

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 103

THURSDAY, 6 DECEMBER 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. Petitions

Hon Robin Chapple presented a petition from 16 petitioners requesting the Legislative Council to inquire into the performance of the Department of Local Government, Sport and Cultural Industries. (Tabled Paper 2308).

Hon Robin Chapple presented a petition from 23 petitioners requesting the Legislative Council to call on the Government to evaluate the effects of pollutants and emissions on the rock art at Murujuga. (Tabled Paper 2309).

Hon Adele Farina presented a petition from 190 petitioners requesting the Legislative Council to recommend installation of mobile towers for the Paynedale Capel River Region. (Tabled Paper 2310).

3. Ministerial Statement — Law Reform Commission of Western Australia Report

The Leader of the House representing the Attorney General made a Ministerial Statement with respect to the latest report of the Law Reform Commission of Western Australia entitled *Project 108 Final Report — Review of Western Australian legislation in relation to the registration or change of a person's sex and/or gender and status relating to sex characteristics*.

The Leader of the House representing the Attorney General tabled the report *Project 108 Final Report — Review of Western Australian legislation in relation to the registration or change of a person's sex and/or gender and status relating to sex characteristics*. (Tabled Paper 2311).

4. Ministerial Statement — Report on Visit to Shanghai, China

The Minister for Regional Development made a Ministerial Statement with respect to her visit to the China International Import Expo in Shanghai, China.

The Minister for Regional Development tabled the *Report on Ministerial Visit to Shanghai, China*. (Tabled Paper 2312).

5. Standing Committee on Uniform Legislation and Statutes Review — Report No. 120 — Child Support (Commonwealth Powers) Bill 2018 — Extension of time

Hon Michael Mischin presented Report No. 120 of the Standing Committee on Uniform Legislation and Statutes Review, *Child Support (Commonwealth Powers) Bill 2018 — Extension of time*. (Tabled Paper 2313).

Hon Michael Mischin moved, without notice —

That the reporting date for the Committee inquiry into the *Child Support (Commonwealth Powers) Bill 2018* be extended from 12 February 2019 to 19 March 2019.

Hon Michael Mischin sought leave to continue his remarks at a later stage of this day's sitting.
 Leave granted.
 Debate stands adjourned.

6. Health Practitioner Regulation National Law Regulation 2018 — Disallowance

Hon Robin Chapple: To move on the next day of sitting —

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the *Health Practitioner Regulation National Law Regulation 2018* published in the *Gazette* on 26 October 2018 and tabled in the Legislative Council on 30 October 2018 under the *Health Practitioner Regulation National Law (WA) Act 2010*, be and is hereby disallowed. (Tabled paper No. 2107).

7. Temporary Orders — Extension

Leader of the House moved, without notice —

That the operation of the Temporary Orders with respect to the Consideration of Committee Reports, adopted by the Council on 7 December 2017, be extended to apply until (and including) 31 December 2019.

The motion requiring the concurrence of an absolute majority.

Question — put.

The President having counted the Council, and there being an absolute majority present, and no dissentient voice, declared the motion carried with the concurrence of an absolute majority.

8. Minister for Regional Development; Agricultural and Food — Discharge of Ministerial Responsibilities

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

That this House expresses its concern with the manner in which the Minister for Regional Development; Agriculture and Food has discharged her Ministerial responsibilities.

Debate ensued.

Motion lapsed.

9. Personal Explanation

Hon Pierre Yang, by leave, made a personal explanation in relation to his disclosure of financial interests.

10. Order of Business

Ordered — That Orders of the Day Nos 1, *City of Mandurah Cemeteries Amendment Local Law — Disallowance*, 2, *Rights in Water and Irrigation Amendment Regulations (No. 2) 2018 — Disallowance*, 3, *Shire of Mount Magnet Activities in Thoroughfares and Public Places and Trading Local Law 2018 — Disallowance*, 4, *Shire of Mount Magnet Animals, Environment and Nuisance Local Law 2018 — Disallowance*, 5, *Shire of Mount Magnet Cats Local Law 2018 — Disallowance*, 6, *Shire of Mount Magnet Cemeteries Local Law 2018 — Disallowance*, 7, *Shire of Mount Magnet Dogs Local Law 2018 — Disallowance*, 8, *Shire of Mount Magnet Extractive Industries Local Law 2018 — Disallowance*, 9, *Shire of Mount Magnet Fencing Local Law 2018 — Disallowance*, 10, *Shire of Mount Magnet Health Local Law 2018 — Disallowance*, and 11, *Shire of Mount Magnet Standing Orders Local Law 2018 — Disallowance*, be taken after Order of the Day No. 31, *Standing Committee on Procedure and Privileges — Report No. 45 — Outstanding Matters from the 39th Parliament — Recommendation 2*. (Leader of the House)

