

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 89

WEDNESDAY, 17 SEPTEMBER 2014

1. Meeting of Council

The Council assembled at 2.00pm pursuant to order.

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

2. Petition

Hon Robin Chapple presented a petition from 31 petitioners requesting the Legislative Council to ensure the establishment of a transparent, high level process to review the Western Australian Aboriginal Stolen Wages Reparation Scheme. (Tabled Paper 1890).

3. Paper

The following Paper was laid on the Table by —

Parliamentary Secretary representing the Minister for Transport

Annual Reports -

Coastal Shipping Commission (2013–2014) (Date received 16/09/2014)..... 1889

4. Local Government Amalgamations

Motion No. 1 having been called, Hon Ken Travers, pursuant to notice, moved —

That this House —

- (a) expresses its view that the *Local Government Act 1995* (the Act) never contemplated the use of boundary changes to amalgamate Local Governments;
- (b) believes that the correct approach under the Act is to abolish existing Local Governments and to create new Local Governments as this ensures that local communities are given a voice as intended by the Dadour provisions of the Act;
- (c) is of the view that any attempt to force Local Government amalgamations by using boundary changes to circumvent the intent of the Dadour provisions is an abuse of the Act; and
- (d) therefore calls on the Government to ensure that any proposals for amalgamation of existing Local Governments involve the abolition of all affected Councils and the creation of new Councils.

Point of Order

Hon Nick Goiran raised the following Point of Order —

I have in my possession a document from the Supreme Court of Western Australia. I hasten to add that it is a copy of a sealed copy of an application for a judicial review. It is CIV 1923 of 2014. The applicants are the City of Subiaco, the City of South Perth, the Shire of Serpentine–Jarrahdale, and the fourth applicant is a Mr Ian Kerr. The first respondent is Hon Anthony James Simpson, MLA, and the second respondents are Councillor Mel Congerton, Ms Mary Adam, Mayor Ron Yuryevich, Councillor Helen Dullard and Dr Shayne Silcox. Mr President, I draw this matter to your attention in accordance with the longstanding principle in this place and in all Parliaments under the Westminster system on *sub judice*. In particular I draw to your attention Standing Order 52.

When you have had the opportunity, Mr President, to read this particular document, which I will be quite happy to hand up to you, you will see that all 14 pages go into some detail on a current case that I understand is before the Chief Justice of the Supreme Court. In that case, when you have had the opportunity to read it, Mr President, you will see that at the very heart of it is the consideration of the intent of Parliament at the time with respect to the very matters that Hon Ken Travers brings to our attention this afternoon. Mr President, although it may be said that there is no substantial danger of prejudice to the adjudication of this case, I would ask that you give consideration to the rulings that have been previously made on this matter. Indeed, Mr President, I draw to your attention a ruling by President Griffiths on 11 April 2006, which I note was actually a point of order that you raised at the time. That was in respect to the *Yallingup Foreshore Land Bill 2005*. That ruling by President Griffiths was clarified by comments made by Hon George Cash. In effect, that ruling was talking about the importance of knowing whether a trial date has been set down for civil matters. In the limited time I have had to research this matter, noting of course that it was only the decision of the House yesterday afternoon to bring this matter to our attention for today—I was away on urgent parliamentary business for the remainder of the day—I have been unable to ascertain whether the matter has been set down for trial, but I do note that in the limited research I have done there is some suggestion of a date being provided in November. My respectful submission, Mr President, is that this is a matter that may require you to make some enquiries with the Chief Justice of the Supreme Court to ascertain exactly the status of that matter.

Mr President, even if you are not inclined to do that, I want to draw to your attention a couple of other matters for consideration. The motion moved by Hon Ken Travers has four limbs, the first three of which are all problematic, in my view, with the matter currently before the Supreme Court. You will see that, at paragraph (a) there is an intent for this House to express a view about what was or was not contemplated by the *Local Government Act 1995*, which is precisely the point before the Supreme Court.

Paragraph (b) refers to whether the correct approach has been taken under the act as intended by the Dadour provisions. That is also a matter specifically before the Supreme Court. Thirdly, there is a suggestion that the way the Government is proceeding might be an abuse of the Act, which is also something on which the applicants are asking the Chief Justice to provide a determination.

Hon Nick Goiran, by leave, tabled documents relating to a Supreme Court of Western Australia application for Judicial review. (Tabled Paper 1891).

The President left the Chair at 2.14pm

The President resumed the Chair at 2.45pm

President's Ruling

The President ruled as follows —

Hon Nick Goiran has raised a point of order in relation to the motion moved by Hon Ken Travers dealing with proposed local government amalgamations. The essence of the point of

order is that in debating the matter the House would be in breach of the *sub judice* convention. This is dealt with in Standing Order 52, which reads —

Subject always to the right of the Council to debate any matter it deems appropriate, a matter before any court of record may not be referred to in any motion, debate or question if it appears to the President that there is a real and substantial danger of prejudice to the adjudication of the case.

