

**LEGISLATIVE COUNCIL**

---

---

**MINUTES OF PROCEEDINGS**

**No. 189**

**THURSDAY, 19 MAY 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. Petition**

Hon Lynn MacLaren presented a petition from 163 petitioners requesting the Legislative Council to support the establishment of a Royal Commission into the use of pesticides and harm to public health. (Tabled Paper 4133).

**3. Ministerial Statement — Aboriginal Affairs Planning Authority**

The Minister for Aboriginal Affairs made a Ministerial Statement with respect to the tabling of a report that outlines a proposal to amend the boundaries of Aboriginal Reserves 1834, 20927 and 22615 to allow for the dedication of the Broome to Cape Leveque Road located on the Dampier Peninsula.

The Minister for Aboriginal Affairs tabled a report entitled, *De-proclamation of Aboriginal Reserves on the Dampier Peninsula*. (Tabled Paper 4134).

**4. Ministerial Statement — Master Builders Association Building Excellence Awards — Kimberley/Pilbara Regions**

The Minister for Commerce made a Ministerial Statement with respect to the Master Builders Association Building Excellence Awards for the Kimberley/Pilbara Regions 2016.

**5. Paper**

The following Paper was laid on the Table by —

**Attorney General**

*Reports —*

Terrorism (Preventative Detention) Act 2006 — Quarterly Report (for the quarter ending 31 March 2016) ..... 4132

**6. Standing Committee on Estimates and Financial Operations — Report No. 62 — Provision of Information to the Parliament**

Hon Ken Travers presented Report No. 62 of the Standing Committee on Estimates and Financial Operations, *Provision of Information to the Parliament*. (Tabled Paper 4135).

Hon Ken Travers moved, without notice —

That pursuant to recommendation 11, the House refer to the Standing Committee on Procedure and Privileges for inquiry and report, the question as to how the Standing Orders of the Legislative Council may be amended to provide an appropriate mechanism for the consideration of *Auditor General Opinions on Ministerial Notifications* under section 24(2)(c) of the *Auditor General Act 2006*.

Hon Ken Travers sought leave to continue his remarks at a later stage of this day's sitting.

Leave granted.

Debate adjourned pursuant to order.

**7. Standing Committee on Estimates and Financial Operations — Report No. 63 — Budget Estimates Hearings 2015–16**

Hon Ken Travers presented Report No. 63 of the Standing Committee on Estimates and Financial Operations, *Budget Estimates Hearings 2015–16*. (Tabled Paper 4136).

**8. Select Committee into the Operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia (Inc)**

Hon Rick Mazza presented the Report of the Select Committee into the Operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia (Inc). (Tabled Paper 4137).

**9. 2016–2017 Federal Budget**

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

That this House notes the adverse effects imposed on Western Australia by the Federal Liberal-National Government's 2016–17 Budget.

Debate ensued.

*Motion lapsed.*

**10. Mental Health Regulations 2015 — 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, *Mental Health Regulations 2015 — Disallowance*, be discharged from the Notice Paper.

Question — put and passed.

**11. Order of Business**

Ordered — That Orders of the Day Nos 2, *Albany Cemetery Board By-laws Amendment 2015 — Disallowance*, 3, *Shire of Kellerberrin Dogs Local Law 2016 — Disallowance*, and 4, *Shire of Chittering Cats Local Law 2015 — Disallowance*, be taken after Order of the Day No. 19, *Public Health (Consequential Provisions) Bill 2014*. (Leader of the House).

**12. Estimates of Revenue and Expenditure — Consolidated Account Estimates 2016–2017**

The Order of the Day having been read for the adjourned debate on the motion of the Attorney General representing the Treasurer as follows —

That pursuant to Standing Order 69(1) the Legislative Council take note of Tabled Paper No. 4085 A-E (2016–2017 Budget Statements), laid upon the Table of the House on Thursday, 12 May 2016.

Debate resumed.

Hon Lynn MacLaren, by leave, tabled documents in relation to the *Harm Reduction Innovation Fund Reducing Harm, Saving Lives*. (Tabled paper 4138).

Debate resumed.

On the motion of Hon Samantha Rowe the debate was adjourned to the next sitting.

### **13. Health Services Bill 2016**

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

Debate resumed.

### **14. Questions Without Notice**

Questions without notice were taken.

