

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 52

TUESDAY, 22 SEPTEMBER 2009

1. Meeting of Council

The Council assembled at 3.30pm pursuant to order.

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

2. President's Ruling - First Home Owner Grant Amendment Bill 2009

The President ruled as follows -

On Wednesday, 16 September, Hon Ken Travers sought a ruling from the Deputy Chairman of Committees on whether the amendment to clause 5 in the name of the Parliamentary Secretary to the Treasurer was in order for the purposes of section 46(3) of the *Constitution Act Amendment Act 1899*. Section 46(3) of the *Constitution Act Amendment Act 1899* provides that the Legislative Council may not amend any Bill so as to increase any proposed charge or burden on the people — that is, if the amendment appropriates public moneys. The Deputy Chairman ruled the amendment in order. The Deputy Chairman raised the matter with me and requested that I provide a more detailed ruling on the question of any proposed charge or burden on the people.

I have reviewed the amendment moved by the Parliamentary Secretary. The amendment creates two additional definitions and sets out the meaning of class 6 and 7 eligible transactions. The amendment also provides that class 6 and 7 eligible transactions are not available after the cut-off date. The Bill as introduced included in clause 4 a definition of “cut-off date”, which is the date by which certain transactions must be entered into to receive the additional grant under the first home owners boost scheme. For the class 6 and 7 eligible transactions to take effect pursuant to the principal Act — the *First Home Owners Grant Act 2000* — other amendments would be necessary, particularly to section 19 of the principal Act, before any grant is payable and effectively imposed.

In 1960 the then President made, in part, the following ruling on the *Optometrists Act Amendment Bill* —

I have consulted *May's Parliamentary Practice* which lays down three tests for deciding whether a particular proposal constitutes a charge. These are as follows:

In order to constitute a charge upon public funds, expenditure must be -

- (1) new and distinct;
- (2) payable out of the exchequer;
- (3) effectively imposed.

Dealing with the first of these tests that a charge must be new and distinct, I would point out that section 15 of the existing Act makes provision for the necessary remuneration of Members. Therefore it is not a new and distinct charge.

The remuneration is paid from the funds of the Board. These funds may include, but not necessarily, grants from the Government. However, according to *May's Parliamentary Practice* payments out of funds which are fed by grants from the Consolidated Fund are specifically excluded from the category of a charge.

The third test is that a charge must be "effectively imposed". In my opinion the proposed appointment contained in the amendment does not constitute an effective charge on the Consolidated Fund.

As I have stated, the amendment does not effectively impose a charge on the consolidated fund. I therefore rule that the amendment is within the scope and purpose of the Bill, and does not create an appropriation pursuant to section 46(3) of the *Constitution Act Amendment Act 1899*.

3. Message from His Excellency the Governor - Assent to Bills

The President reported the receipt of a Message from His Excellency the Governor assenting to the following Bills -

16 September 2009 - Message No. 60	Act No.
Local Government Amendment Bill 2009	17 of 2009
Acts Amendment (Bankruptcy) Bill 2009	18 of 2009
Revenue Laws Amendment (Taxation) Bill 2009	19 of 2009

4. Message from the Lieutenant Governor and Deputy of the Governor - Assent to Bills

The President reported the receipt of a Message from the Lieutenant Governor and Deputy of the Governor assenting to the following Bills -

21 September - Message No. 61	Act No.
Major Events (Aerial Advertising) Bill 2009	20 of 2009
Criminal Code Amendment Bill 2008	21 of 2009

5. Ministerial Statement - Legislative Council Parliamentary Sitting Dates for 2010

The Leader of the House made a Ministerial Statement with respect to the Legislative Council parliamentary sitting dates for 2010.

The Leader of the House tabled the Legislative Council 2010 Sitting Dates. (Tabled paper 1200).

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

6. Ministerial Statement - Mineral and Petroleum Industry

The Minister for Mines and Petroleum made a Ministerial Statement with respect to the value of the Western Australian resources industry to Australia's merchandise exports.

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

7. Ministerial Statement - Harvest Mass Management Scheme

The Minister for Transport made a Ministerial Statement with respect to the approval of the Harvest Mass Management Scheme providing for improved flexibility in load weight for the transport of grain.

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

8. Ministerial Statement - Standing Committee on Legislation Inquiry Into State Administrative Tribunal - Government Response

The Parliamentary Secretary representing the Attorney General made a Ministerial Statement with respect to the Government's response to Report No. 14 of the Standing Committee on Legislation - *Inquiry into the Jurisdiction and Operation of the State Administration Tribunal*.

