

# NEW SOUTH WALES LEGISLATIVE COUNCIL

## *HOUSE IN REVIEW*



*Volume 55/82*

*2014 Summary*

The *House in Review* provides regular updates of the activities of the New South Wales Legislative Council. Clicking on a hyperlink will take you to the relevant webpage. For further information refer to the NSW Parliament website [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au) or contact the Procedure Office on (02) 9230 2431. To be placed on the email distribution list of the *House in Review*, please contact us on [council@parliament.nsw.gov.au](mailto:council@parliament.nsw.gov.au).

### Overview

This edition of *House in Review* summarises the work of the Legislative Council during 2014, the fourth and final sitting year of the 55th Parliament. The period covered by this summary extends from when the House first met in 2014 on Thursday 30 January to its last sitting day on Thursday 20 November, the final sitting day before the March 2015 election.

The House was initially due to first sit on 4 March, however, at the request of the Leader of the Government the President recalled the House to sit for one day in January to consider legislation regarding drug and alcohol related violence, and the cancellation of certain mining exploration licences.

As was the case in the previous year, 2014 was extremely busy, with the House considering 84 Government bills and 481 amendments. Seventeen private member's bills were introduced into the House, a substantial increase from the three introduced in the previous year. In addition, four private members' bills were passed by both Houses, each attracting significant public attention.

The year also saw the number of orders for papers agreed to increase and return to the high numbers seen in previous parliaments (from 20 to 30). Fourteen of these orders were made in October and November alone.

Committees also had a very busy 2014, tabling 17 reports, with a further eight reports due to be finalised before the March 2015 election.

Other House processes saw a decrease in quantity from the previous year, such as questions on notice, down from 2,266 to 933, questions without notice down from 1,302 to 978 and notices of motion given down from 681 to 609. This decline in quantity can, in part, be attributed to the House sitting fewer days than in 2013.

Parliament was prorogued on 8 September, which brought an end to the first session of the 55th Parliament. The official opening of the second session occurred the next day and enabled Parliament to pay tribute to Professor the Hon Dame Marie Bashir, who retired from her position as Governor of New South Wales on 1 October 2014.

The final sitting week of the year saw seven members who are not returning after the 2015 election giving their official valedictory speeches during debate on a motion of appreciation.

On the final day of the sitting year, the House adjourned until Tuesday 3 March 2015. It is not anticipated that the House will sit on that day, however, as the Parliament is likely to be prorogued before that date for the next State election.

### Procedural statistics for the 55th Parliament in 2014

The following statistics summarise the work of the Council in the dual roles of reviewing legislation and holding the executive government to account in 2014.

<b>Sitting days</b>	47
<b>Sitting hours</b>	370
<b>Average length of sitting days</b>	7.8 hours
<b>Bills</b>	
All bills passed by both Houses	88
Government bills passed in the Council	84
- of which were considered in committee	47
- of which were amended in the Council	11
Private members' bills introduced in the Council	17
Private members' bills passed by both Houses	4
<b>Amendments to bills</b>	
- circulated	481
- agreed to	60
<b>Notices of motions given</b>	609
<b>Formal business</b>	
- agreed to	299
- objected to	104

## Petitions

- received	43
- received, irregular	14
- number of signatures	37,155

## Questions

- on notice	933
- without notice	978

Orders for Papers 30

Tabled papers 1,180

## Legislation

### Government legislation

This year saw a reduction in the number of Government bills considered by the Council, down from 114 to 84. The overwhelming majority of these bills were introduced in the Assembly with the percentage of Government bills that originated in the Council continuing to decrease. In 2012, 20 per cent of government bills were introduced in the Council; in 2014 this figure was down to approximately 4 per cent.

While 47 Government bills had amendments considered in committee of the whole, only the following 11 bills had amendments agreed to:

- (1) Crimes Amendment (Intoxication) Bill 2014
- (2) Graffiti Control Amendment Bill 2013
- (3) Statute Law (Miscellaneous Provisions) Bill 2014
- (4) Petroleum (Onshore) Amendment (NSW Gas Plan) Bill 2014
- (5) Mutual Recognition (Automatic Licensed Occupations Recognition) Bill 2014
- (6) Disability Inclusion Bill 2014
- (7) Election Funding, Expenditure and Disclosures Amendment Bill 2014
- (8) Electricity Supply Amendment (Bush Fire Hazard Reduction) Bill 2014
- (9) Surveillance Devices Amendment (Police Body-Worn Video) Bill 2014
- (10) Environmental Planning and Assessment Amendment Bill 2014
- (11) Ombudsman and Public Interest Disclosures Legislation Amendment Bill 2014.

