaning of marriage – 121 signatures (irregular, presented Revd Mr Nile)
- (2) International Trafficking and Harvesting of Human Organs – 70,000 signatures (irregular, presented Mr Shoebridge)
- (3) Sanctity of marriage – 102 signatures (presented Mr Colless).

Reports tabled

Auditor General: Financial Audit report, Volume Six 2013, focusing on Law, Order and Emergency Services, November 2013.

Department of the Legislative Council: Annual report of the Department of the Legislative Council for year ended 30 June 2013.

Department of Parliamentary Services: Annual report of the Department of Parliamentary Services for year ended 30 June 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

Standing Committee on Law and Justice: On 26 November 2013, the House agreed to a motion of the Hon David Shoebridge, as amended by the Hon Michael Gallacher, that the Standing Committee on Law and Justice inquire into and report on the family response to the murders in Bowraville of Colleen Walker-Craig, Evelyn Greenup and Clinton Speedy-Duroux and in particular give the families the opportunity to appear before the committee and detail the impact the murders of these children have had on them and their community.

Privileges Committee: On 27 November 2013, the House agreed to a motion of the Hon Duncan Gay that the Privileges Committee inquire into and report on Recommendations 22, 24 and 25 in the report of the Independent Commission Against Corruption entitled 'Reducing the opportunities and incentives for corruption in the State's management of coal resources', dated October 2013.

Select Committee on the Impact of Gambling: On 27 November 2013, the House agreed to a motion of Revd the Hon Fred Nile that a Select Committee be appointed to inquire into and report on the impact of gambling on individuals and families in New South Wales.

Committee membership

The President informed the House that, on 25 November 2013, the Leader of the Opposition nominated the Hon Peter Primrose as a member of the Privileges Committee in place of the Hon Greg Donnelly.

Extension of reporting date

On 27 November 2013, the House agreed to a motion of the Hon Duncan Gay that the reporting date for the Procedure Committee's inquiry into the regulation of the consumption of alcohol by members during sittings of the House be extended to Thursday 6 March 2014.

Inquiry activities

Social, public and affordable housing

A Select Committee on Social, Public and Affordable Housing was established by the House on 13 November 2013.

Wambelong fire

General Purpose Standing Committee No. 5 adopted terms of reference to inquire into and report on the causes and management of the Wambelong fire within and adjacent to the Warrumbungle National Park in January 2013. A call for submissions has been advertised and submissions close 31 January 2014.

Racial vilification law in NSW

The Standing Committee on Law and Justice report will be tabled on 3 December 2013.

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.

Removing or reducing station access fees at Sydney Airport

General Purpose Standing Committee No. 3 has received 31 submissions and is holding hearings on 2 and 3 December 2013.

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 11 submissions to each review. Hearings will be held in March 2014.

Tourism in local communities

General Purpose Standing Committee No. 3 has received 86 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.

Greyhound racing in NSW

Submissions to the Select Committee closed on 6th November and over 700 submissions have been received. The Committee held its first public hearing and public forum at Penrith on 15 November 2013. The Committee resolved to defer its second hearing at Wallsend until February 2014, and will hold a third public hearing in Sydney in February 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.

Strategies to reduce alcohol abuse among young people

The Standing Committee on Social Issues has received 54 submissions concerning strategies to reduce alcohol abuse among young people. The Committee has held four public hearings and a roundtable with young people from the Byron Bay area. The Committee is finalising its report and anticipates tabling in December 2013.

Allegations of bullying in WorkCover NSW

General Purpose Standing Committee No.1 has received 92 submissions and held two hearings. The Committee intends to report by Friday 28 March 2014.

Adjournment debate

Tuesday 26 November 2013

Tribute to Carla Deery (Mrs Pavey); Young worker pay rates (Mr Donnelly); Child protection (Ms Barham); Major sporting events (Mr Blair); Tribute to Mark Webber (Ms Fazio); Compensation for psychological injuries (Mr Shoebridge); Asia baseball league champions (Dr Phelps).

Wednesday 27 November 2013

Tribute to Ms Esme Evans (Mr Searle); Human Trafficking (Revd Nile); Tribute to Lawrence Hargrave (Mr Colless); Trans-Pacific Partnership; Blue Mountains National Park (Dr Faruqi); Zombies (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.



David Blunt
Clerk of the Parliaments