

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 219

THURSDAY, 10 NOVEMBER 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. Papers

The following Papers were laid on the Table by —

President

Reports —

Ombudsman — A report on giving effect to the recommendations arising from the:
Investigation into issues associated with violence restraining orders and their
relationship with family and domestic violence fatalities (November 2016)..... 4856

Attorney General

Reports —

Treasury Corporation — Quarterly Report (ending 30 September 2016)..... 4857

Minister for Planning

Reports —

Disability Access and Inclusion Plans Progress Report (2015–2016) 4858

3. Standing Committee on Uniform Legislation and Statutes Review — Report No. 104 — Statutes (Repeals) Bill 2016

Hon Kate Doust presented Report No. 104 of the Standing Committee on Uniform Legislation and Statutes Review, *Statutes (Repeals) Bill 2016*. (Tabled Paper 4859).

4. Joint Standing Committee on the Commissioner for Children and Young People — Report No. 8 — Annual Report 2015–16

Hon Robyn McSweeney presented Report No. 8 of the Joint Standing Committee on the Commissioner for Children and Young People, *2015–16 Annual Report*. (Tabled Paper 4860).

5. Alcohol Advertising Ban on Public Transport Facilities

Private Members' Business No. 1 having been called, Hon Helen Morton moved, without notice —

That this House encourages the Government of Western Australia to ban alcohol advertising on State Government controlled public transport facilities.

Debate ensued.

Motion lapsed.

6. Order of Business

Ordered — That Order of the Day No. 2, *Energy Operators (Electricity Generation and Retail Corporation) (Charges) Amendment By-Laws 2016 — Disallowance*, be taken after Order of the Day No. 18, *Misuse of Drugs Amendment (Search Powers) Bill 2016*. (Attorney General).

7. Motor Vehicle (Catastrophic Injuries) Regulations 2016 — Disallowance — Discharge from Notice Paper

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

That pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, Order of the Day No. 1, *Motor Vehicle (Catastrophic Injuries) Regulations 2016 — Disallowance*, be discharged from the Notice Paper.

Question — put and passed.

8. Pilbara Port Assets (Disposal) Bill 2015

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 46.

Debate resumed on the amendments moved by Hon Robin Chapple as follows —

Page 33, after line 7 — To insert —

terms and conditions, in relation to an access arrangement, includes —

- (a) prices and charges relating to the access arrangement; and
- (b) any discounts, allowances, rebates or credits given or allowed in relation to the access arrangement; and
- (c) any commissions or similar benefits (whether monetary or otherwise) payable or given in relation to the access arrangement; and
- (d) the supply of other goods or services, where the other goods or services are supplied in connection with the first-mentioned goods or services; and
- (e) the making of payments for such other goods or services.

Page 33, after line 9 — To insert —

- (2A) Prior to executing any access arrangement under this section, the service provider shall publish standard form terms and conditions of access in the *Gazette*.
- (2B) Any variation to the standard form terms and conditions of access referred to at (2A), shall be published by the service provider prior to them having any lawful force and effect.
- (2C) The terms and conditions on which any access arrangement is agreed are —
 - (a) so far as the service provider and any party to the access arrangement agree on the terms and conditions — the agreed terms and conditions; and

- (b) if the service provider and any party to the access arrangement do not agree on terms and conditions, but terms and conditions are set out in a standard form of agreement — the relevant standard form terms and conditions shall apply.

The Attorney General representing the Treasurer tabled documents in relation to key features of the proposed Utah Point Bulk Handling Facility Regime. (Tabled Paper 4861).

Debate resumed.

Amendments — put.

The Committee divided.

Ayes (10)

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

Hon Laine McDonald
Hon Martin Pritchard
Hon Sally Talbot
Hon Darren West
Hon Samantha Rowe (*Teller*)

Noes (19)

Hon Martin Aldridge
Hon Ken Baston
Hon Liz Behjat
Hon Jacqui Boydell
Hon Paul Brown
Hon Jim Chown
Hon Peter Collier
Hon Donna Faragher
Hon Nick Goiran
Hon Dave Grills

Hon Nigel Hallett
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*)

Amendments thus negatived.

