

# LEGISLATIVE COUNCIL

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## MINUTES OF PROCEEDINGS

No. 148

THURSDAY, 5 SEPTEMBER 2019

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### 1. Meeting of Council

The Council assembled at 10.00am pursuant to order.

The President, Hon Kate Doust, took the Chair.

Prayers and an Acknowledgement of Country were read.

### 2. Ministerial Statement — Lebeckia Isanti

The Minister for Agriculture and Food made a Ministerial Statement with respect to the launch of a new perennial pasture legume, Lebeckia Isanti.

### 3. Papers

The following Papers were laid on the Table by —

#### Minister for Environment

##### Reviews —

Road Traffic Code 2000 — Review of Penalties 2019 ..... 2997

##### Reports —

Rule Change Panel — Activities Report (2018–19) (August 2019) ..... 2998

### 4. Health Regulations Amendment (Fees and Charges) Regulations 2019 — 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 *Health Regulations Amendment (Fees and Charges) Regulations 2019* published in the *Gazette* on 14 June 2019 and tabled in the Legislative Council on 25 June 2019 under the *Food Act 2008*, be and are hereby disallowed. (Tabled paper 2812).

### 5. Select Committee on Red Tape

Hon Colin Tincknell: To move on the next day of sitting —

- (1) A Select Committee into the effect of “Red Tape” on the Western Australian economy be established.
- (2) The Select Committee is to inquire into the effect of legislation, regulation and red tape on the Western Australian economy, with particular reference to —
  - (a) the impact of red tape on resources, mining, oil and gas, manufacturing, agriculture, tourism, and small business sectors in Western Australia;
  - (b) the economy-wide impact of red tape in terms of compliance costs, forgone economic output, employment, government revenue and business investment;
  - (c) any specific examples of egregious red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions;

- (d) the impact of the Streamline WA program to date, and how this program can be built upon;
  - (e) the effectiveness of previous governments (federal, state and local) and committee's efforts to reduce red tape;
  - (f) the adequacy of current institutional structures for achieving genuine and permanent reductions to red tape;
  - (g) identify alternative institutional arrangements and settings to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation;
  - (h) how different jurisdictions within Australia and internationally have attempted to reduce red tape; and
  - (i) any other relevant matter.
- (3) The Select Committee shall consist of five members.
  - (4) The Select Committee is to report by no later than 12 months after the Committee has been established.

## **6. Budget Repair Issues**

Non-Government Business No. 1 having been called, Hon Colin Tincknell moved, without notice —  
That this House —

- (a) recognises that the \$64 million savings proposed through education cuts delivered by the McGowan Government in the 2018 State Budget were unnecessary and have had highly foreseeable consequences. This is particularly evident in the case of the privatisation of the Landsdale Farm School operation;
- (b) calls on the Government to acknowledge that this was an unnecessary budget measure and that the consequences of the cuts outweighed any benefits realised under budget repair; and
- (c) further calls on the McGowan Government to recognise and acknowledge that public education, health and law & order should be the core business of Government and therefore immune from budget repair measures.

Debate ensued.

*Motion lapsed.*

## **7. Veterans and Families — Government Strategy**

Private Members' Business No. 1 having been called, Hon Pierre Yang moved, without notice —

That this House notes the McGowan Government's Veterans and Families Strategy and encourages the State Government to continue its strong support for Western Australian veterans and their families.

Debate ensued.

*Motion lapsed.*

## **8. Standing Committee on Procedure and Privileges — Report 56 — Interim Report — Judicial Proceedings for Declaration Challenging the Validity of the Order made by Legislative Council on 15 August 2019**

The Order of the Day having been read for consideration in Committee of the Whole House.

The Acting President left the Chair.

**In Committee**

(President in the Chair)

Recommendation 1 is as follows —

That the Legislative Council:

1. notes that:
  - a. the law of parliamentary privilege is intended to protect the ability of the Houses of Parliament, their members and committees, to exercise their authority and perform their duties without undue external interference; and
  - b. an aspect of that law is the protection of the legislature against improper interference by the judiciary and the executive;
2. further notes and affirms that:
  - a. the privileges, immunities and powers of the Legislative Council are secured through s.36 of the *Constitution Act 1889*, the *Parliamentary Privileges Act 1891*, and *Parliamentary Papers Act 1891* and include the freedoms and immunities formulated in Article 9 of the *Bill of Rights 1688*, protecting speech and debates and proceedings in Parliament against being impeached or questioned in any court or place out of Parliament;
  - b. the protections recited in Article 9 are not confined to courts and tribunals, but also encompass the protection of material subject to parliamentary privilege against incursion by the executive and executive agencies including an Investigative Agency; and
  - c. a thing, material and Document or Data subject to parliamentary privilege is immune from compulsory seizure by an Investigative Agency under a notice to produce, warrant, or similar compulsory process;
3. declares for the avoidance of doubt:
  - a. that the right of the Legislative Council to determine claims of parliamentary privilege over material sought to be seized or accessed by an Investigative Agency adheres regardless of the form of the material, the means by which those agencies seek seizure or access, and the procedures followed;
  - b. that the right of the Legislative Council to determine claims of parliamentary privilege over material sought to be seized or accessed by an Investigative Agency applies to Documents or Data of its members, former members and their staff in the possession, custody, or power of the Director General, Department of the Premier and Cabinet or other Government department or agency; and
  - c. that a person served with a Notice by an Investigative Agency for the production of Documents or Data who, without the authority of the Legislative Council or its authorised delegate, purports to determine, either personally or by any agent of the executive, the question of whether a Document or Data is subject to parliamentary privilege:
    - (i) would usurp the right of the Legislative Council to determine that question; and
    - (ii) in the absence of a lawful excuse, may commit a breach of the privileges of the Legislative Council;

4. expects that where there are reasonable grounds to believe that a Notice served by an Investigative Agency on a person may require production of Documents or Data which attract parliamentary privilege, the person upon whom the Notice is served will inform the Clerk of the Legislative Council promptly following receipt of the Notice and before producing any Documents or Data in compliance with the Notice;
5. requires an Investigative Agency to observe the privileges, immunities and powers of the Legislative Council, its committees and members (including as declared in paragraph 3 above) in determining whether and how to exercise its powers, rights or functions in matters which might engage questions of parliamentary privilege; and

For the purpose of this order:

*Document or Data*, includes a document or electronic or other data in the possession, custody or power of a government department that was created or received by a current or former member of the Legislative Council or their staff;

*Investigative Agency*, includes the Western Australian Police Force, the Australian Federal Police, the Corruption and Crime Commission and any like body with a power to issue a Notice to produce or obtain Documents or Data;

*Notice* includes a notice to produce, warrant, or similar compulsory process for the production or obtaining of Documents or Data.

Hon Simon O'Brien moved, without notice —

That Recommendation 1 be adopted and agreed to.

Debate ensued.

The Leader of the House tabled correspondence from the Corruption and Crime Commission to the President of the Legislative Council. (Tabled Paper 2999).

Debate resumed.

The Leader of the House moved, without notice —

To delete the words “be adopted and agreed to” and substitute the following —

be deferred until such time as a member of the Standing Committee on Procedure and Privileges has tabled legal advice that confirms that the recommendation properly encapsulates the position on parliamentary privilege.

Debate ensued.

Amendment — put.

The Committee divided.

#### Ayes (11)

Hon Alanna Clohesy  
Hon Stephen Dawson  
Hon Sue Ellery  
Hon Alannah MacTiernan  
Hon Kyle McGinn  
Hon Martin Pritchard

Hon Samantha Rowe  
Hon Matthew Swinbourn  
Hon Dr Sally Talbot  
Hon Darren West  
Hon Pierre Yang (*Teller*)

**Noes (20)**

Hon Martin Aldridge  
 Hon Jacqui Boydell  
 Hon Robin Chapple  
 Hon Jim Chown  
 Hon Tim Clifford  
 Hon Peter Collier  
 Hon Diane Evers  
 Hon Donna Faragher  
 Hon Nick Goiran  
 Hon Colin Holt

Hon Rick Mazza  
 Hon Michael Mischin  
 Hon Simon O'Brien  
 Hon Robin Scott  
 Hon Tjorn Sibma  
 Hon Charles Smith  
 Hon Aaron Stonehouse  
 Hon Colin Tincknell  
 Hon Alison Xamon  
 Hon Ken Baston (*Teller*)

Amendment thus negatived.

Debate resumed.

Hon Martin Aldridge, by leave, tabled a document detailing the numbers of privileged and non-privileged documents in relation to the Standing Committee on Procedure and Privileges Committee Report No. 56. (Tabled Paper 3000).

Question, That Recommendation 1 be adopted and agreed to — put.

The Committee divided.

