

LEGISLATIVE COUNCIL

MINUTES OF PROCEEDINGS

No. 129

WEDNESDAY, 4 APRIL 2007

1. Meeting of Council

The Council assembled at 4.00pm pursuant to order.

The President, Hon Nick Griffiths, took the Chair and read prayers.

2. Petition

Hon Barry House, by leave, presented a non-conforming petition from 921 residents of Western Australia regarding the *Daylight Saving Bill 2006*. (Tabled paper 2605).

3. Ministerial Statement - Population Ageing - Access Economics Report

The Minister for Child Protection made a Ministerial Statement with respect to research into the impact of population ageing.

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

4. Ministerial Statement - Whiteman Park and Environs - Metropolitan Region Scheme Amendment 1027/33

The Parliamentary Secretary representing the Minister for Planning and Infrastructure made a Ministerial Statement with respect to Metropolitan Region Scheme Amendment No. 1027/33, Whiteman Park and environs and tabled the Report on Submissions, Submissions and Transcripts of Public Hearings (Tabled papers 2606 A, B and C) and Plan 2.0768/3. (Tabled paper 2607).

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

5. Standing Committee on Procedure and Privileges - Eleventh Report - Referral of Tabled paper 2380 - Request by the Corruption and Crime Commission for Access to and Use of Parliamentary Proceedings

The President tabled the Eleventh Report of the Standing Committee on Procedure and Privileges in relation to the Referral of Tabled paper 2380 - Request by the Corruption and Crime Commission for Access to and Use of Parliamentary Proceedings. (Tabled paper 2596).

Hon George Cash moved, That the Report tabled by the President be printed.

Question - put and passed.

6. Papers

The following Papers were laid on the Table by -

President

Auditor General's Papers -

Second Public Performance Report 2007 (Report No.3) (04 April 2007) (Deemed tabled 04/04/07).....	2594
Audit Results Report - Universities and TAFE Colleges - Other audits completed since 16 October 2006 - Legislative Changes and Audit Practice Statement 2007 (Report No. 4) (04 April 2007) (Deemed tabled 04/04/2007)	2595

Leader of the House

Directions -

Electricity Corporations Act 2005 - Ministerial Direction to Synergy and Verve Energy (Gas Market Moratorium).....	2597
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Orders -

Section 69 Order - Electricity Corporations (Transactions Exempt from Ministerial Approval) Order 2007	2598
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Regulations -

Petroleum (Submerged Lands) Act 1982 (Petroleum (Submerged Lands) (Diving Safety) Regulations 2007 G.G. 27/03/2007, Petroleum (Submerged Lands) (Management of Safety on Offshore Facilities) Regulations 2007 G.G. 27/03/2007, Petroleum (Submerged Lands) (Occupational Safety and Health) Regulations 2007 G.G. 27/03/2007, and Petroleum (Submerged Lands) (Pipelines) Regulations 2007 G.G. 27/03/2007)	2599
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Minister for Local Government

Regulations -

Industrial Relations Act 1979 (Industrial Relations Commission Amendment Regulations 2007 G.G. 27/03/2007).....	2600
Industrial Training Act 1975 (Industrial Training (Apprenticeship Training) Amendment Regulations (No. 3) 2007 G.G. 30/03/2007 and Industrial Training (General Apprenticeship) Amendment Regulations 2007 G.G. 28/03/2007)	2601

Reports -

Land Information, Department of - Final Report (30 March 2007)	2604
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Minister for Regional Development

Regulations -

Environmental Protection Act 1986 (Environmental Protection (Clearing of Native Vegetation) Amendment Regulations 2007 G.G. 30/03/2007)	2602
Residential Tenancies Act 1987 (Residential Tenancies Amendment Regulations 2007 G.G. 30/03/2007).....	2603

Parliamentary Secretary representing the Minister for Planning and Infrastructure

Plans -

Metropolitan Regional Scheme Amendment 1027/33 - Whiteman Park and Environs (City of Swan) (Plan No. 2.0768/3).....	
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Reports -

Metropolitan Regional Scheme Amendment 1027/33 - Whiteman Park and Environs
(City of Swan)

7. Governance and Administration in Western Australia

Motion No. 52 having been read, debate resumed on the motion of Hon Norman Moore as follows -

That this House expresses its grave concern at the significant deterioration in the governance and administration of the State of Western Australia resulting from a Government preoccupied with continued internal division and conflict, manipulated by outside influences and increasingly demonstrating serious signs of dysfunctionality, and calls on the Government to urgently address the issues raised by the Corruption and Crime Commission and refocus its attention on restoring public confidence in the capacity of the Government to govern for all West Australians without fear or favour.

