

WESTERN AUSTRALIA

# LEGISLATIVE COUNCIL

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## MINUTES OF PROCEEDINGS

No. 141

TUESDAY, 22 MARCH 2011

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### 1. Meeting of Council

The Council assembled at 3.00pm pursuant to Temporary Orders.

The President, Hon Barry House, took the Chair and read prayers.

### 2. President's Ruling - Temporary and Standing Orders - Special Adjournment

The President ruled as follows -

Further to my off-the-cuff ruling last Thursday on Temporary Order 3(5)(b) and subsequent point of order, which, in hindsight, may not have been completely clear, I now take the opportunity to state that the convention is that only a Minister can move a special adjournment or the adjournment. The Standing Orders reflect that convention in Standing Order 71. As Temporary Order 2(1) provides, "These Temporary Orders are to be read and applied so as to give effect, to the fullest extent, to the purpose for which they are made without regard to technicalities or matters solely of form." This must include taking into account conventions that form parliamentary law and practice.

I hope I have clarified that issue for the House.

### 3. Papers

The following Papers were laid on the Table by -

#### President

*Joint Standing Committee on Treaties (Commonwealth of Australia) -*

Treaties tabled on 1 March 2011 - Accession by Australia to the Convention on  
Cybercrime (Budapest, 23 November 2001) and Amendments to Singapore -  
Australia Free Trade Agreement, done at Singapore on 27 July 2009..... 3125

#### Leader of the House

*Regulations -*

Lotteries Commission Act 1990 (Lotteries Commission (Policy Instruments) Regulations 2010  
G.G. 15/03/2011)..... 3126  
Mining Act 1978 (Mining Amendment Regulations (No. 3) 2011 G.G. 18/03/2011)..... 3127

**Minister for Finance***Regulations -*

Road Traffic Act 1974 (Road Traffic Code Amendment Regulations 2011 G.G. 18/03/2011 and  
Road Traffic (Miscellaneous) Amendment Regulations 2011 G.G. 18/03/2011)..... 3128

**Minister for Child Protection***Local Laws -*

Local Government Act 1995 (Shire of Busselton Use of a Public Jetty Amendment Local Law  
2011 G.G. 18/03/2011 and Shire of Ravensthorpe Local Government Property Amendment  
Local Law 2010 G.G. 15/03/2011) ..... 3129

**Minister for Mental Health***By-laws -*

Metropolitan Water Supply, Sewerage, and Drainage Act 1909 (Metropolitan Water  
Supply, Sewerage and Drainage Amendment By-laws 2011 G.G. 18/03/2011) ..... 3130

*Leases -*

CALM Lease No. 2244/100 - Between CALM and the Fire and Emergency Services  
Authority of Western Australia for a Telecommunications Facility on  
Karlgarin Nature Reserve No. 10716 ..... 3131

**4. Standing Committee on Uniform Legislation and Statutes Review - Fifty-Ninth Report -  
Personal Property Securities (Commonwealth Laws) Bill 2011 and Personal Property  
Securities (Consequential Repeals and Amendments) Bill 2011**

Hon Adele Farina presented the Fifty-Ninth Report of the Standing Committee on Uniform  
Legislation and Statutes Review in relation to the *Personal Property Securities (Commonwealth Laws)  
Bill 2011* and the *Personal Property Securities (Consequential Repeals and Amendments) Bill 2011*.  
(Tabled paper 3132).

Hon Adele Farina moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

**5. Standing Committee on Uniform Legislation and Statutes Review - Sixtieth Report -  
Electronic Transactions Bill 2011**

Hon Adele Farina presented the Sixtieth Report of the Standing Committee on Uniform Legislation  
and Statutes Review in relation to the *Electronic Transactions Bill 2011*. (Tabled paper 3133).

Hon Adele Farina moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

**6. Temporary Orders - Extension**

The Leader of the House moved, without notice -

- (1) That the duration of the Temporary Orders, adopted by the House on 25 March 2010,  
be extended to (and including) Thursday, 11 August 2011.
- (2) That the following new Temporary Order be adopted -

**15. Uniform Legislation**

Standing Order 230A paragraphs (2) and (4) are amended by deleting the  
numeral "30" and substituting "45".

and that the extended period specified under new Temporary Order 15 apply to all  
bills currently before the Standing Committee on Uniform Legislation and Statutes  
Review.

