

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 89

TUESDAY, 30 OCTOBER 2018

1. Meeting of Council

The Council assembled at 2.00pm pursuant to order.

The President, Hon Kate Doust, took the Chair.

Prayers and an Acknowledgement of Country were read.

2. Message from His Excellency the Governor — Assent to Bills

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

17 October 2018 — Message No. 26	Act No.
Duties Amendment (Additional Duty for Foreign Persons) Bill 2018	24 of 2018
Financial Transaction Reports Amendment Bill 2018	25 of 2018

3. Statement by President — Standing Committee on Legislation — Inquiry into the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018 — Substitution of Member

The President made the following Statement —

I have received the following letter —

Dear Madam President

Inquiry into the Residential Tenancies Legislation Amendment (Family Violence) Bill 2018

I advise that the Standing Committee on Legislation has ordered the substitution of Hon Rick Mazza MLC in place of Hon Colin de Grussa MLC as a Member of the Committee for the above named inquiry.

This order, pursuant to Standing Order 163 is for the duration of the inquiry and both Members have agreed to the substitution.

Yours sincerely

Hon Dr Sally Talbot MLC

Chair

4. Petition

Hon Diane Evers presented a petition from 3 petitioners requesting the Legislative Council to oppose the development of the Greenpatch, Dalyellup on lots 9105, 9076 and 8019. (Tabled Paper 2109).

5. Ministerial Statement — Lock Hospitals Commemorative Sculpture Funding

The Minister for Regional Development made a Ministerial Statement with respect to funding for the Lock Hospitals commemorative sculpture.

6. Papers

The following Papers were laid on the Table by —

President

Annual Reports —

Corruption and Crime Commission — Criminal Investigation (Covert Powers) Act 2012 (2017–2018) Report to the Minister for Police.....	2078
Inspector of Custodial Services, Office of the (2017–2018).....	2079

Reports —

Corruption and Crime Commission — Report into misconduct risks in WA Prisons (26 October 2018) (Deemed tabled 26/10/2018).....	2080
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Leader of the House

Addendums —

Local Government Standards Panel — Annual Report (2017–2018)	2081
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Local Laws —

Local Government Act 1995 (City of Bunbury Penalty Units Local Law 2018 G.G. 26/10/2018, City of Bunbury Standing Orders Amendment Local Law 2018 G.G. 26/10/2018, Shire of Murray Health Amendment Local Law 2018 G.G. 26/10/2018, Shire of Victoria Plains Meeting Procedures Local Law 2018 G.G. 26/10/2018 and Town of Claremont Waste Amendment Local Law 2018 G.G. 19/10/2018).....	2082
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Notices —

Financial Management Act 2006 (section 82) — Notice from the Minister for Education and Training in relation to Legislative Council Question without Notice No. 456 asked by Hon Martin Aldridge	2083
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Regulations —

Legal Profession Act 2008 (Legal Profession Amendment Regulations 2018 G.G. 26/10/2018).....	2084
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Reports —

Gold Corporation — Statement of Corporate Intent (2018–2019) (Deemed tabled 26/10/2018)	2085
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Schemes —

Professional Standards Act 1997 (The Law Society of New South Wales Professional Standards Scheme (2018) G.G. 19/10/2018	2086
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Minister for Environment

Annual Reports —

Australian Crime Commission — Criminal Investigation (Covert Powers) Act 2012 (WA) (2017–2018) (Date received 26/10/2018)	2087
Bankwest and Commonwealth Bank of Australia (2018) (Date received 29/10/2018)	2088
Chief Advocate (2017–2018) (Date received 19/10/2018)	2089
Environmental Protection Authority (2017–2018) (Date received 29/10/2018).....	2090
Police Force, Western Australia — Surveillance Devices Act 1998 (2017–2018) (Date received 26/10/2018).....	2091
Police Force, Western Australia — Witness Protection (Western Australia) Act 1996 (2017–2018) (Date received 26/10/2018)	2092

