

WESTERN AUSTRALIA
LEGISLATIVE COUNCIL
MINUTES OF PROCEEDINGS
No. 88
THURSDAY, 18 OCTOBER 2018

1. Meeting of Council

The Council assembled at 10.00am pursuant to order.

The President, Hon Kate Doust, took the Chair.

Prayers and an Acknowledgement of Country were read.

2. Papers

The following Papers were laid on the Table by —

President

Reports —

Corruption and Crime Commission — Report into unauthorised release of confidential information of the Public Transport Authority (18 October 2018) 2070

Leader of the House

Reports —

Department of Local Government, Sport and Cultural Industries — Report of the Inquiry into the Shire of Wiluna (August 2018) 2071

Minister for Regional Development

Annual Reports —

Racing and Wagering (2017–2018) (Date received 17/10/2018)..... 2072

3. Joint Standing Committee on Delegated Legislation — Report No. 14 — City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Amendment Local Law 2018 and City of Kalgoorlie-Boulder Local Government Property Amendment Local Law 2018

Hon Robin Chapple presented Report No. 14 of the Joint Standing Committee on Delegated Legislation, *City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Amendment Local Law 2018 and City of Kalgoorlie-Boulder Local Government Property Amendment Local Law 2018*. (Tabled Paper 2073).

4. Retirement Villages Act 1992

Hon Alison Xamon: To move on the next day of sitting —

That this House —

- (1) Notes the growing ageing population increasingly looking for suitable accommodation options to facilitate ageing in place.

- (2) Calls on the government to reform the *Retirement Village Act 1992* and associated subsidiary legislation as a matter of priority particularly, but not limited to, strengthening provisions in the following areas —
- (a) definitions;
 - (b) enforceability of a code of conduct;
 - (c) timely action by the Commissioner for Consumer Protection;
 - (d) training of managers;
 - (e) contracts;
 - (f) responsibility for capital maintenance and upgrade/ replacement;
 - (g) refurbishment of residential units on departure from a village;
 - (h) dispute resolution process; and
 - (i) exit fees.
- (3) Calls on the government to engage in extensive consultation with the sector, including the Western Australian Retirement Villages Residents' Association, prior to finalising any proposed legislation.

5. Government Non-supply of Information

Non-Government Business No. 1 having been called, Hon Michael Mischin moved, without notice —

That this House notes and deplores the refusal of McGowan Government Ministers to supply accurate, clear, precise and comprehensive information to the Legislative Council.

Debate ensued.

Hon Tjorn Sibma, by leave, tabled information sought through a Freedom of Information application in relation to resignations of staff from the North Metropolitan Health Service. (Tabled Paper 2074).

Debate resumed.

Motion lapsed.

6. Declining Rates of Methylamphetamine (Ice) Use

Private Members' Business No. 1 having been called, Hon Martin Pritchard moved, without notice —

That the Legislative Council notes the declining rates of use of methylamphetamine (Ice) in Western Australia, particularly in the metropolitan area, and commends the Minister and congratulates the front line officers in their war against this scourge to our society.

Debate ensued.

Motion lapsed.

7. Order of Business

Ordered — That Orders of the Day Nos 1, *City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Amendment Local Law 2018 — Disallowance*, 2, *City of Kalgoorlie-Boulder Local Government Property Amendment Local Law 2018 — Disallowance*, 3, *Health Services (Information) Amendment Regulations 2018 — Disallowance*, 4, *Environmental Protection Amendment Regulations (No. 2) 2018 — Disallowance*, 5, *Water Services Regulations Amendment (Fees and Charges) Regulations 2018 — Disallowance*, 6, *Commerce and Industrial Relations Regulations Amendment (Fees and Charges) Regulations 2018 — Disallowance*, 7, *Planning and Development (Development Assessment Panels) Amendment Regulations 2018 — Disallowance*, 8, *Public Transport Authority Amendment Regulations 2018 — Disallowance*, 9, *Shire of Morawa Fencing Local Law 2018 — Disallowance*, and 10, *Western Australian Meat Industry Authority Amendment Regulations (No. 2) 2018 — Disallowance* be taken after Order of the Day No. 52, *Standing Committee on Uniform Legislation and Statutes Review — Report No. 117 — National Redress Scheme for Institutional Child Sex Abuse (Commonwealth Powers) Bill 2018 — Extension of Time*. (Leader of the House).

