

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 175

TUESDAY, 27 NOVEMBER 2007

1. Meeting of Council

The Council assembled at 3.30pm pursuant to order.

The President, Hon Nick Griffiths, took the Chair and read prayers.

2. Statement by President - Hon Batong Vu Pham, sworn in

The President made the following Statement -

On Monday, 26 November 2007, Hon Batong Vu Pham was sworn in as a Member of the Legislative Council and is entitled to take his seat. I take this opportunity to congratulate the Member and to welcome him to the Legislative Council. As the new Member is currently confined to a wheelchair, I authorise the Member to speak from the aisle next to Hon Graham Giffard until further notice.

3. Petitions

Hon Donna Faragher presented a petition from 144 residents of Western Australia requesting the Legislative Council urge the State Government to relocate Governor Stirling Senior High School and to provide urgent funding. (Tabled paper 3545).

Hon Barry House presented a petition from 720 residents of Western Australia requesting the Legislative Council oppose the State Government's proposal to amend the *Prostitution Act 2000*. (Tabled paper 3546).

4. Papers

The following Papers were laid on the Table by -

President

Documents -

E-mail from Mr Robert Edel, Partner - Mining and Energy, of DLA Phillips Fox, to the President of the Legislative Council in relation to the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations	3537
Letters (x2) from Mr Noel Crichton-Browne to the President of the Legislative Council in relation to the Select Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations.....	3548

Emails (x2) from Mr Noel Crichton-Browne to the President of the Legislative Council and from the President of the Legislative Council to Mr Noel Crichton-Browne in relation to the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations 3547

Financial Statements -

Members of Parliament (Financial Interest) Act 1992 - Primary Return
(Hon Batong Vu Pham)..... 3538

Letters -

Letter from Steven Penglis of Freehills to the President of the Legislative Council in relation to the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations 3539

Leader of the House

Response to Reports -

Standing Committee on Uniform Legislation - Administrative Practices and Procedures and Parliamentary Processes involving Treaties entered into, or proposed to be entered into, by the Commonwealth, Report No. 19
(Leader of the House) 3540

Minister for Local Government

Annual Reports -

Registrar of Housing Societies (2006-2007) (Date received 22/11/2007) 3541

Minister for Child Protection

Annual Reports -

Council of Official Visitors (2006-2007) (Date received 22/11/2007) 3542

Response to Reports -

Standing Committee on Legislation - Acts Amendment (Consent to Medical Treatment) Bill 2006, Report No. 10 (Attorney General)..... 3543

Parliamentary Secretary representing the Minister for Planning and Infrastructure

Annual Reports -

Bunbury Port Authority (2006-2007) (Date received 23/11/2007)..... 3544

5. Shire of Wiluna Health Local Laws 2007 - Disallowance

Hon Ray Halligan: To move on the next day of sitting -

That the *Shire of Wiluna Health Local Laws 2007* published in the *Gazette* on 17 September 2007 and tabled in the Legislative Council on 26 September 2007 under the *Health Act 1911*, be and are hereby disallowed.

6. Matter of Urgency - Mental Health Services

The President read the following letter -

Dear Mr President

At today's sitting it is my intention to move under SO 72 that the Council consider, as a matter of urgency, that this House expresses its grave concern about the state of Western Australia's mental health service, following confirmation that 660 people who were patients receiving treatment in the public mental health system died in 2006/2007.

Yours sincerely

Hon Helen Morton

Member for East Metropolitan Region

Four members having risen in support.

Hon Helen Morton moved the motion.

Debate ensued.

Motion lapsed.

7. Order of Business

Ordered - That Order of the Day No. 526 be taken in Committee of the Whole.

Ordered - That Orders of the Day Nos 515, *Poisons Amendment Regulations (No. 2) 2007 - Disallowance*, 527, *Town of Claremont Standing Orders Local Law 2007 - Disallowance*, 528, *Local Government (Rules of Conduct) Regulations 2007 - Disallowance*, 529, *Non-Coronial Post-Mortem Examinations Code of Practice 2007 - Disallowance*, 542, *Shire of Cue Repeal Local Law 2007 - Disallowance*, 543, *Fish Resources Management Amendment Regulations (No. 7) 2007 - Disallowance* and 544, *West Coast Demersal Scalefish (Interim) Management Plan 2007 - Disallowance*, be taken after Order of the Day No. 6, *Constitution Amendment Bill 2005*. (Leader of the House).

