

2004–2005

LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY

MINUTES OF PROCEEDINGS

No. 30

THURSDAY, 18 AUGUST 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 **FINANCIAL MANAGEMENT LEGISLATION AMENDMENT BILL 2005**

Mr Quinlan (Treasurer), pursuant to notice, presented a Bill for an Act to amend the *Financial Management Act 1996*, to also amend other legislation about statutory authorities and their governance procedures, and for other purposes.

Papers: Mr Quinlan presented the following papers:

Explanatory statement to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 15 August 2005.

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.

3 **PUBLIC ACCOUNTS—STANDING COMMITTEE—INQUIRY—AUDITOR-GENERAL'S REPORTS—STATEMENT BY CHAIR**

Mr Mulcahy (Chair), pursuant to standing order 246A, informed the Assembly that the Standing Committee on Public Accounts had resolved to conduct an inquiry into and report on the following Auditor-General's Reports currently before the Committee:

Report No 2 2005—Development Application and Approval Process.

Review Report—Matters relevant to the Office of the Special Adviser, Council of Australian Governments and Inter-Governmental Relations.

4 **EXECUTIVE BUSINESS—PRECEDENCE**

Ordered—That Executive business be called on forthwith.

5 WATER RESOURCES 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

Clauses 1 to 4, by leave, taken together and agreed to.

Clause 5—

Mr Stanhope (Minister for the Environment) moved his amendment No. 1 (*see* [Schedule 1](#)).

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

Debate continued.

Question—put.

The Assembly voted—

AYES, 7		NOES, 4
Mr Corbell	Mr Hargreaves	Mrs Burke
Dr Foskey	Ms MacDonald	Mrs Dunne
Ms Gallagher	Ms Porter	Mr Mulcahy
Mr Gentleman		Mr Seselja

And so it was resolved in the affirmative.

Clause 5, as amended, agreed to.

Clause 6 debated and negatived.

Title agreed to.

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

6 UNIVERSITY OF CANBERRA 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 Ms Gallagher (Minister for Education and Training), her amendment No. 1 (*see* [Schedule 2](#)) was made.

Paper: Ms Gallagher presented a supplementary explanatory statement to the Government amendment.

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

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

7 UNIT TITLES (STAGED DEVELOPMENT) AMENDMENT BILL 2005

The Assembly, according to order, resumed debate at the detail stage—

Detail Stage

Bill as a whole—

On the motion of Mr Corbell (Minister for Planning), by leave, his amendments Nos. 1 to 6 were made together, after debate (*see* [Schedule 3](#)).

Paper: Mr Corbell presented a supplementary 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.

8 OCCUPATIONAL HEALTH AND SAFETY 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.

9 MINISTERIAL ARRANGEMENTS

Mr Stanhope (Chief Minister) informed the Assembly of the absence of Mr Quinlan (Treasurer and Minister for Economic Development and Business) and advised the Assembly that questions without notice normally directed to Mr Quinlan could be directed to Mr Stanhope.

10 QUESTIONS

Questions without notice were asked.

11 HUMAN RIGHTS ACT—HUMAN RIGHTS AUDIT—QUAMBY YOUTH DETENTION CENTRE—PAPER—PUBLICATION OF PAPER—MOTION TO TAKE NOTE OF PAPER

Mr Stanhope (Attorney-General) presented the following paper:

Human Rights Act, pursuant to subsection 41(2)—Human Rights Audit of Quamby Youth Detention Centre, dated 30 June 2005 (prepared by the Human Rights and Discrimination Commissioner)—

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

Question—put and passed.

Mr Stanhope moved—That the Assembly takes note of the paper.

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

12 PRESENTATION OF PAPERS

Mr Stanhope (Chief Minister) presented the following papers:

Australian Capital Tourism Corporation Act—Australian Capital Tourism Corporation—

Pursuant to subsection 23(8)—Business Plan 2005-06.

