

WESTERN AUSTRALIA

# LEGISLATIVE COUNCIL

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## MINUTES OF PROCEEDINGS

No. 86

THURSDAY, 6 MAY 2010

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### 1. Meeting of Council

The Council assembled at 10.00am pursuant to Temporary Orders.

The President, Hon Barry House, took the Chair and read prayers.

### 2. Petitions

Hon Linda Savage presented a petition from 138 petitioners requesting the Legislative Council support appropriate and adequate air-conditioning in State Government Schools. (Tabled paper 2007).

Hon Max Trenorden presented a petition from 82 petitioners requesting the Legislative Council support the preservation of leased shack-site communities for alternative recreational holiday destinations for Western Australians. (Tabled paper 2008).

### 3. Ministerial Statement - Esperance Port - Mineral Concentrate Infrastructure

The Minister for Transport made a Ministerial Statement with respect to the status of the upgrade of the bulk mineral concentrate infrastructure at the Esperance Port.

Ordered - That consideration of the Ministerial Statement be made an Order of the Day for the next sitting.

### 4. Ministerial Statement - Greater Bunbury Region Scheme Amendment Nos 0004/41 and 0006/41

The Minister for Energy on behalf of the Minister for Child Protection representing the Minister for Planning made a Ministerial Statement with respect to the Greater Bunbury Region Scheme Amendment Nos 0004/41 and 0006/41.

The Minister for Energy on behalf of the Minister for Child Protection representing the Minister for Planning tabled plans in relation to the Greater Bunbury Region Scheme Amendment Nos 0004/41 and 0006/41. (Tabled papers 2009A and 2009B).

The Minister for Energy on behalf of the Minister for Child Protection representing the Minister for Planning tabled the reports on submissions in relation to the Greater Bunbury Region Scheme Amendment Nos 0004/41 (Capel East) and 0006/41 (Shire of Capel). (Tabled papers 2010A and 2010B).

Ordered - That consideration of the Ministerial Statement and Tabled papers be made an Order of the Day for the next sitting.

**5. Standing Committee on Estimates and Financial Operations - Special Report - 2010/11 Budget Estimates Hearings**

Hon Giz Watson presented a Special Report of the Standing Committee on Estimates and Financial Operations in relation to the *2010/11 Budget Estimates Hearings*. (Tabled paper 2012).

Hon Giz Watson moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

**6. Standing Committee on Estimates and Financial Operations - Special Report - Inquiry into the Removal of Year 11 and 12 Courses at 21 District High Schools**

Hon Giz Watson presented a Special Report of the Standing Committee on Estimates and Financial Operations in relation to a resolution of the Committee to commence an *Inquiry into the Removal of Year 11 and 12 Courses at 21 District High Schools*. (Tabled paper 2011).

Hon Giz Watson moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

**7. Joint Standing Committee on Delegated Legislation - Thirty-Ninth Report - Annual Report 2009**

Hon Alyssa Hayden presented the Thirty-Ninth Report of the Joint Standing Committee on Delegated Legislation being the *Annual Report 2009*. (Tabled paper 2013).

Hon Alyssa Hayden moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

**8. Non-Government Business - Government Financial Management - Statutory Compliance**

Hon Ken Travers moved, without notice -

That this Council calls on the Barnett Government to ensure it complies with the requirements of legislation concerning the financial management of the State and in particular section 82 of the *Financial Management Act 2006* and Part 5 Division 2 of the *Port Authorities Act 1999*.

Debate ensued.

*Statement of Explanation - Standing Order 87*

The Minister for Transport, pursuant to Standing Order 87, made a statement of explanation to the House.

Debate resumed.

Motion lapsed.

