

# NEW SOUTH WALES LEGISLATIVE COUNCIL

## *HOUSE IN REVIEW*
















Volume 56/32

2016 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).

### The year in review

This edition of *House in Review* summarises the work of the Legislative Council during 2016. The period covered by this summary extends from 23 February, the first sitting day in 2016, to the last sitting day of the year on 17 November.

48  SITTING DAYS	7.5 hrs  LENGTH OF AVERAGE SITTING	637  NOTICES GIVEN	6  ORDERS FOR PAPERS	1005  PAPERS TABLED	18  COMMITTEE INQUIRIES
66  GOVT BILLS PASSED	24  GOVT BILLS INTRO'D IN LC	650  AMDTS CIRCULATED	73  AMDTS AGREED TO	7  PRIVATE MEMBERS BILLS INTRO'D	1  PRIVATE MEMBERS' BILL PASSED
326 PRIVATE MEMBERS' MOTIONS MOVED	315 PRIVATE MEMBERS' MOTIONS RESOLVED	293 MOTIONS AGREED TO AS FORMAL BUSINESS	26  PETITIONS RECEIVED	502 ? QUESTIONS ON NOTICE	846 ? QUESTIONS W/OUT NOTICE

A range of additional procedural statistics for the Legislative Council, going back to the 1990s, is now available on the Parliament's public website [here](#).

### *The legislative agenda*

This year the House agreed to 66 Government bills to which 650 amendments were circulated, 524 amendments were moved and 73 amendments were agreed to. While the number of bills considered was broadly consistent with those considered in 2015, the number of bills introduced in the Council increased significantly, from 10 per cent in 2015 to 36 per cent in 2016. This is a move away from a trend that had emerged [prior to the 56th Parliament](#) where there was a significant decrease in the number of bills introduced in the Council. The number of amendments circulated and moved to bills during consideration in committee of the whole highlights the Council's active pursuit of its role as a House of Review in

scrutinising government legislation. The majority of amendments agreed to were those moved by the Christian Democratic Party.

For the second year, the House finalised the consideration of all Government bills introduced. As a result, no Government bills remain on the Notice Paper over the summer recess.

2016 also saw two protests lodged to three government bills: the Inclosed Lands, Crimes and Law Enforcement Legislation Amendment (Interference) Bill and the Biodiversity Conservation Bill and its cognate, the Local Land Services Amendment Bill.

While seven private members' bills were introduced into the Council in 2016, only one was agreed to, being the Steel Industry Protection Bill 2016. The House also negatived two private members' bills that had previously been introduced in 2015. The bulk of private members' business considered by the House took the form of motions, with 326 items moved in total. Of these, 293 were resolved as formal business, 22 were resolved during debate on private members' day (Thursdays), and 11 were adjourned or interrupted and remain on the Notice Paper.

A summary of some of the most topical legislation debated by the Council this year can be found in the following pages.

### *Orders for papers*

The 56<sup>th</sup> Parliament has continued to see a decrease in the number of orders for papers agreed to compared to [previous years](#). The House agreed to six orders in 2016, a slight increase on the four orders agreed to in 2015, but a significant departure from 2014, the final year of the 55<sup>th</sup> Parliament, when 30 orders were agreed to. Notwithstanding the number of orders agreed to, the papers produced continued to relate to particularly topical issues such as the welfare of greyhounds bred for racing and the under-dosing of chemotherapy patients. The production of papers relating to greyhound welfare went some way towards settling a question over the Council's power to order the production of papers from statutory bodies, a development that is discussed further in the following pages.

### *Questions, notices and petitions*

2016 saw a significant decrease in the number of questions on notice asked, continuing a [trend over recent years](#). In total, 502 questions were asked, in contrast to 782 in 2015 and 933 in 2014. However, there was a slight increase in the number of questions asked without notice – that is, during Question Time, with 846 questions asked in contrast to the 748 asked in 2015. This is likely attributable to the seven additional days that the Council sat in 2016, affording seven additional Question Times. The number of notices given by members over the year remained broadly consistent, totalling 637 compared to 690 in 2015, however there was an increase in the number of petitions presented, totalling 26 in contrast to the 18 presented in 2015.