Debate resumed.

Hon Lynn MacLaren moved —

Page 33, lines 10 and 11 — To delete “may do any or all of the following —” and insert —

the regulations must do all of the following —

Debate ensued.

Amendment — put.

The Committee divided.

Ayes (10)

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

Hon Laine McDonald
Hon Martin Pritchard
Hon Sally Talbot
Hon Darren West
Hon Samantha Rowe (*Teller*)

Noes (19)

Hon Martin Aldridge
 Hon Ken Baston
 Hon Liz Behjat
 Hon Jacqui Boydell
 Hon Paul Brown
 Hon Jim Chown
 Hon Peter Collier
 Hon Donna Faragher
 Hon Nick Goiran
 Hon Dave Grills

Hon Nigel Hallett
 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.

Debate resumed.

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

New Clause 46A.

Hon Lynn MacLaren moved —

Page 35, after line 16 — To insert —

46A. Preservation of rights to future access

(1) In this section —

access means access to a service;

access capacity means the capacity to provide services of the person who owns, controls or operates a port facility;

available capacity means access capacity that is not contracted to a protected user or is not the subject of a request by a protected user to be so contracted;

eligible request for access means a request for access capacity when a prescribed user has access capacity at a port facility;

prescribed period for a request for access or an eligible request for access means 180 days after the day on which the request is made;

prescribed user means a person specified in regulations as a user or potential user of a service;

protected user means a user or potential user of a service other than a prescribed user;

service has the meaning given in section 46(1).

(2) It is a condition of the operation of a port facility that, subject to subsection (3), 100% of the access capacity must be reserved for protected users.

(3) Despite subsection (2), if a request for access is made by a prescribed user and there is available capacity at that time, the request may be granted to the extent of the available capacity as long as it is granted on terms that enable a protected user who subsequently makes an eligible request for access being provided with such access within the prescribed period or at a later time agreed to by the protected user.

Debate ensued.

New Clause — put.

The Committee divided.

Ayes (11)

Hon Robin Chapple
 Hon Stephen Dawson
 Hon Kate Doust
 Hon Sue Ellery
 Hon Lynn MacLaren
 Hon Laine McDonald

Hon Simon O'Brien
 Hon Martin Pritchard
 Hon Sally Talbot
 Hon Darren West
 Hon Samantha Rowe (*Teller*)

Noes (16)

Hon Martin Aldridge
 Hon Ken Baston
 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 Peter Katsambanis
 Hon Robyn McSweeney
 Hon Michael Mischin
 Hon Helen Morton
 Hon Phil Edman (*Teller*)

New Clause thus negatived.

New Clause 46A.

The Attorney General representing the Treasurer moved —

Page 35, after line 16 — To insert —

46A. Preservation of rights to future access

(1) In this section —

access means access to a service;

access capacity means the capacity to provide services of the person who owns, controls or operates a port facility;

eligible request for access means a request for access that would not, if granted, result in the proportion of the access capacity taken up by protected users exceeding 50%;

prescribed period for a request for access means 180 days, or such other period as is specified in regulations, after the day on which the request is made;

prescribed user means a person specified in regulations as a user or potential user of a service;

protected user means a user or potential user of a service other than a prescribed user;

service has the meaning given in section 46(1).

(2) It is a condition of the operation of a port facility that, subject to subsection (3), 50% of the access capacity must be reserved for protected users.

- (3) Despite subsection (2) if a request for access made by a prescribed user would, if granted, result in the proportion of the access capacity taken up by prescribed users exceeding 50%, the request may be granted as long as it is granted on terms that would not prevent a protected user who subsequently makes an eligible request for access from being provided with access within the prescribed period or at a later time agreed to by the protected user.

Debate ensued.

Amendment — put and passed.

New Clause agreed to.

Clause 47.

Debate ensued.

Clause agreed to.

Schedule 1 agreed to.

Title agreed to.

The Acting President resumed the Chair.

Bill reported with amendment.

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

9. Aquatic Resources Management 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 266.

Debate resumed.

Clause agreed to.

Clauses 267 to 271 agreed to.

