

NEW SOUTH WALES LEGISLATIVE COUNCIL

HOUSE IN REVIEW



Volume 56/4

Sitting period
2 to 4 June 2015



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

Tuesday and Wednesday of the sitting week were focused on the passage of the 'poles and wires' legislation through the House. On Tuesday, Revd Nile tabled the report of the Select Committee on the Leasing of Electricity Infrastructure. Later that day, the House commenced the second reading debate on the two electricity bills and sat late into the night until the conclusion of debate, with more than half the members of the House speaking to the bills. Wednesday saw the House consider the bills in detail, with fifty-nine amendments to the Electricity Network Assets (Authorised Transactions) Bill being moved and debated during the committee-of-the-whole stage. The bills finally passed the House and were returned to the Assembly late on Wednesday night.



On Thursday, representatives of the families of the three young children murdered in Bowraville almost 25 years ago were present in the President's and public galleries to witness the introduction of the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill.

Also this week, the House was advised that a petition had been filed with the Court of Disputed Returns relating to the outcome of the election to last seat in the Council at the State election to which Mr Mark Pearson of the Animal Justice Party was elected.

Finally, a new procedure was adopted for the scheduling of private members' business. During formalities on Thursday, the House agreed to a motion moved by the Government Whip setting out the order of items to be considered following discussion by members of all parties at a "Whips' meeting" the previous evening. It is

anticipated this procedure will continue to be followed in future weeks.

Petition – Court of Disputed Returns

On the first sitting day, the President informed the House that the Clerk had received from the Supreme Court a copy of the petition from Mr Peter Neil Jones to the Court of Disputed Returns in relation to 'Peter Neil Jones v Mark Pearson and Electoral Commissioner 2015/160390 – Court of Disputed Returns', filed on 29 May 2015.

The Clerk tabled the petition.

Government business

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

Electricity Network Assets (Authorised Transactions) Bill 2015 and cognate Electricity Retained Interest Corporations Bill 2015

The bills originated in the Legislative Assembly.

Summary: The Electricity Network Assets (Authorised Transactions) Bill authorises and facilitates the transfer to the private sector of an interest in certain electricity network assets of the State – namely; TransGrid, Ausgrid and Endeavour Energy – and provides for the transfer of electricity network employees and their rights and entitlements. Under the bill, network infrastructure assets are to be transferred by lease with an initial term not exceeding 99 years, and the overall private sector interest in the State's electricity network assets must not exceed 49%. The bill allows 100% transfer of interest in the transmission corporation, TransGrid, and majority interest in Ausgrid and Endeavour Energy, however no transfer of any part of the third distribution company, Essential Energy, is authorised.

The cognate Electricity Retained Interest Corporations Bill provides for the effective stewardship and oversight of the State's retained interest in Ausgrid and Endeavour Energy through the establishment and operation of a

separate independent statutory corporation for each retained interest.

Proceedings: The bills were received from the Legislative Assembly on 2 June 2015 and read a first time. The second reading speech of the Minister (Mr Gay) was incorporated into Hansard. In that speech, the Minister indicated that the bills will allow the Government to proceed with its election commitment to undertake a long-term lease of 49% of the electricity network and deliver on its mandate to rebuild New South Wales by investing \$20 billion in new infrastructure. In his speech, the Minister argued that the Rebuilding NSW plan will boost the economy by around \$300 billion over the next 20 years and create over 120,000 new jobs. The Minister's speech reaffirmed the Government's commitment to lower electricity prices for consumers and emphasised that the transaction bill requires the successful bidder to provide a guarantee that total network charges for the financial year ending 30 June 2019 will be lower than for the financial year ending 30 June 2014. The Minister's speech noted that the Government had been prosecuting the case publicly for the last 12 months and during the recent election campaign, and concluded that the bills represented a once-in-a-generation opportunity that had the support of experts as well as strong backing from the community.

The Opposition opposed both bills on the grounds that during the election campaign it made a commitment to fight to retain the State monopoly interest in electricity transmission and distribution assets. The Opposition argued that the Government has failed to make the case that the transaction proposal is economically sound or in the public interest, and that a thorough analysis of the impact of the proposed transactions on the State budget was required. The Opposition argued that the Government had under-estimated the amount of on-going dividends revenue it will forgo, while over-estimating the amount it will realise from the proposed transaction. The Opposition also criticised the Government for not including what it saw as crucial details in the bills such as full employee protections and whether any regulatory benefits are to be conferred on purchasers.

