DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

21 August 2002

Wednesday, 21 August 2002

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MR SPEAKER (Mr Berry) 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.

Petition

The following petition was lodged for presentation, by **Mr Humphries**, from 943 residents.

Abortion legislation

To the Speaker and Members of the Legislative Assembly for the Australian Capital Territory. The petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly that:

- the Heath Regulation (Maternal Health Information) Repeal Bill 2001 removes valuable statutory protection from women who are considering termination of pregnancy and those who have conscientious objection to participating in abortion procedures, and

- the Crimes (Abolition of Offence of Abortion) Bill 2001 removes all legal protection from the unborn child before birth.

Passage of these Bills would be contrary to:

- the fundamental role of government, which is to protect the lives and promote the wellbeing of all members of our community, particularly the most vulnerable; and

- Australia's international obligations under the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child.

Your petitioners therefore request the Assembly to reject these Bills.

The Clerk having announced that the terms of the petition would be recorded in Hansard and a copy referred to the appropriate minister, the petition was received.

Inquiries Amendment Bill 2002 (No 2)

Ms Dundas, pursuant to notice, presented the bill.

Title read by Clerk.

MS DUNDAS (10.32): I move:

That this bill be agreed to in principle.

Mr Speaker, the Inquiries Amendment Bill 2002 (No 2) is in response to the difficulties which arose out of the Gallop board of inquiry into disability. Whilst Mr Humphries also has a bill on the notice paper, our approaches to this issue are quite different.

My bill will ensure that the Assembly is the first to know of the outcomes of inquiries performed by the executive under the Inquiries Act—that is by ensuring that the inquiry report attracts parliamentary privilege on the day the report is tabled in this Assembly.

This bill will provide a level playing field for all involved in an inquiry. The reason there were delays in the tabling of the Gallop report was not due to the inaction of the executive government or because of conflicting legal advice—rather, it was due to the continuation of the power relationships which exist in the disability sector.

The executive government released part of the report to a select few of the players. These people did not like what they saw in the report and took out an injunction to stop the release of the full report. Those who were not part of the select few, but were also named in or affected by this report, were left in the dark. They did not know what was in the report, what the public servants involved were trying to stop, or why the report was released to a select few.

Mr Speaker, this was not a matter of parliamentary privilege—it was a matter of power, and the selective release of information. The arguments and conflicting legal advice over the extent of parliamentary privilege came after this mismanagement of the release of the inquiry report.

There were questions raised about the two months wait between the Chief Minister receiving and then releasing the report—although we should remember that there was nothing to stop the Chief Minister from not releasing it at all.

The decision as to when to release the report rests entirely with the Chief Minister. He may release nothing, part, or all of the report at any time, to any member of the community and, then, if things get heated, claim that it was always his intention to table the report—and hence invoke parliamentary privilege.

Again, this is not about privilege, it is about the power exercised by the executive government—all the information and power that comes with it—and choosing when to release reports. This allows the Chief Minister to leak a good news story there, make a policy announcement here, suppress what could be a bad news story and, at some time in the future—preferably on a day when the media and the Assembly are distracted with other matters—release the report and hope no-one notices the bad news it contains.

The reason for the bill I am introducing today is to make clear in the act that, when the Chief Minister's Department has in its possession a board of inquiry report, it is released to the Legislative Assembly first, or not at all. That is, it is not released to a select few, behind closed doors, who then take out injunctions against the Chief Minister. Simply, when the report is ready, it will be tabled in the Assembly. I believe this bill restores parliamentary privilege to where it belongs—in this chamber, rather than in press conferences or in the courts.

Parliamentary privilege has a long and chequered history. It arose some three centuries ago, when article 9 of England's Bill of Rights provided that freedom of speech and debates or proceedings in a parliament ought not be impeached or questioned in any court, or place out of the parliament.

Over the years, questions have arisen, in both the courts and the parliaments, about the extent of the proceedings of parliaments. This goes to the heart of the conflicting legal advice which surrounded the Gallop report.

In the late 1980s, a federal joint select committee on parliamentary privilege saw that problems arose through this uncertainty. It proposed a definition which was enacted as section 16 (2) (d) of the federal Parliamentary Privileges Act of 1987. That gives parliamentary privilege to "the formulation, making or publication of a document, including a report, by or pursuant to an order of a house or a committee and the documents so formulated, made or published".

It has been recognised that, if this broad definition could mean that all information used in the writing of a report could receive parliamentary privilege, then this could be used to protect an endless number of documents and files. Clearly, that was not the intention of the definition.

Having said that, there has never been any doubt that documents tabled before a house become proceedings in parliament, whatever their source and whatever their content. The ACT Inquiries Act, written after the enactment of the federal Parliamentary Privileges Act, makes allowances for the Chief Minister to release information at any time and then, later, assume parliamentary privilege.

This may have been to allow the Chief Minister to release information early, as Mr Humphries suggests, or it may have been to give the executive unnecessary discretionary powers to release information quietly, without the spotlight of this Assembly.

Mr Speaker, the bill I table today, if accepted by the Assembly, will turn this problem around. It will ensure that parliamentary privilege is not extended to the leaking of reports, media conferences and the like. It will further ensure that Assembly members are the first to scrutinise reports, rather than disgruntled public servants or lawyers in the Supreme Court.

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

Insurance Compensation Framework Bill 2002

Mr Smyth presented the bill and its explanatory memorandum.

Title read by Clerk.

MR SMYTH (10.39): I move:

> That this bill be agreed to in principle.

It is with great pleasure that I introduce the Insurance Compensation Framework Bill 2002. Before I go into detail, I would like to bring to the attention of members that this bill has been superbly and speedily drafted. I acknowledge that the ACT Assembly is fortunate to be served by some truly gifted draftspeople.

The crisis in public liability insurance requires a fundamental rethink on the way this issue should be addressed. I do not think the current system suits anyone well. It is time to recognise that a system which focuses solely on monetary redress for injuries is flawed.

It is time, as a society, to make a decision about liability. Do we continue to provide a system of adversarial litigation which may sometimes, but by no means always, provide a pot of gold at its end? Or do we step away from this approach? Do we instead recognise that the priority for injured people is not to give them a pot of gold, after several years of expensive litigation, but to get them well—to rehabilitate them back to their pre-injury level of life?

Mr Speaker, this bill is just that—a move away from the pot of gold mentality of large payments to one of early intervention and rehabilitation, where quality of life is the priority. Indeed, my legislation will be the first step towards a no-fault system for all personal injuries claims.

We need a system where, if a person is injured, they will be looked after, their medical needs will be attended to and they are rehabilitated, where possible, to their pre-injury level of lifestyle. Of course, where someone suffers catastrophic injury, where rehabilitation is impractical, compensation should be paid as soon as possible.

The beauty of this legislation is that it has already been done in a similar field, and it works. All stakeholders involved in its development—insurers, employers and unions, believe this will have a downward effect on premiums, and it is already producing better outcomes for injured people. I am referring to the Workers Compensation Act, which I reformed last year when I was minister, which has implemented such a system.

The question I have is: why should an injury caused in medicine be treated differently from one caused at work, or indeed one caused by falling off a horse? I do not think there should be any difference at all. As it happens, and as identified by the Chief Minister yesterday, the legislation covering personal injury in the ACT is a melange of common and tort laws. There are no guidelines for judges, and insurance actuaries have no way of accurately predicting risk. They therefore hedge on the side of caution, and premiums skyrocket.

Mr Speaker, the Insurance Compensation Framework Bill 2002 will address all of this. I put on the record that there are two main drivers of premium prices. The first is volatility of outcome. An insurance actuary has no way of telling, in the current environment, what the likely payout for any particular incident will be. The second is the length of time it takes to claim. The longer a claim takes to resolve, the more it costs. Even more significant for actuaries is the period of time in which it is possible to make a claim—I refer to the statute of limitations. Again, where there is no limit, or where a litigant makes a claim many years after the event, the payout can be enormous.

This bill comprehensively addresses those drivers. This bill will move the process away from the "pot of gold mentality" to one of structured settlements and rehabilitation. It will provide similar structured settlements of rehabilitation obligations to the Workers Compensation Act—reformed by the Liberal government last year—and use a similar system of a table of maims for payments for permanent injury.

The experience with workers compensation is that it is far cheaper and attractive for insurers to accept a claim without necessarily admitting negligence, which follows the no-fault provisions of this bill, than it is to take their chances under common law.

Under the proposed system, it will be possible to go on to common law only if a claim is rejected by the insurer—whereafter it will be subject to a shonk test and extensive mediation and conciliation, before going to court.

Other elements of the bill address issues of timing. Timing is the other major driver of premium costs, after volatility of payouts. The longer it takes for a claim to be assessed, the bigger the payout. Similarly, the longer the space of time between injury and claim, the bigger the payout.

The Insurance Compensation Framework Bill will introduce a statute of limitation on claims—three years for adults and six years for minors—from the time the injury becomes apparent. Currently, there is no such limit. The Insurance Compensation Framework Bill will also force insurers to assess claims within 28 days of receiving them.

The bill will also offer weekly compensation. The bill will force insurers to pay weekly compensation to injured parties while the claim is being assessed and settled—to cover wages lost while the injured person is recovering. The bill will also offer an injury management regime. The bill imposes obligations, on both the injured party and the insurer, to enter into an injury management program. Entry into an injury management program is not an admission of liability—nor is the payment of weekly compensation.

It may interest members to know that one of the few companies in Australia to experience a reduction in their public liability premiums is Westfield. That is because they have implemented an injury management process for their claimants.

Insurance data collection is important. The bill will require insurers to provide information on claims to the minister. The minister will be required to maintain records of this information. Hopefully, that information will be used to target those industries with higher claims histories or risk management programs.

Under this bill, people who contribute to their injury, through wilful misconduct, deliberate self-harm, or the misuse of drugs and alcohol, will not be entitled to compensation.

Under this bill, all the medical costs of the injured party will be met by the insurer. There will be no need for the injured party to undertake litigation to pay for their medical bills, and payment for death is covered. This bill sets out a statutory payment for death as $150,000, CPI indexed. This is the same as the provision in the Workers Compensation Act.

The bill also allows for the use of structured settlements, to ensure the future wellbeing of somebody who is injured. A time limit is set for the making of a claim under this bill—that is, three years from the date the injury occurred, or the date the injury became apparent. People will not be able to make a claim for compensation for permanent injury until two years after the original claim, except in cases of obvious catastrophic injury. A claim will be deemed to have been accepted by an insurer if it is not rejected within 28 days.

Mr Speaker, this bill will give the minister the power to approve insurers, and will also make it compulsory for businesses to have public liability insurance. People will still be able to apply to the common law, once they have participated in the rest of the process. Again, this is modelled on the Workers Compensation Act—and, indeed, the AAT can review all decisions.

Ultimately, the biggest saving as a result of my reforms will be in human terms. Someone who has been injured and is rehabilitated will enjoy a better quality of life than someone who is left isolated and unsupported with their pot of gold, which gradually vanishes as the bills come in.

Mr Quinlan: Mr Speaker, I move that this bill be dismissed out of hand.

MR SPEAKER: I am sure you really wanted to adjourn it, Mr Quinlan.

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

Legal Practitioners Amendment Bill 2002

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

Title read by Clerk.

MR SMYTH (10.49): I move:

> That this bill be agreed to in principle.

Mr Speaker, I believe that the no-win, no-pay syndrome that seems to be infecting the country is a reflection of the more litigious nature of our society as it evolves. This bill seeks to remove the ability to advertise no-win, no-pay solutions. It seems to me that, before this advertising was allowed, the number of claims which went through to the court system was less. One of the adverse effects of no-win, no-pay advertising is to clog the court system.

Advertising clearly adds to the costs of claims. The advertisements have to be paid for, and those costs are passed on to the claimants. The removal of this advertising, I believe, will allow for genuine cases to come forward more regularly—and it should have the effect of reducing the costs of these services to clients.

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

Crimes (Abolition of Offence of Abortion) Bill 2001

Debate resumed from 12 December 2001, on motion by **Mr Berry**:

That this bill be agreed to in principle.

MR DEPUTY SPEAKER: Before I call Mr Stefaniak: members, is it the Assembly's wish to conduct a cognate debate in relation to these four pieces of legislation? I ask because it may be that some members wish to speak once on the matters and the agreement to a cognate debate will not prevent members, if they wish, from speaking to each particular piece of legislation. Is it therefore the wish of the Assembly? There has been one refusal and therefore we will take the legislation seriatum.

Mr Humphries: Mr Deputy Speaker, I wonder if members who object to debating all four bills cognately have any view about how we can group some of the bills in order to minimise the length of debate today. We have potentially a very long day ahead of us if we're going to have 17 speakers, potentially, on four different bills. I wonder if members have any view about whether some of these bills can be grouped in order to make it possible for members to cover a number of targets at the one time. I would've thought, for example, that bills 2 and 3 might have been capable of being debated cognately.

Mr Berry: I had some discussions with Ms Gallagher and she and I agree that orders of the day 2 and 3 could appropriately be grouped, but that's a question we might come to when we get to order No 2.

MR DEPUTY SPEAKER: Very well. Are you happy with that? Thank you.

MR STEFANIAK (10.52): Mr Deputy Speaker, in starting off today, might I indicate that I intend speaking now in relation to order of the day No 1, but I think my comments will also reflect on 2 and 3 and therefore I do not see the need to speak—if at all, certainly not at any length—in relation to those two.

I have been a member of this chamber for most of the time that the Assembly has been in existence, and this is a debate we seem to have at least once every sitting. I restate the position I've always had in relation to this matter, and that is that I am anti-abortion. I am for the rights of the unborn child. Last Assembly I thought we actually ended up with reasonable legislation. It did not satisfy everyone, by any shadow of a doubt, but it did provide I think necessary protections. It provided for information to be given to women considering an abortion. It provided for written consent. It provided a number of other things to protect the rights of the unborn child. Yet it acknowledged that, sadly, there are abortions in our community and there always have been.

That was the Osborne legislation. That was legislation introduced by a man who had some very definite views on the subject. But I think he sat down with other people and came up with reasonable legislation which satisfied most reasonable people.

Mr Berry and other members today seek to ditch that legislation, and I am opposed to them doing that. Accordingly, I'll be opposing those bills. The bill I will be supporting—and will speak briefly to it when we come to it later on today—is Mrs Dunne's bill, which I think is sensible legislation and has some improvements in it.

Speaking to the general issue, I think the rights of the child and the rights of the unborn child are very, very important. If we allow Mr Berry's bill to succeed, there are a number of grave fears, but one of the gravest fears is the fact that an abortion can be had, I understand, at any time during a pregnancy. Mr Berry has always been true to his convictions. I completely disagree with them, but I respect his convictions, and he has consistently tried to change the law. I think each time I have voted against his attempts to do so.

There is a lot of debate in this, as usual. I have received more letters on this subject than any other, and that is usually the case in this debate. Before I start into some of the arguments of the scrutiny of bills committee and my colleagues on it, I commend the scrutiny of bills committee, which tried to balance the various arguments. And I think in the scrutiny of bills reports on this subject—and I'll touch briefly on a couple—there is some quite good background information for members which I hope has been of assistance in this particular debate. I commend my colleagues on the committee for doing that. It was not particularly easy on an issue such as this, which has traditionally always been a conscience issue.

I am going to quote from a number of sources. Might I firstly say that I cannot think of any jurisdiction in Australia that has actually gone down the path which Mr Berry seeks to go down. I think the most recent example is Tasmania, where that bill was defeated. It brings to mind one point, and that is that, if this bill is successful, the ACT again will be a social laboratory, and I think the vast majority of people in our community are sick and tired of the ACT being a social laboratory. I want to make that point.

Various approaches are taken overseas, and in scrutiny report No 2 of 19 February 2002 the German approach is mentioned. I think it is interesting to look at what occurs in that country, a country that in the not-too-distant past has not had a great respect for human rights, when one looks at the Nazi era, but since then has had a much better approach. The report states:

> The Basic Law of Germany states: "Everybody has the right to life and bodily integrity", and it allows that "these rights may only be restricted by or pursuant to the law". In what is called the *First Abortion decision*, the Federal Constitutional Court reasoned through a number of steps to a conclusion that this provision cast on the state an obligation to take measures to protect the foetus.
>
> The first step is that the term "everybody" includes the unborn human being. The court said "Life in the meaning of the chronological existence of a human exists, according to scientific findings, at least from the beginning of the 14th day after conception …".
>
> Second, while the foetus may not hold individual subjective rights against the state, the Basic Law contained an objective value judgment in favour of the protection of the unborn child's right to life. This required the state to protect and promote that life, including from intrusion from third parties.

> Third, notwithstanding that pregnancy is part of the woman's intimate sphere, which itself is constitutionally protected, and she has a right to the free development of her personality, including her autonomy to decide against parenthood, the embryo is not simply part of the woman's body. Abortion does not remain within the private area of life. In the reconciliation of these competing interests, the protection of the life of the foetus must be given priority.

There are some other provisions there. Those are probably the main ones—somewhat different perhaps from approaches taken in some other countries. Nevertheless, I think that is worthy of mentioning in terms of the argument in favour of protection of the rights of the unborn child—and some other members here might well quote other parts of the scrutiny of bills report in terms of other rights there.

Archbishop Carroll, in his letter to the Chief Minister—a copy of which was sent to all members—makes a number of points in relation to these three bills. He summarises six main areas, and I think it is worth putting those on the record. Moving to the more specific aspects of the legislative proposals and related matters, he says firstly:

> 1. Traditionally the purposes of law are, as you well know, to protect, to regulate and to educate. In the case of abortion generally and the Berry amendments in particular, all three goals are subverted. How so? In the case of the unborn, he or she will be killed, invariably by harrowing means. According to Mr Berry, and notwithstanding all legal textbooks to the contrary, women do not need to know any details about the abortion procedure and its possible sequelae. They certainly do not need any time to consider any information which might have been given to them, nor do they need time to seek a second opinion. All of this presumes that all women are always, and in all circumstances, completely self-possessed and in complete command of all facts (medical, legal, emotional, psychological, and alternatives to killing their children, etc) so that they do not need any protection. But what of especially vulnerable women? Does the Assembly pass laws for the protection and care of those who claim vehemently that they do not need it, or for the voiceless and vulnerable who do?
>
> 2. In support of these straight-forward propositions concerning (a) the provision of all relevant information, and (b) the necessity of adequate time to consider it, one need only be referred to the ACT Department of Justice and Community Safety's Senior Legal Adviser, Meg Wallace, who, as you know, has written a detailed text on health law (*Health Care and the Law*, 3rd Edition 2001).

He goes on to say that he encloses an extract of the textbook, complete with checklists regarding these matters. He states:

> I draw your attention to paragraphs 4.108 & 4.122. You will readily appreciate that the "check-lists" drawn up by Ms Wallace are predicated on the landmark High Court decision of *Rogers v Whitaker* (1992) 175 CLR 479. Mr Berry's amendments would make a bizarre exception to Ms Wallace's checklist, so that its recommendations could be said to apply to all medical procedures except abortion.

3. By way of comparison, you'll be aware that there is legislation in the ACT (and elsewhere) which routinely requires that there be significant "cooling off" times for purchases of various goods to re-consider their decision. For example, under the *Credit Act* 1985 (s.37(4)), there is provision for a 10-day credit sale contract to be rescinded. Or under the *Conveyancing Act* 1919 (s.66S) there is a 5 day "cooling off" period with respect to the sale of residential property. If our legislature provides such safety mechanisms for goods, chattels and land, surely it is quite unreasonable not to keep an even shorter "cooling off period", as per the existing legislation, with respect to the "contract" between the abortion provider and a woman concerning the destruction of the child in utero.

4. In the case of the educative role and effect of law, should the amendments pass the Assembly, the community will be instructed that absolute autonomy is the sole arbiter of all actions and that the termination of nascent human life—at any stage of gestation—may be performed with impunity.

He then goes on to make some other points before stating:

5. You will be aware that the Labor Government of Tasmania, last December, voted *not* to decriminalise abortion. On the subject of counselling, the Tasmanian Parliament, in both Houses, voted to require that any woman seeking an abortion not only must see a GP and an obstetrician, but significantly, that counselling be provided for a person completely independent of the abortion provider. The amendments before our Assembly would deprive women of this protection so recently enacted by your Labor colleagues in Hobart.

Remember, he is writing to the Chief Minister and sends a copy to everyone. In his final main point he says:

6. As a community, do we not have a right to information, sanctioned by our legislators, from our bureaucracies and others about how taxpayer funds are spent on abortion, how many abortions are performed, who performs them, and other relevant data? Would not demographers, service providers, planning authorities, and many others benefit from having such basic information available to them? If Mr Berry's bills are successful, the public will be denied all of this basic information which is readily available in other jurisdictions. As Chief Minister and Attorney-General, with a significant commitment to public accountability, surely legislation requiring the collection and publication of all relevant data concerning abortion, as currently required by the 1998 legislation, is a reasonable expectation?

Those are six very good points made by Archbishop Francis Carroll.

A letter to me from Kath Woolf of the Right to Life Association dated 28 May this year makes a number of points in relation to the Crimes (Abolition of Offence of Abortion) Bill and the Health Regulation (Maternal Health Information) Repeal Bill. It then discusses the bill presented by Ms Gallagher in the following terms:

> The Bill presented by Ms Gallagher is an implicit admission of deficiencies in Mr Berry's proposals. Her Bill purports to offer protection to doctors exercising conscientious objection not to perform, or assist in an abortion procedure. However,

> Ms Gallagher's substitute provision gives much less protection than the provisions of the *Health Regulation (Maternal Health Information) Act 1998*. It gives no protection to other medical/health staff in relation to an abortion procedure.
>
> Significantly, Ms Gallagher's proposals give no protection to any person, whether a medical practitioner or otherwise, who does not wish to refer a woman for an abortion nor to counsel abortion to her. Medical practitioners would still be subject to so-called 'wrongful life' suits. There have been a number of these actions where typically a person born with a handicap sues the doctor who managed the mother's pregnancy for the doctor's failure to refer the mother, or counsel her for an abortion.
>
> Further, Ms Gallagher's proposals offer no protection to persons who work in pregnancy support services. These persons (often volunteers) might find themselves and/or their organisations, against their consciences, obliged to refer women for an abortion for fear of legal consequences.

She goes on to say:

> These serious omissions in the Gallagher Bill clearly fail to 'band-aid' one of the evident deficiencies of the Berry proposals.

The letter goes on to say:

> The Association has already made representations opposed to the two Bills presented by Mr Berry and our concerns are presented in more detail in the Attachment.

I won't go into that. But she stated, in summary:

> We hold that the legislation:
>
> - removes valuable statutory safeguards for women who are considering termination of pregnancy, including informed consent, and a cooling-off period to allow women to consider their decision free of pressure;
>
> - does not protect persons who conscientiously object to participating in abortion, or referring for abortion, or counselling for abortion; and
>
> - removes all legal protection from the unborn child before birth and would be an abandonment of the fundamental role of government, which is to protect the lives and promote the well-being of all members of the community which they serve, particularly those members who are most vulnerable.

It goes on to say:

> In fact, in respect of Mr Berry's proposal to remove all sanctions against abortion, the Legislative Assembly's Standing Committee on Legal Affairs Scrutiny Report No.2 2002 stated that no other jurisdiction in Australia has removed all criminal sanctions governing the procuring of abortion. Further, this proposal is contrary to the obligations of Australian Governments to conform their laws to the principles of the United Nations Convention on the Rights of the Child 1989, particularly as given in its Preamble and Articles 6, 7, 19 and 37

It concludes:

> Mr Berry's proposals are extreme and reckless. They are not in the best interests of the ACT community.

I would endorse that last comment.

I was interested today to read an article from a person who has bitter experience—Katherine Smith—and I think this lady has written to all members. She pleads for better, not worse, counselling for women. Katherine's article states:

> Wayne Berry's abortion Bills will be debated in the ACT Legislative Assembly today. As a woman whose life has been scarred by having an abortion, I believe his proposals are misguided. I was 29 years old when I discovered I was pregnant. It took its toll on me physically and emotionally and I felt anxious about what lay ahead of me. While there were issues with my relationship with the baby's father, and I felt the usual anxieties, sickness and fears of a first-time mum, I had not decided on an abortion. I started taking folic-acid for the baby's development, hardly a sign that I had decided I didn't want to keep the baby.
>
> I was very confused, and what I really needed was someone to tell me that I would be able to manage and that I'd be a good mother. Nobody said "congratulations" on hearing of my pregnancy. In fact, most people said "get rid of it" because I was unmarried and the pregnancy was unplanned.
>
> When I went to the Family Planning Clinic I wasn't sure if I wanted an abortion. I didn't even realise I was going to an actual abortion clinic; the name didn't suggest anything of the sort! I did want counselling and I did want to discuss my options, and to think about them. Instead, I felt railroaded into having an abortion.
>
> The counsellor recorded as the reasons for the abortion that I was financially and emotionally unable to take care of the child. Neither reason was true. What's more, the clinic was more than willing to get around the required three-day cooling-off period.
>
> Wayne Berry wants to remove laws that require the clinic to provide women with unbiased information. He claims that women considering abortion will already have thought long and hard about their decision beforehand and therefore don't need this information. How does he know?
>
> In my case, the information given to me by the abortion provider about risks was minimal and delivered in a way that trivialised its importance. They made me feel that they knew what was best for me. They didn't prepare me for what I would experience.
>
> I suffered from nervous shock after the abortion. I cried uncontrollably for weeks and lost five kilos in a matter of days because I couldn't eat. My relationship broke up.
>
> Now, more than a year later, I am still suffering the consequences of the inadequate treatment I received and I am still on anti-depressants and sleeping tablets. I am taking legal action against the clinic because it did not follow the current requirements of law and because of what I have suffered.

> I understand the current informed-consent laws were put in place to protect women and to ensure that they are provided with factual and unbiased information on abortion so they can make an informed decision. It seems Wayne Berry and his supporters want to take away even the minimal information which women are supposed to see under the Maternal Health Information Act 1998.
>
> If I didn't receive adequate information when the law required it, what hope will other women have of being properly informed if the current legislation is removed or watered down? I am sure more women have suffered as I have and more will consider legal action if abortion providers are not made to comply with current regulations.
>
> In December last year I wrote to all MLAs, urging them to retain the informed-consent provisions. Only four replied—.I have found that those in favour of abortion don't want to hear from women like me. It seems as though they just want it to be business-as-usual, no questions asked.
>
> I observed the pro-choice rally at the Assembly Building in April. They said abortion is a woman's human right. But isn't it also our right to know what might happen to us when we have abortions? The rally ended with the song *Girls Just Wanna Have Fun*. Abortion was not fun for me. Abortion is not fun for anyone.
>
> I feel let down by the system. Wayne Berry's proposals will only make things worse for women like me. I want to ensure that no other woman goes through the pain and suffering I have every day, suffering that could have been avoided had I had enough time, information and proper counselling to come to terms with my situation.
>
> My baby would have been born one month after my 30th birthday. Today I would have a one-year-old, a home full of toys and photographs. Instead I come home alone to an empty house with only thoughts of what should have been. No-one told me this is how I would feel afterwards.

"Katherine Smith" is a pseudonym. Her name was suppressed because of current legal action. That is a very powerful statement from a lady in our community. I commenced by saying that we had sensible legislation which I think was acceptable to most people in our community, and that was the Osborne legislation as amended in the last Assembly. I can see no reason why that should change. Accordingly, I will be voting against the bills brought forward by Mr Berry and his colleagues to alter those laws.

MR HARGREAVES (11.13): I wish to say that it was my preference that the bills be debated cognately, because I don't see that any purpose will be served by splitting them up, other than going over the same ground that people have had an opportunity to go over before. This is an issue of conscience. Before I go on, I would like to pay respect to my colleagues, as I did last time we debated this issue. The issue of conscience within the Labor Party is dear to our hearts and we respect each other's position. That respect has been honoured on this occasion and I pay my respects to my colleagues for that, even though some of us have differing positions.

So, like Mr Stefaniak, I suspect, I shall be addressing all of the bills in one hit, unless of course something emerges in the course of the debates on those other ones which may require a comment.

In looking at this deeply, one of the things that struck me was that the fundamental arguments surrounding the German approach, and the Western approach Mr Stefaniak talked about, are exactly where the divide is today in society. The German approach actually talks about somebody's right to life and it actually assumes that an abortion is the taking of a life, and that that is the prime issue. The Western approach actually talks about the inviolability of a woman's body and primacy of her right to privacy. It recognises also that it is the taking of a life but privacy has primacy.

Those arguments rage overseas in many jurisdictions. I don't know whether we will ever find a solution to that. But one of the points that came home to me—and it is a point that I just cannot reconcile within my own heart—is that I do not consider that an abortion is merely a medical procedure.

I understand a medical procedure to be, for example, the removal of a diseased or unwanted organ. It can in fact be the transplantation of any organ. But, to me, "medical procedure" talks about surgical intervention on parts of the body, a pathology issue. It doesn't talk about there being two lives. And I cannot get away from this. We are talking about two lives, and I can't apply the thought of terminating a life as just a medical procedure. I'm sorry about that for those people who have differing views, but there it is. And all of my thoughts kept coming back to that.

I do not believe—emphatically—that we should as a society consider negatively women who have been forced, through their circumstances, to take this decision. Indeed, not only should we not be ostracising people who have made that decision, or even thinking negatively about them; we should actually be putting in as much support as we can possibly bear for them—because what a hell of a decision to have to take!

I thank God quite frequently that I am not going to be faced with having that final decision. I am quite happy to participate in the decision from a long way, but it's a really comforting position to be in to know that I am not the person who has to turn the lights off. A woman has to do that, and only a woman will ever know what that means. I do not think that society ought to be doing anything but supporting these people. So I am not averse to removing the justifiable termination from the crimes law books at all, but I make this point: you cannot just take it out and not replace it with something else.

For example, I think that if a woman has the dreadful decision that she wants to have an abortion and so she goes to the clinic and has it done, then that should be something about which we all say, "Well, we would prefer it didn't happen but okay." But if somebody, for reasons known only to herself, goes along to somewhere other than an approved facility, she is putting herself in danger, it is an illegal act, and in my view we should be making a societal statement about that—and it ought to be a strong one.

I went through various pieces of legislation around the countryside about it, as Mr Stefaniak obviously has. I looked at the Northern Territory legislation, the South Australian legislation and the Western Australian legislation. I own up to not checking out the Tasmanian legislation. The one that actually attracted me most was the South Australian legislation. I won't read the whole lot of the South Australian legislation, but it makes interesting reading on its own. Section 81 of the Criminal Law Consolidation Act 1935 says:

> Any person who, with intent to procure the miscarriage of any woman, whether she is or is not with child, unlawfully administers to her … shall be guilty of an offence and liable to be imprisoned for life.

That says to me that where somebody takes part in an unlawful abortion it carries the same penalty as murder—not manslaughter but murder.

I will skip over the procuring one, and I invite people to look up that section. But then in section 82A of that same act it tells you where abortions are legal. Nobody likes it. Nobody's saying it is a great idea. But they are saying there are occasions when this would happen, and it should be all right. It talks about it being done by a legally qualified medical practitioner in a proper facility. It says that it must involve greater risk to the life of the pregnant woman for the pregnancy to continue than to be terminated. It talks about whether the child would suffer from such physical or mental abnormality as to be seriously handicapped.

It also says that a medical practitioner can do it instantly if he—or she, for that matter—has a fear that some immediate intervention is necessary to save the life of the woman. And it also says in section 82A, subparagraph 3—and this is what made this act attractive to me as opposed to the others:

> In determining whether the continuance of a pregnancy would involve such risk of injury to the physical or mental health of a pregnant woman … account may be taken of the pregnant woman's actual or reasonably foreseeable environment.

What that legislation actually does is say, "Right, it's not on. It's the taking of a life and we're not happy with that. But there are occasions when society has moved to a certain position where it says these things are acceptable to society at large."

They may not be acceptable to me personally, but that's tough luck; society has moved—as indeed it moves in recognising when life begins. Once upon a time life didn't begin until you were 21. Then it became at birth. Now we recognise that it is earlier than that. I for one believe that life begins at the instant of conception. I know other people disagree with that, and I respect their position. But I say that life has primacy. I actually support the German approach—that when we are talking about two lives, that's the end of it. We need then to flick into a regime that is similar to the South Australian regime.

I haven't put that forward because it is very difficult to amend a repeal act. So all I would do is invite members to have a look closely at the South Australian legislation to see whether it does not actually satisfy, predominantly, what we are all worried about, and whether or not with some tinkering it can be made to suit the ACT.

Sorry, I cannot support the Crimes (Abolition of Offence of Abortion) Bill. I am actually not going to support the Health Regulation (Maternal Health Information) Repeal Bill either, because it has some good things in it and some not-so-good things in it. Actually, I think giving a woman a 72-hour cooling-off period on an issue as serious as this is nothing short of a blatant insult. I would be happy to see it go. I don't want to see the whole lot go, but I am happy to see that bit go.

I think that the relationship of that act with the Crimes Act could actually do with a bit of cleaning up too. We ought to be saying, "It's not on with the Crimes Act, but if section X happens with this Health Regulation (Maternal Health Information) Act, then it's fine." That would give a connection similar to the South Australian one.

The objects of that act, for people who are aware of them, I think, are quite reasonable. But, again, it says that it has to be by a medical practitioner, and has to be an approved facility. The difficulty I have with this legislation is that it actually has not been done properly over the period of time.

Members who were here might remember that I actually moved an amendment to ensure that there were at least three women on the panel that was going to determine this booklet—because I did not think, with the state of the medical profession in the ACT as it was, that there were sufficient medical practitioners who were women. I still hold an absolute opposition to the position of a psychiatrist on that panel. I think that is a blatant insult. Women have a psychological episode, whether it's short or long, sure, but they do not go crazy. They do not require psychiatric treatment. That is another insult. I think that could be replaced with a psychologist or someone with similar qualifications. There is a distinct difference between the two. But, more importantly, the actual product or the work of that panel I don't believe satisfied what I was hoping would come of out the legislation.

I wanted to have information not forced down people's throats, but available. I wanted to have information there that talked about all of the alternatives: carrying to term, abortion, adoption, all the rest—every single thing you can think of about having a child.

Who would be actually providing those services—and some indication as to the sort of trauma that people would go through in either case? I have known as many people who have had children that have gone through trauma as I have people who have had abortions and gone through trauma. But I also wanted an unbiased presentation. I did not want pictures of foetuses and I did not want pictures of coat hangers. I wanted it fair, so that people could pick this up, read it and be aware of all of the alternatives before them. And I include the father in the relationship, if that father wishes to be involved in a partnership of three. Mind you, if the father takes off, he takes his rights with him as far as I am concerned, and good riddance to him.

With respect to Ms Gallagher's bill, I support what Ms Gallagher is trying to do—absolutely. The sadness for me is that it is dependent upon the other bill. I think the points that she is making are quite right. It actually does have similar provisions to those within the Health Regulation (Maternal Health Information) Act, which says:

> No individual or body is under a duty, whether by contract or by statutory or other legal requirement, to—
> (a) perform or assist in performing an abortion; or
> (b) provide counselling or advice in relation to an abortion; or
> (c) refer a person to another person who will do the things mentioned in paragraphs (a) or (b).

In other words, people are not obliged to take part in it if they feel they should not for some reason or another. I think Ms Gallagher's wording actually beats that other bit and provides a better protection than is in that measure, and it is just a regret for me that it does not stand on its own.

Mrs Dunne's legislation talks about the reduction of the period of jail. *(Extension of time granted.)* The issue of reducing the penalty from a number of years to a month or something like that misses the point. The point about the sentence is the stigma that it carries with it. I don't care whether you sentence somebody to five minutes jail or 500 years jail; it still carries the same stigma. That's why I can't support that. I don't think the principle of it changes by the length of time. Further, with the measures on coercion, my understanding of them, from the lawyers' advice, is that coercion is in fact a bit similar to accessory before the fact. If something has been unlawfully done, a person coercing another to actually perform that act can be charged with exactly the same thing as the person performing the act, and if found guilty gets the same penalty as that person performing the act.

If, for example, a person is coerced into robbing a supermarket, the person who does the coercing or the influencing—because coercion is merely a gradation of influencing—cops the same charge as the person who pulled the gun out in the supermarket.

So there is no need for this. It already exists within the law. What we need in fact is to discover ways in which we can actually apply the law—because one of the hassles of all time is that nobody is going to stand up and say, "My dad coerced me into doing this" or "My husband coerced me into doing this" or "My husband coerced me into not doing this." You just can't prove it. So one of the issues about the legislation is that the provisions already exist within the law and you can't actually do it. And those issues were put out quite clearly.

Again, I want to thank my Labor Party colleagues for the respectful way in which we have conducted ourselves in the course of these considerations. I won't be supporting the Crimes (Abolition of Offence of Abortion) Bill. In fact, I won't be supporting any of them, but I have a regret about Ms Gallagher's bill.

MR WOOD (Minister for Urban Services, Minister for the Arts and Minister for Disability, Housing and Community Services) (11.30): Mr Deputy Speaker, the present law about abortion is unsatisfactory and undesirable, but I will not be voting today for change. What is also undesirable is the fact that there are far too many abortions carried out in this city—far too many.

The debate on this issue is focused on diametrically opposed views. I would prefer to see considered examination of all the options that might be undertaken to reduce the number of abortions. In today's society that is no easy task, but all we have heard in the last six months is an argument about yes or no. If that focus was changed, we should be able to consider options to bring down the number of abortions. I won't vote for Mr Berry's bill because it takes us to the position where abortion is simply another medical procedure—routine, all right, just an ordinary part of life, a convenient way to remove something we really didn't want. Life, the creation and sustenance of life, is more important than that.

A likely outcome of the successful passage of this bill would be more abortions. Does anyone here argue that that would be desirable? Let us value life. In doing so, let us reject a mechanistic view that there is always a solution, that we don't have to accept the responsibility for our actions. There are many circumstances when an abortion is necessary. My argument is that we should reject this bill and now move to examine the measures and the programs, and have the debate that will take us in the direction where those necessary abortions are the ones that are undertaken.

