

1998-1999-2000-2001

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

MINUTES OF PROCEEDINGS

No. 116

THURSDAY, 1 MARCH 2001

- 1** The Assembly met at 10.30 a.m., pursuant to adjournment. A quorum of Members not being present, the Speaker (Mr Cornwell) ordered the bells to be rung. A quorum having been formed the Speaker took the Chair and asked Members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

- 2 GOVERNMENT PROCUREMENT BILL 2001**

Mr Humphries (Treasurer), pursuant to notice, presented a Bill for an Act to establish a government procurement board and make provision about the procurement of goods and services by Territory entities, and for other purposes.

Paper: Mr Humphries presented an explanatory memorandum to the Bill.

Title read by Clerk.

Mr Humphries moved - That this Bill be agreed to in principle.

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

- 3 HOUSING ASSISTANCE ACT – INSTRUMENT NO 376 OF 2000 – PUBLIC RENTAL HOUSING ASSISTANCE PROGRAM – AMENDMENT**

Mr Wood, pursuant to notice, moved - That pursuant to the *Subordinate Laws Act 1989*, this Assembly disallows provisions 8, 10, 11, 13, 15 and 17 of Instrument No. 376 of 2000, the variation to the Public Rental Housing Assistance Program made pursuant to the *Housing Assistance Act 1987*.

Debate ensued.

Mr Moore (Minister for Health, Housing and Community Services), by leave, moved the following amendments together:

- (1) Omit all the words after “Assembly”, substitute the following:

“amends clause 15 of Instrument No. 376 of 2000, the variation to the Public Rental Housing Assistance Program made pursuant to the *Housing Assistance Act 1987*, by

deleting the definition at clause 17 (5) therein contained, and substituting the following:

‘(5) For the purpose of this clause 17, “Basic Rent” means the sum of:

- (a) 25% of the weekly income of the household, other than
 - (i) the weekly income of all members of the household that are less than 18 years of age other than the tenant; and
 - (ii) dependent child payments;
- (b) 10% of the weekly income of all members of the household that are independent persons less than 18 years of age other than the tenant, other than dependent child payments;
- (c) 10% of dependent child payments payable to any person in the household; and
- (d) any component of the rent for the Property which is in respect of hot water, space heating, garages and other facilities and is specified by the Commissioner to form part of the basic rent.’.”.

(2) Insert at the end to the motion the following:

“(2) This amendment takes effect as of the date of operation of Instrument No. 376 of 2000.”.

Debate continued.

Ms Tucker, by leave, was granted an extension of time.

Mr Moore, by leave, again addressed the Assembly.

It being 45 minutes after the commencement of Assembly business -

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

Debate continued.

Ms Tucker, by leave, again addressed the Assembly.

Ms Tucker, by leave, moved the following amendments together to Mr Moore’s proposed amendments:

- (1) Omit the words “Omit all words after ‘Assembly’, substitute the following:” Substitute “After ‘Program’ in Mr Wood’s original motion insert the following:”.
- (2) Before “amend clause 15”, insert “and”.

Question – That Ms Tucker’s amendments to Mr Moore’s proposed amendments be agreed to – put and negatived.

Question – That Mr Moore’s amendments be agreed to – Proposed.

Mr Moore, by leave, again addressed the Assembly.

Debate continued.

Question – put.

The Assembly voted -

Ayes, 9		Noes, 8	
Mrs Burke	Mr Osborne	Mr Berry	Mr Stanhope
Mr Cornwell	Mr Rugendyke	Mr Corbell	Ms Tucker
Mr Hird	Mr Smyth	Mr Hargreaves	Mr Wood
Mr Humphries	Mr Stefaniak	Mr Kaine	
Mr Moore		Mr Quinlan	

And so it was resolved in the affirmative – Mr Moore’s amendments agreed to.

Question – That the motion, as amended, viz:

(1) That pursuant to the *Subordinate Laws Act 1989*, this Assembly amends clause 15 of Instrument No. 376 of 2000, the variation to the Public Rental Housing Assistance Program made pursuant to the *Housing Assistance Act 1987*, by deleting the definition at clause 17 (5) therein contained, and substituting the following:

(5) For the purpose of this clause 17, “Basic Rent” means the sum of:

- (a) 25% of the weekly income of the household, other than
 - (i) the weekly income of all members of the household that are less than 18 years of age other than the tenant; and
 - (ii) dependent child payments;
- (b) 10% of the weekly income of all members of the household that are independent persons less than 18 years of age other than the tenant, other than dependent child payments;
- (c) 10% of dependent child payments payable to any person in the household; and
- (d) any component of the rent for the Property which is in respect of hot water, space heating, garages and other facilities and is specified by the Commissioner to form part of the basic rent.

(2) This amendment takes effect as of the date of operation of Instrument No. 376 of 2000 –

be agreed to – put and passed.

4 COURT SECURITY BILL 2000

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

Detail stage

Clauses 1 to 4 –

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

5 LEGISLATION (ACCESS AND OPERATION) 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.

Detail stage

Clause 1 –

Paper: Mr Stefaniak (Attorney-General) presented a supplementary explanatory memorandum to Government amendments to the Bill.

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

Clause 1, as amended, agreed to.

Clauses 2 to 18, by leave, taken together and agreed to.

Clause 19 –

On the motion of Mr Stefaniak, by leave, his amendments Nos 2 and 3 (*see* Schedule 1) were made together.

Clause 19, as amended, agreed to.

Clauses 20 to 30, by leave, taken together and agreed to.

