

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 140

TUESDAY, 5 JUNE 2007

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. Message from His Excellency the Governor - Senate Vacancy

The President read the following message -

The Governor transmits to the Legislative Council a copy of a despatch which he has received today from the Honorable the President of the Senate of the Commonwealth of Australia, notifying that a vacancy has happened in the representation of the State of Western Australia in the said Senate.

3. Statement by President - Letter from Hon Sue Ellery - Resignation from Parliamentary Services Committee

The President made the following Statement -

I have received a letter from Hon Sue Ellery, which states -

Parliamentary Services Committee

Due to my appointment as the Minister for Child Protection; Communities; Women's Interests; Seniors and Volunteering, I tender my resignation from the Parliamentary Services Committee effective immediately.

At its meeting of 3 April 2007, Caucus elected Ms Carol Martin MLA, Member for Kimberley as my replacement.

Please do not hesitate to contact Ms Dianne Welch, State Parliamentary Labor Party Office on 9222 7278 for more information.

Hon Sue Ellery

Minister for Child Protection; Communities; Women's Interests; Seniors and Volunteering

4. Petitions

Hon Helen Morton presented a petition, by delivery to the Clerk, [SO 130], from 37 residents of Western Australia requesting the Legislative Council support the dignity of people with a mental illness who wish to live in the community in supported residential units. (Tabled paper 2765).

Hon Ray Halligan presented a petition from 353 residents of Western Australia requesting the Legislative Council to support the upgrading of Wanneroo Road between the Pinjar Road intersection and Joondalup Drive. (Tabled paper 2764).

5. Matter of Urgency - Illegal Drug Abuse Crisis

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 the growing crisis of illicit drug abuse in Western Australia and the inadequacy of the Carpenter Government's response to this serious problem.

Yours sincerely

Hon Donna Faragher

Member for East Metropolitan Region

Four members having risen in support.

Hon Donna Faragher moved the motion.

Debate ensued.

Motion lapsed.

6. Message from His Excellency the Governor - Senate Vacancy

Leader of the House moved, without notice -

That consideration of the message from His Excellency the Governor relating to the resignation of Senator the Honourable Ian Gordon Campbell be made an Order of the Day for the next sitting of the House.

Question - put and passed.

7. Clauses 3 and 10 of the Fish Resources Management Amendment Regulations (No. 8) 2006 - Disallowance - Discharge from Notice Paper

The Order of the Day having been read, Hon Bruce Donaldson moved, without notice -

That Order of the Day No. 379, *Clauses 3 and 10 of the Fish Resources Management Amendment Regulations (No. 8) 2006 - Disallowance*, be discharged from the Notice Paper.

Question - put and passed.

8. Environmental Protection (Regional Power Stations Noise Emissions) Exemption Order 2006 - Disallowance - Discharge from Notice Paper

The Order of the Day having been read, Hon Paul Llewellyn moved, without notice -

That Order of the Day No. 380, *Environmental Protection (Regional Power Stations Noise Emissions) Exemption Order 2006 - Disallowance*, be discharged from the Notice Paper.

Question - put and passed.

9. Order of Business

Ordered - That Orders of the Day No. 395, *Metropolitan Region Scheme Amendment No. 1027/33 - Whiteman Park and Environs - Disallowance*, 401, *Electricity Networks Access Code Amendments (No. 2) 2006 - Disallowance*, 406, *Legal Practice Board Amendment Rules (No. 2) 2006 - Disallowance*, be taken after Order of the Day No. 300, *Sunset Hospital Site Bill 2006*. (Leader of the House).

10. Estimates of Revenue and Expenditure - Consolidated Fund Estimates 2007-2008

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 2007-2008 be noted.

Debate resumed.

11. Questions Without Notice

Questions without notice were taken.

The Minister for Regional Development representing the Minister for Community Development tabled a grant application by Balga Senior High School Parents & Citizens Association and Minister's approval, in response to a question without notice asked by Hon Peter Collier. (Tabled paper 2766).

12. Estimates of Revenue and Expenditure - Consolidated Fund Estimates 2007-2008

Debate resumed on the motion of the Parliamentary Secretary representing the Treasurer, That the Consolidated Fund Estimates 2007-2008 be noted. (cf item 10 above).