## 9. Order of Business

Ordered - That Orders of the Day Nos 1, *Genetically Modified Crops Free Areas Exemption Order - Disallowance*, 2, *Betting Control Amendment Regulations (No. 4) 2009 - Disallowance*, 3, *Casino Control Amendment Regulations 2009 - Disallowance*, 4, *Casino Control (Burswood Island) (Licensing of Employees) Amendment Regulations (No. 2) 2009 - Disallowance*, 5, *Gaming and Wagering Commission Amendment Regulations 2009 - Disallowance*, 6, *Racing and Wagering Western Australia Amendment Regulations 2009 - Disallowance*, 7, *Racing Penalties (Appeals) Amendment Regulations 2009 - Disallowance*, 8, *Waste Avoidance and Resource Recovery Levy Amendment Regulations 2009 - Disallowance*, 9, *Agriculture and Related Resources Protection (European House Borer) Amendment Regulations 2010 - Disallowance*, 10, *Liquor Control Amendment Regulations (No. 7) 2009 - Disallowance*, and 11, *Retail Trading Hours (Tourism Precincts and Holiday Resorts) Amendment Regulations (No. 2) 2009 - Disallowance*, be taken after Order of the Day No. 15, *Appropriation (Consolidated Account) Capital 2007-08 and 2008-09 (Supplementary) Bill 2009*. (Leader of the House).

## 10. Approvals and Related Reforms (No. 3) (Crown Land) Bill 2009

The Order of the Day having been read for the third reading of this Bill.

The Parliamentary Secretary representing the Minister for Lands moved, That the Bill be now read a third time.

The Deputy President having reported that the Deputy Chairman of Committees had certified that the fair print of the Bill was in accordance with the Bill as agreed to in Committee, and reported.

Question - put and passed.

Bill read a third time and passed.

## 11. Aboriginal Housing Legislation Amendment Bill 2009

The Order of the Day for the further consideration of this Bill, in Committee, having been read.

The Deputy President left the Chair.

### In Committee

(Hon Max Trenorden in the Chair)

Clause 9.

Debate resumed on the amendment of Hon Lynn MacLaren as follows -

Page 8, line 13 — To delete “and are practicable”.

Hon Lynn MacLaren, by leave, withdrew her amendment.

Hon Lynn MacLaren moved -

Page 8, after line 13 — To insert —

- (2) In order to determine the wishes of the Aboriginal inhabitants under subsection (1) the Authority will work closely with the Aboriginal Housing Corporations, the Aboriginal Lands Trust and other Aboriginal Housing stakeholders to negotiate and establish clear guidelines on governance, advocacy, and consultation processes, including measurable benchmarks.

- (3) When ascertaining the wishes of the Aboriginal inhabitants under subsection (1), the Authority will —
  - (a) propose the provision of culturally appropriate housing that takes into account the cultural perceptions of the use of living space, the design and location of houses, and the provision of appropriate architectural and town planning advice to the local community; and
  - (b) propose climate-appropriate housing that takes into account the cultural perceptions of the unique climatic conditions in the regions serviced.
- (4) In the case that the wishes of Aboriginal people under subsection (1) cannot be ascertained, or can be ascertained but not met, the housing agreement is to provide for housing to meet culturally appropriate and environmentally sustainable design standards.

Debate ensued.

Amendment - put and negatived.

Question, That the clause stand as printed - put and passed.

The Parliamentary Secretary representing the Minister for Housing and Works, by leave, tabled a document in relation to capital works for remote Indigenous housing for 2009-2010. (Tabled paper 2014).

Clauses 10 and 11 agreed to.

Title agreed to.

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The Deputy President resumed the Chair.

Bill reported without amendment.

Report adopted.

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

## **12. Pay-roll Tax Rebate Bill 2010**

The Order of the Day having been read for the adjourned debate on the second reading of this Bill.

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 Parliamentary Secretary representing the Treasurer moved, That the Bill be now read a third time.

Question - put and passed.

Bill read a third time and passed.

## **13. Road Traffic Amendment Bill 2010**

The Order of the Day having been read for the adjourned debate on the second reading of this Bill.

Debate resumed.

Question - put and passed.

Bill read a second time.

The Deputy President left the Chair.

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**In Committee**

(Hon Matt Benson-Lidholm in the Chair)

Clause 1.

