

LEGISLATIVE ASSEMBLY

NOTICES AND ORDERS OF THE DAY

No. 54

WEDNESDAY, 14 MAY 2003, 12 noon

Prayers *

Petitions

Papers

Giving Notice of Motion

Brief Ministerial Statements *

Questions Without Notice *

Matter of Public Interest

Private Members' Business

Grievances

Private Members' Statements

- | | |
|---|-----------------------------------|
| - | approximately 2.00 p.m. each day |
| - | one per week on any day |
| - | 4.00 p.m. to 7.00 p.m. Wednesdays |
| - | approximately 9.00 a.m. Thursdays |
| - | 12.50 p.m. Thursdays |

* *Note: On days when the Assembly meets at 2.00 p.m. Brief Ministerial Statements and Questions without Notice will follow immediately after Prayers.*

Memorandum: An electronic version of the Assembly's Questions on Notice booklet is available on the Parliament's Internet site at www.parliament.wa.gov.au.

BUSINESS OF THE ASSEMBLY - NOTICES OF MOTION

1. Private Members' Business Precedence (Notice given – 13/5/03)

The Leader of the House: To move -

That so much of the Standing Orders be suspended as is necessary to enable private members' business to take precedence on Wednesday, 14 May 2003, from 4.00 p.m. to 6.00 p.m.

2. Leave of Absence – Member for Moore (Notice given – 13/5/03)

Mr J.L. Bradshaw: To move -

That leave be given for the absence from the Assembly of the Member for Moore on the grounds of urgent private business until 30 June 2003.

BILLS - NOTICES OF MOTION

1. **Health (Smoking in Enclosed Public Places) Amendment Bill 2003** (Notice given – 13/5/03)

Dr J.M. Woollard: To move -

That a Bill for “An Act to amend Part IXB and section 360 of the *Health Act 1911* and for related purposes.” be introduced and read a first time.

GOVERNMENT BUSINESS - ORDERS OF THE DAY

1. **Appropriation (Consolidated Fund) Bill (No. 1) 2003** (Treasurer) (No. 193, 2r. – 8/5/03)
‡**Appropriation (Consolidated Fund) Bill (No. 2) 2003** (Treasurer) (No. 194, 2r. – 8/5/03)
Second reading. Adjourned debate (Leader of the House).
2. ***Civil Liability Amendment Bill 2003** (Parliamentary Secretary to the Premier) (No. 186, 2r. – 20/3/03)
Further consideration in detail – Clause 8.
3. **Prostitution Control Bill 2003** (Minister for Police and Emergency Services) (No. 166, 2r. – 2/4/03)
Second reading. Adjourned debate (Leader of the House).
4. **Legal Practice Bill 2002** (Attorney General) (No. 154, 2r. - 23/10/02)
Further consideration in detail – Clause 21.
5. ***Acts Amendment and Repeal (Courts and Legal Practice) Bill 2002** (Attorney General) (No. 153, 2r. - 23/10/02)
Consideration in detail (after *pro forma* amendment).
6. ***Motor Vehicle Repairers Bill 2002** (Minister for Consumer and Employment Protection) (No. 130, 2r. - 5/12/02)
Further consideration in detail – Clause 30.
7. ‡**Motor Vehicle Dealers Amendment Bill (No. 2) 2002** (Minister for Consumer and Employment Protection) (No. 129, 2r. - 5/12/02)
Second reading. Adjourned debate (Mr M.F. Board).
8. ***Acts Amendment (Carbon Rights and Tree Plantation Agreements) Bill 2002** (Parliamentary Secretary to the Minister for Agriculture, Forestry and Fisheries) (No. 119, 2r. – 22/5/02)
Consideration in detail of Legislative Council message No. 53.
9. **Dangerous Goods Safety Bill 2002** (Minister for State Development) (No. 168, 2r. - 4/12/02)
Second reading. Adjourned debate (Mr W.J. McNee).
10. **Victims of Crime Amendment Bill 2003** (Attorney General) (No. 169, 2r. – 26/2/03)
Second reading. Adjourned debate (Mr W.J. McNee).
11. **Ports and Marine Legislation Amendment Bill 2003** (Minister for Planning and Infrastructure) (No. 171, 2r. – 27/2/03)
Second reading. Adjourned debate (Mr R.F. Johnson).
12. **Western Australian Tourism Commission Amendment Bill 2003** (Minister for Tourism) (No. 174, 2r. – 3/4/03)
Second reading. Adjourned debate (Mr A.D. Marshall).