**Ayes (19)**

Hon Martin Aldridge  
 Hon Robin Chapple  
 Hon Jim Chown  
 Hon Tim Clifford  
 Hon Peter Collier  
 Hon Diane Evers  
 Hon Donna Faragher  
 Hon Nick Goiran  
 Hon Colin Holt  
 Hon Rick Mazza

Hon Michael Mischin  
 Hon Simon O'Brien  
 Hon Robin Scott  
 Hon Tjorn Sibma  
 Hon Charles Smith  
 Hon Aaron Stonehouse  
 Hon Colin Tincknell  
 Hon Alison Xamon  
 Hon Ken Baston (*Teller*)

**Noes (10)**

Hon Alanna Clohesy  
 Hon Stephen Dawson  
 Hon Sue Ellery  
 Hon Alannah MacTiernan  
 Hon Kyle McGinn

Hon Martin Pritchard  
 Hon Matthew Swinbourn  
 Hon Dr Sally Talbot  
 Hon Darren West  
 Hon Pierre Yang (*Teller*)

Motion thus passed.

Recommendation 2 is as follows —

That the Legislative Council rescind its Order No. 4 made on 15 August 2019.

Hon Simon O'Brien moved, without notice —

That the vote passed by the Legislative Council on 15 August 2019 adopting and agreeing to the order contained in Recommendation 4 in Report No. 55 of the Standing Committee on Procedure and Privileges, *A refusal to Comply with a Summons to Produce Documents* is hereby rescinded.

Debate ensued.

The Leader of the House moved, without notice —  
 To insert after “rescinded” —

and to request the Standing Committee on Procedure and Privileges to discontinue the investigations in relation to the actions of two public servants, being Ms Emily Roper, the Deputy Director General of the Department of the Premier and Cabinet and Mr Darren Foster, the Director General of the Department of the Premier and Cabinet.

*Point of Order*

Hon Nick Goiran raised the following Point of Order —

I seek your clarification, Madam President, as to whether the amendment is within the scope of what is permissible. As I understand it, the matters that have been raised by the Leader of the House have absolutely nothing to do with order 4, neither is it contained in any place in the fifty-sixth report, which is the report before us.

*President’s Ruling*

The President ruled as follows —

Members, I intend to seek some appropriate advice on whether that amendment is within the scope. I would hope that somebody might suggest that we postpone dealing with recommendation 2 at this point and defer until a later stage. We would then move on to deal with recommendation 3.

The Leader of the House moved that further consideration of recommendation 2 be postponed until after consideration of recommendation 4.

Question — put and passed.

Recommendation 3 is as follows —

That the Legislative Council order the Corruption and Crime Commission to produce to the Clerk of the Legislative Council by Wednesday, 11 September 2019 at 4.00pm, the laptop issued to Mr Phillip Edman by the Department of Premier and Cabinet that was seized from Mr Edman pursuant to a search warrant, on 14 August 2019, and all copies of the data contained on it in the Corruption and Crime Commission’s possession.

Hon Simon O’Brien moved, without notice —

That Recommendation 3 be adopted and agreed to.

Debate ensued.

Hon Martin Aldridge, by leave, tabled a media release by the Corruption and Crime Commission regarding allegations of serious misconduct in relation to electoral and other allowances. (Tabled Paper 3001).

Debate resumed.

Hon Simon O’Brien moved, That the President report progress and seek to sit again at a later stage of this day’s sitting.

Question — put and passed.

The Acting President resumed the Chair.

The President reported that the Committee of the Whole House had considered Recommendations 1 to 4 contained in Standing Committee on Procedure and Privileges No. 56 — Interim Report — *Judicial Proceedings for Declaration Challenging the Validity of the Order made by Legislative Council on 15 August 2019*, made progress, and seeks to sit again at a later stage of this day’s sitting.

Ordered — That the Committee of the Whole House sit again at a later stage of this day’s sitting.

## 9. Questions Without Notice

Questions without notice were taken.

The Minister for Environment representing the Minister for Police tabled documents in relation to the authorised sworn strength of Western Australia Police, in response to a question without notice asked by Hon Martin Aldridge. (Tabled Paper 3002).

The Parliamentary Secretary to the Minister for Health tabled documents in relation to the Patient Assisted Travel Scheme availability to permanent residents in a WA Country Health Service Region, in response to a question without notice asked by Hon Ken Baston. (Tabled Paper 3003).

## 10. Standing Committee on Legislation — Report 41 — Ticket Scalping Bill 2018

Hon Dr Sally Talbot presented Report 41 of the Standing Committee on Legislation, *Ticket Scalping Bill 2018*. (Tabled Paper 3004).

