

1998-1999-2000-2001

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

MINUTES OF PROCEEDINGS

No. 117

TUESDAY, 6 MARCH 2001

- 1** The Assembly met at 10.30 a.m., pursuant to adjournment. The Speaker (Mr Cornwell) 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 (INCORPORATING THE DUTIES OF A SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION COMMITTEE) – SCRUTINY REPORT NO. 3 OF 2001 – STATEMENT BY DEPUTY CHAIR**

Mr Hargreaves (Deputy Chair), by leave, presented the following report:

Justice and Community Safety – Standing Committee (incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee) – Scrutiny Report No. 3 of 2001, dated 6 March 2001 –

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

- 3 LEASES (COMMERCIAL AND RETAIL) BILL 2000 [NO 2]**

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

Detail stage

Clause 1 –

Debate adjourned (Mr Moore – Minister for Health, Housing and Community Services) and the resumption of the debate made an order of the day for a later hour this day.

- 4 UNIT TITLES BILL 2000**

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.

5 UNIT TITLES CONSEQUENTIAL AMENDMENTS BILL 2000

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 -

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 DISCRIMINATION AMENDMENT BILL 2000

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 negatived.

7 LEASES (COMMERCIAL AND RETAIL) BILL 2000 [NO 2]

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

Detail stage

Clause 1 agreed to.

Clause 2 –

Mr Stefaniak (Attorney-General) moved, pursuant to standing order 185 – That consideration of clause 2 be postponed until after consideration of Schedule 2 of the Bill.

Question – put and passed.

Clauses 3 to 6, by leave, taken together and agreed to.

Clause 7 –

Paper: Mr Stefaniak presented a supplementary explanatory memorandum to Government amendments to the Bill.

On the motion of Mr Stefaniak his amendment No. 1 (*see* Schedule 1, Part 1) was made.

On the motion of Ms Tucker her amendment No. 1 (*see* Schedule 2, Part 1) was made, after debate.

On the motion of Mr Stefaniak his amendment No. 2 (*see* Schedule 1, Part 1) was made, after debate.

On the motion of Ms Tucker her amendment No. 2 (*see* Schedule 2, Part 1) was made.

Clause 7, as amended, agreed to.

Clause 8 agreed to.

Clause 9 agreed to.

Clause 10 –

On the motion of Mr Stefaniak his amendment No. 4 (*see* Schedule 1, Part 1) was made.

Clause 10, as amended, agreed to.

Clause 11 agreed to.

Clause 12 –

Ms Tucker moved her amendment No. 3 (*see* Schedule 2, Part 1).

Debate ensued.

Question – put.

The Assembly voted –

Ayes, 8		Noes, 6	
Mr Berry	Mr Stanhope	Mrs Burke	Mr Stefaniak
Mr Corbell	Ms Tucker	Mr Cornwell	
Mr Hargreaves	Mr Wood	Mr Humphries	
Mr Moore		Mr Kaine	
Mr Rugendyke		Mr Smyth	

And so it was resolved in the affirmative – Ms Tucker's amendment No. 3 agreed to.

Clause 12, as amended, agreed to.

Clause 13 –

Mr Rugendyke, by leave, moved his amendments Nos 1 and 2 together (*see* Schedule 3, Part 1).

Debate ensued.

Amendments negatived.

Clause 13 agreed to.

Clause 14 agreed to.

Clause 15 –

Ms Tucker moved her amendment No. 5 (*see* Schedule 2, Part 1).

Debate ensued.

Question – put.

The Assembly voted –

Ayes, 7		Noes, 7	
Mr Berry	Ms Tucker	Mrs Burke	Mr Smyth
Mr Corbell	Mr Wood	Mr Cornwell	Mr Stefaniak
Mr Hargreaves		Mr Humphries	
Mr Rugendyke		Mr Kaine	
Mr Stanhope		Mr Moore	

And so it was negatived in accordance with standing order 162.

On the motion of Mr Stefaniak his amendment No. 5 (*see* Schedule 1, Part 1) was made.

Clause 15, as amended, agreed to.

Clause 16 agreed to.

Clause 17 –

Mr Rugendyke moved his amendment No. 1 (*see* Schedule 3, Part 2).

Debate ensued.

Amendment negatived.

On the motion of Mr Stefaniak his amendment No. 7 (*see* Schedule 1, Part 1) was made.

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.

8 QUESTIONS

Questions without notice were asked.

Questions concluded.

Paper: Mr Humphries (Chief Minister) presented the following paper:

ActewAGL – Light post in Quiros Street Red Hill– Relocation – Answer to question without notice asked of Mr Smyth by Mr Kaine and taken on notice on 28 February 2001.

Paper: Mr Smyth (Minister for Urban Services), having corrected an answer to question asked by Ms Tucker on 1 March 2001, presented the following paper:

Land (Planning and Environment) Act – Croatia Deakin Soccer Club – Copy of recommendation of Conservator of Flora and Fauna to Executive Director, Land and Property, Environment ACT, dated 19 February 2001.

Paper: Mr Smyth presented the following paper:

Belconnen Landfill – Discharge of retention ponds from Belconnen Landfill to Murrumbidgee River– Answer to question without notice asked of Mr Smyth by Mr Corbell and taken on notice on 27 February 2001.

9 ABORIGINAL DEATHS IN CUSTODY — IMPLEMENTATION REPORT 1999-2000 ON RECOMMENDATIONS OF ROYAL COMMISSION – PAPER – MOTION TO TAKE NOTE OF PAPER

Mr Humphries (Chief Minister) presented the following paper:

Aboriginal Deaths in Custody – 1999-2000 ACT Government Report on the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody –

and moved – That the Assembly takes note of the paper.

Debate ensued.

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

10 FINANCIAL MANAGEMENT ACT – INSTRUMENTS – PAPERS AND STATEMENT BY MINISTER – MOTION TO TAKE NOTE OF PAPERS

Mr Humphries (Treasurer) presented the following papers:

Financial Management Act –

An instrument directing a transfer of funds between appropriations and a statement of reasons, pursuant to section 14.

Instruments (2) directing a transfer of funds within appropriations and a statement of reasons for the reallocation, pursuant to section 15.

Instruments (3) transferring functions between departments and a statement of reasons, pursuant to section 16 –

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

Mr Humphries moved – That the Assembly takes note of the papers.

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

11 2000-01 CAPITAL WORKS PROGRAM – PROGRESS REPORT – DECEMBER QUARTER – PAPER AND STATEMENT BY MINISTER – MOTION TO TAKE NOTE OF PAPER

Mr Humphries (Treasurer) presented the following paper:

2000-01 Capital Works Program – Progress report – December quarter –

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

Mr Humphries moved – That the Assembly takes note of the paper.

Debate ensued.

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

12 LEAVE OF ABSENCE TO MEMBER

Mr Humphries (Chief Minister) moved - That leave of absence for 6 and 8 March 2001 be given to Mr Osborne.

Question - put and passed.

13 SUBORDINATE LEGISLATION (INCLUDING EXPLANATORY STATEMENTS, UNLESS OTHERWISE STATED) – PAPERS

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

Animal Welfare Act – Approval – Australian code of practice for the care and use of animals for scientific purposes – Instrument No. 26 of 2001 (No. 9, dated 1 March 2001).

Bookmakers Act – Determination of event to be a sports betting event – Instrument No. 21 of 2001 (No. 9, dated 1 March 2001).

Canberra Tourism and Events Corporation Act – Appointments to the Canberra Tourism and Events Corporation Board –

Chairperson – Instrument No. 22 of 2001 (S8, dated 22 February 2001).

Members – Instruments Nos 23 to 25 of 2001 (inclusive) (S8, dated 22 February 2001).

Occupational Health and Safety Act – Approval – Code of Practice for the National Standard for Occupational Noise and the National Code of Practice for Noise Management and Protection of Hearing at Work – Instrument No. 27 of 2001 (No. 9, dated 1 March 2001).

14 LEASES (COMMERCIAL AND RETAIL) BILL 2000 [NO 2]

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

Detail stage

Clause 17 –

On the motion of Mr Stefaniak (Attorney-General) his amendment No. 8 (*see* Schedule 1, Part 1) was made.

On the motion of Mr Stanhope (Leader of the Opposition) his amendment No. 1 (*see* Schedule 4, Part 1) was made, after debate.

On the motion of Mr Stefaniak his amendment No. 9 (*see* Schedule 1, Part 1) was made.

On the motion of Mr Stanhope his amendment No. 2 (*see* Schedule 4, Part 1) was made, after debate.

Clause 17, as amended, agreed to.

Clauses 18 to 22, by leave, taken together and agreed to.

Clause 23 –

On the motion of Ms Tucker her amendment No. 6 (*see* Schedule 2, Part 1) was made, after debate.

Clause 23, as amended, agreed to.

Clauses 24 to 29, by leave, taken together and agreed to.

Clause 30 –

Mr Stefaniak moved his amendment No. 10 (*see* Schedule 1, Part 1).

Debate ensued.

Amendment negatived.

On the motion of Mr Stanhope his amendment No. 3 (*see* Schedule 4, Part 1) was made.

Mr Stefaniak moved his amendment No. 11 (*see* Schedule 1, Part 1).

Debate ensued.

Amendment negatived.

On the motion of Mr Stefaniak, by leave, his amendment No. 12 (*see* Schedule 1, Part 1) was made, after debate.

Clause 30, as amended, agreed to.

Clauses 31 to 34, by leave, taken together and agreed to.

Clause 35 –

On the motion of Mr Stefaniak his amendment No. 13 (*see* Schedule 1, Part 1) was made, after debate.

Clause 35, as amended, agreed to.

Clauses 36 and 37, by leave, taken together and agreed to.

Clause 38 –

On the motion of Ms Tucker her amendment No. 1 (*see* Schedule 2, Part 2) was made, after debate.

Clause 38, as amended, agreed to.

Clause 39 –

On the motion of Mr Stanhope his amendment No. 4 (*see* Schedule 4, Part 1) was made, after debate.

Clause 39, as amended, agreed to.

Clause 40 –

On the motion of Mr Stefaniak his amendment No. 14 (*see* Schedule 1, Part 1) was made, after debate.

Clause 40, as amended, agreed to.

Clauses 41 to 43, by leave, taken together and agreed to.

Clause 44 –

On the motion of Mr Stefaniak his amendment No. 15 (*see* Schedule 1, Part 1) was made, after debate.

Clause 44, as amended, agreed to.

Clause 45 –

On the motion of Mr Stefaniak his amendment No. 16 (*see* Schedule 1, Part 1) was made, after debate.

Clause 45, as amended, agreed to.

Clauses 46 to 50, by leave, taken together and agreed to.

