

# LEGISLATIVE COUNCIL

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## MINUTES OF PROCEEDINGS

No. 50

WEDNESDAY, APRIL 2 2003

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### 1. Meeting of Council

The Council assembled at 10.00 am 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 on behalf of the Leader of the House**

##### *Annual Reports -*

Co-operative Bulk Handling [CBH] (2001-2002) (Date received 01/04/2003)..... 908

##### *Reports -*

Forest Products Commission Statement of Corporate Intent 2002-2003 (Half Yearly Report) (February 2003)..... 909

#### **Minister for Housing and Works**

##### *Leases -*

CALM Lease No. 2038/100 - Part of Reserve No. 27632 - Eyre Bird Observatory -  
Between CALM and the Royal Australasian Ornithologists Union ..... 910

### 3. Standing Committee on Uniform Legislation and General Purposes - Seventh Report - Unclaimed Money (Superannuation and RSA Providers) Bill 2002

Hon Adele Farina presented the Seventh Report of the Standing Committee on Uniform Legislation and General Purposes in relation to the *Unclaimed Money (Superannuation and RSA Providers) Bill 2002*. (Tabled paper 911).

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

Question - put and passed.

### 4. Public Interest Disclosure Bill 2002

The Order of the Day having been read for the consideration, in Committee, of Message No. 51 from the Legislative Assembly.

The President left the Chair.

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**In Committee**

(Hon George Cash in the Chair)

The Message was as follows -

The Legislative Assembly acquaints the Legislative Council that it has considered the amendments made by the Legislative Council in the *Public Interest Disclosure Bill 2002*, has agreed to Amendment Nos 1 to 8 and 10, and has disagreed to Amendment No. 9.

The Minister for Racing and Gaming moved, That the Legislative Council do not insist on its Amendment No. 9.

Debate ensued.

The Hon Peter Foss moved, That progress be reported and leave asked to sit again.

Question - put.

The Committee divided.

**Ayes (19)**

Hon Alan Cadby  
Hon George Cash  
Hon Robin Chapple  
Hon Murray Criddle  
Hon Paddy Embry  
Hon Peter Foss  
Hon Ray Halligan  
Hon Frank Hough  
Hon Barry House  
Hon Robyn McSweeney

Hon Dee Margetts  
Hon Norman Moore  
Hon Simon O'Brien  
Hon Barbara Scott  
Hon Jim Scott  
Hon Christine Sharp  
Hon Derrick Tomlinson  
Hon Giz Watson  
Hon Bruce Donaldson (*Teller*)

**Noes (10)**

Hon Sue Ellery  
Hon Adele Farina  
Hon Jon Ford  
Hon Graham Giffard  
Hon Nick Griffiths

Hon Louise Pratt  
Hon Ljiljanna Ravlich  
Hon Tom Stephens  
Hon Ken Travers  
Hon Ed Dermer (*Teller*)

Question thus passed.

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The President resumed the Chair.

The Chairman reported, That the Committee had considered Message No. 51 from the Legislative Assembly, made progress, and asked leave to sit again.

Ordered - That the Committee have leave to sit again.

**5. Order of Business**

Ordered - That Order of the Day No. 21 be taken forthwith. (Leader of the House).

**6. First Home Owner Grant Amendment Bill 2002**

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

The President left the Chair.

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**In Committee**  
(Hon Jon Ford in the Chair)

Clause 1.

Debate ensued.

Clause agreed to.

Clauses 2 and 3 agreed to.

Clause 4 agreed to.

Clauses 5 to 9 agreed to.

New Clause 4.

The Minister for Racing and Gaming moved -

Page 2, after line 13 - To insert the following new Clause -

“

**4. Section 12 amended**

Section 12(3) is repealed and the following subsection is inserted instead —

“

- (3) An applicant is also ineligible if, before the commencement date of the eligible transaction to which the application relates, the applicant or the applicant's spouse —
- (a) held a relevant interest in residential property in the State or an interest in residential property in another State or a Territory that is a relevant interest under the corresponding law of that State or Territory; and
  - (b) occupied the property as a place of residence.

”

”

Debate ensued.

New Clause - put and passed.