Clause 272.

Debate ensued.

Clause agreed to.

Clauses 273 to 297 agreed to.

New Part 19, Division 1A.

The Attorney General representing the Minister for Fisheries moved —

Page 213, after line 22 — To insert —

Division 1A — *Biodiversity Conservation Act 2016* amended

288A. Act amended

This Division amends the *Biodiversity Conservation Act 2016*.

288B. Section 5 amended

- (1) In section 5(1) delete the definitions of:

fish

pearl oyster

- (2) In section 5(1) insert in alphabetical order:

aquatic organism has the meaning given in the *Aquatic Resources Management Act 2016* section 3(1);

- (3) In section 5(1) in the definition of *biodiversity conservation measures* delete paragraph (g)(v) and insert:

- (v) aquatic resource use plans and management plans under the *Aquatic Resources Management Act 2016* and measures under Part 6 of that Act relating to the control of declared organisms or biological threats;

- (4) In section 5(1) in the definition of *fauna processing establishment* delete “fish or pearl oyster,” and insert:

aquatic organisms,

288C. Section 7 amended

In section 7(1) in the definition of *relevant authorisation* delete paragraphs (d) and (e) and insert:

- (d) the *Aquatic Resources Management Act 2016*; or

288D. Section 12 amended

Delete section 12(1) and insert:

- (1) This Act, other than Part 9, does not apply to or in relation to any aquatic organism that is the subject of —
- (a) aquaculture, as defined in the *Aquatic Resources Management Act 2016* section 3(1); or
 - (b) commercial fishing, as defined in the *Aquatic Resources Management Act 2016* section 3(1); or
 - (c) recreational fishing, as defined in the *Aquatic Resources Management Act 2016* section 3(1).

288E. Section 54 amended

In section 54(2)(b) delete “*Fish Resources Management Act 1994.*” and insert:

Aquatic Resources Management Act 2016.

288F. Section 132 amended

Delete section 132(3)(a)(ii) and (iii) and insert:

- (ii) if the species to which the order relates is a species of aquatic organism — the Minister responsible for the administration of the *Aquatic Resources Management Act 2016*;

288G. Section 145 amended

In section 145 in the definition of *fauna* delete “fish or pearl oyster.” and insert:

aquatic organisms.

288H. Section 151 amended

- (1) In section 151(1)(a) delete “fish or pearl oyster); and” and insert:

aquatic organisms); and

- (2) In section 151(2)(a)(i) delete “fish or pearl oyster); and” and insert:

aquatic organisms); and

288I. Section 153 amended

- (1) In section 153(3)(a) delete “fish or pearl oyster); and” and insert:

aquatic organisms); and

- (2) In section 153(4)(a)(i) delete “fish or pearl oyster); and” and insert:

aquatic organisms); and

288J. Section 158 amended

In section 158(1) in the definition of *fauna* delete “fish or pearl oyster.” and insert:

aquatic organisms.

288K. Section 166 amended

In section 166 in the definition of *flora* delete “fish.” and insert:

aquatic organisms.

288L. Section 190 amended

In section 190 in the definition of *aquatic-eco tourism* delete “Fish Resources Management Act 1994 section 4(1);” and insert:

Aquatic Resources Management Act 2016 section 3(1);

288M. Section 194 amended

In section 194(3) delete “Fish Resources Management Act 1994” and insert:

Aquatic Resources Management Act 2016

288N. Section 274 amended

In section 274(1) in the definition of *information sharing agency* —

(a) after paragraph (a) insert:

(aa) the department of the Public Service principally assisting in the administration of the *Aquatic Resources Management Act 2016*;

(b) delete paragraphs (e) and (h).

288O. Schedule 1 amended

In Schedule 1 item 2 delete “fish or pearl oyster),” and insert:

aquatic organisms),

Debate ensued.

New Part — put and passed.

Clauses 298 to 311 agreed to.

Clause 312.

The Attorney General representing the Minister for Fisheries moved —

Page 220, line 22 to page 221, line 8 — To delete the lines and insert —

(2) Delete section 101B(3)(a) and (b) and insert:

(a) the *Aquatic Resources Management Act 2016*,

Debate ensued.

