

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 195

THURSDAY, 30 JUNE 2016

1. Meeting of Council

The Council assembled at 10.00am pursuant to order.

The President, Hon Barry House, took the Chair and read prayers.

2. Message from the Deputy of the Governor — Assent to Bills

The President reported the receipt of a Message from the Deputy of the Governor assenting to the following Bills —

29 June 2016 — Message No. 15	Act No.
Legal Profession Amendment (Levy) Bill 2016	12 of 2016
Legal Profession Amendment Bill 2016	13 of 2016

3. Ministerial Statement — National Disability Insurance Scheme Trials in Western Australia

The Minister for Disability Services made a Ministerial Statement with respect to the 12 month extension of the National Disability Insurance Scheme trials in Western Australia.

4. Ministerial Statement — One on Aberdeen — National Property Council of Australia Innovation and Excellence Awards

The Minister for Housing made a Ministerial Statement with respect to One on Aberdeen being named Australia's best affordable housing development at the National Property Council of Australia Innovation and Excellence Awards.

5. Papers

The following Papers were laid on the Table by —

President

Auditor General's Papers —

Management of Marine Parks and Reserves (Report No. 14) (June 2016).....	4293
Management of Feedback from Public Trustee Represented Persons (Report No. 15) (June 2016).....	4294

Reports —

Report to the Legislative Council — Delegation to Singapore and Vietnam (April 2016).....	4295
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Minister for Planning*Leases* —

CALM Lease No. 2352/100 — Between the Conservation and Land Management Executive Body and Sally Jane Chadwick for an existing recreational hut located along the lower reaches of the Donnelly River in the D'Entrecasteaux National Park..... 4296

6. Joint Standing Committee on the Corruption and Crime Commission — Report No. 28 — The outcome of allegations of misconduct made against officers of the Corruption and Crime Commission

Hon Nick Goiran presented Report No. 28 of the Joint Standing Committee on the Corruption and Crime Commission, *The outcome of allegations of misconduct made against officers of the Corruption and Crime Commission*. (Tabled Paper 4297).

7. Prevention of Forced Closure of Remote Aboriginal Communities Bill 2016

Non-Government Business No. 1 having been called, Hon Robin Chapple, pursuant to notice, moved —

That a Bill for “An Act to provide for the prevention of the forced closure of remote Aboriginal communities.” be introduced and read a first time.

Question — put and passed.

Bill read a first time.

Hon Robin Chapple moved, That the Bill be read a second time.

Hon Robin Chapple tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 4298).

Debate stands adjourned.

8. Independent Office of Animal Welfare — Establishment

Non-Government Business No. 2 having been called, Hon Lynn MacLaren moved, without notice —

That this House calls on the Government to establish an Independent Office of Animal Welfare.

Debate ensued.

Want of Quorum

There not being a quorum present, the President gave instructions for the ringing of the Bells.

A quorum being formed, the debate continued.

Motion lapsed.

9. Constitution and Electoral Amendment Bill 2016

Private Members' Business No. 1 having been called for the adjourned debate on the second reading of this Bill.

Point of Order

Hon Simon O'Brien raised the following Point of Order —

I was hoping you might offer the House a ruling on Standing Order 122 in relation to this matter, specifically with reference to section 46 of the *Constitution Acts Amendment Act 1899*.

President's Ruling

The President ruled as follows —

Hon Simon O'Brien has raised a point of order regarding the *Constitution and Electoral Amendment Bill 2016*, introduced by Hon Martin Aldridge. The point of order queries whether the introduction of the Bill in the Legislative Council is contrary to section 46(1) of the *Constitution Acts Amendment Act 1899*, which states —

Bills appropriating revenue or moneys, or imposing taxation, shall not originate in the Legislative Council; but a Bill shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand of payment or

appropriation of fees for licences, or fees for registration or other services under the Bill.