Title agreed to.

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The President resumed the Chair.

Bill reported with amendment.

Leave was granted to proceed forthwith through all remaining stages of the Bill at this day's sitting.

The Minister for Racing and Gaming moved, That the report be adopted.

Question - put and passed.

The Minister for Racing and Gaming 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.

Question - put and passed.

Bill read a third time and passed.

**7. Cognate Debate - Offshore Minerals Bill 2001, Offshore Minerals (Consequential Amendments) Bill 2001 and Offshore Minerals (Registration Fees) Bill 2001**

The Parliamentary Secretary representing the Minister for State Development sought leave of the House to debate Order of the Day No. 18, *Offshore Minerals Bill 2001*, Order of the Day No. 19, *Offshore Minerals (Consequential Amendments) Bill 2001* and Order of the Day No. 20, *Offshore Minerals (Registration Fees) Bill 2001* cognately [SO 228].

Leave granted.

**8. Offshore Minerals Bill 2001, Offshore Minerals (Consequential Amendments) Bill 2001 and Offshore Minerals (Registration Fees) Bill 2001**

The Order of the Day for the adjourned debate on the second reading of these Bills having been read, Debate resumed.

Question - put and passed.

Bills read a second time.

The President left the Chair.

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**In Committee**

(Hon Simon O'Brien in the Chair)

***Offshore Minerals Bill 2001***

*Statement by Deputy Chairman*

The Deputy Chairman made the following Statement -

I draw the Committee's attention to report No 1 of June 2002 of the Standing Committee on Uniform Legislation and General Purposes relating to this Bill and the other two Bills that accompany it, and I make some preliminary comments about Standing Order No 234A. Amendments to the Bill are listed on supplementary notice paper No 35, issue No 1. Report No 1 of the Standing Committee on Uniform Legislation and General Purposes contains recommended amendments to the Bill in both statutory and narrative form. If amendments recommended by a committee are in a narrative form, it is not possible to put the question of adoption under Standing Order No 234A as the total of the committee's recommended amendments are not able to be read into and deemed part of the Bill within the meaning of that standing order. Therefore, debate will proceed in this Committee of the Whole in the usual manner, and we will have regard for the supplementary notice paper.

Clause 1 agreed to.

Clauses 2 to 43 agreed to.

Clause 44.

The Parliamentary Secretary to the Minister for State Development moved -

Page 32, line 28 - To insert after "fishing" -

" , pearling or aquaculture ".

Amendment - put and passed.

The Parliamentary Secretary to the Minister for State Development moved -

Page 33, after line 11 - To insert -

“

(2) In subsection (1)(c) —

“**aquaculture**” and “**fishing**” have the same meanings as they have in the *Fish Resources Management Act 1994*;

“**pearling**” has the same meaning as it has in the *Pearling Act 1990*.

”

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 45 to 443 agreed to.

New Clause 5A.

The Parliamentary Secretary to the Minister for State Development moved -

Page 9, after line 28 - To insert the following new Clause -

“

**5A. Relationship with *Environmental Protection Act 1986***

This Act is to be read and construed subject to the *Environmental Protection Act 1986*, so that if a provision of this Act is inconsistent with a provision of that Act, the provision of this Act is, to the extent of the inconsistency, taken to be inoperative.

”

Debate ensued.

New Clause agreed to.

New Clause 38B.

The Parliamentary Secretary to the Minister for State Development moved -

Page 28, after line 24 - To insert the following new Clause -

“

**38B. Consultation with other Ministers**

Before granting a licence or special purpose consent, the Minister must consult and obtain the recommendations of —

- (a) the Minister for the time being administering the *Environmental Protection Act 1986*; and
- (b) the Minister for the time being administering the *Fish Resources Management Act 1994*; and
- (c) the Minister for the time being administering the *Land Administration Act 1997*; and
- (d) the Minister for the time being administering the *Marine and Harbours Act 1981*; and
- (e) the Minister for the time being administering the *Pearling Act 1990*.

”

Debate ensued.

New Clause agreed to.

New Clause 439.

