



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

2008–2009–2010–2011

MINUTES OF PROCEEDINGS

No. 124

TUESDAY, 25 OCTOBER 2011

- 1 The Assembly met at 10 a.m., pursuant to adjournment. The Speaker (Mr Rattenbury) 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 **JUSTICE AND COMMUNITY SAFETY—STANDING COMMITTEE (PERFORMING THE DUTIES OF A SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION COMMITTEE)—SCRUTINY REPORT 44—STATEMENT BY CHAIR**

Mrs Dunne (Chair) presented the following report:

Justice and Community Safety—Standing Committee (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report 44, dated 24 October 2011, together with the relevant minutes of proceedings—

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

- 3 **POSTPONEMENT OF ORDERS OF THE DAY**

Mr Corbell (Manager of Government Business) moved—That orders of the day Nos. 1 and 2, Executive business, relating to the Working with Vulnerable People (Background Checking) Bill 2010 and Working with Vulnerable People (Consequential Amendments) Bill 2011, be postponed until a later hour this day.

Debate ensued.

Question—put.

The Assembly voted—

AYES, 11

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

NOES, 6

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

And so it was resolved in the affirmative.

4 EDUCATION AND CARE SERVICES NATIONAL LAW (A.C.T.) 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.

Papers: Ms Burch (Minister for Community Services) presented the following papers:

Revised explanatory statement to the Bill.

Education and Care Services National Regulations—Draft.

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

The Assembly voted—

AYES, 11

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

NOES, 6

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

And so it was resolved in the affirmative.

Detail Stage

Clauses 1 to 5, by leave, taken together and agreed to.

Clause 6—

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

Clause 6, as amended, agreed to.

Clauses 7 to 12, by leave, taken together and agreed to.

Clause 13—

On the motion of Ms Burch, her amendment No. 1 (*see* [Schedule 2](#)) was made.

Paper: Ms Burch presented a supplementary explanatory statement to the Government amendments.

Clause 13, as amended, agreed to.

Clauses 14 to 19, by leave, taken together and agreed to.

Clause 20—

On the motion of Ms Burch, her amendment No. 2 (*see* [Schedule 2](#)) was made.

Clause 20, as amended, agreed to.

Clause 21—

On the motion of Ms Burch, by leave, her amendments Nos. 3 to 6 (*see* [Schedule 2](#)) were made together.

Clause 21, as amended, agreed to.

Proposed new clause—

Mrs Dunne moved her amendment No. 1 (*see* [Schedule 3](#)), which would insert a new clause 21A in the Bill.

Debate continued.

Question—put.

The Assembly voted—

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

And so it was negatived.

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

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

5 CHILDREN AND YOUNG PEOPLE (EDUCATION AND CARE SERVICES NATIONAL LAW) CONSEQUENTIAL 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.

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.

6 WORKING WITH VULNERABLE PEOPLE (BACKGROUND CHECKING) BILL 2010

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

Detail Stage

Clause 1—

Mrs Dunne moved that debate be adjourned.

Question—put.

The Assembly voted—

AYES, 5

Mr Doszpot
Mrs Dunne
Mr Hanson
Mr Seselja
Mr Smyth

NOES, 10

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

And so it was negatived.

Clause 1 agreed to.

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

Ms Burch (Minister for Community Services), by leave, moved her amendments Nos. 1 to 18, 20, 22 to 27, 29 to 39, 41 to 46, 48 to 50, 52, 54, 56 and 58 to 78 together ([see Schedule 4](#)).

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.

7 QUESTIONS

Questions without notice were asked.

8 ROSTERED MINISTER'S QUESTIONS

Questions were asked of Mr Barr (Treasurer).

9 QUESTION ON NOTICE NO. 1830—ANSWER—EXPLANATION

Mr Hanson, pursuant to standing order 118A, asked Mr Corbell (Attorney-General) for an explanation concerning the answer to question on notice No. 1830.

Mr Corbell gave an explanation.

10 QUESTION ON NOTICE NO. 1778—ANSWER—EXPLANATION

Mr Hanson, pursuant to standing order 118A, asked Mr Barr (Treasurer) for an explanation concerning the answer to question on notice No. 1778.

Mr Barr gave an explanation.

11 QUESTIONS ON NOTICE NOS. 1713, 1781 AND 1784—ANSWERS—EXPLANATION

Mr Hanson, pursuant to standing order 118A, asked Ms Gallagher (Minister for Health) for an explanation concerning the answers to questions on notice Nos. 1713, 1781 and 1784.

