

Minutes of Proceedings



LEGISLATIVE COUNCIL

TUESDAY, 30 NOVEMBER 2021

2.00pm

1. Meeting of Council

The Council assembled at 2.00pm pursuant to order.

The President, Hon Alanna Clohesy, took the Chair.

Prayers and an Acknowledgement of Country were read.

2. 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 —

24 November 2021 — Message No. 29				Act No.
Constitutional and Electoral Legislation Amendment (Electoral Equality) Bill 2021				20 of 2021
COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill (No. 2) 2021				21 of 2021

3. Statement by President — Memoranda of Understanding between the Parliament and Law Enforcement Agencies

The President made the following Statement —

I have pleasure in presenting to the Council two executed memoranda of understanding between the Houses of Parliament and the Corruption and Crime Commission and the Western Australia Police Force respectively. The memoranda are concerned with the determination of claims of immunity from production of material to law enforcement agencies by reason of parliamentary privilege. It covers claims of privilege made on behalf of current and former Members, parliamentary officers and Members' staff. The need for such memoranda has long been identified, and is similar to agreements applying in other Australian jurisdictions since the early 2000s between Parliaments and law enforcement agencies.

On 23 July 2021, the President of the Legislative Council, the Speaker of the Legislative Assembly, the Commissioner of the Western Australia Police Force and the Commissioner of the Corruption and Crime Commission met and established a memorandum of understanding working group to develop a suitable draft memorandum of understanding. It soon became clear to the MOU working group that separate memoranda of understanding between the Houses of Parliament and each of the Corruption and Crime Commission and Western Australia Police Force was the most practical way to proceed, given significant operational and statutory framework differences between the Corruption and Crime Commission, under the *Corruption, Crime and Misconduct Act 2003*, and the

Western Australia Police Force, under the *Criminal Investigation Act 2006*. These memoranda have also been designed as an overarching statement of broad principles under which a series of model or template protocols are being developed to deal with procedural specifics and different types of investigations—that is, when the evidence consists of digital images only, mostly hard copy files or vast amounts of electronic data on multiple devices.

Key to the memoranda are that any protocol under them must be consistent with the legal principles established in *The President of the Legislative Council of Western Australia v Corruption and Crime Commission* [No. 2] [2021] WASC 223.

The President tabled a Memorandum of Understanding — Determinations of Claims of Immunity from Production by Reason of Parliamentary Privilege between the Corruption and Crime Commission of Western Australia; the Legislative Assembly of Western Australia and the Legislative Council of Western Australia (November 2021). (Tabled Paper 933).

The President tabled a Memorandum of Understanding — Determinations of Claims of Immunity from Production by Reason of Parliamentary Privilege between the Western Australia Police Force; the Legislative Assembly of Western Australia and the Legislative Council of Western Australia (November 2021). (Tabled Paper 934).

4. Statement by President — Conclusion of Legal Proceedings involving the Legislative Council

The President made the following Statement —

On 27 September 2019, two separate legal actions were commenced in the Supreme Court of Western Australia arising from the exercise of the compulsory evidence production powers of the Corruption and Crime Commission during its investigation into the possible misuse of electorate allowances of Members of Parliament.

CIV 2716 of 2019 was an action by the Attorney General against the President and Clerk of the Legislative Council seeking, amongst other things, to have declared invalid an order of the Legislative Council directing the Clerk of the Legislative Council not to comply with notices to produce documents issued by the Commission. CIV 2717 of 2019 was an action by the President of the Legislative Council against the Commission and other parties seeking, amongst other things, to have declared invalid both the Commission's various notices to produce documents and the purported determination of parliamentary privilege made by the State Solicitor's Office on behalf of the then director general of the Department of the Premier and Cabinet in relation to documents subsequently produced to the Commission by the Director General.

Following a hearing of CIV 2717 of 2019 on 22 and 23 April 2021, the Honourable Justice Hall delivered his judgement on 13 July 2021 and held that although the Commission's notices to produce documents were valid, the receipt of documents by the Commission on the basis of the Director General's purported determination of parliamentary privilege was not valid. The court reaffirmed the primacy of parliamentary privilege by holding that law enforcement agencies did not have the power to require the production of documents that were likely to include privileged documents until a proper determination of which documents were protected from production had been made by either the relevant House of Parliament or a court.

