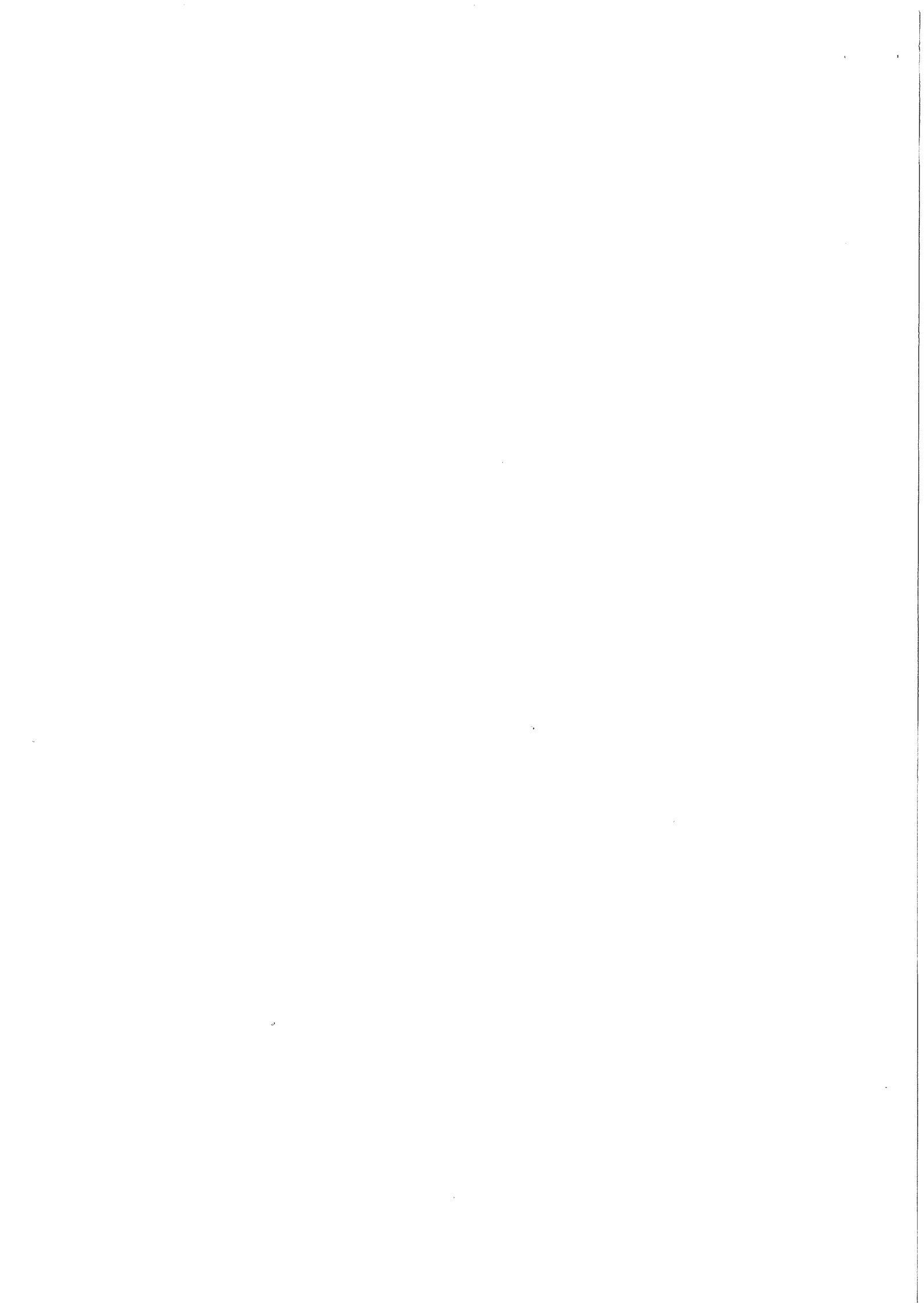


Legislative Assembly for the Australian Capital Territory

**Legislative Assembly (Broadcasting
of Proceedings) Bill 1995**

**Report of the Standing Committee
on Administration and Procedure
February 1996**



RESOLUTION OF APPOINTMENT

On 9 March 1995, the Legislative Assembly for the Australian Capital Territory adopted standing order 16 which established the Standing Committee on Administration and Procedure. This standing order was amended on 4 May 1995 to provide the following terms of reference:

16. (1) A Standing Committee on Administration and Procedure shall be appointed at the commencement of each Assembly to:
- (a) inquire into and report on, as appropriate:
 - (i) the Assembly's annual estimates of expenditure;
 - (ii) the practices and procedure of the Assembly; and
 - (iii) the standing orders of the Assembly;
 - (b) advise the Speaker on:
 - (i) Members' entitlements including facilities and services;
 - (ii) the operation of the transcription service (*Hansard*);
 - (iii) the availability to the public of Assembly documents;
 - (iv) the operation of the Assembly library; and
 - (c) arrange the order of private Members' business and Assembly business;

Membership

The Speaker (Presiding Member)
Mr W Berry, MLA
Mr H Hird, MLA
Mr M Moore, MLA
Ms K Tucker, MLA

Secretaries to the Inquiry: Ms M Weeks
Mr T Duncan



INTRODUCTION

1. On 31 May 1995, the Legislative Assembly referred the Legislative Assembly (Broadcasting of Proceedings) Bill 1995 to the Standing Committee on Administration and Procedure for consideration and required a report by the last sitting day in November 1995. The reporting date was altered to the first sitting day in 1996 by resolution of the Assembly of 22 November 1995. This Bill is a Private Members' Bill which was initially introduced on 3 May 1995 but withdrawn on 30 May 1995 due to a technical error. It was again introduced on 30 May 1995. There has been no other consideration by the Assembly of the Bill and the agreement in principle debate is yet to be conducted.

BACKGROUND

Conduct of the Inquiry

2. The Committee at the outset of the inquiry considered whether it would be appropriate to advertise for submissions. It believed that the inquiry was one which was largely of an internal matter, ie it was concerned primarily with how the Assembly can and will facilitate in the provision of broadcasting of the Assembly's and its Committee's proceedings. The legislation is not in itself designed to provide for broadcasting, ie if the legislation is passed by the Assembly it will not automatically follow that the Assembly's proceedings are broadcast. As a consequence, the Committee believed that it would be more appropriate to establish the practices in other Australian Parliaments and to seek comment from the major print and electronic outlets in the Territory. A list of those asked to comment on the legislation and, in the case of parliaments, their own practices is included as attachment A. Members of the Assembly, other than those who are members of the Committee, were also invited to comment as was the Clerk.