### *Procedures of the House*

This year the House referred three matters to the Procedure Committee: options for members to vote in division while with the care of a young child; reform of the rules for Question Time; and reform of the rules for notices of motions. While the committee is yet to report on possible reform to Question Time or notices, the committee reported on options for members with the care of a young child voting in division in a report tabled on [20 October 2016](#). In November 2016, at the committee's recommendation, the House agreed to a new sessional order to allow a member with the care of a child and seated in the President's gallery to vote in a division at the discretion of the President.

2016 also saw the House utilise a new procedure that enables members to move a 'take note' debate on a tabled document. While the practice of moving a take note motion to consider a document is long-standing, provision for consideration of a document was not formalised in the standing orders until 2004. An amendment agreed to by the House in 2015 further clarified the procedure by providing for debate of one hour on such a motion, and this procedure was utilised by a member to move a take note debate on a

Performance Audit report of the Auditor-General regarding the sale and lease of Crown land, the first time such a report has been debated in the House. Members have since indicated that the procedure is likely to be utilised more often in the future.

The Procedure Office also commenced the publication of the proceedings of committee of the whole in the Minutes of Proceedings this year, in keeping with the practice of the Australian Senate and the NSW Legislative Assembly. Prior to 2016 proceedings in committee of the whole were only publicly available in Hansard.

### *Committees*

Upper House committees continued to manage a busy inquiry workload during 2016, with highlights including the tabling of the report of Select Committee into the Legislative Council committee system, an inquiry on reparations for the Stolen Generations and the referral of numerous oversight inquiries, discussed in further detail in the following pages.

### **The passing of Dr John Kaye MLC**

In May 2016, members and staff of the Legislative Council were greatly saddened by the passing of Dr John Kaye MLC, a widely respected and admired member of the House.

During debate moved on a condolence motion that same month, members remembered Dr Kaye for his ‘titanic intellect’, tenacity and persuasive ability to put an argument. While members acknowledged the many causes for which Dr Kaye was a passionate and effective advocate – including public education, renewable energy, electoral funding law reform, opposition to the construction of Tillegra Dam, greyhound racing reform, TAFE funding, urban planning and medical cannabis – members particularly stressed his many personal attributes, with all acknowledging him as a man of unquestionable integrity. Many members also spoke to Dr Kaye’s sense of humour and deep kindness and compassion, observing his capacity to get on well with people from across the political spectrum and from all walks of life, and his commitment to his role as a parliamentarian. Following an emotional debate, the motion was agreed to, all members and officers standing as a mark of respect.

### **Legislation**

#### *Government bills*

As noted earlier, while the number of bills considered by the Council was similar to that debated in 2015, the number of bills introduced in the Council either by a Minister or Parliamentary Secretary rose significantly. While several bills were notable for their lengthy debate, including those considered during the closing weeks of 2016 when the House sat until the very early hours of the morning on two occasions, the year saw the House consider a wide range of issues and legislate on some particularly topical matters. Some of the most topical bills considered are summarised below:

- **[Limitation Amendment \(Child Abuse\) Bill](#)**: The bill amended the *Limitation Act 1969* to remove the limitation period for an action for damages relating to death or personal injury resulting from child abuse (sexual abuse or serious physical abuse to a person under 18 years).
- **[Transport Administration Amendment \(Authority to Close Railway Lines\) Bill](#)**: The bill was integral to facilitating future development projects in NSW, having authorised the closure of railway lines running from Balmain Road, Lilyfield, to Victoria Road, Rozelle (including the Rozelle rail yards). The bill also enabled the Minister for Transport and Infrastructure to authorise the closure of any other railway line in the greater Sydney, Newcastle, Central Coast or Wollongong metropolitan region for State significant infrastructure development.
- **[Inclosed Lands, Crimes and Law Enforcement Legislation Amendment \(Interference\) Bill](#)**: The bill imposed heavy penalties for protest activities on inclosed lands and authorised police to use move-on powers to prevent obstructions caused by demonstrations and protests.