Determinations —

Planning and Development Act 2005 (section 247) — Determination by the Minister for Planning in relation to conditional development approval for concrete batching plants at No. 71 (Lot 200) Edward St Perth and No. 120 (Lot 1001) Claisebrook Rd Perth	2093
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Local Laws —

Waste Avoidance and Resource Recovery Act 2007 (Town of Port Hedland Waste Local Law 2018 G.G. 19/10/2018)	2094
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Notices —

Financial Management Act 2006 (section 82) — Notice from the Minister for Finance in relation to Legislative Council Question on Notice No. 1644 asked by the Hon Robin Scott	2095
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Regulations —

Environmental Protection Act 1986 (Environmental Protection Amendment Regulations (No. 3) 2018 G.G. 16/10/2018)	2096
Road Traffic (Authorisation to Drive) Act 2008 (Road Traffic (Authorisation to Drive) Amendment Regulations 2018 G.G. 19/10/2018)	2097

Reports —

Statutory Review of the Criminal Investigation Act 2006 (Final Report June 2018)	2098
Treasury Corporation (Quarterly Report ending 30 September 2018)	2099

Minister for Regional Development*Addendums —*

Rottneest Island Authority — Annual Report (2017–2018)	2100
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Annual Reports —

Greyhound Racing Association (2017–2018) (Date received 20/10/2018)	2101
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Management Plans —

Fish Resources Management Act 1994 (Kimberley Crab Managed Fishery Management Plan 2018 [1218] G.G. 23/10/2018)	2102
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Orders —

Fish Resources Management Act 1994 (Prohibition on Commercial Fishing (King Sound South) Order 2018 [1383] G.G. 26/10/2018)	2103
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Regulations —

Occupational Safety and Health Act 1984 (Occupational Safety and Health Amendment Regulations 2018 G.G. 19/10/2018)	2104
Workers' Compensation and Injury Management Act 1981 (Workers' Compensation and Injury Management (Scales of Fees) Amendment Regulations 2018 G.G. 19/10/2018)	2105

Reports —

Racing and Wagering Western Australia — Statement of Corporate Intent (2018–2019)	2106
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Parliamentary Secretary to the Deputy Premier*Regulations —*

Health Practitioner Regulation National Law (WA) Act 2010 (Health Practitioner Regulation National Law Regulation 2018 G.G. 26/10/2018)	2107
Radiation Safety Act 1975 (Radiation Safety (General) Amendment Regulations 2018 G.G. 16/10/2018)	2108

7. Criminal Code Amendment (Desecration of War Memorials) Bill 2018

Hon Charles Smith: To move on the next day of sitting —

That a Bill for “An Act to amend *The Criminal Code*.” be introduced and read a first time.

8. Order of Business

Ordered — That Orders of the Day Nos 1, *City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Amendment Local Law 2018 — Disallowance*, 2, *City of Kalgoorlie-Boulder Local Government Property Amendment Local Law 2018 — Disallowance*, 3, *Health Services (Information) Amendment Regulations 2018 — Disallowance*, 4, *Environmental Protection Amendment Regulations (No. 2) 2018 — Disallowance*, 5, *Water Services Regulations Amendment (Fees and Charges) Regulations 2018 — Disallowance*, 6, *Commerce and Industrial Relations Regulations Amendment (Fees and Charges) Regulations 2018 — Disallowance*, 7, *Planning and Development (Development Assessment Panels) Amendment Regulations 2018 — Disallowance*, 8, *Public Transport Authority Amendment Regulations 2018 — Disallowance*, 9, *Shire of Morawa Fencing Local Law 2018 — Disallowance*, and 10, *Western Australian Meat Industry Authority Amendment Regulations (No. 2) 2018 — Disallowance* be taken after Order of the Day No. 16, *Local Government Amendment (Suspension and Dismissal) Bill 2018*. (Leader of the House).

9. Strata Titles Amendment Bill 2018

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

The President left the Chair.