The Bill proposes the amendment of both the *Constitution Acts Amendment Act 1899* and the *Electoral Act 1907* to increase the number of Members of the Legislative Assembly from 59 to 61. The specific concern raised by Hon Simon O'Brien is whether the Bill involves an "appropriation", and therefore whether the Bill should be introduced in the Council. It is important to note from the outset that section 46 of the *Constitution Acts Amendment Act 1899* is nonjusticiable. Its equivalent provision in the Commonwealth Constitution has been described by the courts as "a procedural provision governing the intramural activities of the Parliament". The courts do not interfere in those activities, and I cite the High Court of Australia's decision in *Western Australia v Commonwealth (1995) 183 CLR 373* as authority for this proposition. The main point of this is that the courts will not be determinative of the issue of compliance with section 46; rather, it will be a ruling of the Presiding Officer of one or both Houses that will determine the fate of the Bill.

Unfortunately, many of the relevant parliamentary precedents are not particularly helpful, due to the historically divergent approaches taken by the Legislative Council and Legislative Assembly with respect to section 46, with this divergence waxing and waning over time. For instance, in 2005 the *One Vote One Value Bill 2005* proposed to increase the number of Members of the Legislative Council by two. On the basis that the Bill would therefore require additional public funding to pay for the two extra MLCs, the Governor sent a message to the Legislative Assembly, pursuant to section 46(8) of the *Constitution Acts Amendment Act 1899*, recommending the appropriation for the purposes of the *One Vote One Value Bill 2005*. This, however, was not unusual, as the Legislative Assembly has for some time adopted an interpretation of section 46 that has regarded any Bill that may either directly or indirectly result in additional public expenditure as being a Bill "for the appropriation of revenue or moneys". As far as the Council is concerned, however, the issue comes down not to whether a Bill may simply result in more Government money being spent, but rather whether or not the Bill contains an "appropriation".

What is an appropriation? Provision is made in section 64 of the *Constitution Act 1889* for a consolidated fund into which state revenue is paid. The consent of the Parliament is essential before the Executive may raise public revenue through taxation or expend public revenue. Clause 4 of the *Bill of Rights 1688* (UK) states —

That levying money for or to the use of the Crown by pretence of prerogative without grant of Parliament for longer time or in other manner than the same is or shall be granted is illegal.

That consent is given in the form of an act of the Parliament imposing taxation or appropriating money from the consolidated fund, pursuant to section 72 of the *Constitution Act 1889*.

The Executive Government's control over the State's finances is recognised by the prohibition on the appropriation of public funds without the Governor's authorisation in section 46(8) of the *Constitution Acts Amendment Act 1899*. This provides that before a Bill for the appropriation of revenue or moneys can be passed, the Governor must in the same session recommend the purpose of the appropriation by message to the Legislative Assembly. In practice, the message usually accompanies the introduction of the Bill. For an appropriation to be valid, a particular purpose must be identified. A sum appropriated to a particular purpose cannot be spent on another purpose. The sum appropriated is a maximum sum. It is available only in respect of expenditures which are made during the period in respect of which the parliamentary appropriation is given. If unexpended during that period, the authority to spend it expires, and the money cannot be spent and returns to the control of the Parliament.

Justices Isaacs and Rich in the High Court of Australia case of *Commonwealth v Colonial Ammunition Company Limited (1924) HCA 5; 34 CLR 198* at page 224 observed that —

... an Appropriation Act has a twofold purpose. It has a negative as well as a positive effect. Not only does it authorize the Crown to withdraw moneys from the Treasury, it "restrict(s) the expenditure to the particular purpose".

Latham CJ also stated at page 253 of *Attorney-General (Vic) ex rel Dale v Commonwealth (1945) 71 CLR 237*, known as the Pharmaceutical Benefits Case, that a statute would not operate as an appropriation act unless it defined the purpose for which the money might be spent —

... there cannot be appropriations in blank, appropriations for no designated purpose, merely authorizing expenditure with no reference to purpose. An Act which merely provided that a minister or some other person could spend a sum of money, no purpose of the expenditure being stated, would not be a valid Appropriation Act.

Accordingly, to be an appropriation Act, the Act must expressly appropriate a sum of money for a specific purpose. There is, therefore, a distinction between appropriation and authorisation, an Act may authorise or necessarily require expenditure by the Government to effectively implement it, but the Act itself may not as a matter of law appropriate that expenditure.

