

WESTERN AUSTRALIA

LEGISLATIVE ASSEMBLY

VOTES AND PROCEEDINGS

No. 19

FIRST SESSION OF THE THIRTY-EIGHTH PARLIAMENT

WEDNESDAY, 1 APRIL 2009

1. Meeting of Assembly

The Assembly met at 12.00 noon pursuant to adjournment.

The Speaker took the Chair.

Prayers were read.

2. Papers

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

By the Speaker –

Office of the Auditor General - Public Sector Performance Report 2009 (775).

By the Clerk –

Central TAFE - Annual Report 2007–2008 (765).

Central West TAFE - Annual Report 2007–2008 (766).

Challenger TAFE - Annual Report 2007–2008 (767).

CY O'Connor TAFE - Annual Report 2007–2008 (768).

Great Southern TAFE - Annual Report 2007–2008 (769).

Kimberley TAFE - Annual Report 2007–2008 (770).

Pilbara TAFE - Annual Report 2007–2008 (771).

South West Regional College - Annual Report 2007–2008 (772).

Swan TAFE - Annual Report 2007–2008 (773).

West Coast TAFE - Annual Report 2007–2008 (774).

3. Notice of Motion

4. Brief Ministerial Statements

The following Brief Ministerial Statements were made by –

The Minister for Regional Development on the Royalties for Regions Regional Grants Scheme 2008–2009.

Paper

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

By the Minister for Regional Development –

Royalties for Regions - Regional Grants Scheme 2008–2009 (776).

The Minister for Mental Health on the Fitzroy Crossing Liquor Restriction: October 2007 to September 2008 Twelve Month Report developed by the Drug and Alcohol Office.

Paper

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

By the Minister for Mental Health –

Drug and Alcohol Office - Fitzroy Crossing Liquor Restriction: October 2007 to September 2008 Twelve Month Report (777).

The Minister for Sport and Recreation on the release of the first stage of a review into the Barbagallo Raceway.

5. 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 enable consideration of the Tobacco Products Control Amendment Bill 2008 to be resumed forthwith.

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. Tobacco Products Control Amendment Bill 2008

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.

Dr J.M. Woollard moved, That in relation to the Tobacco Products Control Amendment Bill 2008, the amendments listed on the Notice Paper standing in her name be made *pro forma*.

Question put and passed.

The amendments agreed to under the foregoing motion were –

Clause 2.

Page 2, line 6 – To delete “Assent;” and substitute –

“ Assent (*assent day*); ”.

Page 2, lines 7 and 8 – To delete “Act within 6 months of sections 1 and 2 receiving the Royal Assent.” and substitute –

“

Act — on the day after the end of the period of 12 months after assent day.

”.

Clause 4.

Page 2, lines 11 to 25 – To delete the lines.

Clause 5.

Page 3, lines 4 to 17 – To delete the lines and substitute:

“

22. Prohibition on display of tobacco products, packages, smoking implements

- (1) The holder of a retailer’s licence must ensure that a tobacco product, package or smoking implement is not displayed in the premises specified in the licence.

Penalty: see section 115.

- (2) If a person is charged with an offence under subsection (1) it is a defence to prove that the display was made to a specific customer at the customer’s request.

”.

New clause.

Page 3, after line 17 – To insert –

“

6. Section 23 deleted

Delete section 23.

7. Section 77 amended

In section 77(1) delete “environmental health officer” and insert:

a person who belongs to a class of persons prescribed for the purpose of this section

”.

Clause 6.

Page 3, lines 21 to 29 and page 4 lines 1 to 25 – To delete the lines and substitute –

107A. Prohibition on smoking “between the flags”

A person must not smoke in an area that is between flags or other markers placed on a beach for the purpose of indicating a patrolled swimming area.

Penalty: a fine of \$1 000.

107B. Prohibition on smoking in outdoor eating areas

- (1) In this section —

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

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

- (2) A person must not smoke in an outdoor eating area.

Penalty: a fine of \$2 000.

- (3) If a person commits an offence under subsection (2) the occupier of the outdoor eating area commits an offence.

Penalty: a fine of \$2 000.

