

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 190

TUESDAY, 21 JUNE 2016

1. Meeting of Council

The Council assembled at 2.00pm pursuant to Temporary Orders.

The President, Hon Barry House, 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 Bill —

26 May 2016 — Message No. 14

Health Services Bill 2016

Act No.

11 of 2016

3. President's Ruling — Standing Order 104 — Questions Relating to Non-Government Party Policies

The President ruled as follows —

On Thursday, 19 May 2016, I ruled out of order a question without notice that had been asked by the Leader of the Opposition that was expressed to be directed to the Minister for Housing representing the Minister for Regional Development as Leader of the National Party. The question related to the National Party's policy on greenhouse gas emissions and climate change. At the time I ruled as follows —

Members in this House do not have provision to ask Members questions in their political capacity. We have provision only to ask Ministers and Parliamentary Secretaries or Ministers in their representative capacities questions relating to the portfolios that they hold, not the political positions they hold. I know it is different in the other place, they can ask questions like that directly. Standing Order 104 restricts questions only to public affairs relating to Ministers' portfolios, not their political parties.

At the request of the Leader of the Opposition, I have further considered the matter and now provide the following detailed ruling.

Standing Order 104 states —

Questions may be asked of —

- (a) a Minister or Parliamentary Secretary relating to public affairs with which the Minister or Parliamentary Secretary is connected, to proceedings in the Council, or to any matter of administration for which the Minister or Parliamentary Secretary is responsible; or
- (b) a Member, except the President, relating to any Bill, motion or other public matter connected with the business of the Council of which the Member has charge.

There is no ability under Standing Order 104 for Members to ask questions of a Member, certainly not a Member of another House, in their capacity as the leader of a political party. The Leader of the Opposition has indicated that her question was, in fact, directed to the Minister for Regional Development in his ministerial capacity because the question's preamble related to the impact of climate change on farmers in regional areas. Nevertheless, the substance of the question asked for comment on a National Party policy. The custom and practice of this House are reflected in the following quote from page 637 of the thirteenth edition of *Odgers' Australian Senate Practice*. It reads —

A question which invites a minister to comment on the policies or actions of non-government parties is out of order unless the question seeks an expression of the government's intentions in some matter of ministerial responsibility.

Although the National Party has entered into an alliance with the governing Liberal Party of Western Australia, it frequently states that its policies are not necessarily those of the Government. It is in order for Members to ask Ministers or Parliamentary Secretaries about the Government's intentions in their area of ministerial responsibility and why they will or will not adopt a specific alternative policy. There is a clear distinction, however, between such questions and those that simply seek a Minister's comment on the alternative policies of other parties or governments. The latter type of question will be ruled out of order.

On 23 August 2012, I ruled out of order a similar question to the one in this case. That question related to the activities of an Assembly Minister in that Minister's role as the Leader of the National Party. On 14 May 1992, President Clive Griffiths ruled out of order a question that asked the then Labor Government's Minister for Education to comment on the opposition Liberal Party's Fightback education policy. I therefore uphold my earlier ruling that the question asked on 19 May by the Leader of the Opposition of the Minister for Housing representing the Minister for Regional Development as Leader of the National Party was not in order.

4. President's Ruling — Select Committee into the Operations of The Royal Society for The Prevention of Cruelty to Animals Western Australia (Inc)

The President ruled as follows —

On Thursday, 19 May 2016, Hon Ken Travers raised a point of order about the report of the Select Committee into the Operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia (Inc). The point of order was that the report and, by extension the Committee, went beyond its terms of reference in referring to matters connected with the Department of Agriculture and Food's responsibilities under the *Animal Welfare Act 2002*. The essence of the Member's argument was that such matters were excluded from the Committee's remit because the House had, during debate on the motion to establish the Committee, rejected an amendment to the motion that expressly provided for the Committee to inquire into the department's use of its powers and, in particular, its administration of the *Animal Welfare Act 2002*.

