

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 204

THURSDAY, 15 MAY 2008

1. Meeting of Council

The Council assembled at 11.00am pursuant to Temporary Order.

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

2. Papers

The following Papers were laid on the Table by -

Leader of the House on behalf of the Minister for Employment Protection

Regulations -

Industrial Relations Act 1979 (Industrial Relations Commission Amendment Regulations (No. 3)
2008 G.G. 06/05/2008) 3987

Prisoners (Interstate Transfer) Act 1983 (Prisoners (Interstate Transfer) Amendment Regulations
2008 G.G. 09/05/2008) 3988

Prisons Act 1981 (Prisons Amendment Regulations (No. 2) 2008 G.G. 09/05/2008) 3989

Parliamentary Secretary representing the Deputy Premier on behalf of the Minister for Child Protection

Notices -

Health Act 1911 (City of Armadale - Fees and Charges G.G. 06/05/2008) 3990

Rules -

Legal Practice Act 2003 (Legal Practice Board Amendment Rules 2008 G.G. 06/05/2008 and (Legal
Practice Board Amendment Rules (No. 2) 2008 G.G. 06/05/2008)..... 3991

3. Ministerial Statement - Child Care Regulations Consultative Committee - Report on the Children's Services Regulation Review

The Leader of the House on behalf of the Minister for Child Protection made a Ministerial Statement with respect to the Report on the Children's Services Regulation Review provided by the Child Care Regulations Consultative Committee.

The Leader of the House on behalf of the Minister for Child Protection tabled the *Child Care Regulations Consultative Committee - Report on the Children's Service Regulations Review* (February 2008). (Tabled paper 3992).

Ordered - That consideration of the Ministerial Statement and Tabled paper be made an Order of the Day for the next sitting.

4. Select Committee into the Police Raid on the *Sunday Times* - Membership

Hon Norman Moore moved, without notice -

That the Hon George Cash, Hon Giz Watson and Hon Adele Farina be appointed to the Select Committee into the Police Raid on the *Sunday Times*, and that Hon George Cash be appointed Chairman.

Question - put and passed.

5. Temporary Orders - Extension

The Leader of the House moved, without notice -

That the Temporary Orders adopted and in force on 2 April 2008 relating to the days and times of sittings of the Council and for the transaction of business be extended from Tuesday, 27 May 2008 until Thursday, 5 June 2008 inclusive.

The motion requiring the concurrence of an absolute majority.

Question - put.

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

6. Royal Flying Doctor Service

Pursuant to Temporary Order, Hon Robyn McSweeney moved, without notice -

That this House urges the Government to alleviate the current funding crisis being faced by the Royal Flying Doctor Service and to recognise that this worthy service is managed by dedicated people and not “an interest group” as claimed by the Health Minister.

Debate ensued.

The Leader of the House moved -

Line 1 — To delete the words after “House” and insert instead —

“

recognises and supports the current negotiations for a new contract between the State Government and the Royal Flying Doctor Service (RFDS) and urges both parties to pursue an early and acceptable agreement.

”

Debate ensued.

The President left the Chair at 11.34am

The President resumed the Chair at 11.39am

Debate resumed.

Amendment - put.

The House divided.

Ayes (11)

Hon Matt Benson-Lidholm
 Hon Vincent Catania
 Hon Kim Chance
 Hon Kate Doust
 Hon Sue Ellery
 Hon Adele Farina

Hon Sheila Mills
 Hon Batong Pham
 Hon Sally Talbot
 Hon Ken Travers
 Hon Ed Dermer (*Teller*)

Noes (15)

Hon Ken Baston
 Hon George Cash
 Hon Wendy Duncan
 Hon Donna Faragher
 Hon Anthony Fels
 Hon Nigel Hallett
 Hon Ray Halligan
 Hon Barry House

Hon Paul Llewellyn
 Hon Robyn McSweeney
 Hon Norman Moore
 Hon Helen Morton
 Hon Barbara Scott
 Hon Giz Watson
 Hon Bruce Donaldson (*Teller*)

Amendment thus negatived.

