

# LEGISLATIVE COUNCIL

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## MINUTES OF PROCEEDINGS

No. 116

TUESDAY, 12 OCTOBER 2010

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**1. Meeting of Council**

The Council assembled at 3.00pm pursuant to Temporary Orders.

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

**2. 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 -

<b>1 October 2010 - Message No. 113</b>	<b>Act No.</b>
Retail Trading Hours Amendment Bill 2009	38 of 2010
Public Sector Reform Bill 2009	39 of 2010

**3. Ministerial Statement - School Bus Services - Composite Rate Model Contracts Review**

The Minister for Transport made a Ministerial Statement with respect to the establishment of an Independent Review into School Bus Services (Orange Bus) Composite Rate Model Contracts.

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

**4. Papers**

The following Papers were laid on the Table by -

**President**

*Annual Reports -*

Inspector of Custodial Services, Office of the (2009-2010) (Deemed tabled 30/09/2010) ..... 2635

*Financial Statements -*

Members of Parliament (Financial Interest) Act 1992 - Annual Returns (2009-2010)..... 2636

*Reports -*

Corruption and Crime Commission - Report on the Use of Taser Weapons by Western  
Australia Police (October 2010) (Deemed tabled 04/10/2010) ..... 2637

Corruption and Crime Commission - Summary Report on the Use of Taser Weapons  
by Western Australia Police (October 2010) (Deemed tabled 04/10/2010) ..... 2638

**Leader of the House***Annual Reports -*

Burswood Park Board (2009-2010) (Date received 24/09/2010).....	2639
Fisheries, Department of (2009-2010) (Date received 01/10/2010).....	2640
Gaming and Wagering Commission (2009-2010) (Date received 24/09/2010).....	2641
Institute of Sport [WAIS] (2009-2010) (Date received 24/09/2010) .....	2642
Liquor Commission (2009-2010) (Date received 24/09/2010) .....	2643
Professional Combat Sports Commission (2009-2010) (Date received 24/09/2010) .....	2644
Racing, Gaming and Liquor, Department of (2009-2010) (Date received 24/09/2010) .....	2645
Racing Penalties Appeal Tribunal (2009-2010) (Date received 24/09/2010) .....	2646
Sport and Recreation, Department of (2009-2010) (Date received 24/09/2010) .....	2647
State Supply Commission (2009-2010) (Date received 01/10/2010).....	2648
Venues West (2009-2010) (Date received 24/09/2010).....	2649

*Regulations -*

Fish Resources Management Act 1994 (Fish Resources Management Amendment Regulations (No. 8) 2010 G.G. 08/10/2010) .....	2650
--	------

**Minister for Transport***Annual Reports -*

Broome Port Authority (2009-2010) (Date received 28/09/2010) .....	2651
Dampier Port Authority (2009-2010) (Date received 11/10/2010) .....	2652
Esperance Ports Sea and Land (2009-2010) (Date received 30/09/2010).....	2653
Port Hedland Port Authority (2009-2010) (Date received 28/09/2010).....	2654
Reproductive Technology Council (2009-2010) (Date received 01/10/2010).....	2655

*Regulations -*

Pharmacy Act 2010 (Pharmacy Regulations 2010 G.G. 01/10/2010).....	2656
Poisons Act 1964 (Poisons Amendment Regulations (No. 5) 2010 G.G. 01/10/2010).....	2657
Road Traffic Act 1974 (Road Traffic (Licensing) Amendment Regulations 2010 G.G. 24/09/2010 and Road Traffic (Charges and Fees) Amendment Regulations 2010 G.G. 24/09/2010).....	2658

*Reports -*

Albany Port Authority - Statement of Corporate Intent (2009-2010) (Date received 11/10/2010).....	2659
Albany Port Authority - Statement of Corporate Intent (2010-2011) (Date received 11/10/2010).....	2660
Bunbury Port Authority - Statement of Corporate Intent (2009-2010) (Date received 11/10/2010).....	2661
Bunbury Port Authority - Statement of Corporate Intent (2010-2011) (Date received 11/10/2010).....	2662
Dampier Port Authority - Statement of Corporate Intent (2009-2010) (Date received 11/10/2010).....	2663
Dampier Port Authority - Statement of Corporate Intent (2010-2011) (Date received 11/10/2010).....	2664
Esperance Port Authority - Statement of Corporate Intent (2009-2010) (Date received 11/10/2010).....	2665

