

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 181

TUESDAY, 19 FEBRUARY 2008

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 - Resignation of Hon Murray Criddle

The President read the following letter -

Dear Mr President

I hereby wish to notify you that I tender my resignation effective as at 2 January 2008 as a Member of the Legislative Council.

Yours sincerely

Hon Murray Criddle

Member for the Agricultural Region

3. Swearing-in - Wendy Duncan

The President read the following Commission authorising him to administer the Oath -

I, the Governor, acting under the *Constitution Act 1889* section 22, authorise you, while you are the President of the Legislative Council, to administer the oath or affirmation of allegiance in Schedule E to that Act to members of the Legislative Council.

The Clerk read the following letter from the Electoral Commissioner -

Dear Mr President

I have today written to His Excellency Dr Ken Michael AC, Governor of Western Australia to inform him that I have declared Wendy Maxine Duncan elected as a member of the Legislative Council to fill the vacancy in the Agricultural Region.

A copy of my letter to the Governor is enclosed for your information.

Yours sincerely

Warwick Gately AM

Electoral Commissioner

29 January 2008

The Member Elect, Wendy Duncan, was escorted to the President's table by the Usher of the Black Rod.

The Member Elect, Wendy Duncan, took the Oath as follows:

I, Wendy Maxine Duncan, swear by Almighty God that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, her heirs and successors, according to law and will faithfully serve the people of Western Australia as a member of the Legislative Council.

and signed the Oath Book and the Member's Role.

4. Papers Tabled - Letters pursuant to Resolution of the House of Tuesday, 4 December 2007

The following Papers were laid on the Table by the President -

Letters from Mr Noel Crichton-Browne, Mr. Brian Burke, and Mr Julian Grill -
Apology to the Legislative Council..... 3609

The Leader of the House moved, without notice -

That consideration of the letters be made an Order of the Day for a later stage of this day's sitting.

Question - put and passed.

5. Messages from His Excellency the Governor - Assent to Bills

The President reported the receipt of Messages from His Excellency the Governor assenting to the following Bills -

6 December 2007 - Message No. 42	Act No.
Trans-Tasman Mutual Recognition (Western Australia) Bill 2007	30 of 2007
21 December 2007 - Message No. 43	Act No.
Criminal Code Amendment (Drink and Food Spiking) Bill 2007	31 of 2007
Electricity Industry Amendment Bill 2007	32 of 2007
Judges' Salaries and Pensions Amendment Bill 2007	33 of 2007
Local Government (Miscellaneous Provisions) Amendment (Smoke Alarms) Bill 2007	34 of 2007
Petroleum Amendment Bill 2007	35 of 2007
Waste Avoidance and Resource Recovery Bill 2007	36 of 2007
Waste Avoidance and Resource Recovery Levy Bill 2007	37 of 2007
Water Resources Legislation Amendment Bill 2006	38 of 2007
Road Traffic Amendment Bill (No. 2) 2007	39 of 2007

6. Petition

Hon Simon O'Brien presented a petition from 4 994 residents of Western Australia requesting the Legislative Council oppose the export of containerised lead through the port of Fremantle. (Tabled paper 3640).

7. Papers

The following Papers were laid on the Table by -

President

Reports -

Corruption and Crime Commission - Report on an Investigation into Inappropriate Associations between Western Australian Police Officers and Pasquale Minniti (21 December 2008) (Deemed tabled 21/01/2008) 3610

Corruption and Crime Commission - Report on the Investigation of Alleged Misconduct concerning Dr Neale Fong, Director General of the Department of Health (25 January 2008) (Deemed tabled 25/01/2008)	3611
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Reports -

Parliamentary Inspector of the Corruption and Crime Commission - Findings of "Misconduct" by Mr Paul Frewer (Deemed tabled 8/02/2008)	3612
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Leader of the House

Annual Reports -

Grain Licensing Authority (2006-2007) (Date received 14/12/2007).....	3613
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Response to Reports -

Standing Committee on Uniform Legislation and Statutes Review - Statutes (Repeal and Minor Amendments) Bill 2006, Report No. 21 (Premier)	3614
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Minister for Local Government

Annual Reports -

LANDGATE [Land Information Authority], (1 January 2007 - 30 June 2007) (Date received 27/09/2007)	3615
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Minister for Regional Development

Annual Reports -

Australian Crime Commission (2006-2007) (Date received 12/02/2008)	3616
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Minister for Child Protection

