



LEGISLATIVE COUNCIL
MINUTES OF THE PROCEEDINGS
No. 121 — Wednesday, 15 September 2021
Proof Version

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- 1 The President took the Chair at 9.06 a.m., read the Prayer and made an Acknowledgement of Country.
- 2 **PAPERS PURSUANT TO STATUTE** — The following Papers, pursuant to the directions of several Acts of Parliament, were laid on the Table by the Clerk:
Planning and Environment Act 1987 — Notice of Approval of an amendment to Victoria Planning Provisions — Amendment VC211.
A Statutory Rule under the Courts (Case Transfer) Act 1991 — No. 115.
- 3 **MEMBERS' STATEMENTS** — Statements were made by Members pursuant to Standing Order 5.13 and further statements were received from Members for incorporation in Hansard pursuant to an Order of the Council of 7 September 2021.
- 4 **BAIL AMENDMENT (REDUCING PRE-TRIAL IMPRISONMENT OF WOMEN, ABORIGINAL, AND VULNERABLE PERSONS) BILL 2021** — Dr Ratnam laid on the Table the statement of compatibility as required by the *Charter of Human Rights and Responsibilities Act 2006*.
Dr Ratnam moved, That the Bill be now read a second time.
On the motion of Ms Taylor, the debate was adjourned for two weeks.
- 5 **USE OF WHIPS IN HORSE RACING** — Mr Meddick moved, That this House —
(1) acknowledges —
(a) that Members in this House and in the community condemn animal cruelty where it occurs;
(b) that horses in the racing industry deserve our care and respect;
(2) notes —
(a) that surveys commissioned by Racing Victoria found that more than 87 per cent of respondents believe that there should be reform to the use of the whip;
(b) the public commentary from Racing Victoria that it supports reform to reduce the use of the whip;
(c) Racing Victoria's view that the whip remains critical for the safety of the horse and jockey; and
(3) calls on state racing authorities to work with Racing Australia to develop a national approach to address community concern around the use of the whip.
Debate ensued.
Question — put and agreed to.
- 6 **PRODUCTION OF DOCUMENTS — REVIEW OF DISCRIMINATION, SEXUAL HARASSMENT AND VICTIMISATION IN THE COUNTRY FIRE AUTHORITY AND METROPOLITAN FIRE BRIGADE** — Mr Davis moved, That this House —
(1) notes the —
(a) failure of the Government to comply with the resolution of the Council of 5 May 2021 requiring the Leader of the Government to table in the Council the Victorian

- Equal Opportunity and Human Rights Commission's (VEOHRC) review into the nature, prevalence, drivers and impacts of discrimination, sexual harassment and victimisation in the Country Fire Authority and Metropolitan Fire Brigade;
- (b) Attorney-General's letter of 19 May 2021 in response to the order to produce these documents that stated that the Government does not hold a copy of the Review and that the VEOHRC advised that it cannot provide a copy of the Review to the Government due to Orders made by the Court of Appeal on 4 October 2018;
 - (c) ruling made by the President on 4 May 2021, upholding a point of order highlighting that the Government had claimed executive privilege over certain documents, but had failed to produce them pursuant to the terms of Standing Order 11.03;
- (2) further notes that if the resolution of the Council is not complied with, the Council reserves its right to find the Leader of the Government guilty of a contempt of the Council and this may result in a formal motion of censure of the Leader of the Government;
 - (3) further notes the accepted practice in the New South Wales Legislative Council that if documents are legally in the custody and control of an agency rather than a Minister, the agency is required to comply with an order to produce those documents to the House;
 - (4) further notes the legal opinion tabled in the New South Wales Legislative Council on 18 November 2015 by Mr Bret Walker SC, reiterating the right of Australian State Houses of Parliament to demand documents from all government agencies, directly if necessary, consistent with their ancient privileges and powers;
 - (5) requires —
 - (a) the Commissioner and the Executive Director of the VEOHRC to provide the documents outlined in paragraph (1)(a) to the Clerk for tabling in the House within 14 calendar days following the adoption of this resolution;
 - (b) requires the Leader of the Government to table within 21 calendar days following the adoption of this resolution, all documents outlined in paragraph (1)(a);
 - (6) authorises the Clerk to communicate this order to the Commissioner and the Executive Director of the VEOHRC and table any documents received from the VEOHRC under paragraph (5)(a) in accordance with Standing Order 11.02; and
 - (7) further notes that Standing Order 11.03 provides a mechanism whereby documents that the government agency or individual is of the view should not be released, can be subject to the ruling of an independent legal arbiter.

Debate ensued.

