

Inquiry into the Australian Capital Territory (Self-Government) Amendment (Disallowance and Amendment Power of the Commonwealth) Bill 2010

Question on Notice asked on Wednesday, 16 March 2011 (Committee Hansard, page 45)

Senator FORSHAW—The other question I was going to ask has been asked by Senator Brown. It was in regard to what steps the Liberal Party took following the decision in 2006 to utilise section 35. It is the only time it has ever been used. But your evidence is that nothing specific was done.

Mr Seselja—I became leader in 2007 and it is something that I certainly came to consider more at the 20-year anniversary of self-government. That was in 2009. There was a—

Senator FORSHAW—Did the opposition object to that at the time? Just refresh my memory.

Mr Seselja—To what?

Senator FORSHAW—To the use of section 35 to override the territory's legislation. We know that the Labor Party did and the Greens did. What was the position of the Liberal Party?

Mr Seselja—To be honest, I do not actually recall.

Senator FORSHAW—Could you check that and let us know?

Mr Seselja—I could check that and get back to you. I was not leader then and it was not my portfolio area, so it was not a debate that I was driving. I am sure we could provide you with that information.

Senator FORSHAW—Thank you. As soon as you can.

Mr Seselja—Sure.

Dear Ms Dennett:

Pursuant to Senator Forshaw's request for details of the Canberra Liberal's position regarding the ACT Legislative Assembly's disallowance vote in 2006, I am emailing you the link to the relevant Minutes of Proceedings (see item 4): <http://www.parliament.act.gov.au/downloads/minutes-of-proceedings/06MoP067.pdf>.

Please feel free to contact me if you require further details.

Kind regards,

Office of Zed Seselja MLA

Leader of the Opposition

Member for Molonglo
ACT Legislative Assembly



**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

2004–2005–2006

MINUTES OF PROCEEDINGS

No. 67

THURSDAY, 8 JUNE 2006

1 The Assembly met at 10.30 a.m., pursuant to adjournment. A quorum of Members not being present, the Speaker (Mr Berry) 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 LEGAL AFFAIRS—STANDING COMMITTEE (PERFORMING THE DUTIES OF A SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION COMMITTEE)—SCRUTINY REPORT 27—PUBLICATION OF REPORT—STATEMENT BY CHAIR

Mr Stefaniak (Chair) presented the following report:

Legal Affairs—Standing Committee (performing the duties of a Scrutiny of Bills and Subordinate Legislation Committee)—Scrutiny Report 27, dated 8 June 2006, together with the relevant minutes of proceedings—

and, by leave, moved—That the report be authorised for publication.

Question—put and passed.

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

3 SUSPENSION OF STANDING ORDERS—CONSIDERATION OF EXECUTIVE BUSINESS

Mr Corbell (Manager of Government Business) moved—That so much of the standing orders be suspended as would prevent Notice No. 4, Executive Business, relating to an Address to His Excellency the Governor-General, being called on forthwith.

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

4 ADDRESS TO HIS EXCELLENCY THE GOVERNOR-GENERAL

Mr Corbell (Attorney-General), pursuant to notice, moved—That, pursuant to standing order 268, this Assembly makes the following Address to His Excellency the Governor-General:

YOUR EXCELLENCY:

The Legislative Assembly for the Australian Capital Territory respectfully submits the following Address to His Excellency the Governor-General of the Commonwealth of Australia:

Under section 35 of the *Australian Capital Territory (Self-Government) Act 1988*, the Governor-General may disallow or recommend amendments to a law made by the parliament of the Australian Capital Territory.

The Australian Capital Territory has been advised that the Commonwealth proposes to recommend that the Governor-General disallow the *Civil Unions Act 2006*, a law made by the parliament of the Australian Capital Territory.

While understanding that the Governor-General neither represents the Crown in relation to the Australian Capital Territory nor acts on advice of the Executive of the Australian Capital Territory, the parliament of the Australian Capital Territory directs your attention to the unusual circumstances presented by section 35 of the *Australian Capital Territory (Self-Government) Act 1988* and respectfully submits that in considering advice from the Federal Executive Council the following matters should be taken into consideration:

The Australian Capital Territory is a body politic with a plenary grant of power.

Members of the Australian Capital Territory parliament are elected by free election on the basis of pre-election commitments made known to the electorate. The election of members on the basis of pre-election commitments, including commitments relating to the *Civil Unions Act 2006*, gives members of the Assembly a political mandate to pursue the commitments.

Members of the present Australian Capital Territory parliament debated and passed the *Civil Unions Act 2006*.

The *Civil Unions Act 2006* is a lawful exercise of the legislative power of the parliament of the Australian Capital Territory, made in pursuance of a political mandate given the parliament by the people of the Australian Capital Territory.

By convention, the Crown seldom intervenes once a law is made, so as to delay or frustrate the commencement of the law, save in unusual circumstances where the law because of its exceptional circumstances might be beyond the power of the parliament or is otherwise defective.

The Commonwealth has indicated publicly that it will seek to disallow the *Civil Unions Act 2006* on the basis that it trespasses on a legitimate area of Commonwealth policy, namely that dealt with in the Marriage Act.

The Australian Capital Territory disagrees with the proposition that the *Civil Unions Act 2006* has such an effect.

However, mindful of the need for legislatures to operate cooperatively within a federal system, the Australian Capital Territory stands ready to consider amending the *Civil Unions Act 2006* were the Governor-General to make recommendations concerning the amendment of the Act, to resolve any outstanding ambiguities.

The Australian Capital Territory does not seek to interpose contrary advice to that which might be provided to the Governor-General by the Federal Executive Council.

Instead it makes the following points:

- (1) This is the first time that the Governor-General will be requested to disallow a law of the Australian Capital Territory under section 35. This is an exceptional request, which will inevitably form the basis for future precedent, not just in relation to the Australian Capital Territory, but in relation to self-governing territories and other polities, including the Commonwealth itself.
- (2) It is submitted that the power to disallow does not exist at large, but is constrained by ordinary convention in relation to Crown consideration of new legislation.
- (3) The Australian Capital Territory stands ready to consider amending the Act in accordance with any recommendation made by the Governor-General under subsection 35(4) of the *Australian Capital Territory (Self-Government) Act 1988*.

Mr Stefaniak (Leader of the Opposition) moved the following amendment: Omit paragraph 8, namely:

“The *Civil Unions Act 2006* is a lawful exercise of the legislative power of the parliament of the Australian Capital Territory, made in pursuance of a political mandate given the parliament by the people of the Australian Capital Territory.”.

Debate continued.

Mr Stefaniak, who had already spoken, by leave, again addressed the Assembly.

Question—That Mr Stefaniak’s amendment be agreed to—put and negatived.

Debate continued.

Question—That the motion be agreed to—put and passed.

Suspension of standing orders—Vote: Mr Corbell moved—That so much of the standing orders be suspended as would prevent the Assembly proceeding to a vote on the Address.

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

In accordance with the resolution, the question was again put.

The Assembly voted—

AYES, 15	NOES, 0
Mr Barr	Mr Mulcahy
Mr Berry	Ms Porter
Mr Corbell	Mr Pratt
Mrs Dunne	Mr Seselja
Dr Foskey	Mr Smyth
Ms Gallagher	Mr Stanhope
Mr Gentleman	Mr Stefaniak
Mr Hargreaves	

And so it was resolved in the affirmative.