

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 140

THURSDAY, 17 MARCH 2011

1. Meeting of Council

The Council assembled at 10.00am pursuant to Temporary Orders.

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

2. Statement by President - Department of the Legislative Council - Increased Funding and Organisational Changes

The President made the following Statement -

All Members will be aware that the Department of the Legislative Council has been seeking additional funding for a number of years in order to improve service delivery to the House and its Members. Following considerable effort over an extended period, I am delighted to advise Members that supplementary funding for the current financial year and subsequent out years was approved by the Premier and Treasurer just prior to Christmas. This funding approval will allow the Department to progress a number of initiatives that have been planned for some time.

Foremost among these initiatives are changes being made to the organisational structure of the Department. These changes align the structure with the Department's strategic plan, which was developed and tabled in the House in 2008. One position that has changed as a consequence of this process is the role of Usher of the Black Rod. In its amended form, this position will assume more of a management role in relation to the Department's administrative services. The current Usher of the Black Rod, Chris Hunt, has taken up the position of Parliamentary Officer (Procedure) effective from next week. On behalf of all Members, I congratulate and thank Chris for his performance in the Usher's role over the past six years.

I am pleased to announce that the new Usher of the Black Rod will be Dr Julia Lawrinson, a former Sergeant-at-Arms. Julia will commence in this position next Monday and will be the first female Usher of the Black Rod for the Parliament of Western Australia.

Two further appointments were made to our chamber personnel recently. A new position of Advisory Officer (Procedure) was created, and Grant Hitchcock was successful in being appointed to that position. A second position of Parliamentary Officer (Procedure) was also created, and Peter Axford, a former Research Officer at the Committee Office, was successful in attaining that role. On behalf of all Members, I congratulate Chris, Julia, Grant and Peter on their appointments, and look forward to working with them in their new roles.

Two additional staff positions have also been created at the Committee Office. Michael Baker has commenced in the position of Advisory Officer, and is already assisting the Public Administration Committee. A further appointment of an Advisory Officer (Legal), under a 12 month contract, will be made in the near future, to support other committee activities including the Standing Committee on Uniform Legislation and Statutes Review.

For the information of Members, I table a copy of this statement and the new organisational structure of the Department of the Legislative Council. I am confident that these additional staff resources, along with other expansions to Members' support services, will lead to an increased service delivery to all Members during the course of this year, both for the House and its committees.

The President tabled the statement and the new organisational structure for the Department of the Legislative Council. (Tabled paper 3118).

3. Petition

Hon Giz Watson presented a petition from 787 petitioners requesting the Legislative Council recommend to the Minister for Heritage that the development guidelines for the land known as Swanbourne Hospital Conservation Area, as shown in Certificate of Title Volume 2121 Folio 149 and described as Lot 1204 on Diagram 75983, located within the City of Nedlands Town Planning Scheme No. 2, be preserved. (Tabled paper 3119).

4. Papers

The following Papers were laid on the Table by -

President

Letter -

Joint Standing Committee on the Corruption and Crime Commission - Letter to the President of the Legislative Council advising of three new inquiries to be conducted..... 3120

Leader of the House

Reports -

Interstate and Overseas Travel undertaken by Members of Parliament Funded by the Imprest System (For the three months ended 30 September 2010)..... 3116

Parliamentary Secretary representing the Attorney General

Response to Reports -

Joint Standing Committee on the Commissioner for Children and Young People - Functions and Powers of the Joint Standing Committee on the Commissioner for Children and Young People (Report No. 5) (Attorney General).....3117

5. Notice of Question

Hon Ken Travers to the Leader of the House representing the Premier:

I refer to question on notice No. 2936 asked on the 20 October 2010, regarding the notification of any conflicts of interest by officers in the Department of Premier and Cabinet (DPC) or in Ministerial Offices, and further advice on 25 November 2010 by Hon Norman Moore, that an answer would be provided in due course, and ask -

- (1) Do you intend to answer this question?
- (2) If yes to (1), on what date will an answer be provided?

- (3) Why have you not been able to answer this question in the five months since it was asked?
- (4) Does the DPC maintain a register of conflicts of interest that have been disclosed?
- (5) Does the Premier accept that public disclosure of conflicts of interests are an important component of an open and accountable Government?
- (6) If no to (5), why not?
- (7) Can the Premier provide an assurance that the excessive time taken to answer this question is not due to an attempt to cover up any past failures by officers in his Government regarding conflicts of interest?