New clauses 30A to 30H inclusive –

On the motion of Mr Stefaniak – New Chapter 4A (new clauses 30A to 30H) (his amendment No. 4 (*see* Schedule 1)) were inserted in the Bill.

Clauses 31 to 35, by leave, taken together –

Mr Stanhope (Leader of the Opposition) moved his amendment No. 4 (*see* Schedule 2)

Mr Stefaniak, by leave, addressed Mr Stanhope's amendments Nos 4 and 5.

Debate continued.

Question – That Mr Stanhope's amendment No. 4 be agreed to – put.

The Assembly voted -

Ayes, 8

Noes, 9

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

Mrs Burke	Mr Moore
Mr Cornwell	Mr Osborne
Mr Hird	Mr Smyth
Mr Humphries	Mr Stefaniak
Mr Kaine	

And so it was negatived.

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

Clauses 31 to 35, as amended, agreed to.

Clause 36 –

On the motion of Mr Stefaniak, by leave, his amendments Nos 6 and 7 (*see* Schedule 1) were made together.

Clause 36, as amended, agreed to.

Clause 37 agreed to.

Clause 38 –

On the motion of Mr Stefaniak, by leave, his amendments Nos 8 to 10 (*see* Schedule 1) were made together.

Clause 38, as amended, agreed to.

Clause 39 –

On the motion of Mr Stefaniak his amendment No. 11 (*see* Schedule 1) was made.

Clause 39, as amended, agreed to.

Clauses 40 to 43, by leave, taken together and agreed to.

Clause 44 –

On the motion of Mr Stefaniak his amendment No. 12 (*see* Schedule 1) was made.

Clause 44, as amended, agreed to.

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.

6 QUESTIONS

Questions without notice were asked.

7 PAPER

Mr Berry, during a personal explanation, by leave, presented the following paper:

Parking for people with disabilities at Bruce Stadium – Copy of letter from Kate Carnell MLA, Chief Minister to Mr Wayne Berry MLA, dated 6 July 2000.

8 PRESENTATION OF PAPER

Mr Humphries (Chief Minister) presented the following paper:

Ministerial Travel Report for 1 October to 31 December 2000.

9 PRESENTATION OF PAPER

Mr Humphries (Treasurer) presented the following paper:

Financial Management Act, pursuant to subsection 26 (4) – Consolidated Financial Management Report for the month and financial year to date ending 31 January 2001.

10 PRESENTATION OF PAPERS

Mr Smyth (Minister for Business, Tourism and the Arts and Minister for Urban Services) presented the following papers:

Canberra Tourism and Events Corporation Act, pursuant to subsection 23 (8) – Canberra Tourism and Events Corporation – Business Plan for 2000-2004.

Cultural Facilities Corporation Act, pursuant to subsection 29 (3) – Cultural Facilities Corporation – Quarterly report for the second quarter of 2000/2001: 1 October to 31 December 2000.

Land (Planning and Environment) Act, pursuant to section 29 – Variation (No. 166) to the Territory Plan relating to the Lower Molonglo Water Quality Control Centre, together with background papers and a copy of the summaries and reports.

11 PLANNING AND URBAN SERVICES – STANDING COMMITTEE – REPORT NO. 60 – TUGGERANONG LAKESHORE MASTER PLAN – GOVERNMENT RESPONSE – MOTION TO TAKE NOTE OF PAPER

Mr Smyth (Minister for Urban Services) presented the following paper:

Planning and Urban Services – Standing Committee - Report No. 60 – Tuggeranong Lakeshore Master Plan (*presented 30 November 2000*) – Government response –

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

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

12 NATIONAL ENVIRONMENT PROTECTION COUNCIL REPORT – 1999-2000 – PAPER AND STATEMENT BY MINISTER

Mr Smyth (Minister for Urban Services) presented the following paper:

National Environment Protection Council – Report and financial statements, including the Australian National Audit Office Report, for 1999-2000 –

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

13 LEGISLATION (ACCESS AND OPERATION) BILL 2000

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

Detail stage

Clauses 45 agreed to.

Clause 46 negatived.

Clause 47 agreed to.

New clauses 47A to 47D inclusive –

On the motion of Mr Stefaniak (Attorney-General) – New Part 5.2A (new clauses 47A to 47D) (his amendment No. 14 (*see* Schedule 1)) was inserted in the Bill.

Clauses 48 to 50, by leave, taken together and agreed to.

New clause 50A –

On the motion of Mr Stefaniak- New clause 50A (his amendment No. 15 (*see* Schedule 1)) was inserted in the Bill.

Clauses 51 to 60, by leave, taken together and agreed to.

Clause 61 –

On the motion of Mr Stefaniak, by leave, his amendments Nos 16 and 17 (*see* Schedule 1) were made together.

Clause 61, as amended, agreed to.

Clauses 62 to 78, by leave, taken together and agreed to.

Clause 79 –

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

Clause 79, as amended, agreed to.

Clauses 80 and 81, by leave, taken together and agreed to.

Clause 82 –

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

Clause 82, as amended, agreed to.

Clauses 83 to 89, by leave, taken together and agreed to.

Clause 90 –

On the motion of Mr Stefaniak his amendment No. 20 (*see* Schedule 1) was made.

Clause 90, as amended, agreed to.

Clause 91 agreed to.

Clause 92 –

On the motion of Mr Stefaniak his amendment No. 21 (*see* Schedule 1) was made.

Clause 92, as amended, agreed to.

Clause 93 –

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

Clause 93, as amended, agreed to.

