

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 182

THURSDAY, 7 APRIL 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. Petitions

Hon Sue Ellery on behalf of Hon Kate Doust presented a petition from two petitioners requesting the Legislative Council to investigate the impact on consumers of substandard white set plaster. (Tabled Paper 4012).

Hon Adele Farina presented a petition from two petitioners requesting the Legislative Council to investigate the transfer of the disputes resolution process for building services in Western Australia from the Building Commissioner to the State Administrative Tribunal. (Tabled Paper 4013).

3. Ministerial Statement — Review of the Criminal Law (Mentally Impaired Accused) Act 1996

The Attorney General made a Ministerial Statement with respect to the Report on the Review of the *Criminal Law (Mentally Impaired Accused) Act 1996*.

The Attorney General tabled the *Review of the Criminal Law (Mentally Impaired Accused) Act 1996 Final Report (April 2016)*. (Tabled Paper 4000).

4. Ministerial Statement — Meeting of the Legislative and Governance Forum on Consumer Affairs

The Minister for Commerce made a Ministerial Statement with respect to reforms to consumer laws, at a national level, that were considered at the meeting of the Legislative and Governance Forum on Consumer Affairs.

5. Papers

The following Papers were laid on the Table by —

Attorney General

Annual Reports —

Criminal Investigation (Covert Powers) Act 2012 — Corruption and Crime
Commission on the Work and Activities of the Western Australia Police
(for the period 1 July 2014 – 30 June 2015)..... 3999

Minister for Planning*Leases —*

CALM Lease No. 2387/100 — Between the Conservation and Land Management Executive Body and Aileen Jones and Michael James Jones for the purpose of an existing hut located along the lower reaches of the Donnelly River in the D’Entrecasteaux National Park (Reserve No. 36996).....	4001
CALM Lease No. 2355/100 — Between the Conservation and Land Management Executive Body and Thomas Raymond Smith and Helena Patricia Smith for the purpose of an existing hut located along the lower reaches of the Donnelly River in the D’Entrecasteaux National Park (Reserve No. 36996).....	4002
CALM Lease No. 2388/100 — Between the Conservation and Land Management Executive Body and Sharleen Giles and Darren Hammer for the purpose of an existing hut located along the lower reaches of the Donnelly River in the D’Entrecasteaux National Park (Reserve No. 36996).....	4003
CALM Lease No. 2365/100 — Between the Conservation and Land Management Executive Body and Eric John Ipsen and George Athol Ipsen for the purpose of an existing hut located along the lower reaches of the Donnelly River in the D’Entrecasteaux National Park (Reserve No. 36996).....	4004
CALM Lease No. 2391/100 — Between the Conservation and Land Management Executive Body and Peter Ross Wood and Adrian Ernest Wood for the purpose of an existing hut located along the lower reaches of the Donnelly River in the D’Entrecasteaux National Park (Reserve No. 36996).....	4005
CALM Lease No. 2371/100 — Between the Conservation and Land Management Executive Body and Donald Gordon Sivyver and Faye Judith Wells for the purpose of an existing hut located along the lower reaches of the Donnelly River in the D’Entrecasteaux National Park (Reserve No. 36996).....	4006
CALM Lease No. 2390/100 — Between the Conservation and Land Management Executive Body and Colin David Hooper, Adriana Hooper, Yvette Marie Hooper and Emma Lee Rawson for the purpose of an existing hut located along the lower reaches of the Donnelly River in the D’Entrecasteaux National Park (Reserve No. 36996).....	4007
CALM Lease No. 2376/100 — Between the Conservation and Land Management Executive Body and David John Serafini, Paula Kaye Serafini, Benjamin David Serafini and Brianna Louise Serafini for the purpose of an existing hut located along the lower reaches of the Donnelly River in the D’Entrecasteaux National Park (Reserve No. 36996).....	4008
CALM Lease No. 2386/100 — Between the Conservation and Land Management Executive Body and Nancy Helen McQueen, Christine Helen McQueen, Lynette Frances Durrant, Jillian Roberta Power, Nathaniel James Muir, Benjamin Douglas Muir and Eva Claire Muir-Ralph for the purpose of an existing hut located along the lower reaches of the Donnelly River in the D’Entrecasteaux National Park (Reserve No. 36996).....	4009
CALM Lease No. 2159/100 — Between the Conservation and Land Management Executive Body and Mr Stephen and Mrs Dian Greville for the Wellington Dam Kiosk situated in the Wellington National Park.....	4010