- **Biofuels Amendment Bill**: The bill required that small petrol retailers comply with minimum ethanol content requirements previously applied only to major petrol retailers and wholesalers and that all retailers make ethanol blend petrol available.
- **Assisted Reproductive Technology Amendment Bill**: The bill allowed persons who were born from assisted reproductive technology (ART) treatment using donor gametes prior to 2010 to obtain non-identifying information about the donor, and required ART providers to retain records for 75 years.
- **Crimes (Domestic and Personal Violence) Amendment (National Domestic Violence Orders Recognition) Bill**: The bill saw NSW become the first jurisdiction to implement measures agreed by COAG to ensure that apprehended domestic violence orders, or domestic violence orders in some other states, will be automatically recognised and enforceable in any State or Territory in Australia.
- **Coastal Management Bill**: The bill repealed the *Coastal Protection Act 1979* and the *Coastal Protection Regulation 2011* and established a new integrated management framework for the coastal environment of NSW.
- **Crimes (Serious Crime Prevention Orders) Bill and Criminal Legislation Amendment (Organised Crime and Public Safety) Bill**: The bills allowed the Director of Public Prosecutions (DPP), the Crime Commission or the Commissioner of Police to apply to the Supreme and District Courts to make serious crime prevention orders to restrict the activities of persons or businesses that are involved in serious crime or terrorism offences. The bills allowed senior police to issue temporary public safety orders to prevent people from attending places or events where they are expected to engage in violence or present a serious threat to public safety or security.
- **Terrorism (Police Powers) Amendment (Investigative Detention) Bill**: The bill authorised the arrest, detention and questioning of a person suspected of a recent or imminent terrorist act, or in possession of a thing connected with a terrorist act.
- **Taxation Administration Amendment (Collection and Disclosure of Information to Commonwealth) Bill**: The bill expanded the scope of information currently gathered at the time of a property transaction following a decision by Commonwealth, State and Territory Treasurers (excepting the NT) to establish a national register of foreign ownership of land titles.
- **Courts Legislation Amendment (Disrespectful Behaviour) Bill**: The bill made it a summary offence for a person to engage in disrespectful behaviour according to practice or convention in the Supreme Court, Land and Environment Court, District Court or Local Court or in coronial proceedings.
- **Local Government and Elections Legislation Amendment (Integrity) Bill**: The bill applied the aggregated caps on donations that apply at the State level to local government elections; disqualified persons who have been convicted of an offence carrying a sentence of five or more years imprisonment from holding office in a council for seven years after their conviction; and amended pecuniary interest provisions.
- **Point to Point Transport (Taxis and Hire Vehicles) Bill**: The bill allowed rideshare drivers to provide services legally so long as they meet certain safety requirements, as implemented in December 2015. The bill also established a new regulatory framework for the point to point transport industry
- **Greyhound Racing Prohibition Bill**: The bill implemented one of the options recommended by a Special Commission of Inquiry headed by Justice the Honourable Michael McHugh AC QC into the greyhound racing industry by providing for a ban on greyhound racing which would ultimately see the industry shut down. (In the months since the bill was passed the Government has announced that it will revisit the decision to shut down the industry in 2017.)
- **Land and Property Information NSW (Authorised Transaction) Bill**: The bill enabled the private sector to invest in and operate the titling and registry business of Land and Property Information for a period of 35 years.