Clauses 94 to 103, by leave, taken together and agreed to.

Clause 104 –

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

Clause 104, as amended, agreed to.

Clauses 105 and 106, by leave, taken together and agreed to.

Clause 107 –

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

Clause 107, as amended, agreed to.

Clauses 108 to 110, by leave, taken together and agreed to.

Clause 111 –

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

Clause 111, as amended, agreed to.

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

On the motion of Mr Stefaniak, by leave, his amendments Nos 26 and 27 (*see* Schedule 1) were made together.

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

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

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

On the motion of Mr Stefaniak his amendment No. 31 (*see* Schedule 1) was made.

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

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

14 LEGISLATION (ACCESS AND OPERATION) (CONSEQUENTIAL PROVISIONS) 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.

Detail stage

Clauses 1 to 4, by leave, taken together –

On the motion of Mr Stefaniak (Attorney-General) his amendments Nos 1 to 4 (*see* Schedule 3) were made together.

Clauses 1 to 4, as amended, agreed to.

Schedule 1 –

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

On the motion of Mr Stefaniak his amendment No. 6 (*see* Schedule 3) was made.

On the motion of Mr Stefaniak, by leave, his amendments Nos 7 to 10 (*see* Schedule 3) were made together.

On the motion of Mr Stefaniak his amendment No. 11 (*see* Schedule 3) was made.

On the motion of Mr Stefaniak, by leave, his amendments Nos 12 to 17 (*see* Schedule 3) were made together, after debate.

Schedule 1, as amended, agreed to.

Title –

On the motion of Mr Stefaniak his amendment No. 18 (*see* Schedule 3) was made.

Title, as amended, agreed to.

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

15 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 -

Mr Corbell moved – That the debate be adjourned.

Mr Smyth (Minister for Urban Services), Mr Stanhope (Leader of the Opposition) and Mr Rugendyke, by leave, addressed the question.

Question – put and passed.

Ordered – That the resumption of the debate be made an order of the day for the next sitting.

16 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 -

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

17 SUSPENSION OF STANDING AND TEMPORARY ORDERS - CONSIDERATION OF PRIVATE MEMBERS' BUSINESS

Mr Moore (Manager of Government Business) moved - That so much of the standing and temporary orders be suspended as would prevent order of the day No 15, private Members' business relating to the Leases (Commercial and Retail) Bill 2000 being called on immediately after the resolution of any question relating to the conclusion of consideration of order of the day No 6, Executive business relating to the Leases (Commercial and Retail) Bill 2000 [No 2].

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

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

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.

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

Mr Stefaniak (Attorney-General) requiring the question to be put forthwith without debate –

Question – put and negatived.

Question - That this Bill be agreed to in principle – put.

The Assembly voted -

Ayes, 13		Noes, 3
Mr Berry	Mr Kaine	Mr Moore
Mrs Burke	Mr Quinlan	Mr Rugendyke
Mr Corbell	Mr Smyth	Ms Tucker
Mr Cornwell	Mr Stanhope	
Mr Hargreaves	Mr Stefaniak	
Mr Hird	Mr Wood	
Mr Humphries		

And so it was resolved in the affirmative – Bill agreed to in principle.

Detail stage

Clause 1 -

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

19 LEASES (COMMERCIAL AND RETAIL) 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 negatived.

20 ADJOURNMENT

Mr Moore (Manager of Government Business) moved - That the Assembly do now adjourn.

Debate ensued.

Suspension of standing order 34 – Adjournment of Assembly: Mr Moore moved – That so much of standing order 34 be suspended as would prevent the adjournment debate extending for a maximum period of 30 minutes.

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

Debate continued.

Question – That the Assembly do now adjourn – put and passed.

And then the Assembly, at 5.26 p.m., adjourned until Tuesday, 6 March 2001 at 10.30 a.m.

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

M J McRAE

Clerk of the Legislative Assembly

Schedule 1**LEGISLATION (ACCESS AND OPERATION) BILL 2000**

Amendments circulated by Attorney-General

1**Clause 1****Page 1, line 6—**

Omit “(Access and Operation)”.

2**Clause 19****Subclause (8)****Page 10, line 30—**

Omit “is not required to”, substitute “need not”.

3**Clause 19****Subclause (8), note****Page 10, line 33—**

Omit the note, substitute the following note:

Note See s 110 (Application of s 28) and s 111 (Application of s 50 and s 50A) about Acts and registrable instruments made before the commencement of this Act.

4**Proposed new chapter 4A****Page 16, line 21—**

After chapter 4, insert the following new chapter:

Chapter 4A Regulatory impact statements for subordinate laws and disallowable instruments

Part 4A.1 Preliminary

30A Definitions for ch 4A (SLA s 9A)

In this chapter:

authorising law, in relation to a proposed subordinate law or disallowable instrument (the *proposed law*), means the Act or statutory instrument (and, if appropriate, the provision of the Act or statutory instrument) under which the proposed law will be made.

benefits includes—

- (a) advantages; and
- (b) direct and indirect economic, environmental and social benefits.

costs includes—

- (a) burdens and disadvantages; and
- (b) direct and indirect economic, environmental and social costs.

scrutiny committee principles means the terms of reference of the Legislative Assembly's Standing Committee on Justice and Community Safety that apply to subordinate laws and disallowable instruments.

