

2004–2005

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

MINUTES OF PROCEEDINGS

No. 7

THURSDAY, 17 FEBRUARY 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 **DOMESTIC VIOLENCE AND PROTECTION ORDERS AMENDMENT BILL 2005**

Mr Stanhope (Attorney-General), pursuant to notice, presented a Bill for an Act to amend the *Protection Orders Act 2001*, and for other purposes.

Papers: Mr Stanhope presented the following papers:

Explanatory statement to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 16 February 2005.

Title read by Clerk.

Mr Stanhope 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 **LEGAL AID AMENDMENT BILL 2005**

Mr Stanhope (Attorney-General), pursuant to notice, presented a Bill for an Act to amend the *Legal Aid Act 1977*.

Papers: Mr Stanhope presented the following papers:

Explanatory statement to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 16 February 2005.

Title read by Clerk.

Mr Stanhope 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 JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2005

Mr Stanhope (Attorney-General), pursuant to notice, presented a Bill for an Act to amend the law relating to justice and community safety.

Papers: Mr Stanhope presented the following papers:

Explanatory statement to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 16 February 2005.

Title read by Clerk.

Mr Stanhope 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 RESIDENTIAL TENANCIES AMENDMENT BILL 2005

Mr Stanhope (Attorney-General), pursuant to notice, presented a Bill for an Act to amend the *Residential Tenancies Act 1997*, and for other purposes.

Papers: Mr Stanhope presented the following papers:

Explanatory statement to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 16 February 2005.

Title read by Clerk.

Mr Stanhope 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 APPROPRIATION BILL 2004-2005 (NO. 2)

Mr Quinlan (Treasurer), pursuant to notice, presented a Bill for an Act to appropriate additional money for the purposes of the Territory for the financial year that began on 1 July 2004.

Papers: Mr Quinlan presented the following papers:

Explanatory memorandum to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 16 February 2005.

Financial Management Act, pursuant to section 13—Supplementary budget papers 2004-2005—Appropriation Bill No. 2.

Title read by Clerk.

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

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

7 PUBLIC ACCOUNTS—STANDING COMMITTEE—REFERENCE—APPROPRIATION BILL 2004-2005 (NO. 2)

Mr Mulcahy, by leave, moved—That:

- (1) notwithstanding the provisions of standing order 174, the Appropriation Bill 2004-2005 (No. 2) be referred to the Standing Committee on Public Accounts;
- (2) the Committee report by 31 March 2005;
- (3) if the Assembly is not sitting when the Committee has completed its inquiry, the Committee may send its report to the Speaker, or in the absence of the Speaker, to the Deputy Speaker who is authorised to give directions for its printing, publishing and circulation;
- (4) the foregoing provisions of this resolution so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders; and
- (5) on the Committee presenting its report to the Assembly, the resumption of debate on the question—That this Bill be agreed to in principle—be set down as an order of the day for the next sitting.

Question—put and passed.

8 UTILITIES AMENDMENT BILL 2005

Mr Hargreaves (Minister for Urban Services), pursuant to notice, presented a Bill for an Act to amend the *Utilities Act 2000*, 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 16 February 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.

9 LEGAL AFFAIRS—STANDING COMMITTEE (PERFORMING THE DUTIES OF A SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION COMMITTEE)—SCRUTINY REPORT 3—PUBLICATION OF REPORT—STATEMENT BY CHAIR

Mr Stefaniak (Chair) presented the following report:

Legal Affairs—Standing Committee (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report 3, dated 17 February 2005, together with the relevant minutes of proceedings—

and, by leave, moved—That the report be authorised for publication.

Question—put and passed.

Mr Stefaniak, by leave, made a statement in relation to the report.

10 LEAVE OF ABSENCE

Mrs Dunne moved—That leave of absence be given to Mr Corbell (Minister for Health) and Mr Pratt for this sitting.

Question—put and passed.

11 PLANNING AND ENVIRONMENT—STANDING COMMITTEE—REPORT 1—DRAFT VARIATION TO THE TERRITORY PLAN NO. 243—AGED CARE FACILITY MONASH—REPORT NOTED

Mr Gentleman (Chair) presented the following report:

Planning and Environment—Standing Committee—Report 1—*Draft Variation to the Territory Plan No. 243—Aged Care Facility Monash*, dated 17 December 2004, together with a copy of the extracts of the relevant minutes of proceedings—

and moved—That the report be noted.

Debate ensued.

Question—put and passed.

12 PLANNING AND ENVIRONMENT—STANDING COMMITTEE—REPORT 2—DRAFT VARIATION TO THE TERRITORY PLAN NO. 248—AGED CARE FACILITY HUGHES—REPORT NOTED

Mr Gentleman (Chair) presented the following report:

Planning and Environment—Standing Committee—Report 2—*Draft Variation to the Territory Plan No. 248—Aged Care Facility Hughes*, dated January 2005, together with a copy of the extracts of the relevant minutes of proceedings—

and moved—That the report be noted.

