

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 235

TUESDAY, 24 NOVEMBER 2020

1. Meeting of Council

The Council assembled at 2.00pm pursuant to order.

The President, Hon Kate Doust, took the Chair.

Prayers and an Acknowledgement of Country were read.

2. President's Ruling — Matter of Privilege

The President ruled as follows —

On Thursday, 12 November 2020, during questions without notice, Hon Dr Steve Thomas asked a question of the Minister for Environment in a representative capacity on behalf of the Minister for Emergency Services. The question asked why two previously provided answers regarding the reason for an estimated \$30 million reduction in the revenue raised by the emergency services levy in 2020–21 appeared on their face to contradict one another. The Minister identified one of the previous answers as correct, being a Government decision to freeze the levy rates, and provided further information regarding that answer.

Hon Dr Steve Thomas has now raised the previous answers and the Minister's clarification of them as a matter of privilege under Standing Order 93. Specifically, Hon Dr Steve Thomas submits that the House has been misled by the three answers from the Minister, which are apparently not supported by either the Member's own calculations or the evidence given by the Fire and Emergency Services Commissioner during this year's annual estimates committee hearings in the other place.

A number of important issues of procedure and longstanding convention are raised by this matter. Firstly, the Minister for Environment is acting here in a representative capacity. I note a ruling of President House from 22 March 2016, which states —

Ministers and Parliamentary Secretaries answering questions on behalf of the Minister they represent are responsible to this House, I repeat, to this House, for the answer that they give. When given in this place, it is their answer and they are responsible for its accuracy. However, the representative Minister or Parliamentary Secretary is not individually responsible in any legal or parliamentary sense for the Department of State of the Minister they are representing. This is made clear by the practice for oral questions when questions are answered in a representative capacity. In these cases the Member asking the question is required to give some notice. This is to enable the responsible Minister in the other place to approve any answer to be given by his or her representative in this House. This approval is provided by the responsible Minister signing the answer. When it is discovered that an answer given in any capacity is inaccurate, the Minister or Parliamentary Secretary has an obligation to correct the record at the earliest opportunity, and the usual practice is to also apologise to the House for the error.

Notwithstanding the responsibility of the Minister for Environment to this House for any answer given, for all practical and evidential purposes it would be extremely difficult to establish that the representative Minister had an intention to mislead the House.

Hon Dr Steve Thomas himself acknowledges that the Minister is likely to have inadvertently misled the House. It is often stated in this House by Presiding Officers that the answer given by the Government is the answer that you, as a Member, will receive and that as the receiver you must accept it, unless there is *prima facie* evidence of any intention to mislead the House.

In determining whether there is substance to a matter of privilege under Standing Order 93, schedule 4 of the Standing Orders establishes a threshold test for possible contempts. Relevant to the present matter are the considerations as to whether a person “knowingly committed” an act amounting to contempt, and the existence of any other remedy. The various answers given by the Minister, although apparently contradictory, appear to be matters that could easily be clarified by some further investigation. The Council has a number of mechanisms, in addition to questions without notice, by which Members can question the Government and gain further clarification of any answers given. This can be done via questions on notice, motions on notice, non-government business, standing or select committee inquiries or the annual estimates hearings. Any of these mechanisms would be preferable to a Standing Committee on Procedure and Privileges inquiry, the focus of which would be to determine whether, in answering a question in a representative capacity, a Minister knowingly gave a false answer. Accordingly, I rule that there is no substantive matter of privilege to be investigated. I also repeat that when it is discovered that an answer given in this House is inaccurate, the Minister or Parliamentary Secretary has an obligation to correct the record at the earliest opportunity and, by tradition, apologise to the House for the error

3. 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 —

19 November 2020 — Message No. 41	Act No.
COVID-19 Response Legislation Amendment (Extension of Expiring Provisions) Bill 2020	39 of 2020
Environmental Protection Amendment Bill 2020	40 of 2020
Environmental Protection Amendment Bill (No. 2) 2020	41 of 2020

4. Petitions

Hon Dr Steve Thomas presented a petition from 2,000 petitioners requesting the Legislative Council to fast track construction of the Albany radiation machine bunker at Albany Health Campus as an infrastructure priority for the Great Southern region. (Tabled Paper 4643).

Hon Dr Steve Thomas presented a petition from 18 petitioners requesting the Legislative Council reinstate current funding arrangements for the Eaton Family Centre. (Tabled Paper 4644).

