

# LEGISLATIVE COUNCIL

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## MINUTES OF PROCEEDINGS

No. 218

WEDNESDAY, 9 NOVEMBER 2016

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### 1. Meeting of Council

The Council assembled at 1.00pm pursuant to Temporary Orders.

The President, Hon Barry House, took the Chair and read prayers.

### 2. Ministerial Statement — Submarine and Offshore Patrol Vessel Production

The Minister for Commerce made a Ministerial Statement with respect to his recent visit to Europe to promote Western Australia's capability to participate in the SEA1000 Future Submarine Project and SEA1180 Offshore Patrol Vessel Project.

### 3. Papers

The following Papers were laid on the Table by —

#### President

*Auditor General's Papers* —

Audit Results Report — Annual 2015–16 Financial Audits (Report No. 24) (November 2016) .....	4846
Opinion on Ministerial Notification (Report No. 25) (November 2016) .....	4847

#### Attorney General

*Annual Reports* —

Australian Crime Commission — Criminal Investigation (Covert Powers) Act 2012 (2015–2016) (Date received 8/11/2016) .....	4848
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#### Parliamentary Secretary to the Minister for Housing

*Reports* —

Water Corporation — Statement of Corporate Intent (2016–2017) .....	4849
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### 4. Standing Committee on Environment and Public Affairs — Report No. 46 — Overview of Petitions 1 January 2016 to 30 September 2016

Hon Stephen Dawson presented Report No. 46 of the Standing Committee on Environment and Public Affairs, *Overview of Petitions 1 January 2016 to 30 September 2016*. (Tabled Paper 4850).

### 5. Police Portfolio

Motion No. 1 having been called, Hon Phil Edman continued his introductory remarks in moving the motion as follows —

That this Council congratulates the Liberal–National Government on its excellent performance in the police portfolio.

Debate ensued.

*Interruption pursuant to order.*

## **6. Consideration of Committee Reports**

Pursuant to order for the consideration of Committee Reports.

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### **In Committee**

(Hon Liz Behjat in the Chair)

#### **Joint Standing Committee on Audit — Report No. 7 — Review of the Operation and Effectiveness of the Auditor General Act 2006**

Hon Rick Mazza moved, That consideration be postponed until the next sitting.

Question — put and passed.

#### **Standing Committee on Public Administration — Report No. 27 — Government Response to Report 26: Transport of Persons in Custody**

The Leader of the House moved, That consideration be postponed until the next sitting.

Question — put and passed.

#### **Standing Committee on Estimates and Financial Operations — Report No. 67 — Budget Estimates Hearings 2016-17**

Debate resumed on the motion of Hon Alanna Clohesy, That the Report be noted.

Question — put and passed.

#### **Standing Committee on Environment and Public Affairs — Report No. 45 — Petition Number 59 — Bio-Organics composting facility, Oakford**

Hon Stephen Dawson moved, That consideration be postponed until the next sitting.

Question — put and passed.

#### **Standing Committee on Estimates and Financial Operations — Report No. 68 — 2015–16 Annual Report Hearings — Revised Timetable**

The Deputy Chair moved, That the Report be noted.

Question — put and passed.

#### **Standing Committee on Estimates and Financial Operations — Report No. 69 — 2015–16 Annual Report Hearings**

The Deputy Chair moved, That the Report be noted.

Question — put and passed.

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The Acting President resumed the Chair.

The Deputy Chair of Committees reported that the Committee of the Whole House had considered the —

- (1) Joint Standing Committee on Audit — Report No. 7 — *Review of the Operation and Effectiveness of the Auditor General Act 2006* and postponed consideration to the next sitting.
- (2) Standing Committee on Public Administration — Report No. 27 — *Government Response to Report 26: Transport of Persons in Custody* and postponed consideration to the next sitting.
- (3) Standing Committee on Estimates and Financial Operations — Report No. 67 — *Budget Estimates Hearings 2016-17* and had noted same.
- (4) Standing Committee on Environment and Public Affairs — Report No. 45 — *Petition Number 59 — Bio-Organics composting facility, Oakford* and postponed consideration to the next sitting.
- (5) Standing Committee on Estimates and Financial Operations — Report No. 68 — *2015–16 Annual Report Hearings — Revised Timetable* and had noted same.

