

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 27

WEDNESDAY, 18 SEPTEMBER 2013

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. Ministerial Statement — Visit to Murchison and East Kimberley

The Minister for Child Protection made a Ministerial Statement with respect to a recent visit she made to Geraldton and Meekatharra in the Murchison, and Kununurra and Kalumburu in the East Kimberley.

3. Papers

The following Papers were laid on the Table by —

President

Auditor General's Papers —

Public Trustee: Administration of the Financial Affairs of Vulnerable People
(Report No. 14) (September 2013)..... 632

Sustainable Funding and Contracting with the Not-For-Profit Sector (Report No. 13)
(September 2013)..... 633

Minister for Mental Health

Annual Reports —

Metropolitan Cemeteries Board (2012–2013) (Date received 17/09/2013)..... 634

Metropolitan Redevelopment Authority (2012–2013) (Date received 17/09/2013)..... 635

Museum, Western Australia (2012–2013) (Date received 17/09/2013)..... 636

Perry Lakes Redevelopment Project (2012–2013) (Date received 17/09/2013)..... 637

Perth Theatre Trust (2012–2013) (Date received 17/09/2013)..... 638

ScreenWest (2012–2013) (Date received 17/09/2013)..... 639

State Library of Western Australia (2012–2013) (Date received 17/09/2013)..... 640

Swan Bells Foundation Inc (2012–2013) (Date received 17/09/2013)..... 641

Notices —

Financial Management Act 2006 — Section 82 — Question on Notice No. 938..... 642

Parliamentary Secretary representing the Minister for Training and Workforce Development

Annual Reports —

Busselton Water (2012–2013) (Date received 17/09/2013)..... 643

4. Leave of Absence — Hon Robyn McSweeney

The Leader of the House moved, without notice —

That leave be granted to Hon Robyn McSweeney for three sitting days due to urgent personal business.

Question — put and passed.

5. Carbon Tax

Motion No. 1 having been called, debate resumed on the amendment of Hon Liz Behjat as follows —

To delete “calls on the Gillard Government to scrap this job-destroying carbon tax immediately.” and insert —

calls on all elected Members of the Federal Parliament to recognise the mandate given to the Abbott Government by the people of Australia by supporting the legislation to scrap this tax as one of its first legislative measures.

to the motion of Hon Liz Behjat as follows —

That the Council —

- (a) notes that the carbon tax imposed by the Gillard Labor Government has significant adverse implications for Western Australia because as the single biggest cause of electricity price increases it is, and will continue, to —
 - (i) push up the cost of living and the cost of doing business in Western Australia; and
 - (ii) reduce our international competitiveness and cost jobs; and
- (b) calls on the Gillard Government to scrap this job-destroying carbon tax immediately.

Amendment — put.

The Council divided.

Ayes (20)

Hon Martin Aldridge
 Hon Ken Baston
 Hon Liz Behjat
 Hon Jacqui Boydell
 Hon Paul Brown
 Hon Peter Collier
 Hon Brian Ellis
 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 Rick Mazza
 Hon Michael Mischin
 Hon Helen Morton
 Hon Simon O’Brien
 Hon Phil Edman (*Teller*)

Noes (11)

Hon Robin Chapple
 Hon Alanna Clohesy
 Hon Stephen Dawson
 Hon Kate Doust
 Hon Adele Farina
 Hon Lynn MacLaren

Hon Ljiljana Ravlich
 Hon Amber-Jade Sanderson
 Hon Sally Talbot
 Hon Ken Travers
 Hon Samantha Rowe (*Teller*)

Amendment thus passed.

Debate resumed.

Question — put and passed.

6. Legislative Council Prayer

Motion No. 2 having been called, Hon Sally Talbot, pursuant to notice, moved —

That a revised form of Prayer, as contained in the Schedule to this motion, be adopted by the Council.

Schedule

Almighty God, we ask for your blessing upon this Parliament. Direct and prosper our deliberations to the true welfare of Western Australia and its people. *Amen.*

Interruption pursuant to order.

