

PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

ANNOUNCEMENTS, TABLING AND COMMITTEE REPORTS

WEDNESDAY, 5 DECEMBER 2018

TABLING

The Speaker:

1. INTRODUCTION

A delegation from the Western Cape Provincial Parliament consisting of Members and staff visited Australia from 7 October to 20 October 2018 on a study visit. The main purpose of the visit was to consider best practice in respect of parliamentary processes and procedures and to interact with relevant officials on internal processes and policies relating to security, human resource and finance and related matters.

The WCPP has a long standing relationship with Western Australia and New South Wales through the participation at various conferences and interaction at different levels in the past. Queensland was included in the programme as the only unicameral legislature in Australia with similarities in terms of size and procedures to that of the WCPP.

The delegation consisted of:

MEMBERS

- Hon Sharna Fernandez (Speaker and leader of the delegation)
- Hon Khaya Magaxa (Leader of the Official Opposition)
- Hon Denis Joseph
- Hon Pat Lekker

OFFICIALS

- Sunelle Fouché (Manager: HR)
- Dawood Jawoodien (Manager: Finance)

- Achmat Patience (International Relations, Protocol and New Media Officer)
- Jannie Uys (Parliamentary adviser: Office of the Speaker)

Overall, it was a very intensive programme covering many different areas of parliamentary work and activities of the three states that we visited and being able to observe ‘mature’ parliamentary democratic systems at work. It was a revelation to see how similar our parliamentary rules, practices and systems are and that we were also in a position to convey to our hosts some of our own innovative systems and customs developed over a reasonably short time since 1994.

2. GENERAL OBSERVATIONS

(a) Composition of the delegation

As stated above, the delegation consisted of four Members (including the Speaker) and four staff (including a staff member responsible for logistical arrangements).

The interaction and camaraderie amongst the members of the delegation were exceptional and everybody played his/her part in making the trip successful. However, consideration should be given in future to split the Members and staff simply because of different areas of interests and expectations of such a trip.

(b) Hosting of delegations from abroad

The level of preparation the Australians have gone to welcoming and hosting us over a period of 10 days was simply exceptional. The Speakers, Members and senior staff went to great lengths not only to make us feel welcome, but also to prepare meticulously for each engagement and they displayed a willingness to share their experiences (good and bad) in a most sincere way.

We should learn from this experience in the planning and hosting of delegations at WCPP and get our senior staff (and Members when required) to participate in whatever programmes are designed.

(c) Parliamentary precincts

All three parliaments we visited have their own buildings with properly demarcated precincts. Apart from the obvious advantages of having their own space for parliamentary activities the citizens can better identify with a parliamentary building separate from the executive arm of government where their representatives can discharge (and be seen to discharge) their constitutional duties.

(d) Knowledge of parliamentary practice and procedure by staff across disciplines

In our interaction with staff members, it was apparent that staff across functional areas of the different institutions had a thorough knowledge of the constitutional functions of the parliament and a basic understanding of the intricacies of parliamentary procedure through policies of staff transfers. This helps tremendously with the mobility of staff in terms of promotion to other positions in the institution.

3. OBSERVATIONS ON SPECIFIC AREAS OF WORK

(a) SPEAKER

The Office of the Speaker is an essential element in the parliamentary system as we know it. We met with the Speakers in all three jurisdictions and had the opportunity to observe them performing their functions in the different Houses during plenary sessions.

We witnessed very robust sessions (especially during question time in the different Houses) but in all sessions observed, there was a healthy respect for the office of the Speaker and for the rules and procedures of the House. All Speakers acted with both authority and impartiality and the authority of the Speakers was respected and rarely challenged.

Speakers have to regulate debate and enforce observance of the rules which govern the conduct in the House. To assist with the interpretation of procedures and practices of the House, they are able to issue guidelines in relation to matters not provided for in the Rules.

The Speaker's decisions are subject to the will of the House and can only be challenged by way of a substantive motion. Any inference from the floor of the House that the Speaker has acted inadequately or improperly, however indirect or ambiguous, is out of order.

