

# NEW SOUTH WALES LEGISLATIVE COUNCIL

## *HOUSE IN REVIEW*
















*Volume 56/49*

*2017 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 2017. The period covered by this summary extends from 21 February, the first sitting day of the Legislative Council in 2017, to the last sitting day of the year on 23 November.

48  SITING DAYS	7.7 hrs  LENGTH OF AVERAGE SITTING	755  NOTICES GIVEN	2  ORDER FOR PAPERS	1023  PAPERS TABLED	21  COMMITTEE INQUIRIES
69  GOVT BILLS PASSED	18  GOVT BILLS INTRO'D IN LC	431  AMDTS MOVED	59  AMDTS AGREED TO	15  PRIVATE MEMBERS BILLS INTRO'D	2  PRIVATE MEMBERS BILL PASSED
404 PRIVATE MEMBERS MOTIONS MOVED	391 PRIVATE MEMBERS MOTIONS RESOLVED	368 MOTIONS AGREED TO AS FORMAL BUSINESS	16  PETITIONS RECEIVED	667 ? QUESTIONS ON NOTICE	830 ? 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](#).

### *Election of a new President of the Legislative Council*

On the first sitting day of the year, the Clerk informed the House that, consequent on the resignation of the former President, the Hon Don Harwin – occasioned by his appointment as a Minister and Leader of the Government in the Legislative Council – it was necessary for the House to elect a member to be President. The House proceeded to elect the Hon John Ajaka unopposed to the position of President. Mr Ajaka is the 21<sup>st</sup> President of the Legislative Council since the advent of responsible government.

### ***Changing membership of the House***

2017 saw the departure of three long-serving members who between them had over 67 years of experience and service in the Legislative Council.

The Hon Michael Gallacher was first elected to the Council on 17 April 1996 and resigned on 6 April 2017. The Hon Duncan Gay was first elected on 19 March 1988 and resigned on 31 July 2017. The Hon Greg Pearce was first elected on 1 November 2000 and resigned on 15 November 2017. All three members served as Shadow Ministers and as Ministers of the Crown. Among the other positions of office in the Council variously held by the three members, both Mr Gallacher and Mr Gay had served as Leader of the Government in the Legislative Council and Vice President of the Executive Council and as Leader and Deputy Leader of the Opposition respectively.

2017 also saw the formal resignation of Ms Jan Barham who was elected to the Council on 28 March 2011. Ms Barham resigned on 13 February 2017, with her resignation announced to the House on the first sitting day of the year.

Four joint sittings were held in 2017 to elect new members to fill the vacancies caused by the resignations. As a result Ms Dawn Walker (The Greens), the Hon Taylor Martin (Liberals), the Hon Wes Fang (The Nationals) and the Hon Natalie Ward (Liberals) all joined the House this year.

### ***The Government's legislative agenda***

This year the House agreed to 69 Government bills, three more than the previous year. 2016 was notable for the significant increase in the percentage of Government bills introduced in the Council. This continued in 2017 with 18 bills, representing about 27 per cent, originating in the Council. The House considered forty Government bills in detail in committee of the whole, of which 16 were amended. The Legislative Assembly agreed to all of the amendments made by the Council. In addition to the Government amending five of its own bills, the Opposition amended six Government bills, the Christian Democratic Party amended five, The Greens amended two and the Animal Justice Party had its proposed amendments to a Government bill agreed to on one occasion.

The Government bills amended in the Council were:

- Local Government Amendment (Rates – Merged Council Areas) Bill
- Motor Accidents Injuries Bill
- Greyhound Racing Bill
- Parliamentary Contributory Superannuation Amendment (Criminal Charges and Convictions) Bill
- Mining and Petroleum Legislation Amendment
- Transport Administration Amendment (Closure of Railway Line Between Rosewood and Tumberumba) Bill
- State Revenue and Other Legislation Amendment (Budget Measures) Bill
- Environment Planning and Assessment and Electoral Legislation Amendment (Planning Panels and Enforcement) Bill
- Public Health Amendment (Review) Bill
- Aboriginal Languages Bill
- Education Amendment (School Safety) Bill
- Statute Law (Miscellaneous Provisions) Bill (No 2)

- Local Government Amendment (Regional Joint Organisations) Bill
- Natural Resources Access Regulator Bill
- State Revenue Legislation Amendment (Surcharge) Bill
- Building Products (Safety) Bill.

