

PARLIAMENTARY CHRONICLE

Western Australia Parliamentary Chronicle: July 2008 to July 2010

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This chronicle of the last days of the Carpenter Labor government and the first two years of Colin Barnett's Liberal-National 'alliance government', focuses on parliamentary aspects of the period and other key policy issues. Alan Carpenter's August decision to call an early poll for 6 September 2008 backfired and resulted in an unexpected win for the all but retired Colin Barnett, who had assumed the Liberal Party leadership just one day before the election was called. The 'alliance' narrowly won government just as the global financial crisis emerged, but the 2009 and 2010 budgets saw the government record small surpluses, driven in part by the mining sector. Triple A investment status was maintained, although some concerns were voiced about debt predictions and steep rising public utility charges, while the key portfolios of health and education fell short of the government's controversial 3 per cent public sector efficiency drive.

With the 2008 election result, Western Australia broke the pattern of 'wall to wall' Labor government's throughout Australia. Despite early cooperation at the Council of Australian Governments (COAG) and significant federal backing for the state's infrastructure projects, the Premier spoke strongly against revised Commonwealth Grants Commission relativities, and whilst broadly supportive of the federal health reform package, Barnett refused to sign the April 2010 COAG deal that required the transfer of some 30 per cent of the state's GST funds to federal coffers. In May 2010 the Premier stridently opposed the proposed federal 'resources super profits tax', while polls indicated Labor's first preference votes had declined to below 35 percent at both the state and federal level, with support sliding to the Greens.

The 2008 Election

The October 2007 electoral redistribution delivered 'one vote one value' to the Legislative Assembly and it was predicted that Labor may even achieve a 10 seat majority in the 59 member lower House when it next faced the voting public. Yet, in a surprise result, Labor lost four seats, resulting in the real possibility of a hung

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parliament. Labor ended up with 28 seats, down from 32 in 2005 when it held a seven seat majority over the Liberals and Nationals combined. The Liberals won just 24 seats, with their traditional coalition partner the Nationals retaining four. Speculation soon arose as to whether the break in the traditional agreement between the Liberal and National parties might be permanent when Nationals leader Brendan Grylls entered into preliminary discussions with the incumbent Labor Premier Alan Carpenter. However, after protracted negotiations, Carpenter was unable to persuade Grylls to accept ministerial posts in a Labor led coalition, with the Nationals' 'old guard' said to be stridently opposed to the notion. Instead Grylls accepted an agreement with the Liberals that incorporated the Nationals' 'royalties for regions' policy, whereby 25 percent of mining and petroleum royalties would be quarantined for spending in regional areas.

While it looked like a hung parliament, with 28 seats a piece for the major parties, Barnett won the voting support of three Independent members, Elizabeth Constable, Janet Woollard and former Labor member John Bowler, who won the seat of Kalgoorlie and then committed himself to vote with the Nationals on most matters. With numbers tight in the Assembly, there was more comfort for the government in the expanded 36 seat Legislative Council, in which from 22 May 2009 the Liberals had 16 seats and the Nationals had five. Labor was reduced to 11 seats while the Greens (WA) increased their standing from two to four, yet lost their 'balance of power' position. As late as 20 May 2009 the Court of Disputed Returns rejected a bid by former MLC Anthony Fels to prevent the National's Mia Davies from taking her Agricultural Region seat. Sadly, the parliament recorded the 13 February 2010 death of 'Labor Lion' Jock Ferguson, who had been an MLC for less than a year. The 'casual' vacancy was filled by Linda Savage, a lawyer who commenced her career working for the former ALP Senator Ruth Coleman.

The Premier, who took the State Development portfolio, had the complicated task of selecting a Ministry necessarily different from the former Shadow Ministry. The four Nationals in the Assembly took three ministerial posts and the Speakership. Grylls did not accept the Deputy Premier position (which went to Liberal MLA, Kim Hames), but assumed portfolios closely associated with regional development, while Terry Redman took Agriculture and Forestry, Terry Waldron gained Sport and Recreation, and the position of Speaker was won by Grant Woodhams. In a move certain to consolidate her support, Independent Elizabeth Constable was designated Education Minister as well as taking on the portfolios of Women's Interests and Tourism. A devastated Labor Party was soon faced with Alan Carpenter's departure as leader, with former Treasurer Eric Ripper (57) unanimously appointed to the post on 23 September 2008.