Clause 51 –

On the motion of Mr Stanhope his amendment No. 5 (*see* Schedule 4, Part 1) was made, after debate.

Clause 51, as amended, agreed to.

Clause 52 –

On the motion of Mr Stefaniak his amendment No. 17 (*see* Schedule 1, Part 1) was made.

On the motion of Mr Stefaniak his amendment No. 18 (*see* Schedule 1, Part 1) was made.

On the motion of Mr Stanhope his amendment No. 6 (*see* Schedule 4, Part 1) was made, after debate.

On the motion of Mr Stanhope his amendment No. 7 (*see* Schedule 4, Part 1) was made, after debate.

Clause 52, as amended, agreed to.

Clause 53 –

On the motion of Mr Stefaniak his amendment No. 19 (*see* Schedule 1, Part 1) was made, after debate.

Paper: Mr Stefaniak presented a supplementary explanatory memorandum to a Government amendment to clause 53.

On the motion of Mr Stefaniak his amendment (*see* Schedule 1, Part 2) was made, after debate.

Clause 53, as amended, agreed to.

Clauses 54 to 56, by leave, taken together and agreed to.

Clause 57 –

On the motion of Ms Tucker her amendment No. 7 (*see* Schedule 2, Part 1) was made, after debate.

Ms Tucker moved her amendment No. 8 (*see* Schedule 2, Part 1).

Debate ensued.

Ms Tucker, by leave, again addressed the Assembly.

Mr Stefaniak, by leave, moved his amendment (*see* Schedule 1, Part 3) to Ms Tucker's proposed amendment No. 8.

Debate ensued.

Question – That Mr Stefaniak's amendment to Ms Tucker's proposed amendment No. 8 be agreed to – put and negatived.

Question – That Ms Tucker's amendment No. 8 be agreed to – put and passed.

Clause 57, as amended, agreed to.

Clause 58 agreed to.

Clause 59 –

On the motion of Mr Stanhope, by leave, his amendments Nos 8 and 9 (*see* Schedule 4, Part 1) were made, after debate.

On the motion of Ms Tucker her amendment No. 2 (*see* Schedule 2, Part 2) was made, after debate.

Clause 59, as amended, agreed to.

Clauses 60 to 65, by leave, taken together and agreed to.

Clause 66 –

On the motion of Ms Tucker her amendment No. 9 (*see* Schedule 2, Part 1) was made, after debate.

On the motion of Mr Stefaniak, by leave, his amendments Nos 20 and 21 (*see* Schedule 1, Part 2) were made.

Clause 66, as amended, agreed to.

Clauses 67 to 69, by leave, taken together and agreed to.

Clause 70 –

Mr Stanhope moved amendment No. 10 (*see* Schedule 4, Part 1).

Adjournment negatived: It being 5 p.m. – The question was proposed – That the Assembly do now adjourn.

Mr Moore (Manager of Government Business) requiring the question to be put forthwith without debate –

Question – put and negatived.

Debate ensued.

Question – That Mr Stanhope's amendment No. 10 be agreed to – put and passed.

Clause 70, as amended, agreed to.

Clauses 71 and 72, by leave, taken together and agreed to.

Clause 73 –

On the motion of Mr Stanhope his amendment No. 11 (*see* Schedule 4, Part 1) was made, after debate.

Clause 73, as amended, agreed to.

Clauses 74 to 82, by leave, taken together and agreed to.

Clause 83 –

Ms Tucker moved her amendment No. 10 (*see* Schedule 2, Part 1).

Debate ensued.

Amendment negatived.

Clause 83 agreed to.

Clause 84 –

On the motion of Mr Stanhope his amendment No. 12 (*see* Schedule 4, Part 1) was made, after debate.

On the motion of Mr Stanhope, by leave, his amendments Nos 13 and 14 (*see* Schedule 4, Part 1) were made together.

Clause 84, as amended, agreed to.

Clause 85 –

On the motion of Mr Stanhope his amendment No. 15 (*see* Schedule 4, Part 1) was made.

On the motion of Mr Stefaniak his amendment No 22 (*see* Schedule 1, Part 1) was made.

On the motion of Mr Stanhope his amendment No. 16 (*see* Schedule 4, Part 1) was made.

On the motion of Mr Stanhope, by leave, his amendment No. 17 (*see* Schedule 4, Part 1) was made.

Clause 85, as amended, agreed to.

Clause 86 agreed to.

Clause 87 –

On the motion of Mr Stanhope his amendment No. 18 (*see* Schedule 4, Part 1) was made.

Clause 87, as amended, agreed to.

Clause 88 –

Ms Tucker moved her amendment No. 11 (*see* Schedule 2, Part 1).

Debate ensued.

Question – put.

The Assembly voted –

Ayes, 8		Noes, 7	
Mr Berry	Mr Stanhope	Mrs Burke	Mr Smyth
Mr Corbell	Ms Tucker	Mr Cornwell	Mr Stefaniak
Mr Hargreaves	Mr Wood	Mr Hird	
Mr Quinlan		Mr Humphries	
Mr Rugendyke		Mr Moore	

And so it was resolved in the affirmative – Ms Tucker's amendment No. 11 agreed to.

Clause 88, as amended, agreed to.

Clause 89 –

On the motion of Ms Tucker her amendment No. 12 (*see* Schedule 2, Part 1) was made.

Clause 89, as amended, agreed to.

Clause 90 agreed to.

Clause 91 –

On the motion of Mr Stefaniak his amendment No 23 (*see* Schedule 1, Part 1) was made.

Clause 91, as amended, agreed to.

Clauses 92 to 96, by leave, taken together and agreed to.

Clause 97 –

On the motion of Mr Stanhope his amendment No. 19 (*see* Schedule 4, Part 1) was made, after debate.

Clause 97, as amended, agreed to.

Clauses 98 to 103, by leave, taken together and agreed to.

Clause 104 –

Mr Rugendyke moved his amendment No. 3 (*see* Schedule 3, Part 2).

Debate ensued.

Amendment negatived.

Ms Tucker moved her amendment No. 13 (*see* Schedule 2, Part 1).

Debate ensued.

Amendment negatived.

Ms Tucker moved her amendment No. 14 (*see* Schedule 2, Part 1).

Debate ensued.

Ms Tucker, by leave, again addressed the Assembly.

Debate continued.

Ms Tucker, by leave, again addressed the Assembly.

Question – That Ms Tucker's amendment No. 14 be agreed to – put and negatived.

On the motion of Ms Tucker her amendment No. 15 (*see* Schedule 2, Part 1) was made, after debate.

Clause 104, as amended, agreed to.

Clause 105 agreed to.

Proposed new clause 105A –

Mr Rugendyke moved his amendment No. 5 (*see* Schedule 3, Part 2) to insert a new clause 105A in the Bill.

Debate ensued.

Amendment negatived.

Clauses 106 and 107, by leave, taken together –

Mr Rugendyke moved his amendment No. 4 (*see* Schedule 3, Part 3).

Mr Stefaniak moved his amendment No. 1 (*see* Schedule 1, Part 4) to Mr Rugendyke's proposed amendment No. 4.

Debate ensued.

Mr Stefaniak, by leave, moved an amendment (*see* Schedule 1, Part 5) to his amendment No. 1 (*see* Schedule 1, Part 4) to Mr Rugendyke's proposed amendment No. 4.

Debate ensued.

Suspension of sitting: At 8.35 p.m. the Speaker left the Chair

Resumption of sitting: At 8.46 p.m. the Speaker resumed the Chair.

Question – That Mr Stefaniak’s amendment to his amendment No. 1 to Mr Rugendyke’s proposed amendment No. 4 be agreed to – put.

The Assembly voted –

Ayes, 6

Noes, 6

Mrs Burke	Mr Stefaniak	Mr Berry	Mr Wood
Mr Cornwell		Mr Hargreaves	
Mr Hird		Mr Rugendyke	
Mr Kaine		Mr Stanhope	
Mr Smyth		Ms Tucker	

And so it was negatived in accordance with standing order 162.

Mr Stanhope, by leave, moved his amendment (*see* Schedule 4, part 2) to Mr Stefaniak’s amendment No. 1 (*see* Schedule 1, Part 4) to Mr Rugendyke’s proposed amendment No. 4.

Debate ensued.

Question – That Mr Stanhope’s amendment to Mr Stefaniak’s amendment No. 1 to Mr Rugendyke’s proposed amendment No. 4 be agreed to – put.

The Assembly voted –

Ayes, 7

Noes, 5

Mr Berry	Ms Tucker	Mrs Burke
Mr Hargreaves	Mr Wood	Mr Cornwell
Mr Kaine		Mr Hird
Mr Rugendyke		Mr Smyth
Mr Stanhope		Mr Stefaniak

And so it was resolved in the affirmative.

Question – That Mr Stefaniak’s amendment No. 1, as amended, to Mr Rugendyke’s proposed amendment No. 4 be agreed to – put and passed.

On the motion of Mr Stefaniak his amendment No. 2 (*see* Schedule 1, Part 4) to Mr Rugendyke’s proposed amendment No. 4 was made.

Question – Mr Rugendyke’s amendment No. 4, as amended, be agreed to – put and passed.

Clauses 106 and 107, as amended, agreed to.

New clauses 107A and 107B –

Mr Stanhope moved his amendment No. 20 (*see* Schedule 4, Part 1) to insert new clauses 107A and 107B in the Bill.

Debate ensued.

On the motion of Mr Stefaniak his amendment No. 1 (*see* Schedule 1, Part 6) to Mr Stanhope's proposed amendment No. 20 was made, after debate.

Debate ensued.

Question – That Mr Stanhope's amendment No. 20, as amended, be agreed to – put and passed.

Clause 108 –

On the motion of Mr Stanhope his amendment No. 21 (*see* Schedule 4, Part 1) was made.

Clause 108, as amended, agreed to.

Clauses 109 and 110, by leave, taken together and agreed to.

Clause 111 debated and negatived.

Clause 112 agreed to.

Clauses 113 and 114, by leave, taken together and agreed to.

New clauses 114A to 114F –

On the motion of Mr Stanhope new clauses 114A to 114F (his amendment No. 23 (*see* Schedule 4, Part 1)) were inserted in the Bill, after debate.

Clause 115 agreed to.

Clause 116 –

On the motion of Mr Stanhope his amendment No. 24 (*see* Schedule 4, Part 1) was made.

Clause 116, as amended, agreed to.

Clauses 117 to 121, by leave, taken together and agreed to.

Clause 122 –

On the motion of Mr Stanhope his amendment No. 25 (*see* Schedule 4, Part 1) was made, after debate.

On the motion of Mr Stanhope his amendment No. 26 (*see* Schedule 4, Part 1) was made.

Clause 122, as amended, agreed to.