The Greens opposed the bills, characterising them as representing a triumph of ideology over the public good. The Greens rejected the argument that the loss of electricity network dividends will be offset by increased taxation receipts arising from increased economic growth due to the proposed infrastructure investment; rather the Greens asserted that the budget would suffer over the long-term for the sake of a one-off cash benefit. The Greens questioned the position of the Government which, while arguing that the electricity dividend revenue stream will diminish over time, still maintained that it would receive a strong sale price for those assets. The Greens also believed that the lease transaction will serve to lock the State electricity network out of innovative energy technology alternatives.

The Opposition and the Greens both noted that the Select Committee on the Leasing of Electricity Infrastructure tabled its report just prior to commencement of debate on the bills, and criticised the

Government for bringing on the bills without allowing adequate time for the House to first consider the report.

The Shooters and Fishers Party noted that it had gone to the recent election with a policy of opposing the sale of the State's electricity assets, and on that basis opposed the bills. While opposing the bills, the Shooters and Fishers Party said that it would support any amendments that sought to improve employment protections for electricity workers. The Animal Justice Party opposed the bills, on the grounds that it believed that essential services such as power and water should remain under Government oversight, and argued that electricity privatisation in other States has shown that the level of service to consumers invariably suffers following privatisation.

The Christian Democratic Party supported the bills, arguing that the transactions authorised by the bills were necessary to ensure the essential infrastructure needs of the State were met and the groundwork is laid for continuing economic growth. The CDP agreed with the Government that it had a mandate to proceed with the leasing of the electricity network assets, and that it would not have a negative effect on electricity prices, safety or reliability. However, the CDP indicated that its support was reliant upon amendments that would see the powers of the Electricity Price Commissioner reviewed within 12 months of the completion of the lease transactions; an independent review of the Deloitte Access Economics report, relied upon by the Government in promoting the benefits of the proposal, prior to the enactment of any enabling legislation; and the creation of strong employment protection measures including a five year employment guarantee period, transferrable accrued entitlements and a mandated minimum number of apprenticeship opportunities.

The second readings were agreed to (Division 19:18), with the Government and the Christian Democratic Party voting for the bills, and the Opposition, the Greens, the Shooters and Fishers Party and the Animal Justice Party voting against the bills.

Consideration of the bill in committee-of-the-whole commenced on 3 June 2015. The Opposition, the Greens and the Christian Democratic Party all moved amendments to the bill, with a number of the amendments put forward by each of the three parties being similar in their intent.

The Opposition and the Greens amendments sought, among other things, to ensure that assets were returned to the State at the end of a lease; require Parliamentary approval for lease transactions; promote investment in renewable energy network innovations; provide transfer payments to electricity employees moving to the private sector; establish employment and apprenticeship guarantees; and to broaden the step in rights for contravention of a lease. Despite in the main supporting each other's amendments and often drawing the support of the Animal Justice Party, all of the Opposition and Greens amendments were defeated, primarily on division.

In contrast, all of the Christian Democratic Party amendments, which were foreshadowed during the second reading debate, were agreed to on the voices.

The Electricity Network Assets (Authorised Transactions) Bill was reported with amendments and the Electricity Retained Interest Corporations Bill was reported without amendments.

The third reading of the bills was agreed to (Division 19:17), and the bills were returned to the Assembly. The following day, the Assembly advised that it had agreed to the Council's amendments.

On 4 June 2015, and as provided for under standing order 161, the Greens lodged a protest against the passing of the bills. The protest was entered into the Minutes of Proceedings, and a copy will be forwarded to the Governor.

Legal Profession Uniform Law Application Legislation Amendment Bill 2015

The bill originated in the Legislative Assembly.

Summary: The Legal Profession Uniform Law (the uniform law) establishes a scheme to regulate the legal profession in New South Wales and Victoria. The *Legal Profession Uniform Law Application Act 2014* (the application Act) applies the text of the uniform law as a law of the State, enacts complementary provisions for the State and repeals the *Legal Profession Act 2004*. The formal and ancillary provisions of the application Act and uniform law commenced on 1 July 2014. The remaining provisions of the application Act and the uniform law are yet to commence.

