

# LEGISLATIVE COUNCIL

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## MINUTES OF PROCEEDINGS

No. 226

TUESDAY, 20 OCTOBER 2020

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### 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. President's Ruling — Tabling of Annual Reports and Estimates Process

The President ruled as follows —

On Thursday, 15 October 2020, the Hon Nick Goiran raised a point of order concerning the tabling of the Department of Communities Annual Report and the deadline to lodge questions on notice with the Standing Committee on Estimates and Financial Operations.

I have considered the matter. The question as to the timing of the submission of questions on notice and the Ministers called to appear at hearings of the Committee are a matter for the Committee and the Member should address these concerns directly to the Committee. Therefore, I rule that there is no point of order.

### 3. Ministerial Statement — Improving the Transparency of Recognised Biosecurity Groups

The Minister for Agriculture and Food made a Ministerial Statement with respect to improving the transparency of recognised biosecurity groups, by requiring that annual Operational Plans be published on recognised biosecurity groups' websites.

### 4. Papers

The following Papers were laid on the Table by —

#### Leader of the House

*Annual Reports* —

Criminal Injuries Compensation, Office of the (2019-20) (Date received 20/10/2020) ..... 4492

Law Reform Commission (2019-20) (Date received 20/10/2020)..... 4493

State Coroner, Office of the (2019-20) (Date received 20/10/2020)..... 4494

#### Minister for Environment

*Annual Reports* —

Electoral Commission (2019-20) (Date received 15/10/2020)..... 4495

*Proposals* —

Land Administration Act 1997 — Submission No. 5/2020 — Amendment to Class A Reserve No. 18803 for the purpose of water and conservation of flora and fauna in the Chinocup Dam Reserve in the Shire of Kent ..... 4496

**Minister for Regional Development***Annual Reports —*

Greyhound Association of Western Australia (2019-20) (Date received 20/10/2020) ..... 4497

Racing and Wagering Western Australia (2019-20) (Date received 20/10/2020) ..... 4498

*Response to Reports —*

Standing Committee on Public Administration — Coming Home Safely: Worksafe and  
the Workplace Culture in Western Australia (Report No. 31)  
(Minister for Industrial Relations) ..... 4499

**5. Order of Business**

Ordered — That Orders of the Day Nos 1, *Local Government (Rules of Conduct) Amendment Regulations 2020 — Disallowance*, 2, *Local Government (Rules of Conduct) Amendment Regulations 2020 — Disallowance*, 3, *Local Government (Rules of Conduct) Amendment Regulations 2020 — Disallowance*, 4, *Shire of Narembeen Cemeteries Local Law 2020 — Disallowance*, 5, *Shire of Narembeen Fencing Local Law 2020 — Disallowance*, 6, *Curtin University Statute No. 12 — Admission and Enrolment — Disallowance*, 7, *Curtin University Statute No. 5 — Election of Council Members — Disallowance*, 8, *Mines and Petroleum Regulations Amendment (Fees and Charges) Regulations 2020 — Disallowance*, and 9, *Animal Welfare (Transport, Saleyards and Depots) (Cattle and Sheep) Regulations 2020 — Disallowance*, be taken after Order of the Day No. 37, *Criminal Law (Unlawful Consorting) Bill 2020*. (Leader of the House).

**6. Order of Business**

Ordered — That Order of the Day No. 10, *Estimates of Revenue and Expenditure — Consolidated Account Estimates 2020-2021*, be taken after Order of the Day No. 37, *Criminal Law (Unlawful Consorting) Bill 2020*. (Leader of the House).

**7. Work Health and Safety Bill 2019 and Safety Levies Amendment Bill 2019**

The Orders of the Day for the further consideration of these Bills, in Committee of the Whole House, having been read.

The President left the Chair.

**In Committee**

(Hon Simon O'Brien in the Chair)

***Work Health and Safety Bill 2019***

Clause 274.

Debate resumed.

Hon Nick Goiran moved —

Page 179, lines 1 to 5 — To delete the lines.

Debate ensued.

Amendment — put.

The Committee divided.

