

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 97

TUESDAY, 21 OCTOBER 2014

1. Meeting of Council

The Council assembled at 3.00pm pursuant to order.

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

2. Statement by President — Honourable Edward Gough Whitlam, AC, QC

The President made the following Statement —

I inform the House that a former Prime Minister and former Member for Werriwa, the Honourable Edward Gough Whitlam, AC, QC, passed away on 21 October 2014 aged 98. Today in the Federal Parliament a condolence motion was passed placing on record the House of Representatives' deep regret at his death and its appreciation of his long and highly distinguished service to the nation, and expressing its profound sympathy to his family in their bereavement. The House of Representatives has adjourned for the day as a mark of respect. I share the sentiments expressed in the condolence motion.

Members will have an opportunity during members' statements this week to express their thoughts on a politician and Prime Minister who can only be described as one of the most influential figures in Australian politics. As is the protocol and custom of the Parliament, the flags at our Parliament House are flying today at half-mast. I acknowledge most sincerely Gough Whitlam's highly distinguished service to this nation.

As is custom, I ask that Members stand with me and observe one minute's silence as a mark of respect.

3. Statement by President — Perth Heritage Days

The President made the following Statement —

Parliament House opened last Sunday, 19 October 2014 for Perth Heritage Days, commemorating the 100th anniversary of World War I and the seventy-fifth anniversary of World War II. Both the Speaker and I attended and were extremely pleased as an estimated 1,100 visitors attended, despite inclement weather. Staff of the Parliament did a huge amount of work for the event including the development of displays, a special event website, brochures and media materials, training of volunteers, and also did a great job when staffing the building on Sunday.

A special thanks also goes to Bill Grayden, former Member and World War II veteran, who was an integral part of the parades and displays. We were supported on the day by the generous contribution of volunteer and other organisations. I extend my thanks to Heritage Perth, the 10th Light Horse and Westralian Great War Living History Association re-enactment troops, the Army Museum of Western Australia, the Aviation Heritage Museum of Western Australia, Phil Sullivan's 10th Light Horse display, Bob Maumill and his team at 882 6PR, the Royal Australian Navy, the Country Women's Association, the Lions, the Scouts and the RSL. I strongly encourage Members to view the displays and to visit Parliament's commemorative

website available through the Parliament House home page. Parliament House is again open on Sunday, 2 November from 10.00am to 4.00pm as part of Open House Perth in which Parliament House is one of 69 destinations that can be visited by the general public during that weekend.

4. Ministerial Statement — Construction Contracts Act 2004 — Review

The Minister for Commerce made a Ministerial Statement with respect to the independent statutory review of the *Construction Contracts Act 2004*.

5. Papers

The following Papers were laid on the Table by —

Minister for Mental Health

Local Laws —

Cemeteries Act 1986 (Shire of Kellerberrin Cemeteries Local Law 2014 G.G. 15/10/2014)..... 2172

Local Government Act 1995 (City of Bayswater Keeping and Control of Cats Local Law 2014 G.G. 17/10/2014, Shire of Kellerberrin Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2014 G.G. 15/10/2014, Shire of Kellerberrin Fencing Local Law 2014 G.G. 15/10/2014 and Shire of Kellerberrin Local Government (Council Meetings) Local Law 2014 G.G. 15/10/2014) 2173

Attorney General

Annual Reports —

Legal Aid (2013–2014) (Date received 17/10/2014)..... 2174

Regulations —

Workers' Compensation and Injury Management Act 1981 (Workers' Compensation and Injury Management (Scales of Fees) Amendment Regulations 2014 G.G. 17/10/2014)..... 2175

Minister for Agriculture and Food

Regulations —

Water Services Act 2012 (Water Services (Water Corporations Charges) Amendment Regulations (No. 2) 2014 G.G. 15/10/2014 and Water Services Amendment Regulations (No. 3) 2014 G.G. 15/10/2014) 2176

6. Standing Committee on Estimates and Financial Operations — Report No. 50 — 2013–14 Agency Annual Report Hearings — November Timetable

Hon Ken Travers presented Report No. 50 of the Standing Committee on Estimates and Financial Operations, *2013–14 Agency Annual Report Hearings — November Timetable*. (Tabled Paper 2177).

7. Partial Revocation of State Forest No. 56

The Leader of the House moved, without notice —

That Motion No. 49, *Partial Revocation of State Forest No. 56*, be made an Order of the Day for the next day's sitting.

Question — put and passed.