Parliament and Parties

The alliance cabinet experiment was surprisingly stable but in both parliament and the media the government had to defend charges that it had not delivered on around one third of its 45 point plan for the first hundred days of office. The 38th

parliament had, at the time of writing, passed 81 bills, but the government was criticised for the historically low number of sitting weeks, which overlooked the increase in parliamentary committee work. Speculation as to whether the government could maintain the confidence of the Assembly soon abated as it strengthened its grip on power, particularly after Labor lost the safe seat of Fremantle to the Greens (WA) candidate Adele Carles. The May 2009 Fremantle by-election followed the resignation of former Labor Minister Jim McGinty and was not contested by the Liberal Party. A reflection of the influence of the Independents in the Assembly was the passage of Dr Janet Woollard's private members' Bill to ban smoking on beaches and in cars, which would be implemented in September 2010. Woollard's campaign to ban smoking at Parliament was also brought to fruition on 17 June 2009.

More than a year after his electoral loss former Premier Alan Carpenter resigned from the Parliament altogether and took an executive position at Wesfarmers. The Liberal Party again chose not to endorse a candidate for the 26 November 2009 Willagee by-election, at which former army major turned small businessman Peter Tinley held the seat for Labor, winning 54 per cent of the primary vote. The victory helped restore some confidence to Labor which had earlier faced the defection of North West MLA Vince Catania to the Nationals. In August 2009 former Labor Minister Alannah MacTiernan announced her intent to have a tilt at the federal seat of Canning, held by long time 'sparring partner' Don Randall, and on 24 June 2010 made her farewell speech to the Assembly ahead of the scheduled 21 August federal election.

The new government soon changed some of its predecessor's policy decisions, particularly in relation to local government. There was a move to amalgamate some of the state's 139 local government bodies, specifically municipalities serving populations with fewer than 1000 people, and October 2009 saw a return to simple member plurality for local government elections. The alliance government did however, complete some of its predecessor's legislative program, with the so called 'living wills' legislation (the Acts Amendment (Consent to Medical Treatment) Bill 2006) which finally came into effect in January 2010. One controversial action was the Minister for Agriculture Terry Redman's January 2010 decision to lift the ban on growing genetically modified canola. Despite concerns expressed about the environmental safeguards on the massive \$50 billion Gorgon Gas Project, it was underway by the end of 2009. However, the 30 June 2010 deadline for agreement with the traditional owners of the gas hub site at James Price Point passed without resolution, with the Premier threatening to compulsorily acquire the required area.

Although the government's law and order legislation was frequently challenged, it claimed electoral support for these measures, including, toughening up the so termed 'hoon' legislation and the introduction of a Prohibitive Behaviour Orders Bill, aimed at providing courts with a mechanism to restrict those who have a history of antisocial behaviour. Contentious too, was the delivery of the so called

Redress Scheme, with the 2010 announcement of four compensation levels, considerably less than the amount budgeted by the previous government, for people who had suffered abuse in state care. Meanwhile, in June 2009 the Minister for Fisheries Norman Moore was forced to grapple with changes to licensing and fishing regulations to provide greater levels of protection to 'at risk' species.

Parliamentary fortunes for Labor in opposition were mixed, with the perennial debate on shopping hours proving divisive. The Labor caucus initially opted for 7.00 pm weeknight closing against the Premier's preference for 9.00 pm. Despite opposition from the Nationals, who would not over-ride their electoral commitment to oppose extended trading hours, and after Labor indicated agreement to the 9.00 pm option, the government introduced its Retail Trading Hours Amendment Bill in June 2009 to enable this to occur, yet the bill remained on the Notice Paper until it came up for debate in mid 2010. The Opposition spent much of 2009/10 focusing on a range of government appointments which it claimed showed 'a disregard for proper process and transparency' (Hon Sue Ellery, Legislative Council 16/6/2009). Four appointments in particular were questioned, the first being former Howard Cabinet Secretary Peter Conran as Director General of the Department of the Premier and Cabinet, a matter in which the Assembly's Public Accounts Committee, in its 11 June 2009 report, did not establish improper process. The appointment of former Liberal Senator Chris Ellison to report on the government's science and conservation strategy for the Kimberley raised questions of a conflict of interest given he was an associate director for a company representing resource interests in the region. In early 2010 Premier Barnett again faced opposition criticism over the appointment of his Chief of Staff, Brian Pontifex, who had replaced Deidre Wilmot. In 2008 Wilmot had foregone pre-selection for the seat of Cottesloe after Barnett decided against retirement to take on the party leadership at the eleventh hour. It was revealed in the Assembly on 27 May 2010, that Pontifex was to receive a substantial package in the order of \$350,000 per annum, well above that received by Wilmot.