The Legislative Assembly's Practice

3. The broadcasting of Assembly proceedings is not without precedent. Since the establishment of the Legislative Assembly for the Australian Capital Territory, the Assembly has authorised the delayed broadcasting of its proceedings with sound by the television networks on three occasions. On each of these occasions the broadcasting related to the opening proceedings for each of the newly elected Assemblies which are ceremonial in nature. The resolution of the Assembly which authorised the broadcasting included the televising of the proceedings from the swearing in of Members to the appointment of the Leader of the Opposition and was specific as to which proceedings could be broadcast with sound (only the swearing-in of Members) and set guidelines as to how the footage (without sound) could be used in subsequent broadcasts (not for the purpose of satire or ridicule).
4. The Assembly has also periodically passed resolutions to enable the delayed broadcasting of specific events in the Assembly, usually the presentation of the Budget or proceedings during Questions without Notice so that the broadcasters can have up to date file footage of Members of the Assembly for their broadcasts. The resolutions authorising these delayed broadcasts have included restrictions on the use of the footage (not for the purpose of satire or ridicule) and have only provided for the

recording to be without sound. To date no major problems have been encountered in authorising the re-broadcasting of the Assembly's proceedings.

5. In addition, the Assembly has also made provision for the reticulation of the proceedings of the Assembly and on occasions its Committees to the Members' and certain staff offices (including public servants and the press) within the Assembly's accommodation. This has been the practice since the inception of the Assembly and while it is clear who has access to the broadcast in the Assembly Building prior to the move in March 1994, it was never clear who had accessed the feed when the Assembly was sharing accommodation in the ACT Administration Centre. The broadcast was initially without vision but since April 1995 has included black and white vision transmitted by a static camera giving a broad view of the Chamber from the perspective of the public gallery.
6. Since self-government the Assembly has received numerous requests from the electronic media and from ACT government officers to allow the proceedings of the Assembly to be broadcast in some way. These requests have been refused based on a number of legal opinions received from the Attorney-General's Department that such broadcasts may only attract qualified privilege. The opinions indicate that the Defamation (Amendment) Act 1909 of the State of New South Wales applies to the Territory, and that a broadcast of the Assembly's proceedings would seem to be unprotected by the provisions of that Act. Even if the Defamation Act could provide protection to a broadcast there is the further problem that the broadcast must be of proceedings of the Assembly. There is an argument that not all words spoken in the Assembly's Chamber are part of its proceedings because they are not spoken by the Member or official who has the floor. The advice also states "... that any broadcast may not, because of the exigencies of broadcasting, amount to a fair and accurate report.". The latest opinion, dated 19 April 1994, concluded that:

The only way that I can see for those involved in a broadcast to be absolutely protected against a claim based on the publication of the defamatory material would be for the Assembly to legislate along the lines of the Commonwealth's Parliamentary Proceedings Broadcasting Act...¹

Practices in other Australian Parliaments

7. The practice in the Commonwealth Parliament and those of other Australian States and Territories varies. Only two parliaments, the Commonwealth and the Northern Territory's Legislative Assembly broadcast with any statutory authority. Interestingly, both also make provision by resolution which stipulates a number of guidelines and constraints on the use of the proceedings in broadcast and particularly for re-broadcast and provide a role for the Speaker in giving instructions in relation to broadcasting. The House of Representatives indicate that non-compliance with the conditions may incur penalties for stations, with possible breaches being considered by the House Standing Committee on the Televising of the House of Representatives. The Speaker in the Legislative Assembly for the Northern Territory also has a role in authorising the televising of the Assembly proceedings and breaches are referred as matters of privilege to the Committee of Privileges.

¹ Legal opinion on Broadcast of Assembly Proceedings over Land Line to ACTGS Officers, Parliamentary and Constitutional Section, Attorney-General's Department, dated 19 April 1994

8. The Victorian lower House co-opts the support of the Press Gallery in their broadcasting of proceedings, but they also have a sessional order which provides a general authorisation for broadcasting. The Order provides terms and conditions for filming and the use of the footage, and also that the Speaker may make guidelines in relation to the filming of proceedings. The Speaker also has the authority to suspend media privileges (ie access to the House and it's proceedings) or the individual media representative's privileges should any representative or media organisation breach the orders relating to broadcasting.
9. The Queensland Parliament is itself currently examining the option of broadcasting their proceedings and the Western Australian Parliament is currently installing a televising and audio system which is expected to commence on the first sitting day of 1996. Tasmania only provides for television stations to take "file footage" without sound in a manner similar to that the Assembly has operated and the South Australian Parliament permits radio stations to make individual recordings of proceedings from the back-up *Hansard* tape and the televising of any proceedings with the discretion as to what is broadcast residing exclusively with the television station subject to guidelines. The television crews are located in the public gallery while televising.

PURPOSE OF THE BILL

10. The purpose of the Bill (a copy of which is attachment B) is to provide a legal framework which will remove any legal impediments to the establishment of a system of broadcasting of the proceedings of the Legislative Assembly and its committees. Although it sets down a mechanism by which authorisation to broadcast may be granted it does not actually establish a broadcasting service. It is, as the long title of the Bill indicates, "... An Act to facilitate the broadcasting of the proceedings of the Legislative Assembly ...".
11. The Bill is a relatively short bill with only six clauses. The first two clauses, as usual, provides the short title of the Act and the commencement provisions. Clause 3 relates to interpretation and includes the following definition: " 'broadcast' means to transmit sound or visual images by radio, television, landline or other electronic means."
12. The substance of the Bill is contained in clauses 4 to 6. The mechanisms for authorisation to broadcast proceedings are included in clause 4. Essentially, the Bill gives the Standing Committee on Administration and Procedure the responsibility for providing written authorisation to a person to record and broadcast proceedings of the Legislative Assembly or an Assembly committee, subject to any conditions specified in the authorisation. There is also provision for the modification or revocation of the authorisation and a requirement to present the authorisation, revocation or modification to the Assembly within 5 sitting days of the Presiding Member (the Speaker) signing it. Clause 5 provides that only an authorised person can broadcast and that an authorised person must broadcast within the terms specified in the authorisation. Failure to meet these provisions incurs a penalty of 50 units. Subject to the provisions of the *Interpretation Act 1967* each penalty unit is equivalent to \$100. The final clause provides absolute privilege to authorised broadcasts.

