

WESTERN AUSTRALIA

# LEGISLATIVE ASSEMBLY

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## VOTES AND PROCEEDINGS

No. 26

FIRST SESSION OF THE THIRTY-EIGHTH PARLIAMENT

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THURSDAY, 7 MAY 2009

### 1. Meeting of Assembly

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

The Speaker took the Chair.

Prayers were read.

### 2. Paper

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

By the Clerk –

Legal Contribution Trust - Financial Report for the Six Months Ended 31 December 2008 (872).

### 3. Brief Ministerial Statements

Brief Ministerial Statements were made by –

The Minister for Police on the recent awarding of Lotterywest funding to the Constable Care Foundation.

The Minister for Regional Development on the approval for funding for the Dolphin Discovery Centre in Bunbury, under the Regional Grants Scheme.

The Attorney General on his recent attendance at the meetings of the Standing Committee of Attorneys-General, Censorship Ministers, and the Ministerial Council Corporations (SCAG).

The Minister for Citizenship and Multicultural Interests on the Office of Multicultural Interests invitation for applications for grants to assist ethnic organisations meet the needs of culturally and linguistically diverse communities in Western Australia.

### 4. Grievances

The Speaker called for grievances which were then made.

## **5. Joint Standing Committee on the Corruption and Crime Commission**

Mr J.N. Hyde, as Chairman, presented the following report which was ordered to lie upon the Table of the House –

Joint Standing Committee on the Corruption and Crime Commission - Robert Bilos Report No. 3 (873).

Mr J.N. Hyde and Mr F.A. Alban spoke on the report.

## **6. Occupational Safety and Health Legislation Amendment Bill 2009**

The Treasurer, pursuant to notice, moved,

That a bill for “An Act to amend the *Occupational Safety and Health Act 1994* and to make related amendments to the *Industrial Relations Act 1979*.” be introduced and read a first time.

Question put and passed.

The Treasurer presented an explanatory memorandum and bill read a first time.

Leave was granted to proceed forthwith to the second reading of the bill.

The Treasurer moved, That the bill be now read a second time.

Mr J.C. Kobelke moved, That the debate be adjourned.

Question put and passed.

## **7. Veterinary Surgeons Amendment Bill 2009**

The Minister for Agriculture and Food, pursuant to notice, moved,

That a bill for “An Act to amend the *Veterinary Surgeons Act 1960*.” be introduced and read a first time.

Question put and passed.

The Minister for Agriculture and Food presented an explanatory memorandum and bill read a first time.

Leave was granted to proceed forthwith to the second reading of the bill.

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

Mr J.C. Kobelke moved, That the debate be adjourned.

Question put and passed.

## **8. Notice of Motion after the Time Prescribed**

Mr J.C. Kobelke was granted leave to give a late notice of motion on behalf of Mrs M.H. Roberts.

## **9. Parliamentary Commissioner Amendment Bill 2009**

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 (the Premier in reply) and adjourned until a later stage of the sitting.

## **10. Members' Statements**

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

## **11. Questions**

Questions without Notice were taken.

Questions on Notice Nos 832 to 856 were asked.

Questions on Notice Nos 661, 662, 664, 666, 683, 686, 688, 689, 691 to 693, 695 to 698, 700 to 707, 711, 714, 715 and 744 were answered.

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Papers tabled by the Minister for Education –

Question on Notice No. 704 - The name and location of each public pre-primary centre in Western Australia (874).

Question on Notice No. 705 - The name and location of properties owned by the Department of Education and Training, excluding pre-primary centres, primary schools, secondary schools and TAFE colleges (875).

Question on Notice No. 706 - The purpose and location of all properties leased by the Department of Education and Training (876).

Question on Notice No. 707 - Details of properties being sold by the Department of Education and Training and details of properties leased to other parties (877).

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## **12. Acts Amendment (Bankruptcy) Bill 2009**

Message No. 21 dated 6 May 2009 from the Legislative Council was reported forwarding for concurrence a bill entitled a bill for “An Act to amend various Acts to reflect changes made to the *Bankruptcy Act 1966* (Commonwealth) and for related purposes.”.

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

Question put and passed.

## **13. Fines, Penalties and Infringement Notices Enforcement Amendment (Compensation) Bill 2008**

Message No. 22 dated 6 May 2009 from the Legislative Council was reported agreeing to the bill without amendment.

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

Ordered, That Government Business Order of the Day No. 3 be resumed.

## **15. Parliamentary Commissioner Amendment Bill 2009**

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.

Leave was granted to proceed forthwith to the third reading of the bill.

The Premier moved, That the bill now be read a third time.

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

## **16. Major Events (Aerial Advertising) Bill 2009**

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.

Leave was granted to proceed forthwith to the third reading of the bill.

Minister for Sport and Recreation moved, That the bill be read a third time.

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

### 17. Personal Explanation

Minister for Police made a personal explanation regarding the Minister's answer to Question without Notice No. 379 and whether two police officers from the liquor enforcement group based in Fremantle have now been relocated to Perth.

### 18. Suspension of Standing Orders

The Leader of the House, without notice, moved, That so much of the Standing Orders be suspended in relation to the Tobacco Products Control Amendment Bill 2008 as is necessary to enable -

- (a) the Bill to be called on when Government Business has precedence;
- (b) during consideration in detail, the amendments appearing on the Notice Paper in the name of the Minister for Health to be proposed as one question;
- (c) during consideration in detail, the clauses and title of the Bill, as amended, to be proposed as one question; and
- (d) the third reading stage to be moved forthwith after the consideration in detail stage has concluded.