The Attorney General representing the Minister for Emergency Services tabled documents in relation to fire fighters located in the South West region with level three bushfire fighting and command experience in 2016, in response to question on notice No. 3999 asked by Hon Adele Farina. (Tabled Paper 4139).

The Minister for Disability Services tabled documents in relation to service providers currently contracted to provide services in the lower South West under the National Disability Insurance Scheme (NDIS) My Way Trial, in response to question on notice No. 3984 asked by Hon Adele Farina. (Tabled Paper 4140).

The Minister for Planning on behalf of the Minister for Housing tabled documents in relation to affordable housing dwellings built in the South West in 2015, in response to question on notice No. 3986 asked by Hon Adele Farina. (Tabled Paper 4141).

The Minister for Planning on behalf of the Minister for Housing tabled documents in relation to Department of Housing residential dwellings listed for maintenance work in the South West, in response to question on notice No. 3989 asked by Hon Adele Farina. (Tabled Paper 4142).

The Minister for Planning on behalf of the Minister for Housing tabled documents in relation to residential dwellings added to the Department of Housing stock in 2015 in the South West, in response to question on notice No. 3990 asked by Hon Adele Farina. (Tabled Paper 4143).

The Parliamentary Secretary to the Minister for Agriculture and Food on behalf of the Parliamentary Secretary to the Minister for Tourism tabled documents in relation to membership and sponsorship details, in response to question on notice No. 3949 asked by Hon Kate Doust. (Tabled Paper 4144).

### **15. Statement by President — Legislative Assembly Estimates Hearings**

The President made the following Statement —

Members, when the House rises this evening, I ask that you take a moment to clear your desks of personal and work material prior to leaving Parliament as this Chamber will be occupied by the Legislative Assembly next week for its Budget Estimates hearings. Any items remaining on desks tonight will be cleared by staff and retained until the next sitting week.

### **16. Select Committee into the Operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia (Inc)**

Hon Ken Travers raised the following Point of Order —

Mr President, I have a point of order and I seek your clarification and guidance on the actions that the House can take. This morning we received the report of the *Select Committee into the Operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia (Inc)*. The Select Committee had a very narrow set of terms of reference, which read —

... a Select Committee be established to inquire into the operations of The Royal Society for the Prevention of Cruelty to Animals Western Australia (Inc), including an examination of —

- (a) its funding from the Government;
- (b) its objectives; and
- (c) the use of its powers.

It is worth noting at this point that those terms of reference did not include any reference to “any other relevant matters”, which is included from time to time in terms of reference. *Erskine May’s Parliamentary Practice* states that the interpretation of the terms of reference for a committee is a matter for the committee. However, the issue I raise tonight with you, Mr President, is that during the debate to establish that committee, the House considered an amendment moved by Hon Lynn MacLaren —

... the Select Committee also inquire into the use of the powers of the Department of Agriculture and Food Western Australia and, in particular, its administration of the *Animal Welfare Act 2002*.

During the debate on that amendment, a number of Members, including Hon Sue Ellery and Hon Ken Baston, made it clear that in their view they did not want to see those matters investigated by the committee. In fact, Hon Ken Baston said —

It is no surprise that we will not be supporting this motion. We are already doing a review, which I announced and which Hon Sue Ellery just alluded to. I wanted to correct one thing ...

He finishes his statements with —

We already have an inquiry; we do not need another motion.

On reading the Select Committee’s report today, the committee has clearly gone into a range of matters relating to the *Animal Welfare Act* and its administration by the Department of Agriculture and Food, which was directly contrary to a decision of the House.

Mr President, I also draw to your attention a letter that I found on the Select Committee’s website. It was written to the Select Committee by the Department of Agriculture and Food’s Acting Director, Legal and Commercial, Felicity Heffernan. The letter states —

I would like to draw to the Select Committee’s attention to a number of matters in some evidence and submissions that have been provided under the Parliamentary Privilege that do not relate to the specific terms of reference of the Inquiry.

It concludes —

I am instructed that DAFWA does not support inaccurate evidence and submissions about staff which are outside the terms of reference of your inquiry.

That letter is dated 4 April.

Although I accept that the interpretation of the terms of reference is a matter for the Select Committee in accordance with *Erskine May*, I still argue that it is important that committees stick to the broad terms of reference provided by this House, particularly when this House has taken a decision to limit the terms of reference. Mr President, I seek your ruling and guidance about the status of the recommendations and the elements of the report that are clearly outside the terms of reference and directly contrary to a decision of this House.