DISCUSSION

Agreement in principle?

13. As the Bill was referred to the Committee prior to the Assembly agreeing to the Bill in principle, the obvious question with which to commence the inquiry is whether the basic principle of the Bill should be supported, ie should the proceedings of the Legislative Assembly be broadcast. In introducing the legislation Mr Moore informed the Assembly that the Bill was "... about openness, it is about accountability..."² and indicated that the main objectives of the Bill were "... improved news reporting, accountability and the public interest, and improved standards for MLAs."³ In the discussion on a matter of public importance which took place in the Second Assembly on 8 November 1994, some of these points were considered by the Assembly. There was general agreement to the idea that broadcasting would increase openness and accountability in the legislative process but there were also a number of problems areas identified, including the question of funding and the issue of privilege.
14. The submissions received by the inquiry also indicated a general support for establishing a framework which would enable the proceedings of the Assembly to be broadcast. Submissions from *The Canberra Times* and *Prime Television Canberra* were supportive of the idea, with Prime Television's News Director indicating that "... I welcome any proposal to allow broadcasting of the proceedings to (sic) the Assembly."⁴ The Print Handicapped Radio of ACT (One RPH) also expressed support in their submission for the idea and indicated a willingness to "explore ways in which One RPH could assist ... with the broadcasting of Assembly proceedings ..."⁵ Although invitations to comment on the legislation were sent to all major radio and television stations and the print media operating in Canberra, no other comments were received. It is difficult to know whether this failure to comment represents lack of interest (which would be translated into no interest in broadcasting proceedings) or concurrence with the idea.
15. The Government's submission indicated that the broadcasting of the Assembly's proceedings "... is consistent with the Government's commitment to keep the community informed." It also suggests that "Immediate access to Assembly proceedings, via broadcasting over landlines to ACT Government Service Offices, would also allow public servants to provide quicker, more responsive service to the Assembly."⁶ However, the Government submission raises a number of concerns with the proposed legislation and conclude their submission by indicating that "... the Government does not support this Bill and would prefer to draft comprehensive legislation which would encompass the whole issue of broadcasting, publishing and relaying of Assembly proceedings."⁷
16. In considering the submissions and previous debates in the Assembly, the Committee considered that there was general support from both the media and the Assembly for the concept of a legislative framework which would support the development of a system to broadcast the proceedings of the Assembly and its committees. However, it

² *Hansard*, 3 May 1995, p 107

³ *Hansard*, 3 May 1995, p 106

⁴ Prime Television Canberra submission, dated 4 August 1995

⁵ Print Handicapped Radio of ACT Inc. submission, dated 4 September 1995

⁶ Government submission, dated 14 August 1995

⁷ Government submission, dated 14 August 1995

was clear also that there were a number of concerns relating to the legislation that would need to be addressed if the Committee was to make a recommendation that the Bill be agreed to. These concerns focused on the funding and coverage of the broadcasting and what parliamentary privilege would attach to the broadcast. These issues will be discussed in the next section.

Recommendation 1 - The Committee believes that a bill to facilitate broadcasting of proceedings has general support and therefore recommends that the proposed legislation should be agreed in principle.

ISSUES - THE BILL IN DETAIL

Authorisation

17. The Committee considered the provisions of the Bill relating to authorisation which, as indicated, rests with this Standing Committee. The Committee has a number of concerns in relation to that provision which is clause 4 of the Bill.
18. As a general rule, the Committee believes that legislation should not nominate specific Committees of the Assembly to conduct specific tasks. This stems from a number of concerns the most significant being that it allows no flexibility should work loads of a Committee be such that it cannot cope with any additional work and, should the Assembly wish to alter its Committee structure, legislative amendments would also be required. If an Assembly Committee was to fulfill the task the Committee would prefer the reference to be to an appropriate Assembly Committee or a Committee nominated by the Assembly. However, the Committee is aware of a number of concerns that have been expressed over the process of the Standing Committee on Administration and Procedure or indeed any Assembly Committee having responsibility for the granting of the authorisation to broadcast.
19. The submission from *The Canberra Times* suggests that there should be a general authorisation to broadcast as permission to broadcast a special occasion would require "... a committee meeting. A quorum might be hard to get. The event might be over before permission is obtained."⁸ This concern is echoed by the submission from Prime Television Canberra, "...Having to seek formal approval every time an extract of proceedings was to be broadcast would not be a workable system."⁹ Similar concerns were expressed in the submissions received from other parliaments. Both Victoria and the Commonwealth indicated that the authorisation process was likely to be cumbersome and difficult to administer resulting in a heavy workload for the Committee and possible allegations of bias being levelled against the Committee should certain broadcasters miss out on broadcasting authority for a specific event. Clearly, not only the Committee's involvement but the authorisation process itself is raising concerns.
20. The Committee believes that the problems identified in the submissions are likely to be substantiated in practice but considers that it is essential that any other authorisation process established should ensure that the Assembly maintains control over the proceedings that are broadcast and the way the broadcasts are conducted especially in relation to public broadcasting. Practice in other Parliaments suggests that after a authorisation for all media to broadcast subject to a specific set of criteria, the Speaker

⁸ *The Canberra Times* submission, dated 11 July 1995

⁹ Prime Television Canberra submission, dated 4 August 1995

ensures compliance and also imposes penalties should that compliance not be forthcoming.

21. The criteria set by other States, the Northern Territory and the Commonwealth relating to broadcasting is detailed and relates not only to the purposes for which the material can be used in any re-broadcast but also the technical aspects of the filming. There is a large degree of commonality between the guidelines operating in other Australian Parliaments. Most provide that proceedings should only be used in fair and accurate reports which are well balanced and any extracts should be placed in context, withdrawn remarks and points of order are not to be rebroadcast and proceedings are not to be included in party political advertising or political campaigns, commercial or sponsorship advertising, television promotions or for the purposes of satire or ridicule. While the Commonwealth Parliament have their own Sound and Vision Office which provides the material for broadcast and only this material can be used in broadcasting many other Australian parliaments provide guidelines for the use of camera men televising the proceedings. Victoria and New South Wales, for example, require that the camera always focuses on the Member who has the call and that wide angle shots may only be used during question time and votes (divisions) or when the exchange between Members is too fast to focus on the individual Member, coverage of the galleries and advisors seats is not permitted and reaction shots of a Member are permitted only when the Member has sought information from the Member speaking.
22. The Committee believes that the practices relating to authorisation of the other States, the Northern Territory and the Commonwealth has much to recommend them. Certainly to empower the Speaker with the responsibility to authorise broadcasts appears to be a much less cumbersome way to manage the process. The Committee accordingly makes the following recommendation:

Recommendation 2: The Committee recommends that the responsibility for granting the authorisation to broadcast should rest with the Speaker and that the Bill be amended to reflect this.