Debate ensued.

Clause agreed to.

Clauses 2 and 3 agreed to.

The Minister for Energy representing the Minister for Police moved, That consideration of Clauses 4 and 5 be postponed until after consideration of Clause 6.

Question - put and passed.

Clause 6.

The Minister for Energy representing the Minister for Police moved -

Page 6, after line 29 — To insert —

**79BCC. Cancelling notices to surrender**

(1) In this section —

*notice to surrender* means —

- (a) a surrender notice given under section 79BA; or
- (b) a surrender substitute vehicle notice given under section 79BCA; or
- (c) a surrender alternative vehicle notice given under section 79BCD.

(2) If a senior police officer is satisfied that —

- (a) a notice to surrender has been given to a person in respect of a vehicle; and
- (b) the vehicle has not been impounded under section 79BB, 79BCB or 79BCE, as the case may be; and
- (c) either —
  - (i) if the vehicle were so impounded, the vehicle would be a vehicle that could, under section 79D, be released before the impounding period ends; or
  - (ii) the vehicle's condition is such that it no longer functions as a vehicle and a licence could not be issued for it under Part III,

the officer may cancel the notice to surrender.

(3) As soon as is practicable after a senior police officer cancels a notice to surrender, the officer must give a written notice of the cancellation to the person to whom the notice to surrender was given.

**79BCD. Notice to surrender alternative vehicle if surrender notice cancelled**

(1) This section applies if —

- (a) under section 79BA a surrender notice is given to a person responsible for a vehicle (*vehicle A*) the driver of which (the *alleged offender*) is suspected of having committed an offence (the *offence*); and

- (b) under section 79BCC the surrender notice is cancelled before vehicle A is impounded under section 79BB; and
  - (c) the alleged offender is a responsible person for one or more other vehicles.
- (2) If this section applies, a member of the Police Force may give the alleged offender, personally or by registered post, a notice in accordance with this section (a **surrender alternative vehicle notice**).
- (3) The surrender alternative vehicle notice cannot be given after 28 days after the date on which the surrender notice was cancelled.
- (4) The surrender alternative vehicle notice must contain a statement to the effect that, because vehicle A will not be impounded, a vehicle for which the alleged offender is a responsible person (the **alternative vehicle**) is required to be surrendered to the Commissioner for impounding instead of vehicle A.
- (5) The surrender alternative vehicle notice must specify the following —
  - (a) in relation to the offence, its details and the time and place at which it is suspected to have been committed;
  - (b) which of sections 79(1) and 79A(1) is the provision that authorised the impounding of vehicle A (the **impounding provision**);
  - (c) sufficient details of vehicle A to identify it;
  - (d) when the surrender notice was cancelled under section 79BCC;
  - (e) sufficient details of the alternative vehicle to identify it;
  - (f) if the impounding provision is section 79(1) and the alleged offender is a previous offender as defined in section 79(1A), sufficient details to explain why the alleged offender is regarded as a previous offender;
  - (g) the length of the impounding period for the alternative vehicle, which is to be —
    - (i) if section 79(1) was the impounding provision for vehicle A, either 28 days or 3 months according to which of those periods was the impounding period for which section 79(1) required vehicle A to be impounded; and
    - (ii) if section 79A(1) was the impounding provision for vehicle A, 28 days;
  - (h) the place at which, and the time of day during which, the alternative vehicle and its keys are required to be surrendered under this Division;
  - (i) the last day on or before which the alternative vehicle and its keys are required to be surrendered, being the seventh day after the day on which the notice is given.
- (6) The surrender alternative vehicle notice must also include —
  - (a) a statement to the effect that this Division contains law about the notice and the impounding of the vehicle; and
  - (b) a statement as to the effect of section 79BCE(5); and
  - (c) a statement to the effect that failure to comply with the notice will result in the vehicle being impounded by operation of section 79BCE(2).

- (7) If the alleged offender is a responsible person for 2 or more other vehicles, the surrender alternative vehicle notice must specify only one of them as the alternative vehicle, being the one decided by the member of the Police Force issuing the notice.