In the case of this Select Committee, the terms of reference omit the usual catch-all phrase that expressly permits a Committee to inquire into "any other related matter". However, in this particular case, the terms of reference are expressed in very broad terms, with the matters set out in paragraphs (a), (b) and (c) included for specificity and not being limiting in any way.

The debate on the motion for the establishment of this Committee could leave no Member in any doubt that the operation of the *Animal Welfare Act 2002* whereby this relates to the functions of the RSPCA would be a subject matter of the Committee's inquiry. There is a clear connection between that Act and the RSPCA, whose employees are appointed as general inspectors and who are also empowered to carry out prosecutions under the Act. It is therefore unsurprising that the Department of Agriculture and Food's administration of this aspect of the Act and its relationship with the RSPCA would be scrutinised by the Committee and that findings and recommendations flowed from this aspect of the inquiry. The fact that the House may have rejected an amendment to significantly enlarge the scope of the Committee's inquiry to all aspects of the department's exercise of statutory powers does not, as a matter of logic or

parliamentary practice, result in a conclusion that a Committee lacks authority to inquire into matters that would otherwise fall within its terms of reference.

I also note from debate on the amendment that the reasons for its rejection by the House varied. One Member viewed the amendment as superfluous and able to be addressed within the scope of the original motion, while another rejected it on the grounds that they opposed the establishment of the Committee altogether.

I therefore rule that there is no point of order. In this case, the terms of reference may reasonably be interpreted so as to capture all matters dealt with in the Committee's report. In the future and so as to minimise the potential for disputes of this nature, Committees should ensure that when framing their terms of reference for inquiries, they include the usual catch-all provision "and any other related matter".

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

The President made the following Statement —

I have a letter from the Joint Standing Committee on the Corruption and Crime Commission addressed to me regarding an error in the Joint Standing Committee inquiry's terms of reference, which reads —

Mr President

The Joint Standing Committee wrote to you on 12 May 2016 advising of a new inquiry. The terms of reference for this inquiry contained an error in subsections (a) and (b) where it referred to section 28 of the *Corruption, Crime and Misconduct Act 2003*. The correct number for this section is section 189.

Yours sincerely

Hon Nick Gorian, MLC

Chairman

6. Statement by President — Parliamentary Departmental Surveys

The President made the following Statement —

Today you will receive both electronic and hard copy versions of surveys of the Legislative Council and the Parliamentary Services Department. These surveys give Members the opportunity to comment on the services provided by the staff of the Department of the Legislative Council and the Parliamentary Services Department. I encourage Members to fill them out and return them to chamber staff or complete the online versions via the link provided in the emails you will receive. The results of the surveys will appear in the annual reports, and the feedback that Members give will be used to improve the services you receive wherever possible.

7. Petitions

Hon Stephen Dawson presented a petition from 161 petitioners requesting the Legislative Council to undertake an inquiry into the need for ongoing funding to keep the Bunara Maya Hostel in the town of South Hedland open. (Tabled Paper 4181).

Hon Alanna Clohesy presented a petition from one petitioner requesting the Legislative Council to investigate how to make the Perth Fringe World Festival sustainable into the future. (Tabled Paper 4182).

8. Ministerial Statement — Higher Education Delegation to Indonesia

The Minister for Education made a Ministerial Statement with respect to a recent delegation to Indonesia in relation to higher education.

The Minister for Education tabled the itinerary for the higher education delegation to Indonesia. (Tabled Paper 4183).

9. Ministerial Statement — Miss Africa Perth

The Minister for Commerce made a Ministerial Statement with respect to the Miss Africa Perth program.

