

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 7

TUESDAY, MAY 29 2001

1. Meeting of Council

The Council assembled at 3.30pm pursuant to order.

The President, Hon John Cowdell, took the Chair and read prayers.

2. Papers

The following Papers were laid on the Table by -

Leader of the House

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3. **Prohibition on Fishing (Lancelin Island Lagoon) Order 2001 - Disallowance**

Hon Peter Foss: To move on the next day of sitting -

That the *Prohibition on Fishing (Lancelin Island Lagoon) Order 2001* published in the *Gazette* on March 20 2001 and tabled in the Legislative Council on May 23 2001 under the *Fish Resources Management Act 1994*, be and is hereby disallowed.

4. **Cockburn Sound Crab Fishery Management Plan Amendment 2001 - Disallowance**

Hon Peter Foss: To move on the next day of sitting -

That the *Cockburn Sound Crab Fishery Management Plan Amendment 2001* published in the *Gazette* on April 3 2001 and tabled in the Legislative Council on May 23 2001 under the *Fish Resources Management Act 1994*, be and is hereby disallowed.

5. **Abrolhos Islands and Mid West Trawl Management Plan Amendment 2001 - Disallowance**

Hon Peter Foss: To move on the next day of sitting -

That the *Abrolhos Islands and Mid West Trawl Management Plan Amendment 2001* published in the *Gazette* on April 3 2001 and tabled in the Legislative Council on May 23 2001 under the *Fish Resources Management Act 1994*, be and is hereby disallowed.

6. **Kimberley Prawn Management Plan Amendment 2001 - Disallowance**

Hon Peter Foss: To move on the next day of sitting -

That the *Kimberley Prawn Management Plan Amendment 2001* published in the *Gazette* on April 3 2001 and tabled in the Legislative Council on May 23 2001 under the *Fish Resources Management Act 1994*, be and is hereby disallowed.

7. **New Standing Order 313 - Consideration of Annual Estimates - Appointment of Standing Committee on Estimates and Financial Operations**

The Leader of the House: To move on the next day of sitting -

(1) That the following standing order is inserted -

“

313. Consideration of Annual Estimates

- 1 A committee of the whole (the “**Estimates Committee**”) is appointed to consider the Annual Estimates of Expenditure and related documents (the “**Budget Papers**”) which, on being tabled, stand referred to the Estimates Committee accordingly.
- 2 The Chairman of Committees, acting with the advice of the committee established under SO 125A, is to determine -
 - (a) the Votes in the Budget Papers to be considered and the order in which they will be considered;
 - (b) for each Vote, the day and time for its consideration;
 - (c) the final date for lodging questions on notice (if any) relating to each Vote; and
 - (d) cause a copy of that determination to be given to each member, each minister, and the chief executive officers of the departments or other State instrumentalities whose operations are wholly or partly funded from the Votes determined under paragraph (a).
- 3 Any variation or cancellation of a determination is to be made, if practicable, in accordance with the requirements of subclause 2.

- 4 The Chairman of Committees is the Chairman of the Estimates Committee and has those powers necessary or incidental to the maintenance of the orderly conduct of its proceedings.
- 5 When considering a Vote -
 - (a) there is no question to be resolved;
 - (b) members may ask oral questions of the appropriate minister in the Council and, with the minister's consent but subject nonetheless to SO 331, of any person appearing with that minister.
- 6 The Estimates Committee is not to require the attendance of a person by name or office unless the person is authorized or required by law to perform a function with a public purpose and there is no capacity for a minister -
 - (a) to give directions as to the manner or occasion when the function is to be performed, or
 - (b) to alter or nullify an effect resulting from a performance of the function.
- 7 Not later than 1 sitting day after the day on which the question for the second reading of a bill appropriating the Consolidated Fund for the ordinary annual services of the Government is first put, the Estimates Committee may report on any matter arising from its consideration of the Budget Papers.
- 8 Standing order 234 does not apply to a bill that appropriates the Consolidated Fund in accordance with the Budget Papers if, when it is read a second time, no notice has been given of a motion for a purpose permitted under section 46 of the *Constitution Acts Amendment Act 1899*, and in such a case the question for the third reading is to be put immediately.
- 9 The House stands adjourned over each day that is subject to a determination under subclause 2(b).
- 10 Despite subclause 9, if satisfied by the Leader of the House that a matter requires the immediate attention of the House, the President may recall the House to sit on such a day at a specified time, and any proceedings of the Estimates Committee on that day are suspended for the duration of the sitting.
- 11 The business to be transacted on a day provided for in subclause 10 is that determined by the Leader of the House and need not be confined to consideration of the matter for which the House is recalled.