Esperance Ports Sea and Land - Statement of Corporate Intent (2010-2011) (Date received 11/10/2010).....	2666
Geraldton Port Authority - Statement of Corporate Intent (2009-2010) (Date received 11/10/2010).....	2667
Geraldton Port Authority - Statement of Corporate Intent (2010-2011) (Date received 11/10/2010).....	2668
Port Hedland Port Authority - Statement of Corporate Intent (2009-2010) (Date received 11/10/2010).....	2669
Port Hedland Port Authority - Statement of Corporate Intent (2010-2011) (Date received 11/10/2010).....	2670

## **Minister for Energy**

### *Annual Reports -*

Horizon Power (2009-2010) (Date received 12/10/2010).....	2671
Verve Energy (2009-2010) (Date received 12/10/2010).....	2672

### *Local Laws -*

Cemeteries Act 1986 (Shire of Plantagenet Cemeteries Amendment Local Law 2010 G.G. 08/10/2010).....	2673
Local Government Act 1995 (City of Armadale Street Numbering Local Law 2010 G.G. 21/09/2010, City of Albany Fencing Local Law 2010 G.G. 24/09/2010, Town of Kwinana Standing Orders Amendment Local Law 2010 G.G. 28/09/2010 and Shire of Plantagenet Activities in Thoroughfares and Public Places and Trading Local Law 2010 G.G. 08/10/2010) ....	2674

## **Minister for Child Protection**

### *Financial Statements -*

Landcare Trust (For the year ending 30 June 2010) (Date received 05/10/2010).....	2675
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### *Regulations -*

Veterinary Surgeons Act 1960 (Veterinary Surgeons Amendment Regulations 2010 G.G. 28/09/2010).....	2676
Working with Children (Criminal Record Checking) Act 2004 (Working with Children (Criminal Record Checking) Amendment Regulations 2010 G.G. 05/10/2010).....	2677

## **Parliamentary Secretary representing the Treasurer**

### *Annual Reports -*

Independent Market Operator (2009-2010) (Date received 12/10/2010).....	2678
Treasury - Annual Report on State Finances (2009-2010) (Date received 28/09/2010) .....	2679

### *By-laws -*

Water Boards Act 1904 (Busselton Water Area Amendment By-laws (No. 2) 2010 G.G. 28/09/2010).....	2680
Water Agencies (Powers) Act 1984 (Water Agencies (Water Use) Amendment By-laws 2010 G.G. 28/09/2010).....	2681

### *Regulations -*

State Trading Concerns Act 1916 (State Trading Concerns (Authorisation) Amendment Regulations (No. 2) 2010 G.G. 01/10/2010).....	2682
---	------

**Parliamentary Secretary representing the Attorney General***Annual Reports -*

Court Security and Custodial Services (2009-2010) (Date received 11/10/2010) .....	2683
Law Reform Commission (2009-2010) (Date received 01/10/2010).....	2684
State Administrative Tribunal (2009-2010) (Date received 30/09/2010) .....	2685

**5. Standing Committee on Uniform Legislation and Statutes Review - Trade Measurement (Amendment and Expiry) Bill 2010 - Extension of Reporting Time**

Hon Adele Farina presented a Report of the Standing Committee on Uniform Legislation and Statutes Review in relation to the *Trade Measurement (Amendment and Expiry) Bill 2010* seeking an extension of time for the Committee to report from 14 October 2010 to 11 November 2010. (Tabled paper 2686).

Hon Adele Farina moved, That the Report do lie upon the Table and be adopted and agreed to.

Question - put and passed.

**6. Occupational Safety and Health Amendment Regulations (No. 5) 2010 - Disallowance**

Hon Alison Xamon: To move on the next day of sitting -

That the *Occupational Safety and Health Amendment Regulations (No. 5) 2010* published in the *Gazette* on 14 September 2010 and tabled in the Legislative Council on 21 September 2010 under the *Occupational Safety and Health Act 1984*, be and are hereby disallowed.

