

WESTERN AUSTRALIA

LEGISLATIVE ASSEMBLY

VOTES AND PROCEEDINGS

No. 240

FIRST SESSION OF THE THIRTY-EIGHTH PARLIAMENT

WEDNESDAY, 14 NOVEMBER 2012

1. Meeting of Assembly

The Assembly met at 12.00 noon pursuant to adjournment.

The Speaker took the Chair.

Prayers were read.

2. Petitions

Dog Breed Regulations – Petitions requesting that the Legislative Assembly removes all legal restrictions on certain breeds deeming them automatically dangerous, and replaces this with a system that considers all breeds of dog to be not dangerous, unless an individual investigation of the dog and owner proves the dog is a true danger to society were presented by –

Mr J.N. Hyde from 3 persons (P. 691);

Mr J.N. Hyde from 120 persons (P. 692);

Mr J.N. Hyde from 244 persons (P. 693); and

Mr J.N. Hyde from 281 persons (P. 694).

Affordable Housing – Ms M.M. Quirk presented a petition from 31 persons requesting that the Legislative Assembly gives urgent attention to the housing needs of homeless Western Australians who are suffering due to a critical shortage of affordable housing properties in both the private rental and social housing sectors (P. 695).

Carpark Facilities Cockburn Central Railway Station – Mr F.M. Logan presented a petition from 510 persons requesting that the Legislative Assembly calls upon the State Government to commit to building a new overpass road bridge joining an upgraded North Lake Road to Armadale Road, and a new rail station with car parking at Russell Road (P. 696).

3. Paper

The following paper was presented and ordered to lie upon the Table of the House –

By the Speaker –

Auditor General, Office of the – Managing the Road Trauma Trust Account, Report 15 – November 2012 (5575).

4. Notice of Motion

5. Brief Ministerial Statements

Brief Ministerial Statements were made by –

The Minister for Emergency Services on National SES Week, marking the dedication and commitment of almost 2,000 State Emergency Service volunteers.

The Minister for Sport and Recreation on the latest Community Sports and Recreation Facilities Fund Small Grant Round, totalling \$693,488.

The Minister for Police on the accomplishments of the State Graffiti Taskforce.

6. Questions

Questions without Notice were taken.

Paper

The following paper was presented and ordered to lie upon the Table of the House –

By the Minister for Health –

Health, Minister for – Records of donation from Peel Health Campus to the Mandurah Australian Labor Party Campaign (5576).

7. Additional Information

The Treasurer provided additional information relating to Question on Notice No. 8616 from Mr B.S. Wyatt.

Paper

The following paper was presented and ordered to lie upon the Table of the House –

By the Treasurer –

Question on Notice No. 8616 – Correction to the answer provided to Question on Notice No. 8616 (5577).

The Minister for Tourism provided additional information relating to Question without Notice No. 700 from Mrs M.H. Roberts.

8. Unanswered Questions on Notice

The following members asked why no answer had been received in respect of their Questions on Notice –

Ms M.M. Quirk – Questions on Notice Nos 8779, 8776, 8775, 8774 and 8773.

Mr B.S. Wyatt – Questions on Notice Nos 8835 and 8700.

Mr R.H. Cook – Question on Notice No. 8730.

Mr P.C. Tinley – Question on Notice No. 8845.

Dr A.D. Buti – Question on Notice No. 8725.

9. Private Members' Business Precedence

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

That so much of the Standing Orders be suspended as is necessary to give Private Members' Business priority on Wednesday, 14 November 2012, between 4.30 p.m. and 6.00 p.m.

Question put and passed.

10. Variation to the Order of Business

Ordered, That Bills – Notice of Motion No. 1 be postponed until a later stage of the sitting.

11. Loan Bill 2012

The Order of the Day for the resumption of the debate upon the second reading of the bill was read.
Debate resumed.

The Leader of the House moved, That the debate be adjourned until a later stage of the sitting.

Question put and passed.