11. Criminal Law Amendment (Intimate Images) Bill 2018

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

The President left the Chair.

In Committee

(Hon Dr Steve Thomas in the Chair)

Clause 4.

Debate resumed.

Hon Michael Mischin moved —

Page 6 line 12, to page 7 line 23 — To delete the lines and insert:

- (3) A person is not criminally responsible under subsection (2) if a reasonable person would consider the distribution of the image to be acceptable, having regard to each of the following (to the extent relevant) —
 - (a) the nature and content of the image;
 - (b) the circumstances in which the image was distributed;
 - (c) the age, mental capacity, vulnerability or other relevant circumstances of the depicted person;
 - (d) the degree to which the accused's actions affect the privacy of the depicted person;
 - (e) the relationship between the accused and the depicted person;
 - (f) any other relevant matters.
- (4) It is a defence to a charge under subsection (2) to prove that —
 - (a) the distribution of the image was for a genuine scientific, educational or medical purpose; or
 - (b) the distribution of the image was reasonably necessary for the purpose of legal proceedings; or
 - (c) the person who distributed the image —
 - (i) distributed the image for media activity purposes; and
 - (ii) did not intend the distribution to cause harm to the depicted person; and
 - (iii) reasonably believed the distribution to be in the public interest.
- (5) Nothing in subsection (2) makes it an offence —
 - (a) for a member or officer of a law enforcement agency or their agents to distribute an intimate image when acting in the course of their official duties; or
 - (b) for a person to distribute an intimate image in accordance with, or in the performance of the person's functions under, a written law or a law of the Commonwealth or another State or Territory; or
 - (c) for a person to distribute an intimate image for the purposes of the administration of justice.

Debate ensued.

Amendment — put.

The Committee divided.

Ayes (14)

Hon Jacqui Boydell
 Hon Jim Chown
 Hon Peter Collier
 Hon Donna Faragher
 Hon Colin Holt
 Hon Rick Mazza
 Hon Michael Mischin

Hon Simon O'Brien
 Hon Robin Scott
 Hon Tjorn Sibma
 Hon Charles Smith
 Hon Dr Steve Thomas
 Hon Colin Tincknell
 Hon Ken Baston (*Teller*)

Noes (15)

Hon Robin Chapple
 Hon Tim Clifford
 Hon Alanna Clohesy
 Hon Sue Ellery
 Hon Diane Evers
 Hon Alannah MacTiernan
 Hon Kyle McGinn
 Hon Martin Pritchard

Hon Samantha Rowe
 Hon Aaron Stonehouse
 Hon Matthew Swinbourn
 Hon Dr Sally Talbot
 Hon Darren West
 Hon Alison Xamon
 Hon Laurie Graham (*Teller*)

Amendment thus negatived.

Debate resumed.

The Leader of the House representing the Attorney General moved —

Page 8, after line 29 — To insert:

221BF. Review of amendments made by *Criminal Law Amendment (Intimate Images) Act 2018*

- (1) The Minister must review the operation and effectiveness of the amendments made to this Code, the *Restraining Orders Act 1997* and the *Working with Children (Criminal Record Checking) Act 2004* by the *Criminal Law Amendment (Intimate Images) Act 2018*, and prepare a report based on the review, as soon as practicable after the 3rd anniversary of the day on which the *Criminal Law Amendment (Intimate Images) Act 2018* section 4 comes into operation.
- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 3rd anniversary.

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 5 to 14 agreed to.

Title agreed to.

The President resumed the Chair.

Bill reported with amendment.

The Leader of the House representing the Attorney General, by leave, moved, That the report be adopted.

Report adopted.

