

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 107

TUESDAY, 24 OCTOBER 2006

1. Meeting of Council

The Council assembled at 3.00pm pursuant to order.

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

2. Road Traffic Amendment Bill 2005

The following Message from the Legislative Assembly was reported -

Mr President

Message No. 180

The Legislative Assembly acquaints the Legislative Council that it has agreed to the amendments made by the Legislative Council in the *Road Traffic Amendment Bill 2005*.

Ms J. Hughes

Acting Speaker

Legislative Assembly Chamber

Perth, 19 October 2006

3. Electoral Reform (Electoral Funding) Bill 2006

The following Message from the Legislative Assembly was reported -

Mr President

Message No. 181

The Legislative Assembly acquaints the Legislative Council that it has agreed to the amendments made by the Legislative Council in the *Electoral Reform (Electoral Funding) Bill 2006*.

Ms J. Hughes

Acting Speaker

Legislative Assembly Chamber

Perth, 19 October 2006

4. President's Ruling - Standing Order 128 and Sessional Order 5

The President ruled as follows -

I have a ruling in relation to Standing Order 128 and Sessional Order 5. On Wednesday, 27 September 2006 the Leader of the House raised a point of order with the Deputy President (Hon Graham Giffard) regarding the Order of the Day for the motion concerning a Select Committee on the Department for Community Development. The Leader of the House suggested in his point of order that Standing Order 128 has been suspended by Sessional Orders. In other words, that Sessional Orders take precedence over the Standing Orders.

Indeed, that is the function and purpose of making the orders. The Leader of the House contends that Sessional Order 4(5) requires that the sequence of the Orders of the Day is to be determined by the Leader of the House, and that the provisions of the Sessional Orders operate in their own right and have an overriding effect in relation to any conflict that may occur vis-a-vis the Standing Orders and, in particular, Standing Order 128.

The Leader of the House sought the advice of Mr Deputy President at a time convenient to him on the following matters: firstly, whether in relation to the issues raised there is a conflict between the Sessional Orders and the Standing Orders; secondly, if so, which prevails; thirdly, can a motion under Standing Order 128 direct the Leader of the House to list an item of business in any particular sequence or priority or merely to recognise that it is an Order of the Day; fourthly, if so, can the direction apply while the current Sessional Orders are in place, particularly clauses 4(5) and 5(1); and, fifthly, as the Sessional Orders make specific provisions in relation to the sequence of the Orders of the Day and Standing Order 128 makes a general provision concerning the notice paper but not the business program, does the principle of the specific overriding the general apply? The Deputy President (Hon Graham Giffard) indicated he would put the point of order before the President for consideration.

I have considered the question about whether Standing Order 128 applies under the Sessional Orders. A literal reading of Sessional Order 5 may lead a Member to conclude that the Sessional Order overrides Standing Order 128. However, to understand the objects of the Sessional Orders, I direct Members to the interim report of the Select Committee on Rules, Orders, and Usages of the House tabled on 2 March 2003. The interim report proposed the following objectives -

- Certainty of sitting weeks at commencement of the year to enable longer term planning.
- House to sit Tuesday, Wednesday, Thursday, and Friday with Monday reserved for committee meetings.
- House to sit for 2 weeks followed by 2 weeks constituent time.
- Requirement for a meaningful Private Members' time.
- Motions to be debated over an extended time rather than being interrupted after one hour as is the current situation.
- Motions to be completed in 2 sitting weeks.
- Provision of additional time for Government Business (Orders of the Day).
- Additional time for consideration of Committee Reports.
- Opportunity to debate Ministerial Statements required.
- Increase sitting hours each week, but reduce sitting weeks.
- Avoid very late sittings in December.
- Reduce night sittings.

Our parliamentary system is based on restraint being exercised on both sides and the House being the master of its own procedure. The Sessional Orders and Standing Orders should be read to provide guidance for the orderly conduct of its business and not to overly restrict the House. Further, Standing Orders should be restricted only so far as to give effect to the Sessional Orders. Sessional Orders 4(5) and 5(1) are raised in the point of order and must be read together with the other provisions. Sessional Order 5 states -

5. Arrangement of business for each sitting day

- (1) If business under Order 4 is not completed within an hour of the time at which the Council met, any matter then under consideration and any business not reached is held over to the next sitting. The Orders of the Day are then to be called *seriatim* as published in the *Business Program*.

