

*Standing Committee on Environment and Public Affairs — Fifty-ninth Report —
Overview of petitions 3 December 2021 to 30 June 2022 — Motion*

Resumed from 15 March on the following motion moved by Hon Peter Foster —

That the report be noted.

Hon SHELLEY PAYNE: I think I have only one minute left on this so I will be brief. I am a member of this committee along with our chair, Hon Peter Foster, Hon Tjorn Sibma, Hon Sophia Moermond and Hon Stephen Pratt. This report covers the petitions received from 3 December 2021 to 30 June 2022. The last time I spoke on this, I referred to the housing issue and how we had received petition 6 on Caravan Parks and Camping Grounds Regulations and the issue of tiny homes. I know that this is an issue that a lot of local governments have been discussing over the last couple of years, particularly the Shire of Esperance, the first shire in Western Australia to implement a tiny homes policy. I think we are still waiting for the National Construction Code to be amended to recognise tiny homes.

Hon NICK GOIRAN: It is timely that we get to consider the fifty-ninth report of the Standing Committee on Environment and Public Affairs today that looks at the petitions tabled between 3 December 2021 and 30 June 2022. I would like to specifically draw to the attention of members petition 33 found at page 11 of the report entitled “Release the Coroner’s Court recommendation”. This petition was tabled by me on 14 October 2021 and finalised by the committee on 18 May 2022. Given the primary order of the day that will be considered by the house today, it is worthwhile members giving some consideration to this particular petition. This petition contained more than 2 000 signatures and called for —

... the Legislative Council to inquire into the Attorney General’s refusal to release the recommendation made by the Coroner’s Court in January 2020 to amend the *Health (Miscellaneous Provisions) Act 2011*. This concerned a number of cases of the live birth of children as a result of abortion procedures.

The committee faithfully reports in its report that I made a submission to this particular inquiry into the consideration of petition 33 and it quotes that I advised in my submission —

... there has been significant concern that Western Australian babies have been born alive but then not provided the same standard of health care (or indeed any health care) that a baby of the same gestational age would ordinarily receive. This concern has been heightened in light of the non-reporting of these child deaths.

The committee report indicates that further in my submission I said —

On 18 September 2018, it was confirmed by the Government in Parliament, that advice from the State Solicitor’s Office stated that these deaths were reportable deaths but that, as at that date, they had not been reported to the State Coroner.

The committee then indicates that it wrote to the Attorney General and to the Minister for Health seeking comment on the petition. It is instructive to note that the Attorney General responded at that time by way of letter to Hon Peter Foster’s committee dated 5 May 2022. The Attorney General said, in part —

the State Coroner’s recommendation to amend the *Health (Miscellaneous Provisions) Act 2011* (WA) was prepared for the ultimate deliberation of Cabinet. Because this Cabinet deliberation is yet to take place, the Government has not been in a position to make the recommendation public to date.

I do not quibble with the Attorney General and his response from 5 May last year. I simply note for the benefit of the chamber that he indicated that he and the government were not in a position to make public the recommendation of the State Coroner at that time because the deliberation had yet to take place. The deliberation has obviously now taken place because we have a bill before the house that we will consider further during orders of the day and in Committee of the Whole House. During our consideration yesterday, I urged the government to expedite the release of the coroner’s recommendation. This matter has been pursued since 2018. On 18 September 2018, Hon Sue Ellery in her capacity representing the Attorney General, confirmed that the deaths of babies who were born alive after an abortion procedure had not been reported to the State Coroner. It is a matter of public record that the following day I reported those matters to the State Coroner. It is a matter of public record that since that time the Department of Health has on multiple occasions reported those deaths to the State Coroner. It is a matter of public record that those matters remain with the State Coroner in the backlog, on hold, pending the outcome of this recommendation. The problem is that we do not know what the recommendation is. Is it the recommendation of the State Coroner that the jurisdiction of the Coroner’s Court should be removed for these matters? Is it the recommendation of the State Coroner that these matters ought not be reportable deaths? Is it the recommendation of the State Coroner that there should be some capacity by the State Coroner to compel health officials to provide information to assist the State Coroner with its inquiry? We do not know. The house does not know, yet there is a bill before the house.