**Ayes (15)**

Hon Jacqui Boydell  
Hon Jim Chown  
Hon Peter Collier  
Hon Colin de Grussa  
Hon Donna Faragher  
Hon Nick Goiran  
Hon Rick Mazza  
Hon Michael Mischin

Hon Simon O'Brien  
Hon Robin Scott  
Hon Tjorn Sibma  
Hon Aaron Stonehouse  
Hon Dr Steve Thomas  
Hon Colin Tincknell  
Hon Ken Baston (*Teller*)

**Noes (17)**

Hon Robin Chapple  
 Hon Tim Clifford  
 Hon Alanna Clohesy  
 Hon Stephen Dawson  
 Hon Sue Ellery  
 Hon Diane Evers  
 Hon Adele Farina  
 Hon Laurie Graham  
 Hon Alannah MacTiernan

Hon Kyle McGinn  
 Hon Martin Pritchard  
 Hon Samantha Rowe  
 Hon Charles Smith  
 Hon Matthew Swinbourn  
 Hon Dr Sally Talbot  
 Hon Alison Xamon  
 Hon Pierre Yang (*Teller*)

Amendment thus negated.

The Minister for Regional Development representing the Minister for Industrial Relations moved —  
 Page 179, after line 21 — To insert:

- (7) The Minister must make available on the WHS Department’s website, without charge, a copy of —
- (a) each code of practice that is currently approved; and
  - (b) unless doing so would infringe copyright, each document applied, adopted or incorporated (to any extent) by an approved code of practice.

Hon Michael Mischin moved to amend the amendment as follows —

In paragraph (b) — To delete “unless doing so would infringe copyright,”.

Debate ensued.

Hon Michael Mischin, by leave, withdrew his amendment.

The Minister for Regional Development representing the Minister for Industrial Relations, by leave, withdrew her amendment.

The Minister for Regional Development representing the Minister for Industrial Relations moved —  
 Page 179, after line 21 — To insert:

- (7) The Minister must make available on the WHS Department’s website, without charge —
- (a) a copy of each code of practice that is currently approved; and
  - (b) the identity of each document applied, adopted or incorporated (to any extent) by an approved code of practice and, unless doing so would infringe copyright, a copy of that document.

Amendment — put and passed.

Clause, as amended, agreed to.

Clause 275 agreed to.

Clause 276.

Debate ensued.

Hon Nick Goiran moved —

Page 180, lines 13 to 17 — To delete the lines and insert:

- (1) The Governor may make regulations in relation to any matter or thing that —
- (a) is required or permitted by this Act to be prescribed; or
  - (b) is necessary or convenient to be prescribed to give effect to this Act.

Debate ensued.

Amendment — put.

The Committee divided.

#### Ayes (16)

Hon Jacqui Boydell  
 Hon Jim Chown  
 Hon Peter Collier  
 Hon Colin de Grussa  
 Hon Donna Faragher  
 Hon Nick Goiran  
 Hon Colin Holt  
 Hon Rick Mazza

Hon Michael Mischin  
 Hon Simon O'Brien  
 Hon Robin Scott  
 Hon Tjorn Sibma  
 Hon Aaron Stonehouse  
 Hon Dr Steve Thomas  
 Hon Colin Tincknell  
 Hon Ken Baston (*Teller*)

#### Noes (16)

Hon Robin Chapple  
 Hon Tim Clifford  
 Hon Alanna Clohesy  
 Hon Stephen Dawson  
 Hon Sue Ellery  
 Hon Diane Evers  
 Hon Adele Farina  
 Hon Laurie Graham

Hon Alannah MacTiernan  
 Hon Kyle McGinn  
 Hon Martin Pritchard  
 Hon Samantha Rowe  
 Hon Charles Smith  
 Hon Dr Sally Talbot  
 Hon Alison Xamon  
 Hon Pierre Yang (*Teller*)

The votes being equal, the amendment was resolved in the negative.

Debate resumed.

Hon Nick Goiran moved —

Page 180, lines 24 to 27 — To delete the lines.

Debate ensued.

### 8. Questions Without Notice

Questions without notice were taken.

The Minister for Electoral Affairs tabled documents in relation to non-parliamentary elections postal election packages receipts for the Town of Port Hedland, in response to a question without notice asked by Hon Jacqui Boydell. (Tabled Paper 4500).

