

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 124

THURSDAY, 11 NOVEMBER 2010

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. Papers

The following Papers were laid on the Table by -

Minister for Energy on behalf of the Minister for Child Protection

Annual Reports -

Architects Board (2009-2010) (Date received 10/11/2010)..... 2804

Parliamentary Secretary representing the Minister for Regional Development

Reports -

Landcorp - Statement of Corporate Intent (2010-2011)..... 2805

3. Standing Committee on Uniform Legislation and Statutes Review - Fifty-Fifth Report - Trade Measurement Legislation (Amendment and Expiry) Bill 2010

Hon Adele Farina presented the Fifty-Fifth Report of the Standing Committee on Uniform Legislation and Statutes Review in relation to the *Trade Measurement Legislation (Amendment and Expiry) Bill 2010*. (Tabled paper 2806).

Hon Adele Farina moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

4. City of Rockingham Dogs Amendment Local Law 2010 - Disallowance

Hon Robin Chapple: To move on the next day of sitting -

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the *City of Rockingham Dogs Amendment Local Law 2010* published in the *Gazette* on 10 September 2010 and tabled in the Legislative Council on 14 September 2010 under the *Local Government Act 1995*, be and is hereby disallowed.

5. Fish Resources Management Amendment Regulations (No. 7) 2010 - Disallowance

Hon Robin Chapple: To move on the next day of sitting -

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the *Fish Resources Management Amendment Regulations (No. 7) 2010* published in the *Gazette* on 10 September 2010 and tabled in the Legislative Council on 14 September 2010 under the *Fish Resources Management Act 1994*, be and are hereby disallowed.

6. Statement by President - Remembrance Day

The President made the following Statement -

I remind Members that, today being Remembrance Day, we will observe one minute's silence in the Chamber at 11.00 am.

7. President's Ruling - Mutual Recognition (Western Australia) Bill 2010

The President ruled as follows -

Further to my ruling of yesterday evening and the request for clarification sought by the Leader of the Opposition, I provide the following advice to the House. The Commonwealth *Mutual Recognition Act 1992*, as proposed to be continued to be adopted by the *Mutual Recognition (Western Australia) Bill 2010*, is in essentially the same terms as it was in 2001 when adopted by the *Mutual Recognition (Western Australia) Act 2001*. As noted in the Minister's second reading speech, since 2001 there has been only one amendment to the Commonwealth *Mutual Recognition Act 1992*, being the addition of a South Australian Act to the list of exemptions to the Commonwealth Act set out in Schedule 2 of the Commonwealth Act. I do not consider this to be sufficiently significant as to constitute an amendment of the legislative scheme as it was in 2001.

Specifically, the details of that amendment are as follows. Part 2 of the Commonwealth *Mutual Recognition Act 1992* deals with trade in goods. Section 14 of that Act provides that Part 2 does not affect the operation of laws described in Schedule 2 of the Act. Amendments to Schedule 2 of the Commonwealth Act occur by way of Commonwealth regulations. An amendment to Schedule 2, accordingly, occurs by way of what is commonly referred to as a Henry VIII clause. This year the Commonwealth *Mutual Recognition Act 1992* was amended by the *Mutual Recognition Act 1992 Amendment Regulations 2010 (No. 1)*, which inserted the following South Australian legislation into the list of exemptions in Schedule 2: the *Summary Offences Act 1953* of South Australia, Section 9B. That provision relates to the sale of drug paraphernalia in South Australia.

The inclusion of this South Australian law in Schedule 2 of the Commonwealth Act has already taken place and is therefore currently part of the Commonwealth Act as adopted in Western Australia by the *Mutual Recognition (Western Australia) Act 2001*. This past amendment to the Commonwealth Act has no apparent implications for Western Australia or for the uniform mutual recognition scheme generally. I therefore do not consider this amendment to be of sufficient substance to alter the nature of the bill as merely facilitating the continuation of an existing uniform scheme that has previously been given legislative effect.