8. Transport (Road Passenger Services) Amendment Bill 2018 and Transport (Road Passenger Services) Bill 2018

The Orders of the Day for the further consideration of these Bills, in Committee of the Whole House, having been read.

The Acting President left the Chair.

—————
(Hon Robin Chapple in the Chair)

Transport (Road Passenger Services) Bill 2018

Clause 227.

Debate resumed on the amendments moved by Hon Colin Tincknell as follows —

Page 143, line 5 — To insert before “In this Division”:

Subject to subsection (4),

Page 143, line 16 — To insert before “In this Division”:

Subject to subsection (4),

Page 143, line 27 — To insert before “In this Division”:

Subject to subsection (4),

Amendments — put.

Ayes (2)

Hon Charles Smith

Hon Colin Tincknell (*Teller*)

Noes (27)

Hon Martin Aldridge
Hon Ken Baston
Hon Jacqui Boydell
Hon Robin Chapple
Hon Jim Chown
Hon Tim Clifford
Hon Alanna Clohesy
Hon Peter Collier
Hon Stephen Dawson
Hon Sue Ellery
Hon Diane Evers
Hon Donna Faragher
Hon Nick Goiran
Hon Laurie Graham

Hon Colin Holt
Hon Alannah MacTiernan
Hon Rick Mazza
Hon Michael Mischin
Hon Simon O’Brien
Hon Martin Pritchard
Hon Tjorn Sibma
Hon Matthew Swinbourn
Hon Dr Sally Talbot
Hon Dr Steve Thomas
Hon Darren West
Hon Alison Xamon
Hon Pierre Yang (*Teller*)

Amendments thus negatived.

Hon Colin Tincknell moved —

Page 144, after line 6 — To insert:

- (4) An eligible owner (buyback) of the taxi plates may apply to the CEO for a determination by the CEO of the eligible owner’s actual net loss, if the eligible owner can establish to the reasonable satisfaction of the CEO that the deductions

referred to in subsections (1), (2) and (3) do not reasonably apply to the eligible owner's ownership of the plates.

Debate ensued.

Amendment — put and negatived.

Debate resumed.

Question, That the clause stand as printed — put and passed.

Clause 228 agreed to.

Clause 229.

Debate ensued.

Clause agreed to.

Clauses 230 to 243 agreed to.

Clause 244.

Debate ensued.

Hon Simon O'Brien moved —

Page 153, after line 22 — To insert:

- (5) This section does not apply to limousine or small charter vehicle services.

Debate ensued.

Hon Simon O'Brien, by leave, withdrew the amendment.

Clause agreed to.

Clauses 245 to 261 agreed to.

Clauses 262 to 346 agreed to.

Title agreed to.

The Acting President resumed the Chair.

Bills reported without amendment.

Report adopted.

Leave was granted to proceed forthwith to the third readings.

The Minister for Environment representing the Minister for Transport moved, That the *Transport (Road Passenger Services) Amendment Bill 2018*, be read a third time.

The Acting President announced that the Deputy Chair of Committees had certified that this was a true copy of the Bill as agreed to in Committee of the Whole House and reported.

Question — put and passed.

Bill read a third time and passed.

The Minister for Environment representing the Minister for Transport moved, That the *Transport (Road Passenger Services) Bill 2018* be read a third time.

The Acting President announced that the Deputy Chair of Committees had certified that this was a true copy of the Bill as agreed to in Committee of the Whole House and reported.

Question — put and passed.

Bill read a third time and passed.

9. Order of Business

Ordered — That Order of the Day No. 25, *Strata Titles Amendment Bill 2018*, be taken forthwith. (Minister for Regional Development).

10. Strata Titles Amendment Bill 2018

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

The Acting President left the Chair.

In Committee

(Hon Martin Aldridge in the Chair)

Postponed Clause 83.

Debate ensued.

Hon Donna Faragher moved the following Committee recommendation —

Page 263, lines 23 to 28 — To delete the lines and insert:

- (i) provide, in accordance with the regulations, details of proposed arrangements for obtaining independent advice or representation referred to in section 190; and

Debate ensued.

Amendment — put and passed.

Debate resumed.