Hon Diane Evers presented a petition from 992 petitioners requesting the Legislative Council to support preserving the Gnarabup coastline from development. (Tabled Paper 4645).

Hon Tjorn Sibma presented a petition from 638 petitioners requesting the Legislative Council to amend the *Dog Act 1976*. (Tabled Paper 4646).

Hon Nick Goiran presented a petition from 4 petitioners requesting the Legislative Council to establish a committee to inquire into the governance of the Department of Mines, Industry Regulation and Safety and residential/commercial building practices relating to compliance under the relevant Acts, regulations, codes and public accountability. (Tabled Paper 4647).

5. Ministerial Statement — 16 Days in Western Australia to Stop Violence Against Women 2020

The Leader of the House representing the Minister for Women’s Interests made a Ministerial Statement with respect to the 2020 16 days in Western Australia to stop violence against women campaign.

6. Ministerial Statement — Amendment to the Animal Welfare (Transport, Saleyards and Depots) (Cattle and Sheep) Regulations 2020

The Minister for Agriculture and Food made a Ministerial Statement with respect to an amendment to the *Animal Welfare (Transport, Saleyards and Depots) (Cattle and Sheep) Regulations 2020*.

The Minister for Agriculture and Food tabled the draft amendment to the *Animal Welfare (Transport, Saleyards and Depots) (Cattle and Sheep) Regulations 2020*. (Tabled Paper 4648).

7. Standing Committee on Procedure and Privileges — Report 60 — Do we need to think again? The foreign allegiance provision in section 38(f) of the Constitution Acts Amendment Act 1899

The President presented Report 60 of the Standing Committee on Procedure and Privileges, *Do we need to think again? The foreign allegiance provision in section 38(f) of the Constitution Acts Amendment Act 1899*. (Tabled Paper 4649).

8. Papers

The following Papers were laid on the Table by —

President

Joint Select Committee on Palliative Care in Western Australia —

Palliative Care in Western Australia — Final Report (November 2020)
(Deemed tabled 19/11/2020) 4617

Leader of the House

Local Laws —

Local Government Act 1995 (Shire of Coolgardie Meeting Procedures Amendment Local Law 2020 G.G. 13/11/2020, Shire of Coolgardie Parking Amendment Local Law 2020 G.G. 13/11/2020, Shire of Coolgardie Public Places and Local Government Property Amendment Local Law 2020 G.G. 13/11/2020 and City of Greater Geraldton Waste Local Law 2020 G.G. 13/11/2020) 4618

Response to Reports —

Select Committee into Local Government — Final Report (September 2020)
(Leader of the House) 4619

Reports —

Gold Corporation — Statement of Corporate Intent (2020-21) 4620
Report of Overseas Air Travel Undertaken by Ministers, Parliamentary Secretaries and Government Officers on Official Business for the three months ended 30 June 2020 4621

Minister for Environment

Addendums —

Aboriginal Affairs Planning Authority (Reserve 15530 and 23079 Land) Proclamation 2020 (October 2020) 4622

Annual Reports —

Conservation and Parks Commission (2019-20) (Date received 18/11/2020) 4623
Police Force Western Australia — *Criminal Investigation (Covert Powers) Act 2012*
Assumed Identities (2019-20) (Date received 19/11/2020) 4624

Determinations —

Planning and Development Act 2005 (section 246(2) (a)) — Determination by the Minister for Planning on applications DR362/2013 and DR444/2013 4625

Leases —

CALM Lease No. 2988/100 between the Conservation and Land Management Executive Body and Little Gumnuts Pty Ltd for educational purposes in Yanchep National Park.....	4626
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Reports —

Horizon Power — Statement of Corporate Intent (2020-21)	4627
Insurance Commission — Statement of Corporate Intent (2020-21).....	4628
Landgate — Statement of Corporate Intent (2020-21).....	4629
Racing and Wagering Western Australia — Statement of Corporate Intent (2020-21)....	4630
Synergy — Statement of Corporate Intent (2020-21)	4631
Treasury Corporation — Quarterly Report (for the quarter ended 30 September 2020) ...	4632
Treasury Corporation — Statement of Corporate Intent (2020-21)	4633
Western Power — Statement of Corporate Intent (2020-21)	4634

