

# LEGISLATIVE COUNCIL

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## MINUTES OF PROCEEDINGS

No. 70

FRIDAY, 27 NOVEMBER 2009

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### 1. Meeting of Council

The Council assembled at 10.00am pursuant to order.

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

### 2. Paper

The following Paper was laid on the Table by -

#### Minister for Energy

##### *Addendums -*

Western Power Annual Report (2008-2009)..... 1592

### 3. Notice of Questions

Hon Ken Travers: To ask the following question of the Minister for Transport on the next day of sitting -

I refer to the debate on the disallowance of the *Perth Parking Management Amendment Regulations (No. 2) 2009* and I ask -

- (1) Why did you not respond to my question during the debate about whether you have had any conversations about these regulations with any Members of the Joint Standing Committee?
- (2) Have you or any Member of your staff had any conversations with any Member of the Joint Standing Committee on Delegated Legislation about the disallowance of these regulations?
- (3) If yes, who were the discussions with, what was the nature of the discussions and when did they occur?
- (4) Will the Minister table any documents including emails provided to any Member of the Committee on these regulations?

Hon Ken Travers: To ask the following question of the Minister for Transport on the next day of sitting -

Why have you not put in place any arrangement for a shipping service to the North West of this State once the current contract expires?

Hon Ken Travers: To ask the following question of the Minister for Transport on the next day of sitting -

I refer to your request yesterday for me to place my question concerning your compliance with Section 82 of the *Financial Management Act 2006* on notice and I ask -

Does your office have any systems in place to ensure that it has ongoing compliance with the requirements of this Act and if no, why not?

*Point of Order*

Hon Simon O'Brien raised the following Point of Order -

A number of those matters are the subject of questions for which answers are already in train or have already been provided to the Member. I think that the Member is using this agenda item as a device to make a statement that cannot be responded to until the House resumes next March. I think that is an abuse of the rare provision that he is using. If the Member wants to ask any of those questions today, I will answer them today at two o'clock. I believe, as a point of order, the Member is misusing the process because he has already embarked on other processes to answer those very questions.

*President's Ruling*

The President ruled as follows -

Order, Members. We will check against previous questions asked to examine whether Hon Simon O'Brien's point has validity and advise whether that is the case before question time.

**4. Order of Business**

Ordered - That Orders of the Day be taken forthwith (Leader of the House).

**5. Joint Authority Southern Demersal Gillnet and Demersal Longline Managed Fishery Management Plan Amendment (No. 2) 2009 - Disallowance - Discharge from Notice Paper**

The Order of the Day having been called, Hon Robin Chapple moved, without notice -

That the *Joint Authority Southern Demersal Gillnet and Demersal Longline Managed Fishery Management Plan Amendment (No. 2) 2009 - Disallowance*, be discharged from the Notice Paper.

Question - put and passed.

**6. Waste Avoidance and Resource Recovery Amendment Bill 2009**

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

Debate resumed.

*Want of Quorum*

There not being a quorum present, the President gave instructions for the ringing of the Bells.

A quorum being formed, the debate continued.

Hon Ken Travers moved, without notice -

That the *Waste Avoidance and Resource Recovery Amendment Bill 2009* be discharged and referred to the Standing Committee on Legislation for consideration and report not later than 15 December 2009.

Debate ensued.

**7. President's Ruling - Ministerial Answers - Financial Management Act, North West Shipping Service and Perth Parking Licence Fee Increases - Northbridge Link**

The President ruled as follows -

Honourable Members, before we move into question time, I have considered the points raised by the Minister for Transport at the commencement of today's proceedings regarding the questions asked by Hon Ken Travers. The first point to make is that it is the entitlement of any Member under standing order 137(c) to give oral notice of questions. It was requested by the Minister to place on notice the first question asked by the Member; therefore the Member has undertaken to do so under standing order 137(c). As far as I am aware, the second question placed on notice by the Member is a new question, as it has not been asked either on notice or without notice. The third and last question asked by the Member relates to a debate on a disallowance. There is no barrier for Members to ask questions on notice or without notice about a matter subject of previous debate. I therefore rule that the questions are in order and will be placed on notice.

**8. Questions Without Notice**

Questions without notice were taken.

The Minister for Transport tabled, and by leave incorporated into Hansard, an answer in relation to projects funded under the \$700 million Perth's Urban Transport and Freight corridors, in response to question on notice No. 1380 asked by Hon Ken Travers. (Tabled paper 1593).

