

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 123

WEDNESDAY, 10 NOVEMBER 2010

1. Meeting of Council

The Council assembled at 2.00pm pursuant to Temporary Orders.

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

2. Papers

The following Papers were laid on the Table by -

President

Auditor General's Papers -

Audit Results Report - Annual 2009-10 Assurance Audits (Report No. 10)
(November 2010) 2798

Leader of the House

Reports -

Gold Corporation - Statement of Corporate Intent (2010-2011) (Date received 9/11/2010)..... 2799

Gold Corporation - Strategic Development Plan (2010/11-2014/15)
(Date received 9/11/2010)..... 2800

Minister for Environment

Reports -

Cockburn Sound Management Council - State of Cockburn Sound 2009
(Date Received 9/11/2010) 2801

Parliamentary Secretary representing the Treasurer

Reports -

Western Australian Treasury Corporation, Quarterly Report (for the quarter ended
30 September 2010) (Date Received 9/11/2010) 2802

3. Statement by President - Legislative Council - Better Practice Agency

The President made the following Statement -

Members, the report that I have just tabled from the Office of the Auditor General contains the results of the Auditor General's annual assurance audits for agencies in 2009-10.

The report includes the Auditor General's assessment of better practice agencies, being those agencies that demonstrate a better practice in managing their financial reporting and controls during the reporting period. On page 32 of the report in table 10, the 66 best practice agencies for 2009-10 are listed. I draw to Members' attention that the Department of the Legislative Council is listed amongst those agencies for the second consecutive year.

On behalf of all Members, I acknowledge the efforts of the Clerk and officers of the Parliament, particularly the Department's Chief Financial Officer, Dawn Timmerman, in achieving this continued success.

4. Government Small Business Policy

Motion No. 1 having been called, debate resumed on the motion of Hon Ljiljanna Ravlich as follows -

- (1) That this House condemns the Minister for Commerce for his failure to produce a small business policy and calls on the Minister to outline what he will do to assist small businesses and Western Australian workers who have been adversely impacted by the global financial crisis.
- (2) That this House calls on the Minister to explain -
 - (a) his Government's policies to deal with the impact of the global financial crisis on small business and the thousands of workers who lose their jobs and require retraining;
 - (b) what strategies he has put in place to protect small business and their workers;
 - (c) what practical assistance is available to small businesses that go bust and the thousands of workers who lose their jobs; and
 - (d) why he has been asleep at the wheel whilst small business in Western Australia go under.

Question - put.

The House divided.

Ayes (11)

Hon Matt Benson-Lidholm
 Hon Helen Bullock
 Hon Robin Chapple
 Hon Kate Doust
 Hon Sue Ellery
 Hon Jon Ford

Hon Lynn MacLaren
 Hon Ljiljanna Ravlich
 Hon Sally Talbot
 Hon Ken Travers
 Hon Linda Savage (*Teller*)

Noes (17)

Hon Liz Behjat
 Hon Jim Chown
 Hon Peter Collier
 Hon Mia Davies
 Hon Wendy Duncan
 Hon Brian Ellis
 Hon Donna Faragher
 Hon Philip Gardiner
 Hon Nick Goiran

Hon Alyssa Hayden
 Hon Col Holt
 Hon Robyn McSweeney
 Hon Michael Mischin
 Hon Norman Moore
 Hon Helen Morton
 Hon Simon O'Brien
 Hon Ken Baston (*Teller*)

Question thus negatived.

5. Government Tourism Policy

Motion No. 2 having been called, Hon Ljiljanna Ravlich, pursuant to notice, moved -

- (1) That this House condemns the Minister for Tourism for her failure to produce a tourism policy at a time of economic uncertainty and calls on the Minister to outline what she will do to assist tourism businesses and Western Australian workers who are adversely impacted by the global financial crisis.
- (2) That this House calls on the Minister to explain -
 - (a) her Government's policies to deal with the impact of the global financial crisis on tourism operators in Western Australia and the thousands of workers that are being retrenched in the tourism and hospitality sector;
 - (b) what strategies she has put in place to protect small business and their workers;
 - (c) what practical assistance is available to tourism operators that go bust and the thousands of workers who lose their jobs; and
 - (d) why she has been asleep at the wheel whilst tourism operators in Western Australia go under.

Interruption pursuant to Temporary Orders.