Clauses 123 to 131, by leave, taken together and agreed to.

Clause 132 –

On the motion of Mr Rugendyke his amendment No. 6 (*see* Schedule 3, Part 2) was made.

Clause 132, as amended, agreed to.

New clause 132A –

On the motion of Mr Rugendyke new clause 132A (his amendment No. 7 (*see* Schedule 3, Part 2)) was inserted in the Bill.

Proposed new clause 132B –

Mr Rugendyke moved his amendment No. 8 (*see* Schedule 3, Part 2) to insert new clause 132B in the Bill.

Debate ensued.

Question – That Mr Rugendyke’s amendment No. 8 be agreed to – put and negatived.

Clauses 133 and 134, by leave, taken together and agreed to.

Clause 135 –

On the motion of Mr Rugendyke his amendment No. 9 (*see* Schedule 3, Part 2) was made, after debate.

Clause 135, as amended, agreed to.

Clause 136 agreed to.

Proposed new clause 136A –

Mr Rugendyke moved his amendment No. 10 (*see* Schedule 3, Part 2) to insert new clause 136A in the Bill.

Debate ensued.

Question – That Mr Rugendyke’s amendment No. 10 be agreed to – put and negatived.

Proposed new clause 136B –

Mr Rugendyke moved his amendment No. 11 (*see* Schedule 3, Part 2) to insert new clause 136B in the Bill.

Debate ensued.

Question – That Mr Rugendyke’s amendment No. 11 be agreed to – put and negatived.

Clauses 137 to 139, by leave, taken together and agreed to.

Clause 140 –

On the motion of Ms Tucker her amendment No. 16 (*see* Schedule 2, Part 1) was made, after debate.

Clause 140, as amended, agreed to.

Clause 141 –

Mr Rugendyke moved his amendment No. 12 (*see* Schedule 3, Part 2).

Debate ensued.

Amendment negatived.

Clause 141 agreed to.

Clause 142 agreed to.

Clause 143 agreed to.

Clause 144 –

On the motion of Mr Stefaniak his amendment No. 24 (*see* Schedule 1, Part 1) was made, after debate.

Clause 144, as amended, agreed to.

Clause 145 –

On the motion of Mr Stefaniak his amendment No. 25 (*see* Schedule 1, Part 1) was made.

Clause 145, as amended, agreed to.

Clauses 146 to 148, by leave, taken together and agreed to.

New clause 148A –

On the motion of Mr Rugendyke new clause 148A (*see* Schedule 3, Part 4) was inserted in the Bill, after debate.

Clause 149 agreed to.

Clauses 150 to 161, by leave, taken together and agreed to.

Schedule 1 debated and negatived.

Schedule 2 –

On the motion of Mr Stefaniak his amendment No. 27 (*see* Schedule 1, Part 1) was made, after debate.

On the motion of Mr Stefaniak his amendment No. 28 (*see* Schedule 1, Part 1) was made.

On the motion of Ms Tucker her amendment No. 19 (*see* Schedule 2, Part 1) was made.

On the motion of Ms Tucker, by leave, her amendment No. 20 (*see* Schedule 2, Part 1) was made.

On the motion of Ms Tucker, by leave, her amendment No. 21 (*see* Schedule 2, Part 1) was made.

Schedule 2, as amended, agreed to.

Clause 2 –

On the motion of Mr Stefaniak his amendment No. 1 (*see* Schedule 1, Part 7) was made.

Clause 2, as amended, agreed to.

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

On the motion of Mr Rugendyke his amendment No. 5 (*see* Schedule 3, Part 3) was made.

On the motion of Mr Stefaniak his amendment No. 2 (*see* Schedule 1, Part 7) was made.

On the motion of Mr Stefaniak his amendment No. 29 (*see* Schedule 1, Part 1) was made

On the motion of Ms Tucker her amendment No. 22 (*see* Schedule 2, Part 1) was made.

On the motion of Mr Stefaniak his amendment No. 30 (*see* Schedule 1, Part 1) was made.

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

Reconsideration of clauses 51, 52 and 104: Mr Rugendyke, pursuant to standing order 187, moved that clauses 51 (as amended), 52 (as amended) and 104 (as amended) be reconsidered seriatim.

Question having been put and passed –

Reconsideration of clause 15: Ms Tucker, pursuant to standing order 187, moved that clause 15 (as amended) be reconsidered.

Question – put.

The Assembly voted –

Ayes, 7

Noes, 5

Mr Berry	Ms Tucker
Mr Corbell	Mr Wood
Mr Kaine	
Mr Rugendyke	
Mr Stanhope	

Mrs Burke
Mr Cornwell
Mr Hird
Mr Smyth
Mr Stefaniak

And so it was resolved in the affirmative.

Suspension of standing order 136 – Same question rule: Ms Tucker moved – That so much of standing order 136 be suspended as would prevent Ms Tucker from moving amendment No. 5 circulated in her name.

Question – put.

The Assembly proceeding to a vote –

Mr Stefaniak, by leave, withdrew his call for a vote.

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

Clause 15 – Ms Tucker moved her amendment No. 5 (*see* Schedule 2, Part 1).

Debate ensued.

Ms Tucker, by leave, withdrew her amendment No. 5.

Clause 15, as amended, agreed to.

Question proposed – That clause 51, as amended, be agreed to –

Mr Rugendyke moved his amendment No. 1 (*see* Schedule 3, Part 3).

Debate ensued.

Question – put.

The Assembly voted –

Ayes, 6

Noes, 5

Mr Berry	Ms Tucker
Mr Corbell	
Mr Hargreaves	
Mr Rugendyke	
Mr Stanhope	

Mrs Burke
Mr Cornwell
Mr Hird
Mr Smyth
Mr Stefaniak

And so it was resolved in the affirmative – Mr Rugendyke's amendment No. 1 agreed to.

Debate continued.

Clause 51, as further amended, agreed to.

Question proposed – That clause 52, as amended, be agreed to –

On the motion of Mr Rugendyke his amendment No. 2 (*see* Schedule 3, Part 3) was made, after debate.

Clause 52, as further amended, agreed to.

Question proposed – That clause 104, as amended, be agreed to –

On the motion of Mr Rugendyke his amendment No. 3 (*see* Schedule 3, Part 2) was made.

Clause 104, as further amended, agreed to.

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

15 ADJOURNMENT

Mr Stefaniak (Attorney-General) moved - That the Assembly do now adjourn.

Debate ensued.

Question – put and passed.

And then the Assembly, at 10.36 p.m., adjourned until tomorrow at 10.30 a.m.

MEMBERS' ATTENDANCE: All Members were present at some time during the sitting, except Mr Osborne (on leave).

M J McRAE

Clerk of the Legislative Assembly

Schedule 1

LEASES (COMMERCIAL AND RETAIL) BILL 2000 [NO 2]

Amendments circulated by Attorney-General

PART 1

1

Clause 7

Paragraph (1) (a)

Page 3, line 31—

Omit the paragraph, substitute the following paragraph:

- (a) the permitted use of the premises under the lease or proposed lease is for commercial business; or

2

Clause 7

Paragraph (3) (a)

Page 4, line 7—

Omit the paragraph, substitute the following paragraph:

- (a) the permitted use of the premises under the lease or proposed lease is for retail business; or

3

Clause 8

Subparagraph (1) (b) (ii)

Page 5, line 3—

Omit '2000', substitute '1970'.

4

Clause 10

Proposed new subclause (2)

Page 5, line 28—

At the end of the clause insert the following new subclause:

- (2) However, a proposed lease is not a *continuous occupation lease*.

5

Clause 15

Subclause (2)

Page 9, line 1—

Omit the subclause, substitute the following subclause:

- (2) However, if this Act applied to the lease immediately before the lease was assigned, subsection (1) has the effect of ceasing the application of this Act to the lease, or to a dispute in relation to the lease, only—
- (a) if this Act would not have applied to the lease if the assignee had been the original tenant; and
 - (b) while that assignee is the tenant.

6

Clause 16

Paragraph (1) (a)

Page 9, line 10—

Omit ‘2000’, substitute ‘1970’.

7

Clause 17

Paragraph (a)

Page 9, line 21—

Omit the paragraph, substitute the following paragraph:

- (a) the lease or proposed lease, or a provision of the lease or proposed lease, to which the dispute relates, was entered into, extended under an option, renewed or, for a provision only, varied, at or after the corresponding time mentioned in column 2 (if applicable); and

8

Clause 17

Table, item 3

Page 10—

Omit the item, substitute the following item:

3	a provision of a lease if— (a) the provision was varied or inserted as part of a variation; and (b) the variation happens on or after 1 January 1995; and (c) this Act would apply to the dispute if the lease had been entered into or extended under an option on or after commencement day	any time	1 January 1995
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9

Clause 17

Table, item 9, column 2

Page 11—

Omit ‘commencement day’, substitute ‘1 January 1995’.

10**Clause 30****Subclause (2)****Page 18, line 19—**

Omit '14', substitute '7'.

11**Clause 30****Subclause (4)****Page 18, line 25—**

Omit '14', substitute '7'.

12**Clause 30****Subclause (5)****Page 18, line 26—**

Omit the subclause, substitute the following subclause:

- (5) The time limits mentioned in this section do not apply, or apply as varied, if the tenant provides the lessor with a certificate signed by a lawyer stating that the tenant is aware of the time limits under this section and has chosen to waive the time limits, or to vary them as set out in the certificate.

13**Clause 35****Subclause (2)****Page 20, line 6—**

Omit the subclause, substitute the following subclause:

- (2) For subsection (1), the commissioner for fair trading may approve a handbook (the *approved handbook*) that helps lessors and tenants to understand this Act.

14**Clause 40****Page 22, line 6—**

Omit the clause, substitute the following clause:

40 Guarantees and indemnities

The lessor may accept a guarantee, indemnity or both for the performance of the tenant's obligations under the lease as well as, or instead of, a bond.

15**Clause 44****Subclause (2)****Page 23, line 12—**

Omit the subclause, substitute the following subclause:

- (2) The lessor must give the tenant the bond and the interest earned on it, less any amount deducted by the lessor in accordance with this Act, not later than 30 days after the later of the following:
 - (a) the end of the lease;
 - (b) the tenant vacating the premises.

16**Clause 45****Page 23, line 17—**

Omit the clause, substitute the following clause:

45 Return of guarantees

- (1) This section applies if—
 - (a) the lessor has required a guarantee to secure the tenant's obligations under the lease; and
 - (b) the guarantee is not part of the lease; and
 - (c) the lease is not being extended under an option; and
 - (d) the tenant has performed the obligations secured by the guarantee.
- (2) The lessor must return the guarantee document to the tenant not later than 30 days after the later of the following:
 - (a) the end of the lease;
 - (b) the tenant vacating the premises.