7. Questions Without Notice

Questions without notice were taken.

The Minister for Mental Health representing the Minister for Environment tabled the *Forest Management Plan 2012–2023 — Review and Update, and Indigenous Consultation*, in response to a question without notice asked by Hon Sally Talbot. (Tabled Paper 644).

The Minister for Child Protection, in accordance with Standing Order No. 107(2), advised that an answer to question on notice No. 190 asked by Hon Sally Talbot will be provided on 15 October 2013.

The Minister for Child Protection tabled documents in relation to applicants to the Hardship Utility Grant Scheme in April, June and July 2013, in response to question on notice No. 197 asked by Hon Sally Talbot. (Tabled Paper 645).

8. President's Ruling — Revenue Laws Amendment Bill 2013

The President ruled as follows —

The *Revenue Laws Amendment Bill 2013* was passed by the Legislative Assembly and introduced into this House on 11 September 2013.

I have taken the opportunity to review the Bill and have formed the view there are matters contained in the Bill that have no proper relation to each other. The rule, previously Standing Order 222, in this House is that such matters that have no proper relation to each other should not be included in one and the same Bill. This House has always upheld its privileges in this regard, with the Presiding Officers ruling the Bills out of order.

The old Standing Order 222 provided —

Such matters as have no proper relation to each other shall not be included in one and the same Bill.

The Standing Order was unfortunately not incorporated into the new Standing Orders. However, the comparative table for the new Standing Orders includes a note to indicate there is no substantial change to the current Standing Orders and practice.

The rule is designed to ensure that the House is not put in a position of having to accept a provision unrelated to other provisions of the Bill on the basis that the Bill stands or falls with that provision in it. It is a prohibition against non-financial tacking.

The *Revenue Laws Amendment Bill 2013* contains four parts. The first three parts deal with assessment and collection of duties and payroll tax.

Part four deals with proposed changes to the First Home Grant schedule for a grant of moneys the amount to be based on whether to purchase or build a home. Part four appears to be an orphan. There is no readily apparent link between its provisions and those of the remainder of the Bill. I note in previous Revenue Law Bills there have been matters dealing with the First Home Owners Grant. However, in those cases there were provisions that were mutually relevant or at least not internally inconsistent with each other.

I therefore rule, that it would be unsafe to allow part four to remain in the present Bill without securing the agreement of the House in the form of an instruction.

9. Consideration of Committee Reports

Pursuant to order for the consideration of Committee Reports.

In Committee

(Hon Adele Farina in the Chair)

Standing Committee on Estimates and Financial Operations — Report No. 43 — 2013–2014 Estimates Hearings — Sitting Schedule Amended

Hon Kate Doust moved, That the Report be noted.

Question — put and passed.

The President resumed the Chair.

The Chair of Committees reported that the Committee of the Whole House had considered the —
Standing Committee on Estimates and Financial Operations — Report No. 43 — 2013–2014
Estimates Hearings — Sitting Schedule Amended and had noted same.

Report adopted.

10. Order of Business

Ordered — That Orders of the Day Nos 1, *Proposal No. 1/2013, Excision of land from Class A Reserve 33581 for the upgrade of Gilmore Avenue, Leda to a dual carriageway in the City of Kwinana — Disallowance*, 2, *Children's Court (Fees) Amendment Regulations (No. 2) 2012 — Disallowance*, 3, *Civil Judgments Enforcement Amendment Regulations 2012 — Disallowance*, 4, *Coroners Amendment Regulations 2012 — Disallowance*, 5, *District Court (Fees) Amendment Regulations (No. 3) 2012 — Disallowance*, 6, *Evidence (Video and Audio Links Fees and Expenses) Amendment Regulations (No. 2) 2012 — Disallowance*, 7, *Magistrates Court (Fees) Amendment Regulations (No. 3) 2012 — Disallowance*, 8, *State Administrative Tribunal Amendment Regulations (No. 3) 2012 — Disallowance*, 9, *Supreme Court (Fees) Amendment Regulations (No. 3) 2012 — Disallowance*, 10, *City of Fremantle Plastic Bag Reduction Local Law 2012 — Disallowance*, 11, *Mindarie Regional Council Waste Facility Site Amendment Local Law 2013 — Disallowance*, 12, *Legal Profession Conduct Amendment Rules 2013 — Disallowance*, 13, *Town of Victoria Park Parking and Parking Facilities Amendment Local Law 2013 — Disallowance*, 14, *Supreme Court Amendment Rules 2013 — Disallowance*, 15, *Firearms Amendment Regulations 2013 — Disallowance*, 16, *Town of Claremont Parking Local Law 2013 — Disallowance*, and 17, *Fire Brigades Amendment Regulations 2013 — Disallowance*, be taken after Order of the Day No. 25, *Climate Change Readiness (Coastal Planning and Protection) Bill 2013*. (Leader of the House).

