

WESTERN AUSTRALIA

**LEGISLATIVE COUNCIL**

**MINUTES OF PROCEEDINGS**

**No. 38**

**TUESDAY, 28 NOVEMBER 2017**

**1. Meeting of Council**

The Council assembled at 2.00pm pursuant to order.

The President, Hon Kate Doust, took the Chair and read prayers.

**2. Message from Her Excellency the Governor — Assent to Bill**

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

**15 November 2017 — Message No. 22**

Appropriation (Recurrent 2017–18) Bill 2017	11 of 2017
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Appropriation (Capital 2017–18) Bill 2017	12 of 2017
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**3. President's Ruling — Correction of Answers**

The President ruled as follows —

On 9 November 2017 at the conclusion of question time, Hon Martin Aldridge raised a point of order about a further answer given by the Leader of the House to question without notice 770. He has asked me to rule on whether the further answer provided conforms to the standards expected of this House.

I refer Members to my ruling about the answering of questions by Ministers given two days earlier. I reiterate that it is not the Chair's responsibility to tell Ministers how they should respond to questions provided that an answer is within the Standing Orders. It is also not the Presiding Officer's role to determine whether an answer is correct. Therefore, there is no point of order. There are, however, certain courtesies that Members usually observe when providing answers that correct information in earlier answers. These are set out in a statement made by President House on Tuesday, 22 March 2016 when he said, and I quote —

When it is discovered that an answer given in any capacity is inaccurate, the Minister or Parliamentary Secretary has an obligation to correct the record at the earliest opportunity, and the usual practice is to also apologise to the House for the error.

The obligation on Members to correct inaccurate answers is to ensure that they do not mislead the House. The deliberate provision of false information to the House would constitute a grave contempt. To avoid any suggestion that such a contempt has occurred, a Member will usually correct inaccurate answers at the earliest opportunity. They will usually also apologise to the House for the error because regardless of in what capacity the answer is given, they are personally responsible for it.

For the benefit of Members, I table two extracts from *Hansard* of corrections to answers; one from this House and one from the other place, that demonstrate the usual courtesies. (Tabled Paper 869).

#### 4. Statement by President — Standing Order 21 — Speaking Times

The President made the following Statement —

Standing Order 21 restricts the majority of Members' speaking time on most matters to 45 minutes. The following three categories of Members, however, have unlimited time to speak on the second and third readings of Bills, the Budget debate and Address-in-Reply. Firstly, the mover of the question and the mover in reply; secondly, the lead Member from the Government or opposition; and, thirdly, each party leader or Member deputed.

In category 1, the unlimited speaking time for the mover of a question and in reply reflects longstanding tradition. The extension of unlimited speaking time to all party leaders in category 3 has applied since 2012. This was a concession arising from increased party representation in the Legislative Council. A party leader may also effectively transfer their unlimited speaking time to another Member of their party for a specific debate by deputising the Member. A Member so deputised must announce the arrangement at the commencement of their speech to ensure that the House is aware of the swap. A question has arisen on the proper interpretation of a lead Member for the opposition for the purposes of category 2. A government lead Member on any particular matter is straightforward. It is a member of the party or parties that support and form the Government and is usually the Minister or Parliamentary Secretary with primary portfolio responsibility in the relevant area. If the lead Member is not also the Leader of the Government, the Government may have two speakers with unlimited speaking time applying to the particular items of business set out in Standing Order 21.

The ordinary parliamentary meaning of "opposition" is Her Majesty's most loyal opposition. This expression is usually shortened to the official opposition. This is the party in opposition with a membership in the House of Government greater than any other non-government party. Currently, this is the Liberal Party. The preference given to the official opposition for unlimited speaking times in Standing Order 21 reflects the fact that the official opposition is the alternative Government. Therefore, the lead Member to speak for the opposition, usually the shadow Minister, has an equivalent speaking time to the government's lead Member. The issue is whether this definition of "opposition lead Member" continues to be appropriate, particularly when, as now, six non-government parties hold seats in this House.