A recurring problem for the Premier was Treasurer Troy Buswell, who was twice called on to explain inaccurate accommodation claims. In spirited debate at the October 2009 Regional Parliament in Bunbury, and again in November of that year, Labor demanded Buswell either resign or be dismissed, and while the Premier acknowledged it was a serious matter he was not prepared to take disciplinary action. Eventually Buswell resigned from the Cabinet following the April 2010 surprise revelation of an extramarital affair with Greens MLA Adele Carles. At issue was the question of whether their meetings had involved the misuse of public money, but in a late June report on the matter, Public Service Commissioner Mal Wauchope dismissed this concern. Nevertheless, the Premier, who had assumed the Treasury portfolio, dampened speculation of an early return for Buswell to the front bench. Almost one year after her election to the Assembly, Carles became an 'Independent Green' following internal party disputes over the matter. In a further blow to the minor party, Carles' departure effectively denied the Greens their claim to parliamentary party status with its associated staff and research entitlements.

In January 2010 the Presiding Officers ruled out a plan to convert the billiard room at Parliament House to a crèche, which prompted Greens MLC Allison Xamon to decry the lack of family facilities as ‘unacceptable’ (*Sunday Times* 17/01/2010). Labor’s Michelle Roberts, however, had an earlier win for breastfeeding mothers when in May 2009, after a woman was asked to leave a Perth hotel for breastfeeding her baby in public, Roberts introduced a Private Member’s Bill to prohibit this form of discrimination. Although the Premier suggested such laws were unnecessary, an effective campaign saw the legislation pass through the Parliament to gain assent on 1 April 2010. Also of interest in the period under review was the conduct on 16 May 2009 of the fourth daylight saving referendum in the state, which immediately followed an agreed three year trial. The 54 per cent ‘no’ vote virtually replicated the 1975, 1983 and 1992 referendums on the subject and signaled the death knell for the perennial debate, at least in the foreseeable future.

Matters concerned with the Corruption and Crime Commission, specifically the judicial fate of former Premier turned lobbyist Brian Burke, his lobbying partner former Minister Julian Grill, former Minister Norm Marlborough and a number of senior public servants, came to a head in mid June 2010. The Director of Public Prosecutions announced an appeal against the acquittals of Burke, Grill and former ministerial officer, Nathan Hondros on charges that stemmed from a 2006 CCC investigation into the influence of the lobbyists. Grill was cleared in 2009 of two counts of ‘lying’, and although Burke beat four out of five similar charges in April 2010 and was fined \$25,000 he chose to appeal that decision, while Marlborough was found guilty of one count of lying to the CCC. The CCC’s inquiry into the wrongful conviction of Andrew Mallard was completed in 2009 and resulted in the resignations of the associated senior police personnel Mal Shervill and Dave Caporn, and public prosecutor Ken Bates, who each played key roles in the murder investigation. Mallard was later awarded an *ex gratia* payment, but did not rule out further action against those he considered responsible for his spending almost 12 years behind bars for a crime he did not commit.

Extreme weather events were also an issue for government and on 30 December 2009 a bushfire at Toodyay was declared to be a ‘natural disaster’. Dissatisfaction with the state electrical safety regulator EnergySafety’s 15 February 2010 finding that it was unable to determine if Western Power’s distribution system had ignited the fire led to a second report being commissioned which, in mid 2010 revealed new evidence concerning a rotten power pole. At the other end of the weather spectrum on 22 March 2010, heavy hail and high winds and rain caused the Premier to declare another ‘natural disaster’ for parts of Perth, with insurance companies bearing a heavy load.