The independency and impartiality of the Speaker are reflected by the fact that the Speaker is not bound by any order of cabinet or the executive council.

Speakers have been criticised for being subject to the will of his/her political party but the principle should remain '*control of the House in an impartial manner*'.

The Speakers are required to give rulings, interpret the Standing Orders and practice of the House, but is not required to interpret the Constitution or other acts. Speakers are also not required to adjudicate points of law, technical interpretations of legislation, or to judge the correctness or otherwise of statements made in the House by the Members.

In terms of our Constitution, the Speaker must exercise a casting vote in the event of an equality of votes. In the Australian jurisdictions, the Speaker will traditionally use the casting vote to avoid making the decision before the House final. In other words, keep the question open and not decide for the House on important matters.

Reference could be made to the principles set out in *Erskine May* in this regard. *May* asserts that '*in the performance of this duty to give a casting vote, the Speaker is at liberty to vote like any other member, according to his/her conscience, without assigning a reason, but in order to avoid any imputation upon his/her impartiality, it is usual for him/her, when practicable, to vote in such a manner as not to make the decision of the House final*'.

When the Speaker takes part in debates on legislation or general motions, he/she does so in his/her capacity as a private Member and not as the Presiding Officer.

Apart from presiding duties, the Speakers also have extensive administrative functions for the overall direction of the parliament and its staff.

It is interesting to note that in New South Wales, the Speaker, by convention, remains in office and exercises the powers vested in the office up until the election of a new Speaker on the opening day of the first session of a new parliament. This applies even if the occupant of the office of the Speaker is not returned at the general election.

Legislation was enacted in 1997 providing for a statutory definition of the precincts of the New South Wales Parliament and vests control of the precincts in the Speaker and the President of the Legislative Council (Upper House).

(b) Code of Ethical Standards

The Code of Ethical Standards in Queensland was amended in June 2018 seeking to simplify the material presented in the previous code by focusing on fundamental principles of ethical behaviour applying to Members of Parliament.

A Guide to the Code provides more detailed guidance to Members on the application of the Code and the rules relating to their conduct including examples of determinations made by the Ethics committee and its predecessors.

(c) Administration

The administrative structures of the Parliaments visited were very closely aligned to the proposals made to the WCPP from the functional enhancement project. There is a dedicated focus for support for the House(s) in the various Parliaments with a separate services department that renders all organisational support service. That is generally called the Department of Parliamentary Service and consolidates the support services to the organisation as a whole.

The Parliamentary Services Department generally includes Technology Services, Human Resources, Finance, Facilities, Catering, Public Engagement, Information Services, Security, Parking, Maintenance and Parliamentary Reporting. The *raison d'être* of the DPS in all three parliaments is very strongly emphasised as support and enablement and it was found that it is highly value driven. Recognition, as opposed to the financial reward we provide, is also based on the performance of employees in terms of the identified values.

In terms of the administration for the House(s), the Parliaments have a body of multi-skilled procedural experts that provide support for all areas of proceedings, including sittings, committee meetings, public hearings and oversight. The Parliaments are more sitting driven than committee driven and employees have to be able to support all areas effectively.

What was impressive at all three Parliaments is the level of shared knowledge and collaboration. Employees in DPS are very aware of the role, work and responsibilities of their colleagues in support of the House(s), thus giving them a much better understanding of the impact of their work on the institution. Similarly the employees supporting the House(s) understand the processes and requirements of the DPS.