The Leader of the House representing the Attorney General moved, without notice —

That so much of Standing Orders be suspended so as to enable the *Criminal Law Amendment (Intimate Images) Bill 2018* to be read a third time.

The motion requiring the concurrence of an absolute majority.

Question — put.

The President having counted the Council, and there being an absolute majority present, and no dissentient voice, declared the motion carried with the concurrence of an absolute majority.

The Leader of the House representing the Attorney General moved, That the Bill be read a third time.

The 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.

12. Public and Health Sector Legislation Amendment (Right of Return) Bill 2018

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 President left the Chair.

In Committee

(Hon Matthew Swinbourn in the Chair)

Clause 1.

Debate ensued.

Hon Tjorn Sibma, by leave, tabled draft amendments to the *Public and Health Sector Legislation Amendment (Right of Return) Bill 2018*. (Tabled Paper 2314).

The Leader of the House representing the Minister for Public Sector Management moved, That the Deputy Chair report progress and seek to sit again at a later stage of this day's sitting.

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 at a later stage of this day's sitting.

Ordered — That the Committee of the Whole House sit again at a later stage of this day's sitting.

The Deputy President left the Chair at 3.37pm

The President resumed the Chair at 3.49pm

13. Suspension of Standing Orders

Leader of the House moved, without notice —

That so much of Standing Orders be suspended so as to enable Questions Without Notice to be taken forthwith and that the afternoon tea break not be taken.

The motion requiring the concurrence of an absolute majority.

Question — put.

The President having counted the Council, and there being an absolute majority present, and no dissentient voice, declared the motion carried with the concurrence of an absolute majority.

14. Questions Without Notice

Questions without notice were taken.

The Parliamentary Secretary to the Deputy Premier on behalf of the Minister for Environment representing the Minister for Planning tabled documents in relation to Scarborough Land Redevelopment Committee meeting No. 20, in response to a question without notice asked by Hon Alison Xamon. (Tabled Paper 2315).

The Minister for Agriculture and Food tabled documents in relation to the South-West Saleyard Solutions criteria, in response to a question without notice asked by Hon Colin Holt. (Tabled Paper 2316)

The Minister for Regional Development representing the Minister for Water tabled documents in relation to the Water Corporation's guidelines for unsolicited proposals, in response to a question without notice asked by Hon Diane Evers. (Tabled Paper 2317).

The Minister for Education and Training tabled the itinerary, briefing notes and advice provided to the Minister for her visit to the Central Wheatbelt on 16 November 2018, in response to question on notice No. 1790 asked by Hon Martin Aldridge. (Tabled Paper 2318).

The Parliamentary Secretary to the Minister for Health, by leave, incorporated into *Hansard* information in relation to the high dependency unit and paediatric intensive care unit at the Perth Children's Hospital, in response to a question without notice asked by Hon Peter Collier.

The Parliamentary Secretary to the Minister for Health, by leave, incorporated into *Hansard* information in relation to code yellows at Geraldton Regional Hospital, in response to a question without notice asked by Hon Martin Aldridge.

15. Standing Committee on Procedure and Privileges — Report No. 53 — Review of the Standing Orders relating to motions on notice

The Order of the Day having been read for the consideration, in Committee of the Whole House, on the motion of Hon Simon O'Brien, of Recommendation 1 contained in Report No. 53 of the Standing Committee on Procedure and Privileges, *Review of the Standing Orders relating to motions on notice*.

The President left the Chair.

In Committee

(The President in the Chair)

Recommendation 1 is as follows —

That the following Temporary Orders be adopted by the Council to apply from 1 January 2019 until (and including) 31 December 2019 —

1. Operation

This Temporary Order operates from 1 January 2019 to 31 December 2019.

2. Definitions

For the purposes of this Temporary Order a Private member means a member who is not:

- (a) a Minister;
- (b) a Parliamentary Secretary; or
- (c) the President.

3. Quota

- (1) Subject to (2), the number of opportunities available to members of a political group in each calendar year of sittings shall be a quota calculated as the sum of:

$$\left(\frac{\text{Number of private members of political group}}{\text{Total private members}} \times 100 \right) \times \left(\frac{\text{Number of sitting weeks}}{100} \right)$$

rounded to the nearest whole number.

