

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 9

WEDNESDAY, 3 DECEMBER 2008

1. Meeting of Council

The Council assembled at 4.00pm pursuant to order.

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

2. Petition

Hon Simon O'Brien presented a petition from 53 petitioners, requesting the Legislative Council to support the relocation of the Regional Resource Recovery Centre's Waste Composting Facility in Canning Vale. (Tabled paper No. 409).

3. Ministerial Statement - Esperance - Lead Contamination Clean-up

The Minister for Transport made a Ministerial Statement with respect to issues in Esperance and at the Port of Esperance.

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

4. Papers

The following Papers were laid on the Table by -

President

Auditor General's Papers -

Second Public Sector Performance Report 2008 (Report No. 8) (December 2008) 398

Joint Standing Committee on Treaties (Commonwealth of Australia) -

Treaty tabled on 26 November 2008 - Agreement between the Government of Australia and the North Atlantic Treaty Organisation on the Security of Information, New York, 26 September 2007 399

5. Standing Committee on Procedure and Privileges - Nineteenth Report - Petition for Relief - Noel Crichton-Browne

The President presented the Nineteenth Report of the Standing Committee on Procedure and Privileges in relation to the Petition for Relief - Noel Crichton-Browne (Tabled paper No. 400)

Statement by President

The President made the following Statement -

Members,

I present for tabling the Nineteenth Report of the Procedure and Privileges Committee, into a petition for relief.

This inquiry has been the first undertaken by the Procedure and Privileges Committee since the adoption of the amendments to Standing Order 134 by the House in 2000. While this report deals primarily with the specific allegations raised by the petitioner, the Committee has noted in the report the potential for matters arising under the Standing Order to have a “stifling effect” on debate in this House.

I advise members I will request the Procedure and Privileges Committee to undertake a review of the operation of Standing Order 134, in particular having regard to whether a form of threshold or a test should apply to future petitions to ensure that prayers for relief have adequate substance and raise matters of sufficient importance to warrant a hearing. The Committee may also consider the role of solicitors in verifying the facts in the affidavit accompanying such petitions.

Hon George Cash moved, without notice -

That the Nineteenth Report of the Standing Committee on Procedure and Privileges in relation to Petition for Relief - Noel Crichton-Browne do lie upon the table and be printed and adopted and agreed to.

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

6. Papers

The following Papers were laid on the Table by -

Leader of the House

Regulations -

Electoral Act 1907 (Electoral Amendment Regulations 2008 G.G. 21/11/2008 and Electoral (Ballot Paper Forms) Amendment Regulations 2008 G.G. 21/11/2008).....	401
Fish Resources Management Act 1994 (Fish Resources Management Amendment Regulations (No. 11) 2008 G.G. 21/11/2008)	402
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Reports -

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Minister for Transport

Directions -

Port Authorities Act 1999 - Ministerial Direction to the Esperance Port Authority regarding the acceptance of Bulk Nickel Sulphide Concentrate from 1 January 2009	405
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Minister for Energy

Local Laws -

Bush Fires Act 1954 (City of Gosnells Repeal Local Law 2008 G.G. 21/11/2008).....	406
Local Government Act 1995 (City of Wanneroo Standing Orders Local Law 2008 G.G.21/11/2008)	407

Regulations -

Vocational Education and Training Act 1996 (Vocational Education and Training Amendment Regulations (No. 2) 2008 G.G. 21/11/2008)..... 408

7. Not-For-Profit Sector - Government Support

Hon Sue Ellery: To move on the next day of sitting -

That this House notes the changing demands for assistance on the Western Australian not-for-profit sector and calls on the Barnett Government to ensure the sector has appropriate resources and capacity to meet demand.

8. Child Death Review Committee - Implementation of Recommendations

Hon Sue Ellery: To move on the next day of sitting -

That this House notes the Recommendations of the *Group Analysis of Aboriginal Child Death Review Cases in which Chronic Neglect is Present* report of the Child Death Review Committee and calls on the Minister for Child Protection to provide quarterly reports to the House on the implementation of those recommendations.

9. Parliamentary Superannuation Board - Appointment of Members

The Leader of the House moved, without notice -

That Hon Bruce Donaldson and Hon Kate Doust be appointed as Members to the Parliamentary Superannuation Board.