The Leader of the House representing the Minister for Child Protection tabled the *Office of the Auditor General Young People Leaving Care Performance Audit (August 2018)*, the *Children in Care longitudinal data report (1990 to 2005)*, and the *Care and Protection System Co-design report, Moving to Child Safety and Family and Community Wellbeing (OOHC) (January 2020 to August 2020)*, in response to a question without notice asked by Hon Nick Goiran. (Tabled Paper 4501).

The Minister for Environment representing the Minister for Housing, by leave, incorporated into *Hansard* information in relation to funding for social housing construction, in response to a question without notice asked by Hon Tim Clifford.

The Parliamentary Secretary to the Minister for Health, by leave, incorporated into *Hansard* information in relation to health investments listed in the Western Australian State Budget 2020-21, 4 Years of Delivering for the Wheatbelt, published on the Our State Budget website, in response to a question without notice asked by Hon Martin Aldridge.

The Parliamentary Secretary to the Minister for Health tabled minutes of the Voluntary Assisted Dying Implementation Leadership Team, in response to question on notice 3204 asked by Hon Nick Goiran. (Tabled Paper 4502).

**9. Work Health and Safety Bill 2019 and Safety Levies Amendment Bill 2019**

Resumption of consideration of these Bills in Committee of the Whole House (*see item 7 above*).  
The President left the Chair.

**In Committee**

(Hon Dr Steve Thomas in the Chair)

***Work Health and Safety Bill 2019***

Clause 276.

Debate resumed on the amendment of Hon Nick Goiran as follows —

Page 180, lines 24 to 27 — To delete the lines.

Amendment — put.

The Committee divided.

**Ayes (14)**

Hon Jacqui Boydell  
Hon Peter Collier  
Hon Colin de Grussa  
Hon Nick Goiran  
Hon Colin Holt  
Hon Rick Mazza  
Hon Michael Mischin

Hon Simon O'Brien  
Hon Robin Scott  
Hon Tjorn Sibma  
Hon Aaron Stonehouse  
Hon Dr Steve Thomas  
Hon Colin Tincknell  
Hon Ken Baston (*Teller*)

**Noes (15)**

Hon Robin Chapple  
Hon Tim Clifford  
Hon Alanna Clohesy  
Hon Stephen Dawson  
Hon Sue Ellery  
Hon Diane Evers  
Hon Adele Farina  
Hon Laurie Graham

Hon Alannah MacTiernan  
Hon Martin Pritchard  
Hon Samantha Rowe  
Hon Charles Smith  
Hon Dr Sally Talbot  
Hon Alison Xamon  
Hon Pierre Yang (*Teller*)

Amendment thus negatived.

Debate resumed.

Hon Nick Goiran moved —

Page 180, line 28 to page 181, line 3 — To delete the lines.

Debate ensued.

Amendment — put.

The Committee divided.

**Ayes (14)**

Hon Jacqui Boydell  
Hon Peter Collier  
Hon Colin de Grussa  
Hon Donna Faragher  
Hon Nick Goiran  
Hon Colin Holt  
Hon Rick Mazza

Hon Michael Mischin  
Hon Simon O'Brien  
Hon Robin Scott  
Hon Aaron Stonehouse  
Hon Dr Steve Thomas  
Hon Colin Tincknell  
Hon Ken Baston (*Teller*)

**Noes (15)**

Hon Robin Chapple  
 Hon Tim Clifford  
 Hon Alanna Clohesy  
 Hon Stephen Dawson  
 Hon Sue Ellery  
 Hon Diane Evers  
 Hon Adele Farina  
 Hon Laurie Graham

Hon Alannah MacTiernan  
 Hon Martin Pritchard  
 Hon Samantha Rowe  
 Hon Charles Smith  
 Hon Dr Sally Talbot  
 Hon Alison Xamon  
 Hon Pierre Yang (*Teller*)

Amendment thus negatived.

Debate resumed.

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

Clause 277.

Hon Nick Goiran moved —

Page 181, line 24 — To delete the line and insert:

on which this section comes into operation; and

Amendment — put and passed.