Ms Gallagher gave an explanation.

12 PUBLIC ACCOUNTS—STANDING COMMITTEE—INQUIRY—AUDITOR-GENERAL’S REPORT NO. 2/2011—RESIDENTIAL LAND SUPPLY AND DEVELOPMENT—GOVERNMENT SUBMISSION

Mr Barr (Minister for Economic Development) presented the following paper:

Public Accounts—Standing Committee—Inquiry—Auditor-General’s Report No. 2/2011—Residential Land Supply and Development—Government submission.

13 COMMISSIONER FOR THE ENVIRONMENT ACT—COMMISSIONER FOR SUSTAINABILITY AND THE ENVIRONMENT—REPORT ON CANBERRA NATURE PARK (NATURE RESERVES); MOLONGLO RIVER CORRIDOR (NATURE RESERVES) AND GOOGONG FORESHORES INVESTIGATION—PAPERS AND STATEMENT BY MINISTER

Mr Corbell (Minister for the Environment and Sustainable Development) presented the following papers:

Commissioner for the Environment Act, pursuant to section 22—Commissioner for Sustainability and the Environment—Report on Canberra Nature Park (nature reserves); Molonglo River Corridor (nature reserves) and Googong Foreshores Investigation—

Part 1. Report, dated July 2011, including CD of Summary and Recommendations, Report and Appendices.

Part 2. Appendices, dated July 2011.

Part 3. Submissions, dated July 2011—

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

14 INDEPENDENT COMPETITION AND REGULATORY COMMISSION ACT—INDEPENDENT COMPETITION AND REGULATORY COMMISSION—REPORT 7 OF 2011—A.C.T. GREENHOUSE GAS INVENTORY REPORT FOR 2008-09—PAPER AND STATEMENT BY MINISTER

Mr Corbell (Minister for the Environment and Sustainable Development) presented the following paper:

Independent Competition and Regulatory Commission Act, pursuant to section 24—Independent Competition and Regulatory Commission—Report 7 of 2011—A.C.T. Greenhouse Gas Inventory Report for 2008-09, dated September 2011—

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

15 PRESENTATION OF PAPER

Mr Corbell (Minister for Territory and Municipal Services) presented the following paper:

Auditor-General’s Report No. 7/2010—Management of Feedback and Complaints—Government progress report on the Territory and Municipal Services Directorate implementation.

16 PRESENTATION OF PAPERS

Mr Corbell (Manager of Government Business) presented the following papers:

Subordinate legislation (including explanatory statements unless otherwise stated)

Legislation Act, pursuant to section 64—

Cultural Facilities Corporation Act and Financial Management Act—Cultural Facilities Corporation (Governing Board) Appointment 2011 (No. 2)—Disallowable Instrument DI2011-278 (LR, 11 October 2011).

Gas Safety Act—Gas Safety (Codes of Practice) Determination 2011 (No. 1)—Disallowable Instrument DI2011-272 (LR, 11 October 2011).

Legal Profession Act—

Legal Profession (Bar Council Fees) Determination 2011 (No. 1)—Disallowable Instrument DI2011-276 (LR, 7 October 2011).

Legal Profession (Barristers and Solicitors Practising Fees) Determination 2011—Disallowable Instrument DI2011-277 (LR, 7 October 2011).

Public Place Names Act—Public Places Names (Macgregor) Determination 2011 (No. 2)—Disallowable Instrument DI2011-273 (LR, 11 October 2011).

Road Transport (General) Act—Road Transport (General) (Segway Exemption) Determination 2011 (No. 2)—Disallowable Instrument DI2011-263 (LR, 30 September 2011).

Road Transport (Public Passenger Services) Act—Road Transport (Public Passenger Services) Regular Route Services Maximum Fares Determination 2011 (No. 1)—Disallowable Instrument DI2011-275 (LR, 6 October 2011).

Utilities Act—Utilities (Emergency Planning Code) Determination 2011—Disallowable Instrument DI2011-274 (LR, 11 October 2011).

17 MATTER OF PUBLIC IMPORTANCE—DISCUSSION—COMMUNITY SPORT

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 Mr Doszpot be submitted to the Assembly, namely, “The importance of supporting community sport”.

Discussion ensued.

The time for discussion having expired—

Discussion concluded.

18 WORKING WITH VULNERABLE PEOPLE (BACKGROUND CHECKING) BILL 2010

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

Detail Stage

Remainder of Bill as a whole—

Consideration resumed on amendments Nos. 1 to 18, 20, 22 to 27, 29 to 39, 41 to 46, 48 to 50, 52, 54, 56 and 58 to 78 (*see* [Schedule 4](#)) moved by Ms Burch (Minister for Community Services).

