DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

FIFTH ASSEMBLY

WEEKLY HANSARD

4 AUGUST

2004

Wednesday, 4 August 2004

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The Assembly met at 10.30 am.

(Quorum formed.)

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

Electoral Amendment Bill 2004

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

Title read by Clerk.

MR STEFANIAK (10.32): I move:

> That this bill be agreed to in principle.

This is a simple bill which would change the election day for the Australian Capital Territory from the third Saturday in October to the second Saturday in November. This would not apply, of course, for the 2004 election because we are currently towards the end of this particular parliament and that would be completely undemocratic. It would apply for the next election and by the next parliament. That would mean that instead of having the election on the third Saturday in October 2008 it would be held on the second Saturday in November 2008.

No date is ideal when you are trying to set a date for an election. I suppose there are some people who do not particularly like elections, or even our democratic system. As Churchill said, it might not be a perfect system but it is the best anyone has invented to date. I think it is important to find the best possible date for an election. Interestingly, I have been told that, in the discussions in federal parliament prior to self-government being formalised and when the lead up work was being done, the preferred date of the federal ALP for territory elections was the second Saturday in November.

In 1989, once self-government was announced, which was in late 1988 I think, we had a March election. You will recall that parliament did not start until May, as a result of the d'Hondt system and the length of time taken. Then, when we went to a different election mode under the Hare Clarke system, which started from 1995, we continued with February elections. It was decided in 1997 to move the date of the election from February, for a number of reasons which I will come to, to the third Saturday in October.

It was decided by that particular Assembly that the month of February was not the world's best date, simply because it came on the back of the Christmas break and the holiday period and perhaps did not give optimum time for people to campaign and for parties and individuals to get their messages across. It was therefore decided that October would be a better date, and hence that occurred. Also in that period the Assembly lasted for three years and about eight months. There was then a push to go to four-year terms. That did not happen in this Assembly but of course it will happen in the next Assembly.

A number of issues have arisen in relation to the single October election we have had to date, but I will come to the federal one first. This situation may not occur as frequently now that we are going to four-year terms: it is likely to arise only once every nine or 12 years, but we have been affected by federal elections and it looks like this will happen again. We could well be bumped if the federal government decides to go to an election on 16 October. Of course, if it goes one week earlier or one week later there would be the clutter of having two elections running simultaneously. There were some issues in relation to that last time around, when the elections were about three weeks apart.

Of more concern to a number of people I and my party have spoken to, on both sides of the political fence, is the fact that an October date is somewhat close to the territory school holidays and indeed somewhat close to other events such as football finals. Just like we found with February, it does not give optimum time for parties and candidates to put their positions forward.

Mr Quinlan: What about the spring racing carnival, Bill? Come on!

MR STEFANIAK: Mr Quinlan mentions the spring racing carnival. As I said when I started, Mr Quinlan, there is never, ever, any optimum time. Apart from the spring racing carnival the second Saturday in November is probably one of the best possible dates you could pick where there would be the least number of distractions that might prevent people from concentrating on the matter at hand, stop candidates and parties getting their messages across and hinder people from getting a reasonable chance—if they want it—to digest the information and then vote accordingly.

I think it is important that the more informed the electorate, the more they focus on issues and the better our democratic system. As I said, no date is a particularly good date. There is always going to be something wrong with any date but it is interesting that, when the founding fathers of territory self-government were deliberating in the 1980s, they picked this very date as the best possible one. As events transpired that did not occur for subsequent elections of this Assembly but I think it is important, now that we have experienced a few dates, to settle on that. I commend that date to members. I look forward to support in relation to it and will be talking to members further about that. It is a fairly simple but nonetheless important issue. I believe it would not take terribly long to finalise it in this Assembly.

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

Residential Property (Awareness of Asbestos) Amendment Bill 2004

Mrs Cross, pursuant to notice, presented the bill and its explanatory memorandum.

Title read by Clerk.

MRS CROSS (10.40): I move:

> That this bill be agreed to in principle.

Even with the great breadth and depth of western medical knowledge we had to learn the hard way that exposure to asbestos could have a devastating effect on our health. It took us so long to learn that fact, not so much because of a lack of medical expertise but because the asbestos-related sicknesses were "sleeping" sicknesses—in the sense that they were silent, insidious, and took years or decades to develop.

As an example of the horrific nature of this slow and silent assault, an often quoted estimate concludes that the United Kingdom will lose one per cent of its male population born during the 1940s to asbestos-related diseases. The fine airborne asbestos fibres around many work sites silently entered through the smallest airways of the lungs to cause asbestos lung diseases including mesothelioma and, occasionally, through swallowing, abdominal mesothelioma.

Not only was the asbestos at work sites, factories, shipyards, et cetera but also, because of its remarkable and versatile properties, its application spread more widely so that over a longish period it entered people's homes as building and insulating materials and turned up in such household products as ironing blankets, stove-top simmering pads, and even sometimes as contamination in talcum powder.

This "wonder material" was all around us, but that is now history. Most, or much, of the worst damage has been done. The consequences of that damage are now exercising the minds of society as we try to handle the difficult task of treating and caring for those who have become, or will become, sufferers from asbestos-related diseases. Another task, separate from the task of addressing the plight of those who have already succumbed to asbestos-related diseases, is to do everything in our power to reduce the possible future incidence of these diseases that have already wrought such harm. That is what this amendment bill I am tabling today is designed to do in its small but significant way.

In recent times here in the ACT a program was undertaken to remove asbestos insulation from homes and other buildings in which it had been installed. That program apparently concluded successfully because the loose and readily accessible asbestos had been disposed of. Not surprisingly many people thought the matter had been put to rest, but not so. The spectre raised its ugly head again with the increasing incidence of renovation of older homes, many of which contained asbestos-related materials which, when broken up, set the tiny floating fibres free again, so the hazard remains, waiting to be set loose. This is an emotional topic for me, as I have lost family members to this disease.

The hazard remains, waiting to be set loose by the unsuspecting home owner, home renovator, professional tradesman, tenant or other occupant of a property that contains asbestos. We have to do our best to ensure that the asbestos does not get loose inadvertently; that people who have worked with it are properly protected and that proper disposal of the material occurs. We have to make certain that people know about, and remain alert to, the potential hazard. That is the intention of this amendment bill I am tabling today. I apologise to members for becoming emotional.

In essence, one amendment I am proposing will introduce a new element into the scope of the building inspection report, whereby the obligation is placed upon the building inspector who compiles the report to state whether there is asbestos or asbestos product in buildings on a property and, if there is, where it is and what type it is. Also, the report

must state whether part of the building was not accessible or available during the inspection. This simple, practical modification to the building report requirements will make a very significant contribution to society's efforts to control the asbestos hazard.

A further amendment in relation to premises that are the subject of a proposed residential tenancy agreement will require that, if there is asbestos or asbestos product in the premises, its exact location and type must be stated. In this way a good register of the presence of asbestos will be compiled.

Even though these measures will not bring back those who have been taken by asbestos diseases, we as legislators have a duty of care to society to take every, and any, step we can to keep the asbestos hazard at bay. Whatever steps can be taken should be taken as soon as possible to strengthen defences against these diseases. We should permit nothing to stand between our responsibilities and the achievement of that goal. On that basis I seek the support of the Assembly for the sensible and practical measures proposed in this bill.

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

Hemp Fibre Industry Facilitation Bill 2004

Debate resumed from 30 June 2004, on motion by **Mrs Burke**:

> That this bill be agreed to in principle.

MS DUNDAS (10.46): Over a few months we have had time to consider this bill. The Democrats have reached the position of supporting the bill, although we will raise a number of concerns that we think the government will need to take into account before the bill is implemented in the ACT. The Democrats have, for a long time, been supporters of a commercial hemp industry. Hemp is a strong and flexible fibre with many applications. It is a low-risk product and Australia exports hemp and hemp products all over the world. Even though the industry in Australia is at a relatively infant stage, Australia is a significant producer of the world's commercial hemp crop.

The ACT Democrats are supportive of the ACT establishing its own commercial hemp industry, as we are assured that the Canberra climate is suitable for the commercial production of such a crop. Any new industry that will bring jobs and help diversify Canberra's industry should be supported. With that focus this bill is a positive step forward.

Despite our low unemployment rate, Canberra's economy suffers from a lack of diversity in our work force and in our industries. As with the recent explosion in grape farming, this bill gives us an opportunity to bring some much-needed options and opportunities to our work force and bring a primary industry, for which there is a genuine and growing demand, into the territory. We have seen that in Queensland. Thanks to the support of the Queensland government, the hemp industry is already well established and provides almost $20 million in exports for Queensland. So it is definitely something the ACT should be looking at for our economy and our work force market.

The concerns the Democrats have, however, relate to hemp as a crop. It is a relatively thirsty crop and in our current dry climate and drought conditions it would be unwise to immediately establish a hemp industry. Hemp is great as a replacement crop for cotton or other water intensive crops, but the ACT does not have a large-scale cotton industry that we are trying to replace so we will not get the water savings that come from switching from cotton crops to hemp crops.

While this bill only allows an industry to exist and puts in place a regulatory scheme to govern that industry, I urge the government to exercise care—and I am sure they will—in awarding licences, to make sure that we do not overload our fragile water levels. More work needs to be done in examining the water table in the ACT before we grant licences to allow hemp production to exist in the territory.

I would like to make it clear that support for this bill does not in any way imply the Democrats' support for a new dam. We are not in favour of that proposal. If we learn to manage water properly there is a sufficient water supply in the ACT for both urban and rural use; it will just take care.

That being said, there are positive environmental outcomes for a commercial hemp industry. Commercial hemp is a crop, because of the way it is grown and harvested. But it does not attract much insect attention and consequently relies on far less, if any, pesticides. Being a large leafy crop it crowds out other weeds and plants and is therefore not dependent on large doses of herbicides. I think that is incredibly important if we are continuing to allow things in the ACT that will support our natural environment and not impact on the environment around them, which pesticides and herbicides can do, because you cannot always control the spray of those.

With this bill as put forward—we recognise that there are some amendments coming forward from the Greens that we think are quite sensible—we are happy to support the beginning of a hemp fibre industry in the ACT. We can see the positive benefits of having such an industry in the territory but we urge caution in respect of the impact that such a crop will have on our water supplies. It is something that will need to be managed into the future.

MS TUCKER (10.51): Industrial hemp—cannabis sativa with a low THC content—has been grown in Australia in all states, some on only a trial basis and some on a more permanent crop system. The most likely use of hemp products in Australia is utilisation of the plant for its fibre in pulping for paper and timber board products, for textile use and the production of oil from its seeds.

The global hemp market is still developing, as many countries have only recently legalised the production of industrial hemp. As a consequence the market potential of many hemp products is still largely unknown. The factors that may influence a revival in hemp, as some predict, include the diversity of potential uses for hemp products and the environmental benefits of hemp relative to other crops such as cotton. It certainly is an exciting industry.

Hemp can be used for insulation, fibreboards, mulching, carpeting, panelling, clothing and cosmetics but I understand that the greatest potential for markets in Australia is for

industrial purposes such as non-woven textiles. Currently there is limited capability in Australia for the processing of products. The full potential of the domestic market is still being discovered and assessed.

Hemp plants grow to a height of one to four metres, depending on the type of plant and growing conditions. It is also known as an excellent rotation crop. It reduces the need for chemical weed control, as the characteristic early growth and density smothers weeds and therefore acts as a natural weed control. Hemp is harvested during the summer months with a crop reaching maturity 60 to 90 days after planting.

I am interested in considering the suitability of hemp crops in the ACT. The crop requires a nutrient-rich, well-drained, well-structured sandy or silty lime soil with high organic matter. In most crops hemp does not require any herbicides. Approximately four megalitres of water is required over the crop production period, varying according to soil type and depth, initial soil moisture content, soil water holding capacity, irrigation systems, temperatures reached and evapotranspiration rates.

This information indicates to me that, due to the high water needs of hemp, maybe it is not an ideal crop in the Cotter catchment, following Mrs Burke's suggestion that the burnt out forests be replanted with hemp. The government has also raised such issues, and I am pleased to hear that they are reluctant to give out water licences easily for this sort of work. Equally, I would question the future of cottage industries around the growing of grapes and olives in the region.

The scheme for licensing and enforcement is orthodox, as the scrutiny committee knows. I understand that there are three categories of licenses: one for a grower, one for a person who undertakes research on cannabis plants that have a THC concentration of three per cent or more—THC is tetrahydrocannabinal, the psycho-active ingredient in cannabis—and another for a person who undertakes research on cannabis plants that have a THC concentration of more than one per cent but less than three per cent, according to the concentration the researcher works with.

This seems like an extremely rigorous licensing system, but I am a bit concerned by a few restrictive features of it. The chief executive, when deciding whether to grant or refuse a licence to a person, must consider matters such as good repute, having regard to the character, honesty and integrity of the person and their close associates. The chief executive may make investigations about relevant persons and may also ask for a criminal history report about any of the people. These requirements raise some rights concerns. I have drafted some amendments to take out the eligibility criterion that includes a condition of being convicted or found guilty within the previous 10 years of a serious offence.

My amendment replaces this eligibility criterion with one that was used in the Drugs of Dependence (Cannabis for Medical Conditions) Bill—that the person has not been found guilty or convicted in the previous five years of an offence involving drugs prescribed under the regulations. This amendment makes it clear that the criminal history of concern is really based on drug offences rather than other general offences.

I was also concerned with the definition of "serious offence" in the dictionary as it defines "serious offence" as an offence punishable by imprisonment for three years or

longer. I have spoken before about my concern about reducing the requirement of "serious offence". So I have amended, in this instance, this legislation to make the drug offences more relevant to this debate.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (10.55): The government will support the bill, not because we have any particular faith in the capacity of the bill to be a catalyst for a thriving industrial hemp industry in the ACT but primarily because of the opportunity it presents for research activities within the ACT in relation to hemp and a range of issues around the possible uses of hemp or industrial hemp for commercial and research purposes within Australia.

It is the case that the ACT is the only jurisdiction in Australia that does not have legislation that would enable either the commercial production of hemp or research into issues around hemp. That is a potential restriction within the ACT that seems anomalous and in relation to which there is no rational or cogent basis. As has been touched on by Ms Tucker, there are some questions around whether or not hemp would ever be grown commercially in the ACT—whether or not it is a commercial crop or has commercial potential, having regard for our environment and the nature of the conditions here within the ACT.

Hemp is a crop that requires significant levels of water for optimal production or growth. It also requires significantly high levels of nutrients. Hemp is not particularly frost tolerant and grows best where there is significant summer rainfall. It is probably fair to offer the comment that the places within Australia best suited to the large-scale commercial production of industrial hemp are the Northern Territory, perhaps parts of northern Western Australia, and Queensland. But I think the fact that it is highly unlikely that industrial hemp will be grown commercially within the ACT is not reason enough, of itself, to oppose the bill. As I have said, there are many research institutions in the ACT: CSIRO Plant Industry, CSIRO Land and Water, the Australian National University, and Land and Water Australia are all based here.

It may be that all those organisations would wish to undertake work in relation to industrial hemp and there really should be no disincentive or incapacity in opportunities for them to undertake that research, having regard for the potential for commercial production of industrial hemp throughout Australia. So while the ACT's climate and soils are less capable of supporting industrial hemp as a crop, we are certainly well placed to facilitate research on developing strains, for example, of industrial hemp for commercial production in other places throughout Australia. I think it is relevant that there is no legislation in the ACT that allows this to occur. It is only reasonable that the ACT be brought into line with other jurisdictions around Australia.

I am not aware of any interest within the ACT community for the production of industrial hemp on a commercial scale but, whilst ever there is a legislative prohibition to that occurring, there is no incentive for anybody within the ACT to think about it as a potential crop. It is appropriate that we make the point, though, that with regard to issues we face in relation to the sustainable use of water within the ACT, I do not think this government, or any other government, would be looking particularly actively or sympathetically at requests from potential commercial hemp growers to be allowed to

take water from within the ACT catchment for the irrigation of any crop, or certainly any large-scale or commercial growing of industrial hemp, within the ACT.

I think the things we would look at here in our determination to develop sustainable water systems and appropriate and strategic use of the limited water that we have available would not lead us to be exploring cash crops that require irrigation or require amounts of water simply to sustain them. My advice, although it is not detailed advice, from Environment ACT is that hemp is a crop that would, having regard for the ACT's climatic position, almost certainly require irrigation. I simply cannot believe that hemp is a crop the growing or harvesting of which we would encourage if it required irrigation.

Having said that, it probably needs to be acknowledged that we have a bad history in Australia with cotton, rice and some other crops that are essentially unsustainable and should not be grown, and we are looking to a reduction in the amount of water used, particularly for rice. Whilst we worked through the Murray-Darling Basin Commission initially to discourage their expansion, it would be anomalous if, whilst we are engaged in resourcing a reduction in the use of water in the Murray-Darling Basin system for irrigation, we encouraged its greater use within the ACT.

This is a gap in the legislative scheme that applies within the ACT. I am advised that we are the only jurisdiction that actively discriminates against the possibility of either the growing of or research into hemp. That is anomalous: it is appropriate that the anomaly be removed, and the government will support the legislation. I also have received advice in relation to amendments proposed by the Greens and the government will be happy to support them.

MRS CROSS (11.02): I rise to support Mrs Burke's bill, and I commend her for it. One of my concerns when deliberating on this bill was the water that would be required, but those concerns seem to have been addressed. I agree with the Chief Minister's concerns with the water issue on this, but I think this is a very good initiative.

MRS BURKE (11.03), in reply: I will close the debate. I would like to thank members very much for their input into and support for this bill. It is interesting that the Chief Minister notes that the ACT is the only jurisdiction not to have such legislation. We are normally renowned for trying to be the first at things. It is interesting that we have been dragging the chain and that we are now catching up with the rest. I appreciate that.

In addressing some of the comments I will start with those of the Chief Minister. He was saying something about the bill not being a catalyst but he went on to qualify that by saying that perhaps the fact that there has been no legislation has deterred people. I take those comments on board.