Interruption of Debate [SO 195].

8. Consumer Credit (Western Australia) (Infringement Notices) Regulations 2006 - Disallowance - Discharge from Notice Paper

The Order of the Day having been read, Hon Ray Halligan moved, without notice -

That Order of the Day No. 348. *Consumer Credit (Western Australia) (Infringement Notices) Regulations 2006 - Disallowance*, be discharged from the Notice Paper.

Question - put and passed.

9. Owner-Drivers (Contracts and Disputes) Bill 2006

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

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

The President having reported that the 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.

Debate ensued.

Question - put.

The House divided.

Ayes (15)

Hon Vincent Catania
Hon Kim Chance
Hon Murray Criddle
Hon Ed Dermer
Hon Kate Doust
Hon Sue Ellery
Hon Adele Farina
Hon Jon Ford

Hon Graham Giffard
Hon Paul Llewellyn
Hon Sheila Mills
Hon Ljiljanna Ravlich
Hon Sally Talbot
Hon Ken Travers
Hon Giz Watson

Noes (12)

Hon Ken Baston
Hon George Cash
Hon Peter Collier
Hon Bruce Donaldson
Hon Donna Faragher
Hon Anthony Fels

Hon Nigel Hallett
Hon Ray Halligan
Hon Barry House
Hon Robyn McSweeney
Hon Helen Morton
Hon Simon O'Brien

Question thus passed.

Bill read a third time and passed.

10. Parental Support and Responsibility Bill 2005

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

The Minister for Child Protection moved, That the Bill be now read a third time.

The 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.

Debate ensued.

Question - put and passed.

Bill read a third time and passed.

11. Chemistry Centre (WA) Bill 2006

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

The President left the Chair.

In Committee

(Hon Ray Halligan in the Chair)

Clause 1.

Debate ensued.

Clause agreed to.

Clauses 2 to 10 agreed to.

Clause 11.

Debate ensued.

Clause agreed to.

Clause 12.

The Minister for Agriculture and Food moved -

Page 11, lines 10 and 11 — To delete “*Financial Administration and Audit Act 1985* section 66” and insert instead —

“ *Financial Management Act 2006* Part 5 ”.

Debate ensued.

Amendment - put and passed.

Clause, as amended, agreed to.

12. Questions Without Notice

Questions without notice were taken.

The Parliamentary Secretary representing the Minister for Planning and Infrastructure tabled documents in relation to Town Planning Scheme No. 9 - District Zoning Scheme - Scheme Text (September 2003), in response to a question without notice asked by Hon Simon O’Brien on behalf of Hon Norman Moore. (Tabled paper 2608).

The Parliamentary Secretary representing the Minister for Planning and Infrastructure tabled, and by leave incorporated into Hansard, an answer in relation to the Town of Kwinana proposal to implement permit fees for commercial vehicles, in response to a question without notice asked by Hon Simon O’Brien. (Tabled paper 2609).

The Leader of the House representing the Minister for Water Resources tabled, and by leave incorporated into Hansard, details in relation to the current status of plans and projects to develop alternative water supplies in the north metropolitan region, in response to a question without notice asked by Hon Giz Watson. (Tabled paper 2610).

The Minister for Regional Development representing the Minister for Police and Emergency Services tabled, and by leave incorporated into Hansard, an answer relation to dates of approval of leave without pay for eight police officers, in response to a question on notice asked by Hon George Cash. (Tabled paper 2611).

The Parliamentary Secretary representing the Minister for Planning and Infrastructure tabled, and by leave incorporated into Hansard, details of Smart Rider Add Value Machines (AVMs) on the Midland to Perth Line, in response to a question without notice asked by Hon Donna Faragher. (Tabled paper 2612).

The Parliamentary Secretary representing the Treasurer tabled, and by leave incorporated into Hansard, a list of tender evaluation and selection panel members, in response to a question without notice asked by Hon Helen Morton. (Tabled paper 2613).

The Parliamentary Secretary representing the Minister for Planning and Infrastructure tabled, and by leave incorporated into Hansard, an answer in relation to the Town of Kwinana permit fees for commercial vehicles - details of road grants for 2002/03, 2003/04, 2004/05, 2005/06 and 2006/07, in response to a question without notice asked by Hon Simon O'Brien. (Tabled paper 2614).

