

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 251

THURSDAY, 29 NOVEMBER 2012

1. Meeting of Council

The Council assembled at 10.00am pursuant to order.

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

2. Ministerial Statement — Western Australian Planning Commission — Removal of Chairperson

The Minister for Mental Health representing the Minister for Planning made a Ministerial Statement with respect to the removal of Mr Gary Prattley from the office of Chairperson of the Western Australian Planning Commission.

3. Papers

The following Papers were laid on the Table by —

Leader of the House

Reports —

Status Reports of the Fisheries and Aquatic Resources of Western Australia (2011–2012) State of the Fisheries (Date received 29/11/2012)..... 5430

Minister for Child Protection

Annual Reports —

Australian Children's Education and Care Quality Authority (2011–2012) (Date received 28/11/2012)..... 5431

Carers Advisory Council — Compliance Report 2012 (Date received 28/11/2012)..... 5432

Education and Care Services Ombudsman — National Education and Care Services FOI and Privacy Commissioners (January 2012 to June 2012) (Date received 28/11/2012)..... 5433

Reports —

Report of the Legislative Review of the Children and Community Services Act 2004 (October 2012) (Date received 28/11/2012) 5434

4. Joint Standing Committee on Delegated Legislation — Report No. 62 — City of Nedlands Parking and Parking Facilities Local Law 2012

Hon Sally Talbot presented Report No. 62 of the Joint Standing Committee on Delegated Legislation in relation to the *City of Nedlands Parking and Parking Facilities Local Law 2012*. (Tabled Paper 5435).

5. Climate Change Readiness (Coastal Planning and Protection) Bill 2012

Non-Government Business No. 1 having been called, Hon Lynn MacLaren, pursuant to notice, moved —

That a Bill for “An Act to provide for planning and development in the coastal zone, the management of the coastal zone, and for related purposes.” be introduced and read a first time.

Question — put and passed.

Bill read a first time.

Hon Lynn MacLaren moved, That the Bill be read a second time.

Hon Lynn MacLaren tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 5436).

Debate stands adjourned.

6. Marriage Equality Bill 2012

Non-Government Business No. 2 having been called, Hon Lynn MacLaren, pursuant to notice, moved —

That a Bill for “An Act to provide for marriage equality, including the authorisation of celebrants, the registration of same-sex marriages via an amendment to the *Births, Deaths and Marriages Registration Act 1998*, and to provide for the dissolution and annulment of same-sex marriages and for related financial matters via amendments to the *Family Court Act 1997*.” be introduced and read a first time.

Point of Order

Hon Nick Goiran raised the following Point of Order —

Mr President, I seek your ruling on whether the motion moved by the honourable Member contravenes section 51 of the Constitution when read with section 109 of the Constitution and sections 5, 6 and 46 of the Marriage Act.

In brief, I just draw to your attention that section 51(xxi) of the Constitution confers the issue of legislating in terms of marriage specifically to the federal Parliament. I also draw to your attention, Mr President, that section 109 of the Constitution provides that where there is going to be an inconsistency between a commonwealth law and a state law, it will be found to be invalid. I also draw to your attention, Mr President, that section 6 of the Marriage Act, which is of course a commonwealth act which this motion would seek to contravene—as you would be aware, Mr President, the honourable Member seeks to include the registration of same-sex marriages—explicitly preserves the validity of state and territories relating only to the registration of marriage. Mr President, in my view it is important for you to take into account the current definition of marriage, as found in section 5 of that same commonwealth act.

Mr President, you would be aware that “marriage” has been defined by the commonwealth in section 5(1) of that commonwealth act, and I draw to your attention that it defines marriage as —

... the union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

So, in my view it would be improper for this House to consider a motion that would clearly be in contravention to that commonwealth law.

Lastly, Mr President, I draw to your attention the paraphrase of that same definition in section 46(1) of the Marriage Act, and in essence this would mean that the attempt to register same sex marriages in this state via a state act would be invalid on the grounds of it violating sections 5 and 46(1) of the Marriage Act 1961, which is the commonwealth act. Mr President, I seek your ruling on this matter, and I ask that the matter be stood down so that a ruling can be provided in due course.

President's Ruling

The President ruled as follows —

Members, in terms of the point of order there are several matters that require some consideration there, and I am not in a position to rule on that point of order right here and now. But two things: I will allow the matter to proceed at this stage to the first reading question to be asked, and then it is up to the house to make a decision at that stage; and if and when that is decided, I will inform the house of a further course of action and rule on the point of order as soon as practicable.

