

WESTERN AUSTRALIA

**LEGISLATIVE COUNCIL**

**MINUTES OF PROCEEDINGS**

**No. 56**

**TUESDAY, 8 MAY 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. Statement by President — Acknowledgement of Country**

The President made the following Statement —

I would like to acknowledge the presence of a number of esteemed Noongar elders and guests who are in the President's gallery today.

Firstly, I acknowledge Dr Richard Walley and his wife, Robyn Walley. This day marks the first sitting day of the Legislative Council that commences its proceedings with an acknowledgement of country, an acknowledgement that this House honours the traditional owners of the ancestral lands upon which we meet the Whadjuk Noongar people, and pays its respects to their elders both past and present. Dr Walley's advice and counsel was invaluable in progressing this acknowledgement. The Standing Committee on Procedure and Privileges requested Dr Walley's advice at relatively short notice as it sought a respectful and appropriate wording for an acknowledgement of country to recommend to the House. On behalf of the Committee and this House, I would like to put on record our thanks to Dr Walley for his timely and expert advice and assistance. The Parliament of Western Australia and, indeed, the Legislative Council, was the last remaining jurisdiction in Australia to adopt an acknowledgement of country.

I would also like to acknowledge the presence of our other esteemed guests, Dr Robert Isaacs, Ms Sandra Harben and Professor Colleen Hayward, who have all provided significant and longstanding contributions towards recognition for and on behalf of Aboriginal people in Western Australia.

**3. Statement by President — Dr Paul Lobban**

The President made the following Statement —

I would like to record for posterity the passing of a former senior staff member in the Legislative Council. Dr Paul Lobban was appointed Usher of the Black Rod in October 2013 and resigned to return home to Adelaide in 2015 after 19 months of service to this House. He sadly passed away on Monday, 23 April. He was only 48 years of age when he died from motor neurone disease.

Before his role as Usher of the Black Rod in Western Australia, Paul was employed as an executive officer with the Public Works Committee of the House of Assembly in South Australia and had worked at the South Australian Parliament since 2001 in several committee support and administrative roles. He worked closely with some of my ALP colleagues in South Australia, who have told me of his excellent reputation as a committee secretary, good humour

and dedication to the Parliament. Paul was well qualified for his parliamentary career, holding a PhD in literature and a Bachelor of Laws from the University of Adelaide.

As Usher of the Black Rod, Paul managed the Council's papers office and was a Clerk at the Table. During his brief time here he developed strong friendships with many Members and staff from both Chambers. His commitment to his sandgroper friends was demonstrated when he returned briefly to Western Australia to help a colleague celebrate her milestone fiftieth birthday, which is sadly a milestone he himself never reached.

Paul loved Perth and his time here. His sense of humour and his facility for withering commentary were unaffected by his illness, even at the point where he was communicating by means of eye-tracking software.

Paul leaves behind his fiancée, Debbie, and two young children whom he loved very much. A life tragically cut short. We pass on our respects to Paul's family.

#### **4. Statement by President — Standing Committee on Estimates and Financial Operations**

The President made the following Statement —

I have a letter from the Standing Committee on Estimates and Financial Operations, which reads —

Dear Madam President

Consultation with the Auditor General

The Standing Committee on Estimates and Financial Operations (Committee) requests that you advise the Legislative Council of the following:

- The Committee will be meeting with the new Auditor General, Ms Caroline Spencer, on 27 June 2018, consistent with our terms of reference. Ms Spencer will take over from Mr Colin Murphy, who was Auditor General for over 10 years, on 28 May 2018.
- The current audit program is available from the Office of the Auditor General.
- Members who wish to raise possible topics to be added to the audit program should contact the Auditor General directly on (08) 6557 7500 or at [info@audit.wa.gov.au](mailto:info@audit.wa.gov.au).

Yours sincerely

Hon Alanna Clohesy

Chair

#### **5. President's Ruling — Questions without Notice No. 271 — Parliamentary Secretaries**

The President ruled as follows —

On Thursday, 12 April 2018, Hon Nick Goiran raised a point of order during question time. He has asked me for my ruling as to who was responsible for an answer given by the Parliamentary Secretary to the Minister for Education and Training acting on behalf of the Leader of the House representing the Minister for Child Protection.