I again call on the government to expedite the release of that coroner's recommendation. I see no harm in doing that. If there is harm in the coroner's recommendation being released, I invite members to explain what that harm is. I invite any representative on behalf of the Attorney General to explain what that harm is. I invite someone from the government to explain why Hon Peter Foster's committee was told that it was not in a position to make the recommendation public to date because the deliberation was yet to take place, implying to Hon Peter Foster's committee that once the deliberation had taken place, it would be possible to make the recommendation public—a fair and reasonable inference of the response provided by the Attorney General. I call on the government to expedite the consideration and release of this information, which has the support of thousands of Western Australians.

Further, I make this point: we know—it is on the public record—that a coroner's inquiry was held in the Northern Territory into the death of Jessica Jane. It was a similar type of case. A young Northern Territorian was born alive after an abortion procedure but was then left to die. The coroner in the Northern Territory inquired into that matter and made some recommendations. We know that there was also a coronial inquiry in New South Wales into a similar matter at Westmead. We have had coronial inquiries in our country previously. We know of at least the Northern Territory and New South Wales cases. There has obviously not been any in Western Australia because there is this blockage. There are matters before the Coroner's Court, but there is some form of blockage, unknown to members. The blockage is known to some members who are part of cabinet because it has been brought to their attention and they have had the opportunity to deliberate on it. However, if one is not a member of cabinet, one does not know what that recommendation from the State Coroner is. I am simply asking for, preferably, the information to be released to members before we make a decision on the bill that is pending; or alternatively, if there is a good, fair and reasonable reason it cannot be provided, I call on the government to provide that explanation.

I might add that in all the circumstances, members ought remember that section 82 of the Financial Management Act 2006 obligates the government, if it is not going to provide that information to Parliament, to issue a notice, to both the Parliament and also the Auditor General so the Auditor General can look at the recommendation from the State Coroner and give an opinion as to whether it is fair and reasonable that this information has not been provided to the people of Western Australia more broadly, but in particular to the 35 members of the Legislative Council who have a responsibility to make decisions on not only the bill but also particular clauses, some of which go to the jurisdiction of the State Coroner, all in circumstances when we are talking about the very distressing scenario of babies being born alive after an abortion procedure and there is inadequate or, in some circumstances, no health care provided to those youngest Western Australians. I hope every member of the Western Australian Legislative Council supports at least having the information available to them.

Hon LORNA HARPER: I, too, rise to talk about the fifty-ninth report of the Standing Committee on Environment and Public Affairs, *Overview of petitions 3 December 2021 to 30 June 2022*, but more broadly than Hon Nick Goiran. I do not want to dig into the details of each and every petition. Especially as I notice we have some students in the public gallery, I would like to give an overview of what the committee does and its functions. The committee considers petitions and the consideration of petitions serves to enhance transparency and inform the Parliament and public about current issues of concern to the community. A petition will not always bring about a change of policy by the government or achieve the specific objectives desired by the petitioners. That is an important point to make. The fact that a petition has been presented to Parliament does not mean it automatically becomes policy; there are a lot of other things to consider. At the submission stage the committee does not have the power to direct, amend or overturn decisions of other bodies. That is something we must be aware of because the committee has clear terms of reference and clear powers.

The committee has five members and the functions of the committee are to inquire into, and report on, any public or private policy, practice, scheme, arrangement or project whose implementation, or intended implementation, within the limits of the state is affecting, or may affect, the environment—that is a mouthful; any bill referred by the Council; and petitions. The committee, when relevant and appropriate, is to assess the merits of matters or issues arising from an inquiry in accordance with the principles of ecologically sustainable development and the minimisation of harm to the environment. The committee may refer a petition to another committee when the subject matter of the petition is within the competence of that committee. The word “may” is regularly referred to in this chamber. The committee “may”—the committee does not “have to” and it is not obliged to. That point is argued quite a lot in this chamber when some items are put forward.

I had a little look at petition 42 on Department of Communities' housing in Karawara. I used to work in Karawara. I love saying “Karawara” because of the number of r's in it. I used to work at Lady Gowrie Child Care Centre in Karawara—that was a mouthful to answer the phone to! The petition called for the Legislative Council to support a reduction in the number of Department of Communities' houses in Karawara. The tabling member, who is the member for the area, did what we are meant to do—that is, he was asked to table a petition, so he tabled it. We do not always agree 100 per cent with petitions that we are asked to table, but when constituents ask us to do it, we do it as we represent them. I found it quite unusual that the petition was asking for a 24 per cent reduction in community housing, especially considering the lack of housing and the issues that are going on. Being a person who grew up

in a council house on the west coast of Scotland, I believe in social housing and think it is very important. Well, it was social housing until Margaret Thatcher sold them all from underneath us, but that is a different matter.