**7. Fish Resources Management Amendment Regulations (No. 3) 2010 - Disallowance - Withdrawn from Notice Paper**

Hon Robin Chapple, by leave, moved, without notice -

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, Motion for Disallowance No. 2, *Fish Resources Management Amendment Regulations (No. 3) 2010*, be withdrawn from the Notice Paper.

Question - put and passed.

**8. Shipping and Pilotage (Ports and Harbours) Amendment Regulations (No. 3) 2010 - Disallowance - Withdrawn from Notice Paper**

Hon Robin Chapple, by leave, moved, without notice -

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, Motion for Disallowance No. 3, *Shipping and Pilotage (Ports and Harbours) Amendment Regulations (No. 3) 2010*, be withdrawn from the Notice Paper.

Question - put and passed.

**9. Leave of Absence - Hon Sue Ellery**

Hon Kate Doust moved, without notice -

That leave be granted to Hon Sue Ellery for six sitting days due to urgent personal business.

Question - put and passed.

**10. Leave of Absence - Hon Max Trenorden**

Hon Wendy Duncan moved, without notice -

That leave be granted to Hon Max Trenorden for six sitting days due to Parliamentary business.

Question - put and passed.

**11. Road Traffic Code Amendment Regulations (No. 2) 2010 - Disallowance - Discharge from Notice Paper**

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

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, Order of the Day No. 1, *Road Traffic Code Amendment Regulations (No. 2) 2010 - Disallowance*, be discharged from the Notice Paper.

Question - put and passed.

**12. Shire of Dowerin Waste Local Law 2010 - Disallowance - Discharge from Notice Paper**

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

That, pursuant to recommendation of the Joint Standing Committee on Delegated Legislation, Order of the Day No. 2, *Shire of Dowerin Waste Local Law 2010 - Disallowance*, be discharged from the Notice Paper.

Question - put and passed.

**13. Petroleum and Energy Legislation Amendment Bill 2009**

The Order of the Day having been read for the consideration, in Committee, of Message No. 135 from the Legislative Assembly.

The President left the Chair.

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**In Committee**

(Hon Matt Benson-Lidholm in the Chair)

The Message was as follows -

Mr President

Message No. 135

The Legislative Assembly acquaints the Legislative Council that it has agreed to the *Petroleum and Energy Legislation Amendment Bill 2009* subject to the amendments contained in the Schedule annexed, in which amendments the Legislative Assembly desires the concurrence of the Legislative Council.

*Schedule indicating the amendments made by the Legislative Assembly in the Petroleum and Energy Legislation Amendment Bill 2009.*

**No. 1**

Clause 61.

Page 46, line 22 to page 47, line 3 — To delete the lines.

**No. 2**

Clause 169.

Page 129, lines 6 to 16 — To delete the lines.

Hon G.A. Woodhams

Speaker

Legislative Assembly Chamber

Perth, 21 September 2010

The Minister for Mines and Petroleum moved, That Legislative Assembly amendment No. 1 be agreed to as follows -

Clause 61.

Page 46, line 22 to page 47, line 3 — To delete the lines.

Debate ensued.

Amendment - put and passed.

The Minister for Mines and Petroleum moved, That Legislative Assembly amendment No. 2 be agreed to as follows -

Clause 169.

Page 129, lines 6 to 16 — To delete the lines.

Amendment - put and passed.

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The President resumed the Chair.

The Chairman reported, That the Committee had considered Message No. 135 from the Legislative Assembly, and had agreed to same.

Report adopted.

Legislative Assembly acquainted accordingly.

#### **14. Cement Works (Cockburn Cement Limited) Agreement Amendment Bill 2010**

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

The President left the Chair.

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#### **In Committee**

(Hon Matt Benson-Lidholm in the Chair)

Clause 5 agreed to.

Clause 6 agreed to.

Title agreed to.

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The 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.

#### **15. Railway (Roy Hill Infrastructure Pty Ltd) Agreement Bill 2010**

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

Debate ensued.

#### **16. Questions Without Notice**

Questions without notice were taken.

The Parliamentary Secretary representing the Treasurer on behalf of the Minister for Environment tabled documents in relation to the Waste Avoidance and Resource Recovery Account (1 July 2009 to 30 June 2010), in response to a question without notice asked by Hon Sally Talbot. (Tabled paper 2688).