Pursuant to subsection 28(2)—Quarterly report—April to June 2005.

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

Mr Corbell (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 April to 30 June 2005—

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

14 HUMAN RIGHTS ACT—HUMAN RIGHTS AUDIT—QUAMBY YOUTH DETENTION CENTRE—GOVERNMENT RESPONSE—PAPER AND STATEMENT BY MINISTER

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

Human Rights Act—Human Rights Audit of Quamby Youth Detention Centre—Government response, dated August 2005—

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

15 MATTER OF PUBLIC IMPORTANCE—DISCUSSION—CANBERRA'S SOCIAL AND COMMERCIAL APPEAL

The Assembly was informed that Ms MacDonald, Mr Mulcahy and Mr Seselja had proposed that matters of public importance be submitted to the Assembly for discussion.

Speaker's ruling: The Speaker ruled that the matter proposed by Ms MacDonald was out of order as it was not within the scope of ministerial responsibility.

In accordance with the provisions of standing order 79, the Speaker had determined that the matter proposed by Mr Seselja be submitted to the Assembly, namely, “The outlook for Canberra’s social and commercial appeal to investors and residents.”.

Discussion ensued.

The time for discussion having expired—

Discussion concluded.

16 RESIDENTIAL TENANCIES AMENDMENT BILL 2005

The Assembly, according to order, resumed further consideration at the detail stage.

Detail Stage

Clause 17—

Dr Foskey moved her amendment No. 4 (*see* [Schedule 4](#)).

Debate continued.

Amendment negatived.

On the motion of Mr Stanhope (Attorney-General), by leave, his amendments Nos. 3 and 4 (*see* [Schedule 5](#)) were made together.

Clause 17, as amended, agreed to.

Clauses 18 to 21, by leave, taken together and agreed to.

Clause 22—

Dr Foskey, by leave, moved her amendments Nos. 5 and 6 together (*see* [Schedule 4](#)).

Debate continued.

Amendments negatived.

Clause 22 agreed to.

Remainder of Bill, by leave, taken as a whole and agreed to.

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

17 ADJOURNMENT

Mr Stanhope (Chief Minister) moved—That the Assembly do now adjourn.

Debate ensued.

Standing order 156—Declaration of interest: Dr Foskey, pursuant to standing order 156, declared an interest in the Residential Tenancies Amendment Bill 2005.

Debate continued.

The time allotted for the debate having expired—The Speaker, at 5.28 p.m., adjourned the Assembly until Tuesday, 23 August 2005 at 10.30 a.m.

MEMBERS' ATTENDANCE: All Members were present at some time during the sitting.

Tom Duncan
Clerk of the Legislative Assembly

SCHEDULES OF AMENDMENTS

Schedule 1

WATER RESOURCES AMENDMENT BILL 2005

Amendments circulated by the Minister for the Environment

1

Clause 5

Page 3, line 8—

omit clause 5, substitute

5 New sections 63A to 63C

in part 9, insert

63A Moratorium on granting licences etc

- (1) The operation of the following provisions is suspended:
 - (a) section 28 (1) to (10) (Allocation of water);
 - (b) section 35 (1) to (4) (Licence to take water);
 - (c) section 44 (1) and (2) (Bore construction permit);
 - (d) section 47 (2), (3) and (6) (Unlicensed recharge).
- (2) The operation of section 77 (3) (Review of decisions) is suspended in relation to decisions under the suspended provisions.
- (3) Without limiting subsection (1)—
 - (a) an application cannot be made for an allocation, licence or permit mentioned in the suspended provisions; and
 - (b) a decision cannot be made to grant or refuse to grant an allocation, licence or permit mentioned in the suspended provisions.
- (4) Subsections (1) and (2) have effect subject to section 63B (Exceptions to moratorium).
- (5) However, subsection (1) does not affect the operation of any allocation, licence or permit (including the conditions to which it is subject) if—
 - (a) it was granted before the commencement of this section; or
 - (b) it is granted after the commencement of this section because of section 63B.

