

# LEGISLATIVE COUNCIL

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## MINUTES OF PROCEEDINGS

**No. 205**

**TUESDAY, 27 MAY 2008**

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### **1. Meeting of Council**

The Council assembled at 3.30pm pursuant to Temporary Order.

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

### **2. Messages from His Excellency the Governor - Assent to Bills**

The President reported the receipt of Messages from His Excellency the Governor assenting to the following Bills -

<b>19 May 2008 - Message No. 17</b>	<b>Act No.</b>
Employment Dispute Resolution Bill 2007	18 of 2008
<b>19 May 2008 - Message No. 18</b>	<b>Act No.</b>
Mining Legislation Amendment and Validation Bill 2007	19 of 2008
Fatal Accidents Amendment Bill 2008	20 of 2008

### **3. Statement by President**

The President made the following statement -

The Parliamentary Secretary representing the Treasurer stated in the budget speech -

The Government will invest \$26.1 billion in capital works around the State and plans to spend \$7.6 billion next year alone on capital works..... Over the next four years, the Government is budgeting to spend an unprecedented \$26.1 billion on the Capital Works Program. This is just one way that every Western Australian is benefiting from the boom, with Western Australia's direct spend on infrastructure per person in 2008-09 being around 50 per cent higher than the average of other States.

I advise the House that the State budget announced on 8 May 2008 did not provide funding for the refurbishment of the Legislative Council chamber. Funding has been denied several times. I thank the Speaker of the Legislative Assembly for his approach to the Treasurer in January to have the matter revisited.

On 9 May, I wrote to the Treasurer in these terms -

I note the budget presented to the Parliament yesterday did not include any capital funding for the refurbishment of the Legislative Council chamber. As advised on a number of occasions the current chamber seating is inadequate to provide for the additional Members when the new Parliament is formed in 2009. I seek an urgent

meeting next week with you and your Treasury officers, the Leader of the House and the Clerk of the Legislative Council to discuss options to overcome this urgent matter.

A copy of the letter was forwarded to the Leader of the House.

On Thursday, 15 May, a telephone communication was received by my office from the Treasurer's office in these terms: "The Treasurer's diary is full and not possible to meet.". It was inquired of the person from the Treasurer's office as to whether this was short term or long term, and the further response was "Not possible; diary full."

In the budget round, the Legislative Council kept its submission to four recurrent items. Only one of these items has been approved - a total of \$40 000 - which was, of course, the least expensive item. The other three items are important to enhancing the productivity of the chamber and committees, which would have ultimately benefited the Government, but more importantly, the State. How can the Premier complain about the Legislative Council's consideration of legislation and then deny proper funding? It should be made clear that the recurrent funding issues relate solely to the net amount appropriated to deliver services, and not to salaries and allowances for Members.

The budget demonstrates the continuing inequity in funding between the two Houses, which leaves the Legislative Council \$837 000 below the funding level made available to the Legislative Assembly in 2008-2009. In 2005, the Parliament enacted new electoral laws providing for an additional two Members in both the Legislative Council and the Legislative Assembly. The membership of the Legislative Council will increase from 34 Members to 36 Members in May 2009.

In November 2005, Mr Speaker and I wrote to the Under Treasurer seeking funding for the ergonomic refurbishment of and seating adjustments to both chambers. It was intended that the Legislative Assembly chamber be refurbished in 2006-2007, followed by the Legislative Council chamber in 2008-2009. In 2006, the Parliament submitted a budget request for refurbishment of the Assembly chamber. At the bilateral meeting in 2006, Mr Speaker and I made it very clear that the Council would seek funding in 2008 to undertake the same refurbishment. In November 2007, a comprehensive business case and costings were submitted to the Department of Treasury and Finance. After consulting both the Department of Housing and Works and the Department of Treasury and Finance, the amount sought was \$2.27 million. I note that funding was approved for the Assembly in the absence of a business case, and at a time when the state government surplus was significantly less.

I was advised by the Department of Treasury and Finance, by letter dated 12 December 2007, that on 3 December 2007 the expenditure review committee had declined the funding. No reasons were forthcoming. In a letter dated 20 March 2008, the Treasurer notified me that the ERC had not approved the funding. The Department of Treasury and Finance, however, had supported the funding. Unlike the Legislative Assembly chamber, the Legislative Council chamber does not have the capacity for two additional Members without additional capital works funding.