Reviews —

Department of Biodiversity, Conservation and Attractions — Parks and Wildlife Service — A review of the <i>Conservation Legislation Amendment Act 2011</i> : How are Western Australia's joint management arrangements working? (July 2020).....	4635
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Minister for Regional Development*Reports —*

Development WA — Statement of Corporate Intent (2020-21)	4636
Fremantle Ports — Statement of Corporate Intent (2020-21)	4637
Kimberley Ports Authority — Statement of Corporate Intent (2020-21).....	4638
Mid West Ports — Statement of Corporate Intent (2020-21)	4639
Pilbara Ports Authority — Statement of Corporate Intent (2020-21)	4640
Southern Ports — Statement of Corporate Intent (2020-21).....	4641

Rules —

Settlement Agents Act 1981 (Settlements Agents Code of Conduct Amendment Rules 2020 G.G 10/11/2020).....	4642
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9. Joint Standing Committee on Delegated Legislation — Report 18 — Curtin University Statute No. 5 — Election of Council Members and Curtin University Statute No. 12 — Admission and Enrolment

Hon Robin Chapple presented Report 18 of the Joint Standing Committee on Delegated Legislation, *Curtin University Statute No. 5 — Election of Council Members and Curtin University Statute No. 12 — Admission and Enrolment*. (Tabled Paper 4650).

10. Joint Standing Committee on Delegated Legislation — Report 19 — Annual Report 2020

Hon Robin Chapple presented Report 19 of the Joint Standing Committee on Delegated Legislation, *Annual Report 2020*. (Tabled Paper 4651).

11. Standing Committee on Public Administration — Report 34 — Consultation with Statutory Office Holders

Hon Adele Farina presented Report 34 of the Standing Committee on Public Administration, *Consultation with Statutory Office Holders*. (Tabled Paper 4652).

12. Standing Committee on Uniform Legislation and Statutes Review — Report 131 — Statutes (Repeals and Minor Amendments) Bill 2020

Hon Michael Mischin presented Report 131 of the Standing Committee on Uniform Legislation and Statutes Review, *Statutes (Repeals and Minor Amendments) Bill 2020*. (Tabled Paper 4653).

13. **Veterinary Practice Bill 2020**

The Parliamentary Secretary to the Minister for Agriculture and Food on behalf of the Minister for Agriculture and Food: To move on the next day of sitting —

That a Bill for “An Act —

- to provide for the regulation of the practice of veterinary medicine in Western Australia; and
- to facilitate the regulation of the practice of veterinary medicine on a national basis; and
- to repeal the *Veterinary Surgeons Act 1960* and the *Veterinary Surgeons Regulations 1979*; and
- to make consequential amendments to various Acts; and
- for related purposes.”

be introduced and read a first time.

14. **Order of Business**

Ordered — That Orders of the Day Nos 1, *Curtin University Statute No. 12 — Admission and Enrolment — Disallowance*, 2, *Curtin University Statute No. 5 — Election of Council Members — Disallowance*, and 3, *Animal Welfare (Transport, Saleyards and Depots) (Cattle and Sheep) Regulations 2020 — Disallowance*, be taken after Order of the Day No. 43, *National Disability Insurance Scheme (Worker Screening) Bill 2020*. (Leader of the House).

15. **Cognate Debate — Appropriation (Recurrent 2020–21) Bill 2020 and Appropriation (Capital 2020–21) Bill 2020**

The Minister for Environment representing the Treasurer sought leave of the Council to debate Order of the Day No. 44, *Appropriation (Recurrent 2020–21) Bill 2020*, and Order of the Day No. 45, *Appropriation (Capital 2020–21) Bill 2020*, cognately [SO 127].

Leave granted.

16. **Appropriation (Recurrent 2020–21) Bill 2020 and Appropriation (Capital 2020–21) Bill 2020**

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

Debate ensued.

17. **Questions Without Notice**

Questions without notice were taken.

The Minister for Education and Training, by leave, incorporated into *Hansard* information in relation to the Instrumental Music School Services, in response to a question without notice asked by Hon Donna Faragher.

The Minister for Environment tabled the *Gorgon Gas Development and Jansz Feed Gas Pipeline Five Year Environmental Performance Report (2015-2020)*, in response to a question without notice asked by Hon Tim Clifford. (Tabled Paper 4654).

The Minister for Environment representing the Minister for Emergency Services, by leave, incorporated into *Hansard* information in relation to the cost of the bushfire in the Stirling Ranges on 26 December 2019, in response to a question without notice asked by Hon Diane Evers.

