

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 92

WEDNESDAY, 24 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. Petitions

Hon Stephen Dawson presented a petition from 51 petitioners requesting the Legislative Council to support improvement to housing conditions in the Warralong Community. (Tabled Paper 1996).

Hon Stephen Dawson presented a petition from 81 petitioners requesting the Legislative Council to disallow the privatisation of motor vehicle inspections and increases to motor vehicle examination fees. (Tabled Paper 1997).

3. Papers

The following Papers were laid on the Table by —

Leader of the House

Annual Reports —

Energy Disputes Arbitrator (2013–2014) (Date received 23/09/2014) 1950

Minister for Mental Health

Annual Reports —

Botanic Gardens and Parks Authority (2013–2014) (Date received 23/09/2014)..... 1951

Child Protection and Family Support, Department of (2013–2014)
(Date received 23/09/2014) 1952

Disability Services Commission (2013–2014) (Date received 23/09/2014) 1953

Drug and Alcohol Office (2013–2014) (Date received 23/09/2014) 1954

Economic Regulation Authority (2013–2014) (Date received 23/09/2014) 1955

Environmental Protection Authority (2013–2014) (Date received 23/09/2014) 1956

Environmental Regulation, Department of (2013–2014) (Date received 23/09/2014) 1957

Finance, Department of (2013–2014) (Date received 23/09/2014)..... 1958

Government Employees Superannuation Board (2013–2014) (Date received 23/09/2014) 1959

Heritage Council (2013–2014) (Date received 23/09/2014) 1960

Keep Australia Beautiful Council (2013–2014) (Date received 23/09/2014) 1961

Mental Health Commission (2013–2014) (Date received 23/09/2014) 1962

Parks and Wildlife, Department of (2013–2014) (Date received 23/09/2014) 1963

Swan River Trust (2013–2014) (Date received 23/09/2014) 1964

Treasury Corporation (2013–2014) (Date received 23/09/2014) 1965

Treasury, Department of (2013–2014) (Date received 23/09/2014)	1966
Zoological Parks Authority (2013–2014) (Date received 23/09/2014)	1967

Attorney General

Annual Reports —

Attorney General, Department of the (2013–2014) (Date received 23/09/2014)	1968
Commerce, Department of (2013–2014) (Date received 23/09/2014)	1969
Commission for Occupational Safety and Health (2013–2014) (Date received 23/09/2014)	1970
Commissioner for Children and Young People (2013–2014) (Date received 23/09/2014)	1971
Construction Industry Long Service Leave Scheme (2013–2014) (Date received 23/09/2014)	1972
Criminal Injuries Compensation, Office of (2013–2014) (Date received 23/09/2014)	1973
Equal Opportunity Commission (2013–2014) (Date received 23/09/2014)	1974
Fire and Emergency Services, Department of (2013–2014) (Date received 23/09/2014)	1975
Gender Reassignment Board (2013–2014) (Date received 23/09/2014)	1976
Industrial Relations Commission, Chief Commissioner of the (2013–2014) (Date received 23/09/2014)	1977
Industrial Relations Commission, Department of the Registrar (2013–2014) (Date received 23/09/2014)	1978
Legal Costs Committee (2013–2014) (Date received 23/09/2014)	1979
Public Advocate (2013–2014) (Date received 23/09/2014)	1980
Small Business Development Corporation (2013–2014) (Date received 23/09/2014)	1981
WorkCover W.A. (2013–2014) (Date received 23/09/2014)	1982

Minister for Agriculture and Food

Annual Reports —

Agricultural Produce Commission (2013–2014) (Date received 23/09/2014)	1983
Meat Industry Authority (2013–2014) (Date received 23/09/2014)	1984
Potato Marketing Corporation (2013–2014) (Date received 23/09/2014)	1985
Rural Business Development Corporation (2013–2014) (Date received 23/09/2014)	1986
Veterinary Surgeons Board (2013–2014) (Date received 23/09/2014)	1987

Parliamentary Secretary representing the Minister for Transport

Annual Reports —

Broome Port Authority (2013–2014) (Date received 23/09/2014)	1988
Dampier Port Authority (2013–2014) (Date received 23/09/2014)	1989
Geraldton Port Authority (2013–2014) (Date received 23/09/2014)	1990
Main Roads (2013–2014) (Date received 23/09/2014)	1991
Port Hedland Port Authority (2013–2014) (Date received 23/09/2014)	1992
Public Transport Authority (2013–2014) (Date received 23/09/2014)	1993
Rail Safety, Office of the (2013–2014) (Date received 23/09/2014)	1994
Transport, Department of (2013–2014) (Date received 23/09/2014)	1995

4. Local Government Amalgamations

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

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.

