DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

22 August 2001

Wednesday, 22 August 2001

Wednesday, 22 August 2001

MR SPEAKER (Mr Cornwell) took the chair at 10.30 am and asked members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

Eggs (Labelling and Sale) Bill 2001

Mr Corbell, pursuant to notice, presented the bill and its explanatory memorandum.

Title read by Clerk.

MR CORBELL (10.31): I move:

> That this bill be agreed to in principle.

Mr Speaker, the bill I table this morning is a measure designed to ensure that the ACT's existing provisions in relation to egg labelling remain in force. The debate yesterday over the Food Bill highlighted the problems that currently exist in the proposed new arrangements under national agreements in relation to food safety laws and the impact they will have on our existing egg labelling provisions. The egg labelling provisions originally approved by this Assembly in 1997 were inserted into the existing Food Act. The passage of the Food Bill yesterday deletes those provisions from the new Food Act because of requirements for uniform national food safety laws.

My bill today, therefore, ensures that the provisions for egg labelling in the ACT remain in force. My bill sets out clearly a stand-alone piece of legislation that provides for the existing laws to remain in force.

In brief, the bill outlines the requirements for egg labelling, the requirements for keeping of hens and a regulation-making power. This bill simply transfers the existing arrangements under the previous Food Act into a new stand-alone piece of legislation.

Members would be aware that there has been quite a deal of debate nationally in relation to a model uniform national provision for hen egg labelling. It may be the case that in 12 or 18 months time those new egg labelling provisions will become mandatory. At that stage, the Assembly may well need to revisit this bill if it is passed later in this sitting period. But at the moment there are no mandatory egg labelling provisions nationally, and therefore the ACT's egg labelling provisions continue to lead the nation in rigour and the amount of consumer information they provide.

The Labor Party believes that the ACT's egg labelling laws are the best in the country. They provide consumers with the information they need to make a properly informed choice about eggs, where they are produced and the conditions under which they are produced. We believe that this is the approach that should be adopted by other jurisdictions nationally. However, if other jurisdictions choose to impose upon the ACT a nationally agreed scheme which is less rigorous than our own, that will be a matter for this Assembly to decide at a later time. In the interim, Labor believes it is appropriate to

continue with our existing egg labelling laws, applying them in the same way as they have been applied since 1997. My bill sets out the process to achieve that.

I commend the bill to the Assembly.

Debate (on motion by **Mr Moore**) adjourned to the next sitting.

Road Transport (Safety and Traffic Management) Amendment Bill 2001 (No 2)

MR RUGENDYKE: I ask for leave to present the Road Transport (Safety and Traffic Management) Amendment Bill 2001 (No 2) as it is not in accordance with standing order 136.

Leave not granted.

Suspension of standing and temporary orders

MR RUGENDYKE (10.35): I move:

> That so much of standing and temporary orders be suspended as would prevent Mr Rugendyke from presenting his bill.

MR SPEAKER: You can debate it, if you wish, Mr Rugendyke. We have 15 minutes to debate this motion to suspend standing orders. You can set out your reasons why you want it done. You have five minutes.

MR RUGENDYKE: I think it is important to have this debate on this bill that I have attempted to present, even though it is in the same calendar year as my previous bill. It is my understanding and belief that the burnout legislation I introduced to this Assembly some time ago was very successful. It was taken out of operation, in my view inadvertently, with the introduction of road rage legislation. For that reason, I believe it is important to have this debate, as it was the will of the Assembly on two occasions previously that burnout legislation be passed.

MR HARGREAVES (10.37): Mr Speaker, I am opposing the suspension of standing orders. I think it is inappropriate to try to introduce the same legislation in the same calendar year at this late stage. I do not see any necessity for it whatever. If Mr Rugendyke is successful in being re-elected, he can bring the bill back next year and it can be voted on on its merits then.

Mr Rugendyke says that the reason why he wants to reintroduce this bill through the agency of a suspension of standing orders is that the changes to the burnout legislation were inadvertent. I remind members that when I spoke against the road rage bill I indicated very clearly that there was no suggestion that there was anything inadvertent about what happened to the burnout legislation. Both of these pieces of legislation have one thing in common: they remove from the courts the power to order the confiscation of property.

There was nothing inadvertent about it. It is unfortunate the Minister for Urban Services is not here. I remind members that in the course of the preparation of the debate on burnouts it was the minister who said to me, "You realise that this legislation affects the burnout legislation?" I said, "Yes, I do. There is nothing accidental about that." The only difference between the two pieces of legislation is that in one the police could confiscate on suspicion and in the other they can do so if they witness road rage. Everything else is the same.

We are vesting in the police the power to confiscate property, when that power should be properly vested in the courts. I made that absolutely clear in my speech against the burnout legislation, again when we debated the road rage legislation and again when we moved the amendment to remove these provisions.

What we are seeing here, in my view, is a cheap political trick trying to sensationalise the issue just before an election. I think it is a ridiculous thing. The standing orders clearly make provision for people to bring forward legislation and, once it is dealt with, it is dealt with. We can then bring it back in the next calendar year, which is plenty of time. It is more than coincidental that with an election around the corner we have this right-wing approach.

Mr Speaker, I draw your attention to standing order 136. You may disallow any motion or amendment which is the same in substance as any question during the calendar year. I ask you to disallow this attempt by Mr Rugendyke. I do not think it is necessary. We have dealt with it. If Mr Rugendyke wants to make an issue out of it, he can make an election issue out of it. Go to the election of it, get the mandate from the people, and bring it back next calendar year.

Mr Rugendyke said that something inadvertent happened. I do not think I could have been clearer. Mr Moore, when he supported my changes, indicated to me that he saw the similarity between the two pieces of legislation. Members in this place were not fooled by something. There was no trickery.

I would argue against the suspension of standing orders. Under standing order 136, I do not think we as an Assembly should allow this debate to proceed.

MR MOORE (Minister for Health, Housing and Community Services) (10.42): The last time Mr Rugendyke sought to suspend standing orders I opposed such a course. He had not given us any warning. After discussing it with him this time, I concede that the circumstances are different, although he is bringing on a piece of legislation that was debated earlier this year. Because of the circumstances I am prepared to change my view and allow him to present his bill.

I am opposed to the legislation, but where possible we have always tried to allow members to debate issues. That has been a hallmark of this Assembly from the very beginning. Allowing that opportunity now will also give us the opportunity to explain why this is such a silly bill. Because we are in the last two weeks of sitting, I think it is appropriate that Mr Rugendyke have the opportunity to present his legislation.

MS TUCKER (10.43): I will not be supporting this motion. As Mr Moore said, we have already said why we think it is a silly bill. If I were to bring back every piece of legislation that did not get up, I do not think I would be getting support, and I cannot understand why anyone would consider giving Mr Rugendyke the capacity to do so at this time.

MR OSBORNE (10.44): My understanding is that Mr Rugendyke does have the numbers for the legislation to pass. My understanding is that the burnout provision was inadvertently removed when we had a debate this year.

Mr Hargreaves: You were not here to listen. I told you directly.

MR OSBORNE: Mr Hargreaves interrupts. I do not recall. I missed it. I will support the suspension of standing orders to allow Mr Rugendyke to bring his bill on. There are two issues here. The first is whether we give leave. Secondly, if the Assembly does give leave, then we all have the opportunity to speak on the bill.

Mr Kaine: We already have. I will support him, but your argument is a bit flawed.

MR OSBORNE: I always find Mr Kaine's lecturing of me interesting. There are two issues. We give leave and then we vote on the bill. I understand that Mr Moore will give leave and probably vote against the bill, and other members will do the same.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (10.45): Mr Speaker, I want to make a brief response to the point Ms Tucker made. I think normally it would be inappropriate to bring a bill back on for debate in this place where the Assembly had clearly decided a particular thing and a member wanted to have a further go to see whether he would have better luck on the second go. I think that would be inappropriate, and in those circumstances I think Ms Tucker's point would be reasonable.

But I understand that in this matter a number of members were unaware of the effect of what was being put forward. Mr Hargreaves apparently was aware of what was going on. That is fine.

Mr Hargreaves: And said so.

MR HUMPHRIES: And said so. But apparently other members were not aware. On that basis I think there is a case for saying that this is a matter that ought to be redealt with.

MS TUCKER: I seek leave to speak again.

Leave granted.

MS TUCKER: If you are going to say that there was a serious misunderstanding, there should be a recall of the vote, but I do not think you can do that after such a large period of time has elapsed. If you say that people did not quite understand what was happening, and if therefore you do not observe the rule about reintroducing legislation in the same calendar year, then there is going to be a clear incentive for other people to do the same as Mr Rugendyke. I would love to do it with many pieces of legislation on which I would

suggest that the vote was not informed by a full understanding of the issues. It would give me a reason to continue to lobby on any given issue, saying, "You obviously did not understand this bit. Did you understand this bit?" When the numbers change, you would say, "We want to debate it again because of the change in the numbers." It is a precedent that has other implications.

MR SPEAKER: Mr Hargreaves made reference to standing order 136, which says that the Speaker "may disallow". The matter has progressed beyond the Speaker ruling, because Mr Rugendyke has moved suspension of standing orders. I am happy to leave it to the Assembly to decide this matter. I do not have to rule on it. I may do so. I have elected not to do so and have left it to the Assembly.

Question resolved in the affirmative, with the concurrence of an absolute majority.

Road Transport (Safety and Traffic Management) Amendment Bill 2001 (No 2)

Mr Rugendyke presented the bill and its explanatory memorandum.

Title read by Clerk.

MR RUGENDYKE (10.48): I move:

> That this bill be agreed to in principle.

The bill aims to reinstate the capacity for police officers to seize motor vehicles within a 10-day period of the vehicle being used by a person to commit burnouts and street racing offences. This policing tool was implemented by the Legislative Assembly in 1999, bringing the ACT into line with New South Wales, and remained until removed earlier this year during the passage of legislation relating to road rage offences. The removal of the police seizure powers for burnouts was contrary to the intent and purposes of the original legislation, and this bill reinserts this fundamental element of these laws.

Mr Speaker, the outcome of the road rage debate had an impact on burnout laws that did not accurately reflect the will of the Assembly. The burnout laws were endorsed on two occasions—the first in late 1999 as part of the then Motor Traffic Act, and again last year in an amendment to the revamped road transport legislation package. Based on the two previous burnout votes and my discussions with other members, it would appear that removing the power for police to seize cars involved in burnouts or street racing does not accurately reflect the majority position of the Assembly.

As we know, when the legislation was in place, the police used the discretionary power in the legislation cautiously, sensibly and to excellent effect. As far as I am aware, fewer than 20 vehicles were impounded during the time of the operation of the police seizure powers. I am sure the police minister will have the exact figures, and I am sure that he will concur that the police made every effort to ensure this tool was utilised only in the most severe circumstance and certainly not in trivial circumstances.

Anecdotal evidence I have gathered from police is that no other law has been so effective in putting a stop to a problem than the police powers to seize cars. The bulk of the hoodlum behaviour ceased when these laws came into effect. The prospect of losing a vehicle was a deterrent. When police pulled over a vehicle for a traffic offence, regularly the offender's first words would be something like: "It was not a burnout," because they knew quite clearly what the consequences could be.

But in recent times the ball game has taken a sudden turn for the worse. The rules have changed and the word has spread fast that it is much more difficult to lose a vehicle. The word is out that the police can no longer take vehicles, and the door is open for car hoons to wreak havoc again. The most critical element of the laws has been ripped out, and the community has already started to pay the price, with the hoons treating the law with contempt. The situation can only get worse, particularly at Summernats time, when motorists visit from places like New South Wales, where the police can confiscate cars for dangerous burnouts.

It is clear that the AFP did carefully and astutely implement the ability to seize cars when the powers were put in place. It has to be remembered that confiscating cars was not mandatory for burnout offences. There was a range of options, including traffic infringement notices. The fines that are tied to these notices are substantially lower than the maximum penalties. The confiscations were for the most serious and extremely dangerous circumstances. As far as I am aware, the action was certainly deserved in each case, and this highlights how these laws can be effectively used to curb this type of behaviour.

Overall, the burnout laws were greeted favourably by the majority of the community. The responses I received were extremely positive and supportive of cleaning up driving behaviour in the suburbs. Police have utilised the range of enforcement options available to them, from caution to impoundment. There was not a spate of confiscations, only in the most serious cases which warranted such action. But the penalties that were in place served as a deterrent. Families who are constantly annoyed and threatened by this type of driving knew the police had the ability to do something about it.

Mr Speaker, I commend the bill to the Assembly.

Debate (on motion by **Mr Humphries**) adjourned to the next sitting.

Liquor Amendment Bill 2001

Mr Rugendyke, pursuant to notice, presented the bill and its explanatory memorandum.

Title read by Clerk.

MR RUGENDYKE (10.56): I move:

> That this bill be agreed to in principle.

Mr Speaker, this is a bill to amend the Liquor Act 1975. Currently section 159 of the Liquor Act 1975 creates a rebuttable presumption that the contents of a container which purports to contain liquor are liquor. The presumption stands unless the defendant

establishes the contrary on the balance of probabilities. This means that the defendant bears both the evidentiary and probative burden of proof.

The provisions of section 159 have been interpreted to mean that at least a sample of the relevant substance must be taken. This was deemed necessary by the courts to enable a defendant to be provided with a sample that he or she could have analysed to rebut the prosecution evidence.

The Victorian Liquor Control Act 1987 provides that where an informant avers that any liquid is liquor the averment is evidence that the liquid is liquor. The aim of this bill is to adopt this type of provision to relieve police of the need to have liquid thought to be liquor analysed to ascertain whether it is liquor.

Unlike a rebuttable presumption, an averment does not shift the onus of disproving the relevant facts, which are whether the liquid was or was not liquor, to the defendant. The prosecution has the onus of establishing the elements of the defence beyond reasonable doubt.

The averment provision provides that the allegations of the prosecutor in the averment are sufficient to discharge the onus of establishing a relevant fact. An averment is an allegation which is ascribed the status of prima facie evidence.

I am aware that the Australian Federal Police and the Australian Federal Police Association have expressed a desire for this provision of the legislation to be changed in this manner. As the legislation regarding liquor offences stands, police are required to take samples of what is purported to be liquor, have it analysed and prove that it contains alcohol.

This bill will change the legislation so that police are able to aver or confirm that when a liquid purports to be alcohol it is taken as alcohol. It is that simple. It streamlines a procedure that will make the Liquor Act work much more smoothly and appropriately.

Debate (on motion by **Mr Stefaniak**) adjourned to the next sitting.

Evidence (Miscellaneous Provisions) Amendment Bill 2001

Mr Rugendyke, pursuant to notice, presented the bill and its explanatory memorandum.

Title read by Clerk.

MR RUGENDYKE (11.00): I move:

> That this bill be agreed to in principle.

The thrust of this bill is that counsellors' notes in relation to sexual offences will be considered to be in confidence. The defence in a sexual assault case would be unable to adduce evidence from confidential notes of a counsellor.

The explanatory memorandum outlines the thrust of the bill. In any proceedings before a court, a party is entitled to call evidence that is relevant to the matters the court has to decide on. If someone who was not involved in the proceedings has information that is considered relevant, they can be compelled to produce this information or attend court to give evidence in person.

In recent years it has become commonplace for defence lawyers in sexual assault trials to issue subpoenas against sexual assault counsellors. Counsellors' notes are confidential records of the therapeutic process and not an investigative one. Counsellors have pointed out that complainants of sexual assault expressed feelings of guilt or doubt as to whether they were to blame in some way. These expressions can reflect a common psychological reaction to what has occurred and do not mean the complainant was not sexually assaulted. It is potentially misleading for the defence to rely upon them as evidence of consent.

The New South Wales government recognised that counsellors' notes required protection in 1998 by introducing legislation aimed at restricting the right of a party to legal proceedings from issuing a subpoena for counsellors' notes.

This bill establishes similar provisions by establishing a sexual assault communications privilege. The intent is to create a presumption that a person cannot be compelled to produce details of a protected confidence to court, and that such a confidence cannot be used in evidence unless the court is satisfied that the evidence will have substantive probative value.

Mr Speaker, I commend the bill to the Assembly.

Debate (on motion by **Mr Moore**) adjourned to the next sitting.

Crimes Amendment Bill 2001

Debate resumed from 9 August 2001, on motion by **Mr Osborne**:

> That this bill be agreed to in principle.

MR WOOD (11.04): Mr Speaker, in principle, steps ought to be taken to protect people who may suffer harassment or other abuse through electronic means. In practice, it is a little more difficult, and that has been well pointed out.

Ms Follett, when she was Chief Minister, introduced stalking legislation into the ACT. Those measures covered stalking via the telephone or mail. So it is logical to extend that coverage to systems like email, the Internet and general computer usage. It is a logical consequence. It must have been about 10 years ago now that those measures were introduced, and a vast amount of progress—if you call it that—has been made in technology since that time. So we certainly support the principle.

It is a matter of some debate in Australia and around the world how you control it. This is a little bit more difficult. You can have stalking via email, via the Internet or by taking over someone's computer. It becomes very difficult then to manage prosecution. Indeed,

it becomes very difficult to find who is responsible, to identify someone who may be acting in this way.

Systems provide a high degree of protection to users. It is quite possible to be entirely anonymous, so that it is very difficult to track down who may be responsible. Nevertheless, we should take steps to see that we control cyberstalking. Maybe some steps can be taken with the technology we use, but in this place we are looking at legislation.

People who know a little more about computers than I do point to the difficulties. For example, there are a lot of freebies around. Pick up any computer magazine and you can get free Internet access for a period of hours, a month, two months or three months. It was explained to me that it would be entirely possible for someone to pinch my name, to take up one of these freebies in my name, and to use my name to circulate offensive material around the place. We have seen how easy it is to break into computers and web sites and interfere with those web sites. It has been done at the political level.

We are well aware of the various viruses that plague the world at different times. The Melissa virus, the I Love You virus and the Anna Kornukova virus rapidly spread material. So it would not be difficult for someone with a little bit of skill to develop some techniques. Then that material will be spread widely very quickly.

Mr Osborne has indicated to me that he will look at one of the clauses in his bill. I think Ms Tucker is looking at it also. I know that Mr Stefaniak is preparing some amendments we have not seen yet, or some comments. I was concerned at Mr Osborne's claim at proposed subsection 92NC (3):

> It is not a defence to a prosecution for an offence against this section that—
>
> (a) the defendant did not know that the person to whom the suggestion was made, or the material was sent or made available, was a young person; or
>
> (b) that the young person had consented to receive the material or suggestion.

I have some doubts about that, bearing in mind what I have said about how difficult it is to control what goes out. Something may go out in my name that I did not put out at all.

Secondly, it is impossible to know the age or the real identity of the person you may be talking to in a chat room or receiving messages from via the Internet. It is just not possible to know those things. I think there needs to be a reasonable measure of defence available to people who may be charged, given those difficulties.

There are other matters to be looked at, and I look forward to the debate as it continues, to see the points that are raised and see how we may approve, in principle and then in the detail, steps that can be taken that are fair and reasonable and will go some way towards removing stalking in this way

MR STEFANIAK (Minister for Education and Attorney-General) (11.09): This bill will amend the Crimes Act 1900 in a number of ways. It will provide that sending electronic messages to a person on two or more occasions may constitute stalking under section 34A of the act, if the other requirements in that section are met. It will provide that

sending electronic messages about a person to anyone else, or making such messages available to anyone else, would also constitute stalking.

It will create a new offence of using electronic means to suggest to a young person that he or she commit or take part in, or watch someone else commit or take part in, an act of a sexual nature. Finally, it will create a new offence of using electronic means to send or make available pornographic material to a young person.

The issue of child predators—that is, adults who stalk children over the Internet—is an issue that I know Mr Osborne takes very seriously, and I think everyone in this Assembly would. He was recently involved in the publication of a brochure on the issue that went out to households in the ACT. I have seen the brochure and I commend him on it. It contains good practical advice for parents. The government shares Mr Osborne's concern regarding the issue.

Despite its many benefits, the Internet can facilitate or even encourage inappropriate and offensive behaviour due to the anonymity that it provides users. This is of understandable concern to parents, especially when their children may often be better at using the Internet than they themselves are.

The government, like the Labor Party, is prepared to support this bill in principle. There are a number of problems as it is currently constituted which I hope we will be able to sort out so that it becomes effective, good law.

Last year the Assembly passed laws to amend section 34A. The laws governing stalking are still far from clear cut. Stalking is an offence that is unique in that it can criminalise ordinary everyday behaviour. So any new amendments to stalking laws need to be carefully considered.

There are a number of issues I could raise. For example, it would be necessary to look at whether it is justifiable to differentiate messages sent by electronic means from messages sent by other means. This will be the effect of the proposed new paragraphs 34A (2) (fa) and (fb). I am also advised that sending electronic messages to a person being stalked is covered by the words "or otherwise contacts" in the current section 34A (2) (f).

Mr Wood alluded to the fact that the bill provides that it is not a defence to a prosecution for an offence against the section that the defendant did not know that the person to whom the suggestion was made was a young person. That would be inconsistent with other sexual offences concerning young people in the Crimes Act, such as the provisions dealing with sexual intercourse and acts of indecency with a young person, and could therefore constitute a significant policy shift. I think Ms Tucker's amendment may deal with that.

There are some other potential problems we need to address, especially in proposed new section 92NC (2). There are some issues with that. Chief amongst them, my department advises, is that the Assembly does not appear to have the power to make such a law by reason of the Australian Capital Territory (Self-Government) Act. That would need to be looked at carefully to see how we could ensure that what finally would pass through this Assembly is good, effective law and serves the purpose without having any other adverse effects.

The Assembly's power to make laws for the purpose of censorship is also constrained by the self-government act and by various other pieces of Commonwealth legislation. Accordingly, there would need to be some amendments to ensure that we are not inconsistent with those acts.

It might well be important to define electronic stalking. At present, it could include television and radio broadcasts as well as video and CD recordings. Again, there could be potential inconsistencies with Commonwealth legislation governing those areas.

Whilst the government is very happy to support the bill at the in-principle stage, we would indicate that there need to be some further amendments to it. I would hope that they could be made expeditiously. Hopefully, then we will end up with legislation that does what it is intended to do without having any other adverse effects, which I am sure no-one would want to see.

MS TUCKER (11.15): This bill appears to address child predation and pornography on the Internet. We are supportive of the general concerns, but we have some concerns with the structure of the legislation.

The bill addresses two distinct concerns. One is the growing use of the Internet as an adjunct to, or substitute for, more conventional stalking. Clearly, it is possible to use the communication and publishing potential of the Internet to incite fear and apprehension, and it makes sense to ensure that legislation, as it pertains to stalking, encompasses Internet-based activities in the same way as it encompasses post, phone messages and the distribution of offensive material.

I would have thought that one could have drafted the definition of behaviour or activity that would constitute stalking a little more narrowly and use some of the language regarding offensive material that already exists in the act under section 34A (2) (e), at least in regard to web sites.

It is also arguable that such Internet-based harassment is already covered by other law. Nonetheless, the stalking provisions in the Crimes Act focus on a person intending to cause serious harm or the apprehension or fear of serious harm, and in that context the inclusion of Internet communication in the list of activities which can provide evidence of stalking is not unreasonable.

This act also seeks to address concerns of cyberpredation on young people, by making it illegal that anyone suggest that a young person engage in acts of a sexual nature or that anyone distribute sexually explicit material to a young person. Again, it strikes me that this bill is intended to demonstrate a strong stance against paedophiles, but with inadequate analysis of the actual impact.

If passed unamended, the bill would make any suggestion of any sexual kind to a young person under 16 illegal, even if that suggestion came from a friend the same age. It would also mean that anyone would be vulnerable to entrapment by a young person masquerading as an adult and could be found guilty of using the Internet to deprave a young person.

Most of the research of cyberpredation and unwelcome advances on the Internet makes the point that young people are infinitely more vulnerable to attack or manipulation by people in their own families and by friends of the family. The issues of domestic violence and sexual abuse are the ones that have the strongest destructive impact on young people's lives and need to be addressed through social service, community and political support at a much higher level.

Unwelcome approaches on the Internet may be quite disturbing to young people, so it is important to help Net users develop strategies for dealing with such approaches and building a public awareness that the Net is not entirely safe and we must all be cautious of the personal information we make available to people. It is, however, easy to overdramatise the problem of strangers rather than looking closer to home.

If we proceed to the detail stage today, I am proposing amendments to proposed new section 92NC to ensure that the defence against charges of acts of indecency against a young person—section 92K of the Crimes Act—will also apply in these instances. This amendment picks up on concerns expressed in *Scrutiny of Bills Report No 12* about the absolute liability.

The defence that the person charged would reasonably believe that the young person was over 16 years, for example, would obviously protect people from entrapment but provide no defence for older people joining in young people's chat rooms and passing themselves off as someone young.

Similarly, the amendment would ensure that young people engaged in the usual exploratory communication of youth would not be trapped by a side effect of this legislation. We would rather see this bill given more time and would support an adjournment of the debate or referral of the bill to a committee.

MR OSBORNE (11.19), in reply: I thank members for their support for the bill. I have agreed to the adjournment, because there are a couple of issues that we do need to resolve in the detail stage, but it is my intention to bring it back today. I look forward to working with Mr Wood, Mr Stefaniak and other crossbench members on amendments.

Mr Stefaniak mentioned the self-government act. My office had a discussion with the legal adviser to the scrutiny of bills committee a short time ago, and he is of the view that the concerns raised by Mr Stefaniak are not valid. I hope to get something from him prior to the legislation coming back on this afternoon.

Some concerns about the bill have emerged. Members will recall that I referred in my tabling speech to the Australian Institute of Criminology report No 166, entitled *Cyberstalking*. This report deals with these points of concern. I will take a few moments to cover them briefly.

The proposed amendments to section 34A, including a specific mention of electronic communication, are unnecessary as section 34A is already adequate. This is one of the concerns raised by the department.

The Australian Institute of Criminology covered the intent of this bill in depth in its report. The report strongly advocated that all states and territories specifically include electronic forms of communication in their stalking laws, as noted by the following extracts from pages 4 and 5:

> In theory, there is no reason why current legislation covering stalking should not also cover cyberstalking ... Other difficulties may occur in South Australia and the Australian Capital Territory, where there is a requirement that offenders intend to cause "serious" apprehension and fear. Thus, the magistrates may dismiss cases of cyberstalking, given the lack of physical proximity between many offenders and victims … In saying this, however, cyberstalking has become renowned for the difficulties involved in actually prosecuting it. The simple inclusion of email and Internet communications within the definition would go a long way towards easing current difficulties in prosecution, as has indeed occurred in Northern America … While in many ways cyberstalking can be considered analogous to physical world stalking, at other times the Internet needs to be recognised as a completely new medium of communication.

The report raised another issue. Currently actions that may constitute stalking must be directed at the victim or be actions that are likely to be brought to the victim's attention. New paragraphs 34A (2) (fa) and (fb) expand the criteria to include communications to a third party. Again I quote from the Institute of Criminology report:

> As with stalking in the physical world, few examples of stalking are confined to one medium. While email stalking may not be analogous to traditional stalking in some instances, it is not restricted to this format. Stalkers can more comprehensively use the Internet in order to slander and endanger their victims. In such cases, the cyberstalking takes on a public, rather than a private, dimension. In one example, a female university lecturer was stalked for some years. Her ex-boyfriend would visit her usual chat sites, and then follow her from site to site, recording where she went. He also posted false information about her in various chat sites, including both those she habited and pornography sites that he visited. Finally, he hunted down and distributed semi-pornographic photographs of her as a young girl across the net. In another example, a woman was stalked for a period of 6 months. Her harasser posted notes in a chat room that threatened to rape and kill her, and posted doctored pornographic pictures of her on the net, together with personal details.

The proposed provision, as currently written, would address the examples given in the report, which I believe should be considered stalking offences.

No justification has been given for placing electronic communication on a different footing to other modes of communication. As can be seen from the sections of the Australian Institute of Criminology report I have quoted, electronic means of communication provide an additional dimension to traditional forms of stalking. The Internet operates in real time and is able to distribute vast amounts of information to a wide audience almost instantly. A further quotation from the report reads:

> What this means is that individual computer users have a vastly reduced buffer between themselves and the stalker. A cyber stalker can communicate directly with their target as soon as the target computer connects in any way to the Internet. The stalker can assume control of the victim's computer, and the only defensive option for the victim is to disconnect and relinquish their current Internet 'address'. The situation is like discovering that anytime you pick up the phone, a stalker is on-line

> and in control of your phone. The only way to avoid the stalker is to disconnect the phone number completely, and then reconnect with an entirely new number.

