#### WESTERN AUSTRALIA

# LEGISLATIVE COUNCIL

# MINUTES OF PROCEEDINGS

## No. 91

# **TUESDAY, 23 SEPTEMBER 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. Papers

The following Papers were laid on the Table by —

# **President** Annual Reports — Leader of the House Annual Reports — (2013-2014)Building Construction Industry **Training** Board Regulations — Land Tax Assessment Act 2002 (Land Tax Assessment Amendment Regulations (No. 2) 2014 **Minister for Mental Health** Annual Reports —

	Perth Theatre Trust (Date received 18/09/2014)
	ScreenWest (2013–2014) (Date received 18/09/2014)
	State Finances (2013–2014) (Date received 23/09/2014)
	State Library of Western Australia (2013–2014) (Date received 18/09/2014)
	Swan Bells Foundation Inc (2013–2014) (Date received 18/09/2014)
	Local Laws —
	Local         Government         Act         1995         (City         of         Albany         Standing         Orders         Amendment           Local Law 2014 G.G.19/09/2014)
	Regulations —
	Conservation and Land Management Act 1984 (Conservation and Land Management Amendment Regulations (No. 2) 2014 G.G. 19/09/2014)
	State Enterprises (Commonwealth Tax Equivalents) Act 1996 (State Enterprises (Commonwealth Tax Equivalents) (Application) Amendment Regulations (No. 2) 2014 G.G. 19/09/2014)
	Wildlife Conservation Act 1950 (Wildlife Conservation Amendment Regulations (No. 2) 2014 G.G. 19/09/2014)
	Minister for Agriculture and Food
	Orders —
	Fish Resources Management Act 1994 (Prohibition on Recreational Fishing (Marmion Marine Park) Amendment Order 2014 [1185] G.G. 19/09/2014 and Prohibition on Recreational Fishing (Shoalwater Islands Marine Park) Amendment Order 2014 [1185] G.G. 19/09/2014)
	Regulations —
	Water Services Act 2012 (Water Services (Water Corporations Charges) Amendment Regulations 2014 G.G. 19/09/2014)
	Parliamentary Secretary representing the Minister for Transport
	Regulations —
	Port Authorities Act 1999 (Port Authorities Amendment Regulations (No. 5) 2014 G.G. 19/09/2014)
	Parliamentary Secretary representing the Minister for Health
	Annual Reports —
	Animal Resources Authority (2013–2014) (Date received 23/09/2014)
	Health and Disability Services Complaints Office (2013–2014) (Date received 23/09/2014) 1938
	Healthway (2013–2014) (Date received 23/09/2014)
	Local Health Authorities Analytical Committee (2013–2014) (Date received 23/09/2014) 1940
	Quadriplegic Centre Board of Management (2013–2014) (Date received 23/09/2014)
3.	Sentencing Amendment Bill 2014
	torney General: To move on the next day of sitting —
, - 40	That a Bill for "An Act to amend the Sentencing Act 1995." be introduced and read a first

time.

#### 4. Order of Business

Ordered — That Orders of the Day Nos 1, Regulation 11(3)(0) 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, 6, Road Traffic (Charges and Fees) Amendment Regulations (No. 6) 2014 — Disallowance, and 7, City of Greater Geraldton Animals, Environment and Nuisance Local Law 2014 — Disallowance, be taken after Order of the Day No. 17, Mines Safety and Inspection Amendment Bill 2014. (Leader of the House).

## 5. Taxation Legislation Amendment Bill 2014

The Order of the Day having been read for the adjourned debate on the second reading of this Bill. Hon Sue Ellery moved, without notice —

That —

- (a) the *Taxation Legislation Amendment Bill 2014* be discharged and referred to the Standing Committee on Legislation for consideration and report not later than Thursday, 13 November 2014; and
- (b) the Committee examine the Bill for the purpose of ascertaining whether the Bill imposes unintended consequences, if any, on legitimate fourth limb charities.

Hon Sue Ellery, by leave, tabled a letter from the Western Australian Council of Social Services Incorporated in relation to the Bill. (Tabled Paper 1942).

Debate ensued.

Question — put and passed.

Debate stands adjourned and the Bill referred to the Standing Committee on Legislation.

## 6. Mandatory Testing (Infectious Diseases) Bill 2014

The President reported the receipt of Message No. 76 from the Legislative Assembly forwarding the Bill for concurrence.