10. Papers

The following Papers were laid on the Table by —

President

Auditor General's Papers —

Delivering Services Online (Report No. 8) (May 2016) (Deemed tabled 25/05/2016).....	4146
Payment of Construction Subcontractors — New Perth Children's Hospital (Report No. 9) (June 2016) (Deemed tabled 8/06/2016).....	4147
Opinions on Ministerial Notifications (Report No. 10) (June 2016) (Deemed tabled 8/06/2016).....	4148
Supplementary Report — Health Department's Procurement and Management of its Centralised Computing Services Contract (Report No. 1A) (June 2016) (Deemed tabled 8/06/2016).....	4149

Reports —

Corruption and Crime Commission — Report on a Purchase of Land in the Australian Marine Complex Henderson by a Senior Officer of Landcorp (20 June 2016) (Deemed tabled 20/06/2016)	4150
Inspector of Custodial Services, Office of the — Fine Defaulters in the Western Australian Prison System (April 2016) (Deemed tabled 23/05/2016).....	4151
Inspector of Custodial Services, Office of the — Report of an Announced Inspection of Hakea Prison (Report No. 102) (April 2016) (Deemed tabled 9/06/2016).....	4152
Inspector of Custodial Services, Office of the — Recruitment and Retention of Aboriginal Staff in the Department of Corrective Services (April 2016) (Deemed tabled 14/06/2016)	4153
Inspector of Custodial Services, Office of the — Report of an Announced Inspection of Pardelup Prison Farm (Report No. 103) (April 2016)	4154

Leader of the House

Regulations —

Duties Act 2008 (Duties Amendment Regulations 2016 G.G. 24/05/2016).....	4155
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Reports —

Remuneration of Judges, District Court Judges, Masters of the Supreme Court, Magistrates and the Parliamentary Inspector of the Corruption and Crime Commission.....	4156
Report on Consultants Engaged by Government (for the six months ended 30 June 2015)	4157
Report of Overseas Air Travel Undertaken by Ministers, Parliamentary Secretaries and Government Officers on Official Business (for the three months ended 31 December 2015)	4158
Report of Overseas Travel Undertaken by Members of Parliament funded by the Parliamentary Travel Allowance (for the three months ended 31 March 2016) ...	4159

Rules —

Electricity Industry Act 2004 (Wholesale Electricity Market Rules Amending Rules 2016 G.G. 31/05/2016)	4160
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Attorney General*Annual Reports — Extension of Time —*

Anzac Day Trust (2015) extension of time (Date received 16/06/2016) 4161

Management Plans —

Fish Resources Management Act 1994 (West Coast Demersal Gillnet and Demersal Longline Interim Managed Fishery Management Plan Amendment 2016 [1279] G.G. 27/05/2016 and West Coast Rock Lobster Managed Fishery Management Plan Amendment (No. 3) 2016 [1280] G.G. 24/05/2016) 4162

Regulations —

Auction Sales Act 1973, Building Act 2011, Building Services (Complaint Resolution and Administration) Act 2011, Building Services (Registration) Act 2011, Construction Contracts Act 2004, Debt Collectors Licensing Act 1964, Electricity Act 1945, Employment Agents Act 1976, Gas Standards Act 1972, Land Valuers Licensing Act 1978, Motor Vehicle Dealers Act 1973, Motor Vehicle Repairers Act 2003, Occupational Safety and Health Act 1984, Plumbers Licensing Act 1995, Real Estate and Business Agents Act 1978, Residential Tenancies Act 1987, Retirement Villages Act 1992, Settlement Agents Act 1981 (Commerce Regulations Amendment (Fees and Charges) Regulations 2016 G.G. 3/06/2016)..... 4163

Residential Tenancies Act 1987 (Residential Tenancies Amendment Regulations 2016 G.G. 3/06/2016)..... 4164

Road Traffic Act 1974 (Road Traffic (Events on Roads) Amendment Regulations 2016 G.G. 27/05/2016)..... 4165

Reports —

Government Employees Superannuation Board — Statement of Corporate Intent (2016-2017) (Deemed tabled 10/06/2016) 4166

Government of Western Australia — 2015–2016 Quarterly Financial Results (March 2016)..... 4167