The Parliamentary Secretary to the Minister for State Development moved -

Page 238, after line 26 - To insert the following new Clause -

“

**439. Minister's approval required for certain transactions under *Land Administration Act 1997***

No Crown land that is in coastal waters is to be leased, transferred in fee simple, or otherwise disposed of, under the *Land Administration Act 1997* without the approval of the Minister.

”.

New Clause agreed to.

Schedule 1 agreed to.

Schedule 2.

The Parliamentary Secretary to the Minister for State Development moved -

Page 252, line 9 - To delete “lease” and insert instead -

“ licence ”

Amendment - put and passed.

The Parliamentary Secretary to the Minister for State Development moved -

Page 253, line 20 - To delete “section” and insert instead -

“ clause ”.

Amendment - put and passed.

The Parliamentary Secretary to the Minister for State Development moved -

Page 253, lines 22 and 23 - To delete “any such order has effect on a day that is earlier than the day of its publication in the *Gazette*” and insert instead -

“

an order published under this clause after the commencement has effect from the commencement

”.

Debate ensued.

Amendment - put and passed.

The Parliamentary Secretary to the Minister for State Development moved -

Page 253, after line 30 - To insert -

“

- (5) The Minister must cause an order under this clause to be laid before each House of Parliament within 6 sitting days of that House after its publication in the *Gazette*.

”.

Amendment - put and passed.

Schedule, as amended, agreed to.

Title agreed to.

***Offshore Minerals (Consequential Amendments) Bill 2001***

Clause 1 agreed to.

Clauses 2 to 16 agreed to.

Title agreed to.

***Offshore Minerals (Registration Fees) Bill 2001***

Clause 1 agreed to.

Clauses 2 to 8 agreed to.

Title agreed to.

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The Deputy President resumed the Chair.

*Offshore Minerals Bill 2001* reported with amendment.

*Offshore Minerals (Consequential Amendments) Bill 2001* and *Offshore Minerals (Registration Fees) Bill 2001* reported without amendments.

Leave was granted to proceed forthwith through all remaining stages of these Bills at this day's sitting.

The Parliamentary Secretary to the Minister for State Development moved, That the report be adopted.

Question - put and passed.

The Parliamentary Secretary to the Minister for State Development moved, That the Bills be now read a third time.

The Deputy President having reported that the Deputy Chairman of Committees had certified that the fair print of the Bills was in accordance with the Bills as agreed to in Committee, and reported.

Question - put and passed.

Bills read a third time and passed.

**9. Nurses Amendment Bill 2002**

The following Message from the Legislative Assembly was reported -

Mr President

Message No. 54

The Legislative Assembly acquaints the Legislative Council that it has agreed to the amendments made by the Legislative Council in the *Nurses Amendment Bill 2002*.

Fred Riebeling

Speaker

Legislative Assembly Chamber

Perth, 1 April 2003

**10. Carbon Rights Bill 2002, Tree Plantation Agreements Bill 2002 and Acts Amendment (Carbon Rights and Tree Plantation Agreements) Bill 2002**

The Order of the Day for the consideration of these Bills, in Committee, having been read,

The Deputy President left the Chair.

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**In Committee**

(Hon Simon O'Brien in the Chair)

***Carbon Rights Bill 2002***

Clause 1.

Debate ensued.

Clause agreed to.

Clauses 2 to 17 agreed to.

Title agreed to.

***Tree Plantation Agreements Bill 2002***

Clause 1 agreed to.

Clauses 2 to 13 agreed to.

Title agreed to.

***Acts Amendment (Carbon Rights and Tree Plantation Agreements) Bill 2002***

Clauses 1 agreed to.

Clauses 2 to 5 agreed to.

Clause 6.

Debate ensued.

Clause agreed to.

Clauses 7 and 8 agreed to.

Clause 9.

Debate ensued.

The Deputy Chairman left the Chair under Sessional Order 5(5).

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The Deputy President resumed the Chair.

The Deputy Chairman reported, That the Committee had considered the Bills, made progress, and asked leave to sit again.

Ordered - That the Committee have leave to sit again.

**11. Perth Urban Rail Development - Tabling of Questions and Referral to Standing Committee on Public Administration and Finance**

Motion No. 1 having been called.