Minister for Housing*Addendums —*

Water Corporation Annual Report (2013–2014).....	4011
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6. Landfill Operations in Western Australia

Non-Government Business No. 1 having been called, Hon Rick Mazza moved, without notice —

That this House —

- (a) recognise that the increasing use of landfill operations to dispose of metropolitan and urban waste in rural Western Australia is unsustainable;
- (b) call on the Government to assess the social, environmental and economic impacts on rural communities from the dumping of metropolitan waste in their backyards; and
- (c) identify and investigate alternative methods of disposal, such as “waste to energy plants”.

Debate ensued.

Motion lapsed.

7. Industry Development and Support

Private Members’ Business No. 1 having been called, Hon Mark Lewis moved, without notice —

That this Government continue to pursue tenure, planning and property rights reform to enhance and support industry development and growth.

Debate ensued.

Motion lapsed.

8. Order of Business

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

9. Electoral Amendment Bill 2016

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 Brian Ellis in the Chair)

Clause 1 agreed to.

Clauses 2 to 4 agreed to.

Clause 5.

Debate ensued.

Clause agreed to.

Clauses 6 to 10 agreed to.

Clause 11.

Debate ensued.

Clause agreed to.

Clause 12.

Debate ensued.

Hon Martin Aldridge moved —

Page 11, lines 10 to 14 — To delete the lines and insert —

- (2) Without limiting the content of the audits, the independent auditor must express an opinion about the extent to which:
 - (a) test votes cast in accordance with the approved procedures were accurately reflected in the corresponding test vote record produced under those procedures prior to voting commencing; and
 - (b) at the close of polling and prior to the votes being admitted to the count, the votes recorded in the information technology used under the approved procedures accurately reflect the votes cast in the final poll.

Debate ensued.

Hon Martin Aldridge, by leave, tabled correspondence from the Electoral Commissioner regarding the *Electoral Amendment Bill 2016*. (Tabled Paper 4014).

Debate resumed.

Amendment — put and negatived.

Hon Martin Aldridge moved —

Page 11, after line 19, To insert —

- (4) The results of any audit of the information technology used under subsection (2) shall be published on the website of the Western Australian Electoral Commission as soon as practicable and no later than 30 days following the close of polling.

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 13 to 28 agreed to.

Title agreed to.

The Acting President resumed the Chair.

Bill reported with amendment.

The Minister for Electoral Affairs, by leave, moved, That the report be adopted.

Report adopted.

The Minister for Electoral Affairs moved, without notice —

That the Standing Orders be suspended so far as to enable the Bill to pass through its remaining stages in this sitting.

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 Electoral Affairs 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.

10. Dangerous Sexual Offenders Legislation Amendment Bill 2015

The Order of the Day for the further consideration of this Bill, in Committee of the Whole House, having been read.

The Acting President left the Chair.

In Committee

(Hon Liz Behjat in the Chair)

Clause 17.

Debate resumed on the amendment moved by Hon Adele Farina, as follows —

Page 15, after line 19 — To insert —

- (4) A court may only make an order under subsection (1)(b) if the court is satisfied that the offender will comply with the conditions stated in the order.
- (5) The offender has the onus of satisfying the court as described in subsection (4) and the court has to be satisfied —
 - (a) by acceptable and cogent evidence; and
 - (b) to a high degree of probability.
- (6) In deciding whether to make an order under subsection (1)(b), the court must disregard the fact that the person will be subject to electronic monitoring if an order under subsection (1)(b) is made.