**79BCE. Consequences of surrender of alternative vehicle notice**

- (1) If a responsible person who is given a surrender alternative vehicle notice under section 79BCD surrenders the alternative vehicle specified in the notice according to the notice, the vehicle is impounded by operation of this subsection for a period that commences at the time when the vehicle is surrendered.
- (2) If a responsible person who is given a surrender alternative vehicle notice under section 79BCD fails to surrender the alternative vehicle specified in the notice according to the notice, the vehicle is impounded by operation of this subsection for a period that commences at the time when a member of the Police Force takes possession of the vehicle for the purpose of impounding it.
- (3) An impounding period the length of which is specified as 28 days or 3 months in a surrender alternative vehicle notice includes the part of the day on which the vehicle is impounded that is after the impounding occurred even though including that part of the day makes the period more than 28 days or 3 months, as the case requires.
- (4) The period for which a vehicle is impounded by operation of subsection (1) or (2) ends when the impounding period has passed since the end of the day on which the vehicle was impounded.
- (5) A responsible person who is given a surrender alternative vehicle notice under section 79BCD commits an offence and is liable to a fine of 50 PU if, when the alternative vehicle specified in the notice has not been impounded by operation of subsection (1) or (2) as a consequence of the notice, the person disposes of an interest that the person has in the vehicle.

Debate ensued.

**14. Questions Without Notice**

Questions without notice were taken.

**15. Road Traffic Amendment Bill 2010**

The President left the Chair.

**In Committee**

(Hon Matt Benson-Lidholm in the Chair)

Clause 6.

Debate resumed on the amendment of the Minister for Energy representing the Minister for Police as follows -

Page 6, after line 29 — To insert —

**79BCC. Cancelling notices to surrender**

(1) In this section —

*notice to surrender* means —

- (a) a surrender notice given under section 79BA; or
- (b) a surrender substitute vehicle notice given under section 79BCA; or
- (c) a surrender alternative vehicle notice given under section 79BCD.

(2) If a senior police officer is satisfied that —

- (a) a notice to surrender has been given to a person in respect of a vehicle; and
- (b) the vehicle has not been impounded under section 79BB, 79BCB or 79BCE, as the case may be; and
- (c) either —
  - (i) if the vehicle were so impounded, the vehicle would be a vehicle that could, under section 79D, be released before the impounding period ends; or
  - (ii) the vehicle's condition is such that it no longer functions as a vehicle and a licence could not be issued for it under Part III,

the officer may cancel the notice to surrender.

(3) As soon as is practicable after a senior police officer cancels a notice to surrender, the officer must give a written notice of the cancellation to the person to whom the notice to surrender was given.

**79BCD. Notice to surrender alternative vehicle if surrender notice cancelled**

(1) This section applies if —

- (a) under section 79BA a surrender notice is given to a person responsible for a vehicle (*vehicle A*) the driver of which (the *alleged offender*) is suspected of having committed an offence (the *offence*); and
- (b) under section 79BCC the surrender notice is cancelled before vehicle A is impounded under section 79BB; and
- (c) the alleged offender is a responsible person for one or more other vehicles.

(2) If this section applies, a member of the Police Force may give the alleged offender, personally or by registered post, a notice in accordance with this section (a *surrender alternative vehicle notice*).



