

# NEW SOUTH WALES LEGISLATIVE COUNCIL

## *HOUSE IN REVIEW*



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*Sitting period  
14 to 17 June 2011*

The *House in Review* provides a summary of the New South Wales Legislative Council's activities for each sitting week. 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).

### **Vacancy in the Council**

The Hon Tony Kelly tendered his resignation to Her Excellency the Governor as a member of the Legislative Council on Monday 6 June 2011.

### **Opposition representation in the Council**

On Tuesday 14 June 2011, the Hon Luke Foley informed the House that he had been elected as Leader of the Opposition in the Legislative Council and the Hon Adam Searle had been elected as Deputy Leader of the Opposition in the Legislative Council.

The change in the leadership followed the resignation of the Hon Tony Kelly, formerly Leader of the Opposition in the Legislative Council.

### **Consideration of the removal of a judicial officer – Magistrate Betts**

Under Part 9 of the *Constitution Act 1902* and the provisions of the *Judicial Officers Act 1986*, the Parliament is responsible for considering the removal of a judge or magistrate where the Conduct Division of the Judicial Commission has provided a report expressing the opinion that the conduct of the officer could justify such action.

In accordance with this procedure, on 21 May 2011, a report of the Conduct Division concerning Magistrate Jennifer Betts of the Local Court was tabled in the House along with a response from Magistrate Betts. The report included a finding of misbehaviour and incapacity, both of which could justify the magistrate's removal by Parliament.

On 15 June 2011, in accordance with a resolution of the House, Magistrate Betts attended at the Bar of the House and delivered an address as to why she should not be removed from office. This is only the second time the Legislative Council has considered the removal of a judge or magistrate, the previous occasion being in 1998.

The following day, the Leader of the Government in the House (Mr Gallacher) moved a motion for an Address to

the Governor for the removal of Magistrate Betts on the grounds of incapacity. In doing so, Mr Gallacher made it clear that the inquiry and report of the Conduct Division is a process that is entirely separate from the Government.

The terms of the motion for the removal of Magistrate Betts was consistent with past practice, and as such, did not necessarily reflect the views of Government members.

The debate was held on 16 June 2011. All members of the House were allowed a conscience vote on the matter. Members spoke on various issues including the requirement of the courts to dispense justice dispassionately and fairly, the need to uphold the independence of the judiciary, the details of the complaints against Magistrate Betts examined by the Conduct Division, and the address delivered by Magistrate Betts at the Bar of the House in which she addressed her health issues.

The question for an Address to the Governor for the removal of Magistrate Betts was resolved in the negative.

### **Appearance by Magistrate Maloney**

The House resolved that in view of the Report of the Conduct Division of the Judicial Commission of New South Wales concerning complaints about Magistrate Brian Maloney (tabled on 2 June 2011), Magistrate Maloney be called on to address the House on Tuesday, 21 June 2011 and show cause why he should not be removed from office.

### **Conduct of business**

Private members' business took precedence of Government business on Tuesday, 15 June 2011. This followed the loss of a private members' business day during the last sitting week when the House debated the Industrial Relations Amendment (Public Sector Conditions of Employment) Bill 2011.

## Government business

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

### **Industrial Relations Amendment (Public Sector Conditions of Employment) Bill 2011**

The bill originated in the Legislative Council.

*Summary:* The bill amends the *Industrial Relations Act 1996* to require the Industrial Relations Commission, when making or varying any award or order relating to public sector conditions of employment, to give effect to aspects of government policy on conditions of employment for the public sector. The bill applies to proceedings that are pending in the Commission, including claims filed under the previous Government, but excluding the current NSW Police negotiations.

*Proceedings:* As reported in the previous edition of *House in Review*, the bill was read a second time on 4 June 2011 after an extensive debate over three days.

Debate on the third reading of the bill occurred on 14 June 2011. The Opposition again argued that the bill was introduced without consultation with the community or public sector employees, and that it was fundamentally unfair. The Greens again contended that the bill undermines the independence of the Industrial Relations Commission and will lead to a real reduction in the wages of public sector workers, for which the Government has no mandate.

The bill, as amended, was read a third time (Division 22:17) and forwarded to the Assembly for concurrence.