13. Criminal Code Amendment Bill 2003 (Attorney General) (No. 187, 2r. – 3/4/03)

Second reading. Adjourned debate (Mr A.D. Marshall).

14. Western Australian Land Authority Amendment Bill 2003 (Minister for Planning and Infrastructure) (No. 184, 2r. – 9/4/03)

Second reading. Adjourned debate (Mr J.L. Bradshaw).

15. Higher Education Bill 2003 (Minister for Education and Training) (No. 191, 2r. – 6/5/03)

Second reading. Adjourned debate (Mr A.D. Marshall).

16. Genetically Modified Crops Free Areas Bill 2003 (Parliamentary Secretary to the Minister for Agriculture, Forestry and Fisheries) (No. 189, 2r. – 7/5/03)

Second reading. Adjourned debate (Mr J.L. Bradshaw).

17. Stamp Amendment (Budget) Bill 2003 (Treasurer) (No. 198, 2r. – 13/5/03)

Second reading. Adjourned debate (Mr J.L. Bradshaw).

18. *Electoral Reform Bill 2002 (Minister for Electoral Affairs) (No. 155, 2r. - 23/10/02)

Second reading. Adjourned debate (Mr J.L. Bradshaw).

19. *Restoration of Legislative Assembly Bills (Leader of the House) (Moved - 24/9/02)

Consideration of Legislative Council message No. 9.

PRIVATE MEMBERS' BUSINESS - NOTICES OF MOTION
1. Eradication of Introduced Plant and Animal Species (Notice given - 13/8/02, renewed - 3/12/02)

Mr B.K. Masters: To move –

That recognising the threat posed by introduced plants and animals to agriculture and the environment, this House calls upon the Government to –

- (a) adequately fund the control and, where possible, eradication of introduced plant and animal species that pose unacceptable risks to agriculture and our unique environment, especially where they are present on Crown land; and
- (b) accept that the onus for control and, where appropriate, eradication should not rest solely with private landowners whose properties are regularly subject to weed and feral animal re-introductions from adjoining and nearby Crown land.

2. South West Forest Regeneration and Management (Notice given - 13/8/02, renewed - 3/12/02)

Mr B.K. Masters: To move –

That this House calls upon the Government to –

- (a) accept that the cessation of logging by itself will not protect south west forests from a range of threatening impacts;
- (b) understand that, without proper management, forests will grow old and degrade, leaving logging as a possible management tool for use at some further time in forest regeneration;
- (c) acknowledge that jarrah forests regrow naturally by the creation of relatively small gaps in the canopy within which tree seedlings can grow;

- (d) acknowledge that karri forests regrow naturally after major disturbances such as fire kill pre-existing trees and allow seedlings to grow in the resulting ashbeds; and
- (e) increase funding for management of the forest conservation estate.

3. Wheatbelt's Salinity Crisis (Notice given – 13/8/02, renewed - 3/12/02)

Mr B.K. Masters: To move –

That this House calls upon the Government to urgently provide appropriate funding for the assessment of innovative solutions to the Wheatbelt's salinity crisis, such as are described in "Salinity Crisis Action Plan: A Creative Engineering Solution", produced by Peter Coyne, David Williamson and Jonathon Thomas, together with the full range of possible alternative solutions.

4. Emergency Service Plans (Notice given - 10/9/02, renewed – 12/3/03)

Mr P.D. Omodei: To move –

That recognising local emergency service plans are fundamental to the safety and security of the Western Australian community this House calls on the government -

- (a) to provide local governments appropriate funds to ensure that local emergency management advisory committees (LEMACs) have the capacity to ensure that emergency services plans are up-to-date and cognisant of recent events of September the 11th 2001;
- (b) to ensure that the State emergency plan is current and if necessary make any changes to the plan to ensure the Western Australian community is protected from events like September 11 2001.

5. Regional Sitting of the Legislative Assembly (Notice given - 17/9/02, renewed – 19/3/03)

Mr L. Graham: To move –

That this House instructs the Speaker to hold a three-day regional sitting of the Legislative Assembly. The sitting should take place in Port Hedland during the calendar year 2003.