On 26 October 2021, Hon Justice Hall made his final orders to conclude Supreme Court action CIV 2717 of 2019. Those final orders were, essentially —

- (1) to declare that the receipt by the Commission on 22 July 2019 of the Department of the Premier and Cabinet's records in reply to the Commission's various notices to produce documents was in contravention of section 3(2) of the *Corruption, Crime and Misconduct Act 2003 (WA)*, in excess of the Commission's powers, rights or functions and invalid; and
- (2) to require the Commission to deliver up to the Legislative Council all records produced on behalf of the then Director General of the Department of the Premier and Cabinet on 22 July 2019 or since in reply to the Commission's various notices to produce documents, for the purposes of determinations of parliamentary privilege being made by the Legislative Council in relation to those documents.

The background to the case, including an extensive chronology and summary of relevant case law, is set out in the sixty-first report of the Legislative Council Standing Committee on Procedure and Privileges.

On 25 November 2021, the Attorney General, with the consent of the other parties and the court, discontinued Supreme Court action CIV 2716 of 2019. This now brings the legal proceedings involving the Legislative Council to a conclusion.

In relation to the Commission's ongoing investigation into electoral allowances, the Standing Committee on Procedure and Privileges, as the delegate of the Legislative Council, pursuant to an order of this Council on 12 June 2019 has now —

- (a) completed its review of the evidence sought by the Commission that has been provided to it, making determinations of parliamentary privilege in relation to approximately 500 000 items; and
- (b) is working with the Commission's digital forensic staff to produce to the Commission later this week electronic copies in an acceptable format of all non-privileged material arising from that process.

I wish to thank all Members and staff of the Council for their support and patience during the significant challenges posed by this litigation over the last two and a half years.

5. Petitions

Hon Sophia Moermond presented a petition from 3,843 petitioners requesting the Legislative Council to support the repeal of COVID-19 pandemic response measures including vaccine mandates. (Tabled Paper 935).

Hon Dr Brad Pettitt presented a petition from 76 petitioners requesting the Legislative Council to oppose the introduction of the *Aboriginal Cultural Heritage Bill 2021* in its current form. (Tabled Paper 936).

6. Papers

The following Papers were laid on the Table by —

President

Auditor General's Papers —

Cyber Security in Local Government (Report No. 9) (2021-22)..... 903

Audit Results Report — Annual 2020-21 Financial Audits of State Government
Entities (Report No. 10) (2021-22) 904

Leader of the House*Annual Reports —*

Local Government Grants Commission (2020-21) (Date received 30/11/2021)..... 905

Local Laws —

Dog Act 1976 (Shire of West Arthur Dogs Amendment Local Law 2021 G.G. 22/11/2021) 906

Local Government Act 1995 (Shire of Murray Extractive Industries
Local Law 2021 G.G. 15/11/2021) 907

Local Government Act 1995 (Shire of West Arthur Fencing Local Law 2021 G.G. 22/11/2021) 908

Reports —

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Report of Consultants Engaged by Government (for the six months
ended 30 June 2021)..... 910

Report of Overseas Air Travel Undertaken by Ministers, Parliamentary Secretaries
and Government Officers (for the three months ended 19 March 2021) 911

Report of Overseas Air Travel Undertaken by Ministers, Parliamentary Secretaries
and Government Officers (for the three months ended 30 June 2021)..... 912

Response to Reports —

Joint Standing Committee on the Corruption and Crime Commission — If not the
CCC...then where? An examination of the Corruption and Crime
Commission's oversight of excessive use of force allegations against
members of the WA Police Force (Report No. 2) (Attorney General) 913

Minister for Mental Health*Annual Reports —*

Australian Health Practitioner Regulation Agency (2020-21) (Date received 26/11/2021)
..... 914

Chief Advocate for Residents of Declared Places (Mentally Impaired Accused)
Act 2015 (2020-21) (Date received 25/11/2021)..... 915