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

Question — put and passed.

Bill read a first time.

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

The Attorney General representing the Minister for Police tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 1943).

Debate stands adjourned.

### 7. 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 President left the Chair.

### In Committee

(Hon Adele Farina in the Chair)

#### Mental Health Bill 2013

Clause 207.

Debate resumed.

The Minister for Mental Health tabled a document in relation to a jurisdiction comparison of electroconvulsive therapy and psychosurgery. (Tabled Paper 1944).

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

Clauses 208 to 211 agreed to.

Clause 212.

The Minister for Mental Health moved —

Page 155, after line 9 — To insert —

(2) A person is not secluded merely because the person is alone in a room or area that the person is unable to leave because of frailty, illness or mental or physical disability.

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 213 to 223 agreed to.

Clause 224.

Debate ensued.

Hon Stephen Dawson moved —

Page 164, after line 6 — To insert —

(aa) the Chief Mental Health Advocate; and

Debate ensued.

Amendment — put and negatived.

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

Clause 225 agreed to.

Clause 226.

Debate ensued.

Clause agreed to.

Clause 227.

The Minister for Mental Health moved —

Page 165, after line 17 — To insert —

- (2A) A person is not being physically restrained merely because the person is being provided with the physical support or assistance reasonably necessary
  - (a) to enable the person to carry out daily living activities; or
  - (b) to redirect the person because the person is disoriented.

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 228.

Debate ensued.

Clause agreed to.

Clauses 229 to 239 agreed to.

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Clause 240.
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Hon Stephen Dawson moved —

Page 176, after line 31 — To insert —

(aa) the Chief Mental Health Advocate; and

Debate ensued.

Amendment — put and negatived.

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

Clause 241.

The Minister for Mental Health moved —

Page 178, lines 16 to 20 — To delete the lines and insert —

- (2) The person in charge of the hospital must ensure that a medical practitioner physically attends on the person, for the purpose of examining the person to assess the person's physical condition, as soon as practicable and, in any event, within 12 hours after the time when the person is admitted or received, and at reasonable intervals after that initial attendance, until the first of these things occurs
  - (a) the person is examined by a medical practitioner;
  - (b) if the person is a voluntary inpatient
    - (i) the person refuses to consent to being examined by a medical practitioner; or
    - (ii) if the person does not have the capacity to consent to being examined by a medical practitioner the person who is authorised by law to consent to the provision of treatment to the person refuses to consent to the person being examined by a medical practitioner;
  - (c) the person is released or discharged by or otherwise leaves the hospital.

Debate ensued.

Amendment — put and passed.

Debate ensued.

The Minister for Mental Health moved —

Page 178, lines 21 to 23 — To delete the lines and insert —

(3) For the purpose of assessing under this section the physical condition of a person referred to in subsection (1)(a)(ii) or (iii) or (b), these things may be done without consent —

Debate ensued.

Amendment — put and passed.

The Minister for Mental Health moved —

Page 178, lines 27 and 28 — To delete "purposes of subsection (2)" and insert —

purpose of assessing under this section the person's physical condition

Debate ensued.

Amendment — put and passed. Clause, as amended, agreed to. Clause 242. Debate ensued.

#### 8. **Ouestions Without Notice**

Questions without notice were taken.

The Minister for Agriculture and Food representing the Minister for Housing tabled, and by leave incorporated into Hansard, a document in relation to apartments rented by the Government at the Pelago West complex, in response to a question without notice asked by Hon Kate Doust. (Tabled Paper 1945).

The Minister for Education tabled, and by leave incorporated into Hansard, a document in relation to the Claremont School of Art, in response to a question without notice asked by Hon Sue Ellery. (Tabled Paper 1946).

The Minister for Education tabled a document in relation to the budget for each Western Australian public school in 2013, in response to question on notice No. 1424 asked by Hon Sue Ellery. (Tabled Paper 1947).

The Minister for Mental Health representing the Minister for Environment tabled a document in relation to Environmental Management Plans for GD Pork, in response to question on notice No. 1461 asked by Hon Lynn MacLaren. (Tabled Paper 1948).

The Parliamentary Secretary representing the Minister for Health tabled a document in relation to school health nursing allocation for all public schools in 2011, 2012, 2013 and 2014, in response to question on notice No. 1469 asked by Hon Sue Ellery. (Tabled Paper 1949).