Business having been interrupted at 11.00 a.m. pursuant to an Order of the Council of 7 September 2021 —

7 QUESTIONS AND MINISTERS' STATEMENTS — Questions without notice were taken and Ministers' Statements were made pursuant to Sessional Order 13.

WORKSAFE STAFF — VACCINATION RATES — Ms Stitt having given answers to a question without notice and supplementary question relating to WorkSafe staff vaccination rates —

On the motion of Mr Davis, the Minister's answers were ordered to be taken into consideration on the next day of meeting.

QUESTIONS — Questions without notice and Ministers' Statements continued.

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QUESTIONS DIRECTED FOR WRITTEN RESPONSE — The President directed written responses be provided to questions without notice pursuant to Standing Order 8.07 as follows:

- **Firearms dealers – insurance requirements** — substantive and supplementary questions asked by Mr Bourman — response from Ms Tierney due Friday, 17 September 2021.
- **Rabbit farming – animal welfare** — substantive and supplementary questions asked by Mr Meddick — response from Ms Tierney due Friday, 17 September 2021.
- **Hospital bed capacity** — substantive and supplementary questions asked by Mr Hayes — response from Ms Symes due Friday, 17 September 2021.
- **Victorian border restrictions** — substantive and supplementary questions asked by Mr Quilty — response from Ms Symes due Friday, 17 September 2021.

8 CONSTITUENCY QUESTIONS — Constituency questions were taken pursuant to Standing Order 8.08 and further questions were received from Members for incorporation in Hansard pursuant to an Order of the Council of 7 September 2021.

9 PRODUCTION OF DOCUMENTS — REVIEW OF DISCRIMINATION, SEXUAL HARASSMENT AND VICTIMISATION IN THE COUNTRY FIRE AUTHORITY AND METROPOLITAN FIRE BRIGADE — Debate continued on the question, That this House —

(1) notes the —

- (a) failure of the Government to comply with the resolution of the Council of 5 May 2021 requiring the Leader of the Government to table in the Council the Victorian Equal Opportunity and Human Rights Commission's (VEOHRC) review into the nature, prevalence, drivers and impacts of discrimination, sexual harassment and victimisation in the Country Fire Authority and Metropolitan Fire Brigade;
 - (b) Attorney-General's letter of 19 May 2021 in response to the order to produce these documents that stated that the Government does not hold a copy of the Review and that the VEOHRC advised that it cannot provide a copy of the Review to the Government due to Orders made by the Court of Appeal on 4 October 2018;
 - (c) ruling made by the President on 4 May 2021, upholding a point of order highlighting that the Government had claimed executive privilege over certain documents, but had failed to produce them pursuant to the terms of Standing Order 11.03;
- (2) further notes that if the resolution of the Council is not complied with, the Council reserves its right to find the Leader of the Government guilty of a contempt of the Council and this may result in a formal motion of censure of the Leader of the Government;
- (3) further notes the accepted practice in the New South Wales Legislative Council that if documents are legally in the custody and control of an agency rather than a Minister, the agency is required to comply with an order to produce those documents to the House;
- (4) further notes the legal opinion tabled in the New South Wales Legislative Council on 18 November 2015 by Mr Bret Walker SC, reiterating the right of Australian State Houses of Parliament to demand documents from all government agencies, directly if necessary, consistent with their ancient privileges and powers;
- (5) requires —
- (a) the Commissioner and the Executive Director of the VEOHRC to provide the documents outlined in paragraph (1)(a) to the Clerk for tabling in the House within 14 calendar days following the adoption of this resolution;
 - (b) requires the Leader of the Government to table within 21 calendar days following the adoption of this resolution, all documents outlined in paragraph (1)(a);
- (6) authorises the Clerk to communicate this order to the Commissioner and the Executive Director of the VEOHRC and table any documents received from the VEOHRC under paragraph (5)(a) in accordance with Standing Order 11.02; and
- (7) further notes that Standing Order 11.03 provides a mechanism whereby documents that the government agency or individual is of the view should not be released, can be subject to the ruling of an independent legal arbiter.

Question — put.

The Council divided — The President in the Chair.

AYES, 13

Mr Atkinson; Dr Bach; Mr Barton; Ms Crozier; Dr Cumming; Mr Davis; Mr Finn; Mr Grimley; Mr Hayes; Ms Lovell; Ms Maxwell; Mrs McArthur; Mr Ondarchie.