National Health Practitioner Ombudsman (2020-21) (Date received 26/11/2021) 916

Orders —

Health Services Act 2016 (Health Services (Fees and Charges) Amendment
Order (No. 5) 2021 G.G. 26/11/2021)..... 917

Regulations —

Community Protection (Offender Reporting) Act 2004 (Community Protection
(Offender Reporting) Amendment Regulations (No. 3) 2021 G.G. 19/11/2021) 918

Construction Industry Portable Paid Long Service Leave Act 1985 (Construction
Industry Portable Paid Long Service Leave Amendment
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Environmental Protection Act 1986 (Environmental Protection Amendment
Regulations (No. 2) 2021 G.G. 19/11/2021) 920

Reports —

Terrorism (Preventative Detention) Act 2006 — WA Police (Quarterly Report for the
period ending 30 September 2021)..... 921

Minister for Regional Development*Annual Reports —*

Jobs, Tourism, Science and Innovation, Department of — WA Industry
 Link (2020-21) (Date received 25/11/2021) 922

Proposals —

Land Administration Act 1997 — Submission No. 01/2021 — Proposal for the
 cancellation of Class A Reserve 1916 for inclusion into Mount Roe
 National Park..... 923

Regulations —

Land Administration Act 1997 (Land Administration Amendment
 Regulations (No. 2) 2021 G.G. 19/11/2021) 924

Parliamentary Secretary to the Attorney General*Annual Reports —*

Gaming and Wagering Commission (2020-21) (Date received 30/11/2021) 925
 Racing Penalties Appeal Tribunal (2020-21) (Date received 30/11/2021) 926
 State Coroner, Office of the (2020-21) (Date received 18/11/2021) 927

Regulations —

Betting Control Act 1954 (Betting Control Amendment Regulations 2021 G.G. 19/11/2021) 928

Rules —

Racing and Wagering Western Australia Act 2003 (Rules of Wagering Amendment
 Rules (No. 2) 2021 G.G. 19/11/2021) 929

**Parliamentary Secretary to the Minister for Disability Services on behalf of the
 Parliamentary Secretary to the Minister for Child Protection**

Communities, Department of — Review of the Carers Recognition Act 2004 —
 Report to Parliament..... 931

Parliamentary Secretary to the Minister for Disability Services*Reports —*

Communities, Department of — Disability Access and Inclusion Plans — Minister's
 Progress Report (2020-21) 932

**7. Standing Committee on Estimates and Financial Operations — Report 85 —
 Consideration of the 2021-22 Budget Estimates**

Hon Peter Collier presented Report 85 of the Standing Committee on Estimates and Financial
 Operations, *Consideration of the 2021-22 Budget Estimates*. (Tabled Paper 937).

8. Legislative Council — Member COVID-19 Vaccinations

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

- (1) In order to protect the health and safety of Members and parliamentary staff and to give effect to the Chief Health Officer's published health advice, this House requires Members of the Legislative Council attending the Chamber, Parliament House or the Legislative Council Committee Office to be fully vaccinated during a lockdown or similar restrictions.
- (2) Members must provide proof of their first and second COVID-19 vaccine doses, or proof of a valid exemption, to the Clerk by 31 January 2022.

- (3) Unless otherwise ordered, any Member who has not complied with the requirements set out in paragraph (2) is determined to have failed to comply with an order of the House and therefore is suspended from attending the Chamber, Parliament House and the Legislative Council Committee Office during a lockdown or similar restrictions.
- (4) If a Member who is suspended under paragraph (3) provides proof of their first and second COVID-19 vaccine doses, or proof of a valid exemption, to the Clerk, their suspension is immediately lifted.
- (5) For the purposes of this resolution:
 - (a) 'COVID-19 vaccine' means a vaccine to protect a person against SARS-CoV-2 that has been registered or provisionally registered by the Therapeutic Goods Administration;
 - (b) 'proof of their first and second COVID-19 vaccine doses' means forms of evidence approved by the Chief Health Officer; and
 - (c) 'proof of a valid exemption' means forms of evidence approved by the Chief Health Officer.
- (6) The Clerk:
 - (a) must ensure all information provided under this resolution remains confidential and is stored securely; and
 - (b) must destroy all information provided under this resolution at the end of the session or an earlier time determined by the House.
- (7) The House may agree to further resolutions to:
 - (a) vary or amend this resolution; or
 - (b) provide for arrangements for sittings in 2022 based on health advice.

