



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

2008–2009–2010–2011

MINUTES OF PROCEEDINGS

No. 108

THURSDAY, 23 JUNE 2011

1 The Assembly met at 10 a.m., pursuant to adjournment. A quorum of Members not being present, the Speaker (Mr Rattenbury) ordered the bells to be rung. A quorum having been formed, the Speaker 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 WORK HEALTH AND SAFETY BILL 2011

Ms Gallagher (Minister for Industrial Relations), pursuant to notice, presented a Bill for an Act about work health and safety.

Papers: Ms Gallagher presented the following papers:

Explanatory statement to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 22 June 2011.

Title read by Clerk.

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

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

3 LAND TAX AMENDMENT BILL 2011

Ms Gallagher (Treasurer), pursuant to notice, presented a Bill for an Act to amend the *Land Tax Act 2004*.

Papers: Ms Gallagher presented the following papers:

Explanatory statement to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 22 June 2011.

Title read by Clerk.

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

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

4 RESIDENTIAL TENANCIES (DATABASES) AMENDMENT BILL 2011

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

Papers: Mr Corbell presented the following papers:

Explanatory statement to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 22 June 2011.

Title read by Clerk.

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

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

5 UNIT TITLES (MANAGEMENT) BILL 2011

Mr Corbell (Attorney-General), pursuant to notice, presented a Bill for an Act to provide for the management of units plans, 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 22 June 2011.

Title read by Clerk.

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

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

6 CORONERS AMENDMENT BILL 2011

Mr Corbell (Attorney-General), pursuant to notice, presented a Bill for an Act to amend the *Coroners Act 1997*.

Papers: Mr Corbell presented the following papers:

Explanatory statement to the Bill.

Human Rights Act, pursuant to section 37—Compatibility statement, dated 22 June 2011.

Title read by Clerk.

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

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

7 LAW OFFICERS BILL 2011

Mr Corbell (Attorney-General), pursuant to notice, presented a Bill for an Act about the functions of the Attorney-General, solicitor-general and government solicitor, 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 22 June 2011.

Title read by Clerk.

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

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

8 JUSTICE AND COMMUNITY SAFETY—STANDING COMMITTEE—PROPOSED REFERENCE—ALEXANDER MACONOCHIE CENTRE—SUPERINTENDENT POSITION

Mr Hanson, pursuant to notice, moved—That this Assembly:

(1) notes that:

- (a) since the Alexander Maconochie Centre (AMC) opened in March 2009 there have been numerous superintendents or people acting in that position and the recent Hamburger review found this “lack of continuity of leadership” (p 28) “created a potential risk to the safety, security and effectiveness of the centre” (Finding 15);
- (b) the Hamburger review noted that in May 2010, the appointment of a “highly experienced officer to fulfil the role of Superintendent”, Mr Doug Buchanan, “provides the opportunity for continuity of appropriately experienced leadership”;
- (c) the Superintendent of the AMC, Mr Doug Buchanan, had his secondment from NSW terminated at short notice in May 2011;
- (d) the Attorney-General stated in Estimates hearings on 23 May 2011 that Mr Buchanan “had agreed to return to his substantive position in NSW Corrective Services”;
- (e) in response to a question during Estimates asking if Mr Buchanan was “pushed”, the Attorney-General answered “no”; and
- (f) Mr Buchanan has stated:
 - (i) publicly that his termination was not voluntary;
 - (ii) publicly that he is the “political fall guy” and was “shattered” by his termination;
 - (iii) to the media that he has been denied due process; and
 - (iv) publicly that he believed that the motivation for his termination was in part due to his opposition to a Needle and Syringe Program at the AMC; and

- (2) refers the matter of the termination of the former Superintendent, Mr Doug Buchanan, and the lack of continuity in the AMC superintendent position to the Standing Committee on Justice and Community Safety for inquiry.

Debate ensued.

Ms Bresnan moved the following amendment: Omit all words after “That this Assembly”, substitute:

“calls on the ACT Government to:

- (1) facilitate the public interest disclosure process for the former Superintendent of the Alexander Maconochie Centre about the termination of his secondment to the ACT Public Service, if that is a process which the former Superintendent wishes to pursue; and
- (2) report back to the Assembly by the last sitting day in August 2011 about:
- (a) what industrial rights are available to workers seconded to the ACT Public Service;
 - (b) how they compare with the rights of permanent ACT public servants; and
 - (c) if action needs to be taken to raise the level of rights available to people on secondment.”.

Debate continued.

Mr Corbell (Attorney-General) addressing the Assembly—

It being 45 minutes after the commencement of Assembly business—

Ordered—That the time allotted to Assembly business be extended by 30 minutes.

Debate continued.

Amendment negatived.

Debate continued.

Question—That the motion be agreed to—put.