Point of Order

Hon Lynn MacLaren raised the following Point of Order —

The Bill before us is, on our advice from the eminent George Williams, not in breach of the Constitution in that it is related to same-sex marriage, and the federal Marriage Act is related to marriage between a man and a woman. This Bill and similar Bills have been read in other jurisdictions; I know that is not the most important thing, but other states in Australia have also heard this Bill and it has not been ruled out of order on that basis. But, of course, we would be very keen to hear your ruling at some point.

President's Ruling

The President ruled as follows —

As indicated, I am not going to entertain a debate on the point of order. If the Member who has made the point of order wants to make a short point in response to the mover, I will give him the opportunity.

Point of Order

Hon Nick Goiran raised the following Point of Order —

Mr President, I just raise as a further point of order, in terms of the timing of your ruling, that as a Member of this place I am, in a moment, going to be asked whether to vote for or against the first reading of this Bill. I do not feel I am in a proper position to make a determination on that until I have heard your ruling on this matter.

President's Ruling

The President ruled as follows —

In that context I may not be in a proper position to make a ruling if I have not heard a bit more information as well. So, at this stage I will allow the question to go to the first reading, and I will put the question that the bill be agreed to for the first time.

Question — put and passed.

Bill read a first time.

Hon Lynn MacLaren moved, That the Bill be read a second time.

President's Ruling

The President ruled as follows —

I have noted the point of order that has been taken, and I will certainly give that consideration and report back to the House as soon as I can. But in the interim I will allow the second reading to be read into the House, because that may well throw some further light on the point of order I have been asked to rule on at some stage. I will now give the call to Hon Lynn MacLaren.

President's Ruling

The President ruled as follows —

Order! I will interrupt there to insist that you change the wording of the second reading speech to refer to a fellow Parliamentarian by their proper title. I think you would have meant the Commonwealth Leader of the Opposition.

Hon Lynn MacLaren tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 5437).

Debate stands adjourned.

7. Perth Hills Planning Bill 2010

Non-Government Business No. 3 having been read for the adjourned debate on the second reading of this Bill.

Debate resumed.

Distinguished Visitors

The President drew attention to the presence in the gallery of members of the Liberian Parliament in the public gallery and on behalf of honourable Members, extended a warm welcome to members of the delegation.

Debate resumed.

Question — put

The Council divided.

Ayes (4)

Hon Robin Chapple
Hon Lynn MacLaren

Hon Giz Watson
Hon Alison Xamon (*Teller*)

Noes (28)

Hon Liz Behjat
Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Ed Dermer
Hon Kate Doust
Hon Wendy Duncan
Hon Phil Edman
Hon Brian Ellis
Hon Jon Ford
Hon Philip Gardiner
Hon Nick Goiran

Hon Nigel Hallett
Hon Alyssa Hayden
Hon Col Holt
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton
Hon Simon O'Brien
Hon Ljiljanna Ravlich
Hon Linda Savage
Hon Sally Talbot
Hon Ken Travers
Hon Max Trenorden
Hon Ken Baston (*Teller*)

Question thus negatived.

Bill defeated.

8. Order of Business

Ordered — That Orders of the Day Nos 1, *Submission No. 13/2012 — Amendment to Class A Reserve 8485 and Cancellation of Class A Reserve 28535 — Disallowance*, 2, *City of Vincent Dogs Amendment Local Law No. 2, 2012 — Disallowance*, 3, *Metropolitan Region Scheme Amendment No. 1218/41 — Keralup Stage 1 — Disallowance*, 4, *City of Subiaco Meeting Procedures Local Law 2012 — Disallowance*, 5, *Metropolitan Region Scheme Amendment No. 1221/41 — Banjup Urban Precinct — Disallowance*, 6, *Metropolitan Region Scheme Amendment No. 1221/41 — Banjup Urban Precinct — Disallowance*, and 7, *City of Nedlands Parking and Parking Facilities Local Law 2012 — Disallowance*, be taken after Order of the Day No. 10, *Integrity (Lobbyists) Bill 2011*. (Leader of the House).

9. Road Traffic (Miscellaneous Amendments) Bill 2012

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

Debate resumed.

Question — put and passed.

Bill read a second time.

The Deputy President left the Chair.

In Committee

(Hon Matt Benson-Lidholm in the Chair)

Clause 1 agreed to.

Clauses 2 to 5 agreed to.

Clause 6.

Debate ensued.

Question — put.

The Committee divided.