- (4) If a person is charged with an offence under subsection (3) it is a defence to prove that —

- (a) neither the accused nor any employee or agent of the accused was aware, or could reasonably be expected to have been aware, that the offence was occurring; or
- (b) as soon as the accused or an employee or agent of the accused became aware that the offence was occurring, the accused or an employee or agent of the accused —
 - (i) informed the person concerned that the person was committing an offence; and
 - (ii) requested the person to stop smoking in the outdoor eating area and to extinguish, and properly dispose of, the tobacco product; and
 - (iii) if the person failed to comply with a request under subparagraph (ii), requested the person to leave the outdoor eating area until the person finished smoking the tobacco product.

107C. Prohibition on smoking near children in open playgrounds or sportsgrounds

- (1) In this section —

child —

- (a) means any boy or girl who has not reached 18 years of age; and
- (b) in the absence of positive evidence as to age, means any boy or girl who apparently has not reached 18 years of age;

play/sport area means a public place or part of a public place —

- (a) that is provided as an area where a child may play, or where a person may play sport or watch sport being played; and
- (b) that is not an enclosed public place.

- (2) A person who is in a play/sport area must not smoke within 10 metres of any child who is in the play/sport area.

Penalty: a fine of \$1 000.

107D. Prohibition on smoking in or on vehicles if under 17 year old present

- (1) In this section —

child —

- (a) means any boy or girl who has not reached 17 years of age; and
- (b) in the absence of positive evidence as to age, means any boy or girl who apparently has not reached 17 years of age;

vehicle means any thing used or capable of being used to transport people or goods on roads;

road means any highway, road or street open to, or used by, the public and includes every carriageway, footway, reservation, median strip and traffic island on it and any parking area in a public place.

- (2) A person must not smoke in or on a vehicle if —

- (a) the vehicle is on a road; and
- (b) any other person in or on the vehicle is a child.

Penalty: a fine of \$1 000.

107E. Prohibition on smoking near entrances of buildings used by or open to the public

A person must not smoke within 5 metres of any entrance to a building that is a public place or part of a public place.

Penalty: a fine of \$1 000.

”.

Clause 7.

Page 5, line 2 – To delete “section 115(b) in the Table:” and substitute –

“

section 115(1)(b) in the Table in column 1 delete “s. 22(1), (2), (3), (4)” and insert:

s. 22(1)

”.

Page 5, lines 3 to 10 – To delete the lines.

New clauses 8, 9, 10 and 11.

Page 5, after line 10 – To insert:

“

8. Section 124A inserted

After section 123 insert:

124A. Provision of information about alleged offences of smoking near children

- (1) If a police officer suspects on reasonable grounds that a person has committed an offence under section 107C or 107D, the Commissioner of Police is to supply the CEO with the alleged offender's name, address and date of birth and the date and details of the alleged offence, to the extent that the Commissioner has that information.
- (2) Information supplied under subsection (1) may be used in the performance of any function that the CEO or the Foundation has under this Act.
- (3) Subsection (1) applies whether or not the person is charged with having committed the alleged offence, or otherwise dealt with for the alleged offence without being prosecuted.

9. Section 124 amended

In section 124(2):

- (a) delete paragraph (b) and insert:
 - (b) prescribing matters in relation to the storage of tobacco products, packages and smoking implements at places where those items are sold by way of retail sale including the means to avoid or minimise attention being given to those items;
- (b) in paragraph (c) after "products" insert:

or smoking implements

10. Schedule 2 Division 3 inserted

In Schedule 2 after clause 10 insert:

Division 3 — Transitional and savings provisions arising from amendments made by the *Tobacco Products Control Amendment Act 2009*

11. Pre-commencement day sections 22 and 23 saved for 12 months in relation to specialist retailers

- (1) In this clause —
amending Act means the *Tobacco Products Control Amendment Act 2009*;
commencement day means the day mentioned in section 2(b) of the amending Act.
- (2) Despite the deletion by the amending Act sections 5 and 5A of sections 22 and 23 as they were in operation immediately before commencement day, those provisions continue to apply —
 - (a) to a person who is a specialist retailer as defined in section 23 immediately before commencement day; and
 - (b) for the period of 12 months starting on commencement day.

11. Glossary amended

In the Glossary insert in alphabetical order:

enclosed public place has the meaning given to that term in regulations mentioned under section 125 about smoking in public places as it may be amended from time to time;

occupier, in relation to a public place, means a person having the management or control, or otherwise being in charge, of that place;

”.