17**Clause 52****Subclause (1)****Page 26, line 2—**

Omit 'This section', substitute 'Subsection (2)'.

18**Clause 52****Subclause (3)****Page 26, line 10—**

After 'may' insert 'also'.

19**Clause 53****Subclauses (2) and (3)****Page 27, line 6—**

Omit the subclauses, substitute the following subclauses:

- (2) On receiving a report from the valuer, the Magistrates Court must give the parties to the lease a copy of the report.
- (3) The market rent worked out by the valuer is the rent under the lease if the parties fail to agree on a different rent to be charged within 14 days after being given a copy of the valuer's report.

20**Clause 66****Subparagraph (4) (a) (v)****Page 33, line 16—**

Omit the subparagraph, substitute the following subparagraph:

- (v) a contribution paid to a corporation in accordance with a determination under the *Unit Titles Act 1970*, section 39, to the extent that the contribution is used, or is to be used, for an outgoing mentioned in subparagraphs (i) to (iv); and

21**Clause 66****Paragraph (4) (a), note****Page 33, line 20—**

Omit the note.

22**Clause 85****Paragraph (1) (b)****Page 41, line 4—**

Omit the paragraph, substitute the following paragraph:

- (b) the tenant can use the premises (fully or in part) for their normal purpose despite the damage.

23**Clause 91****Paragraph (1) (b)****Page 43, line 22—**

Omit 'paragraph 88 (a)', substitute 'section 88'.

24

Clause 144

Paragraph (2) (c)

Page 67, line 23—

Omit the paragraph, substitute the following paragraph:

- (c) provide that the words used in a lease, or a mortgage for leased premises, have a wider meaning than that set out in the lease or mortgage, and may prescribe the meaning.

25

Clause 145

Proposed new definition of *lease*

Page 68, line 7—

After the definition of *dispute*, insert the following new definition:

lease means a lease within the meaning of the repealed Act.

26

Schedule 1

Item 22

Page 73, line 14—

Omit the item, substitute the following item:

- 22 Car parking premises.

27

Schedule 2

Paragraphs (2) (i) and (j)

Page 75, line 1—

Omit the paragraphs, substitute the following paragraphs:

- (i) particulars required to be disclosed in a disclosure statement that affect or potentially affect the rental value of premises, including particulars about a tenant's obligations, costs or responsibilities;
- (j) the terms of the lease or proposed lease;

28

Schedule 2

Proposed new item 3A

Page 75, line 12—

After item (3), insert the following new item:

- 3A** Items 2 and 3 do not limit the matters that the valuer may take into account in relation to the premises.

29**Dictionary****Definition of *disclosure statement*****Page 77, line 29—**

Omit the definition, substitute the following definition:

disclosure statement means a disclosure statement under section 30 (Disclosure statements).

30**Dictionary****Definition of *Territory lease*****Paragraph (b)****Page 80, line 24—**

Omit the paragraph, substitute the following paragraph:

(b) a lease under the *Unit Titles Act 1970*;

PART 2 – Attorney-General**Clause 53****Subclause (4)****Page 27, line 14—**

Omit the subclause, substitute the following subclauses:

- (4) If the parties to a lease enter into an interim agreement about renewing or extending the lease—
 - (a) the lessor cannot withdraw the offer to renew or extend; and
 - (b) the tenant cannot withdraw the acceptance of the offer.
- (5) However, subsection (4) does not apply if the parties agree, after the interim agreement is entered into, that the offer or acceptance may be withdrawn.
- (6) For subsections (4) and (5), an interim agreement is entered into if the tenant has accepted the lessor's offer to renew or extend the lease subject to the rent being market rent and, under section 52 (3), requested the Magistrates Court to refer a dispute about the rent for mediation.

PART 3 – Attorney-General's amendment to Ms Tucker's amendment No. 8 to Clause 57

Omit from proposed subclause (4) the words “, whether direct or indirect,”.

PART 4 – Attorney-General’s amendments to Mr Rugendyke’s amendments**1****Amendment 4****Proposed new sections 107AA and 107AB—**

After proposed section 107A, insert the following proposed new sections:

107AA Implementation of preferential right

- (1) If the tenant has a right of preference, the lessor must, at least 6 months (but not more than 12 months) before the end of the term of the lease, begin negotiations with the tenant for a renewal of the lease.

Note Renewal of a lease includes extension of the lease (see dict).

- (2) In particular, before agreeing to enter into a lease with someone else, the lessor must—
 - (a) make a written offer, expressed to be made under this section, to renew the lease with the tenant on terms no less favourable to the tenant than those of the lease proposed to be entered into with the other person; and
 - (b) provide the tenant with a copy of the proposed lease (as renewed or extended) and the disclosure statement or proposed disclosure statement required in relation to it.
- (3) If the lessor offers to renew the lease under this section—
 - (a) the offer remains open for the period stated in the offer (the *acceptance period*) or until its earlier acceptance; and
 - (b) the tenant must tell the lessor in writing within the acceptance period whether the tenant accepts the offer; and
 - (c) if the tenant does not tell the lessor in writing within the acceptance period that the tenant accepts the offer—the offer lapses.
- (4) The acceptance period must be a reasonable period (at least 10 business days) after the offer is made.
- (5) The negotiations must continue until—
 - (a) the tenant rejects an offer under this section (or the offer lapses); or
 - (b) the tenant tells the lessor in writing that the tenant does not want to continue negotiations for a renewal of the lease.
- (6) The negotiations must be conducted honestly.
- (7) A tenant may not accept an offer under this section subject to the amount of rent being worked out.

107AB Notice of absence of right of preference

- (1) If the tenant does not have a right of preference, the lessor must, by written notice—
 - (a) tell the tenant that the tenant does not have a right of preference; and
 - (b) explain why the tenant does not have a right of preference.

Note Section 107 (3) sets out the circumstances in which the tenant does not have a right of preference.

- (2) The lessor must give the notice to the tenant—
 - (a) at least 6 months, but not more than 12 months, before the end of the term of the lease; or
 - (b) if the term of the lease is 12 months or less—at least 3 months, but not more than 6 months, before the end of the term.

2

Amendment 4

Proposed section 107B (2) (b)—

Omit “gave the lawyer apparently credible assurances”, substitute “told the lawyer”.

PART 5 – Attorney-General’s amendment to his amendment No. 1 to Mr Rugendyke’s amendment No 4

Amendment to proposed new section 107AA.

Delete subclause (7), insert new subclause (7).

“Section 51 does not apply if the tenant has accepted an offer expressed to be made under section 107AA.”.

PART 6 – Attorney-General to Leader of the Opposition’s amendments

1

Proposed new division 12.2

New clause 107C—

After proposed new clause 107B, insert the following new clause:

107C Abandonment

- (1) If the tenant abandons the premises, the lease terminates on abandonment.
- (2) If the tenant abandons the premises before the end of the lease, the lessor may apply to the Magistrates Court for—
 - (a) an order declaring the lessor’s right to enter the premises to recover possession of them; and
 - (b) compensation for any damage caused to the lessor because of the abandonment, including the reasonable costs of advertising the premises for lease and of giving a right to occupy the premises to someone else.
- (3) In working out the amount of compensation that may be awarded under this section in relation to costs, the Magistrates Court must have regard to—
 - (a) when, apart from the abandonment, the lease would have ended; and

- (b) whether the lessor would have incurred the costs at the end of the lease.
- (4) The lessor is not entitled to be compensated under this section for a loss that could reasonably have been avoided by the lessor.
- (5) This section does not limit any right of the lessor to enter abandoned premises without a declaration under subsection (2) (a).

Example of when lessor may enter abandoned premises without declaration

As a reasonable response to an emergency situation.

PART 7 – Attorney-General**1****Clause 2****Page 1, line 6—**

Omit the clause, substitute the following clause:

2 Commencement

This Act commences on 1 July 2002.

2**Dictionary****Definition of *commencement day*****Page 77, line 10—**

Omit the definition, substitute the following definition:

commencement day means 1 July 2002.

Schedule 2**LEASES (COMMERCIAL AND RETAIL) BILL 2000 [NO 2]**

Amendments circulated by Ms Tucker**PART 1****1****Clause 7****Subclause (2)****Page 4, line 4—**

Omit the subclause.

2**Clause 7****Subclause (4)****Page 4, line 13—**

Omit the subclause.

3**Clause 12****Proposed new paragraphs (1) (ca) to (cg)****Page 7, line 8—**

After paragraph (c), insert the following new paragraphs:

- (ca) premises under a lease to an association incorporated under the *Associations Incorporation Act 1991*, or an entity eligible to be incorporated under that Act, other than premises used for residential purposes;
- (cb) premises under a lease to an unincorporated charitable entity, other than premises used for residential purposes;
- (cc) premises under a lease that are used to provide a combination of business accommodation and secretarial services;
- (cd) premises under a lease that are used as a child care centre;
- (ce) premises under a lease that are used as a sports centre (other than premises covered by another paragraph);
- (cf) premises under a lease that are used as an art gallery;
- (cg) premises under a lease that are used as a gardening supply centre;

4**Clause 12****Subclause (2)****Page 7, line 12—**

Omit the subclause, substitute the following subclause:

- (2) However, this Act does not apply to a lease if the lease is for less than 6 months, unless the lease is a continuous occupation lease.

5**Clause 15****Page 8, line 26—**

Omit the clause, substitute the following clause:

15 Is assignment the same as entering into lease for working out application of Act?

In working out whether this Act applies to a lease, a person (the *assignee*) is taken to have entered into the lease when the lease is assigned to the assignee.

6**Clause 23****Subclause (2)****Page 15, line 25—**

Omit the subclause, substitute the following subclause:

- (2) However, if a party requires the lease to be registered under the *Land Titles Act 1925*, the party must pay any fee for registration of the lease.

7**Clause 57****Subclause (1)****Page 28, line 15—**

After “about the conflict”, insert “(including details of the conflict)”.

8**Clause 57****Proposed new subclauses (4) and (5)****Page 28, line 21—**

At the end of the clause, insert the following new subclauses:

- (4) For this section, the valuer is taken to have an interest that could conflict with the proper working out of the market rent for the lease if the valuer has or has recently had an interest, whether direct or indirect, in commercial property ownership or commercial property management.
- (5) Subsection (4) does not limit the circumstances in which the valuer has an interest that could conflict with the proper working out of the market rent for the lease.

9

Clause 66

Subparagraph (4) (a) (i)

Page 33, line 12—

Omit the subparagraph.

10

Clause 83

Paragraph (b)

Page 40, line 15—

After “centre”, insert “unless the change materially affects the tenant’s business”.