Debate continued

Amendments agreed to.

Ms Burch, pursuant to SO182A(b), sought leave to move her amendments Nos. 19, 21, 28, 40, 47, 51, 53, 55 and 57 together (*see* [Schedule 4](#)).

Objection being raised, leave not granted.

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

Debate ensued.

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

On the motion of Ms Burch, her amendments Nos. 19, 21, 28, 40, 47, 51, 53, 55 and 57 (*see* [Schedule 4](#)) were made together.

On the motion of Ms Bresnan, by leave, her amendments Nos. 1 to 4 (*see* [Schedule 5](#)) were made together, after debate.

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

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

19 WORKING WITH VULNERABLE PEOPLE (CONSEQUENTIAL 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.

20 AUDITOR-GENERAL'S REPORT NO. 10/2010—2009-10 FINANCIAL AUDITS—STATEMENT BY MINISTER

Mr Barr (Treasurer), by leave, made a statement regarding Auditor-General's Report No. 10/2010, entitled *2009-10 Financial Audits*.

21 ADJOURNMENT

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

Debate ensued.

Question—put and passed.

And then the Assembly, at 5.52 p.m., adjourned until tomorrow 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

EDUCATION AND CARE SERVICES NATIONAL LAW (A.C.T.) BILL 2011

Amendment circulated by Ms Hunter

1

Clause 6

Page 4, line 2—

omit clause 6, substitute

6 Adoption of Education and Care Services National Law

- (1) Subject to this section, the Education and Care Services National Law, as in force from time to time, set out in the schedule to the Victorian Act—
 - (a) applies as a territory law; and
 - (b) as so applying may be referred to as the Education and Care Services National Law (ACT); and
 - (c) so applies as if it were part of this Act.
 - (2) A law that amends the Education and Care Services National Law set out in the schedule to the Victorian Act and is passed by the Victorian Parliament after this Act's notification day must be presented to the Legislative Assembly not later than 6 sitting days after the day it is passed.
 - (3) The amending law may be disallowed by the Legislative Assembly in the same way, and within the same period, that a disallowable instrument may be disallowed.

Note See the Legislation Act, s 65 (Disallowance by resolution of Assembly).
 - (4) If the amending law is not presented to the Legislative Assembly in accordance with subsection (2), or is disallowed under subsection (3), the Education and Care Services National Law applying under subsection (1) is taken—
 - (a) not to include the amendments made by the amending law; and
 - (b) to include any provision repealed or amended by the amending law as if the amending law had not been made.
 - (5) Section 303 (4) (Parliamentary scrutiny of national regulations) of the Education and Care Services National Law set out in the schedule to the Victorian Act does not apply as a territory law.
-

Schedule 2

EDUCATION AND CARE SERVICES NATIONAL LAW (A.C.T.) BILL 2011

Amendments circulated by the Minister for Community Services

1

Clause 13

Page 6, line 13—

omit clause 13, substitute

13

Former education and care services law

For the definition of *former education and care services law* in the *Education and Care Services National Law (ACT)*, section 5—

- (a) the *Children and Young People Act 2008*, chapter 20, is a former education and care services law; and
 - (b) the *Education Act 2004* is a former education and care services law.
-

2

Clause 20

Proposed new definitions of *childcare services standards* and *government preschool*

Page 9, line 3—

insert

childcare services standards—see the *Children and Young People Act 2008*, section 887 (2) (e).

government preschool means a government preschool established under the *Education Act 2004*, section 20.

3

Clause 21 (2)

Page 9, line 11—

omit clause 21 (2), substitute

- (2) For the definition of *declared approved provider* in the *Education and Care Services National Law (ACT)*, section 305—
 - (a) a person who was a licensed proprietor of a licensed childcare service is a declared approved provider; and
 - (b) the director-general responsible for the administration of the *Education Act 2004* is a declared approved provider.
-

4**Clause 21 (3)****Page 9, line 15—***omit clause 21 (3), substitute*

- (3) For the definition of ***declared approved service*** in the *Education and Care Services National Law (ACT)*, section 305—
- (a) a service that was a licensed childcare service is a declared approved service; and
 - (b) a government preschool is a declared approved service.