6. Notice of Question

Hon Ken Travers to the Leader of the House representing the Premier:

I refer to question on notice No. 2937 asked on the 20 October 2010, regarding approval for private employment for officers employed by the Department of Premier and Cabinet (DPC) or in Ministerial Offices and further advice on 25 November 2010 by Hon Norman Moore that an answer would be provided in due course, and ask -

- (1) Do you intend to answer this question?
- (2) If yes to (1), on what date will an answer be provided?
- (3) Why have you not been able to answer this question in the five months since it was asked?
- (4) Does the DPC maintain a record of officers granted approval for private employment?
- (5) If no to (4), why not?
- (6) Does the Premier accept that public disclosure of officers private employment is an important component of an open and accountable Government?
- (7) If no to (6), why not?
- (8) Can the Premier provide an assurance that the excessive time taken to answer this question is not due to an attempt to cover up any past failures by officers in his Government regarding private employment?

7. Notice of Question

Hon Ken Travers to the Leader of the House representing the Premier:

I refer to question on notice No. 2939 asked on the 20 October 2010, regarding records of gifts, hospitality, or other benefits received by officers employed by the Department of Premier and Cabinet (DPC) or in Ministerial Offices, and further advice on 25 November 2010 by Hon Norman Moore that an answer would be provide in due course, and that was finally answered yesterday, and ask -

- (1) Why did it take five months to provide an answer?
- (2) Does the DPC maintain a record of gifts, hospitality or other benefits received by officers?
- (3) If no to (2), why not?
- (4) Does the Premier accept that public disclosure of gifts, hospitality or other benefits received by officers is an important component of an open and accountable Government?
- (5) If no to (4), why not?

- (6) Will the Premier provide, -
- (a) a list of the names of the officers who received the gifts, hospitality or other benefits;
 - (b) the date which they received the item; and
 - (c) the date on which a formal written record was recorded by the Department?

8. Property Law (Mortgagee's Power of Sale) Amendment Bill 2009

Non-Government Business No. 1 having been called for the adjourned debate on the second reading of this Bill.

Debate resumed.

Interruption pursuant to Temporary Orders.

9. Order of Business

Ordered - That Orders of the Day Nos 1, *Regulation 13(4) of the Animal Welfare (Pig Industry) Regulations 2010 - Disallowance*, 2, *West Coast Estuarine Fishery (Interim) Management Plan Amendment 2010 - Disallowance*, 3, *Gascoyne Demersal Scalefish Management Plan 2010 - Disallowance*, and 4, *Shire of Esperance Cemeteries Amendment Local Law 2010 - Disallowance*, be taken after Order of the Day No. 27, *Standing Committee on Environment and Public Affairs - Report No. 19 - Prayer for Relief*. (Leader of the House).

10. Criminal Investigation Amendment Bill 2010

The Order of the Day having been read for the third reading of this Bill.

The Leader of the House on behalf of the Minister for Energy representing the Minister for Police moved, That the Bill be now read a third time.

The President having reported that the Deputy Chairman of Committees had certified that the fair print of the Bill was in accordance with the Bill as agreed to in Committee, and reported.

Question - put and passed.

Bill read a third time and passed.

11. Road Traffic Legislation Amendment (Information) Bill 2010

The Order of the Day having been read for the third reading of this Bill.

The Minister for Finance representing the Minister for Transport moved, That the Bill be now read a third time.

The President having reported that the Deputy Chairman of Committees had certified that the fair print of the Bill was in accordance with the Bill as agreed to in Committee, and reported.

Question - put.

Debate ensued.

Question - passed.

Bill read a third time and passed.

12. Conservation Legislation Amendment Bill 2010

The Order of the Day for the consideration of this Bill, in Committee, having been read.

The President left the Chair.

In Committee

(Hon Matt Benson-Lidholm in the Chair)

Clause 1.

Debate ensued.

Hon Robin Chapple, by leave, tabled a consultation version of the Explanatory Memorandum for the *Conservation Legislation Amendment Bill 2010*. (Tabled paper 3121).

Clause agreed to.

Clause 2.

Debate ensued.

Clause agreed to.

Clause 3 agreed to.

Clause 4.

Debate ensued.

Hon Robin Chapple moved -

Page 4, after line 23 — To insert —

Minister for Indigenous Affairs means the Minister to whom either the administration of the *Aboriginal Communities Act 1979* or the *Aboriginal Heritage Act 1972* is committed;

Debate ensued.

Hon Robin Chapple, by leave, withdrew the amendment.