I have seen Ms Tucker's amendments. I will speak to them during the detail stage, hopefully later today. We have some amendments also. I concede that one area of defence we need to address is contained in Ms Tucker's amendments, but I will be moving amendments myself. One of the defences that Ms Tucker talked about was that the person who sent material genuinely thought that the person to whom they sent it was over the age of 16.

I thank members for their support. This is obviously a new frontier for us all. It is an area of concern and an area we need to focus law enforcement on. Regardless of whether we think it is a problem or not, there are people who cruise chat rooms. During the tabling of my bill, I spoke of the survey that we had done at a high school. It is quite clear that we need to focus attention on this.

I am ready to concede that the legislation will be hard to enforce. It is a difficult issue. I have met with the AFP, Mr Murray and the sexual assault unit on this issue, and this issue is being taken up on a national level. Jurisdictions across the country have specific police task forces that focus entirely on predators in chat rooms and on the Net. As I said, this is new ground for us. Regardless of that, we need to start moving towards a system that enables us to adequately prosecute offenders and adequately protect our children. I thank members for their support, and hopefully we can get back to this bill later today.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clause 1.

Debate (on motion by **Mr Osborne**) adjourned to a later hour.

Primary schools—tender for health and fitness assessment program

MS TUCKER (11.27): I move the motion standing in my name on the notice paper relating to the tender for the health and fitness assessment program for primary schools, which reads:

> (1) That the Minister for Education ensure the withdrawal of the request for tender for the provision of a health and fitness assessment program for ACT government primary school students; and
>
> (2) That the ACT Government set up a working party including key stakeholder groups to:
> (a) determine the principles and parameters of a health and fitness assessment program for ACT government primary school students;
> (b) ensure such a program is consistent with the Health Promoting Schools program;
> (c)

(d)
(e) determine the quality issues to be included in any tender specifications;
(f) determine evaluation criteria for such a program; and
(g) monitor the implementation and evaluation of any such program.

The first thing I want to say is that, of course, the Greens are very supportive of any programs that enhance the health and fitness of children in our schools. However, this debate is more about the tender process and service purchasing processes of the Liberal government.

The tender document Provision of a health and fitness assessment program for ACT government primary school students raises a number of questions about this government's approach to service purchasing, and its willingness or even capacity to develop tender documents that adequately specify quality. The ACT government and ACTCOSS produced a report called More than the sum of its parts: planning for and assessing quality in ACT government services, in 1998, which contained comprehensive analysis and recommendations on the matter. The tender for health and fitness testing does not reflect the values and principles so clearly articulated in this report.

The specifications for quality in this tender are almost nonexistent. The contractor is given responsibility for designing, developing and implementing the program, as well as developing the evaluative criteria. The contractor will also be able to charge for particular information, which raises serious questions about access.

Performance indicators in the request for tender are basically just numbers, or quantitative assessments of the program objectives. These include the number of schools assessed, the number of students assessed, the number of additional reports provided to parents/carers on a user-pays basis, the number of in-service sessions provided to schools on a fee-for-service basis, and the number of sample programs provided to schools.

In the request for tender:

> The main objectives in seeking tenders under this request for tender ("RFT") are to select a suitably qualified and experienced tenderer who can be contracted:
>
> 1. To design and implement an effective HAFAP for ACT government primary school students.
> 2. To effectively report the results of the assessment program to schools and other nominated persons.
> 3. To provide schools with sample curriculum programs targeting specific age groups and fitness levels.

Where is the quality in this? I will just give a couple of quotes about the ACT approach from the report More than the sum of its parts, which said:

> Experience elsewhere in Australia and overseas also indicates that the current ACT approach to defining and measuring quality could be broadened and further developed. Specifically, there is a need for:
>
> - a clearer focus on the achievement of objectives (outcomes);
> - the development of more sophisticated ways to understand quality which recognises the limitations of the current (mostly quantitative) measurement paradigm; and
> - the identification of negotiated standards of quality expected in government outputs and outcomes.

It also said:

> It is necessary for governments to explicitly analyse and take account of the range of viewpoints before defining their outputs and intended impacts on the quality of life of individuals and communities.

That is about actually broadly examining the issues before you decide what your outputs or outcomes are going to be. It also says:

> Qualitative information is very important to an understanding of the performance of an agency. In many cases, evidence about a particular aspect of output performance derived from qualitative measures will be more relevant to particular decisions than that provided by quantitative data. It is, therefore, essential for managers to have access to qualitative measures, either to report on difficult-to-quantify aspects of performance or to provide needed explanatory information. Quantitative measures should rarely, if ever, be used on their own.

Another comment from the Australian National Audit Office and Commonwealth Department of Finance includes a useful checklist. The document *Performance information principles: better practice guide*, 1996, includes this particular point: "*The collection of information* should not be confined to those items which are 'easy to measure'."

The community participation in planning for and assessing quality outcomes section of the More than the sum of its parts document refers particularly to access and equity issues, and I refer to this in this debate because of the user-pays component of this proposal:

> Access and equity issues
> The next tool deals with fairness and opportunity on which ACT government already has a statement. For information on auditing and evaluating performance in relation to equity and access, please refer to the Australian National Audit Office and Commonwealth Department of Finance's *Performance Information Principles: Better Practice Guide*. The guide provides a checklist which covers the following issues:
>
> Access
> Equity
> Communication
> Responsiveness
> Effectiveness
> Efficiency
> Accountability.
>
> Community and citizen participation issues
> The following checklist is taken from a paper by Wray and Hauer, entitled, Performance measurement to achieve quality of life: adding value through citizens.
>
> The Do's for involving citizens in performance measurement:
>
> > Design a performance measurement and quality-of-life effort that explicitly involve citizens as partners.

This is obviously about consultation and involving stakeholders and people with expertise in this particular debate. I continue:

> Focus on the citizens' desired future vision for the community and on their perceived top priorities.
> Relate performance measurement initiatives clearly to key public needs, as expressed in surveys and as fleshed out in focus groups.

Then we have another really important point that is made in a paper by Winston, Rogers and Hough, entitled *Give me a performance system that works*. Ways to maximise the use of indicators are discussed. One useful method is a framework called:

> Performance data + performance questions = performance information.
>
> This framework highlights the difference between performance *indicators* and performance *information*. It makes the point that performance indicators are a means to an end—not an end in themselves.

Then, finally, the ACT community criteria model, which was in the "More than the sum of its parts: document:

> incorporates the values expressed by members of the project's community focus groups and citizen research conducted by the ACT government.
>
> At the core of the model is the question concerning the service objective: what is the service supposed to do? This is the fundamental question when assessing performance. Radiating from the core are the four key questions that members of the community most commonly want to know about a service, and they are as follows:
>
> Does the service do what it is supposed to do?

That is the question for this tender document. I continue:

> What is it like to use?

What is it like for the kids? I continue:

> What does it cost?

It is obvious what that is about. I continue:

> Does it do what it is not supposed to do?

That is a very important question in the context of this debate, which I will go on to explain now.

This tender document also does not fit with the government's own purchasing policy. The following is a quote from a purchasing policy discussion paper, from the Chief Minister's Department:

> For quality issues to be considered in the tender selection process they need first to have been included in the tender specifications.

That has not occurred in this document.

If the expertise no longer exists in the department of education to develop a proper tender document that integrates best practice and includes specifications to ensure quality outcomes, they must go back to the drawing board and work with a steering committee, and they should have done that anyway. They already should have worked with interest group stakeholders in the community. What my motion is asking is that they go back to the drawing board and work with the steering committee made up of experts, parents, carers and teachers, to develop another tender document. This consultation, as I said, should have occurred anyway.

The tender document does refer to consultation. It says:

> The contractor will advise the ACT Department of Education and Community Services on the design and implementation of the health and fitness assessment program.

That does not fit into the government's own consultation criteria, I think. I would support any well thought out attempt to improve the health and wellbeing of children, but poorly designed attempts can do more harm than good. The government is handing responsibility for this important matter in our public school system to a private contractor, and has also introduced a user-pays component to access.

Where does the user-pays aspect of this tender fit into the government's claimed commitment to improving the health of all children in the schools? Where does it fit with this government's proclamations about addressing inequity and poverty in our community? How does it fit with the principles of equity that were emphasised as so important in the More than the sum of its parts report? Where do the social values and quality issues actually fit into this process?

This proposal may improve the financial health of the contractor, who will be in the unique position of being able to test the fitness of individuals and schools, give them basic results only (categories measured in age, year level and gender), then charge for more detail; and then charge them for in-servicing. What does this say about government responsibility, and even capacity, to develop an informed and effective educational response to the issue of the physical fitness and health of all children in our public schools?

The evaluation criteria are lacking in any detail regarding quality, and the specifications in annexure A simply state that this is about collecting data on the health and fitness levels of school children and students in the ACT. Such assessment would allow the progress of students to be monitored and assist in the development of specific programs designed to address the areas concerned.

I noticed that it also does note that there is no actual policy developed by the ACT department on fitness. I have to go back to this: of course, the programs that will come out of this work include in-service sessions with teachers on implementing health and fitness programs, which could be purchased from the contractor for a price, as could more detailed students reports to parents.

The reporting of numbers is simplistic. One could test the fitness of many children and manage to achieve nothing more than lowering their self-esteem. How does the notion of fitness fit with health, particularly mental health? Is this proposal consistent with the health promoting schools framework? Did the government look at these questions at all? If so, I would like to see the analysis. It is certainly not reflected adequately in this tender document, and stakeholders were certainly not consulted.

Questions of the fitness and health of children are complex, sensitive and closely connected to family life. Any serious attempt to address these issues has to be informed by a broad understanding of all these aspects.

In the draft agreement between DECS and the successful contractor there are these four lines. Interestingly, this is only in the draft agreement. This is not in the request for tender, but we do have in the draft agreement four lines out of these many, many pages that say:

> the contractor will be required to consult with schools regarding students with disabilities and other special needs.

There is no definition of what special needs are. I continue:

> The contractor will be required to demonstrate sensitivity to the needs of all students participating in the program, to avoid any embarrassment or humiliation.

This is a tokenistic acknowledgment of the fact that there should be a broader, holistic approach to this matter, and that there is a broader mental health perspective that should be integrated into the process as well. How this important aspect of the program is to be evaluated is not specified. There are no performance measures relating to it in the documents. It is not mentioned at all, as I said, in the request for tender document.

I refer again to the "More than the sum of its parts" document:

> With the introduction of an outputs-based budgeting and management system, the higher level impacts of ACT government have not been given enough attention. It is however, the higher level impacts that tell us most about quality of life, and are generally of more interest to the community as a whole. Government officials recognise that the higher level outcomes have been underdeveloped as an area of analysis and review, and in fact it was in part this recognition which led the ACT Chief Minister's Department to support the quality of life project.
>
> This approach requires a move away from a reliance on the current mechanistic, engineering notions of assessment and the presumption that everything can be specified, measured and objectively proven. It also means allowing space (and time) for the unstated; finding ways of assessing quality which can accommodate those more indefinable, intangible aspects which are intuitively felt but difficult to demonstrate objectively.

Why is it that the government has not taken these very important principles into account, despite the fact that this really important work has already been done? I have to give the government credit for supporting work like More than the sum of its parts, and other work they have done on service purchasing. That is why it is so disappointing to see a document like this request for tender. It is as if none of that work ever occurred. If

there is one thing we have learned in the ACT since we introduced the purchaser-provider split, it is that this is a very important issue.

There is another point I would raise, and this is in the draft agreement. I think it is an interesting thing to look at. The draft agreement, at point 10.1, refers to conflict of interest. I imagine this is a standard clause that is in all contracts. It says:

> The contractor warrants that, at the date of entering into this agreement, no conflict of interest exists or is likely to arise in the performance of the services and of its other obligations under this agreement.

It is interesting to reflect on whether the actual design of this request for tender document actually is inherently in breach of this clause. (*Extension of time granted.*) I think this whole tender could be in breach of this clause, because if a contractor has the opportunity to sell further information about the fitness or otherwise of a child or school population, depending on that contractor's own assessment of that fitness level, surely there is a conflict of interest if that contractor finds that the extra information and service is necessary. Perhaps Mr Stefaniak can respond to that question.

Another way one person in the community put it to me this morning was: doesn't this give the contractor the opportunity to burn the candle at both ends, receiving an unspecified government subsidy, and running a business out of the work?

I also noticed this morning, reading these documents again, that in the evaluation criteria the contractor is asked to explain under what circumstances related to the cost of the service they might ask for a variation to the tender price. Now what does that mean? Does it mean that, if the contractor does not make enough from the user-pays aspect, it will put up the price to government? You really have to wonder what is going on here.

What I am asking for in this motion is that the government withdraw this request for tender and involve the main stakeholders concerned with education and the area generally to thoughtfully develop a response to the issues related to fitness in school children.

Any tender document has to respect the need for quality indicators and statements of quality, and a holistic and integrated approach to health and fitness in school children, as well as fundamental principles of equity. There should also be clear evaluative mechanisms determined by this group. That group may have to be involved on a continuing basis in actually monitoring any program that is agreed to.

I understand that Mr Berry is going to be moving some amendments, to which he will speak and on which I will respond, about whether or not we can actually ask the government to withdraw this request for tender. My argument is that of course the government can do this if it so desires. If it is clear that a majority of members of this Assembly want to see this important work more carefully thought out, then I think it is quite within the capacity of the government to do this. However, Mr Berry has another idea about how this could be addressed, so I will listen to the debate on that and speak again.

MR BERRY (11.45): I ask for leave to move my amendments together.

Leave granted.

MR BERRY: Mr Speaker, I move the amendments that have been circulated in my name, which read:

(1) Omit paragraph 1

(2) Omit paragraph 2(c)

(3) Add the following paragraph (2A):

"That the contract for a health and fitness program for ACT Government primary school students provide for monitoring by the working party and for the inclusion of the decisions of the working party."

Mr Speaker, concerns about this process are not that surprising, given the record of the government in relation to tendering. We have seen some pretty awful performances back as far as the hospital implosion, the Bruce Stadium fiasco and so on. I suppose I could even mention the Feel the Power campaign, as well. There is good reason for caution about the way the government contracts its work, notwithstanding concern about the principle of the government's moves to contract things to the private sector.

However, in this case we feel that this objective, that is, to run a health and fitness program in government schools, is a noble one, and something that we are quite content with, in principle. What we are concerned about is that, again, notwithstanding all its rhetoric, the government has not consulted with the stakeholders who are interested in the issue of health and fitness in schools.

There is a lot of tension out there about this particular minister's fetish with sporting activities, and there are some concerns out there in the community that perhaps he leans a little bit too far that way. That is arguable, but there are these tensions. All I am asking the Assembly to recognise is that there are these tensions out there in the school community about health and fitness in our schools, its emphasis, and how it ought to be managed in our school system.

Because of the tensions to which I referred, the stakeholders say, and rightly so in my view, that they ought to be involved in the process of any new developments in this area to make sure that the schools community is comfortable with the approach that has been taken with kids in our schools in relation to health and fitness, sport and PE, and so on.

We do not want to stop the process. We would like to see the process continue. We think that the amendment that I have put forward at least provides the government with a mechanism to negotiate different outcomes with tenderers, where that flexibility is available to them.

The government will say, "This will cause us to re-tender," but I do not care, frankly. That does not bother me. We will end up with a process where there is proper consultation, and a working party to look at the quality issues and so on before the tenders go out. However, these amendments at least provide a mechanism for the

government, if it wants to, to attempt to negotiate a different input with tenderers, and allow a schools community-based steering committee to have a say about what goes on in our schools as far as health and fitness is concerned.

If, at the end of the day, this Assembly does not support this approach, then so be it. The government will move on without the involvement of the schools community in the process of developing health and fitness programs in our schools. The problem with that, as I see it, is that there is sufficient heat in the argument to cause tension and disquiet among members of the schools community and parents, and therefore among students in our school system, which will not be advantageous to the program that is being introduced in our schools.

I think you start off on the wrong foot if you start off with antagonism about these issues. I had some experience with these issues in my former employment, where it was decided that there would be a commitment to health and fitness programs. It was a new thing in the fire service in those days, although it is not new any more, happily. The issue concerned deciding where we would start. Of course, most people thought, "You are not going to tell me how fit I am, how fit I will be, or what tests I will go through."

In the union movement, we had to listen to our members. We went through a very long process of engagement with our members, negotiating between them and the fire service management to make sure that everybody was comfortable with an examination of fitness programs, and some testing of members, which was conducted by an outside contractor.

The outside contractor did a range of flexibility, strength and aerobic fitness tests, and members were very concerned about related issues of privacy, and rightly so, because they may have had some sort of fitness problem that they did not want other people to know about. It was extremely important to ensure that the process of engagement for that fire service community was sufficient to relax people about their involvement in the fitness and assessment programs. After that period of engagement, of course, the fitness and assessment programs went ahead, and the rest of it is history. It is commonplace now to see a different emphasis placed on physical fitness in fire services.

I see this in much the same way, certainly in principle. You have to engage the community that is going to be involved in the fitness and assessment schemes in our schools. If there is suspicion about quality issues, if there is suspicion about the contractor, if there is suspicion about the motives of government, or if there is suspicion about the education values that might flow from this, you end up with a war within our education system over health and fitness. What is the point of that? People routinely say yes when asked the question: "Wouldn't you like our kids to be healthier and fitter?" Everybody would say yes to that, but if you asked, "Would you like to force our kids to be healthier and fitter?" you might get a different answer.

I think that, somewhere in between, there is a process of engagement that has been missed, because the complaints I hear tell me that there are tensions building on this issue. There have been tensions building about this government and this minister's approach to health and fitness in our schools, to the point where I think there needs to be some sort of consultation process with the community so that we all go forward together without suspicions about the motives of people in relation to the health and fitness of our

kids. After all, the prime aim of our schools is to make sure that they get quality education.

To go back to my original point: this is about offering the government an opportunity to come up with a negotiated arrangement with possible tenderers, which produces a better consultative phase and allows people into the whole process. Of course, ideologues in the government ranks say, "We will make the decisions here. We will just put out the tenders and they can like it or lump it." I do not think that is the way to go.

In my view, it should have been worked out in the first place, and we should not need to go through this process. There should have been a process of engagement, so that we did not have this tension over what is a pretty basic issue for the development of a civil society, that is, a decent level of health and fitness and knowledge about it.

However, I think the government will say, "We will have to reissue the tenders if we go ahead with this information." If that is the government view, they can go and reissue the tenders. That is fine. It is up to them, and it would not bother me at all, because it would then mean that there should be a process of engagement involving the community to come up with a sensible outcome. However, if they want to be a little flexible and support this sort of amendment, it gives them the chance to at least negotiate with tenderers and come up with a more satisfactory result for everybody involved in the process.

Frankly, if the government and this Assembly are not minded to do something about what is a point of tension in the education community, I think that would be a shame, on top of the fact that it has been created by the lack of involvement of the community in the issue. These amendments merely offer an opportunity for the government to provide a circuit-breaker in the process. If the government wants to maintain its position and say, "If we go back to this process, we will have to re-tender it," I will be relaxed about it.

If this Assembly supported the involvement of the community in the development of these standards and the implementation and monitoring of them, and particularly if the quality issues were all sorted out in the process, I would be happy if the government went back and re-tendered it, to be frank. I think these amendments would give them the opportunity to negotiate around it, keep the process going, get the health and fitness program into our schools and, at the same time, deal with some of those issues that affect the schools community.

MR STEFANIAK (Minister for Education and Attorney-General) (11.55): Mr Speaker, I will try to speak to both members' points. I was amazed to see this motion to start with, especially after the debates in relation to tender processes, Bruce Stadium and such. I will say that Mr Berry's amendment is better than the original motion. He is right, there are still problems with that. However, the original motion virtually directs me, as minister, to interfere in a tender process that has started, and where people have actually put in tender documents. I am aware that some 16 tender documents actually went out to people, and the tender process actually closes next week. I understand the tender process has been going for some weeks.

Ms Tucker, and perhaps Mr Berry too, may be confused in relation to exactly what is at issue here, and exactly who is involved. Certainly, there is confusion on one very important point.

We need to look at a number of issues here. First, speaking to Ms Tucker's motion, I think that it is amazing that she actually has the gall to ask the government to interfere in a tender process. At least Mr Berry is not quite saying that, I will say that in his favour.

The health and fitness assessment program tests are being done in response to local, national and, indeed, international concerns about the health and fitness of primary school-aged students. Research indicates that the level of child obesity has increased and participation rates of children in sport and physical activity have decreased. It is important that the ACT continues to move forward in improving the health and fitness of our children.

The Australian Bureau of Statistics report, *Children's participation in cultural and leisure activities, April 2000,* gives results from the survey of cultural and leisure activities of Australian children aged between five and 14. The statistics shown in that report highlight the need to move quickly on assessing our children's health and fitness.

In the 12 months to April 2000, 30 per cent of children aged five to 14 did not participate in either organised sport or one of the four organised cultural activities, that is, playing a musical instrument, singing, dancing or drama, outside of school hours. Of the children aged five to eight, 39 per cent were not involved in those organised sport or cultural activities, compared with 23 per cent of children aged nine to 11 and 27 per cent of children aged 12 to 14.

Nearly half, 48 per cent, of children born overseas in countries other than the main English-speaking countries were not involved in those activities. A much lower percentage, 28 per cent, of children born overseas in the main English-speaking countries were not involved in those activities.

Fifty-one per cent of children living with a single parent who was not employed did not participate in organised sport or one of the selected cultural activities, compared with less than a quarter, 21 per cent, of children living in a couple family with two employed parents.

Ms Tucker has cast doubt on the capacity of the department to develop a suitable assessment for the health and fitness of primary school-aged students. First, I record my confidence in officers of the Department of Education and Community Services overseeing a tender process that will ensure the future fitness of our children. The department has spent time and effort in considering what is needed, what should be done and how best to do it.

Tenders were called on 14 July in the *Canberra Times* and they close on 31 August. We are well into a tender process, and I bring that to members' attention. I do not think I can say that enough. I have said there were some 16 expressions of interest.

Should a contract be cancelled? Mr Berry, in his motion, alluded to the fact that it might result in a re-tender. The cost to the department would be the person hours involved, which are four to five people working for approximately six to eight hours each in the preparation of the contract documentation, the cost of advertising and the ongoing cost involved in dealing with inquiries from prospective tenderers. Other costs include the inconvenience to the 16 or so people or organisations who have expressed interest, and who are no doubt either putting in tenders, or who may well have done so to date.

If the contract were to be amended, this would involve many more person hours to rework the documentation, readvertise the call for tenders and, indeed, produce the work to be done by the tenderers themselves.

Ms Tucker also seems to have problems with the department calling on expertise from outside to set up health and fitness assessment programs. However, she also wants us to go through long and involved working party exercises with key stakeholder groups. Her idea of a working party will mean, in the long run, input from a number of people. We may actually not be able to get agreement. This is a specialised area for which you need expertise. What if we cannot actually get agreement on certain things? What happens to the process then? I will tell you what: it is the kids who miss out.

There has already been input from a lot of people after many months of meetings. Calling for tenders from professionals in the field who are best able to provide the assessment program is certainly a very sensible way to go.

We are already getting input. We are gaining advice: we are tapping into the expertise of a wide range of people. What will happen if we agree to Ms Tucker's motion is effectively a much more expensive process, with unnecessary delays that I think could mean we get nowhere in the end. I just do not think that is a suitable situation.

The specifications for the tender call for input from professionals in the field. The document lists a number of items, and Ms Tucker has read out some. However, what it requires a contractor to do is identify specific health and fitness categories to be measured that are appropriate for primary school students, design a program that will effectively measure the health and fitness levels of primary school students in these categories, and provide written reports to schools and other nominated people on the results of the assessment program, including analysis of the results and suggested programs that will address areas of concern.

I must say that there already has been some work done on this in both our school system, and the independent system, too, through some fitness people. I am particularly keen on the programs that can help our schools develop better ways of ensuring the health and fitness of our students, and that is one of the great benefits, I think, of this development.

I am advised that there are a number of prospective tenderers who currently run health and fitness assessment programs in the ACT. The health and fitness categories, which can be measured, vary widely between these organisations. The tender requires the contractor to design an appropriate program for primary school students.

My department has invited a wide range of experts to be part of the panel that assesses the tenders we receive. This is something that perhaps Ms Tucker and Mr Berry do not appreciate: they are the kind of people you might well have on a working party. In that respect, these suggestions become somewhat unnecessary too.

We have invited representation from the P&C; the Australian Education Union; Fitness ACT; which is the peak body representing all fitness organisations and individuals; the Heart Foundation and the Primary Principals Association, as well as the manager of my department's community partnerships section and the department's executive officer for PE and sport. That is a very wide range of people to be on a tender panel, and they include what I consider to be key stakeholders.

I believe that my department is setting about this task in a very professional and careful manner. I do not believe that setting up a working party will produce any better results. I have already indicated some of the real problems with that. The calibre of the representatives on the tender assessment panel speaks for itself. These people have a wide range of expertise. They are professionals in the area of children's issues, and health and fitness issues.

Mr Speaker, you may wonder why we do not have sufficient staff in our department to do this work. Well, health and fitness assessment is a highly specialised area. It requires specific skills and equipment. Classroom teachers do not have the qualifications or the expertise, and nor should they be expected to, to assess students in this particular area.

There are currently some 21,000 primary students in 71 government schools, and the sheer size of this project means that we require an outside source to provide this service. Having one organisation conducting the program also ensures consistent assessment and reporting to schools and the ACT Department of Education and Community Services.

The workload of teachers would be increased and results obtained would be inconsistent if tests were conducted at an individual school level. The cost to the government of setting up a staffing unit to conduct the assessment program across the ACT would also be far greater than using experts to do this.

We have specified, Mr Speaker, that the contractor will provide to the manager, community partnerships section, ACT Department of Education and Community Services, by 30 June 2002 and 30 November 2002, and at the same time intervals if the contract is extended, a report including the following performance indicators: the number of schools assessed; the number of students assessed; the number of additional reports provided to parents/carers; the number of in-service sessions provided to schools; the categories of health and fitness assessment by age group, gender and year; the number of sample programs provided to schools—crucially important—and any other relevant information.

I think we are on the right track, Mr Speaker, with the way we are handling this health and fitness program. I firmly believe the only tangible result of supporting Ms Tucker's proposal, and indeed Mr Berry's amendments, would be delaying the implementation of the program for our children, and accruing all the costs associated with that.

We have seen evidence that shows that, over about the last 15 years, the number of overweight and obese children has doubled in Australia. We do need to do something now. We cannot keep going round and round in circles and getting nowhere. (*Extension of time granted.*) The program that we have put out for tender will provide information relating to the health and fitness levels of all ACT government primary students. That will help schools with the development of health and physical education curriculums and provide information to parents on the health and fitness levels of their children.

The successful tenderer would be required to prepare a school report with some analysis of results, including programs targeting specific age groups and fitness levels for schools. The pilot program will operate over a three-year period, with students being assessed each year to monitor their ongoing health and fitness, and the impact of any targeted programs.

There will be no cost to schools for this service. The successful tenderer will conduct the assessment program at the school and will contact schools to arrange an appropriate time for administering the program. The program would require only one or two sessions of class time per year. The class teachers would remain with their classes while the program is being conducted.

This program is in line with the Australian Council of State Schools Organisations' call for education authorities to provide physical education programs that include sports that develop fitness. Information gathered through this testing will assist schools to develop a program that targets the specific needs of their student population. Confidentiality and sensitivity will be paramount. The results will be based on large numbers of students, rather than on individuals.

There are a few misconceptions here. Parents, I understand, will actually receive an individual report on their child at no cost. There is some provision for more detailed reports, too, if parents or carers want them. Also, if parents have strong grounds for not wanting their children to participate in the program, for example, for cultural or medical reasons, their wishes will be respected.

Ms Tucker mentioned cost issues. There are a number of things, such as school photographs, that kids actually pay for, but in terms of the basic individual report, there might be a misconception there, but there is no cost. There is the option for parents who want more information for pay for it, sure, but for the individual report there is no cost. There is no cost to schools for the programs and the assessments that go on there. That is something that the department picks up. That is why we are going through this particular process.

I think we need to be sensible about this. We do not need to delay what is an important step towards better health outcomes for our children. I reiterate: these key stakeholders are actually already involved in the tender appraisal panel. Mr Berry's suggestions are better than Ms Tucker's, but there are still huge problems there, I suspect. However, if either of them get up, this could go by the wayside. At best, it could cause further unnecessary delays.