Finally, this old bloke standing here has the right and the duty to speak and to vote on this issue. It is not one for women alone. This is about life. It becomes an issue for people to determine what kind of society they wish to have. All people should speak about it, especially legislators.

MR DEPUTY SPEAKER: Order! Members, before I call Ms Tucker, I would like to draw your attention to the presence in the gallery of two members and the secretary of the Regulation Review Committee of the New South Wales parliament, led by its chair, Mr Gerard Martin. Welcome to the ACT Assembly.

MS TUCKER (11.34): Mr Deputy Speaker, the debate about abortion is obviously complex and positions are often deeply felt. However, neither this bill, nor any other bill, will stop abortions being wanted, or carried out.

What these bills do is make abortions safer, less fraught with guilt, blame and harassment—and remove a possible criminal sanction. The anti-choice arguments around abortion legislation—and certainly around these bills—quickly seem to lose sight of this. It becomes an argument about why abortions should never happen, and that is just not an option. Abortion is a last-stop option for women to have some control over their own fertility. It is the last-stop option for a woman who is pregnant and who, for personal reasons, is not in a position to bring a child into the world.

Responsibility in parenthood is still one of the fundamental differences between the roles of men and women in life. Whatever view you hold on that point—whether you believe that women must be primary caregivers, for whatever period of time, or you are working hard to shift attitudes and systems so that, increasingly, parenting is genuinely a shared responsibility—at this point in time, the responsibilities of parenthood have, on the whole, a much greater impact on women than on men.

Decriminalisation is one aspect of access to abortion. It is fairly easily understood—that a woman should not be named a criminal for seeking an abortion—and neither should the medical practitioner who, at her request, carries out the operation.

The prospect of 10 years in jail does nothing to support women, and does nothing to reduce the incidence of unwanted pregnancies. Mrs Dunne's proposal to reduce the criminal penalty to one month misses the point—it is still criminalising abortion.

There are people who believe that abortion is a sin and should, therefore, be a crime. There are people who believe that becoming pregnant means coming into contact with a spirit. Some believe that that spirit will understand if you truly cannot become its parent now, and will come back into your life in the future. That understanding and various spiritual beliefs—the questions of where personhood begins and when life

begins—are personal. Meanwhile, the choices we make as legislators have profound consequences for people—especially for women who find themselves pregnant.

I have found some very personal stories from women with differing views and spiritualities, and I will read some of these. I am contributing them to the debate today because I think it is important for us to understand that there is a range of genuine beliefs, and that abortion is no place for the criminal law.

In the mid 1960s, in the United States of America, a group of church people—from Catholics, Jesuits, Episcopalians to Methodists—were so horrified by the consequences of illegal abortions they saw that they organised to get women to safe clinics. The following story comes from a woman who had an illegal abortion and who then, for different reasons, had a legal abortion. She is also the mother of two now full-grown children. Her name is Linda Ellerbee, and she is a journalist. She says:

> I've said over and over that I am not for abortion, that no-one is for abortion. I am for a woman's right and a man's right—I'm for your right to make your own hard choices in this world.
>
> I think one of the things that makes me angriest, as angry as the shame and the pain I had to go through for the illegal abortion, is the lack of education, of sex education in the home, in the church, in the school, all of those places that didn't give me any information that got me into that place. The same people who don't want you to have an abortion don't want you to have sex education, and there is no question where this ignorance leads. And anyone who thinks that outlawing abortion makes abortion go away is a fool. It makes it uneconomical, it makes it dangerous, and it makes it shameful …

Of legal abortion, she says:

> Having the legal abortion was so totally different from having the illegal one. It was inexpensive. It was done in a clinic, a Planned Parenthood clinic, under sterile circumstances, with counselling, and I was not made to feel worse than I already felt. I was helped in grieving my loss, and it was a loss.
>
> About the question 'Does life begin at conception?' I do not know. Life in a certain sense probably does begin at conception, even perhaps right before conception—the properties of life are in the sperm and they're in the womb. But one must make tough choices in this world, harder choices than abortion. I don't see that choice as any different from the choice that families and doctors always have to make in difficult childbirth when they can only save the mother or save the fetus: You go for the life that is.

That is the view of one woman.

The Reverend Christine Grimbol, a woman who had an abortion and then trained as a minister in the Presbyterian Church, says:

> The Presbyterian church's official stand on abortion is pro-choice … Part of the stand is based on stewardship, on the belief that our job as human beings is to take care of the world and if we have babies we can't take care of, that is not particularly moral.

She goes on:

> I would add even more than our official statement. I believe—and this is a common Christian paradox—that the kingdom of God has come, is here and is yet to come. The kingdom of God is present when we can see the action of God in the world, when we can see compassion and mercy and love at work. But the kingdom of God is not yet here in all the also obvious ways … poverty, war, incest, child abuse, rape, homelessness, and hunger in the most wealthy country in the world.
>
> I believe that as Christians we are called to usher in the kingdom of God. We do that by insisting that these issues be addressed. Choice has to be connected to that. Life for a Christian is more than breathing in and out. Until people have a home in which to raise their children, the safety and security of whatever they need to do that well, then abortion needs to be a choice. Clearly, giving a woman the right to abortion is a compassionate stand, and anytime compassion rules over judgment, we see the kingdom of God.
>
> I see Jesus being outrageously gracious, outrageously forgiving. If Jesus were right here today, I think he would say, "I'm sad that anyone has to have an abortion. I'm sad that that has to be a choice. But you've been created as human beings... You're going to make mistakes. Yes, I do value life, I do value babies, but I don't use babies for punishment. And you've had a lot of babies born that you haven't taken care of very well. I want you to find homes for these children that have been battered and abused. I want you to get these people off the streets. I want you to take care of what you've already got."

That is one person's faith.

The New South Wales Synod of the Uniting Church puts a religious case for removing legal penalties for abortion as well. Quoting from their statement, it says:

> In a world at peace, justice and harmony of relationships, where hopes are fulfilled and plans succeed, there would be little need for women to seek abortions. However, we recognise that abortion must remain a legal option for a woman who is unable to continue her pregnancy.

I am not convinced that simply reaching a world of peace, justice and harmony of relationships would itself prevent unwanted pregnancies—nonetheless, it is a fine goal. The views of the Uniting Church quoted here emphasise—importantly—that the place for making a world where every pregnancy can be wanted, for those who share that vision, is not by making it illegal to have an abortion.

There are shades of grey, there are many personal understandings of what is going on in pregnancy and in abortion, particularly in the early stages of the pregnancy. The question of when personhood—not life but personhood—begins is a religious or spiritual one. It is not something for people of one belief to impose on others, and especially not as criminal law.

I have heard from some people with disabilities who fear that, with abortion and the various tests for disabilities in utero, along comes the view that a woman is obliged to abort if tests show the foetus will develop with a particular disability. There is experience

of this kind of attitude. A report from the Australian Women's Research Centre in 1996 cites cases where health insurance companies threatened to deny women health insurance unless they aborted foetuses with genetic anomalies.

I have also been sent a copy of what appears to be an ACT department of health briefing from 1998, in which costs of not being able to access abortion were detailed in answers to questions from the then minister for health.

Shockingly, the brief's version of costs included estimates of the costs of caring for people born with disabilities as a result of their mothers not being able to access abortions in the ACT. Before I go on, I restate that reducing the legality of abortions does not prevent them from happening, so there is a faulty premise in this brief. Nonetheless, the point I want to explore is that consideration was being given to this question in respect of the costs involved in caring for someone. My correspondent points out that this is cold-blooded economic rationalism.

This view of people with disability—this failure to see people as contributors to society, is not created by access to abortion. I also believe that decriminalisation will do nothing to change this attitude, one way or the other. I believe that the work to shift this attitude is a different thing altogether. That work is already under way. I am committed to that, and have a proven record on it.

As to insurance being refused, we must watch this and prevent it here. It is a dilemma we are going to face in many situations, as genetic testing becomes more prevalent. Getting back to the decisions about abortion versus parenting, the moral choice has to work both ways, if it is a real choice.

Why change? Some people have claimed that there is no need to change this law, or that it is preposterous to be concerned about a 10-year jail term for seeking or providing an abortion, because no-one has been charged. If no-one has been charged, then let's get rid of it! This is still a superficial argument.

We know that, as long as abortion remains part of the Crimes Act, eventually someone may try to use it to punish a woman for not sharing his or her own beliefs, or for drawing different conclusions to her circumstances from what they may have done. It happened in Western Australia in 1998 and in Tasmania last year.

Abortions in Tasmania are provided at public hospitals. Legally, it had been assumed that abortions were lawful, subject to the 1969 ruling of Mennenheit J in Victoria. That ruling established that the lawfulness of abortion relies on establishing that, if a pregnancy were to continue, it would seriously adversely affect the physical or mental health of the woman.

The Levine ruling in 1971 in New South Wales established that social and economic factors could contribute to an abortion being lawful. This opened the way for the establishment of counselling services for women. The law in Tasmania had not been tested. Legal advice was that the Mennenheit/Levine interpretations would apply in Tasmania. That is the same murky legal situation as we currently have here in the ACT.

In July 2001, in Tasmania, a medical student, who was apparently opposed to abortions, started asking questions based on his own reading of the Tasmanian Criminal Code in relation to abortion. This led to a police investigation of a particular termination and a historical investigation of records of terminations performed in the Royal Hobart Hospital. This resulted in the threat of charges being laid. It also led other hospitals to cease providing abortions. Consequently, women seeking abortions had to travel to Melbourne—where there is a public fund to assist Tasmanians requiring surgery not available in Tasmania to travel to the mainland for that purpose—in order to access a legal service.

This clearly illustrates the flimsiness of the legality of abortion and, hence, access to abortion, while it is simply a common law ruling. Other decisions leave the matter unclear. Model Criminal Code paper, at page 152, says:

> It appears to the Committee that the CES decision [Kirby et al] leaves the non-statutory states (that is, all but SA and the NT) in a legal quagmire.

It is unjust to allow such murkiness to remain in the criminal law.

What will this bill do and what will it not do? This bill will remove the criminal threat of 10 years jail. Much of the debate and campaigning about this bill has assumed that we can somehow stop abortions. Not so. Prior to the Levine ruling in 1971, which opened the way for abortion to be made available lawfully and therefore openly, albeit a tenuous legality, illegal abortion was a major cause of maternal deaths in Australia. Between 1931 and 1971, on average 25 per cent of maternal deaths were related to illegal abortions, according to the Public Health Association of Australia—based on ABS data.

Along the same line is the argument that the number of adoptions has dropped because abortion is more freely available. That may be partly true, but it is also true that the stigma and ostracism of single mothers has been partly chipped away—there is a long way to go, but it has reduced, so that women are now more comfortable to become single mothers.

It is also true that doctors no longer virtually order single women to give up their babies for adoption and refuse to give them information about any alternatives, including how to support the child. I have heard of this happening as recently as the 1970s. Can you imagine the pressure?

Timing and the law. This bill does not change or remove any laws about timing, because, in the ACT, there are no laws about the timing of an abortion. There are several mentions in the Crimes Act of gestational stage, but these clauses are not affected by this bill. For the purposes of ACT law, a foetus, or child, has been born once it has been delivered wholly from the mother and has breathed, regardless of whether or not it has an independent circulatory system. (See section 10 of the Crimes Act 1900.)

Development of the lung system occurs at around 22 to 23 weeks. Section 47 of the Crimes Act concerns the crime of concealing the body of a dead child, whether or not it was born alive. *(Extension of time granted.)* That does not apply prior to 28 weeks gestation. Under the Births, Deaths and Marriages Act, a doctor is required to certify the death, and cause of death, when there is a stillbirth—meaning at least 20 weeks

gestation—or if this cannot be determined, of at least 400 grams weight, with no sign of respiration or heartbeat immediately after birth.

The offence of child destruction in the Australian Capital Territory, Western Australia, Tasmania and the Northern Territory is limited to acts which cause the death of a viable foetus during birth. This section—section 42 of the Crimes Act—is unaffected by this bill. Because of the methods that can be used in very late-term abortions, it seems to me that the child destruction clause may well apply. Very late-term abortions—"right up to the moment of birth"—arguments are nonsensical. It does not happen, and that is not what this bill is about.

At least 98 per cent of abortions in the ACT are done prior to 14 weeks gestation. It is rare for someone to want an abortion in the final trimester, and even more rare for her to get one. In the ACT, up to 24 weeks or so is the maximum, and then only when a panel at a hospital, put together by the chiefs of women's and children's health, consider it is medically and ethically justified. What do we, as legislators, know about their individual cases? Why would we try to restrict what almost never happens? Once an arbitrary limit is set, it reduces the capacity to deal with someone in a specific case.

Viability tends to be the cut-off mark in the assessment, but each individual situation is taken into account. The reasons are evaluated by the medical practitioners concerned at the hospital, and by a panel. They consider the viability of an abortion against the consequences for the woman and the child if the pregnancy continues. The Victorian act sets viability at 28 weeks. We can see echoes of this view of viability in the ACT law on disposal of the dead body of a child, but this is a difficult area to assess.

It is clear that people have been misled on the question of timing. This bill does not open the way for abortions at all stages of pregnancy. The same medical and ethical, to some extent legal and, quite frankly, personal limits on when abortions are carried out are not changed by removing criminality.

Finally, in supporting this bill, I am making a pro-choice, not a pro-abortion statement. I sincerely hope that, today, we will take a step forward and repeal this outdated and unjust law. I hope we will continue to remove social exclusion, and I hope we will work towards developing a social condition which means that fewer women have to face this difficult decision. We need to be able to reduce the number of unwanted pregnancies. By passing this bill, we will also be able to reduce the pain of the individual situations when they arise.

MRS DUNNE (11.52): Mr Deputy Speaker, in accordance with standing order 84, I present a petition from 625 electors from the electorate of Ginninderra in relation to the Health Regulation (Maternal Health Information) Repeal Bill and the Crimes (Abolition of Offence of Abortion) Bill, calling on the Assembly to oppose this bill. The passage of this bill would be contrary to the fundamental role of government, which is to protect the lives and promote the wellbeing of the members of our community, particularly the most vulnerable, under Australia's obligations under the International Covenant on Civil and Political Rights and the Convention of the Rights of the Child.

MR DEPUTY SPEAKER: Order! The order of the day for the tabling of petitions has passed. However, you may seek leave to table a petition.

MRS DUNNE: I seek leave to table the petition.

Leave granted.

MRS DUNNE: I present a petition from 625 residents requesting the Assembly to reject the Health Regulation (Maternal Health Information) Repeal Bill 2001 and the Crimes (Abolition of Offence of Abortion) Bill 2001.

Mr Deputy Speaker, we come here today hopefully to put an end, for some time, to the question of abortion. I ask a question that many people around this place and in this community have asked—to which I hope to give an answer—why is abortion different?

It has been argued that abortion is just another medical procedure. Mr Berry argues that there is no need for any safeguard beyond that provided for surgical procedures in general. For me, the main difference comes down to the arguments we have heard before. They are the ones about life and death. Those arguments are not about lifestyles or lifestyle choices.

More ACT lives are lost to abortion than all published causes of death combined. More years of life are lost from abortion in the ACT than are lost in the whole of Australia for any other published cause of death, except ischaemic heart disease, yet many people are unmoved by this argument. Some claim to be convinced by sophisticated, philosophical, arguments that say humanity is defined not by soul or biology but by our social relationships, so we are not dealing with humans here. Others are uninterested in philosophy and say that those who cannot see, be seen or do not vote, do not matter.

Most, I suspect, simply refuse to think about the question—either because they cannot face the idea of living in a society that destroys its citizens by the thousands or because they might be forced to think about what I would say is the unspeakable, which most of you would just think is unsayable.

The debate is focused on the interests of the mother, and it is assumed that this is unrelated to the arguments about the status of the principal victim. The trouble is that they are, in fact, intimately related. Even if members here believe, with absolute certainty, that we are talking only about blobs of protoplasm, we have to face the fact that large numbers of Australians do not believe that—in particular, the pregnant woman. I know this. Pregnant women are strongly inclined to develop the view that what they are carrying around in their belly is a baby. As I said when I introduced this bill, how many women do you know who have said, “I felt the foetus kick”?

I know most members received the book by Melinda Tankard Reist, *Giving Sorrow Words*. I hope you all read at least part of that book. Unfortunately, as we know from many publications, many women come to this conclusion when it is too late. They often come to this conclusion after later carrying a later pregnancy to term—as many of them do. I will give one small quote from Katherine. It reads:

> Certainly I knew theoretically that there were alternatives, but the facts about them were withheld from me. Before the abortion, I allowed myself to think in terms of 'product of conception' or 'blobs of jelly'. Yet afterwards I knew with absolute clarity that I had killed a child. My child.

Would not Katherine have been better off if she had discovered that this was a child before she took the action she did? Even if you believe, hand on heart, that it is not really a child, can you imagine the effect it would have on a woman if she came to the conclusion that she had killed her child?

As a mother, I can imagine the feelings of someone who comes to such a decision under pressure and in distress. Could you wake up hours, years or days later and come to the realisation that you had done the wrong thing? "What have I done? What have I done?"

Having a baby, even in the best of circumstances, is not always an unalloyed joy. I will read from one of the hundreds of letters I have received. This is one I received most recently. The lady who writes to me says:

> I know a few women whose lives have been shattered by just such a process, where information and time to think, and offers of support (rather than just termination) have not been provided.
>
> On the other hand, and interesting I think even in the small sample of my personal experience, I know of no women who regret continuing an unplanned pregnancy, even in difficult circumstances. As a professional woman with four children and six pregnancies, I know how stressful that the decision can be. I cannot say how grateful I am for the provision of information, time to get used to the idea and find solutions to the problems around the pregnancy, and support—rather than all fingers pointing to the clinic.

I can echo that. As someone who has lived for 22 years in a stable relationship and who has five children, sometimes you sit there and think, "This is not the right thing to do. This is too difficult. I am not sure that I want to be here."

I think we should be conveying the message to people that it is all right to feel afraid to be pregnant; it is all right to feel threatened; it is all right to feel that you cannot cope, but that there are solutions which do not end in the abortion clinic. At the most basic level, as I said in this place in June, abortion is not just another medical procedure. I am glad Mr Hargreaves and Mr Wood touched on this. Medicine is concerned with diagnosis, treatment and the prevention of disease. Pregnancy, as we all know, is not a disease—there is no disease for which abortion is a cure.

This is in an era of evidence-based medicine. It is an era when evidence-based medicine holds sway. The Chief Minister is a great advocate of an evidence-based approach to policy. We rightly judge the effectiveness and cost-effectiveness of medical procedures by measures such as potential years of life saved and quality-adjusted life years. No-one claims any positive health outcomes for abortion by these or any other criteria. Any search of the medical literature will fail to uncover any positive health outcome for abortion.

The other day, someone did an internet search on the medical database, Medline, looking for evidence over the past five years surrounding induced abortion. They found more than 150 citations. Not one of them suggested any positive health outcome for abortion.

Mr Deputy Speaker, there are other ways in which abortion is different. One of the ways is the approach taken to abortion by the providers. In the introductory speech to my bill, I talked about the reasons people have abortions. Whatever one thinks of their validity, they clearly lie outside the field of medicine—again, this is not a medical procedure. Medical technology is used, but as a technological solution to a social problem—perhaps a technological solution to a lifestyle problem. The decision about whether that solution is the right answer to a patient's social, psychological or financial situation is not one an abortion provider is qualified to make.

Abortion is not like any other elective procedure. In a typical elective procedure, the patient is referred by a GP to a specialist. Case notes are provided and the doctor talks to the patient. They make decisions and look at the options. They look at what modality of treatment is appropriate—or whether no treatment is appropriate. The doctor finds out something about the patient—they know something about the patient's background.

None of this is the case with abortion. Often, the first time the doctor sees the patient is when she is on the operating table. The abortion clinic offers a procedure, and that procedure is a financial end in itself. The financial gains from abortion can be considerable. The abortion clinic has no time for the troublesome and time-consuming processes of diagnosis—there is no disease.

Ms Dundas: Have you been there, Vicki?

MRS DUNNE: Yes, I have. There is no discussion about whether this treatment for this non-existent disease is really necessary, or helpful, and meets the medical, psychological and family circumstances of the person. We are talking about the antithesis of holistic medicine—the antithesis of family medicine.

As I have said before, often the first time the abortionist sees the patient is when that patient is on the operating table. The patient is not even an individual—she is reduced to the status of an inconveniently-occupied womb. None of the rest of her matters—not her head, and not her heart.

Mr Berry says, in his introductory speech, that we do not need to do any more than we do already. He says the case of Rogers v Whitaker in the High Court has raised this bar high enough, and that we have high expectations of our medical practitioners.

However, I would contend that, because we have such high expectations of our medical practitioners, they have failed in the case of women facing abortion. Rogers v Whitaker implies that a patient is entitled to make his or her own decision about a medical procedure and that the doctor must disclose all material risks to a patient. The judgment in Rogers v Whitaker says:

> A risk is material if in the circumstances of the particular case, a reasonable or ordinary person in the patient's position if warned of the risk, would be likely to attach significance to it, or if the medical practitioner is or should be reasonably

> aware that the particular patient if warned of the risk, would be likely to attach significance to it.

Mr Berry contends that the decision in Rogers v Whitaker has already set the bar high and that it is unnecessary to mandate any more information. However, as I have said before, I think that, in the case of abortion, doctors do not reach the bar. This is reinforced in the *Bulletin* of the Royal Australian College of Gynaecologists and Obstetricians by Hamish McGlashan, in April 1998, where he says:

> We have been content to delegate the commonest gynaecological operation, one that we dislike, to others less well qualified … we have not ensured that the highest standards of practice have been available or reviewed, nor have we seen to it that adequate counselling and contraceptive advice has been made available.

If, by their own admission, doctors are not seeing that adequate counselling has been made available, there is a role for government to provide information. This is especially the case when abortions are being performed in government-owned or at least government-funded facilities.

Simply because the government is involved in it, there is a duty of care. If doctors are not supplying the information, then the government must. As Dr McGlashan said, they need to be given qualified counselling. As Rogers v Whitaker said, patients must be made aware of the risks—anything to which they might attach significance.

I would like to touch on a couple of those risks. The most contentious is the issue of breast cancer. There seems little doubt that there is a strong link between abortion and the increased risk of breast cancer. I say that, and I know that there are others in the room saying, "Boo! Nonsense! Not true!"

The pages of eminent medical journals have been running hot on this issue for two decades. There have been at least 35 epidemiological studies looking at abortion as a risk factor in breast cancer. *(Extension of time granted.)* Whilst not all the evidence is conclusive, the weight of evidence indicates that there is a strong link between abortion and breast cancer. If there is a strong link, it is incumbent upon people who are contemplating abortion to be made aware of that.

According to the dicta set down by the decision of Rogers v Whitaker, if there is a risk to which people are likely to attach significance, they need to be told—but Mr Berry does not want you to be told. This is why Mr Berry is moving his bills and why I am opposing them.

In a massive publication in the British Medical Association's *Journal of Epidemiology and Community Health* entitled "Induced abortion as an independent risk factor for breast cancer, a comprehensive review and meta-analysis", we find that there were 28 published reports which include specific data on induced abortion and incidence of breast cancer. The results of this are quite chilling. The cumulative evidence shows that there is a 30 per cent increase in the incidence of breast cancer among women who have had an abortion at some stage in their life. It is even higher—at 50 per cent—if a woman's first pregnancy ends in abortion.

I do not believe we can ignore these figures any longer. I do not believe women in Canberra should be allowed to have abortions without being told these facts. This meta-analysis is about three years old now. There was a publication called *Abortion and Other Pregnancy-related Risk Factors in Female Breast Cancer*, printed in London in December 2001 which says, briefly, that the incidence of breast cancer has risen in the epoch, considered in parallel with the rising abortion rates and that there is no doubt that there is a causal relationship. The figures in this publication look at Great Britain, Scotland, Sweden, the Czech Republic and Finland. It finds that there is a consistent causal relationship between breast cancer and abortion.

On the subject of breast cancer and abortion, Dr Janet Daling, who is a pro-choice US-based epidemiologist, did a landmark study linking abortion with breast cancer. She found that women under 18 who had an abortion after more than eight weeks gestation had eight times the risk of developing breast cancer by the age of 45.

If you look at the figures published in this Assembly every quarter, you will see that women under 18 are the largest single group, by proportion of population, who avail themselves of the services of abortion clinics in the ACT. We are not telling them. We should at least give them the information that, if they do this, they will increase their risk of becoming victims of breast cancer by the age of 45, which is a fairly early onset for this disease.

I will read what Dr Daling says. This is really telling, because it is not an anti-abortionist pedalling this story—this is a woman who, despite the information, continues to be pro-choice:

> If politics get involved in science it will really hold back the progress that we make. I have three sisters with breast cancer and I resent people messing with the scientific data to further their own agenda, be they pro-choice or pro-life. I would have loved to have found no association between breast cancer and abortion …

I will repeat that:

> I would have loved to have found no association between breast cancer and abortion

She continues:

> …but our research is rock solid, and our data is accurate. It's not a matter of believing, it's a matter of what is.

Turning to Ms Gallagher's bill, I note that Mr Berry has put forward his legislation and is content to grandstand on the big picture and leave the tidying-up and housekeeping details to Ms Gallagher.

I know the ALP has abolished sex roles, so I must attribute this to his personality, rather than the fact that he is a mere male. As Ms Gallagher makes some attempt in her amendments to recognise the role of individual consciences, I suppose that has to be applauded. It will be interesting to see, given Ms Gallagher's bill and the circulated amendments, whether today, in exercising our conscience, we will attempt to constrain the consciences of others.

Ms Gallagher's amendments grant doctors the right to refuse to perform abortions. But there is no protection afforded, in Ms Gallagher's amendments, to the matter of referral. If Ms Tucker has her way, doctors will, in fact, be conscripted. What this means for doctors of my philosophical belief is that they do not have to be murderers, but they have to at least be accessaries. That would make it impossible for a sincere, Catholic doctor or a Muslim doctor to be an obstetrician, gynaecologist or general practitioner in the territory, because he would be unable to refuse to deal with abortion. In addition to the doctors, there are the nurses.

Mr Deputy Speaker, I thought I could use standing order 84, but I understand that I cannot. I seek leave to table a petition from 79 midwives and nurses opposing the passage of this bill. They oppose the bill for a variety of reasons but, principally, as health professionals, they will no longer have the protection of law that they need to hold a conscientious objection to abortion.

Leave granted.

MRS DUNNE: I present a petition from 79 midwives and nurses requesting the Assembly to reject the Health Regulation (Maternal Health Information) Repeal Bill 2001 and the Crimes (Abolition of Offence of Abortion) Bill 2001.

I foreshadow that, if we get to debate Ms Gallagher's bill, I will be moving an amendment, which I have already circulated, to ensure that doctors, nurses and institutions can conscientiously decline to be involved in either the practice of abortion or referring people elsewhere.

Whilst this is a debate about philosophy and conflicting claims about human rights rather than population effects, we need to look at the data and get a picture of what is really happening. *(Further extension of time granted.)* There are 1,500 abortions per year in the ACT. That is 40 per cent of the number of live births and slightly more than the number of deaths from all other causes. Mr Wood was correct this morning, when he said that there are too many abortions in the ACT. The first thing that is incumbent upon us is to find a way of making that number decline.

The abortion rate in the ACT is higher than just about anywhere else on the planet. Nowhere else do we find an abortion rate as high as that for women in the ACT—especially young women who, I submit, do not have enough knowledge, put the whole of their lives in peril. There are no prosecutions. According to legal advice I have received, there is no legal basis for prosecuting any of the 1,500 women who have abortions in the ACT each year.

As I foreshadowed publicly earlier today, I will not be supporting part of my own bill—on the basis of advice I have received since submitting that bill. When I introduced that bill, I did so because I believe, as every person in this place believes, that a woman should not be sent to jail because she does something in a stressful situation. However, I do believe there are circumstances in which medical practitioners should be sent to jail.

I will now oppose my own proposal to deal with section 44 of the Crimes Act, on the basis of advice that I have received from an eminent international lawyer who works in this area. I seek leave to table the advice and will read the salient points. It says that the

plain meaning of the words of section 44 is that this section penalises a pregnant woman who intends to procure her own abortion. It continues:

> That section does not penalise her for attending before another person who then procures her miscarriage.

It says that section 45 penalises a person who has the intent to procure a miscarriage and administers a drug to do so. It goes on:

> Plainly, this is intended to penalise a third party procurer, not just the woman who procures her own miscarriage.
>
> In my opinion, however, this section does not directly penalise a woman who attends upon a third party for the purpose of having her miscarriage procured …

MR DEPUTY SPEAKER: Excuse me, Mrs Dunne. Are you debating a later bill? We do not have a cognate debate.

MRS DUNNE: I thought we were able to speak on all—

MR DEPUTY SPEAKER: No, we are not.

MRS DUNNE: Okay. I will leave that and come back to it.

MR DEPUTY SPEAKER: Yes. You will have to leave it until the bill is discussed, I am afraid.

MRS DUNNE: I apologise to members. I thought we were debating all of them. I thought we were able to speak on all of them at once, even if we were not debating them.

It is clear that abortion rates are changing significantly over time. It is interesting that, in the two jurisdictions where we have reliable data, the trends are in opposite directions. This is where I have to part company with Mr Hargreaves. I do not think the legislation in South Australia does the job that Mr Hargreaves hoped it would, because, in the 30 years that data has been collected in South Australia, the rate of abortion has trebled. That belies the claim that better sex education and contraceptive availability will reduce the need for abortion.

The ACT stands as a pinnacle at the moment because, by contrast, over the two years of information we have available to us, abortions have fallen—from 1,710 in 1999-2000 to 1,447 in 2000-01. On present trends, they will be around 1,270 at the end of this financial year. That is a reduction of more than a quarter of the number of abortions over two years.

If Mr Berry's moves to remove all restrictions on abortions succeed, this trend is likely to be reversed. ACT statistics will be expected to follow the gradual upward trend shown in South Australia and elsewhere in the western world—or, at least, ACT abortion numbers may grow, the statistics will no longer be collected, and we will not know for sure. The effect of returning to 1999-2000 abortion rates would be the equivalent of quadrupling the death rate. The cumulative effect of a few years is not hard to imagine.

Mr Deputy Speaker, it has been claimed that the debate about the provisions in the Health Regulation (Maternal Health Information) Act for a cooling-off period for informed consent is without effect. However, I believe these figures show that it is more than a mere annoyance. I really believe it is insulting to use the terminology of the pro-abortion lobbyists, who say it is an insult to their intelligence. It is not an insult to the intelligence of a woman to be told of the risks she faces with abortion, to see if those risks are significant for her, and to be given some time to contemplate them.

I pose a question for those who run the argument. If these provisions are without effect, why did abortion numbers in the ACT fall by 15 per cent in 1999-2000, and by a further 12 per cent in 2000-2001—all of this, with no change to the legal status of abortion, its funding or its availability? Does this suggest to you that you are dealing with a group of people who have made up their minds in advance, with absolute certainty? The letter from Katherine in the *Canberra Times* today shows that she had not made up her mind.

Surely those who argue that abortion should be safe, legal and rare should consider this as a basis for rejoicing, but I see that Mr Berry does not. Surely, they should at least think twice before claiming that giving information to women seeking abortion, and time to think, will make no difference to the outcome. This legislation will stop the cooling-off period, the provision of information and, in the end, Mr Deputy Speaker, it will suppress the evidence of what will happen.

MR PRATT (12.23): Mr Deputy Speaker, my remarks relate to the three bills being discussed. My comments on Mrs Dunne's proposed bill will be dealt with later. It is easy to get caught up in the emotion of this debate. However, we are legislators, and I urge that we take a step back from the emotional arguments being presented on both sides of the debate.

These bills have little to do with whether we are for or against abortion. They have to do with ensuring that we make and keep good legislation designed to protect all of those for whom we legislate. This is why I am against the changes which both Mr Berry and Ms Gallagher have presented. I see them as emotive, backward steps which substitute important protective legislation with ideology. As law-makers, we have the obligation to make and change laws which will protect those whom we represent—not to force our ideology down people's throats.

I would firstly like to address the problems I have with the Crimes (Abolition of Offence of Abortion) Bill 2001, as proposed by Mr Berry. The Crimes Act, as it stands, gives necessary and legal protection to a pregnant woman and her unborn child. The three sections which Mr Berry wishes us to abolish—sections 44 through to 46—stand as the only protection of these two individuals. Section 44 of the Crimes Act ensures that a pregnant woman does not reach harm by her own hand. It acts as a deterrent to a woman who seeks the desperate measure of providing herself with an abortion.

The deletion of sections 45 and 46 of the Crimes Act is what perturbs me most as a legislator. Mr Berry seeks to delete the only legislation which protects an unborn child, right up until the point of birth. He has not proposed to replace this legislation, and this will leave a remarkable hole in protective legislation. That is why no other jurisdiction has sought to make such deletions.

Let me outline two examples, based on real incidents, where sections 45 and 46 are most important. My first example is of a woman who is 38 weeks pregnant. Estranged from her partner, she is enjoying a normal pregnancy. Whilst she is looking forward to the birth, and has already established a strong bond with her unborn child, her partner wants to move on and does not want to be a "paternal" father.

After she breaks up with him, due to ongoing abuse, he wants her to have an abortion, but she adamantly refuses. One evening, he follows her and confronts her. He is so angry that he proceeds to punch her continuously in the stomach—this is based on a real incident—in a last attempt to try to rid himself of the trouble of being a "paternal" father.

The continuous punching causes the baby to die, and the woman proceeds to have a very painful miscarriage—or, in medical terms, an abortion. Whilst she suffers no long-term physical side-effects, naturally, she suffers from long-term mental trauma.

Mr Deputy Speaker, under section 45 of the Crimes Act, current legislation acknowledges that her partner has acted criminally. He is able to be charged and prosecuted for the death of the unborn child, as well as for the assault on the woman. Under Mr Berry's proposals, he would be charged only with assault.

As legislators, we have an obligation to protect the unborn child under the United Nations Convention on the Rights of the Child 1989, which states inter alia:

> … the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.

Another place where this legislation acts as a protection to the community—to the woman and her baby—is when a hospital or clinic board has made a decision which is not considered acceptable to the community. For example, if a medical decision is made to allow a teenager to have a late-term abortion at 38 weeks—for the first part of her pregnancy, she has been prepared to become a mother and, only in recent days, has been coerced by her pushy father, or others, to go through this painful late-term procedure so that she will not shame the family—under current legislation, the judiciary would have reasonable grounds to enforce section 45 or section 46. Removing this legislation is not a forward step towards protecting women's rights, it is a backward step.

Legal precedent has shown that prosecutions have not taken place for normal abortions, and I have absolute faith that the judiciary is not about to contemplate allowing such cases. I urge the members of this Assembly to vote against Mr Berry's Crimes (Abolition of Offence of Abortion) Bill, which changes the Crimes Act to the detriment of legislative protection.

Mr Deputy Speaker, Mr Berry's second bill—the Health Regulation (Maternal Health Information) Repeal Bill 2001—also concerns me. The Health Regulation (Maternal Health Information) Act 1998 has positive objections which are by no means anti-choice. On the contrary, this act helps to ensure that women are provided with balanced information and medical advice.

Mr Berry: On a point of order, Mr Deputy Speaker: I respect Mr Pratt's concern over the bill we are due to discuss later, but he might wish to make that contribution later on, when we get to the bill.

MR DEPUTY SPEAKER: Thank you.

Mr Berry: It is good to see one of my opponents talking about the Crimes Act instead of—

MR DEPUTY SPEAKER: Order, Mr Berry! Do not debate the matter, please.

MR PRATT: In fact, I support Mr Berry's comment.

MR DEPUTY SPEAKER: Excuse me, Mr Pratt. Otherwise, we may find a distinguished previous member of this Assembly, Mr Collaery, who was Attorney-General, joining in!

MR PRATT: We would welcome that!

MR DEPUTY SPEAKER: Mr Pratt, please restrict yourself to this particular bill. I would remind you that it is not a cognate debate.

MR PRATT: Mr Deputy Speaker, I will wind up at this juncture and return to the debates on the other two bills, and also Mrs Dunne's bill, at a later time.

Debate interrupted in accordance with standing order 74 and the resumption of the debate made an order of the day for a later hour.

Sitting suspended from 12.30 to 2.30 pm.

Questions without notice

Apology

MRS DUNNE: Mr Speaker, my question is to the Minister for Planning, Mr Corbell. Minister, yesterday you offered a form of words to the Assembly apologising for having misled us in your answer on 4 June to the effect that the Gungahlin Drive extension could still be completed within the timetable of the former government. On 6 June you told the Assembly that consideration was being given to a bus lane in the GDE corridor. Documents that I have subsequently obtained have shown that the government had clearly decided that there would be no bus lane in the first instance.

Given that you were prepared to apologise yesterday to the Assembly in relation to the timing and costing of the GDE, is there anything you would like to say to the Assembly about the provision of bus lanes?

MR CORBELL: Yes. In fact, bus lanes are part of the GDE project.

MRS DUNNE: Mr Speaker, I have a supplementary question. If the bus lanes are part of the GDE project, could the minister describe where they are going—in stage one?

MR CORBELL: Mrs Dunne should refer to the answer to the question on notice I provided to her during the Estimates Committee process. The answer is detailed in full in the answer to the question on notice she asked during estimates.

Public transport

MR HARGREAVES: I would like to ask a question of Mr Corbell, the best Planning Minister we have had in seven years. Minister, the executive director of the International Association of Public Transport spoke at a forum at the weekend advocating some interesting positions on public transport. Can the minister advise if the issues raised at the forum are being addressed as part of the government's transport policy?

MR CORBELL: I am very happy to answer the question, and I thank Mr Hargreaves for asking it. In an attempt to play catch-up on transport policy, the Liberal Party shadow minister for transport, Mrs Cross, hosted a public transport forum at the weekend. They invited Mr Peter Moore, who is the executive director of the International Association of Public Transport, to speak at their forum.

