

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 179

THURSDAY, 29 SEPTEMBER 2011

1. Meeting of Council

The Council assembled at 10.00am pursuant to Temporary Orders.

The President, Hon Barry House, took the Chair and read prayers.

2. President's Ruling - Matter of Privilege - Hon Adele Farina MLC - Establishment of Select Committee

The President ruled as follows -

Members, I have a ruling on a matter from yesterday. Hon Adele Farina yesterday raised a matter alleging a breach of privilege regarding an answer provided by the Minister for Mental Health representing the Minister for Health to question without notice 790. By way of background, the relevant part of the question and the answer given was —

(2) If growth funding is yet to be determined —

...

(b) what action is the Minister taking to ensure all children and adolescents with mental health problems are able to access South West CAMHS for assessment and appropriate treatment?

(3) What is the current wait time for assessment by South West CAMHS?

(4) How many children and adolescents are on the wait list for assessment by South West CAMHS?

The Minister for Mental Health answered question (2)(b) to (4) as follows—

These questions need to be addressed to the Minister for Mental Health. However, I am aware that I have already provided that information to the Member, and I ask her to look at answer 714.

The Member alleges parts (3) and (4) of question without notice 790 do not form part of question without notice 714 and no answer to these parts was provided by the Minister's answer to question without notice 714, and therefore the Minister has misled the House.

Standing Order 155 requires the President to rule whether the matter is one affecting the Privileges of the House under the *Parliamentary Privileges Act 1891*. The Parliamentary Privileges of this House are those of the House of Commons as at 1 January 1989. Erskine May's *Parliamentary Practice*, twenty-first edition, at page 119 states —

The Commons **may** treat the making of a **deliberately** misleading statement as a contempt.

Before I rule on this matter, I think I should give some guidance to the House when considering the matter. In 1999, the then President—from *Hansard* at page 837 on 8 September—when speaking to Standing Order 155, in part, stated —

Although it is not part of my ruling, I should say something about the nature of the contempt under debate and the standard of proof required to prove it. Unlike some contempts, where a particular state of mind is irrelevant, two elements must be proved before it can be said that a Member deliberately misled the House. First, the statement must, as a fact, have been misleading. Second, the Member must have known at the time of making the statement that it was misleading and intended that it be so.

The parliamentary authorities state that the requirement to prove the case is to be on the balance of probabilities, illustrating the high standard of proof required. They make the point that recklessness alone is not sufficient to sustain such a charge. The Member must have had, and be shown to have had, the intent to mislead the House.

Before proceeding with matters of privilege, Members might wish to consider the Senate's criteria used in deciding whether it will send a matter to its privileges committee —

- (a) the principle that the Senate's power to adjudge and deal with contempts should be used only where it is necessary to provide reasonable protection for the Senate and its committees and for Senators against improper acts tending substantially to obstruct them in the performance of their duties, and should not be used in respect of matters which appear to be of a trivial nature or unworthy of the attention of the Senate;
- (b) the existence of any remedy other than that power for any act which may be held to be a contempt; and
- (c) whether a person who committed any act which may be held to be a contempt —
 - (i) knowingly committed that act, or
 - (ii) had any reasonable excuse for the commission of that act.

Standing Order 155 does not require the President to find the contempt has been committed, rather to determine if the alleged matter is one that affects the privileges of the House. I do not in this case and leave it to the House to decide if it wants the Standing Committee on Procedure and Privileges to examine this allegation. I rule the matter is one that affects the privileges of the House.

I now give the call to the acting Leader of the House to move the Order of the Day forthwith as per Standing Order 155, but as the ruling is lengthy, can I suggest the Order of the Day be adjourned to a latter stage of this day's sitting in order to allow Members to consider the ruling, which will be distributed immediately.

On the motion of the Minister for Finance, the debate was adjourned to a later stage of this day's sitting.

3. Petitions

Hon Kate Doust presented a petition from 432 petitioners requesting the Legislative Council enact the National Model Workplace Health and Safety Bill as endorsed by the Workplace Relations Ministerial Council in 2009. (Tabled paper 3925).

Hon Matt Benson-Lidholm presented a petition from 18 petitioners requesting the Legislative Council oppose Western Power's proposal to construct a new 132kV overhead powerline between the Rangeway substation and a proposed new substation in the Geraldton Port precinct. (Tabled paper 3926).

4. Ministerial Statement - 2012 Parliamentary Sitting Dates

The Deputy Leader of the House made a Ministerial Statement with respect to the 2012 Parliamentary Sitting Dates.

The Deputy Leader of the House tabled a calendar of the 2012 Parliamentary Sitting Dates. (Tabled paper 3927).

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

5. Ministerial Statement - Oombulgurri Aboriginal Community - Closure

The Minister for Indigenous Affairs made a Ministerial Statement with respect to the formal closure of Oombulgurri Aboriginal community.

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

6. Ministerial Statement - Redress WA Scheme - Finalisation

The Minister for Community Services made a Ministerial Statement with respect to the finalisation of the Redress WA Scheme.