Later the same day, the Leader of the Opposition lodged a Protest against the passing of the bill. The terms of the Protest were that the bill involved an historic diminution of conditions for public service workers, the bill will give unfettered power to the Government in determining public sector wages, and that in order to pass the bill, the Government used the gag three times in the Legislative Council, something that has not been used for 105 years, and passed new instructions to the committee of the whole House to limit the proper and democratic expression of members, something that has never been done before.

This is only the fifth Protest lodged against the passage of a bill since 1986. The Protest was forwarded to the Governor by the President.

### **Payroll Tax Rebate Scheme (Jobs Action Plan) Bill 2011**

*Summary:* The bill is intended to promote the creation of 100,000 new jobs by establishing a payroll tax rebate scheme that gives employers an incentive to increase the number of their full-time equivalent employees for a period of at least two years. It is anticipated that 60 per cent of the new jobs will be created in metropolitan areas and 40 per cent in non-metropolitan areas.

*Proceedings:* The bill was received from the Legislative Assembly and read a first time. In his second reading speech, the Minister (Mr Pearce) indicated that the bill delivers on one of the Government's pre-election commitments. Mr Pearce explained that the payroll tax rebate will be \$4,000 per full-time employee and the rebate will be calculated on a pro-rata basis for each part-time employee. The Opposition did not oppose the bill but questioned whether the scheme would stimulate genuine jobs growth, and raised a number of questions about the scheme's operation. The Christian Democratic Party supported the bill and further argued that payroll tax should be phased out completely. The Greens did not oppose the bill but disagreed with the principle of placing a tax on jobs, and questioned whether there are more efficient and effective ways for the Government to spend money on creating jobs.

The second and third readings of the bill were agreed to and the bill was returned to the Assembly without amendment.

### **Evidence Amendment (Journalist Privilege) Bill 2011**

*Summary:* The bill amends the *Evidence Act 1995* to strengthen the protections available to journalists and their sources. If a journalist has promised not to reveal an informant's identity, the bill provides that the journalist (and his or her employer) will not be compelled to disclose the informant's identity in any proceedings in a NSW court, unless the court determines otherwise in accordance with a specified public interest test. Journalists are defined to mean persons engaged in the profession or occupation of journalism in connection with the publication of information in a news medium. The bill is somewhat similar to a private members' bill previously introduced in the House by the Greens.

*Proceedings:* The bill was received from the Legislative Assembly and read a first time. In his second reading speech, the Parliamentary Secretary (Mr Clarke) argued that freedom of information, including freedom of the press, is vital to the proper functioning of an open and transparent democracy, and that the bill fulfils an election commitment by the Government to strengthen the protection of journalists in NSW. The Opposition supported the bill, noting recent cases before the courts where parties have sought to expose the identity of journalists' informants. However, the Opposition criticised the bill for not adopting the broader definition of journalists used in Commonwealth legislation, that is: those engaged and active in the publication of news, including blogging or other web-based publication of news. By adopting a narrower definition, the Opposition argued that the Government will destroy national consistency while potentially failing to protect whistleblowers when it is in the public interest to do so. The Greens also supported the bill, again citing recent case law and arguing that journalists and their informants need protection when bringing forward matters in the public interest. However, the Greens similarly argued that the definition of journalists in the bill

should be broadened and reiterated concern that there will be inconsistency between State and Federal law. The Christian Democratic Party supported the bill. The bill was read a second time.

In the committee stage, the Opposition moved an amendment to broaden the definition of journalists in the bill to any person actively engaged in the publication of news. The Government opposed the amendment, on the basis that extending the definition of journalists would potentially extend the privilege to any person who happens to publish, in any form, information received from an informant. At the same time, the Government argued that the wider definition would necessarily entail a commensurate reduction in information admissible before the courts. The amendment was negated.

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

### **Court Security Amendment Bill 2011**

*Summary:* The bill amends the *Court Security Act 2005* to make various changes to improve the regulation of court premises, such as enabling a court security officer to require a person not to wear a helmet that obscures his or her face while in court premises.