On the motion of Hon Paul Llewellyn the debate was adjourned to the next sitting.

13. Standing Committee on Legislation - State Administrative Tribunal

Leader of the House moved, without notice -

That Motion No. 60 *Standing Committee on Legislation - State Administrative Tribunal*, be made an Order of the Day at the next sitting of the House.

Question - put and passed.

14. Chemistry Centre (WA) Bill 2006

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)

Postponed New Clause 31.

Debate resumed on New Clause 31 moved by the Minister for Agriculture and Food as follows -

Page 20, after line 28 — To insert the following new clause —

“

31. Liability for duties, taxes and other statutory imposts

- (1) Despite any other written law but except as stated in subsection (2) —

- (a) the Chemistry Centre; and
- (b) deeds or other instruments to which it is a party,

are liable to and chargeable with duties, taxes or other imposts under any written law.

- (2) Despite subsection (1) but subject to subsection (3), the Chemistry Centre is not liable to pay any local government rate or charge.

- (3) Subsection (2) does not apply to the liability to pay any rate or charge in respect of land held under a lease or tenancy agreement from the Chemistry Centre.

- (4) The Chemistry Centre is to pay to the Treasurer in respect of each financial year an amount equivalent to the sum of all local government rates and charges that, but for subsection (2) and the Local Government Act 1995 section 6.26(2)(a)(i), the Chemistry Centre would have been liable to pay in respect of that financial year.
- (5) Subsection (4) does not apply in relation to rates and charges in respect of land referred to in subsection (3).
- (6) An amount payable under subsection (4) —
 - (a) is to be determined in accordance with such principles as the Treasurer may direct; and
 - (b) is to be paid at such time or times as the Treasurer may direct.
- (7) The first payment under subsection (4) is to be in respect of the next full financial year after the commencement of this Act.

Chairman's Ruling

The Chairman ruled as follows -

We are dealing with proposed new clause 31. I thank the Leader of the House for the additional advice he has provided to the committee. I do not propose to comment on the merit or otherwise of the substance of the advice just given as, notwithstanding the advice, following earlier debate on this particular new clause. Having regard to that earlier concern that was raised by the Deputy Chairman, I took the opportunity to again consider the issues.

Accordingly, on Wednesday, 4 April 2007 the Deputy Chairman raised concerns regarding proposed new clause 31. The Deputy Chairman put the view that provisions subclauses (4) and (6) may amount to a tax. The Legislative Council may not originate a Bill imposing taxation. In addition, it cannot do by amendment what it is prevented from doing by way of originating a Bill. If it is prevented from originating a Bill imposing taxation, it cannot amend a Bill so as to impose taxation. If the amendment proposed by the Minister is imposing taxation, it will be out of order as beyond the legislative capacity of the Legislative Council. In addition, it would be contrary to section 46(7) of the *Constitution Acts Amendment Act 1899*, which provides in section 46(7) -

Bills imposing taxation shall deal only with the imposition of taxation.

It is clear that the Bill deals with a broad range of matters relating to the establishment, powers and functions of the Chemistry Centre. The Deputy Chairman invited the Minister to provide advice on this matter before making a ruling. On Thursday, 5 April 2007 the Minister presented the government's argument in favour of proposed new clause 31 as follows: firstly, the wording of the proposed amendment is the same as in the *Land Information Authority Act 2006*; secondly, the proposed new clause 31 does not impose a tax but simply restores the liability for tax imposed by another instrument; that is, without crown immunity having been conferred by clause 5, the Chemistry Centre would have been liable for rates. Proposed new clause 31 therefore simply restores that liability. Thirdly, the proposed new clause does not impose a tax but merely transfers revenue from one agency to another. Proposed new clause 31 is in the same terms as section 72 of the *Land Information Act 2006*.

I now refer to the *Hansard* of 23 October 2006 when, during the Committee of the Whole stage when considering the *Land Information Authority Bill 2006*, Hon Kate Doust, in her capacity as Parliamentary Secretary representing the Minister for Planning and Infrastructure, stated on clause 72 -

Although it may not have to pay local government rates or charges, it pays an equivalent amount to the Treasurer. I understand that this is a standard provision.