- (2) A Minister must exercise a discretion under SO 127, or a power under SO 129, in accordance with the express provisions of this Order.
- (3) A motion moved under SO 129 that complies with subclause (2) passes with a simple majority.
- (4) Subject to subclause (5), on the completion or interruption of business under Order 4, the Orders of the Day are to be taken in the order determined under SO 127.
- (5) Consideration of business under subclause (4) is suspended between 2.00 pm and 4.15 pm on Wednesday.

Clearly, there is a link between Sessional Orders and Standing Orders on the point of arranging the business of the House. I read the Sessional Orders in conjunction with their objectives. I interpret Sessional Order 5 to mean that once other matters have been completed or the time has expired, the House will move to Orders of the Day pursuant to Standing Order 127 unless the House has resolved otherwise. There is no doubt the government arranges the Orders of the Day pursuant to Standing Order 127, but this is always subject to the Standing Orders, including Standing Order 128, as has become the practice of the House. An example demonstrating how Standing Orders override Standing Order 127 is Standing Order 153, which relates to disallowance motions when those matters are provided precedence.

Members are aware that this House recently agreed and adopted the eighth report of the Procedure and Privileges Committee. In particular, I refer Members to that part of the report dealing with the listing of disallowance motions on the business program. At paragraph 3.15 the report states -

- 3.15 A practice has developed whereby only those disallowance motions where the Standing Orders require that the question be put (that is, on the 11th sitting day), or are to be discharged that day, are listed as Orders of the Day on the *Business Program*.

This practice is contrary to the requirement of SO 153(a). An adherence to the requirement of SO 153(a) would mean that all disallowance motions, once moved, would be listed on the *Business Program* first under Orders of the Day.

- 3.16 Sessional Order 5 provides, amongst other things, that subject to SO 127, Orders of the Day are to be taken in the order in which they are listed on the *Business Program*. If the Leader of the Government did not wish to deal with disallowance motions listed as Orders of the Day in priority to other Orders of the Day, it would require the Leader to move an 'Order of Business' motion seeking to have these Orders of the Day taken at some other time. This occurs frequently with disallowance motions that are listed on the *Business Program* for debate that day (the 11th day).

The House accepted that Standing Order 153 applied, and now the disallowance motions are listed on the business program. I note the Leader of the House's view as expressed at page 2723 of *Hansard* of Thursday, 7 November 2002 -

... that while, in principle, the Government should control the flow and management of business in the House, it is somehow undemocratic to deny other Members of the House the opportunity, through the proper use of Standing Orders, to have some say on the way in which the business should be prioritised and dealt with.

The government retains the ability to use Standing Order 129 to determine the order of business listed on the business program or any other motion or Order of the Day listed on the notice paper.

In relation to the matters raised by the leader, I respond as follows: first, there is no conflict between Sessional Orders and Standing Orders; secondly, the Sessional Orders and Standing Orders are to be read jointly so as to give effect to the objectives of Sessional Orders and no further; thirdly, any motion under Standing Order 128 must be carried out in conformity with other Standing Orders and read to override Standing Order 127; and the fourth and fifth matters are not applicable. Until the matter has been considered by the Standing Committee on Procedure and Privileges, I will uphold the practice of using Standing Order 128 to allow the House the opportunity to determine the order of its business.

5. Petition

Hon Giz Watson presented a petition, by delivery to the Clerk, [SO 130], from 38 residents of Western Australia requesting the Legislative Council to support a moratorium on the removal of mature trees on public land in urban areas. (Tabled paper 2146).

6. Papers

The following Papers were laid on the Table by -

Parliamentary Secretary representing the Minister for Planning and Infrastructure

Annual Reports -

Albany Port Authority (2005-2006) (Date received 24/10/2006) 2143

Parliamentary Secretary representing the Minister for Housing and Works on behalf of the Parliamentary Secretary representing the Minister for Health

Addendums -

Drug and Alcohol Office 2006 Annual Report Amendment..... 2144

Annual Reports -

Gender Reassignment Board (2005-2006) (Date received 24/10/2006) 2145

7. Western Australian College of Teaching Election Rules 2006 - Disallowance

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

That the *Western Australian College of Teaching Election Rules 2006* published in the *Gazette* on 16 August 2006 and tabled in the Legislative Council on 30 August 2006, under the *Western Australian College of Teaching Act 2004*, be and are hereby disallowed.

8. Leave of Absence - Hon Margaret Rowe

Hon Bruce Donaldson moved, without notice -

That leave of absence be granted to Hon Margaret Rowe for six sitting days due to ill health.

Question - put and passed.

