

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 237

THURSDAY, 26 NOVEMBER 2020

1. Meeting of Council

The Council assembled at 10.00am pursuant to order.

The President, Hon Kate Doust, took the Chair.

Prayers and an Acknowledgement of Country were read.

2. Petition

Hon Aaron Stonehouse presented a petition from 7,176 petitioners requesting the Legislative Council to support the legalisation of vaping. (Tabled Paper 4683).

3. Ministerial Statement — Community Use of Public School Facilities

The Parliamentary Secretary to the Minister for Education and Training made a Ministerial Statement with respect to promoting community use of public school facilities.

4. Papers

The following Papers were laid on the Table by —

President

Auditor General's Papers —

Regulating Minor Pollutants (Report No. 8) (November 2020)..... 4678

Western Australian Registry System — Application Controls Audit (Report No. 9)
(November 2020) 4679

Reports —

Corruption and Crime Commission — Report on Electorate Allowances and
Management of Electorate Offices (November 2020) 4680

Minister for Environment

Determinations —

Planning and Development Act 2005 — Ministerial determination by the Minister for
Planning regarding structure plan of lot 3082 Cable Beach Broome 4681

Reports —

Disability Access and Inclusion Plan (Minister's Progress Report) (2019-20)..... 4682

5. Paper

The following Paper was laid on the Table by —

President

Letters —

Letter from the Minister for Mines and Petroleum, Energy, Industrial Relations to the President regarding Standing Committee on Public Administration (Report No. 35) 4684

6. Joint Standing Committee on the Corruption and Crime Commission — Report 17 — Meaningful Reform Overdue: The Corruption, Crime and Misconduct Act 2003

Hon Jim Chown presented Report 17 of the Joint Standing Committee on the Corruption and Crime Commission, *Meaningful Reform Overdue: The Corruption, Crime and Misconduct Act 2003*. (Tabled Paper 4685).

7. Standing Committee on Environment and Public Affairs — Report 57 — Overview of Petitions 1 July 2020 to 31 October 2020

Hon Matthew Swinbourn presented Report 57 of the Standing Committee on Environment and Public Affairs, *Overview of Petitions 1 July 2020 to 31 October 2020*. (Tabled Paper 4686).

8. Standing Committee on Estimates and Financial Operations — Report 83 — 2020-21 Budget Cycle — Part 1: Estimates Hearings and Related Matters and 2019-20 Budget Cycle — Part 2: Annual Report Hearings

Hon Alanna Clohesy presented Report 83 of the Standing Committee on Estimates and Financial Operations, *2020-21 Budget Cycle — Part 1: Estimates Hearings and Related Matters and 2019-20 Budget Cycle — Part 2: Annual Report Hearings*. (Tabled Paper 4687).

9. Joint Standing Committee on the Commissioner for Children and Young People — Report 7 — Discussion Paper — In their own voice. The participation of children and young people in parliamentary proceedings

Hon Dr Sally Talbot presented Report 7 of the Joint Standing Committee on the Commissioner for Children and Young People, *Discussion Paper — In their own voice. The participation of children and young people in parliamentary proceedings*. (Tabled Paper 4688).

10. Standing Committee on Procedure and Privileges — Appointment of Member

The Leader of the House moved, without notice —

That Hon Tjorn Sibma be appointed as a member of the Standing Committee on Procedure and Privileges.

Question — put and passed.

11. Special Adjournment

The Leader of the House moved, without notice —

That the House at its rising adjourn until a date and time to be fixed by the President.

Question — put and passed.

12. Curtin University Statute No. 12 — Admission and Enrolment — Disallowance — Discharge from Notice Paper

The Order of the Day having been called, Hon Robin Chapple moved, without notice —

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, Order of the Day No. 1, *Curtin University Statute No. 12 — Admission and Enrolment — Disallowance*, be discharged from the Notice Paper.

Question — put and passed.