- **Law Enforcement Conduct Commission Bill**: The bill established the Law Enforcement Conduct Commission (LECC), a single law enforcement oversight body that will exercise the functions currently undertaken by the PIC, the Ombudsman and the Inspector of the Crime Commission. To that end, the bill abolished the Police Integrity Commission and the Inspector of the Crime Commission and transferred the Ombudsman's jurisdiction as it relates to police.
- **Industrial Relations Amendment (Industrial Court) Bill**: The bill abolished the Industrial Court, transferring functions of the Court to the Supreme Court, the District Court or the Industrial Relations Commission and reconstituting the Commission.
- **Social and Affordable Housing NSW Fund Bill**: The bill provides for the establishment of the Social and Affordable Housing Fund to set aside dedicated, ring-fenced funding for social and affordable housing. The fund will be called the SAHF NSW, or the SAHF, and in its first phase will target delivery of up to 3,000 additional social and affordable homes.
- **Housing Legislation Amendment Bill**: The bill authorised the Land and Housing Corporation, the statutory body that owns the state's public housing assets, to enter into a lease arrangement, known as a concurrent lease, with a registered community housing provider for specified public housing properties with a view to transferring up to 35 per cent of the state's social housing to community housing providers (while retaining ownership of the stock).
- **Waste Avoidance and Resource Recovery (Container Deposit Scheme) Bill**: The bill established a container deposit scheme in NSW that will allow people to receive a 10 cent refund when they deliver an eligible beverage container to a collection point, similar to other schemes operating in South Australia and the Northern Territory, and overseas.
- **Crown Land Management Bill**: The bill reformed the management of Crown land in NSW, creating a single modern legislative framework which the Government stated would be easier to understand and increase community involvement in major decisions relating to Crown land.
- **Land Acquisition (Just Terms Compensation) Amendment Bill**: The bill responded to recent criticism of the land acquisition process undertaken in relation to infrastructure development projects by providing more certainty, transparency and greater compensation for landowners and residents impacted by land acquisition. Of note, the bill required a fixed six-month negotiation period before compulsory acquisition can occur.
- **Fisheries Management Amendment (Shark Management Trials) Bill**: The bill enabled the trial for 12 months of shark nets along the North Coast in time for the 2016-17 summer school holidays at Sharpes, Shelly and Lighthouse beaches near Ballina, Seven Mile Beach at Lennox Head and Main Beach at Evans Head.
- **Biodiversity Conservation Bill and Local Land Services Amendment Bill**: The bills put in place a new land management framework for NSW, including new provisions for land clearing activities, conservation assessments and the protection of threatened species.
- **Independent Commission Against Corruption Amendment Bill**: The bill reformed the managerial structure of the ICAC from a single Commissioner model to a panel of Commissioners comprising of one Chief Commissioner and two other Commissioners, with a Chief Executive Officer to manage the day-to-day affairs of the Commission.

### ***Disallowance of delegated legislation***

The Legislative Council has the power to disallow delegated legislation such as statutory rules and instruments under the *Interpretation Act 1987* or under the provisions of the primary Act.

In 2016, the Council considered nine disallowance motions. Of these, six were resolved in the negative, two were set down for consideration in 2017, and one was withdrawn.

### ***Private members' bills***

As noted earlier, seven bills were introduced by private members in 2016. These were the Public Health Amendment (Registered Nurses in Nursing Homes) Bill, the Steel Industry Protection Bill, the Abortion Law Reform (Miscellaneous Acts Amendment) Bill, the Human Tissue Amendment (Trafficking in Human Organs) Bill, the Mining Amendment (Climate Protection – No New Coal Mines) Bill, the Local Government Amendment (Parliamentary Inquiry Recommendations) Bill and the Plastic Shopping Bags (Prohibition on Supply by Retailers) Bill.

The House agreed to the Steel Industry Protection Bill 2016, which seeks to ensure that Australian steel is used in infrastructure or public works constructed by or on behalf of public authorities. The bill remains on the Legislative Assembly Business Paper for consideration. The House also continued to debate several bills that had been introduced in 2015 and disposed two, voting to negative the Climate Change Bill 2015 and the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2015 at the second reading stage.

### **Parliamentary privilege, the Code of Conduct and the interest disclosure regime**

On 1 June 2016, the Premier wrote to the Speaker and the President, indicating the Government's broad agreement with the directions for reform contained in two recent reports of the Legislative Assembly's Standing Committee on Parliamentary Privilege and Ethics and the Legislative Council's Privileges Committee. The reports examined a number of matters regarding a proposed Parliamentary Ethics/Standards Commissioner, the Members Code of Conduct, and the interest disclosures regime. The Premier also expressed a preference for uniform agreements across both Houses and requested that the Parliament develop an approach for reform.

