

2004–2005

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

MINUTES OF PROCEEDINGS

No. 23

THURSDAY, 23 JUNE 2005

1 The Assembly met at 10.30 a.m., pursuant to adjournment. The Speaker (Mr Berry) took the Chair and asked Members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

2 **CRIMINAL CODE (ADMINISTRATION OF JUSTICE OFFENCES)
AMENDMENT BILL 2005**

Ms Gallagher (Acting Attorney-General), pursuant to notice, presented a Bill for an Act to amend the *Criminal Code 2002*, and for other purposes.

Papers: Ms Gallagher presented the following papers:

Explanatory statement to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 23 June 2005.

Title read by Clerk.

Ms Gallagher moved—That this Bill be agreed to in principle.

Debate adjourned (Mr Stefaniak) and the resumption of the debate made an order of the day for the next sitting.

3 **CRIMINAL CODE HARMONISATION BILL 2005**

Ms Gallagher (Acting Attorney-General), pursuant to notice, presented a Bill for an Act to amend certain offences for the application of the Criminal Code, and for other purposes.

Papers: Ms Gallagher presented the following papers:

Explanatory statement to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 23 June 2005.

Title read by Clerk.

Ms Gallagher moved—That this Bill be agreed to in principle.

Debate adjourned (Mr Stefaniak) and the resumption of the debate made an order of the day for the next sitting.

4 LAND (PLANNING AND ENVIRONMENT) AMENDMENT BILL 2005

Mr Corbell (Minister for Planning), pursuant to notice, presented a Bill for an Act to amend the *Land (Planning and Environment) Act 1991*, and for other purposes.

Papers: Mr Corbell presented the following papers:

Explanatory statement to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 23 June 2005.

Title read by Clerk.

Mr Corbell moved—That this Bill be agreed to in principle.

Debate adjourned (Mr Stefaniak) and the resumption of the debate made an order of the day for the next sitting.

5 EMERGENCIES AMENDMENT BILL 2005

Mr Hargreaves (Minister for Police and Emergency Services), pursuant to notice, presented a Bill for an Act to amend the *Emergencies Act 2004*, and for other purposes.

Papers: Mr Hargreaves presented the following papers:

Explanatory statement to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 23 June 2005.

Title read by Clerk.

Mr Hargreaves moved—That this Bill be agreed to in principle.

Debate adjourned (Mr Stefaniak) and the resumption of the debate made an order of the day for the next sitting.

6 BROADCASTING OF ASSEMBLY PROCEEDINGS—AMENDMENT

Mr Berry, by leave, moved—That the resolution of the Assembly of 7 March 2002, as amended 17 March 2005, relating to the guidelines for Broadcasting the Public Proceedings of the Legislative Assembly and its Committees, be amended by omitting paragraph (A)(6) regarding the rebroadcasting of points of order and remarks that are withdrawn.

Question—put and passed.

7 EXECUTIVE BUSINESS—PRECEDENCE

Ordered—That Executive business be called on forthwith.

8 HEALTH LEGISLATION AMENDMENT BILL 2005

The order of the day having been read for the resumption of the debate on the question—That this Bill be agreed to in principle—

Debate resumed.

Question—That this Bill be agreed to in principle—put and passed.

Detail Stage

Bill, by leave, taken as a whole—

On the motion of Mr Corbell (Minister for Health), by leave, his amendments Nos. 1 to 17 were made together, after debate (*see* [Schedule 1](#)).

Paper: Mr Corbell presented an explanatory statement to the Government amendments.

Bill, as a whole, as amended, agreed to.

Question—That this Bill, as amended, be agreed to—put and passed.

9 REVENUE LEGISLATION AMENDMENT BILL 2005

The order of the day having been read for the resumption of the debate on the question—That this Bill be agreed to in principle—

Debate resumed.

Question—That this Bill be agreed to in principle—put and passed.

Leave granted to dispense with the detail stage.

Question—That this Bill be agreed to—put and passed.

10 CRIMES (CHILD SEX OFFENDERS) BILL 2005

The order of the day having been read for the resumption of the debate on the question—That this Bill be agreed to in principle—

Debate resumed.

Question—That this Bill be agreed to in principle—put and passed.

Leave granted to dispense with the detail stage.

Question—That this Bill be agreed to—put and passed.