13. Curtin University Statute No. 5 — Election of Council Members — Disallowance

The Order of the Day having been called for the motion of Hon Robin Chapple moved *pro forma* as follows —

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the *Curtin University Statute No. 5 — Election of Council Members* published in the *Gazette* on 24 July 2020 and tabled in the Legislative Council on 11 August 2020 under the *Curtin University Act 1966*, be and is hereby disallowed.

Debate ensued.

Question — put and passed.

14. Public Transport Authority Amendment Regulations 2020 — Disallowance — Discharge from Notice Paper

The Order of the Day having been called, Hon Robin Chapple moved, without notice —

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, Order of the Day No. 3, *Public Transport Authority Amendment Regulations 2020 — Disallowance*, be discharged from the Notice Paper.

Question — put and passed.

15. City of Albany Jetties, Bridges, Boat Pens, and Swimming Structures Local Law 2020 — Disallowance — Discharge from Notice Paper

The Order of the Day having been called, Hon Robin Chapple moved, without notice —

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, Order of the Day No. 4, *City of Albany Jetties, Bridges, Boat Pens, and Swimming Structures Local Law 2020 — Disallowance*, be discharged from the Notice Paper.

Question — put and passed.

16. Swan Valley Planning Bill 2020

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

The Minister for Environment representing the Minister for Planning moved, That the Bill be read a third time.

The President announced that the Deputy Chair of Committees had certified that this was a true copy of the Bill as agreed to in Committee of the Whole House and reported.

Question — put and passed.

Bill read a third time and passed.

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

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

The Leader of the House representing the Attorney General moved, That the report be adopted.

Question — put and passed.

The Leader of the House representing the Attorney General moved, without notice —

That so much of Standing Orders be suspended so as to enable the *Births, Deaths and Marriages Registration Amendment (Change of Name) Bill 2018* to be read a third time.

The motion requiring the concurrence of an absolute majority.

Question — put.

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

The Leader of the House representing the Attorney General moved, That the Bill be read a third time.

The President announced that the Deputy Chair of Committees had certified that this was a true copy of the Bill as agreed to in Committee of the Whole House and reported.

Question — put and passed.

Bill read a third time and passed.

18. Criminal Law Amendment (Uncertain Dates) Bill 2019

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 Acting President left the Chair.

In Committee

(Hon Dr Steve Thomas in the Chair)

Clause 1.

Debate ensued.

Clause agreed to.

Clauses 2 and 3 agreed to.

Clause 4.

Debate ensued.

Clause agreed to.

Clauses 5 and 6 agreed to.

Clause 7.

Debate ensued.

Clause agreed to.

Clause 8.

Debate ensued.

Clause agreed to.

Clauses 9 to 11 agreed to.

Title agreed to.

The Deputy President resumed the Chair.

Bill reported without amendment.

Report adopted.

The Leader of the House representing the Attorney General moved, That the Bill be read a third time.

The Deputy President announced that the Deputy Chair of Committees had certified that this was a true copy of the Bill as agreed to in Committee of the Whole House and reported.

Question — put and passed.

Bill read a third time and passed.

19. National Disability Insurance Scheme (Worker Screening) Bill 2020

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

Debate ensued.

The Minister for Disability Services tabled an revised explanatory memorandum to the Bill. (Tabled Paper 4689).

Debate resumed.

Question — put and passed.

Bill read a second time.

The Acting President left the Chair.

In Committee

(Hon Robin Chapple in the Chair)

Clause 1.

Debate ensued.

Clause agreed to.

Clause 2.

The Minister for Disability Services, by leave, moved —

Page 2, line 8 — To insert after “Assent”:

(assent day)

Page 2, after line 10 — To insert:

(2) However —

- (a) if no day is fixed under subsection (1)(b) before the end of the period of 10 years beginning on assent day, this Act is repealed on the day after that period ends; or
- (b) if paragraph (a) does not apply, and a provision of this Act does not come into operation before the end of the period of 10 years beginning on assent day, that provision is repealed on the day after that period ends.

Amendments — put and passed.

Clause, as amended, agreed to.