The Minister for Regional Development representing the Minister for Racing and Gaming tabled a memorandum of understanding in relation to welfare in the euthanasia of standardbred and thoroughbred horses, in response to a question without notice asked by Hon Alison Xamon. (Tabled Paper 4655).

The Minister for Regional Development tabled a correction to question without notice 1312 in relation to controls and procedures to ensure that imported fuel complies with Western Australian requirements, asked by Hon Robin Chapple. (Tabled Paper 4656).

The Parliamentary Secretary to the Minister for Mental Health tabled the *Report of the Forensic Youth Mental Health Mapping of Pathways, Access to Care Working Group*, in response to question on notice 3338 asked by Hon Alison Xamon. (Tabled Paper 4657).

18. Appropriation (Recurrent 2020–21) Bill 2020 and Appropriation (Capital 2020–21) Bill 2020

Cognate debate resumed on the second reading of these Bills (*see item 16 above*).

Question — That the *Appropriation (Recurrent 2020–21) Bill 2020* be read a second time — put and passed.

Bill read a second time.

Question — That the *Appropriation (Capital 2020–21) Bill 2020* be read a second time — put and passed.

Bill read a second time.

Leave was granted to proceed forthwith to the third reading.

The Minister for Environment representing the Treasurer moved, That the *Appropriation (Recurrent 2020–21) Bill 2020*, be read a third time.

Question — put and passed.

Bill read a third time and passed.

The Minister for Environment representing the Treasurer moved, That the *Appropriation (Capital 2020–21) Bill 2020* be read a third time.

Question — put and passed.

Bill read a third time and passed.

19. Swan Valley Planning Bill 2020

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

Debate ensued.

Question — put and passed.

Bill read a second time.

The Acting President left the Chair.

In Committee

(Hon Dr Steve Thomas in the Chair)

Clause 1.

Debate ensued.

Clause agreed to.

Clause 2.

Hon Michael Mischin moved —

Page 3, after line 7 — To insert:

- (3) However, if no day is fixed under subsection (1)(e) before the end of the period of 10 years beginning on assent day, this Act is repealed on the day after that period ends.

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 3.

Hon Tim Clifford moved —

Page 5, after line 4 — To insert:

Swan Valley Statutory Planning Committee means the committee established under section 33(1);

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 4 agreed to.

Clause 5.

Debate ensued.

Clause agreed to.

Clauses 6 to 9 agreed to.

Clause 10.

Hon Charles Smith moved to postpone consideration of Clause 10 until after consideration of New Clause 13A.

Question — put and passed.

Clauses 11 to 13 agreed to.

New Clause 13A.

Hon Charles Smith moved —

Page 11, after line 28 — To insert:

13A. Third party rights in relation to development applications and approvals

(1) In this section —

development application means an application for approval of development.

(2) The Swan Valley Planning Scheme must require the Commission —

- (a) to advertise any development application made under the Scheme, inviting members of the public to make submissions to the Commission within the period specified in the advertisement; and
- (b) to have due regard to any submissions made in response to the advertisement.

(3) For the purposes of subsection (2)(a) —

- (a) the advertisement must be published on the websites of the Commission and the Swan Valley local government throughout the period specified for the making of submissions; and
- (b) the advertisement must also be published in the following ways as often as the Commission considers appropriate for the purpose of drawing the development application to the attention of persons whose interests may be affected by the development —
 - (i) in a local newspaper circulating throughout the Swan Valley (as opposed to a newspaper circulating throughout the State);
 - (ii) in a newspaper circulating throughout the State;
 - (iii) in any other way the Commission considers appropriate for the purpose of drawing the development application to the attention of persons whose interests may be affected by the development;

and

- (c) the advertisement must specify the following —
- (i) to whom and how submissions may be made;
 - (ii) that submissions may include objections to the development or to any aspect of the development;
 - (iii) details of a person's right to apply to the State Administrative Tribunal under subsections (4) and (5);
- and
- (d) the period specified for the making of submissions must be a period of not less than 28 days after the day on which the advertisement is first published.
- (4) A person within subsection (5) may apply to the State Administrative Tribunal for a review, in accordance with the *Planning and Development Act 2005* Part 14, of a decision under the Swan Valley Planning Scheme to approve development.
- (5) A person is within this subsection if the person —
- (a) in response to an advertisement that the Commission was required to publish by the Swan Valley Planning Scheme in accordance with subsection (2)(a), made a submission on the development within the period specified for the making of submissions; and
 - (b) in that submission, objected, or in effect objected, to the development or to any aspect of the development.