The Chief Minister wondered whether hemp would ever be grown commercially in the ACT. It is interesting to note that, in thinking laterally about this, the parallel to this is the viticulture industry. As we know, in the early 1970s this was started off as a hobby by CSIRO and ANU academics. Of course now we see that viticulture is a fast-expanding industry, thanks to the likes of people like Ken Helm and Kate Carnell, who have obviously pushed that agenda forward and seen a really good increase in that industry.

Indeed people found it rather amusing—and I think when you try to introduce anything new and slightly outside of the square or people's paradigms of thinking, it is amusing. I think that, as Ken Helm said, "wool" to "wine" is still a four-letter word. I think it is interesting. "Hemp" is a four-letter word but I think we look to "hemp" as meaning "hemp employs many people". As people would know from my tabling statement, the focus has always been on training. I will talk about that in a little while.

We talked to many members with regard to the significant levels of water. In fact, hemp uses the same amount of water as wheat. Let us be clear. It really needs—and I think the Chief Minister alluded to this—significant levels of water in its first 60 days or three months. There seems to be differing advice on this whole area. If you look into it—I have a couple of full files on this—you find that there are possible threats to industries like the cotton and rice industries that, as Mr Stanhope has clearly pointed out, use enormous amounts of water. He is constantly struggling with that debate. Maybe there is an alternative to these crops that use huge amounts of water, and we can look to diversifying in that way. I think that needs to be noted.

I wanted to thank Ms Dundas and the ACT Democrats for their support of the bill. I note that Ms Dundas has some concerns. I am not sure if she is putting any amendments through in relation to those. She said the same thing—that it is a positive step forward; it talks about diversity; it perhaps gives our farmers something to do other than growing olives; and it is an opportunity for diversification. We can still grow olives, Mrs Cross—it is okay!

Ms Tucker talked about many things and supported this. She talked about the difficulties with water. I would like to talk to Ms Tucker more in that regard as we progress through this because there is interest, certainly in the training sector, in how we can develop that now that it appears that this bill will get passed and will become legislation. It will open up the industry. You talked about—I could not hear all that you were saying; I am sorry—the growth of cottage industries in the region. You were concerned about, or questioned, the growth of cottage industries. I think that is something we need to look at again in light of how the wine industry, for example, grew out of that cottage-type hobby interest. We have to keep thinking laterally when we table a new idea.

I also take on board Ms Tucker's amendments. I have only just looked at those but my office has been talking with Ms Tucker's office and we are happy to accept them. I appreciate your input. Thankfully, Mrs Cross talked about supporting the bill and, as a businesswoman herself, looking at the options, opportunities and new vistas this will open up for us. I think Ms Dundas also said that.

I would like to thank parliamentary counsel for the vast amount of work they have done on this. I would like to thank the staff in my office—Dean Logan and Ilona Fraser—for their support. I thank members for supporting this, and I think we also need to support the Earth Collection, who allowed me to model this jacket here today. I know props are not allowed, Mr Speaker, but you have to admit it is a very fine jacket!

Let us hope we can see more diversity in this area, which is really the focus of what we are doing here, that will open up new industries, new jobs and new training opportunities in areas such as agriculture, building, retail, small business, tourism and hospitality, to

name but a few. I will not say any more. I thank you for that. If members need any more information please do not hesitate to come and ask me.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Bill, by leave, taken as a whole.

MS TUCKER (11.09): I seek leave to move the amendments circulated in my name together.

Leave granted.

MS TUCKER: I move amendments Nos 1 to 5 *[see schedule 1 at page 3470]*. I have already spoken to these.

Amendments agreed to.

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

Bill, as amended, agreed to.

Discrimination (Genetic Status) Amendment Bill 2003

Debate resumed from 10 December 2003, on motion by **Mrs Cross**:

> That this bill be agreed to in principle.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (11.10): The Discrimination (Genetic Status) Amendment Bill was introduced into the Assembly on 10 December 2003 by Mrs Cross. The bill aims to protect the community against the use of predictive genetic information and discrimination based on genetic information. Some legal protection is already available in the ACT under the Crimes Act against the non-consensual collection and use of body samples for genetic testing. However, the protection is limited.

While the collection and disclosure of personal information by a public or private laboratory is subject to national privacy principles, the laboratory may not know the identify of the individual from whom samples were derived. In that case the laboratory will not be dealing with personal information covered by the Privacy Act. The Privacy Act is further limited as it does not apply to genetic samples but rather to the genetic information derived from them.

The bill proposed by Mrs Cross amends the Discrimination Act 1991 through the insertion of new grounds for discrimination to which the act applies, namely discrimination on the grounds of a genetic characteristic or a genetic predisposition to a condition or disease. The government does not support the amendments to the

Discrimination Act proposed in clause 4 of the bill as they, in the government's opinion, will not provide any more protection than is currently made available by the provisions in the act.

In early 2003 the Discrimination Act was amended to attend to the issues of discrimination on the basis of genetic information. In 2003 the Discrimination Amendment Act expanded the meaning of "impairment" to include an impairment that a person has or is thought to have, an impairment that a person had in the past or is thought to have had in the past, and an impairment that a person will have in the future, or may have in the future. In this way the Discrimination Act gives broader protection from discrimination based on past, present or future impairment.

That approach is consistent with the anti-discrimination legislation of Tasmania, of New South Wales and of the Commonwealth. All have an expanded definition of disability that includes disabilities that may exist in the future. Therefore, the government does not support clause 7 of the bill, which proposes to add a new section 28 (2) to section 28 of the Discrimination Act because fundamentally it is inconsistent with the Commonwealth legislation, and as a result of that inconsistency is almost certainly ineffective.

Clause 7 of the bill proposes to add a new section 28 (2) to section 28 of the Discrimination Act. Section 28 of the act relates to insurance and allows a person to discriminate against another person in relation to the terms of an annuity or insurance policy if the discrimination is reasonable in the circumstances having regard to any actuarial or statistical data. However, the new section 28 (2) of the bill provides that section 28 does not apply to the use of predictive genetic information to discriminate against a person in relation to the terms of an annuity or insurance policy. Specifically, with the introduction of this new part, insurers and insurance agents would not be able to use predictive genetic information when providing an annuity or insurance policy to clients.

The government also does not support clause 9 of the bill, which proposes to add a new section 29 (1) (a) to section 29 of the Discrimination Act. Section 29 of the act relates to superannuation and allows a person to discriminate against another person in relation to the terms or conditions of a superannuation or provident fund scheme if the discrimination is due to a standard enforced under the Superannuation Industry (Supervision) Act 1993 of the Commonwealth, is for the purpose of complying with, avoiding a penalty or obtaining a benefit under an act of the Commonwealth, or based on actuarial, statistical or other reasonable data. The government also questions the effectiveness of proposed sections 28 (2) and 29 (1) (a), as they are contrary to section 46 of the Disability Discrimination Act 1992 of the Commonwealth. Because they are inconsistent with the Commonwealth legislation it is highly doubtful that they would have any effect.

Finally, the government does not support part 2B of the bill. This part proposes amendments to the Crimes Act through insertion of the offence of genetic testing without consent and of unlawfully obtaining genetic testing consent. Under these provisions, a person commits an offence if he or she takes a sample from someone for the purpose of genetic testing, submits a sample from someone for the purpose of genetic testing, or conducts genetic testing on a sample from someone and there was no consent to the

taking of the sample for the purpose of genetic testing and the person who took it, who submitted it or who conducts the genetic testing knows that there was no consent.

This provision, in its current format, inadvertently targets employees such as the laboratory worker who receives a sample from B who has taken the sample from A and conducts genetic testing on the sample. If the laboratory worker assumes that there is a valid consent form or adverts his or her mind to the question of whether there is a valid consent form but does not bother to confirm or deny the assumption and conducts the test, the laboratory worker would be captured by the recklessness provision. Similarly, if the laboratory worker just processes the job without even considering the validity of consent, given the nebulous consent of recklessness, that worker could also be caught and would be likely to be caught by the offence.

The government believes the bill unfairly targets laboratory and health professional workers. The bill makes it an offence for a person to conduct genetic testing without checking if there is a valid consent form and an employee would be liable even if he or she were not responsible for the obtaining of the consent. The government submits that the bill proposed is inconsistent with standard concepts of criminal law and the values of a legal system where innocent victims are not convicted and where citizens know and understand their rights and obligations under the law. For that reason, as well as the others that I have stated earlier, the government does not support this bill.

Fundamentally and in summary, the government believes that the issue that is sought to be addressed through this legislation was appropriately addressed in 2003 by amendments in the Discrimination Amendment Act to expand the meaning of impairment. Those amendments were designed to be consistent with the inclusion of that expanded scope of disability within the Commonwealth legislation. The government believes that the bill being debated now is inconsistent with the Commonwealth's Discrimination Act and, as a result of that inconsistency, almost certainly would not be of any effect.

We believe that it is confusing to now impose or to seek to impose specific legislation in relation to so-called genetic discrimination when that discrimination is included quite clearly within the expanded definition of impairment in the amendments passed by the Assembly last year. We also believe, as I have indicated, that the penalty provisions proposed to be inserted in the Crimes Act in relation to the taking and using of samples are inconsistent with good and standard criminal law practice.

MS DUNDAS (11.18): The ACT Democrats will be supporting this bill in principle. In 1998 Australian Democrat Senator Natasha Stott Despoja first tabled the Genetic Privacy and Non-Discrimination Bill in the Australian Senate. It was re-listed on the Senate notice paper in 2002, so if the Chief Minister is particularly concerned about fears of inconsistency with federal legislation he might want to talk to his federal colleagues about what the Democrats are trying to do up on the hill. The Australian Democrats have long been at the forefront of the debate on the genetic rights of Australians, and protection from discrimination on the basis of genetic data has been central to our concerns.

The rapid developments of genetic technology have changed the basic identity of individuals. It is now possible to distinguish between individuals on the basis of their

genetic material, the sequence code that makes up genes and chromosomes in every cell of our body. This achievement is significant and has the potential to provide considerable benefits for improved medicine and treatment of diseases. However, these advances also bring the need to develop new laws to deal with the new possibilities, to make sure we achieve the full benefit of new technologies.

The recognition of genetic privacy in ACT law is timely. On 11 November 1997 the general conference of the United Nations Educational, Scientific and Cultural Organization, or UNESCO, unanimously adopted the Universal Declaration on the Human Genome and Human Rights. The general conference matched the universal declaration with a resolution on its implementation. In part it urges member states:

> … in the light of the provisions of the Universal Declaration on the Human Genome and Human Rights, to take appropriate steps, including where necessary the introduction of legislation or regulations, to promote the principles set forth in the Declaration, and to promote their implementation.

Article 7 of the universal declaration provides:

> Genetic data associated with an identifiable person and stored or processed for the purposes of research or any other purpose must be held confidential in the conditions … set by law.

Parliaments need to lead this debate and provide the guiding principles. The exponentially increasing number of genetic conditions that may be tested and the huge range of genetic information that will be available from the human genome project will make genetic information a reality for many in our community. It is estimated there may be 3,000 or 4,000 genetic hereditary diseases and conditions, and their identification at the gene level is possible. Each person probably carries a number of non-functioning genes, often lethal, and most probably a larger number of genes that place the individual at risk of developing some condition.

Genetic discrimination describes the different treatment of individuals and their family based on genetic differences, presumed or actual, and may be distinguished from discrimination based on having the symptoms of genetic disease. On 11 November 1997, the general conference of UNESCO adopted unanimously and by acclamation the Universal Declaration on the Human Genome and Human Rights. Article 6 provides:

> No one shall be subjected to discrimination based on genetic characteristics that is intended to infringe or has the effect of infringing human rights, fundamental freedoms and human dignity.

This bill outlaws genetic discrimination by amending the ACT Discrimination Act of 1991. The ACT has been repeatedly at the forefront of advances in discrimination law. For example, the ACT added discrimination on the basis of age to its discrimination laws in 1994, a full decade before the Commonwealth, who has only recently passed the Age Discrimination Act.

Medical science is increasingly designing new and more accurate tests to determine the genetic susceptibility of people to a range of genetically influenced disorders. The commercialisation of these tests will lead to more widespread testing and increase the

dangers of genetic discrimination. The impact on insurance of genetic information is substantial and must be controlled. Insurance providers in Australia have taken steps towards addressing the use of genetic information and these steps are to be commended. However, this bill will provide clear guidance that insurance providers cannot discriminate against a person or their family based on genetic information where that person or family member is presently healthy, or on the basis of a request for or receipt of a genetic service.

Although there are no reported cases of genetic discrimination in Australia—and worldwide data is limited—such discrimination probably does occur. A survey of 322 people with genetic disorders in 44 states of the United States found 22 per cent were refused health insurance and 13 per cent were denied or dismissed from a job on the basis of their genetic code. These findings show genetic discrimination is an issue that needs to be addressed and is impacting on real people.

The ACT Discrimination Act 1991 already lists sex, race and impairment among the characteristics protected under the act, all of which may have genetic elements of those characteristics already protected. The definition of impairment was specifically included in the act by the Discrimination Amendment Bill 2003 to include potential future impairment, which would cover the results of genetic testing indicating susceptibility to future diseases. However, I believe that it is possible there may be gaps in coverage of the act and this bill ensures that discrimination on the basis of genetic characteristics is clearly articulated as being against the law. However, there are concerns about the detail of what Mrs Cross is trying to do today, so I would support an adjournment at the in principle stage so that we can take a bit more time to try to make sure that the bill achieves what we hope it will.

MR STEFANIAK (11.24): What Mrs Cross is attempting to do with her bill is to rein in some of the dangerous potential of DNA testing and prevent large-scale discrimination against people who have a predisposition to certain diseases or illnesses. As she quite rightly says, just because they have a predisposition does not necessarily mean that it is going to affect them in their job or they are going to get a disease. I suppose most of us have a predisposition towards something in our make up. Some of us have high blood pressure. We could drop dead tomorrow. Those things happen. But it does not mean that that person is not going to be an excellent employee for any firm, body, or organisation. So I think the reason behind what Mrs Cross is doing is most admirable indeed.

Genetic testing is a two-edged sword but it is a very important tool. When I first read this legislation, I hoped this would not do anything that would affect the ability of the police and law enforcement authorities to do DNA testing and, if need be, to force DNA testing on people to ensure that crimes can be solved. DNA testing can be used not only to solve crimes but also, on the odd chance, to show that someone who might have been convicted is innocent. Those things have occurred. So I think it is terribly important in the criminal law to ensure that occurs and Mrs Cross seems to have covered that in her legislation.

The Attorney has now raised a number of other issues that I had not heard of till today, but they are substantial issues. They relate to a couple of the clauses being inconsistent with Commonwealth legislation. Obviously those things need to be checked. He also raised some other issues in relation to laboratory workers. However, they are things we

can work out. We can see whether this bill, which has some excellent motivation behind it, can go forward with necessary amendments in the in-principle stage. So, like Ms Dundas, the opposition is certainly very happy to support this bill to the in-principle stage. Then we will see what occurs after that—whether amendments can be made and what needs to be done. I do not know whether that is going to be too much of a problem. Perhaps the relevant people could have a round table, get some advice and go from there. Certainly the sentiment behind what Mrs Cross is doing is admirable.

I have indicated I am a great supporter of DNA testing, especially in the criminal law. However, there are issues about how to take it. People have legitimate rights to their privacy—is it fair and just to use DNA in certain circumstances? There are risks that it can be used, and perhaps abused, in so many circumstances that some of the net benefits we get from DNA testing in the criminal law will have unfair adverse affects on people—especially if the law is lax and testing is allowed in inappropriate circumstances.

As legislators, we need to be careful about that. Again, that is one of the driving forces behind what Mrs Cross is attempting to achieve. So, the opposition is happy to support the bill in principle and we will then see what amendments need to be made to it. I will certainly be seeking further opinion from people in relation to some of the issues that the Attorney has raised today.

MS TUCKER (11.28): The Greens will be supporting this bill in principle but will be supporting an adjournment at the detail stage to allow us to sort out a number of issues in the mechanism to be used. This adjournment would likely not have been necessary had we had more notice of this bill coming back on today. With notice coming only late yesterday, there has not been time to sort through the details with any level of confidence. I acknowledge, however, that Mrs Cross's office has assisted with references to their background material.

The Scrutiny of Bills Committee raised a number of issues on this bill. Could the prohibition on testing without consent interfere with the legal rights of another person? Examples given centre on family disputes, specifically on maintenance obligations on the basis of genetic relationship. This kind of case has been the subject of comment for many reasons. One reason is the failure to get consent of the other parent. Another is the question of whether a family responsibility would continue even if it were shown that a parent is not the genetic parent. If you have lived with a child and cared for him or her as a parent, should it alter your relationship with that child if it turns out you are not the genetic parent?

The other situation is where there is not yet a parental relationship and establishing the parentage is a matter of establishing responsibilities before or shortly after a child is born. In drawing out this issue, the committee used the example of a court case and asked why is this form of surveillance and information gathering different from other forms that may also be intrusive? Report 45 of the Scrutiny of Bills Committee pointed out:

> … under the general law a person may in any way that is not prohibited by law gather information about another for the purpose of using that information as evidence in a legal proceeding. The method of gathering the information may be highly intrusive of the privacy of the person and may concern private conduct of the person. … the rationale for the absence of any general law against collecting

> information in a way that intrude on privacy may be that in the interests of justice—that is that a person should be able to place before a court all information relevant to that person pursuing their legal entitlements—prevails over any privacy interest of the person about whom the information was collected.

It seems to me that the problem of information being required for a legal case would be overcome without too much difficulty since the court is already involved. If the information is relevant to the case a court order should not be a problem. Genetic information is a new type of information and is potentially very powerful. Someone holding information that indicates that I have a genetic predisposition to a particular condition is in a position to do great damage. Part of this damage might be on the basis of prejudice, by telling other people. Part of the damage would then be due to ignorance. We do not yet fully understand the interplay between genetics and environment—what we eat, our attitudes, and accidental events. Genetic information must be considered in the context of the complexity of our genetic make-up and the effects of our genetic make-up on our lives and our great lack of understanding of this complexity.

