

148

Business Program



LEGISLATIVE COUNCIL

THURSDAY, 5 SEPTEMBER 2019

10.00am

Prayers

Acknowledgement of Country

ORDER OF BUSINESS

Condolence Motions

Petitions

Statements by Ministers and Parliamentary Secretaries

Minister for Agriculture and Food

Papers for Tabling

Minister for Environment

Notice of Questions

Notices of Motions to Introduce Bills

Notices of Motions for Disallowance

Hon Robin Chapple

Notices of Motions

Hon Colin Tincknell

Motions without Notice

Non-Government Business

Private Members' Business

Orders of the Day

4.30pm Questions without Notice

5.00pm Orders of the Day

5.20pm Members' Statements

6.00pm House adjourns

NON-GOVERNMENT BUSINESS

1. Budget Repair Issues

Hon Colin Tincknell to move —

That this House —

- (a) Recognises that the \$64 million savings proposed through education cuts delivered by the McGowan Government in the 2018 State Budget were unnecessary and have had highly foreseeable consequences. This is particularly evident in the case of the privatisation of the Landsdale Farm School operation;
- (b) Calls on the Government to acknowledge that this was an unnecessary budget measure and that the consequences of the cuts outweighed any benefits realised under budget repair; and
- (c) Further calls on the McGowan Government to recognise and acknowledge that public education, health and law & order should be the core business of Government and therefore immune from budget repair measures.

PRIVATE MEMBERS' BUSINESS

1. Veterans and Families — Government Strategy

Hon Pierre Yang to move —

That this House notes the McGowan Government's Veterans and Families Strategy and encourages the State Government to continue its strong support for West Australian veterans and their families.

ORDERS OF THE DAY

[NB: It is intended that Order of the Day No. 2 be discharged]

1. *Standing Committee on Procedure and Privileges — Report 56 — Parliamentary Privilege and Intrusive Powers — Interim Report — Judicial Proceedings for Declaration Challenging the Validity of the Order made by the Legislative Council on 15 August 2019 (Tabled 4 September 2019)

Committee (Wednesday, 4 September 2019).

Consideration of Recommendations 1 to 4 contained in Report 56 of the Standing Committee on Procedure and Privileges, *Parliamentary Privilege and Intrusive Powers — Interim Report — Judicial Proceedings for Declaration Challenging the Validity of the Order made by the Legislative Council on 15 August 2019*.

See Tabled paper 2994 (Tabled 4 September 2019).

Recommendation 1 states —

That the Legislative Council pass the following resolution in substitution for Order No. 4 made on 15 August 2019 as follows:

That the Legislative Council:

- (1) notes that:
 - (a) the law of parliamentary privilege is intended to protect the ability of the Houses of Parliament, their members and committees, to exercise their authority and perform their duties without undue external interference; and
 - (b) an aspect of that law is the protection of the legislature against improper interference by the judiciary and the executive;
- (2) further notes and affirms that:
 - (a) the privileges, immunities and powers of the Legislative Council are secured through s.36 of the *Constitution Act 1889*, the *Parliamentary Privileges Act 1891*, and *Parliamentary Papers Act 1891* and include the freedoms and immunities formulated in Article 9 of the *Bill of Rights 1688*, protecting speech and debates and proceedings in Parliament against being impeached or questioned in any court or place out of Parliament;
 - (b) the protections recited in Article 9 are not confined to courts and tribunals but also encompass the protection of material subject to parliamentary privilege against incursion by the executive and executive agencies including an Investigative Agency; and
 - (c) a thing, material and Document or Data subject to parliamentary privilege is immune from compulsory seizure by an Investigative Agency under a notice to produced, warrant, or similar compulsory process;
- (3) declares for the avoidance of doubt:
 - (a) that the right of the Legislative Council to determine claims of parliamentary privilege over material sought to be seized or accessed by an Investigative Agency adheres regardless of the form of the material, the means by which those agencies seek seizure or access, and the procedures followed;
 - (b) that the right of the Legislative Council to determine claims of parliamentary privilege over material sought to be seized or accessed by an Investigative Agency applies to Documents or Data of its members, former members and their staff in the possession, custody, or power of the Director General, Department of the Premier and Cabinet or other Government department or agency; and
 - (c) that a person served with a Notice by an Investigative Agency for the production of Documents or Data who, without the authority of the Legislative Council or its authorised delegate, purports to determine, either personally or by any agent of the executive, the question of whether a Document or Data is subject to parliamentary privilege:
 - (i) would usurp the right of the Legislative Council to determine that question; and
 - (ii) in the absence of a lawful excuse, may commit a breach of the privileges of the Legislative Council;
- (4) expects that where there are reasonable grounds to believe that a Notice served by an Investigative Agency on a person may require production of Documents

or Data which attract parliamentary privilege, the person upon whom the Notice is served will inform the Clerk of the Legislative Council promptly following receipt of the Notice and before producing any Documents or Data in compliance with the Notice;