The Assembly voted—

AYES, 5

Mr Coe
Mr Doszpot
Mrs Dunne
Mr Hanson
Mr Smyth

NOES, 10

Mr Barr
Dr Bourke
Ms Bresnan
Ms Burch
Mr Corbell
Ms Gallagher
Mr Hargreaves
Ms Hunter
Ms Le Couteur
Mr Rattenbury

And so it was negatived.

9 JUSTICE AND COMMUNITY SAFETY—STANDING COMMITTEE (PERFORMING THE DUTIES OF A SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION COMMITTEE)—ADMINISTRATIVE (ONE A.C.T. PUBLIC SERVICE MISCELLANEOUS AMENDMENTS) BILL 2011—STATEMENT BY CHAIR

Mrs Dunne (Chair), pursuant to standing order 246A, informed the Assembly that the Standing Committee on Justice and Community Safety (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee) had examined the Administrative (One ACT Public Service Miscellaneous Amendments) Bill 2011 and offers no comment on it.

10 PUBLIC ACCOUNTS—STANDING COMMITTEE—GOVERNMENT PROCUREMENT ACT—REPORTABLE CONTRACTS—TABLING—STATEMENT BY CHAIR—PAPER

Ms Le Couteur (Chair), pursuant to standing order 246A, made a statement concerning the reporting of reportable contracts, which are provided by agencies to the Standing Committee on Public Accounts under section 39 of the Government Procurement Act.

Paper: Ms Le Couteur, by leave, presented the following paper:

Reportable contracts—Agencies reporting reportable contracts for period 1 October 2010 to 31 March 2011—Table.

11 PLANNING, PUBLIC WORKS AND TERRITORY AND MUNICIPAL SERVICES—STANDING COMMITTEE—INQUIRY—TIDBINBILLA REVISED DRAFT PLAN OF MANAGEMENT 2011—STATEMENT BY CHAIR

Ms Le Couteur (Deputy Chair), pursuant to standing order 246A, informed the Assembly that the Standing Committee on Planning, Public Works and Territory and Municipal Services had resolved to conduct an inquiry into the Tidbinbilla Revised Draft Plan of Management 2011.

12 STANDING COMMITTEES—MEMBERSHIP

Mr Corbell (Manager of Government Business), pursuant to standing order 223, moved—That:

Mr Hargreaves be discharged from the Standing Committee on Climate Change, Environment and Water and Ms Porter be appointed in his place.

Ms Porter be discharged from the Standing Committee on Education, Training and Youth Affairs and Dr Bourke be appointed in her place.

Ms Porter be discharged from the Standing Committee on Health, Community and Social Services and Dr Bourke be appointed in her place.

Question—put and passed.

13 PLANNING AND DEVELOPMENT (LEASE VARIATION CHARGES) AMENDMENT BILL 2011

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

Detail Stage

Clause 1 debated and agreed to.

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

Mr Seselja (Leader of the Opposition) moved his amendment No. 1 (*see* [Schedule 1](#)).

Debate continued.

Question—put.

The Assembly voted—

AYES, 5	NOES, 10
Mr Coe	Mr Barr
Mr Doszpot	Dr Bourke
Mrs Dunne	Ms Bresnan
Mr Seselja	Ms Burch
Mr Smyth	Mr Corbell
	Ms Gallagher
	Mr Hargreaves
	Ms Hunter
	Ms Le Couteur
	Mr Rattenbury

And so it was negatived.

Debate interrupted in accordance with standing order 74 and the resumption of the debate made an order of the day for a later hour this day.

**14 DEATH OF EMERITUS PROFESSOR JACK RICHARDSON AO—
STATEMENT OF CONDOLENCE BY SPEAKER**

The Speaker informed the Assembly of the death, on 13 June 2011, of Emeritus Professor Jack Richardson AO, former Commonwealth and ACT Ombudsman and Dean of the Australian National University's Faculty of Law.

As a mark of respect to the memory of Professor Richardson, all Members present stood, in silence.

15 MATTERS OF PUBLIC IMPORTANCE—STATEMENT BY SPEAKER

The Speaker made a statement concerning matters of public importance.

16 QUESTIONS

Questions without notice were asked.

**17 ANNUAL REPORTS (GOVERNMENT AGENCIES) ACT—ANNUAL
REPORT (GOVERNMENT AGENCIES) NOTICE 2011 (NO. 1)—
NOTIFIABLE INSTRUMENT NI2011-311—PAPER AND STATEMENT BY
MINISTER—STATEMENT BY MEMBER**

Ms Gallagher (Chief Minister) presented the following paper:

Annual Reports (Government Agencies) Act, pursuant to subsection 9(5)—Annual Report (Government Agencies) Notice 2011 (No. 1)—Notifiable Instrument NI2011-311, dated June 2011, including a copy of the Chief Minister's 2010-2011 Annual Report Directions—

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

Ms Le Couteur, by leave, also made a statement in relation to the paper.