## 9. Mental Health Bill 2013 and Mental Health Legislation Amendment Bill 2013

Resumption of consideration of these Bills in Committee of the Whole House (*see item 7 above*). The President left the Chair.

#### In Committee

(Hon Adele Farina in the Chair)

#### Mental Health Bill 2013

Clause 242 agreed to.
Clauses 243 to 245 agreed to.
Clause 246 agreed to.
New Clause 246A.
Hon Stephen Dawson moved —
Page 182, after line 31 — To insert —

## 246A. Psychiatrist to notify State Administrative Tribunal

A psychiatrist who makes an involuntary treatment order must notify the State Administrative Tribunal to appoint a guardian for the limited purpose of arranging legal representation for the patient as necessary.

Debate ensued. New Clause — put and negatived. Clause 247 agreed to.

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Clause 248.
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The Minister for Mental Health moved —

Page 183, line 25 — To delete "that" and insert —

that, as soon as practicable after the refusal,

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 249.

Debate ensued.

Clause agreed to.

Clauses 250 to 252 agreed to.

Clause 253.

The Minister for Mental Health moved —

Page 185, line 24 — To delete "\$15 000" and insert —

\$24 000

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 254.

The Minister for Mental Health moved —

Page 186, before line 1 — To insert —

(b) unlawful sexual contact with the person by a person who is not a staff member of a mental health service that occurs at a hospital; or

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 255 to 261 agreed to.

Clause 262.

Hon Stephen Dawson moved —

Page 190, line 21 to page 191, line 2 — To delete the lines and insert —

(3) A psychiatrist cannot make an order under subsection (1) prohibiting, or limiting the extent of, a patient's right under sections 261(3)(c) or (d).

Debate ensued.

Amendment — put.

The Committee divided.

## Ayes (10)

Hon Alanna Clohesy
Hon Amber-Jade Sanderson
Hon Stephen Dawson
Hon Sally Talbot
Hon Kate Doust
Hon Ken Travers
Hon Adele Farina
Hon Darren West
Hon Lynn MacLaren
Hon Samantha Rowe (Teller)

### Noes (18)

Hon Ken Baston Hon Alyssa Hayden Hon Col Holt Hon Liz Behiat Hon Peter Katsambanis Hon Jacqui Boydell Hon Paul Brown Hon Mark Lewis Hon Peter Collier Hon Rick Mazza Hon Brian Ellis Hon Robyn McSweeney Hon Donna Faragher Hon Michael Mischin Hon Nick Goiran Hon Helen Morton Hon Dave Grills Hon Phil Edman (Teller)

Amendment thus negatived.

Debate resumed.

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

Clauses 263 to 303 agreed to.

New Clause 303A.

Hon Stephen Dawson moved —

Page 215, after line 5 — To insert —

### 303A. Off-label treatment of a child

(1) For the purposes of this section —

*off-label treatment* means treatment contrary to the manufacturer's prescribing information as approved by the Therapeutic Goods Authority.

- (2) A parent has a right to veto the use of off-label treatment of his or her child, unless it has been determined by the Mental Health Tribunal that the parent is unfit to have the primary responsibility for the care and welfare of the child.
- (3) Any determination under subsection (2) must be reported to the Mental Health Advocate.
- (4) Any off-label treatment of a child must be reported to the Chief Psychiatrist.
- (5) This section applies notwithstanding anything to the contrary in this Act.

Debate ensued.

New Clause — put and negatived.

Clause 304 agreed to.

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Clause 305.
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Hon Stephen Dawson moved —

Page 218, after line 2 — To insert —

or

- (iii) bodies/individuals undertaking medical and epidemiological research; or
- (iv) bodies/individuals undertaking apprehension and seizure services; or
- (v) welfare services/individuals contracted to provide services to the mental health service;

Debate ensued.

Amendment — put and negatived.

The Minister for Mental Health moved —

Page 218, after line 2 — To insert —

(iii) the carrying out of medical or epidemiological research relating to mental illness;

Amendment — put and passed.

The Minister for Mental Health moved —

Page 218, after line 10 — To insert —

*provide*, in relation to a mental health service, includes to carry out;

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 306 to 315 agreed to.

Clause 316.

Hon Stephen Dawson moved —

Page 226, lines 9 and 10 — To delete "is not a relative of the complainant".

Debate ensued.

