

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 212

THURSDAY, 19 JUNE 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. Petition

Hon Robyn McSweeney presented a petition from 23 petitioners requesting the Legislative Council investigate the advice and recommendations given by Dr Neale Fong and Mr Michael Moodie concerning the site selection of the new Busselton Hospital. (Tabled paper 4106).

3. Papers

The following Papers were laid on the Table by -

Leader of the House

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Leader of the House on behalf of the Minister for Employment Protection*Local Laws -*

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Parliamentary Secretary representing the Minister for the Environment on behalf of the Parliamentary Secretary representing the Minister for Planning and Infrastructure*Standards -*

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Parliamentary Secretary representing the Minister for the Environment*Reports -*

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4. Dr Luke Neil - Treatment Decisions

Hon Brian Ellis: To move on the next day of sitting -

- (1) That this House directs the Standing Committee on Public Administration to inquire into and report on -
 - (a) the triage and general procedures at the Geraldton Regional Hospital, not limited to but including -
 - (i) decisions made in relation to patient Dr Luke Neil after his admission on 25 December 2007; and
 - (ii) communication of information regarding treatment and transport options for Dr Luke Neil,
 - (b) Geraldton police response times and patrol car allocation at the time of the injuries to Dr Luke Neil;
 - (c) the adequacy of therapeutic counselling services and support services at the Geraldton Victim Support Service; and

(d) any other matters considered relevant by the committee.

(2) The committee is to report to the House no later than 20 November 2008.

5. Order of Business

Ordered - That Order of the Day No. 631, *Prisons Amendment Regulations 2008 - Disallowance*, be taken after Order of the Day No. 638, *Nickel Refinery (BHP Billiton Nickel West Pty Ltd) (Termination of Agreements) Agreement Bill 2008*. (Leader of the House).

6. 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 Treasurer, 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.

7. Suspension of Standing and Temporary Orders

The Leader of the House moved, without notice -

That so much of the Standing and Temporary Orders be suspended as is necessary to enable the *Revenue Laws Amendment Bill 2008* and *Revenue Laws Amendment Bill (No. 2) 2008* to proceed through all stages at today's sitting.

Debate ensued.

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.

8. Cognate Debate - Revenue Laws Amendment Bill 2008 and Revenue Laws Amendment Bill (No. 2) 2008

The Parliamentary Secretary representing the Treasurer sought leave of the House to debate Order of the Day No. 636, *Revenue Laws Amendment Bill 2008* and Order of the Day No. 637, *Revenue Laws Amendment Bill (No. 2) 2008* cognately [SO 228].

Leave granted.

9. Revenue Laws Amendment Bill 2008 and Revenue Laws Amendment Bill (No. 2) 2008

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

Debate ensued.

Question - put and passed.

Bills read a second time.

The President left the Chair.

In Committee

(Hon Ray Halligan in the Chair)

Revenue Laws Amendment Bill 2008

Clause 1.

Debate ensued.

Clause agreed to.

Clauses 2 to 31 agreed to.

Revenue Laws Amendment Bill (No. 2) 2008

Clause 1 agreed to.

Clauses 2 to 27 agreed to.

Clause 28.

Proposed new Section 129 agreed to.

Proposed new Section 130.

Hon George Cash moved -

Page 18, lines 5 to 9 — To delete the lines.

Debate ensued.

Amendment - put and passed.

Proposed new Section, as amended, agreed to.

Proposed new Section 131.

Hon George Cash moved -

Page 18, after line 26 — To insert —

“

- (f) the determination notice ceases to have effect under the *Interpretation Act 1984* section 42(2) as applied by subsection (4).

”.

Amendment - put and passed.

Hon George Cash moved -

Page 18, after line 29 — To insert —

“

- (4) The *Interpretation Act 1984* section 42(1), (2), (3) and (5) apply to a determination notice as if the notice were regulations.

”.

Amendment - put and passed.