On 21 June 2016, the Speaker and the President responded to the Premier noting that some legislation will be required to give effect to the recommendations of the committees, and that this represents an opportunity to progress a number of integrity-based measures as well as certain administrative reforms at the Parliament. These include:

- Parliamentary Privilege legislation (NSW is the only Australian jurisdiction without such legislation)
- Modernisation of the Parliamentary Evidence Act 1901 as it relates to the operation of committees
- Parliamentary service legislation providing a legislative basis for the employment of the staff of the three parliamentary departments.

The Speaker and the President have noted that consistent with the doctrine of the separation of powers, the above matters should be dealt with by the Presiding Officers. The President will primarily oversee the preparation of relevant exposure drafts, while the Speaker will primarily oversee a review of the Members Code of Conduct. The Speaker and the President are committed to a collaborative approach and work on these matters is being prioritised.

### **Orders for papers from statutory bodies**

As mentioned previously, the number of orders for papers agreed to this year has reduced significantly compared to previous years, totalling just six orders relating to the under-dosing of chemotherapy patients, the 2016-2017 Budget, the 2016-2017 Budget finances, the Government's advertising campaign relating to the greyhound industry, greyhound welfare and a proposed Indoor Sports Stadium near Wentworth Park Sporting Complex Trust.

However, 2016 saw the finalisation of a significant matter related to the power of the Council to order the production of documents from statutory bodies. In September 2015, the Council had agreed to an order for the production of papers from, amongst other entities, Greyhound Racing NSW (GRNSW). No return was received from GRNSW and correspondence from the Department of Premier and Cabinet noted that s 5 of the *Greyhound Racing Act 2009* provides that GRNSW does not represent the Crown and is not subject to direction or control by or on behalf of the Government. The President subsequently sought advice from Mr Bret Walker SC on some of the legal issues raised by the matter and, having later tabled the advice, noted that in Mr Walker's opinion, bodies with public functions, such as GRNSW, are amenable to

orders for papers addressed to them directly by the Council, and are compelled to comply with such an order. Failure to do so would result in the responsible officer being in contempt of Parliament.

In November 2015, Dr Kaye (The Greens) gave a notice of motion reaffirming the original order made in September. The motion required that the Clerk communicate the terms of the order directly to the Chief Executive Officer of GRNSW. The summer recess ensued soon after and the matter was not resolved by the year's end. Dr Kaye became ill soon after and the matter was not resolved prior to his sad passing in May 2016.

In March 2016, the matter arose again when the House agreed to an order for papers from the Minister for Health, NSW Health and St Vincent's Health Australia relating to the alleged under-dosing of chemotherapy patients. In response to the return, correspondence was received from the Department of Premier and Cabinet advising that St Vincent's Health Australia is a group of not-for-profit companies and is not subject to direction or control by or on behalf of the Government. When the return was received, it included correspondence from St Vincent's Health Australia noting their receipt of legal advice that the Council's power does not apply to St Vincent's Health Australia or any of its subsidiaries, however they expected that the relevant documents would be provided by NSW Health, with whom they had been co-operating for the purposes of an independent review and to which they had provided unrestricted access to records and staff.

In September 2016, the House opted to pursue the greyhounds matter once again. In August the Government had passed the *Greyhound Racing Prohibition Act 2016*, which included a s 27 which stated that the Minister may, at any time after the assent of the Act and until the dissolution of GRNSW, require GRNSW to produce any specified record and may make the information publicly available. The House agreed to a new resolution noting the order originally made in September 2015, noting the advice provided by Bret Walker SC, noting the provisions of s 27 of the Act, and calling on the Minister for Racing to require GRNSW to produce the documents originally ordered in September 2015, together with any related documents created until the date of the resolution.

In October 2016, the Clerk tabled a return received directly from the Administrator of GRNSW. The return comprised of both public documents and documents over which a claim of privilege was made and which were made available only to members.