Unfortunately for the Liberal Party, Mr Moore effectively debunked the last seven years of Liberal Party transport policy in the territory. Mr Moore advocated the need for the government to invest more in public transport. Mr Moore indicated that priority needed to be given to buses and that paid parking needed to be introduced in Canberra.

He also went on to criticise the Howard government: while cars had got cheaper since the introduction of the GST, public transport had got dearer. I can imagine that Mrs Cross was squirming in her seat while she heard Mr Moore effectively debunk all of the policies of the previous Liberal government when it came to transport planning.

Over the past six years of their government the Liberal Party cut funding to ACTION. They made catching a bus more expensive than car parking for residents, say, of a place like Gungahlin, and they dismissed out of hand the need for light rail planning for the future of our city.

It was not long ago that Mrs Cross was being very vocal in arguing against the government's plans for paid parking in other parts of the city, but at the forum she hosted they actually had an expert advocating and supporting this government's proposals for introducing a wider range of paid parking measures as a way to effectively communicate the true costs of transport in this city.

So, even when the Liberals try to play catch-up on transport planning—something they neglected for seven years—the expert they get debunks their previous government's policies and instead effectively endorses this government's approach to transport planning in the city.

Let me outline why. Mr Moore said government needs to invest more in public transport. What did the Liberal Party do when they were last in government? They were proposing, if they had been re-elected in October last year, to cut ACTION's base funding by an additional $18 million. An additional $18 million cut to public transport funding was programmed into their last budget, and here their expert is saying that we need to invest more. They were going to invest less, Mr Speaker.

So what has the government done? After close to seven years of Liberal neglect of transport policy, this government is taking the steps that need to be taken to better invest in public transport. We are investing $8.8 million to implement a flat fare structure, so that it does not cost more to pay for a bus than it does to pay for parking in Civic, if you live in Gungahlin. That is the investment this government is making. We are investing $20 million in a new bus fleet, which is far in excess of the previous arrangements the Liberals cobbled together as part of their free school bus scheme. We are injecting $18 million into ACTION's base funding to reverse the cuts inflicted on ACTION.

Mr Smyth: We'll see!

MR CORBELL: You say, "We will see." It is in the budget, Mr Smyth. Are you going to vote for it, or are you going to vote against it? This government is serious about investing in public transport.

In addition to that, Mr Moore called for a strategic approach to transport planning. This government is the first in the history of self-government to develop an integrated transport plan for the city. The sustainable transport plan is currently being prepared by the Department of Urban Services and is due for completion in June next year. For the first time we will have a plan to provide a comprehensive and holistic assessment of transport issues in the ACT and to develop programs to address these issues and meet our city's economic, social, environmental and, indeed, sustainability goals for the next 30 years. That is the commitment this government has to transport planning.

What were you doing? What were you doing for seven years apart from ripping money out of ACTION, apart from making it more expensive to catch a bus than it was to pay for parking, apart from not doing any strategic transport planning? That is your very sad legacy when it comes to transport planning, and that is what the government is committed to reversing.

In addition, the government has established a public transport futures study, which is a separate consultancy focused particularly on improving public transport provision. It is looking at dedicated bus lanes, something Mr Moore wholeheartedly recommended to the Liberal Party at their forum; it is looking at light rail—

Mrs Cross: We've been advocating that for months, and you know it!

MR CORBELL: You have been advocating it for the last few months! We were advocating that before the election.

MR SPEAKER: The interjections will cease, and ministers will quit responding to them. Being baited by interjections is as disorderly as the interjections.

MR CORBELL: Thank you, Mr Speaker. This government is putting in place measures that are a long-term response to the transport challenges of our city, a central part of addressing sustainability issues for our city and a real contrast to the seven years of neglect of the previous government during which they cancelled the light rail study, proposed to remove $18 million from ACTION in their last budget, which made bus travel more expensive.

Mr Smyth: And you took $27 million out.

MR CORBELL: Let's face it, you removed tens of millions of dollars out of the ACTION budget in the time you were in government, and you cannot walk away from that. You were planning to rip another $18 million out of ACTION, and we have replaced that with a $47.5 million investment package in ACTION—the largest investment in the past 10 years. That is this government's response.

In answer to Mr Hargreaves' question, this government is already responding to the issues that the Liberal Party's forum has raised. Unfortunately, even when the Liberals try to play catch-up on transport planning issues, they still have not learnt the lessons that the last seven years should have taught them.

Hospital waiting lists—figures

MR HUMPHRIES: My question is to Mr Stanhope as Minister for Health. Yesterday, Minister, you said in answer to questions on hospital waiting lists that there were 4,054 Canberrans awaiting elective surgery in Canberra's public hospitals at the end of July this year. That was both the figure you gave in the house yesterday and the figure that you produced to the Estimates Committee on notice in answer to a question you answered on 12 August. I seek leave to table that answer.

Leave granted.

MR HUMPHRIES: I present the following paper:

> Hospital waiting lists—Copy of page 1 of letter to Mr Humphries, Chairman, Select Committee on Estimates 2002-03 from Jon Stanhope MLA, Minister for Health, in response to questions on waiting lists and estimated raw and cost weighted occasions for service at The Canberra Hospital and Calvary Public Hospital emergency departments.

Mr Stanhope, why did you then put out a press release yesterday, headed "Elective surgery waiting lists" claiming that there were only 3,921 people on the waiting list at the end of July 2002? It is the same date; it is the same set of figures being looked at. You can't have been giving the same information to both the ACT Assembly and the public, since the information is very different. Which is the correct information?

MR STANHOPE: The issue of waiting lists has certainly been achieving significant attention, certainly in the minds of the Liberal Party. I am happy to provide some additional information on the numbers, and there are a couple of things I would like to say about that. To give some historical perspective, in July 1998 there were 4,660 people on the waiting list, in July 1999 there were 4,643, in July 2000 there were 4,105, in July 2001 there were 3,599 and then at the time—

Mr Humphries: Coming down some more.

MR STANHOPE: Yes. Then there was another interesting little trend. In October 2001, the month in which the Labor Party took over, there were 3,731. Do you notice the trend there?

Mr Humphries: Yes. Labor takes over, and the lists go up.

MR STANHOPE: No—the trend between July and October 2001, when they started trending up again. They went from 3,599 to 3,731 between the July figure and the October figure before the election.

Mr Humphries: So what are they now?

MR STANHOPE: You are interested in the history of the numbers; let me go through the history of the numbers.

Mr Humphries: No, I am not.

MR STANHOPE: Yes, you are. This is all about your preoccupation with the history of the numbers between July 2001—when you were the Chief Minister, Mr Humphries, and we know what a distant memory that must be for you now—and October 2001, when the numbers started to go up again, to 3,731. And you are quite right: the figure for July 2002 is 3,921. I did say, in the Assembly yesterday, that the number was 4,054—

Mr Humphries: And to the Estimates Committee.

MR STANHOPE: And to the Estimates Committee. I understand that the figure of 4,000, which I have checked again, was an August figure. So there are two figures there. First, there is a 3,921. There is some confusion around this; I understood it to be an August figure. But we are talking now about the bit between 3,921 to 4,054. As I understand it, one is a July figure and one is an August figure.

I know the depth of your interest in these numbers and have regard to the fact that at the time we took government the waiting list was 3,731 and is now about 4,000. So, yes, there has been an increase of 190-200 people on the waiting list in the first 10 months of the Labor government. I do not know how I will live it down but, yes, there are about 200 more people on the waiting lists at Canberra and Calvary hospitals.

Mr Humphries: You sound really upset about it, don't you?

MR STANHOPE: I am not at all upset about it—in the context of the achievements. As you know, in the second appropriation bill we provided an additional $8.7 million to the Canberra Hospital. We purchased with that additional money a whole range of things. We purchased some additional workers compensation—$1.7 million was expended on workers compensation. That was a mandatory expenditure; we had no option in relation to that. The previous government had not provided any funding, so we were actually filling gaps.

Mr Smyth: Maybe they put it up because they knew they were going to put it into workers comp.

MR STANHOPE: The $1.7 million for workers compensation in the Canberra Hospital, which we paid for in the second appropriation, was mandatory expenditure. It was the sort of stuff you cannot not pay—the sort of stuff you provided no moneys for in your

forward estimates. We provided $2.6 million for nursing initiatives, which allowed us to employ an additional 49.9 full-time equivalent nurses at the Canberra Hospital. As a result of that we were able to settle the long-running nurses dispute at the Canberra Hospital, which so disrupted the delivery of services at the Canberra Hospital.

We provided $820,000 for an additional 300 cost-weighted separations, $200,000 for dermatology, $300,000 for a trainee neurologist, $200,000 for a new nursing information system, $300,000 for a medical officer rostering system and $3.03 million for equipment for oncology, a multi-leaf collimator, to allow us to better treat people with cancer at the Canberra Hospital. Through that expenditure, we now have the most up-to-date, state-of-the-art equipment at the Canberra Hospital for dealing with people with cancer.

In addition to that—as I have explained ad nauseam, but there is something of a fetish within the Liberal Party about this—we provided, in total, $4.7 million to Calvary Hospital, which purchased an additional 900—

Mr Smyth: The lists have gone up.

Mr Corbell: This is in this period since the election.

Mr Smyth: Outpatients have gone down.

MR STANHOPE: Well, you need to put these figures in context. We provided an additional $4.7 million—

Mr Humphries: So why are the waiting lists going up?

MR STANHOPE: Let me answer. We provided an additional $4.7 million to Calvary Hospital, which provided an additional 938 cost-weighted separations. That, added to the 300 in-patient cost-weighted separations at the Canberra Hospital, equates to 1,238 additional cost-weighted separations. In other words, we treated an additional 1,350 patients. Since we came to office in October last year, through additional funding to the Canberra Hospital and the Calvary Hospital, we permitted those hospitals to treat 1,350 more people than would have been treated if you had remained in office. And that is still going up. There are in Canberra 1,350 people who have received treatment for elective surgery at the Canberra and Calvary hospitals who would not have been treated if you had been re-elected.

MR HUMPHRIES: I have a supplementary question. The minister said that one of those two figures I quoted was the August figure. Minister, which is the August figure? Is it the figure that you quoted yesterday in these terms: "There were 4,054 people on that elective surgery waiting list at the end of July 2002"? Or is the August figure the figure that you referred to in the press release of yesterday, which is described as a July 2002 figure, that is, 3,921? Did you tell us the truth in here, or did you tell the truth to the people in the press release you put out yesterday?

MR STANHOPE: Thank you, Mr Humphries. There is perhaps confusion between the July and August figures in the statements I have made. I will seek to determine which is which.

Mrs Dunne: You still do not know?

MR STANHOPE: I am going to check it now I have been asked.

Mrs Dunne: You are going to check it again?

MR STANHOPE: I have to. I have just been asked. I have given both figures. I acknowledge that. I will now check and will respond.

Advance to the Treasurer

MS DUNDAS: My question is for the Treasurer. Treasurer, in estimates I asked for details of spending under the Treasurer's Advance and received no answer. I ask the question again: Minister, can you please inform us how the Treasurer's Advance was spent in the financial year 2001-02, and what circumstances led to each item of unforeseen expenditure?

MR QUINLAN: I certainly can, but not just at the moment, because I have not got the paper with me. If you care to check the papers you received yesterday, you will find that all that data was in one of the papers that I tabled immediately after question time yesterday.

Public liability insurance—park-care groups

MS TUCKER: My question is directed to the Minister for Urban Services, Mr Wood, and relates to the work of voluntary park-care groups that assist Environment ACT in its nature conservation activities. Minister, I understand that Environment ACT withdrew support at the last minute for a working bee that was going to be held by Friends of Aranda Bushland on 10 August because, as stated in an email from Environment ACT to the group:

> The ACT Government has been unable to renew or secure public liability insurance coverage for its volunteers. This means that individuals or volunteer groups, without their own insurance, are not currently covered for third party injury. Therefore individuals would be personally liable for incidents resulting in injury to a third party, and this may include accidents or injuries caused to other members of the group.

Minister, given that the government gains a lot of benefit from the work of park-care volunteers because it reduces the workload of our rangers and other park staff, do you think the situation I have just described is acceptable? What are you going to do to ensure that park-care volunteers are adequately covered by public liability insurance?

MR WOOD: Ms Tucker, it is a problem not just for park care volunteers. It is a problem affecting a whole range of volunteers and agencies, including, for example, what Mr Quinlan does—the take-care-of-a-road campaign.

MR SPEAKER: Adopt-a-road.

MR WOOD: Adopt-a-road. Thank you. That is a problem. I can stand here and regretfully read out a very long list of organisations that are facing problems. Therefore, the government is facing problems because, as you correctly say, we depend very much on those groups.

What is being done? A great amount is being done. Mr Quinlan in particular is working assiduously, not just in this volunteer area but in a whole range of areas, to resolve as many of the issues as possible of the insurance problem.

Ms Tucker, I am sure you are going to get many other comments from bodies of a very similar nature. It has taken some time. It is a difficult task. There are lots of comments about it. One aspect Mr Quinlan was attending to, when he introduced a bill yesterday, was the good Samaritan aspect of the legislation. It is not directly the point you are making, but it nevertheless relates a great deal to what happens in Canberra.

Ms Tucker, it is a long and complex task, and this government is working on it. We want to keep those groups because they are essential to us; they do a vast amount of work. I hope we can find that solution soon enough.

MS TUCKER: I have a supplementary question. Minister, given that the ACT government set up its own insurance authority last year to cover the insurable risks of territory agencies, why can't park-care activities be covered directly by the government instead of Environment ACT offering to fund the Friends of Aranda Bushland to find its insurance cover?

MR WOOD: I will check with my colleague later. That is one of the options that may well be considered, but there are significant ramifications if we do that because our insurance costs would go up exponentially, Mr Quinlan. So, while it is a good idea, it is an idea we will have to examine further to see if it is within our capability to accept.

Hospital waiting lists

MR SMYTH: Mr Speaker, my question is for the Minister for Health. Minister, in an Estimates Committee, with regard to the waiting lists, you said, "Certainly there is going to be some pain. There is no doubt about that." Then yesterday you said you had taken a deliberate policy decision to allow waiting lists to go up, as Canberrans on the waiting lists have a lower priority than other Canberrans requiring health care assistance. Could you inform us exactly—

Mr Stanhope: I have a point of order, Mr Speaker. I did not say that. That is an outright lie.

MR SPEAKER: Order! I think you should withdraw that.

MR SMYTH: I am not going to withdraw it, if he is offended by what I have said.

Mr Stanhope: I would like you to tell the truth. I did not use those words. I will withdraw the word "lie", but it would be good if you actually quoted me appropriately.

MR SMYTH: Minister, could you inform us exactly how much pain there will be? In other words, how high will the waiting lists go under your governorship of the health portfolio?

MR STANHOPE: They won't go as high as they went under the Liberals, Mr Speaker.

MR SMYTH: I have a supplementary question. Minister, how high are you prepared to let the waiting lists get?

MR STANHOPE: That is not a question that is capable of being answered. But the lists certainly won't go as high as they went under the Liberals; there is no way that they will. Nor will we allow expenditure on mental health services to drop to the absolutely deplorable levels that they reached under the Liberal Party.

Mr Smyth: Why do you keep changing the subject?

MR STANHOPE: Everything is connected to everything in the putting together of a budget, isn't it?

Mr Stefaniak: I have a point of order, Mr Speaker.

MR STANHOPE: There are a whole range of priorities, and we are responding to those priorities.

MR SPEAKER: What is your point of order, Mr Stefaniak?

Mr Stefaniak: We had this yesterday, and here we go again. This is repetitious.

Mr Quinlan: So was the question.

Mr Stefaniak: I said "tedious and repetitious". Can you can get him to stick to the question, Mr Speaker?

MR SPEAKER: Thank you, Mr Stefaniak. There have been a number of questions about waiting lists and answers that have been contextualised. I think the Chief Minister is entitled to paint the bigger picture.

MR STANHOPE: He is asking questions about waiting lists, and I will answer them as I deem appropriate and will enjoy it every time.

Let's get back to torts. We will not allow the ACT to fall back into the absolutely disastrous situation that it achieved under your stewardship. We will not allow funding for people with a mental illness in this territory to fall to the disastrously low levels that you allowed it to fall to. There was 17½ per cent less funding on a per capita basis for people with mental issues than the second worst jurisdiction in Australia. This is not just a question of being the lowest funded jurisdiction in Australia; this is a question of having 17½ per cent less in funding for people with a mental illness.

Think about what that means for those people. Stop and dwell on what it means for people battling on a day-to-day basis with a mental condition—people for whom just getting through the day is a trial, people whose daily existence is affected by their capacity to participate in the community, people for whom life is a struggle. And you funded them at 17½ per cent less than the second lowest funding jurisdiction in Australia.

After seven years of Liberal government, we found that between 20 and 26 per cent of people within our community deal with a mental health issue—one in five people. It is generally accepted that we have above the national level of mental illness. Over one in five people deal with a mental issue, and you funded them at 17½ per cent less than the second worst funding jurisdiction in Australia, and you feel proud of that. That is a great achievement after seven years.

And I have pledged to address those issues, just as I have pledged to address the issues in relation to Disability Services. You were forced into a $1.7 million inquiry into Disability Services, and it found a whole raft of problems in the way this community and you as a government dealt with, funded and treated people with a disability in this community.

The numbers are stacking up, aren't they? You neglected people with mental issues; you neglected people with a disability; you neglected people needing respite. We went to the people of Canberra, in the election campaign, with a plan, with a pledge and with promises that we would end the neglect. And we have ended it.

We have pledged over $4 million over this next term for people with mental illness, over $10 million of extra money for people with disabilities, over $3 million for people who require respite and a new convalescent facility for the people of Canberra. We settled the nurses dispute, we are developing a whole new approach to the delivery of health services in the ACT and we created a department just for disabilities. We are dealing with the issues that this community elected us to deal with.

Respite care—Narrabundah and Dickson services

MR CORNWELL: My question is to the Minister for Health, Mr Stanhope, and it dovetails rather nicely with his reply to Mr Smyth. Minister, in your media release of 8 August you reassured the people of Canberra that aged care facilities would increase. However, there is significant community concern that Narrabundah and Dickson day-care respite services will be closed.

Yesterday—indeed, today you made mention of this—you expressed concern that services to mental health patients needed to be improved, and you just elaborated on that at some length. I assume that you are including people with dementia, who are easily disturbed and distressed by changes to routine and exposure to long trips, as you know.

So, while I note your assurance that the quantum of aged care services will increase and there will be no net loss in hours of respite care, I would like to know where the respite services for these people are going to be based, given that the space in Dickson is earmarked for another use and the space in Narrabundah for a different sort of

community health facility and, I repeat, given that people suffering from dementia are easily disturbed and distressed by changes to routine and exposure to long trips.

MR STANHOPE: Thank you, Mr Cornwell. Much of the concern for people who utilise those services at Dickson and Narrabundah has been generated by the way you have beaten up the story, Mr Cornwell. Be that as it may—

Mr Cornwell: Just answer the question, will you?

MR STANHOPE: You have beaten it up outrageously, Greg.

Mr Smyth: It is your decision; you are closing the services.

MR STANHOPE: No decision has been made. As I explained, consideration is being given to the most effective and efficient provision of respite-type services at Dickson and Narrabundah. This is aged care services relating to respite—a social-type service not a medical service. There is no element of medical care provided in the particular service we are talking about. It is a service that allows respite, in a traditional sense, for people caring for older people, perhaps with dementia. I am not quite sure, Mr Cornwell, about the extent to which those services have as clients people with dementia. I do not know about that.

Mr Humphries: Are you going to answer the question, Jon, in the course of this?

MR STANHOPE: Yes, I am. What I said, as Mr Cornwell knows, is that no decision has been made. We were investigating other possible methods of service delivery. As you know, Mr Cornwell, the funding for those services is the Commonwealth funding.

The suggestion that I made at the time was that, if a decision was made that Community Care could better focus on the provision of other services and allow the community sector—the NGO sector—which more traditionally provides respite services, to provide that particular respite service, then it would be put to tender by the Commonwealth. The ACT government, through Community Care, would approach the Commonwealth and say, "The service we provide at Dickson and Narrabundah is provided with your funds. We believe it could be more efficiently provided by the community sector, and we would like to talk to you about tendering out that service for the residents at Dickson and Narrabundah that we currently care for." Travelling and location issues would, of course, be fundamental to the identity of the successful tenderer, if that is the decision we make.

MR CORNWELL: I have a supplementary question, Mr Speaker. Minister, thank you for that response. Could you tell me, though, why you are perhaps looking—because you have qualified that now—at closing Narrabundah and Dickson day care respite services when a review is currently being conducted into them? Would it not have been better to wait until after the review?

MR STANHOPE: That is what we are doing. I thought I had explained that, Mr Cornwell. We are looking at these issues and a range of issues. We are looking at how to provide this service most effectively and efficiently. We are not going to abandon anybody. As a government and as a community, we take our responsibility to our older

people extremely seriously. We are not going to close down this service. We are looking to an alternative provider, potentially.

Insurance

MS MacDONALD: My question is to the Treasurer. Can the Treasurer clarify for members the legal protection afforded by the Trade Practices Act to the general ACT community in respect of the current insurance climate?

MR QUINLAN: Mr Speaker, with your guidance, I will take due care not to anticipate debate on some bills before the house. I want to make it clear to the house that the insurance issue is very serious and requires an equally serious approach to its resolution.

On 15 July the opposition, assisted by some organisations, staged an event to gain some exposure—at least ostensibly—for proposals to address the insurance problem. Following that event I received complaints that the organisation involved had put pressure on clients to sign certain documents in support of the cause. Of greater concern was the nature of the documents thrust at attendees.

I can understand the business wanting to do this if the business has been led to believe, or, more correctly, misled to believe, that the mere production of its own waiver or a waiver that might have been given them—I do not know the source—would in any way change the relationship with its client. It was, I think, a very dangerous situation to create.

I have expressed my concern in the public forum, and I want to repeat that an attempt to waive individual rights to sue may not abrogate common law rights until the new section 68A of the Trade Practices Act is in force. We need to be very careful as to what advice is given. I am greatly concerned that this sort of misinformation has great potential to do harm in the general community.

To put the insurance question in the ACT into perspective—it is a worldwide problem—Australia represents 2 per cent of the global insurance market, and the ACT represents 2 per cent of that 2 per cent. This government has participated fully in looking for practical solutions that will impact upon the affordability and accessibility of insurance, but it is probably not real clever for the ACT to pretend that it could go out on its own. In fact, it could be downright irresponsible and dangerous. I am reminded of the phrase "fools rush in".

MS MacDONALD: Can the Treasurer say if members of the opposition played any role in this activity, and how does it reflect on their contribution to the insurance crisis in the ACT?

MR QUINLAN: It is quite clear that the opposition staged this event just for exposure. You will have to forgive me—I had forgotten that the Liberals in this place had built a culture of the photo opportunity far ahead of substance. It would appear that we have an opposition that is lazy and bereft of ideas, to the extent of wanting to puddle—

Mr Smyth: I have a point of order, Mr Speaker. Is the minister providing an opinion, and is his answer therefore out of order?

Mr Corbell: On the point of order, Mr Speaker: it may be an opinion, but it is certainly accurate.

MR SPEAKER: Thank you, Mr Corbell. The accuracy of opinions has not got much to do with it. Mr Quinlan is entitled to offer an opinion, but he is not entitled to be asked for one.

MR QUINLAN: Thank you, Mr Speaker. As I was saying , the opposition, being lazy and bereft of ideas of its own, thought, "We need some exposure somewhere. Let's puddle in the quite serious material that is emerging from quite sensible deliberations on the insurance question." Therefore, what we see is a clear demonstration of that phrase that ends, "It is better to say nothing than to speak and remove all doubt." Quite clearly, we have an opposition that understands very little of the insurance question and has therefore been amongst the fools that would rush in.

I want to advise the house of an article in the *Australian Financial Review*, in which commentator Alan Kohler reported new developments in the insurance market. He says:

> But it is apparently already clear that the claims experience of the not-for-profit sector is better than originally thought, so that a viable package of public liability insurance can be provided without Government support.

That is saying that a more studied, rigorous and intellectual approach to the question might take us to a far better place than would the actions of the opposition across there.

This government has been working closely with the Commonwealth and with other states on finding a common solution for Australia. Remember those figures that I gave you earlier to put it into perspective? With Australia at 2 per cent of the world market and us at 2 per cent of that 2 per cent, it would be rather stupid to try to go it alone. It would be far more sensible to be part of a more reasoned and intellectual approach.

But who does the opposition want to help, anyway? I think they are just seeking another photo opportunity—a continuation of the shallowness that was a feature of the previous government. Further, I have heard that the opposition has established an insurance hotline. God help us. Now, not only are fools rushing in and telling people that waivers are okay and giving misinformation; they are going to institutionalise that and provide a hotline service so that they can spread misinformation across the airwaves.

Let me say that this government has established a hotline. This government has contacted businesses. This government has held a very well attended seminar.

Mrs Cross: Yes, but you didn't market it. You didn't tell anybody. You had to guess.

MR QUINLAN: We targeted the people. We did not rush around the streets. We were not looking for the photo opportunity; we were looking to contact the people who were really affected. So we did contact the people who were really affected. And as I said earlier, I am sorry that I have forgotten that there are people in this place who still want to live by the photo opportunity.

We do have a hotline. It is working, and we are getting very positive feedback on that. I will read one endorsement from an organisation:

> The president and members of the council—

whatever council it might be—

> would like to take the opportunity to sincerely thank you for the assistance and advice and support you provided …We appreciate the support of the ACT Government. If we can be of assistance to others, please let me know.

Mr Smyth: Who is it?

MR QUINLAN: You can check later.

Mrs Cross: Who is it, Ted? Name them. Tell us.

MR QUINLAN: It is the Music for Everyone Council. On a serious note, I would ask the opposition to please be careful for the sake of the people and the enterprises you might otherwise seriously and deleteriously effect.

Gungahlin Drive extension

MRS CROSS: It is my pleasure to ask this question of Mr Corbell. Mr Corbell, when will the draft variation process begin for the Gungahlin Drive extension?

MR CORBELL: The draft variation of the Gungahlin Drive extension is due to be completed in time for construction to commence—

Mr Humphries: She said "begin".

MR CORBELL: I will come to the answer, but I am placing it in context. It will be completed by the end of the financial year. That is the timetable the government has published. We anticipate that the draft variation will commence shortly after September.

MRS CROSS: I have a supplementary question. Minister, isn't it a fact that your own timetable required the draft variation process to have begun before now for you to be able to complete the road within your own timetable of winter 2005?

MR CORBELL: No.

Gungahlin Drive extension

MR STEFANIAK: My question is also to Mr Corbell. Minister, you have been ambivalent on the future of Gungahlin Drive, stating that if the western route proves to be impossible you will reconsider the eastern route. Last night, in a meeting of Aranda residents about the next stage of the Gungahlin Drive extension from Belconnen Way to Glenloch Interchange, you expressed a view that the residents' preferred route to the east of Caswell Drive is not favoured by you.

This morning on ABC radio you refused to commit to moving the road into the Black Mountain nature reserve. Will you now categorically state which is the preferred route of this next stage of Gungahlin Drive?

MR CORBELL: Mr Speaker, the government has outlined its preferred alignment for consultation, and that is the alignment the government released about two months ago. The preferred alignment is based on the government's assessment of the engineering, environmental, social and cultural heritage issues that need to be taken account of. The stage we are in now is a consultation process engaging with residents who are affected along the route and with other stakeholders. The government will consider all of those comments very seriously and will look at issues raised by residents.

In that context, the issue raised by the Aranda Residents Group—the potential relocation of the road to the east—will be considered by the government, as I indicated on the radio this morning. However, in the context of this discussion there are a range of factors the government must take account of, including the impact on an area of Canberra Nature Park versus the impact on residents' amenity in their homes. These are both serious issues, and we do not seek in any way to trivialise one over the other. We seek to respond to them in a responsible way, and the government will do that as part of its consultation process. We are serious about the consultation process, and we are serious about listening to the issues that have been raised.

MR STEFANIAK: I have a supplementary question. Minister, will you give an undertaking that, when you finally concede that the GDE cannot be built on the western route, the Aranda section will also move to the east?

MR SPEAKER: That is a bit of a hypothetical.

MR CORBELL: That is a hypothetical question, Mr Speaker.

Remand facilities

MS GALLAGHER: My question is to the minister for corrective services, Mr Quinlan. Minister, this week's *Chronicle* features an article on the conversion of the PDC to a temporary remand centre. Can the minister please outline, for the benefit of those in the Assembly who may not be aware, why the government took the decision to expand remand facilities in the ACT ahead of building a permanent facility?

MR QUINLAN: Yes, I did see this week's *Chronicle* and the little photo of the leader of the opposition behind the construction fence of the periodic detention centre, railing against the fact that we might have prisoners in that section of town.

One of the reasons we need to expand the PDC is that the Belconnen Remand Centre is overcrowded. This is where we start to enter the area of hypocrisy. A few days ago, we had Mrs Dunne saying, "We've got far less crime in the place because we've got the Bail Act, which we brought in, and Operation Anchorage, which we brought in." That, in fact, increased traffic to the Belconnen Remand Centre. But what did you do about it? Nothing. You created a situation, and you did not then complete the job. You were gunna do something about it; you were gunna fix that.

MR SPEAKER: Order, members! Mr Quinlan, resume your seat for the moment. Mr Quinlan was asked a question, please let him answer it.

MR QUINLAN: This was the government that operated the Quamby centre right next to the periodic detention centre—not a problem; that is different; that was there before. That has some people in it who could be considered to have committed antisocial crimes This is the government that ran the Belconnen Remand Centre—overcrowded and dangerous—right in the middle of Belconnen Town Centre. Not a problem. This is the government that was going to build a jail just up the road.

All I can observe is: what a difference a few metres and an election disappointment makes to an attitude. Now we have Mr Humphries in the *Chronicle* in crocodile tears over the fact that the periodic detention centre would have some remandees in it. And he has been in the media and in the estimates trying to beat up the fact that there might be very dangerous prisoners.

Mrs Dunne: You could not rule out that high security remandees would go to the PDC. You cannot rule it out, and it goes against everything you said and the commitments you made to the people of Red Hill.

MR QUINLAN: Let's talk about commitments.

MR SPEAKER: Let's just talk about the question.

Mrs Dunne: Mental health is his job. You're talking about the prison.

MR SPEAKER: Mrs Dunne. Please!

MR QUINLAN: Mr Humphries is part of a story. He is beating up the fact that you are now putting a jail near Red Hill. You have now reneged on a promise. Let me read from the policy statement issued by the Labor Party before the election:

> Labor will investigate how to relieve the stress at BRC by transferring a number of prisoners who do not require maximum security classification to alternative accommodation in the periodic detention centre.

There is a technicality that every remandee who enters the remand centre is classified, by definition, as maximum security, as much for their own protection as for the protection of society and other people in the remand centre.

However, it is still within the wit of mankind to make some assessments as to the likelihood of getting dangerous prisoners versus non-dangerous prisoners. Mr Humphries, hypocritical as ever and distorting the facts as ever, wants to beat up that—according to Mr Humphries—every remandee in the ACT is apparently an axe murderer. I find that appallingly hypocritical.

And just as an aside to you, Mr Humphries, I also like your "sad day" comment about the demise of Margaret Reid as President of the Senate. I loved the crocodile tears in the paper. Mr Humphries, I love your work.

Lanyon Valley—availability of doctors

MR PRATT: My question is to the Chief Minister, Mr Stanhope. During the Estimates Committee hearing of 29 July you said:

> There is nobody who cannot get to see ministers, and there is absolutely nobody who cannot get to see me. It may be that they wait a little bit longer than they think is desirable.

In the *Tuggeranong Chronicle* of 13 August, Rosemary Lissimore, chair of the Tuggeranong Community Council, regarding their efforts to have you speak at a meeting about the availability of doctors in the Lanyon Valley, said:

> The houses are still being built and families are still moving into this area, yet we are still waiting for the Minister to find time to come and hear the concerns of these residents first hand. We do know that the Minister will be attending a meeting at the Southern Cross Club on August 20 at 10.30am: maybe we can arrange a meeting for a future time on that day. We do not expect miracles but if the people concerned can hear first-hand how the Labor Government are trying to assist the people of Tuggeranong, it might show them this Government cares.

The Tuggeranong Community Council has been seeking a meeting with you on this issue since February, which is six months. Does your failure to find time to meet with the Tuggeranong Community Council on this issue indicate that the availability of doctors in the Lanyon Valley is a low priority for this government?

MR STANHOPE: Was that all a quote from Ms Lissimore, or was there a question from you at the end of it?

Mr Pratt: There was a question. I gave you everything I needed to give you, Chief Minister.

MR STANHOPE: I was just not sure where the quotes ended. I was not aware of Ms Lissimore's comments. The extent of her disappointment had not been drawn to my attention.

MR SPEAKER: You should read the *Chronicle*.

MR STANHOPE: Yes. I must have missed that edition of the *Chronicle*. I regret that, and I will probably be flayed to death for that admission. I had not read that edition of the *Chronicle*, and I was not aware that Ms Lissimore was upset with me. I have to say that I was not aware that there was an outstanding invitation for me to attend.

MR PRATT: I have a supplementary question. Chief Minister, are you prepared to give a commitment to the people of Tuggeranong that you will meet with them by the end of October? If not, why not?

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MR STANHOPE: I am not aware, other than through what you have just read from the *Chronicle*—esteemed journal though it is, and I have no reason to doubt anything contained within its pages—that Ms Lissimore has extended to me that invitation.

My office has not advised me of it. I will chase the issue up. It is not that I distrust anything I read.

Mr Stanhope: I ask that further questions be placed on the notice paper.

Crimes (Abolition of Offence of Abortion) Bill 2001

Debate resumed.

MR CORNWELL (3.30): I will make my comments relevant to the four pieces of cognate legislation and I will be brief. During the last Assembly I stated publicly that I would oppose any and all legislation on this subject.

MR SPEAKER: Mr Cornwell, I know that you are trying to assist the Assembly in the efficient passage of this legislation but, in commenting on the bill that is before the chamber, try to make sure that any reference to the other pieces of legislation is within context as the debate is not a cognate debate, as you would appreciate.

MR CORNWELL: Of course, Sir. They will be in context to the extent that I will address the first piece of legislation. I stated publicly during the last Assembly that I would oppose any and all legislation on this subject. I probably owe it to the new members of this Assembly to explain my reasons. They are quite simple. I believe that 17 members, with the numbers so delicately balanced for and against abortion in this context, are simply too few to be determining such a contentious issue. May I say, Mr Speaker, that I believe this also would apply in the event that we were successful in increasing the numbers of this chamber from 17 to 21, or indeed to 23. The situation would still be the same.

I am concerned, because of the delicate balance of numbers, that, if abortion legislation continues to be introduced into this chamber, the legality or otherwise of abortion in the ACT feasibly could change every three years after an election. If you had one or two new members, and we normally have about one-third of our membership turning over after each election, the balance of support or opposition on this subject could change every three years. Apart from the absurdity of that situation, I would ask members to consider the legal, social and, indeed, psychological issues that could be created by the change of law: it is legal for three years and then suddenly it is not legal for another three years. Can you imagine the problems that could occur from such regular swings of what I regard as a moral pendulum?

I believe that the only way we are going to settle this matter once and for all is by having a nationwide referendum. As this Assembly cannot control such an important activity, I am afraid that I must continue to vote, as I indicated in the previous Assembly, against all proposals relating to this quite divisive subject.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (3.34): Abortion is an issue that arouses deep emotions within the community and there are widely diverging views on the subject. My view has always been that access to safe, legal abortion is a human rights issue for women.

As individuals, women are responsible for their own reproductive decisions. Women must have the right to make reproductive decisions for themselves and the community should respect and support such decisions. I believe that the provisions relating to abortion should be removed from the ACT's Crimes Act to reflect the principle that the regulation of human reproduction is a health issue and is not the business of the criminal law.

I also believe that we need to ensure that appropriate safeguards are in place for women contemplating or undergoing an abortion in the same way that other aspects of health care require safeguards. In particular, I support legislation which clearly provides that only qualified medical practitioners can perform abortions and only in approved facilities. I would also support the right of any person to refuse to assist in performing an abortion.

All Australian jurisdictions have felt it necessary to review their abortion laws in recent years and regulate abortions in some way. While the form of this regulation may vary from state to state, all Australian jurisdictions strive to protect women from the consequences of unsafe abortions, ensure that abortions only occur with the informed consent of the woman concerned, ensure that medical practitioners are given appropriate legal protection whether they agree or refuse to perform legal abortions, and punish acts of violence against women which may result in miscarriage.

The proposed legislative changes that we are dealing with will not negate the need for health professionals to provide full information to women considering an abortion. Informed consent is required for all medical procedures and this requirement will continue to be met. Comprehensive termination of pregnancy protocols will continue to operate to ensure that women and families experiencing abortion have the best care provided by experienced staff prior to, during and after an abortion. Follow-up care will remain an important aspect of this service continuum.

Even with the best information and services, fertility cannot be controlled perfectly or at will. Reproductive education, reliable contraception and safe legal abortion together constitute a necessary range of services for effective family planning and fertility control. There is some compelling information to highlight the facts about abortion, based on research conducted by the Public Health Association of Australia. There are, and it is regrettable, millions of abortions performed around the world each year. Almost a third are performed in adverse social and legal environments. In countries where abortion is illegal or where affordable services are not available, women do not stop having abortions. They use unsafe services at greater risk to their health and lives. Globally, about 30 per cent of maternal deaths—that is, deaths related to pregnancy and childbirth—are attributable to unsafe abortion.

When performed by qualified personnel under hygienic conditions, abortion is a very safe procedure. The risk of maternal death from unsafe abortion is between 100 and 500 times higher than if performed under safe conditions. In Australia, maternal health has fallen dramatically since earlier this century. A significant component of this reduction is the near disappearance of maternal deaths due to abortion. There is no evidence that the availability of abortion led Australian women to systematically neglect the use of contraception and choose abortion instead.