18 PRESENTATION OF PAPER

Ms Gallagher (Chief Minister), pursuant to the resolution of the Assembly of 8 December 2010, presented the following paper:

South Tralee—Proposed residential development—Government response.

19 FINANCIAL MANAGEMENT ACT—INSTRUMENT—PAPER AND STATEMENT BY MINISTER

Ms Gallagher (Treasurer) presented the following paper:

Financial Management Act, pursuant to section 17—Instrument varying appropriations relating to Commonwealth funding to the Treasury Directorate, including a statement of reasons, dated 19 June 2011—

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

20 EDUCATION, TRAINING AND YOUTH AFFAIRS—STANDING COMMITTEE—REPORT 5—NEEDS OF A.C.T. STUDENTS WITH A DISABILITY—PROGRESS REPORT ON RECOMMENDATIONS—PAPER

Mr Barr (Minister for Education and Training) presented the following paper:

Education, Training and Youth Affairs—Standing Committee—Report 5—*Needs of ACT Students with a Disability*—Progress report on recommendations—Question taken on notice budget estimate hearings, dated June 2011.

21 PRESENTATION OF PAPER

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

Coroners Amendment Bill 2011—Reform of the ACT coronial system.

22 MINISTERIAL STATEMENT—LEAVE NOT GRANTED

Ms Gallagher (Chief Minister) sought leave to make a ministerial statement.

Objection being raised, leave not granted.

23 SUSPENSION OF STANDING AND TEMPORARY ORDERS—MINISTERIAL STATEMENT

Mr Corbell (Management of Government Business) moved—That so much of the standing and temporary orders be suspended as would prevent Ms Gallagher (Chief Minister) from making a ministerial statement on open government.

Debate ensued.

Question—put and passed, with the concurrence of an absolute majority.

24 OPEN GOVERNMENT—MINISTERIAL STATEMENT—STATEMENT BY MEMBER—PAPER NOTED

Ms Gallagher (Chief Minister) made a ministerial statement concerning open government.

Mr Seselja (Leader of the Opposition), by leave, also made a statement in relation to the matter.

Ms Gallagher presented the following paper:

Open government—Ministerial statement, 23 June 2011—
and moved—That the Assembly takes note of the paper.

Debate ensued.

Question—put and passed.

25 TOWARDS A DIVERSIONARY FRAMEWORK FOR THE A.C.T. DISCUSSION PAPER—INTERIM RESPONSE TO THE CONSULTATION REPORT—MINISTERIAL STATEMENT—PAPERS—PAPERS NOTED

Ms Burch (Minister for Community Services), by leave, made a ministerial statement concerning the interim response to the consultation report on *Towards a Diversionary Framework for the ACT Discussion Paper* and presented the following papers:

Towards a Diversionary Framework for the ACT Discussion Paper—

Interim response to the consultation report—Ministerial statement, 23 June 2011.

Consultations report, prepared for the Department of Disability, Housing and Community Services by Noetic Solutions Pty Ltd, dated April 2011.

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

Debate ensued.

Question—put and passed.

26 MATTER OF PUBLIC IMPORTANCE—DISCUSSION—COMPETENCE AND LEADERSHIP IN GOVERNMENT

The Assembly was informed that Dr Bourke, Ms Bresnan, Mr Coe, Mr Doszpot, Mrs Dunne, Mr Hanson, Mr Hargreaves, Ms Hunter, Ms Le Couteur, Ms Porter, Mr Seselja (Leader of the Opposition) and Mr Smyth 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 Mrs Dunne be submitted to the Assembly, namely, “The importance of competence and leadership in government”.

Discussion ensued.

The time for discussion having expired—

Discussion concluded.

27 PLANNING AND DEVELOPMENT (LEASE VARIATION CHARGES) AMENDMENT BILL 2011

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

Detail Stage

Remainder of Bill, as a whole—

Mr Seselja moved his amendment No. 2 (*see* [Schedule 1](#)).

Debate continued.

Adjournment negated: It being approximately 6 p.m.—The question was proposed—That the Assembly do now adjourn.

Ms Gallagher (Treasurer) requiring the question to be put forthwith without debate—
Question—put and negated.

Debate continued.

Question—put.

The Assembly voted—

AYES, 5		NOES, 10
Mr Coe	Mr Barr	Ms Gallagher
Mrs Dunne	Dr Bourke	Ms Hunter
Mr Hanson	Ms Bresnan	Ms Le Couteur
Mr Seselja	Ms Burch	Ms Porter
Mr Smyth	Mr Corbell	Mr Rattenbury

And so it was negated.

Ms Hunter sought leave to move amendments together.

Objection being raised, leave not granted.

Suspension of standing and temporary orders—Amendments to be moved together:
Ms Hunter moved—That so much of the standing and temporary orders be suspended as would prevent Ms Hunter from moving her amendments together.