Insurance Commission of Western Australia — Statement of Corporate Intent (2016-2017) 4168

Rules —

State Administrative Tribunal Act 2004 (State Administrative Tribunal Amendment Rules (No. 2) 2016 G.G. 17/05/2016)..... 4169

Schemes —

Professional Standards Act 1997 (Queensland Law Society Professional Standards Scheme (2016) G.G. 27/05/2016 4170

Minister for Housing on behalf of the Minister for Planning*Leases —*

CALM Lease No. 2358/100 — Between the Conservation and Land Management Executive Body and Suzanne Mary Cybula, Kathleen Mary Britza, Kylie Marie Britza, Mathew Gary Britza and Carl Gary Britza for an existing recreational hut located along the lower reaches of the Donnelly River in the D'Entrecasteaux National Park 4171

Local Laws —

Cat Act 2011 (Shire of Donnybrook-Balingup Cat Local Law 2016 G.G. 27/05/2016) 4172

Local Government Act 1995 (Town of East Fremantle Penalty Units Local Law 2016 G.G. 31/05/2016) 4173

Regulations —

Poisons Act 1964 (Poisons Amendment Regulations 2016 G.G. 17/05/2016)..... 4174

Minister for Housing*Regulations —*

Liquor Control Act 1988 (Liquor Control (Bayulu Restricted Area) Amendment Regulations 2016 G.G. 27/05/2016).....	4175
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Parliamentary Secretary to the Minister for Agriculture and Food*By-laws —*

Country Areas Water Supply Act 1947 (Country Areas Water Supply Amendment By laws 2016 G.G. 7/06/2016).....	4176
---	------

Metropolitan Water Supply, Sewerage, and Drainage Act 1909 (Metropolitan Water Supply, Sewerage and Drainage Amendment By-laws 2016 G.G. 7/06/2016).....	4177
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Regulations —

Road Traffic (Authorisation to Drive) Act 2008, Road Traffic (Vehicles) Act 2012, Shipping and Pilotage Act 1967 (Transport Regulations Amendment (Fees and Charges) Regulations 2016 G.G. 27/05/2016).....	4178
---	------

Taxi Act 1994, Transport Co-ordination Act 1966 (On-demand Transport Regulations Amendment (Fees) Regulations 2016 G.G. 27/05/2016).....	4179
--	------

Parliamentary Secretary to the Minister for Tourism*Notices —*

Financial Management Act 2006 — Section 82 — Notice from the Minister for Tourism in respect to Legislative Council Question on Notice No. 3949 (Deemed tabled 2/06/2016).....	4180
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11. Standing Committee on Public Administration — Report No. 26 — Transport of Persons in Custody

Hon Liz Behjat presented Report No. 26 of the Standing Committee on Public Administration, *Transport of Persons in Custody*. (Tabled Paper 4184).

12. Standing Committee on Uniform Legislation and Statutes Review — Report No. 97 — Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016

Hon Kate Doust presented Report No. 97 of the Standing Committee on Uniform Legislation and Statutes Review, *Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016*. (Tabled Paper 4185).

13. Standing Committee on Uniform Legislation and Statutes Review — Report No. 98 — Obsolete Legislation Repeal Bill 2015

Hon Kate Doust presented Report No. 98 of the Standing Committee on Uniform Legislation and Statutes Review, *Obsolete Legislation Repeal Bill 2015*. (Tabled Paper 4186).

14. Standing Committee on Uniform Legislation and Statutes Review — Report No. 99 — Inquiry into the Statute Book

Hon Kate Doust presented Report No. 99 of the Standing Committee on Uniform Legislation and Statutes Review, *Inquiry into the Statute Book*. (Tabled Paper 4187).

15. National Electricity (Western Australia) Bill 2016

The Leader of the House representing the Minister for Energy: To move on the next day of sitting — That a Bill for “An Act to apply, as a law of Western Australia, a national law to provide for access to, and the regulation of, certain electricity network services, to make interim arrangements, and for related purposes.” be introduced and read a first time.