5**Clause 21 (4)****Page 9, line 18—***omit clause 21 (4), substitute*

- (4) For the definition of ***declared certified supervisor*** in the *Education and Care Services National Law (ACT)*, section 305, a person is a declared certified supervisor if—
- (a) the person held any of the following positions mentioned in the childcare services standards:
 - (i) qualified service director, designated qualified team leader or qualified primary contact staff member of a licensed childcare service providing centre based care;
 - (ii) qualified service director or qualified service coordinator of a licensed childcare service providing school aged care;
 - (iii) qualified staff member of the coordination unit for a licensed childcare service providing family day care;
 - (iv) qualified senior teacher or qualified teacher of a licensed childcare service operating an independent preschool; and
 - (b) the person held, or had completed the requirements for, the qualification required under the childcare services standards for the position.

6**Clause 21 (6) and (7)****Page 10, line 5—***omit clause 21 (6) and (7), substitute*

- (6) For the definition of ***former approval*** in the *Education and Care Services National Law (ACT)*, section 305—
- (a) a childcare service licence issued under the *Children and Young People Act 2008*, chapter 20, is a former approval; and
 - (b) the establishment of a government preschool under the *Education Act 2004*, section 20, is a former approval.
-

Schedule 3**EDUCATION AND CARE SERVICES NATIONAL LAW (A.C.T.)
BILL 2011**

Amendment circulated by Mrs Dunne

1

Proposed new section 21A

Page 10, line 16—

insert

21A Educator to child ratio—children aged 24 months or under at certain centre-based services

- (1) This section applies to a centre-based service that provides education and care for 10 or fewer children from birth to 24 months of age.
- (2) Despite anything to the contrary in the national regulations, until 1 January 2013 the minimum number of educators required to educate and care for children from birth to 24 months of age is 1 educator to 5 children.
- (3) In this section:

national regulations means a regulation made under the Education and Care Services National Law (ACT), section 301.

Schedule 4**WORKING WITH VULNERABLE PEOPLE (BACKGROUND CHECKING) BILL 2010**

Amendments circulated by the Minister for Community Services

1**Proposed new clause 2A****Page 2, line 17—***insert***2A When does Act apply to a regulated activity?**

- (1) This Act applies to a regulated activity mentioned in an item in table 2A, column 2 on and after the date mentioned in column 3 in relation to the item.

Table 2A Application of Act to regulated activities

column 1 item	column 2 regulated activity	column 3 date of application
1	activities or services for children (see sch 1, pt 1.1)	1 year after the day part 2 commences
2	homeless people (see sch 1, s 1.9) victims of crime (see sch 1, s 1.13) community services (see sch 1, s 1.15) disability services (see sch 1, s 1.16) respite care services (see sch 1, s 1.17) religious organisations (see sch 1, s 1.22)	2 years after the day part 2 commences
3	coaching and tuition (see sch 1, s 1.20) vocational and educational training (see sch 1, s 1.21) clubs, associations and movements (see sch 1, s 1.23)	3 years after the day part 2 commences
4	migrants, refugees and asylum seekers (see sch 1, s 1.8) housing and accommodation (see sch 1, s 1.10) prevention of crime (see sch 1, s 1.12) emergency services personnel (see sch 1, s 1.18)	4 years after the day part 2 commences
5	mental health (see sch 1, s 1.7) transport (see sch 1, s 1.19)	5 years after the day part 2 commences
6	justice facilities (see sch 1, s 1.11) services for addictions (see sch 1, s 1.14)	6 years after the day part 2 commences

- (2) This section expires 6 years after the day part 2 commences.

2**Clause 11 (2) (g)****Page 9, line 18—***omit clause 11 (2) (g), substitute*

- (g) engaged in the activity as a school student on a work experience placement or doing practical training; or

3**Proposed new clause 11 (2) (ga)****Page 9, line 19—***insert*

- (ga) an employer or supervisor of a vulnerable person, unless the vulnerable person is engaged in a regulated activity; or

Examples

- 1 A person supervising a school student on a work experience placement at a childcare centre is required to be registered.
- 2 A person supervising a school student on a work experience placement at an accounting firm is not required to be registered.