- (6) Standing Committee on Estimates and Financial Operations — Report No. 69 — 2015–16 Annual Report Hearings and had noted same.

Report adopted.

**7. Executive Officer Remuneration (Government Entities) Legislation Amendment Bill 2015**

The Acting President reported the receipt of Message No. 186 from the Legislative Assembly forwarding the Bill for concurrence.

The Leader of the House representing the Premier 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 Premier moved, That the Bill be read a second time.

The Leader of the House representing the Premier tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 4851).

Debate stands adjourned.

**8. Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2016**

The Acting President reported the receipt of Message No. 187 from the Legislative Assembly forwarding the Bill for concurrence.

The Attorney General representing the Minister for Police moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Attorney General representing the Minister for Police moved, That the Bill be read a second time.

The Attorney General representing the Minister for Police tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 4852).

Debate stands adjourned.

**9. School Boarding Facilities Legislation Amendment and Repeal Bill 2016**

The President reported the receipt of Message No. 189 from the Legislative Assembly forwarding the Bill for concurrence.

*Statement by President*

The President made the following Statement —

The Bill contained in the Assembly message that I have just read, the *School Boarding Facilities Legislation Amendment and Repeal Bill 2016*, is identical in every substantive respect to the Bill introduced and then passed by this House on 18 August 2016. That Bill was transmitted by a message of this House to the Legislative Assembly on that date, seeking the Assembly's concurrence. On Tuesday, 18 October 2016, the Speaker ruled the Bill out of order because, in his view, the Bill contravened section 46(1) of the *Constitution Acts Amendment Act 1899*. This decision of Mr Speaker was communicated to the Legislative Council by Assembly Message No. 183. In that message, Mr Speaker asks, and I quote —

... that the Legislative Council ensures that it strictly observes this section in relation to all future bills.

Mr Speaker considered that the Bill received from the Legislative Council was out of order because it was a Bill appropriating revenue or moneys and, therefore, could not originate in the Legislative Council by reason of the prohibition contained in section 46(1). The Legislative Assembly subsequently introduced an identical Bill, has agreed to it and has now transmitted it to the Legislative Council for concurrence.

On 30 June 2016, I gave a detailed and comprehensive ruling about another Bill that originated in this House, the *Constitution and Electoral Amendment Bill 2015*. That Bill was ruled out of order by Mr Speaker on the same basis. I do not propose to repeat what I have said previously, save that the interpretation of section 46(1) by successive Speakers of the Legislative Assembly does not accord with the view of numerous eminent lawyers and what

the courts have said about what constitutes the legislative action of appropriating revenue or moneys. The Clerk has received an opinion from Mr Greg McIntyre, SC, about whether the *School Boarding Facilities Legislation Amendment and Repeal Bill 2015* as first introduced into this House was a Bill appropriating revenue or moneys for the purposes of section 46(1) of the *Constitution Acts Amendment Act 1899*. Mr McIntyre's emphatic view is that it is not such a Bill and, accordingly, the Bill was properly and lawfully originated in the Legislative Council. I table Mr McIntyre's opinion. I also table a letter from the Minister for Education, Hon Peter Collier, MLC, to the Clerk that confirms in relation to the previous Bill passed by this House, first, that the Department of Education will not receive any additional funds from the consolidated account arising from the passage of that Bill and, second, that the Bill will not create new costs against the consolidated fund nor create a potential of contingent liability against that fund. I table these papers for the assistance of the House should the order of the day listed on the notice paper relating to Legislative Assembly Message No. 183 be brought on for debate.

The President tabled a letter from the Minister for Education to the Clerk of the Legislative Council and a Memorandum of Advice from Greg McIntyre SC in relation to the *School Boarding Facilities Legislation Amendment and Repeal Bill 2016*. (Tabled Paper 4853).

The Leader of the House moved, without notice —

That so much of Standing Orders be suspended to enable the questions on the first, second and third readings of the *School Boarding Facilities Legislation Amendment and Repeal Bill 2016* to be put in this calendar year at such times and dates as the House determines.