Hon Nick Goiran moved —

Page 181, after line 32 — To insert:

- (3) If, in the Minister's opinion, a House of Parliament will not sit during the period of 21 days after finalisation of the report, the Minister must send the report to the Clerk of the House.
- (4) When the report is sent to the Clerk of a House it is taken to have been laid before the House.
- (5) The laying of the report that is taken to have occurred under subsection (4) must be recorded in the Minutes, or Votes and Proceedings, of the House on the first sitting day of the House after the Clerk receives the report.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 278 to 287 agreed to.

Clause 288.

Debate ensued.

Clause — put and negatived.

New Clause 288.

The Minister for Regional Development representing the Minister for Industrial Relations moved —

Page 186, after line 21 — To insert:

**288. Section 96A deleted**

Delete section 96A.

New clause agreed to.

Clause 289 agreed to.

Clauses 290 to 375 agreed to.

Clause 376.

Debate ensued.

Hon Nick Goiran moved —

Page 222, lines 1 to 6 — To delete the lines and insert:

- (3) Transitional regulations may provide that specified provisions of this Act, or any other enactment, do not apply to, or in relation to, a specified matter or thing.

Debate ensued.

Amendment — put and negatived.

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

Clauses 377 to 416 agreed to.

Clause 417.

The Minister for Regional Development representing the Minister for Industrial Relations moved —

Page 249, lines 10 and 11 — To delete the lines.

Debate ensued.

Amendment — put and passed.

The Minister for Regional Development representing the Minister for Industrial Relations moved —

Page 249, line 28 — To delete “health and safety”.

Amendment — put and passed.

The Minister for Regional Development representing the Minister for Industrial Relations moved —

Page 250, line 4 — To delete “health and safety”.

Amendment — put and passed.

Clause, as amended, agreed to.

Clauses 418 and 419 agreed to.

Clause 420.

Debate ensued.

Hon Nick Goiran moved —

Page 250, after line 23 — To insert:

- (2) Subsection (3) applies if a code of practice referred to in subsection (1) incorporates by reference, as provided for by section 93(2) of MSIA or section 57(2) of OSHA, a document as the document may from time to time be amended.
- (3) The code of practice continues in effect under subsection (1) as if the document were incorporated as the document is in force immediately before commencement day.
- (4) Accordingly, if the document is amended on or after commencement day, the amendment has no effect for the purposes of the code of practice unless the code of practice is subsequently varied under section 274 to apply, adopt or incorporate the amendment.

Debate ensued.

Amendment — put and negatived.

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

Clauses 421 to 425 agreed to.

Schedule 1.

Debate ensued.

Schedule – put and negatived.

Schedule 2.

The Minister for Regional Development representing the Minister for Industrial Relations moved —  
Page 273, line 23 to page 274, line 10 — To delete the lines.

Debate ensued.

Amendment — put and passed.

Schedule, as amended, agreed to.

Schedule 3 agreed to.

Postponed Clause 7.

Debate ensued.

Clause agreed to.

Postponed Clause 230.

Debate ensued.

The Minister for Regional Development representing the Minister for Industrial Relations moved —  
Page 159, lines 11 and 12 — To delete “, other than an industrial manslaughter offence under section 30A,”.

Debate ensued.

The Minister for Regional Development representing the Minister for Industrial Relations tabled a memorandum to all Members of Parliament providing an overview of proposed amendments to Clauses 230 to 232 of the *Work Health and Safety Bill 2019*. (Tabled Paper 4503).

Debate resumed.

Amendment — put and passed.

The Minister for Regional Development representing the Minister for Industrial Relations moved —  
Page 159, lines 21 to 23 — To delete the lines and insert:

- (3) Nothing in this section affects —
  - (a) the ability of an authorised officer (as defined in the *Criminal Procedure Act 2004* section 80(1)) to commence or conduct a prosecution for an offence against this Act; or
  - (b) the functions of the DPP under the *Director of Public Prosecutions Act 1991*.

Amendment — put and passed.

Clause, as amended, agreed to.

Postponed Clause 4.

The Minister for Regional Development representing the Minister for Industrial Relations moved —  
Page 7, lines 11 and 12 — To delete the lines and insert:

***industrial manslaughter*** — see section 30A;

Debate ensued.

Amendment — put and passed.

Clause, as amended, agreed to.

Postponed Clause 231.

