

**LEGISLATIVE COUNCIL**

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**MINUTES OF PROCEEDINGS**

**No. 191**

**THURSDAY, 24 NOVEMBER 2011**

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**1. Meeting of Council**

The Council assembled at 10.00am pursuant to Temporary Orders.

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

**2. Ministerial Statement - White Ribbon Day**

The Minister for Women's Interests made a Ministerial Statement with respect to White Ribbon Day and the elimination of violence against men, women and children.

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

**3. Ministerial Statement - Mental Health Services - Admission and Discharge Practices Review**

The Minister for Mental Health made a Ministerial Statement with respect to the review into the admission and discharge practices of public mental health services in Western Australia.

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

**4. Papers**

The following Papers were laid on the Table by -

**President**

*Reports -*

Corruption and Crime Commission - Report on the Investigation of Alleged Public Sector Misconduct in Relation to the Purchase of Toner Cartridges in Exchange for Gifts Outside Government Procurement Policies and Arrangements (24 November 2011) ..... 4102

**Parliamentary Secretary representing the Premier (on Public Sector)**

*Reports -*

Public Sector Standards Commissioner, Office of the [OPSSC] - State of the Sector Report (2011) ..... 4103

**5. Joint Standing Committee on the Corruption and Crime Commission - Report No. 21 - Parliamentary Inspector's Report Concerning Telecommunication Interceptions and Legal Professional Privilege**

Hon Nick Goiran presented Report No. 21 of the Joint Standing Committee on the Corruption and Crime Commission in relation to the *Parliamentary Inspector's Report Concerning Telecommunication Interceptions and Legal Professional Privilege*. (Tabled paper 4104).

Hon Nick Goiran moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

**6. Joint Standing Committee on Delegated Legislation - Report No. 46 - City of Gosnells Waste Local Law 2011 and Shire of Derby/West Kimberley Waste Services Local Law 2011**

Hon Sally Talbot presented Report No. 46 of the Joint Standing Committee on Delegated Legislation in relation to the *City of Gosnells Waste Local Law 2011* and *Shire of Derby/West Kimberley Waste Services Local Law 2011*. (Tabled paper 4105).

Hon Sally Talbot moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

**7. Franchise Agreements Bill 2011**

Non-Government Business No. 1 having been called, Hon Ljiljanna Ravlich, pursuant to notice, moved -

That a Bill for "An Act to regulate the conduct of people who are about to enter or who are parties to franchise agreements and for related matters." be introduced and read a first time.

Question - put and passed.

Bill read a first time.

Hon Ljiljanna Ravlich moved, That the Bill be now read a second time.

*Point of Order*

The Leader of the House raised the following Point of Order -

I understand that this Bill may be identical or very similar to a Bill already defeated in the other House. I seek your advice, Mr President, about the issue of the same question and whether that applies in this particular case.

*President's Ruling*

The President ruled as follows -

The Leader of the House would be referring to Standing Order 170, which refers to the same question. But that Standing Order refers to the same question in this House. We do not take any notice effectively of proceedings that might have occurred in another place. The matter is relevant to proceedings in this House and nowhere else. So there is no Point of Order.

Debate stands adjourned.

## 8. Asbestos in Western Australia

Non-Government Business No. 2 having been called, Hon Jon Ford moved, without notice -

That the Legislative Council notes that it is National Asbestos Disease Awareness Week and the devastating effect that the long term mining and use this deadly substance has had on many Western Australians and will continue to in the future and calls on the Barnett Government to detail what plans and actions it will implement to clean up and to mitigate the effects of asbestos in Western Australia.

Debate ensued.

*Interruption pursuant to Temporary Orders.*

## 9. Order of Business

Ordered - That Orders of the Day Nos 1, *City of Gosnells Waste Local Law 2011 - Disallowance*, 2, *Taxi Amendment Regulations (No. 3) 2011 - Disallowance*, 3, *Shire of Derby/West Kimberley Waste Services Local Law 2011 - Disallowance*, and 4, *Shire of Kalamunda Keeping and Control of Animals and Nuisance Local Law 2011 - Disallowance*, be taken after Order of the Day No. 9, *Commercial Arbitration Bill 2011*. (Leader of the House).

## 10. Residential Tenancies Amendment Bill 2011

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

The Deputy President left the Chair.

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### In Committee

(Hon Col Holt in the Chair)

Clause 41.

Debate resumed.

Clause agreed to.

Clauses 42 to 55 agreed to.

Clause 56.

Hon Adele Farina moved the following Committee Recommendation -

Page 44, after line 18 — To insert —

- (3) A minor must seek advice from a prescribed tenancy network provider before entering into a residential tenancy agreement about their responsibilities and obligations under the agreement.