In light of the evidence presented, I support the decriminalisation of abortion in the ACT through the repeal of relevant sections of the Crimes Act 1900, the repeal of the Health Regulation (Maternal Health Information) Act 1998, and the introduction of amendments to the Medical Practitioners Act with the aim of regulating abortion as a medical procedure rather than a criminal issue or act. I look forward to a sensible outcome that protects the rights of women and ensures the best health outcomes for women considering an abortion.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (3.38): I will be supporting Mr Berry's bill today, consistent with the approach I have adopted on previous occasions when this matter and related issues have been debated in this place. As other members have said, particularly Mr Berry, abortions should be safe, they should be legal and they should be rare. Already in the ACT we have a range of measures that go to addressing the issues of making abortion safe. We have already a range of provisions that ensure that it is as rare as it is possible to be. What we are doing in passing this legislation today, if indeed it is passed, is that we are seeking once and for all to ensure that it is also legal and that it is not an issue whereby a woman faces the possibility of a criminal sanction in exercising that choice.

We in the ACT already do much to make abortion safe. The steps taken by the previous Follett Labor government and Mr Berry in his time as health minister in providing for the clinic that operates in Canberra have done much to ensure that there is accessible and safe opportunity for abortion and, equally, for advice on the issues surrounding a potential abortion. That has been a very significant step in ensuring that abortion in the ACT is safe.

Equally, as the Chief Minister has pointed out, a range of measures that already exist and will continue to exist if this legislation is passed today around the requirements for informed consent and the normal medical protocols that will apply will continue to ensure that women make, as they do already, an informed and responsible choice, a choice which suits and responds to the circumstances that they face. I think that is the underlying assurance that members of this place have in being prepared to support the proposal that Mr Berry is putting forward today.

Of course, "safe", "legal" and "rare" mean making sure that the sanction associated with abortion which currently exists in the Crimes Act is one which should be removed. Those who argue that this penalty will never be applied, effectively, are arguing that there is no need for this penalty. Indeed, if this penalty is not to be applied and is not meant to be applied, we should not have the penalty on the statute book. That is the view that I take as a member of this place and I will be supporting Mr Berry's legislation and, hopefully, Ms Gallagher's proposed amendments to this legislation.

Mrs Dunne: I rise on a point of order, Mr Deputy Speaker. I seek your guidance and a ruling on procedure. I want to know where we are going. We are not having a cognate debate and I do not particularly want to anticipate debate, but I seek your guidance on a point which was raised with me at lunchtime, one on which I have had preliminary discussions with the Clerk.

If Mr Berry's first bill, the bill we are currently debating which deals with the definition of abortion, and Mr Berry's second bill, which deals with the repeal of the Health Regulation (Maternal Health Information) Act, succeed, we will come to the third bill on the notice paper for today, which is Ms Gallagher's bill. We will come to Ms Gallagher's bill only if the first two bills succeed and we succeed in repealing various things. In doing that, we would repeal the definition of abortion, saying that an abortion can be performed only by a medical practitioner in approved facilities and there are no obligations for people to do certain things. Those things already would have been removed from the maternal health act as it currently exists if Mr Berry's first and second bills succeed.

I seek your ruling, Mr Deputy Speaker, and I want to give you time to think about it. If it is the case that Mr Berry's first and second bills succeed, would Ms Gallagher's bill become out of order because she is seeking to reinstate something that we have just removed? It is a slightly esoteric and complex problem, but some people may wish to support one or other of the first two bills because the third bill does something else and it may be that that would be out of order and we may not be able to vote on it. I seek your ruling on that at your leisure.

MR DEPUTY SPEAKER: Thank you, Mrs Dunne. We will get back to you on that before the end of the matter.

MS DUNDAS (3.43): I would like to start with a quote from a young woman called Sarah:

> I often hear people say, "In a perfect world there would be no abortions." But in my perfect world, the world I am hoping to help create, I do not toss out abortion so hastily. We need a safe world for women, one in which we control our bodies, our sexuality, our reproduction. And if abortion is part of a woman's quest, I would have the experience be painless, nurturing, free, safe, and without stigma. In my perfect world, each moment of our lives will be ones that encourage us to love our bodies and celebrate our power.

I believe that that quote embodies the debate that we are having today. It is one that I wholeheartedly agree with.

I know that I am lucky. I was born into a society where it was never questioned that I, as a woman, would go to school, that I would be able to live independently and own property without being married, that I would be able to determine my own future. It is within these freedoms that I declare myself a feminist.

Over the last 100 years, women have struggled for more economic security and a quality of life. We have struggled for recognition as valid human persons, for the right to determine the course of our own lives, for genuine respect and all that that brings with it. Against the blind inertia of a systemic oppression, women have had to construct their own positive view of what it means to be a woman, and then to change hearts and minds—and we are still doing it.

One of the battles we continue to fight is for the right of self-determination over our bodies. We have laws that say that it is illegal to discriminate on the basis of gender, that women should be paid equal to men for work of equal value, and that sexual harassment

is a crime. Soon we may have national laws enshrining paid maternity leave. At the moment, we also have a law that makes a woman seeking a medical procedure a criminal. Comments have been made this morning that this law is not what we think, that it is wrong and unenforceable and should only be applied to doctors. Well, let us remove it. Let us remove a law that is draconian, not enforced and unenforceable.

The complete lack of convictions for abortion in the ACT shows that the judiciary and successive governments have rejected the concept of abortion as a crime. This is an obsolete piece of law that must be removed. Keeping these laws in place will only appease the small but noisy anti-choice groups. These laws do not save lives and they definitely do not help women. It is completely unacceptable that a women seeking to exercise her right to decide when to have a child faces the possibility of 10 years in prison as a consequence. This is an outdated law that contradicts Australians' overwhelming belief that the decision about abortion should be left to the individual and their doctor.

Anti-abortion campaigners believe that the right choice is not to have an abortion. This leads these people to assume that with adequate information a woman will choose not to have an abortion. There is only a small jump from there to saying that the only information that is adequate is that which leads to a decision not to have an abortion. I think we would agree that that is not truly informed decision-making.

I have read Melinda Tankard Reist's book *Giving Sorrow Words*, as Melinda was kind enough to send me a copy. The thing that struck me about the women in these stories was not the medical procedures that they took, not the fact that they had an abortion, but the fact that they were all pressured into it, that they were not free to make a choice. Treating abortion as a crime will not deal with the problem of women being pressured by men, by their partners, and others. Empowering women will. Women are empowered by the expansion of their real life choices and liberalising abortion law is directed to this end.

Mr Deputy Speaker, it is a very important issue for me that abortion should be a crime, that as a woman the courts could determine my future over a medical procedure. I raised this issue in my first speech in this chamber. I said then and I say again today that I believe in a woman's right to choose. The year is 2002. We are standing in a democratically-elected parliament, representing members of a notionally-free community, yet we still have laws that treat women seeking a medical procedure like criminals.

Despite evidence of overwhelming public support for the decriminalisation of pregnancy termination and improved access to abortion for women in Australia, politicians in all jurisdictions have consistently failed to act on calls from within the community and even from government instrumentalities to remove abortion from criminal legislation. We all agree that we have a very important role as legislators. We must be responsive to community demands, but we must also lead.

Access to abortion empowers women by enabling them to decide when and whether to bear a child. These decisions are never taken lightly and I am very angry at the patronising assumptions made by the anti-choice groups which believe that women are incapable of making decisions about their own lives and their own futures. Pro-choice

does not mean pro-abortion. It is not about advocating abortion over birth. It is about women being able to decide for themselves. It is about options. It is about children by choice and having every pregnancy a wanted one.

We are responsible to each other for making this community one in which we can all live and which does not marginalise or criminalise women for undertaking a medical procedure—a medical procedure which is performed with care, to national standards and not without access to a variety of information and support and which is a criminal act in this country in this century. We should stand firm and fix this now.

A woman's right to choose should be hers—not mine, not the choice of another legislator, lobbyist or politician, but hers and hers alone. Let us today take the step as legislators and leaders and remove the crime of abortion from the ACT criminal code. Let us finally let women make their own decisions to consider their choices free from unnecessary fear and prosecution.

MS MacDONALD (3.51): Mr Deputy Speaker, this is the hardest speech I have had to give in my short time in this place. I do not imagine that, if the topic arises again, it will become any easier.

It is my belief that the great majority of people in our society go through life never having to think about the issue of abortion. While many in our communities have a vague opinion about the termination of a pregnancy, most never have to sit down and think about the issues in depth, let alone have a discussion or debate or vote on the matter. I do not have that luxury.

I had the thought of not saying anything today, but I believe that I have a responsibility to place my opinion on the record. I was not elected to this place to sit in silence. In the last eight months I, like everyone else in the Assembly, have received numerous letters, emails and faxes about Mr Berry's bills. I made a conscious decision not to reply to the correspondence I received on this matter, which makes it all the more important for me to speak on it so that the Canberra community can understand my reasoning on this issue.

Responding to every one of the hundreds of individual questions and viewpoints is an impossible task. I cannot satisfy every person's desire to have their view expressed because, quite simply, there is no compromise or middle ground on this issue. I hope that the Canberra community will understand that I have put many hours of research into the emotional and complex issues surrounding this debate and I do not cast a vote in the Assembly lightly. Meeting with representatives of all interest groups and medical and legal professionals has given me an appreciation of the views of the public which I do not believe can be rivalled in this place.

I believe that the issue of abortion and a woman's right to choose stir up emotions like no other issue on both sides of the argument and I do not argue with people on either side that feel deeply and passionately about this issue. I know that many people will choose not to vote for me and other candidates on the basis of the vote on this one single issue. That will be the case whether you are pro-choice or pro-life.

However, I do believe in a woman's right personally to choose whether to seek a termination in her first trimester of pregnancy. I also believe that terminations should be available in the second trimester for extreme foetal abnormalities and where the woman's life is in danger if the pregnancy continues. I do not believe that the issue of a woman seeking an abortion belongs in the criminal code. I do not shy away from these beliefs. As such I will be voting yes to Mr Berry's and Ms Gallagher's bills.

Having said that, I have concerns over a number of issues that have arisen as a result of these bills. First and foremost, if these bills are passed, the first two being Mr Berry's bills, I believe that virtually nothing will change from this week to the next. I believe that this is more about getting a psychological win than practical changes. I think that is very unfortunate.

I say that for the reason that the original bill or bills which were introduced by Mr Osborne severely restricted a woman's right to choose whether to have a termination by placing impossible obstacles in the way. These proposals were defeated. Of course, they included such things as the need to seek expert medical opinions from a psychiatrist and an obstetrician when there were months and months of waiting times in Canberra. For those reasons, I say that those obstacles were impossible to overcome in terms of seeking a termination. What we did get instead of the original bills was some severely watered-down legislation. Women have still had access to a safe termination, albeit with some obstacles.

It is my belief, based on the questioning I have done, that around the same number of abortions occur in the region—in the region, not just in Canberra—as took place prior to the maternal health information regulations going through. Whilst I do believe that the maternal health information regulations are flawed and I do believe that the issue of access to safe legal abortion needed to be visited, I believe that Mr Berry's bills do nothing other than to take abortion out of the criminal code and to totally deregulate abortion. For the latter reason, I was very pleased when Ms Gallagher introduced her bill to put in place some safeguards.

On the issue of giving information to a woman, I have thought at great length about that and I agree that women should be given as much information as possible about a possible termination. I am, however, torn about the need to legislate on that. I would hope that anyone providing a medical procedure would provide as much information as possible to the person considering undertaking it. But, as I have stated, I am torn because this is not like any other medical procedure.

I believe that in all the rhetoric that many from the extreme pro-choice side espouse about a woman's right to choose we often forget that women considering termination of a pregnancy are extremely vulnerable. I do not buy the argument that we should not legislate on this medical issue. As an elected representative, I feel that we have a duty to ensure that there are no loopholes that a woman may face in considering an abortion, whether that be the very distant possibility of an unethical backyard abortionist or someone with a little bit of knowledge about which pharmaceuticals might bring on an early labour and thereby cause a woman to face physical damage through possible haemorrhaging under unsupervised conditions.

I am also concerned about the possibility that someone who bashes a pregnant woman with the intention of causing a miscarriage will be treated under normal assault law. I believe that this is an issue we will need to revisit in light of recent cases in Queensland and elsewhere. I believe that we will need to revisit it whether or not these bills get up today.

Finally, I do have an issue with terminations past the first trimester, except in the case of foetal abnormality and danger to the life of the mother, as I have already stated. In this respect, I believe that I reflect the opinion of a greater majority of the people who feel, for want of a better word, squeamish about the thought of abortion post the first trimester.

There is one issue in this whole debate that really annoys me, that is, the tendency of people from both sides of the argument to make assumptions and to patronise me while trying to convince me of their view and to make assumptions about the opposing side of the argument. One assumption is that, by having a 72-hour cooling-off period, a woman can take the time to think seriously about the issues. That sounds good in theory but it fails to take into account that most women having to face the choice of an abortion have already thought through the issue for at least four weeks. Of course, there are some exceptions to this case, but in the majority of cases the women concerned have had several weeks to think about the issue.

All of you in the Assembly are aware of my recent marriage. A lot of the people in the community would be unaware that my husband takes the opposite view on this issue and many others, as in all healthy relationships, I am glad to say. That is one reason I would prefer not to have this debate today. But it annoys me considerably that people are concerned that I may vote one way or the other because of my husband's views. Whilst discussing the issue of abortion will never be easy for the two of us, my husband has ensured that I have continually listened to all the arguments.

Partially as a result of his prompting, I have investigated the issue as widely as I possibly could. I have not changed my opinion—I know that this is a great disappointment to him—but I do have a greater understanding of his side of the argument and I do respect him for the views that he holds. I have to say that it is part of the reason that I love him that he does hold those views so deeply.

In the past eight months, I have thought through this issue and revisited my beliefs on abortion. I have listened to arguments from Right to Life and Options for Women. I have visited the clinic where the first trimester terminations take place and questioned the staff about both the procedure and the information given out. I have spoken with one of the doctors who perform terminations beyond 20 weeks and questioned him at great length.

At the end of all of this, I have come to this position. I do believe in a woman's right to choose when she is faced with the difficult situation of an unwanted pregnancy. I have known quite a few women who have had an abortion and not one of them has taken this decision lightly. In fact, for all of them it was a very difficult period in their lives.

I want to ensure that women who face the choice are supported whatever choice they make, without additional pressure being placed upon them. Whether that be to make the choice to continue with the termination or to continue with the pregnancy, I think that we

need to be giving more support to the women in our community who are actually facing this situation.

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism, Minister for Sport, Racing and Gaming and Minister for Police, Emergency Services and Corrections) (4.02): I will be very brief, but I do agree with Ms MacDonald that each of us is obliged not to sit in silence but to state their position. I am pro-choice; I do believe in the woman's right to choose. In that light, I will be supporting the Berry and Gallagher bills. I was pleased to see the Gallagher bill come forward.

Twice now in this place we have debated abortion and, to the best of my knowledge, in practical terms the world will have changed little as a result of each of those debates—in practical terms. I have made inquiries to satisfy myself. I do harbour deep concerns about late-term abortion. I am satisfied with what I know now that, in practical terms, the world tomorrow will not be much different, if any, from the world yesterday as a result of this debate.

I am conscious of the angst that bringing on this debate does cause to lots of people. The house was acquainted with at least one dimension of that angst by Ms MacDonald in her speech. I have to say that I have been disappointed twice that we have had this quite emotional debate for what appears to have been no real change to the world as we know it and to the situation in relation to the accessibility of abortion and controls therein between then and now. I said I would be brief. I have been brief. I will be supporting the Berry and Gallagher bills.

MR SMYTH (4.04): I will not be supporting these bills simply because I believe that law, criminal law in particular, is passed to protect us from harm as individuals and a society. I think that this provision in the Crimes Act sends a very strong message that abortion is not a desirable outcome and that is why it should remain.

The Crimes Act puts a fence around what we see as unacceptable behaviour. Before we pull that fence down, we have to ask the real question: what harm will that allow to occur? Before we give the green light, before we say go, before we say that we do not believe something to be unacceptable, we have to ask ourselves what doing so will mean. That is called the precautionary principle. Many people use it in this chamber when it suits their purpose. If we do not know the outcome of this change, we should stop and take stock of ourselves.

Mr Berry said in his introductory speech that he would like to see abortion legal, safe and rare. Others have made a similar comment. If it is legal and it is safe, why would you like to see it as rare? The reason you would like to see it as rare is that it should naturally occur. For something to be rare is for it not to occur. In that comment, in that legal, safe and rare line, there is a real contradiction that needs to be addressed before we go ahead with changing the legal bit. One of the speakers has said that nothing would change with total deregulation. Much changes in what we say in society about human life. That is a very important question. Rather than having the ACT Assembly saying that abortion is okay, we ought to be asking ourselves what that huge mass, that huge weight, of material that grows daily with survey after survey, says about the side effects, the downsides, of abortion. I think that it is important to find out what they are before we, in theory, give an endorsement to abortion by removing these provisions from the Crimes Act.

If, after looking at everything that is before us on the web and the information that is presented to us by the pro-life and pro-choice groups, you do not come away with at least a sense of doubt about the effects of an abortion, you are blind. I think that we need to see the full package—how you would make it legal, safe and rare—before we take this step today. The emphasis is always on the legal aspect from those who are pro-choice. We never hear how they will make it safe or, if it is safe to have an abortion, how they will go and make it rare. In the time that I have been in this place and in the time that I have observed ACT politics, I have never heard from Mr Berry how he will make it safe and rare. I ask that in his closing speech he tell me how he will provide a guarantee that abortions undertaken in the ACT will be safe for the women who seek them and how he will make them rare.

I think that we need to look at whether abortion it safe. Before we give the green light to abortion and before, as one of the previous speakers said, we totally deregulate, how do we determine whether it is safe? Until we have an answer that says that abortion is safe, we should err on the side of precaution. Until you prove to me that it is safe for women to undertake an abortion, I will resist all that you attempt to do in this place.

I appreciate the honesty and the candour of members so far. As people put their cards on the table, they need to explain where they have come from and how they have got to a position. All of you will know that I am a Catholic. I am one of 10 kids and that is my tradition. But I now follow that tradition not as a child whose parents inculcated that tradition in me. I follow that tradition through choice. I follow my tradition because I look at the issues and I try to come to a position based on knowledge and information, not on rhetoric and cant.

A couple of questions need to be answered. One of the speakers said that she would be okay on abortions in the first trimester. What happens on day 93, day 94 or day 95 with the move into the second trimester that changes? I would love to know what changes make abortion acceptable for three months but not three months and a day, three months and two days, three months less a day or three months less two days.

We have all been onto the net, we have all searched the web and we have all read, I hope, the information that has been presented to us. The document that struck me most was from STAKES, the Finnish National Research and Development Centre for Welfare and Health. There has been legalised abortion in Finland for probably 30 or 40 years. This document was prepared as part of an epidemiological study which went back and checked the record as to whether there was an effect, whether abortion was safe, as women had been told. The information in this script that I have clearly says that abortion is not safe.

If you have doubt as to the outcome of this survey, even if you only have doubt, then, using the precautionary principle, you should err on the side of caution and not vote this bill through today. This data identified 9,192 women in Finland who had died between 1987 and 1994. There was then a check to see whether there was a correlation with abortion. The statistical accuracy of this survey seems to be very high and the faith that people seem to put in this survey by a body that, I guess, is the equivalent of our own NH&MRC is really important. The document contains some amazing numbers. For instance, it says:

> Table 1 shows that the age-adjusted odds ratio of women dying in the year they give birth as being half that of women who are not pregnant—

if you gave birth, you were half as likely to die—

> whereas women who have abortions are 76 per cent more likely to die in the year following abortion compared to non-pregnant women. Compared to women who carry to term, women who abort are 3.5 times more likely to die within a year.

Safe! That is reasonably safe! If we change the Crimes Act, if we send the message that abortion is okay, do we actually open to legal action this Assembly and those that enforce the laws here and the activity that goes on to the clinic? We have all seen the opinion piece in the paper this morning about a woman who is suing the ACT government or the clinic because she was not informed, she was not made aware, that abortion was not safe.

The next figure goes on to suicide. It says:

> Using a subset of the same data, STAKES researchers had previously reported that the risk of death from suicide within the year of an abortion was more than seven times higher than the risk of suicide within a year of childbirth.

So much for being safe! The figures go on. I will keep a large amount of this data for the debate on the next bill about the need for informed consent. The document does not rely just on the data for Finland. It goes on to say that the data aroused some concern in South Glamorgan in Great Britain, which has a population of 408,000, not dissimilar to the ACT. The document says:

> After their pregnancies, there were 8.1 suicide attempts per 1,000 women among those who had abortions, compared to only 1 suicide attempt among those who gave birth. The higher rate of suicide attempts subsequent to abortion was particularly evident among women under 30 years of age.

The document goes on to quote a study by the University of Minnesota about younger women, saying:

> Teens are generally at higher risk for both suicide and abortion. In a survey of teenaged girls, researchers at the University of Montana found that the rate of attempted suicide in the six months prior to the study increased tenfold—from 0.4 per cent for girls who had not aborted during that time period to 4 per cent for teens who had aborted in the previous six months.

The document goes on about self-harm, before saying:

> In a study of government-funded medical programs in Canada, researchers found that women who had undergone an abortion in the previous year were treated for mental disorders 41 per cent more than postpartum women, and 25 per cent more often for injuries or conditions resulting from violence.

This information is not from a study of morals. These figures have come from bodies that fund these services in various countries—Finland, Glamorganshire in Great Britain, Canada. The document continues:

> Similarly, a study of Medicaid payments in Virginia found that women who had state-funded abortions had 62 per cent more subsequent mental health claims (resulting in 43 per cent higher costs) and 12 per cent more claims for treatment related to accidents (resulting in 52 per cent higher costs) compared to a case match sample of women covered by Medicaid who had not had an abortion.

So it goes on. There have been dozens of such surveys and studies. I know that there have been surveys and studies that debunk them. But the point is that we just do not know.

We then get to the question of abortion being rare—legal, safe and rare. Which people are working in the ACT to make it rare? Where is the government's commitment to making it rare? We have the case of a woman who says, "I was railroaded into an abortion. Don't weaken the law." This is the experience of a woman who has been there and who sought an abortion under the law in the ACT. Tomorrow, abortion will be still legal in the ACT and it will still occur. But what we have to do is to ask ourselves what is being done to make it rare.

Good legislation, like good surgeons, should first do no harm. Nor should good legislation or amendments to legislation condone harm or allow harm to happen. I do not think we have had enough answers in anything that has been said here today by those who will vote in favour of these bills to tell us what they will do to make it safe and to make it rare. Indeed, foreshadowing what will happen next, we will go on to the second order of the day, which seeks to remove the provision of information. So much for making it safe, so much for making it rare! The contradiction in these two bills is extraordinary.

I sound a warning note to those in government. One of the things that you accept when you sit on the treasury bench is exposure to risk. Governments get sued. Governments have deep pockets and governments provide many services. It may sound cold and cynical, but I think that we have to take into account whether, if we do not provide adequate information, if we give the green light by removing abortion from the Crimes Act, we are further exposing the ACT government and the taxpayers of the ACT to further litigation.

Mr Deputy Speaker, I have much information on this subject. I am going to keep it for the other bills because we are not handling them cognately. I think that the outcome would have been much better if we had dealt with these bills cognately as there are so many issues to discuss and each of these bills impacts on the other. It is unfortunate that that was stifled.

The other thing that we need to look at is the fundamental question that I ask every time we have one of these debates—I am yet to get an answer; maybe I will be lucky today and get an answer—that is: when does life begin? I have already asked what happens at first trimester plus one day or two days, but when does life begin? A question was asked earlier about when personhood starts. The latest thinking on personhood is that you really have all the genetics and capabilities that you inherit from your parents on about

day 14. On about day 14 is normally the last opportunity that that small cluster of cells will divide and, instead of being one child, will become twins. So personhood comes at about day 14; that is when everything is in place.

The question from me to those who would vote in favour of this bill—I have asked it every time and I am yet to get an answer from anyone—is: where is the evidence that tells you, that gives you the certainty that you have, that you are not aborting a human life, that you are not destroying a human life? I do not have that certainty. It would make these debates so incredibly easy if somebody could point to where it happens, but nobody can. We do not know. If we do not know, as good legislators we must take the precautionary approach.

Mr Deputy Speaker, I finished the last debate by referring to a sign that used to be in Newtown. I will finish with it again because some members would not have heard of it. There used to be a sign on a building in Newtown that went something like this: "The greatest violation of a woman's rights is to abort her." *(Extension of time granted.)* We know also that the majority of foetuses around the world—and I am yet to be able to get data for Australia—is that this is actually a device used against women. Mr Deputy Speaker, the greatest violation of a woman's rights is to abort her.

MS GALLAGHER (4.20): I rise in support of Mr Berry's Crimes (Abolition of Offence of Abortion) Bill. This law is now a dated reminder of the 19th century, when abortion was a far more risky procedure than it currently is and was legislated against to protect the lives of women. This is no longer the case, and we must accept that we are no longer a society that should use threats or criminal sanctions to coerce women into continuing with an unwanted pregnancy.

The criminal law is rarely about deterrence; it is more about punishment. We need to consider what the purpose of having abortion in the Crimes Act is. Is it to act as a deterrent? No-one can prove that the criminalisation of abortion has reduced the number of women seeking one, any more than anyone can prove that removing these sections from the act will result in an increase in the number of abortions being sought or performed in the ACT.

The choices available to a woman when she is facing an unwanted pregnancy are varied and often difficult to make. If at all possible, she should be able to make the most private of decisions with reference to her own circumstances, desires and values. The presence of abortion in the criminal code prohibits this, because even if the penalty is not enforced, it sends a message that abortion is not an acceptable choice.

There are some in this Assembly that argue that this is preferable, that abortion is wrong and that the message needs to be sent out to the community that abortion is not acceptable. I disagree with this. The Crimes Act should not be used to create an impression. It is a legal tool that as a society we expect to be enforced. No-one claims that sections of the Crimes Act that apply to theft are there just to send a message that stealing is wrong but that we do not expect people who steal to go to jail or get another punishment.

The whole reason for having a Crimes Act is to lay down sanctions against acts that society considers deserving of fines or jail terms. I do not believe that society considers abortion as deserving of a fine or jail term, so abortion should not be a crime under the act.

It is currently unclear whether or not abortion is legal in the ACT, as Mr Osborne's abortion laws do affect applications of sections 40 to 45 of the Crimes Act, and the criminality of abortion in the ACT has never been tested.

The Health Regulation (Maternal Health Information) Act clearly states that compliance with the act does not affect the application of the criminal law. We can only assume then that women in the ACT can access abortion legally only if there is a serious risk to their mental or physical health. Hence, a woman can legally have an abortion only if there is a risk to her health, which precludes the range of reasons that women may have to make not to continue with a pregnancy.

This situation forces women who have an abortion although there is no risk to their health to lie. They are not allowed to say that their reason is legitimate. If a woman does not want children at all or now, if she does not want to raise children alone, if she has enough children, or if she does not want a child with a particular person, these are not legal reasons under what we think the current interpretation of the Crimes Act might be. Such a situation is unacceptable. There is no certainty, there is no respect and there is no choice.

As long as these provisions remain on the statute book, there is a very real possibility that they could be enforced, and we have no certainty as to what would happen if they were. The women of the ACT deserve certainty, and repealing sections of the Crimes Act that refer to abortion is the best way to deliver this certainty.

Not only does criminalising abortion limit a woman's choice; it can endanger her health. When abortion is illegal, women can take their health into their own hands or risk it in what are often terms backyard abortions. The World Health Organisation estimates that approximately 78,000 women die each year because of unsafe abortions. Those who would argue that abortion should remain illegal often cite the right to life, but what about the right to life of these women?

If we were at all serious about reducing rates of abortion, then the existence of criminal sanctions is not the way to go about it. To place a jail sentence on the end result is not the way to go with this issue. Rather, we should be looking at more widely available and comprehensive sex education and more accessible and effective contraception. We should be looking at all the options available to women and whether we can improve the chance for some women to balance work or education with motherhood. We need to look at the emotional, financial and community support that women need if they are to have real choices when faced with an unplanned pregnancy.

Even so, there will be times when no amount of financial assistance and no amount of family friendly practices will change the fact that an unwanted pregnancy is impossible to continue. Are we going to put a woman in jail if, under these circumstances, she has an abortion? I should hope not, and if we are not going to, then the sections of the Crimes Act that refer to abortion need to be repealed.

Members, today I ask you not only to support Mr Berry's bill but to support women in the ACT. I ask you to think carefully about whether, even if you would not choose abortion for yourself or those close to you, you would send a woman who did choose an abortion, for reasons that are entirely valid to her, to jail. Any woman who has had to make that choice has been through a difficult and emotional time. Are you willing to add time in jail to that experience? I urge you to vote for Mr Berry's bill and let the women of the ACT choose for themselves.

MRS CROSS (4.25): I agonised for so long over this matter and I canvassed views from as many sources and I could, including views from lobby groups and prominent figures in the national-level debate—people who have had first-hand experience, medical practitioners and people with diverse views from different age groups and differing professional, socioeconomic and religious backgrounds. Then I tried to weigh objectively the range of views that I was presented with.

This has not been an easy decision for me, but it has been helpful to meet rational and sensible people from both sides of this debate. From that range of views, the first decision I made was to remove those that were based on dogma from both sides. Why? I know from sometimes bitter experience that when confronted with a difficult problem there are many who seek the easiest course, and the easiest course of all is to take refuge in dogma. Why is that? Dogma offers the pat solution.

But the problem is that dogma is not really a good remedy, because it has at least one very bad side effect. It is precisely because dogma is the ready-made answer that it inevitably stifles objective thought. It is incapable of taking account of views that might differ from it, so it should have no place in the consideration of a complex matter.

One other serious strike against dogma is that it is favoured by the ready bullies of society and, because of that, has often been the root cause of much of humanities grief and suffering over the ages. So to keep an open mind I had to reject the comfort of dogmatism.

Next, it was apparent to me that the very serious stigma of criminality imposed specifically for women was an offshoot from the root of the same tree of dogma. Once the stigma had been enshrined in law, the dogmatists who had for so long decided, among other things, what a woman's lot in society was to be, were able to sit back in the satisfaction that the matter had been appropriately addressed and, as far as they were concerned, put to rest.

But the dogmatists' stance on the need for the stigma of criminality to be applied has, in practice, been generally ignored by the authorities responsible for the application of laws. The provisions of the ACT Crimes Act under consideration today have never been used, and I am unsure when they were last used in any jurisdiction in Australia. The law has turned out to be a paper tiger and not worth the paper it is written on. In that case, the stigma of criminality should be removed.

The aspect to be addressed next is the issue itself. Let it be enough now for me to say that I have heard enough sad tales from all quarters—tales of grief, of ignorance, of deprivation, of desperation, of shame—to persuade me to support the legalisation of abortion.

That then leaves only the matter of when the procedure may be performed. After consultation with many medical practitioners over the past months, I became aware of the practice of late-term abortions by a certain doctor in Queensland. I have concerns in that area. However, I am also aware that any abortion performed in the ACT after the first trimester must be first considered and approved by a hospital ethics committee. At this time, I am comfortable with that process, because requests to that ethics committee are not always granted. Should that process prove to be unworkable at some future date, then I am prepared to revisit the issue at that time.

I also give notice that I will be supporting Mr Berry's second bill to repeal the Health Regulation (Maternal Health Information) Act, and Ms Gallagher's bill.

This is my first conscience vote as a politician and hopefully my last one. A conscience decision is, by nature, a difficult one to make at the best of times. After today, some of the community will be happy with the Assembly's decision and some will not. Some of those in the latter group will be in my own party. I am aware that I am the only Liberal member voting for Mr Berry's bills today and, to be honest, this makes me more than a little nervous.

However, my vote reflects my convictions, and I stand by them. I have made my decision on this suite of legislation before us painstakingly and with a genuine belief that I have had a true conscience vote. I guess only time will tell.

MR DEPUTY SPEAKER: Order! The gallery will behave itself, please.

MR HUMPHRIES (Leader of the Opposition) (4.30): My position on abortion has been clear for a very long time. I oppose abortion except in very limited circumstances. I believe in the sanctity of human life. I do not believe there is any such thing, in 21st century Australia at least, as an unwanted child.

My opposition has been clear for some 18 years, since I first stood as a candidate for public office in this territory. My views about abortion have been published regularly before each election in which I have participated, and I think the value of the clarity of my position and the consistency of my approach has been that my support in the electorate has increased as the years have gone by.

As a result, my position on the four bills before the Assembly today might be fairly easy to guess. But as in previous debates, I do not come to this place today to put arguments based on my particular political philosophy, my particular personal philosophy or my religious convictions. I come to put them on the basis of logic and commonsense and on the basis of arguments about the effectiveness of the law of the territory and the way in which the law of the territory may be adversely affected by changing the law in the way proposed by Mr Berry's bill.

I would argue that there are good reasons not to upset the apple cart of laws on abortion as they presently stand in the territory. Present laws do not, in effect, prevent general access to abortion, and therefore opponents change the present law at some risk. There is good reason to fear the consequences of a wholesale repeal of the checks and balances surrounding the practice of abortion in the territory at the present time.

Let me explode a few myths which have been put forward in the course of this debate today. The first of those is the myth that abortion is illegal in the ACT. It is not, and has probably not been illegal for at least the last 30 years. In fact, I have my doubts about whether it has ever been illegal. It is at best ignorant, at worst deceptive, to look at sections 44 to 46 of the Crimes Act—originally a New South Wales act adopted in the ACT many decades ago—and to say that they represent the state of the law in the ACT. They do not.

Women do not go to jail in the ACT for seeking or having abortions. They have not gone to jail in at least the last 30 years, and I have not been able to discover a single case at any time in the territory's history in which a woman, or indeed anybody else associated with the practice of abortion, has suffered that penalty.

The law of the territory is not succinctly stated in the Crimes Act. The law of the territory is a combination of sections 44 to 46 of the Crimes Act and the common law. The common law is relevant when one looks at the word "unlawfully" which appears in sections 43, 44 and 45. I quote section 44 in particular:

> A pregnant woman who unlawfully—
> (a) administers to herself any drug or noxious thing; or
> (b) uses any instrument or other means;
> intending to procure her own miscarriage is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

The use of the word "unlawfully" allows court-made law, common law, to be used to interpret what the effect of that section and other sections with that word in it mean. For a number of years it has been the case in the ACT that abortions have been conducted almost certainly under the protection of the law, because it is the widespread belief of legal practitioners in the territory, certainly of successive directors of public prosecutions and others, that the law in its present state, both statute and common law, does not permit the prosecution of women who seek abortions or the people who assist them in that process.

In those circumstances it is untrue to say that the ACT's laws are in urgent need of amendment. There is a cosmetic quality about this legislation, particularly the first of the bills being debated today, which we need to understand and appreciate.

I do not favour wide access. I regret that fact, and I have to say quite bluntly that if I was in a position to change it I would. But I cannot equally deny that wide access exists, lawfully, in the territory at the present time. Mr Berry has been jousting at the windmill of illegality for years, but it is no more real for that fact.

There is a warning to those supporting the Crimes (Abolition of Offence of Abortion) Bill 2002. You are not merely sweeping away a piece of archaic law; you are not simply taking an anachronism and relegating it to the trash heap. You are taking out one of the

structures which underpin the present balance of the law in the territory. The consequences of doing so are not necessarily what you might expect them to be.

I have read already section 44 of the Crimes Act. What does that section mean? Supporters of abortion say that it means that women who seek an abortion or who have an abortion can be prosecuted for that act. Putting to one side for a moment the fact that in living memory no woman has been prosecuted in that way—indeed, I am yet to hear any contradiction to the argument that never has a woman been prosecuted in that way—what does the section say?

It does not say that seeking an abortion or presenting at an abortion clinic or at a hospital to obtain an abortion is illegal. It refers to a woman who administers to herself any drug or noxious thing or uses any instrument or other means. That is, it means that the self-administration of abortion is illegal.

The argument has been put repeatedly in the course of today's debate that it is a crime for a woman to seek an abortion. I do not believe that that is the case. I am not sure that members would have appreciated the advice which was tabled earlier today by Mrs Dunne.

Mrs Dunne: It has not been tabled yet. I was not allowed to table it.

MR HUMPHRIES: I see. It was not tabled. I seek leave to table it.

Leave granted.

MR HUMPHRIES: I present the following paper:

> Crimes Act—Advice by James Bogle, Hallewell Simpson Hardacre, Solicitors, London in relation to proposed amendments to the *Crimes Act 1900*.

Mr Bogle is a barrister in Britain who has interpreted laws in Australia and in Britain which are similar in nature. I will let members look at that for themselves. He particularly addresses the meaning of section 44 of the Crimes Act ACT. I quote from his advice:

> The plain meaning of the words of the statute are a sufficient aid to construction of the meaning of the statute in answering the question put, in the first instance.
>
> The plain meaning of the words of section 44 is that this section penalises a pregnant woman who intends to procure her own miscarriage. That section does not penalise her for attending before another person who then procures her miscarriage.
>
> Section 45 penalises a person who has the intent to procure a miscarriage and then administers a drug, causes it to be taken by the woman or uses any instrument. Plainly this is intended to penalise a third party procurer, not just the woman who procures her own miscarriage.
>
> In my opinion, however, this section does not directly penalise a woman who attends upon a third party for the purpose of having her miscarriage procured by him or her.

I would submit that the plain words of that section support that contention. It is not the case, even on the face of the Crimes Act, that a woman will be prosecuted for seeking an abortion or obtaining an abortion. It is not the case.

What it does certainly address is a woman who performs an abortion on herself. That is a punishable offence. I wonder whether in the course of this debate we might just slip for a moment into the question: should perhaps we retain a penalty for a person performing an abortion procedure on herself?

One would like to think that a woman would not be in that position, would not be in a state of mind where she would want to do that to herself and to the child she carries. But is it wise to remove from the statute books a provision which deals with that very issue. That is all the section deals with, plainly.

The view that I have put on my reading of the section, the view of Mr Bogle of counsel, I understand, is also the view of parliamentary counsel in the ACT. I think it has also been put in other papers that have been tabled in the course of this debate.