30B Other publication or consultation requirements not affected (SLA s 9B)

- (1) Part 4A.2 (Requirements for regulatory impact statements) does not affect any requirements in any other Territory law for publication or consultation about a proposal to make a subordinate law or disallowable instrument.
- (2) Part 4A.2 does not apply to the subordinate law or disallowable instrument if the requirements are of a comparable level to publication and consultation under the part.

30C Guidelines about costs of proposed subordinate laws and disallowable instruments (SLA s 9C)

- (1) The Minister may, in writing, issue guidelines to be applied in deciding whether a proposed subordinate law or disallowable instrument is, or is not, likely to impose appreciable costs on the community or a part of the community.
- (2) Guidelines issued under this section are a disallowable instrument.
- (3) The Minister must issue guidelines under subsection (1) within 6 months after the commencement of this section.
- (4) Subsection (3) and this subsection expire 6 months after the commencement of this section.

Part 4A.2 Requirements for regulatory impact statements

30D Preparation of regulatory impact statements (SLA s 9D)

- (1) If a proposed subordinate law or disallowable instrument (the **proposed law**) is likely to impose appreciable costs on the community, or a part of the community, then, before the proposed law is made, the Minister administering the authorising law (the **administering Minister**) must arrange for a regulatory impact statement to be prepared for the proposed law.
- (2) However, this section does not apply to the proposed law if the administering Minister, in writing, exempts the proposed law from subsection (1).

Note Sections 30B and 30F also state other circumstances when a regulatory impact statement is not required.

- (3) An exemption under subsection (2) (the **RIS exemption**) is a disallowable instrument.

- (4) If the RIS exemption is disallowed under this Act after the proposed law has been made in whole or in part, the administering Minister must arrange for a regulatory impact statement to be prepared for the subordinate law or disallowable instrument.
- (5) The regulatory impact statement prepared under subsection (4) must be presented to the Legislative Assembly within 5 sitting days after the disallowance of the RIS exemption.
- (6) This chapter (other than section 30G (When must a regulatory impact statement be presented?)) applies to the law as if the law were a proposed subordinate law or disallowable instrument.

30E Content of regulatory impact statements (SLA s 9E)

A regulatory impact statement for a proposed subordinate law or disallowable instrument (the *proposed law*) must include the following information about the proposed law in clear and precise language:

- (a) the authorising law;
- (b) a brief statement of the policy objectives of the proposed law and the reasons for them;
- (c) a brief statement of the way the policy objectives will be achieved by the proposed law and why this way of achieving them is reasonable and appropriate;
- (d) a brief explanation of how the proposed law is consistent with the policy objectives of the authorising law;
- (e) if the proposed law is inconsistent with the policy objectives of another Territory law—
 - (i) a brief explanation of the relationship with the other law; and
 - (ii) a brief explanation for the inconsistency;
- (f) if appropriate, a brief statement of any reasonable alternative way of achieving the policy objectives (including the option of not making a subordinate law or disallowable instrument) and why the alternative was rejected;
- (g) a brief assessment of the benefits and costs of implementing the proposed law that—
 - (i) if practicable and appropriate, quantifies the benefits and costs; and
 - (ii) includes a comparison of the benefits and costs with the benefits and costs of any reasonable alternative way of achieving the policy objectives stated under paragraph (f);
- (h) a brief assessment of the consistency of the proposed law with the scrutiny committee principles and, if it is inconsistent with the principles, the reasons for the inconsistency.

30F When is preparation of a regulatory impact statement unnecessary?
(SLA s 9F)

- (1) A regulatory impact statement need not be prepared for a proposed subordinate law or disallowable instrument (the *proposed law*) if the proposed law only provides for, or to the extent it only provides for, any of the following:
 - (a) a matter that is not of a legislative nature, including, for example, a matter of a machinery, administrative, drafting or formal nature;
 - (b) a matter that does not operate to the disadvantage of anyone (other than the Territory or a Territory authority or instrumentality) by—
 - (i) adversely affecting the person's rights; or
 - (ii) imposing liabilities on the person;
 - (c) an amendment of a Territory law to take account of current legislative drafting practice;
 - (d) the commencement of an Act or statutory instrument or a provision of an Act or statutory instrument;
 - (e) an amendment of a Territory law that does not fundamentally affect the law's application or operation;
 - (f) a matter of a transitional character;
 - (g) a matter arising under a Territory law that is substantially uniform or complementary with legislation of the Commonwealth or a State;
 - (h) a matter involving the adoption of an Australian or international protocol, standard, code, or intergovernmental agreement or instrument, if an assessment of the benefits and costs has already been made and the assessment was made for, or is relevant to, the ACT;
 - (i) a proposal to make, amend or repeal rules of court;
 - (j) a matter advance notice of which would enable someone to gain unfair advantage;
 - (k) an amendment of a fee, charge or tax consistent with announced government policy.
- (2) A regulatory impact statement also need not be prepared for the proposed law if, or to the extent, it would be against the public interest because of the nature of the proposed law or the circumstances in which it is made.

Example

A law may need to be made urgently for controlling the spread of a disease or dealing with another urgent situation.

Note Sections 30B and 30D also state other circumstances when a regulatory impact statement is not required.

30G When must a regulatory impact statement be presented? (SLA s 9G)

- (1) This section applies if a regulatory impact statement for a proposed subordinate law or disallowable instrument (the *proposed law*) has been prepared and the proposed law is made in whole or part.

- (2) The statement must be presented to the Legislative Assembly with the subordinate law or disallowable instrument.

