

WESTERN AUSTRALIA

LEGISLATIVE ASSEMBLY

VOTES AND PROCEEDINGS

No. 62

SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

THURSDAY, 12 JUNE 2003

1. Meeting of Assembly

The Assembly met at 9.00 a.m. pursuant to adjournment.

The Speaker took the Chair.

Prayers were read.

2. Speaker's Ruling - Petition Out of Order

The Speaker ruled that petition No. 207, presented on Wednesday, 11 June 2003 by Mr A.D. Marshall, was out of order, as it had been signed by the member presenting the petition.

3. Petitions

Prostitution - Mr A.J. Dean presented a petition from 131 persons requesting that opposition to legalising prostitution be noted and prostitutes be encouraged to enter rehabilitation programs (P. 208).

Peel Deviation - Mr A.D. Marshall presented a petition from 23 persons requesting that the Peel Deviation be built to alleviate the increased traffic noise from vehicles travelling along sections of the Old Coast Road and, if the completion of the Peel Deviation is delayed, the road be resurfaced with new integrated bitumen to reduce traffic noise (P. 209).

Perth to Mandurah Bus Service - Mr J.P.D. Edwards presented a petition from 22 persons requesting that a late night Perth to Mandurah bus service be implemented immediately (P. 210).

4. Papers

The following papers were presented and ordered to lie upon the Table of the House -

Great Southern TAFE - Annual Report 2002 (1185).

Land Administration, Department of [DOLA] - Submission No. 10/2003 Amendment of "A" Class Reserves 3007, 1811 and 680 in the Shire of Bridgetown-Greenbushes for the purpose of "Recreation" (1186).

South West Regional College of TAFE - Annual Report 2002 (1187).

5. Notice of Motion Lapsed

The Speaker advised that Private Members' Notice of Motion No. 9 had lapsed and, unless the member indicated otherwise, would be removed from the Notice Paper.

6. Brief Ministerial Statements

The following brief Ministerial Statements were made by -

The Minister for Community Development, Women's Interests, Seniors and Youth on amendments to the *Adoption Regulations 1995*.

The Minister for State Development on official travel to Germany, the Netherlands and the United Kingdom from 8 to 20 March 2003.

Paper

The following paper was presented and ordered to lie upon the Table of the House -

By the Minister for State Development -

Official Travel - Report by the Minister for State Development on travel to Germany, the Netherlands and the United Kingdom from 8 to 20 March 2003 (1188).

The Minister for Disability Services on the establishment of access guidelines for State Government agencies, for people with disabilities accessing State Government information, services and facilities.

7. Grievances

The Speaker called for grievances which were then made.

8. Education and Health Standing Committee

Mr M.F. Board advised the Assembly that he, Mr P.W. Andrews and Mr S.R. Hill, accompanied by the Principal Research Officer, will travel to Canada and the United Kingdom from 20 June 2003 to 6 July 2003 to gather evidence for the Committee's inquiry into the role and interaction of health professionals in the Western Australian public health system.

9. Prostitution Control Bill 2003

The Order of the Day for the resumption of the debate upon the second reading of the Bill was read.

Debate resumed.

Debate interrupted by the Chair (Minister for Police and Emergency Services speaking) and adjourned until a later stage of the sitting.

10. Members' Statements

The Acting Speaker called for members' statements which were then made.

11. Questions

Questions without notice were taken.

Questions on notice Nos 1658 to 1660 were asked.

Question on notice No. 1488 was answered.

12. Variation to the Order of Business

Ordered, That consideration of Government Business Order of the Day No. 1 be resumed.

13. Prostitution Control Bill 2003

The Order of the Day for the resumption of the debate upon the second reading of the Bill was read.

Debate resumed.

Question put.

The Assembly divided.

