

# LEGISLATIVE ASSEMBLY

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## VOTES AND PROCEEDINGS

No. 119

SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

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THURSDAY, 8 APRIL 2004

**1. Meeting of Assembly**

The Assembly met at 9.00 a.m. pursuant to adjournment.

The Speaker took the Chair.

Prayers were read.

**2. Message from the Governor**

Message No. 11 from His Excellency the Governor was reported assenting to the Ocean Gardens (Inc.) Bill 2004, Act No. 3 of 2004.

**3. Speaker's Statement - Economics and Industry Standing Committee**

The Speaker advised the Assembly that he had received a letter dated 7 April 2004 from the Chairman of the Economics and Industry Standing Committee advising that, under Standing Order No. 287(4), the Committee had determined for itself terms of reference in relation to an inquiry into energy efficiency and renewable energy in Western Australia.

The letter read as follows -

“ Dear Mr Speaker

As reported in the Committee's 2002/2003 Annual Report, my Committee has been actively developing its knowledge and understanding of matters related to energy efficiency and renewable energy.

This work has continued, and recently the Committee has received briefings from the Sustainable Energy Development Office and the Electricity Reform Implementation Unit of the W.A. Office of Energy, as well as from Western Power.

My Committee believes an inquiry will make a valuable and timely contribution to encourage measures for energy efficiency and renewable energy in Western Australia.

The Committee resolved at its meeting on 7 April 2004 to conduct an inquiry and adopted the following terms of reference -

The Economics and Industry Standing Committee review and make recommendations on measures available to Western Australia -

- (a) which encourage efficiencies in electricity production and consumption;
- (b) which encourage use of renewable energy; and
- (c) any other relevant matters.

The Committee will report to the Assembly on this matter by 30 September 2004. ”.

In accordance with the same Standing Order, the Speaker arranged for the Committee’s terms of reference to be placed on the notice boards of the Assembly.

#### **4. Petitions**

Southern Rail Link - Mr D.A. Templeman presented a petition from 425 persons requesting that the construction of the Southern Rail Link remain a priority to ensure that the services commence by December 2006 and that the Peel Deviation become a priority after the rail link (P. 339).

Health Services in Warren Blackwood - Mr P.D. Omodei presented a petition from 22 persons requesting that health care services be restored to their previous level in the Warren Blackwood district (P. 340).

#### **5. Paper**

The following paper was presented and ordered to lie upon the Table of the House -  
Painters’ Registration Board - Annual Report 2003 (2252).

#### **6. Notices of Motion**

#### **7. Brief Ministerial Statements**

The following brief Ministerial Statements were made by -

The Deputy Premier on the progress of negotiations between the Government and the Kimberley Land Council on the Bardi Jawi native title determination application.

The Minister for Planning and Infrastructure on compulsory competency training for recreational boaters.

The Minister for Sport and Recreation on the memorandum of understanding on sports co-operation between the governments of Western Australia and the Republic of India.

#### **8. Grievances**

The Speaker called for grievances which were then made.

#### **9. Occupational Safety and Health Legislation Amendment and Repeal Bill 2004**

The Minister for Consumer and Employment Protection, pursuant to notice, moved,

That a Bill for “An Act to amend —

- the *Occupational Safety and Health Act 1984*;
- the *Industrial Relations Act 1979*; and
- the *Mines Safety and Inspection Act 1994*,

and to repeal the *Shearers’ Accommodation Act 1912*.” be introduced and read a first time.

Question put and passed.

The Minister for Consumer and Employment Protection presented an explanatory memorandum and Bill read a first time.

The Minister for Consumer and Employment Protection moved, That the Bill be now read a second time.

Mr A.D. Marshall moved, That the debate be adjourned.

Question put and passed.

#### **10. Criminal Law Amendment (Criminal Property) Bill 2004**

The Attorney General, pursuant to notice, moved,

That a Bill for “An Act to amend —

- *The Criminal Code*; and
- the *Sentencing Act 1995*.” be introduced and read a first time.

Question put and passed.