In a recent debate a Member of the Greens WA was given unlimited time as the party's lead Member on the second reading debate on a Bill. I note that on occasion during the thirty-ninth Parliament, Members of the Greens and the National Party were also granted unlimited time after identifying themselves as the lead speakers for their party and not being the party leader or a deputised Member. At the time, the absence of a designated party leader for the Greens caused difficulties in identifying whether a speaker for the Greens was allocated unlimited time. The Standing Committee on Procedure and Privileges has considered the matter after obtaining comments from all parties. The committee does not believe that any amendment is necessary to Standing Order 21. The committee is opposed to an interpretation of "opposition" in Standing Order 21 that would encompass all parties that do not support the Government. Given the current composition of the House, such an interpretation would result in up to 12 Members enjoying unlimited speaking time. If the traditional meaning of "opposition" is applied, this would be restricted to a maximum of nine Members. The committee was of the view that the potential for one-third of all Members having unlimited speaking time would undermine the purpose of Standing Order 21 to limit the length of debates. Accordingly, the committee considers that Standing Order 21 should be strictly interpreted so that only the Labor Party, as the Government, and the Liberal Party, as the official opposition, each have a lead Member. All parties will continue to have a party leader or deputised Member with unlimited speaking time.

I accept the Standing Committee on Procedure and Privileges' advice on this matter and indicate that I shall be applying its recommended interpretation of Standing Order 21 from this point onwards.

## **5. Statement by President — Joint Standing Committee on the Corruption and Crime Commission**

The President made the following Statement —

I have received the following letter —

Dear Madam President

Joint Standing Committee on the Corruption and Crime Commission Terms of Reference

The Joint Standing Committee on the Corruption and Crime Commission has today resolved to conduct an inquiry with the following terms of reference:

An inquiry into public sector procurement of goods and services and its vulnerability to corrupt practice

The Committee will examine —

1. The adequacy and nature of oversight mechanisms, policies and guidelines for procurement within the WA public sector to prevent corruption and serious misconduct;
2. The profile and training of public sector personnel engaged in procurement;
3. Corruption prevention and risk strategies deployed in WA Public Sector agencies;
4. The sufficiency and use of sanctions for individuals found to have engaged in corrupt and serious misconduct in procurement duties;
5. Best corruption prevention practices in procurement from other jurisdictions;
6. Reform to current legal and administrative practices in the area of procurement to prevent and reduce the risk of corruption;
7. Adequacy of whistle blowing protections in the context of allegations of corruption in procurement.

The Committee will report by April 2019.

Yours sincerely

Ms M.M. Quirk, MLA

Chair

## **6. Petition**

Hon Dr Steve Thomas presented a petition from 13 petitioners requesting the Legislative Council to oppose the proposed closure of the Canal Rocks boat ramp. (Tabled Paper 901).

## **7. Ministerial Statement — 16 days in Western Australia to stop violence against women**

The Leader of the House made a Ministerial Statement with respect to 16 days in Western Australia to stop violence against women.

## **8. Ministerial Statement — Recognition of Jennie Franceschi**

The Minister for Regional Development made a Ministerial Statement with respect to recognising Jennie Franceschi for her outstanding contribution to agriculture in Western Australia.

## 9. Papers

The following Papers were laid on the Table by —

### **President**

#### *Reports —*

Ombudsman Western Australia — Investigation into ways to prevent or reduce deaths of children by drowning ..... 870

### **Leader of the House**

#### *Local Laws —*

Dog Act 1976 (Shire of Mundaring Dogs Local Law 2017 G.G. 21/11/2017)..... 871

Local Government Act 1995 (City of Cockburn (Local Government Act) Amendment Local Law 2017 G.G. 07/11/2017, City of Cockburn Parking and Parking Facilities Amendment No. 2 Local Law 2017 G.G. 07/11/2017 and Town of Cottesloe Local Government Property Amendment Local Law 2017 G.G. 14/11/2017)..... 872

#### *Notices —*

Financial Management Act 2006 (section 82) — Notice from the Attorney General in regards to Legislative Council Question without Notice No. C784 (Attorney General)..... 873

#### *Regulations —*

Domestic Violence Orders (National Recognition) Act 2017 (Domestic Violence Orders (National Recognition) Regulations 2017 G.G. 24/11/2017) ..... 874

Restraining Orders Act 1997 (Restraining Orders Amendment Regulations (No. 2) 2017 G.G. 24/11/2017) ..... 875

School Curriculum and Standards Authority Act 1997 (School Curriculum and Standards Authority Amendment Regulations 2017 G.G. 24/11/2017)..... 876

#### *Response to Reports —*

Joint Standing Committee on Delegated Legislation — Observations Arising from the Committee Review of the City of Joondalup Local Government and Public Property Amendment Local Law 2015 (Report No. 1) (Minister for Local Government)..... 877

#### *Reviews —*

Public Sector Commission — Review of the PathWest Forensic Biology Department (October 2017) ..... 878

#### *Rules —*

Magistrates Court (Civil Proceedings) Act 2004 (Magistrates Court (Civil Proceedings) Amendment Rules (No. 2) 2017 G.G. 24/11/2017)..... 879