The purpose of the refurbishment project is to increase the number of Members' seats in the Legislative Council chamber due to changes in electoral boundaries. While increasing the seat numbers, the seating and desks would have been upgraded to improve the ergonomics and functionality. The Legislative Council chamber has changed very little over the past 100 years. The present seating arrangements date back to the building of Parliament House in 1904. The current seating was installed in the chamber in 1904.

The institution of Parliament should not be subject to preferential treatment by the Government to one House over another. The Legislative Council has for many years been deprived of resources for committees, staffing and capital improvement. Given that the core function of Parliament is to consider legislation, it is wrong that one House is provided with greater resources than another. The Government's position is discriminatory. The Parliament of Western Australia does not make frivolous funding bids, and the projects we sought funding for are essential to the effective functioning of the Parliament.

I am making no criticism of the other place. However, if the Legislative Council is being properly funded, the Legislative Assembly is grossly over-funded. Conversely, if the Legislative Assembly is properly funded, the Legislative Council is grossly underfunded. The Government has failed to provide any proper explanation as to why the Legislative Council, the elected accountability body in Western Australia, is not being treated properly.

The Legislative Council refurbishment is time critical in light of the inadequate chamber accommodation and the addition of two Members in 2009. The decline in funding is inconsistent with the expenditure review committee's decision in 2005 to fund the Legislative Assembly chamber refurbishment.

I table a number of relevant items of correspondence involving this matter, together with a chart dealing with funding comparison between the Legislative Council and Legislative Assembly funding and operational budgets. I also table other relevant charts.

The President tabled correspondence between the President of the Legislative Council and the Treasurer relating to the Legislative Council Budget, a Business Case for the Legislative Council Chamber Refurbishment and charts showing funding comparisons between the Legislative Council, Legislative Assembly and other departments. (Tabled paper 4008).

#### **4. Petitions**

Hon Brian Ellis presented a petition, by delivery to the Clerk, [SO 130], from 76 petitioners requesting the Legislative Council support an inquiry into the shortage of abattoir capacity in the State. (Tabled paper 4001).

Hon Helen Morton presented a petition from 1 616 petitioners requesting the Legislative Council oppose the closure of the Royal Perth Hospital. (Tabled paper 4002).

Hon Giz Watson presented a petition from 1 400 petitioners requesting the Legislative Council support maintaining Western Australia as a Genetically Modified (GM) Free Zone. (Tabled paper 4003).

Hon Giz Watson presented a petition from 6 832 petitioners requesting the Legislative Council support saving from destruction Underwood Avenue Bushland, Shenton Park. (Tabled paper 4004).

#### **5. Papers**

The following Papers were laid on the Table by -

##### **President**

*Joint Standing Committee on Treaties (Commonwealth of Australia) -*

Report No. 90 - Treaties tabled on 12 March 2008..... 3997

*Reports -*

Work of the Legislative Council Chamber 2007 (20 March 2007 to 6 December 2007) .. 3998

Work of the Legislative Council Committees 2007 (1 January 2007 to 31 December 2007) ..... 3999

##### **Minister for Employment Protection**

*Reports -*

Fisheries, Department of - State of the Fisheries Report (2006-2007) ..... 4000

#### **6. Standing Committee on Uniform Legislation and Statutes Review - Twenty-eighth Report - Prisoners (Interstate Transfer) Amendment Bill 2007**

Hon Simon O'Brien presented the Twenty-eighth Report of the Standing Committee on Uniform Legislation and Statutes Review in relation to the *Prisoners (Interstate Transfer) Amendment Bill 2007*. (Tabled paper 4005).

Hon Simon O'Brien moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

**7. Standing Committee on Uniform Legislation and Statutes Review - Twenty-ninth Report - Sentence Administration (Interstate Transfer of Community Based Sentences) Bill 2007**

Hon Simon O'Brien presented the Twenty-ninth Report of the Standing Committee on Uniform Legislation and Statutes Review in relation to the *Sentence Administration (Interstate Transfer of Community Based Sentences) Bill 2007*. (Tabled paper 4006).

Hon Simon O'Brien moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

**8. Standing Committee on Uniform Legislation and Statutes Review - Thirtieth Report - Co-operatives Bill 2007**

Hon Simon O'Brien presented the Thirtieth Report of the Standing Committee on Uniform Legislation and Statutes Review in relation to the *Co-operatives Bill 2007*. (Tabled paper 4007).

Hon Simon O'Brien moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

**9. Taxi Amendment Regulations 2008 - Disallowance**

Hon Ray Halligan: To move on the next day of sitting -

That the *Taxi Amendment Regulations 2008* published in the *Gazette* on 7 March 2008 and tabled in the Legislative Council on 19 March 2008 under the *Taxi Act 1994*, be and are hereby disallowed.

