

WESTERN AUSTRALIA

LEGISLATIVE ASSEMBLY

VOTES AND PROCEEDINGS

No. 52

FIRST SESSION OF THE THIRTY-EIGHTH PARLIAMENT

WEDNESDAY, 23 SEPTEMBER 2009

1. Meeting of Assembly

The Assembly met at 12.00 noon pursuant to adjournment.

The Speaker took the Chair.

Prayers were read.

2. Petition

Increase in fees and charges to householders - Mr C.J. Tallentire presented a petition from 88 persons requesting that the Legislative Assembly voices the case of householders aggrieved by the increases in fees and charges (P. 141).

3. Papers

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

By the Clerk –

Agricultural Practices Board - Annual Report 2008–2009 (1323).

Agricultural Protection Board - Annual Report 2008–2009 (1324).

Agriculture and Food, Department of - Annual Report 2008–2009 (1325).

Animal Resources Authority - Annual Report 2008–2009 (1326).

Australian Crime Commission (Western Australia) Act 2004 - Independent Review, August 2009 (1327).

Disability Services Commission - Annual Report 2008–2009 (1328).

Environment and Conservation, Department of - Annual Report 2008–2009 (1329).

Environmental Protection Authority - Annual Report 2008–2009 (1330).

Gaming and Wagering Commission of Western Australia - Annual Report 2008–2009 (1331).

Gascoyne Development Commission - Annual Report 2008–2009 (1332).

Goldfields Esperance Development Commission - Annual Report 2008–2009 (1333).

Great Southern Development Commission - Annual Report 2008–2009 (1334).
 Health Review, Office of - Annual Report 2008–2009 (1335).
 Keep Australia Beautiful Council - Annual Report 2008–2009 (1336).
 Kimberley Development Commission - Annual Report 2008–2009 (1337).
 LandCorp - Annual Report 2008–2009 (1338).
 Landgate - Annual Report 2008–2009 (1339).
 Liquor Commission of Western Australia - Annual Report 2008–2009 (1340).
 Mid West Development Commission - Annual Report 2008–2009 (1341).
 Midland Redevelopment Act 1999 - Ministerial Approval for the Disposal of Land in Excess of \$1 million, in accordance with section 20(2)(a) of the Act 1999, dated 22 September 2009 (1342).
 Minerals and Energy Research Institute of Western Australia - Annual Report 2008–2009 (1343).
 Peel Development Commission - Annual Report 2008–2009 (1344).
 Pharmaceutical Society of Western Australia - Annual Report 2008–2009 (1345).
 Racing Penalties Appeal Tribunal of Western Australia - Annual Report 2008–2009 (1346).
 Racing, Gaming and Liquor, Department of - Annual Report 2008–2009 (1347).
 South West Development Commission - Annual Report 2008–2009 (1348).
 Sport and Recreation, Department of - Annual Report 2008–2009 (1349).
 Western Australian Health Promotion Foundation (HealthWay) - Annual Report 2008–2009 (1350).
 Western Australian Sports Centre Trust (VenuesWest) - Annual Report 2008–2009 (1351).
 Wheatbelt Development Commission - Annual Report 2008–2009 (1352).
 Zoological Parks Authority - Annual Report 2008–2009 (1353).

4. Brief Ministerial Statements

The following Brief Ministerial Statements were made by –

The Minister for Health on the human pandemic H1N1 2009 influenza vaccination program commencing in Western Australia from 30 September 2009.

The Minister for Education on the names of the 34 schools that will become Independent Public Schools in 2010.

Paper

The following paper was presented and ordered to lie upon the Table of the House –

By the Minister for Education –

Education and Training, Department of – List of the Schools Included in First Intake of Independent Public Schools in 2010 (1354).

The Minister for Planning on the Metropolitan Region Scheme Amendment No. 1162/41, Claremont North East Precinct, which will facilitate the development of a Transit Oriented Development surrounding the Claremont Football Oval.