The Minister for Regional Development representing Minister for Consumer Protection tabled, and by leave incorporated into Hansard, an answer in relation to compensation packages for finance broking victims, in response to a question without notice asked by Hon Anthony Fels. (Tabled paper 2615).

13. Chemistry Centre (WA) Bill 2006

In Committee

(Hon Graham Giffard in the Chair)

The Minister for Agriculture and Food moved, That progress be reported and leave asked to sit again at a later stage of this day's sitting.

Question - put and passed.

The Acting 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 at a later stage of this day's sitting.

Ordered - That the Committee have leave to sit again at a later stage of this day's sitting.

14. Order of Business

Ordered - That Bills for Introduction be taken forthwith. (Leader of the House).

15. Uranium Mining (Implementation of Government Commitments) Bill 2007

Hon Giz Watson pursuant to notice, moved -

That a Bill for "An Act to prohibit the mining of uranium in Western Australia" be introduced and read a first time.

Question - put and passed.

Bill read a first time.

The Hon Giz Watson moved, That the Bill be now read a second time.

Debate stands adjourned.

16. Order of Business

Ordered - That Order of the Day No. 275, *Chemistry Centre (WA) Bill 2006*, be taken forthwith.
(Leader of the House).

17. Chemistry Centre (WA) Bill 2006

The Acting President left the Chair.

In Committee

(Hon Graham Giffard in the Chair)

Clauses 13 to 19 agreed to.

Clause 20.

Debate ensued.

Clause agreed to.

Clause 21 agreed to.

Clause 22.

The Minister for Agriculture and Food moved -

Page 17, lines 7 and 8 — To delete “*Financial Administration and Audit Act 1985* section 66”
and insert instead —

“ *Financial Management Act 2006* Part 5 ”.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 23 to 26 agreed to.

Clause 27.

The Minister for Agriculture and Food moved -

Page 19, line 10 — To insert after “Account” —

“ , which is to be established ”.

Page 19, lines 11 to 13 — To delete the lines and insert instead —

“

(a) as an agency special purpose account under the *Financial Management Act 2006* section 16; or

”.

Page 19, lines 15 and 16 — To delete “the *Financial Administration and Audit Act 1985* section 3(1)” and insert instead —

“ section 3 of that Act ”.

Amendments - put and passed.

Clause, as amended, agreed to.

Clause 28 agreed to.

Clause 29.

The Minister for Agriculture and Food moved -

Page 20, line 15 — To delete “Fund” and insert instead —

“ Account ”.

Page 20, line 20 — To delete “Fund” and insert instead —

“ Account ”.

Amendments - put and passed.

Clause, as amended, agreed to.

Clause 30.

The Minister for Agriculture and Food moved -

Page 20, line 24 — To delete “Fund” and insert instead —

“ Account ”.

Amendment - put and passed.

Clause, as amended, agreed to.

Heading for Division 3.

The Minister for Agriculture and Food moved -

Page 21, line 1 — To delete “*Financial Administration and Audit Act 1985*” and insert instead —

“ *Financial Management Act 2006 and Auditor General Act 2006* ”.

Amendment - put and passed.

Divisional Heading, as amended, agreed to.

Clause 31.

The Minister for Agriculture and Food moved -

Page 21, lines 3 and 4 — To delete “*Financial Administration and Audit Act 1985*” and insert instead —

“ *Financial Management Act 2006 and the Auditor General Act 2006* ”.

Amendment - put and passed.

Clause, as amended, agreed to.

Clauses 32 and 33 agreed to.

Clause 34.

The Minister for Agriculture and Food moved -

Page 24, lines 2 and 3 — To delete “*Financial Administration and Audit Act 1985*” and insert instead —

“ *Financial Management Act 2006 Part 5* ”.

Page 24, lines 11 and 12 — To delete “*Financial Administration and Audit Act 1985*” and insert instead —

“ *Financial Management Act 2006 Part 5* ”.

Page 24, lines 19 and 20 — To delete “*Financial Administration and Audit Act 1985* section 69” and insert instead —

“ *Financial Management Act 2006 section 64* ”.

Amendments - put and passed.

Clause, as amended, agreed to.

Clauses 35 to 42 agreed to.

New Clause 31.

Statement by Deputy Chairman

The Deputy Chairman made the following Statement -

Order! I have read proposed new clause 31 and formed the view that provisions of subclauses (4) and (6) may amount to a tax. Section 46(7) of the *Constitution Acts Amendment Act 1899* reads as follows -

- (7) Bills imposing **taxation** shall deal only with the imposition of **taxation** and any provision therein dealing with any other matter shall be of no effect.