#### *President’s Ruling*

The President ruled as follows —

I note the terms of reference of the committee, and I will read them again for the benefit of Members. On Wednesday, 13 May 2015, the Legislative Council ordered that a select committee be established to inquire into the operations of the Western Australian Royal Society for the Prevention of Cruelty to Animals. The terms of reference for the inquiry state that —

The Select Committee be established to inquire into the operations of the Western Australian Royal Society for the Prevention of Cruelty to Animals, including an examination of:

- (a) its funding from the Government;

- (b) its objectives; and
- (c) the use of its powers.

The key word is “including”. Therefore, in relation to the terms of reference, I do not believe that Hon Ken Travers has a point of order. Hon Ken Travers’ comments, I think, would be perfectly appropriate during the debate on consideration of committee reports when it comes up at some later stage of the sitting of this House. It was really more a Member’s Statement than a point of order.

Hon Sue Ellery raised the following Point of Order —

Mr President, on the same point of order, if I may, I wonder if I might ask you to give consideration to providing some guidance to the House at least. When the House has made an explicit decision not to include a particular matter in the terms of reference for an inquiry, and it appears that the committee has examined matters that fit within the explicit decision of the House not to examine those matters, where does that leave us? If the House has expressed a point of view that it does not want the committee to look into X, and the committee report clearly has findings and recommendations about X, where does that leave that initial decision of the House? I would ask you to consider that, Mr President.

*President’s Ruling*

The President ruled as follows —

I will take that on board, and if there is anything further to add to what I said previously, I will come back to the House and inform the House.

Hon Ken Travers raised the following Point of Order —

Mr President, also in considering the matter further, I think the key statement is that the Select Committee was established to inquire into the Royal Society for the Prevention of Cruelty to Animals WA, including an examination of the use of its powers. As Hon Sue Ellery said in the debate when we defeated the motion to extend the powers of this committee, the powers in that regard were the powers of the RSPCA under its constitution, not the powers under the *Animal Welfare Act*. The substantive issue is an inquiry into the RSPCA.

*President’s Ruling*

The President ruled as follows —

I believe that is a point of view rather than a point of order. Nevertheless, I will consider all those matters and add anything that is necessary when I report to the House at some later stage.

## **17. Health Services Bill 2016**

Debate resumed on the second reading of this Bill (*see item 13 above*).

Question — put.

The Council divided.

### **Ayes (18)**

Hon Martin Aldridge  
 Hon Ken Baston  
 Hon Liz Behjat  
 Hon Jacqui Boydell  
 Hon Robin Chapple  
 Hon Jim Chown  
 Hon Peter Collier  
 Hon Donna Faragher  
 Hon Nick Goiran

Hon Dave Grills  
 Hon Peter Katsambanis  
 Hon Mark Lewis  
 Hon Lynn MacLaren  
 Hon Rick Mazza  
 Hon Robyn McSweeney  
 Hon Michael Mischin  
 Hon Simon O’Brien  
 Hon Brian Ellis (*Teller*)

1212

**Noes (7)**

Hon Alanna Clohesy  
Hon Sue Ellery  
Hon Martin Pritchard  
Hon Amber-Jade Sanderson

Hon Sally Talbot  
Hon Ken Travers  
Hon Samantha Rowe (*Teller*)

Question thus 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 Health moved, That the Bill be read a third time.

Question — put and passed.

Bill read a third time and passed.

**18. Members' Statements**

Statements were taken.

Hon Sally Talbot, by leave, tabled a corrected erratum to the minority report by Hon Dr Sally Talbot and Hon Lynn MacLaren in the report of the *Select Committee into the Operations of the Royal Society for the Prevention of Cruelty to Animals Western Australia (Inc)*. (Tabled paper 4145).

**19. Adjournment**

The Council adjourned at 5.42pm until Tuesday, 21 June 2016 at 2.00pm.

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

Attendance: Present all Members except Hon Paul Brown, Hon Stephen Dawson, Hon Kate Doust, Hon Nigel Hallett, Hon Alyssa Hayden and Hon Colin Holt (leave of absence).

**NIGEL PRATT**  
Clerk of the Legislative Council

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