Hon Adele Farina, by leave, tabled the decision of the Supreme Court of Western Australia, *Director of Public Prosecutions (WA) v McGarry* [No 8] [2016] WASC 82, 11 March 2016. (Tabled Paper 4015)

Debate resumed.

Amendment — put.

The Committee divided.

Ayes (11)

Hon Robin Chapple
 Hon Stephen Dawson
 Hon Kate Doust
 Hon Sue Ellery
 Hon Adele Farina
 Hon Lynn MacLaren

Hon Martin Pritchard
 Hon Sally Talbot
 Hon Ken Travers
 Hon Darren West
 Hon Samantha Rowe (*Teller*)

Noes (20)

Hon Liz Behjat
 Hon Jacqui Boydell
 Hon Paul Brown
 Hon Jim Chown
 Hon Peter Collier
 Hon Brian Ellis
 Hon Donna Faragher
 Hon Nick Goiran
 Hon Dave Grills
 Hon Nigel Hallett

Hon Alyssa Hayden
 Hon Col Holt
 Hon Peter Katsambanis
 Hon Mark Lewis
 Hon Rick Mazza
 Hon Robyn McSweeney
 Hon Michael Mischin
 Hon Helen Morton
 Hon Simon O'Brien
 Hon Phil Edman (*Teller*)

Amendment thus negatived.

Question, That the clause stand as printed — put and passed.

New Clause 18A.

Hon Adele Farina moved —

Page 17, after line 3 — To insert —

18A. Section 21 amended

Delete section 21 and replace with:

21. Warrant because of contravention

- (1) A member of the police force or community corrections officer who reasonably suspects that a person who is subject to a supervision order is likely to contravene, is contravening, or has contravened, a condition of the order may apply to a magistrate for the issue of a warrant under subsection (3).
- (2) A person who makes an application under subsection (1) must advise the DPP as soon as practicable that the application has been made.
- (3) If the magistrate is satisfied that there are reasonable grounds for the suspicion described in subsection (1), the magistrate has to issue, in the form approved under section 46, a warrant directed to all members of the police force for the person who is subject to the supervision order to be arrested and brought before the Supreme Court for it to consider the suspected or anticipated contravention.
- (4) The warrant may state the suspected or anticipated contravention in general terms.
- (5) A magistrate cannot issue a warrant under subsection (3) for the arrest of a person unless the application for the warrant is supported by evidence on oath.
- (6) A person arrested pursuant to a warrant issued under subsection (3) for a suspected contravention shall not be released on bail, and shall be remanded in custody until the suspected contravention has been the subject of a determination by the Supreme Court.

Debate ensued.

New Clause — put.

The Committee divided.

Ayes (11)

Hon Robin Chapple
Hon Stephen Dawson
Hon Kate Doust
Hon Sue Ellery
Hon Adele Farina
Hon Lynn MacLaren

Hon Martin Pritchard
Hon Sally Talbot
Hon Ken Travers
Hon Darren West
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 Hon Nigel Hallett

Hon Alyssa Hayden
 Hon Col Holt
 Hon Peter Katsambanis
 Hon Mark Lewis
 Hon Rick Mazza
 Hon Robyn McSweeney
 Hon Michael Mischin
 Hon Helen Morton
 Hon Simon O'Brien
 Hon Phil Edman (*Teller*)

New Clause thus negatived.

Clause 19 agreed to.

Clause 20.

Hon Adele Farina moved —

Page 17, line 21 to page 18, line 16 — To delete the lines and insert —

20. Section 23 amended

Delete clause 23 and replace with:

23. Court shall order detention

- (1) If the court is satisfied, on the balance of probabilities, that the person who is subject to the supervision order is contravening, or has contravened, a condition of the supervision order, the court shall make a continuing detention order in relation to the person.
- (2) Subject to (1), if the court is satisfied, on the balance of probabilities, that the person who is subject to the supervision order is likely to contravene a condition of the supervision order, the court may —
 - (a) make an order amending the conditions of the supervision order, or extending the period for which the offender is to be subject to the conditions of the supervision order, or both; or
 - (b) if the court is also satisfied that there is an unacceptable risk that, if an order under this paragraph were not made, the person would commit a serious sexual offence, make a continuing detention order in relation to the person; or
 - (c) make no order.
- (3) In considering whether it is satisfied as required in subsection (2)(b), the court must disregard the possibility that the person might temporarily be prevented from committing a serious sexual offence by imprisonment, by remand in custody or by the imposition of bail conditions.
- (4) In deciding whether to make an order under subsection (2) the paramount consideration is to be the need to ensure adequate protection of the community.