So while it might be useful for me to know that I have a particular genetic tendency for some diseases, we know that that means I will have a particular difficulty to deal with in my health. We do not know about others. It is a predisposition, and if I know about it early enough in my life I can try to live in a way to minimise the chance of that condition developing. Because of this inexact nature of genetic information it is perhaps more dangerous. Misinterpretation and overreaction are more likely. So, I agree that there is an issue here. The question now is whether we need to change our current laws in order to deal with this issue.

The government is arguing that none of the amendments proposed in this bill is necessary, and that we are already covered. The first part of Mrs Cross's bill is to insert an additional ground of discrimination into section 7 of the act to specifically identify discrimination on the basis of a genetic characteristic or a genetic predisposition to a condition or disease. My office has had advice from the Discrimination Commissioner that although it is likely that genetic discrimination is covered already by section 5AA's definition of disabilities, including potential future disability, it may be useful to clarify that this includes genetic information. The commissioner referred to reports from the Productivity Commission and from the Law Reform Committee, both of which reached similar conclusions on this point. However, her advice is also that it may work better to have an amendment to section 5AA (1)—this would avoid the problem created by relying on 5AA (2)—specifically that it excludes work-related discrimination and discrimination by qualifying bodies. This is one question to be resolved in the detail stage.

The second part of the bill, also amending the Discrimination Act, would make it unlawful for an insurance company to discriminate on the basis of predictive genetic information. Because of the uncertain nature of so-called predictive genetic information and the uncertainties I have already mentioned about what will occur, there is a case to be made for excluding this kind of information from use by the insurance industry. A study by Matthew Stulic in the Murdoch University law journal in 2000 noted that:

> … there is international evidence to suggest that genetic composition was becoming a factor in the denial or curtailment of insurance coverage. This is true of health insurance … and life insurance.

Stulic refers to a British study of genetic discrimination in the British life insurance industry published in the *British Medical Journal*. He states that 33.4 per cent of the study group, which was drawn from members of a range of genetic support groups, faced difficulties when applying for life insurance compared with 5 per cent of applicants in a control group. He goes on further, noting the Senate committee's conclusions, that it was less of a problem in Australia because of the universal health coverage through Medicare. However, as we well know, since 2000 and since the Senate committee reported, the universality of Medicare has been under severe attack.

The exemption for the insurance industry in the Discrimination Act relies on the use of actuarial data indicating some link between information and health risks. In the case of genetic information, Mr Stulic notes that the *British Medical Journal* has examined this topic and quotes the journal as follows:

> As the scope for screening, particularly for polygenic disease escalates, insurance companies cannot possibly have the data to enable them to finetune individual premiums. It is going to take decades to unravel the complex interaction between genetic, environmental, and individual factors in multifactorial disease, and the extent to which we can use this knowledge to improve health outcomes.

In other words, actuarial data on genetic information is really unreliable as a predictor. So this amendment seems important. However, I have been alerted to the possibility of this section contravening the Commonwealth's Insurance Act. This is something we will need to look into before finally voting.

The final part of the bill amends the Crimes Act and the Health Records (Privacy and Access) Act to require permission of the person whose genetic material is being tested before any testing occurs. The application of this section to the person doing the tests in the lab is perhaps of concern. However, the wording of the offence is that the person is reckless about whether a relevant person has consented to the taking of the sample for the purpose of genetic testing. This seems probably to be a reasonable basis, with the scope for reasonable defences.

As I discussed in relation to the scrutiny report, testing without consent would be allowed in accordance with the law of the territory or in accordance with a court order. I look forward to resolving these issues in the detail stage, and thank Mrs Cross for bringing the matter forward.

MRS CROSS (11.36), in reply: I thank members of the crossbench and the opposition for their support and have made notes of the Chief Minister's concerns. I assure the Chief Minister that I will look into them in depth. I accept that we will debate this in the in-principle stage and adjourn debate in detail to another day.

Genetic technology can produce many benefits for the community. Among other things, genetic information can be used to give an indication of a predisposition to certain illnesses. It can also be used to establish parentage in disputed custody situations. Benefits such as these that can be derived from genetic information are undeniable. However, the misuse of this information can have adverse consequences, and if there is no regulation of the use of genetic information, there will exist the potential for likely large-scale discrimination against people who have a predisposition to certain diseases or

illnesses. For example, if employers are allowed access to genetic information when recruiting staff, this could lead to some very well-qualified and healthy persons becoming unemployable. I believe this sort of thing occurs, and it is patently unfair and utterly without ethical justification.

A case in point is an 18-year-old male named Nathan, whose mother had Huntington's disease. Nathan completed university with above average marks and was deemed to be in the top 5 per cent of applicants for a public sector job he was seeking. The final requirement was to pass a medical examination in which the applicant was required to submit his family's medical history. Nathan did this, noting his family had a history of Huntington's disease. Nathan was subsequently offered the job, but only on the proviso that he undertook a genetic test. It proved negative for the genotype that causes Huntington's disease. If Nathan had the genotype that caused Huntington's disease, it would not mean that he would definitely get the disease. To base employment on the possibility that somebody might develop a certain disease is patently unfair. It is seriously discriminatory and is simply biological determinism at its worst.

I appreciate the co-operation and the effort put in by the opposition and members of the crossbench when looking into bills in general. Indeed, we seem to work quite well together when we are debating or about to debate a bill. However, I cannot say that that exists with the government when a bill does not have its name on it. It is interesting to me that in this instance Mr Stefaniak, Ms Tucker's office and Ms Dundas' office were extremely open to discussing this bill. Given that this bill was tabled in December last year, I cannot recall one occasion when the government ever came to me or my office, even though we offered to provide information to the government to discuss it. So, it would be good if there were more co-operation and collaboration between the government and others in this place. Maybe the day that the majority in this place see this will be a day to celebrate.

A United States study conducted by Northwestern National Life Insurance in the late 1990s found that by the year 2000, 15 per cent of employers plan to check the genetic status of prospective employees and dependants before making employment offers. This is a very high figure and underlines why we need to take steps to protect people against genetic discrimination.

Over the years we have seen, particularly in the area of employment, many examples of discrimination ranging across characteristics such as race, gender and age; characteristics which are unchangeable, characteristics which of themselves do not constitute a risk simply because they exist. Over the years we have moved to eradicate these abhorrent forms of discrimination within our society. It took us a long time between acknowledging the discrimination and addressing it through legislation.

Indeed, in 2002, this Assembly unanimously passed the amendment to the Discrimination Act on pregnancy discrimination. I remember that debate very clearly. Despite the fact that it was a unanimous vote, the Chief Minister was quite bitter in his statements, saying, "I find this unnecessary"—and this from the man who professes to be the social conscience of his party and the territory and who wants to preserve and protect people's rights. How much taxpayers' money was spent on putting through a bill of rights? It seems to be a very arbitrary preservation and protection of people's rights, and only when his name is attached to it.

Let us continue this process of eradicating harmful discrimination by treating in the same way the discriminatory use of genetic information in employment. We cannot allow such serious decisions to be made on a suspect basis that has potential to tragically affect lives that might otherwise be lived happily and fully. We cannot let people play God in matters with such potentially serious consequences for an individual, particularly when the individual has no present manifestations of an illness that might never manifest itself. We do not tolerate racial or sexual discrimination, so we should not tolerate genetic discrimination. The legislation I am proposing stops such discrimination.

Similarly, we cannot allow genetic information to be used in the field of insurance to stop certain individuals from having access to insurance. This bill will not prevent insurance companies from employing existing actuarial practices that are used to measure the risk and cost of insurance policies. Rather, this bill will prevent insurance companies going further than that and demanding genetic tests from those seeking insurance. Furthermore, it will prevent insurance companies from discriminating against an individual on the basis of personal genetic information.

A recent article in the *British Medical Journal* showed that 33.4 per cent of a study group made up of individuals from numerous genetic support groups had difficulty obtaining life insurance compared to 5 per cent of other applicants. So the evidence is there to show that insurance discrimination based on genetic information does exist. The perception that genetic information will be used to alter or prevent insurance coverage is of itself also significant. This perception can deter people from undergoing genetic testing which in turn takes away any possible benefits that could be derived from genetic testing. The Australian Law Reform Commission and the Australian Health Ethics Committee have both indicated that there is a perceived fear of genetic discrimination in life insurance that has caused individuals to avoid genetic testing.

If we allow individuals or classes of people to be discriminated against in the areas of employment and insurance on the basis of genetic information, we will likely be contributing to the creation of a new social problem through the establishment of a new social underclass, an underclass that is unemployable and uninsurable. We have to prevent that from happening. This legislation is also in line with UNESCO's Universal Declaration on the Human Genome and Human Rights, specifically, article 6 of that declaration, which states:

> No one shall be subjected to discrimination based on genetic characteristics that is intended to infringe or has the effect of infringing human rights, fundamental freedoms and human dignity.

That appears to state things very clearly. The main result of this bill not being passed in the detail stage would be a negative effect on the health of our community. As I said at the outset, genetic testing can be highly beneficial to people's health. Genetic testing can give clues to dealing with life-threatening conditions and can indicate a person's predisposition to a disease which would allow for early treatment or could enable the person to adjust their lifestyle to minimise the chance of the predisposition becoming manifest. This has been referred to today by both Ms Tucker and Ms Dundas.

Simply put, genetic testing and the information this testing provides can be used for preventing, treating and healing diseases. But if we do not assure genetic privacy, people will avoid undertaking genetic testing and likely health benefits will not be realised. The negative effects this would have on the community are obvious. Similarly, those who undertake genetic testing can significantly reduce the costly burden of continuous medical surveillance if the test turns out to show no signs of a predisposition to a particular disease. These people would also have a weight of anxiety lifted from their shoulders.

We cannot bury our heads in the sand on this issue. It should be acknowledged that the misuse of genetic information is not widespread in Australia at present. This is because genetic testing is not widely used; nor is it considered highly reliable. But genetic testing will become more widely used and more reliable. With this will come increased levels of discrimination based on genetic information. We have a chance now to prevent this happening. We can right now take steps to assure the residents of the ACT that their genetic privacy will be protected. We need to be ahead of the game on this issue, and supporting this legislation shows that we are. Let us stop genetic discrimination before it becomes a regular practice.

I encourage all members to support the Discrimination (Genetic Status) Amendment Bill 2003 because it prevents unfair and unwarranted discrimination. We need to allow for genetic testing while ensuring it is not misused. This legislation does this. I refer to something Mr Stefaniak mentioned. In my tabling speech I mentioned that the role of the police in using DNA to solve crimes would not be hindered. That is extremely important. The purpose of this is to prevent another form of discrimination. The Chief Minister said earlier that this was unnecessary and he referred to a number of clauses that were a problem. He also referred to the Commonwealth Disability Discrimination Act and the Commonwealth Insurance Act. This is something I will look into.

If the Chief Minister is genuinely interested in the preservation of human rights—and I suppose that is manifest through his bill of rights—I ask him to look at it seriously rather than just discount it as unnecessary and saying that it is covered in the act. I would have found it more encouraging as a member of this place if the Chief Minister had come to me or sent somebody to say they feel it is unnecessary but let us sit down and talk about it because it is a form of discrimination.

I encourage all members to support this bill. I do believe we need to allow for genetic testing but to ensure that it is not misused. I will conclude with a quote from congresswoman Louise Slaughter, a representative who has sponsored a number of similar bills in the US Congress. She put it best when she said:

> Genetic discrimination is an insidious threat to privacy, public health and medical research and it is a danger to every person.

This is before the US Congress, but for members' benefit—and primarily for the Chief Minister's so he does not believe that only one side of politics in the United States is looking at this—both Presidents Clinton and Bush supported this form of action. On 8 February 2000, President Bill Clinton endorsed this type of bill when he signed an executive order banning genetic discrimination in federal employment. On 23 June 2001,

President George Bush, in his Saturday radio address, called for the passage of genetic non-discrimination legislation. It is something in which we should be leading the country. The ACT is known to have supported landmark legislation and is a leader in some significant legislation. This is another piece of legislation protecting the rights of ACT residents, and I commend the bill to the Assembly.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clause 1.

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

Public-private partnerships

MR HARGREAVES (11.51): I move:

> That this Assembly notes the recent discussions at the National Conference of Parliamentary Environment and Public Works Committees on the subject of Public Private Partnerships.

The involvement of the private sector in the provision of public infrastructure is not new. Governments have contracted with the private sector for centuries. I give as examples Matthew, the private tax collector who is referred to in the Bible; the private cleaning of public street lamps in eighteenth century England; the private railways of the nineteenth century; and the fact that 82 per cent of the 197 vessels in Drake's fleet that successfully conquered the Spanish Armada in 1588 were private contractors to the Admiralty.

The first ship that sailed to America was a joint effort between the public and private sectors. I refer to Australia's past and to the transportation of convicts from England and Ireland to Australian colonies. Private shipping contractors whose vessels were chartered by the British government carried out that transportation. However, in recent years a new form of public-private partnership arrangements, or PPPs, and privately funded infrastructure has become increasingly common. Public-private partnerships currently account for about 7 per cent of overall Australian public infrastructure provision, and that number is steadily increasing.

The availability of private finance for major infrastructure projects has essentially given governments access to a massive credit card with which to sign up to infrastructure deals. Professor Graeme Hodge, Director of the Centre for the Study of Privatisation and Public Accountability, Faculty of Law, Monash University, said:

> If government is eventually paying the bills for PPPs over the long term, then the pressure on government budgets has simply changed from a short-term pressure for capital funding to a longer term pressure to pay off the government's mega-credit card.

The essence of PPPs is risk sharing. The private sector, usually a consortium of financier, builder-developer, facility manager and subcontractors, arranges project financing for the development and accepts the financial risk. The contractor also accepts the construction and industrial relations risk. Russell Walker, Victorian Assistant Auditor-General, gave this warning about risk sharing:

> The essence of a PPP is risk sharing … the fundamental aim is to arrive at a risk sharing arrangement that assigns risks to the party best able to manage the risk at the lowest cost.
>
> It is now generally accepted that the transfer of risk to the private sector is really only cost effective where the private sector is better able to manage these risks.
>
> Seeking to transfer inappropriate forms of risk onto the private sector merely adds unnecessary cost to PPP agreements and will also undermine the value for money obtained from the deal. This is because it will result in the private sector entities trying to price that risk into payments they seek to obtain from government, or they simply fail to manage the risks assigned to them.

Public sector involvement is usually limited to providing guidance on risk allocation expectations and residual arrangements on the development. In simple terms, PPPs involve joint decision-making relationships with both parties being involved early on in developing effective joint outputs rather than having a principal-agent relationship where the government alone arranges its own approach to financing, organises the design and building of a project and then manages the completed project.

Over the past 10 years Victoria has initiated around 40 public-private partnership style projects for the delivery of major social infrastructure, which includes schools, hospitals, prisons, toll roads, and major infrastructure like the docklands project, or elements of it. Victoria has quite an extensive commitment to PPP arrangements. The first generation of PPPs involved the allocation of substantially less risk to the private sector than do current arrangements. That was reflected in the government providing substantial guarantees and indemnities to the private sector, which effectively placed the financial risks back on the state.

It is important to draw a distinction between that infrastructure and the more recent extension of PPP delivery to social infrastructure such as schools, hospitals and prison services. I refer to some of the arguments in favour of PPPs. They will reduce pressure on government budgets through the maximisation of equity to non-government income streams and ancillary income streams, thus reducing the costs to government. Risk allocation is the most important feature of PPP arrangements as the identification, quantification and allocation of risks are directed to the parties best able to manage them. The message in that statement is that it has to happen. In the past risks were allocated or directed to parties who were not able to manage them, or governments paid through the nose to get someone else to manage them.

Another argument in favour of PPPs is specialised service delivery. Specialist private sector firms can provide some specified services at an improved price over public sector service delivery. Innovation is achieved through commercial, physical design and service innovation, and synergies between those elements of the PPP arrangement. The final

argument relates to whole of life asset management benefits, costing and budgetary certainty. Continuous monitoring over the life of the contract should ensure the ongoing provision of efficient services.

I refer, next, to the risks inherent in PPPs. Three risks come to mind—governance and quality controls, lack of accountability, and complexity. Much has been written about quality controls and a lot of concern has been expressed about the lack of accountability. Once a PPP arrangement has been signed the private sector and, to a degree, the government partner, hide behind its commercial-in-confidence clauses to prevent transparency and accountability. Auditors reflect a great deal on those aspects.

I refer to the final risk of PPPs, that is, their complexity. One of the gentlemen who spoke at the National Conference of Parliamentary Environment and Public Works Committees said that he went through a contract that was some inches thick. It looked good until he got down to about the fifth inch where he found a subclause, a sub-paragraph to that subclause and a sub-sub-paragraph to that subclause. He found that there was no risk to the private sector partner and that the risk was to be carried by the state. However, all those facts were hidden in the contract. He said that that was an example of a complex contract and that people could get burned if they were not aware of all the facts.

Professor Graeme Hodge from the Centre for the Study of Privatisation and Public Accountability at Monash University argues that while PPPs purport to transfer micro-risks from governments to private contractors, it is not those risks that are the most troublesome. What is of concern is the fact that parliaments have abdicated their responsibility of providing governance for PPPs as well as clear and honest assessments of public works provisions through that policy.

In simple terms, when a government signs up for a long-term PPP arrangement it is not future elected governments that govern; it is the long-term PPP legal contract. Professor Hodge argues that the degree to which this may fetter the discretion of future governments to make decisions in the public interest has seen little debate to date. What he is saying is that there has not been any discussion about it and that perhaps it is time we discussed it.

He goes on to argue that the notion that PPPs represent a quantum step ahead for the provision of public infrastructure must be tested. It has not been adequately tested. The first claim is that PPPs can reduce pressure on government budgets and supply new infrastructure earlier and cheaper than otherwise would have been possible. Hodge argues that this has not always proved to be the case and that the pressure on government budgets has simply changed from the short-term pressure of capital funding to the long-term pressure to pay off the government's credit card.

The exception is when governments sign up to PPP deals that will be paid for by users, for example, toll roads. In that instance the government is not using its own credit card; effectively it is using the cards of the general public. In short, PPPs do not provide the magical source of new infrastructure funds. The second claim that PPPs can supply new infrastructure earlier and cheaper than otherwise would have been possible is still an open question. The evidence on both sides of the argument is pretty thin. There just is not enough quantitative information relating to PPPs, in particular, to risk experience and

comparative performance. Better quality empirical assessments are needed and should be a priority for future policy development in this area.