6. Consideration of Committee Reports and Ministerial Statements

Pursuant to Temporary Orders for the consideration of Committee Reports and Ministerial Statements.

In Committee

(Hon Matt Benson-Lidholm in the Chair)

Cost of Living Rebate Scheme - Ministerial Statement and Tabled Paper

Hon Sue Ellery moved, That the Ministerial Statement and Tabled Paper be noted.

7. Questions Without Notice

Questions without notice were taken.

The Parliamentary Secretary representing the Minister for Mental Health tabled documents in relation to details of staffing levels for the Child and Adolescent Mental Health Service, in response to question on notice No. 2795 asked by Hon Adele Farina. (Tabled paper 2803).

The Parliamentary Secretary representing the Minister for Regional Development, in accordance with Standing Order No. 138(d), advised that an answer to question on notice No. 2793 asked by Hon Adele Farina will be provided on 11 November 2010.

8. Consideration of Committee Reports and Ministerial Statements

Pursuant to Temporary Orders for the consideration of Committee Reports and Ministerial Statements.

In Committee

(Hon Jon Ford in the Chair)

Cost of Living Rebate Scheme - Ministerial Statement and Tabled Paper

Hon Sue Ellery continued her introductory remarks in moving, That the Ministerial Statement be noted.

Debate ensued.

Interruption pursuant to Temporary Orders.

The Deputy President resumed the Chair.

The Deputy Chairman of Committees reported that the Committee of the Whole House had considered the -

- (1) Cost of Living Rebate Scheme - Ministerial Statement and Tabled Paper, made progress, and asked leave to sit again.

Report adopted.

9. Order of Business

Ordered - That Bills for Introduction be taken forthwith. (Leader of the House).

10. Road Traffic Legislation Amendment (Information) Bill 2010

The Minister for Transport, pursuant to notice, moved -

That a Bill for “An Act to amend —

- the *Road Traffic Act 1974*; and
- the *Road Traffic (Administration) Act 2008*; and
- the *Road Traffic (Authorisation to Drive) Act 2008*,

in relation to the disclosure of certain classes of information, the provision of photographs and signatures for use on learner’s permits, and for related purposes.” be introduced and read a first time.

Question - put and passed.

Bill read a first time.

The Minister for Transport moved, That the Bill be now read a second time.

Debate stands adjourned.

11. Order of Business

Ordered - That Orders of the Day Nos 1, *Shire of Roebourne Parking and Parking Facilities Local Law 2010 - Disallowance*, 2, *Western Australian Meat Industry Authority Amendment Regulations (No. 2) 2010 - Disallowance*, 3, *Occupational Safety and Health Amendment Regulations (No. 5) 2010 - Disallowance*, and 4, *Shire of Koorda Cemeteries Amendment Local Law 2010 - Disallowance*, be taken after Order of the Day No. 10, *Criminal Investigation Amendment Bill 2009*. (Leader of the House).

12. Prohibited Behaviour Orders Bill 2010

Debate resumed on the motion of Hon Alison Xamon as follows -

That the *Prohibited Behaviour Orders Bill 2010* be discharged and referred to the Standing Committee on Legislation for consideration and report not later than Tuesday, 15 February 2011.

Hon Adele Farina moved to amend the motion as follows -

To insert the following new paragraph —

- (2) The committee has the power to consider the policy of the Bill.

Debate ensued.

Amendment - put.

The House divided.

Ayes (12)

Hon Helen Bullock
 Hon Robin Chapple
 Hon Kate Doust
 Hon Sue Ellery
 Hon Adele Farina
 Hon Jon Ford

Hon Lynn MacLaren
 Hon Ljiljanna Ravlich
 Hon Sally Talbot
 Hon Ken Travers
 Hon Alison Xamon
 Hon Linda Savage (*Teller*)

Noes (17)

Hon Liz Behjat
 Hon Jim Chown
 Hon Peter Collier
 Hon Wendy Duncan
 Hon Phil Edman
 Hon Brian Ellis
 Hon Philip Gardiner
 Hon Nick Goiran
 Hon Nigel Hallett

Hon Alyssa Hayden
 Hon Col Holt
 Hon Robyn McSweeney
 Hon Michael Mischin
 Hon Helen Morton
 Hon Simon O'Brien
 Hon Max Trenorden
 Hon Ken Baston (*Teller*)

Amendment thus negatived.

Question - That the motion be agreed to - put.