Ayes (29)

Hon Liz Behjat
 Hon Matt Benson-Lidholm
 Hon Helen Bullock
 Hon Jim Chown
 Hon Peter Collier
 Hon Mia Davies
 Hon Ed Dermer
 Hon Kate Doust
 Hon Wendy Duncan
 Hon Phil Edman
 Hon Sue Ellery
 Hon Brian Ellis
 Hon Jon Ford
 Hon Philip Gardiner
 Hon Nick Goiran

Hon Nigel Hallett
 Hon Alyssa Hayden
 Hon Col Holt
 Hon Robyn McSweeney
 Hon Michael Mischin
 Hon Norman Moore
 Hon Helen Morton
 Hon Simon O'Brien
 Hon Ljiljana Ravlich
 Hon Linda Savage
 Hon Sally Talbot
 Hon Ken Travers
 Hon Max Trenorden
 Hon Ken Baston (*Teller*)

Noes (4)

Hon Lynn MacLaren
 Hon Giz Watson

Hon Alison Xamon
 Hon Robin Chapple (*Teller*)

Question thus passed.

Clause 7.

Debate ensued.

Clause agreed to.

Clause 8 agreed to.

Clause 9.

Debate ensued.

Clause agreed to.

Clause 10 agreed to.

Clause 11.

Hon Kate Doust moved —

Page 9, lines 7 and 8 — To delete “the accused satisfies the court that.”

Debate ensued.

Amendment — put.

The Committee divided.

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Ayes (14)

Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Robin Chapple
Hon Kate Doust
Hon Sue Ellery
Hon Jon Ford
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 (19)

Hon Liz Behjat
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Wendy Duncan
Hon Phil Edman
Hon Brian Ellis
Hon Philip Gardiner
Hon Nick Goiran
Hon Nigel Hallett

Hon Alyssa Hayden
Hon Col Holt
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.

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

Clauses 12 to 14 agreed to.

Title agreed to.

The Deputy President resumed the Chair.

Bill reported without amendment.

Report adopted.

The Attorney General representing the Minister for Police moved, That the Bill be read a third time.

The Deputy President having reported that the 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.

10. Dangerous Sexual Offenders Amendment Bill 2012

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

Debate resumed.

The Minister for Education representing the Minister for Corrective Services tabled the Queensland Corrective Services Global Positioning System (GPS) Electronic Monitoring (High Risk Offender Management Unit) Factsheet. (Tabled Paper 5438).

Question — put and passed.

Bill read a second time.

The Deputy President left the Chair.

In Committee

(Hon Jon Ford in the Chair)

Clause 1 agreed to.

Clauses 2 to 5 agreed to.

Clause 6.

Hon Giz Watson moved —

Page 6, line 14 — To insert after “must not” —

without reasonable excuse

Debate ensued.

Amendment — put and negatived.

Debate resumed.

Hon Giz Watson moved —

Page 7, after line 27 — To insert —

- (8) A community corrections officer exercising the power referred to in subsection (1) or (5) must, at the reasonable request of a person apparently in charge of the premises or any other person on the premises, produce evidence of his or her appointment.

Penalty: A fine of \$2 000.

Debate ensued.

Amendment — put and negatived.

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

Clauses 7 and 8 agreed to.

Title agreed to.

The Deputy President resumed the Chair.

Bill reported without amendment.

Report adopted.

The Minister for Education representing the Minister for Corrective Services moved, That the Bill be read a third time.

The Deputy President having reported 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.

11. Loan Bill 2012

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

Debate resumed.

Question — put and passed.

Bill read a second time.

12. Questions Without Notice

Questions without notice were taken.

13. Loan Bill 2012

Resumption of consideration of this Bill in Committee of the Whole House (*see item 11 above*).

The President left the Chair.

In Committee

(Hon Jon Ford in the Chair)

Clause 1.

Debate ensued.

Clause agreed to.

Clauses 2 to 5 agreed to.

Title agreed to.

The President resumed the Chair.

Bill reported without amendment.

Report adopted.

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

The President having reported 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.

14. Sittings of the House — 30 November 2012

The Leader of the House, by leave, made a Statement with respect to the sitting times and business of the Legislative Council for Friday, 30 November 2012.

15. Order of Business

Ordered — That Members' Statements be taken forthwith. (Leader of the House).

16. Members' Statements

Statements were taken.

17. Message from Lieutenant Governor and Deputy of the Governor — Assent to Bills

The President reported the receipt of a Message from the Lieutenant Governor and Deputy of the Governor assenting to the following Bills —

29 November 2012 — Message No. 24	Act No.
School Education Amendment Bill 2012	46 of 2012
Wills Amendment (International Wills) Bill 2012	47 of 2012
Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2012	48 of 2012
Criminal Organisations Control Bill 2012	49 of 2012
Western Australian Future Fund Bill 2012	50 of 2012
Mining Amendment Bill 2012	51 of 2012
Mental Health Amendment (Psychiatrists) Bill 2012	52 of 2012
Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2012	53 of 2012

18. Adjournment

The Council adjourned at 5.32pm until Friday, 30 November 2012 at 10.00am.

Members present during the day's proceedings

Attendance: Present all Members except Hon Donna Faragher (leave of absence).

MALCOLM PEACOCK
Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council