9. Minister for Education and Training - Confidence of the House

Hon Peter Collier moved, without notice -

That pursuant to Standing Order 128, Motion No. 49, *Minister for Education and Training - Confidence of the House*, be made Motion No. 1 for Wednesday, 25 October 2006.

Question - put and passed.

10. Order of Business

Ordered - That Orders of the Day Nos 308, *Land Administration (Land Management) Regulations 2006 - Disallowance*, 316, *Family Court Amendment Rules 2006 - Disallowance* and 317, *Section 9 of the Electricity Networks Access Code Amendments 2006 - Disallowance*, be taken after Order of the Day No. 232, *Local Government (Miscellaneous Provisions) Amendment Bill 2005*. (Leader of the House).

11. Parliamentary Legislation Amendment Bill 2006

The Order of the Day having been read for the consideration of the Committee's report upon this Bill.

The Leader of the House moved, That the report be adopted.

Question - put and passed.

Ordered - That the third reading of the Bill be made an Order of the Day for the next sitting.

12. Criminal Investigation Bill 2005 and Criminal Investigation (Consequential Provisions) Bill 2005

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

The President left the Chair.

In Committee

(Hon Ray Halligan in the Chair)

Criminal Investigation Bill 2005

Clause 88.

Debate resumed.

The Leader of the House moved -

Page 74, line 28 to page 75, line 3 — To delete the lines and insert instead —

“

the officer, without a warrant, may arrest the involved person and, having arrested the person —

- (c) may detain the person for a reasonable time to allow for the application to be made and decided; and
- (d) while the person is so detained, may take reasonable measures to prevent the thing or evidence of it from being disturbed or lost.

”.

Debate ensued.

Amendment - put and passed.

Hon George Cash moved -

Page 75, after line 3 — To insert —

“

- (4) When detaining a protected person under subsection (3), an officer must consider the best interests of the person.

”.

Debate ensued.

Hon Giz Watson moved to amend the amendment by inserting after “When” the following -

“ arresting and ”.

Debate ensued.

Amendment to the amendment - put and passed.

Amendment, as amended, agreed to

Clause, as amended, agreed to.

Clauses 89 to 93 agreed to.

Clause 94.

Debate ensued.

Clause agreed to.

Clause 95 agreed to.

Clause 96.

The Leader of the House moved -

Page 84, line 5 — To delete “a police” and insert instead —

“ an ”.

Debate ensued.

Amendment - put and passed.

The Leader of the House moved -

Page 84, lines 11 to 17 — To delete the lines and insert instead —

“

the officer, without a warrant, may arrest the suspect and, having arrested the suspect —

- (c) may detain the suspect for a reasonable time to allow for the application to be made and decided; and
- (d) while the suspect is so detained, may take reasonable measures to prevent the thing or evidence of it from being disturbed or lost.

”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 97 agreed to.

Clause 98

Hon Giz Watson moved -

Page 85, line 24 — To delete “senior officer” and insert instead —

“ magistrate ”.

Page 86, line 11 — To delete “senior officer” and insert instead —

“ magistrate ”.

Page 86, line 13 — To delete “senior officer” and insert instead —

“ magistrate ”.

Debate ensued.

Amendments - put and negatived.

The Leader of the House moved -

Page 86, line 20 — To delete “a police” and insert instead —

“ an ”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 99 agreed to.

Clause 100.

Debate ensued.

Clause agreed to.

Clause 101.

Debate ensued.

Clause agreed to.

Clause 102 agreed to.

Clause 103.

The Leader of the House moved -

Page 93, before line 1 — To insert before “Dentist” in the second column of Item 8 of the Table —

“ Doctor, ”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 104 agreed to.

Clause 105.

The Leader of the House moved -

Page 95, line 13 — To delete “a police” and insert instead —

“ an ”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 106 to 110 agreed to.

Clause 111.

Debate ensued.

Clause agreed to.

Clause 112.

Debate ensued.

13. Questions Without Notice

Questions without notice were taken.

The Leader of the House representing the Premier tabled documents from the Ministry of the Premier and Cabinet to Ross Ainsworth MLA - Electorate Information Management System, in response to a question without notice asked by Hon Norman Moore. (Tabled paper 2147).

The Parliamentary Secretary representing the Minister for Housing and Works on behalf of the Parliamentary Secretary representing the Minister for Health tabled, and by leave incorporated into Hansard, an answer in relation to the employment details for certain employees and former employees of the Department of Health, in response to a question without notice asked by Hon Donna Faragher. (Tabled paper 2148).