The Minister for Mines and Petroleum tabled documents in relation to details of mine safety inspections, in response to question on notice No. 2712 asked by Hon Robin Chapple. (Tabled paper 2689).

The Minister for Mines and Petroleum tabled documents in relation to job description forms for the Inspector of Mines, District Inspector of Mines, Special Inspector Mines Electricity and Special Inspector Mines Machinery, in response to question on notice No. 2713 asked by Hon Robin Chapple. (Tabled paper 2690).

The Minister for Mines and Petroleum tabled documents in relation to Mullen Industries Miner's Mate details, in response to question on notice No. 2715 asked by Hon Robin Chapple. (Tabled paper 2691).

The Minister for Transport tabled documents in relation to the number of car parking bays located at each train station on all Perth railway lines, in response to question on notice No. 2740 asked by Hon Ken Travers. (Tabled paper 2692).

The Minister for Transport tabled documents in relation to antisocial behaviour recorded by the Public Transport Authority on the Perth rail network, in response to question on notice No. 2782 asked by Hon Ken Travers. (Tabled paper 2693).

The Minister for Transport representing the Minister for Indigenous Affairs, by leave, tabled the *Aboriginal Heritage (Abydos-Woodstock Protected Area) Variation Order 2010*, published in the *Gazette* on 12 October 2010 under the *Aboriginal Heritage Act 1972*. (Tabled paper 2687).

The Minister for Energy tabled documents in relation to the average residential electricity bill issued by Synergy in the suburbs of: Spencer Park, Balcatta, Dalyellup, High Wycombe, Kingsley, Clarkson, Noranda, Yokine, Currambine, Parkwood, Innaloo, Huntingdale, Ellenbrook, Darch and Peppermint Grove for the months April to August 2010, in response to question on notice No. 2767 asked by Hon Kate Doust. (Tabled paper 2694).

The Minister for Energy tabled documents in relation to the average residential electricity bill issued by Synergy in the suburbs of: Wanneroo, Leeming, Morley and Canning Vale for the months April to August 2010, in response to question on notice No. 2768 asked by Hon Kate Doust. (Tabled paper 2695).

The Minister for Energy tabled documents in relation to the average residential electricity bill issued by Synergy in the suburbs of: Bayonet Head, Lockyer, Spencer Park, Lower King, Mira Mar and Little Grove for the months April to August 2010, in response to question on notice No. 2770 asked by Hon Kate Doust. (Tabled paper 2696).

The Minister for Energy tabled documents in relation to the average residential electricity bill issued by Synergy in the suburbs of: Augusta, Australind, Bunbury, Busselton, Capel, Collie, Donnybrook, Dunsborough, Eaton, Harvey, Margaret River, Nannup and Yallingup for the months April to August 2010, in response to question on notice No. 2771 asked by Hon Kate Doust. (Tabled paper 2697).

The Minister for Energy tabled documents in relation to the average residential electricity bill issued by Synergy in the suburbs of: Rockingham, Shoalwater, Safety Bay, Kwinana, Calista, Parmelia and Leda for the months April to August 2010, in response to question on notice No. 2772 asked by Hon Kate Doust. (Tabled paper 2698).

The Minister for Energy representing the Minister for Education tabled a list of schools that have received additional funding to improve attendance, in response to question on notice No. 2752 asked by Hon Alison Xamon. (Tabled paper 2699).

The Minister for Child Protection representing the Minister for Forestry tabled documents in relation to the Forest Products Commission's schedule of base native forests stumpages, in response to question on notice No. 2742 asked by Hon Alison Xamon. (Tabled paper 2700).

The Parliamentary Secretary representing the Treasurer on behalf of the Minister for Environment tabled maps in relation to the locations of the Gidji Roaster (Mining Tenements), Fimiston Mine Site and Mount Percy Tailings Dam, in response to question on notice No. 2717 asked by Hon Robin Chapple. (Tabled paper 2701).

The Parliamentary Secretary representing the Treasurer on behalf of the Minister for Environment tabled maps in relation to the locations of the Norseman Gold Mill, Bullen Decline Mine Site, Okay Decline Gold Mine, Norseman Gold Mill (Part Of), North Royal Mine and Harlequin Gold Mine, in response to question on notice No. 2718 asked by Hon Robin Chapple. (Tabled paper 2702).