In Committee

(Hon Simon O'Brien in the Chair)

Clause 83.

The Chair of Committees moved the following Committee recommendation —

Page 282, lines 25 and 26 — To delete the lines and insert:

request under subsection (1).

Debate ensued.

Amendment — put and negatived.

The Minister for Environment representing the Minister for Lands moved —

Page 282, line 26 — To delete the line and insert:

appropriate modifications.

Debate ensued.

Amendment — put and passed.

Debate resumed.

The Chair of Committees moved the following Committee recommendation —

Page 286, lines 5 to 17 — To delete the lines and insert:

(1) The regulations —

- (a) shall require the proponent of a termination proposal to enter into specified arrangements for the owners of lots in the strata titles scheme proposed to be terminated to obtain independent advice or representation in connection with the proposal; and

- (b) shall specify arrangements for obtaining fuller or more extensive advice or representation for a class or classes of owner identified in or under the regulations as vulnerable, having regard to —
 - (i) advanced age, illness, trauma, disability or other factors that may impair the ability of an owner to consider and make an informed decision in relation to a termination proposal; or
 - (ii) financial disadvantage which would significantly impair the ability of the owner to bear the cost of obtaining appropriate professional advice in relation to a termination proposal.
- (2) Without limitation, the arrangements may include a requirement for the proponent of a termination proposal to pay an amount to a trustee to be held in trust for owners to obtain independent legal advice or representation, valuation advice or reports or financial or taxation advice in connection with the proposal.

Debate ensued.

Amendment — put and negatived.

The Minister for Environment representing the Minister for Lands moved —

Page 286, lines 5 to 17 — To delete the lines and insert:

- (1) The regulations —
 - (a) must require the proponent of a termination proposal to enter into specified arrangements for the owners of lots in the strata titles scheme proposed to be terminated to obtain independent advice or representation in connection with the proposal; and
 - (b) must specify arrangements for obtaining fuller or more extensive advice or representation for a class or classes of owner identified in or under the regulations as vulnerable, having regard to —
 - (i) age, illness, trauma, disability or other factors that may impair the ability of an owner to consider and make an informed decision in relation to a termination proposal; or
 - (ii) financial disadvantage which would significantly impair the ability of the owner to bear the cost of obtaining appropriate professional advice in relation to a termination proposal.
- (2) Without limitation, the arrangements may include a requirement for the proponent of a termination proposal to pay an amount to a trustee to be held in trust for owners to obtain independent legal advice or representation, valuation advice or reports or financial or taxation advice in connection with the proposal.
- (3) The regulations may specify terms of a trust referred to in subsection (2).

Debate ensued.

Amendment — put and passed.

The Chair of Committees moved the following Committee recommendation —

Page 287, lines 1 to 8 — To delete the lines and insert:

- (2) The *Planning and Development Act 2005* applies to the required approval subject to the modification that a reference to subdivision is to be read as including a reference to termination of a strata titles scheme.

Debate ensued.

Amendment — put and negatived.

The Minister for Environment representing the Minister for Lands moved —

Page 287, lines 1 to 8 — To delete the lines and insert:

- (2) The *Planning and Development Act 2005* applies to the required approval subject to —
 - (a) the modification that a reference to subdivision is to be read as including a reference to termination of a strata titles scheme; and
 - (b) any other appropriate modifications.

Amendment — put and passed.

Debate resumed.

Clause, as amended, agreed to.

Title agreed to.

The Acting President resumed the Chair.

Bill reported with amendments.

The Minister for Environment representing the Minister for Lands, by leave, moved, That the report be adopted.

Leave denied.

Ordered — That consideration of the Committee's Report be made an Order of the Day for the next sitting.

10. Court Jurisdiction Legislation Amendment Bill 2017

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

Debate resumed.

Hon Michael Mischin, by leave, tabled data from the Department of Justice in relation to the *Court Jurisdiction Legislation Amendment Bill 2017* as requested by the Liberal Party. (Tabled Paper 2110).