There is little doubt that a perceived loss of public accountability has been a major concern throughout the recent history of PPPs in Australia. International experience suggests that while managerial accountability has increased through PPPs it has come at the cost of broader public accountability mechanisms such as parliamentary accountability and quasi-judicial accountability. I can remember speaking in this place about the debacle of the Port Phillip prison, which was just such a PPP. The way in which the contract linked the maintenance to the service contract and the building contract left the Victorian government in all sorts of trouble.

The question about accountability relates fundamentally to who is accountable to whom and for what result. The matter is further complicated when agencies are held accountable for the performance of services that are primarily delivered by the private sector. Public access to reliable information is necessary for government accountability. We need to resolve some fundamental questions such as how parliament should be involved in PPP related legislation oversight, planning process oversight, policy development oversight, implementation oversight and the oversight of contract deals.

The question of how PPP arrangements should be accounted for and disclosed in public sector financial statements and budgets also needs to be resolved. Currently, there are no Australian accounting standards that deal specifically with that. PPP arrangements are becoming increasingly complex but there must be a clear understanding and appreciation of the roles and responsibilities of relevant participants. Mr Russell Walker, Victorian Assistant Auditor-General, noted in his paper to the conference:

> If PPP arrangements are to work effectively, it is important that risks are assigned to those best placed to manage the risks and that access to assets and services is obtained in the most cost effective manner, irrespective of whether or not debts sit on balance sheets.

In summary, it must be understood that PPPs are not necessarily a panacea for infrastructure financing. They are projects that are carried out over a long period and, as has been claimed, we are not fully aware of their benefits. Even though PPPs have been around for centuries there is no empirical data to sustain them. I thank members for their interest in this matter and I look forward to hearing their comments.

MRS DUNNE (12.05): When Mr Hargreaves first spoke in debate on this matter I thought for a few moments that economic rationalism was alive and well in the Labor Party. However, I was mistaken. As Mr Hargreaves said, public-private partnerships have a long history that goes back thousands of years. In this modern age there is a propensity for people to believe that it is the role of governments to provide a whole range of services that hitherto have not been provided by them. In addressing this motion I would like to deal with the provision of transport infrastructure.

Mr Hargreaves touched on transport infrastructure when he talked about the development of the railways in the nineteenth century. In a lot of emerging economies, principally in the United States of America, the development of the railways was a public-private partnership and private money was expended in return for access to land. The revenue

captured from the sale of land and the building of associated infrastructure along the railway route provided the wealth to develop the railways. We might have a nineteenth century model but that model still has a role to play. We should not discount that model just because it was developed in the nineteenth century.

Mr Hargreaves touched on many of the problems associated with public-private partnerships. However, he did say that there were some benefits and he dwelt on those as well. As I said earlier, I would like to deal with the provision of transport infrastructure. We have talked about tollways and the like but I would like to look also at public transport. In a sense, public transport is a bit of a misnomer. When we talk about public transport people presume that it is paid for by the public purse. But let us consider the taxi service—one essential element of public transport in this city and in every city.

The taxi service in this city and in every city around Australia is provided by the private sector. Private people running businesses provide what could be called mass transport—transporting more than one person, or transporting people in vehicles not privately owned by those who are being transported. That is the distinction that we should be trying to make. Mass transit is not necessarily public transport in the sense that it is publicly owned; mass transit is the transporting of members of the general public. We must have a clear look at and a clear discussion about that distinction. Until we do so we will be missing a lot of opportunities in the ACT.

There have been problems in Victoria, which led the way in Australia in the transition to public-private transport partnerships. Victoria got its fingers burnt. The classic example that arose in April or May last year was when one of the major companies that had been contracted to run the tram system in Victoria pulled out and left town. I will not name the company as its name escapes me at the moment, but it entered into and signed a contract when, quite simply, there was not enough probity on either side. As a result the company eventually decided that it was better and cheaper to cut its losses, pay the penalties and get out.

Unfortunately, Melbourne now has a tram system that is run almost entirely on a monopoly. There remains only one major operator of the Melbourne tram system. That failure does not mean that public-private partnerships do not work; it means that we have to be careful and smart and that we have to learn new ways of doing things. We discussed this issue on another occasion. A couple of years ago, during the Estimates Committee process, I remember asking the transport minister whether he would consider private funding for public transport. He went so far as to say that if the ACT wanted public-private partnerships for something other than buses he would consider it, but that the bus system would stay in public ownership.

I thought that we made some progress but we need to make more progress than that. Last year I had the privilege of attending the 55th world congress of the International Union of Public Transport in Madrid, which dealt at considerable length with the issue of public-private partnerships in the transport industry. We looked at a number of places where it had worked, where it had not worked, where it had started off okay and where it had come off the rails a bit. We then looked at how the European Union in particular was working towards making public-private partnerships perform better for the people of Europe.

Member states of the European Union and the European Union at that meta-level have made a considerable effort to develop contract law to make public-private partnerships work and to ensure, as Mr Hargreaves said, that the risk is managed by appropriate people. The failure of the Victorian tram contract was simply due to the fact that the wrong people managed the risk and there was a lack of governance. When we talk about governance we need to ensure that a body of law supports appropriate public-private partnerships.

Last year at the Madrid conference, Chris Mulligan spoke at length about achieving deregulation in a competitive environment. He referred to many case studies in which public-private partnerships had been instituted; where, in the first flush of economic rationalism in the late seventies and eighties there had been many problems; and how, through changes in the legislation and improved accountability, quality partnerships had been able to develop. So we are taking great steps forward in the provision of high quality public transport in European cities because of the involvement of public-private partnerships.

As I said earlier, in Australia we are pretty much transfixed by the idea that public transport is something paid for out of the public purse. That is not the experience of our trading competitors in Europe. While I welcome the remarks made by Mr Hargreaves, I look forward to having an opportunity to read the papers presented to the National Conference of Parliamentary Environment and Public Works Committees. I regret that I did not have the opportunity to attend the conference or the discussions on public-private partnerships. However, I welcome the opportunity to discuss them in the chamber. This should be the beginning of a process of discussion.

Even if Mr Hargreaves is not convinced, I firmly believe that the way forward for major infrastructure financing, especially in the area of public transport in the ACT, is through public-private partnerships. We must start the discussion so we can get it right and learn from the experiences of our colleagues in Melbourne who got it wrong the first time around, and we can learn from the vast body of experience gained by our European and American neighbours.

MS DUNDAS (12.14): I thank Mr Hargreaves for moving this motion today. Some interesting issues were raised at the National Conference of Parliamentary Environment and Public Works Committees, not just in relation to public partnerships but also in relation to environmental sustainability. A number of different topics were covered at that conference. Referring specifically to public-private partnerships, the ACT Democrats are open to establishing how public-private partnerships can benefit the community by enabling greater investment in things such as public transport. However, we have ongoing concerns about the ability for public-private partnerships to be mismanaged, resulting in taxpayers being left with huge debts and very little to show for it.

I looked through the papers received by that conference. Mr Hargreaves referred to some of the key points in those papers, but other interesting things were put forward. Mr Doug Jones, national president of Engineers Australia, spoke about a discussion paper that was released in 2002 entitled "Public investment in infrastructure: justified and effective." He referred to one of the benefits of that paper as follows:

> It marked the beginning of the pendulum being swung back towards a more balanced role for government investment in critical infrastructure.

He said that governments were responsible for providing infrastructure that benefited the whole community. Mr Jones went on to state:

> I believe that the increased need for infrastructure investment will not go away. Tens of billions of dollars will be needed to address the backlog of work as well as meeting the changing needs caused by the ageing and growing population, and its move to new housing estates and to the coastal fringe.

I continue to quote from Mr Jones's paper which states:

> The only way this will be addressed is by increasing investment in infrastructure from both the public and the private sector.

He laments:

> Unfortunately this will not occur quickly.

He said that governments had to take into account major policy shifts and that that did not necessarily happen at a very fast rate. Other people talked about how we are to meet the growing demand for new infrastructure. I think the ongoing maintenance of infrastructure was alluded to in a number of reports. Public-private partnerships refer to the need for new infrastructure but we have not necessarily dealt with how we maintain our current infrastructure and whether or not we can do that in a better way. Tim Cave, from the Victorian Department of Justice, talked about the complexity of public-private partnerships and stated:

> The complexity arises in the commercial/financial terms of the transaction, in the service scope (depending on the mix of accommodation, core and ancillary services), in the numbers of parties involved in the transaction, and in the array of transaction documents.

He went on to state:

> As a result, PPP delivery during the transition and development phases requires experienced project management and consultant advice.

That means that the PPP model works best. To a certain extent he was saying that it works only when one is looking at larger major projects, where the value derived from private sector participation is sufficient to offset additional transaction costs. So we are debating whether both the private and public sectors are receiving value for money and we are also debating the value of the end product. Mr Hargreaves referred in his speech to the need for ongoing accountability and control over public-private partnerships. When we look at public-private partnerships we are looking at a legal contract; we are not necessarily looking at a parliamentary policy decision.

A contract entered into by one government binds future parliaments for many years. There is little scope for movement if political or community imperatives change, whereas

we have that flexibility within government agencies and in our delivery of government services. That was an interesting point that came out of the sessions relating to public-private partnerships. In the paper presented by Professor Graeme Hodge from Monash University in Melbourne is the following statement:

> Recent privatisation experience in Australia teaches us that significant care has been needed to achieve citizen and consumer benefits through strong and independent regulatory frameworks in sectors such as electricity. These regulatory institutions need to be resistant to capture by private companies, and need also to be underpinned by legislation and practices that maximise transparency to citizens and other stakeholders. There is no reason to suspect that any less care will be needed in order to guarantee citizen benefits from PPPs—indeed, the potential use of any mega-credit card arrangement by government should send waves of concern to citizens worried about the misalignment of political incentives in the short-term compared to long-term implications and financial outcomes.

So quite a number of interesting and different points of view were raised relating to public-private partnerships at the National Conference of Parliamentary Environment and Public Works Committees. There are a lot of information and other issues for the government and the Assembly to consider in the future. However, the conference was not only about public-private partnerships. I was lucky enough to participate in the environment stream of the conference that focused on sustainability and what we are doing to achieve it.

This conference followed previous conferences in which we have had debates about sustainability and the concepts that we are trying to achieve. We are now looking at what we are doing to achieve those sustainability goals. Some interesting papers were put forward relating to water management, how we manage different catchments across Australia, the role of agriculture in sustainability and catchment management, what is happening in our farming sector and how that is impacting on our environment. The Green Building Council of Australia presented a paper that dealt with the need for sustainability in urban design.

Those who participated in the environment stream were lucky enough to have two international guests presenting specific challenges. A speaker from the Pacific Island countries and territories talked about ongoing challenges that were being faced by islanders trying to achieve sustainability in an environment where an island is sinking. That led to some interesting problems. Australia, a strong, rich and sustainable country is putting pressure on its Pacific neighbours to achieve environmental, social and economic sustainability when they are still struggling with the day-to-day problems of keeping their communities alive and maintaining the importance of their cultural identity. Australia as a nation needs to take on board some strong challenges as it looks at its relationship with its Pacific neighbours.

We also had guests from Sweden who talked about the Swedish government's environmental objectives. They have picked up 15 key targets and set up an assessment scheme to determine how they are achieving sustainability. One of the interesting things about the scheme is that it includes parliamentary accountability and debate and the need to review environmental and sustainability legislation every four years to ensure that policy instruments are working. It also enables the Swedish government to take whatever

action is necessary to achieve its objectives under the 15 key sustainability and environmental goals set by the Swedish parliament.

I commend this paper to members as it raised some interesting issues and concerns in relation to ongoing sustainability and the need to involve the population and the community at a grassroots level. Everything cannot be done at a parliamentary level; we have to focus our achievements and our goals. I think the Swedish government started with over 200 sustainability and environmental initiatives that it wanted to achieve. It realised that they were unachievable within the timeframe that it had set so it reduced its goals to 15. It focused on those 15 goals and it is now seeing flow-on benefits after having achieved some sustainability goals.

I again thank Mr Hargreaves for bringing to the attention of the Assembly the papers that were tabled at the National Conference of Parliamentary Environment and Public Works Committees. I urge other Assembly members to look at those papers, which I believe could have benefits for the ACT.

MR HARGREAVES (12.24), in reply: I thank members for their input to this debate. In particular, I thank the chair of the Standing Committee on Planning and Environment for her expose of the environmental stream. I did not attend that session. When Mrs Dunne was talking about the future application of PPPs in the ACT her underlying message was that we should be proceeding with caution. There are a number of reasons for that. One of them is that PPPs have not been adequately and empirically evaluated. Professor Hodge said:

> The poor quality of publicly available data for PPPs is just one common issue in terms of empirical governance and accountability concerns Australian citizens might express. This is not only the case in terms of project definitions and financial amounts involved for partnership projects but as well there is an absence of good quality monitoring and evaluation information. A serious effort is now needed to address this shortfall.

He also said:

> Because PPPs generally apply to infrastructure projects spread over many years, even decades, the suggested benefits to both sides of the partnership have not yet been realised nor proven.

He said:

> Given the length of such contracts the jury is still out on the extent to which promised performance gains are actually being achieved.

Referring to the application of PPPs in the ACT he said that we needed to be mindful of the type of PPP that may be attractive to future governments. Mr Tim Cave, General Director, Major Projects Delivery Services, Department of Justice, Victoria, said that only projects of $100 million would attract a PPP. That would limit their application in the ACT to large infrastructure projects such as light rail or a prison—the very point that Mrs Dunne made.

We should not rule out PPPs in respect of things such as light rail, but we need to be careful about it. Referring to whole of life budgetary implications, the costs of publicly owned projects such as a prison are carried by the taxpayer, whereas the costs of user-pay projects such as toll roads and rail services are paid by the users of that infrastructure.

Concern has been expressed about the loss from major work arenas of expertise from the public sector to the private sector, which has resulted in the draining of expertise from the administration of particularly complex contracts. I refer members to the papers that were presented by Mr Cave, Professor Hodge and Mr Russell Walker, Assistant Auditor-General in Victoria, who put forward different perspectives relating to PPPs. Mr Cave described Victoria's experience over the past 10 years—it has about 40 PPPs—and said that he is in favour of PPPs.

Professor Hodge provided a detached academic view and challenged the premises and promises of PPPs. Not unexpectedly, Mr Walker provided the best advice that could be provided by an auditor, that is, to tread carefully. I am sure that the secretary of the Standing Committee on Planning and Environment can arrange to send members a copy of those papers if they are interested. I thank members for their input to this debate.

Motion agreed to.

Sitting suspended from 12.29 to 2.30 pm.

Questions without notice

Ambulance service

MR SMYTH: My question is to the Minister for Police and Emergency Services, the Acting Minister for Health. I understand that on a number of occasions the ACT ambulance service has called on the use of ambulances from Queanbeyan and Yass to transport patients within the ACT. This is due to the fact that ambulances from the ACT are tied up for hours outside hospitals because our hospitals are choc-a-bloc with patients and cannot handle any more. This is another indicator of the incredible stress that Labor's mismanagement is putting our hospital system under. How many times has the ACT ambulance service had to request ambulances from Queanbeyan and Yass, and why is this necessary?

MR WOOD: It is necessary because, as Mr Smyth says, the emergency department is incredibly busy. It is usually busy. I said yesterday that it is often very busy and sometimes it reaches capacity. On those occasions, because of the processes in place between the ambulance service and the emergency department—and sometimes it takes a while for the ambulance to move on—it is necessary to call on other services. I cannot answer the detail of the question. I know it happens. As to the number of times, if the member gives me a few days, I will get back to him with that information.

MR SMYTH: I ask a supplementary question. What is the government doing to alleviate this stress on the hospitals, particularly the emergency rooms, or will it just become standard practice that ambulances are used as supplementary hospital beds under this government?

MR WOOD: I will take the five minutes on this answer to tell Mr Smyth what we are doing. We are pouring more money into hospital services than ever before; there is certainly an increase on what the previous government did. We are aware of the pressures on the emergency department. There is no question about that. For that reason, in recent times we have put significant money into it, and we are continuing to put money into it. We have already announced a nine-bed emergency medicine unit and the introduction of rapid assessment and response teams at a cost of $1¼ million. We have announced an eight-bed clinical decision unit and four multiday medical beds at Calvary Hospital at a cost of just over a million dollars. We are providing $11.3 million over four years to increase the number of beds in the intensive care unit at the hospital, and there is a physical redevelopment of the emergency department, to enhance patient flow, at a cost of $3.5 million. They are just some of the things we are doing as we continue on this path to provide, as the emergency department does, the best emergency service in the nation.

Bushfires

MR PRATT: Mr Speaker, my question is to the Chief Minister. Given that you were acting emergency services minister on the evening of 17 January and the Chief Minister in charge of a cabinet facing a highly dangerous threat to the community, where exactly were you in Canberra on the evening of 17 January and what exactly were you doing about that threat that evening?

MR STANHOPE: I was in the north of Canberra, Mr Speaker.

MR PRATT: Chief Minister, why are you so reluctant to tell the community what you were doing, other than embarrassment at your poor performance in a crisis?

MR STANHOPE: I'm not, Mr Speaker.

ACT Health—drug and alcohol program

MR STEFANIAK: My question is directed to the Chief Minister as the minister responsible for the public service. I refer to allegations by whistleblowers about serious problems in the ACT drug and alcohol program in the ACT department of health. You commissioned internal reports into the program to investigate these concerns. Are you treating the allegations as public interest disclosures under the relevant legislation?

MR STANHOPE: That matter is being handled by the Acting Minister for Health. I ask him to take the question.

MR WOOD: It is being handled appropriately. I have made a number of comments publicly and I have backed those comments with action. Ms Tucker raised those issues. As a result—we take these issues very seriously—we have commissioned three separate external reviews. First, a probity review has commenced. That is being conducted by Acumen Alliance and the ACT internal health auditors with a range of terms of reference appropriate to the issues raised. If you like I can read them out.