Motion — put and passed.

5. 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 Delegated Legislation — Report No. 75 — Identifying a Systemic Issue Arising out of Nine Court and Tribunal Instruments

Hon Ljiljanna Ravlich moved, That the Report be noted.

6. Questions Without Notice

Questions without notice were taken.

The Minister for Education tabled a document in relation to utility expenditure by government schools for 2012 and 2013, in response to question on notice No. 1468 asked by Hon Sue Ellery. (Tabled Paper 1998).

The Minister for Education tabled a document in relation to staff hours allocated to cleaning and gardening for government schools in 2011, 2012, 2013 and 2014, in response to question on notice No. 1471 asked by Hon Sue Ellery. (Tabled Paper 1999).

The Minister for Education tabled a document in relation to student attendance rates at government schools for 2011, 2012, 2013 and 2014 to date, in response to question on notice No. 1474 asked by Hon Sue Ellery. (Tabled Paper 2000).

The Minister for Education tabled a document in relation to maintenance data for the Department of Education for the period of 1 January 2014 to 21 August 2014, in response to question on notice No. 1491 asked by Hon Sue Ellery. (Tabled Paper 2001).

The Minister for Fisheries tabled documents in relation to the Community Engagement Strategy being prepared as part of the Shark Hazard Mitigation initiative titled *Promoting safe beach use — the Role of Channels and Community Perceptions Survey Report*, in response to question on notice No. 1501 asked by Hon Lynn MacLaren. (Tabled Paper 2002).

7. Consideration of Committee Reports

Pursuant to order for the consideration of Committee Reports (*see item 5 above*).

In Committee

(Hon Adele Farina in the Chair)

Joint Standing Committee on Delegated Legislation — Report No. 75 — Identifying a Systemic Issue Arising out of Nine Court and Tribunal Instruments

Hon Ljiljanna Ravlich continued her introductory remarks in moving, That the Report be noted.

Debate ensued.

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 Delegated Legislation — Report No. 75 — *Identifying a Systemic Issue Arising out of Nine Court and Tribunal Instruments* and had noted same.

Report adopted.

8. Order of Business

Ordered — That Bill for Introduction No. 1, *Sentencing Amendment Bill 2014*, be taken forthwith. (Leader of the House).

9. Sentencing Amendment Bill 2014

The Attorney General, pursuant to notice, moved —

That a Bill for “An Act to amend the *Sentencing Act 1995*.” be introduced and read a first time.

Question — put and passed.

Bill read a first time.

The Attorney General moved, That the Bill be read a second time.

The Attorney General tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 2003).

Debate stands adjourned.

10. Alcohol and Drug Authority Amendment Bill 2014

The Deputy President reported the receipt of Message No. 77 from the Legislative Assembly forwarding the Bill for concurrence.

The Parliamentary Secretary representing the Premier moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Parliamentary Secretary representing the Premier moved, That the Bill be read a second time.

The Parliamentary Secretary representing the Premier tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 2004).

Debate stands adjourned.

11. 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*, 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. 16, *Mines Safety and Inspection Amendment Bill 2014*. (Leader of the House).

12. 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 Liz Behjat in the Chair)

Mental Health Bill 2013

Clause 447.

Debate resumed on the amendment moved by the Minister for Mental Health as follows —

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

Amendment — put and passed.

The Minister for Mental Health moved —

Page 307, line 6 — To delete “another person” and insert —

a person listed in paragraph (aa)

Amendment — put and passed.

The Minister for Mental Health moved —

Page 307, line 9 — To delete “may” and insert —

must in the case of the party who is the person concerned in the proceeding, and may in the case of any other party,

Amendment — put and passed.

Hon Stephen Dawson moved —

Page 307, after line 12 — To insert

- (2A) The Tribunal may specify in an order made under subsection (2) that the party must be represented in the proceeding by a legal practitioner.

Debate ensued.

Amendment — put and negatived.

Clause, as amended, agreed to.

Postponed Clause 444.

The Minister for Mental Health, by leave, moved —

Page 303, line 28 — To delete “section 447(1)(a) or (b)” and insert —

section 447(1)(aa) or (b)

Page 304, line 5 — To delete “section 447(1)(a) or (b)” and insert —

section 447(1)(aa) or (b)

Amendments — put and passed.