Amendment — put and negatived.

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

Clause 317.

The Minister for Mental Health moved —

Page 226, line 22 — To delete "who is" and insert —

and is

Debate ensued.

Amendment — put and passed.

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The Minister for Mental Health moved — Page 226, after line 24 — To insert —
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(e) a person who is being paid through a funding arrangement with government to provide free advocacy services and is representing a person who has, or may have, a mental illness or a carer of a person who has, or may have, a mental illness.

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Debate ensued.
Amendment — put and passed.
Clause, as amended, agreed to.
Clauses 318 and 319 agreed to.
Clause 320.
The Minister for Mental Health moved —
        Page 228, line 18 — To insert after "by" —
        delaying,
Amendment — put and passed.
Clause, as amended, agreed to.
Clauses 321 to 327 agreed to.
Clause 328.
The Minister for Mental Health moved —
        Page 234, lines 13 and 14 — To delete the lines.
Amendment — put and passed.
Clause, as amended, agreed to.
Clauses 329 to 336 agreed to.
Clause 337.
The Minister for Mental Health moved —
        Page 243, line 29 — To delete the line and insert —
        so many of those people as the Director considers appropriate.
Amendment — put and passed.
Clause, as amended, agreed to.
Clauses 338 to 359 agreed to.
Clause 360.
The Minister for Mental Health moved —
        Page 262, line 29 — To delete "section 249(1)(a)." and insert —
        section 249(1)(a) or (b) or (3).
Amendment — put and passed.
The Minister for Mental Health moved —
        Page 263, lines 4 and 5 — To delete "section 249(1)(a); and" and insert —
        section 249(1)(a) or (b) or (3), as the case requires; and
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Debate ensued.

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Amendment — put and passed.
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Clause, as amended, agreed to.

Clause 361.

The Minister for Mental Health moved —

Page 263, line 19 — To delete "section 249(1)(a); and" and insert —

section 249(1)(a) or (b) or (3); and

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 362 to 378 agreed to.

Clause 379.

Hon Stephen Dawson moved —

Page 273, lines 7 and 8 — To delete "direction or declaration" and insert —

direction, declaration or recommendation

Debate ensued.

Amendment — put and negatived.

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

Clauses 380 to 385 agreed to.

Clause 386.

Hon Stephen Dawson, by leave, moved —

Page 276, lines 21 to 24 — To delete the lines.

Page 277, after line 9 — To insert —

and

(c) there is no new relevant evidence or change in the circumstances regarding the patient's detention.

Debate ensued.

Amendments — put and negatived.

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

Clause 387 agreed to.

Clauses 388 to 392 agreed to.

Clause 393.

The Minister for Mental Health moved —

Page 282, lines 19 to 22 — To delete the lines and insert —

(b) if the proceeding relates to an application made under section 390 and the applicant is not the involuntary patient — the applicant; and

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 394 agreed to.

Clause 395.

Hon Stephen Dawson moved —

Page 284, lines 5 to 7 — To delete the lines and insert —

(3) The Tribunal may make an order to give a direction under subsection (1) in relation to an involuntary patient's treatment, support or discharge plan, and may make —

Debate ensued.

Amendment — put and negatived.

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

Clause 396 agreed to.

Clause 397.

The Minister for Mental Health moved —

Page 284, line 27 — To delete "order) —" and insert —

order) that is or was in force —

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 398.

The Minister for Mental Health moved, That consideration of Clause 398 be postponed until after Clause 401.

Question — put and passed.

Clause 399 agreed to.

Clause 400.

The Minister for Mental Health moved —

Page 286, line 24 — To delete "patient;" and insert —

patient or the person who was the subject of the treatment order;

Amendment — put and passed.

The Minister for Mental Health moved —

Page 286, line 27 — To delete "patient;" and insert —

patient or of the person who was the subject of the treatment order;

Amendment — put and passed.

The Minister for Mental Health moved —

Page 286, after line 30 — To insert —

(2) An application cannot be made under section 398(1) in respect of a treatment order that ceased to be in force more than 6 months ago unless, in the Tribunal's opinion, the applicant shows good reason for the delay.

Debate ensued.

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Amendment — put and passed.

Clause, as amended, agreed to.

New Clause 400A.