Further, this House calls on the Government to support a regional sitting of the Assembly. Government support should specifically include the provision in the coming budget for sufficient funds to enable a three-day sitting to take place in Port Hedland.

6. Equal Access to Education (Notice given - 25/9/02, renewed – 3/4/03)

Mr T.K. Waldron: To move –

That this House calls on the Government to ensure that all children in Western Australia, particularly those in regional and remote Western Australia, have equal access to education so that geographical isolation does not penalise students and families –

- (a) that are burdened with additional costs of living away from home;
- (b) where children are forced to move away from their family home and community support structure in order to continue education beyond that provided by their local school.

7. Health Professionals in Western Australia (Notice given - 14/11/02)

Mr M.F. Board: To move -

That in accordance with Standing Order 287(2)(d) the following matter be referred to the Education and Health Standing Committee for its urgent investigation and report to the Assembly by 30 June 2003 –

- (a) the extent of the current shortages of health professionals in Western Australia, in particular, country and regional and outlying metropolitan areas of Perth;
- (b) the adequacy of current education and training programmes to meet the shortage; and

- (c) what other measures or programmes, including incentives, that may assist in addressing the shortage.

8. Availability of Beds in Public Tertiary Hospitals (Notice given - 14/11/02)

Mr M.F. Board: To move -

That the Minister for Health request the Health Department to immediately look at measures that may ease the pressure on beds in our public tertiary hospitals by funding Care Awaiting Placement Beds and support where available in non-public hospitals.

9. Lang Hancock Contribution (Notice given - 26/11/02)

Mr C.J. Barnett: To move -

That this House acknowledges the major contribution made by the late Lang Hancock to the development of the Western Australian iron ore industry on the occasion of the 50th anniversary of his discovery of iron ore in the Pilbara.

10. School Bus Contractors (Notice given - 3/12/02)

Ms K. Hodson-Thomas: To move -

That this House condemns the Gallop Labor Government for its failure to resolve the serious and long-standing concerns of Western Australian school bus contractors in the interests of our school aged children and the contractors.

11. Adverse Seasonal Conditions in Regional Western Australia (Notice given - 4/12/02)

Mr T.K. Waldron: To move -

That this House condemns the Government for its failure to recognise the adverse seasonal conditions affecting regional Western Australia and subsequently a complete lack of action, in particular the following responses by Government are condemned –

- (a) the fact that it took until September 2002 for the Minister for Community Development to realise there were adverse seasonal conditions when a mental health response should have been already implemented by Government;
- (b) the inability of the Treasurer to advise in December 2002 on the social and economic impact to the State's economy;
- (c) the Minister for Agriculture claiming on 3 December 2002 that no one had asked him to evaluate the social and economic impacts of the adverse seasonal conditions; and
- (d) the failure of the Premier as Chairman of the Cabinet Standing Committee on Regional Development to take any action in response to the adverse seasonal conditions.

12. Corporate Services for Regional TAFE Colleges (Notice given - 5/12/02)

Mr T.K. Waldron: To move -

That this House calls on the Government to abandon any attempt to centralise corporate services of Regional TAFE Colleges, and that the Government give an undertaking that the current structure will be retained, given that regional corporate services staff assume a much wider range of duties than their metropolitan counterparts.

13. Parliamentary Inquiry into Western Power (Notice given – 25/2/03)

Mr M.W. Trenorden: To move -

That this House calls on the Government to support a parliamentary inquiry to investigate deteriorating infrastructure and the poor customer service standards of Western Power.

14. Police Station Closures in Regional Western Australia (Notice given – 25/2/03)

Mr M.W. Trenorden: To move -

That this House calls on the Government to provide an assurance that no police stations will be closed in regional Western Australia for the remainder of the term of the Gallop Government.