I am rather amazed that Ms Tucker is bringing forward a motion, particularly part 1 of that motion, that actually calls on the government to do something after a tender process has actually commenced. I think people need to think long and hard before they go down that path. As it is a possibility that Mr Berry's motion will get up, members should still think about having to re-tender, as the same issues arise.

Why should the Assembly become involved to that extent, especially when people have such concerns about process, concerns indeed that led to Mrs Carnell leaving this place as a result of perceived, or otherwise, breaches of process? I think the Assembly needs to be very, very careful before it considers Ms Tucker's motion, but even Mr Berry's as well, Mr Speaker.

I ask the Assembly to be sensible on this. Do not delay what is an important step towards much better health outcomes for our children. I think this is an exercise in prevarication. Ultimately, it is not going to assist the people we really want to assist, and those are the kids in our system who need that help and who will be fitter as a result. As a result of them being fitter, they will not contract a lot of potential illnesses that they might otherwise have contracted. Obviously, too, they will feel much better within themselves and, if they are physically fit, children tend to study harder and work better at school.

There are so many benefits of doing something to address the decline in physical fitness of our children, and this is, I think, an exciting step that goes down that path. I urge members to support the government on this.

MR KAINE (12.10): Ms Tucker has raised this issue today because she, and presumably other people, have some concerns about the process the government is using to let a contract.

I did not hear her question the concept of the assessment of children's health and fitness at all. I do not think she raised that question at all.

Ms Tucker: I did not. I said it was good.

MR KAINE: Yes, like motherhood and apple pie, it is good. Yes, so I am not entirely convinced, after hearing the minister, that there is not some substance to what Ms Tucker has asked the Assembly to consider.

I would have some caution about government contracting, because I think over the last few years the government has demonstrated that it is not all that hot at it. My opinion on that matter is supported by some people of substance, such as the Auditor-General of the ACT.

When we start looking at the way contracts are developed, the contents of them, and how efficacious they are in advancing the public interest, I think that it is appropriate that the matter be questioned. The minister responsible says, "We cannot stop now. We are in the tender process, and the government cannot intervene in the tender process." I beg to differ, Mr Speaker. If the government can be convinced that their tender process is flawed, and that they are likely to get a contract that is not in the best interests of the community, then they have an obligation to cut across the tender process.

I do not mean by that that they should try to influence the outcomes. However, if the process is flawed, and if it seems as though they are going to get a flawed contract, are they going to sit there and let the contract be put in place, and then let the community wear the consequences? That is in no way a responsible approach from government.

I have not seen the documents, and I was not even aware that there was a potential problem until this debate began. However, Ms Tucker pointed out what she thought were some flaws in the process. In fact, her motion deals with what she perceives to be flaws: that the contract, in her view, needs to be more specific in terms of the principles and parameters of the assessment program, the quality issues to be included in the tender specification and matters of this kind.

If the contract is deficient in those matters, the government has to get it right, not simply shrug it off and say, "We cannot intervene in the contract process." We have seen some bodgie contracts let by the government in the past, and I, for one, do not think that the minister should stand aside and allow another contractual disaster to occur.

I think that Ms Tucker's proposition is right. What sort of a contract is it that does not state up front what services are to be delivered, what standards they are to be delivered at, and some criteria for assessing and evaluating the way the contract is progressing? If they are missing from this so-called contract, then they are major omissions.

Lest anybody think that I am just an old politician with no great expertise in this matter, I would say that I spent a good many years of my life, in a previous incarnation, letting and administering major contracts. As a result, I think I can claim to know something about the contracting process.

If the government is intending to let a contract that leaves the definition of all these matters to the contractor, they are giving the contractor a blank cheque. They cannot put a cap on the cost of this thing if they have not specified beforehand what is to be delivered, and that specification has to include the deliverables in terms of both quantity and quality. If the contract does not state those things it is a deficient contract, and I do not know how the minister can stand up and defend it, saying, "We cannot interfere in the process," if it is flawed to that degree.

No, Mr Speaker. The minister says, "We have taken advice from all these experts, all these specialists." Well, if those experts and specialists are outside the government and may gain by being involved in this contract, and we are putting ourselves in the hands of those experts and specialists, I say to the minister that he is putting himself into a position where he has again lost control of the costs. If we do not have people inside the administration who are capable of assessing and evaluating those propositions, then we are in the hands of the experts and the specialists, and we need more control over them than that.

He says, "We have a panel of assessors who evaluated this contract." But who are they? Are they public servants, working in the public interest, or are they contractors and consultants working in somebody else's interests? I do not know. He also said that he did not think we ought to have a working party or anybody evaluating this program, because they could not agree.

Well, did his assessment panel agree? They are a group of individuals, no doubt, just as are the members of this working party that Ms Tucker is proposing be set up to determine some of the parameters of the contract. If the assessors and evaluators can agree, why then can't a group of individuals put together under Ms Tucker's proposal agree? Why is that deficient?

As I have said, I know nothing of this contract. I have not seen the papers. However, Ms Tucker has put forward what I believe is a proposition that there are flaws in this contractual process. If that is true then, from the public viewpoint, it is likely that a flawed contract will emerge. If that is true, the minister has an obligation to have another look at it, and not simply tell us, "We cannot intervene in the tender process." If what Ms Tucker says has any substance to it, and I believe that it does, he is not fulfilling his duty as a minister if he does not require some reassessment of what is going on.

She made the point, which I thought was critical that, at least in one respect, despite the government's record on contracting, this contract contravenes the government's own contracting rules. I did not hear the minister respond to that. If that is a fact, then there is some good reason for some re-evaluation of what is going on.

I do not want to see us stuck with another contract, major or minor, that is a money machine for the potential contractor. On the face of it, in this one, the contractors define the deliverables, they define the standards, and they define the evaluation criteria, because nobody else has done so.

If that is the case, I do not believe that the government is acting responsibly, and I believe Ms Tucker's request for something to be done about it is a valid one. It is incumbent on the members of this place to make sure that the minister does review the matter and satisfy us that everything is in order, and that this contract will be acting not only in the interests of the children to be evaluated and their parents, but in the public interest, in terms of the amount of money that is going to be spent on this exercise.

MR RUGENDYKE (12.18): I must say that I have been trying to get my head around this matter. It is about a health and fitness assessment program to determine how fit our school kids are. I think that is the nature of the tender that has been advertised. As Mr Kaine also said, I do not know the quality of the tender, because I have not seen it. This has appeared on the daily program today for the first time, I think, hasn't it?

Ms Tucker: Yes, but I raised it three weeks ago.

MR RUGENDYKE: You raised it three weeks ago?

Ms Tucker: You did not follow it up. That is fine.

MR RUGENDYKE: I must have missed something.

Ms Tucker: Yes, sure. I do not mind adjourning it, if you want.

MR RUGENDYKE: I have spoken to a departmental officer, briefly, during the debate, while listening to everybody's input, and am advised that a degree of expertise has been used to look at these things, to determine the principles and parameters for the health and fitness assessment program—

Ms Tucker: Do you want an adjournment to look at the documents, so you can make up your own mind?

MR RUGENDYKE: I can make up my mind.

Ms Tucker: But I thought that you actually wanted to look at the documents.

MR RUGENDYKE: I do not know that that would change my view.

Ms Tucker: It might not, but you would at least have an informed position.

MR RUGENDYKE: Perhaps if that had made a difference, I might have been given it a day or two ago, since it was apparently mentioned to me three weeks ago. I apologise for not being astute enough to pick up this matter three weeks ago.

Ms Tucker: I am offering you an adjournment if you want it, Dave. I am not babying you.

MR RUGENDYKE: What I am trying to say is that I am yet to be convinced that there is anything wrong. Mr Stefaniak has advised us that a panel of experts will assess the tenders when they come in, including the Heart Foundation, the P&C, and the Education Union. That, in effect, might be a working party. Perhaps, in her closing speech, Ms Tucker will let me know who the key stakeholder groups might be if they are not represented by the people on this assessment panel.

I am advised that the program will be evaluated, and that it will be monitored, so I look to the closing speeches to help me work out where all this is headed.

MS TUCKER (12.22): Well, I am closing the debate.

MR SPEAKER: You are?

MS TUCKER: Apparently.

MR SPEAKER: Yes.

MS TUCKER: I do not think anyone else wants to speak.

I want to respond to a couple of the points. I would have been happy with an adjournment, and I apologise that I did not get the full documents out to Mr Rugendyke. I do realise that that is an issue. If people want an adjournment, I am very happy with that, because if you actually look at this document in detail you might be interested to consider how well, or not, the document actually reflects the commitment by this government, through tender documents and specifications, to bringing in the qualitative issues.

As Mr Kaine said, there is a real problem if you have open-ended contracts. Because there are quantifiable performance indicators, Mr Stefaniak is claiming this is a good contract. The whole point of this debate, and the point I was making in my speech, was that there is more than quantity to be looked at here. In fact, if you actually are interested in that—and this government claims they are, and I quoted at length reports which support this government's position—you do not have a tender document that looks like this.

I hear Mr Stefaniak say that there is now a tender assessment group. I am glad, but the point is that group should have been brought in before this, so that your tender document and this program is informed by those groups' views. Those people are not happy with this process. I am glad they are involved now, but it is quite possibly going to be too late.

For example, my motion says "parameters and principles". Are you going to tell me that the Australian Education Union and the P&C council said they want user-pays in this program? Do you want to say that? I give you leave to speak here, though no-one will, I am sure. Is that what you are saying? The whole question of user-pays in what is meant to be a health program for all children in primary schools has not been addressed. You also did not respond to the inherent conflict of interest in the whole structure of this document.

As Mr Kaine said, you have contradicted yourself. You said, "We could not have a working panel like that, because they might not agree with each other," but you are happy to have a working panel to assess who gets the tender. Clearly, if you are afraid they will not agree while developing a tender process, you should be very afraid that they might not agree on who actually gets the tender. That is also totally inconsistent with the fact that you have set up many other panels over the years to look at important issues. I can think of one example, which was the working party on drug policy in schools. That is really quite an inconsistent argument to use.

You seem very, very horrified that we would consider intervening in any way in a tender process. You wonder, "How could we dare to be involved in a tender process, and why would we?" We would because the majority of members in this place are focused, I hope, on the community benefit. If we do not think community interest has been properly served in the development of the tender process, I am sorry if it causes extra expense for your department. I regret that, but you should have done the work properly in the first place.

Mr Stefaniak: I think you will find they have.

MS TUCKER: Mr Stefaniak raised the issue of children from overseas. You have a little loose thing in this document. Not, as I said, in the inconsistent request for tender, but in the draft agreement. On four lines you talk about, as I said, "children with special needs", whatever that means. Perhaps that means children from another culture. Perhaps that means you will be culturally sensitive in the delivery of this service. That is an important quality issue.

If you do not want to have a negative impact on children when measuring their fitness, you need to look at those questions. How is that going to be measured? How are you going to know whether or not that is delivered with this contract process? Your own paper on purchasing of services says, "Specifications of quality should be included in the tender specifications." They are not there. This is about government purchasing processes as much as it is about fitness.

You seemed to be implying that I do not care about fitness, and gave us all the data on fitness. I said I support any work that actually helps improve the health and fitness of children in our system—all children, not just those who can pay—and supports them in a way that takes into account the broader issues of fitness testing, the holistic approach to health. You have this happening in some of your schools now, through the health promoting schools framework. I do not see where you have related this to that holistic approach. Perhaps you have, but I have not seen it and you have not talked about it.

I think they are all the points I want to make. I ask members to support me in this. I am happy with Mr Berry's amendments, if they work to actually ensure that whatever contract agreement is presented reflects these broader issues. I do not think it is in any way out of order to have a process that is actually informed, either through a re-tendering process or through changing the actual agreement—which I said is not particularly consistent with your request for tender document anyway—by people who have expertise from the educational sector. I think particularly the user-pays component is very offensive to a lot of people.

Amendments agreed to.

Question put:

> That **Ms Tucker's** motion, as amended, be agreed to.

The Assembly voted—

Ayes, 6		Noes, 7	
Mr Berry	Mr Stanhope	Mrs Burke	Mr Osborne
Mr Corbell	Ms Tucker	Mr Cornwell	Mr Rugendyke
Mr Kaine	Mr Wood	Mr Hird	Mr Stefaniak
		Mr Humphries	

Question so resolved in the negative.

Sitting suspended from 12.32 to 2.35 pm

Questions without notice
Nurses

MR STANHOPE: My question is to the Minister for Health, Housing and Community Services. Today the minister announced that the government was to make a new wage offer to nurses. The essence of the offer was an increase of 17.5 per cent over four years, with some backdating, subject to trade-offs that did not include the current overlapping shift rostering system at Canberra Hospital. The minister indicated that the offer will cost an estimated $36 million over the period and that the Treasurer, Mr Humphries, was confident the government had the money to pay it.

Can the minister say where the $36 million is coming from? Can he give a guarantee that the nurses pay offer will not be funded by cuts to other areas of the health portfolio.

MR MOORE: It is coming from Treasury.

MR STANHOPE: That answer is very helpful and raises some very interesting questions about financial integrity. Can the minister confirm that in the same interview this morning on the ABC he said he had told the Liberals he would not help in their election campaigning, a promise fully illustrated in his answer to the previous question? Why has he waited until 59 days before the election to suddenly find the spare $36 million to keep the nurses quiet?

MR MOORE: Thank you for that question. The offer has already been made to nurses. We made a 12 per cent offer towards the end of last year. I was very pleased that 83 per cent of nurses at Calvary voted to accept that offer. I was very disappointed when nurses at Canberra Hospital did not accept it. Because they did not accept it, we moved into enterprise bargaining negotiations. The negotiations had to start at any time in the six months leading up to 30 November.

The hospital and Community Care pointed out to me that they were in a very difficult position to carry on negotiations, because they did not have any sense of the money that would be available and therefore would be limited to a negotiation based on hospital funds, taking into account the overall commitment of the government in terms of the generic pay rise and CPI. They requested that I see whether the government would be prepared to indicate a level of funding within which they could then negotiate their enterprise bargaining agreement.

Unlike the situation we had a bit less than a year ago, when we were talking about a 12 per cent intervention in an enterprise bargaining agreement period, a very unusual move, we are now talking about the new enterprise bargaining agreement period. However, we did add something. We said that, should the hospital and the nurses union come to an agreement prior to the enterprise bargaining agreement being completed, provided it was in the time frame in which the government is able to operate prior to going into caretaker mode, we would be prepared to pay the nurses the agreed sum starting early.

Mr Stanhope, that is the answer, I think, to your question. You seem to feel that my answer to your first question was inadequate. I took the matter to cabinet, and cabinet agreed that we would be prepared to find these extra funds. It will most likely require an additional appropriation. That was a process we used for the funding for nurses at Calvary, who agreed to the 12 per cent offer.

Maternal and child health nurses—waiting times

MR OSBORNE: My question is to the Minister for Health, Housing and Community Services. It regards access to maternal and child health nurses. I recently received a letter from a concerned mother who wished to inform me that she had to wait over three weeks to see a child health nurse in the Belconnen facility. My office checked the waiting list for each of the facilities a couple of weeks ago, at which time the Tuggeranong clinic had the shortest waiting period, which was seven or eight days. While there is provision for emergency appointments, most people would agree that even a week—and I am talking from experience here—is unacceptable for a mother and baby with feeding problems that might not be considered an emergency.

Can you confirm what the waiting periods are for these facilities? Can you confirm that all mothers and babies are granted their initial home visit within an appropriate time frame? Is there a time frame set by the department? Are the clinics adequately staffed to meet this demand?

MR MOORE: Current waiting times for clinic appointments are unacceptable. Waiting times for generic appointments range from 10 to 29 days. The contract stipulates that they ought to be done in 10 days. Waiting times for priority appointments vary from five to eight days. It is expected that a family is able to access services within five days. That waiting time would fulfil the requirements for timely immunisation, timely child health checks and monitoring and an effective response to a variety of maternal and child health issues—for example, post-natal depression. It is also worth remembering that there are a series of other resources that women can go to for assistance. Of course, their GP is, and should be, their first point of call if there is a particular issue.

When we are talking about immunisation, we want to encourage people. The spot van is advertised and circulates. There is no booking for the spot van; people can go directly into it. I would recommend to members, if they see the spot van parked anywhere, to pop in and say hello to the nurses who do the immunisation service and see what they are doing. I have done that a number of times, and I have always found them very friendly.

I have said that the service is inadequate in its timing, and we are now taking measures to improve that. I think I have explained those measures to you, Mr Osborne.

Drag racing

MR BERRY: My question is to Mr Stefaniak in his capacity as minister for sport in the ACT. I refer the minister to the heading "Perth says V8 Supercars cost too much" at the bottom of page 1 of this morning's *Canberra Times*. The government will spend $23 million over five years on the V8 car race, and the government claims a benefit of $11 million to $12 million per year, which, according to all these figures, gives us a return of $55 million to $60 million, or $2 to $3 for each dollar spent. The Western

Australian government, interestingly though, has rejected the race as not being value for money because it will give only about a dollar for a dollar. It is interesting that they can get only a dollar for a dollar in Perth but we can get two to three here.

My question goes to the issue of drag racing in the territory and how it might compare. Has the government funded and received a report on drag racing in the territory which includes the financial impact of revenue lost because of the government's failure to take the necessary steps to ensure a continuing occupation of the drag strip at Fairbairn? Considering the fact that the returns from drag racing to the ACT economy come at no cost to the territory, what is the loss to the territory because of the government's failure to take the necessary steps to ensure a future for the sport at Fairbairn? Will the minister table the report today in the Assembly?

MR STEFANIAK: I thank the member for the question. Obviously the V8 car race would relate to Mr Humphries. However, I will make a couple of points in relation to drag racing. Firstly, as I think you are well aware, there is not a huge amount this government can do in respect of Fairbairn. I personally made representations to a number of federal parliamentarians, including Senator Margaret Reid, to see if the federal government and the Department of Defence could intervene to keep the drag strip at Fairbairn. But that was to no avail. Obviously, the matter then went to the court, and I am not going to reflect on that.

Mr Berry asked about a report. The Bureau of Sport and Recreation has given some assistance to, I think, the Motor Sport Council in relation to looking at the issue of drag racing and an alternative site, and that may well even include a business study and some work on the economic impact. I am not quite sure about that and I would have to check. But I am unaware whether there is a report available yet.

Certainly I am aware that work is being done at present. There are a number of likely sites. I think Mr Devlin has indicated a likely area and some work is occurring there through the auspices of the Motor Sport Council, which is the peak body for motor sport, with the assistance of the Bureau of Sport and Recreation. If there is a report available, it is news to me, Mr Berry.

Mr Berry: If you happen to look around and find that there is one, would you mind tabling it in the Assembly today or maybe even tomorrow?

MR STEFANIAK: My understanding is that work is in progress. I will have to check that out and see whether there is some report—unless there is some old report that I am unaware of.

Nurses

MRS BURKE: My question is to the Minister for Health, Housing and Community Services, Mr Moore. The government announced this morning that it was offering a 17.5 per cent pay rise to nurses. Minister, will that offer mean that the nurses at Calvary who accepted the offer to them will miss out?

MR MOORE: No, the nurses at Calvary who voted by 83 per cent to accept the 12 per cent offer when it was an intervention in their EBA will not miss out. The cabinet decision is to provide funding for those nurses as well. Their agreement has a catch-up clause anyway. I think that there is some debate in a legal sense as to whether it is binding. However, the government perceives it so. We will ensure on a wage basis that, should the nurses at Canberra Hospital accept this offer, the nurses at Calvary will have that option as well. In fact, the money will be available for nurses at Calvary should they wish to look at their EBA. There are some issues in terms of negotiation that we need to sort out.

When we put the offer which nominally we called a 12 per cent offer, we provided 12 per cent extra in funding, but there was a slight variation between different areas of nursing because we were trying to get a single wage outcome. This government has had a policy of not having a single negotiation. I think that might be different from Labor's approach. But we did agree in regard to nursing on a single wage outcome for any particular level of nursing. This means that the nurses, if they accept this 17.5 per cent wage offer and its equivalent in terms of Calvary, will be just ahead of New South Wales nurses over each of the outyears. That will make them the highest paid nurses in Australia over each of the outyears.

The offer has been deliberately constructed in that way to bring benefits to the hospital and health care. Why would we do that? We did it because we want to have the very best health care. We know that we have a problem at the moment. There are 39 positions for nurses at the Canberra Hospital that are paid for but unfilled. We have not been able to attract nurses to those positions. That is a source of great frustration for me. Similarly, it is a source of frustration for every health minister round Australia. They expressed the same concern when we met and discussed this issue for a number of hours at our ministerial council meeting in Adelaide.

Also, we are keen to ensure that nurses are able to be employed part time—not to interfere with those on an 8/8/10 roster, those who are employed full time, but, in addition to that, to be able to employ nurses part time to help ease the load. I think that it is important to note that our nurses have worked extraordinarily hard, that they have done double shifts and that they have managed more patients than would be their normal load over the last little while to make sure that they were able to deliver the best possible health care. I take this opportunity to thank them for that contribution. I hope that we will get a reasonable and rapid outcome on this matter so that we can do the best by our nurses.

MRS BURKE: I have a supplementary question. You may have answered it, Minister, but could you explain to me how this offer will help to ease the pressures on the hospital system in the ACT?

MR MOORE: I did touch on it a bit, but I think I could explain some more. It is not just the actual wage outcome. You may recall that when we offered the 12 per cent we said that we would provide particular postgraduate and refresher schemes that were there to attract nurses back to the profession. We have offered to continue those over the full period of the enterprise bargaining agreement, so there is extra money in there to continue them. There is a strategy about making sure that we can bring nurses back into our workforce, pay them at a rate that will improve the attractiveness of the profession

and make sure that we can continue to work in the most effective way to deliver the best possible health care, because fundamentally that is what it is about and we know that nurses are the backbone of our hospital and health care system.

TransACT

MR HARGREAVES: Mr Speaker, can the Chief Minister say on what basis he and his co-shareholder, Mr Smyth, made judgments on Actew's requests for approval of its decision to put an extra $30 million into its TransACT holding if he didn't know the basis of the revised business plan, or is it the case that there is no revised business plan?

MR HUMPHRIES: Mr Speaker, I think I answered this question yesterday. I made it clear when I answered the questions on this yesterday that it wasn't the shareholders—let me emphasise this very much—who made this decision by themselves; it was cabinet. Cabinet met to consider these matters and cabinet ultimately took a position on what was being proposed.

You ask: on what basis did we make a decision? I say to you that I made it clear in answer to questions yesterday that cabinet did not make a decision as a substitute for the decision of Actew. The decision cabinet made was that it did not have enough information on which to—

Mr Hargreaves: Did you flick it to the public servants?

MR HUMPHRIES: You asked a question; do you want to hear the answer or not? The issue is: what decision did we make? The decision we made was that we would rely on the commercial judgment of Actew as to whether a further investment was made. That was the decision of cabinet. That was based on the inadequacy of the information that was available to us at that time, on short notice, to replace our judgment for theirs.

SACS award

MR WOOD: My question is to Mr Moore and follows the SACS question I asked Mr Humphries yesterday. So if Mr Humphries wants to take it on as well, that's fine. Mr Moore, you heard the Chief Minister yesterday say that the government is committed to ensuring that services to the community are maintained at an appropriate level. He also said that the government is cognisant of the impact on agencies in general and is anxious to provide the means for as many agencies as possible to be able to continue to provide those services.

My question is simply: in view of the importance of the matter are you yet able to advise what steps are now under way to work out that assistance to agencies? When might they receive that assistance?

MR MOORE: Thank you for that question. As you would be aware, the department is in negotiation with agencies developing their purchase contracts. Within those purchase contracts negotiations there is room for the discussion on the SACS award. I am informed that the Department of Health, Housing and Community Care has actually been discussing this with a number of agencies that are affected, but the number of agencies affected is actually minimal. There are a small number.

They advise me that they are determining exactly how many agencies are affected; to what extent; and then determining what level of additional resources is required to ensure that levels of service delivery are not adversely affected. I think that is an answer you will find very consistent with the one that was given by the Chief Minister yesterday.

MR WOOD: I would certainly expect it to be. Part of the prompting for the question is that, when the SACS award was increased some time ago, it seemed not to work through very easily to agencies, and it is still very problematic how much assistance was actually received by agencies. Can I have your assurance that this is of the highest importance and will be acted upon before the election, for example?

MR MOORE: Can I say to Mr Wood that our purchasing contracts work in this way: we're purchasing a particular set of services from particular agencies. The responsibility for SACS awards and all those things is, indeed, their responsibility. However, when you are making that purchase, you have to negotiate carefully and make allowances for those things; and it is done in a two-way street. It is not just a simple: I walk into a shop, I give you some money, you give me 55 widgets.

What we are interested in doing is making sure there is a proper negotiation that takes into account the fact that the Industrial Relations Commission has followed through the three awards—the Social and Community Services Award, the Community and Aged Care Services Award and the Community Services Home Care Award. We refer to those three.

Mr Wood: Have you got a number of contracts coming up right now?

MR MOORE: The department has been in negotiation in the normal way right across the whole range at this time of year; once the budget is passed, the department then goes into the process of purchasing services from a wide range of people. What we won't do is simply say, "Okay, if you tell me the SACS award is going to cost an extra $50,000, here is the $50,000." We actually go into a negotiation about how services are delivered.

It may well be that if another service deliverer is able to offer that at a lower price we would purchase that service from there. Why would we do that, Mr Wood? The reason we would do it is: if we can get a service from somebody else at a lower price, provided it is as good a service, it means that we have more money to purchase more services. We do not take out money from the sector; the whole purpose of the exercise is to deliver the best possible services to the people who need those services. That is where the focus will be.

It is not a black and white situation. I want you to understand that we are working to try to deal with the SACS award and to recognise that people are dealing with that. It is not just a simple: "Here's the extra money for you."

Mr Wood: It does sound like the cheapest price prevails, does it not?

MR MOORE: Mr Speaker, just before I sit down, I will say that I hear an interjection from Mr Wood that goes something to this effect: "You just go for the cheapest price available." To be fair to him, it sounds a bit like: "You go for the cheapest price

available." No, I was being very careful in saying, "Subject to the quality of service." Of course, if we can get the same quality of service for a cheaper price, we must go for it, Mr Wood, because by doing that it means we have more money available to buy more services.

Mr Wood, you will know, if you are standing in this spot and answering questions this time next year—

Mr Wood: I'll do it differently.

MR MOORE: I'm sure you'll do it differently.

Mr Kaine: On a point of order, Mr Speaker: is the minister answering a supplementary question from Mr Wood or a supplementary supplementary question or what?

MR SPEAKER: I thank you, Mr Kaine. I uphold the point of order. If you two would like to do something about this, put a motion on the notice paper.

TransACT

MR KAINE: My question is to the Chief Minister. I am still seeking clarification in connection with the TransACT deal. Chief Minister, both you and the chairman of TransACT are now on the public record as stating that the total cost of TransACT's Canberra rollout will be a little bit more than $200 million. Yesterday I asked you a specific question about that. I asked you how much more than $200 million would be needed. You declined to answer, claiming that you had already answered that question from the Leader of the Opposition. In fact, a study of the *Hansard* shows that you did not answer his question either. You did not answer a question either from Mr Stanhope or from me on this matter yesterday, so I am still unclear.

I would like you now to answer the question. I ask you: have you been advised of the likely total rollout cost, and how much more than the stated $200 million is it? Is it $10 million, $20 million, $50 million or $70 million? Can you answer that question?

MR HUMPHRIES: Mr Kaine may be aware that I was again asked a question earlier today.

Mr Kaine: And you did not answer that either.

MR HUMPHRIES: That is what you claim. I am sorry, I do not agree with that. I think I have answered the question fully and properly. I have indicated to you and to the Assembly that I understand the approximate cost of the rollout is $200 million. I do not believe there is any more precise advice available to the government at this stage about the total cost of the rollout, because at this stage the rollout is about 95 per cent yet to be completed. So the precision of the estimate cannot be significantly greater than I have already given, which is approximately $200 million.

I would love to be able to give Mr Kaine and other members who asked questions on this matter a precise figure, but I do not believe a more precise figure is available. As a result of questions yesterday, I have asked TransACT whether they can be more precise about

the figure. If I have a more precise answer, I will give it to you, Mr Kaine, and to others who are interested. I do not believe that figure is yet available.

MR KAINE: Chief Minister, are you asserting that you have not been given a more precise figure by the management of Actew or TransACT, or are you asserting that if they did tell you you have forgotten?

MR HUMPHRIES: That is an inference, Mr Speaker.