Debate ensued.

Interruption pursuant to order.

The Acting President resumed the Chair.

The Deputy Chair of Committees reported that the Committee of the Whole House had considered the Bill, made progress, and seeks to sit again.

Ordered — That the Committee of the Whole House sit again.

11. Statement by President — Retirement of Russell Bremner

The President made the following Statement —

It is with regret that I advise that today is Russell Bremner's last sitting day before he departs on pre-retirement leave next week. Russell has been the Executive Manager of the Parliamentary Services Department for the past 18 years, having joined the Western Australian Parliament in 1998 just after the department was established. His retirement will take effect from 25 October 2016. Prior to his employment at the Western Australian Parliament, Russell worked for nearly 26 years in the Commonwealth, private and State sectors.

As Executive Manager, Russell has been instrumental in introducing many significant improvements to the Parliament House building and to facilities and services for Members. Under his leadership, the Parliamentary Services Department has become a strong, efficient and professional department serving the chamber departments, the parliamentary institution and the diverse and ever-changing needs of its Members. In 1998, this Parliament took the lead in establishing a new joint services department, and this innovation has been adopted by the New South Wales, Victorian and Federal Parliaments. Under Russell's stewardship, the Parliamentary Services Department of this Parliament has achieved very high standards of service as demonstrated by the consistently positive feedback received from Members in the annual survey. I believe that our Parliamentary Services Department continues to set the standard that other Parliaments aspire to, and this is in no small part due to Russell's leadership.

I wish to sincerely thank Russell on behalf of all Members and staff of this Chamber, and, indeed, on behalf of all past Members whom he has served during his distinguished career, for his advice, support and guidance over the years and for his significant contribution to the management and operation of the Parliament of Western Australia. I wish Russell a long, happy and healthy retirement. Thank you, Russell.

12. Statement by President — Complaint against a Member

The President made the following Statement —

I inform Members that I have received correspondence from the chief executive officer of a major local government authority seeking my guidance on a complaint against a Member of the Legislative Council. I will not name the local government or the Member but wish to notify the House that I will be responding to advice that there is no case to answer by the Member because the allegation involves activities in a public place and does not qualify as an offence or contempt under the Standing Orders of our jurisdiction, the Legislative Council.

However, I make some further observations. Most Members of this Chamber are elected as members of a political party. While several Members have served for a time as Independents, in fact, only one Member has been elected as an Independent since the current regional, proportional representative system has been used since the general election of 1989. Despite the fact that the majority of Members of the Legislative Council are also Members of political parties, and hold a variety of government, opposition and parliamentary positions, everyone is recognised in this Chamber as a community representative for their electorates. Members are also recognised in their communities as such. Consequently, Members have responsibilities to this Chamber and their communities at large. In this Chamber we do not permit political advertising and promotion, for example, stickers on laptops, party pins et cetera. As a House of Parliament, though, we do not have jurisdiction over local government policies in relation to these matters. They are responsible for policy in relation to their community events.

However, Members of the Legislative Council should be mindful of how they conduct their representative and political roles in the communities they represent. It is always better to have a constructive dialogue with local governments and other organisations than a negative relationship. As a general rule, Members of our State Parliament should interact with the elected leaders, the mayor or shire president and councillors, of a local government body rather than at officer level. Local government officers and administrations are responsible to their elected members, not state parliamentary Members.