11. Estimates of Revenue and Expenditure — Consolidated Fund Estimates 2013–2014

The Order of the Day having been read for the adjourned debate on the motion of the Minister for Mental Health representing the Treasurer as follows —

That pursuant to Standing Order 68(1), the Legislative Council take note of Tabled Paper 506A-E (2013–2014 Budget Statements), laid upon the Table of the House on Thursday, 8 August 2013.

Debate resumed.

Hon Brian Ellis sought leave of the House to extend his speaking time.

Leave granted.

Debate resumed.

On the motion of the Leader of the House the debate was adjourned to the next sitting.

12. Protection of the Identity of Journalists' Informants

The Order of the Day having been read for the adjourned debate on the motion of Leader of the House, as follows —

That new Standing Order 201, as outlined in the Schedule to this motion, be adopted by the Council and that the Standing Orders be renumbered accordingly.

Schedule

201. Protection of the Identity of Journalists' Informants

- (1) Where a journalist is examined before a Committee or the Council and, in the course of such examination, is asked to disclose the identity of the journalist's informant and refuses, the Council shall consider whether to excuse the answering of the question pursuant to section 7 of the *Parliamentary Privileges Act 1891*.
- (2) In considering a matter under (1), the Council shall only order the disclosure of the identity of a journalist's informant if the Council is satisfied that, having regard to the issues to be determined in the proceeding, the public interest in the disclosure of the identity of the informant outweighs —
 - (a) any likely adverse effect of the disclosure of the identity on the informant or any other person; and
 - (b) the public interest in the communication of facts and opinions to the public by the news media and, accordingly also, in the ability of the news media to access sources of facts.
- (3) Without limiting the matters that the Council may have regard to for the purposes of this Standing Order, the Council must have regard to the following matters —
 - (a) the probative value of the identifying evidence in the proceeding;
 - (b) the importance of the identifying evidence in the proceeding;
 - (c) the nature and gravity of the subject matter of the proceeding;
 - (d) the availability of any other evidence concerning the matters to which the identifying evidence relates;
 - (e) the likely effect of the identifying evidence, including the likelihood of harm, and the nature and extent of harm that would be caused to the informant or any other person;
 - (f) the means available to the Council to limit the harm or extent of the harm that is likely to be caused if the identifying evidence is given;
 - (g) the likely effect of the identifying evidence in relation to —
 - (i) a prosecution that has commenced but has not been finalised; or
 - (ii) an investigation, of which the Council is aware, into whether or not an offence has been committed;
 - (h) whether the substance of the identifying evidence has already been disclosed by the informant or any other person;
 - (i) the risk to national security or to the security of the State;
 - (j) whether or not there was misconduct on the part of the informant or the journalist in relation to obtaining, using, giving or receiving information.

Debate resumed.

Question — put and passed.

13. Revenue Laws Amendment Bill 2013

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

The Leader of the House moved, without notice —

That it be an instruction to the Committee of the Whole House on the *Revenue Laws Amendment Bill 2013* that it have power to retain part four of the Bill, as committed, in the Bill and reported to the House.

Debate ensued.