(d) Public Education

One of the Queensland Parliament's corporate goals is, *"To promote the institution of Parliament and raise community awareness and understanding of its important role and functions."*

To support this goal, the Queensland Parliament coordinates parliamentary education activities and also develops initiatives to support the Parliament and its committees to engage with the community. Specific parliamentary education activities and services provided are:

- Seminars, workshops, conferences, professional development and youth parliaments for educators, secondary school students, university students, public servants, Members and their staff, and other client groups (both community service and fee paying);
- Educational outreach programs for regional Queenslanders;
- Educational and information resources for use in educational institutions and by the wider community;
- The Queensland Parliament Research Internship - an annual program where university students undertake a nominated research project under the supervision of a Member of Parliament or senior officer of the Parliamentary Service; and
- Ongoing evaluation, in partnership with Education Queensland, of current educational programs (including school tours) to ensure that they are appropriate for the target audience; based on relevant school curricula; and consistent with current best practice in teaching.

(e) Committees

A strong and active committee system is an asset in a functional parliamentary democracy and provides greater accountability by making the policy and administrative functions of government more accountable.

The following six major benefits of committees have been identified:

- Committees provide greater opportunity to scrutinise the actions of the Executive;
- Committees permit the parliament to conduct detailed investigations of topics parliament as a whole would otherwise never be able to consider;
- Committees provide access to members of the public to express their opinion in a direct manner;
- Committees can access expert advice which would not normally be available to private members;
- Committees provide an opportunity to utilise and develop skills of private members; and
- Committees promote bipartisan decision making.

In the Queensland jurisdiction, most committees are statutory committees established by an act of parliament whereas others derive their powers from the House by delegation.

Committees generally may inquire and report on matters:

- Referred to it by the House;
- Within its area of responsibility under the relevant act;
- It terms of reference.

Since 2011, committees play a major role in the legislative process, similar to the procedure prevailing in the WCPP.

The Parliament of Queensland Act 2001 provides that the responsible Minister must table a response to a committee report within a certified time period. The response must include

reasons if recommendations are not to be adopted and if recommendations are to be adopted, the way and timeframe it will be carried out.

(d) Finance

Various topics were discussed during sessions with the Finance Managers/representatives of the 3 Parliaments and it quickly became very apparent that the processes and methods utilized by WA Parliament were distinctly different from the way WCPP operates, these included things like:

- Some Parliaments not having an ERP system (like WA who uses manual systems for reporting systems; or the utilisation of smaller ERP packages like Microsoft Dynamics by Qld; NSW uses SAP which was identified as too big a system for their purposes, and they are exploring the implementation of a more appropriate system;
- The Financial year end is 30 June;
- Accounting standards are based on Australian or International reporting framework (IFRS), which is similar or on which GRAP is based in SA
- Members' Salaries, Secretarial and all other allowances are determined by an independent Salary and Allowance tribunal(SAT);
- NSW pay Political Party staff themselves and not via Secretarial and Constituency allowances;
- There are no monthly IYM's submitted, but quarterly reports are issued to their Treasury;
- The 3 Parliaments have not or do not experience any unauthorised, irregular or Fruitless and Wasteful expenditure, hence controls around this is not as stringent
- Tender processes only occur for large procurement projects(e.g. WA > \$250,000)
- The Members entitlement (i.e. salaries, allowances) are housed and done within finance in 2 of the 3 Parliaments;
- All procurement is done by each section head (i.e. not via a SCM or procurement unit);
- Capital procurement is "project based" and housed within their respective units where they are managed;
- NSW do/will not retain any underspending, any underspending is paid back to Treasury, they do however normally spend their full budget.
- Catering is a unit on its own with its own budget and manager, Queensland Parliament also generates their own sources of revenue as well by catering for other events and this supplements the catering budget by > \$150,000;
- Heritage assets are valued and reported on in terms of their own Heritage asset Act;

(e) Human Resources

Number of employees:

Western Australia	200
New South Wales	337
Queensland	200 (recess) 400 (session)

Performance Management: Performance Management is referred to as Professional Development Reviews and does not lead to a reward. Recognition can however be given to an Employee of the Year, or a significant contribution.

ERP Systems:

Western Australia	No integrated system yet.
New South Wales	SAP
Queensland	Aurion

Employee Wellness:

- Mental Health Leave Days are granted to employees;
- Employees are granted time-off to participate in sport or health activities; and
- Flexible working hours – some employees work at satellite offices closer to their homes and only come to office when necessary.