**9. Waste Avoidance and Resource Recovery Amendment Bill 2009**

Debate resumed on motion of Hon Ken Travers (cf item 6 above) as follows -

That the *Waste Avoidance and Resource Recovery Amendment Bill 2009* be discharged and referred to the Standing Committee on Legislation for consideration and report not later than 15 December 2009.

*Want of Quorum*

There not being a quorum present, the President gave instructions for the ringing of the Bells.

A quorum being formed, the debate continued.

*Want of Quorum*

There not being a quorum present, the President gave instructions for the ringing of the Bells.

A quorum being formed, the debate continued.

Question, That the motion be agreed to - put.

The House divided.

**Ayes (12)**

Hon Matt Benson-Lidholm  
Hon Robin Chapple  
Hon Sue Ellery  
Hon Jock Ferguson  
Hon Jon Ford  
Hon Lynn MacLaren

Hon Ljiljanna Ravlich  
Hon Sally Talbot  
Hon Ken Travers  
Hon Giz Watson  
Hon Alison Xamon  
Hon Ed Dermer (*Teller*)

**Noes (17)**

Hon Jim Chown  
 Hon Peter Collier  
 Hon Mia Davies  
 Hon Phil Edman  
 Hon Brian Ellis  
 Hon Donna Faragher  
 Hon Philip Gardiner  
 Hon Nick Goiran  
 Hon Nigel Hallett

Hon Alyssa Hayden  
 Hon Col Holt  
 Hon Michael Mischin  
 Hon Norman Moore  
 Hon Helen Morton  
 Hon Simon O'Brien  
 Hon Max Trenorden  
 Hon Ken Baston (*Teller*)

Motion thus negatived.

Debate resumed on the second reading of the Bill.

Question - put.

The House divided.

**Ayes (17)**

Hon Liz Behjat  
 Hon Jim Chown  
 Hon Peter Collier  
 Hon Mia Davies  
 Hon Phil Edman  
 Hon Brian Ellis  
 Hon Donna Faragher  
 Hon Philip Gardiner  
 Hon Nick Goiran

Hon Nigel Hallett  
 Hon Alyssa Hayden  
 Hon Col Holt  
 Hon Norman Moore  
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**Noes (12)**

Hon Matt Benson-Lidholm  
 Hon Robin Chapple  
 Hon Sue Ellery  
 Hon Jock Ferguson  
 Hon Jon Ford  
 Hon Lynn MacLaren

Hon Ljiljanna Ravlich  
 Hon Sally Talbot  
 Hon Ken Travers  
 Hon Giz Watson  
 Hon Alison Xamon  
 Hon Ed Dermer (*Teller*)

Question thus passed.

Bill read a second time.

The President left the Chair.

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**In Committee**

(Hon Matt Benson-Lidholm in the Chair)

Clause 1.

Debate ensued.

*Point of Order*

Hon Ken Travers raised the following Point of Order -

I ask you, Madam Deputy Chairman, to give us a ruling on whether this Bill is an Appropriation Bill.

*Deputy Chairman's Ruling*

The Deputy Chairman ruled as follows -

There is already a *Waste Avoidance and Resource Recovery Levy Act 2007* and a *Waste Avoidance and Resource Recovery Act 2007*. The Bill before the House will amend both Acts. The principal Act, the *Waste Avoidance and Resource Recovery Levy Act 2007*, authorises the levy. The Bill seeks to amend these Acts to provide for the broadening of the purposes for which the levy imposed under the *Waste Avoidance and Resource Recovery Levy Act 2007* can be applied. Section 46(6) of the *Constitution Acts Amendment Act* provides -

A Bill which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

As a former President ruled in 1983, "ordinary" describes an annually funded service of a type which government must provide by law or which is provided by a government in the course of giving effect to its policy. Clause 8 of the Bill before the House seeks to amend section 80 of the Act by deleting subsections (1) and (2) and inserting a proposed new subsection (1) of the Act. This will expand the application of moneys as currently provided in the Act.

The ruling states in part -

... I need to exclude some appropriations that clearly are not for the ordinary annual services. As the High Court has said -

... the Parliament forgoes its annually-exercised power over expenditure by government when a law containing a standing appropriation is enacted. Standing appropriations need not be included in annual appropriations.