15. Commonwealth Health Funding in Western Australia (Notice given – 25/2/03)

Mr M.F. Board: To move -

That the Minister for Health clearly outlines the true extent of Commonwealth health funding into Western Australia including –

- (a) the percentage increase in Commonwealth health funding (over the life of the current Health Agreement) compared to the State's contribution to public hospitals;
- (b) the Commonwealth's contribution to primary health care via Medicare to Western Australia;
- (c) the contribution of the Commonwealth in indigenous health and other speciality funding areas;
- (d) contributions by the Commonwealth to funding capital equipment and any recurrent funding in regard to running equipment;
- (e) contribution by the Commonwealth to capital works in health and related areas;
- (f) contributions by the Commonwealth to Western Australia for aged care; and
- (g) the cost paid by the Commonwealth in funding our share in Western Australia of the Pharmaceutical Benefits Scheme.

16. South West Election Commitments (Notice given – 18/3/03)

Mr P.D. Omodei: To move -

That this House condemns this State Labor Government for its failure to keep election commitments in the South West and its abysmal efforts in providing vital services and infrastructure, and in particular –

- (a) commitments to the timber industry – eg. furniture industry, timber volumes;
- (b) commitments to the Tourism Industry – eg. Sky Jetty, Eco Lodge;
- (c) Health and Education Services – eg. Allied Health, aboriginal health and Aboriginal Education Officers;
- (d) Road Construction – South West Highway, Muir Highway, Mowen Road;
- (e) Infill Sewerage – deferral; and
- (f) Water Management.

17. Kalamunda Hospital Redevelopment (Notice given – 15/4/03)

Mr J.H.D. Day: To move -

That this House –

- (a) supports the concept of providing health services as close as reasonably possible to where people live; and
- (b) calls on the Government to –
 - (i) fulfil the Labor Party's election commitment to complete the \$5.5 million redevelopment of the Kalamunda Hospital;
 - (ii) ensure sufficient funding to complete the redevelopment is included in the 2003 budget; and

- (iii) ensure that all existing services, including obstetrics and surgery, are maintained at the Hospital.

18. Home Burglary Incidence (Notice given – 7/5/03)

Mr P.G. Pental: To move -

That this House calls on the Minister for Police to explain –

- (a) why the Police Service has failed to make any serious impact in solving greater numbers of home-burglaries, given that the clearance or clean-up rates for this crime have averaged only 14% in each of the past five years;
- (b) why the Police Service has taken no special action to tackle the problem, especially given that in 2001-02 some 34,044 home burglaries (or 85.3% of those reported) went unsolved;
- (c) why the Police Service does not acknowledge the nexus between crimes investigated and crimes solved; and
- (d) why considerable police attention continues to be directed at easy targets like motorists, but such focus and attention is with-held from major crime areas like home burglaries,

and calls on the Police Service to outline, what, if any, innovative plans it has to lift the home burglary clearance rates from an abysmal 14%.

19. Proposed Water Resource Management Charges (Notice given – 13/5/03)

Mr P.D. Omodei: To move -

That this House –

- (a) condemns this State Labor Government for the proposed introduction of annual license administration fees for farm dams;
- (b) calls on the State Government to acknowledge the huge capital injection that farmers have contributed for water conservation in Western Australia; and
- (c) accepts that the overall management of water conservation in Western Australia is the responsibility of the State and should be funded by the Consolidated Fund.

PRIVATE MEMBERS' BUSINESS - ORDERS OF THE DAY

1. Adoption Amendment Bill 2002 (Dr E. Constable) (No. 126, 2r. – 26/6/02)

Second reading. Adjourned debate (Mr J.L. Bradshaw).

2. Main Roads Amendment Bill 2001 (Mr M.W. Trenorden) (No. 48, 2r. – 29/8/01)

Second reading. Adjourned debate (Leader of the House).

3. Volunteer Protection Bill 2002 (Mr B.J. Grylls) (No. 122, 2r. – 12/6/02)

Second reading. Adjourned debate (Mr J.L. Bradshaw).

4. Fair Trading Amendment Bill 2001 (Mr P.G. Pental) (No. 44, 2r. – 13/3/02)

Second reading. Adjourned debate (Minister for Consumer and Employment Protection).

5. Heathcote Hospital Site (Reservation) Bill 2001 (Dr J.M. Woollard) (No. 63, 2r. - 17/10/01)

Second reading. Adjourned debate (Mr J.L. Bradshaw).

6. Fremantle Eastern Bypass (Moved - 21/8/02)

Adjourned debate (Mr F.M. Logan - continuation of remarks) on the motion moved by Mr M.F. Board –

That this House condemns the State Government for failing to govern in the interests of Western Australians in relation to the proposed deletion of the Fremantle Eastern Bypass from the Metropolitan Region Scheme.