We can continue to build up and inflate what it is that we are attacking, but whether it has justification or truth is another matter. The effect of this bill is that it strips away all criminal sanctions in relation to abortion. There are no offences in relation to abortion, at least on the face of Mr Berry's bill as it baldly stands before the house today.

Mr Berry: Wrong.

MR HUMPHRIES: I am afraid that in relation to abortion that is the case. There is no offence of conducting an abortion at nine months gestation, for example, on the face of this bill. If I am wrong, you can point to that Mr Berry when you sum up this debate, but I cannot see where it is.

I remind members that to put ourselves in that position would make us the only jurisdiction in the whole of Australia which has chosen to remove all criminal sanctions in relation to abortion. The Tasmanian parliament was presented recently with the option of removing all penalties in relation to abortion, and it chose not to go down that path.

I would submit to the house that to remove all penalties of this kind is dangerous. I want to give some examples of why I think it is dangerous. Some of these have been mentioned already. If a man assaults a woman to procure the death of her baby, what is the offence committed? Of course there is an assault on the mother, but that assault may be relatively minor compared with the harm occasioned to the child inside her. Is it really appropriate to charge a person in those circumstances merely with the assault on the mother?

What, for example, if a drug is administered to kill the child but not harm the mother? In those circumstances, arguably, under Mr Berry's regime, no offence would be committed. That disturbs me deeply.

There are even circumstances where the deliberate procuring of a miscarriage would be wrong, not just in my language or the language of some people who have argued against these bills, but in anybody's language. Take, for example, the commercial harvesting of foetuses for the purposes of organ transplant or obtaining stem cells. We know that there is already a market in body parts around the world. We know that there is potentially a market in valuable human organic material, and we do our community no service to pass laws tonight which have the effect potentially of abetting those who would procure foetuses or parts of foetuses in that way. *(Extension of time granted.)*

I do not believe that the consequences of repealing sections 44 to 46 of the Crimes Act have been fully thought through. They are regarded by the supporters of this bill as being an easily excised piece of the Crimes Act, the absence of which will barely flicker in the recognition of either lawyers or those administering the law in the territory. I do not know that that is the case. I fear that it is not the case. I doubt that anybody can assure me tonight, as has been said already a couple of times in the course of this debate, that the changing of the law in this way will not change anything in the day-to-day lives of people in the territory. I am not confident of that, and I believe that we have not fully understood the effect of removing those sections of the Crimes Act.

The fact that Ms Gallagher has felt it necessary to move a separate bill of her own to deal with the inadequacies, you might even say the baldness, of Mr Berry's original legislation is evidence of the fact that this is the product of a determination, almost an obsession, on Mr Berry's part. In his desire to see the legal status changed, the appearance of the law changed, he may be throwing out—dare I use the analogy—the baby with the bathwater.

It is clear from what we have heard in this debate this afternoon that a majority of members of this place support provisions to "decriminalise" abortion in the ACT. I think that is a dangerous state of affairs. I do not believe that we have fully understood the effect of what we might do.

Rather than empower women, we may be leaving many women in a parlous state. We may be leading to a situation where terribly wrong things may be done because the law has vacated the field of abortion, in effect. Laws intervene in many aspects of our lives today—the way we buy a car, the way we obtain a service, the way we interact with each other in the things we say and the things we do, the way we obtain employment, the way we get married, et cetera. The laws of the territory speak on many areas. If this law passes, our laws will say very little about abortion. That gives me great concern.

Even those who think that it is a woman's right to make that choice may have to face one day the consequences of those actions which may be undesirable and very distant from what they had expected to achieve by virtue of moving this legislation before the house tonight.

MR BERRY (4.49), in reply: Everybody is driven on this issue by their own values. We all seek to present arguments in relation to this matter in accordance with our own values in respect of a woman's right to choose.

The last of my opponents on this matter, Mr Humphries, has used those same values to put together his argument. If I can put it bluntly, he brought his silkiest tongue with him today. Yes, it is true that abortion in the ACT is covered by a mixture of the common law and statute law. But what Mr Humphries probably missed in my speech—and I will give him the benefit of the doubt that he overlooked this bit—is that Judge Newman ruled in New South Wales in about 1994 in respect of abortion in relation to a damages matter which had been bought before his court. This was under the New South Wales Crimes Act, from which the ACT Crimes Act is a direct lift. He said that abortion in New South Wales was illegal, unlawful, against the law, a criminal act.

Shortly after that, I made the first moves to decriminalise abortion in the ACT because of those very obvious connections. I introduced legislation into this Assembly in 1994, but because there were insufficient numbers here to pass that legislation, I never proceeded with it.

Since then there have been some other events which have strengthened my resolve to deal with this issue. The first was in Western Australia, where an abortion matter was directed to the police. The Western Australian parliament was involved in consideration of that issue and provided a legal way for abortion to occur in that state, given the previously existing criminal nature of access to that procedure. I remember at the time sending a copy of my 1994 bills to the Labor member of the Western Australian parliament who first pursued the matter.

Some years after that, the performance of abortions in Tasmania was referred to the police or the DPP. That has been mentioned here tonight. Women were forced to go interstate for abortions because for a time they were held up. They were held up because the contention was that it was a criminal offence to conduct an abortion in Tasmania. Of course medical practitioners would not perform the procedure against that background. I say to members in this place that it is open for that to occur in the ACT. That would take us back 10 years to a point when about 1,600 women per year were forced to travel interstate to get access to the procedure.

Mr Humphries has tried to lighten the impact of this legislation against the weight of the legislation as it exists and against the weight of events which have occurred throughout Australia in relation to abortion.

Those of us who support a woman's right to choose know that our opponents who campaign against abortion at any time are working hard to prevent abortions from occurring in any event. It is a matter that we have to contend with, whether or not this legislation passes tonight. Even if it passes tonight, this campaign will continue. We have to be vigilant about protecting well into the future any gains that are made. The campaign will not be over. It is driven, on one hand, by religious fervour and, on the other, by a firm concern about the issue of abortion.

What pains me most about the legislation as it exists in the ACT is that it attempts to create the impression that a woman is a lesser person if she has an abortion. That is unacceptable. It is unacceptable to any right-minded person in the ACT. It is particularly unacceptable for those of us who have progressive views on this issue and for those who have been fighting the campaign for such a long time.

This is an argument about whether or not there should be a crime relating to abortion in the Crimes Act. It is not about many of the other things that members in this place who oppose my bill have said tonight.

Mr Humphries drew attention to section 44 of the Crimes Act and made great play of his argument that it was not a criminal offence under the Crimes Act if a woman procured a miscarriage from someone else but that if she did it to herself it was perhaps a criminal offence. Mr Humphries did not say that if this were proven to be the case then medical practitioners who might provide this service would withdraw the service. Women who wanted abortions would then have go to backyard abortionists, as they did for years. Women died as a result of the procurement of abortions from illegal practitioners. What you are really doing is strengthening the argument to repeal this legislation.

Mr Humphries: I do not understand that, Wayne.

MR BERRY: Let me explain it to you again. If a woman cannot legally procure an abortion from a medical practitioner, then where else will she—

Mr Humphries: Why can't she?

MR BERRY: Because it would still be unlawful under the legislation.

Mr Humphries: Only if she did it to herself.

MR BERRY: It would be unlawful for somebody else to provide the abortion. Look at section 45. Under the heading "Procuring another's miscarriage" it says:

> A person who, unlawfully and with intent to procure a woman's miscarriage (whether or not she is pregnant)—
>
> (a) administers a drug … or
>
> (b) uses any instrument or other means—

this would probably be a doctor in the current estimation of things—

> is guilty of an offence punishable, on conviction, by imprisonment for 10 years.

If that was brought into effect, Mr Humphries, how many medical practitioners do you think would provide the service? I say none. I say also that women would be forced to go interstate to procure an abortion or to go to backyard abortionists in the ACT. If this sort of notion was to be adopted in New South Wales, which uses the same form of legislation, we would end up with the calamitous situation of thousands of women being forced to endure unwanted pregnancies.

Mr Stefaniak carefully avoided talking about supporting the Crimes Act provisions. He used the argument often used by the Right to Life Association that the bill would allow abortions at any time. Under the current legislation, if one listens to the arguments about its effectiveness, abortions could be allowed at any time. But in our hospital system they are dealt with in a way which I find acceptable. Nobody gets access to late-term

abortions within our system without reference to a professional and ethical group within the hospital structure. Therefore, this is merely chanting the mantra to try to create the impression that so-called abortionists are eagerly waiting to remove foetuses from women's bodies to make some sort of profit from them. This is an extraordinary thing to be saying or hinting at in the context of this debate.

Mr Stefaniak also referred to Archbishop Carroll's letter. In fact, I think he read it all. He also referred to the Tasmanian legislation. The good archbishop said that the Tasmanians had not decriminalised abortion. What the good archbishop overlooked is that there is a legal path to access to abortion described in the Criminal Code, in effect decriminalising access to the abortion procedure in Tasmania.

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 BERRY: The good archbishop also drew attention to a document produced within the ACT health department by a Ms Meg Wallace. The archbishop tried to make the point that the document in some way undermined my moves to decriminalise abortion. Had you checked, Mr Stefaniak, you would know that it very clearly sets out a checklist arising from the High Court decision in Rogers v. Whitaker. The checklist reads:

> All health carers owe a duty of care to clients to consider the need for "informed consent" when any proposed procedure involves:
>
> a recognised risk of side-effects or adverse effects;
>
> any side-effects or adverse effects that the proposed client would consider significant;
>
> alternative procedures that are reasonably available that the health carer can offer; and
>
> the effects on the client of not having the procedure.
>
> A recognised risk can be established by considering:
>
> text, articles and courses to which the health carer has or ought to have access;
>
> required knowledge;
>
> accepted and widespread practice; and
>
> codes of health care practice.

Further on a checklist is provided under the heading "Guidelines for giving information for client decision-making":

> There should be no coercion, patients should be encouraged to be frank, ask questions, and make up their own minds. Provide interpreters and repeat information if required, and look for responses that indicate that information has not been understood.
>
> Where possible, give the patient adequate time to make a decision—

sounds like a waiting period to me—

> ask more questions, talk to others, think about the matter, etc.
>
> Advise the patient that he or she can get another medical opinion, and assist the patient to seek it if it is requested.
>
> Ensure that the patient understands:
>
> — the diagnosis …
>
> — the prognosis ...
>
> — the anticipated effects of not undergoing the proposed treatment;
>
> — the nature of the intervention ...

There is a comprehensive list of protections for people undergoing any medical procedure, and they would apply to an abortion procedure. I think the archbishop understates the effectiveness of the information contained in that publication.

Somebody mentioned the dangers associated with abortion. I think Mr Smyth did, and probably Mrs Dunne did. For your information, I refer to a document from the Australian Capital Territory government "Considering an abortion". On page 8, under the heading "What are the possible longer term complications?" it goes on about some of the issues associated with abortion, as it should. *(Extension of time granted.)*

But the last paragraph says that there are also complications associated with making a decision to continue with a pregnancy. In fact, the risk of complications in pregnancy is higher than the risk for a termination under medical supervision. These are facts that have to be on the table when we are talking about this issue. They cannot be ignored.

This is a debate about whether women ought to be degraded by the threat of an impact of the criminal code. Those who oppose the legislation which I have put before this place have done little to settle my nerves about the continuance of this backward-looking legislation.

Many of the people who say they are anti-abortion have put strong arguments which would justify the retention of those provisions. In fact, it could be said that there is nothing inconsistent with being anti-abortion and removing those criminal provisions from the Crimes Act. I am not pro-abortion but I certainly am pro-choice, and I think it is about time that this Assembly faced up to its responsibilities as a reflection of the views of the community in the ACT on these issues.

Right-minded people do not think there ought to be mention in the criminal code of punishments on the issue of abortion. Right-minded people think that there ought to be more assistance for people to ensure that unwanted pregnancies do not occur. But there is no magical solution for that. Some of the opponents of the legislation I have proposed would say that there should be no acts of sex unless they are related to the production of a child.

Mrs Dunne: There is not one person in this place, Mr Berry, who thinks that.

MR BERRY: There are some who have been approaching me.

Mrs Dunne: The people who oppose in this place do not think that. That is a gross misstatement.

MR BERRY: Some are approaching me. I turn now to what Mr Pratt said. Mr Pratt tried to make the point that the criminal code was a good disincentive for women to seek an abortion. The figures do not assist us in that respect, but the criminal code is a threat to women who might choose an abortion. Women are constantly reminded of the criminal aspects of abortion by anti-abortion campaigners in the ACT, and this does nothing to further society in the ACT. What is it about people who want to denigrate women who choose to have an abortion?

Mr Cornwell made the point that we ought to have a national abortion referendum. This is a state issue, and it is a matter we have to deal with. It is one of our Assembly responsibilities. The Crimes Act is part of a suite of territory legislation which we are responsible for. You may recall, Mr Cornwell, that the Termination of Pregnancy Act, which was enacted by the federal parliament on the recommendation of the old House of Assembly was later repealed by this place because of concern about the availability of abortions in the ACT.

The last member I want to deal with is Mr Smyth. Mr Smyth made great play about the precautionary principle and how repealing these provisions might assist in the area of legal, safe and hopefully rare abortions. I do not expect that abortions will ever be rare, but I live in hope.

Mr Smyth: What are you going to do to make them rare?

MR BERRY: I am not going to wish them away, because I know wishing them away is not going to fix a thing. The first thing of concern for everybody in the community is that abortions be legal and safe. That has to be the priority. That is necessarily a protection for women who choose the procedure.

This is a campaign which has been going on since long before I entered politics and has had a growing weight of opinion in support of it. I thank all of those members who have participated in the debate this evening. I thank those who have offered their comments in opposition to the legislation for their contributions, even though I do not agree with them. I will continue to oppose them, and I will continually be vigilant to ensure that gains made in access to abortions are not taken back. I particularly thank those members who made a contribution in support of the bill. They have been put through a fairly harrowing experience, I expect, as a result of the long period this legislation has been before this place.

I promised before the election to do something about this. I told everybody in my electorate what I was going to do. I told everybody in Canberra what I was going to do, and I am proud to be here today as the proponent of this legislation.

But it would not be possible to be here today without the strong community support which has grown around this issue. It is a level of community support which will continue to remain in place to ensure that women have access to abortions well into the future. Without their help this bill could not have been debated today.

Question put:

> That this bill be agreed to in principle.

The Assembly voted—

Ayes 9		Noes 8	
Mr Berry	Ms MacDonald	Mr Cornwell	Mr Smyth
Mr Corbell	Mr Quinlan	Mrs Dunne	Mr Stefaniak
Mrs Cross	Mr Stanhope	Mr Hargreaves	Mr Wood
Ms Dundas	Ms Tucker	Mr Humphries	
Ms Gallagher		Mr Pratt	

Question so resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Standing order 136

MR DEPUTY SPEAKER: Mrs Dunne asked me for a ruling earlier this afternoon. She raised a point of order concerning the application of the same question rule to order of the day No 3, Ms Gallagher's Medical Practitioners (Maternal Health Amendment) Bill 2002.

Standing order 136, which is the same question rule, gives the chair a discretion to disallow any motion or amendment the same in substance as any question resolved in the affirmative or negative during that calendar year.

Order of the day No 3, Ms Gallagher's bill, is not the same in substance as order of the day No 1, which we have just passed, or order of the day No 2, which it specifically applies to. But it does reinsert certain provisions which are very similar to certain of those contained in the Health Regulation (Maternal Health Information) Act, the act that Mr Berry's second bill seeks to repeal.

In addressing the application of the same question rule to bills, *House of Representatives Practice*, at page 343, states:

> In using his or her discretion in respect of a bill the Speaker—

in this case the Deputy Speaker—

> would pay regard to the purpose of the rule, which is to prevent obstruction or unnecessary repetition, and the reason for the second bill.

I do not believe Ms Gallagher's proposal obstructs the Assembly or is unnecessarily repetitive. In fact, it provides an alternative course to the Assembly, and for that reason I have concluded that it does not breach the provisions of standing order 136. So the matter may proceed.

Health Regulation (Maternal Health Information) Repeal Bill 2001

[Cognate bill:

Medical Practitioners (Maternal Health) Amendment Bill 2002]

Debate resumed from 12 December 2001, on motion by **Mr Berry**:

> That this bill be agreed to in principle.

MR DEPUTY SPEAKER: Is it the wish of the Assembly to debate this order of the day concurrently with order of the day No 3? There being no objection, that course will be followed. I would remind members that, in addressing their remarks to order of the day No 2, they may also address their remarks to order of the day No 3.

MR SMYTH (5.20): Mr Deputy Speaker, it is a very sad day when we are afraid of the provision of information. The Health Regulation (Maternal Health Information) Repeal Bill 2001 does exactly that—it takes away the provision of information. One has to ask, why are we afraid to present information to women seeking an abortion about the effect of the procedure?

I refer members to the article on page 13 of today's *Canberra Times* which Mr Stefaniak read this out morning, headed, "I was railroaded into abortion. Don't weaken the law". This is a lady who feels "let down by the system". In the article, she says:

> In my case, the information given to me by the abortion provider about risks was minimal and delivered in a way that trivialised its importance. They made me feel that they knew what was best for me. They didn't prepare me for what I would experience.

This lady says:

> I was very confused, and what I really needed was someone to tell me that I would be able to manage... Nobody said "congratulations"...

She says, "When I went to the Family Planning Clinic I wasn't sure if I wanted an abortion." She feels she was railroaded into having an abortion.

That is why this bill should fail. That is why we should keep in place the right, and the insistence on, for people to be given information about what they are about to go through. As I said in the last debate, there are downsides to this. Even if you do not believe they are proven, these downsides are canvassed in many journals and documents. They bear further consideration before we take away the information contained in the Maternal Health Information Regulations.

Mr Deputy Speaker, I go back to the document I was quoting from which canvassed the STAKES and several other surveys. It finishes with the following paragraph:

> These findings underscore the importance of holding abortion clinics liable for screening women who are seeking abortion for a history of suicide, self-destructive behavior and psychological instability. The failure to screen for these risk factors is clearly gross negligence. In addition, when abortion clinic counselors falsely reassure women that abortion is safer than childbirth, they should be held accountable for false and deceptive business practices.

This is the conclusion of the author of this article, David C Reardon PhD, who looks at, across those surveys I have mentioned in the previous debate, the downsides of abortion. The document goes on to say:

> It is also likely that many of these deaths are simply related to heightened risk-taking behaviour among post-abortive women.

It is interesting that, when you get to the next area of inquiry, Mr Reardon talks about deaths from homicide. He says:

> As shown in Figure 4, the risk of dying from homicide for post-abortive women was more than four times greater than the risk of homicide among the general population. This finding, especially when combined with the suicide and accident figures, once again reinforces the conclusion that women who abort are more likely to engage in risk-taking behavior.

This leads to many areas. One of the areas that are quite interesting is the number of women who, having had an abortion, engage in greater risk-taking behaviour. This is probably inconclusive, but there is evidence to suggest that it may even lead to a greater number of women in prison.

A survey I found said that, in a prison ministry, 77 of the 100 participants were post-abortive. It says that symptoms of post-abortion trauma, abuse, promiscuity, child abuse and other destructive behaviours can lead to criminal behaviour. It then talks about—from another source—links between abortion and crime.

There is a curious debate going on in America. One set of proponents is saying that, because of the rising number of abortions in America, there is a link that says there is an increasing amount of crime because those who come from lower socio-economic groups have been aborted. What a perverse twist to put on what I believe is the tragedy of abortion!

Again looking at the area of crime and prisons, counsellor Laurie Velker says a non-scientific survey she conducted, among female inmates in Michigan prisons, reveals that their anger was increased as a result of their abortions. She says that they said they could see an increase in violent behaviour after their abortions.

It then goes on to a different survey and talks about 10 years of research conducted in Canada. It says:

> Ten years of research in Canada found a strong correlation between child abuse and abortion. In a report titled 'Induced Abortion and its Relationship to Child Abuse and Neglect', Dr. Philip Ney of Victoria, British Columbia, reports that British Columbia and Ontario, the provinces with the highest abortion rates, had the highest rate of child abuse. The provinces of Prince Edward Island and New Brunswick had the lowest rates of abortion and child abuse.

People may say, "This is your view. You have gone hunting for the areas where it suits you." The article goes on to talk with a Dr Philip Mango, a psychotherapist with 30 years experience in individual and marital therapy. It says:

> Any honest clinician or researcher will come to the conclusion that large numbers of women who have had abortions, whether they believe in God or not, develop self-destructive behaviors.

He then goes on to say:

> I wouldn't say abortion is the cause of [illegal] behavior … but it can be a major influence.

I think we should look at all the areas that have been discussed today—suicide, mental health problems, increased risk-taking, or death by homicide. Going back to the first article by Dr Reardon, it says:

> Comparing abortion to birth, we once again see that the risk of death from natural causes was significantly higher (60 percent higher in this sample) for women who had an induced abortion in the prior year compared to those who carried to term or had a natural pregnancy loss.

It also then goes on to say that whilst the researchers found that miscarriage was also associated with a lower healing score, induced abortion was more strongly associated with lower health assessments, and more frequently identified by women as the cause of their reduced level of health.

It then looks at the suicide rate, by month, after the pregnancy event. It talks about going back and looking at what happened afterwards—because often surveys were done only in the close months. It talks about the large number of mental health and suicidal incidents in the seven to 10 month period after the abortion was carried out. There is psychological deterioration. Again, whether you choose to believe it or not, there is enough data there to suggest that we need to do more—that we need to look at it. That is why this bill should not be repealed.

Mr Deputy Speaker, I want to read parts of a letter from a Canberra resident who got in touch with me. She has called herself Jennifer. I think she sent this to some other members as well. This is a lady who has had two abortions, one in 1991 and one in 1993. She says:

> When I asked the nurse there whether she could give me some information about what the foetus would look like by this stage, she said she didn't have any of these information. I also asked her if the foetus would feel any pain when being aborted. She said, "No, because it's just a group of cells." I then asked whether the foetus would come out crushed and how the remains would be taken care of. She said it

> would be discarded as biological waste. She couldn't tell me whether he or she [the foetus] would be mutilated in the process.
>
> I went to the clinic three times before making the decision to kill my child to be. At my third visit to the abortion clinic, they told me that, if I didn't abort the baby soon, it would be too late for any procedure there. I opted that day, partly because motherhood was fraught with too much unknown and partly because I didn't understand the reality of abortion.
>
> The reality of abortion procedure that day sank in soon after. I found myself crying over the abortion and feeling an incredible sense of guilt and grief whenever I saw any children around. This grief then extended to when I saw commercials, TV programs, billboards, magazines with children in them.
>
> I believe some good can come out of my own traumatic experience at the abortion clinic. I believe it is vital that women be given relevant information on the following before they are allowed to make the abortion decision.

This is a woman who has had two abortions. She received minimal counselling and her experience was a very bad one. However, she says, "Okay, what do we learn from this?" There are five points she wishes to make. The first point is as follows:

> Accurate factual information on what features, organs the foetus has developed by one, two, three and four months. This should include what stimuli the foetus responds to by those months, for example nerve endings are formed by the first month and thus the foetus can feel pain by then, or that they can already hear by three months old, because the auditory system is formed by then. This should include photos of the unborn child at two, three and subsequent month gestation periods.

Her second point is this:

> Information on what a woman could expect to experience after an abortion. I find it shocking that expectant mothers are warned of the possibility of post-natal depression after the delivery of their babies, and yet mothers about to abort their unborn children are told absolutely nothing of the depression, grief, guilt that could swamp them after an abortion.

Jennifer's third point is as follows:

> Information on what one can possibly expect from parenthood/motherhood. There should be some objective information on the challenges and inconveniences, and also the joys and rewards of bringing up children.

Her fourth point says:

> Information on fostering, adoption of children.

The fifth point:

> Information on where they can get further information and assistance from both pro-life and pro-choice organisations.

Mr Deputy Speaker, here is a woman who has, not once but twice, been through the process of abortion. She feels that, not once but twice, the process led her somewhere where she probably did not want to go. However, based on her experience, as a positive, she says there should be more information—women should be aware of what she has gone through and what they may go through. I believe it is that sort of advice, from somebody who has been there and felt the agony of abortion, that we should take into account today. To repeal the Health Regulation (Maternal Health Information) Act would be a great shame.

It is unfortunate that we are afraid of information. Information is meant to empower us, information has been used previously to keep people down because those who had it used it to their advantage. However, we are now swamped with information about the effects of abortion. If it is not conformed, then what will we do? Mr Berry has achieved his purpose of making it legal. How will we make it safe? How will we make it rare? I would suggest we do not make it safe, and we do not make it rare, by removing information from people when they are vulnerable.

Mr Deputy Speaker, there are many reports I could read through. "Fifteen studies link abortion and substance abuse"; "Half a million women may suffer from post-abortion syndrome"; and "New studies evaluate their effects on women's mental health". They go on and on.

However, I think we need to look at the more credible studies, if I can call them that. Let us try to find the studies that are independent of advice from either a pro-choice or a pro-life group. I refer to the STAKES study from Finland. Here we have a country, which has socialised abortion for 30 or 40 years, now saying their results show that abortion is a risk to women. I believe we ignore that at our peril.

If you wish to look at further information, in the journal called *Acta Obset. Gynecol. Scand.* There is a report of a Scandinavian gynaecology survey. That survey summarises the effect on women who had elective abortions and those who had delivered newborns. The women were tracked for 52 weeks—not a short period like, say, six or eight weeks—to find out which group would have the higher death rate. The report determined that women who had had elective terminations had 6½ times the risk of suicide and 14 times the risk of being a homicide victim. The total death risk for women who had had elective abortions was 3½ times that of women who had delivered babies.

That is from an organisation which does not have an axe to grind, which does not have a pro-choice or a pro-life point of view. This is an organisation that, looking at the data in an epidemiological way, has concluded that there is clear risk to women from having an abortion. I wonder why, then, we would go on.

Janet Daling, who is a well-known pro-abortionist, says:

> If politics gets involved in science it will really hold back the progress that we make. I have three sisters with breast cancer and I resent people messing with the scientific data to further their own agenda, be they pro-choice or pro-life.

She goes on to say:

> I would have loved to have found no association between breast cancer and abortion, but our research is rock solid, and our data is accurate. It's not a matter of believing, it's a matter of what is.

We in this place should not be making laws that put anyone at risk—let alone half the population, who, as females, may potentially seek an abortion—by not warning them appropriately of what may happen to them.

When you read through the list that I spoke of in the previous debate, and in this debate, you see that the consequences of abortion may be increased suicide rates, increased mental health problem rates, increased drug or alcohol abuse, increased self-harming behaviour, increased violent deaths and, it would appear, increased time in prison, because of self-harming behaviour. If we deny people access to that information when they are considering having an abortion, then we are negligent—we are making bad law.

I do not believe that, in a society like ours, and particularly in a city like Canberra, where people value access to education and value the access to knowledge that we have, we should be making it harder—rather than easier—for people, at a very difficult time, to get the full picture. When we put the health regulations in place, that is what we attempted to do. We said, "Let's make some information available. Let's make people aware of some of the downsides. Let's make people aware of what it is that they are aborting."

I repeat my standard question to all those who would vote pro-choice, to all those who would vote for this bill: tell me where life begins. Make it easy for me—make me amenable to your arguments. I notice that, yet again, no-one will tell me where life begins. If we do not know where life begins, we should be very, very cautious in what we do. If we are taking life—I believe we are destroying life with every abortion—then what we are doing is making a law to allow that to happen. What we are doing here, in this debate, is repealing a law that may stop that from happening.

Mr Deputy Speaker, if there is evidence out there which somebody can point me to, that tells me where life begins, and they can prove it to me, I will be a very happy man, because it would take this debate away from all of us—but they cannot. They do not answer my question. We are about to remove a law that allows people access to information at a difficult time—a law that gives people information to allow them to make informed decisions.

In this day and age, when you buy a car or sign up for a house, there is a cooling-off period. Women are making perhaps the most momentous decision in their lives—a decision that I believe will end another life and one which may expose them to all the things of which I have spoken. In view of all the reports I have put before people here, I cannot believe that we seek to deliberately take that knowledge away from people.

The argument, of course, will be: "If they want it, they can go and find it." A woman may be in turmoil, and really searching. If your name happened to be Katherine and you happened to go into an abortion clinic to ask for a balanced view, currently it would appear that you would not get it.

I believe that to remove this regulation—by removing the things that are put before women seeking an abortion—is to weaken the fabric of our society. We do this by reducing an unwanted foetus to the bundle of cells that people so carelessly speak about. I put the challenge again: tell me where life begins, and tell me how you know that, with the certainty that allows you to pass these laws and repeal this bill. *(Extension of time granted.)*

Tell me how you can repeal this bill with such certainty, and tell me that you know it will do no harm. The evidence before me may or may not be proven, but I believe much of it is proven. I believe much of it is indicative, and that more work needs to be done. Tell me how, with a clear conscience, you can say, "Let's give less information because abortion is okay—it is only a bundle of cells."

Mr Deputy Speaker, it is not a bundle of cells until somebody proves otherwise. I believe a life begins at conception. I believe that most of the chemical reaction which takes place is over by about six days. Much of the reading I have done says that all the things that need to be in place to say that that little bundle of cells is a human being have occurred by 14 days. It would appear that the 14th day is the last opportunity for it to divide into twins. So from 14 days onwards we have a life with its own human nature—its own personhood. I would like to know: Where is the evidence to say that it can occur somewhere down the track?

This evidence needs to be put before women considering an abortion. It is a convenience for them—it makes it easier for them, when they have a document that gives them information and shows the pro side and the against side. What are we afraid of? What are we as a society afraid of that stops us helping people, at a vulnerable time, by providing them with information in a reasonable form? What we are afraid of is the truth—that life begins at conception.

MR PRATT (5.42): Mr Deputy Speaker, I have concerns with Mr Berry's second bill—the Health Regulation (Maternal Health Information) Repeal Bill 2001. It certainly concerns me.

The Health Regulation (Maternal Health Information) Act 1998 has positive objectives which are, by no means, anti-choice. On the contrary, this act helps to ensure that women are provided with balanced information and medical advice, and that they are protected from making hasty, emotive decisions which they may soon after regret.

The maternal health act provides women with the ability to access information which is independent of the information provided by the abortion clinic, including basic information on the unborn child and the risks and possible side effects of the abortion operation. It ensures that women are given a minimum amount and standard of information about what abortion involves—not just a one-sided medical opinion.

The current legislation provides women with a compulsory cooling-off period of 72 hours. This allows time for counselling and time to think about the important issues surrounding what is often an emotional decision. It provides women with a chance to have genuine choice, based upon relevant, independent, material being made available, and allows time for them to weigh up all the options. To quote a letter I received recently from Archbishop Carroll, the key phrase in that letter states:

> It is not a choice if the only solution advanced by the community is abortion.

I will repeat that, Mr Deputy Speaker:

> It is not a choice if the only solution advanced by the community is abortion.

I was surprised today, on the issue of wisdom—who has the wisdom, and who exercises wisdom in respect of this issue—to hear a comment from Ms Tucker regarding the wisdom of making life and death decisions about pregnancy.

She seemed to put herself in Jesus' sandals with respect to his alleged view on the matter of choice. I would not dare, or pretend, to put myself into the mindset of Jesus. However, from my understanding of their teachings I reckon that Jesus, Mohammed, the esteemed Buddha, and the Hindu gods et al, would say, "Hey listen! Do not trifle with life. Respect life—respect the sanctity of life. In these cases, seek and exercise wisdom and wise counsel." That is what I think those leaders, in the development of a philosophy, would have said.

Furthermore, the act, as it stands, protects the rights of others to choose whether or not they wish to be part of an abortion process. The act provides for the right of persons and bodies to refuse to participate in abortions.

Mr Deputy Speaker, this is a critical issue. It is important that we have an act that allows medical practitioners, institutions and professionals to make a choice about whether they should or should not be involved.

To best illustrate the dilemma which would evolve if this protection were withdrawn, I want to quote from a letter I have received from concerned doctors. The doctors say:

> As ACT Medical Practitioners we urge you to vote against Mr. Wayne Berry's bills relating to abortion. We object to a number of aspects and implications of these bills including:

There are three key issues. Firstly, they talk about the removal of the requirement for women to be provided with objective information regarding abortion—"the decision about which has such obvious major medical and ethical implications".

Secondly, they go on to say they are concerned about the removal of legal protection for the unborn child up to the time of birth. "The spectre of late-term abortions would become a real and horrible possibility for the nation's capital."

Thirdly, they talk about the loss of legal requirement for full statistical records to be kept and provided to the Health Minister. There is a clinic of some 25 doctors who have signed this letter, representing a wide cross-section of the community. These doctors go on to say:

> Current pro abortion lobbying appears to focus upon emotive arguments around backyard abortions, and assertions that a 72 hour cooling off period implies that women are being patronized and are somehow unable to make mature decisions

> regarding there own bodies. In practice, abortion in the ACT is both freely available and easily accessible.

I feel this is the key comment in this letter which encapsulates the position that I stand for and which I would like to see the Assembly stand firmly on. These doctors go on to say:

> A very real risk seen by those of us at the coalface is of young women in emotionally vulnerable situations, being pressured into hasty decisions that they do not have adequate time to consider. Three days is a trivial price to pay for a small amount of breathing space, which provides more opportunity for informed, well-considered choices.

They finish off by saying:

> Leaving current provisions in law causing no harm and prevents no woman accessing an abortion.

What is the harm in that? The quote continues:

> Removing current provisions however involves major risks and hazards for no practical benefit for any woman or to our community.

I also quote from a letter from a community group known as the Real Alternatives for Women Society. This is a very sensible letter. Their spokesperson says:

> Dear Mr. Pratt,
>
> I am a science graduate with honours, a secondary teacher of seven years and a young mother. I am very passionate about the welfare of women, family and community as a whole. I wish to express my deep concerns over the options for women/Berry abortion campaign. Ironically the words ‘freedom of choice’ and ‘options for women’ are inappropriately used in an abortion campaign which lacks rationality, promotes naivety and seeks to rob women of their reproductive rights.
>
> How many of us would undergo any serious medical procedure without first finding out what is involved, what the risks are and whether there were any other alternatives? The Health Regulation (Maternal Information) Act (1998) requires that women be informed of an abortion procedure, the risks and options available to them. Indeed it is unthinkable in this day and age that this information not be required to be given to women. The push to remove requirements to information is a push for naivety. This to me as a woman is offensive and patronising.

I am quoting the spokesperson. She continues:

> It would impede and jeopardise my ability to make an informed and free decision. It is similarly naïve and contrary to the testimonies of many women to say that abortion providers. Doctors will always, objectively give to every woman all the above information.
>
> Current legislation also requires a waiting or ‘cooling off’ period of three days from when a woman books in for an abortion and when the medical procedures take place. How many of us book in for a non-emergency procedure and expect it to be

> carried out on the same day? Yet the pro-abortionists argue that the wait is ridiculous. This medical procedure is unique in that it significantly affects another life and if any woman intending to abort is not aware of this fact then she has been mislead and uninformed.

She goes on to say:

> Many women I have spoken to say that the news of an unexpected pregnancy, especially in less than ideal conditions, is a very emotionally difficult and confusing time. Surely even the pro-abortionists must recognise that the best decision for some women is not to have an abortion. The waiting period attempts to protect women considering an abortion from making a coerced, uninformed or rash decision.

She asks the question, "Isn't that assisting 'freedom in choice'?" Of course it is, Mr Deputy Speaker. Those are the key issues from that letter. I would like to table this letter, if I may. I would also like to table the letter produced to me by the doctors.

Leave granted.

MR PRATT: I present the following papers:

> Abortion bills—
> Facsimile copy of letter to all MLAs from 20 doctors, Gordon Valley Medical, dated 20 August 2002.
> Copy of email to Mr Pratt from a member of Real alternatives for women (RAW), dated 3 June 2002.

I conclude by saying this: there is no harm in the current law. It does not prevent women from entering into an abortion process. So what is the big deal? It does protect our medical professionals. How will removing the current provisions in the maternal health information act introduce major benefits? What it does, indeed, is introduce risks. It introduces major dangers. That is why, Mr Deputy Speaker, I will not support the bill.

MS DUNDAS (5.30): Mr Deputy Speaker, I am glad and happy to support the repeal of this act. In 1998, I joined the crowd that filled the square in front of this Assembly to protest against the introduction of the Health Regulation (Maternal Health Information) Act. I was then, as I am now, a member of the Women's Electoral Lobby, which has fought since 1972 to do what we have achieved today—to make an abortion not a crime.

They have fought to make sure that women are free to make choices. I believe abortion should be treated in the same way, under our law, as any other medical procedure. This regulation treated abortion as profoundly different from all other procedures. I have no difficulty with statistics being collected on the number of terminations conducted, but I do object to the provisions in this regulation that require reasons for abortions to be publicly reported. We do not collect this information for other medical procedures, including those relating to IVF.

I believe this regulation patronises women. It assumes that the provision of more information by a doctor would change the decision a woman makes about terminating a pregnancy. This is a complex and difficult decision that a woman considers very carefully before she goes down either path.

We all know that women do not treat abortion lightly. Every woman who has reached the decision to have an abortion has considered the physical and emotional consequences. All this law did was increase the trauma and inconvenience for women who had made a decision to pursue a termination.

The 72-hour cooling-off period is one of the major things that I do not like about the Health Regulation (Maternal Health Information) Act. The 72-hour cooling-off period has resulted in women in the ACT travelling to Queanbeyan to have abortions. It has also meant that women who live in the rural New South Wales surrounds have had to travel twice to the ACT if they are to undergo an abortion—at great cost to themselves, their emotional health and their mental stability.

These women have been told that they have not thought about it enough, when I believe they had. Many of these women cannot afford the extra expense of either travelling to Canberra twice, or staying here for three days. An already difficult situation becomes much harder.

I am very pleased and proud to be standing here to vote for the repeal of the Health Regulation (Maternal Health Information) Act. I see no need to retain any part of this regulation and I support its abolition.