”.

(2) Standing order 49(c) is repealed.

8. Standing Committee on Delegated Legislation - Appointment

The Leader of the House: To move on the next day of sitting -

That Schedule 1 of Standing Orders is amended by adding the following clause -

“

6. Delegated Legislation Committee

6.1 A *Delegated Legislation Committee* is established.

- 6.2 The Committee consists of 8 members, 4 of whom are appointed from each House. The Chairman must be a member of the Committee who supports the Government.
- 6.3 A quorum is 4 members of whom at least 1 is a member of the Council and 1 a member of the Assembly.
- 6.4 A report of the Committee is to be presented to each House by a member of each House appointed for the purpose by the Committee.
- 6.5 Upon its publication, whether under section 41(1)(a) of the *Interpretation Act 1984* or another written law, an instrument stands referred to the Committee for consideration.
- 6.6 In its consideration of an instrument, the Committee is to satisfy itself that the instrument -
- (a) is authorized or contemplated by the empowering enactment;
 - (b) does not have an adverse effect on existing rights, interests, or legitimate expectations beyond giving effect to a purpose authorized or contemplated by the empowering enactment;
 - (c) does not:
 - (i) oust or modify the rules of fairness; or
 - (ii) deprive a person aggrieved by a decision of the ability to obtain review of the merits of that decision or seek judicial review; or
 - (iii) impose terms and conditions regulating any review that would be likely to cause the review to be illusory or impracticable;
 - (d) contains provisions that, for any reason, would be more appropriately contained in an Act.
- 6.7 In this clause -
- “**adverse effect**” includes abrogation, deprivation, extinguishment, diminution, and a compulsory acquisition, transfer, or assignment;
- “**instrument**” means -
- (a) in subclause 6.5:
 - (i) subsidiary legislation in the form in which, and with the content it has, when it is published;
 - (ii) a document, not being subsidiary legislation, made for a public purpose under a written law or other lawful authority by the Crown, its servants, agents, or instrumentalities;
 - (b) in subclause 6.6, an instrument within the meaning of paragraph (a)(i) or (ii) that is made subject to disallowance by either House under a written law;
- “**subsidiary legislation**” has the meaning given to it by section 5 of the *Interpretation Act 1984*.

”.

9. Matter of Urgency - Finance Brokers - Promised Government Support for Investors

The President read the following letter -

Dear Mr President

At today's sitting it is my intention to move pursuant to SO 72 that the House, at its rising, adjourn until Friday, December 21 2001 for the purpose of discussing the cruel and cynical

backflip of the Government, and particularly the Attorney General, in denying promised support for investors affected by the collapse of a number of finance brokers.

Yours sincerely

Hon Barry House
Member for South West Region

Four members having risen in support.

Hon Barry House then moved, That the House at its rising adjourn until December 21 2001.

Debate ensued.

Interruption of Debate - One hour having elapsed after the time fixed for the meeting of the House, the President announced that leave of the House would be necessary to enable the debate to continue.

Leave denied.

10. Suspension of Standing Orders - Corporations Bills

The Leader of the House moved, without notice -

That in its application to the *Corporations (Commonwealth Powers) Bill 2001*, the *Corporations (Ancillary Provisions) Bill 2001*, the *Corporations (Administrative Actions) Bill 2001* and the *Corporations (Consequential Amendments) Bill 2001*, SO 230(c) and (d) -

- (a) is modified so that the references to a period of 30 days and any related obligations imposed on the House or the Committee do not apply;
- (b) orders the Legislation Committee to report on each Bill not later than Tuesday, June 19 2001.