The Minister for Environment representing the Minister for Lands moved —

Page 264, line 5 — To delete “section 175” and insert:

section 174

Debate ensued.

Amendment — put and passed.

Debate resumed.

Hon Simon O’Brien moved the following Committee recommendation —

Page 265, lines 1 to 7 — To delete the lines and insert:

- (2) The *Planning and Development Act 2005* applies to the application subject to the modification that a reference to subdivision is to be read as including a reference to termination of a strata titles scheme.

Debate ensued.

Amendment — put and negatived.

The Minister for Environment representing the Minister for Lands moved —

Page 265, lines 1 to 7 — To delete the lines and insert:

- (2) The *Planning and Development Act 2005* applies to the application subject to —
 - (a) the modification that a reference to subdivision is to be read as including a reference to termination of a strata titles scheme; and
 - (b) any other appropriate modifications.

Debate ensued.

Amendment — put and passed.

Debate resumed.

The Deputy Chair moved the following Committee recommendation —
Page 266, after line 22 — To insert:

178A. Reference of full proposal to independent advocate

- (1) In this section —
independent advocate means a person to whom a full proposal is referred under subsection (2).
- (2) A strata company to which a full proposal is submitted under section 178 must refer the proposal for review and assessment to a person who —
 - (a) is independent of the strata company and the proponent of the termination proposal; and
 - (b) satisfies any requirements of the regulations regarding experience or qualifications.
- (3) The independent advocate must, in accordance with the regulations —
 - (a) review the full proposal; and
 - (b) provide the strata company with an independent assessment of the full proposal; and
 - (c) at a time and place arranged with the strata company, make a presentation of its assessment open to the persons mentioned in section 178(4)(a), conducted so as to take account of the needs of any of those persons who have sensory or mobility disabilities.
- (4) The independent advocate must —
 - (a) endeavour to identify any owners of lots for whom arrangements for fuller or more extensive advice or representation are to be made under regulations made under section 190(1)(b); and
 - (b) advise those owners of their entitlements under regulations made under section 190; and
 - (c) if requested by those owners, refer them to independent providers of the advice or representation which they are to obtain; and
 - (d) if requested by those owners, assist them in obtaining benefits under the trust referred to in section 190(2).
- (5) In any proceedings before the Tribunal under Part 13 in which there is a dispute about whether an owner of a lot in the strata titles scheme is entitled to a fuller or more extensive advice or representation under regulations made under section 190(1)(b) or is entitled to benefit under a trust referred to in section 190(2), the independent advocate may represent the owner in the proceedings.
- (6) The strata company —
 - (a) must pay the remuneration of, and reimburse the expenses incurred by, the independent advocate; and
 - (b) may charge fees under section 189 to cover those costs.

Amendment — put and negatived.

The Minister for Environment representing the Minister for Lands moved —
Page 266, after line 22 — To insert:

178A. Reference of full proposal to independent advocate

- (1) In this section —
independent advocate means a person to whom a full proposal is referred under subsection (2).
- (2) A strata company to which a full proposal is submitted under section 178 must refer the proposal for review and assessment to a person who —
 - (a) is independent of the strata company and the proponent of the termination proposal; and
 - (b) satisfies any requirements of the regulations regarding experience or qualifications.
- (3) The independent advocate must, in accordance with the regulations —
 - (a) review the full proposal; and
 - (b) provide the strata company with an independent assessment of the full proposal; and
 - (c) at a time and place arranged with the strata company, make a presentation of its assessment open to the persons mentioned in section 178(4)(a), conducted so as to take account of the needs of any of those persons who have sensory or mobility disabilities.
- (4) The independent advocate must, in accordance with the regulations —
 - (a) endeavour to identify any owners of lots for whom arrangements for fuller or more extensive advice or representation are to be made under regulations made under section 190(1)(b); and
 - (b) advise those owners of their entitlements under regulations made under section 190; and
 - (c) if requested by those owners, refer them to independent providers of the advice or representation which they are to obtain; and
 - (d) if requested by those owners, assist them in obtaining benefits under the trust referred to in section 190(2).
- (5) In any proceedings before the Tribunal under Part 13 in which there is a dispute about whether an owner of a lot in the strata titles scheme is entitled to fuller or more extensive advice or representation under regulations made under section 190(1)(b) or is entitled to benefit under a trust referred to in section 190(2), the independent advocate may, in accordance with the regulations, represent the owner in the proceedings.
- (6) The regulations may prescribe how a person's independence is to be determined for the purposes of subsection (2)(a).
- (7) The strata company —
 - (a) must pay the remuneration of, and reimburse the expenses incurred by, the independent advocate; and
 - (b) may charge fees under section 189 to cover the cost of paying those fees and reimbursing those expenses.