In summary, an appropriation is a formal and particular legislative action, and clear and specific words are required to constitute an appropriation. From the Legislative Council's point of view, a Bill appropriating revenue or moneys is one that contains a clause that requires money be specifically appropriated from the consolidated fund for the purpose of the Bill. In my opinion, the Bill does not contain any express provision appropriating money.

The Legislative Assembly has two sources of funding. One source is appropriated annually by Parliament for the delivery of services. In the 2015–16 budget this appropriation will be \$5,758,000. The other source of funding relating primarily to its Members' salaries and allowances is not contained in the moneys appropriated from the consolidated fund annually by Parliament. This source is contained in a standing appropriation under the *Salaries and Allowances Act 1975*. The 2015–16 budget lists this amount as \$19,188,000, but the requirements of the *Salaries and Allowances Act 1975* is for the necessary salaries and allowances to be appropriated as required. No additional parliamentary authority is necessary and the amount is not contained in the annual appropriation bills. Accordingly, any costs associated with an increase in the membership of the Assembly due to the Bill could be accommodated within these existing annual and standing appropriations.

The Bill does not contain an appropriation and therefore is not a Bill for the appropriation of revenue or moneys described in section 46 of the *Constitution Acts Amendment Act 1899*. The Bill may originate in the Legislative Council. It does not require a message from the Governor recommending an appropriation.

Debate resumed.

Want of Quorum

There not being a quorum present, the Acting President gave instructions for the ringing of the Bells.

A quorum being formed, the debate continued.

Interruption pursuant to order.

10. Order of Business

Ordered — That Bills for Introduction be taken forthwith. (Leader of the House).

11. Bail Legislation Amendment Bill 2016

The Attorney General, pursuant to notice, moved —

That a Bill for “An Act to amend the *Bail Act 1892*, the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* and the *Young Offenders Act 1994*, and for related purposes.” be introduced and read a first time.

Question — put and passed.

Bill read a first time.

The Attorney General moved, That the Bill be read a second time.

The Attorney General tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 4299).

Debate stands adjourned.

12. Biodiversity Conservation Bill 2015

The Acting President reported the receipt of Message No. 159 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Planning representing the Minister for Environment moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Minister for Planning representing the Minister for Environment moved, That the Bill be read a second time.

The Minister for Planning representing the Minister for Environment tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 4300).

Debate stands adjourned.

13. Order of Business

Ordered — That Orders of the Day Nos 1, *Albany Cemetery Board By-laws Amendment 2015 — Disallowance*, and 2, *Shire of Kellerberrin Dogs Local Law 2016 — Disallowance*, be taken after Order of the Day No. 14, *Graffiti Vandalism Bill 2015*. (Leader of the House).

14. Magistrates Court (Minor Cases Procedure) Amendment Rules (No. 2) 2016 — Disallowance — Discharge from Notice Paper

The Order of the Day having been called, Hon Robin Chapple moved, without notice —

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, Order of the Day No. 3, *Magistrates Court (Minor Cases Procedure) Amendment Rules (No. 2) 2016 — Disallowance*, be discharged from the Notice Paper.

Question — put and passed.

15. Magistrates Court (Civil Proceedings) Amendment Rules (No. 2) 2016 — Disallowance — Discharge from Notice Paper

The Order of the Day having been called, Hon Robin Chapple moved, without notice —

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, Order of the Day No. 4, *Magistrates Court (Civil Proceedings) Amendment Rules (No. 2) 2016 — Disallowance*, be discharged from the Notice Paper.

Question — put and passed.

16. Estimates of Revenue and Expenditure — Consolidated Account Estimates 2016–2017

The Order of the Day having been read for the adjourned debate on the motion of the Attorney General representing the Treasurer as follows —

That pursuant to Standing Order 69(1) the Legislative Council take note of Tabled Paper No. 4085 A-E (2016–2017 Budget Statements), laid upon the Table of the House on Thursday, 12 May 2016.

On the motion of Hon Samantha Rowe the debate was adjourned until a later stage of this day's sitting.

17. Public Health Bill 2014

The Order of the Day having been read for the consideration of the Committee's report upon this Bill.

The Minister for Planning representing the Minister for Health moved, That the report be adopted.

Question — put and passed.