The bill amends the application Act to enable the commencement of the uniform law scheme and makes consequential amendments to other legislation.

Proceedings: The bill was received from the Legislative Assembly on 2 June 2015 and read a first time. Debate on the second reading of the bill commenced the following day. The second reading speech of the Parliamentary Secretary (Mr Clarke) was incorporated into Hansard. In that speech, the Parliamentary Secretary indicated that the reforms in the uniform law are necessary and long overdue, and will slash red tape by simplifying and standardising regulatory obligations, with the shorter, less complex legislation resulting in reduced compliance costs and lawyers more able to focus on providing legal services. The speech of the Parliamentary Secretary noted that the bill represents the final legislative piece required to prepare New South Wales for the uniform law reforms and brings the idea of a seamless, unified national legal profession market – first articulated more than two decades ago – closer to reality.

The Opposition did not oppose the bill, noting that the push for a unified national legal profession has always enjoyed bipartisan support. The Opposition further noted that while only New South Wales and Victoria are adopting the uniform law, between them the two States represent 70 per cent of legal practitioners. The Opposition also acknowledged that there will invariably be teething problems with the adoption of a new regulatory regime, and that this may particularly be the case for small legal businesses and sole practitioners.

The Greens supported the bill, agreeing that the need for a unified national legal profession market has long been acknowledged. The Greens held two concerns regarding the bill. Firstly they saw the requirement for Government and in-house lawyers to hold practising certificates as unnecessary. Secondly, they argued that the current restrictions on advertising of legal services, which the bill removes, had proven to be worthwhile and foreshadowed that they would move an amendment to ensure that the restrictions remained in place.

The second reading was agreed to.

In the committee stage, the Greens amendment was opposed by the Government on the grounds that the bill removed the restriction on advertising so that there would be uniformity between New South Wales and Victoria with respect to legal advertising. The amendment did not garner support from other parties and was negated (Division 5:30).

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

Bills introduced and read a first time

The following bills from the Assembly were introduced, read a first time, and their second reading set down for a later hour:

- (1) Statute Law (Miscellaneous Provisions) Bill 2015
- (2) Fair Trading Legislation (Repeal and Amendment) Bill 2015.

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.

Independent Pricing and Regulatory Tribunal Amendment (Accredited State Water Regulator) Bill 2015: On 3 June 2015, the Assembly advised that it was returning the Council bill without amendment.

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 (Appeal and Review) Amendment (Double Jeopardy) Bill 2015 (Mr Shoebridge, The Greens)

The bill originated in the Legislative Council.

Summary: The bill amends the *Crimes (Appeal and Review) Act 2001* to extend an exception to the rule against double jeopardy in relation to an acquitted person where previously inadmissible evidence becomes admissible.

The bill provides that, when the Director of Public Prosecutions applies to the Court of Criminal Appeal for an order that an acquitted person be retried for an offence punishable by life imprisonment, evidence against the acquitted person is to be considered fresh (for

the purpose of determining whether it is “fresh and compelling” in the sense required for a retrial) if it was inadmissible in the proceedings in which the person was acquitted and, as a result of a substantive legislative change in the law of evidence since the acquittal, it would now be admissible if the acquitted person were to be retried.

Recommendation 8 of the Standing Committee on Law and Justice report ‘The family response to the murders in Bowraville’ was that the Government review section 102 of the *Crimes (Appeal and Review) Act 2001* to clarify the definition of ‘adduced’, and in doing so consider, among other things, the merit of expressly broadening the scope of the provision to enable a retrial where a change in the law renders evidence admissible at a later date. The Government has commissioned former Justice James Wood to conduct this review and to report back in November 2015.

Proceedings: The bill was introduced, read a first time and printed on 4 June 2015. In his second reading speech, Mr Shoebridge commended the Government, and the Attorney General in particular, for its commitment to responding to the Bowraville families and implementing the recommendations of the Law and Justice Standing Committee report, including commissioning the legislative review being undertaken by former Justice Wood. Mr Shoebridge said the intention of introducing the bill now was to have it and the second reading debate on the public record while the review was being conducted, in the hope of facilitating immediate action once the review reports in November this year.

