

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 241

WEDNESDAY, 24 OCTOBER 2012

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. Papers

The following Papers were laid on the Table by —

President

Auditor General's Papers —

Implementation of the National Partnership Agreement on Homelessness in Western
Australia (Report No. 13) (October 2012) 5241

Leader of the House

Annual Reports —

Racing and Wagering Western Australia (2011–2012) (Date received 23/10/2012)..... 5242

Management Plans —

Fish Resources Management Act 1994 (West Coast Rock Lobster Managed Fishery
Management Plan 2012 [1078] G.G. 17/10/2012 and CORRECTION - West Coast Rock
Lobster Managed Fishery Management Plan 2012 G.G. 19/10/2012)..... 5243

Regulations —

Fish Resources Management Act 1994 (Fish Resources Management Amendment Regulations
(No. 8) 2012 G.G. 19/10/2012 and Fish Resources Management Amendment Regulations
(No. 10) 2012 G.G. 17/10/2012) 5244

Minister for Finance

Reports —

Albany Port Authority (July 2012–June 2013) — Statement of Corporate Intent 5245

Esperance Ports (2011–2012) — Statement of Corporate Intent 5246

Standards —

Fair Trading Act 2010 (Competition and Consumer (Tobacco) Information Standard 2011
G.G. 15/10/2012)..... 5247

Minister for Child Protection

Local Laws —

Local Government Act 1995 (Shire of Capel Local Government Property Amendment Local Law
2012 G.G. 19/10/2012, Shire of Murray Fencing Local Law 2012 G.G. 16/10/2012 and Shire of
Murray Repeal Local Law 2012 G.G. 16/10/2012) 5248

Minister for Mental Health*Leases —*

CALM Lease No. 2115 — Between CALM and Apex Holiday Centre Inc. for part of Crown Reserve 48968 Point Peron Road Peron	5249
CALM Lease No. 2116 — Between CALM and Australian Post-Tel Institute (Western Australia) Inc. for part of Crown Reserve 48968 Point Peron Road Peron	5250
CALM Lease No. 2119 — Between CALM and L and S Recreation Centre Inc. for part of Crown Reserve 48968 Point Peron Road Peron	5251
CALM Lease No. 2120 — Between CALM and Point Peron Aquatic, Youth and Family Association for part of Crown Reserve 48968 Point Peron Road Peron ...	5252
CALM Lease No. 2122 — Between CALM and the Returned and Services League of Australia W.A. Branch Inc. for part of Crown Reserve 48968 Point Peron Road Peron	5253
CALM Lease No. 2123 — Between CALM and the Maritime Union of Australia for part of Crown Reserve 48968 Point Peron Road Peron	5254
CALM Lease No. 2125 — Between CALM and the Maritime Union of Australia for part of Crown Reserve 48968 Point Peron Road Peron	5255

Attorney General*Annual Reports —*

Road Safety Council — Report on Activities (2011–2012) (Date received 23/10/2012)	5256
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3. Universal Child Health Checks

Motion No. 1 having been called, debate resumed on the motion of Hon Linda Savage as follows —

That this House calls on the Government to implement the recommendations of the Auditor General's Report 11 – November 2010 '*Universal Child Health Checks*'.

Question — put and passed.

4. Child and Adolescent Mental Health Service - Funding

Motion No. 2 having been called, Hon Ljiljanna Ravlich, pursuant to notice, moved —

That this House notes the findings from the Commissioner for Children and Young People in the inquiry into the mental health and wellbeing of children and young people in Western Australia, and calls on the Minister for Mental Health to immediately implement the recommendations by providing extra funding for the Child and Adolescent Mental Health Service.

Debate ensued.

Interruption pursuant to order.

5. Order of Business

Ordered — That Bills for Introduction be taken forthwith. (Leader of the House).

6. Petroleum and Geothermal Energy Legislation Amendment Bill 2012

The Minister for Mines and Petroleum, pursuant to notice, moved —

That a Bill for “An Act to amend the *Petroleum and Geothermal Energy Resources Act 1967* and the *Petroleum Pipelines Act 1969* to facilitate the geological storage of greenhouse gas substances, to make consequential amendments to other Acts, and for other purposes.” be introduced and read a first time.