Hon Norman Moore moved -

Line 3 — To insert after “Minister” —

“

and recognises the current negotiations for a new contract between the State Government and the Royal Flying Doctor Service (RFDS) and urges the Government to pursue an early and acceptable agreement.

”

Amendment - put and passed.

Motion, as amended, agreed to.

7. Mitchell Freeway Traffic Congestion

Pursuant to Temporary Order, Hon Ray Halligan moved, without notice -

That this House expresses its concern that the Carpenter Government has failed to implement solutions to traffic problems related to the Mitchell Freeway congestion.

Debate ensued.

Interruption pursuant to Temporary Order.

8. Order of Business

Ordered - That Orders of the Day Nos 600, *Architects Amendment Regulations 2007 - Disallowance*, 607, *State Superannuation Amendment Regulations 2008 - Disallowance*, 608, *City of Nedlands - Fencing Local Laws 2007 - Disallowance*, 609, *City of Nedlands - Signs Local Law 2007 - Disallowance*, 610, *Swan Districts Hospital (Eveline Road Site) Amendment By-Laws 2008 - Disallowance*, 611, *Peel Health Services By-Laws 2008 - Disallowance*, 612, *Metropolitan Health Service By-Laws 2008 - Disallowance*, 613, *Fremantle Hospital Amendment By-Laws 2008 - Disallowance*, 614, *Bentley Hospital Amendment By-Laws 2008 - Disallowance*, 615, *Armadale Kelmscott District Memorial Hospital Amendment By-Laws 2008 - Disallowance*, 616, *City of Fremantle - Local Law Relating to Outdoor Eating Areas Amendment Local Law 2007 - Disallowance*, 617, *Conservation and Land Management Amendment Regulations (No. 2) 2007 - Disallowance*, 618, *City of Joondalup - Local Government and Public Property Amendment Local Law (No. 2) 2007 - Disallowance*, and 619, *City of Cockburn - Parking and Parking Facilities Local*

Law 2007 - Disallowance, be taken after Order of the Day No. 161, *ANZAC Day Amendment Bill 2005*. (Leader of the House).

9. Estimates of Revenue and Expenditure - Consolidated Fund Estimates 2008-2009

The Order of the Day having been read for the adjourned debate on the motion of the Parliamentary Secretary representing the Deputy Premier, That the Consolidated Fund Estimates 2008-2009 be noted.

Debate resumed.

On the motion of Hon Bruce Donaldson the debate was adjourned to the next sitting.

10. Food Bill 2005

The Order of the Day having been read for the third reading of this Bill.

The Minister for Agriculture and Food moved, That the Bill be now read a third time.

The Acting President having reported that the Deputy Chairman of Committees had certified that the fair print of the Bill was in accordance with the Bill as agreed to in Committee, and reported.

Question - put and passed.

Bill read a third time and passed.

11. Legal Profession Bill 2007

The Order of the Day having been read for the third reading of this Bill.

The Parliamentary Secretary representing the Minister for Planning and Infrastructure on behalf of the Minister for Child Protection representing the Attorney General moved, That the Bill be now read a third time.

The Acting President having reported that the Deputy Chairman of Committees had certified that the fair print of the Bill was in accordance with the Bill as agreed to in Committee, and reported.

Question - put and passed.

Bill read a third time and passed.

12. Community Protection (Offender Reporting) Amendment Bill 2007

The Order of the Day having been read for the consideration of the Committee's report upon this Bill.

The Leader of the House on behalf of the Minister for Employment Protection representing the Minister for Police and Emergency Services moved, That the report be adopted.

Question - put and passed.

Ordered - That the third reading of the Bill be made an Order of the Day for the next sitting.

13. Acts Amendment (Consent to Medical Treatment) Bill 2006

The Order of the Day for the further consideration of this Bill, in Committee, having been read.

The Acting President left the Chair.