8. Planning and Development (Development Assessment Panels) Regulations 2011

The Minister for Mental Health representing the Minister for Planning moved, without notice —

That this Council —

- (a) refers to the *Uniform Legislation and Statutes Review Committee* the review into the *Planning and Development (Development Assessment Panels) Regulations 2011* required pursuant to section 171F of the *Planning and Development Act 2005*; and
- (b) requires the *Uniform Legislation and Statutes Review Committee* to —
 - (i) report to the Legislative Council in relation to this inquiry on or before 14 May 2015; and
 - (ii) forward a copy of its report under (b)(i) to the Speaker of the Legislative Assembly, for tabling in that House on the same day as the report is tabled in the Legislative Council.

Debate ensued.

Question — put and passed.

9. Order of Business

Ordered — That Orders of the Day Nos 2, *Metropolitan Region Scheme Amendment No. 1239/41 — Gidgegannup Urban Precinct — Disallowance*, 3, *Road Traffic (Charges and Fees) Amendment Regulations (No. 6) 2014 — Disallowance*, 4, *City of Greater Geraldton Animals, Environment and Nuisance Local Law 2014 — Disallowance*, 5, *Lotteries Commission (Saturday Lotto) Amendment Rules (No. 2) 2014 — Disallowance*, 6, *City of Fremantle Alfresco Dining Local Law 2014 — Disallowance*, 7, *Road Traffic (Drug Driving) Amendment Regulations 2014 — Disallowance*, and 8, *Transport (Country Taxi-Car) Amendment Regulations (No. 2) 2014 — Disallowance*, be taken after Order of the Day No. 18, *Mandatory Testing (Infectious Diseases) Bill 2014*. (Leader of the House).

10. Firearms Amendment Regulations 2014 — Disallowance

The Order of the Day having been read for the motion moved *pro forma* by Hon Rick Mazza, as follows —

That the *Firearms Amendment Regulations 2014* published in the Gazette on 17 June 2014 and tabled in the Legislative Council on 24 June 2014 under the *Firearms Act 1973*, be and are hereby disallowed. (Tabled Paper 1586).

Debate ensued.

11. Distinguished Visitor

The President drew attention to the presence in the gallery of Hon John Pandazopoulos, a Member of the Victorian Parliament, and, on behalf of honourable Members, extended a warm welcome to him.

12. Questions Without Notice

Questions without notice were taken.

Hon Nigel Hallett, by leave, tabled a document in relation to the Doppler radar capability, network costs and benefits to Western Australia. (Tabled Paper 2178).

The Parliamentary Secretary representing the Minister for Tourism tabled, and by leave incorporated into Hansard, a document in relation to annual visitation to Rottnest Island for the financial years 2008–2009 to 2012–2013, in response to a question without notice asked by Hon Ljiljanna Ravlich. (Tabled Paper 2179).

The Attorney General representing the Minister for Police tabled a document in relation to media statements made by any persons or police officers in respect to the death and transportation of Julieka Ivanna Dhu, in response to a question without notice asked by Hon Robin Chapple. (Tabled Paper 2180).

The Leader of the House representing the Minister for Training and Workforce Development tabled, and by leave incorporated into Hansard, a document in relation to student enrolments at the South West Institute of Technology for semester one of 2012, 2013 and 2014, in response to a question without notice asked by Hon Adele Farina. (Tabled Paper 2181).

The Minister for Child Protection tabled a document in relation to applications to the Hardship Utility Grant Scheme processed in August 2014, in response to question on notice No. 1645 asked by Hon Stephen Dawson. (Tabled Paper 2182).

The Minister for Child Protection tabled a document in relation to application approval to the Hardship Utility Grant Scheme for various suburbs in August 2014, in response to question on notice No. 1647 asked by Hon Stephen Dawson. (Tabled Paper 2183).

13. Firearms Amendment Regulations 2014 — Disallowance

Debate resumed on the *pro forma* motion of Hon Rick Mazza (*see item 10 above*).

Question — put.

The Council divided.

Ayes (13)

Hon Alanna Clohesy
Hon Stephen Dawson
Hon Kate Doust
Hon Sue Ellery
Hon Adele Farina
Hon Nigel Hallett
Hon Rick Mazza

Hon Robyn McSweeney
Hon Ljiljanna Ravlich
Hon Sally Talbot
Hon Ken Travers
Hon Darren West
Hon Samantha Rowe (*Teller*)

Noes (20)

Hon Martin Aldridge
Hon Ken Baston
Hon Liz Behjat
Hon Jacqui Boydell
Hon Paul Brown
Hon Robin Chapple
Hon Jim Chown
Hon Peter Collier
Hon Brian Ellis
Hon Donna Faragher

Hon Nick Goiran
Hon Dave Grills
Hon Alyssa Hayden
Hon Col Holt
Hon Peter Katsambanis
Hon Mark Lewis
Hon Lynn MacLaren
Hon Michael Mischin
Hon Helen Morton
Hon Phil Edman (*Teller*)

Question thus negatived.