My response to the chief executive officer of the local government who has contacted me, which I will copy to the mayor, reflects these points. However, in terms of our legislature, the letter highlights the fact that our Legislative Council does not have a code of conduct for Members. It is worth noting that codes of conduct exist in Western Australia for Cabinet Ministers and Members of the Legislative Assembly. Perhaps it is time for us to again examine the need for a code of conduct for Members of the Legislative Council. Accordingly, I will refer consideration of the absence of a code of conduct to the Standing Committee on Procedure and Privileges for its attention.

13. Questions Without Notice

Questions without notice were taken.

The Minister for Housing tabled documents in relation to letters from the Department of Housing to tenants advising of rent calculation changes, in response to a question without notice asked by Hon Sue Ellery. (Tabled Paper 4016).

The Minister for Housing tabled documents in relation to the Department of Housings Assessable Government Payments list, in response to a question without notice asked by Hon Sue Ellery. (Tabled Paper 4017).

The Parliamentary Secretary to the Minister for Transport tabled documents in relation to letters from Australian Securities and Investments Commission to Hon Dean Nalder MLA, in response to a question without notice asked by Hon Darren West. (Tabled Paper 4018).

The Parliamentary Secretary to the Minister for Transport tabled documents in relation to letters from Australian Securities and Investments Commission to Hon Dean Nalder MLA, in response to a question without notice asked by Hon Samantha Rowe. (Tabled Paper 4019).

The Minister for Planning representing the Minister for Child Protection, by leave incorporated into *Hansard*, information in relation to Family Resource Workers engaged by the Department for Child Protection and Family Support, in response to a question without notice asked by Hon Stephen Dawson.

Point of Order

Hon Robin Chapple raised the following Point of Order —

The Minister has referred to a website for information for the Chamber. I thought you had a ruling on that.

President's Ruling

The President ruled as follows —

The ruling is that an answer should not contain a reference to a website purely as the answer. If it is supplementary information to the answer, that is another matter. But if the answer is framed purely in the sense of referring to a website where the Member will find the information, that is not suitable. Perhaps the Minister would like to indicate that he will reconsider that and provide another answer at some stage.

The Minister for Education, by leave incorporated into *Hansard*, information in relation to the cost of Ms Ros Thomas' participation Department of Education's Bigger Picture advertising campaign, in response to a question without notice asked by Hon Sue Ellery.

The Minister for Planning representing the Minister for Child Protection, in accordance with Standing Order No. 108(2), advised that an answer to questions on notice Nos 3832 and 3833 asked by Hon Martin Pritchard will be provided on 10 May 2016.

The Minister for Planning representing the Minister for Mental Health, in accordance with Standing Order No. 108(2), advised that an answer to questions on notice Nos 3836, 3837, 3838, 3839, 3841, 3842, 3843, 3844, 3845 and 3846 asked by Hon Martin Pritchard will be provided on 10 May 2016.

The Minister for Planning representing the Minister for Mental Health, in accordance with Standing Order No. 108(2), advised that an answer to questions on notice Nos 3849 and 3851 asked by Hon Stephen Dawson will be provided on 10 May 2016.

The Minister for Planning representing the Minister for Child Protection, in accordance with Standing Order No. 108(2), advised that an answer to question on notice No. 3853 asked by Hon Stephen Dawson will be provided on 10 May 2016.

14. Order of Business

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

15. Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016

The Attorney General, pursuant to notice, moved —

That a Bill for “An Act to amend the *Classification (Publications, Films and Computer Games) Enforcement Act 1996*.” be introduced and read a first time.” 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 4020).

Debate stands adjourned and Bill referred to the Standing Committee on Uniform Legislation and Statutes Review [SO 126].

16. Highways (Liability for Straying Animals) Amendment Bill 2016

The Attorney General, pursuant to notice, moved —

That a Bill for “An Act to amend the *Highways (Liability for Straying Animals) Act 1983*.” 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 4021).

Debate stands adjourned.

17. Members’ Statements

Statements were taken.

18. Adjournment

The Council adjourned at 5.25pm until Tuesday, 10 May 2016 at 2.00pm.

Members present during the day’s proceedings

Attendance: Present all Members except Hon Alanna Clohesy.

NIGEL PRATT
Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council