



MEMORANDUM TO MEMBERS OF THE LEGISLATIVE COUNCIL

PRESIDENT RECALLING THE LEGISLATIVE COUNCIL
TO MEET ON

THURSDAY, 28 APRIL 2016 AT 10.00 AM

Please find attached the text of a notice that will appear in the notices section of *The West Australian* newspaper on Tuesday, 26 April 2016.

One of the most important privileges of this House is its capacity to determine the days and times when it adjourns and convenes to undertake its business. This is one aspect of the privilege of exclusive cognisance, a privilege that arose from the centuries-long conflict in England between the Monarch and Parliament. The Parliament was ultimately triumphant. The *Bill of Rights 1688* (UK), which is part of Western Australian law, is a significant statutory recognition of this privilege.

The proclamation issued by Her Excellency the Governor on the advice and with the consent of her Executive Council on Thursday, 21 April 2016 is silent as to the legal authority under which it is issued. This is a significant departure from the usual practice. The powers of the Crown to determine the sittings and adjournment of the Houses of Parliament are confined to s.3 of the *Constitution Act 1889*.

Having received legal advice from Australia's pre-eminent constitutional lawyer, Mr Bret Walker SC, I have treated the proclamation as a request from the Government to recall the Legislative Council earlier than the date to which it last adjourned, 10 May 2016. I have done this notwithstanding the mechanisms contained in the Standing Orders of the Legislative Council relating to how sittings and adjournments are determined and its apparent conflict with a power of a presiding officer to recall the House.

I have a discretionary power to recall the House which is derived from the power of the House of Commons imported as a power of the Houses of the Western Australian Parliament by s.1 of the *Parliamentary Privileges Act 1891*. This power is independent of the Standing Orders and the proclamation. Mr Walker's advice is otherwise entirely consistent with the advice I have received from the Clerk of the House about the limitations on the power of the Crown to determine the adjournments and sittings of the Houses of Parliament. I have exercised my power under the *Parliamentary Privileges Act 1891*:

1. To assert the undoubted privilege of this House to determine its own sittings and adjournments; and
2. To ensure that the proclamation of the Crown issued on 21 April 2016 does not set a precedent whereby the Crown can in the future purport to determine the sittings and adjournments of this House other than according to law.

There is a public interest in maintaining the number of Western Australian senators in the Commonwealth Parliament. This is the case even though a nominee filling the vacancy may only be a senator for a short period prior to a Federal election.

I have therefore recalled the Legislative Council to **Thursday, 28 April 2016 at 10.00am** for the purpose of passing the necessary resolutions under the Joint Standing Orders and to then undertake a joint sitting pursuant to s.15 of the *Commonwealth Constitution* to fill the vacancy caused by the resignation on 13 April 2016 of Senator Joe Bullock.

Hon Barry House MLC

President

Notice in *The West Australian* Newspaper, Tuesday, 26 April 2016

Notice given by the President of the Legislative Council pursuant to s.1 of the *Parliamentary Privileges Act 1891* (earlier meeting of the Legislative Council).

Whereas the Government has represented to me, Hon Barry House, MLC, President of the Legislative Council, that the public interest requires the Legislative Council to meet at an earlier time than 10 May 2016 and I am satisfied that the public interest does so require:

Now therefore, I hereby give notice pursuant to the power provided in s.1 of the *Parliamentary Privileges Act 1891* (earlier meeting of the Legislative Council) that the Legislative Council shall meet on Thursday, 28 April 2016 at 10.00 am.

Given under my hand on 26 April 2016.

Hon Barry House MLC

President