

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 3

WEDNESDAY, 15 MAY 2013

1. Meeting of Council

The Council assembled at 2.00pm pursuant to order.

The President, Hon Barry House, took the Chair and read prayers.

2. Schedule for Non-Government Business

The President tabled a Schedule for Non-Government Business. (Tabled Paper 247).

The Leader of the House moved, without notice —

That, pursuant to Standing Order 110(4), the schedule for Non-Government Business tabled by the President be adopted.

Question — put and passed.

3. Schedule for Private Members' Business

The President tabled a Schedule for Private Members' Business. (Tabled Paper 247).

The Leader of the House moved, without notice —

That, pursuant to Standing Order 111(4), the schedule for Private Members' Business tabled by the President be adopted.

Question — put and passed.

4. President's Ruling — Questions Without Notice to Parliamentary Secretaries

The President ruled as follows —

Yesterday, during questions without notice, Hon Ken Travers asked the following question of Hon Jim Chown, Parliamentary Secretary to the Minister for Transport —

- (1) Can he tell us what he does as parliamentary secretary to the Minister for Transport?
- (2) What is the difference between comments he makes as the parliamentary secretary and comments he makes as the member for Agricultural Region?
- (3) If he believes there is a difference, how does he intend to deal with any conflicts between the two roles?

I refer Members to Standing Order 103, which reads —

103. Questions to Ministers and Members

Questions may be asked of —

- (a) a Minister or Parliamentary Secretary relating to public affairs with which the Minister or Parliamentary Secretary is connected, to proceedings in the Council, or to any matter of administration for which the Minister or Parliamentary Secretary is responsible; or

- (b) a Member, except the President, relating to any Bill, motion or other public matter connected with the business of the Council of which the Member has charge.

Yesterday I indicated that the parts of the question relating to Hon Jim Chown's role as a Member for the Agricultural Region were out of order, but that the parts of the question relating to the parliamentary secretary's role in relation to public affairs and his representative role are in order. I now wish to expand upon that ruling.

Section 44A of the *Constitution Acts Amendment Act 1899* enables a Member of either house to be appointed by the Executive Council as a Parliamentary Secretary to a Minister, with the Parliamentary Secretary's functions specified in the warrant of appointment.

Although at times in this House Parliamentary Secretaries have been treated as equivalent to Ministers, particularly with respect to their responsibility to provide correct information to the House, the fact remains that, as the representatives of Ministers based in the Legislative Assembly, the Parliamentary Secretaries are essentially a conduit of information to this House and are accordingly subject to the limitations of such a role. Parliamentary Secretaries answer questions in a representative capacity and not as Ministers in their own right.

On 23 August 2012, I ruled out of order a question asked of a Parliamentary Secretary with respect to the activities of the Assembly Minister that they represented as the Leader of the National Party. Such a question was not related to the Parliamentary Secretary's representative role.

It is therefore clear that any questions asked of the Parliamentary Secretary to the Minister for Transport that go beyond the Parliamentary Secretary's role as a representative and a conduit of information from their Assembly-based Minister is out of order.

Part (1) of the question asked by Hon Ken Travers seeks a clarification of the parliamentary secretary's representative role, and so is in order. Parts (2) and (3) of the question do not seek information from the Assembly-based Minister for Transport, but relate to the Hon Jim Chown's role as a member for the Agricultural Region. As these questions do not relate to "any Bill, motion or other public matter connected with the business of the Council of which the member has charge" in accordance with the second limb of Standing Order 103, I rule them out of order.

5. Petition

Hon Lynn MacLaren presented a petition from 8,191 petitioners requesting the Legislative Council to recommend that the proposed Mangles Bay Marina Based Tourist Precinct be abandoned and support the setting aside of the land as an "A" Class Reserve. (Tabled Paper 248).

6. Papers

The following Papers were laid on the Table by —

President

Auditor General's Papers —

Audit Results Report — Annual Assurance Audits — Universities and state training providers, other audits completed since 29 October 2012 and Across Government Benchmarking Audits — Recording, custody and disposal of portable and attractive assets and control of funds help for specific purposes (Report No. 4) (May 2013)..... 208

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7. Joint Standing Committee on Delegated Legislation — Establishment

Motion No. 1 having been called, the Leader of the House, pursuant to notice, moved —

That the Legislative Assembly be invited to agree to the rules and orders of the Legislative Council contained in the schedule for the constitution, powers and procedure of a Joint Standing Committee on Delegated Legislation.