The Parliamentary Secretary representing the Treasurer on behalf of the Minister for Environment tabled a map of the location of the Kanowna Belle Mill, in response to question on notice No. 2719 asked by Hon Robin Chapple. (Tabled paper 2703).

The Parliamentary Secretary representing the Treasurer on behalf of the Minister for Environment tabled a map of the location of the Raleigh Gold Mine, in response to question on notice No. 2720 asked by Hon Robin Chapple. (Tabled paper 2704).

The Parliamentary Secretary representing the Treasurer on behalf of the Minister for Environment tabled documents in relation to the Ningaloo Marine Park, Coral Bay, Bills Bay and Maud Sanctuary Zone areas, in response to question on notice No. 2732 asked by Hon Robin Chapple. (Tabled paper 2705).

The Parliamentary Secretary representing the Treasurer on behalf of the Minister for Environment tabled documents in relation to details of Coral Bay boating in the Ningaloo Marine Park, in response to question on notice No. 2733 asked by Hon Robin Chapple. (Tabled paper 2706).

#### **17. Railway (Roy Hill Infrastructure Pty Ltd) Agreement Bill 2010**

Debate resumed on the second reading of this Bill (cf item 15 above).

Hon Jon Ford, by leave, tabled a map relating to the death of trees in the Upper Fortescue flood plain. (Tabled paper 2707).

Debate resumed.

Hon Jon Ford, by leave, tabled documents relating to Roy Hill Station showing comparison photographs of Jigalong Creek floodout before and after rain. (Tabled paper 2708).

Debate resumed.

Hon Jon Ford moved, without notice -

- (1) That Order of the Day No. 4, *Railway (Roy Hill Infrastructure Pty Ltd) Agreement Bill 2010* be discharged and referred to the Standing Committee on Legislation for consideration and report not later than 20 November 2010.
- (2) The committee is to inquire into and report on the policy of the Bill, and the following matters -
  - (a) the measures and assessments used to calculate proper compensation for any damage to the Roy Hill pastoral lease caused by the mine rail infrastructure including diminished stock capacity, extra management and pastoral infrastructure and loss of amenity;
  - (b) access by third parties to the rail;
  - (c) agreements for road realignments and any access impediments to Fortescue Metals Group Ltd's Cloudbreak mine tenement;
  - (d) the effectiveness of local content provisions within the agreement and/or the Bill;
  - (e) compensation or rating ability for local governments affected by the agreement; and
  - (f) any other relevant matter.



*Point of Order*

Hon Ken Travers raised the following Point of Order -

I rise on a point of order before we move to debate the motion. Should this bill have been referred to the Standing Committee on Uniform Legislation and Statutes Review under Standing Order 230A? It would appear to me—I was having another thorough read of the explanatory memorandum today—that this bill gives effect to the *Railways (Access) Act 1998*. When that Act was originally in this House, it was referred to the then Standing Committee on Constitutional Affairs and at that stage it was accepted that it was giving effect to a bilateral or intergovernmental agreement. This bill sets up an arrangement under which this railway line will operate with respect to that governmental agreement. Therefore, it is my view that this bill should have been referred under Standing Order 230A to the Uniform Legislation Committee. If the ruling is that that is the case, we may need to go behind the Chair to try to go negotiate around that. In the first instance, we need to get a decision from you, Madam Acting President, as to whether the bill is captured by this. If it is captured by this, there may be some capacity for us to try to negotiate behind the Chair a way of resolving the implications of that, which will make my colleague Hon Liz Behjat a happy member of that committee.

*Deputy President's Ruling*

The Deputy President ruled as follows -

With regards to the point of order raised by Hon Ken Travers, given the time, I will not make a ruling on it at this stage. There will be time for it to be considered during the dinner break, and a ruling will be made. In the meantime, this motion has been brought to the House and I intend to put the motion moved by Hon Jon Ford.

Debate resumed.

*President's Ruling*

The President ruled as follows -

Just prior to the dinner break, Hon Ken Travers raised a point of order and sought a ruling of the Chair as to whether Standing Order 230A was applicable to this Bill.