Papers

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

By the Minister for Planning –

Planning Commission of Western Australia - Metropolitan Region Scheme Amendment 1162/41, Claremont North East Precinct, Map Number 15/75m (1355).

Planning Commission of Western Australia - Metropolitan Region Scheme Amendment 1162/41, Claremont North East Precinct, Report on Submissions (1356).

Planning Commission of Western Australia - Metropolitan Region Scheme Amendment 1162/41, Claremont North East Precinct, Transcript of Hearings (1357).

Planning Commission of Western Australia - Metropolitan Region Scheme Amendment 1162/41, Claremont North East Precinct, Submissions 1–99, Volume 1 of 2 (1358).

Planning Commission of Western Australia - Metropolitan Region Scheme Amendment 1162/41, Claremont North East Precinct, Submissions 100–Late, Volume 2 of 2 (1359).

5. Suspension of Standing Orders

Ms A.J.G. MacTiernan, without notice, moved,

That so much of the Standing Orders be suspended as is necessary to enable the following motion to be debated forthwith under the time limits that apply to a Matter of Public Interest –

That this House notes the Westminster convention that the Speaker when exercising the casting vote should always vote for further discussion and requests the Speaker provide a ruling on whether this two century old convention continues to apply to the Assembly.

Debate ensued.

Question put.

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

6. Exercise of the Speaker's Casting Vote

Ms A.J.G. MacTiernan, pursuant to the foregoing motion, moved,

That this House notes the Westminster convention that the Speaker when exercising the casting vote should always vote for further discussion and requests the Speaker provide a ruling on whether this two century old convention continues to apply to the Assembly.

Debate ensued.

Question put.

The Assembly divided.

Ayes (26)

Ms L.L. Baker
 Ms A.S. Carles
 Mr A.J. Carpenter
 Mr R.H. Cook
 Ms J.M. Freeman
 Mr J.N. Hyde
 Mr W.J. Johnston
 Mr J.C. Kobelke
 Mr F.M. Logan

Ms A.J.G. MacTiernan
 Mr M. McGowan
 Mr M.P. Murray
 Mr A.P. O’Gorman
 Mr P. Papalia
 Mr J.R. Quigley
 Ms M.M. Quirk
 Mr E.S. Ripper
 Mrs M.H. Roberts

Ms R. Saffioti
 Mr T.G. Stephens
 Mr C.J. Tallentire
 Mr A.J. Waddell
 Mr P.B. Watson
 Mr M.P. Whitely
 Mr B.S. Wyatt
 Mr D.A. Templeman (*Teller*)

Noes (29)

Mr P. Abetz
 Mr F.A. Alban
 Mr C.J. Barnett
 Mr I.C. Blayney
 Mr J.J.M. Bowler
 Mr I.M. Britza
 Mr T.R. Buswell
 Mr V.A. Catania
 Dr E. Constable
 Mr M.J. Cowper

Mr J.H.D. Day
 Mr J.M. Francis
 Mr B.J. Grylls
 Dr K.D. Hames
 Mrs L.M. Harvey
 Mr A.P. Jacob
 Dr G.G. Jacobs
 Mr R.F. Johnson
 Mr A. Krsticevic
 Mr W.R. Marmion

Mr P.T. Miles
 Ms A.R. Mitchell
 Dr M.D. Nahan
 Mr C.C. Porter
 Mr D.T. Redman
 Mr A.J. Simpson
 Mr M.W. Sutherland
 Mr T.K. Waldron
 Mr J.E. McGrath (*Teller*)

Question thus negated.

7. Speaker's Statement - Speaker's Casting Vote

The Speaker advised members that he would make a statement at a later day's sitting regarding the exercise of the Speaker's casting vote.

8. Racing and Wagering Legislation Amendment Bill 2009

The Minister for Racing and Gaming, pursuant to notice, moved,

That a bill for “An Act to to amend —

- the *Betting Control Act 1954*; and
 - the *Gaming and Wagering Commission Act 1987*; and
 - the *Racing and Wagering Western Australia Act 2003*,
- and for related purposes.” be introduced and read a first time.