23. The Committee also believes that for the Assembly to maintain control over the broadcast or rebroadcast of the proceedings of the Assembly or its committees the Assembly should adopt guidelines relating to broadcasting. The Committee expects that the Speaker will consult with the Standing Committee on Administration and Procedure when formulating these guidelines which could reflect the practices of other States, the Northern Territory and the Commonwealth. During the course of the inquiry, the Committee considered what, if any, additional requirements should be placed by the Assembly on broadcasts or rebroadcasts. The practice in other Parliaments was instructive. The Commonwealth provided broadcast material for the whole of the proceedings, while some States (South Australia and the Northern Territory) only broadcast question time. The Committee, in discussing the issue, considered that question time would be the period most attractive for broadcast because it was during question time that the issues of the day were likely to be raised and this activity was considered to be more news worthy. However, it believes that the conduct of the Chamber during question time was not truly representative of the Assembly's proceedings and would therefore defeat one of the major objectives of broadcasting to the public and that is to make the community more aware of the Assembly, how it operates and the significance of what it does. The Committee is equally aware that many of the routine debates would not attract sufficient interest to support their broadcast. Consequently, the Committee agreed that broadcasts to the public in the immediate future (and subject to review) be limited to landmark or significant debates such as the euthanasia debate or budget debates. Some indication

of what constitutes a landmark or significant debate should be incorporated into the Guidelines for broadcasting. The Guidelines once drafted would then be brought to the Assembly for debate and if necessary, amended before adoption by the Assembly. Having been adopted by the Assembly the Committee is of the view that the Speaker should have the Guidelines gazetted and that commencement of the legislation (other than clauses 1 and 2) for public broadcasting should be contingent on that gazettal.

The Committee therefore makes the following recommendations:

Recommendation 3: The Committee recommends that the legislation be amended to remove any legal impediment to the broadcasting to the public of designated significant or landmark debates during the proceedings of the Assembly or its committees on an experimental basis.

Recommendation 4: The Committee recommends that the Speaker in consultation with the Standing Committee on Administration and Procedure prepare guidelines in relation to the broadcasting to the public of the proceedings of the Assembly or its committees and that these Guidelines be considered and adopted by the Assembly.

Recommendation 5: The Committee recommends that the Speaker gazettes the Guidelines for Broadcasting after the Assembly has adopted them and that public broadcasting of the proceedings of the Assembly or its committees not commence until that gazettal is effected and that the commencement provision of the Bill be amended to reflect this.

24. The Committee in its deliberations made a distinction between public broadcasting and broadcasting to the offices of employees in the ACT Public Service directly involved in activities associated with the business of the Assembly. As indicated in the Chief Minister's submission such access would enhance the operation of the Assembly by allowing "...public servants to provide quicker, more responsive service to the Assembly."¹⁰ The Committee concurs with this assessment and considers that direct broadcast could contribute to productivity increases as public servants would not have to spend so much time waiting in the Assembly for debates to commence. It also noted that the Northern Territory legislature has authorised such broadcasts to those offices that have the Speaker's approval. The Committee believes that the officers would only require direct broadcast and does not envisage that any rebroadcasting facility would be available.

Recommendation 6: The Committee recommends that with the approval of the Speaker a direct broadcast, without any rebroadcast facility, be made available to the offices of employees in the ACT Public Service directly involved in activities associated with the business of the Assembly.

Penalties

25. The Bill under consideration by the Committee provides that any unauthorised broadcasting of proceedings would be subject to a penalty of 50 penalty units or

¹⁰ Government's submission, dated 14 August 1995

\$5,000. Clause 5 of the Bill also provides that authorised broadcasting also must comply with any conditions placed on the authorisation.

26. The Committee in considering this section were concerned that the penalties for unauthorised broadcasts should be contained in the legislation and therefore be justiciable. It is a long standing tradition in a Westminster style system that the parliament or legislature maintain control over its own affairs rather than have the courts ruling on such matters. The proceedings of the Assembly or one of its committees are under the control of the Assembly and any unauthorised broadcast or a broadcast which does not comply with the conditions placed on the authorisation are possible breaches of privilege or contempt which should be considered by the Assembly in the normal manner.

Recommendation 7: The Committee recommends that any unauthorised broadcast of the proceedings of the Assembly or one of its Committees be considered by the Assembly as a possible breach of privilege and in accordance with the relevant standing orders and practice.

27. The Assembly is restricted by the provisions of section 24 of the *Australian Capital Territory (Self-Government) Act 1988* (Commonwealth) as to the penalties it could impose on unauthorised broadcasters or authorised broadcasters who do not comply with the conditions placed on the broadcasting authority. It does not have the power to imprison or fine. However, other Australian parliaments and legislatures who are empowered to imprison or fine tend not to utilise these powers in relation to broadcasting. The Commonwealth Parliament lists its system of penalties as part of the *Conditions for Broadcasters* and they are:
- first breach - access to the broadcast service withdrawn for 3 sitting days;
 - second breach - access to the broadcast service withdrawn for 6 sitting days;
 - such other penalty as is agreed by the Standing Committee on the Televising of the House of Representatives.¹¹
28. The withdrawal of power to broadcast is an obvious and direct means by which to penalise those who may broadcast either without authorisation or in contravention of the guidelines but in the Assembly's case it may not be a sufficient deterrent to media organisations to comply with the Assembly's rulings on broadcasting. The Committee has already recommended that the public broadcasting of the Assembly's proceedings should only be undertaken on an experimental basis and that only significant debates be subject to the broadcast. As it is possible that the period between these debates could be extended, a media organisation may consider that it is better option to give the coverage that they want to give to a debate (even though it may not comply with the Guidelines) and forsake any coverage of a future debate. It is also possible that the media crew which would suffer the loss of access to the broadcast would not be the same one that incurred the offence. The Victorian Parliament operates a system of accreditation for all media personnel and organisations. With the accreditation a security pass to access the Parliament is provided. Any individual or organisation who does not comply with the Guidelines is suspended (under the authority of the Speaker) and removed if found in the press gallery area. Reprimands are also used. The Northern Territory Legislature has also used formal reprimands as a means of disciplining media organisations who have breached the privilege of the Legislature by broadcasting outside the resolution of authorisation. In one case where a specific media organisation had twice been found guilty of a breach of privilege in relation to

¹¹ House of Representatives *Conditions for Broadcasters*, dated 20 October 1993

broadcasting a representative of that organisation was "...required to attend before the Assembly on behalf of Channel 8 to be reprimanded and warned by the Speaker."¹²

29. The Committee is of the view that the Assembly should consider having a range of penalties in dealing with breaches of privilege relating to broadcasting. The penalty can then be related to the seriousness of the breach.