The Minister for Education and Training in accordance with Standing Order No 138(d), advised that an answer to question on notice No. 4179 asked by Hon Donna Faragher will be provided in due course.

The Minister for Local Government and Regional Development tabled a Western Australian Local Government Association Electoral Reform Survey, in response to a question without notice asked by Hon Murray Criddle. (Tabled paper 2149).

14. Criminal Investigation Bill 2005 and Criminal Investigation (Consequential Provisions) Bill 2005

The President left the Chair.

In Committee

(Hon Louise Pratt in the Chair)

Criminal Investigation Bill 2005

Clause 112.

Debate resumed.

The Leader of the House moved -

Page 98, after line 21 — To insert —

“

- (4) Subject to section 151, any forensic information obtained under Part 8 or 9 in relation to the investigation of the death of a person, or under Part 9 from a deceased person, must not be destroyed except with the approval of the Coroner.

Penalty: a fine of \$12 000 or imprisonment for 12 months.

”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 113 to 120 agreed to.

Clause 121.

The Leader of the House moved -

Page 105, lines 17 and 18 — To delete “or, if the accused person is or was committed to the District Court, the District Court,” and insert instead —

“ District Court, Magistrates Court or Children’s Court ”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 122 to 126 agreed to.

Clause 127.

Hon Giz Watson moved -

Page 108, line 10 — To delete the line.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 128 to 130 agreed to.

Clause 131.

The Leader of the House moved -

Page 110, line 13 — To delete “police”.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 132 to 139 agreed to.

Clause 140.

The Leader of the House moved -

Page 122, line 19 — To delete “police”.

Page 123, line 1 — To delete “a police” and insert instead —

“ an ”.

Amendments - put and passed.

Clause, as amended, agreed to.

Clause 141.

Debate ensued.

Clause agreed to.

Clauses 142 to 152 agreed to.

Clause 153.

Debate ensued.

Clause agreed to.

Clauses 154 and 155 agreed to.

Clause 156.

Debate ensued.

Clause agreed to.

New Clause 10

The Leader of the House moved -

Page 8, after line 29 — To insert the following new clause —

“

10. Informing people who do not understand English

If under this Act an officer is required to inform a person about any matter and the person is for any reason unable to understand or communicate in spoken English sufficiently, the officer must, if it is practicable to do so in the circumstances, use an interpreter or other qualified person or other means to inform the person about the matter.

”.

Debate ensued.

New Clause - put and passed.

New Clause 113

The Leader of the House moved -

Page 98, after line 21 — To insert the following new clause —

“

113. Publication of photographs restricted

(1) In this section —

“publish” a photograph, includes to supply it to another person.

(2) A person must not publish a photograph taken under Part 8 or 9 of a person or of any part of a person.

Penalty: a fine of \$12 000 or imprisonment for 12 months.

(3) It is a defence to a charge of an offence under subsection (2) to prove —

(a) the accused person published the photograph for a purpose reasonably connected with investigating or prosecuting an offence; and

(b) the accused person —

(i) published the photograph in a way that made identification of the photographed person unlikely; and

(ii) did not also publish the identity of the person photographed.

”.

Debate ensued.

New Clause - put and passed.

Long Title

The Leader of the House moved -

Page 1 — To insert after “**investigation**” —

“ **and prevention** ”

Amendment - put and passed.

Long Title, as amended, agreed to.

Criminal Investigation (Consequential Provisions) Bill 2005

Clause 1.

Debate ensued.

Clause agreed to.

Clauses 2 and 3 agreed to.

Clause 4.

The Leader of the House moved -

Page 3, after line 16 — To insert —

“ or who arrests a person under a warrant. ”.

Amendment - put and passed.

The Leader of the House moved -

Page 3, line 25 — To insert after “charged,” —

“ or arrested under a warrant, as the case may be, ”.

Debate ensued.

Amendment - put and passed.

The Leader of the House moved -

Page 5, line 6 — To delete “6(6)” and insert instead —

“ 6(9) ”.

Amendment - put and passed.

Debate ensued.

Clause, as amended, agreed to.

Clauses 5 to 12 agreed to.

Clause 13.

The Leader of the House moved -

Page 10, line 10 — To delete “deleting” and insert instead —

“ inserting ”.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 14 to 35 agreed to.

Clause 36.

The Leader of the House moved -

Page 25, lines 21 to 24 — To delete the lines.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 37 to 40 agreed to.

Clause 41.