### **Minister for Environment**

#### *Annual Reports —*

Conservation and Parks Commission (2016-2017) (Date received 20/11/2017) ..... 880

#### *Directions —*

Ministerial Direction from the Minister for Police and Road Safety — Funding for the South West Emergency Helicopter Service — Pursuant to Section 6A of the Road Safety Council Act 2002..... 881

#### *Regulations —*

Transfer of Land Act 1893 (Transfer of Land Amendment Regulations 2017 G.G. 24/11/2017) ..... 882

#### *Reports —*

Disability Access and Inclusion Plans (DAIP) — Progress Report (2016-2017) ..... 883

Government Employees Superannuation Board (GESB) — Statement of Corporate Intent (2017-2018).....	884
Horizon Power — Statement of Corporate Intent (2017-2018) .....	885
Insurance Commission — Statement of Corporate Intent (2017-2018).....	886
State Emergency Management Committee — Emergency Preparedness Report 2017 .....	887
Western Power — Statement of Corporate Intent (2017-2018) .....	888

### **Minister for Regional Development**

#### *Annual Reports —*

Architects Board (2016-2017) (Date received 28/11/2017) .....	889
Biosecurity Council (2016-2017) (Date received 27/11/2017) .....	890

#### *Notices —*

Fair Trading Act 2010 (Consumer Goods (Elastic luggage straps) Safety Standard 2017 G.G. 24/11/2017).....	891
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#### *Regulations —*

Betting Control Act 1954 (Racing, Gaming and Liquor Regulations Amendment (Fees and Charges) Regulations 2017 G.G. 10/11/2017) .....	892
Electricity Act 1945 (Electricity (Licensing) Amendment Regulations (No. 2) 2017 G.G. 14/11/2017) .....	893
Mining Act 1978 (Mining Amendment Regulations (No. 3) 2017 G.G. 24/11/2017) .....	894
Occupational Safety and Health Act 1984 (Occupational Safety and Health Amendment Regulations 2017 G.G. 14/11/2017) .....	895

### **Parliamentary Secretary to the Deputy Premier**

#### *Annual Reports —*

Administrator National Health Funding Pool (2016-2017) (Date received 23/11/2017) .....	896
Australian Health Practitioner Regulation Agency (2016-2017) (Date received 23/11/2017) ....	897
Mental Health Tribunal (2017) (Date received 27/11/2018).....	898
National Health Funding Body (2016-2017) (Date received 23/11/2017).....	899
National Health Practitioner Ombudsman and Privacy Commissioner (2016-2017) (Date received 23/11/2017) .....	900

### **10. Standing Committee on Legislation — Report No. 34 — Sentence Administration Amendment Bill 2017**

Hon Dr Sally Talbot presented Report No. 34 of the Standing Committee on Legislation, *Sentence Administration Amendment Bill 2017*. (Tabled Paper 902).

### **11. Transfer of Land Amendment Regulations 2017 — Disallowance**

Hon Rick Mazza: To move on the next day of sitting —

That the *Transfer of Land Amendment Regulations 2017* published in the *Gazette* on 24 November 2017 and tabled in the Legislative Council on 28 November 2017 under the *Transfer of Land Act 1893*, be and are hereby disallowed. (Tabled Paper 882).

### **12. Mining Amendment Regulations (No. 3) 2017 — Disallowance**

Hon Robin Scott: To move on the next day of sitting —

That the *Mining Amendment Regulations (No. 3) 2017* published in the *Gazette* on 24 November 2017 and tabled in the Legislative Council on 28 November 2017 under the *Mining Act 1978*, be and are hereby disallowed. (Tabled Paper 894).

### 13. Temporary Order – Recall of the House

Hon Martin Aldridge: To move on the next day of sitting —

That Standing Order 6(3) is suspended and the following Temporary Order is substituted for the duration of the current Parliament:

- (3) When the Council is adjourned the President:
  - (a) may on the request of the Leader of the House and after consultation with the leaders of all parties vary the day and time at which the Council may next meet; or
  - (b) shall, at the written request of 18 Members that the Council meet at a certain day and time, fix a day and time of meeting in accordance with that request and the day and time of meeting shall be notified to each Member.
- (4) When varying or fixing a day and time of meeting not less than 4 days' notice shall be given to each Member.
- (5) For the purposes of (3)(b):
  - (a) A request by the leader or deputy leader of a party in the Council shall be deemed to be a request by every member of that party who is a member of the Council.
  - (b) A request may be made to the President by delivery to the Clerk, who shall immediately notify the President.
  - (c) If the President is unavailable, the Clerk shall notify the Deputy President, or, should the Deputy President be unavailable, any one of the Deputy Chairs of Committees, who shall be required to summon the Council on behalf of the President, in accordance with this temporary order.