With respect to the possible inter-relationship between the Australian mutual recognition scheme and the Trans-Tasman mutual recognition scheme, it is noted that both were the subject of a Productivity Commission review over 2008 and 2009. The Productivity Commission has recommended legislative changes. The recommendations of the Productivity Commission have been discussed at government level but no further intergovernmental agreement has been entered into with respect to the existing mutual recognition scheme. It is therefore unknown at this time whether any change will be made to the mutual recognition scheme. However, if any substantial change is made to the scheme in the future, the Parliament will have the opportunity to consider any such changes made by the

Commonwealth to the main body of the adopted Commonwealth Act, as any such change will require amendment of the Western Australian adopting act.

Accordingly, this bill is not a bill giving effect to a uniform scheme but is merely a legislative mechanism to continue an existing uniform scheme in the same form. I reiterate that this bill is not a bill subject to Standing Order 230A.

8. Water Services Licensing (Water Conservation Target) Amendment Bill 2008

Non-Government Business No. 1 having been called, debate resumed on the second reading of this Bill.

Interruption pursuant to Temporary Orders.

9. Order of Business

Ordered - That Orders of the Day Nos 1, *Shire of Roebourne Parking and Parking Facilities Local Law 2010 - Disallowance*, 2, *Western Australian Meat Industry Authority Amendment Regulations (No. 2) 2010 - Disallowance*, 3, *Occupational Safety and Health Amendment Regulations (No. 5) 2010 - Disallowance*, 4, *Shire of Koorda Cemeteries Amendment Local Law 2010 - Disallowance*, and 5, *Fish Resources Management Amendment Regulations (No. 6) 2010 - Disallowance*, be taken after Order of the Day No. 11, *Criminal Investigation Amendment Bill 2009*. (Leader of the House).

10. Prohibited Behaviour Orders Bill 2010

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 Matt Benson-Lidholm in the Chair)

Clause 1.

Debate resumed.

Want of Quorum

There not being a quorum present, the Chairman gave instructions for the ringing of the Bells.

A quorum being formed, the debate continued.

The Parliamentary Secretary representing the Attorney General, by leave, tabled a report prepared by the University of Western Australia Crime Research Centre entitled *Pathways Through Justice: A Statistical Analysis of Offender Contact with the WA Juvenile Justice System (31 July 2004)*. (Tabled paper 2807).

Debate resumed.

The Parliamentary Secretary representing the Attorney General, by leave, tabled a previous answer to question on notice No. 2663 asked by Hon Giz Watson relating to research supporting the effectiveness of the publication of offender identities as a crime reduction mechanism, in relation to the *Prohibited Behaviour Orders Bill 2010*. (Tabled paper 2808).

Debate resumed.

Point of Order

Hon Adele Farina raised the following Point of Order -

I would like to seek a ruling about whether the *Prohibited Behaviour Orders Bill 2010* conforms with the long title — An Act to enable courts to make orders that constrain offenders who have a history of anti-social behaviour and for related purposes.

Page 535 of the twenty-third edition of Erskine May states that the long title sets out the purpose of the bill and that it should not refer to significant purposes not covered by the provisions of the printed bill. I have consulted the dictionary for a definition of “history”,

which the Oxford Dictionary defines as a continuous, chronological record of important or public events; the total accumulation of public events, especially relating to human affairs or to the accumulation of developments connected with a particular nation, person, thing et cetera. The Oxford Dictionary online also refers to —

the whole series of past events connected with a particular person or thing.

And, again —

a continuous, typically chronological, record of important or public events or of a particular trend or institution.

It cites as an example “a history of the labour movement”. The Cambridge Advanced Learner’s Dictionary online defines history as —

something that has been done or experienced by a particular person or thing repeatedly over a long period.

We have heard in quite some detail through the discussion so far that clause 8 of the bill does not require antisocial behaviour to have been done repeatedly or over a long period. I therefore question whether the bill conforms with the long title of the bill in that the requirement of a history of something that is done repeatedly over a long period does not actually conform with the bill as printed. I seek your ruling on whether the bill conforms with the long title.

Chairman’s Ruling

The Chairman ruled as follows -

The question has been raised whether the bill conforms with the long title. At this stage, the only argument is whether the bill is entirely outside the scope of the long title — entirely outside the scope. I do not believe this to be the case. However, if Members have points about individual clauses, they should raise those points when dealing with those particular clauses.

Debate resumed.

Question - put.

The Committee divided.

