

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 49

TUESDAY, 18 FEBRUARY 2014

1. Meeting of Council

The Council assembled at 3.00pm pursuant to order.

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

2. Death of Hon Desmond Keith Dans — Motion of Condolence

Hon Sue Ellery moved, without notice —

That this Council expresses its deep regret at the death of Hon Desmond Keith Dans, a former Member of the Legislative Council for the South Metropolitan Region, and places on record its appreciation for his long public service and tenders its profound sympathy to his family in their bereavement.

The motion was supported by all Members including the President and was carried in silence, Members standing in their places.

3. Statement by President — Clerk of the Legislative Council

The President made the following Statement —

I acknowledge the presence at the table today of our newly appointed Clerk of the Legislative Council, Nigel Pratt. As we know, Nigel was appointed late last year to take on the role following the retirement of Malcolm Peacock. He started work on 3 February this year. I am sure I speak for everybody associated with the Legislative Council in congratulating Nigel on his appointment and look forward to working with him in the future. Welcome, Nigel, and best wishes for the years ahead.

4. Message from His Excellency the Governor — Assent to Bills

The President reported the receipt of a Message from His Excellency the Governor assenting to the following Bills —

18 December 2013 — Message No. 28	Act No.
Minerals Research Institute of Western Australia Bill 2013	23 of 2013
Barrow Island Amendment Bill 2013	24 of 2013
Electricity Corporations Amendment Bill 2013	25 of 2013

5. Petition

Hon Stephen Dawson presented a petition from 535 petitioners requesting the Legislative Council to support the allocation of more ultrasound radiology services in the Pilbara. (Tabled Paper 1175).

6. President's Ruling —Same-Sex Marriage Bill 2013

The President ruled as follows —

On our final sitting day last year, Hon Lynn MacLaren introduced the *Same-Sex Marriage Bill 2013*. During Members' Statements, Hon Nick Goiran drew to the attention of the House Standing Order 122(3)(b), and sought my ruling as to whether the *Same-Sex Marriage Bill 2013* offended against that specific provision. I have considered this matter over the summer recess.

In the first instance, I draw Members' attention to the ruling I delivered on 30 November 2012, regarding the *Marriage Equality Bill 2012* introduced in the last Parliament by Hon Lynn MacLaren. I note that Hon Nick Goiran referred to that previous ruling and quoted from it in his Member's Statement. I would also draw Members' attention to part of that previous ruling, in which I stated —

It has been the traditional approach of Presidents of this House that such general matters of law are to be left to the courts to adjudge, and that the President should only make rulings on a matter of law that is directly related to the jurisdiction or procedures of the House; a common example being the applicability of section 46 of the Constitution Acts Amendment Act 1899 to a Bill then under consideration by the House. The most recent rulings where such an approach was taken were in relation to the various electoral reform bills of 2001, which were ultimately the subject of a series of court decisions once enacted.

My view in relation to this matter has not altered since that time.

Standing Order 122(3)(b) provides that “Any Bill that the President determines ... in the case of a Council Bill, cannot be introduced in the Council in accordance with any constitutional or statutory provision, shall be withdrawn by order of the President”. The focus of this Standing Order in relation to Council Bills is deliberate — the clear intent is to exclude Bills that offend against provisions such as section 46 of the *Constitution Acts Amendment Act 1899*, as referred to in my 2012 ruling.

The decision of the High Court of Australia in *The Commonwealth v ACT* [2013] HCA 55 on 12 December 2013 is conclusive in relation to the *Marriage Equality (Same Sex) Act 2013* (ACT). This law, when enacted, was found to be inconsistent in its entirety with the *Marriage Act 1961* (Cth) within the meaning of section 28(1) of the *Australian Capital Territory (Self-Government) Act 1988* (Cth). Section 109 of the Commonwealth Constitution provides for a similar test of inconsistency with respect to laws made by a State legislature. Section 109 provides that “When a law of the State is inconsistent with a law of the Commonwealth, the latter shall prevail and the former shall, to the extent of the inconsistency, be invalid.” Section 109 was not directly considered by the High Court in the ACT case.

It is only when a Bill is passed and receives the Royal Assent that it becomes a law which may be invalid for inconsistency under section 109. There is no provision that I can see in either this State's constitutional arrangements or the Commonwealth Constitution which would prevent this House from considering the Bill introduced by Hon Lynn MacLaren. The matter of the Bill's validity will, if enacted and challenged, be a matter for the courts. The matters raised by Hon Nick Goiran may be taken into consideration by Honourable Members in determining whether to vote in favour of the second reading of the Bill.

Accordingly, consistent with my ruling of 30 November 2012, I am not prepared to rule the *Same-Sex Marriage Bill 2013* out of order.