11 UTILITIES (SHORTAGE OF ESSENTIAL SERVICES) AMENDMENT BILL 2005

The order of the day having been read for the resumption of the debate on the question—That this Bill be agreed to in principle—

Debate resumed.

Question—That this Bill be agreed to in principle—put and passed.

Leave granted to dispense with the detail stage.

Question—That this Bill be agreed to—put and passed.

12 QUESTIONS

Questions without notice were asked.

13 PRESENTATION OF PAPER

Ms Gallagher (Acting Attorney-General) presented the following paper:

ACT Criminal Justice Statistical Profile—March quarter 2005.

14 CIVIL LAW (PROPERTY) BILL 2005—EXPOSURE DRAFT—PAPERS AND STATEMENT BY MINISTER

Ms Gallagher (Acting Attorney-General) presented the following papers:

Civil Law (Property) Bill 2005—

Exposure draft.

Explanatory statement to the exposure draft—

and, by leave, made a statement in relation to the papers.

15 A.C.T. CRIMINAL JUSTICE STATISTICAL PROFILE—PAPER—STATEMENT BY MEMBER

Mr Stefaniak, by leave, made a statement regarding the ACT Criminal Justice Statistical Profile tabled this day.

16 PRESENTATION OF PAPER

Ms Gallagher (Acting Minister for Arts, Heritage and Indigenous Affairs) presented the following paper:

Cultural Facilities Corporation Act, pursuant to subsection 29(2)—Cultural Facilities Corporation—Quarterly report—Second quarter 2004-2005—1 October to 31 December 2004.

17 LAND (PLANNING AND ENVIRONMENT) ACT—STATEMENT REGARDING EXERCISE OF CALL-IN POWERS—DEVELOPMENT APPLICATION NOS. 200405072 AND 200405440—BLOCK 3 SECTION 84 CITY—PAPER AND STATEMENT BY MINISTER

Mr Corbell (Minister for Planning) presented the following paper:

Land (Planning and Environment) Act, pursuant to subsection 229B(7)—Statement regarding exercise of call-in powers—Development application Nos. 200405072 and 200405440—Block 3 Section 84 City, dated 22 June 2005—

and, by leave, made a statement in relation to the paper.

18 MATTER OF PUBLIC IMPORTANCE—DISCUSSION—MANAGEMENT OF THE CANBERRA URBAN ENVIRONMENT

The Assembly was informed that Mr Pratt had proposed that a matter of public importance be submitted to the Assembly for discussion, namely, “The state, or condition, of Canberra, and the current management of the urban environment by the Government.”.

Discussion ensued.

Papers: Mr Gentleman, by leave, presented the following papers:

Calwell Shopping Centre—Copies of photographs (11).

Discussion continued.

The time for discussion having expired—

Discussion concluded.

19 ADJOURNMENT

Mr Hargreaves (Minister for Disability, Housing and Community Services) moved—
That the Assembly do now adjourn.

Debate ensued.

Paper: Ms Gallagher (Acting Attorney-General) presented the following paper:

Revised ACT Criminal Justice Statistical Profile—March quarter 2005.

Debate continued.

The time allotted for the debate having expired—The Speaker, at 4.54 p.m., adjourned
the Assembly until Tuesday, 28 June 2005 at 10.30 a.m.

MEMBERS' ATTENDANCE: All Members were present at some time during the sitting,
except Mr Stanhope*.

*On leave

Tom Duncan
Clerk of the Legislative Assembly

SCHEDULE OF AMENDMENTS

Schedule 1

HEALTH LEGISLATION AMENDMENT BILL 2005

Amendments circulated by the Minister for Health

1
Schedule 1
Amendment 1.5
Page 4, line 1—

omit amendment 1.5, substitute

[1.5] Section 37 (5) (c)

substitute

- (c) when (in addition to the circumstances already prescribed under this Act) a health profession board may apply for—
- (i) the suspension or cancellation of registration; or
 - (ii) a declaration under section 64 (1) (l) (which is about a person who is not registered); and

2
Schedule 1
Proposed new amendment 1.5A
Page 4, line 5—

insert

[1.5A] Section 37 (6)

omit

subsection (2)

substitute

subsection (5)

3
Schedule 1
Proposed new amendment 1.6A
Page 4, line 7—

insert

[1.6A] New section 39A

in division 7.1, insert

39A Meaning of *presidential member* for pt 7

In this part:

presidential member, of the health professions tribunal, means—

- (a) the president of the tribunal; or
- (b) a deputy president of the tribunal.