16. Energy Legislation Amendment and Repeal Bill 2016

The Leader of the House representing the Minister for Energy: To move on the next day of sitting —

That a Bill for “An Act to —

- amend the Electricity Industry Act 2004; and
- amend and repeal the Energy Arbitration and Review Act 1998 and make consequential amendments to other Acts; and
- make consequential amendments to various Acts necessary as a result of the enactment of the National Electricity (Western Australia) Bill 2016 and the National Gas Access (WA) Amendment Act 2016; and
- provide for transitional matters,

and for related purposes.” be introduced and read a first time.

17. National Gas Access (WA) Amendment Bill 2016

The Leader of the House representing the Minister for Energy: To move on the next day of sitting —

That a Bill for “An Act to amend the *National Gas Access (WA) Act 2009*.” be introduced and read a first time.

18. Magistrates Court (Minor Cases Procedure) Amendment Rules (No. 2) 2016 — Disallowance

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

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the *Magistrates Court (Minor Cases Procedure) Amendment Rules (No. 2) 2016* published in the *Gazette* on 3 May 2016 and tabled in the Legislative Council on 10 May 2016 under the *Magistrates Court (Civil Proceedings) Act 2004*, be and are hereby disallowed. (Tabled Paper 4035).

19. Magistrates Court (Civil Proceedings) Amendment Rules (No. 2) 2016 — Disallowance

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

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, the *Magistrates Court (Civil Proceedings) Amendment Rules (No. 2) 2016* published in the *Gazette* on 3 May 2016 and tabled in the Legislative Council on 10 May 2016 under the *Magistrates Court (Civil Proceedings) Act 2004*, be and are hereby disallowed. (Tabled Paper 4035).

20. Appropriation (Recurrent 2016–17) Bill 2016

The President reported the receipt of Message No. 153 from the Legislative Assembly forwarding the Bill for concurrence.

The Attorney General representing the Treasurer moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

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

The Attorney General representing the Treasurer tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 4188).

Debate stands adjourned.

21. Appropriation (Capital 2016–17) Bill 2016

The President reported the receipt of Message No. 154 from the Legislative Assembly forwarding the Bill for concurrence.

The Attorney General representing the Treasurer moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

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

The Attorney General representing the Treasurer tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 4189).

Debate stands adjourned.

22. Order of Business

Ordered — That Orders of the Day Nos 1, *Albany Cemetery Board By-laws Amendment 2015 — Disallowance*, 2, *Shire of Kellerberrin Dogs Local Law 2016 — Disallowance*, and 3, *Shire of Chittering Cats Local Law 2015 — Disallowance*, be taken after Order of the Day No. 18, *Public Health (Consequential Provisions) Bill 2014*. (Leader of the House).

23. 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.

Debate resumed.

24. Questions Without Notice

Questions without notice were taken.

The Minister for Education, by leave incorporated into *Hansard*, information in relation to uncounted students in the first semester census of 2015 and 2016, in response to a question without notice asked by Hon Sue Ellery.

The Leader of the House representing the Minister for Training and Workforce Development tabled documents in relation to staff currently employed at the South West Institute of Technology, in response to question on notice No. 4050 asked by Hon Adele Farina. (Tabled Paper 4190).

The Minister for Education tabled documents in relation to student enrolment and staff allocation in 2016 for each government school in the South West region, in response to question on notice No. 4004 asked by Hon Adele Farina. (Tabled Paper 4191).

The Minister for Education tabled documents in relation to education assistants employed at each government school in the South West region in 2015 and 2016, in response to question on notice No. 4006 asked by Hon Adele Farina. (Tabled Paper 4192).

The Minister for Education tabled documents in relation to the 2015 NAPLAN mean scores in public schools, in response to question on notice No. 4007 asked by Hon Adele Farina. (Tabled Paper 4193).

