

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 85

WEDNESDAY, SEPTEMBER 17 2003

1. Meeting of Council

The Council assembled at 10.00am pursuant to order.

The President, Hon John Cowdell, took the Chair and read prayers.

2. Papers

The following Papers were laid on the Table by -

Minister for Housing and Works

Annual Reports -

Treasury Corporation, Western Australian (2002-2003) (Date received 16/09/2003)..... 1439

Parliamentary Secretary to the Minister for Tourism

Annual Reports -

Disability Services Commission (2002-2003) (Date received 16/09/2003)..... 1440

3. Ministerial Statement - Clarification relating to Wireless Hill Reserve A28913

The Parliamentary Secretary representing the Minister for Planning and Infrastructure made a Ministerial Statement with respect to questions without notice 1201 and 1217.

4. Ministerial Statement - Order of Business

The Leader of the House made a Ministerial Statement with respect to Motions and that Motions would be called on in the following order: Motion 22, 21 and 15.

5. Environmental Protection Amendment Bill 2002

The Order of the Day for the further consideration of this Bill, in Committee, having been read.

The President left the Chair.

In Committee

(Hon George Cash in the Chair)

Clause 121.

Debate resumed.

Clause agreed to.

Clause 122.

The Minister for Local Government and Regional Development moved -

Page 154, line 5 - To insert after "regulations" -

" when requested by the Minister to do so or on its own initiative ".

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 123 to 129 agreed to.

Clause 130.

Hon Murray Criddle

Page 158, lines 24 and 25 - To delete the lines.

Debate ensued.

Amendment - put and negatived.

Hon Murray Criddle moved -

Page 158, line 27 - To delete "other".

Amendment - put and negatived.

The Minister for Local Government and Regional Development moved -

Page 159, lines 1 to 9 - To delete the lines and insert instead -

"

(3) Despite section 51 of the *Justices Act 1902* and subsection (2), if a complaint of an offence to which subsection (2) applies specifies the day on which evidence of the alleged offence first came to the attention of a person authorised to institute the prosecution under section 114 the complaint —

- (a) may be made within 24 months after that day; and
- (b) need not contain particulars of the day on which the offence is alleged to have been committed.

".

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

Clause 131.

Debate ensued.

Clause agreed to.

Clause 132 agreed to.

Clause 133.

Debate ensued.

Clause agreed to.

Clauses 134 to 138 agreed to.

New Clause 120.

The Minister for Local Government and Regional Development moved -

Page 151, after line 10 - To insert the following new Clause -

“

120. Wildlife Conservation Act 1950 sections 16 and 23D amended

- (1) The amendments in this section are to the *Wildlife Conservation Act 1950*.

[*Reprinted as at 20 November 1998.

For subsequent amendments see Act No. 6 of 2002.]

- (2) After section 16(1) the following subsection is inserted —

“

- (1a) In the case of fauna other than fauna in respect of which a declaration under section 14(2)(ba) is in operation, subsection (1) does not apply to the taking of fauna incidental to clearing referred to in section 51C(a), (b) or (c) of the *Environmental Protection Act 1986*.

”.

- (3) Section 23D(5) is amended by deleting “subsection (6)” and inserting instead —

“ subsections (6) and (7) ”.

- (4) After section 23D(6) the following subsections are inserted —

“

- (7) In considering an application under subsection (3) the Minister shall have regard to the principles set out in Schedule 5 to the *Environmental Protection Act 1986* and shall not issue a licence if the taking of the protected flora to which the licence would relate would be seriously at variance with those principles.

- (8) Subsection (7) does not apply if the taking of the protected flora to which the licence would relate is authorised by a clearing permit granted and in force under Part V Division 2 of the *Environmental Protection Act 1986*.

”.

”.

New Clause agreed to.

New Clauses 122 and 123.

The Minister for Local Government and Regional Development moved -

Page 153, after the Table - To insert the following new Clauses -

“

122. Section 5 amended

- (1) Section 5(1) is amended by deleting “(1) Subject to subsection (2), whenever” and inserting instead —

“ Whenever ”.

- (2) Section 5(2) and (3) are repealed.

