

WESTERN AUSTRALIA

**LEGISLATIVE COUNCIL**

**MINUTES OF PROCEEDINGS**

**No. 57**

**WEDNESDAY, 9 MAY 2018**

**1. Meeting of Council**

The Council assembled at 1.00pm pursuant to order.

The President, Hon Kate Doust, took the Chair.

Prayers and an Acknowledgement of Country were read.

**2. President's Ruling — Matter of Privilege raised by Hon Nick Goiran**

The President ruled as follows —

I have considered the matter of privilege raised on Tuesday by Hon Nick Goiran under Standing Order 93(2). Standing Order 93(5) provides that upon a matter of privilege being raised in the House, the President shall determine whether there is some substance to the matter; and, if so, refer the matter to the Standing Committee on Procedure and Privileges for inquiry and report to the Council. The question as to whether some substance exists in relation to a particular matter requires me to make a preliminary assessment. This preliminary assessment exists to provide an initial threshold in relation to such matters. As prescribed in schedule 4 to the Standing Orders, which deals with contempts of the Council, the House has declared that it will not pursue —

... matters of a trivial nature or unworthy of the attention of the Council.

The assessment required of me under Standing Order 93(5) is to determine whether the relevant matter falls into this category and, therefore, should not be considered further. An additional question relevant to my assessment is whether a person who committed any act that may be held to be a contempt knowingly committed that act. Importantly, Standing Order 93(5) does not require the President to inquire into an alleged contempt beyond that necessary to determine this initial assessment.

The alleged matter of privilege arises from an answer to question without notice 225 on 10 April 2018. The question was asked by Hon Nick Goiran of the Leader of the House in her capacity as Minister representing the Minister for Child Protection, and followed a series of questions asked by Hon Nick Goiran since late 2017, seeking to obtain details about child sex offence victims in the town of Roebourne. In the series of answers leading up to that given for question without notice 225, it was stated that the Government was not prepared to release specific data on child sex offences for such a small community and that the department was continuing to monitor the issue in the town.

In question without notice 225, Hon Nick Goiran continued to seek detailed information regarding any communications between the Minister for Child Protection and the officers of her department regarding the child sex offence victims in Roebourne. He asked —

Has the Minister ever asked the department if any of the 184 victims are currently residing with a person either charged or convicted with one or more child sex offences?

The Leader of the House representing the Minister for Child Protection responded yes. Hon Nick Goiran alleges that this one-word answer raises a matter of privilege. The evidence on which the claim is made is a further answer given by the Leader of the House representing the Minister for Child Protection to question without notice 247 on 11 April 2018. In response once again to Hon Nick Goiran's request for details of specific communications between the minister and her departmental officers on the subject of the child sex offence victims in Roebourne, the Leader of the House representing the Minister for Child Protection answered —

On 6 November 2017, the Minister's office referred the specific question to the department's office of the director general for advice on responding to Legislative Council question on notice 486. Since being appointed, the Minister for Child Protection has received regular updates regarding Operation Fledermaus from the director general and the assistant director general, child protection and family support. These updates have included information regarding the children affected by these offences.

The evidence suggests that one of the Minister's staff had contacted the Department for Child Protection and Family Support in November 2017 on the minister's behalf, seeking information in order to answer Hon Nick Goiran's questions. Furthermore, the Minister had received regular updates on the issue since. Hon Nick Goiran suggests that this evidence establishes that either a misleading or false answer was given to the house by the Leader of the House representing the Minister for Child Protection on 10 April 2018.

The question for my assessment is therefore whether the answer of the Leader of the House representing the Minister for Child Protection on 10 April 2018, in which she confirmed by her answer "yes" that the Minister had asked the department whether any of the 184 victims are currently residing with a person either charged with or convicted of one or more child sex offences, was either knowingly misleading or false. In my opinion, the answer of the Leader of the House representing the Minister for Child Protection was not misleading or false. A Minister does not have to personally do an action for that action to have been done for all intents and purposes under their direction and authority. This is supported by the *Carltona* principle of administrative law, which accepts that ministers exercise their multifarious duties and functions by directing public servants to act for them, *Carltona Ltd v Commissioners of Works* [1943] 2 All ER 560. The *Carltona* principle has been expressly approved by the High Court of Australia in cases such as *O'Reilly v State Bank of Victoria Commissioners* [1983] 153 CLR 1.

Even though one of her ministerial office staffers may have actually asked the question of departmental officers, it was effectively the Minister for Child Protection who was seeking the information from her department in order to provide the answer to Parliament that both the Leader of the House and the Minister for Child Protection ultimately signed off on. As a general observation, in this case the Leader of the House representing the Minister for Child Protection has given a series of general answers to some very specific questions, and has therefore not provided the level of detail that the asking Member may have been expecting. In the absence of any procedural concerns with an answer arising from the Standing Orders, it is not for me as President to rule on the sufficiency of an answer. To quote President House from a ruling on 12 August 2010 —

... whatever way the question may be answered, that is the answer. That does not mean that some people will like the answer and that does not mean that everybody has to agree with the answer, but that is the answer that is presented to the Parliament.