Overall, the House passed 60 individual amendments to Government bills in 2014, down from the 2013 figure of 147 amendments. In 2014, the most substantially amended bill was the [Election Funding, Expenditure and Disclosures Amendment Bill 2014](#) with 14 amendments. Debate on the bill occurred over a number of days in October, with 39 amendments moved in committee from four different parties.

In the first half of the year, the Council and the Assembly were not able to agree on the content of the [Crimes Amendment \(Intoxication\) Bill 2014](#). The bill was intended to complement legislation regarding serious drug and alcohol-fuelled attacks in public places that was passed in January when was Parliament was recalled. The House returned the Crimes Amendment (Intoxication) Bill to the Assembly on 19 March 2014 with nine amendments disagreed to by the Assembly on the grounds that they fundamentally changed the intent of the bill.

Both Houses then sent messages to each other insisting on their versions of the bill. With neither House conceding, the bill remains on the Council's Notice Paper and will lapse when the Parliament is prorogued.

In addition to the Crimes Amendment (Intoxication) Bill, six other Government bills remain on the Notice Paper and will also lapse when the Parliament is prorogued before the election.

During the final sitting week in 2013 the Council agreed to 51 amendments in the [Planning Bill 2013](#). The bill, together with its cognate, the Planning Administration Bill 2013, was returned to the Assembly on 27 November 2013. As at the end of sittings in 2014, consideration of the Council's amendments remained an order of the day on the Assembly's Business Paper, with the bills to lapse on the prorogation of the Assembly in early March.

On the final sitting week of 2014 the House adopted the seldom used procedure of splitting a bill received from the Assembly. The [Statute Law \(Miscellaneous Provisions\) Bill \(No 2\) 2014](#) was split into two bills in committee of the whole to remove provisions from the original bill that related to the Ombudsman. The Opposition and The Greens noted that traditionally when a concern or objection is raised regarding a particular provision in a statute law bill, that provision is removed and reintroduced in a separate piece of legislation. On this occasion, the contentious sections of the bill were split from the main bill to become the Ombudsman and the Public Interest Disclosures Legislation Amendment Bill 2014. Both bills subsequently passed the House.

### *Disallowance of delegated legislation*

The Legislative Council may disallow pieces of delegated legislation such as statutory rules and instruments under Part 6 of the *Interpretation Act 1987* or under the provisions of the primary Act.

In 2014, the Council considered the disallowance of a regulation on three occasions, a reduced number in comparison to last year's high of seven. In March the House resolved to disallow a regulation relating to the inclusion of the mandated increase in superannuation in the public sector 2.5 per cent wage increase cap. Similar regulations were disallowed on two occasions in 2013 (see *House in Review* vols 55/52 and 55/65). A provision dealing with this issue was subsequently enacted in the *State Revenue and Other Legislation Amendment (Budget Measures) Act 2014*. The other two motions seeking to disallow regulations were defeated.

## Private members' bills

Seventeen bills were introduced by private members of the Legislative Council in 2014, a significant increase compared to last year.

The House concluded debate on six of those bills: the City of Sydney Amendment (Elections) Bill 2014, the Crimes Amendment (Provocation) Bill 2014, and the St. Shenouda Coptic Orthodox Monastery (NSW) Property Trust Bill 2014 passed both Houses and received assent; the TAFE Changes Moratorium (Secure Future for Public Provision of Vocational Education and Training) Bill 2014 was agreed to by the Legislative Council but negatived in the Legislative Assembly; and the Native Vegetation Amendment Bill 2014, and the Transport Administration Amendment (Rail Trails Community Management) Bill 2014 were negatived in the Legislative Council.

Additionally one private member's bill, the [Criminal Records Amendment \(Historical Homosexual Offences\) Bill 2014](#), was received from the Legislative Assembly and agreed to by the Legislative Council with one minor amendment. The amended bill was assented to in October.

Another private members' bill that originated in the Assembly, the [Crimes Amendment \(Zoe's Law\) Bill 2013 \(No. 2\)](#), was received by the Council on 26 November 2013. However, this bill was not considered by the Council during 2014 and will lapse on the prorogation of the Parliament ahead of the March 2015 election.