63B Exceptions to moratorium

- (1) The operation of section 28 (1) to (10) is not suspended in relation to a grant of a water allocation to a person if—
 - (a) the grant is for an allocation of ground water under particular land; and
 - (b) the person holds or held a licence under section 35 to take ground water under the land; and
 - (c) the land is the subject of a further lease of territory land granted after the commencement of section 13.
- (2) The operation of section 28 (1) to (10) is not suspended in relation to a grant of a water allocation to a water supply utility.
- (3) The operation of section 28 (1) to (10) is not suspended in relation to a grant of a water allocation if the allocation is granted under a court or tribunal order made in a proceeding started before the commencement of this section.
- (4) The operation of section 35 (1) to (4) is not suspended in relation to an application for a licence to take ground water under particular land (a *new licence*) if—
 - (a) the applicant holds or held a licence under section 35 to take ground water under the land; and
 - (b) the land is the subject of a further lease of territory land granted after the commencement of section 13.
- (5) The operation of section 35 (1) to (4) is not suspended in relation to an application for a licence to take ground water under particular land if—
 - (a) the applicant holds a licence under section 35 to take ground water under the land (the *existing licence*); and
 - (b) the application is for a new licence to take a volume of ground water under the land that is not more than the volume of water stated in the existing licence; and
 - (c) the new licence would have effect after the end of the term of the existing licence.
- (6) The operation of section 35 (1) to (4) is not suspended in relation to an application for a licence to take surface water from a particular place (a *new licence*) if—
 - (a) the applicant holds a licence under section 35 to take surface water from the place (the *existing licence*); and
 - (b) the application is for a new licence to take a volume of surface water from the place that is not more than the volume of water stated in the existing licence; and
 - (c) the new licence would have effect after the end of the term of the existing licence.

- (7) The operation of section 35 (1) to (4) is not suspended in relation to an application by a water supply utility for a licence to take water.
- (8) The operation of section 35 (1) to (4) is not suspended in relation to an application for a licence to take water if the licence is granted under a court or tribunal order made in a proceeding started before the commencement of this section.
- (9) The operation of section 44 (1) and (2) is not suspended in relation to an application for a bore construction permit by an applicant who—
 - (a) holds a licence to take water from an existing bore; and
 - (b) is applying for a permit for works on that bore or construction of a replacement bore.
- (10) The operation of section 44 (1) and (2) is not suspended in relation to an application for a bore construction permit if the permit is granted under a court or tribunal order made in a proceeding started before the commencement of this section.
- (11) The operation of section 47 (2), (3) and (6) is not suspended in relation to an application for a recharge licence if the licence is granted under a court or tribunal order made in a proceeding started before the commencement of this section.
- (12) A regulation may prescribe other exceptions for section 63A (1).

63C End of moratorium

Section 63A, section 63B and this section expire 2 years after the day they commence.

2

Clause 6

Page 4, line 19—

[oppose the clause]

Schedule 2

UNIVERSITY OF CANBERRA AMENDMENT BILL 2005

Amendment circulated by the Minister for Education and Training

1

Clause 9

Proposed new section 12A (4)

Page 4, line 23—

after

subsection (1)

insert

or (2)