Debate ensued.

Mr Smyth sought leave to speak after debate had been closed by the mover.

Objection being raised, leave not granted.

Suspension of standing and temporary orders—Member to speak to motion:
Mr Smyth moved—That so much of the standing and temporary orders be suspended as would prevent Mr Smyth from speaking to the motion.

Debate ensued.

Question—put and passed, with the concurrence of an absolute majority.

Mr Smyth addressed the Assembly.

Question—put.

The Assembly voted—

AYES, 10		NOES, 5
Mr Barr	Ms Gallagher	Mr Coe
Dr Bourke	Ms Hunter	Mrs Dunne
Ms Bresnan	Ms Le Couteur	Mr Hanson
Ms Burch	Ms Porter	Mr Seselja
Mr Corbell	Mr Rattenbury	Mr Smyth

And so it was resolved in the affirmative, with the concurrence of an absolute majority.

Ms Hunter moved her amendments Nos. 1 to 25 together (*see* [Schedule 2](#)).

Debate continued.

Question—put.

The Assembly voted—

AYES, 11		NOES, 6
Mr Barr	Mr Hargreaves	Mr Coe
Dr Bourke	Ms Hunter	Mr Doszpot
Ms Bresnan	Ms Le Couteur	Mrs Dunne
Ms Burch	Ms Porter	Mr Hanson
Mr Corbell	Mr Rattenbury	Mr Seselja
Ms Gallagher		Mr Smyth

And so it was resolved in the affirmative.

Question—That the Remainder of Bill, as a whole, as amended be agreed to—put.

The Assembly voted—

AYES, 11		NOES, 6
Mr Barr	Mr Hargreaves	Mr Coe
Dr Bourke	Ms Hunter	Mr Doszpot
Ms Bresnan	Ms Le Couteur	Mrs Dunne
Ms Burch	Ms Porter	Mr Hanson
Mr Corbell	Mr Rattenbury	Mr Seselja
Ms Gallagher		Mr Smyth

And so it was resolved in the affirmative.

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

The Assembly voted—

AYES, 11		NOES, 6
Mr Barr	Mr Hargreaves	Mr Coe
Dr Bourke	Ms Hunter	Mr Doszpot
Ms Bresnan	Ms Le Couteur	Mrs Dunne
Ms Burch	Ms Porter	Mr Hanson
Mr Corbell	Mr Rattenbury	Mr Seselja
Ms Gallagher		Mr Smyth

And so it was resolved in the affirmative—Bill, as amended, agreed to.

28 CRIMINAL PROCEEDINGS LEGISLATION AMENDMENT BILL 2011

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.

Paper: Mr Seselja (Leader of the Opposition), by leave, presented the following paper:

Criminal Proceedings Legislation Amendment Bill 2011—Copy of letter from the President, ACT Law Society, to the Attorney-General, dated 17 June 2011.

Debate continued.

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

Detail Stage

Bill, by leave, taken as a whole—

Mrs Dunne, by leave, moved her amendments Nos. 1 to 7 together (*see* [Schedule 3](#)).

Debate continued.

Question—put.

The Assembly voted—

AYES, 6

Mr Coe
Mr Doszpot
Mrs Dunne
Mr Hanson
Mr Seselja
Mr Smyth

NOES, 11

Mr Barr
Dr Bourke
Ms Bresnan
Ms Burch
Mr Corbell
Ms Gallagher
Mr Hargreaves
Ms Hunter
Ms Le Couteur
Ms Porter
Mr Rattenbury

And so it was negatived.

Debate continued.

Question—That the Bill, as a whole, be agreed to—put.

The Assembly voted—

AYES, 11

Mr Barr
Dr Bourke
Ms Bresnan
Ms Burch
Mr Corbell
Ms Gallagher
Mr Hargreaves
Ms Hunter
Ms Le Couteur
Ms Porter
Mr Rattenbury

NOES, 6

Mr Coe
Mr Doszpot
Mrs Dunne
Mr Hanson
Mr Seselja
Mr Smyth

And so it was resolved in the affirmative.

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

**29 SUSPENSION OF STANDING AND TEMPORARY ORDERS—
DETERMINATION OF BILL**

Mr Corbell (Manager of Government Business) moved—That so much of the standing and temporary orders be suspended as would prevent order of the day No. 4, Executive business relating to the Administrative (One ACT Public Service Miscellaneous Amendments) Bill 2011, being determined this sitting.

Question—put and passed, with the concurrence of an absolute majority.

**30 PUBLIC SECTOR MANAGEMENT (ONE A.C.T. PUBLIC SERVICE)
AMENDMENT BILL 2011**

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.

Suspension of standing order 76: Mr Corbell (Manager of Government Business), by leave, moved—That standing order 76 be suspended for the remainder of this sitting.