It is not a Bill that appropriates revenue or money for the ordinary annual services of the government and, therefore, section 46(6) does not apply.

Debate resumed.

Clause agreed to.

Clause 2.

Debate ensued.

Clause agreed to.

Clause 3.

Debate ensued.

Clause agreed to.

Clause 4.

Debate ensued.

Hon Sally Talbot moved -

Page 3, line 9 — To insert after "facilities" —

to be funded from the Department's consolidated revenue

Debate ensued.

Amendment - put and negatived.

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

Clause 5.

Debate ensued.

Hon Robin Chapple moved -

Page 3, lines 18 to 20 — To delete “an operating account of the Department established under the *Financial Management Act 2006* section 16(1)(a)” and insert —

the WARR Account

Amendment - put.

The Committee divided.

**Ayes (11)**

Hon Matt Benson-Lidholm  
Hon Robin Chapple  
Hon Kate Doust  
Hon Jock Ferguson  
Hon Jon Ford  
Hon Lynn MacLaren

Hon Ljiljanna Ravlich  
Hon Sally Talbot  
Hon Ken Travers  
Hon Giz Watson  
Hon Ed Dermer (*Teller*)

**Noes (16)**

Hon Liz Behjat  
Hon Jim Chown  
Hon Peter Collier  
Hon Mia Davies  
Hon Phil Edman  
Hon Donna Faragher  
Hon Philip Gardiner  
Hon Nick Goiran

Hon Alyssa Hayden  
Hon Col Holt  
Hon Michael Mischin  
Hon Norman Moore  
Hon Helen Morton  
Hon Simon O'Brien  
Hon Max Trenorden  
Hon Ken Baston (*Teller*)

Amendment thus negatived.

Hon Robin Chapple moved -

Page 3, after line 20 — To insert —

- (5) Subject to subsections (6), (7) and (8), the Minister may grant a full or partial exemption to the levy imposed under this section for residual waste from either a —
  - (a) specified Resource Recovery Facility or Materials Recovery Facility; or
  - (b) specified class of Resource Recovery Facility or Materials Recovery Facility,

provided in all cases that the specified facility or class of facility has demonstrated either an ability or a credible commitment to further reduce the amount of residual waste sent to landfill from that specified facility or class of facility.
- (6) The Minister may grant a partial exemption under subsection (5) using any methodology, including by exempting a specified Resource Recovery Facility or Materials Recovery Facility, or specified class of Resource Recovery Facility, by reference to the percentage of waste diverted from landfill by that facility or class of facility.
- (7) The Minister may only grant an exemption under subsection (5) if that exemption includes as conditions the requirements that —

- (a) an operator of a waste facility the subject of the exemption pays an amount, equal to the levy that would otherwise have been payable on the exempted residual waste, into an account specifically created for that purpose by that operator;
  - (b) an account referred to in paragraph (a) must be named “Landfill Levy Exemption Waste Research and Infrastructure Investment Account”;
  - (c) an operator of a waste facility the subject of the exemption must only spend the money in the account referred to in paragraph (a) on research and infrastructure designed to reduce the amount of residual waste sent to landfill from that particular facility.
- (8) The Minister may revoke, in whole or in part, any exemption granted under subsection (5) for any reason including —
- (a) a specified facility or class of facility is no longer demonstrating an ability or a credible commitment to further reduce the amount of residual waste sent to landfill from that specified facility or class of facility; or
  - (b) an operator of a waste facility the subject of an exemption fails to comply or fails to provide evidence demonstrating compliance with any of the standard conditions applied to that facility under subsection (7).

Debate ensued.

The Minister for Environment moved, That progress be reported and leave asked to sit again.

Question - put and passed.

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The President resumed the Chair.

The Deputy 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.

## **10. Special Adjournment**

The Leader of the House moved, without notice -

That the House at its rising adjourn until Tuesday, 1 December 2009 at 11.00am for the purpose of completing all stages of the *Waste Avoidance and Resource Recovery Amendment Bill 2009* and for the taking of questions without notice at 2.00pm.

Debate ensued.

Question - put and passed.

## **11. Adjournment**

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

Debate ensued.

Question - put and passed.

The House adjourned at 9.50pm until Tuesday, 1 December 2009 at 11.00am.

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

Attendance: Present all Members except Hon Wendy Duncan, Hon Adele Farina and Hon Robyn McSweeney.

**MALCOLM PEACOCK**  
Clerk of the Legislative Council

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