7. Independent Advice Relating to Members of the Cabinet (Moved - 11/9/02)

Adjourned debate (Mr C.J. Barnett - continuation of remarks) on the motion moved by Ms S.E. Walker –

That this House calls on the Premier to ensure that the Attorney General appoint some person to make decisions that would otherwise be made by him, being a person independent of Government to deal with and make all decisions with relation to matters which directly or indirectly involve allegations of criminal behaviour by members of the Gallop Cabinet in view of –

- (a) the obvious perception that any member of Cabinet may be biased in favour of their Cabinet colleague when making decisions;
- (b) the clear misuse by the Attorney General of a previous indirect allegation of evidence fabrication which involved the Minister for Health;
- (c) the clear attempt by the Attorney General to cover up his improper behaviour over the Lewandowski affidavit; and
- (d) the latest allegations relating to the Ripley case, the possibility that a now-senior member of the Labor Government could be one of the unnamed co-conspirators or at least would be embarrassed by any revelations.

8. National Review of Nursing Education 2002 (Moved - 18/9/02)

Adjourned debate (Dr J.M. Woollard - continuation of remarks) on the motion moved by Mr M.F. Board –

That the Minister for Health immediately accepts, endorses and implements the recommendations made in the National Review of Nursing Education 2002.

9. Western Australia Hospitality and Tourism Sectors (Moved - 25/9/02)

Adjourned debate (Dr J.M. Woollard - continuation of remarks) on the motion moved by Ms S.E. Walker –

That this House condemns the Gallop Government's lack of support, vision and sound management for the Western Australian Hospitality and Tourism sectors, currently in a deepening crisis, and further being impacted upon by the archaic provisions of the *Labour Relations Reform Act 2002* and calls upon the Government to urgently conduct a public forum of tourism and hospitality stakeholders to properly address issues of serious concern in the industry.

10. Fire Management in the Western Australian Environment (Moved - 6/11/02)

Adjourned debate (Mr T.K. Waldron - continuation of remarks) on the motion moved by Mr B.K. Masters -

That this House calls upon the Government to accept that –

- (a) fire is a natural part of West Australia's environment;
- (b) fire is an essential management tool in virtually all WA ecosystems;
- (c) the exclusion of all fire from natural areas, as supported by some environmentalists, poses serious threats to life, property and environmental values if implemented; and

- (d) adequate funding for the appropriate use of fire as an environmental management and hazard reduction tool must be provided as a high budget priority.

11. Performance of Government (Moved - 27/11/02)

Adjourned debate (Leader of the House) on the motion moved by Mr C.J. Barnett -

That this House condemns the Gallop Labor Government for its failure to govern in the interests of all Western Australians and the failure of its Ministers to discharge their duties in an open and accountable manner.

12. Sustainable Water Supply for Regional Western Australia (Moved - 4/12/02)

Adjourned debate (Minister for the Environment and Heritage - continuation of remarks) on the motion moved by Mr B.J. Grylls -

That this House calls on the Government to take immediate and decisive action to facilitate the role of private enterprise in developing innovative water management projects for the establishment of a sustainable water supply for regional Western Australia.

13. National Action Plan on Salinity and Water Quality (Moved – 9/4/03)

Adjourned debate (Mr R.N. Sweetman – continuation of remarks) on the motion moved by Mr B.J. Grylls –

That this House calls on the Gallop Government to immediately prioritise and fund projects through the National Action Plan on Salinity and Water Quality that have been developed by the community and accredited through regional natural resource management plans, and to re-submit these plans to the Federal Government so that Western Australia does not forfeit matching funding to other States.

14. Flags Protection Bill 2003 (Mr C.J. Barnett) (No. 192, 2r. – 16/4/03)

Second reading. Adjourned debate (Leader of the House).

