



## UNCONFIRMED EXTRACTS OF MINUTES OF MEETING NO 30

1.00pm, Tuesday 15 November 2016

Room 814 - 815

### Members present

Mr Johnsen, Mr Evans, Mr Henskens, Mr Mehan, Mr Pearce Mr Moselmane and Mr Shoebridge

### Staff present

Jason Ardit, Emma Wood and Mohini Mehta

### 1. Apologies

Ms Gibbons

### 2. Confirmation of minutes

Resolved, on the motion of Mr Moselmane, seconded Mr Henskens: That the minutes of the meeting of 8 November 2016 be confirmed and tabled, and that appropriate minute extracts of this meeting be published on the Committee's webpage.

### 3. Consideration of Bills without comment

- ***Fisheries Management Amendment (Shark Management Trials) Bill 2016***

Resolved, on the motion of Mr Pearce, seconded Mr Henskens: That the Committee adopts the draft report of the *Fisheries Management Amendment (Shark Management Trials) Bill 2016*

- ***Greyhound Racing (Repeal of Ban) Bill 2016***

Resolved, on the motion of Mr Moselmane, seconded Mr Pearce: That the Committee adopts the draft report of the *Greyhound Racing (Repeal of Ban) Bill 2016*

- ***Rock Fishing Safety Bill 2016***

Resolved, on the motion of Mr Moselmane, seconded Mr Pearce: That the Committee adopts the draft report of the *Rock Fishing Safety Bill 2016*

### 4. Consideration of Bills with comment

- ***Aboriginal Land Rights Amendment (Local Aboriginal Land Councils) Bill 2016***

Resolved, on the motion of Mr Pearce, seconded Mr Henskens: That the Committee adopts the draft report of the *Aboriginal Land Rights Amendment (Local Aboriginal Land Councils) Bill 2016*

- ***Biodiversity Conservation Bill 2016; Local Land Services Amendment Bill 2016***

Resolved, on the motion of Mr Shoebridge, seconded Mr Henskens: That the following paragraph be inserted after paragraph 11:

‘The Bill preserves the existing frameworks in relation to holding a landholder responsible for the carrying out of activities or unlawful clearing on their land.’

Resolved, on the motion of Mr Shoebridge, seconded Mr Henskens: That the Committee Comment following paragraph 12 be amended by inserting the following paragraphs after ‘in relation to certain offences:’

‘this presumption applies only when the defendant is carrying out an unlawful activity, for example, development without development consent or clearing not authorised under the Local Land Services Act 2013. Where the defendant is carrying out an activity lawfully, this presumption does not apply.

This provision mirrors the existing offence provisions in ss 118C, 118D, and 175 of the *National Parks and Wildlife Act* and ss 95 and 100 of the *Threatened Species Conservation Act*.

In these cases, a defendant need only prove that they did not have the requisite knowledge on the balance of probabilities. This is a significantly lesser standard of proof than that required by the prosecution, that is, beyond reasonable doubt. The prosecutor must still prove each element of the alleged offence beyond reasonable doubt.’

Resolved, on the motion of Mr Shoebridge, seconded Mr Pearce: That the Committee Comment after paragraph 15 be amended by deleting the following two sentences:

‘The Committee is concerned that if the person has not been charged with an offence, the Bail Act 2013 applies as if the person were accused of an offence. The Committee refers clause 12.21 of the Biodiversity Conservation Bill 2016 to Parliament to consider whether it unduly impacts on the right against arbitrary detention.’

Resolved, on the motion of Mr Shoebridge, seconded Mr Henskens: That the Committee Comment after paragraph 21 be amended by including the following paragraph at the end:

‘The Committee notes that while a person is not excused from a requirement to answer questions or furnish information on the grounds of self-incrimination, when this is required in respect of a native vegetation offence under Part 5A of the Local Land Services Act, this information cannot be used against the person in criminal proceedings. There is no requirement for a person to make an objection; this is an automatic protection.

Resolved, on the motion of Mr Shoebridge, seconded Mr Henskens: That the following paragraphs be inserted after paragraph 27:

‘The Committee notes that the Court has an overarching discretion about whether to make such orders. The Court would exercise this discretion such that it would not make orders which are harsh or unreasonable in the circumstances. In addition, a prosecutor has a general legal duty to act fairly; this would include not seeking inappropriate orders.

Finally, less serious offences are likely to be dealt with by the Local Court. The Local Court is more restricted in the types of orders it can make.’

Resolved, on the motion of Mr Shoebridge, seconded Mr Henskens: That the following paragraph be inserted after paragraph 31:

‘The Committee notes that this is not a general provision and applies in very specific circumstances where activities will impact upon marine mammals. Additionally, these offences will not apply to rural landholders.’

Resolved, on the motion of Mr Evans, seconded Mr Henskens: That the Committee adopts the draft report of the *Biodiversity Conservation Bill 2016; Local Land Services Amendment Bill 2016*

- ***Human Tissue Amendment (Trafficking in Human Organs) Bill 2016***

Resolved, on the motion of Mr Pearce, seconded Mr Henskens: That the Committee adopts the draft report of the *Human Tissue Amendment (Trafficking in Human Organs) Bill 2016*

- ***Retail Leases Amendment (Review) Bill 2016***

Resolved, on the motion of Mr Henskens, seconded Mr Pearce: That the Committee adopts the draft report of the *Retail Leases Amendment (Review) Bill 2016*

## **5. Consideration of Regulations with comment**

- ***Marine Safety Amendment Regulation 2016***

Resolved, on the motion of Mr Evans, seconded Mr Pearce: That the Committee adopts the draft report of the *Marine Safety Amendment Regulation 2016*

## **6. Legislation Review Digest**

Resolved, on the motion of Mr Evans, seconded Mr Pearce: That the Committee adopt the Legislation Review Digest No 29 and that it be signed by the Chair and presented to the House.

## **7. Regulations without papers**

Resolved, on the motion of Mr Pearce, seconded Mr Evans: That the Committee adopt the Regulations without papers.

The meeting adjourned at 1.11pm until a date and time to be determined.

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Chair

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Committee Manager