**10. Order of Business**

Ordered - That Orders of the Day Nos 608, *City of Nedlands - Fencing Local Laws 2007 - Disallowance*, 609, *City of Nedlands - Signs Local Law 2007 - Disallowance*, 610, *Swan Districts Hospital (Eveline Road Site) Amendment By-Laws 2008 - Disallowance*, 611, *Peel Health Services By-Laws 2008 - Disallowance*, 612, *Metropolitan Health Service By-Laws 2008 - Disallowance*, 613, *Fremantle Hospital Amendment By-Laws 2008 - Disallowance*, 614, *Bentley Hospital Amendment By-Laws 2008 - Disallowance*, 615, *Armadale Kelmscott District Memorial Hospital Amendment By-Laws 2008 - Disallowance*, 616, *City of Fremantle - Local Law Relating to Outdoor Eating Areas Amendment Local Law 2007 - Disallowance*, 617, *Conservation and Land Management Amendment Regulations (No. 2) 2007 - Disallowance*, 618, *City of Joondalup - Local Government and Public Property Amendment Local Law (No. 2) 2007 - Disallowance*, and 619, *City of Cockburn - Parking and Parking Facilities Local Law 2007 - Disallowance*, be taken after Order of the Day No. 372, *Equal Opportunity Amendment Bill 2006*. (Leader of the House).

**11. Architects Amendment Regulations 2007 - Disallowance - Discharge from Notice Paper**

The Order of the Day having been called, Hon Ray Halligan moved, without notice -

That Order of the Day No. 600, *Architects Amendment Regulations 2007 - Disallowance*, be discharged from the Notice Paper.

Question - put and passed.

**12. State Superannuation Amendment Regulations 2008 - Disallowance - Discharge from Notice Paper**

The Order of the Day having been called, Hon Ray Halligan moved, without notice -

That Order of the Day No. 607, *State Superannuation Amendment Regulations 2008 - Disallowance*, be discharged from the Notice Paper.

Question - put and passed.

### **13. 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.

### **14. Questions Without Notice**

Questions without notice were taken.

The Minister for Local Government representing the Minister for Education and Training tabled, and by leave incorporated into Hansard, an answer in relation to class numbers in primary and secondary schools, in response to a question without notice asked by Hon Peter Collier. (Tabled paper 4009).

The Minister for Child Protection representing the Minister for Health tabled job description forms for Project Coordinator and Consumer Coordinator positions based at Graylands Hospital, in response to a question without notice asked by Hon Helen Morton. (Tabled paper 4010).

The Leader of the House representing the Minister for Small Business tabled a Federal Government Media Release - *Government to implement industry report on skilled migration*, in response to question on notice No. 6230 asked by Hon Brian Ellis. (Tabled paper 4011).

### **15. Estimates of Revenue and Expenditure - Consolidated Fund Estimates 2008-2009**

Debate resumed on the motion, That the Consolidated Fund Estimates 2008-2009 be noted (cf item No.13 above).

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

### **16. Community Protection (Offender Reporting) Amendment Bill 2007**

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

The Leader of the House on behalf of Minister for Employment Protection representing the Minister for Police and Emergency Services moved, That the Bill be now read a third time.

The Deputy President having reported that the 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.

### **17. Medical Practitioners Bill 2006**

The following Message from the Legislative Assembly was reported -

Mr President

Message No. 324

The Legislative Assembly acquaints the Legislative Council that it has agreed to the amendments made by the Legislative Council in the *Medical Practitioners Bill 2006*.

Hon F. Riebeling  
Speaker

Legislative Assembly Chamber  
Perth, 15 May 2008

# **18. Legal Profession Bill 2007**

The following Message from the Legislative Assembly was reported -

Mr President

Message No. 325

The Legislative Assembly acquaints the Legislative Council that it has agreed to the amendments made by the Legislative Council in the *Legal Profession Bill 2007*.

Hon F. Riebeling

Speaker

Legislative Assembly Chamber

Perth, 15 May 2008

# **19. Acts Amendment (Consent to Medical Treatment) 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)

Clause 11.

Proposed Section 110ZJ.

The Minister for Child Protection moved -

Page 26, line 12 — To delete “section 110ZI,” and insert instead —

“ sections 110ZI and 110ZIA, ”.

Amendment - put and passed.

Debate ensued.

Proposed Section, as amended, agreed to.

Proposed Section 110ZK.

