



## LEGISLATIVE COUNCIL

### TUESDAY, 17 OCTOBER 2023

### 1.00pm

#### 1. Meeting of Council

The Council assembled at 1.00pm pursuant to order.

The President, Hon Alanna Clohesy, took the Chair.

Prayers and an Acknowledgement of Country were read.

#### 2. Petitions

Hon Dr Steve Thomas presented a petition from 11 petitioners requesting the Legislative Council to support contract workers affected by the Muja coal fired power station closure. (Tabled Paper 2719).

Hon Nick Goiran presented an E-Petition from 5,165 petitioners requesting the Legislative Council to urge the Western Australian Government to delay changes to the *Equal Opportunity Act 1984* until the findings of the Australian Law Reform Commission report into faith-based schools have been handed down. (Tabled Paper 2720).

#### 3. Ministerial Statement — Pregnancy and Infant Loss Remembrance Day

The Minister for Women's Interest made a Ministerial Statement with respect to International Pregnancy and Infant Loss Remembrance Day bringing greater public awareness and acknowledgment of pregnancy loss and the impact it has on families.

#### 4. Ministerial Statement — Western Australia Shipping and Supply Chain Taskforce

The Parliamentary Secretary to the Minister for Regional Development made a Ministerial Statement with respect to the Western Australia Shipping and Supply Chain Taskforce established in 2022 to reduce the impact of recurrent floods and fire events.

#### 5. Papers

The following Papers were laid on the Table by —

##### President

*Auditor General's Papers* —

Management of the Road Trauma Trust Account (Report No. 7) (October 2023).....2709

##### Leader of the House

*Local Laws* —

Local Government Act 1995 (Shire of Kondinin Amendment Local Law 2023 G.G. 13/10/2023)

.....2710

*Statutes —*

Edith Cowan University Act 1984 (Edith Cowan University Amending Statute No. 3 of 2023 G.G. 10/10/2023) .....	2711
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**Minister for Emergency Services***Annual Reports —*

Acacia Prison Services Agreement (2022-23) (Date received 12/10/2023) .....	2712
Australian Criminal Intelligence Commission — Criminal Investigation (Covert Powers) Act 2012 (WA) — Assumed Identities (2022-23) (Date received 12/10/2023) .....	2713
State Finances (2022-23) (Date received 16/10/2023) .....	2714
Western Australia Police Force — Criminal Investigation (Covert Powers) Act 2012 — Assumed Identities (2022-23) (Date received 12/10/2023) .....	2715

*Reports —*

Western Australia Police — Terrorism (Preventative Detention) Act 2006, section 54(2) — Quarterly Report (30 June 2023) .....	2716
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**Minister for Agriculture and Food***Plans —*

Western Australian Planning Commission — Improvement Plant No. 27 (Ellenbrook Station Precinct) — Notice of Revocation (August 2023) .....	2717
Western Australian Planning Commission — Improvement Plant No. 59 (Ellenbrook Station Precinct) (August 2023) .....	2718

**6. Standing Committee on Uniform Legislation and Statutes Review — Report 144 — Rail Safety National Law Application Bill 2023**

Hon Donna Faragher presented Report 144 of the Standing Committee on Uniform Legislation and Statutes Review, *Rail Safety National Law Application Bill 2023*. (Tabled Paper 2721).

**7. Order of Business**

Ordered — That Orders of the Day Nos 1, *Aboriginal Cultural Heritage Amendment Regulations (No. 2) 2023 — Disallowance*, 2, *Shire of Westonia Fencing Local Law 2023 — Disallowance*, 3, *Shire of Westonia Westonia Historical Precinct Local Law 2023 — Disallowance*, 4, *Shire of Westonia Shipping and/or Sea Container Local Law 2023 — Disallowance*, 5, *City of Gosnells Bush Fire Brigade Local Law 2023 — Disallowance*, 6, *City of Swan Parking Local Law 2023 — Disallowance*, and 7, *Shire of Esperance Cemeteries Local Law 2023 — Disallowance*, be taken after Order of the Day No. 8, *Sports and Entertainment Trust Bill 2023*. (Leader of the House).