MR HUMPHRIES (Leader of the Opposition) (5.57): Mr Deputy Speaker, I do not support the passage of this bill. I am yet to hear, in this debate, an argument as to why the sorts of things that the Health Regulation (Maternal Health Information) Act does are inappropriate and should be dispensed with. Let us examine what the Health Regulation (Maternal Health Information) Act 1998 actually does.

It requires the reporting of abortion procedures to health authorities. It allows indicators of statistical trends to be determined, to understand what is happening with abortion. If we believe, as Mr Berry says he believes, that abortion should be rare, then we have to know how rare it is before it is possible to determine whether we have achieved our goals in respect of this kind of procedure. The publication of those statistics provides information as to what antenatal supports might be lacking to women who experience problems with pregnancy. That goes out the window with the passage of this bill tonight.

The provision of expert, independent information to a woman considering an abortion is the other element of this legislation. It protects the woman from ignorance about the abortion procedure and the risk to herself, and provides information about the development of her baby. The act provides for a cooling-off period of three days between approaching the abortion facility and submitting to the procedure. This measure is intended to ensure that the girl or woman is not subjected to pressing and immediate pressure from any third party, if at all possible. Most importantly, it protects the rights of people to refuse to be involved in the performance of an abortion operation, to counsel a woman for abortion, or to refer a woman for abortion.

What conceivable argument could there be against each of these matters being present in the law of the territory? As has been said before, in equivalent circumstances where other important decisions are being made by a woman—or by a person in general—we would be happy to recommend access to independent advice where the decision is a major one.

Of course we would require a cooling-off period. We require a cooling-off period of 10 days for a purchase made from a door-to-door salesman in the territory—10 days, Mr Deputy Speaker—yet we are not prepared to countenance a three-day cooling-off period in respect of the conduction of an abortion. Goodness me!

Ms Gallagher: You do not know you are going to buy something for four weeks. You cannot draw a conclusion from that!

MR HUMPHRIES: I agree there is no comparison between those things. But if the law says we have to give people the chance to take 10 days to think about whether they should buy a vacuum cleaner, why should we not have a provision which requires someone to spend just three days thinking about whether it is appropriate to have an abortion? Of course we support the collection of statistics in other, equivalent, circumstances, but not here—not in respect of women contemplating abortion.

Let me explode one of the myths that have been repeated again and again in the context of this debate. That is the myth that, at the present time, women are required to look at pictures of foetuses before they have an abortion. This legislation has been in place since 1998, and the provision to look at pictures of foetuses was repealed more than six months ago. In this legislation, there is not necessarily a requirement—

Mr Berry: But it is enabling legislation.

MR HUMPHRIES: Yes, it does enable it. This Assembly has the ability to disallow regulation which includes, in the information which goes to women contemplating abortions, the showing of foetuses. If the Assembly today repeals the Health Regulation (Maternal Health Information) Act, there is no capacity to require women to be given or shown anything before they make that decision. There is no requirement that they be shown information about the process, or the effect on them, of this procedure. There is no requirement that they be given information about counselling services—whether counselling before an abortion is conducted, or support services if they choose to continue their pregnancy. There is no requirement whatsoever.

There is no requirement to give women information about where they may turn to. I cannot believe members are so prepared to dispense with those requirements when I imagine that, in equivalent circumstances, we would be rushing to protect and support people making such major decisions. Apparently it does not matter. If it can be viewed as somehow standing in the way of a person proceeding to obtain their abortion, then we do not want it.

Mr Deputy Speaker, I think the arguments used here have been utterly fallacious and are without a basis in common sense. The suggestion has been made that putting these requirements on women interferes with the autonomy women have over their own bodies—that the Assembly is legislating to do things in respect of women's bodies that it has no right to do. That is nonsense.

In November 1995, I introduced legislation in this place which did precisely that. It interfered directly and very substantially with the right of women to make decisions about their own bodies. What is more, that legislation was supported by women's groups across the territory, and by every member of this chamber. That was, of course,

legislation to outlaw female genital mutilation—also known as female circumcision. Members had no problem on that occasion legislating with regard to the decisions that women make about their own bodies. It appears that this is a very flexible principle with respect to such matters.

The passage of this legislation back in 1998 was quite controversial. It was accompanied by a great deal of histrionics, chest-beating and other dire warnings of imminent disaster. One of the claims made about this act was that, if it was passed, it would end abortions in the ACT—they would cease within a few weeks. The claim was made, Mr Berry, and that dire warning was never fulfilled.

This legislation has not prevented women who have genuinely and clearly wanted to have an abortion from obtaining a termination. What it may have done is provide some women with a fuller set of information which I believe may well have led, in a number of cases, to those women making decisions which resulted in their not having abortions.

If Mr Berry is serious about his claim that he wants abortion to be rare, then putting a full picture before the women of this community is an essential ingredient in that exercise. You cannot possibly hope to educate people about the consequences of their decisions if the one vehicle for that education, which would ensure that every woman contemplating such a decision receives educative material, is removed. You cannot have your cake and eat it too. If we are serious about providing people with the right information, and the fullest information, then we have no choice but to leave this legislation in place.

The content of the information is not the issue. If members of this place are dissatisfied with certain things that have previously appeared within that information, then they use their power—their numbers in this place—to ensure that that information is not provided. Without the power to mandate the provision of the information, nothing need reach women in those circumstances—nothing whatsoever.

The next time a woman in this territory is in the position of regretting a decision to have an abortion, in circumstances where she has not been provided with adequate information, we need to ask ourselves whether, because of a decision we might make tonight to remove the power to put that information before women in those circumstances, we have let such a person down.

MRS DUNNE (6.08): Why are the members of this place afraid of an informed woman? Why are you, Mr Berry, afraid of informing women?

Mr Berry: I am not, at all.

MRS DUNNE: You are. Why are you afraid of three little postage-stamp-sized pictures? That is what it boiled down to. As Mr Humphries has said, the content of that publication could have been changed at any time, had you wanted to change it.

Why are you so afraid, that you will take away the rights of ACT women to look at it if they wish to? Why are you so afraid, that you are not prepared to tell the 18-year-old girls who go down to that clinic that, if they have an abortion, by the age of 45 they will probably have breast cancer?

Mr Berry: Because it is not true.

MRS DUNNE: Why are you afraid, Mr Berry? Why are you afraid? Why are all of you afraid to tell the truth, in this place, about what happens with abortion? Why are you afraid to tell the women who go down the road to that place that there are alternatives for them?

Why are you taking away the booklet that says that, if they do not want to go there, there are other people who can help them? Why are you subjecting people to this? I will relate one story of somebody who did not know where to go.

> Today I oppose abortion because abortion is a lie. It always was. I know, because I told the lie that it got it all started …
>
> I said I was gang raped. And I wasn't. I said I didn't know who the father was. And I did. I said I hated my baby. And I didn't. And I said the Constitution protected my right to abortion. And it's nowhere to be found. I simply made it all up. And now, 41 million babies are dead, and counting …
>
> Most people don't know I never killed my baby. I never did have the abortion on which the case was based. I gave her up for adoption instead. You see [I discovered that] my lawyer never wanted to help me. She only wanted to use me by getting my name on that affidavit. She wanted me to help her legalize the violent slaughter of innocent babies … just like she had killed hers. Although she had never met the man who broke into my childhood and destroyed my innocence with his lustful attacks, and although she didn't know the man who got me pregnant and then beat me up for it—she used me just the same [as they did].

The woman who wrote this is named Norma McCovey, but everyone else knows her as Jane Rowe. She goes on to say:

> I never signed up to become a sacrificial lamb for anyone, I was desperate, [I was] scared and alone. I was just a young woman who needed help, and I turned to the wrong people.

Mr Berry is going to perpetuate this in the ACT, for the young people who, from time to time, need to go somewhere. He will not let them find out that there is an alternative to going down to the clinic and getting rid of it. In this town, there is no place, in the 21st century, for such ill feeling and barbarity.

Earlier in this debate, I pointed out the dramatic drop in the rate of abortions in the ACT in the past two years, since we began collecting statistics. The abortion rate has dropped by 25 per cent since the passage of the Health Regulation (Maternal Health Information) Act. I have no doubt that that is due to the cooling-off period and the information provided to mothers. I have no doubt that, except for today, that would continue. I have no doubt that, from time to time, legislators and people who are concerned about the rate of abortion in the ACT—as Mr Wood and I are concerned—would look at these figures and they would make us pause.

I seek leave to table two papers. Most members of this place would not have seen these. The first is the consolidated statistics, collected over the three years of the operation of the maternal health information act. I do not think that most members have seen them together.

Leave granted.

MRS DUNNE: I present the following papers:

> "Private TCH, RHC, Total" for 1999-2000 – 2001-02—Statistics and a chart.

Along with that, there is a table. It is a small table but it shows a dramatic picture. It shows a dramatic picture of what a simple piece of legislation which was so actively opposed by some members in this place could do. But it was actively opposed only by some members. There were other members who, despite the fact that they were pro-choice, were prepared to say that this was a good thing.

On the night this legislation was passed in 1998, Kate Carnell said that real choice is about having a full suite of information. She said that she was pro-choice, but that she believed choice should be available for women or, for that matter, for anybody else in this community, only when they know what that choice entails—that it is a total breadth of choice.

Tonight in this place, courtesy of Mr Berry and his legislation, we will go back to the dark ages when women were kept in the dark. We have to look at these figures and ask the question why Mr Berry and his cohort want to suppress these statistics. Ms Tucker also needs to answer this question. She claims to be pro-choice, but she does not want to let the information out—that, in the ACT, and across the Western world, against the tide, we are seeing a marked reduction in abortions. This is something we should be proud of. But today is a black day, because we are turning the figures around, we are turning off the information so that in future we will never know what happens. We will never know how many people go down to that clinic and put themselves at risk. Not today!

It is nice and clean and clinical, and they use nice, sterilised implements. Yes, it is clean, but we do not know what is going to happen to them when they are 45 and they suddenly discover they have breast cancer—because Mr Berry, Ms Tucker, Ms Gallagher and the people who support them will not permit them to know that they might get breast cancer in a few years time.

In addition to that, it is not just breast cancer, it is the whole panoply of things that can go wrong. Your total mortality in the year after an abortion, compared to someone delivering at full term, goes up by 252 per cent. Do the young girls and women of Canberra know that? They are 324 per cent more likely to die in accidents. Often it is that, because they feel so bad about what has happened, they take bad risks. They are also 546 per cent more likely to commit suicide.

Do you want this to happen to the women of this town? I suspect you do. I suspect you do not care! Every time a woman submits herself to a termination, she submits herself to those risks. And get this one! If she has an abortion rather than carrying to term, in the year after that event, she is 1,299 per cent more likely to be murdered.

Ms Gallagher: For God's sake, Vicki!

MRS DUNNE: Katy, you can shake your head. You can brush it away, but these are the figures collected over a long period of time—not by me. I make no point about it.

Mr Hargreaves: On a point of order, Mr Deputy Speaker: I understand there is a standing order about comments which reflect adversely on a member. I think that last comment reflects adversely on my colleague. I seek that that comment be withdrawn.

MRS DUNNE: If I have reflected, I withdraw. But you cannot deny the statistics. They are not mine—I did not make them up. They did not come from some fruity pro-lifer like me, they came from a Scandinavian journal of obstetrics and gynaecology.

All we want to do is hide away the facts. What we want to do today is the simple thing—abolish the statistics and hope that the problem will go away. The real issue here today, in addition to hiding information from women, is that what Mr Berry and Ms Gallagher propose to do is take away the rights of doctors, nurses and institutions in the ACT to choose not to be involved in abortions.

Some members have said they will vote for Mr Berry's Health Regulation (Maternal Health Information) Repeal Bill because they can then go back and put in the watered-down conscientious objection provision that has been proposed by Ms Gallagher. As I said earlier today, Mr Deputy Speaker, that provision, especially if the amendments circulated by Ms Tucker come into effect, means that we here exercise our conscience so that the doctors, nurses and hospitals in this place who do not want to be involved in abortion will be unable to do so.

The worst thing we do today is for us to exercise our conscience so that someone else may not. This is a day of shame. This is the greatest shame of the day. If you do this, you have conscripted the consciences of other people while you get to exercise your own.

MS GALLAGHER (6.18): Mr Deputy Speaker, I rise to speak in support of Mr Berry's bill, but not to speak on my bill. I believe that women have the right to make choices about their own health. I believe that women have the right to determine if and when they want children, and how many. I believe that women have the right to decide in what circumstances they find it acceptable to have a child and what circumstances they do not. I believe that the Health Regulation (Maternal Health Information) Act should be repealed.

I find it interesting that both parties have declared this issue as necessitating a conscience vote. It is such an important issue on which we all hold strong and personal views, yet when a woman comes to make this choice for herself, the Health Regulation (Maternal Health Information) Act undermines her right to the same privilege—the privilege of consulting her conscience on an issue that is deeply important and personal to her.

Mrs Dunne: Wrong! Not true!

MS GALLAGHER: Vicki, we have listened to a lot of stuff you have said that is not true. I believe that is true. Real choice is about, as far as possible, having a neutral environment in which to make a decision and then having the decision accepted as legitimate and correct for the person who made it. The bill Mr Berry seeks to repeal undermines the process of choice by undermining women, devaluing their choices, questioning the legitimacy of their decision-making ability, and by patronising them.

I believe that the Health Regulation (Maternal Health Information) Act limits the ability of the women of Canberra to access true equality because it limits and questions their ability to make the most personal of choices. The 72-hour waiting period not only undermines a woman's decision, it suggests that women are not capable of making such a considered decision at the same time as reducing their access to abortion services. We heard Mr Humphries comparing that to buying a vacuum cleaner and having to wait 10 days before you could decide.

I would suggest that, in the analogy he used, perhaps before the door-to-door salesman had turned up on the doorstep, the person had not thought about whether they wanted to buy a vacuum cleaner. However, I believe that, if you have an unplanned pregnancy and you are not sure what to do about it, you are thinking about it for a lot longer than 72 hours.

During the past few months, I visited the Reproductive Health Care Services on two occasions. One occasion was because I had received a lot of information saying that, if Mr Berry's bill were to succeed, women would not have access to information about the procedure—and that they would not have to be informed about it.

I do not know how many other members of this place went, but I attended the clinic and asked to be taken right through the process of a woman using the clinic. The staff helped whatever member was there. I know that a few members went. The staff took time out of their schedules to educate me about their service.

The Reproductive Health Care Services currently provide well in excess of what is required under the maternal health information act. I will list what they provide.

They provide a brochure which explains the procedure in detail, the steps associated with the procedure, if the woman decides to go along with the procedure, what she should bring with her, pre and post-operative care, cost, and issues such as transport and child care.

There is also a leaflet on clients' rights and responsibilities which lists women's rights, including the right to detailed information in relation to condition, treatment, side effects, possible outcomes—in order to make informed choices—and details of the complaints procedure. There is a pamphlet about sedation, local anaesthetic including risks, the preparation required, and recovery. There is a leaflet which provides post-operative care instructions, and one on possible effects and complications. There is a consent form, information about the Health Regulation (Maternal Health Information) Act, a declaration form, two forms for administrative information and client progress notes, and a leaflet entitled "How to Cope Successfully After Abortion".

In total, there are 12 separate information brochures in this package, excluding the information issued under the act. Women receive all this information prior to giving consent for any procedure to occur.

We are privileged in this place, Mr Deputy Speaker, because we have the right to choose on this issue in accordance with our own consciences—to do what we think is right with reference to our own beliefs, past histories and circumstances. However, as long as this act remains, this privilege stays in the room with us.

I am asking members today to trust women—trust that they are capable of making considered decisions, and that they will put as much thought into such decisions as members will have put into how they cast their votes on this issue. I ask members to realise that freedom to choose does not mean that a particular choice is then made. I ask members to recognise that women make these decisions with reference to their own beliefs and circumstances, based on personal and private considerations that we in this place could not possibly hope to predict.

If members would not choose abortion for themselves or their loved ones, I would like them to appreciate that their choice, if made freely and without pressure, is made more legitimate and is more respected.

Please repeal this act and extend the right to choose, and the legitimacy and respect that comes with that right, to all women in the ACT.

Sitting suspended from 6.24 to 8.02 pm.

MR STEFANIAK (8.02): I have an amendment to Ms Gallagher's bill, but I will speak to both bills. Now that Mr Berry has got up his controversial bill, it is more important than ever that the Health Regulation (Maternal Health Information) Act should remain.

I can recall, Mr Deputy Speaker, as you and a number of members in this place no doubt can, how this legislation came about when we were in government. It was very much a compromise. It is very good legislation which persons who are pro-life and persons who are pro-choice can support. Logically, they would have some trouble opposing it, if logic comes into it.

The legislation was introduced by Mr Osborne and amended with a lot of input from Michael Moore, who was very much a pro-lifer. Some people might describe Mr Moore as a screaming leftie. He described himself as a feminist. To use Mr Berry's word, he was a progressive. Yet he was almost the co-author of what we ended up with, with some help from Mr Humphries and some very good drafting by counsel. I cannot remember exactly what was amended and what was not.

Mrs Dunne: I can.

MR STEFANIAK: Mrs Dunne says she can. She was working with Mr Humphries at the time. We ended up with pretty good legislation, enabling women to receive information and to pause and think. It was not only information about why they should not have an abortion.

Sections 8, 9 and 10 are the crucial sections. The scrutiny of bills report gives the pros and cons and the arguments on both sides of the rights issues involved. It comments on some of the sections that would be repealed if Mr Berry's bill got up. It makes some very powerful comments on the rights of women and how they could be adversely affected by information not being provided.

Who could oppose sections 8, 9 and 10? Section 8 states:

> **8 What information must be provided**
>
> (1) Where it is proposed to perform an abortion a medical practitioner shall—
>
> (a) properly, appropriately and adequately provide the woman with advice about—
>
> (i) the medical risks of termination of pregnancy and of carrying a pregnancy to term; and
>
> (ii) any particular medical risks specific to the woman concerned of termination of pregnancy and of carrying a pregnancy to term; and
>
> (iii) any particular medical risks associated with the type of abortion procedure proposed to be used; and
>
> (iv) the probable gestational age of the foetus at the time the abortion will be performed; and
>
> (b) offer the woman the opportunity of referral to appropriate and adequate counselling—
>
> (i) about her decision to terminate the pregnancy or to carry the pregnancy to term; and
>
> (ii) after termination of pregnancy or during and after carrying the pregnancy to term; and
>
> (c) provide the woman with any information approved under section 14 (2)—

which deals with the advisory panel appointed by the minister to approve this information—

> (d) provide the woman with any information approved under section 14 (4); and
>
> (e) provide the woman with any information approved under section 14 (5).
>
> (2) No charge shall be made for the materials provided under subsection (1) (c), (1) (d) or (1) (e).
>
> (3) Complying with this section does not in itself discharge any other contractual, statutory or other legal obligation of a medical practitioner or other person to provide information to a patient.

Section 9 refers to a declaration that the information has been provided, provides that people should not make a false declaration and provides for a penalty if they do. Section 10, which was quoted by the scrutiny of bills committee, states:

10 Abortion must not be performed without consent

(1) A person shall not perform an abortion on a woman unless her consent has been obtained in writing, stating the date and time, at a time not less than 72 hours after making a declaration under section 9.

Maximum penalty: 50 penalty units.

(2) Nothing in this section affects a consent given, or taken to be given, on behalf of the woman by a person with authority to do so in circumstances where the woman is unable to give consent herself.

Those are very well thought-out sections. Someone over the other side pooh-poohed Mr Humphries for mentioning that you have 10 days to decide whether to buy a vacuum cleaner or not. In the ACT you have an indefinite period to decide whether you want to enter a contract to buy a house or not. In New South Wales there is a statutory five-day cooling-off period. In other areas of the law there are many instances of cooling-off periods.

Those opposite, in opposition and now in government, have mouthed platitudes—but good ones—about the need to give people information, to provide open government, to keep the community informed, to make sure that people have all the relevant material to make informed decisions.

It is completely inconsistent, and indeed hypocritical, to now say, "We do not want the Health Regulation (Maternal Health Information) Act. It is patronising. Women can make up their own minds." Of course they will. Why in this one area are you going to repeal an act which provides for information on a number of issues both ways, on risks and on issues relevant to a decision that is far more important than a decision to buy a vacuum cleaner or even a house?

It is illogical that this information should not be given. Maybe it influences people; maybe it does not. I am concerned about reports such as the one I read out earlier today.

Mr Berry: You do not have to read that again.

MR STEFANIAK: I am not going to read it again. I have already done so. Katherine Smith, which is not her name, made a very powerful statement. She felt pressured into having an abortion. If you are pro-choice, if you genuinely believe that it is very much a matter for the woman concerned, why would you want someone pressured? Why would you not want to enable that person to receive information, not only on the medical risks of termination of pregnancy, to take section 8 (1) (a) (i) as an example, but also on the medical risks of carrying a pregnancy to term? I find that completely inconsistent and somewhat hypocritical.

I think we will be very much the worse if this act is repealed, which it seems, on the numbers, it will be. This is a sad day. Mr Berry has won his argument. He has decriminalised abortion. Mr Osborne's bill was drafted by not just one person—it was not just the Osborne bill—but a number of people. It was debated at length, as thing usually are, in the Assembly, with amendments made on the day. It looks like it is now going to be repealed.

Sensible information, a small cooling-off period and other sensible precautions will go out the window. That is completely inconsistent with so many other laws that require that people be given information. People have to have a cooling-off period. People have to have all these protections. This bill will stop information. It will ensure that people do not have both sides. It will make it easier for situations such as that Katherine Smith speaks about to occur. Regardless of which side of this debate you are on, you are sadly mistaken if you feel that getting rid of this act is going to help.

It certainly will not help people who are pro-life. I do not think it will help even people who are genuinely pro-choice. It will deprive them of necessary information. It will deprive them of a period to cool off, in a decision that is far more important than buying a vacuum cleaner or even a house. I would urge members to oppose this bill.

MS TUCKER (8.13): In discussing the repeal of Mr Osborne's amended legislation, it has to be recognised that Mr Osborne was coming from a position of faith which was opposed totally to abortion. In an examination of the merits of his bill in genuinely addressing the welfare of women, his bill does not stand up. We need to look at the best system for allowing women legal, mental, personal and social space to weigh up the issues for themselves, with easy access to whatever support—counselling, medical and other information—they need to work through their own decision. The proposal to repeal this act is a means to remove some of the hoops and some of the means of applying additional pressure that are part of this law.

One of the sections described as protective of women provides for a compulsory booklet. This booklet includes some basic information about the physical risks and about contacts for information.

Mrs Dunne: I take a point of order, Mr Deputy Speaker. Ms Tucker has said that the booklet provided under the Health Regulation (Maternal Health Information) Act was compulsory. It is not. It is to be provided to someone. It does not have to be read.

MR DEPUTY SPEAKER: There is no point of order, Mrs Dunne. If you wish to refute Ms Tucker's comments later on, you may do so.

MS TUCKER: When you compare it, for instance, with the counselling guide used by the clinic, it does not assist a woman in exploring the issues. But it is not the provision of information and not the particular information that are the problem here. The problem is that this booklet is in the law and there is a compulsion to offer it.

Compulsion contradicts the basis of good treatment by any professional—that it be tailored to the individual. It is wrong for legislators to have interfered in this assessment in such a personal decision.

As an illustration of how dangerous it is for legislators to be so involved against the advice of people better informed and professionally trained, remember that very first version of the booklet which I brought to the attention of members. The pictures were quite incorrect. The ages of the foetuses were not properly represented in the pictures.

The availability of counselling, of information, is important. But let us be clear. Information, counselling and support were available without coercion before this legislation and will continue to be without it.

Western Australia has an additional informed consent provision, but it does not specify materials and it does not include signing a form or a cooling-off period. Neither South Australia nor the Northern Territory specifies additional informed consent requirements.

In South Africa there is just a provision requiring the state to promote non-mandatory, non-directive counselling before and after the termination of a pregnancy. This is an interesting model to reflect on. This does not compel particular views or particular materials.

The only other cases in ACT law that I could find which specified additional written informed consent requirements involved procedures not requested by the person who is to consent—specifically, forensic procedures such as taking blood samples and DNA testing swabs from suspects for a criminal investigation.

Victorian law spells out additional informed consent provisions for treatment of a mental illness. These situations are substantially different from the situation where a woman has herself requested an abortion. The health department can continue to publish a booklet that lists alternatives—anyone can do that—and make it broadly available.

When I went to the clinic, I collected the material that was available there. Of course a lot more is available in the library. The booklet that is enshrined in legislation has about 11 pages. It has a lot of white space in it. It gives a fairly broad cover. When you go to the clinic, you get the Reproductive Healthcare Services termination of pregnancy client information folder. You get information on possible after-effects and complications, information on intravenous sedation with local anaesthetic, termination of pregnancy information for the general practitioner, termination of pregnancy postoperative instructions, a comprehensive booklet called "How to cope successfully after an abortion" that deals with how women feel after an abortion, counselling, guilt, anger, sadness, regret. There is a pregnancy decision-making questionnaire with questions such as:

> How do I feel about this pregnancy?
> Was it intended?
> How do I feel about continuing it?
> How will I feel six months from now if I continue?
> How will I feel in two years?
> If I continue, what would change in my life? (Consider: finances, career, education, housing, emotional state, relationship with partner, relationship with family, relationship with friends etc.)
> Am I in a position to support myself/A child?
> Who can support me if I can't?
> How do I feel about adoption or other alternative parenting options such as temporary care for a child by someone else?
> What are the other options available?
> How do I feel about relinquishing a child temporarily or permanently (adoption)?
> How will I feel six months from now if I consider somebody else caring for my baby temporarily or permanently?
> What are the pros and cons of adoption?

How will I feel a year after the adoption is completed?
How do I feel about abortion?
How do I feel about having an abortion?
What are the pros and cons of abortion?
How will I feel six months from now if I have an abortion?
How will I feel in two years?
What are my ethical/religious beliefs about abortion?
When do I believe a life begins?
How do these beliefs affect this decision?
Am I making this decision freely?

There is information available.

While the 72-hour cooling-off period is well intentioned, there are problems with it and not much benefit. This administrative procedure interferes to the detriment in particular of women from the surrounding region. The decision, in any case, is one that women do not generally rush into. One speaker tonight compared it to making a decision when a door-to-door salesman calls to sell a vacuum cleaner. That is an interesting indication of what some people think this decision is like for women. Someone coming to my door and offering to sell me something is put into the same category as me getting pregnant and considering whether or not to terminate that pregnancy. People who put that argument apparently do not believe that women find this difficult, which is a contradiction of what they are arguing. That comparison is quite curious.

Providers must exercise care in ensuring that the women asking for an abortion are informed of the risks, as they must be for other procedures, and that they are clear about their decision. All medical procedures, including abortion, require the practitioner to obtain the patient's written consent. This is not spelled out directly in the ACT law. If it were, it would be an improvement, and perhaps we might see it in the mooted new Health Act. But it is an established part of common law, as Mr Berry detailed in the earlier debate.

Mrs Dunne made a few passionate statements—maybe she was upset and was not careful with her words—about breast cancer. Mrs Dunne put on the public record for the ACT community that we had failed because we had not told 18-year-old girls in Canberra that if they had an abortion they would probably get breast cancer at the age of 45.

That is a very strong statement. I am concerned that Mrs Dunne made it in this Assembly without prefacing it with some qualification. She suggested that this is a fact. This place requires that we take very seriously what we say, because it obviously has an impact in the ACT community. I would like to balance that statement with some of the research I have done. While researchers do not know what causes breast cancer, reproductive factors have been associated with risk for the disease since the 17th century, when breast cancer was noted to be more prevalent among nuns.

It is known that having a full-time pregnancy early in a woman's child-bearing years is protective against breast cancer. Some studies have also indicated that breastfeeding, especially in women who are young when they give birth, may reduce a woman's risk of developing the disease. A woman's age at menarche and menopause also influences her risk of breast cancer, with earlier onset of regular menstrual cycles and later age at menopause associated with higher risk (Kelsey and Gammon, 1991). However, the best

available evidence from large, population-based cohort studies shows no net effect that induced abortion places women at increased risk of developing breast cancer (Bartholomew and Grimes, 1998).

At least 75 research studies worldwide have collected data about breast cancer and reproductive factors such as childbirth, menstrual cycles, birth control pills and abortion. Approximately 25 studies have examined the risk of developing breast cancer for women who have had abortions. Cancer researchers at the National Cancer Institute, the American Cancer Society and major universities say that the most reliable studies show no increased risk, and they consider the entire body of research inconclusive.

In Australia a comprehensive review of medical evidence on the after-effects and complications of abortion was carried out for the national guidelines on abortion produced by the Royal College of Obstetricians and Gynaecologists in March 2000. The report stressed that the risks were much lower for early abortions—that is, up to 12 weeks—than for those over 20 weeks but pointed out that complications of abortion at any stage of pregnancy are rare. The booklet enshrined in the legislation says that complications are more likely if the pregnancy goes to full term.

Only a small minority of women experience any long-term adverse psychological effects after abortion. Early distress, although common, is usually a continuation of symptoms present before the abortion. On the other hand, long-lasting negative effects on both mothers and their children are reported where abortion has been denied.

Haemorrhage (bleeding) at the time of abortion is rare. Uterine perforation (damage to the womb at the time of the surgical abortion) is rare. Cervical trauma (damage to the cervix) is no greater than 1 per cent. Infection of varying degrees of severity occurs in up to 10 per cent of cases, but the risk is reduced when antibiotics are given at the time of abortion. Available evidence on an association between abortion and breast cancer is inconclusive. There are no proven associations between abortion and subsequent infertility or premature births.

The most authoritative study in this country on the after-effects of abortion was carried out jointly by the Royal College of General Practitioners and the Royal College of Obstetricians and Gynaecologists and involved more than 30,000 pregnant women.

The point I am trying to make is that it is absolutely clear that there are different views on this subject. I think it would be responsible for Mrs Dunne to qualify her statement. She obviously has a study which supports what she believes is the case, and she has every right to quote it, but I think it is irresponsible for her to make a blanket statement and alarm people in the community to that degree.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (8.27): I wish to make a short contribution to the debate. I support the bill. The crux of the issue is compulsion, the requirement that certain information be provided in certain circumstances to people seeking medical assistance or a medical procedure.

As a result of the success of the previous bill, it is now acknowledged in this jurisdiction that abortion is to be regarded as a health issue; it is not to be regarded in any other way. We are talking here about the basis on which informed consent will be deemed to have been achieved in relation to a particular health procedure. Issues around informed consent in relation to this procedure should be no different to those in relation to other procedures.

It is not acceptable that this health-related procedure be singled out and that certain information be forced on people seeking to undergo the procedure. That is the situation we are in now. That is the state of the law. It is more than a question of the state of law; an issue of significant principle is involved here.

Ms Tucker has just given us, in great detail, the range of information that is provided. There is a range of issues around informed consent. There is no procedure carried out in the ACT by a medical practitioner in relation to which informed consent is not deemed to be a vital and necessary part of the process leading to the undertaking of the procedure. It is a requirement of every single medical procedure carried out in the ACT that there be informed consent and that informed consent be part and parcel of the decision-making process. This procedure should not be different. There is no basis for distinguishing this particular procedure in these circumstances.

Compulsion is at the heart of the debate we are having. That is the offensive nature of the legislation we are seeking to repeal. The information was forced. It was mandated, whether or not it was needed. The assumption was that the decision could not be made freely by a woman in consultation with her medical practitioner or with whomever else she sought to take advice from.

I support the bill, just as I opposed the legislation it seeks to overturn.

I thank Mr Stefaniak for the history he provided. I have made a pledge to myself not to respond to any baiting around the previous minister for health. I will stand by that pledge to myself. I am happy for any of my colleagues to say what they will or may. I thank you, Mr Stefaniak, for revealing the role which the pro-choice previous minister for health played in the development of the legislation I hope will be repealed tonight.

MR HARGREAVES (8.31): I am going to run for re-election in this place, so that I am here long enough to see the Chief Minister keep that pledge.

Mr Stanhope: I will.

MR HARGREAVES: I will believe it when I see it. I was not going to speak on this bill, because I have made my position known fairly clearly. But what Ms Tucker said made me sit back and think a little more. I do not know whether it was a result of the passion that we all displayed in the last debate, but I acknowledge that the quality of information going to people facing this horrendous decision has improved out of sight.

I stood up in this place and opposed the pictures of foetuses in the information, and I stand by that position. In the last debate years ago I said that I wanted to see information provided in an unbiased way. I was not interested in pictures of coathangers and I was not interested in pictures of foetuses. I wanted all possible information to be

provided to a woman facing this decision so that in the solitude of her own heart she could make the best decision she could.

I know that every single woman who has ever faced it and ever will face it will do just that. But we can help her in that process. The only thing that did not sit well with me was whether or not it should be in the statute or not. I thought, "What is the problem?" They are provided with sufficient information. The list that Ms Tucker gave us satisfied most of the needs I have. It challenges the initial decision by asking, "Have you got it right?" A woman can then say, "Yes, I have, and I am going to the next step."

I thought, "Should we put it in a statute?" Whether it is in a regulation or an act matters not to me. The point made was that we did not have to, because it was being done. It is normal for somebody to go along to a doctor or to the clinic. As an aside, if there is any threat to the clinic, I will stand with the clinic.

We regulate an enormous amount of minutiae in this town. We regulate the diameter of a tree that we can cut down. We regulate residential boundaries to the inch. A chap speaking to the other day has 50-millimetre encroachment on his neighbour's yard. It happened inadvertently. Now he is being asked to go the considerable expense to move back. Why is that? It is in a statute that he cannot do it. We go to that level of detail for issues not concerned with people's lives, so for issues concerned with people's lives we can do the same.

There are two reasons why we have statutes. One is to say to people, "These are the absolute minimum and you are going to stick to them or we are going to belt you." The other one is to give guidance to people by saying, "This is what society feels at this point." Over time as society changes, those things move. At the moment, we are moving, and it is a matter for our collective judgment how far we move.

If we can regulate the diameter of the wheel on a vehicle or the width or length of an axle on a vehicle, are we going to walk away from regulating or at least putting in a statute the minimum standard of information that society expects? It is a bit wrong.

I moved an amendment to the composition of the panel last time to make sure that there were at least three women on it. I would have gone for four, except that I did not get the agreement of the then government. I am still opposed to a psychiatrist being on that panel. I think that is absolutely insulting.

We should be saying to the people on the panel, "Reinvigorate yourselves. Do it again. It is not good enough." I do not think the mandatory information provided in the booklet matches the stuff Ms Tucker referred to.

When I checked out what information was given to people, I was not satisfied that it gave an unbiased presentation. When the pictures of foetuses were put in, that was a deliberate attempt to influence—I hesitate to use the word "blackmail"—people to take a certain direction. I was opposed to that, and I remain opposed.

We should not be doing away with this piece of legislation. We should be making it work. If we are not happy with it, let us not toss it in the rubbish bin. Let us make it work.

We have seen the decriminalisation. I am not happy about that, but this seems to be the prevailing opinion of our legislature. So be it.

Now we need to move on, and it is up to us to make sure that we sincerely support every single woman who is faced with this decision. We should have minimum standards for the information they receive. They have a right to receive information to enable them to make a decision. The information should canvass all of the options. We should provide information to partners who might want to continue a loving relationship, so they know what is going on as well.

I do not see what is wrong with that. I do not see that it requires removal from the statute book. I signal, however, that I will not be supporting the amendments that have been put forward. As I said, I believe Ms Gallagher's amendments stand on their own. The things that she has promoted ensure in the best way she knows the emotional and physical welfare of women facing this decision. That is to her credit, and I will back her as long as I draw breath.

I urge members not to remove this legislation from the statute book. Let us shake the panel. Reconstitute it a bit. Get them to put out a publication which sets the minimum standard, so that society says to the practitioners in this particular area that there is a heck of a big difference between putting in a statute minutiae about the axles of a motor vehicle or the height of a tree, which we are quite prepared to do, and providing information about something to do with people's lives.

My reasons for not supporting the repeal of this act centre on the quality of the information being given to women. I do not suggest that it has to be forced on them. I do not suggest that we have to say to practitioners, "You have to give it to them. Otherwise, you will be disbarred, fined or chucked in jail until you rot." I am saying that the information should be available to them. It should be unbiased and comprehensive. I do not believe that the official information being provided meets that test.

The additional information Ms Tucker provided tonight shook the foundations of what I felt was right. If that information were enshrined as the minimum standard, then I would be a happy man. I cannot support this legislation.

Mrs Dunne: I seek leave to speak again, Mr Deputy Speaker.

Leave not granted.

Mr Pratt: I seek leave also to raise another issue.

Leave not granted.

MR DEPUTY SPEAKER: I am in the hands of the Assembly. I am aware of who has spoken and who has not. I have been keeping a checklist. It is up to the Assembly whether or not you are allowed to speak again. Leave has been refused for Mrs Dunne and Mr Pratt.

Mrs Dunne: Mr Deputy Speaker, I would like it put on the record that this is unprecedented.

MR DEPUTY SPEAKER: You are not allowed to do that. Resume your seat.

MR WOOD (Minister for Urban Services, Minister for the Arts and Minister for Disability, Housing and Community Services) (8.42): I wish to take up some points relating to women's rights, of which this old bloke claims to be a strong supporter. I have heard from a good friend of mine tonight who spelled out a number of rights of women in respect of fertility.

Generally, they should have control over whether they are pregnant or not. I agree with what she says about those rights. Indeed, women have rights and they should have choice. But for the most part, I contend, they do have choice. In this particularly knowledgeable, educated, aware, informed society that is the ACT women can choose—generally, for the most part, not entirely—whether or not to become pregnant.

My concern is that abortion becomes a fallback method of birth control. To me, it is a very drastic, undesirable method of birth control when better methods and well-known methods are most readily available.

When this legislation was brought forward in the last Assembly, I voted against it. The scene has changed somewhat tonight. I will be voting for it and against the repeal bill, because I believe the information that comes to the community about the number of abortions and the like is important information to know, especially in view of those concerns I expressed earlier today and express again tonight. On that basis, I will change my vote from year or two ago and oppose the repeal of the act.