Hon Graham Giffard moved -

Page 27, after line 19 — To insert —

“

“**good faith**” means to come to a decision honestly having made a genuine attempt to make reasonable inquiries and to consider all the information available;

”.

Debate ensued.

Amendment - put and negatived.

Hon Helen Morton moved -

Page 28, line 17 — To insert after “assuming” —

“ , having obtained written evidence of the fact, ”.

Debate ensued.

Amendment - put.

The Committee divided.

**Ayes (14)**

Hon Ken Baston  
 Hon Peter Collier  
 Hon Bruce Donaldson  
 Hon Kate Doust  
 Hon Wendy Duncan  
 Hon Donna Faragher  
 Hon Anthony Fels

Hon Nigel Hallett  
 Hon Barry House  
 Hon Norman Moore  
 Hon Helen Morton  
 Hon Simon O'Brien  
 Hon Barbara Scott  
 Hon Ed Dermer (*Teller*)

**Noes (14)**

Hon Shelley Archer  
 Hon Matt Benson-Lidholm  
 Hon George Cash  
 Hon Kim Chance  
 Hon Sue Ellery  
 Hon Adele Farina  
 Hon Jon Ford

Hon Paul Llewellyn  
 Hon Robyn McSweeney  
 Hon Sheila Mills  
 Hon Ljiljanna Ravlich  
 Hon Sally Talbot  
 Hon Giz Watson  
 Hon Ken Travers (*Teller*)

The votes being equal, the amendment was resolved in the negative.

The Minister for Child Protection moved -

Page 28, line 26 to page 29, line 26 — To delete the lines and insert instead —

“

- (3) For subsection (2)(a)(ii), a health professional is taken to have relied in good faith on what was purportedly a treatment decision if, after considering whether or not to rely on it, the health professional acted honestly in relying on it.

”.

Debate ensued.

Amendment - put and passed.

The Minister for Child Protection moved -

Page 29, after line 26 — To insert —

“

- (4) For the purpose of determining under subsection (2)(b)(ii) whether the health professional's assumption was reasonable, the following matters must be taken into account —
- (a) whether the health professional sighted any written evidence that some other health professional had ascertained that the treatment action was in accordance with the treatment decision;
  - (b) anything else relevant to the determination.

”.

Debate ensued.

Amendment - put and passed.

Proposed Section, as amended, agreed to.

Proposed Section 110ZL agreed to.

New Division 3.

The Minister for Child Protection moved -

Page 30, after line 10 — To insert —

“

### **Division 3 — Jurisdiction of State Administrative Tribunal**

#### **110ZM. Who may apply**

A person who, in the opinion of the State Administrative Tribunal, has a proper interest in the matter may apply to the Tribunal for a decision under this Division.

#### **110ZN. Declaration as to who may make treatment decision**

- (1) The State Administrative Tribunal may declare whether section 110ZJ(2), (3), (4) or (5) applies in respect of any treatment proposed to be provided to a patient.
- (2) A declaration made under subsection (1) has effect according to its terms.
- (3) The Tribunal may revoke a declaration made under subsection (1).

”.

Debate ensued.

New Division agreed to.

Clause, as amended, agreed to.

Clause 12 agreed to.

Clauses 13 to 19 agreed to.

New Clause 12.

The Minister for Child Protection moved -

Page 30, after line 11 — To insert the following new clause —

“

#### **12. Section 113 amended**

After section 113(1) the following subsection is inserted —

“

- (1a) Subsection (1) does not apply to information obtained from the register referred to in section 110ZAA, and section 110ZAB applies to that information instead.

”  
.  
”  
.

New Clause agreed to.

Title agreed to.

The Acting President resumed the Chair.

Bill reported with amendments.

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



**20. Children and Community Services Amendment (Reporting Sexual Abuse of Children) Bill 2007**

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

Debate ensued.

Hon Giz Watson sought leave of the House to continue her remarks at the next day's sitting.

Leave granted.

On the motion of the Leader of the House the debate was adjourned to the next sitting.

**21. Suspension of Standing and Temporary Orders**

The Leader of the House moved, without notice -

That so much of Standing and Temporary Orders be suspended to enable the House to adjourn until Thursday, 29 May 2008.

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.

**22. Members' Statements**

Members' statements were taken.

**23. Adjournment**

The House adjourned at 10.00pm until Thursday, 29 May 2008 at 10.00am.

**Members present during the day's proceedings**

Attendance: Present all Members except Hon Vincent Catania.

**MALCOLM PEACOCK**  
Clerk of the Legislative Council

**HON NICK GRIFFITHS**  
President of the Legislative Council