**8. Aboriginal Heritage Legislation Amendment and Repeal Bill 2023**

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 Dr Brian Walker in the Chair)

Clause 2.

Debate resumed.

Clause agreed to.

Clauses 3 to 7 agreed to.

Clause 8.

Debate ensued.

Clause agreed to.

Clause 9 agreed to.

Clause 10.

Debate ensued.

Hon Dr Brad Pettitt moved —

Page 9, lines 22 to 25 — To delete the lines and insert:

**An Act to recognise the central and beneficial role that Aboriginal cultural heritage plays in the history and culture of Western Australia, and to make provision for the protection of Aboriginal cultural heritage in the interests of the traditional owners of that cultural heritage, and more generally the interests of the community.**

Debate ensued.

Amendment — put.

The Committee divided.

**Ayes (3)**

Hon Sophia Moermond  
Hon Wilson Tucker

Hon Dr Brad Pettitt (*Teller*)

**Noes (28)**

Hon Martin Aldridge  
Hon Klara Andric  
Hon Dan Caddy  
Hon Sandra Carr  
Hon Peter Collier  
Hon Colin de Grussa  
Hon Kate Doust  
Hon Sue Ellery  
Hon Donna Faragher  
Hon Nick Goiran  
Hon Lorna Harper  
Hon Jackie Jarvis  
Hon Louise Kingston  
Hon Ayor Makur Chuot

Hon Steve Martin  
Hon Kyle McGinn  
Hon Shelley Payne  
Hon Stephen Pratt  
Hon Martin Pritchard  
Hon Rosie Sahanna  
Hon Tjorn Sibma  
Hon Matthew Swinbourn  
Hon Dr Sally Talbot  
Hon Dr Steve Thomas  
Hon Neil Thomson  
Hon Darren West  
Hon Pierre Yang  
Hon Peter Foster (*Teller*)

Amendment thus negatived.

Debate resumed.

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

New Clause 10A.

Hon Dr Brad Pettitt moved —

Page 9, after line 26 — To insert:

**10A. Section 3 inserted**

After section 2 insert:

**3. Objects of Act**

- (1) The objects of this Act are as follows —
- (a) to recognise —
    - (i) the fundamental importance to Aboriginal people of Aboriginal cultural heritage and the central role of Aboriginal cultural heritage in Aboriginal communities past, present and future; and
    - (ii) that Aboriginal people have custodianship over Aboriginal cultural heritage; and
    - (iii) the value of Aboriginal cultural heritage to Aboriginal people and the wider Western Australian community; and
    - (iv) the living, historical and traditional nature of Aboriginal cultural heritage;
  - (b) to recognise, protect, conserve and preserve Aboriginal cultural heritage;
  - (c) to manage activities that may harm Aboriginal cultural heritage in a manner that provides balanced and beneficial outcomes for Aboriginal people and the wider Western Australian community; —
  - (d) to promote an appreciation of Aboriginal cultural heritage.
- (2) In the pursuit of the objects of this Act, the following principles must be observed —
- (a) the principles set out in section 3A relating to Aboriginal cultural heritage;
  - (b) the principles set out in section 10 relating to the management of activities that may harm Aboriginal cultural heritage.

**3A. Principles relating to Aboriginal cultural heritage**

The principles relating to Aboriginal cultural heritage are as follows —

- (a) Aboriginal people should be recognised as having a living relationship with, and as being the primary custodians of, Aboriginal cultural heritage;
- (b) Aboriginal people should, as far as practicable, be involved in —
  - (i) the recognition, protection, conservation and preservation of Aboriginal cultural heritage; and
  - (ii) the management of activities that may harm Aboriginal cultural heritage;
- (c) as far as practicable —

- (i) Aboriginal ancestral remains should be in the possession, and under the custodianship and control, of Aboriginal people;
- (ii) secret or sacred objects should be in the possession, and under the custodianship, ownership, and control, of Aboriginal people;
- (iii) Aboriginal ancestral remains and secret or sacred objects that are not in the possession, and under the custodianship and control, of Aboriginal people should be returned to Aboriginal people.