MR SPEAKER: Yes, there is an inference there—in the latter question, anyway.

MR HUMPHRIES: I have had lots of advice about TransACT over the last few years. I do not recall any advice that was more specific than the $200 million which I have mentioned in this place several times.

Impulse Airlines

MR CORBELL: My question is also to the Chief Minister. Chief Minister, the Commonwealth government has come to an agreement with Impulse Airlines over the Newcastle call centre and the claims that workers can now return to secure jobs. The Commonwealth claims that that agreement will ensure that job targets promised for the Newcastle call centre by Impulse will be met.

Can you tell the Assembly the status of the ACT government's negotiations on the call centre in Canberra, the heavy maintenance facility and the numerous other commitments that Impulse made to Canberra in return for our $10 million incentive package?

MR HUMPHRIES: Members are aware that the arrangement made with Impulse Airlines was that a sum of money was provided to Impulse and that Impulse in return were to deliver on a number of growth milestones in the ACT context. The milestones have been laid on the table before. They include regional operational headquarters and facilities, a heavy maintenance and engineering facility, a national reservations and call centre and regional air routes. They are the four main areas covered by those milestones, and there are a number of milestones within each of those categories. They represent the basis on which the government's provision of assistance to Impulse will be confirmed.

Money has been provided to Impulse on the basis of a loan, and that money will be returned to the government if the milestones are not delivered upon satisfactorily. Since Impulse Airlines entered into an arrangement with Qantas, the ACT government has had a series of discussions with both Impulse and Qantas, which have resulted in an assessment by Qantas of the extent to which they will stand in the place of Impulse for the commitments that Impulse has made.

The Minister for Business, Tourism and the Arts met with Impulse on 10 May and with Qantas on 11 May to discuss if and how the elements of the agreement will be met. Mr McGowan of Impulse Airlines stated that Impulse intends to honour its agreements with the ACT, Commonwealth and Tasmanian governments. Qantas advised that it wished to see Impulse meet its obligations and is currently reviewing the situation.

The chief executive of the Chief Minister's Department wrote to Impulse in early July seeking advice on the overdue regional operations headquarters milestone and on Impulse's intentions concerning all the remaining milestones. He also sought advice on Impulse's relationship with Qantas, particularly in relation to meeting the milestones that Impulse may no longer be able to meet.

We understand that Qantas has not taken over Impulse but, rather, has entered into a contractual relationship. Impulse is still an independent organisation and is therefore legally responsible for the regional aviation line agreement with the ACT. The information that we are seeking from Impulse will allow us to assume whether the relationship between Impulse and Qantas is such that Qantas has assumed any of Impulse's obligations.

My colleague the minister for business wrote to the chief financial officer of Qantas on 3 July and advised him that the ACT is seeking early resolution to this matter. Mr Gregg, the chief financial officer, in turn confirmed that Qantas is committed to working with Impulse and the territory to find a satisfactory resolution to the milestones.

A meeting was held with the Qantas general manager of regional operations on 9 August to discuss potential regional aviation routes based on Canberra. A follow-up discussion is planned for 27 August, which is next week, when Qantas anticipate the results of investigations will be available. The minister met with Narendra Kumar, executive general manager of Qantas subsidiary businesses, and Mr John Kerr, general manager of government regulatory fares, on 3 and 10 August to discuss the milestones in the agreement and their progress on the Qantas/Impulse arrangement.

Mr McGowan of Impulse Airlines attended the meeting on 10 August. At that meeting Qantas demonstrated a commitment to work through and resolve the issues. On 17 August, Mr McGowan of Impulse wrote to the ACT government, indicating that negotiations were still ongoing with Canberra Airport and the builder and that it was the intention of Impulse to finish the hangar infrastructure already commenced at Canberra Airport and that the facility will also house a working operational headquarters, which is another of the milestones indicated.

Our agreement with Impulse has clear default provisions, and we are actively and strongly pursuing these with Impulse. We are seeking to work with Impulse and with Qantas to achieve as many of the outstanding milestones as possible so that we can maximise the future employment and economic benefits for the territory.

What that indicates is that, on the part of the ACT government, we will insist on one or two things occurring: either that the milestones be met or that the money that those milestones are associated with be returned to the ACT government. As I have indicated, there is at least one milestone overdue at this point. The government is prepared to allow more time for the milestone concerned to be met if it is the intention of Impulse/Qantas to achieve that or other milestones, but it must be on the basis that the territory has a reasonable assurance that these things will occur. If it appears that the territory will not receive the benefits promised in the milestones, the territory will immediately insist on the refund of the money associated with those milestones.

MR CORBELL: Mr Speaker, I have a supplementary question. Chief Minister, which milestones, if any, has Impulse or Qantas indicated they may not be able to meet?

MR HUMPHRIES: As I have indicated, one of the milestones is late. I do not have the information on which milestone that is, so I will take that part of the question on notice. There are indications at this stage that one of the milestones will not be met. I cannot tell the Assembly what that milestone is now, so I will also take that question on notice and report to the Assembly.

Schools—class sizes

MR HIRD: My question is to the Minister for Education, Mr Stefaniak. Minister, you have recently announced that you will reduce class sizes for kindergarten to year 2 students in government sector schools. What will be the impact of these class size reductions on literacy and numeracy results for our students, and how will this program affect educational outcomes?

MR STEFANIAK: Thanks, Mr Hird, for the question. It is a good question. As you rightly said, we announced in March this year that we would embark on a program to reduce class sizes for kindergarten, year 1 and year 2.

Mr Berry: It will fall just short of what Labor is going to do.

MR STEFANIAK: I will come to that. The program will be phased in over a two-year period, starting next year—actually, I think that should be three years, Harold—with a reduction of year 1 and year 2 classes to 25, which is currently what we try in kindergarten.

Mr Hird: Next year?

MR STEFANIAK: Yes, next year. That will follow with reductions for all three years to 23 the following year, down to 21 for 2004. It will cost some $25 million over the full four-year period, Mr Hird. It involves building additional demountable classrooms at a number of schools. We will also be employing another 140 early childhood teachers. Recruitment of those teachers has already begun, because we need 46 teachers to hit the deck running at the start of 2002. We are busily recruiting those 46 new teachers now.

When I announced the initiative earlier this year, it was greeted with great enthusiasm by many educational commentators, the union and the P&C. It was described as the most important education initiative of the past 25 years—I think that is what someone said—certainly since self-government. It received universal acclaim. It should have a big effect on children's learning. You rightly highlighted literacy and numeracy. It is crucially important that we get those right in the early years.

Obviously, if you drop class sizes from an average of about 28 to 21, there is much more time for each child. That will enable our teachers to focus more on individual needs, address the areas of weakness and maintain better liaison with parents.

I expect that as the program impacts on more and more students the effects on literacy and numeracy will filter through to improved educational outcomes for our kids. We have good outcomes at present, Mr Hird, as you are well aware. I think 94.8 per cent of year 3 students are above national benchmarks in literacy in some strands. That is particularly pleasing. That is leading the country. With this initiative, I think we will further improve the good outcomes.

Mr Berry mentioned something about Labor. It is good to see that the opposition was so impressed with this initiative that they agreed to adopt it as part of their policy. I guess there is no greater form of flattery than imitation. So enthusiastic was Mr Berry about the idea of smaller class sizes that he undertook to take money out of the urban services budget by scrapping the free bus program and using about $11 million of that over four years to fund an extension to year 3. There may be some problems with that. On the face of it, it might sound all right. But there is ample educational research and study to justify smaller classes in the earlier childhood years as we have in kindergarten and year 2, but there is still considerable debate in educational circles as to any educational value in moving into older age groups. Again, I think Mr Berry has embarked on feel-good policies when there is not a huge scientific or professional basis for such a move.

I have seen calculations—I am not going to go over them; I have done it about 10 times in the Assembly—to indicate that once Mr Berry scraps the free bus scheme it will not work out, the way he does his maths, and there might not be enough money in the kitty to pay for the additional educational initiatives which the Labor Party seem to want. I think there could be some real problems there.

Smaller class sizes are an excellent initiative, Mr Hird. You were right to raise the matter. It is ground-breaking stuff. The opposition, whichever way they say it, have imitated it. I think we will see some substantial benefits, especially in literacy and numeracy, right across schooling when kids in government schools are in classes of 21. They will feel the benefit of that through the rest of their schooling.

Thanks for asking the question, Mr Hird. I think it is timely.

MR HIRD: I ask a supplementary question. So, Minister, Mr Berry is in the dark with his calculator or he does not have any batteries in his calculator? Is that the fact?

MR STEFANIAK: It could be a bit of both, Mr Hird.

MR SPEAKER: The question asks for an expression of opinion.

Housing

MS TUCKER: My question is to Mr Moore as minister for housing and relates to accommodation for single people. In November 1999, a spokeswomen for the then minister for housing, Brendan Smyth, stated in the *Southside Chronicle* that the $6.6 million received from the sale of Lachlan Court would go towards redeveloping Burnie Court and purchasing more accommodation for single persons. Now that the majority of Burnie Court is to be sold and the majority of the redeveloped Burnie Court will be privately owned accommodation, could the minister say how many units to

accommodate single people have been purchased or built for ACT Housing since receipt of the $6.6 million?

MR MOORE: I thank Ms Tucker for giving me some notice of the question. The understanding I had was that the question was about waiting times and I do not have numbers for her, but I will take that on notice. Since that announcement there has been a series of other announcements, the most significant being that we are going to move from bed-sitters and single-bedroom flats to a minimum standard of two-bedroom flats. That will have an impact as well. It is also important to understand that whenever money comes into Housing from the sale of assets it must remain in Housing under our agreements with the Commonwealth, and that happens.

I can provide you with some waiting times, if you would like, in terms of accommodation for single persons. For a bed-sitter, it is about 5.2 months. For a one-bedroom flat, it is very high at about 22 months. I imagine that that is because we are removing that stock. For a two-bedroom flat, it is now 10 months, for a two-bedroom house, 27 months; for one-bedroom older persons accommodation, 18 months; and for two-bedroom older persons accommodation, 15 months.

There are priority possibilities under those circumstances as well if applicants are in ill health or have a disability, if their accommodation is inadequate, if they are suffering severe financial difficulty, if they are in an environment of domestic violence, if they are facing imminent evection from the current accommodation or if they are experiencing a similar problem.

We have put a significant amount of effort into the single share home scheme. The scheme has been reinvigorated following an expression of interest process and 19 properties are to be managed by Centacare, Canberra Community Housing for Young People, and Transitional Accommodation Services. The scheme enables single people to share houses. Similarly, in the 2001-02 budget context, we have the three boarding houses option, an initiative which responds to recommendations of both the youth housing task force and the poverty task group, with accommodation being provided for certain people 16 to 21 years of age and for single people aged 20 to 30, with particular emphasis on mental illness. Also, we are doing some work at Ainslie Village at the moment to see whether we can expand the long-term accommodation.

There are a series of initiatives there, but I apologise for not having the specific numbers for Ms Tucker. That was not how we understood the question to be. I will take that on notice.

MS TUCKER: I appreciate that. I have a supplementary question. You may have to get back to me on it as well. What proportion of the people currently on the list of applicants are single?

MR MOORE: I will take that on notice as well and get back to you. I am conscious of standing order 118A, which requires that to be done before next Thursday.

Farmers market

MR RUGENDYKE: My question is to the Chief Minister, Mr Humphries. Earlier this month there was an advertisement in the local press calling for interest in a farmers market to be held on a regular basis in the city. The advertisement claimed that the venture was supported by the ACT government. Can the Chief Minister share with the Assembly the level of support that the government is lending to this proposal, and in what form is that support being given?

MR HUMPHRIES: I thank Mr Rugendyke for that question. I have received a number of letters on that subject in recent days and I have referred those letters to my colleague the Minister for Business, Tourism and the Arts. Since I am Minister for Business, Tourism and the Arts this week, I will take that question on notice. The answer is not available to me at the moment but I am certainly concerned about that as well. I will obtain an answer for you and report to the Assembly.

MR RUGENDYKE: Mr Speaker, I ask a supplementary question. Chief Minister, could you find out whether a senior member of the government bureaucracy attended a meeting at Cooma recently, speaking in support of the proposal to regional farmers? Could you explain why that occurred?

MR HUMPHRIES: I will take that part of the question on notice as well.

Mr Speaker, I ask that further questions be placed on notice.

Impulse Airlines

MR HUMPHRIES: Mr Corbell asked me in question time which milestone is currently overdue, and the answer is the regional operations headquarters.

Papers

Mr Humphries presented the following papers:

> ACTTAB headquarters—Answer to question without notice asked of the Treasurer by Mr Stanhope and taken on notice on 8 August 2001.
>
> ACTTAB headquarters—Answer to question without notice asked of the Treasurer by Mr Stanhope and taken on notice on 8 August 2001.
>
> TransACT—Answer to question without notice asked of the Chief Minister by Ms Tucker and taken on notice on 21 August 2001.

Executive contracts

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer): I present the following papers:

> Public Sector Management Act, pursuant to sections 31A and 79—Copies of executive contracts or instruments—

Temporary contracts:
Les Andrews, dated 3 August 2001
Alan Phillips, dated 1 August 2001

Public Sector Management Act, pursuant to section 76 (10)—Copies of executive contracts or instruments—

Executive Contract Reassignment:
Elizabeth Fowler, dated 1 August 2001

Executive Contract Extension:
Gary Crostin, dated 1 August 2001
Helen Burfitt, dated 20 and 25 July 2001
Jeffrey Mason, dated 20 July 2001

I ask for leave to make a statement in relation to the contracts.

Leave granted.

MR HUMPHRIES: Mr Speaker, these documents are tabled in accordance with those sections I mentioned. Contracts were previously tabled on 8 August. There are two short-term contracts and four contract variations. Details will be circulated to members. I would like to alert members to the issue of privacy of personal information that may be contained in the contracts, and I ask members to deal sensitively with the information and respect the privacy of individual executives.

Personal explanation

MR BERRY: Mr Speaker, I have an issue I want to raise under standing order 46. It arises from some matters yesterday.

MR SPEAKER: Yes.

MR BERRY: Mr Speaker, I have in front of me the uncorrected proof copy of *Hansard* which details a verbal skirmish between you, me and Mr Humphries.

MR SPEAKER: What page, Mr Berry?

MR BERRY: My pages are not numbered, regrettably.

Mr Moore: Is there a time on it?

MR BERRY: It is 3.38.

MR SPEAKER: Okay, thank you.

MR BERRY: I will read it. I said this:

> Mr Speaker, during the course of question time I raised an issue in relation to the Williamsdale quarry and a letter signed by the Chief Minister which the Chief Minister didn't seem to remember. That was previously tabled on 19 June in relation

> to a question on the same subject. Mr Speaker, Mr Humphries also tried to draw some connection between alleged unlawful behaviour at Williamsdale quarry and the events surrounding the VITAB affair and me. There was never any allegations of unlawfulness around the VITAB affair, and I was cleared on two occasions by inquiries established under the Inquiries Act. Mr Humphries can't say that for himself.

Mr Humphries then said:

> First, Mr Speaker, I never asserted Mr Berry broke the law, even though he's just now, by what he's just said, asserted that I have again—yet again. Mr Speaker, and I think, Mr Speaker—in fact I think I've reached the point where in light of the continuing this allegation I think that it's quite improper under standing orders to allege the member has broken the law, particularly when the member has actually produced clear legal advice that it hasn't occurred, and I ask therefore Mr Berry to withdraw the allegation.

Well, from those words, Mr Speaker, you can see that I never said that. I will go on reading. I quote:

> MR SPEAKER: Very well.
>
> Mr Berry: Well, I'm happy to look at the Hansard—
>
> MR SPEAKER: Personal reflections, all imputations of improper motives, all personal reflections on members should be considered highly disorderly.
>
> Mr Berry: But reflections on the government are not.
>
> MR SPEAKER: I don't know that you reflected on the government. I think you reflected on the Chief Minister.

Well, I do not know that that is the case from those words earlier quoted, Mr Speaker. The report continues, and now we get to the important part:

> MR HUMPHRIES: You said I broke the law.

Clearly, I never. Then I asked the question:

> Mr Berry: When did I say that?
>
> MR HUMPHRIES: You said repeatedly.

Clearly, when you look at the words, I never said it at all, let alone repeatedly. Let me continue:

> MR SPEAKER: Look, withdrawal has been asked for.
>
> Mr Berry: Yes, but something has got to have been made first of all, Mr Speaker. I'm happy to look at the Hansard and if I've made any imputations that Mr Humphries is an unlawful character then I'll withdraw them, but I'm going to have a look at the Hansard first.

> MR HUMPHRIES: Mr Speaker, at the end of his remarks on standing order 46 he also said, "that I was cleared of any illegality"—

I never said that. Mr Speaker. Go over the page. I quote:

> Mr Berry: No, no, I didn't say that. Now hang on, I've been Gary-ed again. I said, "I've been cleared by two inquiries, something that you can't say about yourself."

A statement of fact. I continue:

> MR HUMPHRIES: Mr Speaker, those words imply that there is something which—
>
> Mr Berry: They don't imply anything.

And then it reads, "Oh, rack off." And those words were assigned to me. I continue:

> MR SPEAKER: Mr Berry, look we have a great deal of work to do here over the next 6—
>
> Mr Berry: I don't want to say any more that might impugn or might unjustly draw—

Then I was interrupted, apparently. I continue:

> MR SPEAKER: Let's get on with the business. You're acting like children.

You might like to withdraw that imputation, Mr Speaker.

MR SPEAKER: I probably will repeat it again very shortly.

MR BERRY: The uncorrected proof copy then reads:

> Mr Berry: I've got nothing to withdraw.

I think I have demonstrated that again today. I continue:

> MR HUMPHRIES: Mr Speaker, I'll have to insist on withdrawal.

MR SPEAKER: What on earth are we on about here, Mr Berry?

MR BERRY: When I get to the end of it I will make it clear to everybody in this place. I quote:

> MR HUMPHRIES: The allegation has been quite clear, and I ask that it be withdrawn.

It was never quite clear. I continue:

> MR SPEAKER: Thank you. Would you mind withdrawing the—look, you said it yourself just now.
>
> Mr Berry: What?

MR SPEAKER: That you had been cleared by two inquiries.

Mr Berry: That's true.

It's a bit hard to withdraw that. I continue:

MR SPEAKER: Which was more than the Chief Minister had.

Mr Berry: That's right.

MR SPEAKER: There is an implication there, and if you didn't mean it, withdraw it.

Mr Berry: No, they are both statements of fact. Mr Speaker, what can I do other than that—

MR SPEAKER: Withdraw, and we can get on with the business …

Mr Speaker, this *Hansard* indicates that I was unfairly badgered by you and the Chief Minister over something that I did not say. I was Gary-ed repeatedly, and I don't think any member has to put up with that in this place.

Mr Humphries: Mr Speaker, standing order 46 does not allow for that kind of language to be used in relation to—

MR BERRY: It does. Personal explanation. I am not going to be attacked in here by you misrepresenting the facts, which you are commonly known to do.

Mr Humphries: Mr Speaker, if I may speak to the comments: Mr Berry did make allegations in respect of that matter and I believe that you quite properly asked him to withdraw that.

Land (Planning and Environment) Amendment Bill 2001 (No 4)

Debate resumed from 14 June 2001, on motion by **Mr Rugendyke**:

That this bill be agreed to in principle.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs, and Treasurer) (3.23): Mr Speaker, the government will support this bill of Mr Rugendyke's. Mr Rugendyke is attempting to deal with a perceived problem to do with the way in which applications are made for redevelopment of existing houses in the ACT.

I think the bill will assist Planning and Land Management in passing on to interested neighbours a great deal more information about development that may affect them, and for that reason alone the amendments are worthy of support. Importantly, the bill will also assist in raising the quality of development applications and assessing them.

There is a commonly expressed concern that neighbours feel that the information about development around them is inadequate and that its implications are not clear. The government and PALM have been examining effective and affordable ways to address

this concern. Mr Rugendyke's bill proposes a significant improvement to the operation of our development assessment system and I think it deserves appropriate consideration. For this reason, as I said, the government supports the principle expressed in the bill.

There are, however, some other matters that the government believes should be addressed, and the government's amendments which have been circulated in the chamber seek to do that. I will speak to those amendments a little later on when the detail stage is reached.

Mr Speaker, the amendments relate to the question of what information should be included in a survey certificate which it is the obligation of an applicant to obtain, and the way in which that information should be presented in legislation or subordinate legislation. I believe that the survey requirements should certainly be imposed where it is considered necessary to preserve the amenity of neighbours and to advise those who may be disadvantaged by the absence of relevant information. The bill will not only address the concerns expressed about redevelopment in residential areas, it will also assist generally in improving the quality of all development applications and informing anyone who may be affected by a development proposal.

However, because of the broad application of the survey requirement, it might in some situations be desirable to allow exemptions. Mr Speaker, the act allows the regulations to exempt certain classes of development for the operation of provisions of part 6, and that would in effect allow regulations to be made that would exempt some redevelopment applications from requirements for a survey. Examples of such exemptions might involve minor developments such as small extensions or signs, public work construction outside residential areas, or certain class 10 structures such as carports or pergolas. Those regulations will be disallowable by the Assembly, and it would be more appropriate to debate the question of any exemptions at the time that those regulations are made rather than the legislation itself.

I want to flag at this point, Mr Speaker, the government's possible support for exemptions in limited and clearly defined circumstances. If there are such exemptions, as I have said, they will be tabled in the Assembly. It is worth noting that PALM may already, and sometimes does, require survey particulars in relation to development proposals, depending on the circumstances. The effect of this bill as amended is that it would be mandatory for all non-rural development where there was a redevelopment under way.

It may also please Mr Rugendyke to know that PALM, in conjunction with the introduction of the development assessment process of mandatory criteria for quality design and sustainability, is already developing detailed requirements for the provision of a site analysis plan with development applications. From 1 July applicants for most developments have been required to include such a plan with their applications. PALM had intended to introduce the provision of site analysis plans through form requirements using existing provisions in the act. However, this bill will serve to make the survey requirements legally enforceable.

I urge members to support the bill, and I also encourage them to support the amendments which the government is going to put forward in the detail stage.

MR CORBELL (3.28): Mr Speaker, the Labor Party will also be supporting this bill today. There is often an issue in relation to the accuracy of some development applications that are lodged in terms of how they relate to the block on the ground, and how any new development application does fit into the block on which the application is made. There have been a number of instances where a survey would have been a useful instrument in ensuring that the proposal was consistent with the physical features of the lease, and it is clearly the intention of Mr Rugendyke's bill to address that issue. For that reason the Labor Party will be supporting his bill today.

I think, though, as the Chief Minister has flagged, that there may be instances in which it would be inappropriate to require a survey certificate—for example, as the Chief Minister points out, in relation to carports and other minor structures, the class 10 structures that he referred to. I think it would be an overly onerous requirement to require a householder, a leaseholder, to have a survey prepared of their entire block outlining exactly where the dwellings and others structures were on the block prior to getting permission to erect a carport or a pergola. That sort of approach in most instances would be, in Labor's view, unacceptable.

There are a number of the government's amendments which I will speak to in the detail stage which I have a slight concern with, amendment No 3 in particular, but we can deal with that in the detail stage. Labor welcomes this bill. It is a small but useful step in ensuring that residents affected by development applications know that the proposal for a development is consistent with the physical features of the lease on which the development is proposed.

MS TUCKER (3.30): This bill requires development applications which involve alterations or additions to existing buildings to be accompanied by a survey certificate which confirms the locations of the existing buildings on the block. I can understand what Mr Rugendyke is trying to do. It may be the case with some existing buildings that the building was not sited or constructed exactly as shown on the original plans. This could be because of error or because the plan was changed in response to issues that arose during construction. This may not be noted on the building file and may not be an issue for the owners, but it can become an issue if plans are drawn up for alterations or additions that rely on the building being in a certain location relative to the block boundaries or of a certain height-above-ground level. This is particularly so if such dimensions are an important factor in the approval of the development.

My concern with the bill, however, is that it applies to all development applications regardless of their scale, and even when the location of an existing building is quite clear and not in dispute. I also would have thought that any good architect, draftsperson or builder would check the critical dimensions of a building anyway before commencing design work or construction that affected the building.

This bill could thus lead to the unwarranted expense of getting survey certificates that are not really needed in every case. I am therefore not totally convinced that this wholesale change to the requirements placed on development applications is necessary to deal with the few cases where problems arise.

I understand that the government is putting up amendments, particularly to allow developments to be exempted from this requirement for a survey certificate. That certainly is an improvement on the current wording, and if that amendment is supported we support this bill. It's a bit of a broad-brush Mr Rugendyke bill.

MR RUGENDYKE (3.32), in reply: Mr Temporary Deputy Speaker, I thank members for their support for this bill. It is appropriate to point out that departmental officers and the Commissioner for Land and Planning were involved in the process in preparing this bill, and I appreciate the time, expertise and input offered from both offices and, of course, Parliamentary Counsel.

I have had discussions with various parties about ensuring that the application is not too broad, Ms Tucker. I acknowledge the constructive comments on this issue and foreshadow that I am comfortable with the intended government amendments. Having accurate survey details is a commonsense requirement. Inquiries that I have made in Queanbeyan reveal that they would certainly be necessary in development across the border.

As I stated in my presentation speech, there may well be cost implications, but the benefit of investing to get the information right in the first instance certainly outweighs the time, despair and expense in dealing with the fallout caused by architects working off old or incorrect information.

Mr Temporary Deputy Speaker, I have referred to this legislation as the Heycox bill after a family in my electorate who were put through the wringer due to a dual occupancy development being built according to incorrect siting details right outside their bedroom window. The AAT, the Ombudsman's office, PALM, the Commissioner for Land and Planning, solicitors, the Urban Services Minister and my office all became involved in their case at various stages. A registered survey certificate has the capacity to verify what the architect is saying and in the long run eliminate unnecessary disputes like the one I have just described. I thank members for their support.

Bill agreed to in principle.

Detail stage

Bill, by leave, taken as a whole.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (3.35): I ask for leave to move together the four amendments circulated by the government.

Leave granted.

MR HUMPHRIES: I present the supplementary memorandum and I move those amendments *[see schedule 1 at page 3225]*.

Mr Temporary Deputy Speaker, the amendments are in response to a problem. I do not believe that the bill is entirely clear about whether PALM may require a survey certificate to include such matters as, for example, land levels and gradients, services, corridors and easements, and attachments to buildings.

The amendments that I have just moved make it clear that land contours should be included, but it is not appropriate in our view to require a survey to address proposed buildings. That information should be dealt with in building plans and a site analysis plan, which is a document PALM will be requiring with most development applications.

The survey certificate should only reveal the actual and present situation, not what may be in future. Matters such as the height of existing and proposed buildings are addressed in development plans. The surveyor is required to verify all development plans and any amendment thereof. Additional costs and delays will be experienced by the home owner and/or proponent.

Accordingly, the government believes that the proposed new paragraph 226 (1AA) (c) requires amendment to make it clear that the "physical features" of the land are its dimensions and contours. Paragraph (a) already deals with the boundaries of the land. Therefore, paragraph (c) would be best stated as a requirement that a survey certificate show the correct contours of the land. That will enable any person to work out how the proposed changes will relate to the surrounding area.

The other important issue raised by the bill is the range of development that would be subject to the new requirement. The mischief that the bill seeks to address is experienced primarily in residential areas. Certainly, that is where the effects of the problem are most strongly felt, and where those negative effects are least desirable.

As I mentioned, Mr Temporary Deputy Speaker, it is important that the requirement be imposed where it is considered necessary to preserve the amenity of neighbours, and to advise those who may be disadvantaged by the absence of relevant information.

MR CORBELL (3.37): I am grateful for the Chief Minister's advice in relation to the amendment to clause 4 in particular, and the change to the wording "the existing contours of the land" rather than paragraph (c) in Mr Rugendyke's bill. I did have some concerns about that change, but the Chief Minister has clarified those for me.

I stress again that the Labor Party will be supporting these amendments today but we are conscious of the exemption requirements proposed in the Chief Minister's amendments. I take on board that these exemptions will be made by way of a disallowable instrument so that there will be the opportunity to closely look at those when that instrument is tabled in the Assembly.

The issue that the Labor Party is very conscious of is striking the appropriate balance between the level or the extent of a development application which warrants notification and the application of these requirements as proposed by Mr Rugendyke, and the type of development activity which would not or should not attract this requirement of a survey certificate. For example, relatively minor amendments to a home, such as the bricking up of one doorway and the opening of another window, whilst they would usually need a building approval, and in some instances a slightly more extensive development application, would not dramatically change the substance of the built form on a block. It is probably unwise to apply the need for a survey certificate in those cases. Clearly, there

are other circumstances, such as a completely new dwelling through a dual occupancy development, or a major extension to a dwelling, which surely would require and should require the sort of survey certificate proposed by Mr Rugendyke.