Mr Shoebridge said the bill proposes to bring the Act in line with the double jeopardy legislation in the United Kingdom and that the experience there was instructive, as since 2003, when the UK law was changed, there had been only 13 applications, nine of which were granted and which had resulted in seven convictions. Mr Shoebridge noted that the *Crimes (Appeal and Review) Act* had been amended in 2006, with the Bowraville matter specifically mentioned in debate, but that the difficulties with the definition of adduced had prevented the legislative change from operating as intended.

Mr Shoebridge acknowledged that the bill, if passed into law, would not guarantee a retrial or conviction in the Bowraville matter, but commented it would clear one of the major impediments to the long, 25-year search for justice by the Bowraville families.

Debate was adjourned for five calendar days.

Motions

SO52 Order for papers – Electorate information (Ms Sharpe, ALP)

Summary: The motion called on the House to order the production of papers relating to electorate briefings and electorate information sheets on each Legislative Assembly electorate, created since October 2014.

Proceedings: Debate on the motion commenced according to precedence. In speaking to the motion, Ms Sharpe argued that the information sought related to specific information that was provided to Government members by various departments before the 2015 State election.

The Government opposed the motion citing the large costs required to comply with the order. The Minister further cited examples of past orders which returned a large number of documents generated by similar orders in similar terms. The Greens supported the motion highlighting that the information is not publicly available and that the cost of retrieving the documents should not exceed the cost that the Government incurred in distributing the information to Government members for the 2015 State election. While the Christian Democratic Party supported the power of the House to order state papers as it was an important mechanism to hold the Executive to account, the party did not support this particular motion. The Opposition moved an amendment to refine the scope of the documents that would fall under the order.

The amendment was agreed to on the voices, but the motion was negatived (Division 17:22).

Age discrimination (Ms Cotsis, ALP)

Summary: The motion calls on the House to note the work conducted by the Human Rights and Equal Opportunity Commission (HREOC), Age and Disability Discrimination Commissioner; and that the loss of aged workers in the workforce will cost approximately \$10 billion annually. The motion also sought the House to call on the Government and Minister for Ageing to act on the HREOC recommendations and to report back on steps being taken to reduce discrimination faced by older workers in New South Wales.

Proceedings: Debate on the motion resumed on 4 June 2015 from 28 May 2015 (see the previous edition of *House in Review* for earlier debate). The Government applauded the collaborative work of the Age and Disability Discrimination Commissioner and her contributions. The Government drew attention to the NSW Ageing Strategy that was recently reviewed in consultation with the Commonwealth Government, the private sector, universities and older people and stated that targeting discrimination was one of the key focuses of the strategy. The Government highlighted the importance of raising awareness of discrimination of older workers in the workforce and the removal of barriers to workforce participation. The objectives of the updated NSW Ageing Strategy, as summarised by the Minister, will concentrate on improving access to training to update skills; recognition of prior education learning; responding to business restructures and the provision of support services for aged workers; and encouraging older women to return to the workforce.

The Government moved an amendment to the second part of the motion to instead have it congratulate the Government and the Minister for Ageing for responding to the recommendations of the HREOC.

The Greens supported the motion and agreed that the high surveyed rates of discrimination against older workers warrant urgent attention and action. The Greens also urged that cultural change is essential to address the issue of discrimination and commented on the role that media plays in further denigrating older workers.

The Christian Democratic Party agreed that there is a significant issue of cultural bias against older workers in

the community, and reiterated the value of older workers as the source of a wealth of knowledge and skills that is not always recognised by employers.

Debate was interrupted for Question Time.

Motions taken as formal business

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

- (1) National Schizophrenia Awareness Week (Mrs Maclaren-Jones)
- (2) International Nurses Day 2015 (Mrs Maclaren-Jones)
- (3) Fundraising to support the Sydney Neuro-Oncology Group's research (Mr Moselmane on behalf of Ms Cotsis)
- (4) Rhymes with Silence (Dr Faruqi)
- (5) General Purpose Standing Committee No. 6 reference (Mr Green)
- (6) Mr Adam Goodes (Mr Buckingham)
- (7) Use of e-cigarettes (Mr Buckingham)
- (8) Public Education Foundation (Mrs Houssos)
- (9) Mindfulness (Ms Barham)
- (10) Child protection (Ms Barham)
- (11) Sirius apartment building (Ms Barham)
- (12) Centenary of BHP Newcastle Steelworks (Mr MacDonald)
- (13) Engineers Australia (Dr Faruqi).