Debate resumed.

The Leader of the House representing the Attorney General tabled a list of Commonwealth offences punishable by life imprisonment. (Tabled Paper 2111).

Debate resumed.

The Leader of the House representing the Attorney General tabled a letter from the Chief Justice of Western Australia to the Director of Public Prosecutions regarding prosecutions for arson. (Tabled Paper 2112).

Debate resumed.

Question — put and passed.

Bill read a second time.

The Acting President left the Chair.

In Committee

(Hon Martin Aldridge in the Chair)

Clause 1.

Debate ensued.

The Leader of the House representing the Attorney General tabled a letter from the Chief Justice of Western Australia to the Attorney General in relation to the effect of the timing of the passing of the Bill on the Supreme Court of Western Australia's criminal jurisdiction. (Tabled Paper 2113).

Debate resumed.

11. Questions Without Notice

Questions without notice were taken.

The Minister for Regional Development tabled briefing notes in relation to the Albany Wave Farm, Renewable Energy and UWA Wave Power Centre of Excellence, in response to a question without notice asked by Hon Peter Collier. (Tabled Paper 2114).

The Minister for Environment representing the Minister for Transport tabled the Metronet — Yanchep Rail Extension Project Definition Plan (June 2018), in response to a question without notice asked by Hon Michael Mischin. (Tabled Paper 2115).

The Parliamentary Secretary to the Minister for Health, by leave, incorporated into *Hansard* information in relation to WA Country Health Service facilities and information on antivenin, in response to a question without notice asked by Hon Rick Mazza.

The Minister for Environment representing the Minister for Corrective Services tabled meeting minutes of the Justice Health Project Oversight Committee, in response to question on notice No. 1633 asked by Hon Alison Xamon. (Tabled Paper 2116).

The Minister for Environment representing the Minister for Transport tabled the business case for the proposed development of the Bunbury Outer Ring Road, in response to question on notice No. 1652 asked by Hon Peter Collier. (Tabled Paper 2117).

The Minister for Environment tabled documents in relation to exceedance data from the Port Hedland Industries Council in relation to PM10 dust, in response to question on notice No. 1657 asked by Hon Robin Chapple. (Tabled Paper 2118).

The Minister for Environment representing the Minister for Police; Road Safety, in accordance with Standing Order No. 108(2), advised that an answer to question on notice No. 1616 asked by Hon Robin Chapple will be provided on 31 October 2018.

12. Court Jurisdiction Legislation Amendment Bill 2017

Resumption of consideration of this Bill in Committee of the Whole House (*see item 10 above*).

The President left the Chair.

In Committee

(Hon Dr Steve Thomas in the Chair)

Clause 1.

Debate resumed.

Clause agreed to.

Clauses 2 to 11 agreed to.

Title agreed to.

The Acting President resumed the Chair.

Bill reported without amendment.

Report adopted.

The Leader of the House representing the Attorney General 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.

13. Courts Legislation Amendment Bill 2017

The Order of the Day having been read for the consideration, in Committee of the Whole House, of Message No. 90 from the Legislative Assembly.

The Acting President left the Chair.

In Committee

(Hon Dr Steve Thomas in the Chair)

The Message was as follows —

Madam President

The Legislative Assembly acquaints the Legislative Council that it has agreed to the *Courts Legislation Amendment Bill 2017* subject to the amendments contained in the Schedule annexed, in which amendments the Legislative Assembly desires the concurrence of the Legislative Council.

Acting Speaker

Mr I.C. Blayney

Legislative Assembly Chamber

Perth, 11 October 2018

Schedule indicating the amendments made by the Legislative Assembly in the Courts Legislation Amendment Bill 2017.

No. 1

Clause 8.

To delete the clause.

No. 2

New Clause 8.