We will look closely at that disallowable instrument when it is presented, but the Labor Party will support in total the amendments proposed by the government today.

MR RUGENDYKE (3.39): I thank members for supporting the government's amendments. Amendments 1 and 2 simply clarify what is intended, following consultation with the legal advisers from PALM and Parliamentary Counsel.

The third amendment was surprisingly difficult to deal with—how you describe how a dual occupancy fits the lay of the land, so to speak; how to get that into a survey certificate. But that was the intent; to have a dual occupancy development or an extension consistent with the lay of the land. It was not easy to draft, and I applaud Parliamentary Counsel and departmental officers for being able to do that in such a succinct way.

Amendment 4 refers to the exemptions. I heard Mr Corbell's concerns about what may be developed. He is correct in that small-scale developments that have no bearing on siting and so on, such as altered doorways and windows, and carports, would be able to be exempted. Large developments at the other end of the scale would also be able to be exempted. For example, a large commercial development where survey certificates are a normal part of the process would be very strictly governed by correct sitings through the survey certificates and so on. Those are the sorts of exemptions that are most likely to be granted.

The main thrust of this piece of legislation is to deal with developments and extensions which effectively overcrowd existing blocks and cause grief for residents in our city. I thank members for supporting these amendments.

Amendments agreed to.

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

Bill, as amended, agreed to.

Postponement of order of the day

Ordered that order of the day No 3, private members business, be postponed until the next day of sitting.

Ordered that order of the day No 4, private members business, be postponed until a later hour this day.

Gaming Machine Amendment Bill 2000 (No 2)

Debate resumed from 8 August 2001, on motion by **Mr Rugendyke**:

> That this bill be agreed to in principle.

MR HIRD (3.44): I need to sort out a serious technical matter that I find myself involved in, Mr Deputy Speaker. Standing order 156 relates to conflicts of interest. I do not believe I am caught by these provisions. I propose to participate in this debate and to vote on questions put. I note that standing order 156 provides that any question concerning the application of the standing order shall be decided by this place. Should the Assembly make a decision on my participation in the debate, I will abide by that decision. The reason I say this, Mr Deputy Speaker, is that I am a director of a licensed club, the ACT Leagues Club, which is known as the Braddon Club.

Mr Kaine: Out! Out, Mr Hird.

MR HIRD: Thank you, Mr Kaine, for your impartial approach, as always. The fact is that I do not receive any remuneration from this club. It is simply a club which I have been associated with and which I established back in the late 1970s. I am a director of that club. What I am trying to ascertain, in accordance with standing orders, is whether I am in conflict. I am in the hands of the house and I ask members to sort it out for me.

MR DEPUTY SPEAKER: I will allow the house to sort it out should it wish to do so.

Mr Humphries: Mr Deputy Speaker, for the government's part, I am comfortable with Mr Hird's declaration of his prior interest. I personally do not believe any motion is necessary to request Mr Hird to exclude himself from this debate.

MR DEPUTY SPEAKER: Mr Humphries requests that you exclude yourself—

Mr Humphries: No, sorry; I am saying I do not believe we need a motion to exclude Mr Hird from the debate.

MR DEPUTY SPEAKER: You do not. Thank you. I did not pick that up, Mr Humphries. Sorry.

MR HIRD: What about the other side of the house?

Mr Berry: We are happy.

Ms Tucker: They would be very happy.

MR HIRD: Would you say that for the record?

MR DEPUTY SPEAKER: It seems fine, Mr Hird. You carry on.

MR HIRD: Thank you. I assisted in the introduction of poker machines in the mid 1970s. I stood at a meeting of people who wanted to introduce them in 1974. I think Mr Kaine would recall this. I was opposed to the introduction of poker machines

provided that they were removed out of New South Wales. One licensed club across the border where there was a population at the time of 18,000 people had a membership of nearly 30,000. Members in the ACT went across the border, thereby creating jobs and wealth that went to the New South Wales community. It certainly did not come back into the ACT community. I carried the day in this place by saying that I was opposed to them, but their introduction would mean that there would be jobs in the ACT. I was proved to be right.

There was a compromise at the time, as Mr Kaine will recall, in order to get the matter through then advisory body. The then federal minister, Gordon Bryant, indicated that he and the Whitlam government would abide by whatever was decided by what was then the Legislative Assembly of the ACT, the advisory body. A compromise was reached with a member and a 10c ceiling was placed on the poker machines. Of course, that ceiling has long gone.

Since 1974 I have seen the phenomenal growth of the club industry in the ACT, and new jobs, both direct and indirect. There has been money spent on the club industry itself, and that money has passed down to a number of auxiliary clubs, such as darts clubs, little athletics, rugby league, soccer and Australian rules. All these bodies are benefiting directly from the licensed clubs. Prior to 1974 the licensed club industry in the ACT was dying, but after the introduction of gambling we saw a huge upturn.

Mr Deputy Speaker, things move with the times, and now, as the Chief Minister has indicated on numerous occasions, the government is concerned about the gambling industry, not just the licensed clubs but also other facets such as racing, casinos, lotteries, et cetera. Indeed, in July this year the Australian Institute of Gambling Research at the University of Western Sydney tabled a survey of the nature and extent of gambling and gambling problems in the ACT. It was an interesting in depth survey. You would need to know the background which I have outlined to understand that the licensed club industry has gone on from the situation in the mid 1970s and early 1980s when they closed late in the evening, at 11 pm or 11.30 pm. Now there are 24-hour operations.

We have seen the same in the liquor industry, which is very closely associated with gaming. At one time I was a member and deputy chair of the Gaming and Liquor Authority for the ACT. Gaming and the liquor industry are closely associated, and we have chosen now to say that there is a prohibition on alcohol at certain times in the early hours of the morning.

That brings me to this bill introduced by Mr Rugendyke. He argues for a prohibition of three hours in respect to gambling. His argument is to do with problem gambling. Well, I think Mr Rugendyke's sentiments are to be admired and to be supported. I certainly would be urging members to support the breaking of the 24-hour cycle. However, gambling is not just confined to poker machines. As identified in that survey, poker machines are just one part, albeit a big part.

It may be that a government in this place in the next 12 months may look at other facets of gambling, such as the three facets of the racing industry in the territory as well as the lotteries operated from New South Wales and Victoria. Money goes interstate from all these areas. A percentage does come back into the ACT from the lotteries, but not the same percentage as comes in through poker machines and other forms of gambling, such

as the racing industry. We have come a long way, but we must tread lightly. There are, as set out in this survey, problem gamblers. There are problem drinkers. But this society today—

Mr Kaine: There are problem politicians, too.

MR HIRD: There are problem politicians, and one spoke just then. He may well say I am a problem politician.

Mr Stanhope: Heaven forbid.

MR HIRD: Never. I do have the confidence of the Leader of the Opposition. He has told me that he is looking after my interests. I go to bed at night with a warm glow knowing that I have the Leader of the Opposition concerned about my well-being.

Mr Berry: Vicki Dunne is trying to look after you, Harold.

MR HIRD: As for Mr Berry, I have known him for over 22 years, and he is the only man I know who would push me into a bog rather than shove me out, but that is another story for another time.

Getting back to the matter before the house, gambling is part of our community, and we have to face it; but we also must look at the benefits that flow from gambling and channel those benefits to help those who need helping, as indicated in the survey. Money should go to organisations and community groups to assist compulsive gamblers and to better enlighten the club industry of its responsibilities to the community. Clubs are not just gambling dens and places of entertainment. They have to shoulder their responsibilities and not just spend money on new gambling equipment and benefits to their members. Because of the actions of this government, a percentage is going back into the ACT community at large.

We in the territory can be proud of seeing an industry grow from the ashes to what it is today. Thousands of people, not hundreds, are employed either directly or indirectly by the club industry. When we talk of clubs, we talk of poker machines, and if you talk of poker machines and clubs you have to incorporate alcohol as well. You also have to incorporate the benefits that flow to the community at large, and not just to their members.

The club industry has to shoulder its responsibilities, and I am confident that it will, but it needs direction. The proper place from which to get that direction is this place. I commend the bill to the house, but I believe that it needs to be looked at in light of other areas as well.

MR KAINE (3.58): I must commend Mr Hird on a very erudite speech, very erudite indeed. It was most interesting to listen to. The only problem was that it did not cast any light for me on the substance of the bill that is before us. The purpose of the bill is to curtail poker machine operating hours in the early hours of the morning. Despite the fact that Mr Hird's speech was a very erudite one, I regret that it did not deal with that problem, which is the substance of the bill before it.

Mr Deputy Speaker, I do not have any problem in principle with the notion of closing down gambling machine operations for part of the day, whether it is the early hours of the morning or late at night or at any other time of the day, but I do have a problem with dealing with this bill today. It is a case of keeping a dog and doing the barking yourself, because we have a Gambling and Racing Commission which we established quite recently for the specific purpose of examining issues like this one. My understanding is that they have a review in process, so why would we pull out this small aspect of the whole gambling field in Canberra and legislate especially for just it when there is a review of the whole operation going on by the authority which we set up for that purpose?

Mr Hird said we are the people who should make the decision. Yes, we should when we are sufficiently informed on the ramifications of it. It is the responsibility of the Gambling and Racing Authority to do a proper inquiry, then recommend to this place what we should do in light of informed opinion, not just take some knee-jerk reaction and say, "We think there is something bad about poker machines operating at 6 o'clock in the morning, so therefore we are going to discontinue it."

I do not know, and I suspect that Mr Rugendyke does not know either, and I will bet that Mr Hird does not, how many people are in clubs at six o'clock in the morning playing poker machines. I have no information on that. Does Mr Rugendyke? If he has got it he did not put it on the table. Mr Hird certainly did not. Of those people who are in there at six o'clock in the morning, if there are any, how many of them are problem gamblers? We do not know. We are totally uninformed.

If we close the clubs to poker machine operations for a certain time at any time during the day, what would be the impact of that closure on the revenues that come from the clubs to the government and to the community? I do not know. Does Mr Rugendyke know? How many people are going to lose their employment if we close the clubs to poker machines during this time? I do not know.

How on earth can we make a decision on a matter like this with no information at all about the ramifications of doing so? I come back to the point that I began with, not that I want to refer to the gambling commission as a dog, but we have got a dog, so why are we doing our own barking? Why aren't we tasking the gambling commission with doing a full inquiry and then coming to us with appropriate recommendations? That, to me, Mr Deputy Speaker, is the responsible way to go, the proper way to go, and then we can at least be making a decision on the basis of being informed about the consequences of what we are proposing to do. At the moment we are being asked to make a decision with no information at all. I find that, frankly, quite offensive, Mr Deputy Speaker.

I do not think we should be asked to make decisions under those circumstances, particularly when we have a body in place whose job it is to investigate and inquire into these matters. Mr Deputy Speaker, I have to say that in principle I oppose this bill; not because I do not think it might be a good idea at the end of the day, it might be, but I do not think this is the way to deal with it. So, if I am asked to vote on it today, Mr Deputy Speaker, I will be voting against it.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer) (4.03): Mr Deputy Speaker, in light of Mr Kaine's comments I am able to provide the Assembly with an amount of information about the issues that he has raised. Our dog, the Gambling and Racing Commission, has been able to supply me with that information. I point out that Mr Rugendyke asked whether information was available. On the basis of his request, I asked the commission to obtain some information from clubs concerned, and that information has been made available.

In a minute I am going to put some of that information on the table, but some of it has been provided by clubs in good faith. I do not wish to have the information placed on the public record because it may be commercially sensitive to the clubs concerned. What I will do, though, is offer members of this place who would like to see it a chance to peruse this brief so that they are able to acquaint themselves with the position. I will come to that information in a moment, Mr Deputy Speaker.

The Gaming Machine Amendment Bill, as members have heard, restricts the hours of operation of gaming machines in the territory so that there is a three-hour shutdown of machines each day, commencing at either 4 am or 5 am, and coinciding with the break in service of alcohol at licensed premises. At the moment we do not have any such restrictions, but in recent days an increasing number of clubs have been trading 24 hours a day. There are currently eight or nine such clubs in the ACT offering 24-hour a day facilities, and to the best of my knowledge all of those clubs also offer access to poker machines during the hours that they are open.

Mr Deputy Speaker, members are well aware of the debate that has raged in this community in recent months and years on the question of the harmful effects of gambling, and on the way in which we might encourage harm minimisation measures in relation to all forms of gambling, particularly with poker machines. Members would be aware of the recently released ACT gambling impact study undertaken by the Australian Institute for Gambling Research for the Gambling and Racing Commission. This benchmarking study conducted in the ACT found that problem gamblers were more likely to use gaming machines than other forms of gambling.

The ACT had the second highest expansion per capita on gaming machines for all states and territories. The survey found that 92 per cent of respondents considered that the number of gaming machines in the ACT should either stay the same or decrease. The community is of the view that there are sufficient or too many opportunities for gambling at the present time, particularly as far as gaming machines are concerned.

It is disturbing to note that the ACT survey estimates that ACT residents with gambling problems represent 1.9 per cent of the ACT's adult population, about 5,300 adults. The impact of this problem is even more significant when one adds the multiplier effect of 1 on 7 that one could usually apply in these circumstances. It gives us a total figure of people affected adversely in some way by gambling of 37,000. The survey tells us that gaming machines are the main source of problems for ACT gamblers. The negative impact of gaming machines can be very pronounced for some people.

Mr Deputy Speaker, a few years ago we took the decision to provide a break in trading hours in the ACT so that it was not possible to drink 24 hours a day in licensed premises. I believe it is appropriate for us to make the same provision with respect to access to the

most significant and the most prominent form of gambling in the territory, certainly the one that this survey I have referred to demonstrates is the most serious problem in the ACT, namely gaming or poker machines.

I emphasise, Mr Deputy Speaker, that Mr Rugendyke's bill does not result in clubs being forced to close. Clubs that wish to trade for 24 hours a day may continue to do so. Indeed, as the figures I am going to disclose in a moment will reveal, clubs' viability will be very little affected by the fact that during a three-hour period in the early hours of the morning they will be unable to operate their poker machines.

I should note that the Gambling and Racing Commission is conducting a detailed review of the Gaming Machine Act, and this review will be looking at harm minimisation measures to be introduced to assist the control of gaming machines in the ACT. As members are aware, there is a very large number of possible measures that might be conducted in that regard; things such as the provision of clocks and warning signs on poker machines, the provision of natural light, perhaps restrictions on the note acceptors, and a whole host of other things as well. They will be considered by that review, and I think in due course that this Assembly will need to consider those measures at that time.

The commission is also developing an ACT gambling code of practice that will provide a comprehensive list of harm minimisation measures which all gambling providers will be required to follow. That code will be enforceable and will have penalties provided for in it.

Mr Deputy Speaker, the point that Mr Rugendyke makes in this legislation is that this is a problem of significant concern, with a serious and growing dimension, on which this Assembly, quite rightly, is being called to act. On that basis, as a basis for assessing how such measures might impact on the extent of problem gambling in the ACT at least, the ACT government is quite prepared to support this bill today.

I made mention of the fact that there was some information available to members about the extent of gaming machine use at certain hours of the day. As I said, there are nine clubs that trade 24 hours a day. The Gambling and Racing Commission formally sought information from the larger clubs in this group. Those clubs, incidentally, are the Canberra Southern Cross Club, the Canberra Labor Club, the Canberra Tradesmen's Union Club, the Tuggeranong Valley Rugby Union and Amateur Sports Club Incorporated, which has two branches or outlets that trade 24 hours a day, and the West Belconnen Leagues Club. Those clubs are representative because, between them, they represent a total of 1,452 machines, which is 80 per cent of the machines which operate over the 24-hour period, or the clubs that trade during 24-hour periods.

The information was presented by the clubs. It has not been verified or independently documented, Mr Deputy Speaker, but I believe we should take this as at least some indication of what is going on in the clubs. A compilation of the clubs' data, as I said, is available here for members to peruse.

The figures demonstrate that the average revenue per machine in respect of each day's prohibition period of three hours is a total of $3.40. It represents approximately 2.4 per cent of the estimated daily average revenue per machine of $141 which occurs in the

ACT. During that three-hour period, which is one-eighth of the time in a 24-hour period that the machines are open, they achieve 2.4 per cent of the revenue; that is, $3.40 per machine for each machine that is operational during that period.

Mr Kaine asked how many people are using the machines at that time. I will not name the club, but one club in particular had information about the number of machines being played during the hours between 5 am and 8 am over a seven-day period. The maximum number being played at this club, which is a major club in the ACT, at any time was 16, with the average number over the period being only seven. One day showed no machines being played at all during that three-hour period. The club has a total of 270 machines. The club staffing situation for this trading period is a team of four, plus security, with wages estimated at $5,105. With an average of about seven machines times $3.40 and a wages bill of $5,105, you could argue quite persuasively that Mr Rugendyke's bill is doing those clubs a favour by not requiring them to be operating during those times if they choose to close down.

Mr Deputy Speaker, as I said, the information is available here for members to peruse, and I am quite happy for them to look at it. The summary of the information, based on the assumption that there is an average of nine machines that each club uses during the prohibition period, is that there are nine clubs times nine machines; that is 81 machines; revenue of $1,076 per machine per year; that is $87,000. So the totality of the revenue which is being lost to clubs, on this estimate, is probably conservatively estimated to be under $100,000 over an entire year. That is probably the wages of two people.

I very much doubt that we are going to see a large-scale loss of employment in the club industry on the basis of somewhere between $87,000 and $100,000 a year being forgone during those hours because people are not permitted to play. There is also, of course, the possibility that those people will come back and play their machines at other times, so the revenue might not be lost either. Mr Deputy Speaker, that information is available, as I said, for members to peruse.

On that basis I think the indication is very clear that the impact of Mr Rugendyke's legislation is not significant and that it does represent a step towards providing the same relief for problem gamblers that we presently provide for problem drinkers in the ACT. If you are in a club, bar or tavern you will be kicked out at a certain hour of the night, and that, presumably, provides some bar or barrier to people drinking continuously. I think it is appropriate to consider a similar barrier for people who have a problem with gambling, and this measure therefore is appropriate.

MR STANHOPE (Leader of the Opposition) (4.14): Mr Deputy Speaker, this bill is an attempt to limit, as we all know, the operation of gaming machines by preventing licensees from allowing the machines to operate unless the licensed premises are open for the sale of liquor. Of course, as the Chief Minister just indicated, licensed premises must close the bar for three hours each day between 4 am and 8 am. Thus, this bill will prevent the operation of gaming machines for the same period.

Mr Humphries: No, between 4 am and 7 am or 5 am and 8 am.

MR STANHOPE: Yes, I beg your pardon. I think the point has been made. If a licensed club chooses to close the bar between 4 am and 7 am, for example, then the gaming machines must not operate during that period.

I agree entirely with the sentiments expressed by Mr Kaine in relation to this bill that one of the difficulties we have in considering it is that there really is no evidence, to my mind, that the restriction on club members that is being proposed by this bill will do anything to lessen problem gambling, and that is what we are talking about here. We are debating this bill very much in light of the report which was presented by the Gambling and Racing Commission to the government in late July. That is a most disturbing report. The Chief Minister has given a summary of the contents of that report, and each of us in this place accepts that gambling, and problem gambling in particular, is a serious societal issue. Problem gambling, to the extent that it is a response to compulsive behaviour, is as destructive as a lot of other compulsive or addictive behaviours that people exhibit. People do lose control of their lives. Their activities and their actions become very destructive of themselves, of their families, and more generally of the community.

We all acknowledge that we have a significant problem in this community, as does every other jurisdiction in Australia, with problem gambling, and this bill is a response, in a way, to the delivery of that report. It is an immediate response that is made in the absence of any evidence that it will do anything to deal with people who have a problem controlling their gambling, people who have become compulsive in the way that they gamble and have lost control of the capacity to discipline their gambling behaviours.

The report released by the Gambling and Racing Commission, which the Chief Minister referred to in his speech, certainly is extremely disturbing. The report included a whole range of policy-relevant findings, but it did not make any recommendations about how to address problem gambling. There are no recommendations in that report about how to address problem gambling. We all understand that a second report is being prepared which will be provided to the government in the near future. It had initially been indicated to us that that report would be available this week, but my inquiries revealed that it will not be available for another couple of weeks. In fact, it will not be presented to the government before the Assembly rises. We understand that that report will canvass various policy options in relation to gambling, including problem gambling.

That begs the question: why, in advance of the delivery by the Gambling and Racing Commission to the government of its second report, one which does address policy issues around problem gambling, are we debating this bill? Why? It's just not sensible. It is not good process. It does not make sense to be debating and potentially passing into law this measure at this time in advance of a report which is expected to be provided to the government within the next couple of weeks. This is not good practice. It is not good process.

It needs to be said, and Mr Kaine expressed it eloquently, that we do not have the evidence we need on which to base a decision. In the absence of such evidence it may well be that the adverse effects of this bill are greater than the beneficial effects.

To some extent the information which the Chief Minister has tabled is almost a case for not proceeding with this bill. In a way it raised the level of my concern about this bill. I think it put the position quite starkly. The Chief Minister has advised us that the

average take on each of the machines in the clubs that are open 24 hours a day during the prescribed period is $3.40. The Chief Minister tells us that that represents 2.4 per cent of the average daily takings from each of those machines. He suggests that we are talking about an annual sum of about $87,000 a year in revenue taken during these proposed proscribed hours. This is in the context of a gaming revenue of what, $31 million? We are talking about closing down clubs for three hours a night in some sort of unsubstantiated belief that the $87,000 that is spent on gaming machines during the proscribed period is all attributable to problem gamblers without a single skerrick of evidence that any problem gambler frequents clubs between the hours of 4 am and 8 am. The Chief Minister then glossed over the impact on staff.

Let's just look at what we are doing. The maximum number of machines played between 4 am and 8 am in the club that the Chief Minister quoted, one of the four largest clubs in the ACT, was 16. The average number during the week was seven. We are closing down clubs—

Mr Humphries: We are not closing down the clubs. They can stay open.

MR STANHOPE: They can stay open, but they can't game and they can't sell alcohol. So we are closing down this operation for four hours because the average usage—

Mr Humphries: Three hours.

MR STANHOPE: For three hours in a four-hour period. The average number of poker machines used in the largest club is seven. The average use of poker machines during the period is seven. Seven people. I would have thought that before we took this measure the ACT clubs or the Gambling and Racing Commission might have been able to give us some advice on whether any of the seven people who are turning up in the eight or nine clubs have been identified by any of those clubs as chronic gamblers.

Do we know whether any of the seven people who turn up during these hours to play gaming machines are chronic gamblers? We have absolutely no idea. We have no idea at all. This is just hit and miss. This is just a case of saying, "Look, we've got a problem with gambling. Let's stop gambling between 5 am and 8 am because seven people a night, in each of eight clubs, gamble during those hours." Let's not worry about the fact that those clubs will close during those hours. Mr Rugendyke says, "So what?"

Mr Rugendyke: I beg your pardon. I did not.

MR STANHOPE: I beg your pardon, I thought you said, "So what?" I'm sorry mate, I thought you did. I was concerned at the way in which the Chief Minister glossed over the impact of effectively forcing the closure of the clubs during those hours.

Mr Humphries: There is no impact. That was the point of my comments. There is no impact.

MR STANHOPE: But there is an impact. ClubsACT suggests that as many as 40 or 50 jobs or part-time jobs will or may be lost as a result of this.

Mr Humphries: That's clearly not right, on those figures, is it? Because they only make $100,000 in a whole year out of the whole thing.

MR STANHOPE: Well, you don't know that.

Mr Humphries: Why would they stop running the jobs in those circumstances?

MR STANHOPE: That is not the question at all. It's a question of whether or not it costs clubs more to close them down than to keep them open. I think that is one of the points here; that you actually refuse—

Mr Humphries: They only make $100,000 in a whole year, across the entire territory. Why would they not stay open?

MR STANHOPE: That's a decision for the club. There are costs, Chief Minister, in closing down a club that I think you do not appreciate.

Mr Humphries: Then keep them open.

MR STANHOPE: So they keep them open, but do nothing. They basically just keep the staff on. You know they are not going to do that. At the moment they are employing staff during that period for a range of reasons. You remove all reasons for the clubs to remain open.

Mr Humphries: Is this ridiculous or isn't it?

MR STANHOPE: No, you miss the point. You say, "We won't allow them to sell alcohol and we won't allow the poker machines to operate, but we are not really requiring them to close down. We just expect them to keep rolling over in the face of that." To suggest that there will be no impact on employment really is a nonsense. There must be an impact on employment if this step is taken.

I think the crux of the matter is that we are taking this knee-jerk response at this time in advance of a report which is going to be tabled in two weeks time. The Chief Minister has indicated a whole range of possible policy responses that will need to be taken to address the issue of problem gambling. I have indicated that the Labor Party accepts and acknowledges that many of the initiatives which the Chief Minister has suggested, and which we have all considered in our research on this issue, may be initiatives that we will have to take here in the ACT. They are issues which ClubsACT and the responsible clubs are already putting in place. That should be our formal, our strategic, and our thinking response to this issue of problem gambling. We should not respond in this way.

Mr Kaine wants some detailed evidence, and the Labor Party commits to this as well. If there is some evidence that this initiative will have any impact in addressing problem gambling the Labor Party will support it. But show us the evidence first. Don't just jump up and say, "Gee, this sounds like a good idea."

Mr Rugendyke: You haven't spoken to Lifeline then, have you. You haven't sought Lifeline's view. That's because of your conflict of interest.

MR STANHOPE: There is no evidence. There is a whole range of suppositions. There is a whole stack of guesswork. There is a whole spate of crystal ball-gazing going on here. There is absolutely no evidence that this initiative at this time will have any impact at all. At this point in time the Labor Party will not support legislation on this important subject based simply on a wish or a desire to get in ahead with some sort of rather populist response to a really difficult and complex issue.

MS TUCKER (4.28): On the face of it, this bill presents a simple harm minimisation measure to the licensing conditions of gaming machines. We are obviously all aware of the significance of problem gambling in our community. We know that pokies in particular are a problem and that they involve the largest number of problem gamblers. But we also know that racing, wagering and casinos are a big part of the problem. So we know that attention needs to be given to all areas of problem gambling.

I have looked at what Mr Rugendyke suggested and the Greens are prepared to give qualified support. I would like to outline why we have taken this position. Soon after the bill was tabled by Mr Rugendyke I wrote to the Gambling and Racing Commission asking whether they would consider his bill. The commission's response was that they would consider it as part of the review of the Gaming Machine Act. As members will be aware, the Gambling and Racing Commission is charged with the responsibility of providing policy advice and reviews of legislation, all with the umbrella aim of reducing harm and acting in the public interest. So when the bill was brought back onto the Assembly's program, I had some concerns about whether the work had been done.

Members have received letters from various clubs and their workers, and from ClubsACT, claiming that the bill would mean that clubs would have to lay off staff and that not many people gamble at the specified time of day. During the debate today, Mr Humphries put this argument in support of Mr Rugendyke's bill and Mr Stanhope saw this as an argument against the bill. I understand that Mr Humphries argued that there would not be a huge impact on the viability of clubs, and that the loss of small numbers of people playing poker machines could not be seen to be a major threat to clubs.

We just heard Mr Stanhope say that he feels it would not be viable for the clubs to stay open for those hours if the poker machines were not running. If that is the case then this is a very sick industry. If you are seriously telling us that these clubs are not able to stay open for three hours because they do not have poker machines running—

Mr Stanhope: I didn't say that.

MS TUCKER: You didn't say that?

Mr Stanhope: No. I said there must be an impact on staffing.

MS TUCKER: Mr Stanhope is suggesting there will be an impact on staffing. I do not know but that may well be the case. But I think the point here is that we are looking at a broader community interest issue. There is potential for staff loss, and I have heard that from the clubs. I do not know how many staff are involved in managing poker machines but certainly, from what I have seen, there are not many. Staff are engaged in providing drinks and so on to people who play poker machines. So, following Mr Stanhope's

argument, the clubs must be saying that if poker machines are not being used, staff will not be needed because people will not be in the clubs. If that is the case then these clubs are basically open for gambling at those hours. There is nothing else being offered to them.

Mr Stanhope: Have you heard of shift work, Kerrie? Have you heard of people coming off a shift at 2 o'clock in the morning?