Ayes (23)

Mr P.W. Andrews
Mr J.J.M. Bowler
Mr C.M. Brown
Mr A.J. Carpenter
Mr A.J. Dean
Dr G.I. Gallop
Mr L. Graham
Mrs D.J. Guise

Mr S.R. Hill
Mr J.N. Hyde
Mr J.C. Kobelke
Mr J.A. McGinty
Mr M. McGowan
Ms S.M. McHale
Mrs C.A. Martin
Mr A.P. O’Gorman

Mr J.R. Quigley
Ms J.A. Radisich
Mrs M.H. Roberts
Mr D.A. Templeman
Mr P.B. Watson
Mr M.P. Whitely
Ms M.M. Quirk (*Teller*)

Noes (18)

Mr R.A. Ainsworth
Mr C.J. Barnett
Mr D.F. Barron-Sullivan
Mr M.J. Birney
Mr M.F. Board
Dr E. Constable

Mr J.H.D. Day
Mrs C.L. Edwardes
Mr B.J. Grylls
Ms K. Hodson-Thomas
Mr R.F. Johnson
Mr A.D. Marshall

Mr P.D. Omodei
Mr P.G. Pental
Mr T.K. Waldron
Ms S.E. Walker
Dr J.M. Woollard
Mr J.L. Bradshaw (*Teller*)

Question thus passed.

Bill read a second time.

Ordered, That the consideration in detail of the Bill be made an Order of the Day for the next sitting of the Assembly.

14. Civil Liability Amendment Bill 2003

The Order of the Day for the further consideration in detail of the Bill was read.

Clause 8.

Mr B.J. Grylls moved,

Page 6, lines 23 and 24 – To delete “A person is not liable for harm caused by that person’s fault” and substitute the following –

“ A person is not negligent ”.

Amendment put and negatived.

Mr B.J. Grylls moved,

Page 8, after line 22 – To insert the following –

“

Division 4 — Assumption of Risk

5E. Meaning of “obvious risk”

- (1) For the purposes of this Division, an *obvious risk* to a person who suffers harm is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of that person.
- (2) Obvious risks include risks that are patent or a matter of common knowledge.
- (3) A risk of something occurring can be an obvious risk even though it has a low probability of occurring.
- (4) A risk can be an obvious risk even if the risk (or a condition or circumstance that gives rise to the risk) is not prominent, conspicuous or physically observable.

5F. Injured persons presumed to be aware of obvious risks

- (1) In determining liability for negligence, a person who suffers harm is presumed to have been aware of the risk of harm if it was an obvious risk, unless the person proves on the balance of probabilities that he or she was not aware of the risk.
- (2) For the purposes of this section, a person is aware of a risk if the person is aware of the type or kind of risk, even if the person is not aware of the precise nature, extent or manner of occurrence of the risk.

5G. No proactive duty to warn of obvious risk

- (1) A person (*the defendant*) does not owe a duty of care to another person (*the plaintiff*) to warn of an obvious risk to the plaintiff.
- (2) This section does not apply if —
 - (a) the plaintiff has requested advice or information about the risk from the defendant; or
 - (b) the defendant is required by a written law to warn the plaintiff of the risk; or
 - (c) the defendant is a professional and the risk is a risk of the death of or personal injury to the plaintiff from the provision of a professional service by the defendant.
- (3) Subsection (2) does not give rise to a presumption of a duty to warn of a risk in the circumstances referred to in that subsection.

5H. No liability for materialisation of inherent risk

- (1) A person is not liable in negligence for harm suffered by another person as a result of the materialisation of an inherent risk.

- (2) An *inherent risk* is a risk of something occurring that cannot be avoided by the exercise of reasonable care and skill.
- (3) This section does not operate to exclude liability in connection with a duty to warn of a risk.

”.

Amendment put and negatived.

Mr D.F. Barron-Sullivan moved,

Page 11, line 4 – To insert after “person” the following –

“ who is not a child ”.

Amendment put and negatived.

Mr D.F. Barron-Sullivan moved,

Page 11, after line 14 – To insert the following –

“

- (3) If an incapable person suffers harm, the defendant may rely on a risk warning to a person, who is not an incompetent person, who was apparently in charge of or responsible for the incapable person at the time of the warning.

”.

Amendment put and negatived.