Similar provisions can be found in section 32 of the *Western Australian Land Authority Act 1992* and section 43 of the *Forest Products Act 2000*.

The following is from the preamble to a 4 November 1986 Commonwealth revenue ruling No SD041: crown immunity from stamp duty - Commonwealth instrumentalities, which states -

There is a common law presumption that the Crown is not bound by statute except where the statute by express words or necessary implication evinces an intention that the Crown should be bound. So far as this principle applies to stamp duty it means that generally the Crown will not be liable to duty as the *Stamp Duties Act 1920* does not, for the most part, specifically bind the Crown.

Odgers states at page 281 that the imposition of charges on Commonwealth entities, and Commonwealth entities only, is not an imposition of taxation. The test to apply is not the legal status of the body but where the money is coming from. In this particular case, the money is being extracted from the Chemistry Centre. The Chemistry Centre is an agent of the Crown and clause 5 of the Bill expressly provides that it enjoys the status, immunities and privileges of the Crown. The money is coming from a crown entity. This House supplies an interpretation to section 46 of the *Constitution Acts Amendment Act 1899* so as not to restrict the ability of this House to make amendments to Bills. I therefore rule the amendment is in order, as the state is simply extracting money from its own entities. That is money that the state has already extracted from taxpayers. It is not imposing taxation in any real sense.

Debate ensued.

New clause - put and passed.

The Acting President resumed the Chair.

Bill reported with amendments and Long Title amended.

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

15. Biosecurity and Agriculture Management Bill 2006, Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Bill 2006 and Biosecurity and Agriculture Management Rates and Charges Bill 2006

The Orders of the Day for the further consideration of these Bills, in Committee, having been read.

The Acting President left the Chair.

In Committee

(Hon Ken Travers in the Chair)

Biosecurity and Agriculture Management Bill 2006

Clause 98.

Debate resumed on the amendment moved by the Minister for Agriculture and Food as follows -

Page 76, after line 12 — To insert —

“

- (4) The Director General must not exercise a power of sale in relation to land referred to in this section unless the Director General is satisfied that other reasonable means of recovering the amount charged on the land have been exhausted.

- (5) The existence of a charge or registration of a memorial of a charge on land does not affect the Director General's discretion to proceed for recovery of the unpaid amount in proceedings unrelated to the charge.

”.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 99 agreed to.

Clause 100.

The Minister for Agriculture and Food moved -

Page 77, lines 4 and 5 — To delete “give a notice of release to the owner of the land to be lodged for registration under section 101” and insert instead —

“ lodge a withdrawal of memorial with the Registrar of Titles ”.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 101.

The Minister for Agriculture and Food moved -

Page 77, after line 8 — To insert the following —

“

(1) In this Division —

“**land document**” means —

- (a) a notification or removal of notification lodged with the Registrar of Titles under Part 3 Division 1; or
- (b) a memorial or withdrawal of memorial lodged with the Registrar of Titles under Part 4 Division 6;

“**register**”, in relation to a land document, means —

- (a) endorse the particulars of the document on the certificate of title for the land to which the document relates; and
- (b) register or enter the particulars of the document in the Land Titles Register;

”.

Page 77, line 9 — To delete “A memorial or notice lodged with the Registrar of Titles under this Act” and insert instead —

“ A land document ”.

Page 77, lines 12 and 13 — To delete “memorials and notices lodged with the Registrar under this Act” and insert instead —

“ land documents ”.

Page 77, line 15 — To delete “form” and insert instead —

“ land document ”.

Page 77, line 17 — To delete “memorial or notice” and insert instead —

“ land document ”.

Debate ensued.

Amendments - put and passed.

The Minister for Agriculture and Food moved -

Page 77, lines 18 and 19 — To delete the lines and insert instead —

“

- (3) The Registrar of Titles may, on the lodging of a land document and payment of any relevant fee, register the document.

”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 102.

The Minister for Agriculture and Food moved -

Page 77, line 21 — To delete “The registration of a memorial or notice under this Act” and insert instead —

“ A land document registered under section 101 ”.

Page 77, line 22 — To delete “and registration fees”.

Amendments - put and passed.

Clause, as amended, agreed to.

Clause 103.