4**Clause 11 (2) (h) (i)****Page 9, line 21—***omit clause 11 (2) (h) (i), substitute*

- (i) a police officer, including a police officer (however described) of another jurisdiction; or
- (ia) an AFP appointee within the meaning of the *Australian Federal Police Act 1979* (Cwlth); or

5**Clause 11 (2) (i)****Page 10, line 1—***substitute*

- (i) engaged in the activity for a Commonwealth or Territory government agency and the only contact the person has with a vulnerable person is providing a service to the vulnerable person at a public counter or shopfront, or by telephone; or

Example

an administrative worker employed by Centrelink or Medicare

6**Proposed new clause 11 (2) (ia) and (ib)****Page 10, line 8—***insert*

- (ia) engaged in the activity and the only contact the person has with a vulnerable person is providing information to, or receiving information from, the vulnerable person by telephone; or

Example

an employee or volunteer working on a helpline or at a call centre

- (ib) engaged in the activity and the only contact the person has with a vulnerable person is working with a record of the vulnerable person; or

7

Clause 11 (4), proposed new definition of *school*

Page 11, line 14—

insert

school means a high school or secondary college.

8

Clause 12 (1), penalty

Page 11, line 22—

omit

, imprisonment for 6 months or both

9

Clause 12 (5) (b)

Page 12, line 17—

after

section 14

insert

or section 14A

10

Clause 12 (5) (b), note 1

Page 12, line 20—

after

s 14

insert

and s 14A

11

Clause 13 (1), penalty

Page 13, line 14—

omit

, imprisonment for 6 months or both

12

Clause 13 (5)

Page 14, line 5—

after

section 14

insert

or section 14A

13

Clause 13 (5) (b), note 1
Page 14, line 8—
after

s 14

insert

and s 14A

14

Clause 14 heading
Page 14, line 11—
omit clause 14 heading, substitute

14

When unregistered person may be engaged in regulated activity—supervised employment

15

Clause 14 (2)
Page 14, line 20—
omit

, and only if

16

Proposed new clause 14A
Page 15, line 18—
insert

14A

When unregistered person may be engaged in regulated activity—kinship carer

This section applies to an unregistered person if—

- (a) the person is engaged in a regulated activity under the *Children and Young People Act 2008*, part 15.4 (Out-of-home carers) as a kinship carer; and
 - (b) the person is required to be registered to engage in the activity.
- (2) The person may engage in the regulated activity if—
- (a) the person has applied for registration under section 15; and
 - (b) the commissioner has not given the person a negative notice under section 35; and
 - (c) the person has not withdrawn the application; and
 - (d) the person is eligible.

- (3) In this section:

eligible—see section 14 (4).

kinship carer—see the *Children and Young People Act 2008*, section 509.

17**Clause 16 (2) (a) (iii), note****Page 17, line 27—***after*

if a person's registration is suspended or cancelled (see s 53 (2) (b))

insert

or surrendered (see s 53A (4))

18**Clause 16 (2) (b)****Page 18, line 1—***omit*

statutory declaration

substitute

written statement

19**Clause 19 (1) (d)****Page 20, line 2—***omit*

14 days

substitute

10 working days

20**Clause 19 (1), penalty****Page 20, line 3—***omit*

, imprisonment for 6 months or both

21**Clause 19 (2) (d)****Page 20, line 13—***omit*

14 days

substitute

10 working days

22**Clause 19 (2), penalty****Page 20, line 15—***omit*

, imprisonment for 6 months or both

23**Proposed new clause 31A****Page 29, line 13—***insert***31A Independent advisors—appointment**

- (1) The commissioner must appoint 7 or more people as independent advisors the commissioner may ask for advice about—

- (a) whether to give a person a role-based registration; or
- (b) any other aspect of a risk assessment for a person.

Note 1 **Role-based registration**—see s 37 (2).

Note 2 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

- (2) The people appointed—

- (a) must include the following:

- (i) at least 1 Aboriginal or Torres Strait Islander person;
- (ii) at least 1 person with experience or expertise in relation to refugees and migrants;
- (iii) at least 1 person who is a psychologist with experience or expertise in forensic or clinical psychology;
- (iv) at least 1 person with experience or expertise in relation to children and young people;
- (v) at least 1 person with experience or expertise in relation to people with a disability;
- (vi) at least 1 person with experience or expertise in relation to people with mental illness;
- (vii) at least 1 person with experience or expertise in relation to people with drug or alcohol dependency; and

- (b) may include 1 or more people with experience or expertise in any other field the commissioner considers relevant to a matter mentioned in subsection (1) (a) or (b).

- (3) An appointment as an independent advisor must be for not longer than 3 years.
- (4) An appointment is a notifiable instrument.

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

- (5) The conditions of an independent advisor's appointment are the conditions agreed between the commissioner and the person, subject to any determination under the *Remuneration Tribunal Act 1995*.

31B Independent advisors—advice

- (1) This section applies if the commissioner wishes to ask an independent advisor for advice about a matter mentioned in section 31A (1) (a) or (b).