SCHEDULE**6. Joint Delegated Legislation Committee**

- 6.1 A *Joint Delegated Legislation Committee* is established.
- 6.2 The Committee consists of 8 Members, 4 of whom are appointed from each House. The Chair must be a Member of the Committee who supports the Government.
- 6.3 A quorum is 4 Members of whom at least one is a Member of the Council and one a Member of the Assembly.
- 6.4
 - (a) A report of the Committee is to be presented to each House by a Member of each House appointed for the purpose by the Committee.
 - (b) Where a notice of motion to disallow an instrument has been given in either House pursuant to recommendation of the Committee, the Committee shall present a report to both Houses in relation to that instrument prior to the House's consideration of that notice of motion. If the Committee is unable to report a majority position in regards to the instrument, the Committee shall report the contrary arguments.
- 6.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.
- 6.6 In its consideration of an instrument, the Committee is to inquire whether the instrument —
 - (a) is within power;
 - (b) has no unintended effect on any person's existing rights or interests;
 - (c) provides an effective mechanism for the review of administrative decisions; and
 - (d) contains only matter that is appropriate for subsidiary legislation.
- 6.7 It is also a function of the Committee to inquire into and report on —
 - (a) any proposed or existing template, *pro forma* or model local law;
 - (b) any systemic issue identified in 2 or more instruments of subsidiary legislation; and
 - (c) the statutory and administrative procedures for the making of subsidiary legislation generally, but not so as to inquire into any specific proposed instrument of subsidiary legislation that has yet to be published.
- 6.8 In this order —

"instrument" means —

 - (a) subsidiary legislation in the form in which, and with the content it has, when it is published;
 - (b) an instrument, not being subsidiary legislation, that is made subject to disallowance by either House under a written law;

“*subsidiary legislation*” has the meaning given to it by section 5 of the *Interpretation Act 1984*.

Debate ensued.

Question — put and passed.

8. Joint Standing Committee on Audit — Establishment

Motion No. 2 having been called, the Leader of the House, pursuant to notice, moved —

That the Legislative Assembly be invited to agree to the rules and orders of the Legislative Council contained in the schedule for the constitution, powers and procedure of a Joint Standing Committee on Audit.

SCHEDULE

9. Joint Audit Committee

9.1 A Joint Audit Committee is established.

9.2 The Committee consists of 4 Members (including the Chair) of the Legislative Council Standing Committee on Estimates and Financial Operations and 4 Members of the Legislative Assembly Public Accounts Committee, 2 of whom from each House support the Government.

9.3 The Members of the Legislative Council Standing Committee on Estimates and Financial Operations and the Legislative Assembly Public Accounts Committee not appointed to the Joint Standing Committee under section 9.2 are appointed to the Joint Standing Committee as participating members in accordance with Legislative Council Standing Order 164. The requirement for leave under Standing Order 164 does not apply to these appointments.

9.4 The Chair of the Standing Committee on Estimates and Financial Operations will be the Chair of the Joint Audit Committee.

9.5 The Standing Orders of the Legislative Council relating to Standing Committees will be followed as far as they can be applied.

Debate ensued.

Question — put and passed.

9. Mineral Resource Rent Tax

Motion No. 3 having been called, Hon Nick Goiran, pursuant to notice, moved —

That the Council —

- (a) congratulates the Barnett Government for its strong and determined representations against the Mineral Resource Rent Tax imposed by the Gillard Labor Government on iron ore and coal producers in Western Australia and other States; and
- (b) calls on the Gillard Labor Government to immediately scrap this complex and inefficient tax.

Debate ensued.

10. Questions Without Notice

Questions without notice were taken.

11. Mineral Resource Rent Tax

Debate resumed on the motion of Hon Nick Goiran (*see item 9 above*).

Interruption pursuant to order.

12. Order of Business

Ordered — That Bills for introduction be now taken. (Leader of the House).

13. Fair Trading Amendment Bill 2013

The Minister for Commerce, pursuant to notice, moved —

That a Bill for “An Act to amend the *Fair Trading Act 2010*.” be introduced and read a first time.

Question — put and passed.

Bill read a first time.

The Minister for Commerce moved, That the Bill be read a second time.

The Minister for Commerce tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 249).

Debate stands adjourned and Bill referred to the Standing Committee on Uniform Legislation and Statutes Review [SO 126].

14. Address-In-Reply

The Order of the Day having been read for the adjourned debate on the Address-in-Reply.

Debate resumed.

Hon Helen Morton sought leave of the House to extend her speaking time.

Leave granted.

Debate resumed.

Interruption pursuant to order.

15. Members’ Statements

Statements were taken.

16. Adjournment

The Council adjourned at 9.54pm until Thursday, 16 May 2013 at 10.00am.

Members present during the day’s proceedings

Attendance: Present all Members except Hon Helen Bullock, Hon Jon Ford, Hon Philip Gardiner and Hon Max Trenorden.

MALCOLM PEACOCK
Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council