**3B. Principles relating to management of activities that may harm Aboriginal cultural heritage**

The principles relating to the management of activities that may harm Aboriginal cultural heritage are as follows —

- (a) it should be recognised that —
  - (i) places, objects and landscapes have a range of different values for different individuals, groups or communities, and those values may change for an individual, group or community over time; and
  - (ii) those values include social, spiritual, historical, scientific, economic and aesthetic values;
- (b) the range of different values for places, objects and landscapes held by different individuals, groups or communities, at particular times and over time, should be recognised and respected;
- (c) places and objects exist within landscapes and should be considered in that context;
- (d) as far as practicable, in order to utilise land for the optimum benefit of the people of Western Australia, the values held by Aboriginal people in relation to Aboriginal cultural heritage should be prioritised when managing activities that may harm Aboriginal cultural heritage.

Debate ensued.

New Clause — put.

The Committee divided.

**Ayes (2)**

Hon Wilson Tucker

Hon Dr Brad Pettitt (*Teller*)

**Noes (28)**

Hon Martin Aldridge	Hon Steve Martin
Hon Klara Andric	Hon Kyle McGinn
Hon Dan Caddy	Hon Shelley Payne
Hon Sandra Carr	Hon Stephen Pratt
Hon Peter Collier	Hon Martin Pritchard
Hon Colin de Grussa	Hon Rosie Sahanna
Hon Kate Doust	Hon Tjorn Sibma
Hon Sue Ellery	Hon Matthew Swinbourn
Hon Donna Faragher	Hon Dr Sally Talbot
Hon Nick Goiran	Hon Dr Steve Thomas
Hon Lorna Harper	Hon Neil Thomson
Hon Jackie Jarvis	Hon Darren West
Hon Louise Kingston	Hon Pierre Yang
Hon Ayor Makur Chuot	Hon Peter Foster ( <i>Teller</i> )

New Clause thus negated.

Clause 11.

Debate ensued.

Hon Dr Brad Pettitt, by leave, moved —

Page 10, after line 2 — To insert:

***Aboriginal cultural material***

Page 10, after line 7 — To insert:

***Aboriginal cultural heritage*** means the tangible and intangible elements that are important to the Aboriginal people of the State, recognised through social, spiritual, historical, scientific or aesthetic perspectives (including contemporary perspectives), as part of their traditional and living cultural heritage and includes —

- (a) an area that is composed of or contains tangible elements of that cultural heritage (an ***Aboriginal place***);
- (b) an object that is a tangible element of that cultural heritage (***Aboriginal object***);
- (c) a group of areas (a ***cultural landscape***) interconnected through tangible or intangible elements of that cultural heritage;
- (d) any bodily remains of a deceased Aboriginal person (***Aboriginal ancestral remains***), other than remains that —
  - (i) are buried in a cemetery where non-Aboriginal persons are also buried; or
  - (ii) have been dealt with or are to be dealt with under a law of the State relating to the burial of the bodies of deceased persons.

Debate ensued.

Amendments — put and negatived.

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

Clause 12 agreed to.

Clause 13.

Debate ensued.

Clause agreed to.

Clause 14.

Debate ensued.

Hon Neil Thomson, by leave, moved —

Page 15, line 22 — To insert after “information”:

of material importance

Page 15, line 33 — To insert after “information”:

of material importance

Page 16, line 10 — To insert after “information”:

of material importance

Page 16, line 21 — To insert after “information”:

of material importance

Debate ensued.

Amendments — put.

The Committee divided.

**Ayes (12)**

Hon Martin Aldridge  
Hon Peter Collier  
Hon Donna Faragher  
Hon Nick Goiran  
Hon Louise Kingston  
Hon Steve Martin

Hon Sophia Moermond  
Hon Tjorn Sibma  
Hon Dr Steve Thomas  
Hon Neil Thomson  
Hon Wilson Tucker  
Hon Colin de Grussa (*Teller*)

**Noes (21)**

Hon Klara Andric  
 Hon Dan Caddy  
 Hon Sandra Carr  
 Hon Stephen Dawson  
 Hon Kate Doust  
 Hon Sue Ellery  
 Hon Lorna Harper  
 Hon Jackie Jarvis  
 Hon Ayor Makur Chuot  
 Hon Kyle McGinn  
 Hon Shelley Payne

Hon Dr Brad Pettitt  
 Hon Stephen Pratt  
 Hon Martin Pritchard  
 Hon Samantha Rowe  
 Hon Rosie Sahanna  
 Hon Matthew Swinbourn  
 Hon Dr Sally Talbot  
 Hon Darren West  
 Hon Pierre Yang  
 Hon Peter Foster (*Teller*)

Amendments thus negatived.