Debate ensued.

Amendment - put and negatived.

Debate resumed.

Hon Sally Talbot moved -

Page 46, after line 2 — To insert —

- (5) A competent court may, on application from a person who —
- (a) is not a tenant but who is occupying residential premises to which a residential tenancy agreement applies; or
  - (b) is a co-tenant occupying residential premises to which a residential tenancy agreement applies;

and that person is a successful applicant of a violence restraining order against a tenant or co-tenant, order that —

- (i) the applicant is recognised as a tenant under the residential tenancy agreement; or
- (ii) the applicant is removed, without liability, from the residential tenancy agreement.

Debate ensued.

Amendment - put and negatived.

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

Clauses 57 to 73 agreed to.

Clause 74.

Debate ensued.

Hon Sally Talbot moved -

Page 58, after line 13 — To insert —

#### **76BAA. Court to consider interests of children**

A court shall not terminate a social housing or residential tenancy agreement under section 73, 74, 75A or 75 unless the court has taken into consideration —

- (a) the interests of any child in the property and surrounding properties; and
- (b) the effect that the termination may have on such children.

#### **76BA. Termination of agreement affecting a child or person who has a mental illness**

- (1) Where a court terminates a social housing or residential tenancy agreement under section 73, 74, 75A or 75, and a child resides at that property, the court may order the Department of Child Protection to determine if the child is in need of protection.
- (2) Where a court terminates a social housing or residential tenancy agreement under section 73, 74, 75A or 75, and a person who has a mental illness resides at that property, the court may order the Commissioner for Mental Health to arrange for an assessment for their care, treatment and protection needs.

Hon Sally Talbot, by leave, withdrew her amendment.

Hon Lynn MacLaren moved -

Page 58, after line 13 — To insert —

**76BAA. Court to consider interests of a child or person who has a mental illness**

A court shall not terminate a social housing or residential tenancy agreement under section 73, 74, 75A or 75 unless the court has taken into consideration —

- (a) the interests of any child living on the property or surrounding properties and the effect that the termination may have on such a child; and
- (b) the interests of any person with a mental illness living on the property and surrounding properties, and the effect that the termination may have on such a person.

**76BA. Termination of agreement affecting a child or person who has a mental illness**

- (1) Where a court terminates a social housing or residential tenancy agreement under section 73, 74, 75A or 75, and a child resides at that property, the court may order the Department of Child Protection to determine if the child is in need of protection.
- (2) Where a court terminates a social housing or residential tenancy agreement under section 73, 74, 75A or 75, and a person who has a mental illness resides at that property, the court may order the Commissioner for Mental Health to arrange for an assessment for their care, treatment and protection needs.

Debate ensued.

Amendment - put and negatived.

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

Clause 75 agreed to.

Clause 76.

The Minister for Finance representing the Minister for Housing moved -

Page 63, lines 1 to 4 — To delete the lines and insert —

- (7) In section 79(5):
  - (a) delete “an owner” and insert:  
  
a lessor
  - (b) delete “he” (each occurrence) and insert:  
  
the lessor

(c) delete “the owner” (second occurrence) and insert:

the lessor

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 77 and 78 agreed to.

Clause 79.

Debate ensued.

Clause agreed to.

Clauses 80 to 86 agreed to.

Clause 87.

Debate ensued.

Clause agreed to.

Clause 88 agreed to.

Clause 89.

The Minister for Finance representing the Minister for Housing moved -

Page 95, before line 1, the Table the 8<sup>th</sup> row the first column — To delete “s. 79(5)”.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 90 to 94 agreed to.

Clause 95.

Debate ensued.

Hon Sally Talbot moved -

Page 108, lines 4 to 19 — To delete the lines and insert —

**75A. Termination of social housing and residential tenancy agreement due to illegal behaviour**

- (1) A competent court may, upon application by the lessor under a social housing or residential tenancy agreement, terminate the agreement where there is evidence that the tenant has used the premises, or caused or permitted the premises to be used, for an illegal purpose.

Debate ensued.

Amendment - put and negatived.

Hon Lynn MacLaren moved -

Page 108, lines 29 and 30 — To delete the lines and insert —

to —

- (a) whether the behaviour was recurrent and, if it was recurrent, the frequency of the recurrences; and
- (b) the seriousness of the behaviour.

Debate ensued.

Amendment - put and negatived.

Debate resumed.

Question - That the clause stand as printed - put.

The Committee divided.