8. Report of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations

The Order of the Day for the consideration of this Motion, in Committee, having been called.

The President left the Chair.

In Committee

(Hon Ken Travers in the Chair)

Hon Murray Criddle, pursuant to notice, moved -

That the recommendations contained in the report of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations be adopted and agreed to.

The Leader of the House moved -

To amend the motion by deleting all words after the words "That" and substituting the following -

- (1) The severity of the findings of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations in relation to the false evidence provided to the Committee by Hon Shelley Archer, warrant the House to determine that Hon Shelley Archer should be expelled from the Parliament.
- (2) The severity of the findings of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations in relation to the false evidence provided to the Committee by Hon Anthony Fels, warrant the House to determine that Hon Anthony Fels should be expelled from the Parliament.
- (3) Recommendations 3, 6, 9, 10, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 be agreed to.
- (4) The House defers consideration of recommendations 1, 4, 7, 11 and 14.
- (5) Noting the findings of the Select Committee in recommendations 2, 5, 8, 12 and 15 that Mr Nathan McMahon, Hon Shelley Archer MLC, Hon Anthony Fels MLC, Mr Brian Burke and Mr Noel Crichton-Browne have provided false evidence to the Select Committee, the House refers these findings to the Director of Public Prosecutions to assess whether those persons should be prosecuted for a breach of section 57 or of any other provision of the *Criminal Code* and if of that view to commence such prosecution or prosecutions.

- (6) The House notes the Select Committee's recommendation 35 and authorises the disclosure or publication of the evidence taken by the Committee and of any documents presented to the Committee to the Director of Public Prosecutions and to any other agency or agencies to which any matter in the report is referred to the extent necessary or expedient to enable the Director of Public Prosecutions and any such agency or agencies to discharge their functions.
- (7) The House refers the Select Committee's observations 1 and 2 to the Attorney General with the request that he ask the Solicitor General to consider referring, and if he considers it appropriate to refer, the matters discussed in the observations and relevantly in the report generally to any appropriate agency or agencies for consideration in accordance with their functions.
- (8) In relation to observation 3, the House notes that Hon Shelley Archer may have committed a grave contempt of the Parliament and refers this observation to the Standing Committee on Procedure and Privilege for its consideration and report.

9. Questions Without Notice

Questions without notice were taken.

The Minister for Fisheries tabled, and by leave incorporated into Hansard, a table in relation to Management and Ministerial Advisory Committees established under the *Fish Resources Management Act 1994*, in response to a question without notice asked by Hon Ken Baston. (Tabled paper 3549).

The Minister for Regional Development representing the Minister for Corrective Services tabled, and by leave incorporated into Hansard, an answer in relation to the Prisoners Review Board, in response to a question without notice asked by Hon Giz Watson. (Tabled paper 3550).

The Parliamentary Secretary representing the Minister for Planning and Infrastructure in accordance with Standing Order No 138(d), advised that an answer to question on notice No. 5576 asked by Hon Barbara Scott will be provided by 6 December 2007.

10. Report of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations

The President left the Chair.

In Committee

(Hon Ken Travers in the Chair)

The Leader of the House continued his introductory remarks in moving the amendment as follows:

To amend the motion by deleting all words after the words "That" and substituting the following -

- (1) The severity of the findings of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations in relation to the false evidence provided to the Committee by Hon Shelley Archer, warrant the House to determine that Hon Shelley Archer should be expelled from the Parliament.
- (2) The severity of the findings of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations in relation to the false evidence provided to the Committee by Hon Anthony Fels, warrant the House to determine that Hon Anthony Fels should be expelled from the Parliament.
- (3) Recommendations 3, 6, 9, 10, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 and 34 be agreed to.
- (4) The House defers consideration of recommendations 1, 4, 7, 11 and 14.