## 11. Order of Business

Ordered — That Order of the Day No. 2, *City of Armadale Bush Fire Brigades Local Law 2019 — Disallowance*, be taken forthwith. (Leader of the House).

## 12. City of Armadale Bush Fire Brigades Local Law 2019 — Disallowance — Discharge from Notice Paper

The Order of the Day having been called, Hon Robin Chapple moved, without notice —

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, Order of the Day No. 2, *City of Armadale Bush Fire Brigades Local Law 2019 — Disallowance*, be discharged from the Notice Paper.

Question — put and passed.

## 13. Suspension of Standing Orders

The Leader of the House moved, without notice —

That so much of the Standing Orders be suspended as to enable the House to sit beyond 5.20pm today, and so that Members' Statements are taken at a time to be determined by order of the House.

The motion requiring the concurrence of an absolute majority.

Question — put.

The President having counted the Council, and there being an absolute majority present, and no dissentient voice, declared the motion carried with the concurrence of an absolute majority.

## 14. Standing Committee on Procedure and Privileges — Report 56 — Interim Report — Judicial Proceedings for Declaration Challenging the Validity of the Order made by Legislative Council on 15 August 2019

The Order of the Day having been read for further consideration in Committee of the Whole House (*see item 8 above*).

The Acting President left the Chair.

## In Committee

(President in the Chair)

Recommendation 3 is as follows —

That the Legislative Council order the Corruption and Crime Commission to produce to the Clerk of the Legislative Council by Wednesday, 11 September 2019 at 4.00pm, the laptop issued to Mr Phillip Edman by the Department of Premier and Cabinet that was seized from Mr Edman pursuant to a search warrant, on 14 August 2019, and all copies of the data contained on it in the Corruption and Crime Commission's possession.

Debate resumed on the motion of Hon Simon O'Brien, That Recommendation 3 be adopted and agreed to.

Question — put.

The Committee divided.

**Ayes (19)**

Hon Martin Aldridge  
Hon Jacqui Boydell  
Hon Robin Chapple  
Hon Jim Chown  
Hon Tim Clifford  
Hon Peter Collier  
Hon Diane Evers  
Hon Nick Goiran  
Hon Colin Holt  
Hon Rick Mazza

Hon Michael Mischin  
Hon Simon O'Brien  
Hon Robin Scott  
Hon Tjorn Sibma  
Hon Charles Smith  
Hon Aaron Stonehouse  
Hon Colin Tincknell  
Hon Alison Xamon  
Hon Ken Baston (*Teller*)

**Noes (10)**

Hon Alanna Clohesy  
Hon Stephen Dawson  
Hon Sue Ellery  
Hon Alannah MacTiernan  
Hon Kyle McGinn

Hon Martin Pritchard  
Hon Matthew Swinbourn  
Hon Dr Sally Talbot  
Hon Darren West  
Hon Pierre Yang (*Teller*)

Motion thus passed.

Postponed Recommendation 2 is as follows —

That the Legislative Council rescind its Order No. 4 made on 15 August 2019.

*President's Ruling*

The President ruled as follows —

Members, we return to postponed recommendation 2 which we started to deal with before question time and there was more than one point of order. I said that I would provide a ruling on the amendment that had been moved by the Leader of the House.

Hon Nick Goiran raised a point of order in relation to the proposed amendment moved by the Leader of the House to amend the following motion of Hon Simon O'Brien —

That in relation to recommendation 2 —

That the vote passed by the Legislative Council on 15 August 2019 adopting and agreeing to the order contained in recommendation 4 in the fifty-fifth report of the Standing Committee on Procedure and Privileges, "A Refusal to Comply with a Summons to Produce Documents", is hereby rescinded.

The Leader of the House has moved to insert after the word "rescinded" —

and to request the Standing Committee on Procedure and Privileges to discontinue the investigations in relation to the actions of two public servants, being Ms Emily Roper, the deputy director general of the Department of the Premier and Cabinet, and Mr Darren Foster, the director general of the Department of the Premier and Cabinet.