11

Clause 88

Paragraph (a)

Page 42, line 5—

Omit “considers repair of the premises or building is impracticable or undesirable”, substitute “reasonably considers repair of the premises or building is impracticable”.

12

Clause 89

Subparagraph (1) (c) (iii)

Page 42, line 23—

Omit “or undesirable”.

13

Clause 104

Paragraph (6) (a)

Page 52, line 1—

Omit the paragraph.

14

Clause 104

Paragraph (7) (c)

Page 52, line 19—

Omit the paragraph.

15

Clause 104

Subclause (8), definition of *total term*, paragraph (c)

Page 52, line 28—

Omit the paragraph.

16**Clause 140****Page 65, line 23—**

Omit the clause, substitute the following clause:

140 Costs

The parties in a proceeding under this Act must bear their own costs unless the Magistrates Court or Supreme Court makes an order about costs.

17**Schedule 1****Page 72, line 1—**

Omit the schedule.

18**Schedule 2****Paragraph (2) (i)****Page 75, line 2—**

Before “value”, insert “rental”.

19**Schedule 2****Item (5)****Page 75, line 17—**

Omit the item, substitute the following item:

- (5) The valuer must, in writing, tell each party to the lease of the party’s right to make a submission in relation to the valuation.

20**Schedule 2****Item (8)****Page 75, line 26—**

Before “the matters”, insert “particulars of”.

21**Schedule 2****Item (9)****Page 75, line 28—**

Omit the item, substitute the following item:

- (9) The valuation must include particulars of any concession or inducement disclosed to the valuer.

22

Dictionary

Definition of *key money*, paragraph (b)

Page 78, line 24—

Omit the paragraph, substitute the following paragraph:

- (b) a payment for the goodwill or other assets of a business genuinely operated by the lessor that is sold or to be sold by the lessor to the tenant; or

PART 2 – Ms Tucker

1

Clause 38

Proposed new subclauses (2) and (3)

Page 21, line 2—

At the end of the clause, insert the following new subclauses:

- (2) If key money is accepted by the lessor in contravention of this section, the amount paid, or the value of the benefit given, to or at the direction of the lessor is recoverable as a debt owing by the lessor to the tenant.
- (3) Subsection (2) does not limit any other remedy of the tenant for the contravention.

2

Clause 59

Subclause (2)

Page 29, line 5—

Omit the subclause.

3

Clause 106

Page 53, line 16—

Omit the clause, substitute the following clause:

106 Asking lessor's intention about renewal

The tenant may, in writing, ask the lessor to tell the tenant whether the lessor intends to renew the tenant's lease—

- (a) for a lease for longer than 1 year—at any time in the year before the lease ends; or
- (b) in any other case—at any time in the 6 months before the lease ends.

Schedule 3

LEASES (COMMERCIAL AND RETAIL) BILL 2000 [NO 2]

Amendments circulated by Mr Rugendyke

PART 1

1

Clause 13

Subclause (2)

Page 8, line 16—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

2

Clause 13

Subclause (3)

Page 8, line 19

Omit “Magistrates Court”, substitute “tenancy tribunal”.

3

Clause 17

Page 9, line 18—

Omit the clause, substitute the following clause:

17 What disputes does this Act apply to?

- (1) This Act applies to a dispute about, or arising from, a lease or a right arising from this Act.
- (2) Without limiting subsection (1), this Act applies to disputes about the following:
 - (a) the termination of a lease;
 - (b) a rental rate increase;
 - (c) a claim for compensation in relation to, or arising from, a lease or this Act;
 - (d) a lease that is no longer in force.
- (3) This Act applies to a dispute about, or arising from, a lease irrespective of when the lease was entered into, renewed or extended.
- (4) However, this Act does not apply to a lease that is no longer in force if the lease ended before the commencement of this Act.
- (5) This Act applies to a dispute about an act or omission irrespective of when the act or omission happened.

- (6) However, if the act or omission, or latest of a series of acts or omissions, giving rise to the dispute happened more than 6 months before the commencement of this Act, the tenancy tribunal has a discretion about whether to hear and decide the dispute.

4

Clause 18

Page 12, line 9—

[Oppose the clause.]

5

Clause 22

Subclause (2)

Page 14, line 6—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

6

Clause 22

Subclause (2)

Page 14, line 9—

Omit “court” substitute “tribunal”.

7

Clause 22

Subclause (4)

Page 15, line 18—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

8

Clause 22

Subclause (5)

Page 15, line 19—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

9

Clause 52

Subclause (2)

Page 26, line 6—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

10

Clause 52

Subclause (3)

Page 26, line 10—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

11**Clause 52****Subclause (4)****Page 26, line 21—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

12**Clause 52****Paragraph (4) (a)****Page 26, line 23—**

Omit “court” substitute “tribunal”.

13**Clause 52****Subclause (5)****Page 26, line 27—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

14**Clause 52****Subclause (5)****Page 26, line 28—**

Omit “court” substitute “tribunal”.

15**Clause 52****Subclause (6)****Page 26, line 30—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

16**Clause 52****Subclause (6)****Page 26, line 31—**

Omit “court” substitute “tribunal”.

17**Clause 53****Subclause (1)****Page 27, line 5—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

18

Clause 53

Subclause (2)

Page 27, line 6—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

19

Clause 53

Paragraph (3) (a)

Page 27, line 10—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

20

Clause 53

Paragraph (4) (b)

Page 27, line 17—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

21

Clause 57

Subclause (1)

Page 28, line 14—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

22

Clause 57

Subclause (2)

Page 28, line 18—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

23

Clause 57

Subclause (3)

Page 28, line 20—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

24

Clause 58

Subclause (1)

Page 28, line 23—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

25**Clause 58****Subclause (2)****Page 28, line 30—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

26**Clause 60****Paragraph (1) (a)****Page 29, line 14—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

27**Clause 60****Paragraph (1) (b)****Page 29, line 16—**

Omit “court” substitute “tribunal”.

28**Clause 60****Subclause (2)****Page 29, line 19—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

29**Clause 84****Subclause (2)****Page 40, line 22—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

30**Clause 84****Subclause (3)****Page 40, line 24—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

31**Clause 85****Subclause (2)****Page 41, line 7—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

32

Clause 85

Subclause (3)

Page 41, line 8—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

33

Clause 86

Paragraph (1) (a)

Page 41, line 16—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

34

Clause 86

Paragraph (1) (b)

Page 41, line 18—

Omit “court”, substitute “tribunal”.

35

Clause 86

Subclause (2)

Page 41, line 20—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

36

Clause 87

Subclause (1)

Page 41, line 25—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

37

Clause 98

Subclause (1)

Page 47, line 20—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

38

Clause 99

Subclause (5)

Page 48, line 10—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

39**Clause 104****Paragraph (1) (b)****Page 51, line 8—**

Omit the paragraph.

40**Clause 104****Subclause (6)****Page 51, line 29—**

Omit the subclause.

41**Clause 105****Paragraph (2) (b)****Page 53, line 5—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

42**Clause 105****Subclause (3)****Page 53, line 6—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

43**Clause 105****Subclause (5)****Page 53, line 10—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

44**Proposed new clause 105A****Page 53, line 12—**

After clause 105, insert the following new clause:

105A Preference to be given to existing tenant

- (1) If the lessor proposes to re-lease the premises and the tenant wants to renew or extend the term of the lease, the lessor must give preference under this section to the tenant over other possible tenants for the premises, particularly if there is substantial goodwill in relation to the tenant’s business at the premises.
- (2) The lessor must assume the tenant wants a renewal or extension of the term of the lease unless the tenant has told the lessor in writing (otherwise than in the lease) within 12 months before the end of the term that the tenant does not want a renewal or extension.

- (3) Unless the tenant has told the lessor within that 12 months that the tenant does not want to renew or extend the term of the lease, the lessor must begin genuine negotiations with the tenant for a renewal or extension of the lease—
 - (a) for a lease longer than 1 year—at least 6 months, and not longer than 12 months, before the end of the term of the lease; or
 - (b) in any other case—at least 3 months, and not longer than 6 months, before the end of the term of the lease.
- (4) The lessor must not offer to lease the premises to someone other than the tenant unless it would be substantially more advantageous to the lessor to lease the premises to the other person rather than renew or extend the term of the lease.
- (5) However, the lessor is not obliged to prefer the tenant under this section if—
 - (a) the lease is for premises in a shopping centre and the lessor reasonably wants to change the tenancy mix within the whole precinct of the shopping centre; or
 - (b) the tenant has breached the lease substantially or persistently; or
 - (c) the lessor—
 - (i) does not propose to re-lease the premises within a period of at least 6 months after the end of the term of the lease; and
 - (ii) needs vacant possession of the premises during that period for the lessor's own purposes (but not to carry on a business of the same kind as the business carried on by the tenant at the premises).

45

Clause 112

Subclause (1)

Page 55, line 18—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

46

Clause 114

Paragraph (a)

Page 56, line 6—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

47

Clause 114

Paragraph (b)

Page 56, line 8—

Omit “court” substitute “tribunal”.

48**Clause 131****Page 63, line 8—**

Omit the clause, substitute the following clause:

131 Jurisdiction to decide applications under Act

The tenancy tribunal has jurisdiction to decide applications under this Act.

49**Clause 132****Page 63, line 13—**

Omit the clause, substitute the following clause:

132 Applications that may be made to tribunal

An application may be made in relation to a dispute to which this Act applies.

Note Section 17 sets out the disputes to which this Act applies.

50**Proposed new clause 132A****Page 63, line 19—**

After clause 132, insert the following new clause:

132A Timing of rental applications

- (1) An application by a tenant in relation to a rent increase must be made at least 28 days before the increase is proposed to take effect, unless the tenancy tribunal waives this requirement.
- (2) However, the tenancy tribunal may hear an application relating to a proposed rental rate increase made less than 28 days before the day the increase is proposed to take effect, if satisfied that—
 - (a) the application is late because of special circumstances; and
 - (b) to hear the application would not place the lessor in a significantly worse position than the lessor would have been had the tenant applied at least 28 days before the day the increase is proposed to take effect.

51**Proposed new clause 132B****Page 63, line 20—**

Before clause 133, insert the following new clause:

132B Tribunal to act promptly

If an application is made to the tenancy tribunal in relation to a dispute, the tribunal must endeavour to resolve the dispute, or hear and decide the application, within 28 days after the application is made to the tribunal.

52

Clause 133

Subclause (1)

Page 63, line 21—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

53

Clause 134

Page 64, line 2—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

54

Clause 135

Subclause (1)

Page 64, line 16—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

55

Clause 135

Subclause (2)

Page 64, line 20—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

56

Clause 135

Paragraph (2) (a)

Page 64, line 21—

Omit the paragraph, substitute the following paragraph:

(a) hearing the dispute as quickly as possible; and

57

Clause 136

Page 64, line 24—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

58

Proposed new clause 136A

Page 64, line 27—

After clause 136, insert the following new clause:

136A Interim orders

- (1) This section applies if, at any time after an application is made to the tenancy tribunal for resolution of a dispute, a person who has a direct interest in the dispute (the *applicant*) applies to the tribunal for an interim order.