4

Schedule 1**Proposed new amendments 1.7A to 1.7G**

Page 4, line 13—

insert

[1.7A] Section 41

substitute

40A Members of health professions tribunal

The health professions tribunal consists of—

- (a) the president; and
- (b) the deputy presidents; and
- (c) members nominated to a health profession tribunal panel under section 43.

41 Appointment of presidential members

- (1) The presidential members of the health professions tribunal are appointed by the Executive.
- (2) An appointment must be for a term of not longer than 5 years.

Note A person may be reappointed to a position if the person is eligible to be appointed to the position (see Legislation Act, s 208 and dict, pt 1, def *appoint*).

- (3) An appointment is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (4) A person is eligible to be appointed as the health professions tribunal president only if the person is a magistrate.
- (5) A person is eligible to be appointed as a health professions tribunal deputy president only if the person is a magistrate or lawyer of at least 5 years standing.

41A Terms of appointment of presidential members generally

- (1) A presidential member of the health professions tribunal may be appointed as a full-time or part-time member.

- (2) A presidential member of the health professions tribunal holds office on the terms not provided by this Act that are decided by the Executive.
- (3) This section does not apply to a presidential member of the health professions tribunal who is a magistrate.

41B Matters to be included in instrument of appointment of presidential members

The instrument appointing a presidential member of the health professions tribunal must state—

- (a) whether the member is the president or a deputy president of the tribunal; and
- (b) if the member is not a magistrate—whether the member is appointed as a full-time or part-time member.

41C Role of president of tribunal

- (1) The health professions tribunal president is responsible for ensuring the orderly and prompt discharge of the tribunal's business.
- (2) Without limiting subsection (1), the president may give directions about the presidential member who is to be the presidential member of a particular health professions tribunal panel.

41D Presiding member

The presidential member must preside at a proceeding.

41E Ending of appointment of presidential members

- (1) The Executive may end the appointment of a presidential member of the health professions tribunal who is not a magistrate—
 - (a) for misbehaviour; or
 - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions; or
 - (c) if the member becomes bankrupt or executes a personal insolvency agreement.
- (2) The Executive must end the appointment of—
 - (a) a presidential member of the health professions tribunal who is a magistrate if the member stops being a magistrate; or
 - (b) a deputy president of the tribunal who is not a magistrate if—
 - (i) the member stops being eligible for appointment; or

- (ii) the member is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or
- (iii) the member is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would have been punishable by imprisonment for at least 1 year.

[1.7B] Section 42 (1)

omit

formed by the health professions tribunal president

substitute

made up of a presidential member of the tribunal

[1.7C] Section 43 (2) and (5)

omit

The health professions tribunal president

substitute

A presidential member of the health professions tribunal

[1.7D] Section 44

omit everything before subsection (1) (a), substitute

44 When may presidential member alone constitute health professions tribunal?

- (1) The health professions tribunal, formed by a presidential member of the tribunal alone, may exercise the tribunal's functions in relation to the following:

[1.7E] Section 44 (1) (d)

omit

the president

substitute

the presidential member

[1.7F] Section 45

substitute

45 Registrar and deputy registrars

- (1) The registrar of the Magistrates Court is the registrar of the health professions tribunal.
- (2) Each deputy registrar of the Magistrates Court is a deputy registrar of the health professions tribunal.

- (3) Subject to any direction of the registrar, a deputy registrar of the health professions tribunal may exercise the powers of the registrar of the tribunal.
- (4) The registrar may, in writing, delegate to a public servant the registrar's functions under this Act.

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

- (5) The registrar and each deputy registrar must exercise the functions of the registrar of the health professions tribunal in consultation with, and under the direction of, the health professions tribunal president.

[1.7G] New section 46A

insert

46A Application to health professions tribunal by health profession board

- (1) This section applies to an application—
 - (a) for the suspension or cancellation of a health professional's registration; or
 - (b) for a declaration under section 64 (1) (l) (which is about a person who is not registered); or
 - (c) any other application prescribed by regulation.
- (2) A health profession board may make an application to which this section applies.