Debate ensued.

Amendment — put and passed.

Debate resumed.

The Deputy Chair moved the following Committee recommendation —

Page 270, lines 10 to 12 — To delete the lines and insert:

- (4) The regulations must prescribe matters relating to the determination of the market value of a lot for a termination valuation report, including a valuation methodology that takes account of —
 - (a) relevant recent sales history; and
 - (b) the highest and best use of the lot; and
 - (c) the value attributable to the owner's interest in the common property of the strata titles scheme.

Debate ensued.

Amendment — put and passed.

Debate resumed.

The Minister for Environment representing the Minister for Lands moved —

Page 273, line 26 — To delete the words “the independent person must”.

Debate ensued.

Amendment — put and passed.

The Minister for Environment representing the Minister for Lands moved —

Page 275, lines 23 to 27 — To delete the lines and insert:

- (b) if all or part of the parcel of the strata titles scheme is or is included in a retirement village within the meaning of the *Retirement Villages Act 1992* — serve notice of the application on the Commissioner within the meaning of that Act; and

Debate ensued.

Amendment — put and passed.

Debate resumed.

The Minister for Environment representing the Minister for Lands moved —

Page 281, after line 29 — To insert:

- (17A) If the Tribunal orders a person under subsection (17)(c) to take steps for the discharge, withdrawal or removal of an estate, interest or right the Tribunal may order the proponent or the owner of a lot in the strata titles scheme to make a payment to that person in respect of the discharge, withdrawal or removal of the estate, interest or right.
- (17B) If the whole or part of the parcel of a strata titles scheme is subject to a residential tenancy agreement within the meaning given in the *Residential Tenancies Act 1987* section 3, the Tribunal may order that on the termination of the strata titles scheme —
 - (a) the tenant and the lessor must terminate the residential tenancy agreement under that Act; and

- (b) the premises subject to the residential tenancy agreement are taken for the purposes of section 69 of that Act to cease to be lawfully usable as a residence; and
 - (c) if the tenant is given notice of termination under section 69 of that Act, then despite section 69(2) of that Act the period of notice must be not less than a period specified by the Tribunal; and
 - (d) the proponent or the owner of a lot in the scheme is to make a payment to the tenant under the residential tenancy agreement in respect of the termination of the residential tenancy agreement.
- (17C) If the whole or part of the parcel of a strata titles scheme is subject to a retail shop lease within the meaning given in the *Commercial Tenancy (Retail Shops) Agreements Act 1985* section 3(1), then despite anything in that Act the Tribunal may order that —
- (a) the retail shop lease is terminated on the termination of the strata titles scheme; and
 - (b) the proponent or the owner of a lot in the scheme is to make a payment to the tenant under the retail shop lease in respect of the termination of the retail shop lease.
- (17D) If the whole or part of the parcel of a strata titles scheme is subject to a lease or licence not referred to in subsection (17B) or (17C), the Tribunal may, subject to any other written law, order that —
- (a) the lease or licence is terminated on the termination of the strata titles scheme; and
 - (b) the proponent or the owner of a lot in the scheme is to make a payment to the lessee or licensee in respect of the termination of the lease or licence.

Debate ensued.

11. Questions Without Notice

Questions without notice were taken.

The Minister for Regional Development tabled the Pilbara Cattle Holding Yard Feasibility Assessment and Pilbara Truck Wash Feasibility Assessment, in response to a question without notice asked by Hon Jacqui Boyde. (Tabled Paper 2075).

The Minister for Education and Training, by leave, incorporated into *Hansard* information in relation to the expected revenue from the Building and Construction Industry Training Fund, in response to a question without notice asked by Hon Martin Aldridge.

The Minister for Environment, by leave, incorporated into *Hansard* information in relation to Lease No. 2933/97 Water Drawing Sump and Associated Pipeline, part of State Forest No. 39, in response to a question without notice asked by Hon Diane Evers.