Annual Reports -

Chiropractors Registration Board (2006-2007) (Date received 15/01/2008).....	3617
Dental Board (2006-2007) (Date received 15/01/2008).....	3618
Legal Practice Board (2006-2007) (Date received 08/01/2008)	3619
Legal Practitioners Complaints Committee (2006-2007) (Date received 08/01/2008).....	3620
Nurses Board (2006-2007) (Date received 15/01/2008)	3621
Optometrists Registration Board (1 July 2006-19 April 2007) (Date received 08/01/2008)	3622
Optometrists Registration Board (20 April 2007-30 June 2007) (Date received 08/01/2008)...	3623
Podiatrists Registration Board (For the period 1 January 2007 to 29 May 2007) (Date received 23/01/2008).....	3624
Psychologists Board (1 July 2006-3 May 2007) (Date received 08/01/2008)	3625
Psychologists Board (4 May 2007-30 June 2007) (Date received 08/01/2008).....	3626

Plans -

Energy Safety Division Business Plan 2008/2009 (December 2007)	3627
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Parliamentary Secretary representing the Deputy Premier

Reports -

Economic Regulation Authority - Inquiry on Water Corporation's Tariffs (24 December 2007) (Date Received 16/01/2008).....	3628
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Economic Regulation Authority - Inquiry on Water Corporation's Tariffs, REVISED FINAL REPORT (23 January 2008) (Deemed tabled 6/02/2008)	3629
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Government Mid-Year Financial Projections Statement (2007-2008) (December 2007).....	3630
Treasury Corporation - Statement of Corporate Intent (2008-2009).....	3631
Treasury Corporation - Strategic Development Plan (2008/09 to 2010/11)	3632
Western Australia Treasury Corporation Quarterly Report (For the quarter ended 31 December 2007) (Deemed tabled 31/01/2008).....	3633

Parliamentary Secretary representing the Minister for Planning and Infrastructure

Annual Reports -

Perry Lakes Redevelopment (2006-2007) (Date Received 31/02/2008).....	3634
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Directions -

Planning and Development Act 2005 - Ministerial Direction to the State Administrative Tribunal to refer application between Westfield Management Ltd and the City of Stirling	3635
Planning and Development Act 2005 - Ministerial Direction to the State Administrative Tribunal to refer application between Midwest Corporation Ltd and the Shire of Morawa.....	3636

Ministerial Approvals -

Midland Redevelopment Act 1999 - Acquisition of land of value in excess of \$1 million - Lot 44 (271) Great Eastern Highway from Goodo Pty Ltd.....	3637
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Regulations -

Consumer Credit (Western Australia) Act 1996 (Queensland Consumer Credit Amendment Regulation (No.1) 2007).....	3638
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Reports -

Port Hedland Port Authority - Statement of Corporate Intent (2007-2008).....	3639
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8. Standing Committee on Uniform Legislation and Statutes Review - Twenty-Fourth Report - Cross-border Justice Bill 2007

Hon Simon O'Brien presented the Twenty-Fourth Report of the Standing Committee on Uniform Legislation and Statutes Review in relation to the *Cross-border Justice Bill 2007*. (Tabled paper 3641).

Hon Simon O'Brien moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

9. Standing Committee on Uniform Legislation and Statutes Review - Twenty-Fifth Report - Medical Practitioners Bill 2006

Hon Simon O'Brien presented the Twenty-Fifth Report of the Standing Committee on Uniform Legislation and Statutes Review in relation to the *Medical Practitioners Bill 2006*. (Tabled paper 3642).

Hon Simon O'Brien moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

10. Standing Committee on Uniform Legislation and Statutes Review - Twenty-Sixth Report - Legal Profession Bill 2007

Hon Simon O'Brien presented the Twenty-Sixth Report of the Standing Committee on Uniform Legislation and Statutes Review in relation to the *Legal Profession Bill 2007*. (Tabled paper 3643).

Hon Simon O'Brien moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

11. Joint Standing Committee on Delegated Legislation - Twenty-Fourth Report - *Town of Claremont - Standing Orders Local Law 2007*

Hon Ray Halligan presented the Twenty-Fourth Report Report of the Joint Standing Committee on Delegated Legislation in relation to the *Town of Claremont - Standing Orders Local Law 2007*. (Tabled paper 3644).