Firstly, I have checked with the Supreme Court Registry and the civil action referred to by Hon Nick Goiran has been listed for trial for 25 November 2014. I quote from a previous ruling from President Clive Griffiths, dated 11 June 1987, in which he states —

The *sub judice* rule has its origin in Parliament's reluctance to be seen to interfere with the judicial process by publicly commenting on matters pending adjudication in courts of record. In terms of parliamentary history, the rule is of fairly recent origin and its development parallels the constitutional understandings best described as the "separation of powers" doctrine. The rule operates, not as a gag, but as a self-imposed restraint on Parliament's right of free speech. As such, it is an acknowledgement that the courts must be free from improper or undue influences in their adjudications.

I rule that the House in debating this matter would not breach the *sub judice* convention as set out in Standing Order 52. There is no evidence presented that in my view would result in any real or substantial danger of prejudice to the adjudication of the case. This matter will be heard before a judge of the Supreme Court without a jury. I am confident in the professional capacity of the court in this case to discharge its duty in an impartial manner and will not be influenced by any debate that occurs in this Chamber.

The point of order is not upheld.

Debate ensued.

5. Questions Without Notice

Questions without notice were taken.

The Parliamentary Secretary representing the Minister for Regional Development tabled a document in relation to urban renewal funding and acquittal reports, in response to a question without notice asked by Hon Adele Farina. (Tabled Paper 1892).

The Attorney General representing the Minister for Police tabled a document in relation to the State Emergency Plan for Nuclear Powered Warships, in response to a question without notice asked by Hon Lynn MacLaren. (Tabled Paper 1893).

The Attorney General representing the Minister for Police tabled a document in relation to the Western Australian Police Workforce Plan 2014–17, in response to a question without notice asked by Hon Amber-Jade Sanderson. (Tabled Paper 1894).

The Minister for Mental Health on behalf of the Minister for Education tabled a document in relation to the 2013 first semester enrolment numbers and the full time equivalent employee allocation for each Western Australian public school, in response to question on notice No. 1446 asked by Hon Sue Ellery. (Tabled Paper 1895).

The Parliamentary Secretary representing the Minister for Lands tabled a document in relation to stock density (hectares per dry seed equivalent) by station, in response to question on notice No. 1447 asked by Hon Robin Chapple. (Tabled Paper 1896).

6. Local Government Amalgamations

Debate resumed on the motion of Hon Ken Travers (*see item 4 above*).

Interruption pursuant to order.

7. Consideration of Committee Reports

Pursuant to order for the consideration of Committee Reports.

In Committee

(Hon Adele Farina in the Chair)

Joint Standing Committee on the Corruption and Crime Commission — Report No. 17 — Annual Report 2013–14

Hon Nick Goiran moved, That the Report be noted.

Question — put and passed.

The Acting President resumed the Chair.

The Chair of Committees reported that the Committee of the Whole House had considered the —

Joint Standing Committee on the Corruption and Crime Commission — Report No. 17 — *Annual Report 2013–14* and had noted same.

Report adopted.

8. Order of Business

Ordered — That Bills for Introduction be taken forthwith. (Minister for Mental Health).

9. School Education Amendment Bill 2014

The Minister for Mental Health on behalf of the Minister for Education, pursuant to notice, moved —

That a Bill for “An Act —

- to amend the *School Education Act 1999*; and
- to make consequential amendments to the *School Curriculum and Standards Authority Act 1997*,

and for related purposes.” be introduced and read a first time.

Question — put and passed.

Bill read a first time.

The Minister for Mental Health on behalf of the Minister for Education moved, That the Bill be read a second time.

The Minister for Mental Health on behalf of the Minister for Education tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 1897).

Debate stands adjourned.

10. Order of Business

Ordered — That Orders of the Day Nos 1, *Regulation 11(3)(o) as inserted into the Retirement Villages Regulations 1992 by Regulation 6 of the Retirement Villages (Recurrent Charges, Prescribed Matters and Exemption Certificates) Amendment Regulations 2014 — Disallowance*, 2, *Shire of Shark Bay Local Government Property Amendment Local Law 2014 — Disallowance*, 3, *Firearms Amendment Regulations 2014 — Disallowance*, 4, *Shire of Ashburton Fencing Local Law 2014 — Disallowance*, 5, *Metropolitan Region Scheme Amendment No. 1239/41 — Gidgegannup Urban Precinct — Disallowance*, and 6, *Road Traffic (Charges and Fees) Amendment Regulations (No. 6) 2014 — Disallowance*, be taken after Order of the Day No. 13, *Statutes (Repeals) Bill 2013*. (Leader of the House).

11. Mental Health Bill 2013 and Mental Health Legislation Amendment Bill 2013

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

The Deputy President left the Chair.

In Committee

(Hon Adele Farina in the Chair)

Mental Health Bill 2013

Clause 93.

Debate ensued.

Clause agreed to.

Clause 94 agreed to.

Clause 95.

Debate ensued.

Clause agreed to.

Clauses 96 to 104 agreed to.