In Committee

(Hon George Cash in the Chair)

Clause 11.

Proposed Section 110S.

Debate resumed.

Hon Ed Dermer moved -

Page 17, line 18 — To delete “exist or have” and insert instead —

“ have or knowledge has ”.

Debate ensued.

Hon Ed Dermer, by leave, amended his amendment as follows -

Page 17, line 18 — To delete “have” and insert instead —

“ knowledge has ”.

Question, That the words to be deleted, be deleted - put.

The Committee divided.

Ayes (8)

Hon Vincent Catania
Hon Kate Doust
Hon Wendy Duncan
Hon Anthony Fels

Hon Helen Morton
Hon Batong Pham
Hon Barbara Scott
Hon Ed Dermer (*Teller*)

Noes (20)

Hon Ken Baston
Hon Matt Benson-Lidholm
Hon George Cash
Hon Kim Chance
Hon Peter Collier
Hon Sue Ellery
Hon Donna Faragher
Hon Adele Farina
Hon Nigel Hallett
Hon Ray Halligan

Hon Barry House
Hon Paul Llewellyn
Hon Robyn McSweeney
Hon Sheila Mills
Hon Norman Moore
Hon Ljiljanna Ravlich
Hon Sally Talbot
Hon Ken Travers
Hon Giz Watson
Hon Bruce Donaldson (*Teller*)

Question thus negatived.

Hon Ed Dermer moved -

Page 17, lines 19 to 22 — To delete the lines and insert instead —

“

- (a) the maker of that directive would not have reasonably anticipated at the time of making the directive; and
- (b) a reasonable person in the patient’s position, would have changed his or her mind about the treatment decision.

”.

Debate ensued.

Hon Ed Dermer, by leave, amended his amendment as follows -

Page 17, lines 19 to 22 — To delete the lines and insert instead —

“

- (a) the maker of that directive would not have reasonably anticipated at the time of making the directive; and

- (b) would have caused a reasonable person in the maker's position to have changed his or her mind about the treatment decision.

”.

Debate ensued.

Amendment, as amended, agreed to.

The Minister for Child Protection moved -

Page 17, lines 25 to 27 — To delete “made more than 10 years before the time at which the treatment decision would otherwise operate”.

Amendment - put and passed.

The Minister for Child Protection moved -

Page 17, line 29 — To delete “of”.

Amendment - put and passed.

Hon Ed Dermer moved -

Page 18, after line 9 — To insert —

“

- (e) the views of any guardian of the maker, enduring guardian of the maker or the person responsible for the maker as defined in section 110ZD concerning the treatment, unless such a person has been specifically precluded from expressing such a view in the advance health directive.

”.

Debate ensued.

Hon Ed Dermer, by leave, withdrew his amendment.

The Minister for Child Protection moved -

Page 18, lines 10 to 14 — To delete the lines and insert instead —

“

- (5) For the purpose of determining whether or not subsection (3) applies in relation to a treatment decision that is in an advance health directive, subject to the terms of the directive, any of the following persons may be consulted —
- (a) if the maker has an enduring guardian — the enduring guardian;
 - (b) if the maker has a guardian — the guardian;
 - (c) a person who has a relationship with the maker described in section 110ZD(3)(a) to (d);
 - (d) any other person considered appropriate in the circumstances.

”.

Debate ensued.

Hon Helen Morton moved -

To amend the amendment by deleting “may” in paragraph (5) and inserting instead -

“ must ”.

Debate ensued.

Amendment to the amendment - put and negatived.

Amendment - put and passed.

Proposed Section, as amended, agreed to.

14. Questions Without Notice

Questions without notice were taken.

The Parliamentary Secretary representing the Treasurer tabled documents in relation to non-financial corporations sector net debt from 30 June 2007 to 30 June 2009 and net debt levels by agency at 30 June, 2008-2009 Budget, in response to a question without notice asked by Hon Norman Moore. (Tabled paper 3993).