12. Variation to the Order of Business

Ordered, That Government Business Orders of the Day Nos 3, 2 and 4 be next considered.

13. Wills Amendment (International Wills) Bill 2012

The Order of the Day for the resumption of the debate upon the second reading of the bill was read.
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 Planning moved, That the bill be now read a third time.

Question put and passed.

Bill read a third time and passed.

14. Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2012

The Order of the Day for the consideration in detail of Legislative Council Message No. 232 was read.

The Message was as follows –

The Legislative Council acquaints the Legislative Assembly that it has agreed to the *Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2012* subject to the amendments contained in the Schedule annexed; in which amendments the Legislative Council desires the concurrence of the Legislative Assembly.

Schedule indicating the amendments made by the Legislative Council in the Fines, Penalties and Infringement Notices Enforcement Amendment Bill 2012

No. 1

Page 3, lines 17 and 18 — To delete the lines and insert —

number plate —

- (a) before the *Road Traffic (Vehicles) Act 2012* section 3 comes into operation — has the meaning given in the *Road Traffic Act 1974* section 5(1); or
- (b) after the *Road Traffic (Vehicles) Act 2012* section 3 comes into operation — has the meaning given in that section;

No. 2

Page 4, lines 8 to 13 — To delete the lines and insert —

- (2) Delete section 5(4) and insert:

- (4) For the purposes of the service of any document under this Act, a person's last known address may be taken to be the person's current address shown in the records of —
- (a) the Director General; or
 - (b) the Electricity Retail Corporation.

No. 3

Page 5, line 6 — To insert after "*Road Traffic Act 1974*" —

or, after the *Road Traffic (Administration) Act 2008* section 4 comes into operation, a road law

No. 4

Page 17, after line 24 — To insert —

23A. Section 48A inserted

After section 47B insert:

48A. Order to attend for work and development: cancellation

- (1) If —
 - (a) an order to attend for work and development is issued under section 47 or 47A; and
 - (b) it is not reasonably practicable to serve the order on the offender personally,
 the Registrar may cancel the order to attend for work and development and make or again make a licence suspension order in respect of the offender.
- (2) For the purposes of subsection (1), section 43(2) to (9) (but not section 43(4)), with any necessary changes, apply and a licence suspension order may be made even if section 42 has not been complied with.

No. 5

Page 17, after line 24 — To insert —

23B. Section 53A inserted

After section 52 insert:

53A. WDO: effect of cancellation

- (1) If a WDO is cancelled under section 52, the Registrar may make or again make a licence suspension order in respect of the offender.

- (2) For the purposes of subsection (1), section 43(2) to (9) (but not section 43(4)), with any necessary changes, apply and a licence suspension order may be made even if section 42 has not been complied with.

No. 6

Page 22, after line 6 — To insert —

- or
- (c) the person is a person protected under a violence restraining order, or police order, in force under the *Restraining Orders Act 1997*; or
 - (d) the publication of the relevant details would endanger the person's safety.

No. 7

Page 23, after line 20 — To insert —

vehicle licensing law —

- (a) before the *Road Traffic (Vehicles) Act 2012* section 3 comes into operation — means the *Road Traffic Act 1974*; or
- (b) after the *Road Traffic (Vehicles) Act 2012* section 3 comes into operation — means that Act;

No. 8

Page 25, after line 7 — To insert —

- (2) After section 68A(4) insert:

- (5A) If the Sheriff cancels an arrangement made under subsection (1) and a licence suspension order is not in force in respect of the debtor and the amount specified in the warrant under section 21A(3) or 45(4), as the case requires, the Registrar may make or again make a licence suspension order in respect of the debtor.
- (5B) For the purposes of subsection (5A) —
 - (a) if the cancelled arrangement related to a warrant issued under section 21A — section 19(2) to (9), with any necessary changes, apply and a licence suspension order may be made without the issue of a further order to pay or elect under section 17 or further notice of intention to enforce under section 18; or
 - (b) if the cancelled arrangement related to a warrant issued under section 45 — section 43(2) to (9), with any necessary changes, apply and a licence suspension order may be made without the issue of a further notice of intention to enforce under section 42.