### **Committee activity**

Upper House committees continued to manage a busy inquiry workload during 2016. From January 2016 staff continued work on the eight inquiries established in the previous year. A further 18 inquiries were initiated in 2016.

#### ***Select Committee on the Legislative Council committee system***

The Select Committee tabled its report on 28 November 2016. The purpose of the inquiry was to ensure Upper House committees continue to play a key role in policy development, lawmaking and holding the executive government to account. While inquiry participants suggested that the Legislative Council committee system was functioning extremely well, a small number of issues were revealed by the inquiry which required further attention.

Preeminent among these was the need to enhance the Council's role in scrutinising bills and delegated legislation, a fundamental aspect of the role of an upper house. With this in mind, the committee recommended the establishment of a Selection of Bills Committee, on a trial basis, to ensure more draft legislation is referred to committees for detailed consideration.

The committee also recommended that a Regulation Committee be established, again on a trial basis, which would focus on delegated legislation. Rather than replicating the work of the joint Legislation Review Committee which scrutinises all disallowable regulations, the proposed committee would have a broader remit, focusing on substantive policy issues concerning a small number of regulations, as well as examining trends relating to delegated legislation.

Other recommendations seek to enhance the government response process by reducing the timeframe for responses from six to three months and by encouraging committees and the House to debate these responses. The report can be found [here](#).

### ***Reparations for the Stolen Generations***

On 23 June 2016, General Purpose Standing Committee No 3 tabled its report on Reparations for the Stolen Generations. Immediately afterward, members and officers stood to observe a minutes silence in honour of members of the Stolen Generation. Stolen Generation survivors and their family members, along with the Minister for Aboriginal Affairs, the Hon Leslie Williams MP, were present in the President's gallery and public gallery during the debate. The report cover features beautiful artwork by Kim Healey. It can be viewed [here](#). The Government's detailed response to the report's recommendations was received earlier today. It can be viewed [here](#).

### ***Oversight inquiries***

The Standing Committee on Law and Justice has had a longstanding role overseeing the agencies responsible for the state's workers compensation and motor accidents schemes. With the repeal in 2015 of the *Safety, Return to Work and Support Board Act 2012*, and the introduction of the *State Insurance and Care Governance Act 2015*, the committee was tasked with overseeing the operation of the insurance and compensation **schemes** rather than the **agencies** administering the schemes. In 2016, the committee completed its first review of the Compulsory Third Party insurance scheme and commenced its first review of the workers compensation scheme, which will table its report next year. In 2017 the committee will undertake its review of the Dust Diseases scheme and Motor Accidents (Lifetime Care and Support) scheme.

### ***Budget estimates***

In accordance with the resolution establishing the Budget Estimates inquiry, all six committees will table their reports by 2 December 2016. Last year was the first time government members refrained from asking questions in any of the hearings, which continues a trend discernible over the past few years for government members not to ask questions during Estimates hearings. This year the six general purpose standing committees resolved that government members would not ask questions well in advance of the scheduled hearings, on the proviso that the overall hearing time be reduced accordingly. Three of the six general purpose standing committees held four supplementary hearings this year, in contrast to last year when only one supplementary hearing was held.

### ***Select committees***

While the number of select committees established in recent years has declined relative to inquiries undertaken by the general purpose standing committees, select committees are still an important feature of the Upper House committee system. Two high profile select committee inquiries were established in 2016: the first into under-dosing of chemotherapy and a more recent inquiry into human trafficking. Both committees are due to report in 2017.



## A message from the Clerk

As this is the last edition of *House in Review* for 2016, 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](mailto:stephen.frappell@parliament.nsw.gov.au). All responses will be kept strictly confidential. Thank you to those readers who have recently provided feedback.

Finally, I would like to take this opportunity to wish all of our readers a merry Christmas and a safe and restful holiday period. We look forward to continuing the publication of *House in Review* in 2017.

A handwritten signature in black ink, appearing to read 'DB', with a large, sweeping flourish at the bottom.

David Blunt  
Clerk of the Parliaments