For the third year in a row, the House finalised the consideration of all Government bills. As a result, no Government bills remain on the Notice Paper over the summer adjournment.

2017 also saw two protests lodged against the passing of Government bills. In April, members of the Greens signed a protest against the Greyhound Racing Bill, and in September members of the Opposition signed a protest against the Retail Trading Amendment (Boxing Day) Bill. In accordance with the standing orders both protests were forwarded to the Governor.

### **Aboriginal Languages Bill 2017**

On 11 October 2017, the Aboriginal Languages Bill 2017 was introduced into the Legislative Council by the Minister for Aboriginal Affairs, the Hon Sarah Mitchell.

A number of unprecedented or unusual procedures were agreed to by the House in recognition of the historic significance of the Aboriginal Languages Bill, which was the first bill of its type in any State in Australia to recognise the importance of Aboriginal languages. Once the House had agreed to the initial motion for leave to introduce the bill, the President left the chair while proceedings took place to commemorate the bill, including a welcome to country and smoking ceremony in the parliamentary forecourt. A message stick ceremony was then held in the chamber with a number of elders and stakeholders speaking about the significance of Aboriginal languages and the bill. The final speaker handed the message stick to the Minister for Aboriginal Affairs, the Hon Sarah Mitchell, and the message stick ceremony participants took seats in the President's Gallery to the left and right of the President.

Upon the President taking the chair and the House again being in session, the President invited two Aboriginal elders to take chairs on the dais while the bill was being debated. According to the resolution of the House, Minister Mitchell then invited Dr Ray Kelly, an academic researcher in indigenous languages, to firstly translate into Dhungutti her acknowledgement of the traditional owners and later to speak to the significance of the bill. Once the bill had been debated and passed by the Council it was sent to the Assembly for concurrence accompanied by the message stick featured in the ceremony in the chamber. The bill was later returned to the Council from the Assembly with the message stick.

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

Fifteen private members' bills were introduced into the Council in 2017, more than double the number that was introduced in 2016. Two bills were passed by the Council and forwarded to the Legislative Assembly – the Public Health Amendment (Registered Nurses in Nursing Homes) Bill which was sent to the Assembly in May and the Local Government Amendment (Amalgamation Referendums) Bill which was forwarded in June. Both bills were introduced by members of the Shooters, Fishers and Farmers Party. Neither bill, however, progressed in the Assembly, both being negatived at the second reading stage.

The House negatived five private members' bills in 2017, two of which generated considerable public and media interest (discussed below). In both cases members of the major parties were afforded a conscience vote and were not obliged to vote along party lines

The **Abortion Law Reform (Miscellaneous Act Amendment Bill 2016)** was introduced by Dr Faruqi of The Greens. The bill proposed the repeal of existing abortion offences in the *Crimes Act 1900*, a requirement for doctors to disclose to patients if they had a conscientious objection to abortion, and the provision of safe access zones around reproductive health clinics. The second reading debate of the bill

was witnessed by a large gathering in the public galleries. Ultimately, the second reading was negated on division, with 14 members voting for the bill and 25 members voting against.

The **Voluntary Assisted Dying Bill 2017** was introduced by Mr Khan of The Nationals and co-sponsored by Dr Faruqi of The Greens and Ms Voltz from the Opposition. The bill aimed to give terminally ill people the legal right to end their own lives with medical assistance. The bill was the only item of business considered on 16 November, with all but two members of the House who were present that day electing to speak in the second reading debate. The Chamber galleries were again filled with members of the public who had come to witness the proceedings. After eight hours of debate, the second reading was negated by a single vote, with nineteen members voting for the bill and twenty members voting against.