The word “taxation” usually covers “every conceivable exaction which it is possible for a government to make, whether under the name of a tax or under such names as rates, assessments, duties, imposts, excise, licences, fees, tolls etc” - see Quick and Garran on the Constitution, p.550; Wynes, p.165. Prima facie, therefore, the Legislative Council may interpret the expression Bills imposing “taxation” in section 46(7) as including Bills imposing rates.

What is regarded as the classic definition of a tax was given in *Matthews v Chicory Marketing Board* (1938) 60 CLR 263 at 270 per Latham CJ -

A tax . . . is a compulsory exaction of money by a public authority for a public purpose, enforceable by law, and is not a payment for services rendered.

A Bill may “impose taxation” notwithstanding that the Bill merely authorises the taxation and does not itself define the tax payable and the persons liable - see *Stephens v Abrahams* (No.2) (1903-4) 29 VLR 229 at p.253; *Federal Commissioner of Taxation v Munro* (1925) 38 CLR 153 at ps. 188-190.

In the *Municipal Council of Sydney v The Commonwealth* (1904) 1 CLR 208, it was held by the High Court that to levy a municipal rate upon commonwealth property is to “impose a tax” within the meaning of section 114 of the commonwealth Constitution.

It is stated in Halsbury’s Laws of England, 2nd Ed. at p.188 that “the word ‘tax’ in its widest sense includes all money raised by taxation and it may, therefore, include parliamentary taxes; that is, taxes levied directly by Parliament usually for the benefit of the whole community and also rates and other charges levied by local authorities under statutory powers; but, as a rule, it denotes parliamentary taxes, and an agreement by the tenant to pay taxes will bind him to pay the landlord’s proportion of the land tax and also other parliamentary taxes which are payable by the landlord in the absence of agreement to the contrary”.

I am unable to establish whether the payment in subclause (7) is for any service so as to constitute a charge. If the amendment is a tax, it would violate section 46(7). The Bill, as amended, by imposing taxation would deal with matters other than taxation and any provisions dealing with other matters would “be of no effect”.

However, before I rule whether the amendment is out of order I invite the Minister to provide advice on this matter.

Debate ensued.

The Deputy Chairman left the Chair at 8.10 pm

The Deputy Chairman resumed the Chair at 8.34 pm

New Clause 31.

Debate resumed.

The Minister for Agriculture and Food moved that debate on New Clause 31 be postponed until after consideration of the Long Title.

Debate ensued.

Question - put and passed.

Schedule 1 agreed to.

Schedule 2.

The Minister for Agriculture and Food moved -

Page 37, line 7 — To delete “*Financial Administration and Audit Act 1985*” and insert instead —

“ *Financial Management Act 2006* ”.

Amendment - put and passed.

The Minister for Agriculture and Food moved -

Page 39, line 31 to page 40, line 1 — To delete “*Financial Administration and Audit Act 1985* section 66” and insert instead —

“ *Financial Management Act 2006* Part 5 ”.

Debate ensued.

Amendment - put and passed.

Debate ensued.

The Minister for Agriculture and Food moved that debate on Schedule 2, as amended, be postponed until after consideration of the Long Title.

Question - put and passed.

Schedule 3

The Minister for Agriculture and Food moved -

Page 42, lines 16 and 17 — To delete “*Financial Administration and Audit Act 1985*” and insert instead —

“ *Financial Management Act 2006* ”.

Amendment - put and passed.

The Minister for Agriculture and Food moved -

Page 42, lines 18 to 22 — To delete the lines and insert instead —

“

[* *Act No. 76 of 2006.*
For subsequent amendments see Act No. 77 of 2006.]

”.

Amendment - put and passed.

Schedule, as amended, agreed to.

Long Title.

The Minister for Agriculture and Food moved -

Page 1, line 9 — To delete “to” in the first place where it occurs.

Amendment - put and passed.

Long Title, as amended, agreed to.

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

Question - put and passed.

The Acting 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.

18. Road Traffic Amendment (Drugs) Bill 2006

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)].

19. Adjournment

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

Debate ensued.

Question - put and passed.

The House adjourned at 10.08pm until Thursday, 5 April 2007 at 10.00am.

Members present during the day's proceedings

Attendance: Present all Members except Hon Shelley Archer, Hon Margaret Rowe and Hon Barbara Scott.

MIA BETJEMAN

Clerk of the Legislative Council

HON NICK GRIFFITHS

President of the Legislative Council