The Minister for Education tabled documents in relation to student enrolment and non-regular attendance numbers for each government school in the South West region in 2015, in response to question on notice No. 4008 asked by Hon Adele Farina. (Tabled Paper 4194).

The Minister for Education tabled documents in relation to Vocational Education and Training Targeted Initiative funding for public schools in the South West region in 2015 and 2016, in response to question on notice No. 4009 asked by Hon Adele Farina. (Tabled Paper 4195).

The Minister for Education tabled documents in relation to Vocational Education and Training courses offered in high schools in the South West region in 2015 and 2016, in response to question on notice No. 4010 asked by Hon Adele Farina. (Tabled Paper 4196).

The Minister for Education tabled documents in relation to funds donated to each government school in the South West region in 2015 and 2016, in response to question on notice No. 4011 asked by Hon Adele Farina. (Tabled Paper 4197).

The Minister for Education tabled documents in relation to staffing, by category, at each government school in the South West region in 2016, in response to question on notice No. 4012 asked by Hon Adele Farina. (Tabled Paper 4198).

The Minister for Education tabled documents in relation to demountable classrooms at each government school in the South West region in 2016, in response to question on notice No. 4013 asked by Hon Adele Farina. (Tabled Paper 4199).

The Minister for Education tabled documents in relation to student suspensions at each government school in the South West region in 2015, in response to question on notice No. 4014 asked by Hon Adele Farina. (Tabled Paper 4200).

The Minister for Education tabled documents in relation to the percentage of students attaining the Western Australian Certificate of Education in the South West region in 2014 and 2015, in response to question on notice No. 4038 asked by Hon Adele Farina. (Tabled Paper 4201).

The Attorney General, by leave incorporated into *Hansard*, information in relation to violence restraining orders granted by regional courts from January to the end of April 2016, in response to a question without notice asked by Hon Darren West.

The Attorney General tabled documents in relation to outstanding fines with the Fines and Enforcement Registry, by town, in the South West region, in response to question on notice No. 4027 asked by Hon Adele Farina. (Tabled Paper 4202).

The Attorney General tabled documents in relation to restraining orders, violence restraining orders, criminal cases, criminal charges, civil trials and criminal trials at the Bunbury and Busselton Courts, in response to question on notice No. 4030 asked by Hon Adele Farina. (Tabled Paper 4203).

The Attorney General tabled documents in relation to Native Title challenges in Western Australia, in response to question on notice No. 4130 asked by Hon Robin Chapple. (Tabled Paper 4204).

The Attorney General representing the Minister for Corrective Services tabled documents in relation to contract personnel employed at the Department of Corrective Services since 21 December 2015, in response to question on notice No. 4035 asked by Hon Samantha Rowe. (Tabled Paper 4205).

The Minister for Housing on behalf of the Minister for Planning representing the Minister for Health tabled documents in relation to 'Code Yellow' emergencies issued since 1 January 2016, in response to question on notice No. 4086 asked by Hon Stephen Dawson. (Tabled Paper 4206).

The Minister for Housing on behalf of the Minister for Planning, in accordance with Standing Order No. 108(2), advised that an answer to question on notice No. 3945 asked by Hon Kate Doust will be provided on 28 June 2016.

The Minister for Housing representing the Minister for Regional Development tabled documents in relation to the Royalties for Regions Ageing in the Bush Program, in response to question on notice No. 4043 asked by Hon Adele Farina. (Tabled Paper 4207).

The Minister for Housing representing the Minister for Regional Development tabled documents in relation to funding for the Withers Urban Renewal, in response to question on notice No. 4057 asked by Hon Adele Farina. (Tabled Paper 4208).

The Minister for Housing representing the Minister for Regional Development tabled documents in relation to the funding and projects of the Growing Our South program, in response to question on notice No. 4063 asked by Hon Adele Farina. (Tabled Paper 4209).