Question—put and passed, with the concurrence of an absolute majority.

Debate continued.

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 ADMINISTRATIVE (ONE A.C.T. PUBLIC SERVICE MISCELLANEOUS
AMENDMENTS) BILL 2011**

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.

32 POSTPONEMENT OF ORDERS OF THE DAY

Ordered—That orders of the day Nos. 5, 6 and 7, Executive business, relating to the Planning and Building Legislation Amendment Bill 2011, the Gaming Machine (Club Governance) Amendment Bill 2011 and ACT light rail—Proposal to infrastructure Australia—Motion to take note of paper, respectively, be postponed until the next sitting.

33 BIMBERI YOUTH JUSTICE CENTRE—HUMAN RIGHTS AUDIT INTO CONDITIONS—AMENDMENT TO RESOLUTION

Mr Corbell (Attorney-General), pursuant to notice, moved—That the resolution of the Assembly of 8 December 2010 that required the Attorney-General to direct the Human Rights Commissioner to undertake a comprehensive human rights audit into conditions of detention in Bimberi Youth Justice Centre and report to the Assembly by 30 June 2011 be amended by omitting the words “30 June 2011” and substituting “31 July 2011”.

Debate ensued.

Mr Corbell, by leave, addressed the Assembly, without closing debate.

The Assembly continuing to sit until after midnight—
Friday, 24 June 2011

Debate continued.

Question—put and passed.

34 BIMBERI YOUTH JUSTICE CENTRE—HUMAN RIGHTS AUDIT INTO CONDITIONS—PRIVILEGE MATTERS

Mrs Dunne, by leave, moved—That, in relation to the motion of the Attorney-General on the rescheduling of the report into youth justice, the Speaker report to the Assembly by the adjournment on Tuesday, 28 June 2011 on the privilege matters relating to the presentation of this report out-of-session.

Question—put and passed.

35 ADJOURNMENT

Mr Corbell (Manager of Government Business) moved—That the Assembly do now adjourn.

Debate ensued.

Question—put and passed.

And then the Assembly, at 12.19 a.m., adjourned until Tuesday, 28 June 2011 at 10 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

PLANNING AND DEVELOPMENT (LEASE VARIATION CHARGES) AMENDMENT BILL 2011

Amendments circulated by Mr Seselja (Leader of the Opposition)

1

Clause 10

Proposed new section 277A (1) to (3)

Page 11, line 20—

omit proposed new section 277A (1) to (3), substitute

- (1) In working out **VI** and **V2** under section 277, an improvement in relation to the land must be taken into account.
-

2

Clause 10

Proposed new section 278

Page 17, line 16—

omit proposed new section 278, substitute

278 When commissioner must remit lease variation charge

- (1) The commissioner for revenue must remit an amount of a lease variation charge for a chargeable variation of a nominal rent lease as follows:
 - (a) if a development application is approved before 30 June 2016 in relation to the variation—75% of the charge;
 - (b) if it is a condition of a development approval for a chargeable variation of a nominal rent lease that the lessee carry out work on land outside of the lease—an amount equal to the reasonable cost to the lessee of the work;
 - (c) as prescribed by regulation.
 - (2) This subsection and subsection (1) (a) expire on 30 June 2016.
-

Schedule 2**PLANNING AND DEVELOPMENT (LEASE VARIATION CHARGES) AMENDMENT BILL 2011**

Amendments circulated by Ms Hunter

**1
Proposed new clause 3A
Page 3, line 2—***insert***3A Contents of public register
New section 28 (1) (ba) and (bb)***insert*

- (ba) for each lease variation charge for a s 277 chargeable variation of a nominal rent lease—the amounts represented by **VI** and **V2** in section 277 for the charge;
- (bb) for each remission of an amount of a lease variation charge for a chargeable variation of a nominal rent lease under section 278 to section 278E—
 - (i) a description of the chargeable variation; and
 - (ii) the lease variation charge; and
 - (iii) the amount of the lease variation charge remitted;

**2
Clause 10
Proposed new section 276, proposed new definition of *gross floor area*
Page 5, line 14—***insert**gross floor area*—see the territory plan (13 Definitions).

**3
Clause 10
Proposed new section 276, definition of *prescribed chargeable variation*
Page 5, line 19—***omit*

4

Clause 10**Proposed new section 276, definition of s 277 chargeable variation****Page 5, line 23—***omit the definition, substitute**s 276D chargeable variation—see section 276AA.**s 277 chargeable variation—see section 276AA.*

5

Clause 10**Proposed new section 276AA****Page 6, line 2—***insert***276AA Meaning of s 276D chargeable variation and s 277 chargeable variation—div 9.6.3**

(1) In this division:

s 276D chargeable variation, of a nominal rent lease, means a chargeable variation that is 1 of the following:

- (a) if a development application relates to the chargeable variation of only 1 residential lease—a variation to increase the number of dwellings permitted on the land under the lease;

Example

a variation of a nominal rent lease to increase the maximum number of 20 residential units permitted on the land under the lease to 40 units

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).