Part 4A.3 Failure to comply with requirements for regulatory impact statements

30H Effect of failure to comply with pt 4A.2 (SLA s 9H)

- (1) Failure to comply with part 4A.2 (Requirements for regulatory impact statements) in relation to a subordinate law or disallowable instrument (the *law*) does not—
- (a) affect the law’s validity; or
 - (b) create rights or impose legally enforceable obligations on the Territory, a Minister or anyone else.
- (2) In addition, a decision made, or appearing to be made, under part 4A.2 is final and conclusive.
- (3) In this section:
- decision* includes—
- (a) conduct engaged in to make a decision; and
 - (b) conduct related to making a decision; and
 - (c) failure to make a decision.

5

Heading to part 5.2

Page 18, line 1—

After “**INSTRUMENTS**”, insert “**GENERALLY**”.

6

Clause 36

Heading

Page 19, line 22—

Omit the heading, substitute the following heading:

36 Power to make statutory instruments for an Act etc (SLA s 2A)

7

Clause 36

Subclause (1)

Page 19, line 24—

Omit “under”, substitute “for (or for the purposes of)”.

8

Clause 38**Subclause (1)****Page 20, line 13—**

After “instrument”, insert “(the *authorising law*)”.

9

Clause 38**Subclause (2)****Page 20, line 17—**

Insert the following examples:

Examples

- 1 If the instrument is a disallowable instrument, an amendment or repeal of the instrument is also a disallowable instrument.
- 2 If the instrument is a notifiable instrument, an amendment or repeal of the instrument is also a notifiable instrument.
- 3 If notice of the making of the instrument must be published in a newspaper, notice of an amendment or repeal of the instrument must also be published in the newspaper.

10

Clause 38**Proposed new subclause (3)****Page 20, line 17—**

After subclause (2), insert the following new subclause:

- (3) This section is subject to any provision of the authorising law.

11

Clause 39**Page 20, line 18—**

Omit the clause, substitute the following clause:

39 Statutory instrument may make provision by applying a law or instrument (SLA s 8)

- (1) If an Act, subordinate law or disallowable instrument (the *authorising law*) authorises or requires the making of a statutory instrument about a matter, a statutory instrument (the *relevant instrument*) made under the authorising law may make provision about the matter by applying (with or without change)—
 - (a) a law or instrument, or a provision of a law or instrument, as in force at a particular time; or
 - (b) a law or instrument, or a provision of a law or instrument, as in force from time to time if—
 - (i) the statutory instrument expressly provides that the law, instrument or provision is applied from time to time; and
 - (ii) for an instrument or provision of an instrument—the authorising law authorises the instrument or provision to be applied from time to time.

Example of paragraph (b) (i)

The *ABC Regulations 2000* provide that noise measurements are to be taken in accordance with the NSW noise control manual as in force from time to time.

Example of paragraph (b) (ii)

The *XYZ Regulations 2000* are made under the *XYZ Act 1999*. The *XYZ Act 1999* contains the following provision:

‘(2) The regulations may apply, adopt or incorporate (with or without change) an instrument or provision of an instrument as in force from time to time.’.

- (2) If the relevant instrument makes provision about the matter by applying (with or without change), a law or instrument, or a provision of a law or instrument, as in force at a particular time, the text of the law, instrument or provision as in force at that time is taken to be a notifiable instrument made under the relevant instrument by the entity authorised or required to make the relevant instrument.
- (3) If the relevant instrument makes provision about the matter by applying (with or without change), a law or instrument, or a provision of a law or instrument, as in force from time to time, the text of each of the following is taken to be a notifiable instrument made under the relevant instrument by the person authorised or required to make the relevant instrument:
 - (a) the law, instrument or provision as in force at the time the relevant instrument is made;
 - (b) each subsequent amendment of the law, instrument or provision;
 - (c) for a law or instrument that is repealed and remade (with or without changes)—the law or instrument as remade and each subsequent amendment of the law or instrument;
 - (d) for a provision that is omitted and remade (with or without changes) in another law or instrument—the provision as remade and each subsequent amendment of the provision.
- (4) Subsections (2) and (3) do not apply in relation to—
 - (a) an ACT law or a provision of an ACT law; or
 - (b) a law of another jurisdiction, an instrument, or a provision of a law of another jurisdiction or an instrument, if the authorising law or the relevant instrument expressly declares that it does not apply.
- (5) Subsections (2) and (3) apply in relation to a law of another jurisdiction, an instrument, or a provision of a law of another jurisdiction or an instrument, with the modifications (if any) expressly made by the authorising law or the relevant instrument.
- (6) In this section:

ACT law means an Act, subordinate law or disallowable instrument.

applying includes adopting or incorporating.

disallowable instrument, for a Commonwealth Act, means a disallowable instrument under the *Acts Interpretation Act 1901* (Cwlth), section 46A.

instrument does not include a law.

law means an ACT law or law of another jurisdiction.

law of another jurisdiction means—

- (a) a Commonwealth Act, or any regulations, rules, ordinance or disallowable instrument under a Commonwealth Act; or
- (b) a State Act, or any regulations or rules under a State Act; or
- (c) a New Zealand or Norfolk Island Act, or any regulations or rules under a New Zealand or Norfolk Island Act.

12

Clause 44

Subclause (2)

Page 22, line 30—

Omit the subclause, substitute the following subclauses:

- (2) A statutory instrument made under the authorising law may make provision about the matter by authorising or requiring a stated entity to make provision about the matter, or any aspect of the matter, whether or not from time to time.
- (3) In this section:

provision, for a matter, includes determining or regulating the matter, applying the instrument to the matter, being satisfied or forming an opinion about anything relating to the matter, or doing anything else in relation to the matter.