The Attorney General presented an explanatory memorandum and Bill read a first time.

The Attorney General moved, That the Bill be now read a second time.

Mr A.D. Marshall moved, That the debate be adjourned.

Question put and passed.

#### **11. Health Legislation Amendment Bill 2004**

The Minister for Health, pursuant to notice, moved,

That a Bill for “An Act to amend the —

- *Health Act 1911*;
- *Health Services (Quality Improvement) Act 1994*;
- *Hospitals and Health Services Act 1927*; and
- *Queen Elizabeth II Medical Centre Act 1966*,

to make provision in relation to the management of certain hospitals under the *Queen Elizabeth II Medical Centre Act 1966*, and for related purposes.” be introduced and read a first time.

Question put and passed.

The Minister for Health presented an explanatory memorandum and Bill read a first time.

The Minister for Health moved, That the Bill be now read a second time.

Mr A.D. Marshall moved, That the debate be adjourned.

Question put and passed.

#### **12. Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2004**

The Order of the Day for the resumption of the debate upon the second reading of the Bill was read.

Debate resumed.

Debate interrupted by the Chair and adjourned until a later stage of the sitting.

#### **13. Members’ Statements**

The Acting Speaker called for members’ statements which were then made.

#### 14. Questions

Questions without notice were taken.

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#### *Papers*

The following papers were presented and ordered to lie upon the Table of the House -

By the Minister for Energy -

Western Power - Incidence of Pole Top Fires from 1994/1995 to 2003/2004 (to 31 March 2004) (2253).

Western Power - Graph of the Incidence of Pole Top Fires from 1994/1995 to 2003/2004 (to 31 March 2004) (2254).

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Questions on notice Nos 2772 to 2796 were asked.

Questions on notice Nos 2412, 2421, 2477, 2496, 2508, 2512, 2529, 2533, 2647, 2665, 2688, 2689, 2691, 2701, 2730, 2732, 2751, 2752 and 2757 were answered.

#### 15. Variation to the Order of Business

Ordered, That consideration of Government Business Order of the Day No. 1 be resumed.

#### 16. Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2004

The Order of the Day for the resumption of the debate upon the second reading of the Bill was read.

Debate resumed.

Question put and passed.

Bill read a second time.

#### *CONSIDERATION IN DETAIL*

Clauses 1 to 11 agreed to.

Clause 12.

The Minister for Police and Emergency Services moved,

Page 14, after line 32 — To insert the following —

“

- (2) Subsection (1) does not operate to prevent proceeds from the sale or disposal of a confiscated vehicle from being paid in accordance with section 80J(7).

”.

Amendment put and passed.

The Minister for Police and Emergency Services moved,

Page 20, after line 32 — To insert the following —

“

- (i) in the case of a confiscated vehicle, in satisfaction of any unpaid amount known to the Commissioner —
- (i) for which the vehicle was nominated in writing as security for the payment of that amount; and

- (ii) that, but for the confiscation of the vehicle, would have been payable to a person other than the person convicted of the offence in respect of which the vehicle was confiscated;

”.

Amendment put and passed.

Clause, as amended, agreed to.

Clauses 13 to 15 agreed to.

Title agreed to.

Consideration in detail concluded.

Ordered, That the third reading of the Bill be made an Order of the Day for the next sitting of the Assembly.

### 17. Electricity Industry Bill 2003

The Order of the Day for the consideration in detail of Legislative Council message No. 125 was read.

The message was as follows -

The Legislative Council acquaints the Legislative Assembly that it has agreed to the *Electricity Industry Bill 2003* subject to the amendments contained in the Schedule annexed; in which amendments the Legislative Council desires the concurrence of the Legislative Assembly.

*Schedule indicating the amendments made by the Legislative Council in the Electricity Industry Bill 2003*

#### No. 1

Clause 3, page 3, after line 19 - To insert -

“

“**relevant corporation**” means Western Power Corporation or a body corporate that is a subsidiary, as defined in section 3 of the *Electricity Corporation Act 1994*, of Western Power Corporation;

”.