MS TUCKER: Mr Stanhope says that there will be shift workers. I have heard that argument from the clubs. Are you saying that the only reason shift workers go to clubs is to play poker machines? If that is what you are saying then I am back to where I was, which is: if the only thing clubs are offering is poker machines then clubs are offering a gambling opportunity, and that is it. That is not what I hear the clubs tell us. The clubs tell us that they offer a lot more than just the opportunity to gamble.

I acknowledge that one of the dilemmas when restricting aspects of gambling is where to draw the line between preventing problem gambling and not restricting the wish of other people to access gambling as a form of recreation. Perhaps Mr Stanhope is saying that we want to be sure that this will have an effect on preventing or reducing problem gambling to counter the negative impacts of the restriction on other people.

Mr Rugendyke countered the specific example of shift workers by pointing out that some of the shift workers listed changed shifts later than the time identified. This does not mean that there are no shift workers but it does somewhat reduce the impact of the argument—in fact, the major argument—of the clubs.

Members may or may not be aware that I have had several discussions on this issue with Mr Rugendyke, his adviser and the gambling commission. In addition to the issue of this change being made outside the context of the commission's review of the act, there is the important matter of whether it would be possible to monitor the effect of the change. I have had assurances that, although some difficulties remain, the commission has access to baseline data on gambling on the machines at that time of day, and will soon have information on gambling after that period. We still have a lack of information on when problem gamblers gamble on gaming machines. We also do not have clear information on exactly who will be affected by shutting down at this time of the day.

Mr Rugendyke said in his media release that he has drawn on the expertise of Lifeline in researching the matter. On checking, I found that he was referring to studies that were being undertaken to determine why problem gamblers now in counselling were still gambling. This is similar to research carried out by the Productivity Commission in its study of the Australian gambling industry.

Barbara Anderson, the coordinator of gambling counselling at Lifeline, told my office that the aim of their in-house survey was to find out "what would have made a difference". They found a strong response that "If I'd had to stop playing the machine to leave the premises that would have helped". They did not know when problem gamblers might most likely be at a club. But, based on this survey, Ms Anderson said that, when on a binge, often only running out of money or not being able to access money via ATMs would make them stop. So problem gamblers may well be there for 24 hours.

This bill will ensure that anyone in a club will be forced to stop gambling on a gaming machine during the hours when alcohol is not served. So it is essential that we are able to monitor the effects of the shut-down on the numbers of people gambling on machines and the money expended.

It may be that this measure will not have a real impact. Maybe there are better tools. But, based on a letter I have received from the Gambling and Racing Commission, which basically says they think there is a reasonable chance that they will be able to make an evaluation, and because of the very strong support for this bill from Lifeline, we are prepared to support it.

As I have said, I do not support the bill 100 per cent. I am sorry in some ways that we have not had an opportunity to see a better analysis from the Gambling and Racing Commission. The Gambling and Racing Commission has written to me and said—and it is important that Mr Humphries listens to this because I would like him to respond:

> In the event that the Assembly passes Mr Rugendyke's Bill and the Commission is requested to assess the impact and effectiveness or otherwise of the restricted operating hours, properly conducted surveys and monitoring will be established. If necessary, external professional assistance may be sought to help in this process.

What I am asking Mr Humphries to do in this debate is to say that he will request that of the commission. I know that under the act you can make a request. I have had some difficulties before. But this bill does not specify that the Assembly requests the commission to do the work. I am prepared to support this bill if Mr Humphries can clearly state here and now that he intends to request the commission to do that evaluation. My support hinges on the undertaking that we are going to see an evaluation. Even though the commission has said that it is not 100 per cent sure that it will be able to come up with results which clearly show what the impact is, they feel that an evaluation might be useful.

I must say that one paragraph in the letter from the commission worried me a little bit. It says:

> Subsequent to the discussions with Mr Rugendyke, the Treasurer has requested that the Commission gather some initial benchmarking data from clubs so that some comparisons could be made should the Rugendyke Bill be passed. The Commission has already commenced this task with activity being sampled at some clubs in the relevant early morning time periods.
>
> Despite the Commission being somewhat conservative in committing to being able to draw specific or definitive conclusions from the data gathered on this issue—

so they are expressing some reservations about this—

> Mr Rugendyke MLA was confident that if his proposal had an influence on the level of gambling activity then the Commission's analysis of gaming machine operations would be sufficient to detect such a trend.

I want that on the record because I am a bit concerned that the commission seems to be taking Mr Rugendyke's word for whether or not this is going to work. Clearly, Mr Rugendyke is not an expert, and the commission needs to be taking responsibility for deciding whether or not this is effective.

Despite having said that the letter from the commission is slightly contradictory, I am still prepared to support the bill if Mr Humphries gives us a commitment to ask the commission to do whatever it can to evaluate the value of this initiative. I also want to put on the record that if that evaluation does not show that there is any benefit or if it is impossible for the evaluation to be done properly, I am prepared, if I am re-elected, to reconsider this matter in the next Assembly .

MR HARGREAVES (4.39): Mr Deputy Speaker, I want to debunk some of the stuff that the Chief Minister has put to us. He keeps trotting out this hoary little chestnut that the Labor Party has a conflict of interest. I find that absolutely insulting. The assumption is that if an organisation gets a benefit from a particular area of the community then individuals within that organisation who do not receive a specific or real benefit are debarred from considering what may or may not be an adverse effect on the community in which they live and move. That is an appalling position to take, Mr Deputy Speaker. It is something for which the Chief Minister should be condemned.

I am happy for people to know just how much money I get from the clubs. I got $300 in the last election. So far in this election campaign, as you well know, Mr Deputy Speaker—we have been at it for a little while now—I have got not one red cent.

People would know that we have a Hare-Clark electoral system. Each candidate has to fund their own campaign. Some members here receive benefit in real time from the clubs. We do not. Certainly the organisation does, but no more or less so than the Liberal Party receives support from business and no more or less so than some of the crossbenchers receive support from the clubs. I am sure that in previous elections people like Mr Moore and Ms Tucker have globally had assistance in their campaigns. I would not deny them that assistance for a minute. But I do not stand up here and say that because they received assistance they cannot vote on an exercise or an issue which may have a detrimental effect on a member of the community or a group in the community. So I take exception to the Chief Minister's remarks.

Mr Berry: I don't know why you even bother talking about it.

MR HARGREAVES: I think what he said is absolute rot. My colleague Mr Berry says why even bother. He has a good point because this has now become a mantra. For these people, who dream about what is in their lunchbox, it become a self-fulfilling prophecy. Well, this is not the case in the real world.

Mr Berry: It's okay for Harold but not for anybody else.

MR HARGREAVES: That is right. People on the other side of the chamber seem to be excluded from the criticisms of Mr Rugendyke. It is very convenient for Mr Rugendyke to stand up here and scream "conflict of interest" at the Labor Party, but sitting next to him is a person who has received exactly the same sort of benefit that I have. There are members on the opposite side of the chamber to me who have received exactly the same benefit. Do I hear the charge of conflict of interest being directed at them? No, Mr Deputy Speaker. In fact, if those of us who have had a corporate benefit from a specific part of industry were to walk out of the chamber, Mr Rugendyke, the pontificating control freak, would be the only person left here.

I am angry that he singles us out as a group for this kind of treatment. It is exceptional, appalling,

unnecessary and stupid. Mr Humphries—

Mr Humphries: You rang?

MR HARGREAVES: I am not addressing you, Mr Humphries. I am talking about you, not to you.

Mr Humphries: I do apologise.

MR HARGREAVES: I accept Mr Humphries' apology. This is the first time, and possibly the last, in my time in the chamber that he has apologised, and I will savour it.

Mr Deputy Speaker, there has to be a sense of proportion. For Mr Humphries' information, the Tuggeranong Valley Rugby Union and Amateur Sports Club, which I suppose is the biggest group in the ACT, has so far supported one member in this chamber—but, I might say, nobody from the Labor Party. Mr Humphries said that two of their four clubs are open 24 hours a day and they spend $3.40 or 2.4 per cent a machine. Great figures—$87,000 for the whole of the ACT. What a great idea! Mr Humphries said that, if they are running at a loss, why should they stay open? It is their decision.

If Mr Rugendyke thinks that by closing these clubs for particular hours he is going to scratch the surface of problem gambling then I have got news for him. When I was down at Lanyon marketplace a couple of weeks ago a chap came up to me to talk about this legislation. This unfortunate man, whose wife gambles away all of her salary, had to try to feed and clothe his children. Imagine the distress that whole family goes through. This man was nearly in tears when he was talking to me. I said to him, "What can people do about it? Will closing the clubs for this number of hours make a difference?" He said, "No." What he said to me was almost a repeat of what Mr Kaine said by way of interjection. Mr Kaine said, "Why don't you close it between 5 and 8 of a night; why don't you do that?" That is what this bloke said to me down at the Lanyon marketplace.

Believe it or not, Mr Deputy Speaker, people miss a member of their family if they are not around at 3 o'clock in the morning. They know that they are missing and they wonder where they are. All sorts of excuses have come up for not adopting the period between 5 and 10. If we decided to do that there would be a scream that could be heard from here to Majorca.

Mr Deputy Speaker, the inference that the Labor Party does not care about people with problem gambling is also insulting. Of course we do. We do not want to see it any more than anyone else does. We want to see some more action.

Mr Rugendyke seems to think that we are a bunch of fiends because we oppose his legislation. Where is the extra dough for Lifeline in this budget? Where are the specific programs to tackle this problem gambling? Where is the assistance for that bloke down

at the Lanyon marketplace to help him cope with the family problems brought on by problem gambling? I will tell you where the assistance is, Mr Rugendyke: it is in Bruce Stadium, the V8 car race, Hall/Kinlyside, et cetera.

Do not talk to us about not giving support. You should talk about the Treasurer not putting his money where his mouth is. The mealy-mouthed Treasurer is saying, "This is fine. We will close the clubs between 3 and 6 in the morning. That is going to be wonderful. We are going to can $87,000 out of the club industry." Is he going to give the $87,000 to Lifeline to fix up the problem? Short answer—no way. Where is the proof that problem gamblers are at clubs between 3 and 6 in the morning? There is not any.

Essentially the first plank of our opposition to this piece of legislation is that it is a big crock. It is really stupid. As far as I am concerned, it is an attempt to grab attention by putting forward a right-wing rabid conservative viewpoint to give Mr Rugendyke some cheap headlines at the expense of people with a hassle.

Mr Rugendyke should wait to see what is in the report that will be released in two weeks time. Let us see the report. That report might say that clubs should be closed between 3 and 6. So let us debate this issue when we have got the facts in front of us. But, no, Mr Rugendyke knows better than these experts. He knows better than the academics who have spent some time checking out the situation. What has he done? He has spoken to Lifeline. Good start—I am not knocking that—but where is the rest of it?

What Mr Rugendyke is doing is ignoring or pre-empting what is going to come down in the report. Either he is really good at gazing into his teapot and having a look at the tea leaves, which I doubt, or he has got some insider information—he has been involved in insider trading. I will bet he did not get that information at 3 o'clock in the morning. I will bet you, Mr Deputy Speaker, that Mr Rugendyke is tucked up nice and snug in bed between 3 o'clock and 6 o'clock in the morning. He would not know what type of people go to clubs at that time of the day because I do not think he would ever have been at a club at 3 o'clock in the morning.

I want to make a request to Mr Moore. I know that in our hearts we would all like to stop problem gamblers. We all would like to introduce regimes to protect these people from themselves. I do not know how many members have been hypnotised by the sound of poker machines. I suspect that not too many of them have. Well, let me tell you: I have and I do not mind sticking up my hand and saying that it is a hypnotic thing. Like many people in this place, if they were prepared to admit it, I have left a club having spent $10 more on poker machines than I would have preferred to have done. Imagine the pain of people who leave clubs with their whole pay packet missing. It is pretty horrendous. So stop talking this nonsense about us not having any feelings about this problem. Let us get the facts.

In my time as a member of the Assembly Mr Moore has always said, "Show me the evidence. If your evidence is right then that's the way I am going to go. End of story. If you don't like it, that's your bad luck." To be quite honest, I have never known Mr Moore to jump in and pre-empt a decision. On this occasion I appeal to Mr Moore to say, "Let us wait until the evidence comes down."

If the evidence in the report backs what Mr Rugendyke is proposing then I will stand up in this place and apologise for calling him a "pontificating control freak". That is what I think he is at the moment. I think he is just attention grabbing—he is trying to grab the headlines before the report comes out. If the report backs the point which Mr Rugendyke is making, I will stand up in this place and take back what I have said. But if this legislation gets passed today, there is no way in the wide world, for as long as God makes little apples, I am going to do it.

Mr Speaker, I have got a funny feeling yet again. I suggest that we return to the glory days of when Mr Moore sat on the crossbench, put a black handkerchief on his head and said, "This is going to be the case, my boy." I suspect that that will be the case today. I urge Mr Moore to be consistent and scientific in his approach and say, "Look, I'm not going to make a judgment until the trial is finished." The result of that trial will be delivered to us in two weeks time. We should have enough time left within the life of this Assembly to deal with it and I am urging Mr Moore to be guided by that argument.

Mr Speaker, once again I voice my strong objection to the insinuation from the Chief Minister that we are on the take from the clubs. If a donation of $300 to me over a period of five years is on the take, well, sorry about that. I suspect that there are other members here who have received a direct benefit of considerably greater sums than that. To save you looking up the record, the club that made the donation was the Buffalo's Leagues Club down in Tuggeranong. Because they are a struggling club, let me advertise their services: those of you who have never been down there, pay them a visit; but don't go down there at 3 o'clock in the morning because they are not open at that time. They close earlier than that because their patrons do not want them to stay open.

The same thing happens at the City Club. Mr Osborne, as a co-patron—he is probably the main patron—of that club would know that it is pointless going down there at half-past eleven at night because not only is it closed but there is not a person in the precinct.

Mr Speaker, I urge members not to go along with this piece of legislation at this time. Let us see the evidence. Let us join together. Let us be bipartisan in our attack on this insidious problem. Let us not fight over who is going to get the publicity. Let us fix up the problem.

MR OSBORNE (4.53): Mr Speaker, I am going to be as gentle as I possible can. I will not be supporting this bill—I have made my views known to Mr Rugendyke—and I want to spend a couple of minutes explaining why.

I think this is the first major piece of club poker machine legislation that I have been able to vote on in nearly seven years in this place. For many years I had the luxury of being able to rule myself out of voting because of my football and other commitments with the West Belconnen Leagues Club. This finished over a year ago. In the past Ms Tucker constantly berated me for allegedly taking the easy way out on club legislation. She felt that I should have voted. However, given that I was receiving a benefit, direct or indirect, I felt the wisest thing to do was not to take part. So it has been interesting to participate in this debate.

Mr Speaker, let me explain how I reached the position I am now taking. I have had discussions with Mr Rugendyke and I have also looked at the bill. I think Mr Rugendyke is very sincere in what he is attempting to do here. I think he genuinely wants to target problem gamblers and he has been quite passionate about that for basically the time he has been in this Assembly. The problem is, though, that I do not think what he is proposing goes anywhere near achieving what he wants. You might get the odd person who is a problem gambler if you shut a club between 5 and 8 or whatever, but the reality is that this is only window dressing.

I was associated with the West Belconnen Leagues Club basically from the time that I arrived in Canberra at the end of 1991 when I was playing football with the Raiders. I worked there during the day. In the last few years when I have visited the club during the day I have seen people that I considered to be problem gamblers. I have seen mums and dads who send their kids to school and pour their wages through the poker machine. I have stood there and watched people who were not wealthy—they were just middle-of-the-road types—constantly put $50 and $100 through the poker machines. I was stunned at the frequency with which these people did so.

Mr Speaker, one of the saddest times in my association with that club took place at 6.30 one night in the middle of winter when I had finished training at Kippax. Anyone who knows the club—Mr Berry does—would be aware that the oval is next to the pub. I saw two little kids the same age as mine—four and five—in the car park with no shoes and socks on. Their feet and hands were blue because it was freezing. I said, "Where's your mum and dad?" They said, "Oh, mum's inside playing the poker machines." I took the kids inside—it was 6.30 at night and they had been out there for three hours—and I paged the mother. That is a problem gambler. They are the people we have got to target, they are the people we have got to help.

I think we as an Assembly need to look at things like whether to allow $100 notes to be fed into machines, whether to allow EFTPOS machines in clubs, whether the level of lighting should be increased, whether to educate—

Mr Rugendyke: Hear, hear!

MR OSBORNE: Mr Rugendyke says, "Hear, hear!" That is the first step—that is what I would be doing. I think it is unwise and it may lead to problems if a single bloke or an older bloke throw all of their money into poker machines. But in the scheme of things, I reckon the first people we have got to help are the mums and dads that go into clubs during the day when the kids are at school and put their wages through the poker machines. They are not having enough—

Mr Rugendyke: What did the club do about the mother with the two kids?

MR OSBORNE: Mr Rugendyke says, "What did the club do about it?" I do not know.

Mr Rugendyke: Nothing.

MR OSBORNE: Exactly. But what are you doing? What is this bill doing? Nothing. I am trying to be gentle here, but if Mr Rugendyke wants to keep interjecting, fine.

Mr Speaker, regardless of whether the Labor Club gives X amount of dollars, members will have to act according to their conscience. The standing orders do not require them to rule themselves out of voting. I am not going to point the finger. I made a decision which was different to theirs.

I think everybody in here is concerned about the kids and the mums and dads who are affected by problem gambling. What we need to do is look at ways of helping them, and I do not think that what Mr Rugendyke is trying to do will do that. If Mr Rugendyke's bill prohibited the use of notes, I think that would be a first step. It would make it a lot harder for people to put their money through. But by using notes they can put thousands of dollars through in a hour.

Mr Hargreaves: And $2 coins and $1 coins.

MR OSBORNE: And $2 coins. It is just crazy. A few years ago I did something similar to this in respect of liquor.

At 5.00 pm, in accordance with standing order 34, the debate was interrupted. The motion for the adjournment of the Assembly having been put and negatived, the debate was resumed.

MR OSBORNE: Mr Speaker, the police had come to me and said, "We're having enormous problems with—

Ms Tucker: And Lifeline is saying that to us.

MR OSBORNE: Ms Tucker says Lifeline is saying that. Where is the main body of the problem, Mr Speaker?

Mr Berry: Where's the evidence?

MR OSBORNE: Where is the evidence? Well, it is going to be here soon. It is coming. Mr Speaker, I am trying to make the point that we can all throw accusations at one another. Turning the poker machines off will have some sort of impact but all the problem gamblers, those people addicted to gambling, will do is get into a car and go to the casino, which will still be open.

So we need to decide what we can do to help these people. I will support things like stopping notes being put into machines and removing EFTPOS from clubs. They are sensible things to do. They will make it a lot harder for the problem gamblers. If people want to use poker machines, fine, but we in this place have got to target measures that will help them. This legislation does not and that is why I will not be supporting it.

MR MOORE (Minister for Health, Housing and Community Services) (5.01): Mr Hargreaves in particular directed a challenge to me, through the chair, to follow trials and make sure we had a look at evidence and so on. Indeed, where appropriate and possible, I do look at evidence and try to make evidence-based decisions.

But we also sometimes recognise that it is appropriate to make a decision at a time when there is minimal evidence but you feel that what you want to do may help. Many speakers have identified the problem. Mr Rugendyke has come up with a relatively minor solution. I suppose the question for me is: to what extent does it cause more problems than it creates; to what extent does it cause anxiety for clubs?

The reality is, of course, that very few clubs remain open during the hours that Mr Rugendyke is talking about. What he has done—and I have mentioned this to him—is put up a harm minimisation measure, and in some ways Ms Tucker elaborated, although I do not think she used that language particularly, on why that was the case. What we are talking about is not stopping people gambling. We are talking about a restriction at a particular time—a restriction that perhaps puts a brake on the behaviour of people who are gambling at a very late hour.

I think the consequences of supporting this legislation are reasonably minor. But I have to say that one of the things that have surprised me when I have come into this chamber to debate matters to do with poker machines—and it has happened on many occasions—is the energy that is shown by the Labor Party. You only have to hint at the tiniest little bit of a possible conflict of interest and they go completely over the top. Probably Mr Hargreaves did this the least, but even he talked about receiving a $300 donation at the last election. I agree, Mr Hargreaves, that a $300 donation is irrelevant in terms of influencing somebody's opinion. I think he also said that he has not received one cent so far for this election.

I have to say that I think that is a shallow way to look at it. When I argue that Labor ought not vote on these matters, I always refer to what goes into the Labor Party as a whole. Although this does not specifically help with regard to the number of votes that you get, we know that under Hare-Clark one member of a party will receive probably more than a quota. A good example of this at the last election was Kate Carnell, who received 2½ quotas as a result of a campaign that focused very much personally on her. So the leader and the party do get a significant advantage. A lot of money goes into saying "Vote Labor", and if you decide to vote Labor you then choose which member you are going to vote for. So you get a huge benefit from the dollars that come into the party, which are effectively shared between the members and making sure that the party works.

Mr Hargreaves: It really worked last time.

MR MOORE: Mr Hargreaves interjects, "Well, it really worked last time." Considering that you did so badly even though you had that significant sum of money, you have to ask yourselves whether you are on the right wave length. I genuinely still believe—and there is no political mileage in this for me—that Labor should step aside from voting on poker machines issues.

Mr Hargreaves: Well then, perhaps some of the government members should.

MR MOORE: I have always believed that. Mr Hargreaves suggested that other people also get donations and so on. Indeed, I have had donations. But there is a difference. Poker machines are given a statutory or a legislative protection. They get a specific advantage from laws that we pass here in this place. If we did not do that, pubs would be

entitled to have poker machines as well; the casino would be entitled to poker machines and so forth. Clubs get particular, specific privileges through what we do here in this place.

Mr Hargreaves: And developers don't.

MR MOORE: That is a specific issue. Mr Hargreaves says, "And developers don't." I think that is something that could well be examined. But we know very clearly that there is a very specific advantage. I have to stay that I still believe there is a conflict of interest.

That having been said, when Mr Rugendyke puts down a piece of legislation like this my automatic reaction is: "Sorry, Dave. Not more law and order stuff; not more police stuff; I'm not interested in supporting it." I listened carefully to Mr Hargreaves and I listened carefully to Mr Osborne's view as well. But having considered the pluses and minuses in this case, I am prepared to support Mr Rugendyke's bill.

Mr Osborne: The change is complete.

MR MOORE: Exactly. I am just sorry that I am not running again. I imagine that I would have to be a policeman before I could get back in here.

Ms Tucker: That is right—a police state.

MR MOORE: Here we go. Ms Tucker says, "A police state." But she has also done the conversion. She is joining with me, or I am joining with her, to support this bill. She put a most persuasive argument to support the harm minimisation measure that Mr Rugendyke has put forward.

Ms Tucker and I have a perfectly consistent approach on harm minimisation. I am pleased to see that Mr Rugendyke has come on board. Although I will not be here to do it, I am sure that Ms Tucker will be able to charm you into acknowledging the benefits of further harm minimisation measures. I have to say that it will be very interesting then to have a look at the background—

Mr Hargreaves: Show us the numbers.

MR MOORE: Mr Hargreaves says, "Show us the numbers." It is very interesting to note that in percentage terms the number of problem gamblers is similar to that of people who become involved in the use of heroin. It is less than 2 per cent of the population. Just as we need to look after minorities in our population with regard to drugs, we need to look after minorities with regard to gambling.

I think it is worth keeping in perspective the level of the problem and how we should deal with it. I think, though, that this measure is minimalist and I will be supporting it.

MR BERRY (5.10): Mr Speaker, I have a letter dated 22 August 2001 from ClubsACT, which I will read into the record because I think it makes a few salient points in the context of this debate. The letter reads:

> ClubsACT understands that the above Bill is likely to be again on the Legislative Assembly agenda later today. I refer to our earlier position posed on the issue.
>
> We should reiterate that the club movement as a whole continues to actively support the development and implementation of harm minimisation measures that are effective in assisting those in our community that have a gambling problem.
>
> We supported the ACT Government's voluntary code and we issued a new draft Code of Practice for Responsible Gaming to our member clubs. The draft code was reviewed by Professor Jan McMillen of the AIGR. We are currently contributing to the ACT Gambling and Racing Commission's process that is developing a mandatory gambling code of practice and reviewing the Gaming Machine Act.
>
> In addition we are actively involved with some clubs in working together with Lifeline to develop an ACT program to assist clubs to deal with problem gambling and gamblers, and some clubs have embarked on out-sourced, as well as in-house, programs.
>
> In the tabling of this Bill late last year, the question of whether the people who play gaming machines during the hours in question are part of the group of people in the ACT who have gambling problems.
>
> We believe that this is a matter that is being addressed in the study of problem gambling that is currently being undertaken by the ACT Gambling and Racing Commission—the second stage of which, dealing with a needs analysis, is due out shortly.
>
> There is no clear evidence available to answer this question, although there may be some problem gamblers that frequent clubs at this time.
>
> However, as we indicated previously, the information that is currently available from clubs (including anecdotal evidence from staff employed on the early morning shifts) suggests the people who are in clubs at the hours in question are primarily shift workers—such as police and emergency service personnel, hospitality employees, postal workers, taxi drivers, cleaners, health care employees and similar employment groups.
>
> These are people who generally do not use their club facilities during normal hours. If the Bill is passed, this small group of club members who chose/have to work these shift hours will be deprived of a significant part of the membership rights and privileges available to all other club members.
>
> Data available from monitoring systems used by the affected clubs indicates that the number of people using gaming machines in the early hours is very small. While the overall level of trading in those clubs is described as marginal during these hours—

something which I think was highlighted by the Chief Minister in the numbers that he put before this place earlier—

> it is generally sufficient to warrant the clubs remaining open as a service to their members. However, if the Bill is passed it will have a significant effect on the viability of extended early hour operations.

> We appreciate it is a catch 22—ie not many use the clubs at these times so why not shut it down in case there are a few problem gamblers.

Nice point, I think. The letter continued:

> Our response is that why should the majority of users be penalised at the expense of a very small number of possible problem gamblers, who may or may not use the facilities at this time.
>
> In particular, if the members who currently use the clubs at those times react to the reduced trading hours by not attending their club in the hours leading up to the restricted trading hours, then already marginal operations will become unsustainable because of the high staff costs that are involved. As a consequence the affected clubs will close for the whole of these shifts rather than remain open for part of those shifts. The effect of this will be that the clubs will cease 24 hour trading and staff will lose jobs. While the reduced trading hours may give gamblers a break it will be disproportionately high cost to club staff.
>
> The extent of job losses will depend on the reactions of the affected club patrons. At this stage we estimate that there will be a reduction in eight hour shifts and that between 40-50 permanent and casual duty managers/supervisors, bar staff and security staff could lose their jobs. The reduced trading hours will reduce the overall safety in the areas in which the clubs are located and will increase the security risk for the individual clubs.
>
> We continue to hold to the view that the proposed changes contained in this Bill will not achieve its stated objective. It will significantly affect up to 50 club staff and those club members who choose/have to work shift work and enjoy their club facilities at a time convenient to them.
>
> We therefore again urge the Government, the Opposition and the independent members of the Legislative Assembly—

they left you out, Kerrie, but I will include the Greens—

> to postpone consideration of this issue and to examine it as part of the holistic review, which is currently in train.

Mr Speaker, there are a few things that I have to deal with. Mr Moore came up with his usual tirade against the Labor Party. We have come to expect that from an anti-Labor person. If it were not the clubs, Mr Moore would find some other reason to berate the Labor Party, which he hates because of its strength in the community. Mr Moore dislikes the Labor Party because it has been in existence for 100 years. It will be here a long time after he has gone. So let us brush that one aside because it is not relevant to the debate at all.

If you took Mr Moore's suggestions to the extreme, we would not be able to vote on roads in this place because we use them; we would not be able to vote on rates because we pay them; and we would not be able to turn our heaters on at home because we voted on such measures. The logic is just beyond belief.

Let me go to some of the other issues that worry me in relation to members' comments on this bill. Mr Moore, who boasts about his academic qualifications, which have been hard earned and which he is entitled to boast about, has always, on the face of it, taken an evidence-based approach to his decision-making. That is what you would expect of somebody in Mr Moore's position, particularly after listening to Mr Moore for years about the necessity of trials—which I agree with—in relation to drug issues. It is important to consider the emphasis that he has been placing on harm minimisation, the failure of prohibition, and other issues which he has been harping on in this place. But he seems to be able to find a reason to ignore evidence-based decision-making in the context of harm minimisation.

