

SCHOOL BOARDING FACILITIES LEGISLATION AMENDMENT AND REPEAL BILL 2016

Receipt

Bill received from the Assembly.

Statement by President

THE PRESIDENT (Hon Barry House): Members, before calling on the Leader of the House to move motions to enable the question on the first reading of this bill to be put and resolved, I would like to make a few remarks, given the reappearance of this bill in the Legislative Council. The bill contained in the Assembly message that I have just read, the School Boarding Facilities Legislation Amendment and Repeal Bill 2016, is identical in every substantive respect to the bill introduced and then passed by this house on 18 August 2016. That bill was transmitted by a message of this house to the Legislative Assembly on that date, seeking the Assembly's concurrence. On Tuesday, 18 October 2016, the Speaker ruled the bill out of order because, in his view, the bill contravened section 46(1) of the Constitution Acts Amendment Act 1899. This decision of Mr Speaker was communicated to the Legislative Council by Assembly message 183. In that message, Mr Speaker asks, and I quote —

... that the Legislative Council ensures that it strictly observes this section in relation to all future bills.

Mr Speaker considered that the bill received from the Legislative Council was out of order because it was a bill appropriating revenue or moneys and, therefore, could not originate in the Legislative Council by reason of the prohibition contained in section 46(1). The Legislative Assembly subsequently introduced an identical bill, has agreed to it and has now transmitted it to the Legislative Council for concurrence.

On 30 June 2016, I gave a detailed and comprehensive ruling about another bill that originated in this house—the Constitution and Electoral Amendment Bill 2015. That bill was ruled out of order by Mr Speaker on the same basis. I do not propose to repeat what I have said previously, save that the interpretation of section 46(1) by successive Speakers of the Legislative Assembly does not accord with the view of numerous eminent lawyers and what the courts have said about what constitutes the legislative action of appropriating revenue or moneys. The Clerk has received an opinion from Mr Greg McIntyre, SC, about whether the School Boarding Facilities Legislation Amendment and Repeal Bill 2015 as first introduced into this house was a bill appropriating revenue or moneys for the purposes of section 46(1) of the Constitution Acts Amendment Act 1899. Mr McIntyre's emphatic view is that it is not such a bill and, accordingly, the bill was properly and lawfully originated in the Legislative Council. I table Mr McIntyre's opinion. I also table a letter from the Minister for Education, Hon Peter Collier, MLC, to the Clerk that confirms in relation to the previous bill passed by this house, first, that the Department of Education will not receive any additional funds from the consolidated account arising from the passage of that bill and, second, that the bill will not create new costs against the consolidated fund nor create a potential of contingent liability against that fund. I table these papers for the assistance of the house should the order of the day listed on the notice paper relating to Legislative Assembly message 183 be brought on for debate.

[See paper 4853.]

Standing Orders Suspension — Motion

HON PETER COLLIER (North Metropolitan — Leader of the House) [3.35 pm] — without notice:
I move —

That so much of standing orders be suspended to enable the questions on the first, second and third readings of the School Boarding Facilities Legislation Amendment and Repeal Bill 2016 to be put in this calendar year at such times and dates as the house determines.

By way of explanation for members, as the President has indicated in his statement, this bill is in all material respects identical to the bill introduced and agreed to by this house in August this year. Standing order 75 prohibits a question being proposed that is the same in substance as any question resolved during the same year commencing 1 January. The house has considered and resolved the question on the first, second and third readings on an identical bill to the one contained in the Legislative Assembly message. The motion also includes a capacity for the house to deal with the bill without having to wait one calendar week to resume the second reading debate as required by standing order 125.

Accordingly, the house needs to agree to a motion suspending standing orders so that the questions can be proposed again in this calendar year and the bill can pass through its various stages.

I commend the motion to the house.

HON SUE ELLERY (South Metropolitan — Leader of the Opposition) [3.37 pm]: I rise to indicate that we will support the suspension of standing orders. It is a matter of some regret that the house finds itself in this

position and it would be helpful for everybody if a way was found to resolve these conflicts between the two chambers without us having to go through this kind of artificial exercise. Having said that, I support the motion.

The PRESIDENT: The motion requires an absolute majority. Having counted the house, an absolute majority is present; therefore, the motion is agreed to.

Question put and passed with an absolute majority.

First Reading

Bill read a first time, on motion by **Hon Peter Collier (Minister for Education)**.

Second Reading

HON PETER COLLIER (North Metropolitan — Minister for Education) [3.38 pm]: I move —

That the bill be now read a second time.

The purpose of this bill is to repeal the Country High School Hostels Authority Act 1960 and amend the School Education Act 1999 to provide for the functions of the country high school hostels to be undertaken by the Department of Education. The catalyst for this legislative change was the Blaxell inquiry. As members would be aware, in November 2011, retired Supreme Court judge Hon Peter Blaxell was appointed to undertake a special inquiry into the response of government agencies and officials to allegations of sexual abuse at St Andrew's Hostel, Katanning, between 1975 and 1990. At the time, the hostel was one of a number in regional Western Australia that operated under the auspices of the authority established under the authority act.