Procedural Matters

In September 2009, the Legislative Council’s Procedure and Privileges Committee embarked on an extensive review of its Standing Orders, whilst the chamber itself was subject to a long awaited refurbishment, completed in early 2010. The upper

House recorded keen debate concerning the disallowance of regulations and on 15 September 2009 supported the Joint Standing Committee on Delegated Legislation's suggested action to disallow the *City of Joondalup Cats Local Law 2008*, not necessarily in opposition to the sterilisation of cats, but as an objection to the City moving beyond its jurisdiction in recommending the Minister for Local Government pass a statewide law. However, on 26 November 2009 the Legislative Council voted to override the same committee's recommendation that sought to reject the Perth Parking Management Amendment Regulations that had increased parking fees by some 200 per cent.

Of procedural interest in the Assembly was the 22 September 2009 use of the Speaker's casting vote. During the consideration in detail stage on the Waste Avoidance and Resource Recovery Amendment Bill 2009, a closure motion, or 'gag', was moved by the government on three occasions, resulting in a deadlock which required Speaker Woodhams to cast his vote, each time in support of the government. On the following day, Labor's Alannah MacTiernan moved that the House note "the Westminster convention that the Speaker.....should always vote for further discussion" and requested a ruling on whether the two-century old convention continues to apply to the Assembly. In a considered decision on 26 November 2009, Speaker Woodhams noted, among other things, the complexities of the use of casting votes in smaller chambers in comparison to the 646 member House of Commons, and finally stated his disagreement with the assertion that the Speaker in Western Australia is bound by the conventions that apply in the UK.

Parliamentary Committees

In both Houses Standing Committees are now predominant, however in a nod to the past, a Select Committee of the Legislative Council investigated the alleged 2008 budget leaks to the *Sunday Times* newspaper. In its April 2010 report the Committee recommended the introduction of shield laws to enable journalists to better protect their sources, despite no adverse findings being recorded against any journalist. The Council's Environmental and Public Affairs Committee continued to inquire into all petitions tabled in that House, covering such diverse topics as the shortage of abattoir capacity in Western Australia, land clearing in Rockingham National Park, and development proposals in the Moore River region. At the time of writing the Committee was inquiring into the Transportation of Detained Persons and was considering the Coroner Alistair Hope's recommendations in relation to death of Mr Ward, an Aboriginal elder who died whilst being transported in a prison van on 27 January 2008. The Director of Public Prosecutions Joe McGrath, appointed in February 2010, was forced to defend his controversial decision not to lay criminal charges in relation to the death of Mr Ward.

The Public Administration Committee of the Legislative Council took on a House referred inquiry into Recreation Activities within Public Drinking Water Source Areas, examining the competing interests of recreation and the state's obligation to provide drinking water, particularly at dams like Logue Brook, which in itself was

an election issue in 2008. The Committee also started an inquiry into Wooden Power Poles as a result of the concerns raised by EnergySafety into maintenance procedures on the electricity network in the wake of the 2009 Toodyay fires. The Council's Standing Committee on Legislation commenced an inquiry into the government's controversial Criminal Investigation Amendment Bill 2009, which generated heated debate due to its proposal to introduce police stop and search powers in some public places without the need for a search warrant, an arrest, or the person's consent. The Committee was due to report by 21 October 2010.

The Estimates and Financial Operations Committee completed an inquiry in July 2010 into the Education Minister's contentious decision to remove funding for year 11 and 12 courses from 21 district high schools, many in regional or remote parts of the state. The Committee found, among other things, that the poorly communicated decision resulted in confusion amongst principals, parents and the community about what the decision meant and what options were available. A May 2009 report tabled by the Committee on the Royalties for Regions Program followed a preliminary report by the Auditor General, and sought a greater accountability framework for the associated expenditures. Public controversy emanated from the deliberations of the Committee's inquiry into public sector expenditure and, in a sub-committee hearing on 24 March 2009, Under-Treasurer Tim Marney said 'the financials in the midyear review were unsustainable'. Marney told the same Committee on 22 June 2009 that he stood by his stated concern's at the government's decision to retain Royal Perth Hospital, drawing public criticism from the Premier, who was quoted in the *West Australian* (24/6/2010) as saying that 'as a general principle it is up to Ministers to comment on policy'. By year's end the Director General of Health, Dr Peter Flett, who had in October 2008 replaced the controversial Dr Neil Fong, tendered his resignation following his own public comments on cost blowouts. Flett was responding to the Auditor General's criticism of the Health department over its use of a \$25 million special purpose fund to pay operational expenses. Then, on 2 December 2009 Flett told the Assembly's Public Accounts Committee of a potential for a health budget blow-out of some \$200 million. Treasurer Troy Buswell's public criticism of the comments preceded Flett's December 2009 resignation and led to the early 2010 updated guidelines for public servants giving evidence to parliamentary committees.