Recruitment and Selection:

Processes followed very similar to WCPP, with a formal internal interview and an external assessment. For senior positions they, however, also conduct scenario based interviews. Scenario based interviews are aimed at assessing future behaviour by analysing past behaviour. It is also aimed at observing a candidate processing a problem statement and determining a solution.

General observation regarding human resources is that employees operate very well cross-functionally. A lot of emphasis is placed on co-operation and with access to their own buildings, they have managed to stimulate co-operation through co-location. When people are accessible to others, the burden of working together is much eliminated

(f) Members' support

The salaries and allowances of Members are determined by the Independent Tribunal on salaries and allowances of Members. The Tribunals are independent in each state, resulting in Members' salaries and allowances differing from state to state. It is interesting to note that the NSW tribunal included a skills development allowance of A\$1,500.00 in the 2018 determination.

Members do not receive pension or medical aid contributions from the Parliaments. Australia implemented a compulsory system of superannuation whereby all employers have to set aside a certain amount from its budget for each employee as a retirement fund. This is also applicable to Members.

In terms of allowances, the basic travel and accommodation allowances are paid to Members to travel from their electorate offices to the Parliament.

Members do not become Members based on proportional representation but is either elected from a particular electorate (Assembly) or from a specific region (Council). Members are provided with electorate offices by Parliament. This includes the furniture, maintenance and office employees for the Members.

(g) Assurance

The delegation had briefings and information sessions with several entities, commissions that play a watchdog role in the various states. These organisations can be compared to our Chapter 9 institutions. The very significant difference is that these bodies report to Parliament and the incumbents deem themselves to be servants of Parliament.

This direct relationship with Parliament has the following effects:

- Elevation of status/role of Parliament in oversight;
- Elimination of duplication of oversight; and
- Empowering the Parliament to take enforceable decisions (teeth).

All of these are appointed by the governor for a specific term of office, which in some instances are renewable and in others not. The names and numbers of such entities, commissions varied from state to state.

They do include the following:

- Auditor-General
- Ombudsman
- Information Commissioner
- Crime and Corruption Commissioner
- Public Sector Commissioner

Auditor General Briefings:

What was clear from the briefings was that:

- The AG is an independent officer of Parliament;
- The AG has a long term contract (e.g 8 year in NSW and 10 year renewable contract in WA);
- Management report (MR) is only for management purposes;
- Materiality calculation is generally not shared with the Parliament/the Client
- The AG do not audit Performance related payments (e.g. Transfer payments, grants etc.);
- They utilize a balance/combination of tests of control and substantive testing;
- Risk based audit approach is followed;
- AG performs an interim and Final audit which lasts no longer than 2 (TWO) weeks each;
- The regularity audit total cost for this audit is \$56,000 for NSW Parliament;
- The AG had no “power” to enforce any findings upon the Parliament;
- Audit is based on the Public finance and Audit Act.

(h) Information Technology

One common theme that carries through the entire report is the fact that the Parliaments that we visited have their own buildings. This resulted in the Technology developments and projects being specifically tailor made for the needs of the Parliaments. Over many years systems have been designed and built according to the special requirements of the Parliaments, including audio visual, security and other systems.

There is a big emphasis on cyber security and all the Parliaments have recently upgraded to prevent cyber-attacks, as well as regularly testing and reviewing the effectiveness of the systems that have been put in place.

In terms of transactional systems, the Parliaments use:

WA: No integrated system but bespoke separate systems;

NWS: SAP

QLD: Aurion

(i) Security

The first observation at the Parliaments, more so WA and QLD than NSW, was that it is open and accessible to the public. There is no immediate barricade or barrier when approaching the Parliaments. Security happens once you are already inside the Parliament buildings, which has spacious reception areas, which creates a sense of freedom.