Schedule 3**UNIT TITLES (STAGED DEVELOPMENT)
AMENDMENT BILL 2005-2006**

Amendments circulated by the Minister for Planning

1
Proposed new clauses 10A to 10C
Page 4, line 3—

*insert***10A New section 30 (1A) and (1B)***insert*

- (1A) If the amendment of the development statement only affects an uncompleted stage of a staged development, the planning and land authority may amend the development statement as applied for if satisfied on reasonable grounds that—
- (a) the applicant has obtained the written agreement to the amendment of each person with an interest in a unit in that part of the parcel comprising the uncompleted stages of the development (except any interested person to whom subsection (1B) applies); and
 - (b) any change of unit or common property boundaries provided for by the amendment is a minor boundary change within the uncompleted stages of the development.
- (1B) The planning and land authority may amend the development statement under subsection (1A) despite the applicant's failure to obtain an interested person's agreement if the authority is satisfied on reasonable grounds that—
- (a) the applicant could not reasonably be aware of that interest, or has made reasonable efforts to obtain the agreement; and
 - (b) either—
 - (i) the interested person would not suffer any substantial long-term detriment because of the proposed amendment; or
 - (ii) despite that failure, it is desirable to authorise the amendment having regard to the overall interests of everyone with interests in that part of the parcel comprising the uncompleted stages of the development.

10B Section 30 (2)*omit*

The planning and land authority may

substitute

If subsection (1A) does not apply, the land and planning authority may

10C Section 30 (3)*after*

development statement

insert

under subsection (2)

2**Proposed new clause 11A****Page 5, line 2—***insert***11A Section 30***renumber subsections when Act next republished under Legislation Act*

3**Proposed new clause 14A****Page 5, line 23—***insert***14A New section 64A***insert***64A General and sinking funds in staged developments**

- (1) This section applies to a general fund or sinking fund established by an owners corporation for a staged development if the development has not been completed.
- (2) A contribution to a general fund is not payable by the owner of a unit if the unit is in an uncompleted stage of the development.
- (3) A contribution to a sinking fund is not payable by the owner of a unit if the unit is in an uncompleted stage of the development.
- (4) The owners corporation must not pay an amount from a general fund or sinking fund in relation to an uncompleted stage of the development.

 4
Clause 16**Proposed new section 110A (2)****Page 6, line 15—***omit proposed new section 110A (2), substitute*

- (2) The people entitled to vote on the motion are as follows:
- (a) if the motion is only about an uncompleted stage of the development—the people entitled to vote under section 110 in relation to units in the uncompleted stages of the development;
 - (b) if the motion is only about a completed stage of the development—the people entitled to vote under section 110 in relation to units in the completed stages of the development;
 - (c) in any other case—the people entitled to vote under section 110.

 5
Proposed new clause 17**Page 6, line 20—***insert*

17 Building insurance by owners corporation
New section 132 (3)
insert

- (3) In this section:
- parcel*, for a staged development, means the whole of the land in the completed stages of the development.

 6
Schedule 1**Amendment 1.1****Proposed new section 179 (5)****Page 7, line 7—***omit proposed new section 179 (5), substitute*

- (5) For subsection (4), an occupier is substantially inconvenienced by works being, or to be, carried out if the works are being, or are to be, carried out to the common property, or another unit, in the same stage of the development as the occupier's unit.
-

Schedule 4**RESIDENTIAL TENANCIES AMENDMENT BILL 2005**

Amendments circulated by Dr Foskey

1**Clause 7****Proposed new section 8 (2), proposed new definition of *posted*****Page 3, line 23***insert*

posted—a person is *posted* if the person is compulsorily transferred.

2**Clause 15****Proposed new section 42****Page 7, line 20—***omit proposed new section 42, substitute***42 Conditional orders**

- (1) The tribunal may make a termination and possession order whose enforcement is subject to a condition (an ***enforcement condition***) if satisfied that the condition will not cause significant financial hardship to the tenant or a person who is financially dependant on the tenant.

Example of enforcement condition

that a person fails to pay rent arrears to the lessor within 6 months after the day the termination and possession order is made

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If the enforcement of a termination and possession order is subject to an enforcement condition, the order expires on a day stated by the tribunal in the order.
- (3) The expiry day must not be more than 2 years after the day the order is made.

Note An order may expire before an enforcement condition is completed.

- (4) However, subsection (3) does not apply if the tribunal believes on reasonable grounds that—
- (a) there are exceptional circumstances; and
- (b) it would be inappropriate to state an expiry day in accordance with subsection (3).