Proposed new Section, as amended, agreed to.

Proposed new Sections 132 and 133 agreed to.

Proposed new Section 134.

Hon George Cash moved -

Page 20, after line 9 — To insert —

“

134. Review of Division

- (1) The Minister is to carry out a review of the operation and effectiveness of this Division as soon as is practicable after —
- (a) the fifth anniversary of the commencement of the *Revenue Laws Amendment Act (No. 2) 2008* section 28; and
 - (b) the expiry of each 5 yearly interval after that anniversary.

- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared (and in any event not more than 12 months after the relevant anniversary), cause it to be laid before each House of Parliament.

”.

Debate ensued.

Amendment - put and passed.

Proposed new Section, as amended, agreed to.

Clause, as amended, agreed to.

Clauses 29 to 35 agreed to.

Titles agreed to.

The Deputy President resumed the Chair.

The Parliamentary Secretary representing the Treasurer moved, That the report be adopted.

Question - put and passed.

The Parliamentary Secretary representing the Treasurer moved, That the Bills be now read a third time.

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

Question - put and passed.

Bills read a third time and passed.

10. Joint Standing Committee on the Commissioner for Children and Young People

The following Message from the Legislative Assembly was reported -

Mr President

Message No. 341

The Legislative Assembly acquaints the Legislative Council that it has agreed to the following resolution -

- “(1) That the terms contained within the Schedule annexed to Legislative Council Message No. 215 for the establishment of the Joint Standing Committee on the Commissioner for Children and Young People be agreed to, subject to the following amendment -

To delete section 9.5 of the Schedule and substitute -

“9.5 The Standing Orders of the Assembly relating to standing and select committees will be followed as far as they can be applied.”

- (2) That the Members for Maylands and Churchlands be appointed as members of the Committee.”

and the Legislative Assembly seeks the concurrence of the Legislative Council.

Mrs D.J. Guise

Deputy Speaker

Legislative Assembly Chamber

Perth, 19 June 2008

Ordered - That consideration of Message No. 341 be made an Order of the Day for the next sitting.

Question - put and passed.

11. Criminal Law Amendment (Homicide) Bill 2008

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

The Minister for Child Protection representing the Attorney General moved, That the Bill be now read a third time.

The Deputy 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. Statutes (Repeals and Minor Amendments) Bill 2008

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

The Leader of the House 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. Indigenous Conservation Title Bill 2007

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

Debate ensued.

On the motion of Leader of the House the debate was adjourned to a later stage of this day's sitting.

14. Surrogacy 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 and passed.

Bill read a second time.

The Deputy President left the Chair.

In Committee

(Hon George Cash in the Chair)

Clause 1 agreed to.

Clause 2 agreed to.

Clause 3.

Debate ensued.

Clause agreed to.

Clauses 4 and 5 agreed to.

Clause 6.

The Minister for Child Protection moved -

Page 3, after line 21 — To insert —

“

(3) An expense is a reasonable expense for the purposes of subsection (1)(a) to the extent only that it is —

(a) a reasonable medical expense that is not recoverable under any health insurance or other scheme; or

- (b) the value of earnings foregone because of leave taken —
 - (i) for a period of not more than 2 months during which the birth occurs or was expected to occur; or
 - (ii) at any other time for medical reasons arising during the pregnancy; or
- (c) a reasonable expense of psychological counselling; or
- (d) a premium payable for health, disability or life insurance that —
 - (i) would not have been taken out if the surrogacy arrangement had not been entered into; and
 - (ii) provides cover for a period during which an expense referred to in another paragraph of this subsection is incurred or might be, or have been expected to be, incurred.

”.

Debate ensued.

The Minister for Child Protection 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 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 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.

15. Order of Business

Ordered - That Order of the Day No. 545, *Indigenous Conservation Title Bill 2007*, be taken forthwith. (Leader of the House).