- (2) The commissioner must ask a least 3 independent advisors for the advice.
- (3) The request for advice must be made, and the advice must be given, in accordance with the risk assessment guidelines.

31C Independent advisors—ending appointment

The commissioner may end a person's appointment as an independent advisor—

- (a) if the person does not provide advice within a reasonable time when asked by the commissioner; or
- (b) for misbehaviour; or
- (c) for physical and mental incapacity, if the incapacity substantially affects the exercise of the person's ability to give advice to the commissioner; or
- (d) if the commissioner becomes aware that the person has at any time been convicted in Australia of an offence punishable by imprisonment for 1 year or longer; or
- (e) if the commissioner becomes aware that the person has at any time been convicted outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for 1 year or longer.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

24

Clause 32 (3) (b)

Page 29, line 26—

omit clause 32 (3) (b), substitute

- (b) that, if the person would like the commissioner to reconsider the decision, the person may take the steps mentioned in section 33 (1); and

25

Clause 32 (3) (c)

Page 30, line 2—

omit

section 33 (2)

substitute

section 33 (1)

26

Clause 33

Page 30, line 7—

omit clause 33, substitute

33 Reconsideration of negative risk assessments

- (1) If the commissioner gives a person a proposed negative notice, the person may—

- (a) within 10 working days after the commissioner gives the person the proposed negative notice, tell the commissioner in writing that the person intends to ask the commissioner to reconsider the decision; and
- (b) within 20 working days after the commissioner gives the person the notice, ask the commissioner in writing to reconsider the decision.

Note If a form is approved under s 62 for this provision, the form must be used.

- (2) If the person asks the commissioner to reconsider the decision, the commissioner must, as soon as practicable, conduct a risk assessment (a ***revised risk assessment***) for the person.

Note A revised risk assessment may result in registration (see s 36), which may be conditional (see s 37), or a negative notice (see s 35).

- (3) The person may give the commissioner, and the commissioner must consider in conducting the revised risk assessment, any new or corrected information the person believes is relevant.

27**Clause 34 (1)****Page 31, line 10—**

omit

section 33 (2) (a) or (b)

substitute

section 33 (1) (a) or (b)

28**Clause 34 (2), example 2****Page 31, line 19—**

omit

1 month

substitute

20 working days

29**Clause 35 (1) (b) (i)****Page 32, line 17—**

omit

reconsider the application under section 33 (2) (a)

substitute

reconsider the decision under section 33 (1) (a)

30**Clause 35 (1) (b) (ii) (A)****Page 32, line 21—***omit*

reconsider the application under section 33 (2) (a)

substitute

reconsider the decision under section 33 (1) (a)

31**Clause 35 (1) (b) (ii) (B)****Page 32, line 23—***omit clause 35 (1) (b) (ii) (B), substitute*

(B) does not ask the commissioner to reconsider the decision under section 33 (1) (b).

32**Clause 37 (2)****Page 35, line 7—***omit*(a *position-based registration*)*substitute*(a *role-based registration*)

33**Clause 37 (2), example heading****Page 35, line 10—***omit example heading, substitute***Example—role-based registration**

34**Proposed new clause 37 (2A)****Page 35, line 12—***insert*

(2A) Before giving a person a role-based registration, the commissioner may—

(a) consult, in accordance with the risk assessment guidelines, with 3 or more independent advisors; and

(b) consider any relevant advice given.

35**Clause 37 (3)****Page 35, line 15—***omit*

position-based registration

*substitute*role-based registration

36**Clause 38 (2) (b)****Page 35, line 23—**

omit clause 38 (2) (b), substitute

- (b) that, if the person would like the commissioner to reconsider the decision, the person may take the steps mentioned in section 39 (1); and

37**Clause 38 (2) (c)****Page 35, line 28—**

omit

section 39 (2)

substitute

section 39 (1)

38**Clause 39****Page 36, line 6—**

omit clause 39, substitute

39**Reconsideration of proposed conditional registration**

- (1) If the commissioner gives a person a proposed conditional registration notice, the person may—
- (a) within 10 working days after the commissioner gives the person the proposed conditional registration notice, tell the commissioner in writing that the person intends to ask the commissioner to reconsider the decision; and
 - (b) within 20 working days after the commissioner gives the person the notice, ask the commissioner in writing to reconsider the decision.

Note If a form is approved under s 62 for this provision, the form must be used.