The variety of petitions is very interesting. Petition 32 on an RAAF memorial in Kings Park sits next to petition 33 on the release of a Coroner's Court recommendation. Petitions are wide and varied. The committee has to deal with a lot of different petitions, and there are a lot of petitions. I do not think a week goes by when a petition is not presented to Parliament. I challenge any of you to say that three times in a row because I tripped over it! I believe the committee does an excellent and thorough job. We understand that some of the petitions before the committee at the moment are quite daunting. The committee holds hearings and people come in and ask that stuff be put in. Looking at the ongoing petitions mentioned in this report, there is one about Fiona Stanley Hospital. I could talk about Fiona Stanley Hospital quite a lot because I spent a lot of time walking around that hospital, even down below where we are not all meant to go. I spent a lot of time there. I am sure that Hon Rosie Sahanna could talk about crime and antisocial behaviour across the Kimberley—about the reality and the reasons that there might be issues in the Kimberley, such as the lack of social structure following the removal of that structure in previous years. The petition about the marine fish kills in Jurien Bay marina is a very interesting one. I do not go fishing, so I cannot really comment on that. There was even a petition opposing mandatory masks for children in years 3 to 7. I used to work with children on a regular basis. Good luck if you can keep a mask on a child aged three, four or five years old! Unless you have gaffer tape or a staple gun, it is not going to work. I do not believe that children really did it.

We could go into the depth and breadth of each of the petitions but I do not think this is the time to dig into them. The petitions have been tabled, the committee is dealing with them and it will report on them. I do not think this is the time to go into what each petition called for because they all call for something. As I said at the beginning, the committee does not have the power to change policies or to direct, amend or overturn decisions of other bodies. I think we should keep that firmly in mind when looking at these reports, and particularly this one.

Hon DAN CADDY: I rise to speak to the fifty-ninth report of the Standing Committee on Environment and Public Affairs. When petitions are read into this place, for many of us it is the first we have heard of the issue that is being described. Sometimes, a petition is read on a widespread or statewide issue and we all know the issue to some extent. Occasionally, niche issues are brought up in petitions and some individuals might have in-depth knowledge of the issue, the circumstances and sometimes, importantly, the history. The fifty-ninth report of the Standing Committee on Environment and Public Affairs includes two such petitions in terms of my knowledge of the issues they cover. I will talk about both of them if I have time, from a position of some knowledge. Petition 32 is on the RAAF memorial in Kings Park and petition 35 is on the East Subiaco A-class reserve. I will speak to the second petition first; I am sure there will be ample opportunity to speak over time. I go back to the early history of this matter in 2014, when the principal petitioner was himself a member of the council and probably could have made a difference. The redevelopment of Subi East was very much tied to both what happened with football in Subiaco and the decommissioning of Princess Margaret Hospital for Children. An ABC news article of 17 September 2014 states —

WA Premier Colin Barnett has said he sees no future for Subiaco Oval when the new Perth stadium opens in Burswood in 2018.

Whether or not we agree with Colin Barnett, he was pretty firm on that. It continues —

Mr Barnett said the oval, also known as Patersons Stadium, sat on prime real estate in Subiaco and could be turned into a housing development.

However he stressed no decision had been made.

This was really an opportunity for those at the local government level to try to engage. He went on to say —

... I can't see a future for Patersons Stadium as it is ...

What did the council choose to do at that time? The city took out a full-page ad in the *Post* urging both the Barnett government and the state opposition at the time to make an election commitment to keep Subiaco Oval for sport. That was the sum of its efforts—to take out an ad in a local newspaper that, by state definition, nobody read as far as numbers went; it is a very local newspaper. Where was the engagement? As we know, Colin Barnett would not meet with the council at the time. This was a familiar thing. It was a very difficult council to deal with. Many developers would not bother meeting with the council at the time either. Gareth Parker probably summed it up best in an article in *The West Australian* of 31 August 2017. This article is probably the best summary of the pathos surrounding the council at the time. He referred to the old market site as well as the loss of football, which were both part of Subi East and the genesis of the petition. He referred to the pavilion site in the article as —

... the derelict piece of real estate where Subiaco's Pavilion Market once operated: a prime location at the corner of two of Perth's most famous streets.

He then states —

But rather than a vibrant commercial and community centre, the markets on the 5500sqm block on the corner of Rokeby and Roberts roads, a stone's throw from a railway station and a drop punt from Subiaco Oval, have been shuttered for a decade.

What a dismal outcome.