15. Select Committee into the Department of Agriculture and the Agricultural Protection Board of Western Australia (Moved – 7/5/03)

Adjourned debate (Mr W.J. McNee – continuation of remarks) on the motion moved by Mr P.D. Omodei -

That a Select Committee of the Legislative Assembly be appointed to inquire into and report on –

- (a) the structure and future direction of the Department of Agriculture and the Agricultural Protection Board in Western Australia;
- (b) funding of the Department of Agriculture by Government and the Private Sector;
- (c) whether the Department of Agriculture's responsibilities should be expanded or diminished;
- (d) whether there are conflicts between the Department of Agriculture, the Agricultural Protection Board and other Government departments; and
- (e) what changes (if any) need to be made to ensure that the Department of Agriculture is agriculture focused,

and that the Committee report to the Assembly by 30 August 2003.

COMMITTEES TO REPORT

Public Accounts Committee – Review of the Office of the Auditor General’s Annual Report 2001-2002 - 30 June 2003

Education and Health Standing Committee – Attention Deficit Disorder and Attention Deficit Hyperactive Disorder in Western Australia - 30 June 2004

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- * Denotes amendments appear in the Notices and Amendments section of the Notice Paper.
† Denotes time allocated for Bill appears in the Notices and Amendments section of the Notice Paper.
‡ Denotes second reading debate on the Bill was undertaken cognately with a principal Bill, and no further second reading debate will occur.
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NOTICES AND AMENDMENTS

Acts Amendment (Carbon Rights and Tree Plantation Agreements) Bill 2002 (No. 119—1)

Message No. 53.

The Legislative Council acquaints the Legislative Assembly that it has agreed to the *Acts Amendment (Carbon Rights and Tree Plantation Agreements) Bill 2002* subject to the amendments contained in the Schedule annexed; in which amendments the Legislative Council desires the concurrence of the Legislative Assembly.

Schedule indicating the amendments made by the Legislative Council in the Acts Amendment (Carbon Rights and Tree Plantation Agreements) Bill 2002

No. 1

Clause 9, page 7, lines 13 to 16 - To delete all words after “created” and insert instead -

“ or an agreement under which the *profit à prendre* is transferred ”.

No. 2

Clause 9, page 7, lines 19 to 22 - To delete all words after “created” and insert instead -

“ or an agreement under which the plantation interest is transferred ”.

Acts Amendment and Repeal (Courts and Legal Practice) Bill 2002 (No. 153—2)

Clause 88.

Ms S.E. Walker –

Page 53, lines 3 to 10 – To oppose the clause.

Clause 89.

Ms S.E. Walker –

Page 53, lines 11 to 21 – To oppose the clause.

Clause 90.

Ms S.E. Walker –

Page 54, lines 1 to 9 – To oppose the clause.

Clause 91.

Ms S.E. Walker –

Page 54, lines 10 to 18 – To oppose the clause.

Clause 92.

Ms S.E. Walker –

Page 54, lines 19 to 29 – To oppose the clause.

Clause 93.

Ms S.E. Walker –

Page 55, lines 1 to 9 – To oppose the clause.

Clause 94.

Ms S.E. Walker –

Page 55, lines 10 to 16 – To oppose the clause.

Clause 95.

Ms S.E. Walker –

Page 55, lines 17 to 25 – To oppose the clause.

Clause 96.

Ms S.E. Walker –

Page 56, lines 1 to 8 – To oppose the clause.

Clause 97.

Ms S.E. Walker –

Page 53, lines 9 to 13 – To oppose the clause.

Clause 121.

Ms S.E. Walker –

Page 73, lines 1 to 25 – To oppose the clause.

Clause 122.

Ms S.E. Walker –

Page 74, lines 1 to 19 – To oppose the clause.

Clause 123.

Ms S.E. Walker –

Page 74, line 20 to page 76, line 22 – To oppose the clause.

Clause 124.

Ms S.E. Walker –

Page 76, line 23 to page 77, line 3 – To oppose the clause.

Clause 125.

Ms S.E. Walker –

Page 77, line 4 to page 78, line 4 – To oppose the clause.

Clause 127.

Ms S.E. Walker –

Page 78, lines 16 to 24 – To oppose the clause.

Clause 128.

Ms S.E. Walker –

Page 78, line 25 to page 79, line 12 – To oppose the clause.

Clause 129.

Ms S.E. Walker –

Page 79, lines 13 to 19 – To oppose the clause.

Clause 130.

Ms S.E. Walker –

Page 79, line 20 to page 81, line 4 – To oppose the clause.

Civil Liability Amendment Bill 2003 (No. 186—1)

Clause 8.