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism, Minister for Sport, Racing and Gaming and Minister for Police, Emergency Services and Corrections) (8.45): I did not intend to speak more than once in this entire debate, but having listened to it throughout I have become concerned as to some of the presentations that have gone forward. I am concerned that so many statistics have been rolled out to support the case against the original bill and against this bill. Those statistics have been on the harm that abortion might do.

Mr Smyth spoke about when life commences and his fundamental beliefs, which I respect. There was an oscillation between that and statistics. What I heard was that it was intended to take away a woman's right for her own good. That is what it distils down to.

I am fairly certain that those who object to the legislation before us today do so out of their deeply held philosophical convictions. Mr Smyth spoke of his heritage. My partner and I were brought up as Catholics and went to Catholic schools. We no longer consider ourselves to be of that group called Catholics. I do not want enter into religious discussion or challenge anybody's beliefs on this point. But occasionally my partner and I jive each other over the Catholic guilt complex. One of the hallmarks of your Catholic background, particularly your Irish Catholic background, is the big guilt trip.

What concerns me is that the process that was debated at the last debate in this place was about imposing another guilt trip. A lot of statistics have been rolled out about the scarring that having an abortion might have on a woman's psyche. I would conjecture—and I am certainly not an expert—that a lot of that has to do with the fundamental guilt trip.

An incident having occurred in the gallery—

MR DEPUTY SPEAKER: Order in the gallery!

MR QUINLAN: I believe in a woman's right of choice. Somehow we in this place have been able to contrive to compare that choice with the purchase of a vacuum cleaner. It was at that point I decided that I wanted to say a few more words. That is an appalling analogy. We are talking about the imposition of guilt. The whole tenor of the previous legislation that was presented and, in part, passed in this place was to impose guilt. Now I am hearing today that we not only want to impose guilt but we want to take away a woman's right of choice for her own good.

If you wish to say that abortion is a bad thing because it is against your fundamental beliefs, I respect that. But to interweave selective statistics and virtually say, "And I am also doing it for a woman's own good" is heading towards the hypocritical.

I will be supporting this bill, because I see that we need a woman's right of choice and a genuine right of choice. We heard statistics about the decline in the mental wellbeing of women who have an abortion. But two things concern me: the imposition of guilt and the high probability that a large number of women who find themselves pregnant but are not in the circumstances to carry the child full term to have other issues in their lives. I do not want to be a party to a process that compounds those issues in their lives.

MR CORBELL (Minister for Education, Youth and Family Services, Minister for Planning and Minister for Industrial Relations) (8.51): Mr Deputy Speaker, I think both Mr Quinlan and Mr Stanhope have made some very pertinent points. I want to reinforce my support for their comments—in particular the comments that the legislation currently in force has an element of compulsion which we do not require of any other medical procedure in the territory. I know that some will argue that this is not simply a medical procedure. Nevertheless, it is a form of compulsion in relation to the provision of information that we do not require of any other discussion and passage of information and advice between a doctor and that doctor's patient. We do not require it.

And why should we require it here? Why is this particular procedure any different from any other procedure with potentially serious or potentially life-threatening consequences? Why is it any different? Why do we not require and specify in legislation that particular sorts of information be made available for someone who is facing an operation where their life is potentially at risk? Why do we not require it there?

If the argument is that this is about a procedure which affects the life of an unborn child—that's the argument that comes from those who favour the retention of this legislation—then why do we not equally require a similar form of mandated information for other procedures that potentially threaten the life of someone who has been born? There is an inconsistency in that argument. And, for me, the only difference is that

people have strong philosophical and religious views about the practice of abortion. That is the only thing that makes the difference.

Mr Pratt: Abortion pulls in a range of psychological issues, as well as medical and physical.

MR CORBELL: I've listened to your debates in silence and I'd ask you to do me the same courtesy.

Mr Pratt: Well, reflect it accurately.

MR CORBELL: I've listened in silence to your contributions tonight and I'd ask you to do me the same courtesy. That is the only difference, Mr Deputy Speaker, in the long run—that there is a philosophical and religious dimension to this debate that draws that distinction between the procedure of an abortion and some other procedure which is equally potentially life-threatening or has the potential to cause serious physical harm. That's the only difference, in my view. And that really goes to the point that Mr Quinlan made around the notion of guilt. I would share Mr Quinlan's sentiments in that regard.

The other comment I would like to make about this legislation relates to the existing provision for the reporting of instances of procedures at the abortion clinic. This, again, is a level of mandated information provision which I do not believe is in any way necessary—for one very important reason, and that is that I don't believe it is an accurate portrayal of the situation in the territory. It captures, in a data sense, only those women who choose to use the clinic here in the ACT. It does not, for example, capture those instances where women who live in the ACT choose to use the clinic in Queanbeyan, or a clinic in some other part of Australia, such as Sydney or Melbourne.

The sad reality is that, because of the legislation that was passed a number of years ago, women have chosen to go interstate to procure this procedure—they have not even been able to do that here in the ACT because of the requirements imposed by a previous Assembly through the legislation which we are tonight debating changing significantly.

There is a far better source of information, which is already publicly available. I think Mr Berry has made this point previously, but it is worth reiterating. The Medicare statistics actually capture all of the instances of all citizens, and all women in the ACT, who choose to undertake an abortion. That data, surely, is sufficient. Why impose an additional set of requirements which first of all will not be accurate and, secondly, would duplicate an existing activity? It is simply another extension of a particular moral view which I believe has no place in the maintenance of what should be a straightforward and normal procedure between a doctor and that doctor's patient—for which informed consent is the highest and most responsible requirement and which surely should be in the hands of those two people.

Mr Smyth: I seek leave to speak again, Mr Deputy Speaker.

MR DEPUTY SPEAKER: You have spoken already.

Mr Smyth: And I seek leave to speak again.

Leave not granted.

Suspension of standing orders

MR SMYTH (8.58): Then I move:

> That so much of the standing orders be suspended as would prevent Mr Smyth again addressing the Assembly.

Mr Deputy Speaker, we could do this the easy way and the honourable way, which is that we have always allowed people on an abortion debate to speak again.

MR DEPUTY SPEAKER: Excuse me, but you must discuss the question of the suspension of standing orders, Mr Smyth.

MR SMYTH: I certainly am, Mr Deputy Speaker.

MR DEPUTY SPEAKER: Thank you. The question is that the standing orders be suspended. You have five minutes to debate that, but not the matter under consideration.

MR SMYTH: That is correct, Mr Deputy Speaker. In fact, there is 15 minutes for this debate, and those that wanted to speak again would have had a few words, which would have taken a few minutes. But, if necessary, I am sure my colleagues and I, all four of us, will move for a suspension, which will add a debate of at least an hour to this.

What is being done by saying "No, you can't speak again" is something that I believe has never happened in an abortion debate in the Assembly before. Where people seek leave to speak again, that courtesy is normally extended. And in this particular debate, which is such an important debate where points are made across the chamber, I think it is reasonable that people get the opportunity to speak again. Now, the point of this is that there is much to be said. There are points being raised here all the time, and if we want to have a reasonable and informed debate, people should be allowed to refute what is being said. That is debate. If those opposite wish to gag the debate, that's fine, but they will be known for having done that. And I think it would be to their eternal shame that they denied people the opportunity to speak about something which I consider is probably the most important issue that any Assembly is—

Mr Quinlan: We're going to gainsay each other all night, are we?

MR SMYTH: Sorry? I'm sorry, I didn't hear what you said.

Mrs Dunne: Well if you're bored, Ted, you can go away.

MR DEPUTY SPEAKER: Order, please! I will not allow a private debate across the chamber. Mr Smyth, get on with it.

MR SMYTH: The point is that I believe that on this very important issue it is important that everybody is heard, and as points are raised on either side the opportunity to refute those points should be accorded. It is something that we have always done. In the context of this important issue, it is something we should continue to do. Mr Berry said earlier

tonight that no doubt he will have to be vigilant and stand against people who will come back and try to have this debate again. He is probably right, and he should be accorded then—should it ever appear again as an issue for debate in this place—the courtesy of actually being heard.

I don't think it's unreasonable—because I am going to speak for my five minutes and I'm sure at least two other speakers will speak for their five minutes. Every time we go through this we will actually waste 15 minutes talking about the right of a member of the Assembly to be heard. This is one of those issues on which we try to extend to each other the courtesy of not interjecting across the chamber. It is one of the rare events where most members are heard in silence. It has always been one of those events where we are heard as often as we wish, given the importance of the issue.

My understanding is that Mr Pratt and Mrs Dunne wanted to make a small point. It would have taken a few minutes. It is a simple courtesy on a very important issue and I will move that standing orders be suspended to allow them to speak again, and I will speak again myself.

MR BERRY (9.02): I don't respond kindly to threats such as those that were made by Mr Smyth. He has already spoken and said the same thing over and over again a couple of times. And, of course, with extensions of time and whingeing that he's not being heard, it is just a little bit over the top, I think. I know that people get a bit more strained as the day goes on, but at the end of the day if you try to threaten people in this place with some sort of a silly filibuster, nobody else will end up speaking because I am sure the majority of members in here will just get sick of it and the question will be pressed. So, in that event, I am content to yield on this question, but I don't want to hear the same thing over and over again.

MR DEPUTY SPEAKER: Well, of course, that would be out of order, Mr Berry—repetition.

MR BERRY: Of course it would!

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

MR SMYTH: Mr Deputy Speaker, I will be very brief. Mr Corbell raised the point of why we have these regulations for pregnancy and no other condition. It is because pregnancy is like no other condition; it is neither a disease nor an injury. That is why it is different, that is why it is separate, that is why it is special, and that is why it should have these regulations to protect it.

The point was made about people following their religious beliefs and that is why they might be for this or against this, but it would appear that, as was said earlier by Dr Mango, any honest clinician or researcher will come to the conclusion that large numbers of women who have had abortions, whether they believe in God or not, develop self-destructive behaviours. And if people have read the article this morning by a lady under the pseudonym of Katherine Smith, they will have seen that she says:

> In my case, the information given to me by the abortion provider … was minimal …

MRS DUNNE: Mr Deputy Speaker, I seek leave to speak again.

Leave granted.

MRS DUNNE: Mr Deputy Speaker, I rise to respond directly to the points raised by Ms Tucker, almost as a point of personal explanation. Ms Tucker said that I had a study, the implication being that I was quoting something out of context and that I was just hanging my hat on one thing. I would like to point out to Ms Tucker that there are many studies, and what I quoted from this morning was a meta-study. And if members don't know what a meta-analysis is, it's an analysis of a whole range of studies brought together in one place. The original meta-analysis was of 23 studies which looked at data about induced abortion and breast cancer, and that meta-analysis has now expanded to 30. And 24 of those 30 studies reflect an overall increased risk to women who have chosen to have an abortion.

In terms of the magnitude of the increased risk, the average of all the studies still centres around the highly significant figure of 30 per cent above the breast cancer rate for women who do not choose to have an abortion. Looking at some of the 30 studies in the meta-analysis, Janet Daling et al have found a significant overall 20 per cent increase in American women who have had an abortion. And a study in Japan of Japanese women—both Japanese-American women and Japanese women, and both women who have had abortions and women who have not had an abortion—over the period 1940 to 1979 showed a four-fold increase in the incidence of breast cancer.

Mr Quinlan: From what to what?

MRS DUNNE: You are 100 per cent more likely to get breast cancer. Any increase at that rate is a significant increase. I do not say these things, as Ms Tucker claimed, to scare people. I say them because it is time the community became aware of them, because for too long people have been trying to hide these figures.

MR PRATT: I seek leave to speak again.

Leave granted.

MR PRATT: The place is just brimming with positive vibes! I rise briefly just to focus on Ms Gallagher's bill. I want to table a letter—

MR DEPUTY SPEAKER: Order! You are pre-empting the debate, Mr Pratt.

MR PRATT: Would you like me to sit down? With due respect, Mr Deputy Speaker, I thought we were cognately addressing a number of bills.

MR DEPUTY SPEAKER: We have agreed to a cognate debate, but be careful because you could only discuss the in-principle aspects. Please continue, if you can do that.

MR PRATT: Is your ruling, Mr Deputy Speaker, that we are not cognately addressing—

MR DEPUTY SPEAKER: You can discuss cognate matters, but only the in-principle concept of the bills. Proceed.

MR PRATT: Mr Deputy Speaker, if we are proceeding with Ms Gallagher's bill as a separate debate, I will sit down. But, if we are dealing with it cognately, I will speak now. What is your ruling?

MR DEPUTY SPEAKER: You may speak cognately in terms of the principle of the bill, but not the amendments or the detail stage of the bill.

MR PRATT: Thank you, Mr Deputy Speaker, for making that clear. I simply would like to table a letter going to the heart of the issue. I have a letter here from the Midwives and Nurses Ethical Concern—and I am going to table that now—which pretty much points out—

MR DEPUTY SPEAKER: You'll need leave to do that.

MR PRATT: I'm not ready to table it because I'm going to read it first.

MR DEPUTY SPEAKER: Very well.

MR PRATT: Thank you. This particular letter really illustrates why the proposal is flawed, in terms of the protection for medical practitioners which will be withdrawn, should the current legislation be overturned by this new legislation. It goes to the heart of the fact that nurses, midwives, students, counsellors and community officers will not be protected. It is a very fine letter, and I would like to have the professional technical expert voice speaking here rather than a political one for a change.

Ms Dundas: That's what we want as well.

MR PRATT: I thought you might say that. I think this letter eloquently argues the case. Amongst a number of issues that the Midwives and Nurses Ethical Concern points out, it raises this very, very important issue:

> That our rights as health professionals to conscientiously object to participating in abortions will be seriously eroded.

It goes on to develop that argument. Mr Deputy Speaker, I will finish there, which no doubt my colleagues opposite will be pleased to hear me say, and I now seek leave to table this document.

Leave granted.

MR PRATT: I present the following paper:

> Medical Practitioners (Maternal Health) Amendment Bill 2002—Letter from Ana Christina Garufi, Convenor, Midwives & Nurses Ethical Concern to Mr Steve Pratt MLA, dated 31 May 2002.

MR BERRY (9.11), in reply: The first thing with this bill that I think we have to deal with is to discuss its origins. This bill had its origins in a move to block abortions in the ACT. It was eventually watered down through various stages, until it came to be the legislation that I seek to repeal now. The act that I seek to repeal was designed to

punish—no doubt about that—women who had chosen to have an abortion, not only those ones who were thinking about it but also those ones who had had an abortion in the past. There is no question about that.

I will go through the bill shortly and deal with some of the contents of it and how they are being dealt with, should this act be repealed. But I think people need to understand that this act was about punishing—making sure that women understood, for their own good, as my colleague Mr Quinlan said, that this was sinful, and they needed to be reminded of it as many times as possible. And that is the thing that I object to, because this was about sending women on a guilt trip at every opportunity. That's why the statistical information has been required and used. I will come to that a bit further in a moment.

Let me go through the contents of the current act. Part 2, Procedure, begins:

> Abortions must be performed by medical practitioners in approved facilities.

Well, if that's repealed it won't matter, because it is picked up in Ms Gallagher's bill. I continue:

> Abortion must not be performed unless information has been provided.

That obligation is picked up, quite clearly—and I want to thank again the good bishop for sending us down a copy of *Health Care and the Law* by Meg Wallace, because it sets out all of the information which is required by the High Court decision in relation to informed consent. Ms Tucker has dealt in detail with the information which is already provided at the clinic.

What information must be provided? Again, I refer to *Health Care and the Law* by Meg Wallace—the checklist—and the guidelines for giving information for client decision-making go right across the field when it comes to the information which must be given to conform with the decision of the High Court. So that is covered there.

A "Declaration that information has been provided" will not be required if this act is repealed, and I don't think it needs to be anyway, because we must rely on the integrity of medical professionals in the provision of information. We do in all other medical procedures, so there is no reason why we should not rely on them in the case of this particular procedure.

"Abortion must not be performed without consent." That is as plain as the nose on your face. No medical procedure can be performed without one's consent. At this point I would like to deal with the 72-hour waiting period. This is just outrageous. There is no more outrageous a provision in a piece of legislation than this. How patronising it is to tell a woman, "Look, you're considering abortion. Go away for 72 hours and think about it, because you're really not up to it at this point. You couldn't, after many weeks thinking about it, have come to a judgment." We legislators have just sent you off home again—think about it a bit more, then you can pop back in and we might be able to deal with it. That is an outrageous thing to do.

That is precisely the point I tried to make earlier, when I said this is designed around sending women on a guilt trip, creating the impression that something is wrong with what they're doing—something is wrong. Well, it is not wrong. It is not wrong for a woman to want to terminate a pregnancy, and women—not only the women who are considering an abortion but also those thousands of women who have had them in the past—should not be continually punished by this sort of legislation.

"Approval of facilities" is also covered in Ms Gallagher's bill—no obligation on any person to act in relation to an abortion. "Privacy" is covered in the privacy legislation. The next section is "Approval of information pamphlets". Approval of information pamphlets is an ethical decision which has to be resolved by medical professionals and has to be consistent with the High Court decision in relation to the matter, which has been set out in the document which I referred to, which has been provided to us by the good bishop.

The next section, "Quarterly reports from approved facilities", goes to the issue of information. People say, "Why is it that you are trying to keep information? These statistics are very helpful." Well, this is the reason why. This is a document that was produced by the Right to Life Association and it was in response to ACT abortion statistics in 1999-2000. The heading was, "Missing Children Damage Mothers". That is the reason I don't want to see quarterly statistics used to punish women for having an abortion. Those are the sorts of tactics that people use—or abuse. They abuse the statistics by producing that sort of information.

I go further with statistics. The Medicare statistics quite adequately cover abortion procedures right throughout the country. They will be useful to health professionals. Health professionals have never called for quarterly reports in the ACT. They have never called for quarterly reports in relation to any other medical procedure either. Why? Because it's of no particular health use. That is why they don't call for it. And, because it is such a small sample, there is very clearly a risk of going close to identifying people. Indeed, it would remind people who have had late-term abortions—who have been required to have them in the most tragic circumstances—time and time again that they had had one. Now, if you think that's a good idea, I think you're on the wrong wagon.

This particular act is one of the most offensive. It is most offensive because of its genesis. Its genesis, as I said earlier, was about preventing abortions in the ACT and, indeed, reminding women of their big mistake. And their big mistake was that they had an abortion. But it is not just reminding them once—it is continuing to do it, time after time. I can't abide that sort of legislation. I opposed it at the time, for very good reasons.

I heard Mrs Dunne say, "Who would worry about little postage-stamp-sized pictures?". I know that Mrs Dunne is very proud of the fact that she was somehow behind the design of that in Mr Humphries' office before he signed it into law. I've got to say, I would not be proud of that—because that was designed to dissuade women from considering an abortion. That is not the way to deal with this issue. It is a very harsh and cruel measure to deal with women that way when they are facing this very, very serious decision in their lives.

I am not one to go to lots and lots of statistics because I think quite often they can be misused, as I have described earlier. But I will read from a book by Leslie Kennol, *The Abortion Myth*, and I will just touch on some of the statistics mentioned in it. It says:

> One study of New York women who'd had a safe and legal abortion found that 45 per cent would have tried to get an abortion even if it was illegal. Globally, an estimated 13 per cent of pregnancy-related deaths—or one in eight—are the result of an unsafe abortion. While 700 000 women die each year from unsafe abortions, much larger numbers experience a range of complications, which include sepsis, haemorrhage, uterine perforation, kidney failure and even coma.

I know that is not the case in Australia, but you need to consider these statistics against some of the comments people are making about abortion in Australia, such as those about breast cancer and those sorts of things. It also says:

> A South African study of 647 women who'd ended up in hospital after unsafe abortions found that 35 had to have a hysterectomy.

These are the cruel statistics which occur overseas because of the idea that it is wrong to have an abortion and because safe and legal ones are not available. I go on further:

> Feminists have also asked how moral it is to support re-criminalisation when this results in the birth of more unwanted—and so at risk—children. Eight out of ten babies murdered by their mothers, for example, are from unwanted pregnancies.

I am not going to go on any more with that. It is too distressing. This is a serious issue for women. Women ought to be allowed to consider their position in relation to abortion without being forced into situations which are designed to humiliate them. I will not stand for it and that is why from the very outset I opposed this legislation, and that is why I have continued to campaign to get rid of it—and I trust that that will happen this evening.

Question put:

> That this bill be agreed to in principle.

The Assembly voted—

Ayes 9		Noes 8	
Mr Berry	Ms MacDonald	Mr Cornwell	Mr Smyth
Mr Corbell	Mr Quinlan	Mrs Dunne	Mr Stefaniak
Mrs Cross	Mr Stanhope	Mr Hargreaves	Mr Wood
Ms Dundas	Ms Tucker	Mr Humphries	
Ms Gallagher		Mr Pratt	

Question so resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Medical Practitioners (Maternal Health) Amendment Bill 2002

Debate resumed from 15 May 2002, on motion by **Ms Gallagher**:

> That this bill be agreed to in principle.

MS GALLAGHER (9.27), in reply: Mr Deputy Speaker, I will close the debate. These are very straightforward amendments with the straightforward purposes of protecting the right of women seeking abortion to the safest medical care, protecting the right of medical practitioners and others to avoid being involved in an abortion procedure if they do not wish to be, and also to set out clearly that abortions can only be performed in an approved medical facility.

We have all said everything we need to say on this matter during the debate. I do not think I have to go on any further, other than to say that this amendment bill was drafted in consideration of the concerns that have been raised with me, and with other members, about the absence of these clauses if the Osborne legislation was repealed. After I discussed this with many of my colleagues, it became clear that the concerns were legitimate, and could be covered by an existing piece of legislation, and that is what this bill is about. I urge all members here to support this bill.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clauses 1 to 3, by leave, taken together and agreed to.

Clause 4.

MR STEFANIAK (9.29): Mr Deputy Speaker, I ask for leave to move amendments 1 and 2 circulated in my name together.

Leave granted.

MR STEFANIAK: I thank members. I move amendments Nos 1 and 2 *[see schedule 1 at page 2633]*.

When I looked at this bill and saw the particular penalties it contains, I noted a potential inconsistency. I do not know what Ms Gallagher wants to do. I did speak to her briefly about it.

Now that Mr Berry's bill has been successful, we do not have any criminal sanctions. However, Ms Gallagher's bill seeks to impose a criminal sanction, only in relation to someone who is not a medical practitioner carrying out an abortion. Someone who is not

a registered medical practitioner cannot carry out that procedure. There is a maximum penalty for that offence of imprisonment for five years.

I accept that we have gone down the track of the ACT being a social experiment, but I would argue, in relation to my first amendment, for some consistency. The old act did have a 10-year imprisonment provision as a maximum penalty for certain activity. That, to my understanding, still applies in New South Wales and, I believe, in other jurisdictions. For something as serious as someone who is not a registered medical practitioner carrying out an abortion, I think all members—regardless of whether they are pro-life or pro-choice, and whether they voted for Mr Berry's bill or not—would want to ensure that the procedure is safe.

Indeed, those opposite who were supporting Mr Berry's bill, and I think Mr Berry himself, were keen to see the procedure carried out safely. We certainly need to ensure that it is. I think 10 years would be a much more appropriate maximum penalty. It is consistent, as far as it can be now, with legislation in other states. It certainly indicates very strongly that only a registered practitioner can carry out such a procedure, and I think it is a more appropriate penalty.

Regarding my second amendment, which is to section 55C of Ms Gallagher's bill, that is, a person must not carry out an abortion except in a medical facility, or part of a medical facility, approved under the section. The penalty there is 50 penalty units or imprisonment for six months, or both. I was not concerned about the 50 penalty units—I think that is probably reasonable—but I was a little bit concerned that six months seemed a bit incompatible.

I checked the Crimes Act, Mr Deputy Speaker, especially section 347. It is a section which deals with what the fine should be when there is a term of imprisonment and no fine mentioned. Section 347 (2) states:

> A fine imposed pursuant to subsection (1) in respect of an offence shall not exceed—
> (a) where the offence is punishable by imprisonment for a period exceeding 12 months but not exceeding 2 years—
> (1) if the offender is a natural person—$5 000.

That is 50 penalty units. Quite clearly the normal range in the Crimes Act for a $5,000 penalty, if you work it the other way, is at least 12 months and not more than two years. Many acts to my knowledge have maximum fines of around $3,000 to $5,000, or 30 to 50 penalty units, with a maximum penalty of two years. This is the maximum penalty for such things as common assault.

Common assault is the offence that would occur if I slapped Mr Hargreaves across the face or pushed him. That would incur a maximum penalty of two years. If I became particularly nasty, and punched him in the nose until it bled, that would incur a maximum penalty of five years. These are not heinous offences, but that just indicates what the maximum penalties would be.

When one has regard to section 347, and the period of imprisonment that is deemed the equivalent of a fine of $5,000 or 50 penalty units, two years is a more appropriate maximum penalty. When one considers it with other types of offences, the comparison probably reflects on what Ms Gallagher is trying to do.

In the first section I wish to amend, 55B, with regard to the five-year penalty currently stipulated, 10 years, which I am suggesting, is the maximum penalty for assault occasioning actual bodily harm, say for someone who drew blood or committed an assault such as a punch in the nose. Dealing with backyard abortions is something Mr Berry has mentioned and was very concerned about in his comments. Obviously, he wants to see registered medical practitioners carry out the procedure, as does everyone, I am sure.

It is a very serious matter, and to equate the maximum penalty for that offence with that for the fairly average crime of assault occasioning actual bodily harm probably is not appropriate. It is a bit more serious than that, and I think 10 years is more appropriate. It does also reflect some of the penalties under the old Crimes Act, which has now been repealed. Accordingly, I commend my two amendments to the Assembly. I think they will make for a better law.

MR BERRY (9.35): Mr Deputy Speaker, just a moment ago there was passionate support for what has become known as the Osborne bill. Now I see that Mr Stefaniak springs upon us the need to increase these penalties. Bill is well known for wanting to increase penalties. He just cannot get it out of his system. However, I wish that he had used the same passion on the penalties that were in the Osborne bill, which are exactly the same as the ones that are in this bill, and for those reasons I will be opposing them.

The maximum penalty for a person who is not a medical practitioner who performs an abortion was five years. In Ms Gallagher's bill it is five years, miraculously. The penalty for not carrying out an abortion in an approved medical facility in Ms Gallagher's bill—50 penalty units and imprisonment for six months, or both—is miraculously the same in the Osborne bill. I really cannot see the need to get involved in a law and order campaign on this one.

MS TUCKER (9.36): The Greens will not be supporting these amendments either. We have not had very much notice to even consider them, and have not heard any convincing arguments in their favour at this point.

MR STEFANIAK (9.36): I will close the debate if no-one else wants to speak. I note Mr Berry's comments. I had a talk with Ms Gallagher and I think none of us were sure where this came from. I did notice, later, I must say, going through the Osborne bill, that there it was in section 6. Mr Berry has actually spent a lot of time bagging the Osborne bill, and I think it is somewhat ironic that he is now saying, "If it is there in the Osborne bill, it must be all right."

The Osborne act is one with which he has had huge problems, and it was an act which I also indicated in my speech was amended on the floor of the house. I reiterate what I said: if that was in the Osborne bill, I do not think it was consistent with other legislation. It could have been improved. It is surprising that I did not notice that several

years ago when it went through. My point, especially in relation to the two years as opposed to six months, is painfully obvious.

If Ms Tucker has a problem, and I know she does not particularly like strong penalties for anything, then I stress it is a maximum. It is just bringing the legislation into line so that it is totally consistent with section 347 of the Crimes Act. Ms Tucker, if you wanted to be at the bottom end of the scale, you could amend it to 12 months, but 12 months to two years is normal for offences incurring a fine of $5,000. That is consistent with section 347 of the Crimes Act and consistent with a lot of offences. I hark back to the fairly basic offence of common assault, which carries a maximum of two years. I think this offence is at least as serious as a common assault.

I also reiterate the fact that, in acts which deal with abortion, 10 years is a normal penalty for serious breaches. We do not have anything in the Crimes Act there at all, but we do still have a maximum penalty of five years. I have no idea why Mr Osborne, and others who drafted this bill, arrived at that. I wonder if they do themselves. However, at that stage they still had the Crimes Act, and they had other acts which applied to abortion. We do not have that anymore.

People have expressed concern about ensuring that abortions are safe. Mr Berry has made much of that. He does not want to see unsafe abortions; he never has. I have been here in this place on a number of occasions when he has brought forward these bills, up until today without success, bemoaning and counselling against backyard abortions. It is crucially important, I would think, for someone such as Mr Berry, or anyone who supports abortion, to ensure that the procedure is done properly by a registered medical practitioner, to avoid backyarders.

Obviously, the bill that Ms Gallagher has brought forward, contains a penalty: it is five years. I am simply saying that I think it is not appropriate just to equate that offence with a degree of assault marginally worse than common assault, which is actual bodily harm—basically drawing a bit of blood—and which incurs a five-year penalty. I think it is far better to equate it with something such as, say, a burglary, or another offence that carries a penalty of 10 years or thereabouts. It is a maximum penalty. I think that is far more appropriate.

I would urge members to support these sensible amendments of mine, which simply bring the penalties into line with other types of offences and other acts. Indeed, in the case of my second amendment, this change brings the bill into line with other things in the Crimes Act, and section 347 especially.

Question put:

> That **Mr Stefaniak's** amendments Nos 1 and 2 be agreed to.

The Assembly voted—

Ayes 6	Noes 11	
Mr Cornwell	Mr Berry	Ms MacDonald
Mrs Dunne	Mr Corbell	Mr Quinlan
Mr Humphries	Mrs Cross	Mr Stanhope
Mr Pratt	Ms Dundas	Ms Tucker
Mr Smyth	Ms Gallagher	Mr Wood
Mr Stefaniak	Mr Hargreaves	

Question so resolved in the negative.

Amendments negatived.

MRS DUNNE (9.46): Mr Deputy Speaker, I move the amendment circulated in my name relating to section 55E *[see schedule 2 at page 2633]*.

This brings up to date and fills out Ms Gallagher's proposal about what is being called conscientious objection. I see it as a little neater and a little more comprehensive, because what my amendment proposes will ensure that not only individuals, but institutions or bodies are exempt from any obligation to carry out an abortion. I move this amendment with some deliberation because there are institutions in this town that, at the moment, have a policy which makes it impossible for them to carry out abortions, and it would be improper for this legislature to conscript them into doing so.

In addition, I have also suggested an amendment that would ensure that medical practitioners, nurses or institutions who, for conscientious reasons, cannot perform an abortion, are not forced to refer a patient to someone else. That would be, as I said in my opening remarks this morning, making them accessories to something in which they would not participate of their own volition. It would be wrong for us to exercise our conscience and, in doing so, limit the conscience of members of the community, members of the medical fraternity, members of the nursing fraternity and the staff of some of our institutions. I commend the amendment to the Assembly and seek members' support.

MR BERRY (9.48): I will be opposing this amendment and I will be supporting Ms Tucker's amendment, which she has yet to move, but which has been circulated. The result of Mrs Dunne's position is that a patient who is seeking this procedure would not be able to obtain advice from a medical practitioner, if that practitioner chose not to give it, about where or from whom the patient might be able to access this procedure. I think that is unconscionable.

I think, too, that it probably conflicts with the code of ethics of the Australian Medical Association. They would not be very happy about, I would think. I am certainly not happy about it. I think that, if somebody is of the view that they are not able to assist in this matter, I accept that they should not be required to conduct the procedure against his or her will. That matter is dealt with, of course, in Ms Gallagher's amendment. However, I do think that they ought to be obliged to tell the person seeking assistance about the procedure and where the person would be able to obtain it.

MS TUCKER (9.49): As Mr Berry said, this is inconsistent with the amendment that I will soon move. The clause allows a medical practitioner or other person to refuse to be part of providing an abortion, which is reasonable. Freedom of conscience and freedom of belief are important principles.

However, as before, we also have to focus on the protection of the right to freedom of conscience and belief for the woman who wants to consider having an abortion. In a worst case scenario, a doctor could refuse to tell her anything about how to go about obtaining an abortion, even or whether it can be lawfully provided. It is important to ensure that, while a medical practitioner may not want to carry out such a procedure, that practitioner has a responsibility to ensure that that woman can access her rights. I think that not doing this equates to coercing that woman to avoid an abortion.

Paul Osborne introduced a clause that allowed medical professionals to avoid giving their care to a woman in an abortion procedure, and to avoid performing the procedure. The Australian Medical Association has an ethical standard for doctors which incorporates this principle. I will quote here from a letter from the president of the AMA of 5 April this year:

> The AMA code of ethics states: "When a personal moral judgment or religious belief alone prevents you from recommending some form of therapy, inform your patient so that they may seek care elsewhere."

The above extract clearly implies that a medical practitioner has a right to refrain from recommending a form of therapy on moral or religious grounds, providing the doctor informs the patient of alternative places to seek that care. The amendment I will move brings the regulation closer to the AMA's ethical guidelines.

Mrs Dunne has suggested that this amendment could prevent Catholic and Muslim doctors from practising. That is an interesting proposition. I would be surprised to hear that someone with a calling to medicine would let the fact that one of their patients might have different views on abortion prevent them from going on into the profession. Obviously, that would be their own ethical choice.

There is nothing to prevent doctors explaining their point of view to a patient, and explaining sources of counselling or other support in accordance with their own views, as long as the patient is interested. However, why should someone in a position of professional responsibility be allowed to refuse to provide information that they have a professional responsibility to provide, and which will enable the patient's access to lawful treatment and service? Many women, of course, might just find another doctor and keep trying. However, people with fewer skills, or who are distressed or unfamiliar with the laws, may well be intimidated into the belief that there is no way for them to obtain an abortion.

MS DUNDAS (9.52): I cannot support this amendment. The original bill will ensure that no-one will be compelled to take part in an abortion if they have a conscientious objection, and I have no difficulty supporting this provision. Just as I believe that it is a woman's right to decide what happens to her own body, I believe that it is the right of any person to refrain from doing something that his or her conscience forbids. On that

matter, I will also be supporting Ms Tucker's amendment when it is moved so that a referral can take place, and the rights and choices of both the woman and the doctor can be maintained and respected.

MR HUMPHRIES (Leader of the Opposition) (9.53): Mr Deputy Speaker, I support the amendment, and I have indicated that I oppose the alternative that is to be proposed by Ms Tucker.

It is important to remember that, tonight, we have repealed the provisions in the former Health Regulation (Maternal Health Information) Act, which provided quite broad protection against people having to unwillingly perform or assist to perform an abortion, provide counselling in relation to abortion, or refer a person to another who might do things mentioned in the previous paragraphs. It provided a very broad protection for people to prevent them being forced to involve themselves in any way with the provision of those services if their personal convictions prevented them from doing so.

Let us be clear. There is a difference between what the AMA rules might say about the obligation on doctors and what the law says about doctors and other people having an obligation to do certain things in respect of procedures for abortion. It may be that the AMA's code of ethics provides for doctors not having to treat a particular patient, or involve themselves in a particular procedure, if it is contrary to those doctors' personal beliefs. I quote the paragraph that Ms Tucker quoted from the code of ethics:

> When a personal moral judgment or religious belief alone prevents you—

that is, you, the doctor—

> from recommending some form of therapy, inform your patient so that they may seek care elsewhere.

What that says to me is that the doctor may say to the patient, "I am sorry, I do not believe in the treatment or therapy that you are seeking, and I cannot help you." I am not sure that it follows that there should be an obligation on that doctor, flowing from that document, to then tell the patient where she may obtain the services, or to assist her in that process. It would seem to me that, if you had a moral conviction that abortion was wrong, then it would be morally reprehensible for you to take part in that process. It is almost equally morally reprehensible to assist somebody else to—

Mr Berry: On a point of order: the clock has not been started and this could be the longest 10 minutes ever.

MR DEPUTY SPEAKER: Indeed. We must not go on for too long with this matter. Thank you.

MR HUMPHRIES: The point I am making is that the mere fact that the AMA provides a person with the right not to take part in the treatment does not, I think, lead necessarily to the corollary that the doctor or medical practitioner should be required to assist that person to obtain that treatment elsewhere. As I have said, if you have a personal conviction that it is wrong to conduct or be involved in abortion—

Mr Berry: Don't do it.

MR HUMPHRIES: But to tell somebody how they can, nonetheless, do it, I believe may well offend the principles of people who are put in that position. I am treating this as a cognate debate in a way. What Ms Tucker's amendment would do would be to conscript them into making that reference, which may be an offence to their conscience. I think that is quite inappropriate.

The effect of repealing the provisions in the maternal health act, and substituting the provisions which now appear in Ms Gallagher's section 55E, is a considerable watering down of the rights a person might have were they to hold those convictions and be confronted with a person who was seeking those services. We have to understand that, by taking away the provisions that were there before and inserting these much less extensive provisions, we have sent the signal that there is less protection available to a person in those circumstances. I think it is quite appropriate to legislate, as Mrs Dunne has suggested, to say that a person does not have to take part in that process.

That is a matter of personal conviction, and I would be interested to see what members of this place might think were they to see the prosecution of a doctor or health worker for failing to comply with a requirement to refer a patient on conscientious grounds. Members might feel quite strongly about that, and I would like to imagine what members might say in those circumstances.

I concede that the letter from the president of the local AMA goes on to suggest that, in his view, the correct interpretation of the provision of the AMA code of ethics that I read before, and which Ms Tucker read, was that members should inform the patient of alternative places to seek out care. However, that is a matter of interpretation. It is not what the words actually say. The words actually say that they should inform the patient of their own—that is, the doctor's own—personal moral judgment or religious belief. I think that is all we should expect people to do in those circumstances.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (9.59): I do not wish to labour the point. I have the letter that Ms Tucker and Mr Humphries were referring to, the letter from the AMA to me about this particular matter. I understand the significance of the debate that we are having about the two proposals here, and the obligation on a medical practitioner to provide information.