The Blaxell inquiry report was submitted to the government on 3 August 2012 and subsequently tabled in the Legislative Assembly by the Premier on 19 September 2012. At that time, the Premier advised that the government endorsed the five recommendations in chapter 20 of the report. These recommendations have been implemented, with the exception of recommendation 2, which was for a child-focused one-stop shop complaints system. On further examination, a one-stop shop approach was not seen as practical. The government does not want to disrupt the established lines of reporting, in particular to the Department for Child Protection and Family Support and Western Australia Police.

In addition to the recommendations in the report, the government decided that hostels must have a more contemporary public sector governance structure. To achieve this, the authority and local boards will be abolished and the management of hostels will come under the control of the Department of Education. The authority has been physically co-located with the department since 2003 and consequently has been provided with some support from the department since that time. The director general of the Department of Education had been acting as the chief executive officer of the authority from August 2006 and was substantively appointed in October 2011. Following the release of the report, the support of the department has been strengthened.

Chapter 5 of the Blaxell report provides an instructive history about why the government is abolishing the authority and local boards in their current form. From the early 1900s, churches and the Country Women's Association established and managed individual hostels for country students to attend schools. In the 1950s and 1960s there was an increasing demand for government funding of hostel infrastructure run by these organisations. The vehicle for the funding of hostel infrastructure was the Country High School Hostels Authority Act 1960. After the commencement of the act, there was an uneasy relationship between the authority and the bodies operating the existing hostels. In return for the funding of facilities, the authority gradually gained control until it was responsible for the operation of the hostels. During the 1970s, the management of the hostels became subject to a letter of arrangement with the authority. The letter of arrangement provided that a local board would engage and dismiss staff, pay all accounts, and supervise the management and control of the hostel. This management arrangement was a significant contributor to what occurred at St Andrew's Hostel. The Blaxell report at appendix 1 on page 24 states —

It is apparent from the records that McKenna maintained close control over the Board.

Chapter 19 of the Blaxell report considers what has changed at the hostels and considers the employment of staff, and the roles and responsibilities of local boards of management. Under the new legislation, local boards will no longer be responsible for employing staff or for the finances of hostels. The bill provides for the operations of the colleges and, most importantly, that the focus of the colleges will remain the provision of accommodation to allow students to complete educational programs in schools.

The primary reason a parent chooses to have their child board at a college is to access the programs of a school. The incorporation of colleges into the Department of Education will reinforce the fact that the programs and the quality of the school are crucial to the attractiveness and viability of a college. As student residential colleges will be administered under the School Education Act, the wording and ministerial powers used for the administration of the school system is relevant and, to a degree, relied on in the new part 6A to achieve internal consistency in the act.

Notwithstanding this, there are also differences in part 6A that specifically cater for the operations of student residential colleges. The new part 6A will give the minister the authority to establish such colleges as necessary to provide residential accommodation and related services for students while they attend a school.

A “school” is defined in the act to mean a government school or a non-government school. As such, accommodation may be provided to government and non-government school students. Access to available accommodation places will be determined through criteria that will be prescribed in regulation.

The bill will provide the minister with a number of corporate powers that may be exercised for the purposes of operating a student residential college. These corporate powers are similar, but not identical, to those provided to the minister for the administration of government schools.

The bill provides for regulations to be made about an accommodation agreement that will refer to the student code of conduct, and the costs and charges for accommodation. The relationship between the college, students and their parents will be formed by the accommodation agreement. Adherence to the code of conduct will be a requirement of the accommodation agreement. A breach of the code may result in a breach of the accommodation agreement and, in particular circumstances, lead to a student no longer being accommodated at the college. The code of conduct will be issued by the minister.

The minister will have the power to grant licences for the use of college facilities when that use is for a joint arrangement as defined in the legislation; that is, an arrangement endorsed by the minister for the purposes that are complementary and beneficial to functions of the college that involve the use of property vested in the minister. This power is similar to a power the minister has for government schools. Joint arrangements will cater for circumstances in which a Catholic or independent school wishes to build, contribute to the building of a college or provide funding for the purposes of quarantining places for their students.

Each student residential college will have a local input, networking and communication committee that will provide advice on the operation and management of the college; promote the interests of the college and foster community interest in the college; approve arrangements for advertising and sponsorship presented to it by the college manager; provide feedback about the code of conduct; and undertake other functions that may be prescribed in the regulations. However, a LINC committee will not be involved in the day-to-day administration of the college and, as such, will not exercise direct authority over any person employed at the college or the finances of a college.

The bill provides that the land and finances of the authority come under the control of the minister and will be administered by the Department of Education on behalf of the minister. Staff of the authority will be employed by the Department of Education in accordance with their existing industrial awards and agreements.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party. Nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and table the explanatory memorandum.

[See paper 4854.]

Debate adjourned, pursuant to standing orders.