- (2) If the tenancy tribunal is satisfied that, if an interim order were not made, the applicant would suffer detriment, the tribunal may make an appropriate interim order to safeguard the position of the applicant.
- (3) If the person against whom the interim order is made is not present at the making of the order, the registrar must serve a copy of the order on the person as soon as practicable after the order is made.
- (4) The interim order remains in force until the earlier of the following:
 - (a) the tenancy tribunal revokes the order;
 - (b) the tribunal makes an order at the end of a hearing.
- (5) On application by the applicant or any other person who has a direct interest in the dispute, the tenancy tribunal may vary or revoke the interim order.

59**Proposed new clause 136B****Page 64, line 28—**

Before clause 137, insert the following new clause:

136B Power to grant relief

- (1) The tenancy tribunal may exercise any power to grant relief in relation to a dispute to which this Act applies that would be exercisable by the Magistrates Court under the *Magistrates Court (Civil Jurisdiction) Act 1982* if that Act applied to the dispute, unless this Act expressly states otherwise.
- (2) In addition to any other order the tenancy tribunal may make, the tribunal may do any or all of the following:
 - (a) reopen a lease and take whatever action it considers appropriate in the circumstances, including—
 - (i) varying the lease, whether by inserting new terms or otherwise; and
 - (ii) setting the lease aside, in part or whole;
 - (b) make any order required to enforce this Act;
 - (c) restrain a person from breaching a lease or contravening this Act;
 - (d) require performance of the terms of a lease or a provision of this Act;
 - (e) require the payment of compensation for loss caused by or resulting from a breach of a term of a lease or a contravention of a provision of this Act;
 - (f) restore a lease to a person and give the person possession of the premises—
 - (i) from which the person was evicted in contravention of this Act; or
 - (ii) that are vacated because of the misleading behaviour of the lessor, including giving a notice that purports to be a notice to vacate that is invalid;
 - (g) require payment of all or part of the rent payable under the lease to the tribunal until the tribunal orders otherwise;

- (h) direct payment to be made out of amounts paid to the tribunal;
- (i) terminate a lease and give vacant possession of the premises to the owner.
- (3) In addition, the tenancy tribunal may make any other order it considers appropriate.
- (4) However, the tenancy tribunal may not make an order under this section that would be inconsistent with this Act.
- (5) The tenancy tribunal is not limited in any amount it may order to be paid.

60

Clause 137

Subclause (1)

Page 64, line 29—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

61

Clause 137

Subclause (2)

Page 65, line 1—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

62

Clause 137

Subclause (3)

Page 65, line 10—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

63

Clause 137

Subclause (4)

Page 65, line 13—

Omit the subclause, substitute the following subclause:

- (4) If the tenancy tribunal does not decide its own procedures, the procedures in the provisions of the *Magistrates Court (Civil Jurisdiction) Act 1982* mentioned in subsection (2) apply as if a reference in the provisions to the Magistrates Court were a reference to the tenancy tribunal and any other necessary changes were made to the provisions.

64

Clause 138

Page 65, line 17—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

65

Clause 138

Page 65, line 18—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

66**Clause 139****Page 65, line 20—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

67**Clause 140****Paragraph (a)****Page 65, line 26—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

68**Clause 140****Paragraph (b)****Page 65, line 27—**

Omit “court”, substitute “tenancy tribunal or Supreme Court”.

69**Clause 141****Subclause (1)****Page 66, line 3—**

Omit “or fact from a decision of the Magistrates Court”, substitute “from a decision of the tenancy tribunal”.

70**Clause 142****Paragraph (a)****Page 66, line 13—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

71**Clause 142****Paragraph (b)****Page 66, line 15—**

Omit “Magistrates Court”, substitute “tenancy tribunal”.

72**Proposed new part 14A****Page 66, line 17—**

After part 14, insert the following new part:

Part 14A Tenancy tribunal

142A Tenancy tribunal

The Tenancy Tribunal is established by this section.

142B Constitution of tribunal etc

- (1) The tenancy tribunal consists of—
 - (a) the president; or
 - (b) the president and 2 members appointed by the president under section 142C (3).
- (2) The president is responsible for ensuring the orderly and prompt discharge of the business of the tenancy tribunal.

142C Membership of tribunal

- (1) The president must be a magistrate appointed by the Minister in writing.
- (2) The president holds office for the period (not longer than 5 years) stated in the instrument of appointment.
- (3) If, having regard to the nature and complexity of a particular dispute, the president considers it desirable, the president may appoint the following 2 additional members to the tribunal for hearing and resolving or deciding the dispute:
 - (a) 1 member selected from the panel appointed under subsection (4);
 - (b) 1 member selected from the panel appointed under subsection (5).
- (4) The Minister must appoint people who, in the Minister's opinion, are qualified by experience and expertise to represent the interests of tenants to a panel established for this subsection.
- (5) The Minister must appoint people who, in the Minister's opinion, are qualified by experience and expertise to represent the interests of owners to a panel established for this subsection.

142D Powers of tribunal

The tenancy tribunal has power to do everything necessary or convenient to be done for or in connection with the exercise of its functions unless expressly stated otherwise in this Act.

142E Expenses of tribunal members

The Territory must reimburse a member mentioned in section 142C (3) (Membership of tribunal) for expenses reasonably incurred in the exercise of the member's functions.

142F Registrar and deputy registrar of tribunal

- (1) The registrar of the Magistrates Court is the registrar of the tenancy tribunal.
- (2) Each deputy registrar of the Magistrates Court is a deputy registrar of the tenancy tribunal.

- (3) Subject to any direction of the registrar, a deputy registrar may exercise the powers of the registrar.
- (4) The registrar may, in writing, delegate to a public servant all or any of the registrar's powers under this Act.

142G Protection of tribunal members etc

- (1) An action or proceeding does not lie against a relevant person in relation to an act done or omitted to be done honestly in the exercise or purported exercise of a function under this Act.
- (2) In this section:
relevant person means—
 - (a) a member of the tribunal; or
 - (b) a member of the staff of the tribunal; or
 - (c) the registrar or a deputy registrar; or
 - (d) a person acting under the direction or authority of the tribunal; or
 - (e) a participant in a proceeding in the tribunal.

73

Clause 144

Paragraph (2) (a)

Page 67, line 19—

Omit “Magistrates Court”, substitute “tenancy tribunal”.

74

Clause 144

Paragraph (2) (b)

Page 67, line 20—

Omit “court” substitute “tribunal”.

75

Clause 145

Proposed new definitions of *new tribunal* and *old tribunal*

Page 68, line 7—

Insert the following new definitions:

new tribunal means the tenancy tribunal established by section 142A (Tenancy tribunal).

old tribunal means the Tenancy Tribunal established by section 60 of the repealed Act.

76

Clause 145

Definitions of *tribunal* and *tribunal registrar*

Page 68, line 10—

Omit the definitions, substitute the following definition:

tribunal registrar means the registrar of the old tribunal.

77

Clause 146

Page 68, line 16—

Omit “tribunal”, substitute “old tribunal”.

78

Clause 150

Page 69, line 18—

[Oppose the clause.]

79

Clause 152

Page 70, line 5—

Omit the clause, substitute the following clause:

152 Old tribunal decisions

A decision of the old tribunal under the repealed Act is taken to have been a decision of the new tribunal under this Act.

80

Clause 159

Paragraph (c)

Page 71, line 18—

Omit the paragraph.

81

Clause 160

Proposed new section 12, note

Page 71, line 25—

Omit the note.

82

Dictionary

Definition of *Magistrates Court*

Page 79, line 17—

Omit the definition.

83**Dictionary****Proposed new definition of *tenancy tribunal*****Page 80, line 11—**

Insert the following new definition:

tenancy tribunal means the Tenancy Tribunal established by section 142A.

PART 2 – Mr Rugendyke**1****Clause 17****Page 9, line 18—**

Omit the clause, substitute the following clause:

17 What disputes does this Act apply to?

- (1) This Act applies to a dispute about, or arising from, a lease or a right arising from this Act.
- (2) Without limiting subsection (1), this Act applies to disputes about the following:
 - (a) the termination of a lease;
 - (b) a rental rate increase;
 - (c) a claim for compensation in relation to, or arising from, a lease or this Act;
 - (d) a lease that is no longer in force.
- (3) This Act applies to a dispute about, or arising from, a lease irrespective of when the lease was entered into, renewed or extended.
- (4) However, this Act does not apply to a lease that is no longer in force if the lease ended before the commencement of this Act.
- (5) This Act applies to a dispute about an act or omission irrespective of when the act or omission happened.
- (6) However, if the act or omission, or latest of a series of acts or omissions, giving rise to the dispute happened more than 6 months before the commencement of this Act, the Magistrates Court has a discretion about whether to hear and decide the dispute.

2**Clause 18****Page 12, line 9—**

[Oppose the clause.]

3

Clause 104

Paragraph (1) (b)

Page 51, line 8—

Omit the paragraph.

4

Clause 104

Subclause (6)

Page 51, line 29—

Omit the subclause.

5

Proposed new clause 105A

Page 53, line 12—

After clause 105, insert the following new clause:

105A Preference to be given to existing tenant

- (1) If the lessor proposes to re-lease the premises and the tenant wants to renew or extend the term of the lease, the lessor must give preference under this section to the tenant over other possible tenants for the premises, particularly if there is substantial goodwill in relation to the tenant's business at the premises.
- (2) The lessor must assume the tenant wants a renewal or extension of the term of the lease unless the tenant has told the lessor in writing (otherwise than in the lease) within 12 months before the end of the term that the tenant does not want a renewal or extension.
- (3) Unless the tenant has told the lessor within that 12 months that the tenant does not want to renew or extend the term of the lease, the lessor must begin genuine negotiations with the tenant for a renewal or extension of the lease—
 - (a) for a lease longer than 1 year—at least 6 months, and not longer than 12 months, before the end of the term of the lease; or
 - (b) in any other case—at least 3 months, and not longer than 6 months, before the end of the term of the lease.
- (4) The lessor must not offer to lease the premises to someone other than the tenant unless it would be substantially more advantageous to the lessor to lease the premises to the other person rather than renew or extend the term of the lease.
- (5) However, the lessor is not obliged to prefer the tenant under this section if—
 - (a) the lease is for premises in a shopping centre and the lessor reasonably wants to change the tenancy mix within the whole precinct of the shopping centre; or
 - (b) the tenant has breached the lease substantially or persistently; or
 - (c) the lessor—
 - (i) does not propose to re-lease the premises within a period of at least 6 months after the end of the term of the lease; and

- (ii) needs vacant possession of the premises during that period for the lessor's own purposes (but not to carry on a business of the same kind as the business carried on by the tenant at the premises).