Question - put and passed.

10. Select Committee into Public Sector Expenditure - Establishment

Motion No. 2 having been called, debate resumed on the motion, as amended, of Hon Sue Ellery as follows -

- (1) That a select committee of three members is appointed, any two of whom constitute a quorum.
- (2) The committee and the proceedings of the committee are subject to Chapter XXII of Standing Orders and it is to be regarded for all purposes as a committee appointed under that chapter.
- (3) The committee is to inquire into and report on Government measures to audit the operational and financial performance of the Western Australian public sector, and any other means by which efficiencies in public sector expenditure can be gained and all the circumstances surrounding the implementations of the 3 percent efficiency dividend including -
 - (a) the impacts of the 3 percent efficiency dividend on the general level of service delivery across all agencies; in particular any impacts on service delivery to regional areas;
 - (b) consider alternative methods for achieving a 3 percent reduction in government expenditure;
 - (c) whether the efficiency dividend has a disproportionate impact on smaller agencies, including whether or not smaller agencies are disadvantaged by poorer economies of scale or a relative inability to obtain funding for new policy proposals;
 - (d) what measures agencies are taking to implement the efficiency dividend, and the effect on their functions, performance and staffing arrangements;

- (e) alternatives to an across-the-board efficiency dividend to encourage efficiency in the public sector, including consideration of whether certain agencies or functions of agencies should be exempt from the efficiency dividend, or whether the rate of the dividend should vary according to agency size or function.
- (4) The Committee may present interim reports without a requirement for leave and is to present its final report to the House not later than Tuesday, 12 May 2009.

Hon Ray Halligan moved to amend the motion as follows -

- (1) To delete paragraph 3(a) and insert instead —

“

- (a) the impact of the current financial crisis on the State's economy and finances;
- (b) the sustainability of the rate of growth in general government expenditure detailed in the 2008-09 Budget;
- (c) the sustainability of the forecast decrease in operating surplus detailed in the 2008-09 Budget;
- (d) the sustainability of the forecast increase in net debt detailed in the 2008-09 Budget;
- (e) the impacts of the 3 percent efficiency dividend introduced by the former Treasurer, Hon Eric Ripper MLA, and announced in the Pre-Election Financial Projections Statement in August 2008 on the general level of service delivery across all agencies, in particular any impacts on service delivery to regional areas;
- (f) the impact of failing to fully implement the 3 percent efficiency dividend on the operating surplus and net debt;

”.

- (2) In paragraph 3(e) — To insert after “function” —

“

, and if so specific advice on which agencies or functions should contribute a disproportionate share of the \$1,449 million in savings over the forward estimates identified by the former Treasurer, Hon Eric Ripper MLA in August 2008

”.

Debate ensued.

11. Questions Without Notice

Questions without notice were taken.

12. Select Committee into Public Sector Expenditure - Establishment

Debate resumed on the amendment of Hon Ray Halligan to the motion of Hon Sue Ellery (cf item 10 above).

Interruption of Debate [SO 195].

13. Address-In-Reply

The Order of the Day No. 1 having been read, for the adjourned debate on the Address-in-Reply.

Debate resumed.

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

14. Suspension of Standing Orders

The Leader of the House moved, without notice -

That so much of the Standing Orders be suspended as to enable the House to sit beyond 10.00pm in order to complete consideration of Order of the Day No. 12, *Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2008*, Order of the Day No. 11, *Section 38 Constitution Acts Amendment Act 1899*, and Order of the Day No. 14, *Police (Medical and Other Expenses for Former Officers) Bill 2008* at this day'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.

15. Iron Ore Processing (Mineralogy Pty. Ltd.) Agreement Amendment Bill 2008

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 Barry House in the Chair)

Clause 6.

Debate resumed.

Clause agreed to.

Title agreed to.

The Deputy President resumed the Chair.

Bill reported without amendment.

Report adopted.

The Leader of the House 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.

16. Section 38 Constitution Acts Amendment Act 1899

Order of the Day No. 11 having been called.