#### No. 2

Clause 3, page 4, after line 11 - To insert -

“

“**Western Power Corporation**” means the body corporate that is Western Power Corporation under section 4(1) of the *Electricity Corporation Act 1994*.

”.

#### No. 3.

Clause 8, page 8, line 1 - To insert before “The” -

“

Without limiting the other matters that may be taken into account, matters that are to be taken into account by

”.

#### No. 4

Clause 8, page 8, lines 2 and 3 - To delete “, may take into account one or more of the following matters” and insert instead -

“ are ”.

**No. 5**

Clause 8, page 8, line 18 - To delete the line.

**No. 6**

Clause 9, page 8, line 27 - To insert before “The” -

“ Without limiting the other matters that may be taken into account, ”.

**No. 7**

Clause 9, page 8, line 28 - To delete “may” and insert instead -

“ is to ”.

**No. 8**

Clause 9, page 8, line 29 - To delete “one or more of”.

**No. 9**

Clause 9, page 8, line 29 - To insert after “section 8(5)” -

“  
but as if the area or areas referred to in section 8(5)(e) were the area or areas to  
which the licence in respect of which the power is exercised applies  
”.

**No. 10**

Clause 12, page 10, lines 8 to 10 - To delete “body established by section 4(1) of the *Electricity Corporations Act 2003* or any subsidiary of the body as defined in section 3 of that Act” and insert instead -

“ relevant corporation ”.

**No. 11**

Clause 27, page 16, line 14 - To insert before “For” -

“ Without limiting the other matters that may be taken into account, ”.

**No. 12**

Clause 27, page 16, line 14 - To delete “may” and insert instead -

“ is to ”.

**No. 13**

Clause 27, page 16, line 15 - To delete “one or more of”.

**No. 14**

Clause 27, page 16, line 15 - To insert after “section 8(5)” -

“  
but as if the area or areas referred to in section 8(5)(e) were the area referred to in  
subsection (1)(b)  
”.

**No. 15**

Clause 31, page 18, line 18 - To delete “*Corporations Act 2003*” and insert instead -

“ *Corporation Act 1994* ”.

**No. 16**

Clause 32, page 19, line 11 - To insert after the word “Authority” -  
“ in writing ”.

**No. 17**

Clause 45, page 27, lines 5 to 8 - To delete the lines.

**No. 18**

Clause 46, page 27, lines 14 to 20 - To delete the lines.

**No. 19**

Clause 46, page 28, lines 15 to 21 - To delete the lines.

**No. 20**

Clause 49, page 31, after line 6 - To insert -

“  
(3) The requirement in subsection (1) and (2) only applies if the applicant or proposed transferee intends to supply electricity to customers pursuant to the licence.  
”.

**No. 21**

Clause 50, page 31, after line 16 - To insert -

“  
(2) If when a retail licence or an integrated regional licence was granted or renewed, or the transfer of a retail licence or an integrated regional licence was approved, subsection (1) did not apply because of section 49(3), the licensee may at any subsequent time submit to the Authority a draft of a standard form contract under which the licensee will supply electricity to customers pursuant to the licence if the standard form contract is approved by the Authority.  
”.

**No. 22**

Clause 51, page 31, line 20 - To insert after “49” -

“ or 50(2) ”.

**No. 23**

Clause 55, page 33, lines 23 and 24 - To delete “body established by the *Electricity Corporations Act 2003* section 4(1)(c) or (d)” and insert instead -

“ relevant corporation ”.

**No. 24**

Clause 55, page 33, lines 26 and 27 - To delete “the *Electricity Legislation (Amendments and Transitional Provisions) Act 2003* section 58(3)” and insert instead -

“ subsection (7) ”.

**No. 25**

Clause 55, page 33, line 29 to page 34, line 1 - To delete “the *Electricity Legislation (Amendments and Transitional Provisions) Act 2003* section 58(2)” and insert instead -

“ subsection (6) ”.