The Minister for Education and Training tabled a letter to the Western Australian Education Support Principals and Administrators Association and an email from Liz Carey to Kris Doherty in relation to Legislative Council question without notice 456, in response to a question without notice asked by Hon Martin Aldridge. (Tabled Paper 2076).

The Minister for Education and Training, in accordance with Standing Order No. 108(2), advised that an answer to question on notice No. 1648 asked by Hon Donna Faragher will be provided on 30 October 2018.

The Minister for Environment representing the Minister for Corrective Services, in accordance with Standing Order No. 108(2), advised that an answer to question on notice No. 1633 asked by Hon Alison Xamon will be provided on 30 October 2018.

12. Strata Titles Amendment Bill 2018

Resumption of consideration of this Bill in Committee of the Whole House (*see item 10 above*).
The President left the Chair.

In Committee

(Hon Matthew Swinbourn in the Chair)

Clause 83

Debate resumed on the amendment of the Minister for Environment representing the Minister for Lands as follows —

Page 281, after line 29 — To insert:

- (17A) If the Tribunal orders a person under subsection (17)(c) to take steps for the discharge, withdrawal or removal of an estate, interest or right the Tribunal may order the proponent or the owner of a lot in the strata titles scheme to make a payment to that person in respect of the discharge, withdrawal or removal of the estate, interest or right.
- (17B) If the whole or part of the parcel of a strata titles scheme is subject to a residential tenancy agreement within the meaning given in the *Residential Tenancies Act 1987* section 3, the Tribunal may order that on the termination of the strata titles scheme —
- (a) the tenant and the lessor must terminate the residential tenancy agreement under that Act; and
 - (b) the premises subject to the residential tenancy agreement are taken for the purposes of section 69 of that Act to cease to be lawfully usable as a residence; and
 - (c) if the tenant is given notice of termination under section 69 of that Act, then despite section 69(2) of that Act the period of notice must be not less than a period specified by the Tribunal; and
 - (d) the proponent or the owner of a lot in the scheme is to make a payment to the tenant under the residential tenancy agreement in respect of the termination of the residential tenancy agreement.
- (17C) If the whole or part of the parcel of a strata titles scheme is subject to a retail shop lease within the meaning given in the *Commercial Tenancy (Retail Shops) Agreements Act 1985* section 3(1), then despite anything in that Act the Tribunal may order that —
- (a) the retail shop lease is terminated on the termination of the strata titles scheme; and
 - (b) the proponent or the owner of a lot in the scheme is to make a payment to the tenant under the retail shop lease in respect of the termination of the retail shop lease.
- (17D) If the whole or part of the parcel of a strata titles scheme is subject to a lease or licence not referred to in subsection (17B) or (17C), the Tribunal may, subject to any other written law, order that —
- (a) the lease or licence is terminated on the termination of the strata titles scheme; and
 - (b) the proponent or the owner of a lot in the scheme is to make a payment to the lessee or licensee in respect of the termination of the lease or licence.

Amendment — put and passed.

The Minister for Environment representing the Minister for Lands moved, That the Deputy Chair report progress and seek to sit again.

Question — put and passed.

The Deputy 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.

13. Order of Business

Ordered — That Order of the Day in relation to the Standing Committee on Uniform Legislation and Statutes Review Report No. 117, *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018* be taken forthwith. (Leader of the House).

14. Standing Committee on Uniform Legislation and Statutes Review — Report No. 117 — National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 — Extension of Time

The Order of the Day having been called for the adjourned debate on the motion of Hon Michael Mischin as follows —

That the reporting date for the Standing Committee on Uniform Legislation and Statutes Review inquiry into the *National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018* be extended from 30 October 2018 to 21 November 2018.

Debate resumed.

Question — put and passed.

15. Members' Statements

Statements were taken.

The Minister for Regional Development tabled documents in relation to approved grant funding for Local Projects, Local Jobs projects. (Tabled Paper 2077).

16. Adjournment

The Council adjourned at 5.50pm until Tuesday, 30 October 2018 at 2.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Colin de Grussa, Hon Adele Farina, Hon Kyle McGinn (leave of absence) and Hon Aaron Stonehouse.

NIGEL PRATT
Clerk of the Legislative Council

HON KATE DOUST MLC
President of the Legislative Council