- (5) requires an Investigative Agency to observe the privileges, immunities and powers of the Legislative Council, its committees and members (including as declared in paragraph 3 above) in determining whether and how to exercise its powers, rights or functions in matters which might engage questions of parliamentary privilege; and

For the purpose of this order:

Document or Data, includes a document or electronic or other data in the possession, custody or power of a government department that was created or received by a current or former member of the Legislative Council or their staff;

Investigative Agency, includes the Western Australian Police Force, the Australian Federal Police, the Corruption and Crime Commission and any like body with a power to issue a Notice to produce or obtain Documents or Data;

Notice includes a notice to produce, warrant, or similar compulsory process for the production or obtaining of Documents or Data.

Recommendation 2 states —

That the Legislative Council rescind its Order No. 4 made on 15 August 2019.

Recommendation 3 states —

That the Legislative Council order the Corruption and Crime Commission to produce to the Clerk of the Legislative Council by Wednesday, 11 September 2019 at 4.00pm, the laptop issued to Mr Phillip Edman by the Department of Premier and Cabinet that was seized from Mr Edman pursuant to a search warrant, on 14 August 2019, and all copies of the data contained on it in the Corruption and Crime Commission's possession.

Recommendation 4 states —

- (1) That proceedings be commenced and pursued, in the Supreme Court of Western Australia, on behalf of the Legislative Council of Western Australia, challenging the validity of some or all of three notices to produce documents, and one notice to produce information issued by the Corruption and Crime Commission to the Director General, Department of Premier and Cabinet, issued between April and August 2019, and of the conduct of the Commission in issuing those notices;
- (2) That the President of the Legislative Council of Western Australia be authorised to conduct such proceedings in that capacity of behalf of the Legislative Council of Western Australia and to do all things reasonable necessary for, and incidental to, the commencement and pursuit of those proceedings, including to:
 - (a) engage solicitors and counsel to represent the Legislative Council of Western Australia and to act upon their advice with respect to the proceedings in consultation with the Standing Committee on Procedure and Privileges;
 - (b) if considered appropriate, engage separate solicitors and other service providers to search and review the records produced to the Commission in response to the above notices;

- (c) maintain the confidentiality and legal professional privilege attaching to communication relating to the proposed proceedings;
- (d) take direction from the Standing Committee on Procedure and Privileges with respect to the conduct of the proceedings and matters related to them;
- (e) report to the Legislative Council of Western Australia, periodically, and when requested, with respect to the proposed proceedings; and
- (f) to consult with the Clerk as the Accountable Authority of the Department of the Legislative Council to permit the authorisation of the expenditure of funds necessary and reasonable with respect to any proceedings.

2. City of Armadale Bush Fire Brigades Local Law 2019 — Disallowance

Moved *pro forma* (SO 67(3)) 22 August 2019 on the motion of Hon Robin Chapple (Days remaining 14 after today (Indicative date — 30 October 2019))

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the *City of Armadale Bush Fire Brigades Local Law 2019* published in the *Gazette* on 24 May 2019 and tabled in the Legislative Council on 4 June 2019 under the *Bush Fires Act 1954*, be and is hereby disallowed. (Tabled paper 2720).

21. [*High Risk Offenders Bill 2019](#) [LA 137-1] Leader of the House representing the Attorney General

Second reading continuation of remarks Hon Nick Goiran — 29 mins (Wednesday, 4 September 2019).
cf SNP 137 Issue 1 – 3 September 2019.

20. [Terrorism \(Preventative Detention\) Amendment Bill 2019](#) [LA 133–1] Minister for Environment representing the Minister for Police

Second reading adjourned (Wednesday, 7 August 2019).

15. [*Consumer Protection Legislation Amendment Bill 2018](#) [LA 96-2] Minister for Regional Development representing the Minister for Commerce

Committee progress clause 30 (Tuesday, 3 September 2019).
cf SNP 96 Issue 5 – 13 August 2019.

14. [*Residential Parks \(Long-stay Tenants\) Amendment Bill 2018](#) [LA 99-1] Minister for Regional Development representing the Minister for Commerce and Industrial Relations

Second reading adjourned (Tuesday, 12 February 2019).

See Standing Committee on Legislation Report 39 (Tabled 21 March 2019).
cf SNP 99 Issue 4 – 13 August 2019.

7. [Appropriation \(Recurrent 2016–17\) Supplementary Bill 2017](#) [LA 55–1] Minister for Environment representing the Treasurer

Second reading adjourned (Tuesday, 14 August 2018).

8. [Appropriation \(Capital 2016–17\) Supplementary Bill 2017](#) [LA 54–1] Minister for Environment representing the Treasurer

Second reading adjourned (Tuesday, 14 August 2018).

* For amendments see Supplementary Notice Paper and/or Committee Report

NIGEL PRATT

Clerk of the Legislative Council