I have to say that I have difficulty supporting Mrs Dunne's formulation. I understand the point that Mr Humphries makes about imposing an obligation on a medical practitioner to refer a woman in circumstances where he is not, as a result of his conscience, inclined to support her. However, in his letter to me, Dr Pryor does refer to the code of ethics. There are two paragraphs that are pertinent. He refers to the code of ethics, which states:

> When a personal moral judgment or religious belief alone prevents you from recommending some form of therapy, inform your patient so that they may seek care elsewhere.

Dr Pryor then goes on to say in the next paragraph,

> The above extract clearly implies that a medical practitioner has a right to refrain from recommending a form of therapy on moral or religious grounds—

then there is the proviso—

> providing the doctor informs the patient of alternative places to seek that care.

This is actually the formulation that Ms Tucker provides in her amendment. As Ms Tucker said, the formulation of her amendments is quite explicitly the formulation that Dr Pryor makes in his letter on this matter.

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism, Minister for Sport, Racing and Gaming and Minister for Police, Emergency Services and Corrections) (10.01): Seeing as we have here an implied cognate debate, I certainly will not be supporting Mrs Dunne's amendment. However, I also wish to advise the house that I will not be supporting Ms Tucker's amendment either.

I have great respect for the motivation behind Ms Tucker's amendment: that there is concern for the fact that a woman may find herself in a position where she is not getting the advice she ought to receive. However, I also understand that there are protocols in place under the AMA regime.

I said earlier, when I was talking about the second bill, that I respected the deeply held convictions of those people who have an objection to abortion, whether they be philosophical convictions or religious beliefs. I would not be consistent if I did not respect the deeply held convictions of some medicos if they felt that they could not, in all conscience, give that particular information. It would be an unfortunate situation, but on balance I cannot support the element of "must" in Ms Tucker's amendment.

MRS DUNNE (10.03): To close the debate, I thank Mr Quinlan for his comments because they go to the heart of what I am trying to do. This matter is about respecting the views of the people in the medical profession who have to make these decisions.

My amendment does two things: it respects the rights of doctors, other medical practitioners and nurses not to be associated with abortion, and it does not impose upon them an obligation to shunt someone elsewhere, which is an improper imposition. As I said this morning, it allows these people to exercise their consciences, and prevents them from becoming accessories in what they might consider to be a crime. In addition, it extends what Ms Gallagher has done, not just to the individual, but to institutions who may find themselves in the same philosophical position.

I think that members cannot leave this amendment untouched, because it puts in a very precarious position one of Canberra's principal hospitals, which, because of its philosophical position, does not perform abortions. If we do not recognise that institutions have the same rights as individuals, we are putting the Calvary Hospital in an untenable position. I beg the members of this place not to do that, and to give to the Calvary Hospital the right to exercise its conscience as a Catholic institution.

Question put:

That **Mrs Dunne's** amendment No 1 be agreed to.

The Assembly voted—

Ayes 6	Noes 11	
Mr Cornwell	Mr Berry	Ms MacDonald
Mrs Dunne	Mr Corbell	Mr Quinlan
Mr Humphries	Mrs Cross	Mr Stanhope
Mr Pratt	Ms Dundas	Ms Tucker
Mr Smyth	Ms Gallagher	Mr Wood
Mr Stefaniak	Mr Hargreaves	

Question so resolved in the negative.

Amendment negatived.

MS TUCKER (10.08): I move amendment No 1 circulated in my name *[see schedule 5 at page 2635]*.

The intent of my amendment is to establish the principle that a person seeking lawful treatment should not be obstructed from accessing information about that treatment because a particular medical practitioner is exercising the right to freedom of religion regarding the procedures he or she would carry out.

I do not believe that a doctor's freedom of religion and conscience in this situation should be given greater priority than the freedom of religion and conscience of the woman who is seeking a legally available service. For that reason it is important that the doctor does actually assist the woman to find another practitioner who will actually support her right to exercise her freedom of conscience and belief. I think that is all I need to say, as we have already had the discussion.

MS MacDONALD (10.10): I have looked at this amendment and I have actually wrestled with this one. I have to say that I will be voting against this particular amendment and the reasons are as follows. I have great concerns with parts a and b. I really do not believe that you can call on somebody who does not believe in the practice of abortion to give information about abortion when it goes against their conscience. You will be asking them to do what goes against the grain.

I believe that a doctor should say something along the lines of, "I personally do not believe in abortion. I do not approve of abortion and I think you should go to another medical practitioner." However, to actually require a medical practitioner to tell the woman about the lawful performance of an abortion and where this can be carried out would be alien to that person.

I have to say that I do agree with what Mrs Dunne just said. I know that, for Calvary Hospital, it would go against the grain to talk about abortions proceeding. I really do not believe that we can actually say that this one is correct, and for that reason I will be voting no.

MR HUMPHRIES (Leader of the Opposition) (10.11): I concur with what Ms MacDonald has just said. I think that repealing the provision of section 12 of the maternal health information act in favour of the provisions which now appear in the legislation at section 55E may already go a long way towards doing what Ms MacDonald just described.

The previous provisions gave people the express right not to refer a person to another practitioner willing to do those things. That has been taken out now, and the law is now silent. I think that many of the rules of interpretation would lead one to suggest that, if the rules were expressed there and were removed, it is now the case that the Assembly does not wish those previous provisions to subsist.

However, that is not an argument in favour of voting for Ms Tucker's amendment. I think it is a dangerous amendment. I cannot help thinking of a parallel: what if a provision in the law said that there is an obligation on a person who encounters, say, an asylum seeker who has escaped lawful custody to dob that person in to lawful authority, and to bring the authorities into contact with that person as soon as possible. I suspect that Ms Tucker would find that provision most offensive, and would be loath to support it. I think this provision has much the same flavour.

Question put:

> That **Ms Tucker's** amendment No 1 be agreed to.

The Assembly voted—

Ayes 8		Noes 9	
Mr Berry	Mr Hargreaves	Mr Cornwell	Mr Quinlan
Mr Corbell	Mr Stanhope	Mrs Dunne	Mr Smyth
Mrs Cross	Ms Tucker	Mr Humphries	Mr Stefaniak
Ms Dundas		Ms MacDonald	Mr Wood
Ms Gallagher		Mr Pratt	

Question so resolved in the negative.

Amendment negatived.

Mrs Dunne: I move the amendment circulated in my name.

MR DEPUTY SPEAKER: Is that in substitution for the amendment circulated about proposed new section 55F?

Mrs Dunne: No.

MR DEPUTY SPEAKER: We have moved on from proposed new section 55E. I want to make the point that you will need leave to do that, otherwise we would have a situation with any legislation before this Assembly whereby people would be switching back and forth as they think of something new to put. If you wish to move your written amendment to proposed new section 55E

you will need leave and you may seek leave now.

Mr Hargreaves: I rise on a point of order, Mr Deputy Speaker. I understand that there is a ruling or a standing order which applies to something being moved in relation to legislation which has been passed—the 12-month rule. Could you give me a ruling on that, please?

MR DEPUTY SPEAKER: That is true, if it is not within the same piece of legislation. We are still debating that legislation. Nevertheless, it is valid to make the point that leave of the Assembly is still needed to go back in the same legislation. You may seek leave, Mrs Dunne, and it will be up to the Assembly to determine whether to give you leave.

Mrs Dunne: I seek leave to move an amendment to proposed new section 55E.

Leave not granted.

Suspension of standing orders

MRS DUNNE (10.19): I move:

> That so much of the standing orders be suspended as would prevent Mrs Dunne moving her amendment to section 55E.

Mr Deputy Speaker, here we go again with Mr Berry and his cronies applying the gag.

MR DEPUTY SPEAKER: Order! You must speak in terms of the reason for the suspension of standing orders, not to the amendment, if I may say so.

Mr Stanhope: Mr Deputy Speaker, I think that it is unparliamentary to refer to me as a crony of Mr Berry's.

MRS DUNNE: I was not thinking of you, actually.

MR DEPUTY SPEAKER: I did not hear that, Chief Minister. Mrs Dunne, shall we get on with it as it is 20 past 10. Please proceed.

MRS DUNNE: Mr Deputy Speaker, this is an important matter that goes to the heart of how we conduct this debate. This is an important matter about—

Mr Wood: We keep on top of it all the time; that is how we do this debate.

MRS DUNNE: Mr Wood is quite right; I was not entirely on top of it. For that, I apologise to members. But this is an important matter which goes to the heart of ascertaining which members are prepared to support the institutions in this territory and

the way they conduct themselves within the realms of their consciences. We are here today talking exclusively about our consciences.

Mr Corbell: I rise to a point of order, Mr Deputy Speaker. The motion is in relation to the suspension of standing orders, not the substantive matter on which Mrs Dunne is seeking to move an amendment.

MR DEPUTY SPEAKER: I uphold the point of order. You must make a case for the suspension of standing orders, not debate the actual amendment in this case.

MRS DUNNE: The amendment which I have circulated and which, as Mr Wood pointed out, I did so tardily aims to clarify proposed new section 55E in an important way. It is a simple matter that will take up a couple of moments of members' time. It is a matter of indulgence, but much of what has happened today is a matter of indulgence and it would be remiss of us not to consider in this place the future of institutions.

MR HARGREAVES (10.22): I think that it is in order for me to respond. I thought that the standard of debate was starting to degenerate a bit when Mrs Dunne referred to us as cronies of Mr Berry's. It is a badge of honour that I wear.

MR DEPUTY SPEAKER: That is not for reference in terms of the suspension of standing orders.

MR HARGREAVES: Mr Deputy Speaker, as Mrs Dunne said, we can seek to suspend standing orders and do those sorts of things all night long. I am concerned that they are just prolonging the debate. We have seen the substantive things go down. I have been on the losing side and I have copped it. I did not like it, but I have copped it. I do not think that we need to use up too much time now with all of this filibustering. We should all just get on with it.

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

MRS DUNNE (10.23): I thank the Assembly for its indulgence and I move the amendment circulated in my name in relation to proposed new section 55E *[see schedule 3 at page 2634]*.

This is a simple matter. I would like to reinforce the need for this legislature to have regard in this place for the conscience of not only the medical fraternity, but also the medical institutions. Members of the Assembly, this is the Calvary amendment. It allows Calvary Hospital to continue to operate as it currently does, by its ethos, and not perform abortions because it would be counter to its philosophy to do so.

MR BERRY (10.24): As you go along, you whack in another one. This amendment is just a nonsense. No-one is under such a duty—nobody. There might be a friendly hospital which operates without any people in it and which is able to refer people without the assistance of other people, but I have not seen one yet. I reckon that the Health Minister would really like to have a hospital that did not need expensive staff in it to do all the work, but such a hospital does not exist. The fact of the matter is that "no-one" means "no body". In my estimation of things, somebody usually does things on behalf of an organisation. This amendment is just a nonsense.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (10.25): I must respond to that. I think that it is outrageous to suggest that without this amendment Calvary Hospital would be forced to do abortions. I reject that absolutely and I reject that interpretation absolutely. I reject any suggestion that Calvary Hospital would under any circumstances be forced to do abortions. That is an offensive suggestion. It is offensive to suggest that those of us that will not support this amendment are in some way supporting the possibility of Calvary Hospital being required to undertake abortions.

The provision as it currently stands says that no-one is under a duty. You are proposing to introduce the words "or no body or institution", so that it will read, "No-one or no body". There is no difference. There is no suggestion that an institution is not included institutionally in the terms of proposed new section 55E and it is not institutions that perform abortions; it is people. The section is quite clear. No-one—no person, no doctor—is required to carry out or assist in carrying out abortions. This amendment is completely unnecessary. It would not do what you suggest it would do. To suggest, as you will undoubtedly, that those of us that do not support it are in some way supporting the possibility of Calvary being required to carry out abortions is simply wrong.

MS DUNDAS (10.26): As has been stated, we have only had five minutes to look at this amendment; and, not only for that reason but as part of it, I do not believe that I can support the amendment. If I had had time to consider this amendment, I would have checked the Acts Interpretation Act, which I believe would have a broad definition for "no-one" and actually make this amendment redundant.

MS TUCKER (10.27): I will not be supporting the amendment, either. It is making a farce of the whole process to be having a scribbled amendment that I can hardly read and have only three minutes to look at it. I am sorry, this is being incredibly disrespectful of the whole process.

MRS CROSS (10.27): Ms Tucker makes a valid point; it is being done at very short notice. I have to say that I have just been advised that Calvary Hospital is a Catholic hospital. Is that right?

Mr Wood: You have just been advised of it! Where have you been?

MRS CROSS: I do not need a lecture. I am just saying that, if it is a hospital that has a particular doctrine, I do not think that we should force the hospital to do something that goes against its doctrine. I understand everyone's position on this matter, but I think that we have also to be reasonable and fair. I will probably support this amendment.

Question put:

> That **Mrs Dunne's** amendment to proposed section 55E be agreed to.

The Assembly voted—

Ayes 8		Noes 9	
Mr Cornwell	Mr Pratt	Mr Berry	Mr Quinlan
Mrs Cross	Mr Smyth	Mr Corbell	Mr Stanhope
Mrs Dunne	Mr Stefaniak	Ms Dundas	Ms Tucker
Mr Humphries		Ms Gallagher	Mr Wood
Ms MacDonald		Mr Hargreaves	

Question so resolved in the negative.

Amendment negatived.

MRS DUNNE (10.30): I move the nice, neat amendment circulated in my name some time ago about proposed section 55F *[see schedule 4 at page 2634]*.

Mr Deputy Speaker, this amendment adds something to the Medical Practitioners Act, something which, by what we have done previously today, is sadly lacking. What we have done previously today is we have taken away for the foreseeable future the possibility that we will be kept informed about just how many abortions there are in the ACT. We will not be able to tell whether Mr Berry's regime for making abortion safe, legal, accessible and rare is working because we will never know how many abortions take place in the ACT.

It is important information for us to have for a range of epidemiological reasons. It is most important that we keep this information and maintain it so that we can have some idea of just how many abortions are performed. As Mr Wood said at the very outset today, by any standards there are too many abortions in the ACT. We know that because of the operation of the previous legislation which has been repealed. We actually know for the first time that in 1999-2000 there were 1,700 abortions in the ACT and, as things currently look, they are trending down to 1,272.

We need to keep track of that. We need to be able to know in two or three years whether Mr Berry's regime has worked. Earlier this evening, Mr Corbell said that there is no need to keep statistics because we have the lovely Medicare statistics. I do not know how many times I have heard people explain to members who hold views about the collection of statistics exactly how inaccurate and inappropriate the Medicare statistics are. They are not comprehensive. They do not include any abortions performed—

Mr Hargreaves: Mr Deputy Speaker, I rise on a point of order. I seek a ruling as to whether this amendment ought to be ruled out of order on the basis that we have just dealt with this subject and this provision is a straight lift out of a previous act which has now been repealed, so it cannot be reintroduced. On top of that, and I do not know the ruling for it, this amendment actually requires 50 penalty units to be applied to a public servant, a servant of the government, for not doing their job. I just do not know whether this amendment should be ruled out of order because the subject has already been dealt with in the repeal of a previous act.

MR DEPUTY SPEAKER: The Clerk has drawn my attention to my previous ruling. It is not the same; it is similar. There is no point of order. Please continue.

MRS DUNNE: Thank you, Mr Deputy Speaker. It does go to a point I raised earlier in the day. Going back to statistics, Medicare statistics are not comprehensive because they do not cover abortions performed by salaried doctors in public hospitals on public patients as those are always hospital expenses and never appear in the Medicare funding.

There are a large number of people who have abortions and whose abortions are not recorded as abortions under the Medicare items covering abortions and there are also, by anecdotal evidence, a considerable number of people who have abortions but never claim the Medicare rebate. You can tell that there are roughly 80,000 or 100,000 abortions in Australia and you can extrapolate down, but you do not have figures for the ACT. You cannot collect figures for the ACT on this matter and the figures that you have from the Medicare files are not accurate.

I am asking the Assembly to keep the commendable practice of collecting statistics and providing them to us. These provisions are slightly different from those that were in the previous act that we have repealed. There is a requirement that, on receipt of the report, the minister should post these figures to some place on the internet. There are lots of nice ACT health sites where it would be appropriate to do that. Without providing this set of statistics and keeping this set of statistics up to date, we will never know whether Mr Berry has succeeded in making abortion rare in this town.

MR HARGREAVES (10.35): This side of the house will not be supporting this amendment on a number of grounds. Firstly, as I said just a moment ago—

Mr Stefaniak: I thought it was a conscience vote.

MR HARGREAVES: It is a conscience vote. I am just giving you a chance to count because I believe that everybody in this chamber ought to be given the opportunity to count. Just butt out.

One of the biggest problems I have with the amendment is that proposed new section 55F (1) says that if the person or persons responsible for the management of an approved facility—that is, the people providing a service from a government facility such as the clinic—do not do all these things they will be fined 50 penalty units. This is the first time I have ever heard of public servants who do not do their job being fined 50 penalty units. Other disciplinary processes apply, but I do not know of any which say, "You naughty person, you haven't counted and told somebody the result of that count. Therefore, we are going to fine you 50 penalty units." I think that that is abhorrent, absolutely abhorrent. The bureaucracy ought to be protected from this sort of stuff.

Secondly, we have a process in the ACT whereby we collect statistics on medical procedures—I have already made my views known about whether this is a medical procedure—and send them off to relevant authorities. The Australian Institute of Health and Welfare is one that comes to mind instantly. If you want to know the statistics on the number of ingrown toenails which are fixed, you can find out because keeping the statistics is an automatic part of the process, but you will find nowhere in the legislation a requirement for somebody to tell somebody else about the number of ingrown toenails

that have been chopped in this town. In effect, it already happens, so it is an unnecessary provision. If it did not ordinarily happen, you would not be able to have the state comparisons through the quarterly reports from the Australian Institute of Health and Welfare.

The other thing is that the statistics collected are absolutely meaningless. The reason they are meaningless is not that they are not indicative and it is not that they do not tell a bit of a story; it is that they do not tell the whole story. Anybody who thinks they do tell the whole story is, frankly, kidding themselves. I did not vote for the repeal of the substantive legislation from which this provision has been lifted, had a word added and then resubmitted, but I was not supportive of this provision in that legislation. This is a dozy provision, totally dozy.

Mr Deputy Speaker, there are procedures which occur in our hospitals that are abortions under other names and they do not find their way into these statistics. These statistics are nowhere near accurate. I for one believe that it is an inappropriate use of legislative power to insist that we publish figures on anything if we know up front that they are not accurate and they are not complete. It is really dozy to do so. I believe that I am speaking for most people on this side of the house in saying that for a number of reasons we cannot possibly support this amendment, unfortunately.

MS DUNDAS (10.39): Mr Deputy Speaker, whilst I have no difficulty with statistics being collected on the number of terminations conducted, as with any other medical procedure, I do strongly object to the provisions in this amendment that require the reasons for an abortion to be made public, as well as the ages of the women concerned and the gestational ages of the foetuses at the time of abortion. We do not require such information either to be collected or to be reported publicly for any other medical procedure. Hence, I do not agree with its being done with this one.

MS TUCKER (10.40): The Greens will not be supporting this amendment, either. I notice that Mrs Dunne has added something to what was in Mr Osborne's legislation, that is, she has added, "Upon receipt, the minister shall cause the report to be published on the internet." It is quite interesting to me that this requirement has been added. It just seems to me to be making the point that, in some way, it is about the political agenda of Mrs Dunne and her supporters.

I do not have a problem with people having political agendas, but I just do not happen to share the view of Mrs Dunne and other people who support this provision that it is a good thing to put this information on the internet for the political agenda of particular people here. This information is getting very close to identifying people.

Mrs Dunne: It doesn't.

MS TUCKER: Of course it is if looked at every three months. It says:

> The person or persons responsible for the management of an approved facility under 55C shall, not later than three months after the end of each calendar quarter, provide the minister with a report …

It is quite possible that people would then go to the internet and see themselves there. These are the people who are supposed to be caring and sensitive about the experience of women. I think that they need to reconsider what they think they are doing here. I think that it is quite disturbing, in fact, and is inconsistent with a stated commitment to consider the mental health of women.

I am assuming that this provision is actually about trying to reduce the number of abortions, because that is what Mrs Dunne and other people say that they want to see happen, as do I and, I think, as do most people in this place. As has been said several times, people are not pro-abortion; they are pro-choice. We can have a discussion about unwanted pregnancies in our society. I am happy to have that discussion. We have had it already to a degree tonight. But if we really are serious about this subject, let us not put people's personal information on the internet and let us not have every three months information about these particular procedures put into the Legislative Assembly. Let us look at the social condition that creates unwanted pregnancies. Let us look at how consistent sex education is in our schools.

In the inquiry about the health of school-age children, we had consultation with student representatives from colleges and high schools in the reception room here quite recently. One of the things they said was that sex education was extremely inconsistent across the school system in Canberra. We had students from independent and public schools there and that was one of the big issues that came up. There were comments about condoms being available or not being available.

We have an opportunity in this Assembly to do some social research through committee work and so on. We have an opportunity to lobby for greater support for women who want to raise children on their own. The federal government certainly needs to be lobbied on that level. The stigma around single parents is certainly not alleviated by the actions of some members of the Liberal Party in the federal arena. I am sure that people are quite aware of that. We have had the old family values story discussed at length.

I could go on. We are being generous with the granting of leave. If other members would like to seek leave to speak again on this matter, we could talk about how to reduce unwanted pregnancies. I would be quite happy for that to happen, if that is what this is about, but it is about politicisation of the agenda at the expense of women.

MR SMYTH (10.44): Ms Tucker says, "Why do we collect this data?" Why do we collect any data? The data is there so that we can analyse it to see what is happening in our society. The interesting thing is that Ms Tucker said that we do not collect data on other operations. We do, and the details are tabled quarterly in this place. They used to be tabled monthly until the new government decided that they would just put them in the library, instead of tabling them in here and being proud of their achievements.

But we do break down by category inside the waiting lists the different types of surgery performed. This information is not collected. I think that there is a reasonable case for collecting it, if only to see where the numbers are going to determine whether the efforts of those here today have had any effect on making abortion rarer in the ACT.

MRS DUNNE (10.45): To close the debate, when provisions similar to this one were passed in the Assembly in 1998—I did observe at fairly close quarters the passing of them—I thought that they would not make much difference, but we have seen that they have made a difference. We have seen a fall in the statistics. We do not know the reason for the fall in the number of abortions performed in the ACT. We could speculate about that. We could say that people go interstate and those sorts of things. The statistics show us something, but today we have denied that those statistics tell a story. Mr Berry wants to deny that those statistics tell a story and he wants to suppress the statistics.

Ms Tucker and other members have made quite a few points that need to be commented on. Mr Hargreaves said that we should never legislate to collect statistics that might be inaccurate. The ABS collects countless volumes of statistics, many of which are highly inaccurate. The unemployment figures for the ACT are enormously inaccurate. They are so inaccurate that you could drive a Mack truck through them.

Mr Corbell: We will remember that next time you raise them.

MRS DUNNE: I rarely raise unemployment statistics. I cannot remember the last time I raised unemployment statistics because they are, in many ways, quite inaccurate. All they do is show a trend. These figures also show a trend. We have to be very careful about what we throw out. Today, we are throwing the baby out with the bath water. If we throw the figures away, if we break the time series, they will never be as useful again.

In many ways, I do not expect Mr Berry to support this amendment and I am not surprised that Ms Tucker does not support it, but I want to put on the record that these people have introduced today a regime that will change the way that we deal with abortion in the ACT and will now move to suppress the means of assessing its effect.

Question put**:**

> That **Mrs Dunne's** amendment to insert new section 55F be agreed to.

The Assembly voted—

Ayes 5	Noes 12	
Mrs Dunne	Mr Berry	Mr Hargreaves
Mr Humphries	Mr Corbell	Ms MacDonald
Mr Pratt	Mr Cornwell	Mr Quinlan
Mr Smyth	Mrs Cross	Mr Stanhope
Mr Stefaniak	Ms Dundas	Ms Tucker
	Ms Gallagher	Mr Wood

Question so resolved in the negative.

Amendment negatived.

Clause 4 agreed to.

Title agreed to.

Bill agreed to.

Maternal Health Legislation Amendment Bill 2002

Debate resumed from 5 June 2002, on motion by **Mrs Dunne**:

> That this bill be agreed to in principle.

MS GALLAGHER (10.51): Mr Deputy Speaker, I seek guidance on whether, because of what happened earlier tonight, some of what is contained in Mrs Dunne's bill is no longer applicable.

Mr Hargreaves: Most of it is going to go. Just go to the coercion bit.

MS GALLAGHER: Okay. I will just make a couple of comments in relation to the part dealing with coercion. I will not be supporting Mrs Dunne's bill. In relation to the supposedly new crime of coercion, and I say "supposedly" because coercion has long been held up as a defence against a criminal penalty and as a negation of consent, Mrs Dunne's bill has no definition of coercion and no suggestion as to how coercion would be established under the act.

I am not convinced that this provision would provide women with any extra protection or that it would allow for personal interaction between a women, her partner, families and friends. It is interesting that the bill does not seek to protect women who are coerced into continuing with their pregnancy. I will not be supporting the bill.

Motion (by **Mr Humphries**) put:

> That the debate be adjourned.

The Assembly proceeding to a vote, the call for a vote was, by leave, withdrawn.

MS DUNDAS (10.55): I intend to oppose this bill. This bill perpetuates the view that abortion is fundamentally different from other kinds of medical procedures and requires special safeguards. As members of this Assembly would be aware by now, I do not agree. This bill appears to be founded on a belief that people working in abortion clinics encourage women to have abortions and that that should be a crime. The bill also implies that the provision of independent information will change women's minds. I think that both of these assumptions are completely false.

Consequently, I do not see the need for an offence of coercing a woman to have an abortion, nor do I think that it is necessary to require information to be given by someone other than a woman's doctor. As I said earlier this evening in relation to the repeal of the Osborne regulations, no-one seeks an abortion without having first fully evaluated their options. A decision to have an abortion is never one taken lightly and the information provisions in this bill could increase the trauma for women seeking abortions. As all members of this Assembly would be aware by now—

Mr Humphries: I take a point of order, Mr Deputy Speaker. I am sorry to interrupt Ms Dundas, but I do so for the sake of clarity. It seems to me that all of this bill is redundant and beyond our power to consider, given that we have repealed already tonight the act which most of this amendment seeks to amend. The provisions that Ms Dundas is talking about have been removed from the substantive act; therefore, the amendments to the act have no effect.

The only provision which it seems to me we can debate tonight is the very last clause of the bill, which is about proposed new section 45A of the Crimes Act. That seems to me to be the only thing we can debate tonight. I just thought that I should bring that to Ms Dundas' attention, because the rest of it is redundant.

MR DEPUTY SPEAKER: Is it agreed we should debate only that last clause?

MS DUNDAS: As I have said, I think that the assumptions that underpin the need for the new section 45A are completely false. I do not believe that abortion should ever be a crime for a woman and I do not believe that the administration of a safe abortion should be a crime, either. I do not see the need for any part of this bill at all. Hence, I oppose it.

MR HUMPHRIES (Leader of the Opposition) (10.38): Mr Deputy Speaker, as I have said, I believe that we are debating proposed new section 45A of the Crimes Act, which reads quite simply, "A person must not coerce a woman to have an abortion. Maximum penalty—imprisonment for 10 years." We have debated all sorts of things tonight. We have debated whether it is a woman's right to have an abortion, we have debated what information a woman ought to have before she makes that decision, and we have debated what rights a person has in dealing with a woman about whether there is a power to refer that woman to somebody else to conduct an abortion or whatever.

All those might be matters of contention. The argument that a person should not coerce a woman to have an abortion surely rises above all of that as a clear and indisputable observation of what ought to be the case. I assume that no-one in this place would suggest that it was legitimate, appropriate or acceptable for a person to coerce a woman in respect of an abortion; in fact, to coerce a woman in respect of anything, but most particularly perhaps in the case of abortion.

That was seen to be a deficiency in the law. Mrs Dunne has quite appropriately said that if our law is to enhance the validity of a woman's right to choose, as members of this place appear to believe, her right to choose is not enhanced when she is coerced. Indeed, her right to choose is taken way in the circumstances where she is coerced.

Unless members can see some kind of hidden code within the words that are presented there, and it seems to me that there is not any code or secret meaning, then we have an obligation to support this provision. It is almost so axiomatic as not to require any argument. I would hope that members will support this provision and support it without hesitation.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Health, Minister for Community Affairs and Minister for Women) (11.00): I was not going to speak, but I feel that I should respond to the comments made by the Leader of the Opposition. Certainly, it would be repugnant that anyone coerced a woman to have an abortion. I am most concerned, though, at the sort of law-making which says, "A person must not coerce a woman to have an abortion. Maximum penalty—imprisonment for 10 years."

What are the elements of this crime? What are the elements of coercing a woman to have an abortion that would lead to a conviction leading to 10 years imprisonment? This is not good law-making. This not a good offence.

Mr Humphries: Why not?

MR STANHOPE: That means nothing, and I think you know that, Mr Humphries. As a lawyer, as a former Attorney-General, you know that that provision is virtually meaningless in the law. "A person must not coerce a women to have an abortion." What does that mean? What are the elements of this offence? What form does the coercion take?

Mr Humphries: Coercion exists elsewhere in the law.

MR STANHOPE: "A person must not coerce" does not mean anything. It is dangerous law-making, because there is no way of confining the expression. What does coercion mean? What elements fulfil the requirements of this serious offence, an offence that will attract 10 years in prison, this offence of coercion to have an abortion?

Is it perhaps just moral persuasion? Is it a form of bullying? What is it? Is it some sort of blackmail, some threat? What exactly constitutes the coercing of a woman to have an abortion? I just make the point that this is not a way for the criminal law to proceed. I think that if one were to look at reports of the scrutiny of bills committee, one would find similar concerns expressed about this provision, that it is dangerous law-making to introduce into the Crimes Act a penalty, attracting 10 years in jail, of coercing a woman to have an abortion in circumstances where there is no definition around the term and there are no elements provided or described of the offence. I certainly cannot support an offence of that sort.

MS TUCKER (11.03): I will not be supporting this provision, either. Having a prohibition on coercion sounds good on the face of it but, as other members have said, what exactly do we mean? I am surprised that we did not also make it an offence to coerce someone out of having an abortion. In a way, the result of the last vote makes that a possibility. It is, as Mr Stanhope said, dangerously ill defined. Is it coercive to advertise that you provide abortions? Is it coercive to talk about a woman's right to choose? Is a friend coercing in supporting or in some way encouraging someone in their desire? Is that coercion?

Clearly, sometimes there are coercive attempts by partners who are not ready for a child or others involved in a woman's life and it is not okay for that to happen, but is that what we are talking about? Is it coercion if a partner says to a spouse or whatever, "No, I am not comfortable with this"? Would that person have to go to jail for 10 years?

If you look at the counselling that I read out before about the questions that are asked and the things that are considered, you will find, from memory, that coercion was actually mentioned there. If you have good counselling, and I believe we do from my visits to the clinic and the information provided, that is being dealt with. I think that this provision is very dangerous and I do not think that we would want to see a law like it supported in the Assembly. We could live to regret it.

MR PRATT (11.05): Mr Deputy Speaker, I am going to speak in support of this bill and I am going to focus on only one element of this debate right now. The Chief Minister and Ms Tucker seem to have entirely missed the point or do not understand what coercion means. Coercion clearly means an adult, by force to control, forcing perhaps a minor to have an abortion because the pregnancy is unwanted. Is that not clear? Why should we not have a provision in law which protects people in those circumstances?

Mr Stanhope: That is your interpretation. We do not accept that interpretation.

MR PRATT: Get a dictionary, Chief Minister.

MR SMYTH (11.06): I will take Mr Pratt's advice and provide the dictionary definition. The *Oxford Dictionary* says that coercion is controlling a voluntary action by force; it is forcing someone to have an abortion. I think that should be banned by law and I think that it should attract a heavy penalty.

MRS DUNNE (11.06), in reply: It is pretty sad that the advocates of conscience, civil liberties, the right to choose and all of those things around this place cannot take on board the fact that from time to time members of the community are not able to exercise their civil liberties, their conscience or their right to choose because of the actions of other people. The Attorney-General, as a man with a law degree, knows that coercion is a term that is well established in common law and is well recognised. I spent some time with the parliamentary counsel and they had no problem with the drafting of this provision because they recognised that coercion has meaning in the law and is widely accepted in common law.

Let us go to the sorts of things that would constitute coercion. In introducing this bill, I came to this place with half a dozen case studies of women who had had abortions in circumstances which might have constituted coercion. One of the things that you have to remember is that it is not just the exercising of force on someone; it is moral persuasion, it is emotional blackmail. As I said earlier today, the news that one is pregnant is seldom cause for unalloyed rejoicing. That is seldom the case when one first hears.

Those who have taken the trouble to read Melinda Tankard Reist's book will have found case after case of women looking for emotional support in a difficult time and finding rejection, denial of responsibility and outright hostility—we have had a lot of that here today, too—and, as a result, allowing themselves to be pressured into a decision, and that is not too strong a term, that they have regretted later in their lives. Their self-esteem is often at a point where they would rather be dead, and a number of them have attempted suicide.

In these circumstances, Mr Deputy Speaker, the power balance in the relationship between the parent, the partner and the doctor can in no way be described as equal. Women often make decisions which will affect them and which many of them will later regret for their lives while in a highly emotional state.

This amendment seeks to put an end to a situation where a woman is told that if she does not have an abortion her boyfriend or her husband will leave her and she will be without support. It would mean that no longer could parents get away with threatening to turn their daughters out of house and home unless they got an abortion. Quite frankly, parents who would do that to a child deserve the penalty of the law—perhaps not 10 years in jail, but they do deserve to be punished because they have punished their child in a way that is entirely inappropriate. No longer could an abortionist attempt to have a patient held down when she had second thoughts, and that does happen. All of these things could become offences under the Crimes Act.

I am aware that we have changed the rules today and that we no longer live in a society in which abortion is prima facie illegal. I am aware of it and I am ashamed, but I still want to proceed with this bill. As I said when I introduced it, whether or not abortion is illegal in the ACT, surely no-one in this Assembly would claim that it is acceptable for a woman to be forced to have an abortion.

The Chief Minister has said that it is not acceptable for a woman to be forced to have an abortion. Let him put his money where his mouth is, put his vote where his principles are, and support women who are being forced to do something which they will later regret while they are in a highly emotional state or a situation of duress.

Some members—Mr Hargreaves was one—questioned whether the bill would be enforceable. I wish I could say that the law always was, just as I wish that I could say that we could always catch and convict rapists. In practice, some of the more subtle forms of coercion, both abortion and rape, will be impossible to prove. Often, as with rape, it will be impossible to prove beyond reasonable doubt on the uncorroborated evidence of a victim alone. But I do not think that that is a case for abandoning legislation which is just. Just because there are evidentiary difficulties associated with this matter, we should not abandon it. We do not abandon a case of rape because there are difficulties with evidence. I commend the bill to the house.

Question put:

> That this bill be agreed to in principle.

The Assembly voted—

Ayes 5	Noes 12	
Mrs Dunne	Mr Berry	Mr Hargreaves
Mr Humphries	Mr Corbell	Ms MacDonald
Mr Pratt	Mr Cornwell	Mr Quinlan
Mr Smyth	Mrs Cross	Mr Stanhope
Mr Stefaniak	Ms Dundas	Ms Tucker
	Ms Gallagher	Mr Wood

Question so resolved in the negative.

Adjournment

Motion (by **Mr Wood**) agreed to:

> That the Assembly do now adjourn.

The Assembly adjourned at 11.14 pm.

Schedules of amendments

Schedule 1

Medical Practitioners (Maternal Health) Amendment Bill 2002

Amendments circulated by Mr Stefaniak

1
Page 3, line 4
delete
"5"
insert
"10"

2
Page 3, line 8
delete
"6 months"
insert
"2 years

Schedule 2

Medical Practitioners (Maternal Health) Amendment Bill 2002

Amendment circulated by Mrs Dunne

1
Clause 4
Proposed new section 55E

55E Delete all words and substitute:
No obligation to act in relation to abortion

No person or body is under any duty, whether by contract or by statutory or other legal requirement to:-
(a) perform or assist in performing an abortion
(b) refer a person to another person who will perform an abortion

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Schedule 3

Medical Practitioners (Maternal Health) Amendment Bill 2002

Amendment circulated by Mrs Dunne

Clause 4
Proposed new section 55E
Line 19

insert

"or no body or institution"

after

"No-one".

Schedule 4

Medical Practitioner (Maternal Health) Amendment Bill 2002

Amendment circulated by Mrs Dunne

Clause 4
Insert new section 55F

55F Quarterly reports from approved facilities

(1) The person or persons responsible for the management of an approved facility under 55C shall, not later than 3 months after the end of each calender quarter, provide the Minister with a report setting out prescribed details of—

(a) the number of abortions performed at the facility during that year; and

(b) the ages of the women concerned; and

(c) the gestational ages of the foetuses at the time of abortion; and

(d) the number of women who had previously had an abortion performed at that facility.

(2) A report shall not contain information that would enable a woman on whom an abortion had been performed to be identified.

(3) Upon receipt, the Minister shall caused the report to be published on the internet.

(4) The Minister shall table a copy of a report under this section before the Assembly within 5 sitting days after receiving it.

(5) Where a report required by this section is not provided, each person knowingly responsible for the failure commits an offence.

Maximum penalty: 50 penalty units.

(6) Where a person required by this section contains false or misleading information, each person knowingly responsible for the false or misleading information contained in the report commits an offence.

Maximum penalty: 50 penalty units.

Schedule 5

Medical Practitioners (Maternal Health) Amendment Bill 2002

Amendments circulated by Ms Tucker

1
Clause 4
Proposed new section 55F.
Page 3, line 21—

insert

55F Medical practitioner must provide information

If a woman asks a registered medical practitioner for information about abortion, the medical practitioner must—

(a) tell the woman about the lawful performance of an abortion under this part; and

(b) tell the woman about approved facilities under the Act where an abortion may be carried out; and

(c) on request, refer the woman to another registered medical practitioner.