Debate ensued.

11. Questions Without Notice

Questions without notice were asked by Hon Norman Moore, Hon Barry House, Hon Christine Sharp, Hon Peter Foss, Hon George Cash, Hon Murray Criddle, Hon Jim Scott, Hon Jon Ford, Hon Bruce Donaldson, Hon Barbara Scott, Hon Derrick Tomlinson, Hon Simon O'Brien and Hon Ray Halligan.

The Minister for Agriculture tabled the National Rural Advisory Council Report on the application to extend the exceptional circumstances declared area in the south coast and south eastern wheat belt regions of Western Australia in response to a question without notice asked by Hon Murray Criddle. (Tabled paper 362).

12. Suspension of Standing Orders - Corporations Bills

Debate resumed on the motion of Leader of the House (cf item 10 above).

Leave was granted to Hon Peter Foss to continue his remarks at a later stage.

On the motion of Hon Ed Dermer the debate was adjourned to a later stage of this day's sitting.

13. Address-In-Reply

The Order of the Day having been read for the adjourned debate on the Address-in-Reply.

Debate resumed.

On the motion of Hon Ed Dermer the debate was adjourned to the next sitting.

14. Standing Committee on Procedure and Privileges - Referral

The Leader of the House pursuant to notice, moved -

That -

- (1) The matters described in paragraphs (a) and (b) are referred to the *Procedure and Privileges Committee*, and on report to the House after inquiry, the Committee is to advise the House whether, in its opinion -

- (a) any rule, custom or usage of the House contravenes, or appears not to be in conformity with, a written law or rule of law where the relevant provision is mandatory rather than directory;
- (b) any rule in force, or any custom or usage observed, as part of the practice or proceedings of the House ought to be amended or repealed, or its observance discontinued because -
 - (i) its provisions are spent or superseded;
 - (ii) application according to its tenor would be in conflict, whether generally or in particular circumstances, with the accepted practice of the House.
- (2) The House desires and intends that its rules, customs and usages should always conform with any relevant and applicable law, and any finding or recommendation on a matter considered under paragraph 1(a) is to be expressed accordingly without regard to the justiciability of questions associated with the validity or application of the rule, custom, or usage to which a finding or recommendation relates.
- (3) A law that is in force in the State by reason of covering clause 5 of the *Commonwealth of Australia Constitution Act 1900 (Imp)* is a written law or rule of law, as the case requires, for the purposes of paragraph 1(a).
- (4) In this order, “**rule**” includes a resolution of the House and rulings made by the President or other presiding officer.

On the motion of Hon George Cash the debate was adjourned to the next sitting.

15. Ministerial Statement - Interim Policy Position on Introduction of GMO's into the Western Australian Farming System

The Minister for Agriculture, by leave, made a Ministerial Statement with respect to the utilisation of crop varieties which contain genetically modified organisms.

Ordered - That consideration of the Ministerial Statement be made an Order of the Day for the next sitting.

16. Extension of Sitting Time

The Leader of the House moved, That the House continue to sit beyond 10.00pm.

Debate ensued.

Question - put and passed.

17. Order of Business

Ordered - That the Motion, *Suspension of Standing Orders*, be taken forthwith. (Leader of the House).

18. Suspension of Standing Orders - Corporations Bills

Pursuant to the Order of the House.

Debate resumed on the motion of the Leader of the House as follows -

That in its application to the *Corporations (Commonwealth Powers) Bill 2001*, the *Corporations (Ancillary Provisions) Bill 2001*, the *Corporations (Administrative Actions) Bill 2001* and the *Corporations (Consequential Amendments) Bill 2001*, SO 230(c) and (d) -

- (a) is modified so that the references to a period of 30 days and any related obligations imposed on the House or the Committee do not apply;
- (b) orders the Legislation Committee to report on each bill not later than Tuesday, June 19 2001.