Point of Order

Hon Ken Travers raised the following Point of Order —

I am having some difficulty and I will explain it to the Leader of the House. One of the questions I had in my mind was whether passage of the motion before us requires an absolute majority or a simple majority. Another difficulty is that I am trying to find the power in Standing Orders to move a motion without notice, as the Leader of the House has moved tonight. As Mr Deputy President would be aware, Standing Order 64 states that no Member can move a motion without previous notice unless it is specified in Standing Order 64(2). I cannot see any Standing Order in that list that would allow the Leader of the House to move the instruction that he is seeking to move without having given notice to the House, or without seeking to suspend Standing Orders to allow him to move it. I cannot see any Standing Order mentioned in Standing Order 64(2) that would allow that sort of motion to be moved.

The Deputy President left the Chair at 9.07pm

The President resumed the Chair at 9.40pm

President's Ruling

The President ruled as follows —

Members, the Deputy President has referred the point of order to me and we have had discussions with the Acting Clerk behind the Chair. On the point of order raised by Hon Ken Travers, I have been asked to provide a ruling in relation to the motion moved by the Leader of the House, which seeks to provide an instruction to the Committee of the Whole House in relation to the *Revenue Laws Amendment Bill 2013*, and specifically whether that motion required notice pursuant to Standing Order 64.

In the first instance, I would observe that Standing Order 64 provides that any motion can be moved without notice if leave of the House is granted. If leave had been sought and granted in relation to this motion, the matter would be beyond doubt. I also note that Standing Order 64(2) specifies a series of motions that may be moved without notice. Amongst these Standing Orders is Standing Order 129(c). Standing Order 129(c) deals with instructions to the Committee of the Whole House regarding Bills and specifically details the division of a Bill into two or more Bills or the consolidation of several Bills into one Bill. The motion moved by the Leader of the House does not strictly fall within these categories. I do note, however, that the motion does effectively authorise the Committee of the Whole House to retain part four of the Bill and, in effect, retain the Bill as a consolidated Bill.

I consider that it would be nonsensical for the House to provide no requirement for notice of a motion to consolidate several Bills into one Bill, whilst requiring notice of a motion to retain one Bill in a consolidated form. I further note that the previous practice of the House has allowed such motions to be moved without notice. Accordingly, I rule that there is no point of order and the motion moved by the Leader of the House may proceed.

Debate resumed.

Question — put.

The Council divided.

Ayes (20)

Hon Martin Aldridge
 Hon Ken Baston
 Hon Jacqui Boydell
 Hon Paul Brown
 Hon Robin Chapple
 Hon Peter Collier
 Hon Brian Ellis
 Hon Donna Faragher
 Hon Nick Goiran
 Hon Dave Grills

Hon Alyssa Hayden
 Hon Col Holt
 Hon Peter Katsambanis
 Hon Mark Lewis
 Hon Lynn MacLaren
 Hon Rick Mazza
 Hon Michael Mischin
 Hon Helen Morton
 Hon Simon O'Brien
 Hon Phil Edman (*Teller*)

Noes (7)

Hon Stephen Dawson
 Hon Kate Doust
 Hon Adele Farina
 Hon Ljiljana Ravlich

Hon Ken Travers
 Hon Darren West
 Hon Samantha Rowe (*Teller*)

Question thus passed.

Interruption pursuant to order.

14. Members' Statements

Statements were taken.

15. Appropriation (Consolidated Account) Capital 2013–14 Bill 2013

The President reported the receipt of Message No. 23 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Mental Health representing the Treasurer moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Minister for Mental Health representing the Treasurer moved, That the Bill be read a second time.

The Minister for Mental Health representing the Treasurer tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 646).

Debate stands adjourned.

16. Adjournment

The Council adjourned at 10.33pm until Thursday, 19 September 2013 at 10.00am.

Members present during the day's proceedings

Attendance: Present all Members except Hon Sue Ellery and Hon Robyn McSweeney (leave of absence).

MALCOLM PEACOCK
 Clerk of the Legislative Council

HON BARRY HOUSE
 President of the Legislative Council