Mr Speaker, now that I have finished with Mr Moore, I will move to Ms Tucker. Ms Tucker today passionately argued for a working party to look at the sport and health arrangements in our schools. She passionately argued for an evidence-based approach to the tender process for schools. I thought that was a sensible idea. But in just a few hours, Ms Tucker has abandoned her commitment to that philosophy. She argued, quite rightly, that we ought to have an evidence-based approach to putting in place sport and health programs in our schools. I supported her fully because I believe in what she is doing. Ms Tucker is recognised and applauded for her commitment to process, and I think she would boast that she is committed to process and worries about it quite a lot.

Ms Tucker: I worry about problem gambling, too.

MR BERRY: We have heard her worry about process in this place. She interjects that she worries about problem gambling. We all do, Ms Tucker. But if we are going to make a decision about this, just let us make it on the evidence. In two or three weeks time the Gambling and Racing Commission will come down with their report in which they might say, "Look, those early morning hours"—and I do not think they are going to say this, by the way; it just beggars belief—"are a problem for problem gamblers." I reckon if you close a place down at 10 o'clock at night, there would still be problem gamblers. Let's stop kidding ourselves.

I heard Mr Osborne mention lights and note machines and all those sorts of things. Off the top of my head and without any evidence at all, I would say that the big note machines are a problem. But I would not be prepared to stand up and say they should be banned without listening to some evidence on the subject first. People in this place are trying to ban clubs from opening at a particular hour in the morning because it is easy to do that sort of thing.

There has been some concern about problem gambling. Ms Tucker has expressed her concerns about it. Although this arrangement will have least impact on most people at that time in the morning, you will be praised for your work on problem gambling. But you have not dealt with the issue. All you have done is taken a populist approach which does not deal with the problem.

As Mr Stanhope and I have said, if the Gambling and Racing Commission comes back in a few weeks time and says that that time of the morning is the problem, we will vote to close clubs at that time forever. But I do not think they are going to say that. They are going to say a lot of other things to us. Ms Tucker has said to me that if they find that the

problem is not the one that has been suggested, she will revisit this issue. Well, it will be a bit late to do that when 50 people have lost their jobs.

This is a middle-class approach to workers' jobs—just forget about them; it is only 50 jobs. Those jobs are extremely important to those people. You just cannot ignore them like that, especially when we know that some evidence is coming to us about this issue. It may well be that the club industry has to face job losses in other areas as a result of this report, and we are prepared to face that if there is evidence that this needs to happen. But there is no evidence in this case and 50 people are going to lose their jobs because of somebody's gut feeling that this is a popular thing to do.

Mr Humphries: Here is the evidence.

MR BERRY: Mr Humphries waves bits of papers. There is going to be a report soon, within weeks according to ClubsACT. I have said that I personally support change where it is evidence based. But there is no evidence here.

I have a strong commitment to jobs. For months I have been calling for this lot over here to come up with a jobs plan. One week Mr Humphries says, "Yes, we've got a jobs plan. We'll release it soon." A week later he says, "We've got a jobs plan. We'll release it soon." The next week he says, "Cabinet is still considering the matter." The government has got a jobs plan only when we are close to an election. That is when we will see the jobs plan from this lot.

Middle-class people in this place should not be determining the future of workers, who are in reasonably low paid jobs and probably not working the hours that they would prefer to, on the basis of a gut feeling and a populist reaction to a serious problem in the community.

The evidence will be with us soon and that is what you should be basing your decision on. You should not be basing it on some sort of populist wish to deal with the problem by making a small move in an area which you think will make it look as though you are being responsible. You are being irresponsible if you are putting at risk jobs in the club industry, or anywhere else for that matter, by attacking this problem without relying on evidence. You would not take such action in any other case. I would like to know how you can justify ignoring the plight of workers. You might say, "It's only 50 jobs, it doesn't matter." Well, to me it matters, and I think you ought to wait for the evidence.

MR HUMPHRIES (Chief Minister, Minister for Community Affairs and Treasurer): I seek leave to speak a second time.

Leave granted.

MR HUMPHRIES: Ms Tucker asked me for assurance that certain work would be done by the Gambling and Racing Commission.

Mr Stanhope: The indifferent middle class—that is what you fall into.

MR HUMPHRIES: Thank you very much. I can indicate to Ms Tucker that I am quite happy to give the assurances she seeks.

We have heard from Mr Berry that there will be a significant effect on the viability of clubs if this measure passes.

Mr Berry: You are at it again. I read a letter from the clubs. It was not from me

MR HUMPHRIES: You would think that there had been some bad polling somewhere, Mr Speaker, wouldn't you? They are showing a bit of tension, a bit of nervousness. What is going on?

The claim has been made in Mr Berry's mouth this evening, whether he was quoting from somebody else or in his own right—I think it was also in his own right—that there are 40 to 50 jobs to be lost in the ACT from the implementation of this measure. I have invited members in this place to peruse the evidence which comes from the Gambling and Racing Commission, which has been in turn supplied by the clubs themselves. So far no member has taken advantage of my invitation. The evidence shows that the claim that about 40 or 50 jobs will be lost is nonsense. It is a complete fabrication.

Mr Berry: Mr Speaker, I seek leave to table the letter from the clubs. People can read it themselves, if they do not believe I read it right.

MR SPEAKER: You will have to wait until after Mr Humphries has finished speaking, Mr Berry.

MR HUMPHRIES: I am sure that that is what ClubsACT say, but it is also very clear, on their own figures, that it is not true. It is a fabrication. They are making it up. The fact is that clubs are making, on average, less than $25 for the entire three hours they remain open in the mornings. Some of the people who are using clubs at that time may well be people with serious gambling problems. Believe it or not, on this side of the chamber we care about those people with gambling problems. Obviously you people, with your serious conflict of interest in this matter, do not care about them.

There is a serious problem in this city. If people are putting money through poker machines at 4 o'clock in the morning, you have to ask what they are doing there.

Mr Berry: Why don't you ban them altogether?

Mr Hargreaves: How about we arrest them?

MR HUMPHRIES: Money talks, doesn't it, Mr Speaker? Money really talks in this place.

Mr Berry: Mr Speaker, he just made a serious imputation. "Money talks" is an imputation that people on this side of the place are on the take, and it should be withdrawn immediately.

MR HUMPHRIES: Mr Speaker, I will withdraw any such imputations immediately. That is how it is done, Mr Berry. But I will say that the Labor Party has a very serious conflict of interest by virtue of the mammoth amounts of money they receive every year from poker machines in this territory.

Mr Berry: I think that is an issue of order, Mr Speaker. If he wants to move a motion, he is quite entitled to do so under the standing orders, but I think there is a question of order about making those sorts of imputations. There is no conflict of interest, because this Assembly has not decided so.

MR HUMPHRIES: Mr Speaker, it is a simple statement of fact, as you yourself said earlier today. It is a statement of fact. You do get large amounts of money.

The claim from ClubsACT is patently nonsense. We know from their own figures that they obtain less than $100,000 a year in total across the entire territory from poker machines during those hours. Mr Berry quotes the figure that 40 to 50 staff will be lost. Let us take the conservative figure of 40. Forty staff positions, based on revenue of $100,000, would mean that they are paying those staff $2,500 a year. I think we have a scandal on our hands here. Staff in the ACT are working for a whole year and being paid $2,500. It is patently nonsense.

Mr Hargreaves: You are fiddling the figures again.

MR HUMPHRIES: No, I am not fiddling the figures. These figures come from the Gambling and Racing Commission, and they are based on the figures the clubs themselves have supplied. If you do not believe me, Mr Hargreaves, come and have a read of them. I know that you have sat across there on your side and have not bothered to come and have a look at these figures, but they come from our commission, the commission we set up, which consists of honest and decent men and women who have—

Mr Hargreaves: They come from your commission, the commission you set up, and you expect me to believe them?

MR HUMPHRIES: I know you have a conflict of interest, but try to contain yourself, Mr Hargreaves.

Mr Hargreaves: Mr Speaker, I want that imputation withdrawn, please. The Chief Minister says I have a conflict of interest. If he wants to accuse me of that, he can put a motion forward.

MR SPEAKER: I have had quite enough of this. Mr Humphries, you may deal with that matter and withdraw. At the next interjection I will warn the member concerned, and then I shall name him.

MR HUMPHRIES: Mr Speaker, our commission has supplied us with figures which clearly indicate that there is a—

Mr Hargreaves: Where is the withdrawal?

MR HUMPHRIES: I am not giving you one.

Mr Berry: Mr Speaker, he has already withdrawn it once. He has made the imputation again. He ought to withdraw it.

MR HUMPHRIES: Mr Speaker, I have withdrawn the assertion that Mr Berry claimed had been made—that Labor Party members were on the take. I made no such assertion, but in the interests of Mr Berry's sensibilities I withdrew. But I have not withdrawn, and I will not withdraw, the argument that you people have a conflict of interest. It is there. It is patent. It is on the record. You have it. Mr Speaker, I am not withdrawing it. It is not contrary to standing orders.

Mr Hargreaves: Mr Speaker, on the point of order: Mr Humphries has withdrawn the imputation that the Labor Party had a conflict of interest. The *Hansard* will show that Mr Humphries said directly that I personally have a conflict of interest. That is what I want withdrawn.

MR HUMPHRIES: Mr Speaker, I maintain that it is not a breach of standing orders. Each of the members of the Labor Party derive direct benefit in their election to this place from substantial amounts of money from the licensed clubs of the ACT—several hundred thousand dollars a year from that source.

Mr Berry: Mr Humphries just suggested that I receive several hundred thousand dollars. He said "each of the members".

MR SPEAKER: We have had this out before.

Mr Berry: I challenge Mr Humphries to move a motion excluding the Labor Party from voting on the basis of their conflict of interest. I challenge you. Move it.

MR HUMPHRIES: I think that your consciences are the things that need to be examined, Mr Berry. If you choose to come into this place—

Mr Berry: Move the motion, son.

MR HUMPHRIES: I can't. I do not have the power to exclude any member of this place from casting a vote.

Mr Berry: Well, shut up then.

MR HUMPHRIES: I do not know what your problem is, Mr Berry, but I want to put some facts on the table in relation to this matter, if I may be allowed to.

Mr Hargreaves: Mr Speaker, on the point of order: I have asked you to direct the Chief Minister to withdraw the accusation made about my personal conflict of interest.

MR SPEAKER: We have had this out before.

Mr Hargreaves: I want the ruling.

MR SPEAKER: Just a moment. We have made the point that if you refer to the opposition or the government as hypocrites each man or woman can stand up and say, "I am personally offended by that and I seek a withdrawal."

Mr Hargreaves: That is not the issue.

MR SPEAKER: No, it is the issue.

Mr Hargreaves: No, it was about me personally.

MR SPEAKER: If it was about you personally—

Mr Hargreaves: It was. He said, "You, Mr Hargreaves, have a conflict of interest." I want that withdrawn. It was not about a group. It was about me personally.

MR SPEAKER: If it was a personal address, I would suggest that we do withdraw. We have a great deal of work to do. Do I have to repeat this again? Whilst this may be interesting to members here, I am not 100 per cent sure that our constituents are all that impressed by this mud-slinging. Please!

Mr Berry: Stop it, Gary. You heard the Speaker.

MR SPEAKER: It has happened on both sides.

MR HUMPHRIES: The fact of the matter is that the claim that 40 to 50 jobs will be lost by virtue of the passing of this legislation is untrue. We know that from the figures produced by the commission—

Mr Hargreaves: I will continue, Mr Speaker. On a point of order, I asked you to rule on this conflict, and I will continue to do it until the withdrawal comes.

MR SPEAKER: Chief Minister, would you mind withdrawing any implication against Mr Hargreaves, please. I am tired of this.

Mr Moore: I take a point of order. Gary, don't do it, don't do it. Mr Speaker, the self-government act gives us a way to deal with a matter of conflict of interest. Section 15 of the self-government act states:

> A question concerning the application of subsection (1) shall be decided by the Assembly, and a contravention of that subsection does not invalidate anything done by the Assembly.

Mr Speaker, the way to resolve it, if you want to, is to put the question to the Assembly. Mr Humphries has raised the issue of conflict of interest. I agree. I think the method of dealing with it would be to put it to a vote.

Mr Hargreaves: Then we will be here all night.

MR SPEAKER: No, we will not. We are rising at 7 o'clock, and this will continue tomorrow. In the interests of comity, it may be better if we get on with the debate. It would be better if any comment or allegation of conflict of interest were dealt with by a motion on the matter. It is entirely up to the Assembly. Mr Humphries has the call.

MR HUMPHRIES: Mr Speaker, continuing with my remarks, the evidence before us tonight from the Gambling and Racing Commission demonstrates that there is, at most, to be lost from the licensed clubs in the ACT—

Mr Berry: Can I have a look at the papers?

MR SPEAKER: I warn you, Mr Berry.

MR HUMPHRIES: There is to be lost from licensed clubs no more than $100,000 in a whole year. That is the evidence the clubs themselves have provided. I have invited members for the last hour to look at this, Mr Berry. You have not bothered to come and see it. You can look at it now if you wish. I provide it to Mr Berry on the basis I indicated before—that I would not name the clubs concerned. I hope Mr Berry will respect the—

Mr Hargreaves: But you did.

MR HUMPHRIES: No, I did not.

Mr Hargreaves: You talked about the Tuggers Club.

MR HUMPHRIES: I beg your pardon, I did not name the clubs concerned.

Mr Hargreaves: Where did the rugby union club come from then?

MR HUMPHRIES: I am sorry, I named which clubs—

MR SPEAKER: Order! Mr Hargreaves, did you hear what I said about warning people?

Mr Hargreaves: Yes, I did, Mr Speaker.

MR SPEAKER: I warn you now.

MR HUMPHRIES: Mr Speaker, I named the clubs that were represented in the information, which were the nine clubs that were trading 24 hours, but I did not give any breakdowns of information about particular clubs' gambling activities revenue. I would ask Mr Berry and others who look at the material to respect the same privacy. There is an issue of potential commercial-in-confidence about those clubs trading. I think we should respect that.

The figures show that a very large club in the ACT is operating an average of seven machines an hour during that period and deriving income of $3.40 per machine for that period of time. That club is making, on average, $25 over a three-hour period. How many people does $25 employ? It does not employ half of a single person.

If 40 or 50 jobs go, it will be as a result of grandstanding by the clubs, not as a result of any financial implication from this legislation.

MR BERRY: Pursuant to standing order 47, I would like to mention something that I think was misinterpreted by the minister in his speech to this place. I read a letter that I will table in a moment. One paragraph reads:

> In particular, if the members who currently use clubs at those times react to the reduced trading hours by not attending their club in the hours leading up to the restricted trading hours, then already marginal operations will become unsustainable because of the high staff costs that are involved. As a consequence the affected clubs will close for the whole of those shifts rather than remain open for a part of those shifts. The effect of this will be that the clubs will cease 24 hour trading and staff will lose jobs … 40-50 permanent and casual duty managers/supervisors, bar staff and security staff could lose their jobs.

Mr Moore: I take a point of order. Under standing order 47, Mr Berry is not able to debate the matter, just clarify it.

MR SPEAKER: I appreciate that. Do you seek leave to table that?

MR BERRY: Yes.

Leave granted.

MR BERRY: I present the following paper:

> Gaming Machine (Amendment) Bill 2000 No 2—Copy of position paper by Clubs ACT on the bill, dated 22 August 2001.

I now seek leave to speak a second time.

Leave granted.

MR BERRY: I want to thank Mr Humphries for generously providing this brief, because I think it will assist members. It certainly has assisted me. It has confirmed my suspicions. The figures that Mr Humphries read on to the record relate to the planned prohibition period. Workers do not go to work for the planned prohibition period. Shift workers go to work for a shift. The clubs are saying that if you cut out the planned prohibition period then the entire shift will go and workers will lose their jobs.

There has been a bit of a play on the figures here. Mr Humphries has said that there is only a small amount of money involved in these periods and that the clubs are wrong or fibbing by saying that 40 or 50 jobs might go. The clubs are saying that if you take out the prohibition period then more often than not the whole shift will go. Mr Humphries interjects, "That is scare tactics." It is a reality of shift work that people do not turn up for work for two or three hours. They come in for a whole shift, especially at that time of the morning. If the whole shift is affected because two or three hours are taken out, then workers lose their jobs.

All that aside, I go back to my original point on the matter: it should be evidence based. A report is due. We should wait.

MR RUGENDYKE (5.41), in reply: The Australian Institute of Gambling Research report released recently highlighted the frightening impacts that pokies are having in our community. What the research also represents—much as the club industry and those in this place who rely on funding from the club industry have appallingly tried to deny it in protecting their own interests—is how the expansion of 24-hour poker machines into suburbs like Charnwood, Macquarie and Holt has contributed to this extremely serious problem.

Take the Ginninderra Labor Club in Charnwood. It is open around the clock on three days a week: Thursday, Friday and Saturday. These, of course, are the times when people are most likely to have money in their pockets. The Australian Taxation Office confirmed in April that Charnwood was part of the 2615 postcode area that rated as having the lowest earners in the ACT, at an average annual income of $36,000. This demographic matches the profile in the new gambling data, which shows that poker machines prey on people with low incomes, who are losing up to half of their pay.

Professor McMillen said in releasing her report that a key issue was accessibility. In Sydney the proliferation of poker machines, in particular into the pub market, has had a well-documented impact on poorer areas. In Sydney accessibility has increased just as the 24-hour operations have increased accessibility in the ACT, even though the number of machines has stayed the same.

The Labor government in New South Wales has raised a similar proposal. The club industry in New South Wales acknowledged that a break for gamblers was warranted. On 28 July ClubsNSW chief executive, Mark Fitzgibbon, provided a reaction to plans to shut New South Wales pokie venues for a minimum of six hours. In the *Daily Telegraph* Mr Fitzgibbon said:

> We are not supportive of the idea of a prohibition on 24-hour gambling, but we think six hours is excessive. A one or two hour break would be sufficient to allow problem gamblers to time out.

Mr Speaker, the clubs industry and the Labor Party in New South Wales acknowledge that it is sensible to provide gamblers a break. It confounds my understanding that the club industry and the Labor Party in the ACT are in protest mode. But we all know the reason why. I note with interest, though, that the Chief Minister's office has said that one of the big clubs in the ACT does support an enforced break.

I have heard my bill described as a knee-jerk reaction. Mr Speaker, I informed ClubsACT that this issue was on the agenda 12 months ago, and this proposal was around two years before that. In 1998 the Allen Consulting Group produced a report titled *Gambling and related legislation in the ACT*. In the section on hours of operation, the report made recommendation 20, which said:

> The Gaming Machine Act should be amended to restrict the operation of gaming machines in clubs, hotels and taverns to those times when open for the sale of liquor. In the cases of clubs who do not hold a liquor licence, a mandatory break in the operation of gaming machines of at least three hours a day should be applied.

That is exactly the proposal I have here on the table today. This report said it was logical to apply to the consumption of gambling products a rationale similar to that applied in imposing a break on the consumption of alcohol.

Lifeline will tell you that the way to help problem gamblers is the same way you help problem drinkers, and that is to provide a break. Lifeline will also tell you that they know of people who gamble at poker machines for 24 or 30 hours at a time. This proposal of mine, as a start point, is a very sensible one from that point of view. It may well be that the seven or 16 people, however many it was, identified in the figures presented by Mr Humphries as a result of the information gathered by the gambling commission are the problem gamblers.

Mr Kaine: That is a presumption if ever I have heard one.

MR RUGENDYKE: It is a good one, though. It is commonsense and absolutely necessary in light of the information that is now before the Assembly.

The latest research confirms that poker machines are at the core of problem gambling in our community. This report confirms that they prey on the most vulnerable people in our society, and it is time to say that enough is enough.

It is frightening that 1.9 per cent of the adult population accounts for more than 37 per cent of gambling expenditure. That equates to approximately 5,300 people spending a total of $77 million, or $14,500 each, every year. Research also shows that the bulk of this spending is on poker machines and that the average income of the people most likely to use them is $35,000 a year. So people are throwing away about half of their earnings on gambling addictions. Professor McMillen stressed that these were conservative figures. It is very clear that there is a real problem in the ACT.

A pertinent fact is that people, in particular males, in the under 25 age group have the highest prevalence of problem gambling, at 36 per cent. Individuals in this age bracket are extremely likely to continue at all hours of the morning in front of a pokie that is feeding off their addiction. The figures also tell us that half of problem gamblers have dependent kids. That is of more concern to me than the money the government or the clubs will lose by shutting the machines off for a few hours.

I flagged my intention to draft legislation of this kind with ClubsACT some 12 months ago. ClubsACT sat on their hands and failed to meet a commitment to me to make an input into the proposal. ClubsACT sat on their hands for four months before I eventually tabled the bill. It was not until six months after I had raised the issue with ClubsACT that I received some feedback. Surprise, surprise, the industry simply protested against the move and did not signal anything favourable about the proposal. They did not even acknowledge that a break for gamblers was sensible, as we heard from ClubsNSW.

ClubsACT has had 12 months to consult on this, but their only contribution has been no. Now ClubsACT want this bill delayed. It is certainly pertinent to highlight the credibility gap in this organisation's stand. ClubsACT stated in a letter to me in February this year that "the information that is currently available from clubs including anecdotal evidence from staff employed on the early morning shifts suggests the people who are in the clubs

at hours in question are primarily shift workers such as police and emergency services personnel".

This example of patronage from shift workers is an extremely long bow, to say the least. Police officers work a roster system. The night shift starts at 11 and finishes at seven. The night shift for both the ACT Fire Brigade and the ACT Ambulance Service starts at 6 pm and finishes at 8 am. Clearly, these occupations would not be in clubs at the hours in question and, if the clubs were catering for these people, it would still be achievable under the proposed legislation. The fact that the club industry has used these examples creates a clear credibility issue with every argument presented to justify its opposition to the proposal and now its push to have the debate delayed.

It is plain commonsense that an enforced break can have a positive impact. Anything you can do to make the problem gambler walk away from a machine and break the session increases the likelihood that they will return to reality. They will reconnect with reality rather than the mindless pushing of buttons.

This bill is the perfect opportunity to implement a measure to tackle the problem, a perfect opportunity to implement a measure that can be evaluated in isolation by the Gambling and Racing Commission. Through the Chief Minister I have sought information that will serve as a starting point for an evaluation should this legislation pass. I would like to acknowledge the input and cooperation of Ms Tucker and her office and thank both the Chief Minister and the Gambling and Racing Commission for demonstrating firm commitment to ensuring that this proposal is monitored.

Mr Speaker, I look forward to the inevitable range of other reforms finally coming on line. They are happening elsewhere, and I will be putting my energy into pushing for the strongest possible measures being adopted in the ACT. Reforms are required to address the poker machine problem in our society, to ultimately drive down problem gambling and government's reliance on poker machines taxes.

This is the start of a long battle that will continue with the review of the legislation later on. This proposal is an important first step, and I commend the bill to the house.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Administration and Procedure—Standing Committee
Report No 7

Mr Speaker presented the following report:

> Administration and Procedure—Standing Committee—Report No 7—The use of commercial in confidence and in camera evidence in committees, dated 21 August 2001, together with a copy of the extracts of the minutes of proceedings.

MR HIRD (5.55): I move:

> That the report be noted.

This report has been a long time coming, and I think it speaks for itself.

Question resolved in the affirmative.

Report No 8

Mr Speaker presented the following report:

> Administration and Procedure—Standing Committee—Report No 8—Code of conduct for members of the Legislative Assembly and a parliamentary ethics adviser for the ACT, dated August 2001, together with a copy of the extracts of the minutes of proceedings.

MR OSBORNE (5.56): I move:

> That the report be noted.

Mr Speaker, I seek leave to incorporate my speech in *Hansard*.

Leave granted.

The speech read as follows:

CODE OF CONDUCT

The question of whether or not there should be a code of conduct for all Members has been before the Assembly since 1995. As the Assembly is soon to go to an election, this report is presented to enable the code to be debated in the next Assembly.

Do we need a code?

- Members of the Legislative Assembly already have a number of obligations under legislation, standing orders and resolutions of the Assembly. These obligations are quite extensive and are arguably quite sufficient to control dishonest or inappropriate conduct.

- Furthermore, every Member has his or her behaviour and performance carefully assessed by the electorate at every election.

- While the Committee believes that Members of the Legislative Assembly have, on the whole, maintained high standards of honesty and ethics, the present Committee has also come to the conclusion that a code of conduct for all members of the Legislative Assembly should be introduced.

-

-
- The Committee sees the introduction of a code as an opportunity to make a public statement acknowledging and reiterating the obligations and conduct expected of elected representatives of the people.

What type of Code?

- Codes of conduct would appear to fall into two primary categories aspirational and prescriptive.

- The aspirational model is one that sets a number of values and ideals that should be aspired to.

- The prescriptive model is one that seeks to control through a definitive set of rules.

- Codes developed in other Australian jurisdictions have been predominantly aspirational.

- The Committee considered that a code should set a benchmark by which both members and the community can assess the behaviour of their elected representatives.

- The Committee believes that a brief statement of ideals is more likely to achieve that goal than a complex document that attempts to codify acceptable behavior.

- Consequently the Committee has recommended the adoption of an aspirational code.

How should the Code be institutionalised?

- The Committee is concerned that a code set in legislation could lead to a weakening of the separation of powers and open the way for litigation and a delay of proceedings in the courts on points of procedure and interpretation.

- Further, the Committee believes that if a code is administered externally to the Assembly, Members would be separated from its introduction and ongoing amendment.

- The Committee believes that a code should remain within the ownership of the members and should be administered by the Assembly.

- The Committee recommends that a code should be part of standing orders (as in the House of Assembly, Tasmania) or established under a resolution of the House (as in both Houses of the New South Wales Parliament).

How should the Code be enforced?

The Committee is of the firm belief that those that work outside of Parliament do not fully appreciate the unique problems that Members face in the conduct of their duties.

The Committee notes that a number of professional groups administer and enforce rules of conduct within their professions. Doctors, dentists and lawyers have set up internal mechanisms within their professional organisations for dealing with allegations of misconduct.

In the case of an allegation against a Member of the Legislative Assembly, the Committee believes that the Assembly has the collective experience and knowledge to deal with the matter.

Furthermore, it is the Committee's view that formal sanctions are inappropriate when dealing with ethical or moral behaviour.

As already stated, Members of the Legislative Assembly are already bound by a number of other obligations and legal requirements.

In a small Parliament such as this Assembly, it is possible that Members are more exposed to scrutiny than Members in a larger Parliament.

The Committee views the proposed code of conduct as essentially an educational tool to assist Members. Those who are in breach of the code will answer to the Assembly, the media and ultimately the people.

Do we need an Ethics Adviser?

The Legislative Assembly for the ACT presently consists of 17 Members. If for no other reason than the fact that there are so few, Members are in the public eye, their actions are closely scrutinised and any wrong doing can be quickly exposed.

It is the view of the Committee that Members of the Assembly are already well aware of what constitutes ethical behaviour, take responsibility for their conduct and understand their obligations.

Until a code is adopted, and its value assessed, the appointment of an ethics commissioner would appear, in the view of the Committee, to be premature.

It is therefore considered that the appointment of an independent ethical commissioner is not warranted in the Legislative Assembly for the ACT but that the issue be reconsidered once a code has been in place for a reasonable time and its value assessed.

The Code

- A code is attached to the report. It includes matters such as conflicts of interest, use of entitlements, advocacy, use of confidential information and gifts among other things. I do not intend to read it out in full but I urge Members to read the Code and this report.

- I commend the report to the Assembly.

Question resolved in the affirmative.

Report No 9

Mr Speaker presented the following report:

> Administration and Procedure—Standing Committee—Report No 9—Legislative Assembly (Privilege) Bill 1998, dated 21 August 2001, together with a copy of the extracts of the minutes of proceedings.

MR OSBORNE (5.57): I move:

> That the report be noted.

Mr Speaker, I seek leave to incorporate my speech in *Hansard*.

Leave granted.

The speech read as follows:

> The Bill was introduced in the Assembly on 20 May 1998.
>
> The genesis of the Bill was concerns that had been raised in the 3rd Assembly about the protection that was available to officers of the Assembly and others who published or distributed interstate a report of the former Standing Committee on Legal Affairs.
>
> [Though the Assembly had authorised publication of the report there were concerns raised as to the legal protection that was available to its publication beyond Members of the Assembly.]
>
> As summarised in the report, the main features of the Bill are to
>
> - declare certain powers, privileges and immunities of the Legislative Assembly (Part II of the Bill);
> - clarify some areas of law relating to the privilege applying to authorised publications of the Assembly and its committees (Part II of the Bill);
> - define the precincts of the Legislative Assembly (Part III of the Bill); and
> - set in place certain statutory defenses in relation to breach of a number of privileges (Part IV of the Bill).
>
> In considering the Bill, the committee decided to address the issues relating to the precincts separately from the other sections of the Bill.
>
> Assembly precinct
>
> In relation to the Assembly precinct the committee has recommended that:
>
> The Members' car park not be included in the precinct.
>
> [The committee concluded, on balance, that the practical difficulties associated with including the Members' car park within the precinct outweighed the benefits.]