- (2) If the person asks the commissioner to reconsider the decision, the commissioner must, as soon as practicable—
- (a) if the commissioner is satisfied that the condition is unnecessary—register the person unconditionally; or
 - (b) if the commissioner is satisfied that the condition is necessary—register the person subject to the condition.

Note The commissioner's decision to register a person subject to a condition is reviewable (see s 54).

- (3) The person may give the commissioner, and the commissioner must consider in reconsidering the decision, any new or corrected information the person believes is relevant.
-

39**Clause 40 (1)****Page 37, line 11—***omit*

section 39 (2) (a) or (b)

substitute

section 39 (1) (a) or (b)

40**Clause 40 (2), example 2****Page 37, line 20—***omit*

1 month

substitute

20 working days

41**Clause 41 (1) (a)****Page 38, line 12—***omit*

reconsider the application under section 39 (2) (a)

substitute

reconsider the decision under section 39 (1) (a)

42**Clause 41 (1) (b) (i)****Page 38, line 16—***omit*

reconsider the application under section 39 (2) (a)

substitute

reconsider the decision under section 39 (1) (a)

43**Clause 41 (1) (b) (ii) and note****Page 38, line 18—***omit clause 41 (1) (b) (ii) and note, substitute*

- (ii) does not ask the commissioner to reconsider the decision under section 39 (1) (b).

Note The commissioner must also register a person subject to a condition if the commissioner has reconsidered the decision and is satisfied that the condition is necessary (see s 39 (2) (b)).

44**Proposed new clause 41A****Page 39, line 3—***insert***41A Conditional registration—amendment**

- (1) A person with conditional registration may apply to the commissioner to amend the person's registration (including by removing or amending a condition of the registration).

Note If a form is approved under s 62 for this provision, the form must be used.

- (2) The commissioner may, in writing, require the applicant to give the commissioner the additional information in writing or documents the commissioner reasonably needs to decide the application.
- (3) If the applicant does not comply with a requirement under subsection (2), the commissioner may refuse to consider the application further.

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

- (4) On application by a person to amend a conditional registration, the commissioner must—
- (a) amend the registration; or
 - (b) refuse to amend the registration.
- (5) The commissioner must—
- (a) tell the applicant in writing of a decision under subsection (4) and—
 - (i) if the commissioner amends the registration—state the details of the amendment; and
 - (ii) if the commissioner refuses to amend the registration—the reasons for the decision; and
- Note* The commissioner must also give the applicant a reviewable decision notice in relation to a decision to refuse to amend the applicant's registration (see s 55).
- (b) if the commissioner amends the registration—tell the named employer (if any) in writing—
 - (i) that the applicant's registration has been amended; and
 - (ii) the details of the amendment.

45**Clause 42 (1), penalty****Page 39, line 9—***omit*

, imprisonment for 6 months or both

46**Clause 46 (1) (a)****Page 41, line 19—***omit clause 46 (1) (a), substitute*

(a) the person's registration is—

(i) suspended or cancelled under section 53; or

(ii) surrendered under section 53A; and

47**Clause 46 (1) (b)****Page 41, line 22—***omit*

14 days

substitute

10 working days

48**Clause 46 (1), penalty****Page 41, line 24—***omit*

, imprisonment for 6 months or both

49**Clause 48 (3) (b)****Page 44, line 1—***omit clause 48 (3) (b), substitute*

(b) add a condition to, or amend a condition of, the person's registration.

50**New clause 48 (3) (c)****Page 44, line 1—***insert*

(c) remove a condition from the person's registration.

51**Clause 49 (1) (c)****Page 44, line 16—***omit*

14 days

substitute

10 working days

52**Clause 49 (1), penalty****Page 44, line 17—***omit*, imprisonment for 6 months or both

53**Clause 49 (2) (c)****Page 44, line 23—***omit*

14 days

*substitute*10 working days

54**Clause 49 (2), penalty****Page 44, line 25—***omit*, imprisonment for 6 months or both

55**Clause 50 (1) (c)****Page 45, line 6—***omit*

14 days

*substitute*10 working days

56**Clause 51 (2), note****Page 45, line 24—***omit*

may

*substitute*must

57**Clause 52 (2) (b)****Page 46, line 13—***omit*

14 days

*substitute*10 working days

58**Clause 53 (4) (b)****Page 47, line 18—***before*

the later date

*insert*on

 59

Proposed new division 6.5

Page 47, line 25—

insert

Division 6.5 Surrendering registration

53A Surrendering registration

- (1) A registered person may surrender the person's registration by giving written notice of the surrender (a ***surrender notice***) to the commissioner.