7. Ministerial Statement — Greater Bunbury Region Scheme Amendment 0024/41 – Industrial Deferred Zone

The Minister for Mental Health representing the Minister for Planning made a Ministerial Statement with respect to the Greater Bunbury Region Scheme Amendment 0024/41 – Industrial Deferred Zone.

The Minister for Mental Health representing the Minister for Planning tabled plans for the Greater Bunbury Region Scheme Amendment 0024/41 – Industrial Deferred Zone. (Tabled Paper 1176).

The Minister for Mental Health tabled the Greater Bunbury Region Scheme Amendment 0024/41 (Major Amendment) — Industrial Deferred Zone, Report on Submissions. (Tabled Paper 1177).

8. Ministerial Statement — Statutory Review of the Guardianship and Administration Act 1990

The Attorney General made a Ministerial Statement with respect to the statutory review of the *Guardianship and Administration Act 1990*.

9. Schedules for Non-Government Business and Private Members' Business

The President laid on the Table the Non-Government Business and Private Members Business schedules for 2014 (Tabled paper 1161).

The Leader of the House moved, without notice —

That, pursuant to Standing Order 111(4), the schedule for Non-Government Business tabled by the President be adopted.

Question — put and passed.

The Leader of the House moved, without notice —

That, pursuant to Standing Order 112(4), the schedule for Private Members' Business tabled by the President be adopted.

Question — put and passed.

10. Papers

The following Papers were laid on the Table by —

President

Reports -

Corruption and Crime Commission of Western Australia – Report on the Investigation of Alleged Public Sector Misconduct by a Local Government Employee in Relation to the Purchase of Management Systems Software (19 December 2013) (Deemed tabled 19/12/2013) 1162

Corruption and Crime Commission of Western Australia – Report on the Investigation of Alleged Public Sector Misconduct by Western Australian Police Officers in Relation to Incidents that Occurred at Broome Police Station on 29 March and 19 April 2013 (23 December 2013) (Deemed tabled 23/12/2013) 1163

Office of the Inspector of Custodial Services – The Management of Young Women and Girls at Banksia Hill Detention Centre (Report No. 86) (October 2013) (Deemed tabled 16/12/2013) 1164

Office of the Inspector of Custodial Services – Court Custody Centres' Inspection (Report No. 87) (December 2013) (Deemed tabled 13/02/2014) 1165

Leader of the House

Directions -

Electricity Corporations Act 2005 – Electricity Retail Corporation Revocation Direction and Electricity Generation Corporation Revocation Direction 2013 (Deemed tabled 7/01/2014) 1166

Regulations -

Exemption from Provisions of the Electricity Corporations (Electricity Generation and Retail Corporation) Regulations 2013 (Date received 29/01/2014)..... 1167

Reports -

Government Mid-Year Financial Projections Statements (2013-2014),
(December 2013) (Date received 7/01/2014)..... 1168

Interstate and Overseas Travel Undertaken by Members of Parliament Funded by the
Imprest System (for the three months ended 30 June 2013)
(Date received 29/01/2014)..... 1169

Minister for Mental Health*Reports -*

Treasury Corporation (Quarterly Report) (for the quarter ended 31 December 2013)
(Deemed tabled 30/01/2014) 1170

Attorney General*Annual Report -*

Legal Practice Board of Western Australia (2012-2013) (Date received 03/02/2014) 1171

Minister for Agriculture and Food*Annual Reports -*

Biosecurity Council of Western Australia (2012-2013) (Date received 18/12/2013)..... 1172

Reports -

Overseas Travel Report in relation to Western Australia as an investment destination
in agrifood arising from the Minister for Agriculture and Food's visit to
Thailand and Vietnam - 5 to 12 October 2013 (Date received 29/01/2014) 1173

Parliamentary Secretary representing the Minister for Health*Annual Reports -*

Pharmacy Registration Board of Western Australia (2012-2013)
(Date received 15/01/2014)..... 1174

**11. Standing Committee on Uniform Legislation and Statutes Review — Report No. 84 —
Medicines, Poisons and Therapeutic Goods Bill 2013**

Hon Kate Doust presented Report No. 84 of the Standing Committee on Uniform Legislation and Statutes Review, *Medicines, Poisons and Therapeutic Goods Bill 2013*. (Tabled Paper 1178).

**12. Standing Committee on Uniform Legislation and Statutes Review — Report No. 85 —
Electronic Conveyancing Bill 2013**

Hon Kate Doust presented Report No. 85 of the Standing Committee on Uniform Legislation and Statutes Review, *Electronic Conveyancing Bill 2013*. (Tabled Paper 1179).

13. Order of Business

Ordered — That Order of the Day No 1, *Metropolitan Region Scheme Amendment 1225/41 – Upper Swan Urban Precinct - Disallowance*, be taken after Order of the Day No. 12, *Sentencing Legislation Amendment Bill 2013*. (Leader of the House).

14. Western Australian Photo Card Bill 2013

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

15. Questions Without Notice

Questions without notice were taken.