Mr B.J. Grylls: To move –

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 ”.

Mr B.J. Grylls: To move –

Page 7, lines 14 to 22 – To delete the lines and substitute the following –

“

- (1) A determination that negligence caused particular harm comprises the following elements —
 - (a) that the negligence was a necessary condition of the occurrence of the harm (factual causation); and
 - (b) that it is appropriate for the scope of the negligent person’s liability to extend to the harm so caused (scope of liability).

”.

Mr B.J. Grylls: To move –

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 the 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.

”.

Mr D.F. Barron-Sullivan: To move –

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

“ who is not a child ”.

Mr D.F. Barron-Sullivan: To move –

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.

”.

Mr D.F. Barron-Sullivan: To move –

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 ”.

Mr D.F. Barron-Sullivan: To move –

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

”.

Mr D.F. Barron-Sullivan: To move –

Page 12, line 23 – To insert after “required” the following –

“ by the defendant ”.

Mr B.J. Grylls: To move –

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

Mr D.F. Barron-Sullivan: To move –

Page 13, lines 13 and 14 – To delete “has reached 16 years but is under 18 years” and substitute the following –

“ is under 16 years ”.

Mr D.F. Barron-Sullivan: To move –

Page 13, line 16 –To insert after “disability” the following –

“ which is apparent to a reasonable person ”.

Mr D.F. Barron-Sullivan: To move –

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

“ which is apparent to a reasonable person ”.

Mr B.J. Grylls: To move –

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.

”.

Mr B.J. Grylls: To move –

Page 15, after line 11 – To insert the following –

“

5M. Contributory negligence can defeat claim

In determining the extent of a reduction in damages by reason of contributory negligence, a court may determine a reduction of 100% if the court thinks it just and equitable to do so, with the result that the claim for damages is defeated.

”.

Mr B.J. Grylls: To move –

Page 15, after line 24 – To insert the following –

“

- (4) When there is a presumption of contributory negligence, the court must assess damages on the basis to which the person would be entitled in the absence of contributory negligence are to be reduced on account of contributory negligence by 25% or a greater percentage determined by the court to be appropriate in the circumstances of the case.

”.

Mr B.J. Grylls: To move –

Page 18, after line 3 – To insert the following –

“

5Q. Pure mental harm – liability only for recognised psychiatric illness

There is no liability to pay damages for pure mental harm or nervous shock resulting from negligence unless the harm consists of a recognised psychiatric illness.

”.

New Clause.

Dr J.M. Woollard: To move –

Page 31, after line 12 – To insert the following -

“

15. Review of Act

- (1) The Minister is to carry out a review of the effectiveness of this Act as soon as practicable after the expiration of 3 years from its commencement and in the course of that review the Minister is to consider and have regard to the extent to which this Act has affected —
- (a) the range and nature of insurance claims;
 - (b) the nature of legal proceedings commenced in Western Australia;
 - (c) the availability of civil liability insurance;
 - (d) the level of insurance premiums; and

- (e) any other matters that appear to the Minister to be relevant.
- (2) The Minister is to cause the review to be laid before each House of Parliament as soon as practicable and in any case, not more than 6 months after the expiration of the 3 year period referred to in section (1).

”.

Electoral Reform Bill 2002 (No. 155—1)

Clause 4.

Dr J.M. Woollard: To move –

Page 9, lines 3 and 4 - To delete the following –

“

; and

- (ii) the additional large district number,

”.

Dr J.M. Woollard: To move –

Page 9, lines 10 to 13 – To delete the lines.

Dr J.M. Woollard: To move –

Page 9, line 15 to page 10, line 18 – To delete the lines and substitute the following –

“

- (1) The Commissioners shall divide the State into regions in accordance with the principles that —
- (a) the number of electors comprised in the region at the day specified in section 16E, 16F or 16G(1) as the day as soon as practical be after which the division is to be carried out must not be more than 10% greater, or more than 20% less, than the average region enrolment on the day so specified;
 - (b) each region consist of one or more complete and contiguous districts; and
 - (c) to the extent possible the regions reflect communities of interest, land use patterns and distance from the capital.

- (2) In subsection (1)(a) —

“average region enrolment” means the number of enrolled electors in the State divided by the number of regions specified in section 16D.