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

Debate resumed on the motion of the Attorney General representing the Treasurer (*see item 23 above*). On the motion of Hon Samantha Rowe the debate was adjourned to the next sitting.

26. Cognate Debate — Legal Profession Amendment Bill 2016 and Legal Profession Amendment (Levy) Bill 2016

The Attorney General sought leave of the Council to debate Order of the Day No. 21, *Legal Profession Amendment Bill 2016*, and Order of the Day No. 22, *Legal Profession Amendment (Levy) Bill 2016*, cognately [SO 127].

Leave granted.

27. Legal Profession Amendment Bill 2016 and Legal Profession Amendment (Levy) Bill 2016

The Orders of the Day having been read for the adjourned debate on the second reading of these Bills. Debate resumed.

The Attorney General tabled a document in relation to financial contributions to the Supreme Court Law Library in 2011 to 2015. (Tabled Paper 4210).

The Attorney General sought leave to continue his remarks at a later stage of this day's sitting. Leave granted.

Debate resumed.

Question — That the *Legal Profession Amendment Bill 2016* be read a second time — put and passed. Bill read a second time.

Question — That the *Legal Profession Amendment (Levy) Bill 2016* be read a second time — put and passed.

Bill read a second time.

The Acting President left the Chair.

—————
In Committee

(Hon Alanna Clohesy in the Chair)

Legal Profession Amendment Bill 2016

Clause 1 agreed to.

Clauses 2 to 4 agreed to.

Clause 5.

The Attorney General moved —

Page 2, after line 21 — To insert —

CPI means the all groups consumer price index for Perth published by the Australian Statistician referred to in the *Australian Bureau of Statistics Act 1975* (Commonwealth) section 5, or if the index is not published, another similar index nominated by the Minister;

Debate ensued.

Amendment — put and passed.

The Attorney General moved —

Page 2, line 25 — To delete “calculated”.

Amendment — put and passed.

The Attorney General moved —

Page 3, line 2 — Before “method” to insert —

amount of the contribution or the

Amendment — put and passed.

The Attorney General moved —

Page 3, after line 22 — To insert —

(5A) Unless agreement is obtained as mentioned in subsection (5)(a), neither regulations specifying an amount of contribution to be paid nor regulations specifying a method by which the amount of contribution is to be calculated

in any year (the *calculation regulations*) can be amended so as to increase the amount required to be paid in any year to an amount that is greater than the amount that would have been payable in that year, if calculated under the calculation regulations and adjusted for any CPI increase plus 2.5% per annum, pro rata, from the date on which the calculation regulations were made or last amended (whichever is later) to the date of the proposed amendment.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 6 and 7 agreed to.

Title agreed to.

Legal Profession Amendment (Levy) Bill 2016

Clause 1 agreed to.

Clause 2 agreed to.

Clause 3 agreed to.

Clause 4 agreed to.

Title agreed to.

The Acting President resumed the Chair.

Legal Profession Amendment Bill 2016

Bill reported with amendments.

The Attorney General, by leave, moved, That the report be adopted.

Report adopted.

The Attorney General moved, without notice —

That so much of Standing Orders be suspended so as to enable the *Legal Profession Amendment Bill 2016* 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 Attorney General moved, That the *Legal Profession Amendment Bill 2016* 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.

Legal Profession Amendment (Levy) Bill 2016

Bill reported without amendment.

Report adopted.

The Attorney General moved, That the *Legal Profession Amendment (Levy) Bill 2016* 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.

28. Genetically Modified Crops Free Areas Repeal Bill 2015

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

Interruption pursuant to order.

29. Members' Statements

Statements were taken.

30. Adjournment

The Council adjourned at 9.51pm until Wednesday, 22 June 2016 at 1.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Jacqui Boydell, Hon Donna Faragher, Hon Mark Lewis and Hon Sally Talbot.

NIGEL PRATT
Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council