Question — put and passed.

Bill read a first time.

The Minister for Mines and Petroleum moved, That the Bill be read a second time.

The Minister for Mines and Petroleum tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 5257).

Debate stands adjourned.

7. Mental Health Amendment (Psychiatrists) Bill 2012

The Minister for Mental Health, pursuant to notice, moved —

That a Bill for “An Act —

- to amend the definition of *psychiatrist* in the *Mental Health Act 1996* section 3 and in certain instruments; and
- to validate certain acts done, and omissions made, on or after 18 October 2010 but before the day on which this Act commences.”

be introduced and read a first time.

Question — put and passed.

Bill read a first time.

8. Questions Without Notice

Questions without notice were taken.

The Minister for Finance representing the Minister for Transport, in accordance with Standing Order No. 107(2), advised that an answer to question on notice No. 6030 asked by Hon Lynn MacLaren will be provided on 25 October 2012.

9. Mental Health Amendment (Psychiatrists) Bill 2012

The Minister for Mental Health moved, That the Bill be read a second time (*see item 7 above*).

The Minister for Mental Health tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 5258).

Debate stands adjourned.

Point of Order

Hon Ljiljana Ravlich raised the following Point of Order —

Mr President, I wonder whether I could seek your indulgence and ask for a ruling in respect to Part 3 of the Bill whereby the instruments will be amended—that is, at clauses 6, 7 and 8, because this process would enable regulations to be amended. This is not the practice of this House. The Minister has claimed in her speech that Parliamentary Counsel has decided that this would be okay. My understanding is that this is not a matter for Parliamentary Counsel to decide but is a matter for the Parliament to decide. I will be corrected if I am wrong, but it seems to me that this introduces a practice that has not been the practice of this House before.

President's Ruling

The President ruled as follows —

Member, that was quite an involved point of order. I do not feel that I am in a position to respond to all those aspects immediately. I will take that on board and report back to the House at the first opportunity.

10. Order of Business

Ordered — That Orders of the Day Nos 1, *City of Bayswater Standing Orders Local Law 2012 – Disallowance*, 2, *City of Perth Standing Orders Amendment Local Law 2012 – Disallowance*, 3, *Shire of Broomehill-Tambellup Removal of Refuse, Rubbish and Disused Materials Local Law 2012 – Disallowance*, 4, *Submission No. 13/2012 – Amendment to Class A Reserve 8485 and Cancellation of Class A Reserve 28535 – Disallowance*, and 5, *City of Vincent Dogs Amendment Local Law No. 2 2012 – Disallowance*, be taken after Order of the Day No. 10, *Trans-Tasman Mutual Recognition (Western Australia) Amendment Bill 2012*. (Leader of the House).

11. Standing Committee on Public Administration – Special Report – Special Report Regarding Report No. 14 — Unassisted Failure

The Order of the Day having been read for the adjourned debate on the motion of Hon Max Trenorden as follows —

That the Report be adopted and agreed to.

Debate resumed.

On the motion of Minister for Finance the debate was adjourned to the next sitting.

12. National Health Funding Pool 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 Mental Health representing the Minister for Health, by leave, tabled a document containing the National Health Funding Bill 2012 proposed amendments. (Tabled Paper 5259).

Question — put and passed.

Bill read a second time.

The Deputy President left the Chair.

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In Committee

(Hon Alyssa Hayden in the Chair)

Clause 1 agreed to.

Clauses 2 to 9 agreed to.

Clause 10.

The Minister for Mental Health representing the Minister for Health moved —

Page 9, after line 21 — To insert —

- (5) When the Administrator is given a direction under subsection (3) —
 - (a) the Administrator must give a copy of the direction to the responsible Minister for the State; and
 - (b) the responsible Minister must, as soon as practicable after receiving the copy, cause it to be tabled in each House of Parliament.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 11 to 16 agreed to.

Clause 17.