123. Section 12 amended

- (1) Section 12(2) is repealed.
- (2) Section 12(3) is amended by deleting “that interest exists.” and inserting instead —
“ the Authority member has that interest. ”.
- (3) Section 12(4) is amended by deleting “and the Authority member may take part in the consideration or discussion of the matter, but shall not vote thereon”.
- (4) After section 12(4) the following subsection is inserted —
“
(5) If an Authority member discloses an interest in a matter under subsection (1) or is determined under subsection (3) to have an interest in a matter, the Authority member shall not —
(a) take part, as an Authority member, in the consideration or discussion of the matter; or
(b) vote on the matter.
”.

New Clause agreed to.

New Clauses 122 and 123.

Hon Christine Sharp moved -

Page 153, after the Table - To insert the following new Clauses -

“

122. Section 120A inserted

After section 120 the following section is inserted —

“

120A. Supply and ownership of environmental data or information

- (1) Subject to sections 39(3), 39(4) and 40(5), any environmental data or information submitted to the Authority, the Department or the CEO in relation to the requirements of this Act becomes the property of the Crown at the time it is so submitted.
- (2) The data or information referred to in subsection (1) shall be supplied to the Authority, the Department or the CEO in the prescribed form.
- (3) The data or information referred to in subsection (1) shall be collected and compiled by the proponent in the prescribed manner.

”.

123. Section 48H amended

After section 48H(2)(a) the following paragraph is inserted —

“

(b) is to advertise that non-compliance in the prescribed manner; and

”
.”

The Chairman of Committees left the Chair at 11.15am

The Chairman of Committees resumed the Chair at 11.28am

Chairman's Ruling

The Chairman ruled as follows -

Members, we were dealing with new clauses 122 and 123 as moved by Hon Christine Sharp. I indicated that I believed there was a difficulty with these clauses in that they did not comply with the scope of the Bill. I have had an opportunity to consider the principal Act. Proposed new clause 122 is clearly outside the scope of the Bill. It does not relate to the content of the legislation as agreed to in the second reading; it introduces matter inconsistent with the Bill and attempts to transfer intellectual property rights, which is not contemplated in the scope of the Bill. Therefore, I rule proposed new clause 122 out of order. However, proposed new clause 123 is in order. It has also been moved by Hon Christine Sharp, and if she wants to make any other comments, now is the opportunity to do so. The question before the Chair is that proposed new clause 123 as moved by Hon Christine Sharp be agreed to.

Debate resumed.

New Clause 123 - put and negatived.

New Clause 122.

The Chairman noted that Hon Murray Criddle was to move -

Page 153, after the Table - To insert the following new Clause -

“

122. Recognition of property right and compensation

If, under this Act, an accepted land use activity is prevented by a State Government agency in order to deliver a public good or service, and particularly if the State is subsequently to derive revenue from that good or service, then the landholder should be eligible for compensation.

”

Chairman's Ruling

The Chairman ruled as follows -

In its current format, new clause 122 as proposed to be moved by Hon Murray Criddle is outside the scope of the Bill. Also, the Bill itself does not deal with compensation issues. The principal reason it is out of order is that it conflicts with section 46 of the Constitution Acts Amendment Act. Therefore, it is not able to be moved.

New Clause 126.

The Minister for Local Government and Regional Development moved -

Page 155, after line 12 - To insert the following new Clause -

“

126. Section 99A amended

Section 99A(1)(b) is deleted.

”.

New Clause agreed to.

New Clause 133.

Hon Murray Criddle moved -

Page 161, after line 10 - To insert the following new Clause -

“

133. Section 122AA inserted

After section 122A the following section is inserted —

“

122AA. Ministerial Guidelines

- (1) The Minister will by notice published in the *Gazette* make, amend, or revoke guidelines relating to the manner in which the CEO is to perform the CEO's functions under this Act.
- (2) The CEO is to have regard to the guidelines in the exercise of his or her functions under this Act.

”.

”.

Debate ensued.

Amendment - put and negatived.

New Clause 139.

The Chairman noted that Hon Murray Criddle was to move -

Page 165, after line 12 - To insert the following new Clause -

“

139. Schedule 1 — Penalties repealed

Schedule 1 — Penalties is repealed.

”.

Chairman's Ruling

The Chairman ruled as follows -

New clause 139 in the name of Hon Murray Criddle will repeal penalties in schedule 1 of the Bill. The Chamber has, in previous sessions of this Committee, agreed to clauses 66, 85, 88 and 155. Those clauses inserted penalties into the schedule. The proposed amendment is inconsistent with the earlier decisions of the Committee. I note that the Bill has created a regime that imposes penalties that are to be contained in the schedule. It would be inconsistent with decisions already made by the Committee to allow an amendment that would repeal the penalties. Therefore, it is not in order for Hon Murray Criddle to move that amendment.