Hon Nick Goiran's question without notice 271, C288, with some notice given, was directed to the Leader of the House representing the Minister for Child Protection. The Minister for Child Protection is a Member of the Legislative Assembly, so any answer in this House must be given in a representative capacity. The responsible Minister had authorised the Leader of the House, as her representative in the Council, to provide information by the usual practice of signing a hard copy of the answer. The Leader of the House could not deliver the answer as she was absent from question time due to urgent parliamentary business. To facilitate an answer, the Leader of the House, in her capacity as Minister for Education and Training, directed her Parliamentary Secretary to do so on her behalf. As is the usual practice when answers are given in a

representative capacity, a copy of the answer authorised by the Minister was provided in hard copy to Hon Nick Goiran. In a statement dated 22 March 2016, President House observed —

Ministers and Parliamentary Secretaries answering questions on behalf of the Minister they represent are responsible to this House, I repeat, to this House, for the answer that they give. When given in this place, it is their answer and they are responsible for its accuracy. However, the representative Minister or Parliamentary Secretary is not individually responsible in any legal or parliamentary sense for the department of state of the Minister they are representing. This is made clear by the practice for oral questions when questions are answered in a representative capacity. In these cases the Member asking the question is required to give some notice. This is to enable the responsible Minister in the other place to approve any answer to be given by his or her representative in this House. This approval is provided by the responsible Minister signing the answer. When it is discovered that an answer given in any capacity is inaccurate, the Minister or Parliamentary Secretary has an obligation to correct the record at the earliest opportunity, and the usual practice is to also apologise to the House for the error.

From this statement it is clear in this case that the Parliamentary Secretary is responsible for the answer that she provided to the House, even when she answered on behalf of and as directed by the Leader of the House and in a representative capacity.

The Parliamentary Secretary has a corresponding obligation to correct the record at the earliest opportunity and to apologise to the House if she discovers the answer is inaccurate. By way of further explanation, Ministers individually and the Cabinet collectively, as the Government, are accountable to the Legislative Council. The asking and answering of questions is one procedure intended to achieve accountability of a Government's actions and policies. However, Members of this House may only ask questions of other Members of this House in accordance with the Standing Orders, they cannot ask questions directly of Members in the other place. From a practical point of view, the information sought by Hon Nick Goiran resides in a department overseen by a Minister in the Legislative Assembly. The fact that the Minister for Child Protection has signed off on the answer provided to this House by the Parliamentary Secretary is a demonstration of the Minister's individual accountability to this House and gives the answer its authority.

## **6. Messages from Her Excellency the Governor — Assent to Bills**

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

<b>19 April 2018 — Message No. 5</b>	<b>Act No.</b>
Civil Liability Legislation Amendment (Child Sexual Abuse Actions) Bill 2017	3 of 2018
Health Practitioner Regulation National Law (WA) Amendment Bill 2017	4 of 2018
<b>26 April 2018 — Message No. 6</b>	<b>Act No.</b>
Land Tax Assessment Amendment Bill 2017	5 of 2018

## **7. Petition**

Hon Alison Xamon presented a petition from 80 petitioners requesting the Legislative Council to support the creation of a multi-partisan select committee to audit the internal workings of Western Australia Police, Western Australia Corruption and Crime Commission, Internal Affairs (Western Australia Police) and the Western Australian Ombudsman and other oversight agencies. (Tabled Paper 1322).

## **8. Ministerial Statement — Live Export Update**

The Minister for Regional Development made a Ministerial Statement with respect to live sheep exports during the Middle Eastern summer.

## 9. Papers

The following Papers were laid on the Table by —

### President

#### *Auditor General's Papers —*

Confiscation of the Proceeds of Crime (Report No. 5) (May 2018) (Deemed tabled 3/05/2018).....	1299
Audit Results Report — Annual 2017 Financial Audits and Management of Contract Extensions and Variations (Report No. 6) (May 2018).....	1300

#### *Reports —*

Inspector of Custodial Services, Office of the — 2017 Inspection of Banksia Hill Detention Centre (Report No. 116) (February 2018) (Deemed tabled 17/04/2018).....	1301
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### Leader of the House