**Ayes (27)**

Hon Liz Behjat  
 Hon Matt Benson-Lidholm  
 Hon Helen Bullock  
 Hon Jim Chown  
 Hon Mia Davies  
 Hon Ed Dermer  
 Hon Kate Doust  
 Hon Wendy Duncan  
 Hon Phil Edman  
 Hon Sue Ellery  
 Hon Brian Ellis  
 Hon Donna Faragher  
 Hon Jon Ford  
 Hon Philip Gardiner

Hon Nick Goiran  
 Hon Nigel Hallett  
 Hon Alyssa Hayden  
 Hon Col Holt  
 Hon Robyn McSweeney  
 Hon Norman Moore  
 Hon Helen Morton  
 Hon Simon O'Brien  
 Hon Ljiljanna Ravlich  
 Hon Linda Savage  
 Hon Sally Talbot  
 Hon Ken Travers  
 Hon Ken Baston (*Teller*)

**Noes (4)**

Hon Robin Chapple  
 Hon Lynn MacLaren

Hon Giz Watson  
 Hon Alison Xamon (*Teller*)

Clause thus passed.

Clause 96.

Hon Linda Savage moved the following Committee Recommendation -

Page 115, after line 22 — To insert —

- (3) The personal information may indicate the circumstances of the breach.

Debate ensued.

Amendment - put and negatived.

Hon Lynn MacLaren moved -

Page 120, after line 3 — To insert —

- (a) subject to paragraph (c), in the case of personal information relating to a breach of lease committed before the particular person attained the age of 18, one year;

Page 120, line 4 — To insert before “3 years” —

subject to paragraph (c), and in all cases not covered by paragraph (a),

Page 120, line 8 — To delete “3 year period mentioned in paragraph (a)” and insert —

period mentioned in either paragraph (a) or (b)

Debate ensued.

Hon Lynn MacLaren, by leave, withdrew her amendments.

Debate resumed.

The Minister for Finance representing the Minister for Housing moved -

Page 120, after line 10 — To insert —

- (c) if the person —
  - (i) was a minor as defined in section 59A(1) when the information was listed in the database; and
  - (ii) reaches 18 years of age before the end of the 3 year period mentioned in paragraph (a),
 the period ending when the person reaches 18 years of age.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 97 to 108 agreed to.

New clause 61A.

Hon Sally Talbot moved -

Page 49, after line 14 — To insert —

**61A. Section 61A inserted**

Before section 61 insert:



**61A. Termination of social housing or residential housing agreement decision affected by previous behaviour**

In deciding whether to terminate a social housing or residential housing agreement, the court may have regard to the frequency and nature of any notices given to a tenant specifying a breach and requiring that it be remedied, as referred to in section 62(3) and (4).

Debate ensued.

New clause - put and negatived.

Title agreed to.

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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.

**11. Order of Business**

Ordered - That Orders of the Day Nos 1, *City of Gosnells Waste Local Law 2011 - Disallowance*, and 2, *Taxi Amendment Regulations (No. 3) 2011 - Disallowance*, be taken before Order of the Day No. 8, *Criminal Appeals Amendment (Double Jeopardy) Bill 2011*. (Leader of the House).

**12. City of Gosnells Waste Local Law 2011 - Disallowance**

Pursuant to SO 152(b) 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 Gosnells Waste Local Law 2011* published in the *Gazette* on 22 July 2011 and tabled in the Legislative Council on 10 August 2011 under the *Waste Avoidance and Resource Recovery Act 2007*, be and is hereby disallowed.

Debate ensued.

Question - put and passed.

**13. Taxi Amendment Regulations (No. 3) 2011 - Disallowance**

Pursuant to SO 152(b) the following motion was moved *pro forma* by Hon Ken Travers -

That the *Taxi Amendment Regulations (No. 3) 2011* published in the *Gazette* on 5 August 2011 and tabled in the Legislative Council on 10 August 2011 under the *Taxi Act 1994*, be and are hereby disallowed.

Debate ensued.

**14. Questions Without Notice**

Questions without notice were taken.

**15. Taxi Amendment Regulations (No. 3) 2011 - Disallowance**

Debate resumed on the motion of Hon Ken Travers (cf item 13 above).

Question - put and negatived.

**16. Order of Business**

Ordered - That Members' Statements be taken forthwith. (Leader of the House).

**17. Members' Statements**

Statements were taken.

**18. Adjournment**

The House adjourned at 5.54pm until Tuesday, 29 November 2011 at 3.00pm.

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

Attendance: Present all Members except Hon Peter Collier and Hon Michael Mischin.

**MALCOLM PEACOCK**  
Clerk of the Legislative Council

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