Debate resumed.

**9. Questions Without Notice**

Questions without notice were taken.

The Parliamentary Secretary to the Minister for Climate Action tabled a response to a question without notice asked by Hon Dr Brad Pettitt. (Tabled Paper 2722).

The Leader of the House representing the Minister for Health, in accordance with Standing Order 108(2), advised that an answer to question on notice 1612 asked by Hon Martin Aldridge will be provided on 7 November 2023.

The Leader of the House representing the Minister for Aboriginal Affairs, in accordance with Standing Order 108(2), advised that an answer to question on notice 1532 asked by Hon Neil Thomson will be provided on 18 October 2023.

The Leader of the House representing the Minister for Education tabled a response to question on notice 1617 asked by Hon Donna Faragher. (Tabled Paper 2723).

The Minister for Emergency Services tabled a response to question on notice 1611 asked by Hon Martin Aldridge. (Tabled Paper 2724).

**10. Aboriginal Heritage Legislation Amendment and Repeal Bill 2023**

Resumption of consideration of this Bill in Committee of the Whole House (*see item 8 above*).

The President left the Chair.

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**In Committee**

(Hon Dr Brian Walker in the Chair)

Clause 14.

Debate resumed.

Hon Dr Brad Pettitt moved —

Page 14, lines 1 to 5 — To delete the lines and insert:

(2) In section 18(2):

(a) delete “shall, as soon as it is reasonably able,” and insert:

must



- (b) delete "site" (second occurrence) and insert:

cultural heritage

- (c) delete 'evaluate the importance and significance of any such site, and'  
and insert:

and whether the proposed use of the land can be done, including subject to conditions, so as not to impact, damage or destroy that Aboriginal cultural heritage and

- (d) delete "its recommendation" and insert:

the views of the native title party and the recommendation of the Committee

Debate ensued.

Amendment — put and negatived.

Debate resumed.

Hon Dr Brad Pettitt, by leave, moved —

Page 14, after line 5 — To insert:

- (2A) After section 18(2) insert:

- (2A) In making the recommendation under subsection (2), the Committee shall have regard to:

- (a) the views of the native title party or parties;
- (b) the objects of the Act;
- (c) the principles relating to Aboriginal cultural heritage; and
- (d) the principles relating to management of activities that may harm Aboriginal cultural heritage.

Page 14, after line 5 — To insert:

- (2B) In section 18(3) delete "general interest of the community" and insert:

matters in subsection (2A)(a)-(d)

Debate ensued.

Amendments — put and negatived.

Debate resumed.

Hon Dr Brad Pettitt moved —

Page 16, lines 10 and 11 — To delete “may, having regard to the general interest of the community,” and insert:

must seek the views of the native title party for that land and may, having regard to those views and the objects of the Act, the principles relating to Aboriginal cultural heritage, and the principles relating to management of activities that may harm Aboriginal cultural heritage

Debate ensued.

Amendment — put and negatived.

Debate resumed.

Hon Dr Brad Pettitt moved —

Page 17, after line 1 — To insert:

(6A) In section 18(7):

(a) delete “, if it is satisfied that it is practicable to do so,” and insert:

seek the views of the native title party for that land and, if consented to by the native title party,

(b) after “place of safe custody” insert:

agreed to by the native title party.

Debate ensued.

Amendment — put and negatived.

Debate resumed.

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

Clause 15.

Debate ensued.

Clause agreed to.

Clause 16 agreed to.

Clause 17.

Debate ensued.

Clause agreed to.

Clause 18.