16. Indigenous Conservation Title Bill 2007

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

Debate resumed.

Question - put and passed.

Bill read a second time.

The Deputy President left the Chair.

In Committee

(Hon George Cash in the Chair)

Clause 1 agreed to.

Debate ensued.

The Parliamentary Secretary representing the Deputy Premier 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.

17. Order of Business

Ordered - That Order of the Day No. 478, *Surrogacy Bill 2007*, be taken forthwith. (Leader of the House).

18. Surrogacy Bill 2007

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

The Deputy President left the Chair.

In Committee

(Hon George Cash in the Chair)

Clause 6.

Debate resumed on the amendment moved by the Minister for Child Protection as follows -

Page 3, after line 21 — To insert —

“

- (3) An expense is a reasonable expense for the purposes of subsection (1)(a) to the extent only that it is —
 - (a) a reasonable medical expense that is not recoverable under any health insurance or other scheme; or
 - (b) the value of earnings foregone because of leave taken —
 - (i) for a period of not more than 2 months during which the birth occurs or was expected to occur; or
 - (ii) at any other time for medical reasons arising during the pregnancy;
 - or
 - (c) a reasonable expense of psychological counselling; or
 - (d) a premium payable for health, disability or life insurance that —
 - (i) would not have been taken out if the surrogacy arrangement had not been entered into; and
 - (ii) provides cover for a period during which an expense referred to in another paragraph of this subsection is incurred or might be, or have been expected to be, incurred.

”.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 7.

Debate ensued.

Hon Graham Giffard, by leave, tabled a letter, dated 30 April 2008, from Mr Stephen Conroy in relation to the *Surrogacy Bill 2007*. (Tabled paper 4107).

Debate resumed.

The Minister for Child Protection moved -

Page 3, line 23 — To insert after “enforceable” —

“ except to the extent provided for in subsection (3) ”.

Page 3, after line 23 — To insert —

“

(2) Subsection (1) does not affect the ability of the court to make an order under Part 3.

(3) An obligation under a surrogacy arrangement to pay or reimburse reasonable expenses referred to in section 6(1) is as enforceable as it would be if subsection (1) had not been enacted and the arrangement was not unenforceable for any other reason.

”.

Debate ensued.

19. Questions Without Notice

Questions without notice were taken.

20. Surrogacy Bill 2007

The President left the Chair.

In Committee

(Hon Sheila Mills in the Chair)

Clause 7.

Debate resumed on the amendments moved by the Minister for Child Protection as follows -

Page 3, line 23 — To insert after “enforceable” —

“ except to the extent provided for in subsection (3) ”.

Page 3, after line 23 — To insert —

“

(2) Subsection (1) does not affect the ability of the court to make an order under Part 3.

(3) An obligation under a surrogacy arrangement to pay or reimburse reasonable expenses referred to in section 6(1) is as enforceable as it would be if subsection (1) had not been enacted and the arrangement was not unenforceable for any other reason.

”.

Amendments - put and passed.

Clause, as amended, agreed to.

Clause 8 agreed to.

Clauses 9 to 13 agreed to.

Clause 14.

The Minister for Child Protection moved -

Page 6, after line 9 — To insert —

“

“independent legal advice” is legal advice provided by a person who —

- (a) is chosen by the person receiving the advice; and
- (b) is not providing advice to the arranged parents as well as to any other person required to receive the advice;

”.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 15.

The Minister for Child Protection moved -

Page 6, line 16 — To insert after “Australia” —

“ and at least one arranged parent has reached 21 years of age ”.

Debate ensued.

Hon Robyn McSweeney moved -

To amend the amendment by deleting “21” and inserting instead -

“ 25 ”.

Debate ensued.

Amendment - put.

The Committee divided.