*Point of Order*

The Parliamentary Secretary to the Minister for Planning and Infrastructure raised the following Point of Order -

Members will see that paragraph (1)(a) requires me, as the Parliamentary Secretary to the Minister for Planning and Infrastructure, to table documents that deal with matters that came before last year's estimates committee. More importantly, paragraph (1)(b) suggests that, if necessary, I am to require public servants to appear before the Standing Committee on Public Administration and Finance. I seek your guidance, Mr President, on the question of whether I should be the person subject to the order. As a parliamentary secretary, I am not in a position to demand that the minister make available or allow me access to relevant information. Neither have I the power to require that a public servant do something. That lack of power will include my inability to demand the assistance of a public servant in the compilation of the information - assuming I was given access - and his appearing with me before the committee. My inability to comply with the order in its current form, should the minister refuse me access or assistance, leaves me in a difficult position. I therefore seek your ruling, Mr President, on whether the parliamentary secretary is properly named in paragraph (1)(a) and (b).

*Statement by President*

The President made the following Statement -

I take the point of order and I note that, at least in his initial comments, the parliamentary secretary asked for my guidance rather than my ruling. It may well be guidance rather than a ruling that he receives.

If passed, paragraph (1)(a) of motion 9 in the name of Hon Peter Foss requires the Parliamentary Secretary to the Minister for Planning and Infrastructure to table within a specified time material that relates to proceedings before last year's estimates committee. The parliamentary secretary represented the Minister when the committee considered the estimates to which the proposed order relates. The parliamentary secretary has made the point that paragraph (1)(a) of the proposed order assumes that he, in his own right as parliamentary secretary, has possession or control of the information and access to departmental offices to assist in compiling that information in the form and to the extent that the proposed order



requires. So far as paragraph (1)(b) is concerned, a further assumption is made that he has the authority to insist that a public servant appear with him before the Standing Committee on Public Administration and Finance. The parliamentary secretary argues that the assumptions implicit in paragraph (1)(a) and (b) are wrong and misconceive the nature of his office and the relationship that exists between Minister and parliamentary secretary. He states that the relevant possession, control and access factors are entirely within the Minister's purview and that he has no greater entitlement to the information than any other Member. He also states that under no circumstances may he require any public servant to act in any particular way. Whether or not the parliamentary secretary is properly named in the proposed order will become an issue if, assuming paragraph (1)(a) passes in its current form, the parliamentary secretary fails to comply with its requirements. If compliance with paragraph (1)(a) fails, paragraph (1)(b), which relies on the provision of information required under paragraph (1)(a), is also breached.

The House, in making any order requiring compliance, intends the person named to be capable of acting in conformity with its terms. An order that is made against a person in the mistaken belief that the person can comply is unenforceable. This is to be contrasted with the more usual situation whereby the person named has the capacity but fails to comply with the order. The House is then in a position of deciding whether to insist or to excuse compliance.

Section 44A of the Constitution Acts Amendment Act 1899 enables a Member of either House to be appointed by the Executive Council as a parliamentary secretary to a Minister, with the parliamentary secretary's functions specified in the warrant of appointment. The office came into existence in 1990 and replaced that of honorary Minister, provided for in section 44A, that had been enacted to give effect to a recommendation of the Joint Select Committee on Offices of Profit Under the Crown in its 1984 report. Schedule V of the 1899 Act is another result of that report. Section 44A(2) expressly excludes the office of the parliamentary secretary from being counted as an appointment to one of the 17 ministerial officers permitted by section 43. In contrast, the Commonwealth amended its Ministers of State Act 1952 so that in addition to 30 Ministers, the Governor General may appoint a further 12 Ministers under the title of parliamentary secretary. This was a response to the courts invalidating ministerial decisions purporting to have been made by a parliamentary secretary who, prior to the amendment of the 1952 Act, was not a Minister. Appointment to ministerial office of the Commonwealth creates a fundamental difference between the commonwealth parliamentary secretary and one appointed under section 44A. Accordingly, what the High Court said about commonwealth parliamentary secretaries in *Re Patterson*; *Ex parte Taylor* [2001] HCA 51 and their capacity to exercise Ministerial powers and administer, jointly with another Minister, a government department, has no application to a parliamentary secretary in this State. In the 13 years that have intervened since the enactment of section 44A of the Constitution Acts Amendment Act, the House has acquiesced in parliamentary secretaries assuming a role equivalent to that of a Minister. However, the House did not initially acquiesce in that regard. It is as if section 44A can be read as requiring the appointment of parliamentary secretaries as Ministers. The questions put to me illustrate the difficulties that present themselves when usage of the House based on mutual convenience creates a belief or expectation in the right or capacity of a parliamentary secretary that, when tested, is found not to exist. I note for example that the advice given to the Governor in Council is to appoint a person as a parliamentary secretary with the functions of having the carriage of government legislation and assisting the Minister and the Leader of the House in carrying on their respective parliamentary business.