Debate ensued.

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.

### 19. Tobacco Products Control Amendment Bill 2008

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

#### *CONSIDERATION IN DETAIL*

Pursuant to the forgoing motion (see paragraph 18), the Minister for Health, moved,  
Clause 5.

Page 2, line 25 – To delete the line and substitute:

“

(1) In section 23(1) delete the definition of **50% retailer**.

(2) Delete section 23(2) and (3).

(3) In section 23(4):

(a) delete “22(2)” and insert:

22(1)

(b) in paragraph (b) delete “at the time for the purposes of section 22(2); and” and insert:

by the regulations; and

”.

Clause 7.

Page 3, lines 17 to 23 – To delete the lines.

Page 3, line 24 – To insert after “area”:

“ unless the place in which the person is smoking is a smoking zone ”.

Page 4, after line 21 – To insert:

“

- (4) For the purposes of *The Criminal Code* section 338A(d) and any other written law, a person is lawfully entitled to abstain from working in a smoking zone when the smoking zone is open to, or being used by, the public or a section of the public.

”.

Page 4, lines 22 and 23 – To delete “**children in open playgrounds or sportsgrounds**” and substitute:

“ **playground equipment** ”.

Page 4, lines 24 to 32 and page 5 lines 1 to 7 – To delete the lines and substitute:

“

A person must not smoke within 10 metres of children’s playground equipment that —

- (a) is in a public place or a part of a public place; and
- (b) is not in an enclosed public place.

”.

Page 6, lines 1 to 6 – To delete the lines and substitute:

“

**107E. Local government legislative power not affected**

Nothing in section 107A, 107B or 107C is intended to limit the power conferred on a local government by the *Local Government Act 1995* or any other Act to make local laws about matters mentioned in those sections.

**107F. Dismissal or detriment because of refusal to work in smoking zone and employee’s remedy for breach**

- (1) In this section —  
*employee* and *employer* have the respective meanings given in the *Industrial Relations Act 1979* section 7(1).
- (2) An employer must not —
  - (a) dismiss an employee; or
  - (b) alter an employee’s position to the employee’s disadvantage; or

- (c) refuse to promote or transfer an employee; or
- (d) otherwise injure an employee in relation to the employee's employment;  
or
- (e) threaten to do any of those things,

for the reason, or for reasons that include the reason, that the employee does not consent to working in a smoking zone when the smoking zone is open to, or being used by, the public or a section of the public (the **consent**).

Penalty: see section 115.

- (3) In proceedings for a contravention of subsection (2), if it is proved that an employer took any course of action mentioned in that subsection against or in relation to an employee after the employee refused to give the consent, it is for the employer to prove that the course of action was taken for some reason other than because the employee refused to give the consent.
- (4) Subsection (2) is a civil penalty provision for the purposes of the *Industrial Relations Act 1979* section 83E.
- (5) The *Industrial Relations Act 1979* section 97YG applies as if the reference in that section to a contravention of section 97YF of that Act includes a reference to a contravention of the *Tobacco Products Control Act 2006* section 107F(2).

”.

Clause 8.

Page 6, after line 12 – To insert:

“

- (2) In section 115(1)(b) in the Table at the end of column 2 insert:

s. 107F(2)

”.

Clause 10.

Page 7, line 3 – To delete “delete paragraph (b) and” and substitute:

“ after paragraph (b) ”.

Clause 11.

Page 7, lines 16 to 30 and page 8 lines 1 to 6 – To delete the lines.

Clause 12.

Page 8, after line 17 – To insert:

“

**outdoor eating area** means a public place or part of a public place —

- (a) that is provided, on a commercial basis, as an area where food or drink may be consumed by people sitting at tables; and
- (b) that is not an enclosed public place;

**restaurant licence**, in relation to a place, means —

- (a) a restaurant licence granted under the *Liquor Control Act 1988* in relation to that place; or
- (b) a condition of any other kind of licence, order or permit under the *Liquor Control Act 1988* —
  - (i) to the effect that a provision of that Act relating to restaurant licences applies to that place; or
  - (ii) that otherwise has an effect in relation to that place that is similar to a provision of that Act relating to restaurant licences;

***smoking zone*** means a place that —

- (a) is in licensed premises but not in a place to which a restaurant licence applies; and
- (b) is in an outdoor eating area at the licensed premises; and
- (c) has a total area that is not more than 50% of the whole of the area of that outdoor eating area;

”.

Amendments put and passed.

Clauses 1 to 12 and the title, as amended, put and passed.

Consideration in detail concluded.

Dr J.M. Woollard 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.

## **20. Sentence Administration (Interstate Transfer of Community Based Sentences) Bill 2009**

Message No. 23 dated 7 May 2009 from the Legislative Council was reported agreeing to the bill without amendment.

## **21. Adjournment**

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

Question put and passed.

The Legislative Assembly adjourned accordingly, at 5.01 p.m. until Tuesday, 12 May 2009 at 2.00 p.m.

*Members present during any part of the day's proceedings* - All the members except Mr J.J.M. Bowler, Mr V.A. Catania, Mrs C.A. Martin and Mr M. McGowan.

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

**HON. GRANT WOODHAMS**  
Speaker of the Legislative Assembly