5
Schedule 1
Amendment 1.8
Proposed new section 48 (3) and (4)
Page 5, line 5—

insert

- (3) The following are parties to the proceeding on an application for a declaration that, if a person had been registered, the health professions tribunal would have found that the person had contravened the required standard of practice or did not satisfy the suitability to practise requirements:
 - (a) the person;
 - (b) the health profession board that made the application;
 - (c) anyone else with the leave of the health professions tribunal.
- (4) A regulation may prescribe who is a party to any other application to the health professions tribunal.

6

Schedule 1**Proposed new amendments 1.9A to 1.9L**

Page 5, line 17—

*insert***[1.9A] Section 51 (1)***omit*

president

substitute

registrar

[1.9B] Section 58 (1)*omit*

the president

substitute

a presidential member of the tribunal

[1.9C] Section 58 (3)*substitute*

- (3) If, during a preliminary hearing on an application in relation to a registered health professional, the presidential member is satisfied that the application should be referred to a personal assessment panel or professional standards panel, the tribunal may refer the application to the relevant health profession board for referral to the panel.

[1.9D] Section 59 (1)*omit*

The health professions tribunal president, or a person authorised in writing by the president,

substitute

A presidential member of the tribunal, or a person authorised in writing by a presidential member,

[1.9E] Section 59 (2) (b)*omit*

health professions tribunal president

substitute

presidential member of the tribunal

[1.9F] Section 59 (3)

omit

president

substitute

presidential member

[1.9G] Section 59 (4)

omit

health professions tribunal president

substitute

presidential member

[1.9H] Section 59 (5) (a)

omit

health professions tribunal president

substitute

presidential member

[1.9I] Section 59 (5) (b)

omit

president

substitute

presidential member

[1.9J] Section 62 (1) (a)

omit

health professional

substitute

registered health professional

[1.9K] Section 63

substitute

63 Deciding questions

- (1) This section applies if the health professions tribunal is formed by a health professions tribunal panel.
- (2) The presidential member is to decide a question of law arising in a proceeding.
- (3) Any other question in which a majority of the health professions tribunal panel members agree is the decision of the tribunal.

- (4) If a majority of the members of the health professions tribunal panel cannot agree about a question other than a question of law, the decision of the presidential member is the decision of the tribunal.

[1.9L] Section 66 (1)

substitute

- (1) The presidential member of the health professions tribunal may refer a question of law relating to a proceeding on an application to the Supreme Court for direction on its own initiative or on application by a party to the proceeding.

7

Schedule 1

Proposed new amendment 1.10A

Page 5, line 22—

insert

[1.10A] Section 86 (3) (a)

omit

health professional

substitute

registered health professional

8

Schedule 1

Amendment 1.11

Page 6, line 1—

omit amendment 1.11, substitute

[1.11] Section 86 (3) (b)

substitute

- (b) apply to the tribunal for—
- (i) the suspension or cancellation of the registration of the health professional to whom the matter relates; or
 - (ii) if the health professional is not registered—a declaration under section 64 (1) (l) in relation to the health professional;
-

9**Schedule 1****Proposed new amendments 1.11A and 1.11B****Page 6, line 5—***insert***[1.11A] New section 94A***insert***94A Lawyer assisting personal assessment panel**

The health profession board that established a personal assessment panel may appoint a lawyer to assist the panel for an inquiry.

[1.11B] New section 119A*insert***119A Lawyer assisting professional standards panel**

The health profession board that established a professional standards panel may appoint a lawyer to assist the panel for a standards inquiry (including the inquiry hearing).

10**Schedule 1****Amendment 1.12****Proposed new paragraph (ia)****Page 6, line 14—***insert*

- (ia) refer the report or complaint to the health profession board with—
- (i) a recommendation that an application be made to the health professions tribunal for a declaration under section 64 (1) (1) in relation to the health professional; and
 - (ii) the standards inquiry report on which the recommendation is based;

11**Schedule 1****Proposed new amendment 1.12A****Page 6, line 14—***insert***1.12A Section 122 (2)**

renumber paragraphs when Act next republished under Legislation Act

12
Schedule 1
Amendment 1.13
Proposed new section 122 (3)
Page 6, line 18—

after
 paragraph (i)
insert
 or (ia)