Debate ensued.

New Clause — put and negatived.

Postponed Clause 10 agreed to.

Clauses 14 to 27 agreed to.

Clause 28.

Hon Tim Clifford moved —

Page 21, after line 15 — To insert:

- (3A) A person who is a member of the Swan Valley Statutory Planning Committee cannot be appointed under subsection (2).

Debate ensued.

Amendment — put.

The Committee divided.

Ayes (17)

Hon Ken Baston
 Hon Jacqui Boydell
 Hon Robin Chapple
 Hon Jim Chown
 Hon Tim Clifford
 Hon Peter Collier
 Hon Diane Evers
 Hon Donna Faragher
 Hon Nick Goiran

Hon Rick Mazza
 Hon Michael Mischin
 Hon Tjorn Sibma
 Hon Charles Smith
 Hon Aaron Stonehouse
 Hon Dr Steve Thomas
 Hon Colin Tincknell
 Hon Alison Xamon (*Teller*)

Noes (10)

Hon Stephen Dawson
 Hon Sue Ellery
 Hon Adele Farina
 Hon Alannah MacTiernan
 Hon Kyle McGinn

Hon Martin Pritchard
 Hon Samantha Rowe
 Hon Dr Sally Talbot
 Hon Darren West
 Hon Pierre Yang (*Teller*)

Amendment thus passed.

Clause, as amended, agreed to.

Clauses 29 to 32 agreed to.

Clause 33.

Hon Tim Clifford moved —

Page 24, after line 29 — To insert:

- (4) A person who is a member of the Swan Valley Strategic Leadership Group cannot be appointed under subsection (2)(b), (c) or (d).

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 34 to 41 agreed to.

New Clause 41A.

Hon Tim Clifford moved —

Page 30, after line 17 — To insert:

41A. Review of Act

- (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review —
- (a) as soon as practicable after the 5th anniversary of the day on which this section comes into operation; and
 - (b) after that, at intervals of not more than 5 years.
- (2) The review must address the following —
- (a) the effectiveness of —
 - (i) the operations of the Swan Valley Strategic Leadership Group and the Swan Valley Statutory Planning Committee; and
 - (ii) the Swan Valley Planning Scheme;
 - (b) the need for the continuation of —
 - (i) the functions of the Swan Valley Strategic Leadership Group and the Swan Valley Statutory Planning Committee; and
 - (ii) the Swan Valley Planning Scheme;
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (3) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary or the expiry of the period of 5 years, as the case may be.

- (4) If, in the Minister's opinion, a House of Parliament will not sit during the period of 21 days after finalisation of the report, the Minister must send the report to the Clerk of the House.
- (5) When the report is sent to the Clerk of a House it is taken to have been laid before the House.
- (6) The laying of the report that is taken to have occurred under subsection (5) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk receives the report.

New Clause agreed to.

Clauses 42 to 148 agreed to.

Title agreed to.

The President resumed the Chair.

Bill reported with amendment.

Ordered — That consideration of the Committee's Report be made an Order of the Day for the next sitting.

20. Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2018

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

Debate resumed.

Interruption pursuant to order.

21. Members' Statements

Statements were taken.

22. Statement by President

The President made the following Statement —

Take in Hansard.

The President tabled correspondence from the Minister for Emergency Services in relation to the Matter of Privilege assessment concerning the Emergency Services Levy revenue raised in the House by Hon Dr Steve Thomas. (Tabled Paper 4568).

23. Public Health Amendment (Safe Access Zones) Bill 2020

The President reported the receipt of Message No. 235 from the Legislative Assembly forwarding the Bill for concurrence.

The Parliamentary Secretary to the Minister for Health moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Parliamentary Secretary to the Minister for Health moved, That the Bill be read a second time.

The Parliamentary Secretary to the Minister for Health tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 4659).

Debate stands adjourned.

24. Adjournment

The Council adjourned at 10.21pm until Wednesday, 25 November 2020 at 1.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Martin Aldridge, Hon Colin de Grussa and Hon Laurie Graham.

NIGEL PRATT
Clerk of the Legislative Council

HON KATE DOUST MLC
President of the Legislative Council

Uncorrected Draft