9. Legislative Council — Member COVID-19 Vaccinations

The Leader of the House moved, without notice —

That the Notice of Motion I have just given in relation to COVID-19 vaccinations and Members of the Legislative Council be made an Order of the Day for the next sitting of the House.

Question — put and passed.

10. Special Adjournment

The Leader of the House moved, without notice —

That the Annual Sitting Schedule tabled by the Leader of the House on 29 April 2021, and varied on 19 August 2021, be further varied so that the Council will meet on:

- (a) Tuesday, 14 December 2021;
- (b) Wednesday, 15 December 2021; and
- (c) Thursday, 16 December 2021.

Debate ensued.

The motion requiring the concurrence of an absolute majority.

Question — put.

The President having counted the Council, and there being an absolute majority present, and no dissentient voice, declared the motion carried with the concurrence of an absolute majority.

11. Order of Business

Ordered — That Orders of the Day Nos 1, *Biodiversity Conservation (Exemptions) Amendment Order 2021 — Disallowance*, and 2, *Serpentine-Jarrahdale Bush Fire Brigades Local Law 2021 — Disallowance*, be taken after Order of the Day No. 8, *Dog Amendment (Stop Puppy Farming) Bill 2021*. (Leader of the House).

12. Cognate Debate — Appropriation (Recurrent 2021–22) Bill 2021 and Appropriation (Capital 2021–22) Bill 2021

The Minister for Mental Health representing the Treasurer sought leave of the Council to debate Order of the Day No. 15, *Appropriation (Recurrent 2021–22) Bill 2021*, and Order of the Day No. 16, *Appropriation (Capital 2021–22) Bill 2021*, cognately [SO 127].

Leave granted.

13. Appropriation (Recurrent 2021–22) Bill 2021 and Appropriation (Capital 2021–22) Bill 2021

The Orders of the Day having been read for the adjourned debate on the second reading of these Bills cognately.

Debate ensued.

Question — That the *Appropriation (Recurrent 2021–22) Bill 2021* be read a second time — put and passed.

Bill read a second time.

Question — That the *Appropriation (Capital 2021–22) Bill 2021* be read a second time — put and passed.

Bill read a second time.

Leave was granted to proceed forthwith to the third readings.

The Minister for Mental Health representing the Treasurer moved, That the *Appropriation (Recurrent 2021–22) Bill 2021*, be read a third time.

Question — put and passed.

Bill read a third time and passed.

The Minister for Mental Health representing the Treasurer moved, That the *Appropriation (Capital 2021–22) Bill 2021* be read a third time.

Question — put and passed.

Bill read a third time and passed.

14. Industry and Technology Development Amendment Bill 2021

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

15. Questions Without Notice

Questions without notice were taken.

The Parliamentary Secretary to the Minister for Disability Services, by leave, incorporated into *Hansard* a table depicting a headcount of FTE employees by classification level in the Office of Disability within the Department of Communities, in response to a question without notice asked by Hon Donna Faragher.

The Minister for Regional Development tabled documents in relation to the Collie Futures Fund, a full list of projects and their respective funds approved, in response to a question without notice asked by Hon Dr Steve Thomas. (Tabled Paper 938).

The Leader of the House, in accordance with Standing Order 108(2), advised that answers to questions on notice 341, 342, 343, 344, 349, 350, 354, 355, 356, 358, 360 and 361 asked by Hon Tjorn Sibma will be provided on 1 December 2021.

The Minister for Mental Health representing the Minister for Environment, in accordance with Standing Order 108(2), advised that an answer to question on notice 333 asked by Hon Tjorn Sibma will be provided on 16 December 2021.

The Minister for Mental Health representing the Minister for Health, in accordance with Standing Order 108(2), advised that answers to questions on notice 335 and 336 asked by Hon Martin Aldridge will be provided on 1 December 2021.