The point of order is on the basis that the proposed amendment is beyond the scope of the original motion. The motion is to rescind a vote of the Legislative Council pursuant to Standing Order 84. Standing Order 84 requires certain technical requirements to be complied with before a rescission may occur, including a notice requirement and a requirement for an absolute majority, hence Hon Simon O'Brien obtained a suspension of Standing Orders at yesterday's sitting in order to dispense with the notice requirement. The requirement for an absolute majority remains. As a result, it would not be possible to add the rescission of any additional votes, however related to the vote that is the subject of the motion, to the motion by amendment without also suspending Standing Orders. The proposed amendment is a rescission by another



means. The amendment does not comply with the formal requirements of Standing Order 84 and is out of order for that reason.

The Leader of the House argues that the amendment is not a further rescission of two votes of the Legislative Council on 15 August 2019, but simply a request to the Standing Committee on Procedure and Privileges. The amendment, if carried, would have the effect of a direction from the Legislative Council for the committee not to comply with two orders of the Legislative Council made on 15 August 2019. The amendment is therefore inconsistent with these two orders and is out of order.

Apart from noncompliance with Standing Order 84 and inconsistency with previous orders of the Legislative Council, I also agree with the point of order that the amendment is beyond the scope of the motion. The two matters of privilege currently referred to the Procedure and Privileges Committee for investigation relate to matters that have happened in the past, whilst the motion for rescission relates to an order concerning matters that may happen in the future. They relate to an entirely different subject matter and, for that reason, the proposed amendment is also out of order.

I rule that the proposed amendment is out of order.

Motion — put and passed.

Recommendation 4 is as follows —

1. That proceedings be commenced and pursued, in the Supreme Court of Western Australia, on behalf of the Legislative Council of Western Australia, challenging the validity of some or all of three notices to produce documents, and one notice to produce information issued by the Corruption and Crime Commission to the Director General, Department of Premier and Cabinet, issued between April and August 2019, and of the conduct of the Commission in issuing those notices;
2. That the President of the Legislative Council of Western Australia be authorised to conduct such proceedings in that capacity on behalf of the Legislative Council of Western Australia and to do all things reasonably necessary for, and incidental to, the commencement and pursuit of those proceedings, including to:
  - a. engage solicitors and counsel to represent the Legislative Council of Western Australia and to act upon their advice with respect to the proceedings in consultation with the Standing Committee on Procedure and Privileges;
  - b. if considered appropriate, engage separate solicitors and other service providers to search and review the records produced to the Commission in response to the above notices;
  - c. maintain the confidentiality and legal professional privilege attaching to communication relating to the proposed proceedings;
  - d. take direction from the Standing Committee on Procedure and Privileges with respect to the conduct of the proceedings and matters related to them;
  - e. report to the Legislative Council of Western Australia, periodically, and when requested, with respect to the proposed proceedings; and
  - f. to consult with the Clerk as the Accountable Authority of the Department of the Legislative Council to permit the authorisation of the expenditure of funds necessary and reasonable with respect to any proceedings.

Hon Simon O'Brien moved, without notice —

That Recommendation 4 be adopted and agreed to.

Question — put.

The Committee divided.

**Ayes (19)**

Hon Martin Aldridge  
Hon Jacqui Boydell  
Hon Robin Chapple  
Hon Jim Chown  
Hon Tim Clifford  
Hon Peter Collier  
Hon Diane Evers  
Hon Nick Goiran  
Hon Colin Holt  
Hon Rick Mazza

Hon Michael Mischin  
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Hon Kyle McGinn

Hon Martin Pritchard  
Hon Matthew Swinbourn  
Hon Dr Sally Talbot  
Hon Darren West  
Hon Pierre Yang (*Teller*)

Motion thus passed.

The Acting President resumed the Chair.

The President reported that the Committee had considered Recommendations 1 to 4 contained in Standing Committee on Procedure and Privileges — Report 56 — Interim Report — *Judicial Proceedings for Declaration Challenging the Validity of the Order made by Legislative Council on 15 August 2019*, and had adopted and agreed to same without amendment.

Hon Simon O'Brien moved, That the report be adopted.

The motion requiring the concurrence of an absolute majority.

Question — put.

The President having counted the Council, and there being an absolute majority present, and no dissentient voice, declared the motion carried with the concurrence of an absolute majority.

Report adopted.

**15. Order of Business**

Ordered — That Members' Statements be taken forthwith. (Leader of the House).

**16. Members' Statements**

Statements were taken.

**17. Adjournment**

The Council adjourned at 6.14pm until Tuesday, 17 September 2019 at 2.00pm.

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

Attendance: Present all Members except Hon Colin de Grussa.

**NIGEL PRATT**  
Clerk of the Legislative Council

**HON KATE DOUST MLC**  
President of the Legislative Council