Clauses 3 to 38 agreed to.

Clause 39.

The Minister for Disability Services moved —

Page 46, lines 29 and 30 — To delete “*Dangerous Sexual Offenders Act 2006*,” and insert:*High Risk Serious Offenders Act 2020*,

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 40 to 88 agreed to.

Clause 89.

The Minister for Disability Services moved —

Page 80, line 22 — To delete “*Dangerous Sexual Offenders Act 2006*,” and insert:*High Risk Serious Offenders Act 2020*,

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 90 agreed to.

Schedule 1 agreed to.

Schedule 2 agreed to.

Title agreed to.

The President resumed the Chair.

Bill reported with amendments.

The Minister for Disability Services, by leave, moved, That the report be adopted.

Report adopted.

The Minister for Disability Services moved, without notice —

That so much of Standing Orders be suspended so as to enable the *National Disability Insurance Scheme (Worker Screening) Bill 2020* to be read a third time.

The motion requiring the concurrence of an absolute majority.

Question — put.

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

The Minister for Disability Services moved, That the Bill be read a third time.

The President announced that the Deputy Chair of Committees had certified that this was a true copy of the Bill as agreed to in Committee of the Whole House and reported.

Question — put and passed.

Bill read a third time and passed.

20. Criminal Law (Unlawful Consorting) Bill 2020

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

The President left the Chair.

In Committee

(Hon Martin Aldridge in the Chair)

Clause 6.

Debate resumed on the amendment of Hon Alison Xamon as follows —

Page 6, after line 22 — To insert:

- (2) Without derogating from subsection (1), it is not the intention of Parliament that the powers in this Act be used in a manner that would diminish the freedom of persons in this State to participate in advocacy, protest or dissent that is not intended —
 - (a) to cause a person's death;
 - (b) to cause serious physical harm to a person;
 - (c) to endanger a person's life, other than the life of the person participating in the advocacy, protest or dissent; or
 - (d) to create a serious risk to the health or safety of the public.

Amendment — put and negatived.

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

Clause 7.

Debate ensued.

Clause agreed to.

Clause 8.

Debate ensued.

Clause agreed to.

Clause 9.

Debate ensued.

Hon Michael Mischin moved —

Page 8, lines 22 to 27 — To delete the lines.

Debate ensued.

21. Questions Without Notice

Questions without notice were taken.

The Leader of the House representing the Minister for Communities tabled the *Target 120 Evaluation Progress Report (March 2020)*, in response to a question without notice asked by Hon Colin Tincknell. (Tabled Paper 4690).

The Minister for Environment representing the Minister for Energy, by leave, incorporated into *Hansard* information in relation to Government spending on renewable energy certificates from large scale renewable generation facilities in the eastern states, in response to a question without notice asked by Hon Tim Clifford.

The Minister for Environment representing the Minister for Police, by leave, incorporated into *Hansard* information in relation to Youth Crime Intervention Officers allocated in the South West region in 2019-20, in response to a question without notice asked by Hon Peter Collier.

The Minister for Environment representing the Minister for Police, by leave, incorporated into *Hansard* information in relation to strength and vacancies in the Western Australia Police Force in regional Western Australia, in response to a question without notice asked by Hon Martin Aldridge.

The Minister for Environment representing the Minister for Emergency Services tabled a list of Department of Fire and Emergency Services vehicles fitted with defibrillators, in response to a question without notice asked by Hon Colin de Grussa. (Tabled Paper 4691).

The Minister for Environment representing the Minister for Planning tabled a map of the Greater Bunbury Region Scheme, Lot 9077 Maidment Parade, Dalyellup, in response to question on notice 3406 asked by Hon Diane Evers. (Tabled Paper 4692).

The Minister for Regional Development tabled the *Mowanjum Irrigation Trial Industry Report*, in response to question on notice 3345 asked by Hon Robin Chapple. (Tabled Paper 4693).