Reports tabled

Independent Commission Against Corruption: 'Investigation into allegations that an Ausgrid engineer corruptly solicited and accepted benefits from Ausgrid contractors and subcontractors', June 2015.

Committee activities

Note: Committee activities include 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 section entitled 'Inquiry activities'.

Committee references

General Purpose Standing Committee No. 4: The Chair (Mr Borsak) informed the House that on 2 June 2015, the Committee resolved to inquire into the progress of the Ombudsman's investigation 'Operation Prospect'.

General Purpose Standing Committee No. 6: The House referred to the committee an inquiry into vocational education and training in New South Wales.

Committee membership

The following appointments were reported to the House:

General Purpose Standing Committee No. 3: Ms Barham was elected chair, Mrs Maclaren-Jones was elected deputy chair.

The following appointments of Council members to joint statutory and standing committees were agreed to by the House:

Committee on Children and Young People: Mr Donnelly, Mr Green and Mrs Taylor.

Committee on the Health Care Complaints Commission: Mr Amato, Ms Barham and Mr Secord.

Committee on the Independent Commission Against Corruption: Mr Khan, Revd Nile and Ms Voltz.

Committee on the Ombudsman, the Police Integrity Commission and the Crime Commission: Mr Farlow, Mr Khan and Mr Searle.

Legislative Review Committee: Mr Moselmane, Mr Pearce and Mr Shoebridge.

Joint Standing Committee on Electoral Matters: Mr Borsak, Mr Franklin, Mrs Houssos, Dr Phelps and Mr Primrose.

Joint Standing Committee on Road Safety: Dr Faruqi, Mr MacDonald and Mr Mookhey.

Joint Standing Committee on the Office of the Valuer-General: Mr Pearce and Mr Wong.

Committee report tabled

Select Committee on the Leasing of Electricity Infrastructure: Report entitled 'Leasing of Electricity Infrastructure', June 2015.

Government response

Standing Committee on Law and Justice: The House received a response to Report No. 55 entitled 'The family response to the murders in Bowraville', tabled 6 November 2014.

Inquiry activities

General Purpose Standing Committee No. 6

Inquiry into local government in New South Wales. The closing date for submissions is 5 July 2015, after which the committee will hold hearings in Sydney and conduct regional site visits.

General Purpose Standing Committee No. 4

Inquiry into the progress of the Ombudsman's investigation 'Operation Prospect'. Hearings will be held on 19 and 26 June. The report is due to be tabled on 20 July 2015.

Adjournment debate

Tuesday 2 June 2015

James Hardie and asbestos-related diseases liability (Mr MacDonald); Community transport (Mr Secord); Mid-North Coast communities (Dr Faruqi); Newcastle Red Cross Blood Service/ Westmead Hospital high technology dental laboratory (Mrs Mitchell); Labor and Country Labor candidates (Mrs Houssos); Same-sex

marriage (Revd Nile); Credit card interest rates (Ms Cotsis).

Wednesday 3 June 2015

Fit for the Future (Mr Primrose); Electricity privatisation (Mr Green); Ethics classes (Dr Kaye); NSW/ACT Regional Achievement and Community Awards (Mr Colless); Capital punishment (Mr Mookhey); New South Wales Young Liberal Flying Squad (Mrs Maclaren-Jones); Illawarra Mercury and Ms Noreen Hay (Dr Phelps).

Thursday 4 June 2015

Parramatta Female Factory World Heritage listing (Ms Sharpe); Public transport in South West Sydney (Mr Amato); Tribute to Joan Kirner (Ms Voltz); Homelessness (Mr Pearson); State infrastructure funding (Mr Farlow); Byron Bay coastal management (Ms Barham).

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 susan.want@parliament.nsw.gov.au.

All responses will be kept strictly confidential.



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