Page 6, after line 2 — To insert:

“

8. Schedule 1 clause 9 amended

(1) In Schedule 1 clause 9(2):

(a) delete “magistrate — ” and insert:

magistrate a person who meets the qualification requirement set out in clause 2(2)(a).

(b) delete paragraphs (a) to (c).

(2) In Schedule 1 clause 9(3)(a) delete “appointment; but the period must not extend beyond when the appointee reaches 70 years of age; and” and insert:

appointment, which cannot exceed 12 months; and

(3) After Schedule 1 clause 9(3) insert:

(3A) A person appointed under subclause (2) is eligible for reappointment.
”.

Clerk of the Legislative Assembly

Thursday, 11 October 2018

The Leader of the House representing the Attorney General moved, That Amendment No. 1 be agreed to.

Debate ensued.

The Leader of the House representing the Attorney General tabled notes on clause 8 of the *Courts Legislation Amendment Bill 2017*. (Tabled Paper 2119).

Debate resumed.

Amendment — put and passed.

The Leader of the House representing the Attorney General moved, That Amendment No. 2 be agreed to.

Amendment — put and passed.

The Acting President resumed the Chair.

The Chair reported, That the Committee of the Whole House had considered Message No. 90 from the Legislative Assembly, and had agreed to same.

Report adopted.

Legislative Assembly acquainted accordingly.

14. Cognate Debate — Community Titles Bill 2018 and Community Titles Amendment (Consistency of Charging) Bill 2018

The Minister for Environment representing the Minister for Lands sought leave of the Council to debate Order of the Day No. 23, *Community Titles Bill 2018*, and Order of the Day No. 24, *Community Titles Amendment (Consistency of Charging) Bill 2018*, cognately [SO 127].

Leave granted.

15. Community Titles Bill 2018 and Community Titles Amendment (Consistency of Charging) Bill 2018

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

Debate resumed.

The Minister for Environment representing the Minister for Lands tabled examples of community schemes and community scheme tiers. (Tabled Paper 2120).

Debate resumed.

Question — That the *Community Titles Bill 2018* be read a second time — put and passed.

Bill read a second time.

Question — That the *Community Titles Amendment (Consistency of Charging) Bill 2018* be read a second time — put and passed.

Bill read a second time.

The Acting President left the Chair.

In Committee

(Hon Matthew Swinbourn in the Chair)

Community Titles Bill 2018

Clause 1 agreed to.

Clauses 2 to 15 agreed to.

Clause 16.

The Minister for Environment representing the Minister for Lands moved —

Page 28, line 23 — To delete the line and insert:

- (6) When a community title for a lot comes into existence it confers on the owner of the lot —

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 17 to 19 agreed to.

Clause 20.

Debate ensued.

Clause agreed to.

Clause 21 agreed to.

Clause 22.

Hon Donna Faragher moved —

Page 37, lines 10 to 11 — To delete “may, and must, if the Planning Commission so requires,” and insert:

must

Debate ensued.

Amendment — put and passed.

Hon Donna Faragher moved —

Page 37, line 20 — To delete “may” and insert:

must

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 23 to 84 agreed to.

Clause 85.

Debate ensued.

Clause agreed to.

Clauses 86 to 88 agreed to.

Clause 89.

Debate ensued.

The Minister for Environment representing the Minister for Lands tabled a representative flowchart from Landgate. (Tabled Paper 2121).

Debate resumed.

Clause agreed to.

Clauses 90 to 98 agreed to.

Clause 99.

The Minister for Environment representing the Minister for Lands moved —

Page 125, line 26 — To delete “monitoring” and insert:

enforcing

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 100 to 105 agreed to.

Clause 106.

Debate ensued.

Clause agreed to.

Clauses 107 to 116 agreed to.

Clause 117.

Debate ensued.

Clause agreed to.

Clauses 118 to 141 agreed to.

Clause 142.

The Minister for Environment representing the Minister for Lands moved —

Page 167, lines 4 to 8 — To delete the lines and insert:

- (i) provide, in accordance with the regulations, details of proposed arrangements for obtaining independent advice or representation referred to in section 159; and

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 143 agreed to.