The Leader of the House moved -

Page 27, line 10 to page 28, line 6 — To delete the lines and insert instead —

“

- (4) A magistrate to whom an application is made under section 28 for an arrest warrant for an accused for a charge of an indictable offence must not issue the warrant unless satisfied —
 - (a) that the prosecution notice containing the charge complies with section 23; and
 - (b) that there are reasonable grounds to suspect the accused committed the offence; and
 - (c) that —
 - (i) there are reasonable grounds to suspect that, if a summons were issued in relation to the prosecution notice, the accused would avoid service of the summons or would not obey the summons; or
 - (ii) the issue of the warrant is justified under subsection (5).

- (4a) A magistrate to whom an application is made under section 28 for an arrest warrant for an accused for a charge of a simple offence must not issue the warrant unless satisfied —
- (a) that the prosecution notice containing the charge complies with section 23; and
 - (b) that there are reasonable grounds to suspect the accused committed the offence; and
 - (c) that —
 - (i) there are reasonable grounds to suspect that if a court hearing notice were issued in relation to the prosecution notice, the accused would avoid service of the court hearing notice; or
 - (ii) the presence of the accused when the prosecution notice is dealt with is likely to be necessary for any reason or for sentencing purposes; or
 - (iii) the issue of the warrant is justified under subsection (5).

”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 42 to 72 agreed to.

New Clause 11.

The Leader of the House moved -

Page 8, after line 19 — To insert the following new clause —

“

11. Section 184 amended

- (1) Section 184(3) is repealed and the following subsections are inserted instead —

“

- (3) For the purposes of the *Criminal Investigation Act 2005* —
- (a) the office of authorised officer is prescribed to be a public officer; and
 - (b) a holder of that office may exercise all of the powers of a public officer in that Act; and
 - (c) the Commissioner is prescribed to be a senior officer in relation to the authorised officer for the purposes of sections 44, 47, 97 and 132 of that Act.
- (3a) In addition to the powers conferred by subsection (3), an authorised officer may exercise the powers of a police officer in section 40 of the *Criminal Investigation Act 2005*.
- (3b) For the purposes of the *Criminal Investigation (Identifying People) Act 2002* —
- (a) the office of authorised officer is prescribed to be a public officer; and

- (b) a holder of that office may exercise all of the powers of a public officer in that Act; and
 - (c) the Commissioner is prescribed to be a senior officer in relation to the authorised officer.
- (3c) An authorised officer has and may perform all of the functions that a police officer has and may perform under any law of the State, other than the Acts referred to in subsections (3) to (3b).
- (2) Section 184(4) is amended by deleting “subsection (3)” and inserting instead —
- “ subsections (3) to (3c) ”.

”.

Debate ensued.

New Clause agreed to.

Schedule 1.

Hon George Cash moved -

Page 44, after line 1 - To insert the following new clause —

“

6. *Guardianship and Administration Act 1990*

s. 97(1)	<p>Delete “Advocate are — ” and insert instead —</p> <p>“ Advocate are as follows — ”.</p> <p>Delete “and” after paragraph (g).</p> <p>Delete the full stop after paragraph (h) and insert instead a semicolon.</p> <p>After paragraph (h) insert the following paragraph —</p> <p>“</p> <p style="padding-left: 40px;">(i) any other function conferred on the Public Advocate by a written law.</p> <p>”.</p>
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”.

Debate ensued.

New clause - put and passed.

Schedule, as amended, agreed to.

Title agreed to.

The Acting President resumed the Chair.

Bills reported with amendments.

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

15. Prisons and Sentencing Legislation Amendment Bill 2006

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

Debate resumed.

Hon Murray Criddle sought leave of the House to continue his remarks at the next sitting.

Leave granted.

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

16. Financial Management Bill 2006, Financial Legislation Amendment and Repeal Bill 2006 and Auditor General Bill 2006 - Discharge and Referral to the Standing Committee on Estimates and Financial Operations

The Leader of the House moved, without notice -

That Orders of the Day Nos 307. *Financial Management Bill 2005*; 306. *Financial Legislation Amendment and Repeal Bill 2006*; and 314 *Auditor General Bill 2006* be discharged and referred to the Standing Committee on Estimates and Financial Operations for consideration and report not later than 21 November 2006.

Debate ensued.

Question - put and passed.

17. Members' Statements

Members' statements were taken.

18. Adjournment

The House adjourned at 10.10pm until Wednesday, 25 October 2006 at 2.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Vincent Catania, Hon Sue Ellery and Hon Graham Giffard.

Member granted leave: Hon Margaret Rowe.

MIA BETJEMAN
Clerk of the Legislative Council

HON NICK GRIFFITHS
President of the Legislative Council