Further to its aforementioned inquiry into the appointment of Peter Conran, the Assembly's Public Accounts Committee (PAC) continued to report in a manner that perhaps reflected the opposition majority on the committee. Another of its 'political' inquiries was established as a result of the Attorney General's allegations that the Confiscation Proceeds Account Committee (CPAC), in particular its Chairman and Labor MLA John Hyde, were responsible for maladministration and political manipulation of funding grants from the Confiscation Proceeds Account. The PAC found, however, no evidence that the CPAC gave consideration to political factors in recommending grant applications for funding.

During the review period, the Assembly's Community Development and Justice Standing Committee, chaired by former labor Minister Alannah MacTiernan, tabled a report on its *Inquiry into the Adequacy of Services to Meet the Developmental Needs of Western Australia's Children* and an interim report on the efficiency and effectiveness of prisoner education, training and employment strategies, with the final report expected on 25 November 2010. In October 2009, the Economics and Industry Standing Committee's *Inquiry into the Provision, Use and Regulation of Caravan Parks (and Camping Grounds) in Western Australia* delivered 57 recommendations that focussed on ensuring the continued provision of low cost caravan and camping services. In May 2010 the EISC was referred an inquiry into domestic gas prices in the state, and is expected to report in February 2011. The Education and Health Standing Committee, chaired by Independent MLA Janet Woollard had completed five reports since the change in government. The most recent entitled *Destined to Fail: Western Australia's Health System*, tabled on 6 May 2010, earned the government members of the committee the ire of Health Minister Kim Hames, who did not accept the findings of the committee.

In early 2009 the Joint Standing Committee on the Corruption and Crime Commission brokered 'an agreed process' between the CCC and the Parliamentary Inspector for the CCC Malcolm McCusker, who had tabled a series of reports criticising the CCC's investigative and reporting practices, particularly as they relate to procedural fairness. Soon after the agreement on 1 February 2009 Christopher Steytler replaced McCusker as Parliamentary Inspector. The Joint Standing Committee on the Commissioner for Children and Young People commenced its oversight of the role of the (inaugural) Western Australian Commissioner for Children and Young People, Ms Michelle Scott, who took office in December 2007. In May 2009 the committee recommended removing a requirement in the *Children and Young People Act 2006* that makes the Commissioner responsible for Working with Children Checks as it believed this would unduly impact on the Commissioner's other functions under the Act. On 24 September 2009 the Parliament established the Joint Standing Committee on the Racing and Wagering Western Australia Acts, pursuant to a legislative requirement. The Joint Standing Committee was to review the operation and effectiveness of the *Racing and Wagering Western Australia Act 2003* and the *Wagering Western Australia Tax Act 2003* and was expected to report to both Houses by 15 October 2010.

The Assembly's Procedure and Privileges Committee examined allegations concerning the Premier Barnett and former Labor Heritage Minister Michelle Roberts MLA, in relation to the removal of a Peppermint Grove property *The Cliffe* from the state Register of Heritage Places in mid 2008. In its 17 September 2009 report, the Committee found no evidence of any inducement offered to either Michelle Roberts or Colin Barnett in exchange for their support to remove the property from the register. In mid 2010, the Committee proposed changes to the Standing Orders to increase the number of grievances and member's statements in the House and to impose time limits on answers to questions without notice in

recommendations that had yet to gain the support of the House. This followed the Premier's 24 June 2010 announcement that the government would table a quarterly report on ministerial staffing arrangements, as answering questions in the House (and arguably in committees) on these matters had absorbed significant time and resources. ▲