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.

19. Corporations (Commonwealth Powers) Bill 2001

The Minister for Racing and Gaming pursuant to notice, moved -

That a Bill for “An Act to refer certain matters relating to corporations and financial products and services to the Parliament of the Commonwealth for the purposes of section 51 (xxxvii) of the Constitution of the Commonwealth, and for related purposes” be introduced and read a first time.

Question - put and passed.

Bill read a first time.

The Minister for Racing and Gaming moved, That the Bill be now read a second time.

The Minister for Racing and Gaming tabled certified copies of text tabled in the New South Wales Parliament relating to the Bill (Tabled paper 363).

On the motion of Hon Bruce Donaldson the debate was adjourned to the next sitting.

20. Corporations (Administrative Actions) Bill 2001

The Minister for Racing and Gaming pursuant to notice, moved -

That a Bill for “An Act relating to administrative actions taken by Commonwealth authorities or officers of the Commonwealth under certain State laws relating to corporations” be introduced and read a first time.

Question - put and passed.

Bill read a first time.

The Minister for Racing and Gaming moved, That the Bill be now read a second time.

On the motion of Hon Bruce Donaldson the debate was adjourned to the next sitting.

21. Corporations (Ancillary Provisions) Bill 2001

The Minister for Racing and Gaming pursuant to notice, moved -

That a Bill for “An Act to enact ancillary provisions, including transitional provisions, relating to the enactment by the Parliament of the Commonwealth of new corporations legislation and new ASIC legislation under its legislative power, including powers with respect to matters referred to that Parliament for the purposes of section 51 (xxxvii) of the Constitution of the Commonwealth, and to amend certain Acts, and for other purposes” be introduced and read a first time.

Question - put and passed.

Bill read a first time.

The Minister for Racing and Gaming moved, That the Bill be now read a second time.

On the motion of Hon Bruce Donaldson the debate was adjourned to the next sitting.

22. Corporations (Consequential Amendments) Bill 2001

The Minister for Racing and Gaming pursuant to notice, moved -

That a Bill for “An Act to amend various Acts as a consequence of the Commonwealth enacting the *Corporations Act 2001*, and for related purposes” be introduced and read a first time.

Question - put and passed.

Bill read a first time.

The Minister for Racing and Gaming moved, That the Bill be now read a second time.
On the motion of Hon Bruce Donaldson the debate was adjourned to the next sitting.

23. Co-operative Schemes (Administrative Actions) Bill 2001

The Minister for Racing and Gaming pursuant to notice, moved -

That a Bill for “An Act relating to administrative actions by Commonwealth authorities or officers of the Commonwealth under the *Agricultural and Veterinary Chemicals (Western Australia) Act 1995* and other State co-operative scheme laws, and for other purposes” be introduced and read a first time.

Question - put and passed.

Bill read a first time.

The Minister for Racing and Gaming moved, That the Bill be now read a second time.
On the motion of Hon Bruce Donaldson the debate was adjourned to the next sitting.

24. Agricultural and Veterinary Chemicals (Western Australia) Amendment Bill 2001

The Minister for Agriculture pursuant to notice, moved -

That a Bill for “An Act to amend the *Agricultural and Veterinary Chemicals (Western Australia) Act 1995* with respect to the functions and powers of certain Commonwealth authorities and officers of the Commonwealth, and for other purposes” be introduced and read a first time.

Question - put and passed.

Bill read a first time.

The Minister for Agriculture moved, That the Bill be now read a second time.
On the motion of Hon Bruce Donaldson the debate was adjourned to the next sitting.

25. Adjournment

The Leader of the House moved, That the House do now adjourn.

Debate ensued.

Question - put and passed.

The House adjourned at 10.32pm until Wednesday, May 30 2001 at 4.00pm.

Members present during the day’s proceedings

Attendance: Present all Members.

L B MARQUET
Clerk of the Legislative Council

HON JOHN COWDELL
President of the Legislative Council