Clause, as amended, agreed to.

Postponed Clause 445.

The Minister for Mental Health, by leave, moved —

Page 305, line 13 — To delete “section 447(1)(a) or (b)” and insert —

section 447(1)(aa) or (b)

Page 305, line 18 — To delete “section 447(1)(a) or (b)” and insert —

section 447(1)(aa) or (b)

Amendments — put and passed.

Clause, as amended, agreed to.

New Clause 447A.

Hon Stephen Dawson moved —

Page 307, after line 19 — To insert —

447A. Party is a child

- (1) In a proceeding, a party who is a child must be represented by a legal practitioner.
- (2) Even though a party who is a child is represented in the proceeding, the child is entitled to express in person his or her views about any matter arising in the course of the proceeding that may affect the child, whether or not the child has sufficient maturity and understanding to make reasonable decisions about matters relating to himself or herself.

Debate ensued.

New Clause — put and negatived.

Clause 448.

The Minister for Mental Health moved —

Page 307, lines 28 to 30 — To delete the lines and insert —

(iii) the child’s parent or guardian;

Amendment — put and passed.

The Minister for Mental Health moved —

Page 308, line 4 — To delete “another person” and insert —

a person listed in paragraph (b)

Amendment — put and passed.

The Minister for Mental Health moved —

Page 308, line 7 — To delete “may” and insert —

must in the case of the party who is the person concerned in the proceeding, and may in the case of any other party,

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 449.

The Minister for Mental Health moved —

Page 308, lines 25 to 27 — To delete the lines and insert —

(c) the child’s parent or guardian;

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 450.

The Minister for Mental Health moved —

Page 309, line 5 — To delete “at a hearing” and insert —

in a proceeding

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 451 agreed to.

New Clause 451A.

Hon Stephen Dawson moved —

Page 309, after line 13 — To insert —

451A. Access to the Tribunal’s records

For the purpose of conducting a proceeding, a party appearing in person or a party’s representative under section 447, 448 or 449 is entitled to inspect, and to take a copy of the whole or any part of, the Tribunal’s records relating to the proceedings —

- (a) at any time the office of the Tribunal is open for business; and
- (b) at any other time by arrangement with the registrar.

Debate ensued.

New Clause — put and negatived.

Clauses 452 and 453 agreed to.

Clause 454.

The Minister for Mental Health moved —

Page 311, after line 15 — To insert —

- (3A) The Tribunal must make arrangements for the person concerned in a proceeding to be represented at a hearing or a part of a hearing if —
- (a) the person concerned is excluded by an order made under subsection (2)(b) from the hearing or part of the hearing and is appearing in person in the proceeding; or
 - (b) the person concerned's representative in the proceeding is excluded by an order made under subsection (2)(b) from the hearing or part of the hearing.

Amendment — put and passed.

The Minister for Mental Health moved —

Page 311, line 16 — To delete the line.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 455 agreed to.

Clause 456.

The Minister for Mental Health moved —

Page 312, line 3 — To insert after “person” (2nd occurrence) —

chosen

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 457 to 469 agreed to.

New Clause 469A.

Hon Stephen Dawson moved —

Page 320, after line 28 — To insert —

469A. Publication of the Tribunal's decisions

- (1) The Tribunal may publish all or any of its decisions in any form (including electronic form) that the Tribunal considers appropriate.
- (2) A decision may be published under subsection (1) with or without the reasons for it.
- (3) All personal information must be removed from a decision before it is published under subsection (1).

Debate ensued.

New Clause — put and negatived.

Clause 470 agreed to.

Clause 471 agreed to.

Clause 472 agreed to.

Clauses 473 to 478 agreed to.

Clauses 479 and 480 agreed to.

Clause 481 agreed to.

Clauses 482 and 483 agreed to.

Clause 484 agreed to.

Clauses 485 to 490 agreed to.

Clause 491 agreed to.

Clauses 492 to 512 agreed to.

Clause 513.

Debate ensued.

Clause agreed to.

Clauses 514 to 517.

Clause 518.

The Minister for Mental Health moved —

Page 346, after line 20 — To insert —

- (4A) The Chief Psychiatrist cannot give the psychiatrist a direction under subsection (4)(b) to provide the patient with specified treatment unless the Chief Psychiatrist gives the psychiatrist a reasonable opportunity to withdraw from being the patient's psychiatrist.

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 519 to 534 agreed to.

Clause 535.