- (3) The surrender alternative vehicle notice cannot be given after 28 days after the date on which the surrender notice was cancelled.
- (4) The surrender alternative vehicle notice must contain a statement to the effect that, because vehicle A will not be impounded, a vehicle for which the alleged offender is a responsible person (the *alternative vehicle*) is required to be surrendered to the Commissioner for impounding instead of vehicle A.
- (5) The surrender alternative vehicle notice must specify the following —
  - (a) in relation to the offence, its details and the time and place at which it is suspected to have been committed;
  - (b) which of sections 79(1) and 79A(1) is the provision that authorised the impounding of vehicle A (the *impounding provision*);
  - (c) sufficient details of vehicle A to identify it;
  - (d) when the surrender notice was cancelled under section 79BCC;
  - (e) sufficient details of the alternative vehicle to identify it;
  - (f) if the impounding provision is section 79(1) and the alleged offender is a previous offender as defined in section 79(1A), sufficient details to explain why the alleged offender is regarded as a previous offender;
  - (g) the length of the impounding period for the alternative vehicle, which is to be —
    - (i) if section 79(1) was the impounding provision for vehicle A, either 28 days or 3 months according to which of those periods was the impounding period for which section 79(1) required vehicle A to be impounded; and
    - (ii) if section 79A(1) was the impounding provision for vehicle A, 28 days;
  - (h) the place at which, and the time of day during which, the alternative vehicle and its keys are required to be surrendered under this Division;
  - (i) the last day on or before which the alternative vehicle and its keys are required to be surrendered, being the seventh day after the day on which the notice is given.
- (6) The surrender alternative vehicle notice must also include —
  - (a) a statement to the effect that this Division contains law about the notice and the impounding of the vehicle; and
  - (b) a statement as to the effect of section 79BCE(5); and
  - (c) a statement to the effect that failure to comply with the notice will result in the vehicle being impounded by operation of section 79BCE(2).
- (7) If the alleged offender is a responsible person for 2 or more other vehicles, the surrender alternative vehicle notice must specify only one of them as the alternative vehicle, being the one decided by the member of the Police Force issuing the notice.

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- (2) If a responsible person who is given a surrender alternative vehicle notice under section 79BCD fails to surrender the alternative vehicle specified in the notice according to the notice, the vehicle is impounded by operation of this subsection for a period that commences at the time when a member of the Police Force takes possession of the vehicle for the purpose of impounding it.
- (3) An impounding period the length of which is specified as 28 days or 3 months in a surrender alternative vehicle notice includes the part of the day on which the vehicle is impounded that is after the impounding occurred even though including that part of the day makes the period more than 28 days or 3 months, as the case requires.
- (4) The period for which a vehicle is impounded by operation of subsection (1) or (2) ends when the impounding period has passed since the end of the day on which the vehicle was impounded.
- (5) A responsible person who is given a surrender alternative vehicle notice under section 79BCD commits an offence and is liable to a fine of 50 PU if, when the alternative vehicle specified in the notice has not been impounded by operation of subsection (1) or (2) as a consequence of the notice, the person disposes of an interest that the person has in the vehicle.

*Interruption pursuant to Temporary Orders.*

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The President resumed the Chair.

The Chairman of Committees reported that the Committee had considered the Bill, made progress, and asked leave to sit again.

Ordered - That the Committee have leave to sit again.

**16. Members' Statements**

Statements were taken.

**17. Revenue Laws Amendment Bill 2010**

The President reported the receipt of Message No. 94 from the Legislative Assembly forwarding the Bill for concurrence.

The Parliamentary Secretary representing the Treasurer moved, That the Bill be now read a first time.

Question - put and passed.

Bill read a first time.

The Parliamentary Secretary representing the Treasurer moved, That the Bill be now read a second time.

The Parliamentary Secretary representing the Treasurer tabled the Revenue Laws Amendment Bill 2010 Explanatory Memorandum. (Tabled paper 2015).

Debate stands adjourned.

**18. Special Adjournment**

The Leader of the House moved, without notice -

That the House at its rising adjourn until Tuesday, 18 May 2010 at 3.00pm.

Question - put and passed.

**19. Adjournment**

The House adjourned at 5.50pm until Tuesday, 18 May 2010 at 3.00pm.

**Members present during the day's proceedings**

Attendance: Present all Members except Hon Robin Chapple, Hon Mia Davies, Hon Jon Ford, Hon Robyn McSweeney and Hon Michael Mischin.

**MALCOLM PEACOCK**  
Clerk of the Legislative Council

**HON BARRY HOUSE**  
President of the Legislative Council