Other key recommendations relating to the precinct made by the committee are that:

- the Bill be amended to make provision for a flexibility to expand the precincts without amending the parent Act (as is the case in the Northern Territory);

- the Bill be amended to ensure that the nexus between the Speaker's traditional powers and those he has under the Crimes (Offences against the Government) Act are made explicit in the Bill; and

- the Speaker and the Minister responsible for policing agree to general arrangements for the conduct of police officers or special members of the Australian Federal Police within the precinct, especially when they are excluding or removing a person from the precinct, and the arrangements address the need to ensure Members' access to the building at all times.

Parts II and IV of the Bill

In considering Part II of the Bill the committee spent some time considering the issue of the protection available to the publication of documents authorised for publication by the Assembly or the committees of the Assembly.

[This was the issue that was the catalyst for my original drafting instructions]

The legal advice we had received was that the authorised publication of reports and records of Assembly proceedings outside the Assembly was protected only by qualified privilege, no matter who publishes them or authorises their publication.

[Qualified privilege exists where a person is not liable to an action, say for defamation, if certain conditions are fulfilled, for example, if a statement is not made with malicious intent.]

These doubts were also raised by the Australasian Council of Public Accounts Committees.

However, further advice – particularly that from the Government Solicitor in relation to the publication of committee reports on the internet and from the Clerk of the Senate – concluded that documents authorised for publication by the Assembly or a committee of the Assembly were subject to the protection of absolute privilege throughout the Commonwealth as subsection 24 (3) of the Self-Government Act operates throughout the Commonwealth and prevails over any inconsistent law.

[Subsection 24 (3) is the provision that gives the Assembly, its Members and committees the same powers, privileges and immunities as the House of Representatives, its Members and committees.]

Having deliberated on the issue the committee concluded that it was preferable that the Assembly not proceed to declare its powers, privileges and immunities as proposed in the Bill and not proceed, as proposed, to clarify the law relating to the privilege applying to the authorised publication of the documents of the assembly and its committees.

To facilitate the publication of committee reports on the internet the committee has recommended that the Assembly authorise the publication of those reports of Assembly committees that have not been authorised for publication to date. It has also recommended that:

- standing orders be amended to provide that, on the presentation of a report of an Assembly committee, any Member may move a motion to authorise the publication of that report; and
- procedures be put in place by the Clerk to ensure the integrity of electronic copies of documents published on the Internet is maintained.

Creation of statutory offences

Part IV of the Bill creates certain statutory offences relating to the operation of the Assembly. The offences relate to conduct that would constitute a contempt of the Assembly.

The maximum penalty for each offence is a fine of $5,000 or 6 months imprisonment or both. If the offender is a body corporate the fine is greater.

The offences covered in the Bill relate to:

- unauthorised disclosure of committee proceedings;
- failure of witnesses summoned to attend before the Assembly or a committee and produce documents;
- failure of a witness summoned to take an oath or give evidence;
- the giving of false or misleading evidence; and
- improperly influencing witnesses.

In deliberating on these issues the committee considered the question of whether it would be more appropriate for the Assembly or the courts to consider these matters. It can be argued that the statutory penalties are more appropriate as a deterrent and the courts are better equipped to consider and reach decisions on these matters.

The committee, however noted that examples have not emerged to date where it could be argued that it would have been desirable for the courts, rather than the Assembly, to address such matters and that certain offences that could constitute contempt are already addressed by the law of the Territory.

[e.g. – corruption and bribery of Members (Section 15 of the Crimes (Offences against the Government) Act]

The committee was also conscious of a potential for conflict between the Assembly and the courts on such matters and the distinction between the legislature and the judiciary being broken down.

The committee concluded, on balance to recommend that Part IV of the Bill not be proceeded with. The committee, however, has recommended that the standing orders of the Assembly be reviewed with a view to putting in place procedures for the protection of witnesses where a committee is considering a matter referred to it that may involve or give rise to an allegation of contempt.

On behalf of the committee, I commend the report to the Assembly.

Question resolved in the affirmative.

Crimes Amendment Bill 2001
Detail stage

Clause 1.

Debate resumed.

Clause 1 agreed to.

Clauses 2 to 5, by leave, taken together and agreed to.

Clause 6.

MR OSBORNE (5.58): I move amendment No 1 circulated in my name *[see schedule 2 at page 3226]*.

Amendment No 1 removes the examples of electronic means, the intention being to insert a definition of "electronic means" in subclause (4). It was considered unclear whether the noted examples in subclause (1) also applied to subclause (2). A specific definition of "electronic means" would make this clear. As the intention is to have the term "electronic means" applied to the whole clause, I have agreed to this change to provide clarity. That definition is provided in my amendment No 3.

Amendment agreed to.

MR OSBORNE (5.59): I move amendment No 2 circulated in my name *[see schedule 2 at page 3226]*.

It was considered that the words "or made available" could make it possible for the bill to apply to Internet service providers, who could not possibly know what was being sent to whom. It was suggested that this phrase should be removed so the subclause applied to those who actually sent the material. I think this issue was raised by Mr Wood. It was not my intention for the bill to apply to Internet service providers, a point that I believe the bill made clear enough, but I am happy to make this point clear by providing a defence for Internet service providers who had no knowledge of the offence.

The second defence provided for in amendment No 2, one I have agreed to, includes people who have sent offensive material to a person whom they reasonably thought was at least 16 years old. As members will see, I have retained the concept of an offence being committed, despite the underage person having consented to receiving the material. I think this is an important concept to retain in the bill. It will be difficult to prove in a prosecution what the receiving person and the sender thought had been consented to being sent and to whom.

MS TUCKER (6.00): I move my amendment to Mr Osborne's amendment 2 *[see schedule 3 at page 3227]*.

My amendment will replace subsections (3A) and (3B) as proposed in Mr Osborne's amendment with new proposed subsections (3A) and (3B).

Mr Osborne seems to be prepared to allow as a defence that the defendant reasonably believed the young person was over 16 years. However, his wording is strangely more pedantic than the version of that defence in regard to acts of indecency involving young people elsewhere in the act. I am not aware of any problems in the operation of sections 92E, 92K and 92NB of the Crimes Act, in which such a defence is identified. My amendment more directly echoes provisions in the Crimes Act regarding sexual and indecent acts with young people.

Clearly it would not provide a defence for anyone professing to be a young person and so preying on, or making an indecent approach to, young people. It would, however, provide a defence to young people exploring fairly safe forms of sexual communication with each other, which the bill as amended by Mr Osborne would not. My amendment offers more realistic real-life protection for young people.

My amendment also allows the defence that someone might reasonably believe the young person is over 16 years. Given the more or less effective operation of similar provisions in the Crimes Act, as I have referred to, it makes sense to stick with the formulation of words that the defendant established that he or she "believed on reasonable grounds", rather than playing with the words as Mr Osborne has done. In essence, this aspect of the Crimes Act works well for young people in the real world, and I would be confident that it would make sense in this context as well.

MR STEFANIAK (Minister for Education and Attorney-General) (6.03): The government has had a look at both these amendments. On balance, we feel Mr Osborne's amendment is simpler. Both amendments are not unreasonable, but on the basis of my advice that Mr Osborne's is slightly better we will be supporting his amendment rather than Ms Tucker's.

MR WOOD (6.04): I join with Mr Stefaniak. I think Mr Osborne's approach is simpler. I understand where Ms Tucker is coming from. This presents a problem that arises too often in this chamber when we get amendments to amendments. We do not get the best chance to get a consolidated bill that is well put together. For these reasons, we will be supporting Mr Osborne's amendment.

Question put:

> That **Ms Tucker's** amendment to **Mr Osborne's** amendment No 2 be agreed to.

The Assembly voted—

Ayes, 2	Noes, 13	
Mr Moore	Mr Berry	Mr Osborne
Ms Tucker	Mrs Burke	Mr Rugendyke
	Mr Corbell	Mr Stanhope
	Mr Cornwell	Mr Stefaniak
	Mr Hargreaves	Mr Wood
	Mr Hird	
	Mr Humphries	
	Mr Kaine	

Question so resolved in the negative.

Ms Tucker's amendment negatived.

Mr Osborne's amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (6.06): Mr Speaker, I move amendment No 1 circulated in my name *[see schedule 4 at page 3228]*.

I said at the in-principle stage that there were some problems with the bill as it originally stood being beyond the legislative power of the territory. Both this amendment and my next amendment will ensure that the bill comes within the legislative power of the territory.

Amendment No 1 provides a definition of "classified" in terms of the Commonwealth Classification (Publications, Films and Computer Games) Act 1995. That effectively brings us within the ambit of the existing law and overcomes the problem I alluded to earlier.

MR OSBORNE (6.07): I will be supporting this amendment. As I said earlier, the advice I received was that the bill in the original form did not contravene the self-government act, but I think the compromise suggested by Mr Quinton is a reasonable one, and I am more than happy to support it.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (6.08): I move amendment No 2 circulated in my name *[see schedule 4 at page 3228]*.

This amendment is aimed at overcoming the Assembly's inability to make laws for the classification of materials for the purposes of censorship under section 23 (1) (g) of the self-government act. Again, we say that the bill, in its original form, may amount to such a law in its attempts to classify pornographic materials for the purpose of censoring their availability.

Pornographic material in this amendment has been redefined as material that has been, or is likely to be, classified C, X or R, which are the federal classifications under the 1995 Commonwealth act. Material towards which the bill is directed is thereby specified in terms of existing classifications set out in the Commonwealth legislation. This overcomes any potential problems.

Amendment agreed to.

MR OSBORNE (6.09): I move amendment 3 circulated in my name *[see schedule 2 at page 3226]*.

This amendment inserts a definition of "electronic means", which members will note has been expanded slightly from the explanatory note that was removed by my amendment No 1.

MR STEFANIAK (Minister for Education and Attorney-General) (6.10): I have talked to Mr Osborne about this. On advice from parliamentary counsel, I move a very simple amendment to Mr Osborne's amendment No 3 *[see schedule 4 at page 3228]*.

My amendment simply deletes the word "includes" and puts in the word "means". Mr Osborne's amendment inserts the following definition:

> ***using electronic means*** includes using email, Internet chat rooms, SMS messages and real time audio/video.

My amendment would delete the word "includes" and substitute in its place the word "means". If "includes" stays there, other means such as radios and TV products could well be included. That is clearly not intended. My amendment tidies it up.

Mr Stefaniak's amendment to **Mr Osborne's** amendment agreed to.

Mr Osborne's amendment, as amended, agreed to.

Clause 6, as amended, agreed to.

Title agreed to.

Bill, as amended, agreed to.

Olympic Events Security Amendment Bill 2000

Debate resumed from 6 December 2000, on motion by **Mr Osborne**:

> That this bill be agreed to in principle.

MR STEFANIAK (Minister for Education and Attorney-General) (6.13): During the recent Assembly debate on the bill which became the Olympic Events Security Act 2000, the former Attorney-General and other government members made it clear that the powers in the bill were exceptional and that we would not necessarily support the application of those powers to ordinary sporting events conducted in the ACT. That is something the government does not resile from.

The Olympic soccer matches to which the measures in the act were directed presented unusual but not unprecedented security challenges for our police. From time to time the ACT hosts public events which require a greater than usual degree of precaution to ensure public safety and security. These may be events which attract particularly high-spirited or rowdy spectators such as some of those attending the recent Summernats or international cricket matches, where there is a real risk of injury or disruption to spectators or participants. They may be events involving extremely high-profile international figures, such as performances by pop stars, or visits by members of the royal family, who may be at risk from fans or from political extremists seeking publicity for their cause.

This bill will enable law enforcement authorities to extend to such major events the same level of public safety and security that ensured the smooth conduct of the Olympic soccer matches at Bruce Stadium. The government is prepared to support Mr Osborne's bill on the basis that it will be used only in relation to those events which truly warrant the application of special powers.

We certainly would not support its use for ordinary sporting events such as Raiders or Brumbies games. I do not think he is remotely suggesting that that be the case. Accordingly, on the basis that there would be some exceptional events, we think the bill is worthy of support.

MR STANHOPE (Leader of the Opposition) (6.15): Mr Osborne introduced this bill on 6 December 2000. In my view and the view of the Labor Party, the bill contains many of the same problems as the original Olympic Events Security Bill 2000, which was described by the scrutiny committee, chaired by Mr Osborne, as draconic, because it unduly trespassed on personal rights and liberties.

The scrutiny committee in *Scrutiny Report No 1 of 2001* said that its comments on the original bill apply to Mr Osborne's subsequent bill, this bill, except insofar as concerns associated with the vesting of powers in authorised persons and not simply police officers applies.

Mr Osborne would limit the powers to police officers and not extend them to authorised persons. The amending bill, which renames the act the Major Events Security Act 2000, contains the same powers for enforcing security arrangements for declared major events, not Olympic events, but vests them only in the police, not authorised officers. Examples in the bill of declared major events include a papal mass, concerts, national or international sporting events, agricultural trade shows and New Year's Eve celebrations.

When my office received a briefing on the original bill, my staff was told that the cabinet had rejected the special or major event approach and specifically limited the original bill to Olympic events. Olympic events were a specific one-off category of high-risk events that needed a high-security approach. That was the only justification for some of the so-called draconian provisions contained in the original bill. There is no justification for making a limited, one-off abrogation of rights permanent.

There have been no problems at high-profile football matches enjoyed by the Brumbies, Raiders and AFL fans that the police have not been able to handle. So where is the justification for continuing in law these transgressions of rights? What is the continuing justification for legislation described by the scrutiny of bills committee, chaired by Mr Osborne, as draconian?

It would have been interesting to have heard from the Attorney about the basis of the cabinet's move from the position it adopted in relation to the Olympic Events Security Bill, namely, that it should be a specific piece of legislation, a piece of legislation that applied only to the Olympic Games, having regard to the specific and special nature of the Olympic Games.

It is interesting that that was the position of the cabinet during its consideration of the Olympic Events Security Act, but for some reason that the Attorney has not explained to us here it has moved away from that approach and has specifically rejected the approach that the cabinet originally adopted in relation to the Olympic events bill, a position which we agreed with at the time. There has been no explanation of why the cabinet, in its consideration of this bill, abandoned the policy position it adopted in relation to the Olympic events bill. It would have been appropriate for the Attorney to give us some explanation of why the cabinet or the government moved away from the positions that it had embraced in relation to the Olympic Events Security Bill, a position which the Labor Party supported at the time, in recognition of the specific nature of the Olympic Games.

Mr Speaker, you will recall that in the original debate objection was taken to the frisk searching of entrants to the grounds by persons of the opposite sex. Mr Osborne, in his bill, has limited the power to conduct frisk searches, but he has not gone to the extent that the government did and limited the power to same sex searches.

There is still no limitation in the bill on the discretion to search personal property or to select persons for frisk searching, and it is an offence for any person without reasonable excuse to refuse to permit a search of personal property or a frisk search of their person.

Of the examples given of major events, only a papal mass or some international sporting events would raise similar concerns as the Olympics, at least in the view of the Labor Party. Given the experience with the Brumbies, who play teams from South Africa and New Zealand, there must be some doubt that the powers are needed for these games.

However, if or when such events occur, we can consider the need for one-off legislation. The bill cannot be justified, in our opinion, for other events such as rugby Super 12 matches or tests or rugby league semifinals, all examples given by Mr Osborne in his presentation speech.

Indeed, anecdotal evidence available to me is that the police do not generally even use the powers available to them currently in relation to major events such as Summernats. I am not aware of any examples in relation to, say, rugby Super 12 matches or tests or rugby league semifinals, the examples used by Mr Osborne, where the police have indicated that there were incidents at the grounds which they could not handle within the context of their professionalism, their training and the powers currently available to them. I am not aware that the police have concerns about the level of their training, their professionalism or their capacity to handle crowds at Raiders or Brumbies games.

The wide-ranging powers given to the police and authorised officers in the original bill were supported only on the basis that the Olympics were a one-off event. I do not believe that there is any evidence that the powers contained within this piece of legislation are needed for other events, generically or generally. I do not believe the case has been made, and the Labor Party will therefore not support the bill.

MS TUCKER (6.21): The Greens will not be supporting this bill. We are not in favour of increasing police powers unless the need for such an increase is demonstrated.

Mr Berry: Evidence based.

MS TUCKER: I am very keen on the evidence-based approach.

Mr Stanhope: If you could apply this legislation to clubs, that would be all right.

MS TUCKER: I think they are reflecting on a previous vote, Mr Speaker.

Mr Stanhope: No. We are suggesting that you move an amendment.

MS TUCKER: Mr Speaker, I think you need to pay attention to Mr Stanhope's interjections here. I am obviously free to reflect on a previous vote, so I will continue the debate. Mr Stanhope, in response to your interjection about the last debate we had, I did refer to the fact that I have an assurance from the gambling commission—

Mr Stanhope: This is an example that did not occur to me

MR SPEAKER: Order! This sounds more like a G8 demonstration.

MS TUCKER: I did say that I had an assurance from the gambling commission that they were able to evaluate the program, so there is a process element to my position on the gambling legislation, believe me.

Mr Berry: There is a bit of reconstruction here.

Mr Moore: I take a point of order. Ms Tucker correctly refers to standing order 52, about reflecting on a vote of the Assembly. I think Mr Stanhope ought to be very careful.

MR SPEAKER: I would ask everybody to be careful.

Mr Berry: Mr Speaker, I think we were merely reflecting on Ms Tucker.

MS TUCKER: I will have to make personal explanation now under standing order 46. After this, I will seek to make a personal explanation, as I have just been reflected upon by Mr Berry.

On this particular legislation, I will reflect on Mr Osborne. We do not like to see increased police powers for no particular reason, and we will be very worried if it continues to happen in the way it has in this Assembly. That is why we hope we do not have any more police here after October.

The argument appears to be that the police say it would be helpful so the Assembly says, "Okay." The really sad thing is that if you are connected with marginalised groups in our community you realise how very afraid they are of the trend in this Assembly at the moment.

It is important that we take a strong position in this place on issues such as civil liberties. What is the point of this? Why do we need this? Where is the demonstrated need to have the capacity to suddenly infringe on people's civil liberties at the will of the minister of the day.

I understand that Mr Moore might move an amendment to minimise some of the potential damage by providing for a disallowable instrument, but as members in this place know there are quite long periods of time when we do not sit. So that would not necessarily work, because a disallowable instrument requires a number of sitting days to pass.

For me, no evidence has been presented for the need for this legislation, except that Mr Osborne likes to give police more powers. I will not support the bill.

MR OSBORNE (6.25), in reply: I thank some members for their support. We have been very fortunate here not to have had some of the violence we have seen at sporting events around the country, especially at soccer matches, where there have been a lot of ethnic clashes, though I believe there has been the potential at some games here.

In the last few months there has been quite a deal of publicity about crowd behaviour at rugby league matches in Sydney, . Who knows what the trend is? I hope that that never becomes an issue here.

Superintendent Alan Castle, the AFP representative during the Olympics, spoke to us. Having been through the Olympics and having looked at the arrangements, he thought it would be a good move for the legislation to continue. So the matter was raised by the police.

Mr Moore: Of course.

MR OSBORNE: "Of course," Mr Moore says. Mr Stanhope inferred that it had come from nowhere, but the issue was raised by the police. I thank members for their support. I hope that the legislation never has to be used, and I hope that we continue to be as free from violence as we have been in the past.

I understand that Mr Moore has an amendment, which I am more than happy to support. Once again I thank the consistent members for being consistent on different things they have voted on this evening.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Bill, by leave, taken as a whole.

MR STEFANIAK (Minister for Education and Attorney-General) (6.27): Mr Speaker, I seek leave to move amendments 1 to 3 together.

Leave granted.

MR STEFANIAK: I move amendments 1 to 3 *[see schedule 5 at page 3229]*.

These amendments are very simple. They make sure that any decisions to declare an event a major event are made by the executive rather than by a minister acting alone. They will ensure that the special powers under the act are invoked only after careful consideration by the executive and following the usual consultation processes involved in executive decision-making.

MR STANHOPE (Leader of the Opposition) (6.28): Whilst we oppose the bill, we think that, were it passed, these amendments would be sensible.

Amendments agreed to.

MR MOORE (Minister for Health, Housing and Community Services) (6.28): I move the amendment circulated in my name *[see schedule 6 at page 3230]*.

The bill would now read:

> The Executive may not declare a public protest or demonstration to be a major event.

This is what I refer to as the Bjelke-Petersen amendment, and I think that explains exactly the concern I have.

MR STANHOPE (Leader of the Opposition) (6.29): The Labor Party accepts the wisdom of the amendment but opposes the bill.

MR OSBORNE (6.29): If this really were a police state, I would be opposed to Mr Moore's amendment, but I am not. I will support it.

Amendment agreed to.

MR STEFANIAK (Minister for Education and Attorney-General) (6.29): Mr Speaker, I seek leave to move amendments 4 to 6 together.

Leave granted.

MR STEFANIAK: I move amendments 4 to 6 *[see schedule 5 at page 3229]*.

For the same reasons as I gave before, these amendments delete "Minister" and substitute "Executive".

Amendments agreed to.

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

Question put:

> That this bill, as amended, be agreed to

The Assembly voted—

Ayes, 7		Noes, 6	
Mrs Burke	Mr Osborne	Mr Berry	Mr Stanhope
Mr Cornwell	Mr Rugendyke	Mr Hargreaves	Ms Tucker
Mr Hird	Mr Stefaniak	Mr Moore	Mr Wood
Mr Kaine			

Question so resolved in the affirmative.

Bill, as amended, agreed to.

Adjournment

Motion (by **Mr Moore**) proposed:

> That the Assembly do now adjourn.

Athllon Drive transit lane

MR WOOD (6.32): Mr Speaker, life can be tough—and tougher for some people than for others. I want to raise the case of a poor bloke from Tuggeranong who got caught in the transit lane on Athllon Drive down to the valley. He does not get out of the valley much. He gets in his car sometimes and goes down to the health centre in Tuggeranong for physiotherapy. Some months ago—this has been going on for a while—he went to Tuggeranong and they said, "We cannot do you today. Go into Woden."

So he went on Athllon Drive. He has been on it before, no doubt. He did not know about the transit lane. He did not know that at that time in the morning you had to have three people in the car. You only have to look at the bloke. He is not young and he is frail. The policeman could have said, "Okay, I will just let you know. I will educate you." But he did not. He wrote out a ticket and said, "Write a letter and appeal about it." So the bloke wrote a letter and appealed about it. He was told: "No, can't help you." Now he has to face this fine. Life is pretty tough.

I did not understand that sign when I first saw it. I knew it was a transit lane. It is not a very clear sign. It does not tell everybody explicitly what the rule is. I do not know which minister is particularly involved, whether it is a courts matter now, a police matter or what. But I have a letter upstairs that I will be charging off. I hope that whoever gets it says, "Okay, fair thing. This bloke does not deserve a ticket."

Something like this happened not so long ago, and the bloke said, "I didn't know about it and I have been driving for a long time. I should be let off." And he was let off. But this time someone has taken a harder view. Mr Stefaniak, if you or someone else gets my letter, can you help?

Athllon Drive transit lane

MR STEFANIAK (Minister for Education and Attorney-General) (6.34): Mr Wood, I do not know much about the case. From what you have said, your letter should go to the police minister as the police issued the ticket. If the case gets to court, you could then apply directly to the DPP, who has sole discretion over prosecutions. Initially, address your letter to Mr Smyth, because it would be within the discretion of the police to take action themselves. That might be the most appropriate thing for you to do.

Question resolved in the affirmative.

Assembly adjourned at 6.35 pm

Schedules of amendments

Schedule 1

Land (Planning and Environment) Amendment Bill 2001 (No 4)

Amendments circulated by Mr Humphries (Chief Minister)

1
Clause 4
Proposed subsection 226 (1AA)
Page 2, line 16—
After "surveyor that", insert "shows"

2
Clause 4
Proposed paragraphs 226 (1AA) (a) and (b)
Page 2, lines 17 and 19—
Omit "shows"

3
Clause 4
Proposed paragraph 226 (1AA) (c)
Page 2, line 21—
Omit the paragraph, substitute the following paragraph:
(c) the existing contours of the land.

4
Proposed new clause 4A
Page 2, line 23—
After clause 4, insert the following new clause:

4A New section 226 (6) and (7)

insert

(6) The Minister may, in writing, exempt developments mentioned in subsection (1AA) from the application of the subsection.

(7) An exemption is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the *Legislation Act 2001*.

Schedule 2

Crimes Amendment Bill 2001

Amendments circulated by Mr Osborne

1
Clause 6
Proposed new subsection 92NC (1), examples of electronic means
Page 3, line 4—

Omit the examples.

2
Clause 6
Proposed new subsection 92NC (3)
Page 3, line 12—

Omit the subsection, substitute the following subsections:

(3) It is a defence to a prosecution for an offence against subsection (2) if the defendant—

(a) is an Internet service provider; and

(b) had no knowledge that the defendant's facilities were used to commit the offence.

(3A) It is not a defence to a prosecution for an offence against this section that the young person had consented to—

(a) the suggestion being made; or

(b) the material being sent or made available.

(3B) However, it is a defence to a prosecution for an offence against this section if the defendant proves that the defendant believed on reasonable grounds that the young person to whom the suggestion was made, or the material was sent or made available, was at least 16 years old.

3
Clause 6
Proposed new subsection 92NC (4)
Page 3, line 27—

Insert the following definition:

using electronic means includes using email, Internet chat rooms, SMS messages and real time audio/video.

Schedule 3

Crimes Amendment Bill 2001

Amendments circulated by Ms Tucker

4
Clause 6
Proposed new subsections (3A) and (3B)
Page 3, line 18

omit

(3A) and (3B)

substitute

(3A) Also it is a defence to a prosecution for an offence against subsection (1) if the defendant proves—

(a) that either—

(i) the defendant believed on reasonable grounds that the young person to whom the suggestion was made was at least 16 years old; or

(ii) at the time the suggestion was made the defendant was not more than 2 years older than the young person to whom the suggestion was made; and

(b) that the young person consented to the suggestion being made.

(3B) And also, it is a defence to a prosecution for an offence against subsection (2) if the defendant proves—

(a) that either—

(i) the defendant believed on reasonable grounds that the young person to whom the material was sent or made available was at least 16 years old; or

(ii) at the time the material was sent or made available the defendant was not more than 2 years older than the young person to whom the material was sent or made available; and

(b) that the young person consented to the material being sent or made available.

Schedule 4

Crimes Amendment Bill 2001

Amendments circulated by Mr Stefaniak Attorney General

5
Clause 6
Proposed new subsection 92NC (4)
Page 3, line 21—

Insert the following definition:

classified—see the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*.

6
Clause 6
Proposed new subsection 92NC (4)
Definition of *pornographic material*
Page 3, line 22—

Omit the definition, substitute the following definition:

pornographic material means material that has been, or is likely to be, classified RC, X or R.

Schedule 5

Olympic Events Security Amendment Bill 2000

Amendments circulated by Mr Stefaniak Attorney General

1
Clause 4
Proposed new subsection 4 (1)
Page 2, line 7—

Omit ‘Minister’, substitute ‘Executive’.

2
Clause 4
Proposed new subsection 4 (2)
Page 2, line 11—

Omit ‘Minister’, substitute ‘Executive’.

3
Clause 4
Proposed new subsection 4 (3)
Page 2, line 16—

Omit ‘Minister’, substitute ‘Executive’.

4
Schedule 1
Amendment 1.4
Proposed new paragraph 5 (f)
Page 4, line 9—

Omit ‘Minister’, substitute ‘Executive’.

5
Schedule 1
Amendment 1.7
Proposed new subsection 7 (1)
Page 4, line 18—

Omit ‘Minister’, substitute ‘Executive’.

6
Schedule 1
Amendment 1.7
Proposed new subsection 7 (2)
Page 4, line 29—

Omit ‘Minister’, substitute ‘Executive’.

Schedule 6

Olympic Events Security Amendment Bill 2000

1
Clause 4
Proposed new subsection 4 (3)
Page 2, line 19—

Insert—

(3A) "The Executive may not declare a public protest or demonstration to be a major event."