Debate ensued.

Question—put and passed.

13 PLANNING AND ENVIRONMENT—STANDING COMMITTEE—REPORT 3—DRAFT VARIATION TO THE TERRITORY PLAN NO. 209—EAST O'MALLEY—EXTENSION OF MOUNT MUGGA MUGGA NATURE RESERVE—REPORT NOTED

Mr Gentleman (Chair) presented the following report:

Planning and Environment—Standing Committee—Report 3—*Draft Variation to the Territory Plan No. 209—East O'Malley—Extension of Mount Mugga Mugga Nature Reserve*, dated 28 January 2005, together with a copy of the extracts of the relevant minutes of proceedings—

and moved—That the report be noted.

Debate ensued.

Question—put and passed.

14 PLANNING AND ENVIRONMENT—STANDING COMMITTEE—REPORT 4—DRAFT VARIATION TO THE TERRITORY PLAN NO. 246—CHANGES TO RESIDENTIAL AREA SPECIFIC POLICY OVERLAYS—SUBURB OF DOWNER—PUBLICATION OF REPORT—REPORT NOTED

Mr Gentleman (Chair) presented the following report:

Planning and Environment—Standing Committee—Report 4—*Draft Variation to the Territory Plan No. 246—Changes to Residential Area Specific Policy Overlays—Suburb of Downer*, dated 16 February 2005, including a dissenting report, together with a copy of the extracts of the relevant minutes of proceedings—

and, by leave, moved—That the report be authorised for publication.

Question—put and passed.

Mr Gentleman moved—That the report be noted.

Debate ensued.

Question—put and passed.

15 DANGEROUS SUBSTANCES (ASBESTOS) 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.

16 HEALTH RECORDS (PRIVACY AND ACCESS) 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.

17 QUESTIONS

Questions without notice were asked.

18 PAPER

Mr Stanhope (Chief Minister) presented the following paper:

Coronial Inquest—Legal costs—Answer to questions without notice—Asked of Mr Stanhope by Mr Mulcahy and taken on notice on 7 December 2004 and asked of Mr Quinlan by Mr Seselja and taken on notice on 16 February 2005.

19 PUBLIC ACCOUNTS—STANDING COMMITTEE—REPORT 13—REVIEW OF AUDITOR-GENERAL'S REPORT NO. 4 OF 2003—MANAGEMENT OF FRAUD AND CORRUPTION PREVENTION IN THE PUBLIC SECTOR — GOVERNMENT RESPONSE—STATEMENT BY MINISTER

Mr Stanhope (Chief Minister) presented the following paper:

Public Accounts—Standing Committee—Report 13—*Review of Auditor-General's Report No. 4 of 2003—Management of fraud and corruption prevention in the public sector (presented 24 August 2004)*—Government response—

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

20 PRESENTATION OF PAPER

Mr Stanhope (Chief Minister) presented the following paper:

Ministerial Travel Report—1 October to 31 December 2004.

21 PRESENTATION OF PAPERS

Mr Quinlan (Treasurer) presented the following papers:

Financial Management Act—

Pursuant to section 16—Instrument directing a transfer of appropriations relating to the Administrative Arrangements Order of 4 November 2004, including a statement of reasons, dated 16 February 2005.

Pursuant to section 18—Authorisation of Expenditure from the Treasurer's Advance, including a statement of reasons, dated 19 January 2005.

Territory Owned Corporations Act—Notification of the establishment of Territory Owned Corporation—Rhodium Asset Solutions Limited, dated February 2005.

22 LAND (PLANNING AND ENVIRONMENT) ACT—LEASES—PAPER AND STATEMENT BY MINISTER

Mr Hargreaves (Minister for Disability, Housing and Community Services), on behalf of the Minister for Planning, presented the following paper:

Land (Planning and Environment) Act, pursuant to section 216A—Schedules—Leases granted, together with lease variations and change of use charges for the period 1 October to 31 December 2004—

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

23 LAND (PLANNING AND ENVIRONMENT) ACT—STATEMENT REGARDING EXERCISE OF CALL-IN POWERS—DEVELOPMENT APPLICATION NO. 200310406—BLOCK 13, SECTION 58, TURNER—PAPER AND STATEMENT BY MINISTER

Mr Hargreaves (Minister for Disability, Housing and Community Services), on behalf of the 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 No. 200310406—Block 13, section 58, Turner, dated 17 December 2004—