The Minister for Mental Health representing the Minister for Environment moved -

Page 4, after line 23 — To insert —

Minister for Indigenous Affairs means the Minister to whom the administration of the *Aboriginal Affairs Planning Authority Act 1972* and the *Aboriginal Heritage Act 1972* is committed, or each of the Ministers to whom their administration is committed;

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 5.

Debate ensued.

Clause agreed to.

Clause 6 agreed to.

Clause 7.

Debate ensued.

Clause agreed to.

Clause 8.

Debate ensued.

The Minister for Mental Health representing the Minister for Environment, by leave, tabled a marked-up version of the Explanatory Memorandum highlighting amendments from the consultation version. (Tabled paper 3122).

Hon Robin Chapple moved -

Page 8, line 1 — To delete “exclusive”.

Debate ensued.

Amendment - put.

The Committee divided.

Ayes (12)

Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Robin Chapple
Hon Sue Ellery
Hon Lynn MacLaren
Hon Ljiljanna Ravlich

Hon Linda Savage
Hon Sally Talbot
Hon Ken Travers
Hon Giz Watson
Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (17)

Hon Liz Behjat
Hon Jim Chown
Hon Mia Davies
Hon Wendy Duncan
Hon Phil Edman
Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran

Hon Nigel Hallett
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton
Hon Simon O'Brien
Hon Max Trenorden
Hon Ken Baston (*Teller*)

Amendment thus negatived.

Debate resumed.

Hon Robin Chapple moved -

Page 8, lines 16 to 19 — To delete the lines and insert —

- (4) If an agreement made under this section includes land, waters, or land and waters to which a mining lease, or general purpose lease, granted under the *Mining Act 1978*, applies, then that agreement may only be implemented to the extent that it is consistent with any current or planned activities under that mining lease, or general purpose lease, as the case may be.

Debate ensued.

Amendment - put and negatived.

Hon Sally Talbot moved -

Page 9, line 25 — To insert after “Products,” —

the Minister for Indigenous Affairs,

Debate ensued.

Amendment - put and passed.

Debate resumed.

Hon Robin Chapple moved -

Page 10, after line 14 — To insert —

- (c) the eligible land has been the subject of at least a preliminary survey for potential new Aboriginal sites, as defined in sections 4 and 5 of the *Aboriginal Heritage Act 1972*.

Debate ensued.

Amendment - put and negatived.

Hon Robin Chapple moved -

Page 11, after line 3 — To insert —

- (14) The CEO must, from the existing standing appropriations for his or her department, supply adequate funding for the process of developing an agreement under this section, and for the subsequent effective implementation of that agreement.

Debate ensued.

Amendment - put and negatived.

Hon Robin Chapple moved -

Page 12, lines 25 to 27 — To delete the lines.

Debate ensued.

Amendment - put and negatived.

Hon Robin Chapple moved -

Page 13, lines 16 to 18 — To delete the lines.

Amendment - put and negatived.

Hon Robin Chapple moved -

Page 13, line 27 — To insert before “On the recommendation” —

Subject to sections (3A) and (3B)

Page 13, after line 32 — To insert —

- (3A) Subject to section (3B), the Governor may only make an order under section (2) if he or she is satisfied that the Minister has first consulted —
 - (a) the relevant native title holders and registered native title claim groups (if any);
 - (b) the relevant registered Native Title Representative Body, if any; and
 - (c) the relevant registered Native Title service Provider, if any.

- (3B) In the case of an unmanaged reserve for the use and benefit of Aboriginal persons, the Governor must also be satisfied that the Minister has first consulted the Minister for Indigenous Affairs.

Debate ensued.

Amendments - put and negatived.

Hon Robin Chapple moved -

Page 14, after line 3 — To insert —

- (4) The making of an order under section (2) does not prevent or in any way hinder the future transfer of management to another body.
- (5) The CEO's functions pursuant to an order under section (2) shall not be exercised in a manner that affects the exercise of native title rights and interests.

Debate ensued.

Amendment - put and negatived.

Clause, as amended, agreed to.

Clauses 9 to 10 agreed to.

Clause 11.

Debate ensued.

Clause agreed to.

Clauses 12 to 15 agreed to.

Clause 16.

Debate ensued.

The Minister for Mental Health representing the Minister for Environment moved -

Page 20, lines 22 and 23 — To delete the lines and insert —

- (2) If any land to which this Act applies or any section 8A land —
- (a) is not the subject of a management plan; or
- (b) is the subject of a management plan that, due to an exemption given under section 57A(2), was not prepared in accordance with section 56(2),
- then,

Amendment - put and passed.