#### *Local Laws —*

Cemeteries Act 1986 (Shire of Northam Cemeteries Amendment Local law 2017 (No. 2) G.G. 24/04/2018 .....	1302
Local Government Act 1995 (City of Kalgoorlie-Boulder Activities on Thoroughfares and Trading in Thoroughfares and Public Places Amendment Local Law 2018 G.G. 04/05/2018, City of Kalgoorlie-Boulder Local Government Property Amendment Local Law 2018 G.G. 04/05/2018, City of Karratha Standing Orders Local Law 2018 G.G. 03/05/2018, City of Vincent Standing Orders Amendment Local Law 2017 G.G. 20/04/2018, Shire of Broome Parking and Parking Facilities Amendment Local Law 2018 G.G. 24/04/2018, Shire of Murray Consolidated Amendment Local Law 2018 G.G. 10/04/2018 and Shire of Northam—Standing Orders Local Law 2018 G.G. 24/04/2018).....	1303

#### *Reports —*

Ministerial Office Staffing Report (as at 22 March 2018) .....	1304
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#### *Rules —*

Lotteries Commission Act 1990 (Lotteries Commission (Authorised Lotteries) (Powerball) Amendment Rules 2018 G.G. 10/04/2018) .....	1305
State Administrative Tribunal Act 2004 (State Administrative Tribunal Amendment Rules 2018 G.G. 24/04/2018) .....	1306

### Minister for Environment

#### *Local Laws —*

Bush Fires Act 1954 (Shire of Collie Bush Fire Brigades Amendment Local Law 2018 G.G. 04/05/2018) .....	1307
Waste Avoidance and Resource Recovery Act 2007 (City of Albany Waste Local Law 2017 G.G. 10/04/2018, City of Busselton Waste Amendment Local Law 2018 G.G. 13/04/2018 and City of Nedlands Waste Amendment Local Law 2017 G.G. 20/04/2018).....	1308

#### *Regulations —*

Electricity Industry Act 2004 (Electricity Industry (Independent Market Operator) Repeal Regulations 2018 G.G. 27/04/2018).....	1309
Environmental Protection Act 1986 (Environmental Protection Amendment Regulations 2018 G.G. 27/04/2018).....	1310

#### *Rules —*

Electricity Industry Act 2004 (Wholesale Electricity Market Rules Amending Rules 2018 G.G. 27/04/2018).....	1311
Gas Services Information Act 2012 (Gas Services Information Rules Amending Rules 2018 G.G. 27/04/2018).....	1312

**Minister for Regional Development***Codes —*

Dangerous Goods Safety Act 2004 (Approved Codes of Practice in accordance with section 20 of the Dangerous Goods Safety Act 2004 (2018) G.G. 01/05/2018 ..... 1313

*Notices —*

Financial Management Act 2006 (section 82) — Notice from the Minister for Forestry in relation to 2016-17 Annual Report Hearings Supplementary Question No. 13A..... 1314

*Regulations —*

Liquor Control Act 1988 (Liquor Control (Kunawarritji Restricted Area) Amendment Regulations 2018 G.G. 13/04/2018 and (Liquor Control (Yakanarra Restricted Area) Amendment Regulations 2018 G.G. 17/04/2018)..... 1315

Mining Act 1978 (Mining Amendment Regulations (No. 2) 2018 G.G. 04/05/2018)..... 1316

Petroleum Products Pricing Act 1983 (Petroleum Products Pricing Amendment Regulations 2018 G.G. 01/05/2018)..... 1317

*Reviews —*

Department of Mines, Industry Regulation and Safety Consumer Protection — Statutory Review Report on the Business Names (Commonwealth Powers) Act 2012 (October 2017)..... 1318

**Parliamentary Secretary to the Deputy Premier***Orders —*

Health Services Act 2016 (Health Services (Fees and Charges) Amendment Order (No. 4) 2018 G.G. 27/04/2018)..... 1319

*Regulations —*

Health (Miscellaneous Provisions) Act 1911 (Health Regulations Amendment (Cervical Screening Register) Regulations 2018 G.G. 10/04/2018) ..... 1320

Mental Health Act 2014 (Mental Health Amendment Regulations 2018 G.G. 01/05/2018)..... 1321

**10. Standing Committee on Estimates and Financial Operations — Report No. 73 — 2017–18 Budget Cycle — Part 1: Estimates hearings and related matters**

Hon Alanna Clohesy presented Report No. 73 of the Standing Committee on Estimates and Financial Operations, *2017–18 Budget Cycle — Part 1: Estimates hearings and related matters*. (Tabled Paper 1323).