### *Crimes Amendment (Provocation) Bill 2014*

Following the report of the Legislative Council Select Committee on the partial defence of provocation, the Chair of the select committee, Revd Mr Nile, introduced a bill to amend the *Crimes Act 1900* in relation to the partial defence of provocation to a charge of murder. The bill repealed section 23 of the Act and replaced it with a section that provides a more limited partial defence of extreme provocation. During debate on the bill over a number of sitting days in March the work of the select committee and its report was commended. The bill passed the Legislative Assembly in May and came into force in June.

### *City of Sydney Amendment (Elections) Bill 2014*

The City of Sydney Amendment (Elections) Bill 2014 was introduced by Mr Borsak in August 2014 and sought to introduce a model of non-residential voting in City of Sydney elections. Following a lengthy debate in the House, the Government successfully moved 14 amendments to a wide range of provisions before supporting the final version of the bill. The substantially amended bill passed the House on division (22:19) in September. The bill then passed the Legislative Assembly and received assent in September.

## Orders for papers

### Orders made under standing order 52

2014 saw an increase in the number of orders made by the House for the production of state papers under standing order 52, returning to the sorts of numbers seen

in previous parliaments. The following 30 orders were made:

- (1) WestConnex Business Case
- (2) Crown Lands Review
- (3) Documents from the office of the former Minister for Finance and Services and Minister for the Illawarra
- (4) Management of Crown Caravan Parks
- (5) Draft Protection of the Environment Operations (General) Amendment (Native Forest Bio-material) Regulation
- (6) Acquisition of land for the reserve system
- (7) Reform of planning laws in New South Wales
- (8) Planning proposal for Bronte RSL
- (9) CBD and South East Light Rail Project
- (10) Documents from the office of the former Minister for Finance and Services and Minister for the Illawarra—Further order
- (11) 2014-2015 Budget finances
- (12) 2014-2015 Budget
- (13) Governance review of the Game Council—Further order
- (14) Ministerial Consultative Committees
- (15) Medicare co-payment
- (16) VIP Gaming Management Agreement
- (17) Martins Creek and Wollombi Public Schools
- (18) Newcastle East End development project
- (19) Byron Central Hospital and Maitland Hospital
- (20) Planning in Newcastle and the Hunter
- (21) "Going Home, Staying Home" reforms
- (22) Northern Beaches Health Service Redevelopment
- (23) Aboriginal land claims regarding beaches and coastal lands
- (24) Crown Lands Act White Paper consultations and Crown Lands Review
- (25) Drayton South Coal Project - Due December 2014
- (26) Parramatta Road Urban Renewal Project - Due December 2014
- (27) CBD and South East Light Rail Project—Further Order - Due December 2014
- (28) Nurse to patient ratios - Due December 2014
- (29) NSW Health Infrastructure and private-public partnerships- Due December 2014
- (30) Report of Police Strike Force Emblems - Due December 2014

In November the House passed a resolution providing a role for the Privileges Committee in determining the

publication of documents following receipt of a report of the independent legal arbiter on a disputed claim of privilege. This role is usually conducted by the House, but as the House will not sit again before the election, another mechanism was required to consider ordering the publication of documents where a claim for privilege is not upheld.

In 2014 claims of privilege were made in relation to 20 of the 24 returns so far received. The claims of privilege over documents returned to the WestConnex Business Case and VIP Gaming Management Agreement were disputed and are discussed in detail below. In November the claim of privilege on documents returned to the order for papers relating to Byron Central Hospital and Maitland Hospital was also disputed, an independent legal arbiter was appointed and the report is due shortly. Finally, the claim of privilege on the 2013 order for papers relating to the report on actions of a former WorkCover NSW employee was also disputed.

#### *WestConnex Business Case*

In March the House ordered the production of papers relating to the WestConnex Business Case. Twenty-two boxes of public documents were returned, together with 16 boxes of documents subject to a claim of privilege. In July, Dr Faruqi disputed the claim of privilege in relation to 225 documents. The independent legal arbiter, the Hon Keith Mason AC QC, undertaking the role for the second time, called for submissions from a number of parties in relation to both the role of the arbiter and the specific claim and dispute. During this submission process the scope of the dispute narrowed as Roads and Maritime Services advised it would not press its claim of privilege in respect of certain documents and Dr Faruqi withdrew her dispute in relation to others.

Consequently, the independent legal arbiter was only required to assess 110 documents, and ultimately only upheld privilege in relation to a small number of the documents in dispute. The House agreed to the recommendations of the arbiter and most of the documents in dispute were subsequently tabled. The report is available [online](#).