**No. 26**

Clause 55, page 34, after line 5 - To insert -

“

“**tariff customer**” of a corporation means a person who, immediately before the commencement day, was supplied with electricity by the corporation (otherwise than under a written contract) in relation to which the person was liable to pay fees and charges prescribed under the *Energy Operators (Powers) Act 1979* section 124.

”.

**No. 27**

Clause 55, page 34, after line 30 - To insert -

“

- (6) A tariff customer of a corporation is to be taken on and from the commencement day to have entered into a contract with the corporation for the supply of electricity.
- (7) The Minister, by order published in the *Gazette*, is to prescribe a form of contract for the purposes of subsection (6), and the contract referred to in subsection (6) is to be taken to be in the form so prescribed.
- (8) An order under subsection (7) —
  - (a) may specify different forms of contract in respect of different classes of tariff consumers; and
  - (b) may be amended, replaced or revoked by the Minister by order published in the *Gazette*.

”.

**No. 28**

Clause 60, page 38, lines 11 to 13 - To delete “body established by the *Electricity Corporations Act 2003* section 4(1)(b) or (d) or any subsidiary of the body as defined in section 3 of that Act” and insert instead -

“ relevant corporation ”.

**No. 29**

Clause 62, page 39, line 19 - To insert before “In” -

“ Without limiting the other matters that may be taken into account, ”.

**No. 30**

Clause 62, page 39, line 21 - To insert after “section 8(5)” -

“

but as if the area or areas referred to in section 8(5)(e) were the area to be affected by the exercise of the powers

”.

**No. 31**

Clause 67, page 42, lines 6 and 7 - To delete the lines.

**No. 32**

Clause 67, page 42, lines 10 and 11 - To delete the lines.



**No. 33**

Clause 71, page 44, line 8 - To delete “—” and insert instead -

“ , Western Power Corporation is the supplier of last resort for the designated area. ”.

**No. 34**

Clause 71, page 44, lines 9 to 16 - To delete the lines.

**No. 35**

Clause 97, page 57, line 23 - To delete “\$2 000” and insert instead -

“ \$5 000 ”.

**No. 36**

Clause 97, page 57, line 24 - To delete “\$8 000” and insert instead -

“ \$20 000 ”.

**No. 37**

Clause 104, page 61, after line 21 - To insert -

“

- (a) prescribing network infrastructure facilities that are to be covered by the Code with effect from the coming into operation of the Code;

”.

**No. 38**

Clause 104, page 61, line 23 - To insert after “whether” -

“ other ”.

**No. 39**

Clause 104, page 61, line 24 - To insert after “or” -

“ whether network infrastructure facilities that are covered by the Code ”.

**No. 40**

Clause 106, page 64, lines 19 and 20 - To delete “*Transmission and Distribution Systems (Access)*” and insert instead -

“ *Corporation* ”.

**No. 41**

Clause 119, page 72, lines 7 to 11 - To delete “that are transferred to the Electricity Networks Corporation or the Regional Power Corporation under the *Electricity Legislation (Amendments and Transitional Provisions) Act 2003 Part 3*” and insert instead -

“ of a relevant corporation ”.

**No. 42**

Clause 120, page 73, lines 3 to 5 - To delete “commencement day as defined in the *Electricity Legislation (Amendments and Transitional Provisions) Act 2003 section 19(1)*” and insert instead -

“ day on which it comes into operation ”.

**No. 43**

Clause 122, page 74, line 29 - To insert after “technologies” —

“

such as those that make use of renewable resources or that reduce overall greenhouse gas emissions

”

**No. 44**

Clause 122, page 75, after line 2 - To insert -

“

(e) to encourage the taking of measures to manage the amount of electricity used and when it is used.

”

**No. 45**

Clause 124, page 76, lines 17 and 18 - To delete the lines.

**No. 46**

Clause 124, page 77, lines 30 and 34 - To delete the lines.

**No. 47**

Clause 124, page 78, lines 9 and 10 - To delete the lines.

**No. 48**

Clause 126, page 80, lines 2 to 8 - To delete the clause.

**No. 49**

Clause 127, page 80, lines 9 to 31 - To delete the clause.