Mr D.F. Barron-Sullivan moved,

Page 11, line 20 – To insert after “(b)” the following –

“ at the time of or after the warning was given and prior to the child suffering harm ”.

Amendment, by leave, withdrawn.

Mr D.F. Barron-Sullivan moved,

Page 12, line 11 – To insert after “in” the following –

“

or is given generally by another person for the benefit of people engaging in the activity in respect of which the risk warning is given

”.

Amendment put and negatived.

The Leader of the House, on behalf of the Parliamentary Secretary to the Premier, moved,

Page 12, line 32 – To delete “incapable” and substitute the following –

“ incompetent ”.

Amendment put and passed.

Mr B.J. Grylls moved, That the debate be adjourned.

Question put.

The Assembly divided.

Ayes (10)

Mr R.A. Ainsworth
Mr D.F. Barron-Sullivan
Mr J.H.D. Day
Mrs C.L. Edwardes

Mr J.P.D. Edwards
Mr B.J. Grylls
Mr R.F. Johnson
Ms S.E. Walker

Dr J.M. Woollard
Mr J.L. Bradshaw (*Teller*)

Noes (24)

Mr P.W. Andrews	Mr J.C. Kobelke	Mr A.P. O’Gorman
Mr J.J.M. Bowler	Mr F.M. Logan	Mr J.R. Quigley
Mr C.M. Brown	Ms A.J. MacTiernan	Ms J.A. Radisich
Mr A.J. Carpenter	Mr J.A. McGinty	Mrs M.H. Roberts
Mr A.J. Dean	Ms S.M. McHale	Mr D.A. Templeman
Dr G.I. Gallop	Mr A.D. McRae	Mr P.B. Watson
Mrs D.J. Guise	Mrs C.A. Martin	Mr M.P. Whitely
Mr J.N. Hyde	Mr M.P. Murray	Ms M.M. Quirk (<i>Teller</i>)

Question thus negatived.

Mr B.J. Grylls moved,

Page 13, lines 13 and 14 – To delete “who has reached 16 years but is”.

Amendment put and negatived.

The Leader of the House, on behalf of the Parliamentary Secretary to the Premier, moved,

Page 13, lines 15 to 17 – To delete the lines.

Amendment put and passed.

Mr D.F. Barron-Sullivan moved,

Page 13, line 20 – To insert after “disability” the following -

“ which is apparent to a reasonable person ”.

Amendment put and negatived.

Mr B.J. Grylls moved,

Page 14, after line 28 – To insert the following –

“

Division 5 — Professional negligence

5L. Standard of care for professionals

- (1) A person practising a profession (a professional) does not incur a liability in negligence arising from the provision of a professional service if it is established that the professional acted in a manner that (at the time the service was provided) was widely accepted in Australia by peer professional opinion as competent professional practice.
- (2) However, peer professional opinion cannot be relied on for the purposes of this section if the court considers that the opinion is irrational.
- (3) The fact that there are differing peer professional opinions widely accepted in Australia concerning a matter does not prevent any one or more (or all) of those opinions being relied on for the purposes of this section.
- (4) Peer professional opinion does not have to be universally accepted to be considered widely accepted.

5M. Division does not apply to duty to warn of risk

This Division does not apply to liability arising in connection with the giving of (or the failure to give) a warning, advice or other information in respect of the risk of death of or injury to a person associated with the provision by a professional of a professional service.

”.

The Leader of the House moved, That the debate be adjourned.

Question put and passed.

15. Adjournment

The Leader of the House moved, That the House do now adjourn.

Question put and passed.

The Assembly adjourned accordingly, at 5.58 p.m. until Tuesday, 17 June 2003 at 2.00 p.m.

Members present during any part of the day's proceedings - All the members except Mr J.B. D’Orazio, Dr J.M. Edwards, Mr M.G. House, Mr W.J. McNee, Mr N.R. Marlborough, Mr B.K. Masters, Mr E.S. Ripper, Mr R.N. Sweetman and Mr M.W. Trenorden.

PETER J. McHUGH
Clerk of the Legislative Assembly

HON. FRED RIEBELING
Speaker of the Legislative Assembly