13

Clause 46

Page 23, line 11—

[*Oppose the clause.*]

14

Proposed new part 5.2A

Page 23, line 32—

After part 5.2, insert the following new part:

Part 5.2A Making of certain statutory instruments about fees

47A Definitions for pt 5.2A

In this part:

fee includes a charge or other amount.

provide a service includes exercise a function.

service includes a function or facility.

47B Determination of fees by disallowable instrument

- (1) This section applies if an Act authorises or requires a fee to be determined for an Act or statutory instrument by a disallowable instrument.
- (2) The fee may be determined—
 - (a) by specifying the fee; or
 - (b) by setting a rate, or providing a formula or other method, by which the fee is to be worked out; or
 - (c) a combination of a specified fee and a rate, formula or other method.

Examples of different methods of determining fees

An instrument may determine a fee by specifying an amount (eg \$250), or a rate (eg \$7.50 per kilogram). An instrument may also determine a fee by providing a formula. For example, the fee for a licence issued for part of a year could be worked out using the following formula:

$$\text{annual fee} \times \frac{\text{whole and part months for which licence issued}}{12}$$

- (3) The determination—
 - (a) must provide by whom the fee is payable; and
 - (b) must provide to whom the fee is to be paid; and
 - (c) may make provision about the circumstances in which the fee is payable; and
 - (d) may make provision about exempting a person from payment of the fee; and
 - (e) may make provision about when the fee is payable and how it is to be paid (for example, as a lump sum or by instalments); and
 - (f) may mention the service for which the fee is payable; and
 - (g) may make provision about waiving, postponing or refunding the fee (in whole or part); and
 - (h) may make provision about anything else relating to the fee.

Example of paragraph (a)

A provision that the owner for the time being of a vehicle is liable for any unpaid registration fee.

Examples of paragraph (c)

- 1 A provision that a document prepared and submitted in accordance with a condition imposed under the Act be accompanied by a fee.
- 2 A provision that royalty ceases to be payable if the percentage of recoverable minerals is less than the prescribed limit.

Examples of paragraph (e)

A provision that a levy is payable within 30 days after a sale of goods.

A provision that, if a licensee fails to pay an instalment payable in the financial year within 14 days after the day it is payable, all remaining instalments payable in the financial year become payable.

Example of paragraph (g)

A provision that a stated official may waive all or part of a charge in stated circumstances, including if the official is satisfied about a stated circumstance.

47 Fees payable in accordance with determinations etc

- (1) A fee determined by a disallowable instrument is payable by the person by whom the fee is payable under the determination, in relation to the service (if any) mentioned in the determination and in accordance with the determination, to the person to whom the fee is payable under the determination.
- (2) If a service is mentioned in the determination, the fee is payable before the service is provided unless the determination provides otherwise.
- (3) If the fee is payable in relation to a service mentioned in the determination and the fee has not been paid in accordance with the determination, no-one is obliged to provide the service.

Examples

- 1 If a fee for a service is payable in advance under a disallowable instrument and the fee is not paid, there is no obligation to provide the service.
- 2 If fees for services over a period of time are payable by instalment under a disallowable instrument and the person paying the fees falls behind in payments on the instalments, there is no obligation to provide further services for the person.
- (4) Subsection (3) applies to a service even though, apart from that subsection, someone is under a duty to provide the service.

Example

A provision of an Act provides that a registrar ‘must’ renew a licence if the holder of the licence applies to the registrar for its renewal before the end of the licence term. If a fee is determined for renewal of the licence, the registrar is not required to renew the licence unless the fee is paid.

47D Regulations may make provision about fees

- (1) This section applies if an Act (the *authorising law*)—
 - (a) authorises or requires fees to be determined for the authorising law, or another Act or a statutory instrument (the *fees law*); and
 - (b) the authorising law authorises the making of regulations by the Executive.
- (2) Regulations under the authorising law may make provision in relation to—
 - (a) the payment, collection and recovery of determined fees; and
 - (b) the waiver, postponement or refund of the fees (in whole or part); and
 - (c) anything else about which provision may, under section 47B (Determination of fees by disallowable instrument), be made by determination in relation to determined fees.
- (3) The power mentioned in subsection (2) (b) includes power to make provision in relation to an entitlement to a waiver, postponement or refund of determined fees in circumstances prescribed under the regulations (including the removal of a statutory capacity).
- (4) The regulations may make provision in relation to the payment of determined fees by cheque or credit card, including, for example, the consequences of a cheque not being honoured on presentation or a credit card transaction not being honoured.
- (5) The regulations may make provision in relation to the removal of a statutory capacity if any determined fee—

- (a) is not paid when it is required to be paid; or
 - (b) is paid by cheque and the cheque is not honoured on presentation; or
 - (c) is paid by credit card and the credit card transaction is not honoured.
- (6) The regulations may make provision in relation to the restoration of a statutory capacity (whether prospectively or during any past period).
- (7) This section is in addition to any provision of the authorising law or fees law.
- (8) In this section:

credit card includes debit card.

removal, of a statutory capacity, includes suspension, cancellation, revocation, withdrawal, surrender or other prescribed restriction or termination of a statutory capacity under the fees law or authorising law.

statutory capacity includes an accreditation, approval, assessment, authority, certificate, condition, decision, determination, exemption, licence, permission, permit, registration or other prescribed thing conferring a status, privilege or benefit under the fees law or authorising law (whether or not required under either law for doing anything).