Secondly, there is a workplace environment review that will examine management and staff behaviour in the workplace as well as key human resource policies in the ADP. This review has commenced and is being conducted by Ms Catherine McPherson, former deputy ombudsman, with a range of terms of reference that are available. We expect that to be completed by the end of October this year. The probity review will be commenced in perhaps mid-August this year.

There is then a third review. A clinical governance review would examine the appropriateness of clinical services and clinical policies within the ADP. The team for this review is currently being recruited. It will be composed of experts in drug and alcohol services and clinical governance. The review is expected to commence in the coming weeks and will be completed by the end of February 2005. I can offer the terms of reference for those.

I point out that we take these issues very seriously. You particularly asked about the terms of the public interest disclosure legislation. As I understand it, that is being well observed.

MR STEFANIAK: Mr Speaker, I have a supplementary question. In that case, if you are treating these allegations seriously and as a public interest disclosure matter, why are officials in the ACT department of health monitoring the emails and other communications of the workers concerned?

MR WOOD: I do not know whether that is happening. I do not know the extent to which, in the normal course of business, the emails and the business on the computers are accessible and monitored by anybody anyway. I will come back to you with a particular response to that.

MR SPEAKER: Questions without notice?

MR STANHOPE: I ask that all further questions be placed on the notice paper.

Mrs Dunne: Sorry, I was just going to—

MR SPEAKER: The Chief Minister just asked that all further questions be placed on the notice paper because nobody rose.

Mrs Dunne: Ms Dundas was standing and I was standing.

MR SPEAKER: No, she was not. And no, you were not. It was pretty obvious to me that nobody was that keen.

Ms Dundas: Mr Speaker, do we need to suspend standing orders or are we allowed to ask questions?

MR SPEAKER: No. You need to rise to your feet when you want to ask a question. Who wants to go first? I call Mrs Dunne.

Kangaroo cull

MRS DUNNE: Mr Speaker, my question is to the Minister for Environment. Minister, on WIN news on 26 July, in relation to the Googong kangaroo cull, you said:

> Well I think the behaviour that we've witnessed over the last two weeks is probably explanation enough for why it's best to conduct these things first without consultation, without the gaze of publicity and then to announce what's been achieved.

Unlike with previous culls, you failed to consult the animal welfare advisory committee that is there to advise on these issues. Indeed, the only reason this whole thing became public was that your department letterboxed residents near the Googong reservoir and happened, perchance, to letterbox the environment reporter for the *Canberra Times*. Otherwise you would have kept most of the population entirely in the dark until the process was finished. Why did you adopt this policy of shooting first and consulting the community afterwards?

Mr Quinlan: The policy was in place, for heaven's sake!

MRS DUNNE: Why are you looking at permanently abandoning the consultation process for kangaroo culls—

Mr Quinlan: The policy has been laid down over a long period!

MRS DUNNE:—when it was your failure to follow the consultation protocols that caused the trouble in the first place? Do you want me to repeat that?

MR SPEAKER: I would.

MRS DUNNE: Thank you, Mr Speaker. Why did you adopt this policy of shooting first and consulting the community afterwards? Why are you looking at permanently abandoning the consultation process for kangaroo culls when it was your failure to follow consultation processes that caused the problem in the first place?

MR STANHOPE: I support the processes put in place by Environment ACT. It was a most difficult and quite complex issue that they faced in culling kangaroos at Googong. These are never easy issues. I believe the advice I received in relation to the basis for the cull was soundly based. I believed that when I was initially advised; I believed it when I approved the cull; and I believe it now. No issue or program like the culling of kangaroos, or indeed the culling of any animal, can be achieved without arousing quite significant emotion and concern. It can arouse emotional and, at times, quite unreasonable, responses, which we experienced. I have to say I applaud the way in which Environment ACT handled this whole matter and I continue to support them.

MRS DUNNE: Mr Speaker, in accordance with standing order 118 (a): I asked the question, basically, why has he abandoned community consultation? No-one has an issue here, I think, with the nature of the cull; the question was about why was there no community consultation.

MR STANHOPE: I have finished my answer.

Procurement guidelines

MR CORNWELL: Mr Speaker, my question is to the Minister for Education and Training and Minister for Children, Youth and Family Support. Minister, yesterday you stated that you would obtain a full briefing on the extent of the relationship between your department, Totalcare and Procurement Solutions. The opposition has confirmed the ACT government's procurement guidelines with the ACT Auditor-General. The opposition has information that the arrangements with Totalcare and Procurement Solutions are in clear breach of these guidelines. It seems to be another case of "I didn't know; I wasn't told", which perhaps is really code for "I haven't been doing my job."

Have you been fully briefed by your department on the many problems with maintenance and capital works in your portfolio? If so, are you totally confident that your department has fully complied with its responsibilities under occupational health and safety laws and procurement guidelines?

MS GALLAGHER: Yesterday in question time I took, I think, three questions from the opposition relating to matters around the use of Totalcare with facilities management and relationships with ACT Procurement Solutions. I do have some initial advice back on the three questions that were asked by Mrs Burke, Mrs Dunne and Mr Cornwell, which I was going to read at the end of question time. I have sought further advice on one area. It seems the opposition knows a little bit more about this than I do.

Mrs Dunne: Actually we don't. We know exactly what your department knows.

MS GALLAGHER: Well, yesterday in question time Mrs Dunne said, "We know exactly what you know," implying that I knew something that I was not—

Mrs Dunne: We know what your department knows so therefore you know.

MS GALLAGHER: Well, again, there we go. I understand that there is a matter in respect of public interest disclosures that could be related to this. I have not been advised of any information about that, in accordance with the procedures surrounding public interest disclosures, but I can answer some of the questions that were asked yesterday. As some of this relates to Mr Cornwell's question, to save time I will do so now rather than at the end of question time.

Totalcare does not currently provide any repair and maintenance services to the Department of Education and Training. It has not done so since the transfer of its facilities management activities and associated staff to the Department of Urban Services on 1 March 2004. This was following the resolution of the ACT Legislative Assembly which agreed to the transfer in accordance with the provisions of the Territory Owned Corporations Act.

I am advised that prior to the transfer of the facilities management group to Urban Services, Totalcare did undertake repairs and maintenance work for the department. Procurement Solutions have advised that where the value of the work triggered relevant

procurement thresholds for work project managed by them on behalf of the department of education, public tender processes were undertaken.

With respect to repairs and maintenance activity under the direct management of the department dating back to 1998, I have sought further advice in relation to the legality of its engagement of the then Totalcare Industries as the department's contract management agent and specifically whether the requirements of the Government Procurement Act were met in full, going right back to 1998. I will be provided with that information.

In relation to the specific case referred to by Mr Cornwell, there was a competitive tender process which was publicly advertised in September 2002. Totalcare won the work following an evaluation in accordance with the procurement plan that had been previously endorsed by an approved procurement unit.

For the information of Mrs Burke and others, the Government Procurement (Quotation and Tender Thresholds) Guideline 2003 requires that procurements valued above $100,000 be put out to tender. This guideline replaced the November 2000 guideline, which provided that construction-related procurements over $50,000 were required to be advertised in the local press and for procurements between $5,000 and $20,000, only one local quote was needed to be obtained.

In relation to the specific matters raised by Mr Cornwell, Totalcare did not get any preference but won the work in a competitive tender. The work on the school canteens at Hawker, Aranda, Ainslie and Hughes primary schools was undertaken as part of the 2002-03 minor new works program for which funding was provided in the 2002 ACT budget.

In accordance with normal practice, on completion a defects report was prepared for each project. This is normal building practice prior to accepting the work from the contractor. The total number of defects recorded was 60 and they were distributed across the four canteen upgrade projects. The defects noted were minor in nature and amounted to noting a requirement to clean up after the works and to re-key locks to fit the school system.

The OH&S items were also minor and were noted to ensure compliance with the Building Code of Australia and food preparation regulations. They did not present any immediate danger to staff, students or the community. Also, in accordance with normal practice, all defects are the responsibility of the relevant contractor or subcontractor to complete at his expense within the defects liability period. The defects were corrected at no expense to the territory.

In accordance with normal practice for territory projects, the work had a 12-month defects liability period. I have been advised that the defects that were identified at the handover inspection were subsequently fixed and no other defects were identified during the 12-month defects liability period. These projects were not unusual in terms of refurbishment work and the fact that defects lists and handover certificates were prepared and executed illustrates sound project management procedures by the department.

I am running out of time. Perhaps Mr Cornwell might ask a supplementary question to enable me to complete my answer.

MR CORNWELL: Mr Speaker, I ask a supplementary question. I wonder whether the minister has anything further to add.

MS GALLAGHER: Thank you, Mr Cornwell. In relation to the matters raised by Mrs Dunne, ACT Procurement Solutions is a business unit of the Department of Treasury. As such, it is staffed with public servants who are bound by the same procurement requirements as officers of all departments. There is no requirement under the procurement guidelines for agencies to have MOUs with other ACT government administrative units.

MOUs are usually entered into on a government-to-government basis—intergovernmental not intragovernmental—or between a government and an external body. I am advised that ACT Procurement Solutions does not have MOUs with any ACT government agencies, including the Department of Education and Training. All ACT agencies are part of the same legal entity and there cannot be contracts between parts of the same single legal body.

It is Procurement Solutions' role to facilitate the procurement process for large and complex works on behalf of the department, including managing the contractual arrangements in accordance with the Government Procurement Act. It is therefore inaccurate to imply that any money has been improperly paid to Procurement Solutions.

So, in answer to Mr Cornwell's question about whether I am satisfied that the department is currently meeting all of its obligations, the answer is yes.

MR SPEAKER: Before I call on the next question, Mrs Dunne took a point of order to which I did not respond.

Mrs Dunne: Mr Speaker, you did not address my point of order and the minister did not finish answering my question.

MR SPEAKER: Standing order 118 clearly sets out the requirements relating to responses to questions on notice. I cannot dictate the prerogative of ministers to answer questions in the way that they wish. So far as I am concerned, the minister was sticking to the subject matter of the question.

Mrs Dunne: On the point of order, Mr Speaker, I left the minister some time. He spoke for one minute and 15 seconds about the nature of the cull, but he did not address the substance of the question, that is, community consultation, or the lack of it. That was my point. There is no problem about the nature of the cull; the problem relates to the nature of public consultation. My question has not been answered.

Mr Stanhope: On the point of order, Mr Speaker—

MR SPEAKER: I will respond, first, to Mrs Dunne's point of order. According to the standing orders, the Chief Minister had another 3¾ minutes in which to deal with the question. We have set a time limit of five minutes within which ministers have to respond to questions.

Mrs Dunne: The standing order states that an answer should be concise and confined to the subject matter of the question. After one minute and 15 seconds I had not been given any answer that related to the subject matter of my question, that is, community consultation about the cull.

Mr Quinlan: You just were not getting what you wanted so you interrupted, as you always do.

MR SPEAKER: We have been over this issue before. I cannot direct ministers to answer questions in the way in which opposition members or anybody else want them answered. The standing orders, which are pretty clear, state that responses to questions should be concise. At the same time they also give ministers five minutes within which to answer questions. In that sense I am bound by the standing orders to let ministers speak for five minutes.

Mrs Dunne: I submit that on the—

MR SPEAKER: That is my ruling.

Housing—stamp duty concessions

MS DUNDAS: My question is directed to the Treasurer. Could you inform the Assembly how many applications have been received and how many have been approved for stamp duty concessions under the new revised stamp duty scheme? How many of the approved applications have been for unit titled properties?

MR QUINLAN: I do not have the numbers with me. I know that there have been of the order of 117 applications overall in a month. Because there have been quite a number of applications the processing of those applications is taking about four or five days. I cannot, off the top of my head, give the member an answer to her question about unit titled applications. I will take that question on notice.

MS DUNDAS: I ask the minister a supplementary question. Could you find out and inform the Assembly how many applicants who have been approved have dependent children?

MR QUINLAN: As the existence of dependent children can change the threshold level, they may not necessarily be completely below the threshold. I will check on those applicants who have claimed that they have dependent children in order to shift that threshold.

Schools—industrial safety

MRS BURKE: Mr Speaker, my question, through you, is to the Minister for Education and Training. In March 2004, the autism and special needs building at the Gowrie Primary School was being upgraded. A cyclone fence had been built around the work area to secure it. Unfortunately, this fence was left open. A special needs child was disturbed by the noise of a cement truck and ran through the fence opening. The child ran

across the fields in the direction of Chisholm. The child was found an hour later wandering on Isabella Drive.

Minister, has a public interest disclosure been lodged for this incident? Has the matter also been reported to WorkCover as an industrial safety incident?

MS GALLAGHER: This is the first I have heard of that incident, Mrs Burke. In relation to the public interest disclosure: I am not aware of one. In relation to whether it was referred to WorkCover: I am not aware of that either. I have received no briefing from the department about that, nor have I received any complaints or has anyone contacted my office about that issue. I will find out more about it, but that is my answer at this stage.

MRS BURKE: I thank the minister for agreeing to follow up on that answer for me. Minister, have you established a chain of command to ensure that you are kept informed about serious occupational health and safety breaches by your department, given your responsibilities as a minister?

MS GALLAGHER: Yes, I have. The department knows that, where there are incidents that should be brought to my attention, they are brought to my attention. In this case, I will go back and have a look at what has happened with that. It was not brought to my attention. I will take appropriate action if it turns out that it should have been. It sounds like it should have been.

Planning

MRS CROSS: My question is to the acting planning minister. Mr Quinlan, a very distressed constituent of mine has contacted my office on the matter of a dual occupancy development of two two-storey homes under way on block 6, section 13 in Deakin—an 868 square metre lot next to his residence and in a core area.

Objections to this development were first raised by neighbours in November 2003. ACTPLA noted the objections but approved the development plan, with some minor modifications. My constituent took an appeal to the AAT and was joined by the neighbour on the other side of the block that is being developed. The upshot of the mediation of the AAT was a compromise agreement by all parties. Modifications were made to the plans, and these went to ACTPLA for incorporation. This agreed reported position was taken in March by ACTPLA to the AAT, which ruled in support of the agreement. It was believed by the constituent that that was the end of the matter.

Recently, work began on the construction and it became apparent that some changes had been made to what was agreed by all parties in March. On 28 July, this constituent received, under the cover of an unsigned, undated letter from a staffer—whose name I will not disclose, and whose position in ACTPLA is also not disclosed in this letter—notification that ACTPLA had approved a minor amendment to development application 20038128A on 2 July. This action by ACTPLA, despite the earlier agreement of all parties, was taken arbitrarily and without any consultation with the constituent. There was obviously no intention by ACTPLA to notify the other interested parties before the present work on the lot was commenced.

Minister, how was it possible that ACTPLA was permitted to behave in such an arbitrary and dismissive manner towards this constituent, who has been forced by such arbitrariness to spend $4,500 in appeals and, in light of the latest questionable change to the DA, is now contemplating taking out an injunction against the project, which could lead to a protracted court proceeding against the government, costing both sides tens of thousands of dollars?

MR QUINLAN: I trust you appreciate that I am not across the detail and therefore can only undertake to have a look at the case. I add that it might have been referred to us first. There does not seem a lot of point to framing a question without notice on something like this when we could have done a bit of homework. I am happy to stand in this place and answer the question; I just do not have the filing cabinet with me.

MRS CROSS: Mr Speaker, I have a supplementary question. Minister, given the status of this matter and the expressed intentions of the constituent, can you get back to me by tomorrow afternoon with an assurance that the original AAT ruling will be complied with and that this construction will cease until matters are sorted out?

MR QUINLAN: I cannot make that commitment until I find out what is going on and what is necessary to unravel the problem and get the other side of the story. There is bound to be one.

Environment—greenhouse gas emissions

MS TUCKER: My question is to the Minister for Environment, and relates to government action on greenhouse gas reduction and my motion on 23 June. In the debate on my greenhouse targets motion, the minister said:

> … I have … to acknowledge that we should be reviewing the territory's commitment to meeting the greenhouse gas reduction targets. We do need to look at them and we have done that. The report is complete. It is being printed and it will be released in a few weeks.

Does the minister intend to allow us to see that printed report and, if so, when?

MR STANHOPE: As Ms Tucker is aware, her motion was successful. It called on the government to maintain the current strategy and to seek to meet it through a range of measures that Ms Tucker detailed specifically in her motion. The Assembly in its wisdom passed that motion. As a result of that, I have directed Environment ACT to give urgent attention to how we might implement the Assembly's motion. I acknowledge the supremacy of the legislature and I am responding to the legislature and to Ms Tucker's motion. It raises a whole range of issues in relation to how to meet our greenhouse targets and obligations. That is what I am doing. The work I was pursuing was not consistent with the strategy Ms Tucker's motion called on me to implement. So, at this stage, no, I have asked Environment ACT to focus on the Assembly motion. As a consequence, I have had to redirect it from the priority I had set it to the priority the Assembly set.

MS TUCKER: I ask a supplementary question. Will the minister tell us when he will be responding to that motion with his revised greenhouse strategy?

MR STANHOPE: We are doing it now. As I just said, the motion was quite specific. The motion was passed by the Assembly. The motion called on the government to pursue a particular direction in relation to greenhouse gas. I am seeking advice on the implications of meeting the Assembly's direction. I indicated in the debate that the cost of the initiatives the Assembly has imposed on the government is in the order of $114 million. I indicated in the debate that I did not know how we as a government or we as a community would manage to implement the Assembly's motion. Of course, I am keeping faith with the motion, acknowledging the supremacy of the legislature and proceeding to take advice on the motion the Assembly passed.

Children—kids-at-play program

MR HARGREAVES: My question, through you, Mr Speaker, is to the minister for sport and recreation. You recently launched a new program that increases children's participation in active play. Can you please inform the Assembly about this vital program?

MR QUINLAN: Thank you, Mr Hargreaves. Yes, Mr Speaker, I would like to inform the house of the kids-at-play program which aims to promote the importance of physical activity in children's lives. The program aims to increase opportunities for children's participation in active play, to raise parental awareness of the importance of active play for their kids and to provide information, education and training to support parents to encourage active play at home, in the neighbourhood, at after-school centres and in community care programs. Kids-at-play was developed in response to the rising instance of childhood obesity, targeting children from five to 12 years.