The Minister for Mental Health representing the Minister for Police, in accordance with Standing Order 108(2), advised that an answer to question on notice 337 asked by Hon Peter Collier will be provided on 1 December 2021.

The Minister for Regional Development tabled a full list of projects and their respective funds allocation in relation to the Collie Industry Attraction and Development Fund, in response to a question without notice asked by Hon Dr Steve Thomas. (Tabled Paper 939).

The Minister for Regional Development tabled details on all leaks and break repairs on water pipes for the local government area of Albany for 2018–19 and 2019–20, in response to question on notice 334 asked by Hon James Hayward. (Tabled Paper 940).

16. Industry and Technology Development Amendment Bill 2021

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

Question — put and passed.

Bill read a second time.

Leave was granted to proceed forthwith to the third reading.

The Minister for Regional Development representing the Minister for State Development, Jobs and Trade moved, That the Bill be read a third time.

Question — put and passed.

Bill read a third time and passed.

17. Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021

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

Hon Nick Goiran sought leave to continue his remarks at a later stage of this day's sitting.

Leave granted.

On the motion of Hon Pierre Yang, the debate was adjourned to a later stage of this day's sitting.

18. Aboriginal Cultural Heritage Bill 2021

The Acting President reported the receipt of Message No. 48 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Aboriginal Affairs moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Minister for Aboriginal Affairs moved, That the Bill be read a second time.

The Minister for Aboriginal Affairs tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 941).

Debate stands adjourned.

19. **Aboriginal Cultural Heritage Amendment Bill 2021**

The Acting President reported the receipt of Message No. 49 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Aboriginal Affairs moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Minister for Aboriginal Affairs moved, That the Bill be read a second time.

The Minister for Aboriginal Affairs tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 942).

Debate stands adjourned.

20. **Police Amendment (Compensation Scheme) Bill 2021**

The Acting President reported the receipt of Message No. 50 from the Legislative Assembly forwarding the Bill for concurrence.

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

Question — put and passed.

Bill read a first time.

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

The Minister for Mental Health representing the Minister for Police tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 943).

Debate stands adjourned.

21. **Paper**

The following Paper was laid on the Table by —

Parliamentary Secretary to the Minister for Disability Services on behalf of the Parliamentary Secretary to the Minister for Child Protection

Reports —

Commissioner for Children and Young People — Speaking Out Survey — The views
of WA children and young people on their wellbeing — a summary
report (November 2021)..... 930

22. **Order of Business**

Ordered — That Order of the Day No. 23, *Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021*, be taken forthwith. (Leader of the House).

23. **Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021**

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

Hon Nick Goiran moved, without notice —

That the *Criminal Law (Unlawful Consorting and Prohibited Insignia) Bill 2021* be discharged and referred to the Standing Committee on Legislation for consideration and report by no later than 15 February 2022.

Debate ensued.

Question — put.
The Council divided.

Ayes (6)

Hon Peter Collier
Hon Nick Goiran
Hon Steve Martin

Hon Dr Steve Thomas
Hon Neil Thomson
Hon Tjorn Sibma (*Teller*)

Noes (20)

Hon Klara Andric
Hon Dan Caddy
Hon Stephen Dawson
Hon Kate Doust
Hon Sue Ellery
Hon Peter Foster
Hon Lorna Harper
Hon Jackie Jarvis
Hon Ayor Makur Chuot
Hon Kyle McGinn

Hon Sophia Moermond
Hon Shelley Payne
Hon Dr Brad Pettitt
Hon Stephen Pratt
Hon Martin Pritchard
Hon Matthew Swinbourn
Hon Wilson Tucker
Hon Dr Brian Walker
Hon Darren West
Hon Pierre Yang (*Teller*)

Question thus negatived.

Debate resumed.

Interruption pursuant to order.

24. Members' Statements

Statements were taken.

25. Adjournment

The Council adjourned at 10.24pm until Wednesday, 1 December 2021 at 1.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Sandra Carr, Hon James Hayward, Hon Samantha Rowe, Hon Rosetta Sahanna and Hon Dr Sally Talbot.

PAUL GRANT

Deputy Clerk of the Legislative Council

HON ALANNA CLOHESY MLC

President of the Legislative Council