*Proceedings:* The bill was received from the Legislative Assembly and read a first time. In his second reading speech, the Parliamentary Secretary (Mr Clarke) indicated that the bill provides security officers with a range of powers that are directed at ensuring the secure and orderly operation of the courts. The Opposition supported the bill and noted that the bill makes slight but important modifications to the existing legislation. The Christian Democratic Party supported the bill but argued that it should be expanded to cover not just the wearing of helmets, but also any other articles of clothing which obscures the face of the wearer so as to conceal his or her identity. The Greens also supported the bill but spoke against the suggestion of the Christian Democratic Party, on the grounds that it could erode the capacity of certain persons, particularly Muslim women, to take part in the key public institution of the courts.

The second and third readings of the bill were agreed to and the bill was returned to the Assembly without amendment.

### **Credit (Commonwealth Powers) Amendment (Maximum Annual Percentage Rate) Bill 2011**

*Summary:* In 2010, the Parliament passed legislation to transfer regulatory responsibility for consumer credit from NSW to the Commonwealth. However, while awaiting phase two of the national consumer credit laws, NSW continued to impose an interest rate cap of 48 per cent per annum (inclusive of fees and charges) on loans provided by consumer credit providers until mid-2011. The 48 per cent cap is targeted at the short-term small amount lending industry, such as payday lenders, who often provide credit to consumers in financial difficulty. However, with phase two of the new national consumer credit laws now not

expected to commence until December 2011 at the earliest, this bill extends the 48 per cent cap until such time as it is no longer needed.

*Proceedings:* The bill was received from the Legislative Assembly and read a first time. In his second reading speech, the Minister (Mr Pearce) indicated that the bill, in extending the 48 per cent cap, is designed to prevent exploitation of vulnerable and disadvantaged consumers by short-term lenders. Statistics indicate that low income consumers constitute a significant proportion of borrowers from short-term lenders. The Opposition did not oppose the bill on the basis that it protects the most vulnerable and disadvantaged consumers from exploitation. The Greens also did not oppose the bill, while arguing that the 48 per cent cap is a blunt instrument which does not take into account the fixed costs in setting up different types of small loans. The Christian Democratic Party supported the bill, noting concerns to protect the most vulnerable members of the community.

The second and third readings of the bill were agreed to and the bill was returned to the Assembly without amendment.

### **Gene Technology (GM Crop Moratorium) Amendment (Postponement of Expiry) Bill 2011**

*Summary:* The bill extends the operation of the *Gene Technology (GM Crop Moratorium) Act 2003* for a further 10-year period from 1 July 2011. The Moratorium Act prevents the cultivation of genetically modified food in NSW without approval by the NSW Minister for Primary Industries. Currently, GM canola is the only GM food crop grown commercially in New South Wales.

*Proceedings:* The bill was received from the Legislative Assembly and read a first time. In his second reading speech, the Minister (Mr Gay) indicated that the bill ensures the continuation of a balanced approach to the management of GM food crop cultivation in this State: there is a blanket prohibition on commercial cultivation of GM food plants protecting growers and the community, with opportunity for approval of specific GM crops following a detailed assessment of industry's capacity to manage cultivation in accordance with market requirements. The Minister indicated that the NSW Farmers Association supported the bill. The Opposition did not oppose the bill, while noting community and agriculture industry concern about the use of GM crops. The Greens supported the bill but raised concerns about the lack of regulation of the use of GM canola. The Christian Democratic Party also supported the bill, noting the need for careful regulation of GM foods.

The second and third readings of the bill were agreed to and the bill was returned to the Assembly without amendment.

## Appropriation (Supply and Budget Variations) Bill 2011

*Summary:* The bill authorises the Treasurer to make payments from the Consolidated Fund in July, August, September and October 2011 in respect of the regularly recurring services and ordinary contingencies of the State, pending the enactment of the 2011-2012 Appropriation Act.

*Proceedings:* The bill was received from the Legislative Assembly and read a first time. In his second reading speech, the Minister (Mr Pearce) noted that the budget would not be delivered until the new financial year due to the election of the O'Farrell Government in March 2011. In the meantime, the bill would cover funding for Government activities and services until the 2011-2012 appropriation bills are passed. The Opposition supported the bill and the Greens did not oppose the bill, on the grounds that it was an unremarkable but necessary machinery bill.

The second and third readings of the bill were agreed to and the bill was returned to the Assembly without amendment.