- (5) Noting the findings of the Select Committee in recommendations 2, 5, 8, 12 and 15 that Mr Nathan McMahon, Hon Shelley Archer MLC, Hon Anthony Fels MLC, Mr Brian Burke and Mr Noel Crichton-Browne have provided false evidence to the Select Committee, the House refers these findings to the Director of Public Prosecutions to assess whether those persons should be prosecuted for a breach of section 57 or of any other provision of the *Criminal Code* and if of that view to commence such prosecution or prosecutions.
- (6) The House notes the Select Committee's recommendation 35 and authorises the disclosure or publication of the evidence taken by the Committee and of any documents presented to the Committee to the Director of Public Prosecutions and to any other agency or agencies to which any matter in the report is referred to the extent necessary or expedient to enable the Director of Public Prosecutions and any such agency or agencies to discharge their functions.
- (7) The House refers the Select Committee's observations 1 and 2 to the Attorney General with the request that he ask the Solicitor General to consider referring, and if he considers it appropriate to refer, the matters discussed in the observations and relevantly in the report generally to any appropriate agency or agencies for consideration in accordance with their functions.
- (8) In relation to observation 3, the House notes that Hon Shelley Archer may have committed a grave contempt of the Parliament and refers this observation to the Standing Committee on Procedure and Privilege for its consideration and report.

to the motion of Hon Murray Criddle as follows -

That the recommendations contained in the report of the Select Committee of Privilege on a Matter Arising in the Standing Committee on Estimates and Financial Operations be adopted and agreed to.

Debate ensued.

Point of Order

Hon Giz Watson raised the following Point of Order -

I seek a ruling on whether there is a conflict of interest if members participate in a vote on a recommendation about themselves.

Deputy Chairman's Ruling

The Deputy Chairman ruled as follows -

Members, I have been requested by Hon Giz Watson to provide a ruling on whether a Member is entitled to vote on a question that involves a personal interest.

There is no rule or Standing Order of the House dealing with such a proposition. I note that Erskine May's *Parliamentary Practice* addresses the issue of personal interest, other than pecuniary interests, by stating -

Disallowance of a vote on the score of personal interest is restricted to cases of pecuniary interest and has not been extended to those occasions when the dictates of self-respect and of respect due to the House might demand that a Member should refrain from taking part in a division.

It is clear that there is no rule that requires Members to absent themselves; it is for Members to make that decision if they wish to. I also refer Members to the third edition of *Parliamentary Practice in New Zealand* by David McGee, which states under "Personal Interests" -

Apart from pecuniary interests, the House has no formal rules requiring Members to declare interests of a personal and non-pecuniary or non-financial nature that may be relevant to their participation in business before the House. However, it is likely to be in Members' own political interests to make clear any personal interest that they have on matters under consideration by the House or a select committee (such as a

relationship with someone else who may be affected by the outcome of the business under consideration), and to consider abstaining from participating in consideration of the matter if to do so may suggest impropriety on their part.

I make it very clear that my ruling is that there is no requirement for Members to absent themselves; it would be purely a decision for a Member to take if he chose to.

Debate resumed.

Interruption of Debate [SO 61(c)].

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.

11. Trans-Tasman Mutual Recognition (Western Australia) Bill 2005

The following Message from the Legislative Assembly was reported -

Mr President

Message No. 280

The Legislative Assembly acquaints the Legislative Council that it has agreed to the Trans-Tasman Mutual Recognition (Western Australia) Bill 2005 without amendment.

Mr Peter Watson

Acting Speaker

Legislative Assembly Chamber

Perth, 27 November 2007

12. Adjournment

The Leader of the House moved, That the House do now adjourn.

Question - put and passed.

The House adjourned at 9.56pm until Wednesday, 28 November 2007 at 4.00pm.

Members present during the day's proceedings

Attendance: Present all Members.

MALCOLM PEACOCK
Clerk of the Legislative Council

HON NICK GRIFFITHS
President of the Legislative Council