#### *VIP Gaming Management Agreement*

On 18 September 2014 the House resolved to order the production of the un-redacted final and signed version of the VIP Gaming Management Agreement in respect of the Barangaroo Restricted Gaming Facility. The document was returned on 2 October subject to a claim of privilege. Unusually, the submission supporting the claim of privilege was also claimed to be privileged as it revealed confidential information. A redacted version of this claim of privilege was subsequently provided in response to a further resolution of the House.

At the request of Dr Kaye, an independent legal arbiter (Mr Mason) was appointed to determine whether sections of the Agreement should be made public. The arbiter's report was made public on 22 October, and did not uphold the claim of privilege over these sections, recommending their release. The next day, a motion was moved in the House to act on the arbiter's recommendation. However the motion was amended and

the matter referred to the Privileges Committee for inquiry and report.

The committee reported on 11 November and supported the recommendation of the arbiter to make certain sections of the Agreement public, recommending that a copy of the Agreement be released to the Department of Premier and Cabinet for redaction and that this redacted copy be tabled by the Clerk. This process was agreed to by the House and the redacted version of the Agreement was tabled on 13 November.

## **Petitions**

In 2014, the House received 57 petitions, a similar number than in 2013. The number of signatures received dramatically reduced from 289,178 to 37,155 signatures as, unlike 2013, no very large petitions were presented this year.

Fourteen of the petitions received in 2014 were irregular. Most frequently, these petitions were irregular because they were addressed to either the Legislative Assembly or to both Houses rather than to the Legislative Council.

On 12 August 2014 the House varied standing order 68 relating to petitions to require that a Minister must table a response within 35 calendar days of a petition being received by the House if that petition has been signed by 500 or more persons. Since the sessional order was adopted, six petitions have met this threshold. Government responses have been received to two of those petitions, and the remaining four have due dates in December 2014.

## **Committees**

2014 was another extremely busy year for Upper House Committees. Seventeen inquiry reports were tabled and work continues on a further eight inquiries. Several of these inquiries are not due to be concluded until late February 2015.

2013 saw an increase in the number of select committees established. This trend has continued through 2014, with six select committees and one joint select committee established. Only three GPSC inquiries were established in 2014, compared with four in 2013 (not including the budget estimates inquiries).

2014 saw the Council's committees conduct inquiries into a variety of matters ranging from tourism in local communities to greyhound racing and social, public and affordable housing.

Committee processes have continued to evolve during the year. Prior to embarking on its extraordinary inquiry into the family responses to the 1990s murders in Bowraville, the Standing Committee on Law and Justice undertook training in Aboriginal cultural awareness. The committee's report was tabled in the House in November and was immediately followed by a moving take note debate. This was a truly historic occasion for the Council, witnessed by the families and friends of the three children murdered in Bowraville 23 years ago, who travelled to Sydney to observe the proceedings from the public and President's galleries.



Another important inquiry, into bullying within WorkCover NSW, saw the powers of the committees being exercised and challenged, with creative responses developed. These issues were explored in a paper presented by the Clerk Assistant Committees, Ms Beverly Duffy, at this year's Presiding Officers and Clerks conference, which may be accessed on the [Parliament's website](#).

During its inquiry into regional aviation, the Standing Committee on State Development trialled a new social media strategy to enhance community engagement. This strategy builds on the success of the Council's Twitter account @nsw\_upperhouse which has become a trusted source of information for members, staffers and political reporters with over 900 followers after one year's operation.

Budget Estimates this year was marked by an even smaller number of 'Dorothy Dix' questions than the previous year reflecting a trend over the last few years for government members not to ask questions during Budget Estimates hearings. In 2012 government members chose not to ask questions in ten out of 23 hearings, and in 2013 government members chose not to ask questions in 19 hearings. This year government members did not ask questions in 21 out of 23 hearings.

November saw the tabling of Legacy Reports by the chairs of the Standing Committees on Law and Justice, State Development and Social Issues. The preparation of Legacy Reports was recommended by the Chairs' Committee (an informal committee which has been established by the President to share information between committees). The purpose of legacy reports is to provide a summary of each committee's work during the 55th Parliament in order to inform the successor committee in the 56th Parliament of the committee's accomplishments and suggestions for future activity.

### **A message from the Clerk**

This will be the last edition of *House in Review* before Parliament is prorogued before the March 2015 general election. Following this, a final *House in Review* will be released, summarising the work of the Council in the 55th Parliament.

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



David Blunt  
Clerk of the Parliaments