The Leader of the House, pursuant to notice, moved -

That this House direct that Ms Mia Davies on becoming the holder of an office or place at the material time shall be disregarded for the purposes of section 38 of the *Constitution Acts Amendment Act 1899* and that the Legislative Assembly be invited to pass a similar resolution.

Debate ensued.

Hon Sue Ellery, by leave, tabled correspondence from the Department of the Premier and Cabinet to Ms Mia Davies and from the State Solicitor's Office to the Department of the Premier and Cabinet. (Tabled paper 410).

Debate resumed.

Statement by Deputy President

The Deputy President made the following Statement -

Hon Anthony Fels is apparently seeking a ruling from the Chair on, as I understand it, the date upon which a person elected at a general election to the office of Member of the Legislative Council is to be regarded as a Member-elect and subject to the provisions of the law applying to persons holding an office of profit under the Crown. It is my understanding that that date is the date on which the relevant poll is declared by the relevant returning officer. However, I say to Hon Anthony Fels that it is not a function of the Chair to provide advice on matters of law. It is the function of the Chair to provide, when required, rulings on the interpretation of the Standing Orders and the law, custom and proceedings of the House. It is not a function of the Chair to provide a Member with an interpretation of the laws of Western Australia. This House is bound by the law and the speakers have, to date, raised section 39 of the *Constitution Acts Amendment Act 1899*. The House will make a decision in respect of the motion before us, having regard to the law of this State.

For the benefit of Hon Anthony Fels, I have been advised that in respect of section 37 of the *Constitution Acts Amendment Act 1899*, and in particular to section 37(3), which reads —

If any person to whom this section applies is declared to be elected as a Member of the Legislature, he shall, upon and by virtue of being so declared, vacate the office or place by reason of which this section applies to him.

The point I want to make is that the Clerk has been formally advised of the declaration of the election of, in this case, Ms Mia Davies as a person elected as a Member of the legislature, who is to take her place in this House on 22 May 2009.

By way of formal notice, I inform the Member that the Clerk has advised the Chair that he is in receipt of that document.

Debate resumed.

Question - put and passed.

17. Police (Medical and Other Expenses for Former Officers) Bill 2008

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.

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

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

Question - put and passed.

Bill read a third time and passed.

18. Sentencing Legislation (Transitional Provisions) Amendment Bill 2008

The Deputy President reported the receipt of Message No. 11 from the Legislative Assembly forwarding the Bill for concurrence.

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

Question - put and passed.

Bill read a first time.

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

Debate stands adjourned.

19. Suspension of Standing Orders

The Leader of the House moved, without notice -

That so much of the Standing Orders be suspended as is necessary to enable the following motion to be moved forthwith —

That the following Temporary Orders apply on Tuesday, 9 December 2008 —

The Council shall after prayers proceed to —

- (a) presentation of papers for tabling;
- (b) giving notice of motions;
- (c) orders of the day to consider the *Sentencing Legislation (Transitional Provisions) Amendment Bill 2008*; and
- (d) asking questions without notice at a time determined by the President.

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.

20. Temporary Orders

The Leader of the House, pursuant to the foregoing motion, moved -

That the following Temporary Orders apply on Tuesday, 9 December 2008 —

The Council shall after prayers proceed to —

- (a) presentation of papers for tabling;
- (b) giving notice of motions;
- (c) orders of the day to consider the *Sentencing Legislation (Transitional Provisions) Amendment Bill 2008*; and
- (d) asking questions without notice at a time determined by the President.

Debate ensued.

Hon Ken Travers moved -

To insert before “(a)” —

“ (a) petitions; ”.

Amendment - put and passed.

Debate resumed.

The Leader of the House, by leave, made a brief personal statement.

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.

21. Special Adjournment

The Leader of the House moved, without notice -

That the House at its rising adjourn until Tuesday, 9 December 2008 at 11.00am.

Question - put and passed.

22. Adjournment

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

Question - put and passed.

The House adjourned at 10.15pm until Tuesday, 9 December 2008 at 11.00am.

Members present during the day's proceedings

Attendance: Present all Members except Hon Batong Pham.

MALCOLM PEACOCK
Clerk of the Legislative Council

HON NICK GRIFFITHS
President of the Legislative Council