No. 9

Page 32, lines 18 and 19 — To delete “the *Road Traffic Act 1974*,” and insert —

a vehicle licensing law,

No. 10

Page 35, lines 21 and 22 — To delete “the *Road Traffic Act 1974*,” and insert —

a vehicle licensing law,

No. 11

Page 42, lines 11 to 28 — To delete the lines and insert —

36. Section 101C amended

- (1) In section 101C(1)(d) and (e) after “issued” insert:

by the Registrar

- (2) After section 101C(1) insert:

- (2A) Evidence —

- (a) that a vehicle licence suspension order was made under section 95G or a vehicle licence cancellation order was made under section 95J;
- (b) of the details of a vehicle licence suspension order made under section 95G, or a vehicle licence cancellation order made under section 95J, and of the matter to which it relates;
- (c) that a vehicle licence suspension order made under section 95G had not, at a particular time, been cancelled;
- (d) that a vehicle licence cancellation order made under section 95J had not, at a particular time, been cancelled to the extent that the order would disqualify a person from holding or obtaining a vehicle licence;
- (e) that a document issued by the Sheriff under this Act has been served on a person in accordance with section 5;
- (f) of any matter relevant to the service of a document issued by the Sheriff under this Act,

may be given by tendering a certificate to that effect in the prescribed form signed by the Sheriff.

(3) After section 101C(3) insert:

- (4) Unless the contrary is proved, it is to be presumed that a certificate purporting to have been signed by the Sheriff was signed by a person who at the time was the Sheriff.

No. 12

Page 65, after line 8 — To insert —

- (fa) a licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 19 or 43 is not in force in respect of the vehicle; and

No. 13

Page 66, after line 16 — To insert —

Division 7A — *Road Traffic (Vehicles) Act 2012* amended

70A. Act amended

This Division amends the *Road Traffic (Vehicles) Act 2012*.

70B. Section 5 amended

In section 5(3):

- (a) in paragraph (e) delete “vehicle.” and insert:

vehicle; and

- (b) after paragraph (e) insert:

- (f) a licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 19 or 43 is not in force in respect of the vehicle; and
- (g) the vehicle is not immobilised under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 95C; and
- (h) the vehicle’s number plates have not been removed under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 95F; and
- (i) a vehicle licence suspension order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 95G is not in force in respect of the vehicle; and
- (j) a vehicle licence cancellation order made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 95J is not in force in respect of the vehicle.

70C. Section 16 amended

(1) After section 16(1) insert:

(2A) If a vehicle licence suspension order is made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 95G in respect of a person, a licence held by that person in respect of the vehicle specified in the order is, by force of this section, suspended so long as the vehicle licence suspension order continues in force and during that period is of no effect.

(2) In section 16(2) delete “Subsection (1) does” and insert:

Subsections (1) and (2A) do

(3) After section 16(3) insert:

(4) If a vehicle licence cancellation order is made under the *Fines, Penalties and Infringement Notices Enforcement Act 1994* section 95J in respect of a person, a licence held by that person in respect of the vehicle specified in the order is, by force of this section, cancelled.

70D. Section 125 amended

In section 125(8) delete “section 19 or 43.” and insert:

section 19, 43, 95G or 95J.

CONSIDERATION IN DETAIL

The Minister for Planning moved, That amendment Nos 1 to 13 be agreed to.

Questions put and passed.

Consideration in detail concluded and the Legislative Council acquainted accordingly.

15. Criminal Organisations Control Bill 2011

The Order of the Day for the consideration in detail of Legislative Council Message No. 213 was read.

The Message was as follows –

The Legislative Council acquaints the Legislative Assembly that it has agreed to the *Criminal Organisations Control Bill 2011* subject to the amendments contained in the Schedule annexed; in which amendments the Legislative Council desires the concurrence of the Legislative Assembly.