Mrs Dunne: On a point of order, Mr Speaker: I think Mr Quinlan's answer to the question at least reflects on item 4 standing in Ms MacDonald's name on the notice paper for today. I thought when Mr Hargreaves asked the question it was likely to. Mr Quinlan, in answering the question, has launched into it by referring to obesity. Ms MacDonald's motion states:

> That this Assembly:
>
> (1) notes the high level of childhood obesity in our community; and
> (2) acknowledges the need to raise awareness about childhood obesity in the ACT.

MR SPEAKER: Continue, Mr Quinlan.

MR QUINLAN: On the point of order, Mr Speaker: I think it is getting close to the time when the tactic of calling points of order should be evaluated.

Kids-at-play development began in advance of the announcement of the Commonwealth's building a healthy, active Australia program that provides $116 million over four years to promote physical activity and a healthy lifestyle for

children. This includes $90 million for active after-school communities programs to involve sporting organisations in providing after-school physical activity.

The ACT welcomes any federal funding targeted at addressing rising obesity levels amongst children. However, sport is not the answer for all children. Some children are not interested in a sporting environment. The program will not target more disadvantaged sections that are more at risk of inactive lifestyles.

Kids-at-play will use specially branded vans to take active play opportunities—I just happen to have a little model with me—equipment, games and staff to various locations throughout Canberra. The brand has already been developed—bright, fun and active. Such opportunities will be developed in conjunction with accredited after-school providers and community organisations on weekdays and weekends. The location of kids-at-play vans will be promoted through the media, including on a website, in print on and TV. The program will begin in early October 2004. Daylight saving hours provide maximum opportunities to run it and to involve parents.

Kids-at-play will be staffed by three people per van. The recruitment process is currently under way in partnership with the University of Canberra, targeting sports administration, sports science and PE students. A pool of 30 casual employees will be required. Kids at play provides great industry experience for staff. Comprehensive training will be provided. Police checks will be mandatory.

Marketing, operational and risk management plans have already been developed. The ACT Insurance Authority has aided the development of a comprehensive risk management strategy. Sponsorship and relationships are being developed to maximise the effectiveness of kids-at-play, including with organisations such as the Heart Foundation and the YMCA, and with the media. Although wider than sporting participation, we will provide opportunities for high profile and sporting luminaries to assist in encouraging kids in enjoyable activity.

Operational costs of this program for the first year are $150,000, which includes the lease of vans, the equipment, staffing and marketing. A $66,000 grant has been provided to the Heart Foundation to aid the success of kids-at-play. Mr Speaker, this is a very positive program being introduced by this government, amongst so many other very positive programs in a sea of negativity here.

MR SPEAKER: Mrs Dunne raised a point of order in relation to how this might affect a later matter on the notice paper. The question certainly did not relate to a matter that is on the notice paper. I listened to it all the way through and I thought that the minister's response was confined to the question that was asked of him.

Housing—supported accommodation services

MS MacDONALD: My question, which is directed to the minister for housing, Mr Wood, relates to homelessness. Can you tell the Assembly what actions are being taken at the national and local levels to handle homelessness?

MR WOOD: Homelessness continues to be a significant issue in the ACT and nationally. Last week I attended a meeting of community services ministers. One of the

items on the agenda was a discussion about the supported accommodation assistance program, or SAAP, a matter that I am sure is of great interest to members in this chamber. That joint program of the states, territories and the Commonwealth provides supported accommodation to homeless people, or people at risk of homelessness.

I note that the current SAAP agreement expires in under a year. The federal minister, Senator Patterson, agreed that negotiations with the states and territories should commence on the next SAAP 5 agreement. Anxiety was expressed in some quarters as it was thought that there might not be a new agreement. The ministers present at that meeting were pleased to learn that the Commonwealth is committed to implementing a further agreement.

In the current financial year the Commonwealth will contribute $5.8 million to SAAP. In the ACT this government is contributing $8 million, a sum boosted by the ACT budget provision of $3 million. The contribution of the ACT government represents 58 per cent of the total ACT budget. The government used the SAAP 5 negotiations to seek matched funds from the Commonwealth for the additional $3 million allocation. Members should remember that this government has committed to that program over a number of years. I hope that we will attract Commonwealth subsidies to bring spending to over $16 million, which is needed.

MS MacDONALD: I ask a supplementary question. Minister, you did not state what was happening locally to expand services for the homeless.

MR WOOD: A lot is happening locally. In July, I was pleased to announce a major expansion of supported accommodation services. As I indicated in answer to the first part of the member's question, during 2004 this government will be establishing a total of 11 new services at a cost of $3 million to address homelessness in a number of ways. I mentioned earlier that that $3 million is part of the $13.4 million that has been allocated by this government. I was able to announce nine new services that have been selected through the open tender process. Two other services providing supported accommodation and outreach services to Aboriginals and Torres Strait Islanders will be identified later this year.

It is pleasing that the tender process revealed a commitment by a number of services to work together, sharing experience, skills and abilities. For example, we have an exciting partnership between CANFaCS and Inanna. CANFaCS, the Canberra Fathers and Children Service Inc., provides supported accommodation to families headed by a single male, while Inanna provides supported accommodation to single women and families headed by a single female. The collaboration of those services will result in a regionally based family service, with each organisation bringing its own talents.

I was also pleased to see the model of outreach for young people proposed by Anglicare. That service will help young people who have recently acquired independent accommodation to sustain their tenancies. The Stanhope government is not only committed to breaking cycles of homelessness, it is also committed to supporting people as they make the transition from homelessness to independent long-term accommodation.

MR STANHOPE: Mr Speaker, I ask that further questions be placed on the notice paper.

Supplementary answers to questions without notice

Real estate agents—licence fees
Corrective Services—injecting equipment

MR STANHOPE: I took a question on notice yesterday, Mr Speaker, from Mrs Cross and undertook to provide her with further information in relation to real estate agent licences. Mr Wood took a question on notice from Ms Tucker in relation to Corrective Services which I am providing an answer for. I present the following papers:

> Renewal of real estate agent licenses—Answer to question without notice asked of Mr Stanhope by Mrs Cross and taken on notice on 3 August 2004.
>
> Injecting room equipment exchange in the ACT corrections system—Answer to question without notice asked of the Acting Minister for Health by Ms Tucker and taken on notice on 3 August 2004.

ACT Health—drug and alcohol program

MR WOOD: Mr Stefaniak asked me about monitoring of emails. I'm advised that email accounts in ACT Health are accessible by password access only; so staff members cannot monitor each other's emails. The chief information officer has not received any requests from management to monitor emails. So unless they get someone that the Liberals over there know, they cannot intrude into other people's emails.

Housing—stamp duty concessions

MR QUINLAN: Mr Speaker, I took a question from Ms Dundas in relation to home-buyer concessions. The figures are: we have received, from 1 July to 31 July, 118 applications for the home-buyer concession. Of these, 74 have been completed. I think there have been three declined. This compares with 37 applications for the full year last year. Out of those 74 approved, there are 26 for units.

In relation to the number of dependent children, there are none; none has been registered. That information could only be obtained by going back to the applicants, and I do not really think that ought to be done. I might also add that 146 first home owner grant payments have been made in the year 2004. There is an increase of 50 over those made in June. Of course, that may have something to do with the concession as well.

Estimates 2003-2004—Select Committee

Provision of additional information

MR SPEAKER: I believe Mr Smyth wishes to raise a matter.

MR SMYTH (Leader of the Opposition) (3.15): Mr Speaker, it is just a request for an overdue report. In the response to the Appropriation Bill (No 3) 2003-04, the government agreed to provide to the Assembly on the first sitting day in August 2004 information on

how much of the third appropriation had actually been spent. I was just wondering whether the Treasurer could tell us when that report is forthcoming.

MR SPEAKER: That is not a matter in relation to questions.

Mr Quinlan: Sorry, I haven't got the specific date. When did I undertake; by when?

MR SMYTH: One of the recommendations of the Estimates Committee was that the government report back to the Legislative Assembly on the first sitting day of August.

MR SPEAKER: Order! That's an appropriate question for question time, Mr Smyth, if you want to raise it then. Or you can write to the minister.

Mr Quinlan: There's still plenty of August left.

MR SMYTH: But it was due on the first sitting day in August.

MR SPEAKER: Well, tomorrow at question time you might like to raise that, Mr Smyth. Nice try.

MR SMYTH: Mr Speaker, I follow in your footsteps. I sit in the shadow of your chair.

Gambling and race control
Papers and statement by minister

MR QUINLAN (Treasurer, Minister for Economic Development, Business and Tourism, Minister for Sport, Racing and Gaming, and Acting Minister for Planning): For the information of members, I present the following papers:

> Gambling and Racing Control Act—
> Review of the Gambling and Racing Control (Code of Practice) Regulations 2002, undertaken by the ACT Gambling and Racing Commission.
> Gambling and Racing Control (Code of Practice) Amendment Regulations 2004 (No 1)—Subordinate Law SL2004-31 (LR, 2 August 2004).

I ask for leave to make a statement.

Leave granted.

MR QUINLAN: Mr Speaker, the Gambling and Racing Control (Code of Practice) Regulations 2002 are groundbreaking, harm minimisation strategies that this government introduced in December 2002. These regulations are still the national if not international leaders in addressing the harm-minimisation aspects of gambling and problem gambling. This document is visionary in its approach to establishing minimum standards for the industry to follow in the protection of the community.

The code of practice covers such important issues as staff training and care, keeping records of problem gambling incidents, having a specially trained gambling contact officer, self-exclusion for patrons, licensee-initiated exclusion of patrons who have a problem with their gambling, maximum cash payouts for winnings, restrictions on

cashing of cheques in gaming machine venues, availability of information to patrons on odds of winning and how to contact a problem gambling counselling service as well as restrictions on advertising and promotion.

Mr Speaker, to ensure that the code of practice was achieving its goals the Gambling and Racing Commission undertook, at the time of its introduction, to conduct a review after 12 months of operation. The commission has undertaken that review, including extensive consultation with the industry, stakeholders and the community. The commission has produced a policy paper outlining this review process and providing some 31 recommendations regarding the code's operation. So that members can read the commission's paper for themselves, I have decided to table it along with the amending regulations.

In general terms the commission concluded that the code of practice was operating well and that most licensees were taking their responsibilities very seriously. The commission's recommendations are mostly technical in nature and seek to improve or clarify the original intent of the regulations.

The government has adopted all the commission's recommendations except one. The one recommendation not accepted by government relates to the cashing of cheques by gaming machine licensees. The current regulations provide that cheques can be cashed up to the value of $250 or for a higher amount if arrangements are made on a previous day. The commission recommendation was not to allow cheques for higher amounts to be cashed at all. However, I have had representations from some of the smaller clubs that a few patrons rely on their local club where they are very well known to have their cheques for larger amounts cashed after hours. I think that this original provision in the code of practice is reasonable and should remain unchanged.

As mentioned earlier, the changes provided in these amending regulations are mostly technical in nature. Some provisions are clarified by minor changes or the addition of a definition, while other amendments seek to correct ambiguities or close loopholes to ensure that the intent of the provisions is met.

These amendments will enhance the current harm-minimisation provisions by ensuring that the original intent of the code of practice is more closely followed. This is achieved by clarifying certain provisions and ensuring that gambling activity that may lead to problems for some people is covered by the code of practice.

Currently some gambling activities such as the conduct of housie or the conduct of certain promotions that involve gambling activity can avoid the provisions of the code by exploiting the exemption provision. These amendments that I have tabled today will ensure that all appropriate gambling activity is covered by the provisions of the code as originally intended. In addition, other provisions are proposed to be amended to enhance the practical application of the code such as by redefining "gaming day" in reference to the casino and "winnings" in relation to gaming machines.

The gambling code of practice is a progressive document that is leading the field both nationally and internationally. However, it needs a small tweak to refine its provisions to ensure that it remains the visionary document at the cutting edge of harm minimisation for gamblers in the territory. These amendments provide that proper legislative controls

are in place to protect the community as well as ensuring clarity and certainty for the industry. I commend the Gambling and Racing Control (Code of Practice) Amendment Regulations 2004 (No 1) to the Assembly.

Papers

Mr Wood presented the following papers:

> Subordinate legislation (including explanatory statements unless otherwise stated)
> Legislation Act, pursuant to section 64—
> Betting (ACTTAB Limited) Act—Betting (ACTTAB Limited) Rules of Betting Amendment 2004 (No 1)—Disallowable Instrument DI2004-164 (LR, 28 July 2004).
> Electoral Act—Electoral (Chairperson and Member) Appointment 2004 (No 1)—Disallowable Instrument DI2004-161 (LR, 22 July 2004).
> Financial Management Act—
> Financial Management Amendment Guidelines 2004 (No 2)—Disallowable Instrument DI2004-168 (LR, 30 July 2004).
> Financial Management Amendment Guidelines 2004 (No 3)—Disallowable Instrument DI2004-169 (LR, 30 July 2004).
> Gaming Machine Act—Gaming Machine Regulations 2004—Subordinate Law SL2004-30 (LR, 30 July 2004).
> Government Procurement Act—Government Procurement (Principles) (Ethical Suppliers) Amendment Guideline 2004 (No 1)—Disallowable Instrument DI2004-174 (LR, 2 August 2004).
> Hotel School Act—Hotel School Appointment 2004 (No 4)—Disallowable Instrument DI2004-166 (LR, 29 July 2004).
> National Exhibition Centre Trust Act—National Exhibition Centre Trust Appointment 2004 (No 1)—Disallowable Instrument DI2004-167 (LR, 29 July 2004).
> Road Transport (Public Passenger Services) Act—Road Transport (Public Passenger Services) Maximum Fares Determination 2004 (No 1)—Disallowable Instrument DI2004-117 (LR, 19 July 2004).
> Territory Superannuation Provision Protection Act—Superannuation Management Amendment Guidelines 2004 (No 1)—Disallowable Instrument DI2004-170 (LR, 30 July 2004).
> Tree Protection (Interim Scheme) Act—Tree Protection (Interim Scheme).

Commissioner for the Family Bill 2004

Debate resumed from 31 March 2004, on motion by **Mrs Burke**:

> That this bill be agreed to in principle.

MS GALLAGHER (Minister for Education and Training, Minister for Children, Youth and Family Support, Minister for Women and Minister for Industrial Relations) (3.21): Mr Speaker, the government will not be supporting this bill. We have had a very close look at it. Overall, it is a piece of what I think is bad legislation, which has not been thought through well enough by the opposition.

The Commissioner for the Family Bill 2004 is based on the premise that the interests of families are clearly identifiable and homogenous in nature, but there are consistent issues which affect all families within the territory: that the ACT lacks adequate advocacy

services for families; that the ACT can afford the associated costs of the establishment of another service which duplicates many functions of existing services; and that the rights of the family are consistent with the rights and the interests of children and young people.

This premise is fundamentally flawed. It is based on a notion of the sanctity of the family unit and its pre-eminence in all domestic issues. This undermines the reality that the rights of parents are not always compatible with the interests and needs of individuals within the family. Specifically, the territory reports rapidly rising rates of child abuse, domestic violence, elder abuse and neglect.

In principle, this proposed bill has the capacity to undermine the work of child protection authorities and their work with families in the prevention of child abuse and neglect. It must be noted that most child abuse and neglect occurs within the family unit, as defined by section 6 of this bill.

The bill establishes processes of reporting which are flawed. Section 23 allows the commissioner to disclose information on a discretionary basis to a person or member of the public who has been the subject of an investigation. This may be contrary to law and not necessarily in the interests of vulnerable individuals. In addition, section 25 suggests that the commissioner may direct the minister to provide a report to the Legislative Assembly. There is no clear accountability process for the commissioner's actions or appeal mechanisms in response to decisions made under this proposed act.

Furthermore, the commissioner may investigate actions taken by some but not all statutory agencies in the territory. As stated, these include the Office of the Community Advocate, the Public Service Administration Commissioner, the Privacy Commissioner and the Discrimination Commissioner, who may presumably have all of their decisions reviewed by this commissioner.

The establishment of a commissioner for the family is at odds with current law and recommendations by review bodies such as the Standing Committee on Community Services and Social Equity's report into the rights, interests and well-being of children and young people, tabled in August 2003, and the current review of statutory oversight and advocacy agencies. Several ACT agencies provided recommendations to the former inquiry in support of the establishment of a commissioner for children or for children and youth. Furthermore, recommendation 26 of the ACT health review in 2002 calls for the rationalisation of advocacy services in the ACT.

In addition, several of the state functions of a commissioner for the family are already within the scope of the Community Advocate's function. The Office of the Community Advocate is an independent statutory officeholder who has a legal duty under the Community Advocate Act 1991 to promote and protect the interests of children and adults with physical, mental, psychological and/or intellectual conditions that result in a need for protection from abuse, exploitation or neglect.

It is also noted that there is an inherent conflict in the establishment of a role that represents the interests of both children and young people and the interests of their parents.

The proposed establishment of a commissioner for the family who intervenes in individual matters and has the power to review decisions made by government agencies, including the OCA, duplicates the role of the Ombudsman and various commissioners such as the Privacy Commissioner and the Discrimination Commissioner.

The focus of government is to protect society's most vulnerable members. We know that children and young people who are at risk of abuse and neglect fall into this category, also young people within the youth justice system and at risk of homelessness. The government's focus is on addressing the specific needs of these already identified groups, through the children plan, the social plan and the Human Rights Act. The opposition's proposal appears to be lacking in any kind of research context or clearly articulated rationale for identifying families generally as being at risk within the territory.

The government's focus is also directed to current gaps in service delivery and identified areas of need. It is presumed that within the scope of a commissioner for the family would be issues ranging from elder abuse to child abuse and matters within the discretion of the Family Court. The scope of the commissioner's role is expansive in this regard. There is no reference in the bill to the rights of the commissioner with respect to interviewing children and young people, individuals with disabilities, people with impaired mental capacity and the natural justice rights of anyone who feels or is incapable of representing their own interests before the commissioner.

The bill proposes the use of the term "family services". That is broadly defined and ambiguous, and you will see that within the definition section family services could be a whole range of government and non-government agencies that operate within the ACT.