Ayes (17)

Hon Ken Baston
Hon George Cash
Hon Vincent Catania
Hon Peter Collier
Hon Ed Dermer
Hon Wendy Duncan
Hon Brian Ellis
Hon Donna Faragher
Hon Anthony Fels

Hon Nigel Hallett
Hon Ray Halligan
Hon Robyn McSweeney
Hon Norman Moore
Hon Helen Morton
Hon Simon O'Brien
Hon Barbara Scott
Hon Bruce Donaldson (*Teller*)

Noes (11)

Hon Kim Chance
Hon Kate Doust
Hon Sue Ellery
Hon Adele Farina
Hon Graham Giffard
Hon Paul Llewellyn

Hon Sheila Mills
Hon Batong Pham
Hon Sally Talbot
Hon Giz Watson
Hon Ken Travers (*Teller*)

Amendment thus passed.

Amendment, as amended, agreed to.

The Minister for Child Protection moved -

Page 6, lines 23 to 31 — To delete the lines and insert instead —

“

“eligible couple” means 2 people of opposite sexes who are married to, or in a de facto relationship with, each other and who, as a couple —

- (a) are unable to conceive a child due to medical reasons not excluded by subsection (3); or
- (b) although able to conceive a child, would be likely to conceive a child affected by a genetic abnormality or a disease;

“eligible person” means a woman who —

- (a) is unable to conceive a child due to medical reasons not excluded by subsection (3); or
 - (b) although able to conceive a child, would be likely to conceive a child affected by a genetic abnormality or a disease; or
 - (c) although able to conceive a child, is unable for medical reasons to give birth to a child.
- (3) The medical reasons for being unable to conceive a child that are referred to in the definitions of “eligible couple” and “eligible person” do not include —
- (a) a reason arising from a person’s age; or
 - (b) a reason prescribed for the purpose of the *Human Reproductive Technology Act 1991* section 23(1)(d).

”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 16.

The Minister for Child Protection moved -

Page 7, line 3 — To insert after “may” —

“ , if the making of the order would not be not prevented by section 15B(1), ”.

Amendment - put and passed.

The Minister for Child Protection moved -

Page 7, line 10 — To insert after “circumstances” —

“

, or if the child was born before the day fixed under section 2 of this Act, in which case the application may be lodged within one year after that day

”.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 17.

The Minister for Child Protection moved -

Page 7, line 31 — To delete “, as defined in subsection (3),”.

Page 8, lines 17 to 24 — To delete the lines.

Amendments - put and passed.

The Minister for Child Protection moved -

Page 9, after line 7 — To insert —

“

(6) In subsection (4) —

“genetic parent” of a child means a person from whose egg or sperm the child is conceived.

”.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 18.

Debate ensued.

Clause agreed to.

Clause 19 to 34 agreed to.

Clause 35.

The Minister for Child Protection moved -

Page 19, line 11 — To delete “18” and insert instead —

“ 16 ”.

Page 19, line 12 — To delete “18” and insert instead —

“ 16 ”.

Amendments - put and passed.

Clause, as amended, agreed to.

Clause 36.

The Minister for Child Protection moved -

Page 20, line 3 — To delete “18” and insert instead —

“ 16 ”.

Page 20, line 19 — To delete “18” and insert instead —

“ 16 ”.

Amendments - put and passed.

Clause, as amended, agreed to.

Clause 37.

The Minister for Child Protection moved -

Page 20, line 29 — To delete “18” and insert instead —

“ 16 ”.

Page 21, line 13 — To delete “18” and insert instead —

“ 16 ”.

Amendments - put and passed.

Clause, as amended, agreed to.

Clauses 38 to 45 agreed to.

Clause 46.

The Minister for Child Protection moved -

Page 30, after line 13 — To insert —

“

(2) Section 18(1) is amended by inserting after paragraph (b) —

“

(ba) an artificial fertilisation procedure for implementing a surrogacy arrangement as defined in the *Surrogacy Act 2008* section 3;

”
.”

Amendment - put and passed.