Question put and passed.

The Minister for Racing and Gaming presented an explanatory memorandum and bill read a first time.

The Minister for Racing and Gaming moved, That the bill be now read a second time.

Mr M.P. Murray moved, That the debate be adjourned.

Question put and passed.

9. Racing Bets Levy Bill 2009

The Minister for Racing and Gaming, pursuant to notice, moved,

That a bill for “An Act to impose a levy on betting operators in respect of gross revenue or turnover.” be introduced and read a first time.

Question put and passed.

The Minister for Racing and Gaming presented an explanatory memorandum and bill read a first time.
 The Minister for Racing and Gaming moved, That the bill be now read a second time.
 Mr M.P. Murray moved, That the debate be adjourned.
 Question put and passed.

10. Bookmakers Betting Levy Amendment Bill 2009

The Minister for Racing and Gaming, pursuant to notice, moved,
 That a bill for “An Act to amend the *Bookmakers Betting Levy Act 1954* and for related purposes.” be introduced and read a first time.
 Question put and passed.
 The Minister for Racing and Gaming presented an explanatory memorandum and bill read a first time.
 The Minister for Racing and Gaming moved, That the bill be now read a second time.
 Mr M.P. Murray moved, That the debate be adjourned.
 Question put and passed.

11. Planning and Development Amendment Bill 2009

Mr J.N. Hyde, pursuant to notice, moved,
 That a bill for “An Act to amend the *Planning and Development Act 2005* to increase the penalties for illegal works upon heritage places, and for related purposes.” be introduced and read a first time.
 Question put and passed.
 Mr J.N. Hyde presented an explanatory memorandum and bill read a first time.
 Ordered, That the second reading of the bill be made an Order of the Day for the next sitting of the Assembly.

12. Heritage of Western Australia Amendment Bill 2009

Mr J.N. Hyde, pursuant to notice, moved,
 That a bill for “An Act to amend the *Heritage of Western Australia Act 1990* to increase the penalties for illegal works upon places entered in the Register of Heritage Places, and for related purposes.” be introduced and read a first time.
 Question put and passed.
 Mr J.N. Hyde presented an explanatory memorandum and bill read a first time.
 Ordered, That the second reading of the bill be made an Order of the Day for the next sitting of the Assembly.

13. Joint Standing Committee on the Review of the Racing and Wagering Western Australia Acts – Appointment

The Minister for Racing and Gaming, pursuant to notice, and as amended by leave, moved –
 (1) That, pursuant to section 122 of the Racing and Wagering Western Australia Act 2003, and also taking into consideration the Racing and Wagering Western Australia Tax Act 2003 (“the Acts”), a Joint Standing Committee be appointed by the Legislative Assembly and the Legislative Council.

- (2) The Joint Standing Committee will review the operation and effectiveness of the Acts and is to consider and have regard to –
 - (a) the effectiveness of the operations of Racing and Wagering Western Australia (RWWA);
 - (b) the need for the continuation of the operations of RWWA; and
 - (c) any other matters that appear to the Joint Standing Committee to be relevant to the operation and effectiveness of these Acts.
- (3) The Joint Standing Committee will consist of 4 members appointed by the Legislative Assembly and 2 members appointed by the Legislative Council.
- (4) The Standing Orders of the Legislative Assembly relating to standing and select committees will be followed as far as they can be applied.
- (5) The Committee shall report by 30 June 2010.
- (6) That the Legislative Council be acquainted accordingly and its concurrence sought.

Debate ensued.

Question put and passed and forwarded to the Legislative Council for concurrence.

14. Royalties for Regions Bill 2009

The Order of the Day for the further consideration in detail of the bill was read.

CONSIDERATION IN DETAIL

Clause 5.

Ms A.J.G. MacTiernan moved,

Page 4, after line 9 — To insert:

“

- (2) The sums to be allocated to each of the subsidiary funds nominated in subsection (1), including allocations under paragraph (d), are to be specified in the Budget for that year.

”.