The Minister for Child Protection representing the Minister for Health tabled, and by leave incorporated into Hansard, an answer in relation to metropolitan hospitals which provide emergency department services to public patients, in response to a question without notice asked by Hon Norman Moore. (Tabled paper 3994).

The Minister for Agriculture and Food tabled a corrected answer in relation to details of the detection of lead levels in pig offal, in response to a question without notice asked by Hon Anthony Fels. (Tabled paper 3995).

The Minister for Child Protection tabled an answer in relation to paid parental leave taken by public servants within departments in the Attorney General's portfolio in response to question on notice No. 6193 asked by Hon Helen Morton. (Tabled paper 3996).

15. Acts Amendment (Consent to Medical Treatment) Bill 2006

The President left the Chair.

In Committee

(Hon George Cash in the Chair)

The Leader of the House moved, That progress be reported and leave asked to sit again at a later stage of this day's sitting.

Question - put and passed.

The Acting President resumed the Chair.

The Chairman of Committees reported that the Committee had considered the Bill, made progress, and asked leave to sit again at a later stage of this day's sitting.

Ordered - That the Committee have leave to sit again at a later stage of this day's sitting.

16. Criminal Law Amendment (Homicide) Bill 2008

The Deputy President reported the receipt of Message No. 322 from the Legislative Assembly forwarding the Bill for concurrence.

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

Question - put and passed.

Bill read a first time.

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

Debate stands adjourned.

17. Order of Business

Ordered - That Order of the Day No. 362, *Acts Amendment (Consent to Medical Treatment) Bill 2006*, be taken forthwith. (Leader of the House).

18. Acts Amendment (Consent to Medical Treatment) Bill 2006

The Deputy President left the Chair.

In Committee

(Hon George Cash in the Chair)

Clause 11.

Debate ensued.

Proposed Sections 110T to 110ZA agreed to.

Proposed New Heading.

The Minister for Child Protection moved -

Page 21, line 1 — To delete the line and insert instead —

“

Division 4 — Miscellaneous matters

”

Proposed New Heading - put and passed.

Proposed New Sections 110ZAA, 110ZAB and 110ZAC.

The Minister for Child Protection moved -

Page 21, after line 1 — To insert —

“

110ZAA. Register of advance health directives

- (1) A register of advance health directives must be established and maintained.
- (2) The regulations may provide for any matter that is necessary or convenient for the registration of advance health directives, including the following —
 - (a) who must establish and maintain the register;
 - (b) the form and manner in which the register must be established and maintained;
 - (c) the contents of the register, including proof of the contents;
 - (d) who may apply for registration;
 - (e) the procedure for registration, including the alteration and removal of entries in the register;
 - (f) who may have access to or obtain information from the register;
 - (g) the review by the State Administrative Tribunal of decisions allowing, or refusing to allow, people to have access to or obtain information from the register;
 - (h) the procedure for accessing or obtaining information from the register.
- (3) No fee or charge is payable in respect of any matter connected with the register or registration.

110ZAB. Disclosure of information obtained from register

- (1) In this section —
 “register” means the register referred to in section 110ZAA.
- (2) A person who has access to the register must not disclose any information on the register unless the disclosure is authorised by subsection (4).
 Penalty: \$5 000.
- (3) A person who obtains any information from the register must not disclose the information unless the disclosure is authorised by subsection (4).
 Penalty: \$5 000.
- (4) For subsections (2) and (3), a disclosure is authorised if it is —
- (a) authorised by, or made for the purposes of, this Act; or
 - (b) made with the consent of the maker of the advance health directive to which the information relates; or
 - (c) made for a purpose, or in a circumstance, prescribed by the regulations; or
 - (d) otherwise authorised or required by law.

110ZAC. Regulations to facilitate national register

- (1) In this section —
 “advance health directive” means —
- (a) an advance health directive made under this Part; or
 - (b) an instrument created under the law of another State or a Territory that corresponds sufficiently, in form and effect, to an advance health directive made under this Part, whether or not the instrument is recognised under section 110ZA(1).
- (2) The regulations may make provision to facilitate —
- (a) the establishment of a national register of advance health directives; and
 - (b) if a national register is established — the registration of advance health directives on it.