## Disallowance of delegated legislation

**Note:** 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.

### Disallowance of parts of the Terrorism (Police Powers) Regulation 2011 (Mr Shoebridge, The Greens)

*Summary:* The Terrorism (Police Powers) Regulation 2011 is made under the *Terrorism (Police Powers) Act 2002*. The Act provides for preventative detention orders which allow people who are aged 16 years or more to be detained for up to 14 days at a time, with the potential for a further 14-day order to be made. Such detainees have restricted rights in relation to contacting others. Of note, detainees have no access to Official Visitors.

Official Visitors are appointed by the Attorney General and the Minister for Justice, operate independently of Corrective Services NSW, and provide an avenue for inmates and staff to lodge complaints and seek redress. As such, they play an important role in the oversight of the prison system. There are approximately 40 to 50 official visitors at any one time in NSW.

The disallowance motion provided for the disallowance of those parts of the Regulation which prevent detainees in preventative detention from having access to Official Visitors.

*Proceedings:* The disallowance motion was brought on as Business of the House. In speaking to the motion, Mr Shoebridge argued that detainees held in preventative detention, who are held only under suspicion, ought to have the capacity to access an Official Visitor, and that Official Visitors ought to have the capacity to proactively

access detainees to ensure that their human rights are being respected. The Government did not support the motion, arguing that the regulation is closely monitored by the Ombudsman, but that the issue of Official Visitors has not previously been raised. The Opposition also did not support the disallowance, indicating that it would need a great deal more study, including examination of the security clearance of Official Visitors who have access to those in preventative detention.

The disallowance motion was negated. Consequently, the Terrorism (Police Powers) Regulation 2011 remains in force unamended.

## Private members' business

**Note:** Private members' business is business moved by members of the House other than Government ministers. There are two types of private members' business: private members' bills and private members' motions.

### Bill

### Firearms Legislation Amendment Bill 2011 (Mr Borsak, Shooters and Fishers Party)

*Summary:* The bill amends the *Firearms Act 1996* and the *Firearms Regulation 2006* to remove the requirement to register air rifles, to remove the need for a permit to acquire air rifles, to allow persons under the age of 18 to use air rifles under supervision at approved shooting ranges without a licence or permit, and to clarify the operation of existing exemptions in relation to antique firearms.

*Proceedings:* The bill was introduced and read a first time. In his second reading speech, Mr Borsak (Shooters and Fishers Party) argued that the removal of certain requirements relating to the registration of air rifles will not reduce public safety as it will still be necessary to hold a firearms licence to legally possess an air rifle. The amendment to allow persons under 18 to use air rifles under supervision is designed to facilitate junior shooters being introduced to the sport. The amendment in relation to antique firearms will provide that handguns manufactured before 1900 that take ammunition deemed by the Commissioner of Police to be not commercially available are not required to be registered, although a licence or permit will continue to be required to allow the legal possession of such handguns, and this licence must be shown when purchasing them. Debate was adjourned for five calendar days.

### Motions

### Condolence motion – Sergeant Brett Wood (Mr Lynn, Liberal Party)

*Summary:* The motion acknowledged the tragic death of Sergeant Brett Wood who was killed in Afghanistan, and noted that Sergeant Wood was the 24<sup>th</sup> Australian to die in action in Afghanistan since 2001. The motion paid tribute to Sergeant Wood and expressed the sympathy and condolences of the House to his family.



*Proceedings:* Standing orders were suspended to bring on the item of business. Members expressed sadness at the loss of Sergeant Wood and remembered the two commandos also wounded in the incident. Members referred to the sacrifices made by all service personnel and their families. The motion was agreed to.

### **National Volunteer Week (Mr Donnelly, Labor Party)**

*Summary:* The motion noted that 9 to 15 May was National Volunteer Week, and called on the Government to continue the support and initiatives of the previous Labor Government with respect to volunteering in NSW.

*Proceedings:* Debate on the motion resumed from 12 May 2011. As noted previously, members acknowledged the significant contribution that volunteers make to the NSW community, as well as commending the work done by numerous organisations and individuals. The motion was agreed to.

### **National Reconciliation Week (Ms Voltz, Labor Party)**

*Summary:* The motion noted that 27 May to 3 June was National Reconciliation Week, which is held annually to celebrate the rich culture and history of the First Australians.