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

15. Questions

Questions without Notice were taken.

Questions on Notice Nos 1618 to 1623 were asked.

Question on Notice No. 1484 was answered.

16. Message from the Governor

Message No. 61 from His Excellency the Lieutenant Governor and deputy of the Governor was reported assenting to the following bills –

Major Events (Aerial Advertising) Bill 2009, Act No. 20 of 2009.

Criminal Code Amendment Bill 2008, Act No. 21 of 2009.

17. Variation to the Order of Business

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

18. Royalties for Regions Bill 2009

The Order of the Day for the further consideration in detail of the bill was read.

CONSIDERATION IN DETAIL

Clause 5.

Ms A.J.G. MacTiernan had moved,

Page 4, after line 9 — To insert:

“

- (2) The sums to be allocated to each of the subsidiary funds nominated in subsection (1), including allocations under paragraph (d), are to be specified in the Budget for that year.

”.

Amendment put.

The Assembly divided.

Ayes (25)

Ms L.L. Baker
Ms A.S. Carles
Mr A.J. Carpenter
Mr R.H. Cook
Mr J.N. Hyde
Mr W.J. Johnston
Mr J.C. Kobelke
Mr F.M. Logan
Ms A.J.G. MacTiernan

Mr M. McGowan
Mr M.P. Murray
Mr A.P. O’Gorman
Mr P. Papalia
Mr J.R. Quigley
Ms M.M. Quirk
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Noes (29)

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Mr P.T. Miles
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Dr M.D. Nahan
Mr C.C. Porter
Mr D.T. Redman
Mr M.W. Sutherland
Mr T.K. Waldron
Dr J.M. Woollard
Mr A.J. Simpson (*Teller*)

Amendment thus negatived.

Clause agreed to.

New Clause.

Mr P.B. Watson moved,

Page 4, after line 13 — To insert:

“

6. Country Local Government Fund

- (1) Each local authority wishing to apply for funding under the Country Local Government Fund must each year set out a strategic plan for the next four years for the provision of infrastructure and services by that authority. The format of the strategic plan will be established by regulation.
- (2) The strategic funds can only be allocated under the Country Local Government Fund to projects identified as part of a local authority's strategic plan.
- (3) Priority will be given to funding where a local authority can demonstrate that it has worked with other local governments within their region to develop a coordinated plan for the provision of infrastructure or services for which funding is sought.
- (4) Any funding formula used for the fund must not discourage local authorities from engaging in a rationalization of boundaries or services.
- (5) The Minister for Local Government is to be provided with the opportunity to comment on all proposed allocations under this fund before they are made.

”.

Amendment put and negatived.

Clauses 6 to 32 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.

19. Speaker's Ruling - Tabling of Documents

The Speaker advised members that he had reviewed a document quoted from by the Minister for Health during question time in relation to Question without Notice No. 764, and ruled that the document did not need to be tabled. The Speaker also advised members that the Minister for Health would be willing to share the relevant information with the Member for Kwinana.

20. Variation to the Order of Business

Ordered, That Private Members' Business Notice of Motion No. 16 and Private Members' Business Order of the Day No. 1 be next considered.

21. 'The Shops' in Ellenbrook

Mr M. McGowan, pursuant to notice, moved,

That the House condemn the Premier and the member for Swan Hills for breaking their election promises to remove the restrictive covenant over "The Shops" at Ellenbrook.

Debate ensued.

Question put.

The Assembly divided.

Ayes (26)

Ms L.L. Baker
Ms A.S. Carles
Mr A.J. Carpenter
Mr R.H. Cook
Ms J.M. Freeman
Mr J.N. Hyde
Mr W.J. Johnston
Mr J.C. Kobelke
Mr F.M. Logan

Ms A.J.G. MacTiernan
Mr M. McGowan
Mr M.P. Murray
Mr A.P. O'Gorman
Mr P. Papalia
Mr J.R. Quigley
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Mr R.F. Johnson
Mr A. Krsticevic
Mr W.R. Marmion
Mr P.T. Miles

Ms A.R. Mitchell
Dr M.D. Nahan
Mr C.C. Porter
Mr D.T. Redman
Mr A.J. Simpson
Mr M.W. Sutherland
Mr T.K. Waldron
Dr J.M. Woollard
Mr J.E. McGrath (*Teller*)

Question thus negatived.