13
Schedule 1
Proposed new amendment 1.13A
Page 6, line 19—

insert

[1.13A] Section 125 (f)

substitute

- (f) a member of the staff (including the registrar and each deputy registrar) of the health professions tribunal; or

14
Schedule 1
Amendment 1.19
Proposed new section 150A heading
Page 7, line 21—

omit proposed new section 150A heading, substitute

**150A People previously registered under repealed Act—
 s 77**

15
Schedule 1
Amendment 1.19
Proposed new section 150B
Page 8, line 1—

omit proposed new section 150B, substitute

**150B People previously registered under repealed Act—Act
 generally**

In this Act:

registered health professional, in relation to a report under division 9.2 or a complaint, includes a person who was registered under a repealed Act at the time of the act or omission reported or complained about.

 16

Schedule 1

Proposed new amendment 1.19A

Page 9, line 14—

*insert***[1.19A] Dictionary, new definition of *presidential member****insert*

presidential member, of the health professions tribunal, for part 7 (Health professions tribunal)—see section 39A.

 17

Schedule 1

Proposed new amendment 1.20A

Page 9, line 18—

*insert***[1.20A] Dictionary, definition of *registered health professional****substitute*

registered health professional, in relation to a report under division 9.2 or a complaint, includes a person who was registered under this Act at the time of the act or omission reported or complained about.

 ACT Criminal Justice Statistical Profile. *See* "Statements—By Member"

Adjournment of Assembly—

Before 6.30 p.m., 207

Bills—**PROCEEDINGS ON—****CRIMES (CHILD SEX OFFENDERS) BILL 2005—**

Debate resumed; agreement in principle; detail stage dispensed with; agreed to, 205

*Act No. 30 of 2005.***CRIMINAL CODE (ADMINISTRATION OF JUSTICE OFFENCES) AMENDMENT BILL 2005—**

Presented; explanatory statement and compatibility statement presented; title read; agreement in principle moved, 203

CRIMINAL CODE HARMONISATION BILL 2005—

Presented; explanatory statement and compatibility statement presented; title read; agreement in principle moved, 203

EMERGENCIES AMENDMENT BILL 2005—

Presented; explanatory statement and compatibility statement presented; title read; agreement in principle moved, 204

HEALTH LEGISLATION AMENDMENT BILL 2005—

Debate resumed; agreement in principle; detail stage; (amendments agreed to); explanatory statement to Government amendments presented; agreed to, as amended, 204

Act No. 28 of 2005.

LAND (PLANNING AND ENVIRONMENT) AMENDMENT BILL 2005—

Presented; explanatory statement and compatibility statement presented; title read; agreement in principle moved, 204

REVENUE LEGISLATION AMENDMENT BILL 2005—

Debate resumed; agreement in principle; detail stage dispensed with; agreed to, 205

Act No. 29 of 2005.

UTILITIES (SHORTAGE OF ESSENTIAL SERVICES) AMENDMENT BILL 2005—

Debate resumed; agreement in principle; detail stage dispensed with; agreed to, 205

Act No. 31 of 2005.

Broadcasting of Assembly proceedings. *See* "Motions—Principal"

Debate—

Adjournment, 207

Time allotted for adjournment debate having expired, 207

Executive business—

Precedence, 204

Management of the Canberra urban environment. *See* "Matters of public importance"

Matters of public importance—

Discussion of—

Management of the Canberra urban environment (*Mr Pratt*)—

Discussion ensued; time for discussion expired; discussion concluded, 206

Motions—

Motions—Principal—

By leave—

Broadcasting of Assembly proceedings—Amendment (*Mr Berry*); agreed to, 204

Papers—

Presented—

During—

Adjournment debate, 207

Matter of Public Importance, 206

Precedence—

Executive business, 204

Statements—By Member—

By leave—

ACT Criminal Justice Statistical Profile (*Mr Stefaniak*), 206

Statements—By Minister—

By leave—

Civil Law (Property) Bill 2005—

Exposure draft and explanatory statement—

Papers (*Ms Gallagher*), 206

Land (Planning and Environment) Act—

Pursuant to subsection 229B(7)—

Statement regarding exercise of call-in powers—Development application Nos. 200405072 and 200405440—Block 3 Section 84 City—Papers (*Mr Corbell*), 206