### ***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 2017, the Council considered 13 disallowance motions, all of which were resolved in the negative. This continues the trend in the 56<sup>th</sup> Parliament against the disallowance of delegated legislation. The last time a disallowance motion was agreed to was in 2014.

### ***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. Only two orders for papers were agreed to by the House in 2017, both of which related to the annual budget and budget finance papers, such orders becoming a regular feature each year and agreed to as a matter of routine. This year's tally was a decrease on the six orders agreed to in 2016, and was the lowest number of orders agreed to in a calendar year since 1997.

### ***Questions***

This year arrested the downward trend over recent years in the number of questions on notice lodged by members. In total, 667 questions on notice were lodged up from the 502 questions in 2016. The number of questions asked without notice – that is, during Question Time, was consistent with the previous year which was to be expected as there was the same number of sitting days in 2016 and 2017.

### ***Petitions***

Sixteen petitions were presented to the Council in 2017, a decrease from the 26 presented in 2016. While the number of petitions presented was down, the overall number of signatories increased this year. The increase in the overall number of signatures was due in particular to two very large petitions, both of which voiced opposition to a private member's bill that was due for consideration by the House. A petition relating to the Abortion Law Reform Bill was signed by 56,558 citizens, while a petition relating to the Voluntary Assisted Dying Bill was signed by 35,003 citizens.

### ***Procedures of the House***

Standing Order 200 provides an opportunity for the House to debate a topical matter that is given precedence over most other business on the Notice Paper. A member initiates a motion under standing order 200 by giving notice that on the next sitting day he or she will move that the nominated matter of public importance be discussed forthwith. When the motion is moved, the mover and a Minister are each allowed to make a statement not exceeding 10 minutes as to why the matter should be discussed. The House must then agree to the matter being discussed in order for a full debate of up to ninety minutes to take place.

It had been quite a number of years since a member had made use of this provision. However, on two occasions in 2017 a member gave notice of motion for discussion of a matter of public importance. In September, the Ken Matthews interim report on water management and compliance was nominated for

discussion while in October the national energy policy was proposed. In both cases the question was defeated on division and the full debate did not proceed.

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

The House in Review Summary for 2016 reported on the steps taken by the Council during 2016 to order the production of papers from a statutory body, Greyhound Racing NSW, and the return to order received in October 2016 from the Administrator of Greyhound Racing NSW. The return to order was significant because it was the first time the Council had received a return directly from a statutory body, after it had failed to comply with a previous order for papers.

The matter continued to play out in 2017, with the House grappling with the most complicated dispute over privilege claims in a return to order since orders for papers became a regular feature of the work of the Council in the late 1990s.

A dispute over the claim of privilege in the return to order was lodged by Dr Faruqi in November 2016. The dispute concerned approximately 1,700 documents. According to Standing Order, the Honourable Keith Mason AC QC was appointed as an independent legal arbiter to evaluate and report on the validity of the claim of privilege. Following significant negotiations behind the scenes, including the preparation of an initial determination by the arbiter, in February 2017 the report of the Honourable Keith Mason was made available to members and tabled in the House. The House resolved that those documents determined by the arbiter not to warrant a claim of privilege be tabled and made available to the public. A selection of documents was tabled the next day.

The House further resolved that as per the arbiter's recommendation, Greyhound Racing NSW should be provided with the opportunity to redact from the remaining documents any information that could put informants at risk of harm, or about individuals who had been the subject of spurious complaints.

Council staff worked with GRNSW to complete this very complicated and arduous process, and the remainder of the disputed documents were tabled on 28 March 2017. This enabled the documents to be made public and referred to during debate on amendments to the Greyhound Racing Bill 2017 that same month.

### **Parliamentary privilege and related matters**

The September decision of the New South Wales Court of Criminal Appeal in *Obeid v R* [2017] NSWCCA 221 contained a number of important reaffirmations of the law of parliamentary privilege in NSW.