Recommendation 8: The Committee recommends that the Assembly adopt a series of penalties to impose for breaches of privilege relating to broadcasting and that the penalties include withdrawal of the right of a media organisation or individual to access the Assembly Building and any broadcasting feed and use of a reprimand.

Immunity

30. Clause 6 of the Bill grants immunity from civil or criminal proceedings to a person who is authorised to broadcast or rebroadcast the proceedings of the Assembly or one of its committees. It does not restrict this immunity to the broadcast or rebroadcast of the whole of the proceedings but extends it to extracts of proceedings.
31. Such a provision is most unusual in a Westminster Parliamentary context where immunity from prosecution (absolute privilege) generally applies only to Members and the statements they make on the floor of the Chamber and in committee proceedings and in relation to broadcasting to those "...broadcasters who are compelled to broadcast proceedings or who, by arrangement, broadcast a set segment of proceedings ... with no or limited editing, but not to those who broadcast excerpts."¹³ Those who broadcast excerpts only are generally covered by qualified privilege which provides that "... a person is not liable to an action for defamation if certain conditions are fulfilled, for example, if the statement is not made with malicious intention."¹⁴ The distinction between the absolute privilege which is granted to complete broadcasts or broadcasts of set segments of proceedings and the qualified privilege that is provided to the broadcast of excerpts is justified in House of Representatives Practice in the following:

...this situation is appropriate given the fact that those involved in the broadcasting of excerpts act essentially on their own initiative, whereas those involved in the official broadcast and rebroadcast of proceedings have no discretion in the matter...¹⁵

32. The Committee considers the distinction between broadcasting in full, where the audience is aware of the context in which a statement is made and broadcasting an excerpt, where a decision is made as to what will be broadcast, is significant. In his submission, Mr Terry Connolly, MLA provided a graphic if admittedly extreme example of the ramifications of the selective broadcasting:

¹² Legislative Assembly for the Northern Territory Committee of Privileges *Report on an Item in the 6.30 pm News on Channel 8, 1 May 1991, relating to the Mulholland Advice*, October 1991

¹³ Submission by the Clerk of the Legislative Assembly for the Australian Capital Territory, dated 4 September 1995

¹⁴ *House of Representatives Practice*, Second Edition, p 688

¹⁵ *House of Representatives Practice*, Second Edition, p 741

I may say in the course of debate say 'Some have said that (the member) is corrupt, but I have no evidence to support that.' A full broadcast of that statement would cause no problem. But a short grab for the news headlines of my voice saying '(the member) is corrupt' would give a very different impression...¹⁶

Clearly the potential for damage, in this example, not only to the member named but also to the Member who makes the speech and the Assembly is significant and if the broadcast of the excerpt was covered by absolute privilege the avenues for redress would be limited. The Committee therefore cannot support the granting of absolute privilege to broadcast or rebroadcasts of excerpts of proceedings of the Assembly or one of its committees.

Recommendation 9: The Committee recommends that the legislation be amended to provided qualified privilege only to broadcasters of excerpts of the proceedings of the Assembly whether the excerpts are broadcast direct or delayed.

33. The Committee also considered what privilege should be attached to the proposed direct broadcast to the offices of employees in the ACT Public Service directly involved in activities associated with the business of the Assembly. The Committee was of the view that as this broadcast would be direct and not subject to editing, that those involved in the broadcasting process could be covered by absolute privilege. The audience in repeating any excerpt of debate would not of course enjoy such privilege.

Recommendation 10: The Committee recommends that the persons involved in the process of broadcasting the proceedings of the Assembly or its committees directly to the offices of ACT Public Service employees directly involved in activities associated with the business of the Assembly be protected by absolute privilege.

Funding

34. As previously mentioned, during the inquiry the Committee became aware of a number of concerns in relation to the proposed legislation. Some of these issues have been addressed during consideration of the detail of the Bill. However, some such as the issue of funding were not addressed.
35. The Bill has not made any specific provision for establishing a system of broadcasting, it merely removes any legal impediment that would prevent that system being established. None the less the Committee was concerned that the passage of this Bill into law may create an expectation that the Assembly will be providing the proceedings for broadcast. In the submission provided by the RPH it was indicated that any involvement by that community radio station in the broadcasting of the Assembly's proceedings would be dependent on the Assembly resourcing the process '... by the provision of facilities in the Assembly building, links to transmitters and personnel to operate the facilities and conduct the broadcast.'¹⁷ Comments in the Prime Television Canberra Submission also suggest that a "... system similar to the Federal Parliament's Sound and Vision Network would be ideal."¹⁸ but it acknowledges that cost may be prohibitive.

¹⁶ Submission by Mr Terry Connolly MLA, dated 19 July 1995

¹⁷ Print Handicapped Radio of ACT Inc submission, dated 4 September 1995

¹⁸ Prime Television Canberra Submission, dated 4 August 1995

36. When the Assembly Building was refurbished there was some consideration given to the likelihood that, in the future, the Assembly may wish to authorise the broadcasting of its proceedings. As a consequence, as part of the refurbishment process, certain broadcasting and television equipment is already in place and is utilised in the broadcast of sound to those located in the building. The Clerk indicates in his submission that:

For the broadcast of sound beyond the Assembly building the existing equipment in the central control room (located adjacent to the public entrance to the Chamber) would need to be linked with external users. This could be done by way of Telstra landlines, the ACTNET system (for users on that system) and a link with the Telstra Operations Centre on Black Mountain. There would be a cost associated with links to external users of Telstra landlines and any links to Black Mountain via the telephone system or landline.¹⁹

37. Clearly, there is a cost involved in establishing an external broadcasting system. In the current economic climate and given the proposed reductions to the Assembly's budget, the Committee does not consider that at this stage the Assembly can involve itself in any further provision of equipment or commitment of other resources to broadcasting. However, the Committee believes that the option of linking the offices of employees in the ACT Public Service directly involved in activities associated with the business of the Assembly to the direct sound broadcast currently available to Assembly Building occupants via the ACTNET system should be explored with those agencies which have been authorised by the Speaker to receive the broadcast. Any associated cost should be borne by the relevant agency or agencies.