(Recorded by Clerks-at-the-Table, pursuant to an Order of the Council of 23 April 2020)

NOES, 19

Mr Elasmarr; Mr Erdogan; Dr Kieu; Mr Limbrick; Mr Meddick; Mr Melhem; Ms Patten; Ms Pulford; Mr Quilty; Dr Ratnam; Ms Shing; Ms Stitt; Ms Symes; Mr Tarlamis; Ms Taylor; Ms Terpstra; Ms Tierney; Ms Vaghela; Ms Watt.

(Recorded by Clerks-at-the-Table, pursuant to an Order of the Council of 23 April 2020)

Question negatived.

10 WEST GATE TUNNEL PROJECT — Debate resumed on the question, That this House —

- (1) notes the material released in August 2021 by Transurban on the West Gate Tunnel (WGT) Project to investors, including that —
 - (a) tunnelling has not commenced as a result of disputes arising between the project parties;
 - (b) project completion in 2023 is no longer achievable and, due to continued uncertainty in relation to the resolution of commercial matters and timing for commencement of tunnelling, a further update on the expected project completion date cannot be provided at this stage;
 - (c) the contracted total cost of the project was \$6.7 billion, with estimates of additional costs to complete the project differing among project parties and remaining uncertain, however based on preliminary independent analysis, Transurban estimates the D&C subcontractors construction costs could increase by \$3.3 billion, with the D&C subcontractors' claims being higher;
 - (d) in order to reach a commercial settlement, Transurban believes all project parties would be required to make a meaningful financial contribution;
- (2) further notes the WGT Project, a Transurban market led proposal, was signed in December 2017 and was subject to a report by the Victorian Auditor-General;
- (3) further notes the mismanagement of the WGT Project by the Andrews Labor Government, a project that is now late, over budget and the subject of legal dispute;
- (4) insists that the State Government pay no more than the contracted amount and not further extend any toll concession; and

calls for a pause on the collection of WGT related tolls levied on existing CityLink roads.

On the motion of Ms Taylor, the debate was adjourned until later this day.

11 WORKSAFE'S NON-ESTABLISHED, NEW AND EMERGING TREATMENTS AND SERVICES

— Mr Grimley moved, That this House —

- (1) notes that —
 - (a) frontline emergency services have a higher rate of mental illness as a result of their work;
 - (b) WorkSafe provides compensation for a range of reasons, including mental health injuries as a result of work;
 - (c) WorkSafe's non-established, new and emerging treatments and services (NeNETS) policy, provides an avenue for contemporary treatments and services including psychiatric assistance dogs and equine therapy, to be assessed on a case-by-case basis;
 - (d) it can take approximately nine months to approve a psychiatric assistance dog claim to treat post-traumatic stress injuries (PTSI), as opposed to a 27-day average for general mental health claims and a 7-day average for physical injury claims;
 - (e) WorkSafe have previously approved psychiatric assistance dogs to treat PTSI, however this policy does not hold precedent and is not legislated, meaning that each claimant must undergo an extensive and exhaustive legal process, causing additional financial and emotional stress;
 - (f) the Department of Veterans' Affairs has a Psychiatric Assistance Dogs program to treat veterans with PTSI and many animal therapy approaches have yielded extremely positive results;
 - (g) the terminology of post-traumatic stress 'injury' is preferred by sufferers, rather than the outdated term 'disorder';
- (2) calls on the Government to —
 - (a) review its NeNETS policy to ensure future claims for canine and equine therapies treating PTSI are considered without delay and not unfairly denied in the future; and
 - (b) ensure WorkSafe's NeNETS policy is recorded publicly to allow transparency for those seeking claims and their legal representatives.

Debate ensued.

Question — put and agreed to.

12 BUSINESS OF THE COUNCIL — TEMPORARY ORDERS — HYBRID SITTINGS — Ms Symes moved, by leave, That so much of Standing, Sessional and Temporary Orders be suspended to allow the following arrangements to come into effect at the end of this sitting week and remain in place until 31 December 2021 for the purposes of enabling the House to continue its sittings during the COVID-19 pandemic:

Hybrid sitting

Members may participate in debate remotely using an audio-visual link as follows:

- (1) The Chair must be satisfied that the quality of the audio-visual link allows the Chair to verify the identity of that Member and for the Member to participate.
- (2) A Member participating remotely is not counted for the purposes of a quorum.
- (3) A Member participating remotely shall not vote.
- (4) Members participating remotely may do all things a Member in the Chamber may do, except —
 - (a) chair the debate;
 - (b) refuse leave;
 - (c) take, or speak on, a point of order unless it is taken by another member during their contribution;
 - (d) call the Chair's attention to the state of the House;
 - (e) call for a division;
 - (f) vote;
 - (g) move a motion for the closure of debate under Standing Order 12.25 or be counted in support of a closure of debate motion under Standing Order 12.25(2); and
 - (h) be counted for the purposes of satisfying an absolute or special majority requirement.
- (5) In order to assist Members participating remotely, the Chair will use a formal call list to allocate the call for each debate where practical and Members wishing to participate remotely may seek the call by —
 - (a) informing their whip, or the whip's representative, who will inform the Chair in advance — for a Government or Opposition Member; and
 - (b) informing the Clerk, who will inform the Chair in advance — for any other Member.
- (6) When a Member participates remotely, the Chair may exercise all their usual powers to control the debate.
- (7) The Chair is given any additional powers necessary to facilitate the smooth running of the House and/or to address any technical issues, including but not limited to —
 - (a) stopping the clock;
 - (b) returning to a Member's contribution; and
 - (c) re-ordering business.
- (8) The President may issue formal Guidelines from time to time about remote participation which must not be inconsistent with this temporary order and must be complied with as if they are temporary orders and the President may take any action necessary should Members not abide by the Guidelines.

Debate ensued.

Dr Ratnam moved, as an amendment, That all the words in paragraph (3) be **omitted** and replaced with the following:

- “(3) A Member participating remotely shall not vote and a Member that is not in the Chamber at the time of a division may register their opinion on the question by notifying the Clerk in writing of their opinion (either ‘Aye’ or ‘Noe’) after the commencement of the matter in the House and before the President reports the result of the vote to the House, and any such opinion will be published, separately from the results of the vote, in Hansard and the Minutes of Proceedings.”

Debate ensued.

Question — That the amendment moved by Dr Ratnam be agreed to — put and agreed to.

Question — That the motion, amended as follows, be agreed to — That so much of Standing, Sessional and Temporary Orders be suspended to allow the following arrangements to come into effect at the end of this sitting week and remain in place until 31 December 2021 for the purposes of enabling the House to continue its sittings during the COVID-19 pandemic:

Hybrid sitting

Members may participate in debate remotely using an audio-visual link as follows:

- (1) The Chair must be satisfied that the quality of the audio-visual link allows the Chair to verify the identity of that Member and for the Member to participate.
- (2) A Member participating remotely is not counted for the purposes of a quorum.
- (3) A Member participating remotely shall not vote and a Member that is not in the Chamber at the time of a division may register their opinion on the question by notifying the Clerk in writing of their opinion (either 'Aye' or 'Noe') after the commencement of the matter in the House and before the President reports the result of the vote to the House, and any such opinion will be published, separately from the results of the vote, in Hansard and the Minutes of Proceedings.
- (4) Members participating remotely may do all things a Member in the Chamber may do, except —
 - (a) chair the debate;
 - (b) refuse leave;
 - (c) take, or speak on, a point of order unless it is taken by another member during their contribution;
 - (d) call the Chair's attention to the state of the House;
 - (e) call for a division;
 - (f) vote;
 - (g) move a motion for the closure of debate under Standing Order 12.25 or be counted in support of a closure of debate motion under Standing Order 12.25(2); and
 - (h) be counted for the purposes of satisfying an absolute or special majority requirement.
- (5) In order to assist Members participating remotely, the Chair will use a formal call list to allocate the call for each debate where practical and Members wishing to participate remotely may seek the call by —
 - (a) informing their whip, or the whip's representative, who will inform the Chair in advance — for a Government or Opposition Member; and
 - (b) informing the Clerk, who will inform the Chair in advance — for any other Member.
- (6) When a Member participates remotely, the Chair may exercise all their usual powers to control the debate.
- (7) The Chair is given any additional powers necessary to facilitate the smooth running of the House and/or to address any technical issues, including but not limited to —
 - (a) stopping the clock;
 - (b) returning to a Member's contribution; and
 - (c) re-ordering business.
- (8) The President may issue formal Guidelines from time to time about remote participation which must not be inconsistent with this temporary order and must be complied with as if they are temporary orders and the President may take any action necessary should Members not abide by the Guidelines — put and agreed to.

13 STATEMENTS ON REPORTS, PAPERS AND PETITIONS — Statements on reports, papers and petitions were received from Members for incorporation in Hansard pursuant to an Order of the Council of 14 September 2021.

14 ADJOURNMENT — Ms Symes moved, That the House do now adjourn.

Debate ensued and further adjournment matters were received from Members for incorporation in Hansard pursuant to an Order of the Council of 7 September 2021.

And then the Council, at 2.22 p.m., adjourned until tomorrow.

ANDREW YOUNG
Clerk of the Legislative Council