Standing Order 230A section (1) reads -

This order applies to a Bill that -

- (a) ratifies or gives effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party; or
- (b) by reason of its subject matter, introduces a uniform scheme or uniform laws throughout the Commonwealth.

Therefore, for Standing Order 230A to apply to the *Railway (Roy Hill Infrastructure Pty Ltd) Agreement Bill 2010*, the Bill must fall within either of those two categories.

As outlined in the Minister's second reading speech, the purpose of the Bill is -

- to ratify and authorise the implementation of an agreement, scheduled to the bill, between the State and Roy Hill Infrastructure Pty Ltd, Roy Hill Holdings Pty Ltd and Roy Hill Iron Ore Pty Ltd relating to the development of a railway in the Pilbara;
- to facilitate the development of a railway from the Roy Hill Iron Ore mine to the port of Port Hedland, together with additional infrastructure that is required, for the transportation and export of iron ore to overseas markets;
- to gain parliamentary approval for the railway and enable the grant of a licence for the railway; and
- to modify the *Railways (Access) Act 1998* and the *Railways (Access) Code 2000*.

The Bill is comprised of 15 clauses, with the agreement included as the sole schedule to the Bill.

In dealing with Part (b) of Standing Order 230A (1) first, the Bill clearly does not introduce a uniform scheme or uniform laws throughout the Commonwealth. Accordingly, this part of the Standing Order is not relevant to this Bill.

In considering whether Standing Order 230A (1) (a) is applicable to the Bill, I note that the Bill does modify current legislation, and that the current legislation itself would be categorised as uniform legislation. However, that nexus is insufficient to capture the *Railway (Roy Hill Infrastructure Pty Ltd) Agreement Bill 2010* itself as uniform legislation under this Standing Order. In order to achieve that outcome, this Bill would need to ratify or give effect to a bilateral or multilateral intergovernmental agreement to which the Government of the State is a party.

In making his point of order, Hon. Ken Travers expressed the view that the Bill “gives effect to the *Railways (Access) Act 1998*”. I note that the Bill seeks to amend the operation of that Act and, if this Bill is passed by the Parliament, that these amended arrangements will apply to this railway. However, I do not consider that this amendment of an Act can be argued to be uniform legislation, unless the amendments themselves were the subject of a uniform intergovernmental agreement.

Accordingly, I rule that Standing Order 230A does not apply to the *Railway (Roy Hill Infrastructure Pty Ltd) Agreement Bill 2010*.

Debate resumed.

Question - put.

The House divided.

#### Ayes (12)

Hon Matt Benson-Lidholm  
Hon Helen Bullock  
Hon Robin Chapple  
Hon Kate Doust  
Hon Adele Farina  
Hon Jon Ford

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

#### Noes (15)

Hon Liz Behjat  
Hon Jim Chown  
Hon Peter Collier  
Hon Wendy Duncan  
Hon Brian Ellis  
Hon Philip Gardiner  
Hon Nick Goiran  
Hon Alyssa Hayden

Hon Col Holt  
Hon Robyn McSweeney  
Hon Michael Mischin  
Hon Norman Moore  
Hon Helen Morton  
Hon Simon O'Brien  
Hon Ken Baston (*Teller*)

Question thus negatived.

Debate resumed.

*Interruption pursuant to Temporary Orders.*

#### 18. Paper

The following Paper, by leave, was laid on the Table by -

#### **Parliamentary Secretary representing the Minister for Regional Development**

#### *Proposals -*

Land Administration Act 1997 - Submission No. 12/2010 - Excision from Class A

Reserve No. 12237 - City of Belmont..... 2709

**19. Members' Statements**

Statements were taken.

**20. Adjournment**

The House adjourned at 10.04pm until Wednesday, 13 October 2010 at 2.00pm.

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

Attendance: Present all Members except Hon Mia Davies, Hon Phil Edman, Hon Sue Ellery, Hon Donna Faragher, Hon Nigel Hallett, Hon Linda Savage and Hon Max Trenorden.

**NIGEL LAKE**

Acting Clerk of the Legislative Council

**HON BARRY HOUSE**

President of the Legislative Council