**11. Notice of Motion — Postponement — Select Committee into alternative approaches to reducing illicit drug use and its effects on the community**

Hon Alison Xamon moved, without notice —

That Notice of Motion No. 3 standing in my name, *Select Committee into alternative approaches to reducing illicit drug use and its effects on the community*, be postponed until after consideration of Notice of Motion No. 7, *Temporary Order – Recall of the House*.

Question — put and passed.

**12. Special Adjournment**

The Leader of the House moved, without notice —

That the House at its rising on Thursday, 14 June 2018, adjourn until 2.00pm on Tuesday, 26 June 2018, so as to facilitate the annual Budget estimates hearings.

The motion requiring the concurrence of an absolute majority.

Question — put.

The President having counted the Council, and there being an absolute majority present, and no dissentient voice, declared the motion carried with the concurrence of an absolute majority.

### 13. Matter of Privilege

Hon Nick Goiran, pursuant to SO 93, raised a matter of privilege resulting from the answer provided to question without notice No. 255 on 10 April 2018.

Debate ensued.

*Statement by President*

The President made the following Statement —

Thank you, Hon Nick Goiran, for raising that matter under Standing Order 93. Given the amount of material that you have referenced, I will take some time to review the matters that you have canvassed, look through the questions and the responses, and examine the other reports that you have referenced. I will provide a ruling to this Chamber at a later stage.

### 14. Order of Business

Ordered — That Orders of the Day Nos 3, *Shire of Donnybrook-Balingup Meeting Procedures Local Law 2017 — Disallowance*, 4, *Shire of Broome Parking and Parking Facilities Amendment Local Law (2) 2017 — Disallowance*, 5, *Shire of Capel Dogs Local Law 2017 — Disallowance*, 6, *Shire of Collie Parking and Parking Facilities Amendment Local Law 2017 — Disallowance*, and 7, *Western Australian Meat Industry Authority Amendment Regulations 2017 — Disallowance*, be taken after Order of the Day No. 19, *Historical Homosexual Convictions Expungement Bill 2017*. (Leader of the House).

### 15. Shire of Bridgetown-Greenbushes Cemeteries Amendment Local Law 2017 — 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, *Shire of Bridgetown-Greenbushes Cemeteries Amendment Local Law 2017 — Disallowance*, be discharged from the Notice Paper.

Question — put and passed.

### 16. City of Karratha Activities in Thoroughfares and Public Places and Trading Local Law 2017 — 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. 2, *City of Karratha Activities in Thoroughfares and Public Places and Trading Local Law 2017 — Disallowance*, be discharged from the Notice Paper.

Question — put and passed.

### 17. District Court Amendment Rules 2018 — 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. 8, *District Court Amendment Rules 2018 — Disallowance*, be discharged from the Notice Paper.

Question — put and passed.

### 18. Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Bill 2018

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

Debate resumed.

### 19. Questions Without Notice

Questions without notice were taken.

The Leader of the House representing the Attorney General tabled documents in relation to funding provided from the proceeds of crime account to the Office of the Director of Public Prosecutions, in response to a question without notice asked by Hon Michael Mischin. (Tabled Paper 1324).

The Minister for Environment representing the Minister for Transport tabled documents in relation to the terms of agreement with the Commonwealth Government for building Roe Highway Stages 4, 5, 6 and 7, in response to a question without notice asked by Hon Simon O'Brien. (Tabled Paper 1325).

The Minister for Environment representing the Minister for Transport tabled the current Australind train timetable, in response to a question without notice asked by Hon Colin Holt. (Tabled Paper 1326).

The Minister for Education and Training, by leave, incorporated into *Hansard* information in relation to staffing at the Geraldton Camp School, in response to question on notice No. 768 asked by Hon Martin Aldridge.

The Minister for Education and Training, by leave, incorporated into *Hansard* information in relation to student numbers, from 2013 to 2017, in the Agricultural Awareness Program, in response to a question without notice No. 193 asked by Hon Colin de Grussa.