Schedule indicating the amendments made by the Legislative Council in the Criminal Organisations Control Bill 2011

No. 1

Page 4, lines 30 and 31 — To delete the lines and insert —

firearm —

- (a) has the meaning given in the *Firearms Act 1973* section 4; and
- (b) includes ammunition as defined in that section;

No. 2

Page 9, lines 2 and 3 — To delete “organisations and other persons who engage in serious criminal activity.” and insert —

organisations.

No. 3

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

any

No. 4

Page 16, after line 18 — To insert —

- (aa) the designated authority must, as soon as practicable, provide a copy of the authority’s reasons for the decision to the respondent or the respondent’s representative, but only if the respondent or the respondent’s representative, before the hearing of the application for the declaration ends —
 - (i) requests to be provided with a copy; and
 - (ii) provides an address to which the copy may be sent;
- and

No. 5

Page 23, lines 7 to 14 — To delete the lines and insert —

- (1) If the declaration relating to the declared criminal organisation identified in an interim control order or control order in accordance with section 60(1)(c) expires or is revoked, the order ceases to have effect on that expiry or revocation.

No. 6

Page 24, after line 3 — To insert —

- (4) The period of designation of a retired judge must not exceed 5 years, but a retired judge may be designated for a further term.

No. 7

Page 27, lines 4 to 9 — To delete the lines and insert —

- (1) This Part provides for the making of control orders in relation to persons who are members of a declared criminal organisation and persons who have an association with a declared criminal organisation.

No. 8

Page 32, lines 24 to 29 — To delete the lines and insert —

- (c) include the information that section 60(1)(c) requires to be included in a control order; and

No. 9

Page 36, line 17 — To delete “section 25(2).” and insert —

section 25(1).

No. 10

Page 42, lines 15 to 17 — To delete the lines and insert —

- (4) The following must be served with the application —
 - (a) a copy of the affidavit or affidavits that accompanied the application for the control order;
 - (b) a written notice setting out an explanation of —
 - (i) the right to object to the making of a control order at the hearing of the application for the control order; and
 - (ii) the procedure to be followed in notifying the court before the hearing of the grounds of objection in accordance with section 55.

No. 11

Page 48, line 6 — To delete “if the order is made under section 57(2)(a), (b) or (c).”.

No. 12

Page 49, lines 1 to 3 — To delete the lines and insert —

- (h) set out an explanation of the circumstances in which the order might cease to have effect under section 25(1); and

No. 13

Page 50, line 11 — To delete “section 25(2).” and insert —

section 25(1).

No. 14

Page 63, after line 2 — To insert —

(5A) If an interim control order is varied under section 50, or a control order is varied under section 66 or 68, and the effect of the variation is to include or remove a condition that the controlled person is prohibited from carrying on a prescribed activity, then this section applies as follows —

- (a) if the effect of the variation is to include that condition —
 - (i) the prohibition on the controlled person carrying on the prescribed activity takes effect when the variation takes effect; and
 - (ii) the suspension of an authorisation or an application for an authorisation in relation to the prescribed activity takes effect when the variation takes effect; and
 - (iii) the prohibition on the controlled person applying for, or continuing with any existing application for, any authorisation to carry on the prescribed activity takes effect when the variation takes effect;
- (b) if the effect of the variation is to remove that condition —
 - (i) the prohibition on the controlled person carrying on the prescribed activity ceases when the variation takes effect; and
 - (ii) the suspension of an authorisation or an application for an authorisation in relation to the prescribed activity ceases when the variation takes effect; and
 - (iii) the prohibition on the controlled person applying for, or continuing with any existing application for, any authorisation to carry on the prescribed activity ceases when the variation takes effect.

No. 15

Page 65, line 22 to page 66, line 17 — To delete the clause.