The Parliamentary Secretary representing the Minister for Regional Development tabled a Memorandum of Understanding between Kalgoorlie–Boulder Chamber of Commerce and Goldfields–Esperance Development Commission, in response to a question without notice asked by Hon Robin Chapple. (Tabled Paper 1180).

The Parliamentary Secretary representing the Minister for Regional Development tabled the Public Sector Commission’s summary of recommendations from the report into Goldfields–Esperance Development Commission, in response to a question without notice asked by Hon Robin Chapple. (Tabled Paper 1181).

The Leader of the House representing the Premier tabled documents in relation to the Government Mid-Year Financial Projections statement, in response to a question without notice asked by Hon Sue Ellery. (Tabled Paper 1183).

The Leader of the House representing the Premier tabled documents in relation to shark proof enclosures off Old Dunsborough and Coogee beaches, in response to a question without notice asked by Hon Lynn MacLaren. (Tabled Paper 1182).

The Minister for Education tabled documents in relation to the Boarding Away from Home Allowance by region for 2007-08, 2008-09, 2009-10, 2010-11, 2011-12, and 2012-13, in response to question on notice No. 649 asked by Hon Stephen Dawson. (Tabled Paper 1184).

The Leader of the House representing the Minister for Energy tabled documents in relation to power supply interruption details for 2012 and 2013 (to date) for Mundaring, Stoneville and Parkerville, in response to question on notice No. 655 asked by Hon Alanna Clohesy. (Tabled Paper 1185).

The Attorney General representing the Minister for Police tabled documents in relation to Policing districts, authorised strengths and actual strengths as at 1 November 2013, in response to question on notice No. 657 asked by Hon Samantha Rowe. (Tabled Paper 1186).

The Minister for Fisheries on behalf of the Parliamentary Secretary representing the Minister for Regional Development tabled documents in relation to the South West Development Commission, being the registered owner of land lots along the Australind Bypass and nearby roads in Bunbury, in response to question on notice No. 648 asked by Hon Adele Farina. (Tabled Paper 1187).

The Parliamentary Secretary representing the Minister for Transport tabled documents in relation to the Avonlink and the average subsidy per passenger, in response to a question without notice asked by Hon Darren West. (Tabled Paper 1188).

16. Western Australian Photo Card Bill 2013

Debate resumed on the second reading of this Bill (*see item 14 above*).

Question — put and passed.

Bill read a second time.

The Acting President left the Chair.

In Committee

(Hon Simon O’Brien in the Chair)

Clause 1.

Debate ensued.

Clause agreed to.

Clauses 2 and 3 agreed to.

Clause 4.

Debate ensued.

Clause agreed to.

Clause 5.

Debate ensued.

Clause agreed to.

Clauses 6.

Debate ensued.

Clause agreed to.

Clause 7 agreed to.

Clause 8.

Debate ensued.

Clause agreed to.

Clause 9.

Debate ensued.

Clause agreed to.

Clause 10.

Debate ensued.

Clause agreed to.

Clause 11.

Debate ensued.

Clause agreed to.

Clause 12 agreed to.

Clause 13.

Debate ensued.

Clause agreed to.

Clauses 14 to 17 agreed to.

Clause 18.

Debate ensued.

Clause agreed to.

Clause 19 agreed to.

Clause 20.

Debate ensued.

Clause agreed to.

Clauses 21 to 23 agreed to.

Clause 24.

Hon Ken Travers moved —

Page 17, line 5 — To delete “Act;” and insert —

Act, provided that the fee referred to in section 5(3)(c) shall not exceed the amount prescribed for the grant of a driver’s licence whether or not by way of renewal to the equivalent class of person in regulations made under the *Road Traffic Act 1974*.

Debate ensued.

Amendment — put.

The Committee divided.

Ayes (12)

Hon Robin Chapple
Hon Alanna Clohesy
Hon Stephen Dawson
Hon Kate Doust
Hon Sue Ellery
Hon Lynn MacLaren

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

Noes (21)

Hon Martin Aldridge
Hon Ken Baston
Hon Liz Behjat
Hon Jacqui Boydell
Hon Paul Brown
Hon Jim Chown
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 Robyn McSweeney
Hon Michael Mischin
Hon Simon O'Brien
Hon Phil Edman (*Teller*)

Amendment thus negatived.

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

Title agreed to.

The President resumed the Chair.

Bill reported without amendment.

Report adopted.

The Parliamentary Secretary representing the Minister for Transport moved, That the Bill be read a third time.

The President having reported that the Deputy Chair of Committees had certified that this was a true copy of the Bill as agreed to in Committee of the Whole House and reported.

Debate ensued.

Interruption pursuant to order.

17. Members' Statements

Statements were taken.

18. Adjournment

The Council adjourned at 10.08pm until Wednesday, 19 February 2014 at 2.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Adele Farina.

NIGEL PRATT
Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council