Debate ensued.

The motion requiring the concurrence of an absolute majority.

Question - put.

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

## **7. Order of Business**

Ordered - That Order of the Day No. 1, *Regulation 13(4) of the Animal Welfare (Pig Industry) Regulations 2010 - Disallowance*, and 4, *Shire of Esperance Cemeteries Amendment Local Law 2010 - Disallowance*, be taken after Order of the Day No. 29, *Standing Committee on Environment and Public Affairs - Report No. 19 - Prayer for Relief*. (Leader of the House).

## **8. West Coast Estuarine Fishery (Interim) Management Plan Amendment 2010 - Disallowance - Discharge from Notice Paper**

The Order of the Day having been called, Hon Robin Chapple, moved, without notice -

That, pursuant to the recommendation of the Joint Standing Committee on Delegated Legislation, Order of the Day No. 2, *West Coast Estuarine Fishery (Interim) Management Plan Amendment 2010 - Disallowance*, be discharged from the Notice Paper.

Question - put and passed.

## **9. Gascoyne Demersal Scalefish Management Plan 2010 - Disallowance - Discharge from Notice Paper**

The Order of the Day having been called, Hon Robin Chapple, moved, without notice -

That, pursuant to the recommendation of the Joint Standing Committee on Delegated Legislation, Order of the Day No. 3, *Gascoyne Demersal Scalefish Management Plan 2010 - Disallowance*, be discharged from the Notice Paper.

Question - put and passed.

## **10. Conservation Legislation Amendment Bill 2010**

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

The President left the Chair.

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### **In Committee**

(Hon Matt Benson-Lidholm in the Chair)

Clause 16.

Debate resumed on the amendments of Hon Robin Chapple as follows -

Page 20, line 27 — To insert after “protects and conserves” —

the scientific values of the land, the educational values of the land, and

Page 21, line 9 — To insert after “protects and conserves” —

the scientific values of the land, the educational values of the land, and

Amendments - put and negatived.

Clause, as amended, agreed to.

Clause 17.

Hon Robin Chapple moved -

Page 22, line 1 — To insert after “protect or conserve” —

the scientific values of the land or waters, the educational values of the land or waters, or

Debate ensued.

Amendment - put and negatived.

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

Clause 18.

Debate ensued.

Clause agreed to.

Clause 19 agreed to.

Clause 20.

Hon Robin Chapple moved -

Page 26, after line 2 — To insert —

- (8) The CEO must, from the existing standing appropriations for his or her department, supply adequate funding for the process of developing a management plan for the purposes of this section, and for the subsequent effective implementation of that management plan.

Debate ensued.

Amendment - put and negatived.

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

Clause 21.

Debate ensued.

Hon Robin Chapple moved -

Page 26, line 23 — To insert after “protecting and conserving” —

the scientific values of the land, the educational values of the land, and

Debate ensued.

Amendment - put and negatived.

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

Clause 22.

Debate ensued.

Hon Robin Chapple moved -

Page 27, lines 13 to 15 — To delete the lines and insert —

the responsible body for the land must make reasonable endeavours to consult with —

- (a) the relevant native title holders, if any;
- (b) the relevant registered native title claim group, if any;
- (c) the relevant registered Native Title Representative Body, if any;
- (d) the relevant registered Native Title Service Provider, if any; and
- (e) all other Aboriginal persons with an interest in that land,

and may consult any other person, for the purposes of determining the value of the land to the culture and heritage of Aboriginal persons.

Debate ensued.

Amendment - put and negatived.

Hon Robin Chapple moved -

Page 27, after line 15 — To insert —

- (2A) The CEO must, from the existing standing appropriations for his or her department, supply adequate funding for the process of consultation under section (1).

Debate ensued.

Amendment - put and negatived.

Hon Robin Chapple moved -

Page 27, line 16 — To insert before “If the Minister” —

Subject to sections (3A) and (3B),

Page 27, after line 23 — To insert —

- (3A) The Minister may only provide the exemption referred to in section (2) if the Minister is satisfied that the responsible body has first used its best endeavours to comply with sections (1) and 56(2).
- (3B) The Minister may only provide the exemption referred to in section (2) for a period of no greater than 12 months, or a series of time periods that in total do not exceed 12 months.