Recommendation 11: The Committee recommends that the possibility of linking authorised offices of employees of the ACT Public Service to a direct sound broadcast via ACTNET be investigated and implemented with any associated cost to be met by the relevant agency.

38. It is also possible that sound broadcast through a media outlet could be established with minimal costs and the Committee believes that should a media organisation be willing to become involved, the Assembly should explore that possibility within the parameters of the Speaker's authorisation to broadcast, ie those debates which are deemed to be significant or landmark. Again any cost would need to be met by the media outlet.

Recommendation 12: The Committee recommends that the options for sound broadcast of authorised proceedings of the Assembly or its committees be investigated with any interested media outlet and that any associated costs be met by the user organisation.

39. While sound broadcasting can be achieved with very little supplementation of the Assembly's existing equipment, broadcast that includes vision is a different proposition. While there is currently a fixed camera providing a view of the whole Chamber the vision is not of broadcast quality. Replacement of that camera with a better quality colour camera would enhance the image but it would remain a full Chamber view without the capacity to focus on a particular Member. In his

¹⁹ Submission by the Clerk of the Legislative Assembly for the Australian Capital Territory, dated 4 September 1995

submission the Clerk indicates that five identified camera positions for the Chamber would provide (with operators) a pan tilt and zoom system. He further indicates that :

To broadcast vision externally the facilities for an internal video system would have to be provided and these linked with the Telstra Operations Centre on Black Mountain for distribution to users via existing television services, another allocated frequency or a pay-television system such as Galaxy. In addition, an operator or operators would have to be provided...²⁰

40. Clearly the cost involved in establishing such a system would not be borne by the Assembly in the current financial climate. The Committee doubts that any or all media organisations would be prepared to fund the necessary infrastructure given that the Committee is recommending that only significant or landmark debates be broadcast. However, given that authorised broadcasts are not likely to occur every sitting day the Committee believes that one option for television broadcast is for the existing arrangements to be used for the authorised debates. The Committee envisages that one media organisation only would be admitted to the Chamber to televise proceedings with sound and that this footage would be available to all media outlets for rebroadcast. Alternatively, the Assembly could adopt the practice used in NSW where a production company is contracted to televise the authorised proceedings and the media outlets are able to use that footage as proscribed in the authorisation. The media organisations pay a flat fee for access to the footage, regardless of how much footage is used or the frequency with which they use it. The fee is such that it renders the process revenue neutral for the Parliament. The Committee is aware that each of these systems would not provide for live televising of the Assembly proceedings, but considers that any demand for a live broadcast could be met, for the moment, with a sound broadcast.

Recommendation 13: The Committee recommends that the Assembly does not further resource the development of broadcast with vision but investigates other possibilities for the provision of sound and vision broadcasting of authorised debates.

Publication of Papers

41. As previously indicated, the Government in its submission indicated that it supported the general principle of the Bill, but it would "...prefer to draft comprehensive legislation which would encompass the whole issue of broadcasting, publishing, and relaying of Assembly proceedings."²¹ The Committee is aware of a number of concerns under law that have arisen as only qualified privilege is afforded to outside distribution of papers presented to the Assembly even though the Assembly may have agreed to authorise publication. While the Committee would welcome the introduction of some legislative clarification of this issue, it believes that it is of such significance that further investigation is warranted.

Recommendation 14: The Committee recommends that the legislation relating to broadcasting proceed and that further consideration be given to the issue of publication of papers with a view to enacting legislation in the future.

²⁰ Submission by the Clerk of the Legislative Assembly for the Australian Capital Territory, dated 4 September 1995

²¹ Government Submission, dated 14 August 1995

CONCLUSION

42. The Committee believes that there is a need and general support for legislation relating to the broadcasting of the proceedings of the Assembly and its committees. The legislation under the Committee's consideration has a number of problems that require clarification and the Committee has therefore recommended a number of amendments to the current legislation. It has also given some broad parameters to further assist the administrative development of a broadcast policy for sound and or vision to two different audiences - one target group being officers of the ACT Public Service who work in activities associated with the Assembly and the other the community in general. The Committee is proposing that a direct feed be made available to the relevant ACT Public Service offices through ACTNET with any associated costs being the responsibility of the agency. Broadcasts to the community in general are to be limited to debates which under guidelines are determined to be either significant or landmark and whether sound or sound and vision is available is to be dependent to some extent on media organisations.
43. The Committee highlights recommendation 3 which states that the proposed arrangements relating to broadcasting to the community in general operate on an experimental basis. The Committee believes that these arrangements represent the first step in achieving the broadcasting of the Assembly proceedings and considers that it is vital to review the process at a later date. The experimental stage recommended in this report will enable some determination to be made as to the impact of broadcasting on the community and also the interest of the community in broadcasting. This first stage, the Committee believes, will enable the community to be better served by any further commitment of funds or resources that the Assembly or Government may wish to make to broadcasting in the future and may also provide opportunities for broadcasters.
44. A summary of the recommendations follows:

Recommendation 1 - The Committee believes that a bill to facilitate broadcasting of proceedings has general support and therefore recommends that the proposed legislation should be agreed in principle.

Recommendation 2: The Committee recommends that the responsibility for granting the authorisation to broadcast should rest with the Speaker and that the Bill be amended to reflect this.

Recommendation 3: The Committee recommends that the legislation be amended to remove any legal impediment to the broadcasting to the public of designated significant or landmark debates during the proceedings of the Assembly or its committees on an experimental basis.

Recommendation 4: The Committee recommends that the Speaker in consultation with the Standing Committee on Administration and Procedure prepare guidelines in relation to the broadcasting to the public of the proceedings of the Assembly or its committees and that these Guidelines be considered and adopted by the Assembly.

Recommendation 5: The Committee recommends that the Speaker gazettes the Guidelines for Broadcasting after the Assembly has adopted them and that public broadcasting of the proceedings of the Assembly or its committees not commence until that gazettal is effected and that the commencement provision of the Bill be amended to reflect this.