The Minister for Planning representing the Minister for Health moved, without notice —

That so much of Standing Orders be suspended so as to enable the *Public Health Bill 2014* to be read a third time.

The motion requiring the concurrence of an absolute majority.

Question — put.

The Acting President having counted the Council, and there being an absolute majority present, and no dissentient voice, declared the motion carried with the concurrence of an absolute majority.

The Minister for Planning representing the Minister for Health moved, That the Bill be read a third time.

The Acting President announced that the Chair of Committees had certified that this was a true copy of the Bill as agreed to in Committee of the Whole House and reported.

Question — put and passed.

Bill read a third time and passed.

18. Public Health (Consequential Provisions) Bill 2014

The Order of the Day having been read for the consideration of the Committee's report upon this Bill.

The Minister for Planning representing the Minister for Health moved, That the report be adopted.

Question — put and passed.

The Minister for Planning representing the Minister for Health moved, without notice —

That so much of Standing Orders be suspended so as to enable the *Public Health (Consequential Provisions) Bill 2014* to be read a third time.

The motion requiring the concurrence of an absolute majority.

Question — put.

The Acting President having counted the Council, and there being an absolute majority present, and no dissentient voice, declared the motion carried with the concurrence of an absolute majority.

The Minister for Planning representing the Minister for Health moved, That the Bill be read a third time.

The Deputy President announced that the Chair of Committees had certified that this was a true copy of the Bill as agreed to in Committee of the Whole House and reported.

Question — put and passed.

Bill read a third time and passed.

19. Integrity (Lobbyists) Bill 2014

The Order of the Day having been read for the adjourned debate on the second reading of this Bill.

Debate resumed.

Question — put and passed.

Bill read a second time.

The Acting President left the Chair.

In Committee

(Hon Simon O'Brien in the Chair)

Clause 1 agreed to.

Clause 2 agreed to.

Clause 3.

Debate ensued.

Clause agreed to.

Clause 4.

Debate ensued.

Clause agreed to.

Clauses 5 to 10 agreed to.

Clause 11.

Debate ensued.

Clause agreed to.

Clause 12 agreed to.

Clause 13 agreed to.
 Clause 14.
 Debate ensued.
 Clause agreed to.
 Clause 15 agreed to.
 Clause 16.
 Debate ensued.
 Clause agreed to.
 Clause 17 agreed to.
 Clause 18 agreed to.
 Clause 19 agreed to.
 Clause 20.
 Debate ensued.
 Clause agreed to.
 Clauses 21 to 28 agreed to.
 Title agreed to.

The Acting President resumed the Chair.

Bill reported without amendment.

Report adopted.

The Leader of the House representing the Premier moved, That the Bill be read a third time.

The Acting President announced that the Deputy Chair of Committees had certified that this was a true copy of the Bill as agreed to in Committee of the Whole House and reported.

Question — put and passed.

Bill read a third time and passed.

20. Standing Committee on Uniform Legislation and Statutes Review — Report No. 101 — Aquatic Resources Management Bill 2015 — Extension of Time

Hon Kate Doust, by leave, presented Report No. 101 of the Standing Committee on Uniform Legislation and Statutes Review, *Aquatic Resources Management Bill 2015 — Extension of Time*. (Tabled Paper 4301).

Hon Kate Doust moved, without notice —

That the reporting date for the Standing Committee's inquiry into the *Aquatic Resources Management Bill 2015*, be extended from 16 August 2016 to 22 September 2016.

Hon Kate Doust sought leave to continue her remarks at a later stage of this day's sitting.

Leave granted.

Debate stands adjourned pursuant to order.

21. Graffiti Vandalism Bill 2015

The Order of the Day having been read for the adjourned debate on the second reading of this Bill.

Debate resumed.

22. Questions Without Notice

Questions without notice were taken.

The Minister for Education tabled documents in relation to the 2016 average allocation per student, by school, as at March 2016, in response to a question without notice asked by Hon Sue Ellery. (Tabled Paper 4302).

The Minister for Education tabled documents in relation to staff and student numbers at all 13 engagement centres, in response to a question without notice asked by Hon Sue Ellery. (Tabled Paper 4303).