Debate ensued.

# **11. Questions Without Notice**

Questions without notice were taken.

The Minister for Child Protection representing the Minister for Agriculture and Food tabled documents in relation to Karara Mining Ltd, being a copy of a submission from the Department of Agriculture and Food to the Department of Water regarding Karara's licence application to take water from Parmelia aquifer, in response to a question without notice asked by Hon Alison Xamon. (Tabled paper 3134).

The Minister for Mental Health representing the Minister for Environment tabled documents in relation to Gascoyne Traders Site Carnarvon, being a copy of a basic summary of records from the Department of Environment and Conservation, in response to a question without notice asked by Hon Helen Bullock. (Tabled paper 3135).

*The President left the Chair at 4.57pm*

*The President resumed the Chair at 5.11pm*

The Minister for Mental Health representing the Minister for Environment tabled documents in relation to Osmington Coalmine, being a copy of a notice requiring further information issued by the Environment Protection Authority to LD Operations dated 10 November 2010, in response to a question without notice asked by Hon Adele Farina. (Tabled paper 3136).

The Parliamentary Secretary representing the Minister for Regional Development tabled a copy of the licence and reserve management order in relation to the Busselton Jetty Refurbishment, in response to question on notice No. 3429 asked by Hon Adele Farina. (Tabled paper 3137).

# **12. Conservation Legislation Amendment Bill 2010**

The President left the Chair.

## **In Committee**

(Hon Brian Ellis in the Chair)

Clause 22.

Debate resumed on the amendment of Hon Robin Chapple as follows -

Page 27, line 16 — To insert before "If the Minister" —

Subject to sections (3A) and (3B),

Page 27, after line 23 — To insert —

- (3A) The Minister may only provide the exemption referred to in section (2) if the Minister is satisfied that the responsible body has first used its best endeavours to comply with sections (1) and 56(2).
- (3B) The Minister may only provide the exemption referred to in section (2) for a period of no greater than 12 months, or a series of time periods that in total do not exceed 12 months.

Amendments - put and negatived.

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

Clause 23.

Hon Robin Chapple moved -

Page 28, after line 16 — To insert —

(2) After section 57(2)(d) insert:

- (e) of a letter to the following groups, where applicable —
  - (i) the relevant registered Native Title Representative Body;
  - (ii) the relevant registered Native Title Service Provider;
  - (iii) the relevant registered Native Title Body Corporate;
  - (iv) the relevant registered native title claim group.

Debate ensued.

Amendment - put and negatived.

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

Clause 24.

Hon Robin Chapple moved -

Page 29, after line 7 — To insert —

- (b) any person responsible, as defined in section 8A(1);

Debate ensued.

Amendment - put and negatived.

Hon Robin Chapple moved -

Page 29, after line 9 — To insert —

- (c) if the land includes an Aboriginal site, as defined in sections 4 and 5 of the *Aboriginal Heritage Act 1972*, to the Minister for Indigenous Affairs.

Debate ensued.

Hon Robin Chapple, by leave, withdrew his amendment.

The Minister for Mental Health representing the Minister for Environment moved -

Page 29, after line 9 — To insert —

- ; and
- (c) if the land includes an Aboriginal site, as defined in the *Aboriginal Heritage Act 1972* section 4, to the Minister for Indigenous Affairs.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 25 agreed to.

Clause 26.

Hon Robin Chapple moved -

Page 31, after line 18 — To insert —

(5) After section 60(2b) insert:

- (3A) The Minister shall not approve the proposed plan unless the relevant land has been the subject of at least a preliminary survey for potential new Aboriginal sites, as defined in sections 4 and 5 of the *Aboriginal Heritage Act 1972*.

Debate ensued.

Amendment - put and negatived.

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

Clause 27.

Hon Robin Chapple moved -

Page 32, after line 21 — To insert —

- (i) an Aboriginal site as defined in sections 4 and 5 of the *Aboriginal Heritage Act 1972*.

Debate ensued.

Amendment - put and negatived.

Hon Robin Chapple moved -

Page 33, after line 3 — To insert —

- (iv) protecting the scientific values of the land;  
(v) the educational values of the land;

Debate ensued.