Hon Giz Watson moved -

Page 30, after line 16 — To insert —

“

(b) in paragraph (a) —

(i) by deleting “or” at the end of subparagraph (ia);

(ii) by inserting after subparagraph (ii) —

“

or

(iii) a woman who is unable to give birth to a child due to medical reasons and is a party to a surrogacy arrangement (as defined in section 3 of the *Surrogacy Act 2008*) that is lawful;

”
”
.”

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 47 agreed to.

New Division 2.

The Minister for Child Protection moved -

Page 6, after line 11 — To insert the following new Division —

“

Division 2A — Parentage order excluded for certain arrangements

15A. Meaning of “Council”

In this Division —

“**Council**” means the Western Australian Reproductive Technology Council established under the *Human Reproductive Technology Act 1991* section 8.

15B. Approval of surrogacy arrangement

- (1) A parentage order cannot be made in respect of a child unless the surrogacy arrangement has been approved in writing under section 15C by the Council.

- (2) Subsection (1) does not apply if the child was born as a result of a pregnancy that commenced before the day fixed under section 2 of this Act.

15C. Requirements for surrogacy arrangement to be approved

The Council may approve a surrogacy arrangement only if —

- (a) the birth mother —
 - (i) has reached 21 years of age; and
 - (ii) unless the Council is satisfied that there are exceptional circumstances because of which it should dispense with this requirement, has given birth to a live child;

and
- (b) the arrangement is set out in a written agreement signed by —
 - (i) each of the arranged parents; and
 - (ii) the birth mother and her husband or de facto partner, if any; and
 - (iii) any other person (a “**donor**”) whose egg or sperm is to be used for the conception of the child or who is the spouse or de facto partner of a donor;

and
- (c) the Council is satisfied that, at least 3 months before the approval is given, each of the persons required by paragraph (b) to sign the agreement (the “**parties**”) has —
 - (i) undertaken any counselling about the implications of the surrogacy arrangement that regulations under this Act require; and
 - (ii) been assessed by a clinical psychologist and confirmed, in a written report provided to the Council, to be psychologically suitable to be involved in the surrogacy arrangement; and
 - (iii) received independent legal advice about the effect of the surrogacy arrangement;

and
- (d) the Council is satisfied that, at least 3 months before the approval is given, each of the arranged parents, the birth mother and any donor has been assessed by a medical practitioner and confirmed, in a written report provided to the Council, to be medically suitable to be involved in the surrogacy arrangement; and
- (e) the intended birth mother has not yet become pregnant under the arrangement.

15D. Application of *Human Reproductive Technology Act 1991*

- (1) For the purposes of the performance by the Council of a function under this Act, the provisions of the *Human Reproductive Technology Act 1991* referred to in the Table to this subsection apply as if the function were a function under that Act.

Table

s. 10(1), (3) and (4)	Sch. cl. 4
Sch. cl. 6	Sch. cl. 7
Sch. cl. 8	Sch. cl. 9
Sch. cl. 10	

- (2) The Council may, by resolution, delegate a function it is given by this Act to a committee appointed in accordance with subsection (1).
- (3) For the purpose of the *Human Reproductive Technology Act 1991* Schedule clause 10(1)(d) a delegation made under subsection (2) is taken to be a delegation made under section 11 of that Act.
- (4) To enable it to perform its functions under this Act, the Council may make use of staff, services or facilities available to it under the *Human Reproductive Technology Act 1991*.

”.

Debate ensued.

The Minister for Child Protection moved, That progress be reported and leave asked to sit again.

Question - put and passed.

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.

21. Adjournment

The House adjourned at 5.59pm until Tuesday, 26 June 2008 at 3.30pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Shelley Archer, Hon Matt Benson-Lidholm, Hon Jon Ford, Hon Barry House and Hon Ljiljanna Ravlich.

MALCOLM PEACOCK
Clerk of the Legislative Council

HON NICK GRIFFITHS
President of the Legislative Council