Debate ensued.

Clause agreed to.

New Clause 18A.

Hon Dr Brad Pettitt moved —

Page 25, after line 30 — To insert:

**18A. Section 57 amended**

- (1) In section 57(a)(i) delete "\$20,000" and insert:

\$700,000

- (2) In section 57(a)(i) delete "9 months" and insert:

2 years

- (3) In section 57(a)(ii) delete "\$40,000" and insert:

\$1,400,000

- (4) In section 57(a)(ii) delete "2 years" and insert:

5 years

- (5) In section 57(b)(i) delete "\$50,000" and insert:

\$7,000,000

- (6) In section 57(b)(ii):

- (a) delete "\$100,000" and insert:

\$14,000,000

- (b) delete "\$1,000" and insert:

\$500,000

Debate ensued.

New Clause — put.

The Committee divided.

**Ayes (3)**

Hon Sophia Moermond  
Hon Wilson Tucker

Hon Dr Brad Pettitt (*Teller*)

**Noes (29)**

Hon Martin Aldridge  
Hon Klara Andric  
Hon Dan Caddy  
Hon Sandra Carr  
Hon Peter Collier  
Hon Stephen Dawson  
Hon Colin de Grussa  
Hon Kate Doust  
Hon Sue Ellery  
Hon Donna Faragher  
Hon Nick Goiran  
Hon Lorna Harper  
Hon Jackie Jarvis  
Hon Louise Kingston  
Hon Steve Martin

Hon Kyle McGinn  
Hon Shelley Payne  
Hon Stephen Pratt  
Hon Martin Pritchard  
Hon Samantha Rowe  
Hon Rosie Sahanna  
Hon Tjorn Sibma  
Hon Matthew Swinbourn  
Hon Dr Sally Talbot  
Hon Dr Steve Thomas  
Hon Neil Thomson  
Hon Darren West  
Hon Pierre Yang  
Hon Peter Foster (*Teller*)

New Clause thus negatived.

Clause 19 agreed to.

Clause 20.

Debate ensued.

Clause agreed to.

Clauses 21 and 22 agreed to.

Clause 23.

Debate ensued.

Clause agreed to.

Clause 24.

Debate ensued.

Clause agreed to.

Clause 25 agreed to.

Clause 26.

Debate ensued.

Clause agreed to.

Clauses 27 to 34 agreed to.

Title agreed to.

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The President resumed the Chair.

Bill reported without amendment.

Report adopted.

The Leader of the House representing the Minister for Aboriginal Affairs moved, That the Bill be read a third time.

The 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.

Debate ensued.

Question — put.

The Council divided.

### **Ayes (29)**

Hon Martin Aldridge  
 Hon Klara Andric  
 Hon Dan Caddy  
 Hon Sandra Carr  
 Hon Peter Collier  
 Hon Stephen Dawson  
 Hon Colin de Grussa  
 Hon Kate Doust  
 Hon Sue Ellery  
 Hon Donna Faragher  
 Hon Nick Goiran  
 Hon Lorna Harper  
 Hon Jackie Jarvis  
 Hon Louise Kingston  
 Hon Steve Martin

Hon Kyle McGinn  
 Hon Shelley Payne  
 Hon Stephen Pratt  
 Hon Martin Pritchard  
 Hon Samantha Rowe  
 Hon Rosie Sahanna  
 Hon Tjorn Sibma  
 Hon Matthew Swinbourn  
 Hon Dr Sally Talbot  
 Hon Dr Steve Thomas  
 Hon Neil Thomson  
 Hon Darren West  
 Hon Pierre Yang  
 Hon Peter Foster (*Teller*)

### **Noes (1)**

Hon Dr Brad Pettitt (*Teller*)

Question thus passed.

Bill read a third time and passed.

### **11. Members' Statements**

Statements were taken.

### **12. Adjournment**

The Council adjourned at 9.04pm until Wednesday, 18 October 2023 at 1.00pm.

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

Attendance: Present all Members.

**SAM HASTINGS**  
 Clerk of the Legislative Council

**HON ALANNA CLOHESY MLC**  
 President of the Legislative Council