22. Message from the Governor

Message No. 60 from His Excellency the Governor was reported assenting to the following bills –

Local Government Amendment Bill 2009, Act No. 17 of 2009.

Acts Amendment (Bankruptcy) Bill 2009, Act No. 18 of 2009.

Revenue Laws Amendment (Taxation) Bill 2009, Act No. 19 of 2009.

23. Implementation of Government's Hundred Day Plan

The Order of the Day having been read for the resumption of debate on the motion moved by Mr M. McGowan,

That the House condemns the Barnett Government for its failure to implement the election promises contained within its first 100-day plan document.

Debate resumed.

Debate interrupted by the Chair (Mr W.J. Johnston speaking) and adjourned until a later stage of the sitting.

24. First Home Owner Grant Amendment Bill 2009

Message No. 39 dated 23 September 2009 from the Legislative Council was reported as follows –

The Legislative Council acquaints the Legislative Assembly that it has agreed to the *First Home Owner Grant Amendment Bill 2009* 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 First Home Owner Grant Amendment Bill 2009

No. 1

Page 5, after line 7 — To insert —

- (4A) A ***class 6 eligible transaction*** is an eligible transaction the commencement date of which is not before 1 October 2009 and not after the cut-off date that is a contract for the purchase of an established home.
- (4B) A ***class 7 eligible transaction*** is an eligible transaction the commencement date of which is not before 1 October 2009 and not after the cut-off date that is —
 - (a) a contract for the purchase of a new home or a substantially renovated home; or
 - (b) a comprehensive home building contract for a new home if —
 - (i) the building work begins within 26 weeks after the commencement date; and
 - (ii) the contract provides to the effect that the building work must be completed within 18 months after it begins or, if the contract does not provide for a completion date for the building work, it is completed within 18 months after it begins;
 - or
 - (c) the building of a new home by an owner builder if the eligible transaction is completed before the relevant date.

No. 2

Page 13, lines 1 to 4 — To delete the lines and insert —

- (b) in relation to a home north of the 26th parallel of South Latitude, \$1 000 000,

except that the regulations may prescribe another amount as the cap amount for the purposes of paragraph (a) or (b).

Ordered, That consideration in detail of Legislative Council message No. 39 be made an Order of the Day for the next sitting of the Assembly.

25. Road Traffic Amendment (Hoons) Bill 2009

Message No. 40 dated 23 September 2009 from the Legislative Council was reported as follows –

The Legislative Council acquaints the Legislative Assembly that it has agreed to the *Road Traffic Amendment (Hoons) Bill 2009* 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 *Road Traffic Amendment (Hoons) Bill 2009*

No. 1

Page 20, lines 13 to 19 — To delete the clause.

No. 2

Page 20, after line 12 — To insert —

16. Section 79E replaced

Delete section 79E and insert:

79E. Liability for expenses of police impounding

If a vehicle is impounded under this Subdivision and a person is convicted of the offence for which the vehicle was impounded, that person is liable to pay to the Commissioner an amount specified by the Commissioner as being equivalent to all expenses reasonably incurred by the Commissioner in impounding the vehicle less —

- (a) any amount received by the Commissioner under section 80IB(1); and
- (b) any amount received by the Commissioner under section 80JA(8)(b),

in relation to impounding the vehicle.

No. 3

Page 23, after line 11 — To insert —

24A. Section 80JA inserted

After section 80I insert:

80JA. Commissioner may sell vehicle impounded under s. 79A at any time with consent of owner etc.

- (1) In this section —

impounded vehicle means a vehicle that is impounded under section 79A;

interest, in relation to a vehicle, means a legal or equitable interest, right or title in or to the ownership or possession of the vehicle.