15

Proposed new clause 50A

Page 27, line 26—

After clause 50, insert the following new clause:

50A Effect of failure to notify registrable instrument

A registrable instrument is not enforceable by or against the Territory or anyone else unless it is notified.

16

Clause 61

Subclauses (1) and (2)

Page 33, line 9—

Omit the subclauses, substitute the following subclauses:

- (1) An Act commences—
 - (a) on its notification day; or
 - (b) if the Act provides for a different date or time of commencement—on that date or at that time.
- (2) A subordinate law, disallowable instrument or notifiable instrument commences—
 - (a) on its notification day; or
 - (b) if an Act or the instrument provides for a later date or time of commencement—on that date or at that time; or
 - (c) if an Act provides for an earlier date or time of commencement—on that date or at that time; or

- (d) if the instrument, under authority given by an Act, provides for an earlier date or time—on that date or at that time.

Examples for paragraph (b)

- 1 A subordinate law may provide that it commences on a stated future date or at a stated time on a stated future date.
- 2 A disallowable instrument may provide that it commences on the day, or immediately after, a stated law, or a stated provision of a stated law, commences.
- 3 A notifiable instrument may provide that it commences on the expiry of a stated statutory instrument.
- 4 A notifiable instrument may provide that it commences on the date fixed by a Commonwealth Minister, by notice in the Commonwealth Gazette, under a stated Commonwealth Act.

17

Clause 61

Subclause (4)

Page 34, line 1—

Omit the subclause, substitute the following subclause:

- (4) A statutory instrument that is not a registrable instrument commences—
- (a) on the day it is made or, if it is required under an Act or statutory instrument to be approved (however described) by the Executive, a Minister or any other entity, the day it is approved; or
 - (b) if an Act or the instrument provides for a later date or time of commencement—on that date or at that time; or
 - (c) if an Act provides for an earlier date or time of commencement—on that date or at that time; or
 - (d) if the instrument, under authority given by an Act, provides for an earlier date or time—on that date or at that time.

18

Clause 79

Proposed new subclause (10)

Page 47, line 31—

After subclause (9), insert the following new subclause:

- (10) In this section:

insert includes relocate.

19

Clause 82

Subparagraph (1) (c) (i)

Page 49, line 19—

After “made”, insert “(whether by the same or a different entity)”.

20**Clause 90****Proposed new subclause (2A)****Page 54, line 28—**

After subclause (2), insert the following new subclause:

- (2A) This section applies except so far as the contrary intention appears.

21**Clause 92****Proposed new subclause (1A)****Page 55, line 21—**

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

- (1A) In subsection (1), a reference to the statutory instruments made or in force under the Act, instrument or provision includes a reference to any law or instrument (within the meaning of section 39), or provision of a law or instrument (within the meaning of that section), applied, adopted or incorporated (with or without change) under the Act, instrument or provision.

Note Section 39 authorises an Act, subordinate law or disallowable instrument to make provision about a matter by applying, adopting or incorporating a law or instrument (as defined in that section) or a provision of a law or instrument.

22**Clause 93****Proposed new subclause (2)****Page 56, line 7—**

Insert the following new subclause:

- (2) This section applies except so far as the contrary intention appears.

23**Clause 104****Paragraph (1) (o)****Page 60, line 20—**

Omit the paragraph.

24**Clause 107****Proposed new subclause (2)****Page 62, line 4—**

Insert the following new subclause:

- (2) The parliamentary counsel may delegate a power under part 10.3 (Editorial changes) only to a person performing the duties of deputy parliamentary counsel in the public service.

25**Clause 111****Page 63, line 8—**

Omit the clause, substitute the following clause:

111 Application of s 50 and s 50A

- (1) Sections 50 (Notification of registrable instruments) and 50A (Effect of failure to notify registrable instrument) do not apply to a registrable instrument made before the commencement of this section if the instrument, or the making of the instrument, has been published or notified in the Gazette before the commencement.
- (2) Sections 50 and 50A do not apply to any other registrable instrument made before the commencement of this section if neither the instrument, nor the making of the instrument, were required to be published or notified in the Gazette.
- (3) This section expires 1 year after it commences.

26**Dictionary****Proposed new definitions of *authorising law* and *benefits*****Page 70, line 11—**

Insert the following new definitions:

authorising law, for chapter 4A (Regulatory impact statements for subordinate laws and disallowable instruments)—see section 30A (Definitions for ch 4A).

benefits, for chapter 4A (Regulatory impact statements for subordinate laws and disallowable instruments)—see section 30A (Definitions for ch 4A).

27**Dictionary****Proposed new definition of *costs*****Page 70, line 15—**

Insert the following new definition:

costs, for chapter 4A (Regulatory impact statements for subordinate laws and disallowable instruments)—see section 30A (Definitions for ch 4A).

28**Dictionary****Proposed new definition of *fee*****Page 70, line 24—**

Insert the following new definition:

fee, for part 5.2A (Making of certain statutory instruments about fees)—see section 47A (Definitions for pt 5.2A).

29**Dictionary****Definition of *law*, proposed new paragraph (aa)****Page 70, line 29—**

Before paragraph (a), insert the following new paragraph:

- (aa) for chapter 4A (Regulatory impact statements for subordinate laws and disallowable instruments)—see section 30A (Definitions for ch 4A); and

30**Dictionary****Proposed new definition of *provide*****Page 71, line 20—**

Insert the following new definition:

provide, for part 5.2A (Making of certain statutory instruments about fees)—see section 47A (Definitions for pt 5.2A).