Ayes (16)

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

Hon Alyssa Hayden
 Hon Col Holt
 Hon Robyn McSweeney
 Hon Michael Mischin
 Hon Norman Moore
 Hon Helen Morton
 Hon Simon O’Brien
 Hon Ken Baston (*Teller*)

Noes (11)

Hon Matt Benson-Lidholm
 Hon Helen Bullock
 Hon Robin Chapple
 Hon Kate Doust
 Hon Sue Ellery
 Hon Adele Farina

Hon Lynn MacLaren
 Hon Ljiljanna Ravlich
 Hon Ken Travers
 Hon Alison Xamon
 Hon Linda Savage (*Teller*)

Question thus passed.

Clause agreed to.

Clause 2.

Debate ensued.

Clause agreed to.

Clause 3.

Hon Kate Doust on behalf of Hon Sally Talbot moved -

Page 2, line 14 — To delete “or is likely to cause”.

Debate ensued.

Amendment - put and negatived.

The Parliamentary Secretary representing the Attorney General moved -

Page 3, lines 16 and 17 — To delete “Supreme Court or the District Court” and insert —

Supreme Court, the District Court or the Children’s Court exercising jurisdiction under *Children’s Court of Western Australia Act 1988* section 19B(4)

Amendment - put and passed.

The Parliamentary Secretary representing the Attorney General moved -

Page 3, lines 22 to 25 — To delete the lines and insert —

jurisdiction — the person referred to in the *Criminal Procedure Act 2004* section 20(3) who commenced the prosecution or another such person;

Debate ensued.

Amendment - put and passed.

Hon Alison Xamon on behalf of Hon Giz Watson moved -

Page 4, lines 3 and 4 — To delete the lines.

Debate ensued.

11. Questions Without Notice

Questions without notice were taken.

The Minister for Energy representing the Minister for Police tabled, and by leave incorporated into Hansard, documents in relation to the identification of persons of interest undertaken by police working with Redress WA applicants, in response to a question without notice asked by Hon Sue Ellery. (Tabled paper 2809).

The Parliamentary Secretary representing the Minister for Mental Health tabled documents in relation to a correction to a response to question on notice No. 2795 asked by Hon Adele Farina. (Tabled paper 2810).

The Parliamentary Secretary representing the Attorney General tabled a document in relation to women in management, indigenous Australians, people with disabilities and youth employed in agencies within the Attorney General’s portfolios, in response to question on notice No. 2837 asked by Hon Sally Talbot. (Tabled paper 2813).

The Parliamentary Secretary representing the Attorney General on behalf of the Parliamentary Secretary representing the Minister for Regional Development tabled documents in relation to the responsibilities of organisational units dealing with regional matters and Royalties for Regions within the Department of Regional Development, in response to question on notice No. 2793 asked by Hon Adele Farina. (Tabled paper 2812).

The Parliamentary Secretary representing the Attorney General on behalf of the Parliamentary Secretary representing the Minister for Regional Development tabled documents in relation to women in management, indigenous Australians, people with disabilities and youth employed in agencies within the Department of Regional Development, in response to question on notice No. 2823 asked by Hon Sally Talbot. (Tabled paper 2814).

The Minister for Transport on behalf of the Minister for Child Protection tabled a document in relation to the total funded full time equivalent allocation of employees by directorate and district for the Department of Child Protection, in response to question on notice No. 2853 asked by Hon Sue Ellery. (Tabled paper 2811).

12. Prohibited Behaviour Orders Bill 2010

The President left the Chair.

In Committee

(Hon Matt Benson-Lidholm in the Chair)

Clause 3.

Debate resumed on the amendment of Hon Alison Xamon on behalf of Hon Giz Watson as follows -

Page 4, lines 3 and 4 — To delete the lines.

Interruption pursuant to Temporary Orders.

The President resumed the Chair.

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

Ordered - That the Committee have leave to sit again.

13. Members' Statements

Statements were taken.

14. Adjournment

The House adjourned at 5.56pm until Tuesday, 16 November 2010 at 3.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Ed Dermer, Hon Jon Ford, Hon Sally Talbot, Hon Max Trenorden and Hon Giz Watson.

NIGEL LAKE
Acting Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council