The Minister for Mental Health moved —

Page 286, after line 30 — To insert —
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## 400A. Parties to proceeding

The parties to a proceeding under this Division are —

- (a) the involuntary patient or the person who was the subject of the treatment order; and
- (b) if the proceeding relates to an application made under section 398(1) and the applicant is not the involuntary patient or the person who was the subject of the treatment order the applicant.

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Debate ensued.
New Clause — put and passed.
Clause 401.
The Minister for Mental Health moved —
       Page 287, line 3 — To insert after "to be" —
       or to have been
Amendment — put and passed.
The Minister for Mental Health moved —
       Page 287, line 4 — To insert after "order is" —
       or was
Amendment — put and passed.
The Minister for Mental Health moved —
       Page 287, line 5 — To insert after "been" —
       or was
Amendment — put and passed.
The Minister for Mental Health moved —
       Page 287, line 14 — To insert after "been" —
       or were
Amendment — put and passed.
Clause, as amended, agreed to.
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New Clause 401A.
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The Minister for Mental Health moved —

Page 287, after line 15 — To insert —

### 401A. Discretion not to decide on validity of treatment order no longer in force

- (1) In this section
  - question of law includes a question of mixed fact and law.
- (2) The Tribunal is not required to decide whether a treatment order that was in force was valid or invalid, but may do so if satisfied that the matter raises
  - (a) a question of law; or
  - (b) a matter of public interest.

Debate ensued.

New Clause — put and passed.

Postponed Clause 398.

The Minister for Mental Health moved —

Page 285, line 5 — To delete "section 400" and insert —

section 400(1)

Amendment — put and passed.

The Minister for Mental Health moved —

Page 285, line 6 — To insert after "order is" —

or was

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 402 and 403 agreed to.

Clause 404

The Minister for Mental Health moved —

Page 288, lines 14 to 16 — To delete the lines and insert —

(b) if the applicant is not the long-term voluntary inpatient — the applicant; and

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 405 agreed to.

Clause 406.

Debate ensued.

Clause agreed to.

Clauses 407 and 408 agreed to.

Clause 409.

The Minister for Mental Health moved —

Page 290, line 31 — To delete the line and insert —

(b) the applicant; and

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 410 to 415 agreed to.

Clause 416.

The Minister for Mental Health moved —

Page 294, line 9 — To delete the line and insert —

(b) the applicant; and

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 417 to 419 agreed to.

Clause 420.

The Minister for Mental Health moved —

Page 296, after line 5 — To insert —

(c) to ensure that a treatment, support and discharge plan for a patient is prepared, reviewed or revised;

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 421 agreed to.

Clause 422.

Debate ensued.

Clause agreed to.

Clause 423 and 424 agreed to.

Clause 425.

Debate ensued.

Clause agreed to.

Clause 426.

The Minister for Mental Health moved —

Page 298, lines 26 and 27 — To delete the lines.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 427 to 430 agreed to.

Clause 431.

The Minister for Mental Health moved —

Page 300, lines 16 to 18 — To delete the lines and insert —

(b) if the applicant is not the person who made the nomination — the applicant; and

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 432 agreed to.

Clause 433.

The Minister for Mental Health moved —

Page 301, lines 10 and 11 — To delete the lines and insert —

(b) if the applicant is not the person whose rights it is alleged are affected — the applicant; and

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 434 to 443 agreed to.

Clause 444.

The Minister for Mental Health moved, That Clause 444 be postponed until after Clause 447.

Question — put and passed.

Clause 445.

The Minister for Mental Health moved, That Clause 445 be postponed until after Clause 447.

Question — put and passed.

Clause 446 agreed to.

Clause 447.

Debate ensued.

The Minister for Mental Health moved —

Page 307, lines 4 and 5 — To delete the lines and insert —

- (a) may appear in person; or
- (aa) may be represented by any of these people
  - (i) a legal practitioner;
  - (ii) a mental health advocate;
  - (iii) any person who, in the Tribunal's opinion, is willing and able to represent the adult's interests;

or

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.

#### 10. Members' Statements

Statements were taken.

# 11. Adjournment

The Council adjourned at 9.59pm until Wednesday, 24 September 2014 at 2.00pm.

# Members present during the day's proceedings

Attendance: Present all Members except Hon Martin Aldridge, Hon Robin Chapple and Hon Nigel Hallett.

**NIGEL PRATT** 

**HON BARRY HOUSE** 

Clerk of the Legislative Council

President of the Legislative Council