I am of the opinion that there is no substance in the matters raised by Hon Nick Goiran, and accordingly I will not be referring them to the Standing Committee on Procedure and Privileges.

### **3. Petitions**

Hon Tjorn Sibma presented a petition from 5,995 petitioners requesting the Legislative Council recommend funding for the Landsdale Farm School be restored. (Tabled Paper 1337).

Hon Colin Holt presented a petition from 261 petitioners requesting the Legislative Council to recommend to the Western Australian Parliament and the Department of Education that it oppose the decision to close the Pemberton Camp School. (Tabled Paper 1338).

Hon Robin Scott presented a petition from 1,688 petitioners requesting the Legislative Council to support the urgent installation of a magnetic resonance imaging (MRI) machine at Kalgoorlie Hospital. (Tabled Paper 1339).

#### 4. Ministerial Statement — Qfly Detection

The Minister for Agriculture and Food made a Ministerial Statement with respect to the detection of Queensland fruit flies and the subsequent quarantine area over parts of Como, Karawara, South Perth and Kensington.

#### 5. Papers

The following Papers were laid on the Table by —

##### President

*Auditor General's Papers —*

Controls Over Corporate Credit Cards (Report No. 7) (May 2018)..... 1335

*Documents —*

Amended Non-Government Business Schedule (2018)..... 1336

#### 6. Non-Government Business — Schedule

The Minister for Environment moved, without notice —

That, pursuant to Standing Order 111(4), the revised schedule for Non-Government Business tabled today by the President, which takes into account the Budget estimates hearing week, be adopted.

Question — put and passed.

#### 7. Genetically Modified Crops Free Areas Repeal Act

Motion No. 1 having been called, Hon Diane Evers continued her introductory remarks in moving the motion as follows —

That given the Government spoke so vigorously against the *Genetically Modified Crops Free Areas Repeal Bill 2015* when in opposition, that the Government now reinstate the *Genetically Modified Crops Free Areas Act 2003*.

Debate ensued.

*Interruption pursuant to order.*

#### 8. Consideration of Committee Reports

Pursuant to order for the consideration of Committee Reports.

##### In Committee

(Hon Simon O'Brien in the Chair)

**Joint Standing Committee on the Corruption and Crime Commission — Report No. 7 — Unfinished business — The Corruption and Crime Commission's response to the Committee's report on Dr Cunningham and Ms Atoms**

Debate resumed on the motion of Hon Alison Xamon, That the Report be noted.

Pursuant to Temporary Order No. 4, consideration of the report was postponed until the next sitting.

**Standing Committee on Estimates and Financial Operations — Report No. 73 — 2017–18 Budget Cycle — Part 1: Estimates hearings and related matters**

Hon Peter Collier moved, That the Report be noted.

*Interruption pursuant to order.*

The Acting President resumed the Chair.

The Chair of Committees reported that the Committee of the Whole House had considered the —

- (1) Joint Standing Committee on the Corruption and Crime Commission — Report No. 7 — *Unfinished business — The Corruption and Crime Commission's response to the Committee's report on Dr Cunningham and Ms Atoms*, made progress and seeks to sit again.
- (2) Standing Committee on Estimates and Financial Operations — Report No. 73 — *2017–18 Budget Cycle — Part 1: Estimates hearings and related matters*, made progress and seeks to sit again.

Report adopted.

## 9. Questions Without Notice

Questions without notice were taken.

The Minister for Environment, by leave, incorporated into *Hansard* information in relation to the Barrabup and other forests alongside the Vasse Highway between Busselton and Nannup, in response to a question without notice asked by Hon Diane Evers.

The Minister for Environment representing the Minister for Housing, by leave, incorporated into *Hansard* information in relation to the Bentley 360 Project, in response to a question without notice asked by Hon Tim Clifford.

The Minister for Regional Development tabled documents in relation to Local Projects, Local Jobs grants funded by Royalties for Regions, in response to question on notice No. 1075 asked by Hon Martin Aldridge. (Tabled Paper 1341).

## 10. Order of Business

Ordered — That Orders of the Day Nos 1, *Shire of Donnybrook-Balingup Meeting Procedures Local Law 2017 — Disallowance*, 2, *Shire of Broome Parking and Parking Facilities Amendment Local Law (2) 2017 — Disallowance*, 3, *Shire of Capel Dogs Local Law 2017 — Disallowance*, 4, *Shire of Collie Parking and Parking Facilities Amendment Local Law 2017 — Disallowance*, and 5, *Western Australian Meat Industry Authority Amendment Regulations 2017 — Disallowance*, be taken after Order of the Day No. 16, *Historical Homosexual Convictions Expungement Bill 2017*. (Leader of the House).

## 11. Pay-roll Tax Assessment Amendment (Exemption for Trainees) Bill 2018

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

Debate resumed.

*Interruption pursuant to order.*

## 12. Members' Statements

Statements were taken.

## 13. Adjournment

The Council adjourned at 6.27pm until Thursday, 10 May 2018 at 10.00am.

### Members present during the day's proceedings

Attendance: Present all Members except Hon Martin Aldridge and Hon Robin Chapple.

**NIGEL PRATT**  
Clerk of the Legislative Council

**HON KATE DOUST MLC**  
President of the Legislative Council