6**Clause 132****Page 63, line 13—**

Omit the clause, substitute the following subclause:

132 Applications that may be made

An application may be made in relation to a dispute to which this Act applies.

Note Section 17 sets out the disputes to which this Act applies.

7**Proposed new clause 132A****Page 63, line 19—**

After clause 132, insert the following new clause:

132A Timing of rental applications

- (1) An application by a tenant in relation to a rent increase must be made at least 28 days before the increase is proposed to take effect, unless the Magistrates Court waives this requirement.
- (2) However, the Magistrates Court may hear an application relating to a proposed rental rate increase made less than 28 days before the day the increase is proposed to take effect, if satisfied that—
 - (a) the application is late because of special circumstances; and
 - (b) to hear the application would not place the lessor in a significantly worse position than the lessor would have been had the tenant applied at least 28 days before the day the increase is proposed to take effect.

8**Proposed new clause 132B****Page 63, line 20—**

Before clause 133, insert the following new clause:

132B Court to act promptly

If an application is made to the Magistrates Court in relation to a dispute, the court must endeavour to resolve the dispute, or hear and decide the application, within 28 days after the application is made to the court.

9

Clause 135

Paragraph (2) (a)

Page 64, line 21—

Omit the paragraph, substitute the following paragraph:

- (a) hearing the dispute as quickly as possible; and

10

Proposed new clause 136A

Page 64, line 27—

After clause 136, insert the following new clause:

136A Interim orders

- (1) This section applies if, at any time after an application (the *original application*) is made to the Magistrates Court for resolution of a dispute, a person who has a direct interest in the dispute (the *applicant*) applies to the court for an interim order.
- (2) If the Magistrates Court is satisfied that, if an interim order were not made, the applicant would suffer detriment, the court may make an appropriate interim order to safeguard the position of the applicant.
- (3) If the person against whom the interim order is made is not present at the making of the order, the registrar must serve a copy of the order on the person as soon as practicable after the order is made.
- (4) The interim order remains in force until the earlier of the following:
 - (a) the Magistrates Court revokes the order;
 - (b) the court makes an order (other than an interim order) on the original application.
- (5) On application by the applicant or any other person who has a direct interest in the dispute, the Magistrates Court may vary or revoke the interim order.

11

Proposed new clause 136B

Page 64, line 28—

Before clause 137, insert the following new clause:

136B Power to grant relief

- (1) The Magistrates Court may exercise any power to grant relief in relation to a dispute to which this Act applies that would be exercisable by the court under the *Magistrates Court (Civil Jurisdiction) Act 1982* if that Act applied to the dispute, unless this Act expressly states otherwise.
- (2) In addition to any other order the Magistrates Court may make, the court may do any or all of the following:
 - (a) reopen a lease and take whatever action it considers appropriate in the circumstances, including—

- (i) varying the lease, whether by inserting new terms or otherwise; and
- (ii) setting the lease aside, in part or whole;
- (b) make any order required to enforce this Act;
- (c) restrain a person from breaching a lease or contravening this Act;
- (d) require performance of the terms of a lease or a provision of this Act;
- (e) require the payment of compensation for loss caused by or resulting from a breach of a term of a lease or a contravention of a provision of this Act;
- (f) restore a lease to a person and give the person possession of the premises—
 - (i) from which the person was evicted in contravention of this Act; or
 - (ii) that are vacated because of the misleading behaviour of the lessor, including giving a notice that purports to be a notice to vacate that is invalid;
- (g) require payment of all or part of the rent payable under the lease to the court until the court orders otherwise;
- (h) direct payment to be made out of amounts paid to the court;
- (i) terminate a lease and give vacant possession of the premises to the owner.
- (3) In addition, the Magistrates Court may make any other order it considers appropriate.
- (4) However, the Magistrates Court may not make an order under this section that would be inconsistent with this Act.
- (5) The Magistrates Court is not limited in any amount it may order to be paid.

12

Clause 141

Subclause (1)

Page 66, line 3—

Omit “or fact”.

13

Clause 150

Page 69, line 18—

[Oppose the clause.]

PART 3 – Mr Rugendyke

1

Clause 51

Subclause (1) (a)

Page 25, line 23—

Omit the paragraph, substitute the following paragraph:

- (a) either—

- (i) the lessor proposes to renew the lease and makes an offer to the tenant to renew the lease in response to a request under section 107 (Lessor's intentions about renewal); or
- (ii) the lessor gives the tenant preference under section 107A (Rules of conduct at end of lease term for shopping centre leases) by making an offer to the tenant to renew the lease; or

2

Clause 52

Subparagraph (3) (a) (i)

Page 26, line 13—

Omit the subparagraph, substitute the following subparagraph:

- (i) either—
 - (A) proposes to renew the lease and makes an offer to renew the lease in response to a request under section 107 (Lessor's intentions about renewal); or
 - (B) gives the tenant preference under section 107A (Rules of conduct at end of lease term for shopping centre leases) by making an offer to the tenant to renew the lease; or

3

Division 12.1

Heading

Page 51, line 3—

Omit the heading, substitute the following heading:

Division 12.1 Extension

4

Clauses 106 and 107

Page 53, line 13—

Omit the clauses, substitute the following division:

Division 12.1A Renewal

106 Objects of div 12.1A

- (1) The Legislative Assembly recognises that conflicts sometimes happen between a lessor's expectation that the lessor will be able to deal with the leased premises subject only to the terms of the lease and a tenant's expectations of reasonable security of tenure.
- (2) The objects of this division are to achieve an appropriate balance between reasonable but conflicting expectations and to ensure fair dealing, as far as practicable, between lessor and tenant in relation to the renewal or extension of premises.

107 Lessor's intentions about renewal

- (1) This section applies to all leases.
- (2) The tenant may, in writing, ask the lessor to tell the tenant whether the lessor intends to renew the lease if—
 - (a) for a lease for longer than 1 year—the lease is due to end in not less than 6 months and not longer than 1 year; or
 - (b) in any other case—the lease is due to end in not less than 3 months and not longer than 6 months.
- (3) If the lessor receives a request under subsection (2) on a day (the ***request day***), the lessor must tell the tenant, in writing within 1 month after the request day, either that—
 - (a) the lessor proposes to renew the lease; or
 - (b) the lessor does not propose to renew the lease.
- (4) If the lessor fails to notify the tenant under subsection (3), the lease is extended by a period equal to the period starting 1 month after the request day and ending when the lessor gives the tenant a notice that, apart from being late, complies with subsection (3).

107A Rules of conduct at end of lease term for shopping centre leases

- (1) This section applies to a lease for premises in the retail area of a shopping centre if the lessor proposes to re-lease the premises and the tenant wants to renew or extend the lease.
- (2) The lessor must allow the tenant to renew or extend the lease in preference to allowing other possible tenants to lease the premises.
- (3) The lessor must assume that the tenant wants to renew or extend the lease unless the tenant has told the lessor, in writing within 12 months before the end of the lease, that the tenant does not want to renew or extend the lease.
- (4) The lessor may offer to lease the premises to someone other than the tenant only if it would be substantially more advantageous to the lessor to lease the premises to the other person rather than renew or extend the term of the lease.
- (5) However, the lessor is not obliged to prefer the tenant under this section if—
 - (a) the lessor reasonably wants to change the tenancy mix within the shopping centre; or
 - (b) the tenant has breached the lease substantially or persistently; or
 - (c) the lessor—
 - (i) does not propose to re-lease the premises within a period of at least 6 months after the end of the term of the lease; and
 - (ii) needs vacant possession of the premises during that period for the lessor's own purposes (but not to carry on a business of the same kind as the business carried on by the tenant at the premises).
- (6) Also, this section does not apply in relation to the lease if—
 - (a) section 107B applies in relation to the lease; or

- (b) if the lease is a sublease—the sublease is as long as the term of the head lease allows; or
- (c) the lease arises when the tenant holds over after the end of an earlier lease with the consent of the lessor and the holding over is for 6 months or less; or
- (d) the lease is excluded from this section under the regulations.

Note This Act does not apply to leases with a term of less than 6 months unless they are continuous occupation leases (see s 12 (2) (c)).

107B Certified exclusionary clauses

- (1) Section 107A may be excluded in relation to a lease by a certified exclusionary clause.
- (2) A ***certified exclusionary clause*** is a provision of a lease in relation to which a certificate signed by an independent lawyer is endorsed on the lease to the effect that—
 - (a) before the lease was signed and at the tenant's request, the lawyer explained the effect of the provision and how section 107A would apply in relation to the lease if the lease did not include the provision; and
 - (b) the tenant gave the lawyer apparently credible assurances that the tenant was not acting under coercion or undue influence in asking for or agreeing to the inclusion of the provision in the lease.
- (3) For this section, an ***independent lawyer*** is a lawyer who is not acting for the lessor.

107C Fair dealing between lessor and tenant about renewal of shopping centre lease

- (1) If the lessor fails to comply with section 107A (Rules of conduct at end of lease term for shopping centre leases) in relation to premises in the retail area of a shopping centre and the tenant is prejudiced by the failure, the tenant may apply to the Magistrates Court.

Note Under s 52 (Market rent—rent reviews, options and renewals) the lessor or tenant may ask the Magistrates Court to refer a dispute about the rent to be paid under a renewal to mediation.

- (2) On application under this section, the Magistrates Court may make any order it considers appropriate.
- (3) Without limiting subsection (2), the Magistrates Court may—
 - (a) order the lessor to renew or extend the lease, or to enter into a new lease with the tenant, on terms approved by the court (but not to the prejudice of the rights of a third-party who has honestly acquired an interest in the premises); or
 - (b) order the lessor to pay compensation (not more than 6 months rent under the lease) to the tenant.

5**Dictionary****Proposed new definition of *certified exclusionary clause*****Page 77, line 8—**

Insert the following new definition:

certified exclusionary clause—see section 107B.

PART 4 – Mr Rugendyke**Proposed new clause 148A****Page 69, line 8—**

After clause 148, insert the following new clause:

148A Preference to existing tenants

Section 107A (Rules of conduct at end of lease term for shopping centre leases) only applies to a lease entered into after the commencement of this Act.

Schedule 4

LEASES (COMMERCIAL AND RETAIL) BILL 2000 [NO 2]

Amendments circulated by Leader of the Opposition

PART 1

1

Clause 17

Table, item 7, column 1

Page 11—

Omit “or 105”, substitute “, 105, 114B or 114E”.