Schedule 1 agreed to.

Title.

Debate ensued.

Chairman's Ruling

The Chairman ruled as follows -

Hon Bill Stretch has raised the proposition of a preamble. However, inherent in what was said is that I believe he is aware that the preamble would have required an instruction to the Committee. I assume that is why he said that he was unable to move it at this stage. The other point I make is that any preamble would need to be consistent with the policy of the Bill. If the words Hon Bill Stretch read were to be further considered, some ruling would be needed. I suggest that at face value they are inconsistent with the Bill. However, Hon Bill Stretch has made his point, and he is not in a position to move that preamble.

Title agreed to.

The Deputy 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.

6. Cannabis Control Bill 2003

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

The Parliamentary Secretary representing the Minister for Health moved, That the Bill be now read a third time.

The President having reported that the Deputy 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.

Debate ensued.

Question - put.

The House divided.

Ayes (13)

Hon Kim Chance
Hon Robin Chapple
Hon Kate Doust
Hon Sue Ellery
Hon Jon Ford
Hon Dee Margetts
Hon Louise Pratt

Hon Ljiljanna Ravlich
Hon Jim Scott
Hon Christine Sharp
Hon Tom Stephens
Hon Ken Travers
Hon Ed Dermer (*Teller*)

Noes (12)

Hon George Cash
Hon Murray Criddle
Hon Paddy Embry
Hon John Fischer
Hon Peter Foss
Hon Ray Halligan

Hon Frank Hough
Hon Barry House
Hon Simon O'Brien
Hon Bill Stretch
Hon Derrick Tomlinson
Hon Alan Cadby (*Teller*)

Question thus passed.

Bill read a third time and passed.

7. Contaminated Sites Bill 2002

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

Interruption pursuant to Sessional Order.

8. Order of Business

Ordered - That Motions Nos 22, 21 and 15, in that order, be taken forthwith. (Leader of the House).

9. Management of the Fremantle Cemetery to the Metropolitan Cemeteries Board

Motion No. 22 having been called.

Debate resumed on the motion of Hon Simon O'Brien as follows -

- (1) That the Standing Committee on Public Administration and Finance be directed to inquire into and report on the transfer from July 1 2003 of management of the Fremantle Cemetery to the Metropolitan Cemeteries Board, with particular reference to -
 - (a) the history of the Fremantle Cemetery Board;
 - (b) the respective financial positions of each authority at the time of the decision to transfer management of the Fremantle Cemetery;
 - (c) the processes of consultation and decision-making that gave rise to the decision;
 - (d) testing the claims of improved efficiency and elimination of duplication asserted by the Minister for the Local Government in support of the decision to transfer management of the Fremantle Cemetery to the Metropolitan Cemeteries Board, against counter-claims of reduced competition and increased costs; and
 - (e) the impacts upon the community served by the Fremantle Cemetery if the transfer of management proceeds.
- (2) That the Committee do report not later than August 31 2003.

Hon Bruce Donaldson moved -

To delete "August 31 2003" and substitute instead -
" November 30 2003 "

Amendment - put and passed.

Question - That the motion, as amended be agreed to.

Debate ensued.

The Minister for Local Government and Regional Development, by leave, made a statement.

Question - put and passed.

10. Local Government Rating System and Distribution of Funds - Referral to Standing Committee on Public Administration and Finance

Motion No. 21 having been called.

Debate resumed on the introductory remarks of Hon Norman Moore as follows -

That the Standing Committee on Public Administration and Finance be required to inquire into -

- (a) the rationale behind the Local Government rating system that has been applied in the past through State Agreement Acts; and

- (b) the distribution of State funding support to the State's regions (including royalties and the grants to Local Government),

with a view to determining whether changes are required to create greater equity in respect to the distribution and level of State financial support available to regional Western Australia.

Debate ensued.

Interruption pursuant to Sessional Order.

11. Questions Without Notice

Questions without notice were taken.

12. Member's Statements

Statements were taken.

13. Adjournment

Pursuant to Sessional Order 2(2) the House adjourned at 6.09pm until Thursday, September 11 2003 at 10.00am.

Members present during the day's proceedings

Attendance: Present all Members except Hon Graham Giffard, Hon Barbara Scott and Hon Giz Watson.

L B MARQUET

Clerk of the Legislative Council

HON JOHN COWDELL

President of the Legislative Council