The House divided.

Ayes (12)

Hon Helen Bullock
 Hon Robin Chapple
 Hon Kate Doust
 Hon Sue Ellery
 Hon Adele Farina
 Hon Jon Ford

Hon Lynn MacLaren
 Hon Ljiljanna Ravlich
 Hon Sally Talbot
 Hon Ken Travers
 Hon Alison Xamon
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 Hon Nick Goiran
 Hon Nigel Hallett

Hon Alyssa Hayden
 Hon Col Holt
 Hon Robyn McSweeney
 Hon Michael Mischin
 Hon Helen Morton
 Hon Simon O'Brien
 Hon Max Trenorden
 Hon Ken Baston (*Teller*)

Question thus negatived.

Debate resumed.

Question - That the Bill be read a second time - put.

The House divided.

Ayes (17)

Hon Liz Behjat
 Hon Jim Chown
 Hon Peter Collier
 Hon Wendy Duncan
 Hon Phil Edman
 Hon Brian Ellis
 Hon Philip Gardiner
 Hon Nick Goiran
 Hon Nigel Hallett

Hon Alyssa Hayden
 Hon Col Holt
 Hon Robyn McSweeney
 Hon Michael Mischin
 Hon Helen Morton
 Hon Simon O'Brien
 Hon Max Trenorden
 Hon Ken Baston (*Teller*)

Noes (12)

Hon Helen Bullock
 Hon Robin Chapple
 Hon Kate Doust
 Hon Sue Ellery
 Hon Adele Farina
 Hon Jon Ford

Hon Lynn MacLaren
 Hon Ljiljanna Ravlich
 Hon Sally Talbot
 Hon Ken Travers
 Hon Alison Xamon
 Hon Linda Savage (*Teller*)

Question thus passed.

Bill read a second time.

The Deputy President left the Chair.

In Committee

(Hon Jon Ford in the Chair)

Clause 1.

Debate ensued.

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

Question - put and passed.

The Deputy 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.

13. Mutual Recognition (Western Australia) Bill 2010

The Deputy President reported the receipt of Message No. 148 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Transport on behalf of the Leader of the House representing the Premier moved, That the Bill be now read a first time.

Question - put and passed.

Bill read a first time.

The Minister for Transport on behalf of the Leader of the House representing the Premier moved, That the Bill be now read a second time.

Point of Order

Hon Sue Ellery raised the following Point of Order -

Members would be aware that Standing Order 230A applies to a bill that ratifies or gives effect to bilateral or multilateral intergovernmental agreements to which the Government of the state is a party, and automatically refers that bill to the Standing Committee on Uniform Legislation and Statutes Review. There are two questions I might have put to you now, Mr Deputy President. The first one is to seek from you your view about whether or not this bill should stand referred under Standing Order 230A. If, Mr Deputy President, you were of a view to rely on an earlier ruling, which has been drawn to my attention, in respect of the *Mutual Recognition (Western Australia) Bill 2001*, that ruling provides, if I may read it out —

Standing Order No. 230(c) refers to the automatic referral of a Bill to what was the old Constitutional Affairs Committee, but is now the Legislation Committee, on the basis that a Bill ratifies or gives effect to a bilateral or multilateral intergovernmental agreement or, by reason of its subject matter, introduces a uniform scheme or uniform laws.

This the critical bit I think, Mr President —

This is a not a Bill that is affected by Standing Order No. 230(c) on the basis that it is a continuation of a uniform scheme that has already had effect in Western Australia and been given legislative effect.

Mr President, my second part of my point of order is that if that is the ruling that you would rely on, how is the House to be satisfied that there is in fact nothing different from the bill that was captured by that clause of the previous ruling—that is, “it is a continuation of the uniform scheme that has already had effect in Western Australia and been given legislative effect”? After having listened to the second reading speech, I will stand corrected, but I thought I heard the Minister say something about the Commonwealth Act having been amended once, earlier this year, to add a South Australian provision to the list of permanent exemptions in Schedule 2. The second part of the question in my point of order is: is the President satisfied that there is no difference between the uniform scheme that has already been given legislative effect in Western Australia and the uniform scheme that is before the House now?

President's Ruling

The President ruled as follows -

Members, the Leader of the Opposition has asked for some clarification. As it stands, we had anticipated the question being asked on this bill and the points raised by the Leader of the Opposition. Therefore, some comments in respect of a ruling have been prepared in anticipation of the Leader of the Opposition raising that very point. I will now read the ruling.