- (b) if a development application relates to the chargeable variation of only 1 residential lease—a variation to limit the number of dwellings permitted on the land under the lease;

Example

A lease permits land to be used for residential purposes but does not state any limit on the number of permitted residences on the land. The lessee proposes to subdivide the land under the *Unit Titles Act 2001*. That Act, s 20 (2A) does not allow the lease to be subdivided unless the lease provides for the number of dwellings on the land. The lessee must vary the lease to limit the number of dwellings permitted on the land before subdividing the land.

- (c) if a development application relates to the chargeable variation of only 1 non-residential lease—a chargeable variation of the lease that—

- (i) increases, or has the effect of increasing, the maximum gross floor area of any building or structure permitted for non-residential use on the land under the lease; or

- (ii) increases or limits the number of dwellings permitted on the land under the lease;
- (d) the consolidation of 2 or more nominal rent leases;
- (e) the subdivision of 1 or more nominal rent leases;
- (f) if 2 or more nominal rent leases are consolidated—a variation that—
 - (i) increases the number of dwellings permitted on the land under the consolidated lease; or
 - (ii) increases, or has the effect of increasing, the maximum gross floor area of any building or structure permitted for non-residential use on the land under the consolidated lease;
- (g) if 1 or more nominal rent leases are subdivided—a variation that—
 - (i) increases the number of dwellings permitted on the land under the subdivided lease; or
 - (ii) increases, or has the effect of increasing, the maximum gross floor area of any building or structure permitted for non-residential use on the land under the subdivided lease;
- (h) a chargeable variation prescribed by regulation.

Note If a chargeable variation is not a s 276D chargeable variation the lease variation charge is worked out under s 277 (see s 276B).

s 277 chargeable variation means—

- (a) a chargeable variation that is not a s 276D chargeable variation; or
- (b) a s 276D chargeable variation if no lease variation charge is determined in an LVC determination for the variation.

(2) In this section:

consolidated lease means a lease granted during a consolidation involving the surrender of 1 or more nominal rent leases.

non-residential lease means a lease other than a residential lease under section 234.

subdivided lease means a lease granted during a subdivision involving the surrender of 1 or more nominal rent leases.

 6
Clause 10**Proposed new section 276A (1)****Page 6, line 8—***omit*

section 278

substitute

section 278A to section 278F

 7
Clause 10**Proposed new section 276B (1) (a)****Page 6, line 25—***omit proposed new section 276B (1) (a), substitute*

- (a) for a s 276D chargeable variation—the determined charge for the variation; or

 8
Clause 10**Proposed new section 276B (2) (a)****Page 7, line 4—***omit*

prescribed

substitute

s 276D

 9
Clause 10**Proposed new section 276D****Page 8, line 9—***omit proposed new section 276D, substitute***276D Lease variation charges—s 276D chargeable variations**

- (1) The Treasurer may determine a lease variation charge for a s 276D chargeable variation.

Note 1 The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

Note 2 Power to make a statutory instrument (including a determination) includes the power to make different provision for different categories (see Legislation Act, s 48).

- (2) In considering whether to determine a lease variation charge for a s 276D chargeable variation, the Treasurer must, before the start of each financial year—

- (a) obtain and have regard to advice from an accredited valuer; and

- (b) comply with any other requirement prescribed by regulation.
- (3) A determination must—
- (a) as far as is practicable, represent the average market value in relation to the variation; and
 - (b) if a variation increases the number of dwellings permitted on the land under the lease—state an amount for each additional dwelling permitted on the land under the lease; and
 - (c) if a variation increases, or has the effect of increasing, the maximum gross floor area of any building or structure permitted for non-residential use on the land under the lease—state an amount for each additional square metre of gross floor area permitted on the land under the lease; and
 - (d) otherwise be made in accordance with any guideline approved under section 276E.
- (4) The determination must state—
- (a) the reasons for determining the lease variation charge; and
 - (b) how the charge was determined.
- (5) A determination is a disallowable instrument.
- Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (6) In this section:
- average market value*** means the value worked out in accordance with a guideline approved under section 276E.
- (7) Subsection (3) (a) does not apply to a determination made within 1 year after the day this section commences.
- (8) This subsection and subsection (7) expire 1 year after the day this section commences.

10**Clause 10****Proposed new section 277A (2)****Page 11, line 26—**

omit proposed new section 277A (2), substitute

- (2) However, an existing improvement by way of clearing, filling, grading, draining, levelling or excavating the land may be taken into account.