The Leader of the House representing the Attorney General tabled the Supreme Court of Western Australia Court of Appeal decision *Gibson v The State of Western Australia* [2017] WASCA 141, in response to a question without notice asked by Hon Michael Mischin. (Tabled Paper 1327).

The Leader of the House representing the Attorney General tabled further documents in relation to the receipt of all gifts, benefits, hospitality, accommodation and travel received since 11 March 2017, in response to question on notice No. 926 asked by Hon Martin Aldridge. (Tabled Paper 1328).

The Leader of the House representing the Premier tabled documents in relation to a delegation to China, in response to question on notice No. 641 asked by Hon Peter Collier. (Tabled Paper 1329).

The Leader of the House on behalf of the Minister for Regional Development representing the Minister for State Development, Jobs and Trade tabled documents in relation to gifts, benefits, hospitality, accommodation and travel received since 11 March 2017, in response to question on notice No. 938 asked by Hon Martin Aldridge. (Tabled Paper 1330).

The Leader of the House representing the Premier tabled documents in relation to gifts, benefits, hospitality, accommodation and travel received since 11 March 2017, in response to question on notice No. 940 asked by Hon Martin Aldridge. (Tabled Paper 1331).

The Minister for Environment representing the Minister for Emergency Services, by leave, incorporated into *Hansard* information in relation to the Wiluna Town Bush Fire Brigade, in response to a question without notice asked by Hon Colin de Grussa.

The Parliamentary Secretary to the Minister for Health tabled further documents in relation to the receipt of all gifts, benefits, hospitality, accommodation and travel received since 11 March 2017, in response to question on notice No. 936 asked by Hon Martin Aldridge. (Tabled Paper 1332).

The Parliamentary Secretary to the Minister for Health tabled documents in relation to Western Australia Country Health Service hospitals, multi-purpose services and health services, in response to question on notice No. 771 asked by Hon Martin Aldridge. (Tabled Paper 1333).

## **20. Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Bill 2018**

Debate resumed on the second reading of this Bill (*see item 18 above*).

Hon Robin Chapple moved, without notice —

- (1) That the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Amendment Bill 2018* be discharged and referred to the Standing Committee on Legislation for consideration and report by no later than 30 August 2018; and
- (2) The Committee has the power to inquire into and report on the policy of the Bill.

Debate ensued.

The Council divided.

### **Ayes (4)**

Hon Robin Chapple  
Hon Tim Clifford

Hon Diane Evers  
Hon Alison Xamon (*Teller*)

**Noes (28)**

Hon Ken Baston  
 Hon Jacqui Boydell  
 Hon Alanna Clohesy  
 Hon Peter Collier  
 Hon Stephen Dawson  
 Hon Colin de Grussa  
 Hon Sue Ellery  
 Hon Donna Faragher  
 Hon Adele Farina  
 Hon Nick Goiran  
 Hon Laurie Graham  
 Hon Colin Holt  
 Hon Alannah MacTiernan  
 Hon Rick Mazza

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

Question thus negatived.

Debate resumed.

Question — put and passed.

Bill read a second time.

The Acting President left the Chair.

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**In Committee**

(Hon Dr Steve Thomas in the Chair)

Clause 1.

Debate ensued.

Hon Robin Chapple, by leave, tabled a map of the Eliwana Rail Project. (Tabled Paper 1334).

Debate resumed.

Clause agreed to.

Clauses 2 to 6 agreed to.

Clause 7.

Debate ensued.

Clause agreed to.

Title agreed to.

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The Deputy President resumed the Chair.

Bill reported without amendment.

Report adopted.

The Minister for Regional Development moved, That the Bill be read a third time.

The Deputy 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.

**21. Pay-roll Tax Assessment Amendment (Exemption for Trainees) Bill 2018**

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.*



**22. Members' Statements**

Statements were taken.

**23. Adjournment**

The Council adjourned at 10.17pm until Wednesday, 9 May 2018 at 1.00pm.

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

Attendance: Present all Members except Hon Martin Aldridge and Hon Jim Chown.

**NIGEL PRATT**  
Clerk of the Legislative Council

**HON KATE DOUST MLC**  
President of the Legislative Council