3**Clause 16****Proposed new section 51 (d)****Page 9, line 26—**

omit proposed new section 51 (d), substitute

- (d) serious damage to premises or other property of a neighbour; or
- (e) injury to a neighbour or a member of a neighbour's family.

4**Clause 17****Proposed new section 107A****Page 10, line 3—**

omit proposed new section 107A, substitute

107A Substitution of tenant

- (1) This section applies if—
 - (a) a court has made a domestic violence order against the tenant, or a cotenant, (the *respondent*); or
 - (b) a court has made an order to remove the respondent from the premises; or
 - (c) the respondent has given an undertaking to a court to leave the premises.
- (2) An occupant of the premises, other than the respondent, (the *occupant*) may apply to the tribunal to be the tenant or cotenant under the residential tenancy agreement for the premises instead of the respondent.
- (3) To remove any doubt, an application may be made by the occupant even though the occupant is not a tenant or cotenant under the residential tenancy agreement.
- (4) The application must—
 - (a) be in writing; and
 - (b) include a copy of—
 - (i) the domestic violence order; or
 - (ii) the court order removing the respondent from the premises; or
 - (iii) evidence of the respondent's undertaking to the court to leave the premises.
- (5) The tribunal may make an order substituting the occupant as the tenant, or cotenant, if—
 - (a) the grounds of the application are proved; and
 - (b) the lessor has been given an opportunity to be heard on the application.

- (6) If the application is in relation to premises leased under a housing assistance program under the *Housing Assistance Act 1987*, the tribunal must not make an order under subsection (5) that is inconsistent with the eligibility criteria of the program.
- (7) The order is subject to any condition stated in it by the tribunal.

5

Clause 22

Proposed new section 127A (1)

Page 17, line 6—

omit

public housing tenancy agreement

substitute

tenancy agreement with the commissioner for housing

6

Clause 22

Proposed new section 127A (2)

Page 17, line 11—

omit

rent

substitute

rental rebate

Schedule 5

RESIDENTIAL TENANCIES AMENDMENT BILL 2005

Amendments circulated by the Attorney-General

1

Proposed new clause 7A

Page 3, line 23—

insert

7A New section 10 (4A)

insert

- (4A) The tribunal must not endorse a term mentioned in section 15 (5) in relation to a tenant unless satisfied that the tenant owes an amount to the commissioner for housing.
-

2

Clause 10

Proposed new section 15 (5)

Page 5, line 4—

omit proposed new section 15 (5), substitute

- (5) This Act does not prevent the commissioner for housing from requiring a tenant to agree to pay an outstanding amount owed by the tenant to the commissioner for housing in relation to a previous tenancy in consideration for giving the tenant a right to occupy premises if the tribunal has, under section 10, endorsed the term of the residential tenancy agreement requiring the payment.
- (6) The inclusion in a residential tenancy agreement of a term requiring payment of an outstanding amount owed by the tenant to the commissioner for housing does not prevent—
- (a) the commissioner and the tenant agreeing to the tenant repaying the outstanding amount over a period of time longer than the period set out in the term; or
 - (b) the commissioner from taking action against the tenant in relation to the outstanding amount.

3**Clause 17****Proposed new section 107A (1)****Page 10, line 4—**

omit proposed new section 107A (1), substitute

- (1) This section applies if—
- (a) the tenant, or a cotenant, (the ***removed person***) has given an undertaking to a court to leave the premises; or
 - (b) a court has made an order, other than an interim order, to remove the removed person from the premises.

4**Clause 17****Proposed new section 107A (4) (b)****Page 10, line 15—**

omit proposed new section 107A (4) (b), substitute

- (b) include—
- (i) evidence of the removed person's undertaking to the court to leave the premises; or
 - (ii) a copy of the court order to remove the removed person from the premises.
-