11**Clause 10****Proposed new section 277A (3)****Page 12, line 1—**

omit

12**Clause 10****Proposed new section 277A (4) (e)****Page 12, line 12—***omit*

13**Clause 10****Proposed new section 277A (4) (g)****Page 12, line 21—***insert*

- (g) anything mentioned in paragraphs (a) to (e) proposed in a development application in relation to a chargeable variation of a nominal rent lease to be carried out on land outside of the land under the lease.

14**Clause 10****Proposed new section 278****Page 17, line 16—***omit proposed new section 278, substitute***278 When commissioner must remit lease variation charge—sustainability**

- (1) This section applies if—
 - (a) a development application for a chargeable variation of a nominal rent lease is approved; and
 - (b) the approval also relates to the development of a building on the land under the lease; and
 - (c) the building complies with a requirement for energy efficiency determined by the Minister.
- (2) The Minister may determine a requirement for energy efficiency under subsection (1) (c).
- (3) The Treasurer may determine—
 - (a) an amount to be remitted for a lease variation charge for the chargeable variation; and
 - (b) when the amount must be remitted.
- (4) A determination is a disallowable instrument.
 - Note* A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (5) The commissioner for revenue must remit the amount determined under subsection (3) (a) for the lease variation charge for the chargeable variation when the amount is determined to be remitted under subsection (3) (b).

278A When commissioner must remit lease variation charge—certain zones

- (1) This section applies to a chargeable variation of a nominal rent lease if—
 - (a) the variation—
 - (i) increases the number of dwellings permitted on the land under the lease; or
 - (ii) increases, or has the effect of increasing, the maximum gross floor area of any building or structure on the land under the lease; and
 - (b) the land is in a zone determined by the Minister; and
 - (c) any circumstances determined by the Minister apply to the variation.
- (2) The Minister may determine—
 - (a) a zone for subsection (1) (b); and
 - (b) circumstances for subsection (1) (c).
- (3) The Treasurer may determine an amount to be remitted for a lease variation charge for the chargeable variation.
- (4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (5) The commissioner for revenue must remit the amount determined under subsection (3) for the lease variation charge for the chargeable variation.

278B When commissioner must remit lease variation charge—community purpose

- (1) This section applies to a chargeable variation of a nominal rent lease that authorises development in relation to a community purpose determined by the Minister.
- (2) The Minister may determine a community purpose for subsection (1).
- (3) The Treasurer may determine an amount to be remitted for a lease variation charge for the chargeable variation.
- (4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (5) The commissioner for revenue must remit the amount determined under subsection (3) for the lease variation charge for the chargeable variation.

278C When commissioner must remit lease variation charge—heritage significance

- (1) This section applies if—
 - (a) a development application for a chargeable variation of a nominal rent lease is approved; and
 - (b) a place or object on the land under the lease is registered under the *Heritage Act 2004*; and
 - (c) any circumstances determined by the Minister apply to the variation.
- (2) The Minister may determine—
 - (a) circumstances for subsection (1) (c); and
 - (b) criteria for working out the cost to the lessee of complying with the *Heritage Act 2004* in relation to the place or object.
- (3) The Treasurer may determine an amount to be remitted for a lease variation charge, having regard to any criteria determined under subsection (2) (b).
- (4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.
- (5) The commissioner for revenue must remit the amount determined under subsection (3) for the lease variation charge for the chargeable variation.

278D When commissioner must remit lease variation charge—environmental remediation

- (1) This section applies if—
 - (a) a development application for a chargeable variation of a nominal rent lease is approved; and
 - (b) it is a condition of the approval that the lessee carry out remediation of the land under the lease; and
 - (c) any circumstances determined by the Minister apply to the variation.
- (2) The Minister may determine—
 - (a) circumstances for subsection (1) (c); and
 - (b) criteria for working out the cost to the lessee of the remediation of the land.
- (3) The Treasurer may determine an amount to be remitted for a lease variation charge, having regard to any criteria determined under subsection (2) (b).
- (4) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (5) The commissioner for revenue must remit the amount determined under subsection (3) for the lease variation charge for the chargeable variation.

- (6) In this section:

remediation—see the *Environment Protection Act 1997*, dictionary.

278E When commissioner must remit lease variation charges—other

- (1) The Minister may determine circumstances in addition to section 278 to section 278D in which an amount of a lease variation charge for a chargeable variation of a nominal rent lease must be remitted.
- (2) The Treasurer may determine an amount to be remitted for a lease variation charge for a chargeable variation in a circumstance determined by the Minister.
- (3) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (4) The commissioner for revenue must remit the amount determined under subsection (2) for the lease variation charge for the chargeable variation.