Recommendation 6: The Committee recommends that a direct broadcast, without any rebroadcast facility, be made available to the offices of employees in the ACT Public Service directly involved in activities associated with the business of the Assembly with the approval of the Speaker.

Recommendation 7: The Committee recommends that any unauthorised broadcast of the proceedings of the Assembly or one of its Committees be considered by the Assembly as a possible breach of privilege and in accordance with the relevant standing orders and practice.

Recommendation 8: The Committee recommends that the Assembly adopt a series of penalties to impose for breaches of privilege relating to broadcasting and that the penalties include withdrawal of the right of a media organisation or individual to access the Assembly Building and any broadcasting feed and use of a reprimand.

Recommendation 9: The Committee recommends that the legislation be amended to provide qualified privilege only to broadcasters of excerpts of the proceedings of the Assembly whether the excerpts are broadcast direct or delayed.

Recommendation 10: The Committee recommends that the persons involved in the process of broadcasting the proceedings of the Assembly or its committees directly to the offices of ACT Public Service employees directly involved in activities associated with the business of the Assembly be protected by absolute privilege.

Recommendation 11: The Committee recommends that the possibility of linking authorised offices of employees of the ACT Public Service to a direct sound broadcast via ACTNET be investigated and implemented with any associated cost to be met by the relevant agency.

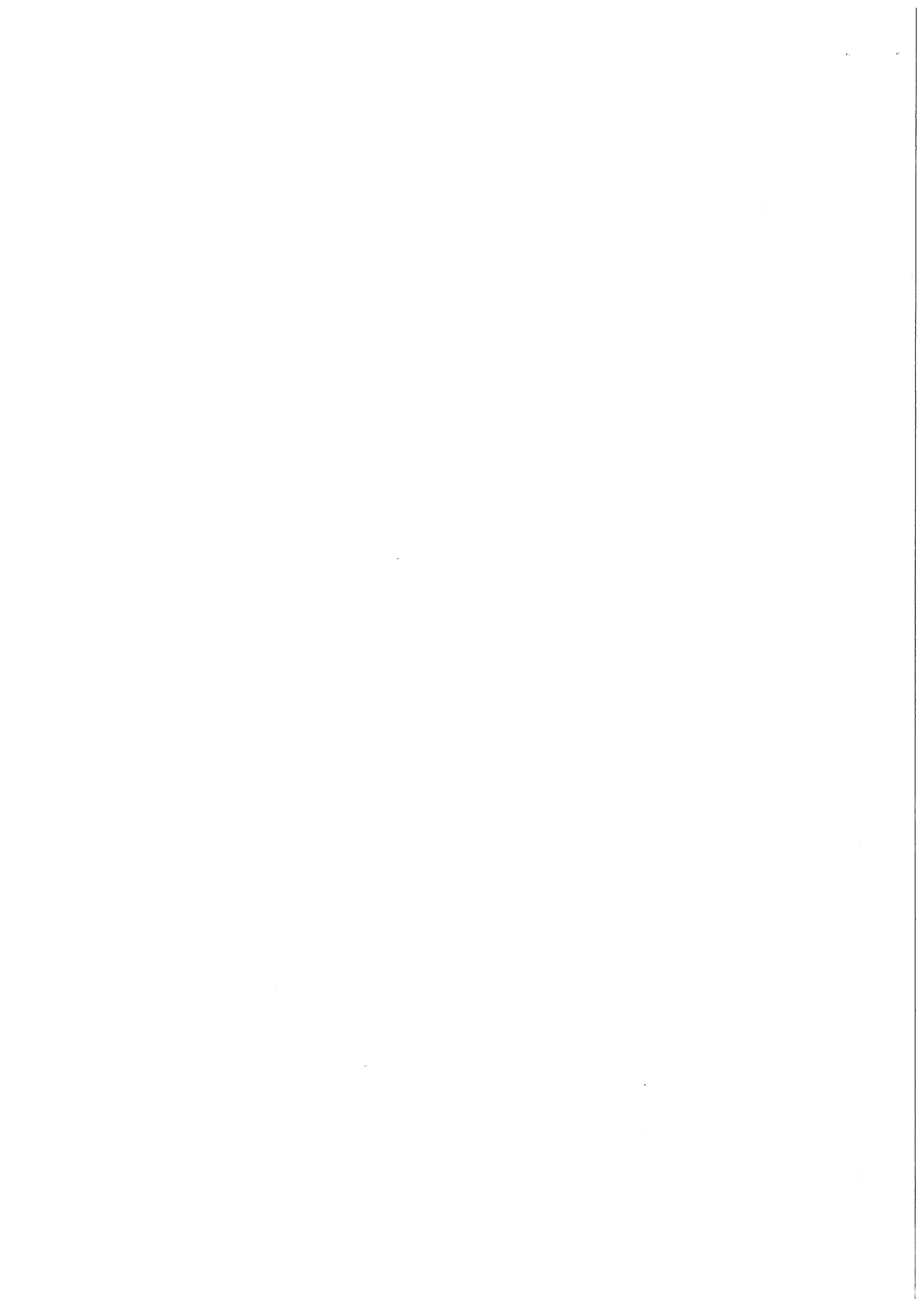
Recommendation 12: The Committee recommends that the options for sound broadcast of authorised proceedings of the Assembly or its committees be investigated with any interested media outlet and that any associated costs be met by the user organisation.

Recommendation 13: The Committee recommends that the Assembly does not further resource the development of broadcast with vision but investigates other possibilities for the provision of sound and vision broadcasting of authorised debates.

Recommendation 14: The Committee recommends that the legislation relating to broadcasting proceed and that further consideration be given to the issue of publication of papers with a view to enacting legislation in the future.