Despite the appearances though, security cameras monitor the outside and the entrance of the Parliaments. Any possible threat is detected on the so-called outer zone and the necessary preventative measures will come into effect. At WA the Parliamentary grounds outside the building is manned by two public safety officers. They are not technically members of the police service but render a public safety role.

Security at the Parliaments are all internal and the security officers working inside resorts under the Department of Parliamentary Service. The Parliaments have internal training programmes for security officers. In QLD not all security employees are permanently appointed but additional security employees are insourced during session.

The CEO of DPS has the powers of arrest on the Parliamentary premises.

4. GENERAL RECOMMENDATIONS

(a) Parliamentary Handbook

Consideration should be given to publish a definitive work on parliamentary practice and to record the Western Cape's parliamentary law and practices since 1994. The publication should be updated on a regular basis.

(b) Standing Rules

As far as the Standing Rules are concerned, the subcommittee on the Review of the Rules could consider the following matters which in my view would enhance the execution of the core functions of the WCPP

- Process for enhancing parliamentary control over subordinate legislation;
- Examples of contempt of parliament in Standing Rules without limiting the power of the House in this regard;
- Consideration of committee reports and responses by relevant Minister to be provided within a specified timeframe;
- Sessional orders as a means to deal with procedure matters valid for a session;
- Revisiting the relevance of Speaker's debates in the current dispensation; and
- Footnotes to be inserted in the Standing Rules bundle giving context by way of precedent and practice to Rules where applicable and appropriate.

(c) Public Education and Outreach

Consideration should be given to a comprehensive overhaul of public education programmes and education material to ensure that our constitutional obligations in that regard are met. Awareness and a comprehensive understanding of how parliament operates are key areas that should be form the basis of outreach activities.

(d) The Speaker further recommends that a proper protocol and etiquette programme be included in the induction programme for the 6th Parliamentary term.

(e) That for every international trip, the Political Party briefs their member of choice on their purpose of participation.

COMMITTEE REPORT**REPORT OF THE PETITIONS COMMITTEE ON THE RIEMVASMAAK INFORMAL SETTLEMENT PETITION**

The Petitions Committee, having considered a petition received from the Riemvasmaak Informal Settlement in Ashton, reports as follows:

1. Introduction

In September 2017 a petition from Riemvasmaak Informal Settlement in Ashton was referred to the Committee for its consideration.

The salient elements of the petition are as follows:

- (i) The community of the Riemvasmaak Informal Settlement claims to be living without basic services for the past seven years.
- (ii) A total of 131 households are without drinking water, electricity, flushing toilets and proper housing.
- (iii) Several letters were written to the Mayor of the Langeberg Municipality and the community of Riemvasmaak is aggrieved that its concerns were not taken seriously by the local-government structures.
- (iv) Mr Stanley Papa and Mr Damon Carstens claim their plots were taken from them by the Langeberg Municipality and they wish to have their respective properties returned to them.

The Committee resolved to engage with the Langeberg Municipality and the Department of Human Settlements to provide clarity as to whether basic services could be provided to them and whether the Riemvasmaak Informal Settlement could be included in discussions of the Integrated Development Plan (IDP).

This report discusses the Committee's recommendations which were agreed to during the engagement sessions with stakeholders regarding this petition.

2. Overview

On 13 April 2018, Mr M Dirkse, Acting Manager of the Public Education and Outreach Section, provided an overview of the petition submitted by the Riemvasmaak Informal

Settlement in Ashton. During this overview session the Committee needed to establish and obtain feedback from the Department of Human Settlements and the Langeberg Municipality. The Committee further requested clarity whether there was a plan to provide basic services to the community of Riemvasmaak and whether Riemvasmaak was considered for inclusion in the Integrated Development Plan (IDP) of the Langeberg Municipality.

A letter dated 8 May 2018 was received from the Langeberg Municipality indicating that at the time that the first petition was submitted on 15 August 2017 to the Executive Mayor, the Langeberg Municipality had already established an Ad-hoc Committee to consider the challenges the Municipality was facing with regard to informal settlements. The Municipality further indicated that Riemvasmaak was an informal settlement that was situated on land that was not suitable for housing development and which would make the provision of services costly for the Municipality.