”.

Dr J.M. Woollard: To move –

Page 10, line 20 – To delete “regions and”.

Dr J.M. Woollard: To move –

Page 10, line 21 – To delete “regions and”.

Motor Vehicle Repairers Bill 2002 (No. 130—1B)

Clause 33.

The Minister for Consumer and Employment Protection –

Page 16, line 26 to page 17, line 6 – To oppose the clause.

Clause 38.

The Minister for Consumer and Employment Protection: To move –

Page 20, after line 13 – To insert the following –

“

(4) As soon as practicable after a business licence ceases to have effect under subsection (2), the person who was the licensee must return to the Board —

(a) the licence; and

(b) any certificate issued to the licensee under section 64(1).

Penalty: \$1 500.

”.

Clause 40.

The Minister for Consumer and Employment Protection: To move –

Page 21, line 22 – To delete “an employee of the person or firm” and substitute the following –

“ any other person ”.

The Minister for Consumer and Employment Protection: To move –

Page 21, line 24 — To delete “employee” and substitute the following –

“ other person ”.

The Minister for Consumer and Employment Protection: To move –

Page 21, line 27 — To insert after “certificate” the following –

“ for that class of repair work ”.

Clause 70.

The Minister for Consumer and Employment Protection: To move –

Page 35, line 23 – To insert after “person” the following —

“ to whom this Part applies ”.

Clause 117.

Mr D.F. Barron-Sullivan: To move –

Page 61, line 25 to page 62, line 4 – To delete the lines and substitute the following –

“

expiry of 3 years from its commencement.

- (2) In the course of that review the Minister shall consider and have regard to —
- (a) the attainment of the purposes of this Act;
 - (b) the administration of this Act;
 - (c) the effectiveness of the operation of the Motor Vehicle Industry Board, established by section 7 of the *Motor Vehicle Dealers Act 1973*, when administering this Act;
 - (d) the impact of this Act on small businesses in the motor industry and on consumers;
 - (e) specific input and extensive consultation with representatives of the motor industry and individual small business proprietors therein with regard to the review; and
 - (f) such other matters as appear to the Minister to be relevant.

”.

Schedule 3.

The Minister for Consumer and Employment Protection: To move –

Page 67, line 13 – To delete “an employee of the person or firm” and substitute the following –

“ another person ”.

The Minister for Consumer and Employment Protection: To move –

Page 67, line 14 – To delete “employee” and substitute the following –

“ other person ”.

The Minister for Consumer and Employment Protection: To move –

Page 67, line 26 – To delete “An employee” and substitute the following –

“ Another person ”.

The Minister for Consumer and Employment Protection: To move –
Page 67, line 28 – To delete “employee” and substitute the following –
“ person ”.

Restoration of Legislative Assembly Bills

Message No. 9.

The Legislative Council has considered Legislative Assembly Message No. 5 relating to the –
Yallingup Foreshore Land Bill 2002
Volunteers (Protection from Liability) Bill 2002
Home Building Contracts Amendment Bill 2002

In response, the Legislative Council –

- (1) does not agree that the difficulties associated with the three Bills can be rectified by altering internal practice and procedure. The Bills lapsed on prorogation by operation of law;
- (2) recommends that the Government reconsider the necessity for annual prorogations said to arise from section 4 of the *Constitution Act 1889* and notes the divergence of interpretation and practice despite a provision identical to section 4 appearing in the Constitution of the Commonwealth and each of the States;
- (3) reminds the Legislative Assembly that a Bill must have been on the Notice Paper in the previous session if it is to be restored, that is, the Bill must have been in the possession of the House. Possession cannot occur until a Bill is introduced and given a first reading. On that basis, the House never had possession of the three Bills and had nothing to restore;
- (4) rejects the assertion that transmission of a Bill between the Houses is a “stage” in passage. Parliamentary authorities are in agreement on the meaning of “stage” and no mention is made of transmission in that context; and
- (5) requests the Legislative Assembly to cite a reference to the written law that expressly or impliedly amended section 46(5) of the *Constitution Acts Amendment Act 1899* so as to enable the Legislative Assembly to “require” this House to comply with the Assembly’s demands relating to the passage of legislation.

PETER J. McHUGH

Clerk of the Legislative Assembly