Debate resumed.

Hon Robin Chapple moved -

Page 20, line 27 — To insert after “protects and conserves” —

the scientific values of the land, the educational values of the land, and

Page 21, line 9 — To insert after “protects and conserves” —

the scientific values of the land, the educational values of the land, and

Interruption pursuant to Temporary Orders.

13. Questions Without Notice

Questions without notice were taken.

The Minister for Finance tabled a graph in relation to WA State Taxation - Pre-election forecasts versus current status, in response to a question without notice asked by Hon Phil Edman. (Tabled paper 3123).

The Minister for Mental Health representing the Minister for Environment tabled copies of stop orders issued to Magellan Metals Pty Ltd, dated 31 December 2010 and 3 January 2011, in response to a question without notice asked by Hon Matt Benson-Lidholm. (Tabled paper 3124).

14. Leader of the House - Personal Statement - Questions Without Notice

The Leader of the House, by leave, made a personal statement regarding Questions Without Notice.

15. Leader of the Opposition - Personal Statement - Questions Without Notice

The Leader of the Opposition, by leave, made a personal statement regarding Questions Without Notice.

16. Conservation Legislation Amendment Bill 2010

The President left the Chair.

In Committee

(Hon Jon Ford in the Chair)

Clause 16.

Debate resumed on the amendments of Hon Robin Chapple as follows -

Page 20, line 27 — To insert after “protects and conserves” —

the scientific values of the land, the educational values of the land, and

Page 21, line 9 — To insert after “protects and conserves” —

the scientific values of the land, the educational values of the land, and

The Minister for Mental Health representing the Minister for Environment moved, That progress be reported and leave asked to sit again.

Question - put and passed.

The President resumed the Chair.

The Deputy Chairman of Committees reported that the Committee had considered the Bill, made progress, and asked leave to sit again.

Ordered - That the Committee have leave to sit again.

17. Road Traffic Amendment (Alcohol and Drug Related Offences) Bill 2010

The President reported the receipt of Message No. 167 from the Legislative Assembly forwarding the Bill for concurrence.

The Leader of the House on behalf of the Minister for Energy representing the Minister for Police moved, That the Bill be now read a first time.

Question - put and passed.

Bill read a first time.

The Leader of the House on behalf of the Minister for Energy representing the Minister for Police moved, That the Bill be now read a second time.

Debate stands adjourned.

18. Members' Statements

Statements were taken.

19. Motion Without Notice - Special Adjournment

The Hon Ken Travers moved, without notice -

That, pursuant to Temporary Order 3(5)(a), the House at its rising adjourn until Thursday, 17 March 2011 at 6.20pm for the purpose of debating the Minister for Finance's response to a question asked today.

Point of Order

The Leader of the House raised the following Point of Order -

Mr President, I draw your attention to Standing Order 71, which states -

The adjournment of the Council may be moved at any time by or on behalf of a Minister.

President's Ruling

The President ruled as follows -

We have looked at Standing Order 71 and Temporary Order 3(5)(b) that the House has adopted. Quite frankly, there appears to be a lack of clarity in how the two come together. That is an issue that we will have to consider in the Standing Committee on Procedure and Privileges, which is looking at the Standing Orders. Because the existing Standing Orders are the basis of our Standing Orders and the Temporary Orders are in a sense an add-on or additional group of Standing Orders, I think it is appropriate that I revert to the substantive Standing Orders and uphold the point of order that Standing Order 71 means that the adjournment of the Council may be moved at any time by or on behalf of a Minister. As I said, there is room for some ambiguity and it is an issue that we have to clear up. At this stage, I uphold the point of order, interrupt the Member's contribution and adjourn the House.

Point of Order

Hon Ken Travers raised the following Point of Order -

Mr President, I wish to draw your attention your attention to Temporary Order 12(2), which states -

Where a provision of a Temporary Order conflicts, or is inconsistent, with a Rule or Standing Order, the provision of the Temporary Order is to be preferred and applied accordingly.

President's Ruling

The President ruled as follows -

The convention is that a Minister or a Member on behalf of a Minister has always moved for an adjournment of the House different to that already set down. In respect of the Standing Orders as we have interpreted them, and the convention, I will abide by the Ruling. Therefore, the House stands adjourned.

20. Adjournment

The House adjourned at 6.01pm until Tuesday, 22 March 2011 at 3.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Peter Collier, Hon Adele Farina, Hon Alyssa Hayden and Hon Colin Holt.

MALCOLM PEACOCK
Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council