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

7. Papers

The following Papers were laid on the Table by -

Minister for Finance on behalf of the Leader of the House

Reports -

Consultants Engaged by Government (For the six months ended 31 December 2010)..... 3921

Interstate and Overseas Travel undertaken by Ministers, Members of Parliament and Officers on Official Business (For the three months ended 31 December 2010)..... 3922

Interstate and Overseas Travel undertaken by Ministers, Members of Parliament and Officers on Official Business (For the three months ended 31 March 2011)..... 3923

Minister for Energy

Notices -

Financial Management Act 2006, Under Section 82 - Question on Notice No. 4513 asked in the Legislative Council on 16 August 2011 3924

8. Joint Standing Committee on the Corruption and Crime Commission - Report No. 20 - Closed Hearing with Gail Archer SC and Further Analysis of Proposed Reforms to the Corruption and Crime Commission Act 2003

Hon Nick Goiran presented Report No. 20 of the Joint Standing Committee on the Corruption and Crime Commission in relation to the *Closed Hearing with Gail Archer SC and further analysis of proposed reforms to the Corruption and Crime Commission Act 2003*. (Tabled paper 3928).

Hon Nick Goiran moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

9. Joint Standing Committee on the Commissioner for Children and Young People - Report No. 7 - Annual Report 2010-2011

Hon Helen Bullock presented Report No. 7 of the Joint Standing Committee on the Commissioner for Children and Young People being the *Annual Report 2010-2011*. (Tabled paper 3929).

Hon Helen Bullock moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

10. Standing Committee on Legislation - Report No. 18 - Local Government Amendment (Regional Subsidiaries) Bill 2010

Hon Michael Mischin presented Report No. 18 of the Standing Committee on Legislation in relation to the *Local Government Amendment (Regional Subsidiaries) Bill 2010*. (Tabled paper 3930).

Hon Michael Mischin moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

11. National Harmonisation of Occupational Health and Safety Laws

Non-Government Business No. 1 having being called, Hon Kate Doust moved, without notice -

That this House calls on the Liberal-National Government to pass the national harmonisation of occupational health and safety laws by 1 January 2012 as committed to by Queensland, New South Wales, Australian Capital Territory and Tasmania.

Debate ensued.

Motion lapsed pursuant to Temporary Orders.

12. Order of Business

Ordered - That Order of the Day No. 7, *Cat Bill 2011*, be taken forthwith. (Leader of the House).

13. Cat Bill 2011

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

Debate resumed.

On the motion of the Leader of the House the debate was adjourned to a later stage of this day's sitting.

14. Order of Business

Ordered - That Order of the Day No. 1, *Matter of Privilege - Hon Adele Farina MLC - Establishment of Select Committee*, be taken forthwith. (Leader of the House).

15. Matter of Privilege - Hon Adele Farina MLC - Establishment of Select Committee

The Order of the Day having been called, debate resumed on the motion of Hon Adele Farina as follows -

That a Select Committee be appointed to inquire into a breach of Parliamentary Privilege by Hon Helen Morton on 21 September 2011.

Debate ensued.

Question - put.

The House divided.

Ayes (12)

Hon Matt Benson-Lidholm
Hon Helen Bullock
Hon Kate Doust
Hon Sue Ellery
Hon Adele Farina
Hon Lynn MacLaren

Hon Ljiljanna Ravlich
Hon Linda Savage
Hon Ken Travers
Hon Giz Watson
Hon Alison Xamon
Hon Ed Dermer (*Teller*)

Noes (19)

Hon Liz Behjat
Hon Jim Chown
Hon Peter Collier
Hon Mia Davies
Hon Wendy Duncan
Hon Phil Edman
Hon Brian Ellis
Hon Donna Faragher
Hon Philip Gardiner
Hon Nick Goiran

Hon Nigel Hallett
Hon Alyssa Hayden
Hon Robyn McSweeney
Hon Michael Mischin
Hon Norman Moore
Hon Helen Morton
Hon Simon O'Brien
Hon Max Trenorden
Hon Ken Baston (*Teller*)

Question thus negatived.

16. Order of Business

Ordered - That Order of the Day No. 7, *Cat Bill 2011*, be taken forthwith. (Leader of the House).

17. Cat Bill 2011

Debate resumed on the second reading of this Bill (cf item 13 above).

18. Questions Without Notice

Questions without notice were taken.

The Minister for Child Protection tabled documents in relation to funding for financial counselling services for the years 2009-10, 2010-11 and 2011-12, in response to question on notice No. 4606 asked by Hon Alison Xamon. (Tabled paper 3931).

The Minister for Finance representing the Minister for Transport, in accordance with Standing Order No. 138(d), advised that an answer to question on notice No. 4581 asked by Hon Lynn MacLaren will be provided on 18 October 2011.

The Minister for Mental Health, in accordance with Standing Order No. 138(d), advised that answers to questions on notice Nos 4578, 4579 and 4584 to 4597 inclusive asked by Hon Ljiljanna Ravlich will be provided on 20 October 2011.

19. Cat Bill 2011

Debate resumed on the second reading of this Bill (cf item 17 above).

Interruption pursuant to Temporary Orders.

20. Members' Statements

Statements were taken.

21. Special Adjournment

The Leader of the House moved, without notice -

That the House at its rising adjourn until Tuesday, 18 October 2011.

Question - put and passed.

22. Metropolitan Redevelopment Authority Bill 2011

The following Message from the Legislative Assembly was reported -

Mr President

Message No. 213

The Legislative Assembly acquaints the Legislative Council that it has agreed to the amendments made by the Legislative Council in the *Metropolitan Redevelopment Authority Bill 2011*.

Hon G.A. Woodhams

Speaker

Legislative Assembly Chamber

Perth, 29 September 2011

23. Adjournment

The House adjourned at 6.01pm until Tuesday, 18 October 2011 at 3.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Robin Chapple, Hon Jon Ford, Hon Col Holt and Hon Sally Talbot.

MALCOLM PEACOCK
Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council