**No. 50**

Clause 128, page 81, lines 1 to 14 - To delete the clause.

**No. 51**

Clause 129, page 81, line 15 to page 82, line 14 - To delete the clause.

**No. 52**

Clause 130, page 82, lines 15 to 24 - To delete the clause.

**No. 53**

Clause 131, page 82, line 25 to page 83, line 33 - To delete the clause.

**No. 54**

Clause 132, page 84, lines 1 to 11 - To delete the clause.

**No. 55**

Clause 133, page 84, lines 12 to 16 - To delete the clause.

**No. 56**

Clause 134, page 84, lines 17 to 19 - To delete the clause.

**No. 57**

Clause 135, page 84, lines 20 to 24 - To delete the clause.

**No. 58**

New clause 124A, page 78, after line 25 - To insert the following new clause -

“

**124A. Appeals**

- (1) Application may be made to the Board for the review by the Board of decisions of a participant referred to in section 121(2)(b) or (c) that are made under the regulations or the market rules and are not of a class specified in the regulations.
- (2) Regulations may —
  - (a) provide for the powers of the Board; and
  - (b) apply provisions of the *Gas Pipelines Access (Western Australia) Act 1998* with or without modifications,in relation to reviews provided for in those regulations.
- (3) Nothing in subsection (1) prevents or affects the review by a court or tribunal, according to law, of decisions of participants made under the regulations or the market rules.

”

**No. 59**

New clause 124B, page 78, after line 124 - To insert the following new clause -

“

**124B. Immunity of certain participants**

- (1) In this section —
  - “**civil monetary penalty**” means liability to pay damages or compensation or any other amount ordered in a civil proceeding, but does not include liability to pay a civil penalty under the regulations;
  - “**market governance participant**” means a participant referred to in section 121(2)(b) or (c);
  - “**officer**” of a body corporate includes a person who is an officer within the meaning of the *Corporations Act 2001* of the Commonwealth section 82A;
  - “**system management participant**” means a market governance participant the functions of which include a function under the regulations or the market rules specified in the regulations as a system management function.
- (2) A market governance participant, or an officer or employee of a market governance participant, does not incur any civil monetary liability for an act or omission done or made in good faith in the performance, or purported performance, of a function under the regulations or the market rules.
- (3) If an act or omission done or made after the expiration of the period of 12 months from the establishment of the initial market rules is negligent —
  - (a) the immunity given by subsection (2) does not apply to that act or omission; but
  - (b) as long as that act or omission is done or made in good faith, the civil monetary penalty for it is not to exceed the prescribed maximum amount.
- (4) Regulations may exempt a specified market governance participant, other than a system management participant, from the operation of subsection (3)(a).

- (5) The regulations may, for the purposes of subsection (3)(b), without limitation —
  - (a) prescribe a maximum amount that is limited in its application to persons, events, circumstances losses or periods to which they are expressed to apply;
  - (b) prescribe maximum amounts that vary in their application according to the persons to whom, or the events, circumstances losses or periods to which, they are expressed to apply; or
  - (c) prescribe a manner in which the maximum amount is to be divided amongst claimants.
- (6) This section does not apply to any liability of an officer of a body corporate to the body corporate.

**No. 60**

New clauses 126 and 127, page 79, after line 4 - To insert the following new clauses -

“

**126. Review of market operation**

- (1) The Authority is to review the operation of the market as soon as practicable after the expiration of 3 years from the commencement of this Part and thereafter as soon as practicable after the expiration of 3 years from a report being laid before each House of Parliament under subsection (5)(a).
- (2) The purpose of the review is to assess the extent to which the objectives set out in section 122(2) have been or are being achieved.
- (3) Not later than 3 years and 6 months after the commencement of this Part, or after the last preceding report was laid before each House of Parliament under subsection (5)(a), as the case may be, the Authority is to give the Minister a written report based on the review.
- (4) If the Authority considers that some or all of the objectives set out in section 122(2) have not been and are not being achieved, the report is to set out recommendations as to how those objectives can be achieved.
- (5) As soon as practicable after receiving the report, the Minister is to —
  - (a) cause the report to be laid before each House of Parliament; and
  - (b) prepare a response to the report and cause the response to be laid before each House of Parliament.
- (6) As soon as practicable after the report is laid before each House of Parliament, the Authority is to post a copy of the report on an internet website maintained by the Authority.