2

Clause 17

Note for item 7

Page 12, line 8—

At the end of the note, insert the following new dot points:

- section 114B—an application for a termination order
- section 114E—an application for a warrant for eviction.

3

Clause 30

Subclause (3)

Page 18, line 21—

Omit “1 month”, substitute “3 months”.

4

Clause 39

Proposed new subclause (2)

Page 22, line 5—

At the end of the clause, insert the following new subclause:

- (2) If the lessor requires payment of more than 3 months rent in advance, any advance payment over 3 months rent is taken, for this section, to be bond.

5

Clause 51

Paragraph (1) (b)

Page 25, line 26—

Omit “3 months”, substitute “12 months”.

6**Clause 52****Subparagraph (3) (a) (ii)****Page 26, line 18—**

Omit “3 months”, substitute “12 months”.

7**Clause 52****Paragraph (3) (b)****Page 26, line 19—**

Omit the paragraph, substitute the following paragraph:

- (b) the tenant accepts the lessor’s offer to renew the lease subject to the rent for the lease being market rent.

8**Clause 59****Heading****Page 29, line 1—**

Omit “rent”.

9**Clause 59****Subclause (1)****Page 29, line 3—**

Omit “rent concession”, substitute “concession”.

10**Clause 70****Proposed new subclause (4)****Page 35, line 23—**

At the end of the clause, insert the following new subclause:

- (4) Further, subsection (1) (a) (ii) does not allow the lessor to recover from the tenant an outgoing in relation to premises that are usually leased but are currently unleased.

11**Clause 73****Paragraph (2) (a)****Page 37, line 7—**

Omit “specifying minimum standards”, substitute “specifying reasonable minimum standards”.

12

Clause 84

Subclause (1)

Page 40, line 17—

Omit the subclause, substitute the following subclause:

- (1) This section applies if—
 - (a) leased premises are, or the building containing the premises is, damaged; and
 - (b) the premises cannot be used for their normal purpose because of the damage.

13

Clause 84

Paragraph (3) (a)

Page 40, line 26—

After “premises”, insert “or building”.

14

Clause 84

Subclause (4)

Page 40, line 32—

After “premises are”, insert “, or the building is,”.

15

Clause 85

Paragraph (1) (a)

Page 41, line 3—

Omit the paragraph, substitute the following paragraph:

- (a) leased premises are, or the building containing the premises is, damaged; and

16

Clause 85

Subclause (2)

Page 41, line 7—

After “premises are”, insert “, or the building is,”.

17

Clause 85

Subclause (4)

Page 41, line 13—

After “premises are”, insert “, or the building is,”.

18**Clause 87****Subclause (1)****Page 41, line 23—**

Omit the subclause, substitute the following subclause:

- (1) If there is a dispute about whether leased premises have been damaged, or the building containing the premises has been damaged, so that the leased premises cannot be used for their normal purpose, a party to the lease may apply to the Magistrates Court for a declaration about whether the premises can or cannot be used for their normal purpose because of the damage.

19**Clause 97****Proposed new subclause (6)****Page 47, line 15—**

At the end of the clause, insert the following new subclause:

- (6) The lessor's mortgagee or head lessor is taken to have consented to the tenant's request if the mortgagee or head lessor fails to give the lessor and tenant written notice of consent or refusal to consent to the request by the latest of the following:
 - (a) 14 days after being told of the request;
 - (b) if the mortgagee or head lessor asked for information or a document under section 96—14 days after receiving the information or document;
 - (c) if a further period has been agreed under subsection (4)—the end of that further period.

20**Proposed new division 12.2****Page 54, line 14—**

After division 12.1, insert the following new division:

Division 12.2 Termination generally**107A Other rights etc unaffected by termination**

- (1) The termination of a lease under division 12.3 (Termination by tenant) or 12.4 (Termination by lessor) does not affect a right, privilege or liability existing under, or because of, the lease immediately before its termination.
- (2) Unless the parties otherwise agree (otherwise than by a provision of the lease), subsection (1) is not affected by—
 - (a) the lessor not contesting a termination notice under division 12.3; or
 - (b) the tenant agreeing to a termination under division 12.4 or not contesting a termination under that division; or

- (c) the termination of the lease by agreement between the parties (otherwise than by a provision of the lease).

107B Termination by agreement

Divisions 12.3 and 12.4 do not prevent the termination of the lease by agreement between the parties (otherwise than by a provision of the lease).

21

Division 12.2

Heading

Page 54, line 15—

Omit the heading, substitute the following heading:

Division 12.3 Termination by tenant

22

Clause 111

Page 55, line 12—

[Oppose the clause.]

23

Proposed new division 12.4

Page 56, line 8—

After clause 114, insert the following new division:

Division 12.4 Termination by lessor

114A Procedure for termination of lease by lessor etc

- (1) If the lessor has a right to terminate the lease, the lessor may give written notice of termination to the tenant (the *termination notice*).
- (2) Within 14 days after being given the termination notice (the *allowed period*), the tenant may—
 - (a) contest the termination by application to the Magistrates Court; or
 - (b) agree to the termination by written notice to the lessor.
- (3) The termination takes effect in accordance with the terms of the termination notice if, within the allowed period, the tenant—
 - (a) does not contest the termination by application to the Magistrates Court; or
 - (b) agrees to the termination by written notice to the lessor.
- (4) If the tenant contests the termination by application to the Magistrates Court within the allowed period—
 - (a) the termination does not have effect unless it is confirmed by the Magistrates Court; and

- (b) if the termination is confirmed—it has effect on the day ordered by the court.
- (5) The lease may be terminated by the lessor only in accordance with this section.
- (6) If the tenant is in possession of the premises, the lessor may enter the premises to recover possession of the premises only—
 - (a) under a court order or warrant; or
 - (b) if the lease has been terminated in accordance with this section.

114B Confirmation of contested termination

- (1) If the tenant applies to the Magistrates Court under section 114A to contest the termination of the lease by the lessor, the court may confirm the termination if satisfied that—
 - (a) a ground (the *termination ground*) exists for the lessor to terminate the lease; and
 - (b) the act or omission that gave rise to the termination ground (the *breach*) is an act or omission of the tenant or a subtenant; and
 - (c) the lessor had given the tenant notice of the breach and a reasonable opportunity to remedy it; and
 - (d) the termination ground justifies confirming the termination.
- (2) Without limiting what is a reasonable opportunity under subsection (1) (c), the tenant is taken to have been given a reasonable opportunity to remedy the breach of an obligation to pay an amount if the tenant is allowed 14 days to pay the amount.
- (3) However, the Magistrates Court may refuse to confirm the termination even if satisfied about the matters mentioned in subsection (1) if—
 - (a) the breach has been remedied; or
 - (b) the tenant gives an undertaking that the tenant will remedy the breach within 14 days.
- (4) The Magistrates Court may suspend the order confirming the termination for not longer than 21 days if satisfied that—
 - (a) the immediate operation of the order would cause significant hardship to the tenant; and
 - (b) the hardship to the tenant would be greater than the hardship that the suspension would cause to the lessor.
- (5) The Magistrates Court may suspend the order under subsection (4) only once.

114C Confirmation of uncontested termination

- (1) This section applies if—
 - (a) the lessor has given the tenant a termination notice under section 114A (1) (Procedure for termination of lease by lessor etc); and

- (b) the tenant has not contested the termination, or agreed to the termination, under section 114A (2).

Note Under the *Interpretation Act 1967*, s 17A (Service of documents), a document (for example, the termination notice) is taken to have been given to someone (for example, the tenant) if it is sent by prepaid post to the address of the person last-known to the giver.

- (2) The lessor may apply to the Magistrates Court for confirmation of the termination.
- (3) The Magistrates Court may confirm the termination if it considers that the termination is reasonable in the circumstances.

114D Content of termination orders

- (1) An order under section 114B (Confirmation of contested termination) or 114C (Confirmation of uncontested termination) confirming the termination of the lease must state—
 - (a) the day the lease is or was terminated; and
 - (b) if the tenant has not already vacated the premises—the following:
 - (i) that the tenant must vacate the premises on or before that day;
 - (ii) either—
 - (A) that, if the tenant does not vacate the premises as required, the lessor may apply to the Magistrates Court for the issue of a warrant for the eviction of the tenant; or
 - (B) that, if the tenant does not vacate the premises as required, the order will have effect as if it were a warrant for eviction.
- (2) If the order states that it will have effect as if it were a warrant for eviction, the order must comply with section 114E as if it were a warrant for eviction under this division.

114E Content of warrants for eviction

- (1) A warrant for eviction under this division in relation to a lease must—
 - (a) authorise a designated officer to take appropriate action to evict the tenant within the time stated in the warrant; and
 - (b) require the designated officer to give the tenant at least 2 days notice of the proposed eviction.
- (2) The designated officer may ask a police officer to take action, or help the designated officer, to enforce the warrant.
- (3) For this section:

designated officer means someone responsible for taking action on warrants issued by the Magistrates Court.

114F Issue of warrants for eviction

On application by the lessor, the Magistrates Court must issue a warrant for eviction in relation to the lease if—

- (a) the court has made an order under section 114B (Confirmation of contested termination) or 114C (Confirmation of uncontested termination) confirming termination of the lease; and
- (b) the order stated that, if the tenant did not vacate the premises as required, the lessor could apply to the Magistrates Court for the issue of a warrant for the eviction of the tenant; and
- (c) the tenant did not vacate the premises as required and continues to occupy the premises in contravention of the order.

24**Clause 116****Proposed new subclause (3)****Page 57, line 28—**

At the end of the clause, insert the following new subclause:

- (3) A person who receives information under this section may only use the information for the purpose for which it was given and may not further disclose the information except with the tenant's consent.

25**Clause 122****Proposed new paragraph (2) (ba)****Page 59, line 30—**

After paragraph (b), insert the following new paragraph:

- (ba) the lessor distributes a written summary of the proposed redevelopment at or before the meeting; and

26**Clause 122****Subclause (4)****Page 60, line 7—**

Omit the subclause.

PART 2 – Leader of Opposition’s amendment to Mr Stefaniak’s amendment No. 1 (see Schedule 1, Part 4) to Mr Rugendyke’s amendments

Proposed new clause 107AA, subclause 7, omit the subclause.

PART 3 – Leader of Opposition’s amendment to Mr Rugendyke’s amendments

Proposed new amendment 1A

After Mr Rugendyke’s amendment to clause 51, insert the following new amendment:

1A

Clause 51

Proposed new subclause (1A)

Page 25, line 27—

After subclause (1), insert the following new subclause:

- (1A) However, this section does not apply if the tenant has already accepted an offer under section 107A (Rules of conduct at end of lease term for shopping centre leases).
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