278F When commissioner must remit lease variation charges—chargeable variations generally

- (1) The Treasurer may determine, for a financial year, an amount to be remitted for each lease variation charge for a chargeable variation for which a notice of assessment has been given under section 276C in the financial year.
- (2) The amount must be expressed as a percentage of the lease variation charge for a chargeable variation.
- (3) The determination must be made not less than 1 year before the beginning of the financial year for which the determination will apply.
- (4) The commissioner for revenue must remit the amount determined under subsection (1) for a chargeable variation to which the determination applies.
- (5) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (6) Subsection (3) does not apply to a determination made within 1 year after the day this section commences.
- (7) This subsection and subsection (6) expire 1 year after the day this section commences.

15**Clause 10****Proposed new section 279 (3)****Page 18, line 7—**

insert

- (3) Subject to any disallowance or amendment under the Legislation Act, chapter 7, the regulation commences—
- (a) if there is a motion to disallow the regulation and the motion is negated by the Legislative Assembly—the day after the day the disallowance motion is negated; or
- (b) the day after the 6th sitting day after the day it is presented to the Legislative Assembly under that chapter; or
- (c) if the declaration provides for a later date or time of commencement—on that date or at that time.

16**Clause 12****Proposed new schedule 1, item 29 and item 29A****Page 21—**

omit

17**Clause 15****Dictionary, proposed new definition of *gross floor area*****Page 22, line 4—**

insert

gross floor area, for division 9.6.3 (Variation of nominal rent leases)—see the territory plan (13 Definitions).

18**Clause 17****Page 22, line 16—**

[oppose the clause]

19**Clause 19****Dictionary, proposed new definition of *s 277 chargeable variation*****Page 23, line 11—**

omit the definition, substitute

s 276D chargeable variation, of a nominal rent lease, for division 9.6.3 (Variation of nominal rent leases)—see section 276AA.

s 277 chargeable variation, of a nominal rent lease, for division 9.6.3 (Variation of nominal rent leases)—see section 276AA.

20

Clause 21

Page 24, line 6—

[oppose the clause]

21

Clause 22

Page 26, line 11—

omit clause 22, substitute

22 Division 5.5.2

substitute

Division 5.5.2 Independent valuation of s 277 lease variation charge

171 Appointment of independent valuer—Act, s 277D (4) (b) (ii)

The president of the ACT division of the Australian Property Institute Incorporated ABN 49 007 505 866 is prescribed.

172 Requirements for independent valuer—Act, s 277D (4) (c)

A valuer preparing an independent valuation must be a current member of the Australian Property Institute Incorporated ABN 49 007 505 866.

22

Clause 23

Page 26, line 16—

[oppose the clause]

23

Clause 24

Page 26, line 18—

[oppose the clause]

24

Clause 25

Page 27, line 1—

[oppose the clause]

25**Clause 29****Page 27, line 16—***[oppose the clause]*

Schedule 3**CRIMINAL PROCEEDINGS LEGISLATION AMENDMENT BILL
2011**

Amendments circulated by Mrs Dunne

1**Clause 3, note
Page 2, line 13—***omit*

2**Clause 10
Proposed new section 68B
Page 5, line 4—***omit proposed new section 68B, substitute***68B Trial by judge alone in criminal proceedings**

- (1) A criminal proceeding against an accused person must be tried by a judge alone if—
 - (a) the—
 - (i) person elects in writing to be tried by judge alone; or
 - (ii) prosecutor elects in writing for the person to be tried by judge alone, and the person consents to the election; and
 - (b) an election under paragraph (a) is filed in the court before—
 - (i) the court first allocates a date for the person's trial; and
 - (ii) the person, or the person's legal representative, knows the trial judge's identity; and
 - (c) the court is satisfied that it is in the interests of justice to make an order that the person be tried by judge alone.
- (2) Without limiting subsection (1) (c), the court may—
 - (a) make the order if it is satisfied that—
 - (i) the length and complexity of the person's trial is likely to prove unreasonably burdensome for a jury; or

- (ii) there is a reasonable risk of the commission of an offence against the Criminal Code, division 7.2.3 (Protection of people involved in legal proceedings) involving a juror in the trial; or
- (b) refuse to make the order if it is satisfied that the trier of fact in the person's trial will be required to decide important issues of fact by applying community standards.

Examples—important issues of fact

- reasonableness
- negligence
- indecency
- obscenity
- dangerousness

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).

- (3) However, the court must not make the order if—
 - (a) the criminal proceeding against the person is for more than 1 offence against the person, and the court is not prepared to make the order for each offence; or
 - (b) the person is to be tried with 1 or more other people (the *co-accused*) and the court is not prepared to make the order for each co-accused.
- (4) If the court makes an order that a person be tried by a judge alone, the court must not revoke the order after the trial judge's identity is known to the parties.

3

Clause 11

Page 6, line 9—

[oppose the clause]

4

Clause 12

Page 6, line 16—

[oppose the clause]

5

Clause 13

Page 7, line 1—

[oppose the clause]

6

Clause 14

Page 9, line 1—

[oppose the clause]

7

Schedule 1

Page 10, line 1—

omit