No. 16

Page 65, after line 21 — To insert —

84. Dealing with things surrendered or seized: firearms, firearms licences and weapons

- (1) If a firearm or weapon is surrendered under section 82 or seized under section 83 —
 - (a) the firearm or weapon is forfeited to the State; and

- (b) the *Criminal and Found Property Disposal Act 2006* applies to and in relation to the firearm or weapon as if —
 - (i) the firearm or weapon were property that has been seized in the course of a criminal investigation and has become forfeited property within the meaning of that Act; and
 - (ii) the interim control order or control order that prohibits the controlled person to whom the order relates from possessing the firearm or weapon were an order that ordered the forfeiture of the firearm or weapon to the State.
- (2) If a firearms licence is surrendered under section 82 or seized under section 83 —
 - (a) the Commissioner of Police must destroy the licence as soon as practicable; and
 - (b) the destruction of the licence is to be treated as a cancellation of the licence under the *Firearms Act 1973* section 20(4).
- (3) However, the Commissioner of Police must not exercise the powers in subsection (1) or (2) in relation to the surrendered or seized firearm, firearms licence or weapon —
 - (a) if the surrender or seizure is by virtue of an interim control order, before a control order confirming the interim control order is made; and
 - (b) if a control order confirming the interim control order is made, or if the surrender or seizure is by virtue of a control order, before the expiration of the time allowed for appealing against the control order or, if an appeal is lodged within that time, before the appeal is concluded.
- (4) If any of the things set out in subsection (5) (a *relevant event*) occurs —
 - (a) the Commissioner of Police must hold the surrendered or seized firearm, firearms licence or weapon in safe custody until it is reclaimed by the person lawfully entitled to possess it or it may be otherwise lawfully disposed of, whichever occurs first; and
 - (b) the person lawfully entitled to possess the firearm, firearms licence or weapon may reclaim it from the Commissioner of Police, unless it has been sooner lawfully disposed of; and
 - (c) if the firearm, firearms licence or weapon is not reclaimed within one month after the relevant event occurs, the Commissioner of Police may —
 - (i) in the case of a firearm, dispose of the firearm under the *Firearms Act 1973* section 33 as if the owner of the firearm cannot be found; or
 - (ii) in the case of a firearms licence, exercise the power in subsection (2); or
 - (iii) in the case of a weapon, make a direction under the *Weapons Act 1999* section 18(1) as if the weapon had been forfeited to the State under that Act.
- (5) The following are the relevant events referred to in subsection (4) —
 - (a) in the case of an interim control order —
 - (i) the order is varied to remove the firearms condition or, as the case requires, the condition prohibiting the person to whom the order relates from possessing a weapon;
 - (ii) the application for a control order confirming the interim control order is withdrawn or dismissed;
 - (iii) the interim control order is revoked under section 47(2)(a) or 56(1)(b);
 - (iv) the interim control order ceases to have effect under section 25(1);

- (b) in the case of a control order, on an appeal under section 64 —
 - (i) the decision of the court to make the order is reversed; or
 - (ii) the order is varied under section 66 to remove the firearms condition or, as the case requires, the condition prohibiting the person to whom the order relates from possessing a weapon.

No. 17

Page 66, line 19 to page 67, line 12 — To delete the lines and insert —

- (1) If an authorisation (other than a firearms licence or an authorisation to which an order made under section 59(2)(c) applies) is surrendered under section 82 or seized under section 83 —
 - (a) the Commissioner of Police must hold the authorisation in safe custody until it is reclaimed by the holder of the authorisation or it may be otherwise lawfully disposed of, whichever occurs first; and
 - (b) when the relevant interim control order or control order ceases to be in force, the holder of the authorisation may reclaim it from the Commissioner of Police, unless it has been sooner lawfully disposed of; and
 - (c) if the authorisation is not reclaimed within one month after the relevant interim control order or control order ceases to be in force, the Commissioner of Police must destroy the authorisation as soon as practicable.
- (2) The destruction of an authorisation under subsection (1)(c) has no effect on the validity of the authorisation.