So the government's strong advice—and the government's position—is that this legislation will do nothing to protect the interests of vulnerable people within the ACT; that it is badly thought through; that there are a number of problems which cannot be addressed through amendments; and that it should be defeated before we get to the detail stage of the debate.

MS DUNDAS (3.27): The Democrats will not be supporting this legislation. As part of the Democrats' election platform in 2001, we called for a children's and young persons commissioner to be established in the ACT. This recommendation came out of the Assembly's inquiry into the rights and welfare of children and young people in the territory as well as the territory as parent report. The government has agreed to these recommendations and I look forward to the consultations that were promised just yesterday in relation to the best model for a commissioner for children and young people in the ACT.

Commissioners for children and young people or commissioners for children already exist in Queensland, New South Wales and Tasmania, as well as in New Zealand and the United Kingdom. The Democrats remain committed to actually having a national body, a national commissioner for children and young people, to work with similar bodies in every state and territory to promote the best interests of children and young people and to ensure that their rights and their wellbeing are not ignored.

We need a commissioner for children and young people to be an advocate for children and to investigate potential problems within child support services. We do not need a commissioner for the family. If our goal is to protect and support children and young people, then it would be a commissioner for children and young people who would be best placed to do this. I think that a commissioner for the family fails to put the best interests of the children as the primary concern and would actually end up confusing and complicating our child protection system.

Of course, commissioners for children and young people can have a broader scope than just the care and protection system, and I hope that is something that the government will take into account as part of their consultations at the development level in the ACT, that we are looking at furthering the best interests, the rights and the wellbeing of all children and young people, not just those known to family services. I do not think that the commissioner for the family, as proposed in this bill, would actually make progress in the ACT in dealing with issues that have come up publicly over the last number of months but have been around for a number of years.

Yes, I agree that rates of family break-up are significant, but this is perhaps a reflection that in previous times families stayed together, not always for the right reasons. We are actually living in a changing society. People are more willing to speak up when they are victims of domestic violence or people are more willing to speak up when they are not in a happy and productive relationship, and sometimes it can be better for the family as a whole for that family to actually move away from its traditional unit and deal with the problems that they are having there.

Usually we set up commissions to focus on issues where there is a threat or ongoing discrimination that we are trying to address. We are establishing a human rights commissioner to ensure that our human rights are protected. We currently have a discrimination commissioner to work against discrimination in our community. We are talking about a disability commissioner to help those with a disability who live in our community. We have an environment commissioner to ensure that our ongoing, sustainable environment is always put on the floor, talked about and protected.

Whilst there is a lot of talk about the role of a family unit in our society, I think it is safe to say that families are not actively discriminated against. Families are important but are not necessarily marginalised in the same way other groups in our society are. As we saw with the federal government's recent handout to low-income families, their votes are often important and sometimes their concerns are listened to.

I think the definitions in this bill are too narrow and reflect a mono-cultural view of the world. Families, by their very nature, can be diverse and come from many different people, particularly those from a non-English speaking background, where their families encompass more than just the parents and the children. A family is aunts and uncles, grandparents, cousins and friends of the family who become more than just friends; they become family. And for many, the family links are very important. It is those links that I do not think are actually clearly reflected in this bill.

We were looking through it before and it talks about a family being parent or parents and child or children, whether or not living together, and/or adults living together as family,

which means living together as parents and children. The problem is that for a definition of parent you need to go to the Legislation Act, which refers to a parent meaning the child's mother or the child's father or someone else who is presumed under the Parentage Act 2004 to be a parent of that child.

The Assembly will remember the debate of the Parentage Act 2004 which talked about surrogate parents and the like and did not really take into account the diversity of parent-like situations that families can find themselves in. And it is quite clear under the law that a child cannot have any more than two parents at any one time. In that sense, the definition of family is actually quite limiting and looks solely at the relationships between parents and children and not necessarily more broadly at all the other people who make up that family unit and impact on the lives of the parents and the children.

We need to have a greater focus on the multitude of family types, not just this definition that actually works to exclude, I think, families. Single parents, families with same-sex parents, extended family arrangements, single mothers who continue to try to throw off the stigma of being a single parent and not being deemed a proper family could see themselves being marginalised as they try to work with this commissioner for the family.

This bill does not necessarily rule them out from accessing the services of the family commissioner, but I think there is a perception there, under our current law, about whom we talk about when we talk about families. That rules all of these different types of families out.

Instead of setting up another bureaucracy like this, we need to be putting resources into youth and children's services, into women's services, into providing avenues for marginalised people to get help and advice, into providing more support for the families of prisoners, into providing more support for single men and their children and actually setting up situations so that, if they need help and advice on family matters, there is a place that will provide this support. I think that's better done by a government agency, service delivery agency or a non-community organisation working possibly with the resources of government to provide that support, rather than an independent oversight body set up to review decisions.

A support system which considers the rights and best interests of children as paramount will do more to help families than a proposal that will not be able to support our most vulnerable at their time of greatest need. The best interests of the child need to be considered within and outside the family context, especially when a child may be suffering abuse. As we saw with the tabling of some of those reports yesterday, the place where some children suffer most harm is in their family unit.

So I think there is more work that needs to be done as opposed to saying that a commissioner for the family will be able to fix some of the problems that we have at the moment. We need to look at some more practical solutions to help families, to help them deal with the issues that they are going through, to provide greater parenting skills, to provide greater support whenever it is needed, not an independent oversight body in this sense, because I think that misses the point of what families need at this time.

We could have more practical solutions such as measures to encourage men to actually seek out and participate in counselling. We know that women attend counselling at

a ratio of 2 to 1 over men; yet males have higher suicide rates, particularly young males. Many families are kept together by parents and sometimes by the children attending counselling, seeking out support. Yet research shows that the vast majority of males are reluctant to seek out a counsellor or even attend once one has been found.

I think greater effort is needed to break down those cycles of stigma, and we need to actually ensure that these places are friendly, accessible and useful to families and to men in particular so that they are actually feeling that they can achieve something, that they can support themselves, that they can support their families. That would be a greater step towards actually achieving Mrs Burke's aim than setting up an oversight agency, a bureaucracy that is designed to review decisions, as opposed to actually helping families when they need it most.

MS TUCKER (3.37): The Greens will not be supporting this bill either, although I think Mrs Burke is well intentioned in what she is doing here. I also have some serious concerns about this particular mechanism for dealing with this problem. We arguably all agree, basically, that families need to be supported. But this particular way of addressing it is problematic, for a number of reasons. I guess one of the really basic points that you would have to make is that we are in dangerous territory if we start to say that the integrity of families in or of itself is more important than protecting family members from what goes on inside families.

It is interesting that this legislation reminds me of the federal Liberal government's recent changes to family law and the concerns that are coming out that basically the rights of the parents are put ahead of the rights of the children. In that instance, we are seeing this language around the rights of the parents, that both parents have access to children. Obviously anyone who has any experience of family breakdown, in particular any experience of working with the interest of the child being the primary motivation for any of our social responses, has to be very concerned when you see this notion of rights of families put above those of the children.

It is not just about children. I will stay with children for a minute. The point, as we know—it has just come out from the audit—is that again the majority of abuse occurs within families. Elder abuse is usually from family members. A paper by Marianne James of the Australian Institute of Criminology shows that a significant proportion of violence against women occurs within close personal relationships and within the family. Of all homicides occurring in Australia in 2002, 56 per cent took place in residential locations, with 49 per cent in a private dwelling. In 2003, 20 per cent of male homicide victims were killed by a family member, and over 20 per cent of female victims were killed by a family member.

Child abuse, as I said, usually occurs within families. That is not to say of course—and I would not like to be misrepresented—that families are evil institutions. Of course they are not. They are very important. But they cannot be made the most important concern within the society. It is important to note that bad things do happen within families and that in the past much of this crime went unreported or was not considered a crime, in the interests of keeping it all within the family. That is still a campaign we have to be talking about, that domestic violence is a crime. We know well that within our culture it is still thought in many situations that it needs to be kept within the family.

Support for families before things get to crisis point is essential, but I do not think you need a commissioner for the family to achieve that. It has come up consistently in every single social policy report I have done in this place that we want prevention of child abuse and family dysfunction and social dysfunction by seeing support for families. So that is where there is common ground between Mrs Burke and everyone else in this place, I would suggest.

I will give some examples of good family support services. I remember well the O'Connor Family Centre, which was closed down by the previous Liberal government. It was one of the really good services that we had in the ACT for working with families and allowing people who lacked confidence within their family situation to move really gently into a supportive external environment. It was one that, I would suggest, represented best practice. I would like to see it replicated around Canberra. We lost that one.

Mrs Burke quoted an American academic, William Doherty, President of the National Council for Family Relations and Professor of Family Social Sciences—and I quote her quote:

> … the principal momentum for competent parenting must come, not from a top down state or federal initiative, but rather from diverse families working together in powerful, but non-partisan ways. What is needed is a public, grass roots movement generated and sustained by parents themselves to make family life a priority.

I have to say I am at a bit of a loss to understand why Mrs Burke chose this quote. It seems to me that it does not lend much support to her concept of a commissioner. In fact, it supports something more like community-based services of support and education, a parents' support line and so on.

The other thrust of Mrs Burke's argument seems to be that things like a commissioner for children focus too much on situations where there are problems, leaving the majority of families unattended. I think this is an interesting position for a Liberal member, too.

Mr Cornwell, as quoted by Mrs Burke, disagreed with the community services and social equity committee's recommendation for a commissioner for children and young people, on the basis that it could threaten the parental rights and responsibilities of the vast majority of ACT families whose children do not come to the attention of any local authority. In Mrs Burke's words, there seems to be a huge push across the country to somehow alienate children from their parents and, in the process, take rights and responsibilities away from parents. With many states now looking at a commissioner for children, I would have thought the value of having commissioners to work on issues related to the group of people who are vulnerable, disadvantaged or at risk is quite clear, that is, these officers oversee services for vulnerable children. To claim that they are taking away family rights is, as I said earlier, verging on what is, for me, quite a terrifying ethic, that what is in the family stays in the family.

It is also very disturbing that Mrs Burke's premise, the reason she argues we need a commissioner for the family, is that we have human rights law and we will have a children's commissioner. If we really want to look at what we need to be doing for our

community as a whole and talking about families, I would like to remind members that it was the federal Liberal government and Labor opposition, unfortunately, that told every child in Australia who lives with lesbian parents that their family is not fit to be seen on television. If you are seriously interested in how as a society we are alienating children and what we are doing to families, you need to have a little look at that particular response because it cannot be argued that that is in any way supportive of that particular family grouping.

I know that, in her speech, Mrs Burke said she had a fairly narrow definition of family, but it was the Australian Family Association's definition that she quoted. I recognise that it is more open in the legislation, but I have to say that I think there is a real danger that this is coming from a very conservative ethic which is not actually informed in any way by all the evidence coming up about what we are doing to support children in our society who are vulnerable in most circumstances in the family situation. All that work says absolutely that we support families.

As I said—and I will repeat it—this most recent audit has said once again that we need thorough support, therapeutic engagement and so on with families. No-one is denying that we want to work with families, but what we are saying is that this dichotomy being set up by Mrs Burke around the rights of the child versus the rights of parents is dangerous and ill informed.

MRS CROSS (3.45): Mr Speaker, I understand the sentiment in Mrs Burke's bill. However, I generally view with some caution proposals that would lead to the establishment of yet more bureaucratic organisations. I also tend to view as a first and more important step the need to take a long, hard look at the span of responsibility, efficiency and effectiveness of the bureaucratic structures that already exist before we leap to conclusions that will perhaps produce new organisations.

We have had, in 2001, the Community Advocate's audit of the child protection system and in the recent past the Vardon report and now the follow-up independent audit report by Gwenn Murray. They, along with ACT coroners, the Ombudsman and the ACT Health Child at Risk Protection Unit, have all been damning and critical of the way the ACT's child protection system has been handled. The upshot of that process was not to create a spate of new organisations to resolve the problem but to take measures to make the organisations directly or indirectly responsible for child protection more effective, more efficient, better coordinated and better structured internally and so forth.

The first priority is to ensure that what we do have is made to work better. Under a range of circumstances, including poor leadership, understaffing or awkward structuring, there is generally a tendency for organisations to become slack and let their focus blur or for morale to be adversely affected, et cetera. Whatever the organisational malady, it has to be treated first and no thought should be perhaps given to creating new structures until everything has been done to shake up the malfunctioning bodies.

The particularly dysfunctional state of the child protection system within the Department of Education, Youth and Family Services cried out for more focused and better structured attention on that daunting problem and ultimately resulted in a recommendation by the Standing Committee on Community Services and Social

Equity for the creation of a position of a commissioner for children. The scale of neglect was such that this response was warranted.

But I have difficulty in accepting the proposal for a commissioner for the family in the same light. We already have agencies in place to provide support for family issues, such as the Office of the Community Advocate and the Office for Children, Youth and Family Support. We also have to ensure that these agencies do their job properly before we even start to think about creating new bodies. Therefore, at this stage I am not prepared to support the creation of another bureaucratic body as proposed by this bill.

MRS BURKE (3.48), in reply: I will not take too long to wrap up. I am obviously not going to get full support for this bill. I want to make something very clear. I am not proposing another bureaucratic layer any different from that which the government is proposing with the commissioner for children and young people. I am not trying to set another body up alongside your commissioner for children and young people. I want to make that clear, because I think it is important, as I have always said and maintained, that any decisions about children should not be made in isolation to the family.

This brings me to a point that Ms Tucker made. She was concerned that my definition of the family was narrow. Well, all I can say is that I indeed took advice from Parliamentary Counsel, whom I wish to thank very much for the inordinate amount of time it took to put this small bill together. I'd like to show my thanks and appreciation to Nick Horne particularly and to Sandra—her surname eludes me, I'm sorry.

Mrs Cross: Georges.

MRS BURKE: Sandra Georges. Thank you, Mrs Cross.

I think Ms Tucker referred to my definition as coming from the Australian Family Association. Well, in fact, I laboured and worked hard to ensure that this definition was very inclusive of what we know as a family unit, and I think it is implied. I think it is a broad description.

That aside, I will just make a few comments on members' contributions. I appreciate your input and thank you very much for that. I certainly look forward to working with the government and joining in the debate at a stage when perhaps the government has its legislation for a commissioner for children and young people drafted and we can debate that robustly.

Ms Gallagher, I guess, read a statement that was prepared for her which was fairly political. It was a fairly negative response, given that she knows and understands where I sit in the situation of care for our most vulnerable. I also have to point out that I think it could be an anomaly that, whilst the office is called Children, Youth and Family Support, in the proposal for a commissioner that will advocate for young children there is no mention of the word "family". I have had that discussion and I am happy to work with the government on that, at the risk of being pedantic. But I think that it is very important that we include, as I keep saying, the holistic approach.

Ms Gallagher mentioned that it was bad legislation, poorly thought out. I think that is a little bit of an indictment on Parliamentary Counsel as much as anybody,

Ms Gallagher. They worked long and hard to put this together. So that is a little sad. You also referred to the capacity to undermine, processes that are flawed, no clear accountability, at odds with the current law. I can only put that down to really political statements because it is going to be interesting to see what the commissioner for children and young people will do that the outline of my bill was not going to do anyway.

We must protect society's most vulnerable. Members have said this will do nothing to protect the vulnerable. Again I would argue that, but I will wait for that debate another day.

To the Democrats, I thank you for your comments. Moving away from the traditional unit—I think that was what you said, Ms Dundas—might be best for the child. Again, I have said, "What happens then to the family members?" I think that that is a concern. In the bill that I was proposing the best interests of the child, the interests of the family unit, whoever they may be, would be brought into account. I still believe decisions must be made about children's future with as much input from the parents and/or carers as possible.

Indeed, I have had at least two cases come across my desk where young people have been in the care of a carer not the biological parent and have been removed and taken back to that parent quite at the behest of not doing so by the carer. That is why I am saying that we should be inclusive. I hope that the government's drafting will include issues such as consulting with family members or family unit, whatever description we want.

It is interesting to note that page 18 of the foreword of the report on the audit and case review we have recently received in this place is exactly my reason for wanting a commissioner for the family, not simply a commissioner for young people. Whilst I fully support the need for children to have a strong voice, I am concerned that we ensure that there is a balanced approach. There must be a balanced approach to it. I hope, as I say, when the debate on the government's proposal comes on, we will be able to see clearly what they propose. Again, I have said we are not suggesting that there be two commissioners. I have talked about that.

Mrs Cross talked about the establishment of more bureaucratic structures, which has been mentioned by a few members; so it is going to be really interesting in this place when we see what the members talk about. Will they feel the same about the establishment of the government's proposed commissioner for children and young people? I am quite confused about some of the comments there. We are already talking about a bureaucratic structure.

I will close there. I again thank members and sincerely thank my staff and Parliamentary Counsel for working so hard on this with me. I look forward to the debate on the government's proposed commissioner for children and young people.

Question put:

> That this bill be agreed to in principle

The Assembly voted—

Ayes 5		Noes 10	
Mrs Burke		Mr Berry	Ms MacDonald
Mr Cornwell		Mrs Cross	Mr Quinlan
Mrs Dunne		Ms Dundas	Mr Stanhope
Mr Smyth		Ms Gallagher	Ms Tucker
Mr Stefaniak		Mr Hargreaves	Mr Wood

Question so resolved in the negative.

Tobacco (Vending Machine Ban) Amendment Bill 2004

Debate resumed from 23 June 2004, on motion by **Ms Dundas**:

That this bill be agreed to in principle.

MR WOOD (Minister for Disability, Housing and Community Services, Minister for Urban Services, Minister for Police and Emergency Services, Minister for Arts and Heritage, and Acting Minister for Health) (3.58): Mr Speaker, the government will be supporting this bill and the opposition's amendments. We are all too aware of the problems surrounding tobacco cigarette smoking. In particular, the issue of youth smoking deserves to be recognised as one of the most important public health issues. I have to say it continues to amaze me that young people take up smoking in the face of the overwhelming evidence of the damage it causes.

Research for the national drug strategy has found that the total cost of tobacco use in this country is up to $21 billion a year—more than all other drugs combined. Tobacco use takes the lives of more than 18,000 Australians a year and is responsible for more disease than any other single risk factor.