- (2) Where the sum of quotas exceeds sitting weeks or a political group has a quota of zero, the quota of the political group comprising the greatest number of members supporting the Government shall be reduced so that as the case requires:
 - (a) the sum of quotas equals sitting weeks; and
 - (b) each other political group has a minimum quota of one.
- (3) As each item of business is disposed of, the quota of the relevant political group reduces accordingly.

- (4) No political group shall in any calendar year exceed its quota unless provided for in this Temporary Order or the Council otherwise orders on motion without notice.

4. Annual schedule of allocation

- (1) Standing Order 66 is suspended for the duration of this Temporary Order.
- (2) There shall be an Annual Schedule of Allocation of Motions on Notice for business taken under Standing Order 15(2) which sets out the *pro rata* allocation of dates between political groups in accordance with their respective quota.
- (3) The President shall table the Annual Schedule of Allocation of Motions on Notice:
 - (a) following the tabling of a schedule of dates for sittings of the Council under Standing Order 6, which is to apply for the forthcoming calendar year; or
 - (b) following a general election when members of the Council are declared elected, which is to apply to the calendar year from when those members take their seats.
- (4) The Annual Schedule of Allocation of Motions on Notice tabled under (3), and any subsequent variations to the Schedule under (5) or (6)(b), shall be published in the Weekly Bulletin.
- (5) Subject to (6)(b), the Annual Schedule of Allocation of Motions on Notice shall only be varied:
 - (a) to take into account any change to the Business Program ordered by the Council under Standing Order 17; or
 - (b) by an agreement to exchange allocated dates that is communicated in writing to the Clerk by each of the parties to the exchange by 4.00pm on the Wednesday prior to the earliest allocated date that is the subject of the exchange agreement.
- (6) Each notice of motion listed on the Notice Paper that is proposed to be moved in accordance with the Annual Schedule of Allocation of Motions on Notice, shall be notified in writing to the Clerk by noon on the Friday prior to the allocated date, and:
 - (a) on the receipt of such written notification, the Clerk shall publish the relevant notice of motion in the Weekly Bulletin for the following week; or
 - (b) if no written notification is provided to the Clerk by the specified deadline and unless the Council otherwise orders on motion without notice:
 - (i) business to be taken under Standing Order 15(2) for the following week shall be vacated and the Council is to proceed to other business; and
 - (ii) the political group listed on the Annual Schedule of Allocation of Motions on Notice for the following week shall have its total quota allocation in the Schedule reduced as if the allocated session for Motions on Notice had proceeded.
- (7) The consideration of notices taken under Standing Order 15(2) for the period from the opening day to when members elected at the general election take their seats shall be selected by lot drawn by the President on the adjournment of the opening day.

5. Debate on motions on notice

The total time for debate on each motion on notice and speaking times in Chapter IV are amended as follows:

- (1) SO 21 Time Limits on Speeches is amended by inserting after the time limits under the heading "Bills (Second and Third Reading)", the following:

Motions on Notice (SO 15(2))

Mover

20 minutes

Responsible Minister or Parliamentary Secretary	15 minutes
Other Members	10 minutes
Mover in Reply	5 minutes

Amendments to Motions on Notice

All Members	5 minutes
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- (2) SO 23 Maximum Time Limits for Certain Business Items is amended by deleting paragraph (a) in clause (1) and inserting instead:

(a) Motions on notice (SO 15(2))	120 minutes
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6. Reply and disposal of business

- (1) When an item is not earlier disposed of, at 5 minutes before the end of the time provided for the consideration of the item, the President is to interrupt proceedings to allow the mover of the motion to speak in reply for not more than 5 minutes. If the mover elects not to make a reply the member interrupted may continue their speech.
- (2) At the close of debate or at the expiry of the maximum time limit, the President is to put every question necessary to dispose of the motion forthwith and successively without further amendment or debate, unless the motion is withdrawn as provided by the Standing Orders.
- (3) When an item is disposed of prior to the expiry of the maximum time limit the period for motions on notice concludes and the Council is to proceed to other business.

Hon Simon O'Brien moved

The Temporary Order set out in Recommendation 1 contained in Report No. 53 of the Standing Committee on Procedure and Privileges, *Review of the Standing Orders relating to motions on notice*, be adopted and agreed to by the Council to apply from 1 January 2019 until (and including) 31 December 2019.