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

7. Treasurer's Advance Authorisation Bill 2009

The Order of the Day for the third reading of the bill having been read, the Leader of the House, on behalf of the Treasurer moved, That the bill be now read a third time.

Debate ensued.

Debate interrupted by the Chair (Mr M.P. Whitely speaking) and adjourned until a later stage of the sitting.

8. Speaker's Statement - Mobile Phone and Laptop Computer Usage in the Chamber

The Speaker reminded members that the use of mobile phones in the Chamber was disorderly, and directed that any such devices brought into the Chamber must be in silent mode. He also directed that laptop computers be similarly muted.

9. Questions

Questions without Notice were taken.

Questions on Notice Nos 640 to 676 were asked.

Questions on Notice Nos 591, 608 and 618 were answered.

Paper

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

By the Treasurer –

Synergy - Letter from the Minister for Energy to Synergy regarding Outsourcing Back Office Positions (778).

10. Variation to the Order of Business

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

11. Treasurer's Advance Authorisation Bill 2009

The Order of the Day for the resumption of the debate upon the third reading of the bill was read.

Debate resumed.

Debate interrupted by the Chair (Mr V.A. Catania speaking) and adjourned until a later stage of the sitting.

12. Variation to the Order of Business

Ordered, That Private Members' Notices of Motion Nos 8 and 6 be next considered.

13. Pay Rates for Cleaners of Government Buildings and Offices

Mr F.M. Logan, pursuant to notice, moved,

That this House support decent and fair pay rates for cleaners employed in cleaning Government buildings and offices and in particular support the Member for Morley's claim that "the hourly rate for cleaners is not only abhorrent it is just plain wrong and I will always side with the cleaners for a pay rise no matter who they get it from".

Debate ensued.

The Treasurer moved, To delete all words after "offices".

Debate ensued.

Amendment put.

The Assembly divided.

Ayes (29)

Mr P. Abetz	Mr J.M. Francis	Ms A.R. Mitchell
Mr F.A. Alban	Mr B.J. Grylls	Dr M.D. Nahan
Mr C.J. Barnett	Dr K.D. Hames	Mr C.C. Porter
Mr I.C. Blayney	Mrs L.M. Harvey	Mr D.T. Redman
Mr I.M. Britza	Mr A.P. Jacob	Mr A.J. Simpson
Mr T.R. Buswell	Dr G.G. Jacobs	Mr M.W. Sutherland
Mr G.M. Castrilli	Mr R.F. Johnson	Mr T.K. Waldron
Dr E. Constable	Mr A. Krsticevic	Dr J.M. Woollard
Mr M.J. Cowper	Mr W.R. Marmion	Mr J.E. McGrath (<i>Teller</i>)
Mr J.H.D. Day	Mr P.T. Miles	

Noes (28)

Ms L.L. Baker	Mr J.A. McGinty	Ms R. Saffioti
Mr J.J.M. Bowler	Mr M. McGowan	Mr T.G. Stephens
Mr A.J. Carpenter	Mrs C.A. Martin	Mr C.J. Tallentire
Mr V.A. Catania	Mr M.P. Murray	Mr A.J. Waddell
Mr R.H. Cook	Mr A.P. O'Gorman	Mr P.B. Watson
Ms J.M. Freeman	Mr P. Papalia	Mr M.P. Whitely
Mr J.N. Hyde	Mr J.R. Quigley	Mr B.S. Wyatt
Mr W.J. Johnston	Ms M.M. Quirk	Mr D.A. Templeman (<i>Teller</i>)
Mr J.C. Kobelke	Mr E.S. Ripper	
Mr F.M. Logan	Mrs M.H. Roberts	

Amendment thus passed.

Motion, as amended, agreed to.

14. Local Government Amalgamation Policy

Mr P. Papalia, pursuant to notice, moved,

That this House condemns the Premier and the Minister for Local Government for their confusing, destructive and non-consultative local government amalgamation policy.

Debate ensued.

Debate interrupted by the Chair (the Premier speaking) and adjourned until a later stage of the sitting.

15. Adjournment

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

Question put and passed.

The Assembly adjourned accordingly, at 7.00 p.m. until Thursday, 2 April 2009 at 9.00 a.m.

Members present during any part of the day's proceedings - All the members except Ms A.J.G. MacTiernan.

PETER J. McHUGH

Clerk of the Legislative Assembly

HON. GRANT WOODHAMS

Speaker of the Legislative Assembly