Debate ensued.

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.

The Minister for Education moved, That the Bill be read a first time.

Question — put and passed.

Bill read a first time.

The Minister for Education moved, That the Bill be read a second time.

The Minister for Education tabled an Explanatory Memorandum relating to the Bill. (Tabled Paper 4854).

Debate stands adjourned.

## **10. Order of Business**

Ordered — That Orders of the Day Nos 1, *Motor Vehicle (Catastrophic Injuries) Regulations 2016 — Disallowance*, and 2, *Energy Operators (Electricity Generation and Retail Corporation) (Charges) Amendment By-Laws 2016 — Disallowance*, be taken after Order of the Day No. 13, *Aquatic Resources Legislation Amendment Bill 2015*. (Leader of the House).

## **11. Retail Trading Hours (Small Retail Shops) Amendment Order 2016 — Disallowance — Discharge from Notice Paper**

The Order of the Day having been called, Hon Kate Doust moved, without notice —

That Order of the Day No. 3, *Retail Trading Hours (Small Retail Shops) Amendment Order 2016 — Disallowance*, be discharged from the Notice Paper.

Question — put and passed.

**12. Sentencing Legislation Amendment Bill 2016**

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.

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**In Committee**

(Hon Liz Behjat in the Chair)

Clause 63.

Debate resumed.

Clause agreed to.

Clauses 64 to 77 agreed to.

Clause 78.

Debate ensued.

Clause agreed to.

Title agreed to.

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The Acting President resumed the Chair.

Bill reported without amendment.

Report adopted.

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. 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 Acting President left the Chair.

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**In Committee**

(Hon Liz Behjat in the Chair)

Clause 46.

Debate resumed.

**14. Questions Without Notice**

Questions without notice were taken.

The Minister for Planning representing the Minister for Health, by leave incorporated into *Hansard*, information in relation to mental health attendances at Hedland Health Campus in September and October 2016, in response to a question without notice asked by Hon Stephen Dawson.

The Minister for Planning representing the Minister for Health, by leave incorporated into *Hansard*, information in relation to the Sexual Assault Research Centre, in response to a question without notice asked by Hon Laine McDonald.

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 4855).

The Minister for Education, by leave incorporated into *Hansard*, information in relation to the cost of transportable class rooms in 2014–15, 2016–17 and 2016–17 to date, in response to a question without notice asked by Hon Sue Ellery.

The Minister for Planning, by leave incorporated into *Hansard*, information in relation to the Swan River Inlet at Elizabeth Quay, in response to a question without notice asked by Hon Samantha Rowe.

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

The following Message from the Legislative Assembly was reported —

Mr President

Message No. 190

The Legislative Assembly acquaints the Legislative Council that it has agreed to the *Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2016* without amendment.

Mr P. Abetz

Acting Speaker

Legislative Assembly Chamber

Perth, 9 November 2016

**16. Royal Perth Hospital Protection Bill 2013**

The following Message from the Legislative Assembly was reported —

Mr President

Message No. 191

The Legislative Assembly acquaints the Legislative Council that it has agreed to the amendments made by the Legislative Council in the *Royal Perth Hospital Protection Bill 2013*.

Mr P. Abetz

Acting Speaker

Legislative Assembly Chamber

Perth, 9 November 2016

**17. Pilbara Port Assets (Disposal) Bill 2015**

Resumption of consideration of this Bill in Committee of the Whole House (*see item 13 above*).

The President left the Chair.

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**In Committee**

(Hon Alanna Clohesy in the Chair)

Clause 46.

Debate resumed.

Hon Robin Chapple, by leave, moved —

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.

Debate ensued.

The Attorney General representing the Treasurer 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.

## **18. Members' Statements**

Statements were taken.

## **19. Adjournment**

The Council adjourned at 6.26pm until Thursday, 10 November 2016 at 10.00am.

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

Attendance: Present all Members except Hon Martin Aldridge, Hon Adele Farina, Hon Alyssa Hayden, Hon Simon O'Brien and Hon Darren West.

**NIGEL PRATT**  
Clerk of the Legislative Council

**HON BARRY HOUSE**  
President of the Legislative Council