**127. Public consultation**

- (1) In the course of conducting a review under section 126(1), the Authority is to seek public comment on the extent to which the objectives set out in section 122(2) have been or are being achieved (the “**issue**”).
- (2) The Authority is to cause a notice giving a general description of the issue to be —
  - (a) published in a daily newspaper circulating throughout the State; and
  - (b) posted on an internet website maintained by the Authority.

- (3) The notice is to include —
  - (a) a statement that any person may, within a specified period, make written submissions on the issue to the Authority; and
  - (b) the address to which the submissions may be delivered or posted.
- (4) The period specified under subsection (3)(a) is not to end less than 30 days after the day on which the notice is published under subsection (2)(a).
- (5) The Authority is to have regard to any submission made in accordance with the notice.

#### *CONSIDERATION IN DETAIL*

The Minister for Energy moved, That amendment Nos 1 to 60 be agreed to.

Question put and passed.

Consideration in detail concluded and the Legislative Council acquainted accordingly.

#### **18. Variation to the Order of Business**

Ordered, That Government Business Order of the Day No. 4 be next considered.

#### **19. Machinery of Government (Miscellaneous Amendments) Bill 2003**

The Order of the Day for the resumption of the debate upon the second reading of the Bill was read.

Debate resumed.

Question put and passed.

Bill read a second time.

Ordered, That the consideration in detail of the Bill be made an Order of the Day for the next sitting of the Assembly.

#### **20. Suspension of Standing Orders**

The Leader of the House, without notice, moved,

That so much of the Standing Orders be suspended as is necessary to allow the completion of all remaining stages today for the following Bills -

Justices of the Peace Bill 2003

Oaths, Affidavits and Statutory Declarations Bill 2003

Oaths, Affidavits and Statutory Declarations (Consequential Provisions) Bill 2003

Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2004

Debate ensued.

Question put.

The Speaker having counted the House, and an absolute majority present and there being no dissentient voice, the motion was declared by the Speaker to be carried with the concurrence of an absolute majority of the whole number of members of the House.

#### **21. Variation to the Order of Business**

Ordered, That consideration of Government Business Order of the Day No. 1 be resumed.

**22. Road Traffic Amendment (Impounding and Confiscation of Vehicles) Bill 2004**

The Order of the Day for the third reading of the Bill having been read, the Minister for Police and Emergency Services moved, That the Bill be now read a third time.

Debate ensued.

Question put and passed.

Bill read a third time and forwarded to the Legislative Council for concurrence.

**23. Variation to the Order of Business**

Ordered, That Government Business Order of the Day No. 9 be next considered.

**24. Children and Community Development Bill 2003**

The Order of the Day for the third reading of the Bill having been read, the Minister for Community Development, Women's Interests, Seniors and Youth moved, That the Bill be now read a third time.

Debate ensued.

Question put and passed.

Bill read a third time and forwarded to the Legislative Council for concurrence.

**25. Special Adjournment**

The Leader of the House moved,

That the House at its rising adjourn until Tuesday, 4 May 2004 at 2.00 p.m.

Question put and passed.

**26. Adjournment**

The Leader of the House moved, That the House do now adjourn.

Question put and passed.

The Assembly adjourned accordingly, at 4.46 p.m. until Tuesday, 4 May 2004 at 2.00 p.m.

*Members present during any part of the day's proceedings* - All the members except Mr M.J. Birney, Mr L. Graham, Mr B.J. Grylls, Mr M. McGowan and Ms J.A. Radisich.

**PETER J. McHUGH**  
Clerk of the Legislative Assembly

**HON. FRED RIEBELING**  
Speaker of the Legislative Assembly