Clause 105.

Debate ensued.

Clause agreed to.

Clauses 106 to 117 agreed to.

Clause 118.

Debate ensued.

Clause agreed to.

Clauses 119 to 125 agreed to.

Clause 126.

The Minister for Mental Health moved —

Page 95, lines 22 to 28 — To delete the lines and insert —

- (c) the supervising psychiatrist reasonably believes that, despite the steps that have been taken, the non-compliance is continuing and that, if the non-compliance continues, there is —
 - (i) a significant risk to the health or safety of the involuntary community patient or to the safety of another person; or
 - (ii) a significant risk of serious harm to the involuntary community patient or to another person; or
 - (iii) a significant risk of the involuntary community patient suffering serious physical or mental deterioration.

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 127 and 128 agreed to.

Clause 129.

The Minister for Mental Health moved —

Page 98, after line 4 — To insert —

- (5) The making of a transport order under subsection (2) is an event to which Part 9 applies and the practitioner who makes the order is the person responsible under that Part for notification of that event.

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 130 to 132 agreed to.

Clause 133.

The Minister for Mental Health moved —

Page 102, lines 3 and 4 — To delete “because of the involuntary community patient’s mental or physical condition,”.

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 134 to 138 agreed to.

The Minister for Mental Health sought leave to put a number of amendments as one question [SO 132(b)].

Leave granted.

The Minister for Mental Health, by leave, moved the following amendments —

Clause 139.

Page 104, lines 21 and 22 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Clause 140.

Page 105, line 4 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Page 105, line 5 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Clause 142.

Page 106, line 2 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Page 106, line 9 — To delete “nominated person, carer or close family member” and insert —
carer, close family member or other personal support person

Page 106, line 11 — To delete “nominated person, carer or close family member” and insert —
carer, close family member or other personal support person

Page 106, line 15 — To delete “nominated person, carer or close family member” and insert —
carer, close family member or other personal support person

Page 106, line 18 — To delete “nominated person, carer or close family member” and insert —
carer, close family member or other personal support person

Clause 143.

Page 106, line 29 — To delete “nominated person, carer or close family member” and insert —
carer, close family member or other personal support person

Page 106, lines 30 and 31 — To delete “nominated person, carer or close family member” and insert —
carer, close family member or other personal support person

Page 106, lines 33 and 34 — To delete “nominated person, carer or close family member” and insert —
carer, close family member or other personal support person

Page 107, line 3 — To delete “nominated person, carer or close family member” and insert —
carer, close family member or other personal support person

Clause 144.

Page 107, lines 17 and 18 — To delete “nominated person, carer or close family member” and insert —
carer, close family member or other personal support person

Page 107, line 23 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Page 107, line 26 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Page 107, lines 28 and 29 — To delete “nominated person, carer or close family member” and insert —

carer, close family member or other personal support person

Amendments — put and passed.

Clause 139, as amended, agreed to.

Clause 140, as amended, agreed to.

Clause 141 agreed to.

Clause 142, as amended, agreed to.

Clause 143, as amended, agreed to.

Clause 144, as amended, agreed to.

Clause 145.

Hon Stephen Dawson moved —

Page 108, after line 31 — To insert —

(aa) the Chief Psychiatrist;

Debate ensued.

Amendment — put and negatived.

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

Clauses 146 and 147 agreed to.

Clause 148.

Hon Stephen Dawson moved —

Page 111, after line 29 — To insert —

(aa) give a copy to the Chief Psychiatrist and the Chief Mental Health Advocate; and

Debate ensued.

Amendment — put and negatived.

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

Clauses 149 to 153 agreed to.

Clause 154.

Hon Stephen Dawson moved —

Page 115, after line 22 — To insert —

- (aa) give a copy to the Chief Mental Health Advocate; and

Debate ensued.

Amendment — put and negatived.

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

Clause 155 agreed to.

Clause 156.

Hon Stephen Dawson moved —

Page 117, after line 24 — To insert —

- (aa) must, as soon as practicable after apprehending a person under subsection (1), notify the Chief Mental Health Advocate of such action; and

Debate ensued.

Amendment — put and negatived.

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

Clauses 157 to 161 agreed to.

Clause 162.

Debate ensued.

Hon Stephen Dawson moved —

Page 121, after line 19 — To insert —

- (3) A police officer or authorised person who searches a person under subsection (2)(a), or seizes any article under subsection (2)(b), must, as soon as practicable after such search or seizure, notify the Chief Mental Health Advocate of such action.

Debate ensued.

Amendment — put and negatived.

Debate resumed.

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

Clauses 163 to 178 agreed to.

Clause 179.

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.

12. Members' Statements

Statements were taken.

13. Adjournment

The Council adjourned at 10.09pm until Thursday, 18 September 2014 at 10.00am.

Members present during the day's proceedings

Attendance: Present all Members except Hon Alanna Clohesy, Hon Peter Collier, Hon Sue Ellery and Hon Mark Lewis.

NIGEL PRATT
Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council