31**Dictionary****Proposed new definitions of *scrutiny committee principles* and *service*****Page 72, line 8—**

Insert the following new definitions:

scrutiny committee principles, for chapter 4A (Regulatory impact statements for subordinate laws and disallowable instruments)—see section 30A (Definitions for ch 4A).

service, for part 5.2A (Making of certain statutory instruments about fees)—see section 47A (Definitions for pt 5.2A).

Schedule 2**LEGISLATION (ACCESS AND OPERATION) BILL 2000**

Amendments circulated by Leader of the Opposition**1****Clause 28****Subclause (1)****Page 15, line 7—**

After “the Speaker must”, insert “, within 10 business days after the day the law is passed,”.

2**Clause 28****Subclause (2)****Page 15, line 10—**

After “must”, insert “, within 15 business days after the day the law is passed”.

3**Clause 28****Subclause (3)****Page 15, line 17—**

After “particular day”, insert “ (not more than 15 business days after the day the law is passed)”.

4**Clause 33****Subclause (1)****Page 17, line 13—**

Omit the subclause, substitute the following subclauses:

- (1) This section applies if—
 - (a) an Act authorises or requires the Executive to make regulations; and
 - (b) the Executive approves the making of proposed regulations under the Act.
- (1A) The regulations may be made by 2 or more Ministers who are members of the Executive signing the regulations, if—
 - (a) the regulations expressly state that the Executive has approved the making of the regulations; and
 - (b) the responsible Minister is 1 of the Ministers signing the regulations.

5**Clause 33****Proposed new subclause (3)****Page 17, line 17—**

After subclause (2), insert the following new subclause:

(3) In this section:

responsible Minister means—

- (a) the Minister for the time being responsible for administering the Act; or
- (b) if, for the time being, different Ministers administer the Act in relation to different matters—
 - (i) if only 1 Minister administers the Act in relation to the relevant matter—the Minister; or
 - (ii) if 2 or more Ministers administer the Act in relation to the relevant matter—any of the Ministers; or
- (c) if paragraph (b) does not apply and, for the time being, different Ministers administer the Act—any of the Ministers.

6**Clause 104****Paragraph (1) (o)****Page 60, line 20—**

Omit the paragraph.

7**Clause 107****Page 62, line 4—**

After “powers under this Act”, insert “, except a power under part 10.3 (Editorial changes),”.

Schedule 3**LEGISLATION (ACCESS AND OPERATION) (CONSEQUENTIAL PROVISIONS)
BILL 2000**

Amendments circulated by Attorney-General

1**Clause 1****Page 1, line 4—**Omit “(*Access and Operation*)”.**2****Clause 2****Page 2, line 3—**Omit “(*Access and Operation*)”.**3****Clause 2, note****Page 2, line 6—**Omit “(*Access and Operation*)”.**4****Clause 4****Subclause (2)****Page 2, line 14—**Omit “(*Operation and Access*)”.**5****Schedule 1****Amendments 1.2 to 1.4****Page 3, line 6—**

Omit the amendments, substitute the following amendment:

[1.2] Part 2

Repeal the part.

6**Schedule 1****Proposed new amendment 1.8A****Page 4, line 8—**

Insert the following new amendment:

[1.8A] Section 11F (3), example 1

Omit the example, substitute the following example:

- 1 Section 13 (4) of this Act contains definitions of *form 1* and *form 2* as tagged terms. There is nothing in this Act indicating that the definitions apply outside section 13. The definitions, therefore, apply only to section 13.

7**Schedule 1****Amendment 1.14****Proposed new definition of *Act*****Page 4, line 21—**

Omit “(*Access and Operation*)”.

8**Schedule 1****Amendment 1.15****Proposed new definition of *commencement*****Page 5, line 4—**

Omit “(*Access and Operation*)”.

9**Schedule 1****Amendment 1.17****Proposed new definition of *disallowable instrument*****Page 5, line 10—**

Omit “(*Access and Operation*)”.

10**Schedule 1****Amendment 1.18****Proposed new definition of *enactment*****Page 5, line 14—**

Omit “(*Access and Operation*)”.

11**Schedule 1****Amendment 1.19****Proposed new definitions of *former NSW Act* and *former UK Act*****Page 5, line 19—**

Omit the definitions, substitute the following definitions:

“*former NSW Act* means a NSW Act mentioned in the *Legislation Act 2001*, schedule 1.

former UK Act means a UK Act mentioned in the in the *Legislation Act 2001*, schedule 1.”.

12**Schedule 1****Amendment 1.22****Proposed new definition of *notifiable instrument*****Page 6, line 3—**Omit “(*Access and Operation*)”.**13****Schedule 1****Amendment 1.22****Proposed new definition of *notification*****Page 6, lines 6 and 8—**Omit “(*Access and Operation*)”.**14****Schedule 1****Amendment 1.23****Proposed new definition of *passing*****Page 6, line 15—**Omit “(*Access and Operation*)”.**15****Schedule 1****Amendment 1.25****Proposed new definition of *provision*****Page 6, line 21—**Omit “(*Access and Operation*)”.**16****Schedule 1****Amendment 1.26****Proposed new definition of *statutory instrument*****Page 6, line 25—**Omit “(*Access and Operation*)”.**17****Schedule 1****Amendment 1.27****Proposed new definition of *subordinate law*****Page 7, line 1—**Omit “(*Access and Operation*)”.

18
Title
Page 1—

Omit “(*Access and Operation*)”.