The Council in its feedback letter indicated that provision had been made in its 2018/19 budget to provide some basic services namely:

- (i) Prepaid water stand pipes in accordance with the minimum standards as prescribed in the national norms and standards;
- (ii) Refuse removal;
- (iii) Sanitation through chemical sanitation, as these areas are temporary settlements which would be moved as soon as suitable land was acquired; and the Council added that they were negotiating with the Department of Human Settlements in this regard; and
- (iv) Electricity, although is a costly investment it was estimated that it would cost approximately R12 000 per unit, which was not affordable to the municipality at that stage.

Following this letter, the Committee requested clarity about the timeline to provide these basic services and for how long these services would be provided.

Subsequently, the Committee resolved to undertake an oversight visit to the Langeberg Municipality and the Riemvasmaak Informal Settlement on 8 June 2018. During the meeting with the Municipal Manager, Mr SA Mokweni, and the Mayor, Mr JM Jansen, all factors were discussed, including the short-term solutions and long-term solutions for the informal settlements in Ashton. Following that meeting, the Committee resolved that Langeberg Municipality must provide clarity to the pro-active steps in respect of providing basic services to the community of Riemvasmaak Informal Settlement. The Committee further requested that time frames for implementation of the short-term services must be communicated. The Committee deemed it necessary to engage with the petitioners in order to provide them with feedback about its meeting with the Municipality.

Furthermore, the Committee engaged with the Langeberg Municipality, the Department of Human Settlements and the Department of Local Government and requested that:

- (i) The Langeberg Municipality seek the necessary assistance and investigate every possible angle in providing basic services as soon as possible to the residents of the Riemvasmaak Informal Settlement.
- (ii) The Langeberg Municipality investigate the possibility of utilising its disaster funds in order to speed up the process of providing basic services in the area.
- (iii) The Minister of Local Government and the Minister of Human Settlements seek assistance in providing basic services to the residents of the Riemvasmaak Informal Settlement.

- (v) The Riemvasmaak Informal Settlement be included in the 60 informal settlements earmarked for upgrade as part of the Provincial Informal Settlements Strategic Framework of the Department of Human Settlements.

During the meeting of 28 September 2018, the Committee discussed the email from the Langeberg Municipality dated 5 September 2018. The email outlined a way forward regarding this petition. The Municipality informed the Committee that the area is cleaned regularly since June 2018. The Municipality has gone out on tender for the installation of prepaid water stand pipes. The stand pipes will be installed in all the informal settlements in the Langeberg area to ensure that these areas have access to basic services. The Municipality has engaged the affected communities to inform them about the services and the costs associated with the provision of these service. The Municipality also informed the Committee that the tender for the chemical toilets has also been advertised and a compulsory briefing took place on 24 August 2018 and the tender closed on 17 September 2018. These chemical toilets would have to be placed as close as possible to the shacks for easy access, however, in most cases the informal settlements will have to be arranged in an orderly manner so that the truck, which would service the toilets, could actually drive through the area. The Municipality highlighted that they were not in a position to carry all the costs associated with the provision of basic services. For instance, the cost of providing electricity is estimated at R12 000 per unit. Given the number of shacks, it would be very costly to provide electricity to all of them. The Langeberg Council resolved that the Minister of Human Settlement be approached for financial assistance to electrify these areas.

In conclusion, the Committee resolved to conclude this petition, but, on the substance of the matters raised in this petition, it was deemed necessary to make further recommendations.

3. Recommendation

The Committee RECOMMENDS that:

- 3.1. This petition be referred to the Standing Committee on Local Government as the matter falls within the competence of that Committee; and this recommendation is made in terms of section 5(3)(b) of the Western Cape Petitions Act (Act 3 of 2006).
- 3.2. When the Standing Committee on Local Government discusses the Riemvasmaak Informal Settlement petition, an invitation be extended to the Petitions Committee.