

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 252

FRIDAY, 30 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 — Directors' Liability Reform

The Attorney General made a Ministerial Statement with respect to the Government's intention to reform legislation dealing with directors' liability.

3. Paper

The following Paper was laid on the Table by —

Minister for Finance

Annual Report —

Architects Board of Western Australia (2011–2012) (Date received 29/11/2012)..... 5439

4. Standing Committee on Environment and Public Affairs — Report No. 31 — Petition No. 136 — Kwinana Air Buffer Zone Extension: Mandogalup

Hon Brian Ellis presented Report No. 31 of the Standing Committee on Environment and Public Affairs in relation to *Petition No. 136 — Kwinana Air Buffer Zone Extension: Mandogalup*. (Tabled Paper 5440).

5. Standing Committee on Estimates and Financial Operations — Report No. 40 — Inquiry into Peel Health Campus Payments

Hon Giz Watson presented Report No. 40 of the Standing Committee on Estimates and Financial Operations in relation to the *Inquiry into the Peel Health Campus Payments*. (Tabled Paper 5441).

6. 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. 13, *Browse (Land) Agreement Bill 2012*. (Leader of the House).

7. Browse (Land) Agreement Bill 2012

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

Debate resumed.

Hon Robin Chapple, by leave, tabled documents in relation to the Walmadany Goolarabooloo, Jabirr Jabirr Country. (Tabled Paper 5442).

Debate resumed.

Question — put and passed.

Bill read a second time.

The Deputy President left the Chair.

In Committee

(Hon Brian Ellis in the Chair)

Clause 1.

Debate ensued.

Clause agreed to.

Clauses 2 to 6 agreed to.

Schedule 1 agreed to.

Title agreed to.

The President resumed the Chair.

Bill reported without amendment.

Report adopted.

The Parliamentary Secretary representing the Minister for Lands 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.

8. Standing Committee on Estimates and Financial Operations — Report No. 41 — Inquiry into Western Power's Evidence: An Informed Debate?

Hon Giz Watson presented Report No. 41 of the Standing Committee on Estimates and Financial Operations in relation to the *Inquiry into Western Power's Evidence: An Informed Debate?* (Tabled Paper 5443).

9. Submission No. 13/2012 — Amendment to Class A Reserve 8485 and Cancellation of Class A Reserve 28535 — Disallowance

Pursuant to SO 66(3) the following motion was moved *pro forma* by Hon Giz Watson —

That the *Submission No. 13/2012 — Amendment to Class A Reserve 8485 and Cancellation of Class A Reserve 28535* made under section 42(4)(c) of the *Land Administration Act 1997* and tabled in the Legislative Council on 11 September 2012, be and is hereby disallowed.

Debate ensued.

Question — put.

The Council divided.

Ayes (4)

Hon Robin Chapple
Hon Lynn MacLaren

Hon Giz Watson
Hon Alison Xamon (*Teller*)

Noes (27)

Hon Liz Behjat
 Hon Matt Benson-Lidholm
 Hon Helen Bullock
 Hon Jim Chown
 Hon Peter Collier
 Hon Mia Davies
 Hon Ed Dermer
 Hon Wendy Duncan
 Hon Phil Edman
 Hon Sue Ellery
 Hon Brian Ellis
 Hon Adele Farina
 Hon Jon Ford
 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 Sally Talbot
 Hon Ken Travers
 Hon Max Trenorden
 Hon Ken Baston (*Teller*)

Question thus negatived.

10. City of Vincent Dogs Amendment Local Law No. 2, 2012 — Disallowance

Pursuant to SO 66(3) the following motion was moved *pro forma* by Hon Sally Talbot —

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the *City of Vincent Dogs Amendment Local Law No. 2, 2012* published in the *Gazette* on 14 September 2012 and tabled in the Legislative Council on 18 September 2012 under the *Dog Act 1976*, be and is hereby disallowed.

Question — put and passed.

11. Metropolitan Region Scheme Amendment No. 1218/41 — Keralup Stage 1 — Disallowance

Pursuant to SO 66(3) the following motion was moved *pro forma* by Hon Lynn MacLaren —

That the *Metropolitan Region Scheme Amendment No. 1218/41 – Keralup Stage 1* published in the *Gazette* on 7 September 2012 and tabled in the Legislative Council on 11 September 2012 under the *Planning and Development Act 2005*, be and is hereby disallowed.

Debate ensued.

Question — put.

The Council divided.

Ayes (4)

Hon Robin Chapple
 Hon Lynn MacLaren

Hon Giz Watson
 Hon Alison Xamon (*Teller*)

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Noes (26)

Hon Liz Behjat
Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Ed Dermer
Hon Wendy Duncan
Hon Phil Edman
Hon Sue Ellery
Hon Brian Ellis
Hon Adele Farina
Hon Jon Ford

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 Sally Talbot
Hon Ken Travers
Hon Ken Baston (*Teller*)

Question thus negatived.

12. Questions Without Notice

Questions without notice were taken.

The Minister for Education tabled, and by leave incorporated into Hansard, documents in relation to markers for the english and/or literature Western Australian Certificate of Education examination, in response to a question without notice asked by Hon Matt Benson-Lidholm. (Tabled Paper 5444).

The Minister for Education, by leave incorporated into Hansard, a document from the Esperance Primary School addressed to Parent and Carers in relation to the Esperance Clean-up and Recovery Project, in response to a question without notice asked by Hon Ken Travers.