Clause 144.

The Minister for Environment representing the Minister for Lands moved —

Page 168, lines 18 to 22 — To delete the lines and insert:

- (4) The *Planning and Development Act 2005* applies to the application subject to —
 - (a) the modification that a reference to subdivision is to be read as including a reference to termination of a community titles scheme; and
 - (b) any other appropriate modifications.

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 145 agreed to.

New Clause 145A.

The Minister for Environment representing the Minister for Lands moved —

Page 169, after line 30 — To insert:

145A. Reference of full proposal to independent advocate

- (1) In this section —
independent advocate means a person to whom a full proposal is referred under subsection (2).
- (2) A community corporation to which a full proposal is submitted under section 145 must refer the proposal for review and assessment to a person who —
 - (a) is independent of the community corporation and the proponent of the termination proposal; and
 - (b) satisfies any requirements of the regulations regarding experience or qualifications.
- (3) The independent advocate must, in accordance with the regulations —
 - (a) review the full proposal; and

- (b) provide the community corporation with an independent assessment of the full proposal; and
 - (c) at a time and place arranged with the community corporation, make a presentation of its assessment open to the persons mentioned in section 145(3)(a), conducted so as to take account of the needs of any of those persons who have sensory or mobility disabilities.
- (4) The independent advocate must, in accordance with the regulations —
- (a) endeavour to identify any owners of lots in the community corporation's community titles scheme for whom arrangements for fuller or more extensive advice or representation are to be made under regulations made under section 159(1)(b); and
 - (b) advise those owners of their entitlements under regulations made under section 159; and
 - (c) if requested by those owners, refer them to independent providers of the advice or representation which they are to obtain; and
 - (d) if requested by those owners, assist them in obtaining benefits under the trust referred to in section 159(2).
- (5) In any proceedings before the Tribunal under Part 12 in which there is a dispute about whether an owner of a lot in the community corporation's community titles scheme is entitled to fuller or more extensive advice or representation under regulations made under section 159(1)(b) or is entitled to benefit under a trust referred to in section 159(2), the independent advocate may, in accordance with the regulations, represent the owner in the proceedings.
- (6) The regulations may prescribe how a person's independence is to be determined for the purposes of subsection (2)(a).
- (7) The community corporation —
- (a) must pay the remuneration of, and reimburse the expenses incurred by, the independent advocate; and
 - (b) may charge fees under section 158 to cover the cost of paying those fees and reimbursing those expenses.

Debate ensued.

Amendment — put and passed.

New clause agreed to.

Clause 146.

The Minister for Environment representing the Minister for Lands moved —

Page 173, lines 14 to 16 — To delete the lines and insert:

- (4) The regulations must prescribe matters relating to the determination of the market value of a lot for a termination valuation report, including a valuation methodology that takes account of —
- (a) relevant recent sales history; and
 - (b) the highest and best use of the lot; and
 - (c) the value attributable to the owner's interest in common property.

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 147 agreed to.

Clause 148.

Debate ensued.

The Minister for Environment representing the Minister for Lands moved, That the Deputy Chair report progress and seek to sit again.

Question — put and passed.

The 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.

16. Members' Statements

Statements were taken.

17. Gaming and Wagering Legislation Amendment Bill 2018

The President reported the receipt of Message No. 91 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Regional Development representing the Minister for Racing and Gaming moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Minister for Regional Development representing the Minister for Racing and Gaming moved, That the Bill be read a second time.

The Minister for Regional Development representing the Minister for Racing and Gaming tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 2122).

Debate stands adjourned.

18. Adjournment

The Council adjourned at 10.29pm until Wednesday, 31 October 2018 at 1.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Adele Farina, Hon Colin Holt and Hon Kyle McGinn (leave of absence).

NIGEL PRATT
Clerk of the Legislative Council

HON KATE DOUST MLC
President of the Legislative Council