The Leader of the House moved, without notice, the following amendment to Section 5 of the Temporary Order —

To delete:

Motions on Notice (SO 15(2))

Mover	20 minutes
Responsible Minister or Parliamentary Secretary	15 minutes
Other Members	10 minutes
Mover in Reply	5 minutes

Amendments to Motions on Notice

All Members	5 minutes
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And insert:

Motions on Notice (SO 15(2))

Mover	20 minutes
Responsible Minister or Parliamentary Secretary	20 minutes

Other Members	20 minutes
Mover in Reply	5 minutes
<i>Amendments to Motions on Notice</i>	
All Members	5 minutes

Debate ensued.

Amendment — put and passed.

Temporary Order, as amended, in Recommendation 1, adopted and agreed to.

The Deputy President resumed the Chair.

Motion reported with amendment.

Report adopted.

16. Standing Committee on Procedure and Privileges — Report No. 49 — Treaty Function — Standing Committee on Uniform Legislation and Statutes Review — Recommendation 1

The Order of the Day having been read for the consideration, in Committee of the Whole House, on the motion of Hon Rick Mazza, of Recommendation 1 contained in Report No. 49 of the Standing Committee on Procedure and Privileges, *Treaty Function — Standing Committee on Uniform Legislation and Statutes Review*.

The Deputy President left the Chair.

In Committee

(The President in the Chair)

Recommendation 1 is as follows —

The Committee recommends that the Legislative Council delete clause 6.3(c) in Schedule 1 of the Standing Orders of the Legislative Council and re-number the remaining subclauses accordingly.

Hon Simon O'Brien moved —

That Recommendation 1 contained in Report No. 49 of the Standing Committee on Procedure and Privileges, *Treaty Function — Standing Committee on Uniform Legislation and Statutes Review* be adopted and agreed to by the Council.

Question — put and passed.

The Deputy President resumed the Chair.

Motion reported without amendment.

Report adopted.

17. Standing Committee on Procedure and Privileges — Report No. 45 — Outstanding Matters from the 39th Parliament — Recommendation 2

The Order of the Day having been read for the consideration of the motion of Hon Adele Farina as follows —

That Recommendation 2 contained in Report No. 45 of the Standing Committee on Procedure and Privileges, *Outstanding Matters from the 39th Parliament*, be adopted and agreed to.

Recommendation 2 is as follows —

That Recommendation 3 contained in Report No. 37 of the Standing Committee on Procedure and Privileges, *Temporary Orders – 2016*, be adopted and agreed to.

Recommendation 3 of Report No. 37, *Temporary Orders – 2016*, is as follows —

That this be a Temporary Order —

Standing Order 190(2) is suspended and replaced by the following Temporary Order –

- (2) When a motion is moved under (1), before putting the question the President shall ask whether any Member wishes to speak to the motion and —
 - (a) if no Member indicates that they wish to speak to the motion, the President shall put the question immediately;
 - (b) if any Member indicates that they wish to speak to the motion, then no debate shall ensue at that time and the debate shall be adjourned until a later stage of the sitting;
 - (c) an adjournment under (b) does not affect the movers right to speak to the motion.

Debate ensued.

Question — put and negatived.

18. Order of Business

Ordered — That Standing Committee on Uniform Legislation and Statutes Review — Report No. 120 — *Child Support (Commonwealth Powers) Bill 2018 — Extension of time*, be taken forthwith. (Leader of the House).

19. Standing Committee on Uniform Legislation and Statutes Review — Report No. 120 — Child Support (Commonwealth Powers) Bill 2018 — Extension of time

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

That the reporting date for the Committee inquiry into the *Child Support (Commonwealth Powers) Bill 2018* be extended from 12 February 2019 to 19 March 2019.

Question — put and passed.

20. Order of Business

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

21. Members' Statements

Statements were taken.

The President tabled the 2019 annual schedule of allocation of motions on notice. (Tabled Paper 2319).

22. Adjournment

The Council adjourned at 5.34pm until Tuesday, 12 February 2019 at 2.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Martin Aldridge and Hon Stephen Dawson.

NIGEL PRATT
Clerk of the Legislative Council

HON KATE DOUST MLC
President of the Legislative Council