The Minister for Agriculture and Food moved -

Page 77, line 24 — To delete “or notice in relation to land is registered” and insert instead —

“ is registered under section 101 ”.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 104 to 107 agreed to.

Clause 108.

The Minister for Agriculture and Food moved -

Page 79, line 27 — To insert after “section 71” —

“ , in relation to an offence committed under this Act ”.

Page 79, line 29 — To delete “under this Act”.

Amendments - put and passed.

Debate ensued.

Clause, as amended, agreed to.

Clauses 109 to 120 agreed to.

Clause 121.

The Minister for Agriculture and Food moved -

Page 88, line 24 — To delete “Unless the contrary is proved” and insert instead —

“ In the absence of evidence to the contrary ”.

Page 88, line 30 — To delete “Unless the contrary is proved” and insert instead —

“ In the absence of evidence to the contrary ”.

Debate ensued.

Amendments - put and passed.

Clause, as amended, agreed to.

Clause 122 agreed to.

Clause 123.

The Minister for Agriculture and Food moved -

Page 89, lines 26 to 29 — To delete the lines.

Amendment - put and passed.

The Minister for Agriculture and Food moved -

Page 90, line 15 — To delete “unless the contrary is proved, evidence” and insert instead —

“ in the absence of evidence to the contrary, proof ”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 124 to 128.

Clause 129.

The Minister for Agriculture and Food moved -

Page 93, lines 8 to 10 — To delete the lines and insert instead —

“

“**operating account**” means an agency special purpose account established and maintained under the *Financial Management Act 2006* section 16;

”.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 130 to 133 agreed to.

Clause 134.

The Minister for Agriculture and Food moved -

Page 95, line 21 — To delete “that”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 135 to 138.

Clause 139.

The Minister for Agriculture and Food moved -

Page 99, line 9 — To delete “Fund” and insert instead —

“ Account ”.

Page 99, line 18 — To delete “Fund” and insert instead —

“ Account ”.

Amendments - put and passed.

Clause, as amended, agreed to.

Clause 140 agreed to.

Clause 141.

The Minister for Agriculture and Food moved -

Page 99, lines 29 and 30 — To delete “a sector of agricultural activity specified in the regulations” and insert instead —

“ a prescribed sector of agricultural activity ”.

Amendment - put and passed.

The Minister for Agriculture and Food moved -

Page 100, line 6 — To delete “management” and insert instead —

“ activity ”.

Amendment - put and passed.

Debate ensued.

Clause, as amended, agreed to.

Clauses 142 to 144 agreed to.

Clause 145.

The Minister for Agriculture and Food moved -

Page 102, line 21 — To delete “specified” and insert instead —

“ prescribed ”.

Page 102, line 27 — To delete “specified” and insert instead —

“ prescribed ”.

Page 103, line 6 — To delete “Fund” and insert instead —

“ Account ”.

Page 103, line 6 — To delete “specified” and insert instead —

“ prescribed ”.

Page 103, line 21 — To delete “Fund” and insert instead —

“ Account ”.

Page 103, line 31 — To delete “specified” and insert instead —

“ prescribed ”.

Debate ensued.

Amendments - put and passed.

The Minister for Agriculture and Food moved -

Page 102, line 27 — To insert after “control of —

“ , or for the advancement and improvement of control measures for, ”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 146 agreed to.

Clause 147.

The Minister for Agriculture and Food moved -

Page 104, line 25 — To delete “specified” and insert instead —

“ prescribed ”.

Page 104, line 28 — To delete “specified” and insert instead —

“ prescribed ”.

Debate ensued.

Amendments - put and passed.

Clause, as amended, agreed to.

Interruption of Debate [SO 61(c)].

The Acting President resumed the Chair.

The Deputy Chairman of Committees reported that the Committee had considered these Bills, made progress, and asked leave to sit again.

Ordered - That the Committee have leave to sit again.

16. Adjournment

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

Debate ensued.

Question - put and passed.

The House adjourned at 10.07pm until Wednesday, 6 June 2007 at 4.00pm.

Members present during the day’s proceedings

Attendance: Present all Members except Hon Sheila Mills and Hon Margaret Rowe.

MIA BETJEMAN
Clerk of the Legislative Council

HON NICK GRIFFITHS
President of the Legislative Council