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

24 COMMUNITY SERVICES AND SOCIAL EQUITY—STANDING COMMITTEE—REPORT 7—ONE-WAY ROADS OUT OF QUAMBY: TRANSITION OPTIONS FOR YOUNG PEOPLE EXITING JUVENILE DETENTION IN THE A.C.T.—GOVERNMENT RESPONSE—PAPER AND STATEMENT BY MINISTER

Ms Gallagher (Minister for Children, Youth and Family Support) presented the following paper:

Community Services and Social Equity—Standing Committee—Report 7—*One-way roads out of Quamby: Transition options for young people exiting juvenile detention in the ACT (presented 17 August 2004)*—Government response—

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

25 THE TERRITORY AS PARENT—REVIEW OF THE SAFETY OF CHILDREN IN THE CARE OF THE A.C.T. AND OF A.C.T. CHILD PROTECTION MANAGEMENT—FIRST SIX MONTH STATUS REPORT AND THE TERRITORY'S CHILDREN—ENSURING SAFETY AND QUALITY CARE FOR CHILDREN AND YOUNG PEOPLE—REPORT ON THE AUDIT AND CASE REVIEW—FIRST SIX MONTH STATUS REPORT—STATEMENT BY MINISTER—MOTION TO TAKE NOTE OF PAPERS

Ms Gallagher (Minister for Children, Youth and Family Support) presented the following papers:

The Territory as Parent—

Review of the safety of children in the care of the ACT and of ACT child protection management—First six month status report, dated February 2005.

The Territory's Children—Ensuring safety and quality care for children and young people—Report on the audit and case review—First six month status report, dated February 2005—

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

Ms Gallagher moved—That the Assembly takes note of the papers.

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

26 PRESENTATION OF PAPER

Mr Hargreaves (Minister for Urban Services) presented the following paper:

Financial Management Act, pursuant to section 30A—Quarterly departmental performance report—December quarter 2004-2005—Arts, Heritage and Environment Portfolio within Urban Services.

27 MATTER OF PUBLIC IMPORTANCE—DISCUSSION—ORGAN AND TISSUE DONATIONS

The Assembly was informed that Mrs Dunne, Ms MacDonald and Mr Seselja had proposed that matters of public importance be submitted to the Assembly for discussion. In accordance with the provisions of standing order 79, the Speaker had determined that the matter proposed by Ms MacDonald be submitted to the Assembly, namely, “The need to recognise the important role Australian Organ Donor Awareness Week plays in promoting organ and tissue donations and encouraging Canberrans to become organ donors.”.

Discussion ensued.

Discussion concluded.

28 POSTPONEMENT OF ORDER OF THE DAY

Ordered—That order of the day No. 3, Executive business, relating to the Crimes Amendment Bill 2004 (No. 4), be postponed until a later hour this day.

29 JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2004 (NO. 2)

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

Clause 1 agreed to.

Clause 2—

On the motion of Mr Stanhope (Attorney-General), his amendment No. 1 (*see* [Schedule 1](#)) was made.

Paper: Mr Stanhope presented a supplementary explanatory statement to the Bill.

Clause 2, as amended, agreed to.

Clauses 3 to 9, by leave, taken together and agreed to.

Clause 10—

On the motion of Mr Stanhope, his amendment No. 2 (*see* [Schedule 1](#)) was made.

Clause 10, as amended, agreed to.

Clauses 11 to 34, by leave, taken together and agreed to.

Remainder of Bill, by leave, taken as a whole—

On the motion of Mr Stanhope, by leave, his amendments Nos. 3 to 5 (*see* [Schedule 1](#)) were made together.

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

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

30 SMOKING (PROHIBITION IN ENCLOSED PUBLIC PLACES) AMENDMENT BILL 2004

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.

31 CRIMES AMENDMENT BILL 2004 (NO. 4)

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

Clauses 1 to 6, by leave, taken together and agreed to.

Clause 7—

On the motion of Dr Foskey, her amendment No. 1 (*see* [Schedule 2](#)) was made, after debate.

Clause 7, as amended, agreed to.

Remainder of Bill, by leave, taken as a whole—

On the motion of Mr Hargreaves (Minister for Disability, Housing and Community Services, on behalf of the Attorney-General, by leave, amendments Nos. 1 to 3 (*see* [Schedule 3](#)) were made together.

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

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

32 ADJOURNMENT

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

Debate ensued.

Question—put and passed.

And then the Assembly, at 5.50 p.m. adjourned until Tuesday, 8 March 2005 at 10.30 a.m.

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

*On leave

Tom Duncan
Clerk of the Legislative Assembly

SCHEDULES OF AMENDMENTS

Schedule 1

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 2004 (NO. 2)

Amendments circulated by the Attorney-General

1

Clause 2

Page 2, line 5—

omit the clause, substitute

2 Commencement

(1) The following provisions commence on the commencement of the *Criminal Code (Serious Drug Offences) Amendment Act 2004*:

- part 6 (Drugs of Dependence Act 1989)
- part 8A (Periodic Detention Act 1995)
- part 8B (Road Transport (Alcohol and Drugs) Act 1977)
- part 10A (Smoke-free Areas (Enclosed Public Places) Act 1994)
- part 12 (Tobacco Act 1927).