14. Environmental Protection Amendment (Validation) Bill 2014

The Order of the Day having been read for the adjourned debate on the second reading of this Bill.

Debate resumed.

Question — put.

The Council divided.

Ayes (29)

Hon Martin Aldridge
 Hon Ken Baston
 Hon Liz Behjat
 Hon Jacqui Boydell
 Hon Paul Brown
 Hon Jim Chown
 Hon Alanna Clohesy
 Hon Peter Collier
 Hon Stephen Dawson
 Hon Kate Doust
 Hon Sue Ellery
 Hon Donna Faragher
 Hon Adele Farina
 Hon Nick Goiran
 Hon Dave Grills

Hon Alyssa Hayden
 Hon Col Holt
 Hon Peter Katsambanis
 Hon Mark Lewis
 Hon Robyn McSweeney
 Hon Michael Mischin
 Hon Helen Morton
 Hon Ljiljanna Ravlich
 Hon Samantha Rowe
 Hon Amber-Jade Sanderson
 Hon Sally Talbot
 Hon Ken Travers
 Hon Darren West
 Hon Brian Ellis (*Teller*)

Noes (2)

Hon Robin Chapple

Hon Lynn MacLaren (*Teller*)

Question thus passed.

Bill read a second time.

The Deputy President left the Chair.

In Committee

(Hon Simon O'Brien in the Chair)

Clause 1.

Debate ensued.

The Minister for Mental Health representing the Minister for Environment tabled documents relating to declarations of interest in Environmental Protection Authority assessments from July 2002 to 19 August 2013. (Tabled Paper 2184).

Debate resumed.

Point of Order

Hon Nick Goiran raised the following Point of Order —

The question that has just been asked requires the Minister to give a legal opinion; in fact, it is asking the Minister to pre-empt what might or might not happen in the event that someone takes an action in the Supreme Court. There are a couple of problems with that. With all due respect to the Minister, the Minister is not competent to respond to that. That is plainly a matter for the court in the event that somebody brings action before the court. Also, Mr Deputy Chair, if I am not mistaken, there is a Standing Order that deals with the expression of an opinion or the request for an opinion from a Minister. I think that is being contravened in this instance.

Deputy Chair's Ruling

The Deputy Chair ruled as follows —

This is an interesting and important question. It is true that Standing Orders 104 and 105 relate to questions on notice and questions without notice. I do not believe that Standing Order 115 applies the laws and Standing Orders applicable to the operation of the Council to the Committee of the Whole House because, of course, we are not doing questions without notice or questions on notice as part of the Committee of the Whole.

We have to look at the nature of what the Minister at the table, whether it is for this Bill or any other, is being asked to provide. In the current example, the Minister is being asked, in effect,

about the Government's intent as to how the proposed law shall work. The question we then turn to is the fundamental one that was raised as a point of order by Hon Nick Goiran, which relates to whether the Minister, firstly, should provide legal advice, or should be invited or requested to provide legal advice. In relation to that question and a Minister providing legal advice, that is not the Minister's role, but of course it very much depends on one's definition of the term. The advice that a Minister at the Table should provide is guidance, advice, if you will, that relates to the proposed law and how the Government intends it shall operate. That is a form of advice about a matter of law, but I do not think it relates to the term of legal advice in the sense that it would infringe either the black and white Standing Orders of the House or the conventions of the House. The question that Hon Robin Chapple has asked the Minister is, I think, a fair one that can be entertained, but, similarly, when the Minister responds, she will do so from the point of view of explaining the intent of the Government in the way that this proposed law shall operate, and in that sense it is not held out to be "Legal Advice".

Debate resumed.

Clause agreed to.

Clauses 2 and 3 agreed to.

Clause 4.

Hon Stephen Dawson moved —

Page 6, after line 11 — To insert —

- (c) the report and recommendations of the Environmental Protection Authority on the Roe Highway Stage 8 extension (Report 1489, September 2013).

Debate ensued.

Interruption pursuant to order.

The President resumed the Chair.

The Deputy Chair of Committees reported that the Committee of the Whole House had considered the Bill, made progress, and seeks to sit again.

Ordered — That the Committee of the Whole House sit again.

15. Members' Statements

Statements were taken.

16. Adjournment

The Council adjourned at 10.15pm until Wednesday, 22 October 2014 at 2.00pm.

Members present during the day's proceedings

Attendance: Present all Members.

NIGEL PRATT
Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council