No. 18

Page 67, after line 33 — To insert —

- (5) If an interim control order is varied under section 50, or a control order is varied under section 66 or 68, and the effect of the variation is to remove a prohibition of the kind referred to in section 82(1), this section applies as if the references in subsection (1)(b) and (c) and (4)(a)(ii) to the relevant interim control order or control order ceasing to be in force were references to the prohibition ceasing to have effect.

No. 19

Page 69, line 27 — To delete “section 25(2); or” and insert —

section 25(1); or

No. 20

Page 131, lines 26 to 30 — To delete the lines and insert —

- (ii) in association with one or more persons who, at the time of the commission of the offence, were members of a declared criminal

organisation (whether or not those persons were also convicted of the offence), but only if the offender knew, at the time of the commission of the offence, that one or more of those persons were members of a declared criminal organisation; or

No. 21

Long Title

Page 1, the first bullet point — To delete “**associates and certain other persons who engage in serious criminal activity,**” and insert —

associates,

CONSIDERATION IN DETAIL

The Minister for Planning moved, That amendment Nos 1 to 21 be agreed to.

Questions put and passed.

Consideration in detail concluded and the Legislative Council acquainted accordingly.

16. Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2012

Message No. 256 dated 13 November 2012 from the Legislative Council was reported forwarding for concurrence a bill for “An Act to the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*.”

The Minister for Planning moved, That the bill be read a first time.

Question put and passed.

The Minister for Planning presented an explanatory memorandum and bill read a first time.

The Minister for Planning moved, That the bill be now read a second time.

Debate ensued.

Debate interrupted by the Chair (Dr G.G. Jacobs speaking) and adjourned until a later stage of the sitting.

17. Variation to the Order of Business

Ordered, That Private Members’ Business Notices of Motion Nos 16 and 15 be next considered.

18. Record of the Barnett Government

Ms R. Saffioti, on behalf of Mr D.A. Templeman, pursuant to notice, moved,

That this House condemns the Barnett Government for its many failures over the past four years, including in the areas of:

- (1) service delivery;
- (2) broken promises; and
- (3) cost of living increases.

Debate ensued.

Debate interrupted by the Chair (Mr A.P. O’Gorman speaking) and adjourned until a later stage of the sitting.

19. Correction to Tabled Paper

The Acting Speaker announced that the Speaker had authorised corrections to the following Tabled Paper tabled on 22 September 2011 –

Western Power – Annual Report 2010–2011 – Addendum (3905A).

20. Variation to the Order of Business

Ordered, consideration of Government Business Order of the Day No. 1 be resumed.

21. Loan Bill 2012

The Order of the Day for the resumption of the debate upon the second reading of the bill was read.
Debate resumed.

The Leader of the House moved, That the debate be adjourned.

Question put and passed.

22. Mental Health Amendment (Psychiatrists) Bill 2012

The Minister for Health, pursuant to notice, moved,

That a bill for “An Act —

- to amend the definition of *psychiatrist* in the *Mental Health Act 1996* section 3 and in certain instruments; and
- to validate certain acts done, and omissions made, on or after 18 October 2010 but before the day on which this Act commences.” be introduced and read a first time.

Question put and passed.

The Minister for Health presented an explanatory memorandum and bill read a first time.

The Minister for Health moved, That the bill be now read a second time.

Debate ensued.

Question put and passed.

Bill read a second time.

The Leader of the House moved, That the debate be adjourned.

Question put and passed.

23. Adjournment

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

Question put and passed.

The Assembly adjourned accordingly at 11.51 p.m. until Thursday, 15 November 2012 at 9.00 a.m.

Members present during any part of the day's proceedings – All the members except Dr M.D. Nahan and Mr D.A. Templeman.

PETER J. McHUGH
Clerk of the Legislative Assembly

HON. GRANT WOODHAMS
Speaker of the Legislative Assembly