*Proceedings:* Standing orders were suspended to bring on the item of business. Members highlighted the importance of reconciliation and the contribution made by indigenous people to Australian society, and called for further progress towards genuine and lasting reconciliation, as measured in tangible improvements to the lives of indigenous people. The motion was agreed to.

### **International Day of Mourning for Workers (Ms Cotsis, Labor Party)**

*Summary:* The motion noted that 28 April was the International Day of Mourning for Workers, a day to mourn, honour and pay tribute to workers killed at or by work. The motion acknowledged the impact of workplace illness or fatality and called for a collaborative approach to workplace safety.

*Proceedings:* Debate on the motion commenced according to precedence. Members referred to the tragedy of workers who do not come home from work, and the role of the Memorial Day in highlighting the importance of workplace safety. Members also referred to the moving nature of the memorial service held at Reflection Park at Darling Harbour, which was attended by the families of workers killed at work. The debate was interrupted by Question Time.

## **Orders for papers**

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

*Return to order*

- (1) **Shenhua Watermark Coal Project:** received 9 June 2011, two boxes public, one box privileged.

## **Petitions received**

- (1) Coal-fired power stations – 168 signatures (presented Dr Kaye);
- (2) Battery cage egg production – 311 signatures (presented Dr Kaye);
- (3) Public ownership of electricity retailers and trading rights – 718 signatures (presented Dr Kaye);
- (4) NSW Solar Bonus Scheme – 958 signatures (presented Dr Kaye).

## **Committee activities**

*Committee references*

**Law and Justice Committee:** The House resolved:

- (1) That the Law and Justice Committee be designated as the Legislative Council committee responsible for supervising the exercise of the functions of the Motor Accidents Authority and Motor Accidents Council.
- (2) That the Law and Justice Committee be designated as the Legislative Council committee responsible for supervising the exercise of the functions of the Lifetime Care and Support Authority of NSW and the Lifetime Care and Support Advisory Council of NSW.

*Committee report tabled*

**Procedure Committee:** Report No. 5 entitled 'Report relating to private members' business and the sitting pattern', June 2011.

*Committee reports debated*

**General Purpose Standing Committee No. 1:** The House concluded the take-note debate on Report No. 36 entitled 'The Gentrader transactions', February 2011.

**Select Committee on Recreational Fishing:** The House concluded the take-note debate on the report entitled 'Recreational Fishing in New South Wales', December 2010.

## **Reports tabled**

**Auditor General:** Performance Audit report entitled: 'Government expenditure and transport planning in relation to implementing Barangaroo: Barangaroo Delivery Authority, Department of Transport, NSW Treasury', dated June 2011.

## Adjournment debate

### Tuesday 14 June 2011

Australian Men's Cricket Team (Mr Veitch); Fire and Rescue NSW (Mr Blair); Princes Highway Upgrade (Mr Green); St George Eisteddfod and Tribute to Mrs Ann Chapman (Ms Ficarra); Public housing rent freeze (Mr Secord); Live animal exports (Mr Buckingham); Australian National Judo Championships (Dr Phelps).

### Wednesday 15 June 2011

First green ban 40<sup>th</sup> anniversary (Ms Voltz); Complaints and compliance mechanisms for disability services (Ms Barham); Bill Ford, OBE (Miss Gardiner); Industrial legislation impacts (Mr Searle); Timber industry (Mr Brown); Carbon tax impact (Mr MacDonald).

### Thursday 16 June 2011

Feral pig hunting (Mr Borsak); Parliamentary debate time limits (Mr Khan); International cleaners' day (Mr Primrose); Animal cruelty (Mr Shoebridge); Global warming (Dr Phelps); TEDxSydney Forum (Ms Sharpe).

### Friday 17 June 2011

Carbon tax (Mr Colless); Maternity services and Karinya House (Mr Donnelly); Marine conservation (Ms Faehrmann); NSW Urban Search and Rescue Team's overseas deployment (Mr Blair); Mortgage stress and delinquencies (Mr Secord); Israel (Revd Mr Nile).

## Feedback on House in Review

We welcome any comments you might have on this publication.

We're 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.



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