Hon Ray Halligan moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

12. Establishment of Indigenous Housing Fund

Hon Shelley Archer: To move on the next day of sitting -

That this House -

1. Accepts and underlines the pre-eminence of the Inquiry into the *Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* (the Gordon Inquiry) and the need for an effective and speedy response from Government.
2. Acknowledges the importance of the finding by the Gordon Inquiry that the provision of adequate housing is a key factor in reducing pressure on families and hence reducing family violence and child abuse.
3. Recognises that, to date, well intentioned policies implemented by successive Governments to provide decent housing in indigenous communities have failed and a new approach is required.
4. Stresses the urgency of the needs of Aboriginal Communities.
5. Urges the Government to establish an Indigenous Housing Fund, to be administered by a board of trustees for the benefit of indigenous communities, with the trustees to be appointed on the basis of their business, community and policy skills and expertise and their standing in the community.
6. Requests the Government -
 - a) allocate a minimum of \$150 million dollars to support the Indigenous Housing Fund in the first 3 years of its operation; and
 - b) establish clear and meaningful outcomes to be met by the trustees in the administration of the fund, but otherwise allow innovation and freedom from bureaucratic restrictions in the achievement of those outcomes.

13. Matter of Urgency - Reintroduction of Sessional Order

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 calls on the Government to reintroduce the Sessional Order for this year's sitting.

Yours sincerely

Hon Norman Moore

Member for Mining and Pastoral Region

Four members having risen in support.

Hon Norman Moore moved the motion.

Debate ensued.

Point of Order

The Leader of the House raised the following Point of Order -

Hon Simon O'Brien called the Premier a "liar", or implied that he told a lie. I believe that that is outside the standing orders of this House.

President's Ruling

The President ruled as follows -

There is no doubt that that expression is unparliamentary.

The Member withdrew.

Debate continued.

Motion lapsed.

14. Poisons Amendment Regulations (No. 4) 2007, WorkCover WA Guides for the Evaluation of Permanent Impairment, Second Edition, Health (Aquatic Facilities) Regulations 2007 and Occupational Safety and Health Amendment Regulations (No. 4) 2007 - Disallowances - Withdrawn from Notice Paper

Hon Ray Halligan, by leave, moved without notice -

That Motions for Disallowance Nos 113, *Poisons Amendment Regulations (No. 4) 2007*; 114, *Workcover WA Guides for the Evaluation of Permanent Impairment - Second Edition*; 115, *Health (Aquatic Facilities) Regulations 2007*, and 116, *Occupational Safety and Health Amendment Regulations (No. 4) 2007*, be withdrawn from the Notice Paper.

Question - put and passed.

15. Order of Business

Ordered - That Orders of the Day Nos 527, *Town of Claremont Standing Orders Local Law 2007*, 544, *West Coast Demersal Scalefish (Interim) Management Plan 2007* and 547, *Prohibition on Commercial Fishing (Metropolitan Waters) Order 2007*, be taken after Order of the Day No. 469, *Eastern Goldfields Transport Board Repeal Bill 2007*. (Leader of the House).

16. Local Government (Rules of Conduct) Regulations 2007 - Disallowance - Discharge from Notice Paper

The Order of the Day having been called, Hon Ray Halligan moved, without notice -

That Order of the Day No. 528, *Local Government (Rules of Conduct) Regulations 2007 - Disallowance*, be discharged from the Notice Paper.

Question - put and passed.

17. Non-Coronial Post-Mortem Examinations Code of Practice 2007 - Disallowance - Discharge from Notice Paper

The Order of the Day having been called, Hon Ray Halligan moved, without notice -

That Order of the Day No. 529, *Non-Coronial Post-Mortem Examinations Code of Practice 2007 - Disallowance*, be discharged from the Notice Paper.

Question - put and passed.

18. Shire of Wiluna Health Local Laws 2007 - Disallowance - Discharge from Notice Paper

The Order of the Day having been called, Hon Ray Halligan moved, without notice -

That Order of the Day No. 549, *Shire of Wiluna Health Local Laws 2007 - Disallowance*, be discharged from the Notice Paper

Question - put and passed.

19. Criminal Law and Evidence Amendment Bill 2006

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

20. Questions Without Notice

Questions without notice were taken.

The Minister for Local Government representing the Minister for Education and Training tabled a letter from the Director General of the Department of Education and Training to the City of Canning, regarding preservation of land at the Ferndale Primary School, in response to question on notice No. 5635 asked by Hon Simon O'Brien. (Tabled paper 3645).

The Minister for Child Protection representing the Minister for Employment Protection tabled written comment by the Department of Consumer and Employment Protection concerning the blast clearance area and tailing storage facility for KCGM gold mine expansion, in response to question on notice No. 5653 asked by Hon Giz Watson. (Tabled paper 3646).