The Minister for Regional Development representing the Minister for Industrial Relations moved —  
Page 159, lines 27 and 28 — To delete “an industrial manslaughter offence,” and insert:

industrial manslaughter,



Amendment — put and passed.

The Minister for Regional Development representing the Minister for Industrial Relations moved —  
Page 160, line 17 to page 161, line 10 — To delete the lines.

Debate ensued.

Amendment — put and passed.

Debate resumed.

Clause, as amended, agreed to.

Postponed Clause 232.

The Minister for Regional Development representing the Minister for Industrial Relations moved —  
Page 161, lines 15 and 16 — To delete “an industrial manslaughter offence under section 30A,”  
and insert:

industrial manslaughter,

Amendment — put and passed.

Debate resumed.

Hon Nick Goiran moved —

Page 161, lines 31 and 32 — To delete “an industrial manslaughter offence under section 30B,  
or for a Category 1 offence,” and insert:

a Category 1 offence

Amendment — put and passed.

The Minister for Regional Development representing the Minister for Industrial Relations moved —  
Page 162, lines 5 to 21 — To delete the lines and insert:

- (3) Subsections (4) and (4A) apply to proceedings (the *relevant proceedings*) against a person for a Category 1 offence, a Category 2 offence or a Category 3 offence in relation to any conduct (the *relevant conduct*).
- (4) The relevant proceedings may be brought after the end of the applicable limitation period in subsection (1) if —
  - (a) either —
    - (i) the DPP has considered whether proceedings for industrial manslaughter should be brought against the person in relation to the relevant conduct or to any conduct that includes the relevant conduct, and has decided not to bring those proceedings; or
    - (ii) the DPP has discontinued proceedings for industrial manslaughter against the person in relation to the relevant conduct or to any conduct that includes the relevant conduct;
  - and
  - (b) the relevant proceedings are brought no later than 6 months after the day on which the DPP made that decision or discontinued those proceedings.
- (4A) Despite section 230(1), the relevant proceedings may only be brought under subsection (4) by an authorised officer (as defined in the *Criminal Procedure Act 2004* section 80(1)).

Debate ensued.

Amendment — put and passed.

Debate resumed.

Hon Nick Goiran moved —

Page 162, lines 8 to 10 — To delete the lines and insert:

- (a) a Category 1 offence;
- (b) a Category 2 offence;
- (c) a Category 3 offence.

Debate ensued.

Hon Nick Goiran, by leave, withdrew his amendment.

Debate resumed.

The Minister for Regional Development representing the Minister for Industrial Relations moved —

Page 162, lines 22 to 26 — To delete the lines and insert:

- (5) A person may be convicted of an offence as provided for by section 30A(2) or (4) despite subsection (1) and section 10A(2) of *The Criminal Code*.

Amendment — put and passed.

Clause, as amended, agreed to.

Long Title.

The Minister for Regional Development representing the Minister for Industrial Relations, by leave, moved —

Page 1, the 4<sup>th</sup> bullet point — To delete “and” the second time it occurs.

Page 1 — To delete the 5<sup>th</sup> bullet point.

Amendments — put and passed.

Long Title, as amended, agreed to.

The President resumed the Chair.

Bill reported with amendments, and amendments to the long title.

The Minister for Regional Development representing the Minister for Industrial Relations moved, without notice —

That the *Work Health and Safety Bill 2019* be recommitted for the purposes of reconsidering Clause 216.

Question — put and passed.

The President left the Chair.

### In Committee

(Hon Simon O’Brien in the Chair)

Recommitted Clause 216.

The Minister for Regional Development representing the Minister for Industrial Relations moved —

Page 143, line 11 — To delete “an industrial manslaughter offence” and insert:

industrial manslaughter

Amendment — put and passed.

Clause, as amended, agreed to.

*Interruption pursuant to order.*

The President resumed the Chair.

The Chair of Committees reported that the Committee of the Whole House had considered the Bill, made progress, and seeks to sit again.

Report adopted.

**10. Members' Statements**

Statements were taken.

**11. Adjournment**

The Council adjourned at 10.02pm until Wednesday, 21 October 2020 at 1.00pm.

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

Attendance: Present all Members except Hon Martin Aldridge and Hon Darren West.

**NIGEL PRATT**  
Clerk of the Legislative Council

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