The Minister for Education tabled documents in relation to Esperance Clean-up and Recovery Project, in response to a question without notice asked by Hon Ken Travers. (Tabled Paper 5445).

13. City of Subiaco Meeting Procedures Local Law 2012 — Disallowance

Pursuant to SO 66(3) the following motion was moved *pro forma* by Hon Sally Talbot —

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the *City of Subiaco Meeting Procedures Local Law 2012* published in the *Gazette* on 6 September 2012 and tabled in the Legislative Council on 11 September 2012 under the *Local Government Act 1995*, be and is hereby disallowed.

Question — put and passed.

14. Metropolitan Region Scheme Amendment No. 1221/41 – Banjup Urban Precinct — Disallowance

Pursuant to SO 66(3) the following motion was moved *pro forma* by Hon Lynn MacLaren —

That the *Metropolitan Region Scheme Amendment No. 1221/41 – Banjup Urban Precinct* published in the *Gazette* on 14 September 2012 and tabled in the Legislative Council on 19 September 2012 under the *Planning and Development Act 2005*, be and is hereby disallowed.

Question — put and negatived.

15. City of Nedlands Parking and Parking Facilities Local Law 2012 — Disallowance

Pursuant to SO 66(3) the following motion was moved *pro forma* by Hon Sally Talbot —

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the *City of Nedlands Parking and Parking Facilities Local Law 2012* published in the *Gazette* on 11 October 2012 and tabled in the Legislative Council on 17 October 2012 under the *Local Government Act 1995*, be and is hereby disallowed.

Question — put and passed.

16. President's Ruling — Marriage Equality Bill 2012

The President ruled as follows —

Members, yesterday during Non-Government Members' Business Hon Lynn MacLaren introduced the Marriage Equality Bill 2012. The Bill was read a first time and Hon Lynn MacLaren has moved that the Bill be read a second time.

Hon Nick Goiran has raised a point of order requesting that I rule that the Bill is invalid on the grounds of inconsistency with Commonwealth legislation pursuant to section 109 of the Commonwealth Constitution. I have also received from Hon Nick Goiran a written submission in support of his point of order.

I note that there has been a division of opinion amongst prominent legal academics throughout Australia as to the constitutional validity of legislation introduced in State Parliaments dealing with the issue of same-sex marriages. This division of opinion was highlighted in the national media only a few months ago when a bill in similar terms to the Marriage Equality Bill 2012 was introduced and dealt with by the Tasmanian Parliament. The key issue appears to be not whether a State Parliament has the legislative jurisdiction to enact such a law, but whether such a law could be effectively administered due to inconsistency with Commonwealth legislation.

The expression of a legal opinion as to the possible ultimate legal validity of a Bill once enacted has always been an acceptable matter for debate during the second and third reading debates on a bill, and may form the basis of a Member's vote at each of those stages. It is not, however, appropriate for me to make a ruling on such a matter of law.

It has been the traditional approach of Presidents of this House that such general matters of law are to be left to the courts to adjudge, and that the President should only make rulings on a matter of law that is directly related to the jurisdiction or procedures of the House; a common example being the applicability of section 46 of the *Constitution Acts Amendment Act 1899* to a Bill then under consideration by the House. The most recent rulings where such an approach has been taken were in relation to the various electoral reform bills of 2001, which were ultimately the subject of a series of court decisions once enacted.

I am therefore not prepared to rule the Bill out of order

The President tabled the submission on the point of order in relation to the *Marriage Equality Bill 2012*, from Hon Nick Goiran. (Tabled Paper 5446).

17. Statement by President — Standing Committee on Estimates and Financial Operations — Report No. 37 — Report in relation to a possible contempt regarding summonses to produce documents issued pursuant to Section 5 of the Parliamentary Privileges Act 1891

The President made the following Statement —

Members, you will be aware that the Standing Committee on Estimates and Financial Operations' thirty-seventh report was referred to the Standing Committee on Procedure and Privileges on Wednesday. I inform Members that the Procedure and Privileges Committee met three times yesterday and today in an attempt to resolve this matter before the Legislative Council rises tonight for the last time this year. Regrettably, we have not been able to conclude our inquiry and report in the very restricted time frame.

As an accusation of contempt of Parliament is a very serious matter, we tried to conclude our report to table it tonight, because I consider it unfair to have an accusation of contempt against any party unresolved for any extended period. Although the Procedure and Privileges Committee will continue its endeavours to complete the inquiry and report as soon as possible, we all know that the certainty of prorogation at some stage soon will prevent the Committee completing its work if we have not been able to report by then. Accordingly, at this last opportunity to make some information public through the Parliament while it is in session, I table a letter and attachments received this morning from Clayton Utz lawyers, which represent Health Solutions (WA), and inform members that I have referred this to the Procedure and Privileges Committee for its consideration in the inquiry.

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The President tabled correspondence between the President, the Clerk of the Legislative Council and Clayton Utz in relation to a possible contempt regarding summonses to produce documents issued pursuant to section 5 of the *Parliamentary Privileges Act 1891*. (Tabled Paper 5447).

18. Special Adjournment

The Leader of the House moved, without notice —

That the Council at its rising adjourn until a date and time to be fixed by the President.

Debate ensued.

Question — put and passed.

19. Adjournment

The Council adjourned at 6.04pm until a date and time to be fixed by the President.

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