Greg Cornwell, MLA
Presiding Member

19 February 1996



ATTACHMENT A

INVITATIONS FOR SUBMISSIONS

Newspaper, Radio and TV Stations

- * The Canberra Times
Chronicle
FM 104.7 and 2CA
2CC
FM 106.3
2XX Radio
ABC
- * Print Handicapped Radio
WIN Television
- * PRIME Television
CAPITAL Television

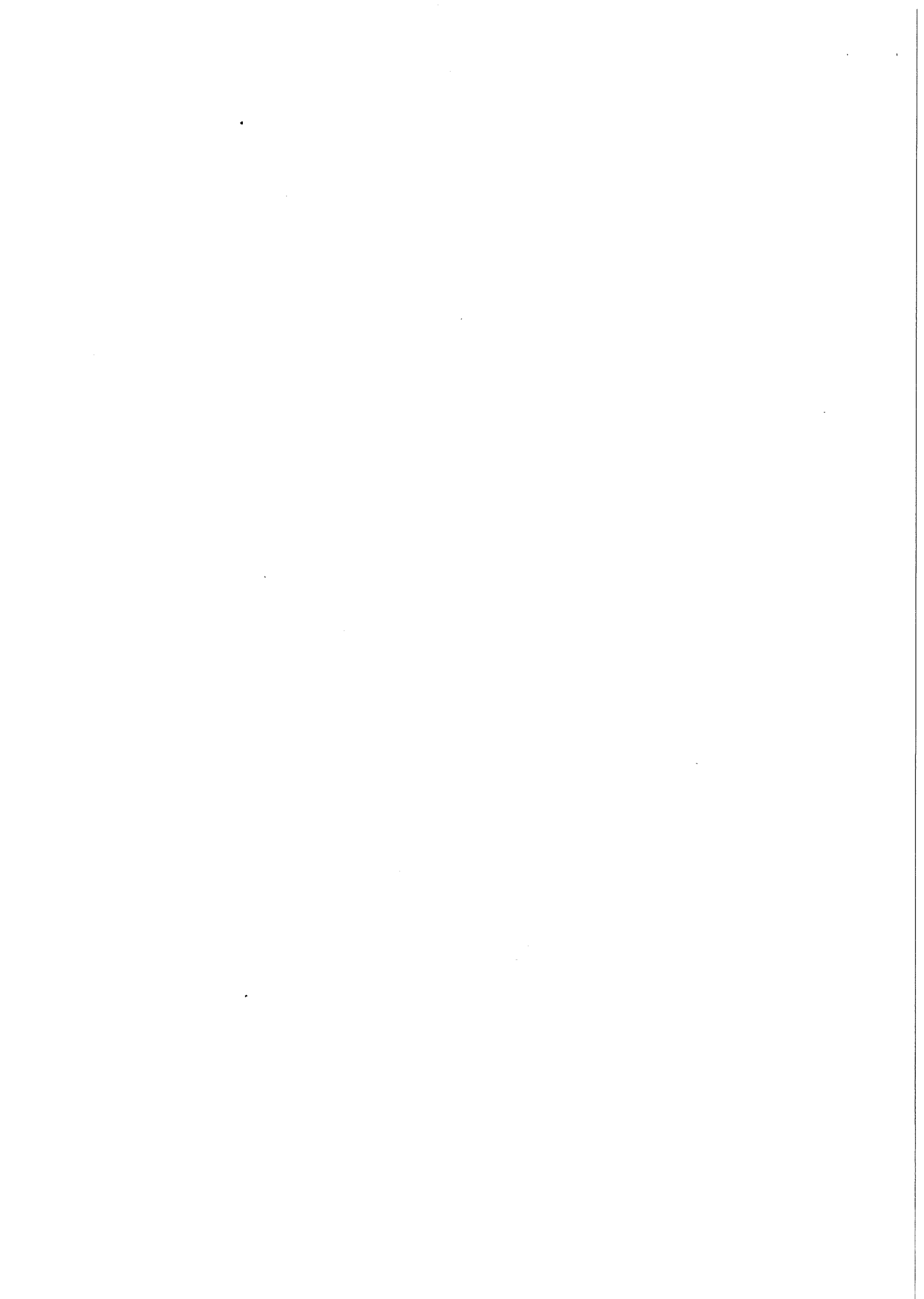
Parliaments - the Clerks of:

- * Northern Territory Legislative Assembly
New South Wales Legislative Assembly
South Australian House of Assembly
Western Australian Legislative Assembly
Tasmanian Legislative Council
- * Victorian Legislative Assembly
- * Queensland Parliament
- * Commonwealth Parliament - Secretary to Joint Committee on Broadcasting of Parliamentary Proceedings.

Legislative Assembly for the Australian Capital Territory

- # All Members of the Assembly except those who are members of the Standing Committee on Administration and Procedure
- * Clerk of the Legislative Assembly for the Australian Capital Territory

NOTE: * indicates those who responded to the invitation to make a submission.
Submissions were made by the Government and Mr Terry Connolly, MLA



1995
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Mr Moore)

**Legislative Assembly (Broadcasting of Proceedings)
Bill 1995**

**A BILL
FOR**

**An Act to facilitate the broadcasting of proceedings of the
Legislative Assembly, and for other purposes**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Legislative Assembly (Broadcasting of Proceedings) Act 1995*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Interpretation

3. In this Act, unless the contrary intention appears—

“Administration and Procedure Committee” means the Standing Committee on Administration and Procedure of the Legislative Assembly;

“broadcast” means to transmit sound or visual images by radio, television, landline or any other electronic means.

Authorisation to broadcast proceedings

4. (1) The Administration and Procedure Committee may, in writing, authorise a person to broadcast—

- (a) proceedings of the Legislative Assembly or a committee of the Assembly; or
- (b) a recording of any such proceedings.

(2) An authorisation is subject to any conditions specified in it.

(3) The Administration and Procedure Committee may, in writing, vary or revoke an authorisation.

(4) An authorisation, or a variation or revocation of an authorisation, shall be signed by the Chairperson of the Administration and Procedure Committee.

(5) The Chairperson shall, within 5 sitting days of the Legislative Assembly after an authorisation is granted, varied or revoked, cause a copy of the authorisation, variation or revocation to be laid before the Assembly.

(6) The validity of an authorisation, or a variation or revocation of an authorisation, is not affected by a failure to comply with subsection (5).

Unauthorised broadcasting of proceedings

5. (1) A person shall not broadcast—

- (a) proceedings of the Legislative Assembly or a committee of the Assembly; or
- (b) a recording of any such proceedings;

unless he or she has been authorised to do so under subsection 4 (1).

(2) A person who has been granted an authorisation under subsection 4 (1) shall, in making a broadcast under the authorisation, comply with any conditions to which the authorisation is subject.

Penalty: 50 penalty units.

No action for broadcasting proceedings

6. (1) Subject to subsection (2), no proceedings, civil or criminal, lie against a person for broadcasting—

- (a) proceedings of the Legislative Assembly or a committee of the Assembly; or
- (b) a recording of any such proceedings.

(2) Subsection (1) does not apply to proceedings for an offence against section 5.

NOTE

Penalty units

See section 33AA of the *Interpretation Act 1967*.