The Minister for Education, by leave incorporated into *Hansard*, information in relation to remedial work completed in schools that required re-inspections for asbestos since the 2013 Asbestos Containing Materials Audit, in response to a question without notice asked by Hon Sue Ellery.

The Attorney General, by leave incorporated into *Hansard*, information in relation to breaches of violence restraining orders in 2014-2015 and 2015-2015, in response to a question without notice asked by Hon Alanna Clohesy.

The Minister for Commerce, by leave incorporated into *Hansard*, information in relation to the completion of investigations by the Director of Energy Safety within the two year statutory limitations period, in response to a question without notice asked by Hon Kate Doust.

The Minister for Housing tabled documents in relation to the operation of gaming facilities on cruise ships visiting Western Australia, in response to a question without notice asked by Hon Sue Ellery. (Tabled Paper 4304).

23. Dangerous Sexual Offenders Legislation Amendment Bill 2015

The following Message from the Legislative Assembly was reported —

Mr President	Message No. 160
The Legislative Assembly acquaints the Legislative Council that it has agreed to the <i>Dangerous Sexual Offenders Legislation Amendment Bill 2015</i> without amendment.	
Ms L.L. Baker	
Acting Speaker	
Legislative Assembly Chamber	
Perth, 30 June 2016	

24. Public Health Bill 2014

The following Message from the Legislative Assembly was reported —

Mr President	Message No. 162
The Legislative Assembly acquaints the Legislative Council that it has agreed to the amendments made by the Legislative Council in the <i>Public Health Bill 2014</i> .	
Mr I.M. Britza	
Acting Speaker	
Legislative Assembly Chamber	
Perth, 30 June 2016	

25. Public Health (Consequential Provisions) Bill 2014

The following Message from the Legislative Assembly was reported —

Mr President	Message No. 163
The Legislative Assembly acquaints the Legislative Council that it has agreed to the amendments made by the Legislative Council in the <i>Public Health (Consequential Provisions) Bill 2014</i> .	
Mr I.M. Britza	
Acting Speaker	
Legislative Assembly Chamber	
Perth, 30 June 2016	

26. Statement by President — YMCA Youth Parliament — Annual Performance Surveys

The President made the following Statement —

This Chamber will be used to host the Twenty-first YMCA Western Australian Youth Parliament on Monday, 4 July and Thursday, 7 July 2016.

Also, on Tuesday, 21 June 2016, copies of the annual performance surveys for the Department of the Legislative Council and the Parliamentary Services Department were distributed to all Members. If Members have not already done so, I would encourage you to take a few minutes to complete the surveys and return them to one of the Chamber staff or, alternatively, complete the electronic version before the survey closes.

27. Graffiti Vandalism Bill 2015

Debate resumed on the second reading of this Bill (*see item 21 above*).

Question — put and passed.

Bill read a second time.

Leave was granted to proceed forthwith to the third reading of the Bill.

The Attorney General representing the Minister for Police moved, That the Bill be read a third time.

Question — put and passed.

Bill read a third time and passed.

28. Order of Business

Ordered — That the Order of the Day relating to the Standing Committee on Uniform Legislation and Statutes Review report, *Aquatic Resources Management Bill 2015 — Extension of Time*, be taken forthwith. (Leader of the House).

29. Standing Committee on Uniform Legislation and Statutes Review — Report No. 101 — Aquatic Resources Management Bill 2015 — Extension of Time

The Order of the Day having been called for the adjourned debate on the motion of Hon Kate Doust as follows —

That the reporting date for the Standing Committee's inquiry into the *Aquatic Resources Management Bill 2015*, be extended from 16 August 2016 to 22 September 2016.

Debate resumed.

Question — put and passed.

30. Order of Business

Ordered — That Members' Statements be taken forthwith. (Leader of the House).

31. Adjournment

There being no Members' Statements, the Council adjourned at 5.10pm until Tuesday, 16 August 2016 at 2.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Jacqui Boydell, Hon Stephen Dawson, Hon Brian Ellis, Hon Adele Farina, Hon Rick Mazza, Hon Robyn McSweeney, Hon Helen Morton and Hon Darren West.

NIGEL PRATT
Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council