Hon Adele Farina moved the following Committee Recommendation —

Page 15, after line 16 — To insert —

- (2) The Administrator must give a copy of any policies or procedures developed pursuant to section 17(1)(a) to the responsible Minister for the State.
- (3) The responsible Minister must, as soon as practicable after receiving the copy, cause it to be tabled in each House of Parliament.

Debate ensued.

Amendment — put and negatived.

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

Clause 18 agreed to.

Clause 19.

The Minister for Mental Health representing the Minister for Health moved —
Page 17, line 17 — To insert after “tabled in” —

each House of

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 20 to 23 agreed to.

Clause 24.

Hon Adele Farina moved the following Committee Recommendation —

Page 19, line 24 — To delete “in accordance with arrangements” and insert

if

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 25 agreed to.

Clause 26.

The Minister for Mental Health representing the Minister for Health moved —

Page 20, line 20 — To delete “the modifications” and insert —

any modifications necessary to give effect to subsection (1) that are

Debate ensued.

Amendment — put and passed.

The Minister for Mental Health representing the Minister for Health moved —

Page 20, after line 21 — To insert —

- (3) Until regulations referred to in subsection (2) are made, subsection (1) does not have effect and instead the legislation referred to in section 25 applies to or in respect of the Administrator and any function exercised or performed by the Administrator.

Amendment — put and passed.

Hon Adele Farina moved the following Committee Recommendation —

Page 20, after line 21 — To insert —

- (3) The regulations cannot be made in accordance with subsection (1) or (2) unless a draft of the regulations has first been approved by a resolution passed by both Houses of the Parliament of the State.

Amendment — put and negatived.

Clause, as amended, agreed to.

Clauses 27 to 37 agreed to.

Title agreed to.

The Deputy President resumed the Chair.

Bill reported with amendments.

The Minister for Mental Health representing the Minister for Health, by leave, moved that the report be adopted.

Question — put and passed.

Ordered — That the third reading of the Bill be made an Order of the Day for the next sitting of the House.

13. Integrity (Lobbyists) Bill 2011

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

Debate resumed.

Interruption pursuant to order.

14. Members' Statements

Statements were taken.

15. Building Amendment Bill 2012

The following Message from the Legislative Assembly was reported —

Mr President

Message No. 284

The Legislative Assembly acquaints the Legislative Council that it has agreed to the *Building Amendment Bill 2012* without amendment.

Mr I.M. Britza

Acting Speaker

Legislative Assembly Chamber

Perth, 24 October 2012

16. President's Ruling — Mental Health Amendment (Psychiatrists) Bill 2012

The President ruled as follows —

I take this opportunity to make a comment on a point of order raised earlier today. Hon Ljiljana Ravlich raised a point of order during the Minister's second reading speech on the *Mental Health Amendment (Psychiatrists) Bill 2012*.

The Member asked for a ruling in respect to Part 3 of the Bill whereby the instruments will be amended, that is, at clauses 6, 7 and 8, because this process would enable regulations to be amended. The Member stated this is not the practice of this House and that it seems this introduces a practice that has not been the practice of this House before.

Firstly, it is not the role of the President to provide legal advice. This Parliament has, on a number of occasions, passed similar legislation, such as the *Pay-roll Tax Assessment Amendment Act 2010* and the *Building and Construction Industry Training Fund and Levy Collection Amendment Act 2009*.

Regulations are made under any written law having legislative effect. As Members would be aware, the *Interpretation Act 1984* allows for regulations to be amended by a resolution of both Houses. As such, there is no prohibition on the House passing legislation to achieve the same effect. Just as a written law confers power to make subsidiary legislation, so too can an Act amend those regulations, as it would be within the limits of the legislative power of the State. I therefore rule the bill in order.

17. Adjournment

The Council adjourned at 10.16pm until Thursday, 25 October 2012 at 10.00am.

Members present during the day's proceedings

Attendance: Present all Members except Hon Sue Ellery, Hon Donna Faragher, Hon Jon Ford and Hon Colin Holt.

MALCOLM PEACOCK
Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council