It would be premature for me to make a ruling at this stage when the House has yet to decide whether to make the order on parts (1)(a) and (b) of the motion. Should the order pass in its current form, and through no fault of his own the parliamentary secretary finds that he cannot meet its requirements or meet them within a specified time frame, he should report to the House at the earliest opportunity so that it can deal with the matter. My initial impression is that no question of privilege would arise from the parliamentary secretary's inability to comply with the order because of a legal or factual impediment. I provide that advice for the

guidance of the parliamentary secretary and Members. Honourable Members would note that it is not a ruling so as to interrupt debate or continued consideration of this motion at this stage.

Debate resumed on the motion, as amended, of Hon Peter Foss as follows -

- (1) That the Parliamentary Secretary to the Minister for Planning and Infrastructure do -
  - (a) table in the House at the next sitting day three calendar days after the making of this order, full and complete answers to all the questions of which notice was given with respect to the Perth Urban Rail Development Proposal for the hearing by the Estimates Committee for the 2002-2003 Budget together with all the documents requested by those questions;
  - (b) attend before the Standing Committee on Public Administration and Finance at its next meeting after such tabling and thereafter and with such other witnesses as directed by that Committee in order that the Committee may satisfy itself as to the adequacy of such answers and tabling, and on any other matters arising out of those answers or which as a result of its inquiries the Standing Committee consider appropriate to inquire into.
- (2) The Standing Committee do generally inquire into and maintain Parliamentary supervision over the Perth Urban Rail Development and report to the House; and
- (3) The Standing Committee do report to the House -
  - (a) with respect to the compliance of the Parliamentary Secretary with part (1)(a) of this order no later than three sitting days after the making of this order; and
  - (b) with respect to compliance with part (1)(b) of this order, and any other matters related thereto, no later than December 3 2003;
  - (c) otherwise, as the Committee deems fit from time to time.

Hon Simon O'Brien moved to amend the motion as follows -

“

In paragraph (1)(b) -

- (1) Lines 3 and 4, by deleting the words “and thereafter and with such other witnesses as directed by that Committee”.
- (2) By inserting a line 5 after the word “itself” the following -
 

“ from that and such other witnesses as the Committee may order ”.

”.

Debate ensued.

Debate adjourned pursuant to Sessional Order.

## 12. Questions Without Notice

Questions without notice were taken.

The Minister for Racing and Gaming, by leave, incorporated into *Hansard* and tabled his response regarding details of Prison Census for 22/02/2001 and 28/02/2003 in response to a question without notice asked by Hon Peter Foss. (Tabled paper 912).

The Parliamentary Secretary representing the Minister for Planning and Infrastructure in accordance with Standing Order No 138(d), advised that would be provided in the near future to question on notice Nos 376, 377 and 380 asked by Hon Jim Scott.

The Parliamentary Secretary representing the Minister for Planning and Infrastructure tabled documents in relation to railway reserves under the MRS that have been removed and reclassified in the last 10 years in response to question on notice No. 381 asked by Hon Jim Scott. (Tabled paper 913).

**13. Adjournment**

Pursuant to Sessional Order 2(2) the House adjourned at 6.10pm until Thursday, April 3 2003 at 10.00am.

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

Attendance: Present all Members except Hon Bill Stretch.

**L B MARQUET**  
Clerk of the Legislative Council

**HON JOHN COWDELL**  
President of the Legislative Council