Note If a form is approved under s 62 for this provision, the form must be used.

- (2) The surrender notice must be accompanied by—

- (a) the person's registration card; or
- (b) if the card has been lost, stolen or destroyed—a statutory declaration signed by the person stating that the card has been lost, stolen or destroyed.

Note The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws.

- (3) The surrender of the registration takes effect—

- (a) on the day the surrender notice is given to the commissioner; or
- (b) if a later date is stated in the surrender notice—on the later date.

- (4) The commissioner must tell the person's employer (if any) in writing that the person's registration has been surrendered.

 60

 Clause 57 (3), definition of ***official***, proposed new paragraph (aa)

Page 49, line 12—

insert

- (aa) an independent advisor; or

 61

 Clause 58 (6), definition of ***person to whom this section applies***, paragraph (a)

Page 51, line 12—

omit paragraph (a), substitute

- (a) a person who is or has been—
 - (i) the commissioner; or
 - (ii) an independent advisor; or
-

62

Clause 63 (1)
Page 53, line 10—
omit

5th year

substitute

3rd year and 7th year

63

Clause 63 (2)
Page 53, line 16—
omit

6

substitute

8

64

Clause 65
Page 54, line 3—
omit clause 65, substitute

65

**Fair Trading (Australian Consumer Law) Act 1992,
dictionary, definition of *fair trading legislation*,
new paragraph (g)**
insert

(g) the *Working with Vulnerable People (Background Checking) Act 2010*.

65

Schedule 1, proposed new clause 1.1A
Page 56, line 7—
insert
1.1A Justice facilities for children

- (1) An activity or service is a regulated activity if—
 - (a) any of the usual functions of the activity or service are carried out in relation to a child at a justice facility; or
 - (b) the activity is conducted, or the service is provided, in relation to a child because of a sentence, detention, probation, parole or other order, that could be made or imposed by a court.
 - (2) In this section:

justice facility means—

 - (a) a detention place; or
 - (b) a place outside a detention place if a detainee is, or has been, directed to work or take part in an activity at the place; or
 - (c) any other place a child may be held in custody.
-

66**Schedule 1, clause 1.11 (1) (a)****Page 61, line 10—***after*

out

*insert*in relation to an adult

67**Schedule 1, clause 1.11 (1) (b)****Page 61, line 11—***after*

provided,

*insert*in relation to an adult

68**Schedule 1, clause 1.11 (1) (b)****Page 61, line 13—***omit*

the court

*substitute*a court

69**Schedule 1, clause 1.14 (1), examples****Page 63, line 2—***omit the examples, substitute***Examples**

- 1 an activity or service that provides health care, counselling, accommodation or financial support for people who are addicted to a substance or an activity
 - 2 a needle and syringe exchange program
 - 3 a methadone treatment and withdrawal program
 - 4 a gambling addiction telephone help-line
-

70**Schedule 2, item 4, column 2****Page 69—***omit*

39 (3) (b) (ii)

*substitute*39 (2) (b)

71**Schedule 2, proposed new item 7A****Page 69***insert*

7A	41A (4) (b)	refuse to amend person's conditional registration	person
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72**Dictionary, note 2, proposed new dot point****Page 71, line 6—***insert*

- working day

73**Dictionary, proposed new definition of *independent advisor*****Page 71, line 20—***insert*

independent advisor means an independent advisor appointed under section 31A.

74**Dictionary, definition of *position-based registration*****Page 71, line 27—***omit*

75**Dictionary, definition of *proposed interim negative notice*****Page 72, line 2—***omit*

76**Dictionary, definition of *reviewable decision*****Page 72, line 9—***omit*

part 4

substitute

part 7

77**Dictionary, definition of *revised risk assessment*****Page 72, line 11—***omit*

section 33 (3)

substitute

section 33 (2)

78

Dictionary, proposed new definition of *role-based registration*

Page 72, line 13—

insert

role-based registration—see section 37 (2).

Schedule 5**WORKING WITH VULNERABLE PEOPLE (BACKGROUND CHECKING) BILL 2010**

Amendments circulated by Ms Bresnan

1

Clause 11 (3)

Page 10, line 21—

omit

notifiable

substitute

disallowable

2

Clause 11 (3), note

Page 10, line 22—

omit the note, substitute

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

3

Clause 25 (3)

Page 24, line 19—

omit

notifiable

substitute

disallowable

4

Clause 25 (3), note

Page 24, line 20—

omit the note, substitute

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