### 14. Suspension of Standing Orders

The Leader of the House moved, without notice —

That so much of the Standing Orders be suspended so as to permit —

- (1) the Notice of Motion given today by the Hon Robin Scott to disallow the *Mining Amendment Regulations (No. 3) 2017* to be made an order of the day for a later stage of this day's sitting; and
- (2) the Hon Robin Scott to move his motion to disallow the *Mining Amendment Regulations (No. 3) 2017* at a later stage of this day's sitting.

The motion requiring the concurrence of an absolute majority.

Question — put.

The 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.

### 15. School Curriculum and Standards Authority Amendment Bill 2017

The President reported the receipt of Message No. 39 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Education and Training moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Minister for Education and Training moved, That the Bill be read a second time.

The Minister for Education and Training tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 903).

Debate stands adjourned.

### 16. Corruption, Crime and Misconduct Amendment Bill 2017

The President reported the receipt of Message No. 40 from the Legislative Assembly forwarding the Bill for concurrence.

The Leader of the House representing the Attorney General moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Leader of the House representing the Attorney General moved, That the Bill be read a second time.

The Leader of the House representing the Attorney General tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 904).

Debate stands adjourned.

#### **17. Order of Business**

Ordered — That Orders of the Day Nos 1, *Police Regulations Amendment (Fees and Charges) Regulations 2017 — Disallowance*, 2, *City of Kalgoorlie-Boulder Cat Amendment Local Law 2017 — Disallowance*, 3, *Town of East Fremantle Plastic Bag Reduction Local Law 2017 — Disallowance*, 4, *Shire of Northampton Dogs Local Law 2017 — Disallowance*, 5, *Shire of Chittering Repeal Local Law 2017 — Disallowance*, 6, *Commercial Tenancy (Retail Shops) Agreements Amendment Regulations 2017 — Disallowance*, 7, *Shire of Northampton Local Government Property Local Law 2017 — Disallowance*, 8, *Biosecurity and Agricultural Management Act 2007 Notice Under Section 130(1) — Disallowance*, and 9, *Water Services (Water Corporations Charges) Amendment Regulations 2017 — Disallowance*, be taken after Order of the Day No. 30, *Standing Committee on Procedure and Privileges – Report No. 45 – Outstanding Matters from the 39<sup>th</sup> Parliament*. (Leader of the House).

#### **18. Iron Ore (Channar Joint Venture) (Hamersley Range) Agreements Amendment Bill 2017**

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

Debate ensued.

Question — put and passed.

Bill read a second time.

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

The Minister for Regional Development representing the Minister for State Development, Jobs and Trade moved, That the Bill be read a third time.

Question — put and passed.

Bill read a third time and passed.

#### **19. Mineral Sands (Cooljarloo) Mining and Processing Agreement Amendment Bill 2017**

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.

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

The Minister for Regional Development representing the Minister for State Development, Jobs and Trade moved, That the Bill be read a third time.

Question — put and passed.

Bill read a third time and passed.

#### **20. Railway (BBI Rail Aus Pty Ltd) Agreement Bill 2017**

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

Debate resumed.

#### **21. Questions Without Notice**

Questions without notice were taken.

The Minister for Education and Training tabled documents in relation to a head count of employees in Regional Education offices, in response to a question without notice asked by Hon Donna Faragher. (Tabled Paper 905).

The Minister for Regional Development tabled ministerial travel details (March-October 2017), in response to a question without notice asked by Hon Tjorn Sibma. (Tabled Paper 906).

The Leader of the House representing the Premier tabled details of contracts of Community Service Organisations in 2015-16, in response to question on notice No. 395 asked by Hon Tjorn Sibma. (Tabled Paper 907).

The Minister for Environment representing the Minister for Lands tabled a map of Waterbank Station, and draft Waterbank Structure Plan — Schedule of submissions, in response to question on notice No. 388 asked by Hon Robin Chapple. (Tabled Paper 908).

The Minister for Environment tabled Department of Parks and Wildlife — Works improvement notices and notification reports for 2015, in response to question on notice No. 390 asked by Hon Diane Evers. (Tabled Paper 909).

The Minister for Environment tabled a summary of the protection status for fauna and flora, in response to question on notice No. 400 asked by Hon Diane Evers. (Tabled Paper 910).

The Minister for Agriculture and Food tabled the Annexure to license the water GWL180441(1), Soil and Plant Analysis Laboratory Analysis Report, and Water for Food West Kimberley — Mowanjum Irrigation Trial Technical Report (June 2015), in response to question on notice No. 402 asked by Hon Robin Chapple. (Tabled Paper 911).