Amendment - put and negatived.

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

Clause 28.

Debate ensued.

Clause agreed to.



Clause 29.

Hon Robin Chapple moved -

Page 34, line 27 — To insert after “protects and conserves” —

the scientific values of the land, the educational values of the land, and

Debate ensued.

Amendment - put and negatived.

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

Clause 30.

Debate ensued.

Clause agreed to.

Clauses 31 to 45 agreed to.

Clause 46.

Debate ensued.

Clause agreed to.

Clauses 47 and 48 agreed to.

New Clause 46A.

The Minister for Mental Health representing the Minister for Environment moved -

Page 45, after line 22 — To insert —

**46A. Section 143 inserted**

At the end of Part XI insert:

**143. Review of amendments made by *Conservation Legislation Amendment Act 2010***

- (1) The Minister must review the operation of the amendments made to this Act by the *Conservation Legislation Amendment Act 2010* (the ***amendment Act***) as soon as is practicable after 5 years after the date on which the amendment Act receives the Royal Assent.
- (2) When doing the review the Minister must consider —
  - (a) whether the policy objectives upon which the amendments made to this Act by the amendment Act were based remain valid; and
  - (b) whether those amendments remain appropriate to achieve those objectives.
- (3) The Minister must prepare a report based on the review and, as soon as practicable after the report is prepared and in any event not more than 2 years after the expiry of the period referred to in subsection (1), cause it to be laid before each House of Parliament.

New Clause - put and passed.

Title agreed to.

The Deputy President resumed the Chair.

Bill reported with amendments.

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

### **13. Statutes (Repeals and Minor Amendments) Bill 2010**

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

The Deputy President left the Chair.

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#### **In Committee**

(Hon Max Trenorden in the Chair)

Clause 1.

Debate ensued.

Clause agreed to.

Clauses 2 to 14 agreed to.

Clause 15.

Debate ensued.

Hon Liz Behjat moved -

Page 7, in the Table, item 3, row 4 to item 4, row 7 — To delete the rows.

Debate ensued.

Amendment - put and passed.

Hon Liz Behjat moved -

Page 7, in the Table, item 5, rows 8 and 9 — To delete the rows.

Debate ensued.

Hon Liz Behjat, by leave, withdrew her amendment.

Hon Liz Behjat moved -

Page 7, in the Table, item 9, rows 16 and 17 — To delete the rows.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 16.

Debate ensued.

Hon Liz Behjat moved -

Page 11, in the Table, item 16, row 5 — To delete "s. 79(2)(a)" and insert —

s. 79(b)(i)

Debate ensued.

Amendment - put and passed.

Hon Liz Behjat moved -

Page 12, in the Table, item 22, row 3 — To delete “160(2)(a)” and insert —

160(b)(i)

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 17 agreed to.

Clause 18.

Debate ensued.

The Parliamentary Secretary representing the Attorney General moved, That consideration of clause 18 be postponed until after consideration of clause 28.

Question - put and passed.

Clauses 19 to 25 agreed to.

Clause 26.

Debate ensued.

The Parliamentary Secretary representing the Attorney General moved, That consideration of clause 26 be postponed until after consideration of clause 28.

Question - put and passed.

Clause 27 agreed to.

Clause 28.

Debate ensued.

Clause agreed to.

The Parliamentary Secretary representing the Attorney General moved, That progress be reported and leave asked to sit again.

Question - put and passed.

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The President resumed the Chair.

The Deputy Chairman of Committees reported that the Committee had considered the Bill, made progress, and asked leave to sit again.

Ordered - That the Committee have leave to sit again.

#### **14. Juries Legislation Amendment Bill 2010**

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

Debate resumed.

*Interruption pursuant to Temporary Orders.*

#### **15. Members' Statements**

Statements were taken.

Hon Ken Travers, by leave, tabled a document entitled *Securing the economic future of Western Australia*. (Tabled paper 3138).

**16. Adjournment**

The House adjourned at 10.22pm until Wednesday, 23 March 2011 at 2.00pm.

**Members present during the day's proceedings**

Attendance: Present all Members except Hon Jon Ford.

**MALCOLM PEACOCK**  
Clerk of the Legislative Council

**HON BARRY HOUSE**  
President of the Legislative Council