- (2) If the Commissioner is satisfied that each person who has an interest in an impounded vehicle has, in accordance with subsection (4), consented to the Commissioner doing so, the Commissioner, on behalf of those persons, may sell or otherwise dispose of the vehicle.

- (3) The Commissioner may sell or otherwise dispose of a vehicle under subsection (2) —
 - (a) even if the impounding period has not elapsed; and
 - (b) even if the Commissioner may sell the vehicle under section 80J; and
 - (c) whether or not a charge of an offence for which the vehicle was impounded has been heard or determined by a court; and
 - (d) whether or not any appeal against the conviction for an offence for which the vehicle was impounded or confiscated has been concluded.
- (4) The consent of a person who has an interest in an impounded vehicle to the Commissioner selling or otherwise disposing of the vehicle has no effect unless —
 - (a) the person has been informed in accordance with subsection (5); and
 - (b) the consent is in writing and signed by the person; and
 - (c) the consent is given at least 48 hours after the vehicle is impounded.
- (5) The Commissioner must ensure a person who has an interest in an impounded vehicle is informed —
 - (a) of the effect of this Division in relation to impounding and selling vehicles; and
 - (b) of the liabilities that this Division imposes on persons for the costs and expenses incurred by the Commissioner.
- (6) The Commissioner may require a person who has an interest in an impounded vehicle to provide information to the Commissioner for the purposes of this section in a statutory declaration.
- (7) If the Commissioner sells or otherwise disposes of an impounded vehicle under subsection (2) —
 - (a) the Commissioner must release the vehicle to the buyer; and
 - (b) the buyer obtains a good title to the vehicle if the person acquires it in good faith and without notice of any failure to comply with this section in relation to the sale or disposal; and
 - (c) the proceeds of the sale are to be paid in the order of priority provided by subsection (8).
- (8) The proceeds of the sale or disposal of a vehicle under subsection (2) are to be paid in the following order of priority —
 - (a) for expenses incurred in selling the vehicle;
 - (b) for the expenses specified by the Commissioner as being equivalent to all expenses reasonably incurred by the Commissioner in impounding the vehicle;
 - (c) if the sale or disposal occurs after the impounding period ends, for expenses (if any) incurred in storing the vehicle after that period ends;
 - (d) the balance —
 - (i) if only one person has an interest in the vehicle, to that person;
 - (ii) if there are 2 or more persons who each have an interest in the vehicle, to each such person according to the proportion that the value of the person's interest bears to the value of the vehicle.

- (9) If an impounded vehicle is sold or otherwise disposed of under subsection (2) and —
- (a) no charge is laid for the offence for which the vehicle was impounded within 3 months after the date of the offence; or
 - (b) the charge for that offence is withdrawn or dismissed for want of prosecution; or
 - (c) the person charged with that offence is acquitted,
- the Commissioner must pay to the person or persons referred to in subsection (8)(d) in accordance with that paragraph an amount equal to the amounts paid under subsection (8)(a), (b) and (c).

No. 4

Page 24, after line 8 — To insert —

25A. Section 80K amended

- (1) At the beginning of section 80K insert:
- (1) If a vehicle is sold under section 80JA(2) but the proceeds of the sale are insufficient to pay the expenses incurred in selling it, the person because of whose conviction the vehicle was impounded is liable to pay to the Commissioner the difference between the amount of those expenses and the proceeds of the sale.
- (2) In section 80K delete “If” and insert:
- (2) If

Ordered, That consideration in detail of Legislative Council message No. 40 be made an Order of the Day for the next sitting of the Assembly.

26. Adjournment

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

Question put and passed.

The Assembly adjourned accordingly, at 7.02 p.m. until Thursday, 24 September 2009 at 9.00 a.m.

Members present during any part of the day's proceedings - All the members except Mr G.M. Castrilli and Mrs C.A. Martin.

PETER J. McHUGH
Clerk of the Legislative Assembly

HON. GRANT WOODHAMS
Speaker of the Legislative Assembly