It was dismal indeed; he was absolutely right. As I said, the Barnett government and developers alike avoided trying to deal with the City of Subiaco at the time, and especially the elected members. It was a council of naysayers. Gareth Parker made the point —

The markets were shut ostensibly so the site could be redeveloped.

He said the owner —

... had ambitious plans for a large-scale project of high-rise apartments, retail, commercial and entertainment space.

Ironically, that is exactly what is there now, but it was delivered well after the time that it could have been. The article continues —

The concept fit neatly with bipartisan State planning policy that called for densification and housing diversity in strategically important brownfield sites.

Here is the kicker from Gareth Parker —

Subiaco's elected members have done-in the reputation of their municipality.

...

Instead, an intransigent council, influenced by a tiny but vocal minority, fought the scheme rather than facilitate it—and so an entire economic cycle was wasted and an opportunity lost.

Those are Gareth Parker's words. After that important context around the history and complete lack of direction from the local government level at the time, let us get back to the specific site. I noticed in the petition it talked about 4.6 hectares, but anyone who has done research or lived through it would know that the principal petitioner and the group they were part of always talked about 1.73 hectares having to be returned to the public. The 1.73 hectares came from the size of Kitchener Park, which is now the footprint of Bob Hawke College. The Leader of the House, Hon Sue Ellery, as then Minister for Education and Training on behalf of this government, opened Bob Hawke College in 2020, but those people were not happy with the new school being built. Those people demanded the 1.73 hectares be returned as part of the Subi East development. I have an August 2019 agenda from the City of Subiaco, which says —

Kitchener Park—was noted that it was not used as active open space and that an opportunity existed to use incorporate ...

The point being, that it was simply an overflow car park for when the West Coast Eagles played. This came from people's objection to this brand new school. Ironically, it is the same school at which Premier Roger Cook, along with local member Katrina Stratton and, I think, Hon John Carey opened stage 2 on Monday.

This is when effective policy passes nimbys by. The important thing is being able to progress. The history of this is important, because it was the litany of missed opportunities and poor leadership—as outlined by Gareth Parker—that pulled Subiaco back into the dark ages, right up until a young, dynamic team was elected to council in 2017. The new council was elected, with members prepared to do the hard work for the revitalisation of Subiaco while preserving what is loved about Subiaco. The Subiaco council had money in the budget for saving footy at Subiaco Oval. Let me say that again. A new group had been elected and it looked at what was going on. The footings had gone down at the new stadium; football was gone, but there was still money in the budget for saving footy. There was not, "Let us take this money and let us see what we can build and what we can do." That is incredulous and a hangover from the time the principal petitioner himself was on council.

The revitalisation is now being realised thanks to the incoming leadership and hard work of many on council, and especially those in business in Subiaco at that time. Let us not forget that many businesses went under and were pushed to the wall by the lack of strategy from the council prior to that last game of football at Subiaco Oval in 2017—as was outlined by Gareth Parker. I go back to Gareth Parker's words. This is not the gospel according to Dan, as Hon Peter Collier will often say. Talking about the previous council, Parker writes —

This is how Subiaco's elected members have done-in the reputation of their municipality.

Over the years the council has been dragged kicking and screaming to night-time football and other events at Subiaco Oval; has opposed the \$200 million hotel redevelopment at the old Ace Cinema site that proceeds only because it was approved by a development assessment panel; and has tried to snuff out the small-bar revolution that has enlivened practically every other of the city's entertainment precincts.

Extract from *Hansard*

[COUNCIL — Wednesday, 13 September 2023]

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Hon Shelley Payne; Hon Nick Goiran; Hon Lorna Harper; Hon Dan Caddy

He then quotes Murray Gill, who was the owner—I am not sure he still is—of Juanita’s bar on Rokeby Road. Gill said —

“There’s something very sad and entrenched in Subiaco ... you can reinvigorate an area but you do need some co-operation.”

That was in 2017, two months out from the elections. Then, as I said, the fresh council —

The CHAIR: The question is that the report be noted.

Hon DAN CADDY: A fresh council was elected and that saw the renaissance of Subiaco. Councillors like Derek Nash, Jodie Mansfield and Matt Davis—to name a few—chose to not only work with the Subiaco business community, but were also a part of it. That is critical.

I will get back to the specific history of the Subi East site from the council point of view and will talk more about that. I have another media statement about what happened next.

Consideration of report postponed, pursuant to standing orders.

Progress reported and leave granted to sit again, pursuant to standing orders.