The Minister for Child Protection representing the Minister for Health tabled documents in relation to the number of elective surgery operations performed at each metropolitan teaching hospital for 2005/06 and 2006/07, in response to question on notice No. 5706 asked by Hon Barbara Scott. (Tabled paper 3647).

The Parliamentary Secretary representing the Minister for Planning and Infrastructure tabled a document in relation to details of Multi Purpose Taxis against indicators, waiting times, 12 months to October 2007, in response to question on notice No. 5646 asked by Hon Simon O'Brien. (Tabled paper 3648).

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. 5628 asked by Hon Paul Llewellyn will be provided by 28 February 2008.

21. Criminal Law and Evidence Amendment Bill 2006

Debate resumed on the second reading of this Bill (cf item No. 19 above).

Extension of Time - Leave granted to Hon George Cash to extend his speaking time.

Debate continued.

Question - put and passed.

Bill read a second time.

The Acting President left the Chair.

In Committee

(Hon Ray Halligan in the Chair)

Clause 1 agreed to.

Clauses 2.

Debate ensued.

The Minister for Child Protection moved -

That further consideration of Clause 2 be postponed until after Clause 13.

Question - put and passed.

Clause 3 agreed to.

Clause 4.

Debate ensued.

Clause agreed to.

Clause 5.

The Minister for Child Protection moved -

Page 4, lines 12 and 13 — To delete the lines and insert instead —

“

- (d) the victim of the offence is —
 - (i) an ambulance officer; or
 - (ii) a member of a FESA Unit, SES Unit or VMRS Group (within the meaning given to those terms by the *Fire and Emergency Services Authority of Western Australia Act 1998*); or
 - (iii) a member or officer of a private fire brigade or volunteer fire brigade (within the meaning given to those terms by the *Fire Brigades Act 1942*),
 who is performing his or her duties as such; or
- (e) the victim of the offence is a person who —
 - (i) is working in a hospital; or
 - (ii) is in the course of providing a health service to the public;
 or
- (f) the victim of the offence is a contract worker (within the meaning given to that term by the *Court Security and Custodial Services Act 1999*) who is providing court security services or custodial services under that Act; or
- (g) the victim of the offence is a contract worker (within the meaning given to that term by section 15A of the *Prisons Act 1981*) who is performing functions under Part IIIA of that Act,

”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 6 to 8 agreed to.

Clause 9.

The Minister for Child Protection moved -

Page 5, lines 25 to 27 — To delete the lines and insert instead —

“

- or
- (h) assaults —
 - (i) an ambulance officer; or
 - (ii) a member of a FESA Unit, SES Unit or VMRS Group (within the meaning given to those terms by the *Fire and Emergency Services Authority of Western Australia Act 1998*); or
 - (iii) a member or officer of a private fire brigade or volunteer fire brigade (within the meaning given to those terms by the *Fire Brigades Act 1942*),
 who is performing his or her duties as such; or

- (i) assaults a person who —
 - (i) is working in a hospital; or
 - (ii) is in the course of providing a health service to the public;
 or
- (j) assaults a contract worker (within the meaning given to that term by the *Court Security and Custodial Services Act 1999*) who is providing court security services or custodial services under that Act; or
- (k) assaults a contract worker (within the meaning given to that term by section 15A of the *Prisons Act 1981*) who is performing functions under Part IIIA of that Act,

”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 10.

Debate ensued.

Clause agreed to.

Clauses 11 to 12 agreed to.

Clause 13.

Debate ensued.

Question, That the clause stand as printed - put and negatived.

Postponed Clause 2.

The Minister for Child Protection moved -

Page 2, lines 9 to 12 - To delete the lines.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 14 agreed to.

Clause 15.

Debate ensued.

Clause agreed to.

Clause 16 agreed to.

Clause 17.

Debate ensued.

Question, That the clause stand as printed - put and negatived.

Clause 18.

The Minister for Child Protection moved -

Page 12, after line 1 — To insert —

“

- (1) Section 55(2) is amended by deleting “either a summons, a court hearing notice, or an approved notice, notifying the accused of the court date,” and inserting instead —

“

a court hearing notice, or an approved notice, notifying the accused of that date and that the court may deal with the charge in the accused’s absence if the accused does not appear on that date,

”.

(2) Section 55(3) is repealed.

”
.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 19 to 27 agreed to.

Clause 28.

Debate ensued.

Question, That the clause stand as printed - put and negatived.

Clauses 29 to 33 agreed to.

Clause 34.