The Parliamentary Secretary to the Deputy Premier, by leave, incorporated into *Hansard* a table correcting a previous answer, in response to question on notice No. 98 and questions without notice Nos 787 and 808 asked by Hon Nick Goiran.

## **22. Railway (BBI Rail Aus Pty Ltd) Agreement Bill 2017**

Debate resumed on the second reading of this Bill (*see item 20 above*).

Hon Robin Chapple moved, without notice —

- (1) That the *Railway (BBI Rail Aus Pty Ltd) Agreement Bill 2017* be discharged and referred to the Standing Committee on Legislation for consideration and report by no later than Tuesday 20 March 2018; and
- (2) The Committee has the power to inquire into and report on the policy of the Bill.

Debate ensued.

Motion — put.

The Council divided.

### **Ayes (4)**

Hon Tim Clifford  
Hon Diane Evers

Hon Alison Xamon  
Hon Robin Chapple (*Teller*)

### **Noes (27)**

Hon Martin Aldridge  
Hon Jacqui Boyde  
Hon Jim Chown  
Hon Alanna Clohesy  
Hon Peter Collier  
Hon Colin de Grussa  
Hon Sue Ellery  
Hon Donna Faragher  
Hon Adele Farina  
Hon Nick Goiran  
Hon Laurie Graham  
Hon Alannah MacTiernan  
Hon Rick Mazza  
Hon Kyle McGinn

Hon Michael Mischin  
Hon Simon O'Brien  
Hon Samantha Rowe  
Hon Robin Scott  
Hon Tjorn Sibma  
Hon Charles Smith  
Hon Aaron Stonehouse  
Hon Matthew Swinbourn  
Hon Dr Sally Talbot  
Hon Dr Steve Thomas  
Hon Colin Tincknell  
Hon Darren West  
Hon Martin Pritchard (*Teller*)

Motion thus negatived.

Debate resumed.



Question — put and passed.

Bill read a second time.

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

The Minister for Regional Development representing the Minister for State Development, Jobs and Trade moved, That the Bill be read a third time.

Question — put and passed.

Bill read a third time and passed.

### **23. Salaries and Allowances Amendment (Debt and Deficit Remediation) Bill 2017**

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

Debate resumed.

Hon Peter Collier sought leave to continue his remarks at a later stage of this day's sitting.

Leave granted.

On the motion of Hon Martin Pritchard the debate was adjourned to a later stage of this day's sitting.

### **24. Order of Business**

Ordered — That Order of the Day, *Mining Amendment Regulations (No. 3) 2017 — Disallowance*, be taken forthwith. (Leader of the House).

### **25. Mining Amendment Regulations (No. 3) 2017 — Disallowance**

The Order of the Day having been called for the motion of Hon Robin Scott moved *pro forma* as follows —

That the *Mining Amendment Regulations (No. 3) 2017* published in the *Gazette* on 24 November 2017 and tabled in the Legislative Council on 28 November 2017 under the *Mining Act 1978*, be and are hereby disallowed. (Tabled paper No. 894).

Debate ensued.

Motion — put.

The Council divided.

#### **Ayes (15)**

Hon Martin Aldridge  
Hon Jacqui Boyde  
Hon Jim Chown  
Hon Peter Collier  
Hon Colin de Grussa  
Hon Nick Goiran  
Hon Rick Mazza  
Hon Michael Mischin

Hon Simon O'Brien  
Hon Robin Scott  
Hon Tjorn Sibma  
Hon Charles Smith  
Hon Aaron Stonehouse  
Hon Colin Tincknell  
Hon Dr Steve Thomas (*Teller*)

#### **Noes (14)**

Hon Robin Chapple  
Hon Tim Clifford  
Hon Alanna Clohesy  
Hon Sue Ellery  
Hon Diane Evers  
Hon Adele Farina  
Hon Laurie Graham

Hon Alannah MacTiernan  
Hon Kyle McGinn  
Hon Matthew Swinbourn  
Hon Dr Sally Talbot  
Hon Darren West  
Hon Alison Xamon  
Hon Martin Pritchard (*Teller*)

Motion thus passed.

### **26. Members' Statements**

Statements were taken.

**27. Adjournment**

The Council adjourned at 10.07pm until Wednesday, 29 November 2017 at 1.00pm.

**Members present during the day's proceedings**

Attendance: Present all Members except Hon Ken Baston and Hon Colin Holt.

**NIGEL PRATT**

Clerk of the Legislative Council

**HON KATE DOUST MLC**

President of the Legislative Council