Hon Stephen Dawson moved —

Page 355, lines 16 to 18 — To delete the lines and insert —

- (1) The Chief Psychiatrist may delegate to a named psychiatrist referred to in subsection (1A) any power or duty of the Chief Psychiatrist under this Act other than this provision and section 544(2) or under another written law.
- (1A) For subsection (1), the named psychiatrist —
- (a) must be a psychiatrist under paragraph (a) of the definition of *psychiatrist* in section 4; and
 - (b) cannot be a staff member of, or be involved in, the management of a mental health service.

Debate ensued.

Amendment — put and negatived.

Hon Stephen Dawson moved —

Page 355, line 20 — To delete "Psychiatrist." and insert —

Psychiatrist and must be published in the *Gazette*.

Debate ensued.

Amendment — put and negatived.

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

Clauses 536 to 544 agreed to.

Clause 545 agreed to.

Clauses 546 to 574 agreed to.

Clause 575.

The Minister for Mental Health moved —

Page 381, line 26 — To delete “332(7),” and insert —

332(7) and (8),

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 576 to 580 agreed to.

New Clause 580A.

Hon Stephen Dawson moved —

Page 386, after line 15 — To insert —

580A. Compensation for unlawful detention

- (1) This section applies if a person is detained contrary to this Act.
- (2) The minimum amount of damages that the person is entitled to be awarded for the unlawful detention referred to in subsection (1) is \$1 000 for each day or part of a day that the person is unlawfully detained.
- (3) A court cannot award the person damages contrary to subsection (2).

Debate ensued.

New Clause — put and negatived.

Clause 581 agreed to.

Clause 582.

The Minister for Mental Health moved —

Page 387, line 12 — To insert after “charge” —

in good faith

Amendment — put and passed.

The Minister for Mental Health moved —

Page 387, line 22 — To delete “section 227(2) and (3),” and insert —

section 227(2) to (6),

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 583 to 585 agreed to.

Schedule 1 agreed to.

Schedule 2.

The Minister for Mental Health moved —

Page 393, in the Table, after row 10 — To insert —

s. 129(5)	The making of a transport order under s. 129(2)	The practitioner who makes the order
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Amendment — put and passed.

Schedule, as amended, agreed to.

Title agreed to.

Mental Health Legislation Amendment Bill 2013

Clause 1 agreed to.

Clauses 2 to 90 agreed to.

Title agreed to.

The President resumed the Chair.

The *Mental Health Bill 2013* was reported with amendments.

The *Mental Health Legislation Amendment Bill 2013* was reported without amendment.

Ordered — That consideration of the Committee's Reports be made an Order of the Day for the next sitting.

13. Statutes (Repeals) Bill 2013

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

Debate resumed.

Hon Sue Ellery sought leave to continue her remarks at a later stage of this day's sitting.

Leave granted.

On the motion of Leader of the House the debate was adjourned to a later stage of this day's sitting.

14. Order of Business

Ordered — That Order of the Day No. 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*, be taken forthwith. (Leader of the House).

15. 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

The Order of the Day having been read for the motion moved *pro forma* by Hon Kate Doust, as follows —

That 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 published in the Gazette on 21 March 2014 and tabled in the Legislative Council on 1 April 2014 under the Retirement Villages Act 1992, be and is hereby disallowed.

Debate ensued.

Question — put.

The Council divided.

Ayes (9)

Hon Alanna Clohesy
Hon Kate Doust
Hon Sue Ellery
Hon Adele Farina
Hon Lynn MacLaren

Hon Ljiljanna Ravlich
Hon Sally Talbot
Hon Ken Travers
Hon Amber-Jade Sanderson (*Teller*)

Noes (17)

Hon Ken Baston
Hon Jacqui Boyde
Hon Paul Brown
Hon Jim Chown
Hon Peter Collier
Hon Donna Faragher
Hon Nick Goiran
Hon Dave Grills
Hon Nigel Hallett

Hon Alyssa Hayden
Hon Col Holt
Hon Peter Katsambanis
Hon Mark Lewis
Hon Michael Mischin
Hon Helen Morton
Hon Simon O'Brien
Hon Brian Ellis (*Teller*)

Question thus negatived.

16. Members' Statements

Statements were taken.

17. Adjournment

The Council adjourned at 9.59pm until Thursday, 25 September 2014 at 10.00am.

Members present during the day's proceedings

Attendance: Present all Members except Hon Robin Chapple and Hon Robyn McSweeney.

NIGEL PRATT

Clerk of the Legislative Council

HON BARRY HOUSE

President of the Legislative Council