The Minister for Regional Development representing the Minister for Racing and Gaming tabled Racing and Wagering Western Australia's Conflict of Interest Policy, in response to question on notice 3376 asked by Hon Alison Xamon. (Tabled Paper 4694).

The Minister for Regional Development representing the Minister for Racing and Gaming tabled Racing and Wagering Western Australia's Integrity Assurance Committee's Licensing Policy, in response to question on notice 3387 asked by Hon Alison Xamon. (Tabled Paper 4695).

The Minister for Regional Development representing the Minister for Forestry tabled the *Forest Product Commission Statistics 2019-20 Report*, in response to question on notice 3410 asked by Hon Diane Evers. (Tabled Paper 4696).

22. Personal Explanation

Hon Rick Mazza, by leave, made a personal explanation in relation to the report by the Corruption and Crime Commission entitled *Electorate Allowances and Management of Electorate Offices*.

23. President's Ruling — Matter of Privilege

The President ruled as follows —

Yesterday, the Leader of the Opposition raised a matter of privilege under Standing Order 93. The matter relates to the noncompliance by the Leader of the House with an order of the Council for the production of documents, made on 4 November 2020.

On 11 November 2020, the Leader of the House tabled documents in part compliance with the order of the Council. The Leader of the House cited a number of reasons for partial compliance, such as practical concerns with the scope of the order; the limited time provided for compliance; cabinet confidentiality; and a desire to redact personal information.

When determining whether there is substance to a matter of privilege under Standing Order 93, Schedule 4 of the Standing Orders establishes a number of threshold questions. Relevant considerations are: whether a person knowingly committed an act amounting to contempt; the

existence of any other remedy; and whether the person had a reasonable excuse for the commission of any act constituting a contempt.

I am of the view that it is premature to treat the Leader of the House's partial compliance with the order of the Council as a substantial matter of privilege. The Leader of the House has not outright refused to comply with the Council's order and she does not appear to have obviously misled the Council. She has instead raised a number of practical objections to the production, or unredacted production, of a number of the documents that have been ordered to be produced. It is ultimately a matter for the Council to decide whether those objections amount to a reasonable excuse not to fully comply with the order. If not, it is within the Council's competence to make further orders, including adjudging a person guilty of a contempt.

I note that the Council has a range of options available to it to effectively deal with aspects of the partial noncompliance with its order, immediately in a public manner, both prior to prorogation and also to enable it to pursue the matter further in the next Parliament.

For instance, the Council may reissue the order with another, more generous, time for compliance and by delivery of the documents to the Clerk, if the Council is not sitting; issue a new, more narrowly focused, order for the production of documents; order the Leader of the House to stand in her place and provide further details of both her compliance and noncompliance with the order; order that the Leader of the House produce certifying letters from the offices of the Premier, the Minister for Health and the Chief Medical Officer that all documents the subject of any order have been identified and produced; or establish a select committee to obtain further relevant oral and written evidence by way of public hearings.

I am, accordingly, of the view that at this stage there is no substantive matter of privilege to be investigated.

24. Criminal Law (Unlawful Consorting) Bill 2020

Resumption of consideration of this Bill in Committee of the Whole House (*see item 19 above*).

The President left the Chair.

In Committee

(Hon Simon O'Brien in the Chair)

Clause 9.

Debate resumed on the amendment of Hon Michael Mischin as follows —

Page 8, lines 22 to 27 — To delete the lines.

The Leader of the House representing the Attorney General moved, That the Chair report progress and seek to sit again.

Question — put and passed.

The President resumed the Chair.

The Chair of Committees reported that the Committee of the Whole House had considered the Bill, made progress, and seeks to sit again.

Ordered — That the Committee of the Whole House sit again.

25. Members' Statements

Statements were taken.

26. Adjournment

The Council adjourned at 6.34pm until a date and time to be fixed by the President.

Members present during the day's proceedings

Attendance: Present all Members except Hon Adele Farina.

NIGEL PRATT
Clerk of the Legislative Council

HON KATE DOUST MLC
President of the Legislative Council