”.

Proposed New Sections - put and passed.

Proposed Section 110ZB agreed to.

Proposed Section 110ZC.

The Minister for Child Protection moved -

Page 21, lines 8 to 14 — To delete the lines and insert instead —

“

110ZC. Meaning of “patient”

In this Part —

“patient” means a person who needs treatment.

”.

Debate ensued.

Amendment - put and passed.

Proposed Section, as amended, agreed to.

Proposed Section 110ZD.

The Minister for Child Protection moved -

Page 23, after line 7 — To insert —

“

- (8) When making a treatment decision for the patient, the person responsible for the patient must act according to the person's opinion of the best interests of the patient.

”.

Debate ensued.

Amendment - put and passed.

Proposed Section, as amended, agreed to.

Proposed Sections 110ZE to 110ZG agreed to.

Proposed New Heading.

The Minister for Child Protection moved -

Page 24, after line 9 — To insert —

“

Division 1 — Preliminary matters

”.

Proposed New Heading - put and passed.

Proposed Section 110ZH agreed to.

Proposed New Heading.

The Minister for Child Protection moved -

Page 25, before line 1 — To insert —

“

Division 2 — Provision of treatment

”.

Proposed New Heading - put and passed.

Proposed Section 110ZI.

Hon Ed Dermer moved -

Page 25, after line 19 - To insert —

“

- (3) Where a medical practitioner treats a patient in good faith based on the information available at the time, no liability shall be attached to the medical practitioner.

”.

Debate ensued.

Hon Ed Dermer, by leave, withdrew his amendment.

Debate ensued.

On the question, That the proposed Section stand as printed - put and passed.

Proposed Section 110ZIA.

The Minister for Child Protection moved -

Page 26, line 3 — To delete “that the patient has” and insert instead —

“ the patient having ”.

Amendment - put and passed.

The Minister for Child Protection moved -

Page 26, line 6 — To delete “that”.

Amendment - put and passed.

The Minister for Child Protection moved -

Page 26, line 8 — To delete “has” and insert instead —

“ having ”.

Amendment - put and passed.

Proposed Section, as amended, agreed to.

Interruption pursuant to Temporary Order.

The Acting President resumed the Chair.

The 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.

19. Special Adjournment

The Leader of the House moved, without notice -

That the House at its rising adjourn until Tuesday, 27 May 2008.

Point of Order

Hon Ken Travers raised the following Point of Order -

Do the Temporary Orders require an absolute majority on this question or do the words “Unless otherwise ordered” at the start of the Temporary Orders mean that we need only a simple majority?

Deputy President’s Ruling

The Deputy President ruled as follows -

The good news is that Hon Ken Travers has answered his own question. He would be aware that the extension of the Temporary Orders, which was passed today, was in the following terms —

That the Temporary Orders adopted and in force on 2 April 2008 relating to the days and times of sittings of the Council and for the transaction of business be extended from Tuesday, 27 May 2008 until Thursday, 5 June 2008 inclusive.

The earlier Sessional Orders contained a requirement that a question on a motion to vary a provision of clause 2(1) of those Sessional Orders could not pass without an affirmative vote of an absolute majority. However, that particular qualification was not included in the Temporary Orders to which the Member referred. Therefore, he is quite right: the words “Unless otherwise ordered” come into play and the motion that the Leader of the House has moved is valid.

Question - put and passed.

20. Adjournment

The House adjourned at 5.59pm until Tuesday, 27 May 2008 at 3.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Shelley Archer, Hon Brian Ellis, Hon Jon Ford, Hon Graham Giffard and Hon Simon O'Brien.

MALCOLM PEACOCK
Clerk of the Legislative Council

HON NICK GRIFFITHS
President of the Legislative Council