Hon Giz Watson moved -

Page 19, after line 17 — To insert —

“

(2) After section 24(4) the following subsection is inserted —

“

In the case of an appeal under section 24(2)(da), the Court of Appeal must refuse to grant leave to appeal if leave to appeal is sought in relation to an acquittal resulting from a retrial under this Part.

”
.
”
.

Debate ensued.

Amendment - put and negatived.

Question, That the clause stand as printed - put and passed.

Clause 35.

Hon Giz Watson moved -

Page 19, line 25 — To delete “14” and insert instead —

“ 20 ”.

Page 19, line 28 — To insert after “charge” —

“ which eliminated or substantially weakened the prosecution case ”.

Debate ensued.

Amendments - put and negatived.

Question, That the clause stand as printed - put and passed.

Clauses 36 to 40 agreed to.

Clause 41.

The Minister for Child Protection moved -

Page 21, line 20 — To insert after “matter” —

“

, including any material change to the person’s circumstances,

”
.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 42 agreed to.

Clause 43.

The Minister for Child Protection moved -

Page 22, after line 27 — To insert —

“

- (3) If evidence described in subsection (2) is admitted in a trial by jury, this section does not affect any duty of the trial judge to warn the jury about any matter relating to the complainant's evidence; but any such warning must be consistent with that evidence.

”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 44 to 46 agreed to.

Clause 47.

Debate ensued.

Clause agreed to.

Clauses 48 to 73 agreed to.

Clause 74.

Debate ensued.

Question, That the clause stand as printed - put and negatived.

Clauses 75 to 80 agreed to.

New Clause 21.

The Minister for Child Protection moved -

Page 12, after line 26 — To insert the following new clause —

“

21. Section 75 amended

- (1) Section 75(4) is amended as follows:

- (a) in paragraph (b) by deleting “issue any document necessary;” and inserting instead —

“

may issue a summons, court hearing notice or approved notice, as the case requires;

”.

- (b) in paragraph (c) by inserting after “document needed” —

“

(including a document referred to in section 139 or 155)

”.

(2) After section 75(9) the following subsection is inserted —

“

- (10) An approved notice issued to a person under this section must be served on the person in accordance with Schedule 2 clause 2, 3 or 4.

”
.
”
.

Debate ensued.

New clause agreed to.

New Clause 42.

The Minister for Child Protection moved -

Page 21, after line 28 — To insert the following new clause —

“

42. Section 51 inserted

After section 50 the following section is inserted —

“

51. Certain amendments to be reviewed

- (1) The Minister must carry out a review of the operation of the amendments made to this Act by the *Criminal Law and Evidence Amendment Act 2006* Part 4 as soon as practicable after the expiration of 5 years from the commencement of the amendments.
- (2) The Minister must prepare a report based on the review and, as soon as practicable after the report is prepared, cause it to be laid before each House of Parliament.

”
.
”
.

Debate ensued.

New clause agreed to.

Title agreed to.

The Deputy President resumed the Chair.

Bill reported with amendments.

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

22. Terrorism (Preventative Detention) Amendment Bill 2007

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

Debate ensued.

Question - put.

The House divided.

Ayes (26)

Hon Shelley Archer
 Hon Ken Baston
 Hon Matt Benson-Lidholm
 Hon George Cash
 Hon Vincent Catania
 Hon Kim Chance
 Hon Peter Collier
 Hon Bruce Donaldson
 Hon Sue Ellery
 Hon Brian Ellis
 Hon Donna Faragher
 Hon Adele Farina
 Hon Anthony Fels

Hon Graham Giffard
 Hon Nigel Hallett
 Hon Ray Halligan
 Hon Barry House
 Hon Robyn McSweeney
 Hon Sheila Mills
 Hon Norman Moore
 Hon Helen Morton
 Hon Simon O'Brien
 Hon Ljiljanna Ravlich
 Hon Sally Talbot
 Hon Ken Travers
 Hon Ed Dermer (*Teller*)

Noes (2)

Hon Paul Llewellyn

Hon Giz Watson (*Teller*)

Question thus passed.

Bill read a second time.

Leave was granted to proceed forthwith to the third reading of the Bill.

The Leader of the House moved, That the Bill be now read a third time.

Question - put and passed.

Bill read a third time and passed.

23. Adjournment

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

Debate ensued.

Question - put and passed.

The House adjourned at 10.16pm until Wednesday, 20 February 2008 at 4.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Barbara Scott.

MALCOLM PEACOCK
 Clerk of the Legislative Council

HON NICK GRIFFITHS
 President of the Legislative Council