The Parliamentary Secretary representing the Attorney General tabled the Government's response to Report No. 14 of the Standing Committee on Legislation - *Inquiry into the Jurisdiction and Operation of the State Administration Tribunal*. (Tabled paper 1198).

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

9. Papers

The following Papers were laid on the Table by -

President

Annual Reports -

Parliamentary Inspector of the Corruption and Crime Commission (2008-2009)
(Date received 22/09/2009)..... 1172

Leader of the House

Annual Reports -

Burswood Park Board (2008-2009) (Date received 16/09/2009)..... 1173

Equal Opportunity in Public Employment, Director of (2008-2009) (Date received 18/09/2009)..... 1174

Gold Corporation (2008-2009) (Date received 18/09/2009)..... 1175

Lotterywest (2008-2009) (Date received 18/09/2009)..... 1176

Public Sector Standards Commissioner, Office of the [OPSSC] (2008-2009)
(Date received 18/09/2009)..... 1177

State Development - Department of (2008-2009) (Date received 21/09/2009)..... 1178

Management Plans -

Fish Resources Management Act 1994 (West Coast Demersal Scalefish Fishery (Interim)
Management Plan Amendment 2009 G.G. 15/09/2009)..... 1179

Orders -

Fish Resources Management Act 1994 (Pilbara Fish Trawl Fishery Notice Revocation Order
2009 G.G. 18/09/2009)..... 1180

Minister for Transport

Regulations -

Poisons Act 1964 (Poisons Amendment Regulations 2009 G.G. 15/09/2009 and Poisons Amendment
Regulations (No. 3) 2009 G.G. 15/09/2009)..... 1181

Port Authorities Act 1999 (Port Authorities Amendment Regulations (No. 2) 2009 G.G.
18/09/2009)..... 1182

Road Traffic Act 1974 (Road Traffic Code Amendment Regulations (No. 3) 2009 G.G. 18/09/2009) .. 1183

Minister for Energy

Annual Reports -

Fire and Emergency Services Authority (2008-2009) (Date received 21/09/2009)..... 1184

Police, Western Australia (2008-2009) (Date received 21/09/2009)	1185
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Minister for Child Protection

Annual Reports -

Agriculture Produce Commission (2008-2009) (Date received 21/09/2009).....	1186
Communities, Department for (2008-2009) (Date received 18/09/2009)	1187
Rural Business Development Corporation (2008-2009) (Date received 21/09/2009)	1188
State Records Commission (2008-2009) (Date received 18/09/2009)	1189

Regulations -

Agricultural Produce Commission Act 1988 (Agricultural Produce (Horticultural Industry) Amendment Regulations 2009 G.G. 15/09/2009).....	1190
Planning and Development Act 2005 (Planning and Development (Repeal) Regulations 2009 G.G. 18/09/2009).....	1191

Parliamentary Secretary representing the Minister for Regional Development

Proposals -

Land Administration Act 1997 - Submission No. 17/2009 - Change of purpose of A Class Reserve 41945 - Greenough Hamlet Heritage Area - City of Geraldton- Greenough	1192
Land Administration Act 1997 - Submission No. 18/2009 - Excision from Class A Reserve No. 15556 - Hammond Road, City of Cockburn.....	1193

Regulations -

Land Administration Act 1997 (Land Administration Amendment Regulations (No. 3) 2009 G.G. 18/09/2009).....	1194
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Parliamentary Secretary to the Attorney General

Annual Reports -

Law Reform Commission (2008-2009) (Date received 21/09/2009).....	1195
Supervised Release Review Board (2008-2009) (Date received 21/09/2009)	1196

Regulations -

Guardianship and Administration Act 1990 (Guardianship and Administration Amendment Regulations 2009 G.G. 15/09/2009).....	1197
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Parliamentary Secretary representing the Treasurer

Regulations -

Rights in Water and Irrigation Act 1914 (Rights in Water and Irrigation Amendment Regulations (No. 2) 2009 G.G. 15/09/2009).....	1199
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10. Standing Committee on Estimates and Financial Operations - Special Report - Resolution of the Committee to hold hearings in relation to Government Agency Annual Reports for 2008-09 on 26 and 27 October 2009, and on 2 November 2009

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 hold hearings in relation to government agency annual reports for 2008-09 on 26 and 27 October 2009, and on 2 November 2009. (Tabled paper 1201).

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

Question - put and passed.

11. Joint Standing Committee on the Corruption and Crime Commission - Fifth Report - Annual Report 2008-2009

Hon Nick Goiran presented the Fifth Report of the Joint Standing Committee on the Corruption and Crime Commission being the *Annual Report 2008-2009*. (Tabled paper 1202).