Standing Order 230A relates to the automatic referral of a bill to the Standing Committee on Uniform Legislation and Statutes Review on the basis that the bill ratifies or gives effect to a bilateral or multilateral intergovernmental agreement or, by reason of its subject matter, introduces a uniform scheme or uniform laws. This is not a bill that is affected by Standing Order 230A. The bill will merely enable the continuation of a uniform scheme developed in the 1990s that has already had longstanding legislative effect in Western Australia. The bill will effectively replace and continue the role of existing legislation that is due to expire at the end of February 2011. The bill is a relatively short bill and there are no significant changes proposed in the bill from the existing *Mutual Recognition (Western Australia) Act 2001*. Similarly, the Commonwealth Act that is proposed to be continued be adopted in Western Australia by the bill, the Commonwealth *Mutual Recognition Act 1992*, has not been the subject of any significant amendment since its last adoption in 2001.

Both the bill and the adopted Commonwealth legislation are, in their nature, basic legislation that provides an overarching framework ensuring that trade in goods and the conduct of an occupation are to be facilitated and mutually recognised throughout Australia. The specific regulation of inter-jurisdictional trade and the recognition of professional qualifications are

dealt with in separate legislation arising from various intergovernmental agreements. These specific intergovernmental agreements and their implementing legislation are each subject to Standing Order 230A as the relevant bills come before the House. Accordingly, this is not a bill that stands referred under Standing Order 230A. I note that a ruling in similar terms was given in relation to the 2001 equivalent of this bill on 12 June 2001.

Point of Order

Hon Sue Ellery raised the following Point of Order -

With the greatest of respect, Mr President, obviously I have not seen that ruling, so I am relying on what I have just heard you say. In the previous ruling that was relied on, it seemed to me that the key sentence was the sentence that read —

This is a not a Bill that is affected by — The relevant Standing Order — on the basis that it is a continuation of a uniform scheme that has already had effect in Western Australia and been given legislative effect.

In the ruling you have just given us, Mr President, you have referred to the fact that some assessment has been made that no significant changes are made to that uniform scheme. The previous ruling in 2001 offered no qualification. It stated that the bill did not need to be referred to the Legislation Committee because it was a continuation—not because it was a continuation with just some slight changes, but, without qualification, because it was a continuation.

I do not mean any disrespect or to dissent from your ruling at all, but can you satisfy the House that you are satisfied, Mr President, that there are indeed no significant changes? The second reading speech has just been read in, so I have no way of satisfying myself, other than relying on your advice to me, that the change between the ruling in 2001, which offered no qualification, and your ruling now, which states that there are no significant changes, is that it is just a continuation. I wonder whether you might be able to assist me by perhaps illuminating how you were satisfied about that.

President's Ruling

The President ruled as follows -

Leader of the Opposition, Members, I will take that comment on notice and come back first thing tomorrow morning to clarify that extra point that you see in the legislation that needs further clarification.

Debate stands adjourned.

14. Members' Statements

Statements were taken.

15. Misuse of Drugs Amendment Bill (No. 2) 2010

The President reported the receipt of Message No. 145 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Energy representing the Minister for Police moved, That the Bill be now read a first time.

Question - put and passed.

Bill read a first time.

The Minister for Energy representing the Minister for Police moved, That the Bill be now read a second time.

Debate stands adjourned.

16. Road Traffic Legislation Amendment (Disqualification by Notice) Bill 2010

The President reported the receipt of Message No. 149 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Transport moved, That the Bill be now read a first time.

Question - put and passed.

Bill read a first time.

The Minister for Transport moved, That the Bill be now read a second time.

Debate stands adjourned.

17. Criminal Code Amendment (Infringement Notices) Bill 2010

The President reported the receipt of Message No. 146 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Energy representing the Minister for Police moved, That the Bill be now read a first time.

Question - put and passed.

Bill read a first time.

The Minister for Energy representing the Minister for Police moved, That the Bill be now read a second time.

Debate stands adjourned.

18. Adjournment

The House adjourned at 10.34pm until Thursday, 11 November 2010 at 10.00am.

Members present during the day's proceedings

Attendance: Present all Members except Hon Ed Dermer and Hon Giz Watson.

NIGEL LAKE
Acting Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council