The 2016 House in Review Summary reported on work taking place on earlier recommendations for reform of the system regulating the conduct of members, including the Code of Conduct for Members, the interest disclosure regime, a proposal for a Parliamentary Commissioner for Standards, and parliamentary privileges legislation. In 2017, officers in Department of the Legislative Council continued to work with the new President and the Deputy President on the development of a model for a Parliamentary Commissioner for Standards and drafting instructions for parliamentary privileges legislation.

### **Committee activity**

Upper House committees managed a busy inquiry workload during 2017. From January 2017 staff continued work on the nine inquiries established in the previous year. A further 21 inquiries were initiated in 2017.

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

In May 2017, the Select Committee on the Legislative Council committee system received the government response to its 2016 report. The government suggested that the implementation of the recommendations was a matter for the Council. Accordingly, the Legislative Council has supported several of the committee's recommendations including renaming general purpose standing committees as portfolio committees,



establishing a Privileges Committee inquiry into procedural fairness for inquiry participants, and establishing a Selection of Bills Committee and a Regulation Committee (on a trial basis).

### *Selection of Bills Committee*

The Selection of Bills Committee has been appointed, on a trial basis, for the 2018 sitting period. The committee will consider all bills introduced into either House and to report on whether any bill should be referred to the any of the standing committees for inquiry and report. The committee is to table a report evaluating the effectiveness of the trial by the last sitting day in November 2018. The resolution appointing the committee can be found [here](#).

### *Regulation Committee*

The Regulation Committee has been appointed, on a trial basis, for the 2018 sitting period. The committee may inquire into and report on any regulation, including the policy or substantive content of a regulation, and trends or issues that relate to regulations. The committee will table a report evaluating the effectiveness of the trial by the last sitting day in November 2018. The resolution appointing the committee can be found [here](#).

### *Statutory review of the State Insurance and Care Governance Act 2015*

The Standing Committee on Law and Justice has commenced a statutory review of the *State Insurance and Care Governance Act 2015*. The Act significantly reformed the governance and regulatory arrangements for the state's statutory insurance and compensation schemes. The review is examining whether the policy objectives of the Act remain valid, and whether the terms of the Act remain appropriate for securing those objectives. This is the first time the Standing Committee on Law and Justice Committee, and indeed any Upper House Committee, has conducted a statutory review.

### *Budget estimates*

This year the budget estimates hearings were held over seven days not five days as in previous years. For all but one hearing, the six portfolio committees resolved that government members would not ask questions in advance of the scheduled hearings, on the proviso that the overall hearing time be reduced accordingly. A record 6,736 questions on notice were generated during the inquiries. Three committees held four supplementary hearings this year. In accordance with the resolution establishing the Budget Estimates inquiry, all six committees will table their reports by 15 December 2017.

### *Select committees*

In May 2017, the select committee into under-dosing of chemotherapy released its report that examined the flat-dosing of chemotherapy patients in New South Wales hospitals. The committee made 11 recommendations directed at building transparency and trust in the New South Wales cancer care system. The government response was received in November 2017, and supported all of the committee's recommendations. The government response can be viewed [here](#).

The Select Committee on human trafficking in New South Wales reported in October 2017. The recommendations in this report seek to strengthen the state's response to human trafficking and call on the Commonwealth government to take further strategic action. For example, the committee recommended the establishment of a Modern Slavery Act for Australia, similar to 2015 legislation in the United Kingdom, and the appointment of independent anti-slavery commissioners. The report can be viewed [here](#).

In September 2017, a select committee was established to inquire into electricity supply, demand and prices in New South Wales. The committee will examine the reasons for recent large increases in the price of electricity, and the impact of the deregulation of electricity prices in 2014.

In November 2017, a select committee was established to examine the State Senate Bill 2015. The Bill seeks to authorise the use of the term State Senate as a reference to the Legislative Council and to authorise the use of the term State Senator as a reference to a member of the Legislative Council.

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

As this is the last edition of *House in Review* for 2017, 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.

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

David Blunt  
**Clerk of the Parliaments**