Hon Nick Goiran moved, That the Report do lie upon the Table and be printed.

Question - put and passed.

12. Standing Committee on Environment and Public Affairs - Special Report - Resolution of the Committee on 16 September 2009 to commence an inquiry into Deep Sewerage in the Cockburn Area

Hon Brian Ellis presented a Special Report of the Standing Committee on Environment and Public Affairs in relation to a resolution of the Committee on 16 September 2009 to commence an inquiry into deep sewerage in the Cockburn area. (Tabled paper 1203).

Hon Brian Ellis moved, That the Report do lie upon the Table.

Question - put and passed.

13. Matter of Urgency - Lobbyists - Regulation

The President read the following letter -

Dear Mr President

At today's sitting it is my intention to move under SO 72 that the Council consider, as a matter of urgency, that this House condemns the Premier for failing miserably on his election commitment to open, accountable and transparent Government, and calls on him to explain why he has not delivered on the promise he made during the 2008 election campaign to "move quickly to legislate to register and monitor the activities of consultant lobbyists".

Yours sincerely

Hon Ljiljanna Ravlich

Member for East Metropolitan Region

Four members having risen in support.

Hon Ljiljanna Ravlich moved the motion.

Debate ensued.

Motion lapsed.

14. Questions Without Notice

Questions without notice were taken.

The Minister for Environment tabled a memo dated 11 May 2009 from the Minister for Environment to the Treasurer entitled *Shortfall in Landfill Levy Revenue - 2009-2010 and Ongoing*, in response to a question without notice asked by Hon Sally Talbot. (Tabled paper 1204).

The Minister for Transport tabled documents in relation to Perth CBD public transport patronage figures for the weeks commencing 29 June 2008 to 3 August 2008, in response to a question without notice asked by Hon Ken Travers. (Tabled paper 1205).

The Minister for Transport representing the Minister for Health tabled documents in relation to the Busselton Hospital redevelopment, in response to a question without notice asked by Hon Adele Farina. (Tabled paper 1206).

The Minister for Mines and Petroleum tabled a DVD titled *Inventory of Abandoned Mine Sites Progress 1999-2007*, in response to question on notice No. 1154 asked by Hon Robin Chapple. (Tabled paper 1207).

The Minister for Mines and Petroleum tabled documents in relation to abandoned mines in Western Australia, in response to question on notice No. 1156 asked by Hon Robin Chapple. (Tabled paper 1208).

The Minister for Environment tabled documents in relation to the Minister for Environment's record of complaints by agency since 23 September 2008, in response to question on notice No. 1076 asked by Hon Ljiljanna Ravlich. (Tabled paper 1209).

15. First Home Owner Grant Amendment Bill 2009

The Order of the Day having been read for the consideration of the Committee's report upon this Bill.

The Parliamentary Secretary representing the Treasurer moved, That the report be adopted.

Question - put and passed.

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

16. Road Traffic Amendment (Hoons) Bill 2009

The Order of the Day having been read for the consideration of the Committee's report upon this Bill.

The Minister for Energy representing the Minister for Police moved, That the report be adopted.

Question - put and passed.

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

17. Criminal Code Amendment (Graffiti) Bill 2009

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

Debate ensued.

Interruption of Debate [SO 61(b)].

18. Bush Fires Amendment Bill 2009

The Deputy President reported the receipt of Message No. 49 from the Legislative Assembly forwarding the Bill for concurrence.

The Minister for Energy representing the Minister for Emergency Services moved, That the Bill be now read a first time.

Question - put and passed.

Bill read a first time.

The Minister for Energy representing the Minister for Emergency Services moved, That the Bill be now read a second time.

Debate stands adjourned.

19. Waste Avoidance and Resource Recovery Amendment Bill 2009

The Deputy President reported the receipt of Message No. 50 from the Legislative Assembly forwarding the Bill for concurrence.

The Leader of the House on behalf of the Minister for Environment moved, That the Bill be now read a first time.

Question - put and passed.

Bill read a first time.

The Leader of the House on behalf of the Minister for Environment moved, That the Bill be now read a second time.

Debate stands adjourned.

20. Adjournment

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

Debate ensued.

Question - put and passed.

The House adjourned at 10.54pm until Wednesday, 23 September 2009 at 4.00pm.

Members present during the day's proceedings

Attendance: Present all Members except Hon Robin Chapple.

MALCOLM PEACOCK
Clerk of the Legislative Council

HON BARRY HOUSE
President of the Legislative Council