Amendment — put and passed.
 Clause, as amended, agreed to.
 Clauses 313 to 362 agreed to.
 Title agreed to.

The Acting President resumed the Chair.

Bill reported with amendment.

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

10. Order of Business

Ordered — That Order of the Day No. 19, *Sale of Land Amendment Bill 2016*, be taken forthwith. (Attorney General).

11. Sale of Land 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.

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

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

Question — put and passed.

Bill read a third time and passed.

12. Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016

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

Debate resumed.

13. Questions Without Notice

Questions without notice were taken.

The Attorney General representing the Minister for Finance tabled documents in relation to staff from the Housing Authority, the Department of Corrective Services and the Department of Transport moving to offices in Fremantle, in response to a question without notice asked by Hon Kate Doust. (Tabled Paper 4862).

The Leader of the House representing the Minister for Training and Workforce Development, by leave incorporated into *Hansard*, information in relation to TAFE campuses in the Pilbara, in response to a question without notice asked by Hon Stephen Dawson.

The Minister for Education, by leave incorporated into *Hansard*, information in relation to asbestos containing materials found at Currambine Primary School, in response to a question without notice asked by Hon Laine McDonald.

The Minister for Education, by leave incorporated into *Hansard*, information in relation to the removal of asbestos containing materials found at Currambine Primary School, in response to a question without notice asked by Hon Laine McDonald.

The Attorney General, by leave incorporated into *Hansard*, information in relation to the increase of the minimum imprisonment sentence allowable under the *Sentencing Act 1995*, in response to a question without notice asked by Hon Adele Farina.

The Attorney General representing the Minister for Finance, by leave incorporated into *Hansard*, information in relation to payment plan options for land tax, in response to a question without notice asked by Hon Martin Pritchard.

The Attorney General representing the Minister for Emergency Services, by leave incorporated into *Hansard*, information in relation to collection of the emergency services levy, in response to a question without notice asked by Hon Laine McDonald.

The Parliamentary Secretary to the Minister for Transport tabled documents in relation to the *Fremantle Traffic Bridge, Pier 15, Emergency Repair Report* by Main Roads Western Australia, in response to a question without notice asked by Hon Kate Doust. (Tabled Paper 4863).

The Parliamentary Secretary to the Minister for Transport, by leave incorporated into *Hansard*, information in relation to the Gateway review process, in response to a question without notice asked by Hon Lynn MacLaren.

The Parliamentary Secretary to the Minister for Mental Health tabled documents in relation to services funded by the Mental Health Commission in the Mandurah and Peel regions for teenagers at risk of suicide, in response to a question without notice asked by Hon Sally Talbot. (Tabled Paper 4864).

14. Restraining Orders and Related Legislation Amendment (Family Violence) Bill 2016

Debate resumed on the second reading of this Bill (*see item 12 above*).

Hon Lynn MacLaren sought leave to continue her remarks at the next sitting.

Leave granted.

On the motion of Leader of the House the debate was adjourned to the next sitting.

15. Oil Refinery (Kwinana) Agreement Amendment Bill 2016

The President reported the receipt of Message No. 192 from the Legislative Assembly forwarding the Bill for concurrence.

The Leader of the House representing the Minister for State Development 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 Minister for State Development moved, That the Bill be read a second time.

The Leader of the House representing the Minister for State Development tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 4865).

Debate stands adjourned.

16. Biological Control Amendment Bill 2016

The following Message from the Legislative Assembly was reported —

Mr President

Message No. 193

The Legislative Assembly acquaints the Legislative Council that it has agreed to the *Biological Control Amendment Bill 2016* without amendment.

Mr N.W. Morton

Acting Speaker

Legislative Assembly Chamber

Perth, 10 November 2016

17. Adjournment

There being no Members' Statements the Council adjourned at 5.19pm until Tuesday, 15 November 2016 at 2.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Alanna Clohesy, Hon Adele Farina, Hon Alyssa Hayden, Hon Colin Holt and Hon Amber-Jade Sanderson.

NIGEL PRATT
Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council