(2) The remaining provisions commence on the day after this Act's notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

(3) To remove any doubt, the Legislation Act, section 79A (Commencement of amendment of uncommenced law) does not apply to the amendment made by part 11.

2

Clause 10

Proposed new section 51 (3) (b) (i)

Page 6, line 8—

omit the subparagraph, substitute

- (i) the day the claimant first instructs a lawyer to provide advice about seeking damages for the personal injury;
-

3

Proposed new parts 8A and 8B

Page 15, line 15—

insert

Part 8A Periodic Detention Act 1995

34A Legislation amended—pt 8A

This part amends the *Periodic Detention Act 1995*.

34B Meaning of *drug* Section 12, definition of *drug*, paragraph (b)

substitute

- (b) a controlled drug within the meaning of the Criminal Code, chapter 6 (Serious drug offences).

Part 8B Road Transport (Alcohol and Drugs) Act 1977

34C Legislation amended—pt 8B

This part amends the *Road Transport (Alcohol and Drugs) Act 1977*.

34D Dictionary, definition of *drug*, paragraph (b)

substitute

- (b) a controlled drug within the meaning of the Criminal Code, chapter 6 (Serious drug offences); or

4

Proposed new part 10A

Page 18, line 18—

insert

Part 10A Smoke-free Areas (Enclosed Public Places) Act 1994

39A Legislation amended—pt 10A

This part amends the *Smoke-free Areas (Enclosed Public Places) Act 1994*.

39B Definitions for Act Section 2, definition of *drug*

substitute

drug means a controlled drug within the meaning of the Criminal Code, chapter 6 (Serious drug offences).

5
Proposed new part 12
Page 19, line 10—

insert

Part 12 Tobacco Act 1927

42 Legislation amended—pt 12

This part amends the *Tobacco Act 1927*.

43 Dictionary, definition of *drug*

substitute

drug means a controlled drug within the meaning of the Criminal Code, chapter 6 (Serious drug offences).

Schedule 2**CRIMES AMENDMENT BILL 2004 (NO. 4)**

Amendment circulated by Dr Foskey

1

Clause 7**Proposed new section 315A (1A)****Page 7, line 16—**

insert

- (1A) Before hearing any evidence or submissions, the court must consider whether, for the protection of the defendant's privacy, the court should be closed to the public while all or part of the evidence or submissions are heard.
-

Schedule 3**CRIMES AMENDMENT BILL 2004 (NO. 4)**

Amendments circulated by the Attorney-General

1

Clause 16**Page 12, line 4—***omit***Appeals to which div 11.2 applies***substitute***Appeals to which div 3.10.2 applies**

2

Clause 19**Page 13, line 4—***[oppose the clause]*

3

New clause 28**Page 17, line 7—***insert***28****New part 14***insert***Part 14 Transitional****148 Application of amendments made by Crimes
Amendment Act 2005**

- (1) This section applies if, before the commencement of the *Crimes Amendment Act 2005* (the *amending Act*)—
- (a) the Supreme Court or Magistrates Court makes an order under the Crimes Act, part 13 requiring a person to submit to the jurisdiction of the tribunal to enable the tribunal to determine whether or not the person is fit to plead to a charge; and
 - (b) the tribunal has not made a final determination about the person's fitness to plead.
- (2) Part 8, as in force immediately before the commencement of the amending Act, continues to apply in relation to the matter until the tribunal makes its final determination about the person's fitness to plead.

- (3) After the tribunal makes its final determination about the persons' fitness to plead, the Crimes Act, part 13 applies in relation to the matter as if the question of the person's fitness to plead had been decided by the court.
- (4) For the application of this Act, section 68 as amended by the amending Act, a determination by the tribunal that a person is unfit to plead in relation to a charge (whether the determination is made before or after the commencement of the amending Act), is taken to be a decision of the Magistrates Court under the Crimes Act, section 315D (7) that the person is unfit to plead in relation to the charge.
- (5) In this section:
final determination about a person's fitness to plead means—
 - (a) a determination under section 68 that the person is unfit to plead and is unlikely to become fit within 12 months; or
 - (b) a determination under section 68, or on a review under section 69, that the person is fit to plead; or
 - (c) if the tribunal first determines under section 68 that the person is unfit to plead but is likely to become fit within 12 months after the determination is made—a determination under section 69 after the end of the 12-month period that the person is unfit to plead.

149 Expiry of pt 14

- (1) This part expires 3 months after the day it commences.
 - (2) This part is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
-