When it comes to just about every other cause of disease, we take a preventive approach on the grounds that it is more cost effective to prevent disease from occurring than to treat it after it has taken hold. Tobacco use should be the same. One of the most effective measures we can take to discourage tobacco use is to discourage children from starting to smoke. We know from numerous surveys that smoking is a habit acquired during childhood or adolescence. There is also good evidence that ease of access to tobacco products, and even perceived ease of access, is a key factor in whether a young person will become a smoker. In other words, if young people are able to obtain cigarettes easily, they are more likely to smoke.

It is not surprising that access to the product is recognised as a key marketing issue. Tobacco products are different from normal consumer products in two ways: they are inherently unsafe and, secondly, their sale is subject to age restrictions. In view of public health issues and changing social norms, it is certainly appropriate to review our arrangements for the location and operation of tobacco vending machines.

We have got one of the strongest legislative regimes here in the ACT when it comes to restricting the sale and display of tobacco products. For example, we have restricted the display of those products to no more than one pack facing of each product line and we no longer permit displays to include cartons. We also require that cigarettes be displayed

only behind the customer service counter and that a tobacco product display be accompanied by a health warning notice. We stipulate that it is an offence to sell or supply cigarettes and similar products to people under the age of 18.

Our legislation currently requires that vending machines may only be located in areas that are off limits to under-18-year-olds or to unaccompanied under-18-year-olds. A tobacco licensing system means that the right to sell products is conditional on retailers meeting their obligations under the law. We have done a great number of things. The issue is: is there scope to do better?

Public access to cigarettes from vending machines became an issue when cigarettes became an age-restricted product. The first major initiative was to limit these machines to licensed premises. In response to Australian studies that children were still able to access machines, the ACT acted to tighten the requirements on where machines could be located. In revisiting this issue, we need to consider whether, as part of an overall public health agenda, it is appropriate to be moving away from the situation that allows harmful age-restricted products to be dispensed from self-service machines.

I have no doubt that these machines are useful in providing secure storage. However, other tobacco retailers like supermarkets, which sell cigarettes over the counter rather than from vending machines, have been able to manage these issues.

Similar issues were raised when restrictions on tobacco products and displays were proposed. In particular, it was claimed that the proposal to end the display of cigarette cartons would impose great hardships on retail outlets. I for one do not mind if there are great hardships imposed in this. In the end, however, the requirements were smoothly implemented and all have been accepted. The result has been to reduce in-store tobacco advertising and promotion and to reduce the prominence and attractiveness of cigarettes to young people.

It was clear several years ago that for public health reasons restrictions would be brought to bear on many forms of advertising and promotion. The move here towards smoke-free enclosed public spaces is another example of a public health response to tobacco that is now well accepted and supported. While they may prefer to delay the inevitable for as long as possible, I believe that tobacco companies, vending machine companies and retailers need to be realistic. They need to anticipate that communities and governments will continue to respond to public health concerns about tobacco use. Arrangements that may have been accepted in the past are now inappropriate. Communities cannot afford to ignore the enormous and compelling amount of information about the harmful consequences of tobacco use.

The legislation before us would still allow tobacco products to be sold in licensed premises where vending machines are currently located. These premises would still be permitted to sell cigarettes over the counter in the same way that they are sold in other retail outlets. The obvious advantage of this is that it provides an opportunity for the seller to verify the age of the purchaser. What will be eliminated is the sales method where the product is dispensed to anyone who places the required payment in the machine.

It is interesting to note that, according to the Commonwealth department of health, only about 1 per cent of adult smokers report that they purchased their last pack of cigarettes from a vending machine. So most adult smokers plan their purchases to avoid relying on those machines, from which cigarettes are normally more expensive anyway. It is reasonable to assume that as young people find it more difficult to obtain cigarettes from over-the-counter sales, vending machines could be an attractive option because the sale can be made quickly and easily. This is something that we need to avoid.

While supporting the spirit and intent of this amending bill, the government will agree to the Liberal amendments that the proposed changes would work just as effectively if the phase-out period were extended to 2006. Indeed, 1 September 2006 is just about the time when the clubs will go to no smoking and that seems a reasonable time. Also, 1 September is the time when permits run out. We are being a little conciliatory to premises in respect of that, bearing in mind, however, that we are all very emphatic about the need to reduce smoking in view of the harm that it does.

Tobacco control initiatives in the ACT have benefited from strong support in the community and in this Assembly. There has been an awareness that this is about the health of our children. This is one of the most significant public health issues in Australia and that is why we are supporting these proposals.

MRS CROSS (4.07): Mr Speaker, smoking among children and adolescents in Australia is a real problem, yet it is a problem that we have made very few inroads into solving despite the fact that we have known about it for decades.

I will briefly highlight some alarming statistics to show how significant the problem of smoking is among youths. Eighty per cent of adult smokers commenced smoking before the age of 18, with approximately one-third of adult smokers having first smoked a cigarette at the age of nine. Around 65 per cent of 16-year-olds in Australia have tried smoking. One in five New South Wales high school children are likely to have smoked in the last week, with 35 per cent of these recent smokers aged between 12 and 14.

Of all drugs, legal and illegal, tobacco is the greatest killer, yet 70,000 children commence smoking each year. This happens in spite of warnings, education and increased taxation. The only way to reduce smoking among youths is to reduce access to cigarettes. Ready access to cigarettes is a predictor of uptake of smoking. The aim of the bill is to reduce access to cigarettes among youths and thus hopefully reduce smoking among youths.

In 1993 a national survey showed that 20 per cent of 12-year-old children purchased their own cigarettes. Similarly, a controlled study in Adelaide showed that 45 per cent of children aged between 12 and 14 successfully purchased cigarettes themselves. This study also shows that children were, on all occasion, successful in obtaining cigarettes from vending machines.

These facts fly in the face of all state and territory legislation that prohibits the sale of tobacco to persons under 18 years of age and clearly indicates that there is large-scale violation of the aforementioned legislation. Whilst it is all well and good to legislate against the sale of cigarettes to youths, the practicalities are that youths still have access

to cigarettes on a near unrestricted level. A primary source of this is vending machines. With cigarette vending machines being permitted only on licensed premises in the ACT, this theoretically should not be a problem. However, it is.

Many pubs do not have somebody on the door during quieter times and often only check ID at the bar. Youths can go into one of the 200 pubs or other licensed premises in the ACT that have cigarette vending machines, walk up to the machine, put in the money and walk out with a pack of cigarettes without even looking at a person, let alone having to present identification. This is a serious problem, a problem that certainly contributes in a significant way to the high levels of smoking among our youths. This bill addresses this problem. Ms Dundas's legislation addresses youth smoking in a practical manner with an approach that has been sorely missing in previous attempts in this country to reduce smoking among youths.

I want also to emphasise the importance of governments in reducing smoking among our youths. Whilst it is primarily up to parents, governments have a significant role to play. Aside from education programs and taxation changes, governments can very simply reduce youth smoking through reducing access to cigarettes by enforcing tobacco sale legislation.

A 1994 New South Wales survey estimated that "illegal sale of cigarettes could be reduced by as much as 70 per cent through the distribution of letters of warning to retail outlets known to have sold cigarettes to minors". A simple letter could have such an effect. This would not be costly or burdensome for the government. Simple measures like this have a very large effect, and I would certainly like to see this government look at ways to stop the sale of cigarettes to minors.

The World Bank reports that every day approximately 80,000 to 100,000 young people around the world become addicted to tobacco. The *British Medical Journal* notes that half of all regular smokers will eventually be killed by their habit. CJ Murray and AD Lopez report that if current trends continue, 250 million children alive today will die from tobacco-related disease. According to the *British Medical Bulletin*, the average loss of life for all smokers whose deaths are attributable to tobacco is 16 years. This indicates the seriousness of the problem. We need to do something. We cannot condone inaction. This legislation is but a step on the road to solving the problem of youth smoking, but it is a step we must take.

I will be supporting Ms Dundas's legislation—I understand that other members of this place will also be supporting it—but am concerned about the proposed amendments that are going to be supported by the government. I am concerned that the major parties are amending this legislation. I have to say that Mr Smyth was extremely helpful in working on the smoking legislation that we passed in this place last November. I cannot say the same about Mr Corbell, who was extremely obstructionist and tried to derail that bill until the eleventh hour, when he put forward an amendment in respect of when the ban would be phased in.

Unlike that bill, we are now talking about the availability of cigarettes to children. Why is it that we need a phase-in period for legislation that addresses access by our children to cigarette vending machines? When the minister says that appropriate action needs to be taken and when everyone agrees that smoking is hazardous and that delaying the

inevitable for as long as possible is hazardous, why is it that we are putting our children at continued risk from the adverse effects of smoking to satisfy premises that may be a bit upset about this?

Adults can go into any of the 200 licensed premises in the ACT and make an adult decision about whether they wish to be around passive smoking or partake in smoking. But to have a phase-in period where our children are concerned is deplorable. Frankly, I know that the legislation is not going to get through without these amendments and I understand that that is going to be very frustrating for Ms Dundas. However, I urge members to consider that we do not need amendments to this legislation in view of the fact that Ms Dundas's bill already has a phase-in period until September next year.

Why do we need to stretch out the phase-in period when this affects our children? When you say that it is hazardous to delay the inevitable, why then are you supporting amendments to delay the enforcement of this legislation? We did that with the smoking legislation that was passed last year. We were not able to get the support that was needed to ensure that measures beneficial to people's health in the ACT were applied as soon as was practicable.

Why are we are putting our children at continued risk simply to satisfy licensed premises? We should be putting our children first. The government has come in here and said that it would support a recommendation to have a children's commissioner because it is concerned about the welfare of children. Yet, when we are looking at the hazardous, adverse effects of the access by children to cigarette vending machines, we are not putting our money where our mouth is. We should not be supporting these amendments and the government should not be supporting these amendments. If the government genuinely has the interests and the welfare of children at heart, it should not be supporting these amendments.

I would ask the government to rethink. Removing vending machines next year will not break the budget. This will not put the clubs and the pubs out of business.

MR SPEAKER: Mrs Cross, the amendments have not been put yet. I am sure you will want to have another—

MRS CROSS: Mr Speaker, I am speaking both to the bill and to the proposed amendments.

MR SPEAKER: The amendments have not been put. They are not on the table and the question that they be agreed to is not before the house. I am sure you will want to have something to say about them later.

MRS CROSS: I probably will, Mr Speaker. I urge members to support Ms Dundas's bill as it is and to consider any potential amendments that will be tabled in the near future.

MS TUCKER (4.16): This bill will ensure that cigarette machines cannot be used in a public place. I think we all know that cigarette machines provide easy access to cigarettes for many young people, either directly themselves or through the agency of older friends. I understand also that cigarette vending machines provide strict stock control, which is a great advantage for bars and clubs—where they are often located—

which otherwise seem to be subject to a fair degree of pilfering. However, I do not think this, in itself, is a reason to license such machines to be operated in public.

I am aware that this legislation mirrors the situation in Tasmania where clubs and pubs have found a way to manage their sale of tobacco so that only some staff involvement—either by selling cigarettes over the counter or triggering their release from a machine—is necessary.

Tobacco is a very interesting drug. It is quickly and powerfully addictive, freely available, linked with glamour and cool, damages smokers and their children, and is enormously expensive in terms of health and lost productivity costs. While it can arguably assist concentration, memory and mood control in some people, it is nonetheless undoubtedly massively damaging to all societies around the world.

The businesses that have profited from tobacco year after year have denied the harm it does and have resisted any controls on its sale. They have sought to expand their markets to young people and increase sales in all communities. Also, they have been at the forefront of high intensity marketing. There is every reason to discourage the use of cigarettes in every conceivable situation. If marketing and sales regulation were to reflect the real impact of this dangerous drug on our community then it would be available only to existing users from pharmacists in unmarked government issue brown paper packages.

It is an interesting contradiction, however, that cigarette smokers can survive extended periods of time without tobacco. These days, aeroplane flights, bus trips and visits to the cinema are all accomplished by smokers without recourse to a smoke. So the culture of smoking, despite every attempt by business to encourage resistance, is changing. The shift towards smoke-free public places is further incontrovertible proof of that.

I would have to say that removing cigarette vending machines from the lexicon of drug delivery systems is a good thing. If it means that some clubs and pubs decide not to sell tobacco products anymore, then I have no doubt that people who are addicted will get their cigarettes from other sources, but under-age access at least will be a little more difficult.

Of course, closing down vending machines is not going to get people off cigarettes. People take up and continue to smoke for a whole number of complex reasons, and availability is only one of them. Issues of class and culture are rarely addressed when people talk about how to change behaviour. While I am happy to support this bill, we should be clear that it will have a small impact on the supply of what is perhaps the most dangerous drug and it will have almost no impact on demand.

MR SMYTH (Leader of the Opposition) (4.19): Mr Speaker, this is an interesting bill. It is a bill that offers half a solution to a problem. Perhaps we should be having a much larger debate rather than tinkering at the edges because even with the removal of vending machines from licensed premises, those premises will still be able to sell tobacco products over the counter.

So the real question here is how do we, as a society, react to the sale of a legal product? Whether you like it or not—and I do not particularly like it—tobacco is a legal product in Australia today. Perhaps it is up to a jurisdiction somewhere, sometime, to have the

real debate about the sale of tobacco, which is whether or not it should be sold at all. That is a debate for another day.

The question before us today is the ban on vending machines, and this will affect clubs, pubs and taverns in the ACT—licensed premises. Again, it is half a solution and not the total solution to the problem. We all clearly acknowledge that the sale of tobacco and the take-up of tobacco by young Australians is of concern to us all.

The minister has just kindly given me a summary of some surveys that have found that vending machines are one of the sources that are most easy for young people to access. It is quite interesting to read the surveys but I wonder about the applicability of those surveys to the ACT. I have spoken to a number of nightclub proprietors and a couple of managers of clubs and they are not specifically aware of the problem. I have had no evidence put to me of the nature of the problem here in the ACT and, indeed, the minister tells me there have been no breaches. Oddly enough, there is some money in this year's budget to carry out some observation to determine what the scale of the problem is in the ACT.

So I come back to my original premise that this is tinkering at the edges when perhaps what is really required is the bigger debate. We have to remember that when we phase out these machines, the clubs, the pubs and the taverns will still be able to sell cigarettes over the counter.

The problem as I see it is how to come up with a real strategy to address the long-term problem that tobacco is. Perhaps this bill is a step forward. I am not convinced it is the step forward that we might think it is in the ACT but maybe it is a step that we need to take. On the other hand, I have been approached by a number of the proprietors of pubs, nightclubs and taverns and some club CEOs who are wary about the effect of this. This is why we are taking a more cautious approach—an approach that brings the proposals in line with the decision to ban the use of tobacco inside licensed premises that comes into effect on 1 December 2006.

Tobacco licences are renewed annually—I understand on 1 September. It is proposed that licences will continue to run through until 31 August 2006 and then they will cease a full two months before the ban comes into place in the pubs, clubs and taverns. But the interesting thing is—and perhaps someone will foreshadow an amendment that will ban the sale of cigarettes in licensed premises altogether—that the clubs, the pubs and the taverns will still be able to sell these products.

I think there is a dilemma here for us. On one hand we have got federal legislation that allows free trade between the states and on the other hand we have mutual recognition legislation, and Ms Tucker and members of previous Assemblies would be aware of those regulations. Perhaps it is time for a larger debate here about the real impact of tobacco smoking. The minister quoted some figures about the impact of tobacco smoking, the number of deaths, and the cost to the health system. But maybe it is time to look at the much larger issue in a more concerted way rather than the tinkering at the edges that is going on here today. And this is really what this bill is—it is a bit of tinkering at the edges.

My amendments simply put off the start date by a further year to bring the legislation very closely into line with the previous decision of this Assembly on the ban of smoking of tobacco in all licensed premises. It does give restaurants, clubs, pubs and taverns some further time to adjust. I think that is reasonable as long as people know that there will be an inexorable continuation of this process. With that in mind, the opposition will not be opposing the bill.

MR CORNWELL (4.24): Mr Speaker, I rise to reluctantly support this legislation. I do so because I feel something of a hypocrite. The problem is that, in my opinion, what we are debating here is the use of tobacco, not the use of tobacco by children. I was interested to see that Ms Dundas said in the overview of the explanatory statement that she presented when introducing this legislation:

> This Bill has been tabled in response to concern that cigarette vending machines remain a common source of tobacco products for minors, and also to accompany the Territory's prohibition on smoking in enclosed places.

In relation to the latter, that simply is not so. The banning of a vending machine is not necessarily going to reinforce the prohibition on smoking in enclosed public places. People may very well buy cigarettes from vending machines and go outside and smoke them for all I know.

The real point is her statement "response to concern that cigarette vending machines remain a common source of tobacco products for minors". There is nothing in the tabling speech to indicate that and figures were not produced. I welcome Mr Wood's comment on this matter. Correct me if I am wrong, Mr Wood, but I think you said that something like 1 per cent of cigarettes are sold through vending machines.

Mr Wood: One per cent of the last purchase was from a vending machine.

MR CORNWELL: Thank you. That is the only figure that I have seen. It is all very well to say that they "remain a common source of tobacco products for minors". Please prove it. Ms Dundas said in her speech:

> These machines were often left unsupervised, easily reached by children ...

She also said:

> While we have laws specifically prohibiting children from accessing vending machines, they are quite often ignored and ineffective.

Frankly, we have a lot of laws in this town on a whole raft of things that are ignored and ineffective—graffiti, litter, whatever we may like to talk about. But we do not turn around and ban, or seek to ban, these things simply because we cannot enforce legislation concerning them. That, therefore, concerns me.

The other thing that worries me a little bit is that, having achieved this in relation to cigarette vending machines, what is next—alcohol vending machines, soft drink vending machines, sweets vending machines—

Mr Wood: Sugar vending machines, yes.

Ms Dundas: We don't have alcohol vending machines.

MR CORNWELL: Sugar vending machines—thank you, Mr Wood. You can understand what I am driving at. We have an obesity problem. Are we going to tackle that problem by adopting this sort of approach? I raise these questions quite seriously. If there is a denial that this is the case with soft drinks or sweets or something like that, then perhaps it is again tobacco that we are targeting, not the vending machines.

The majority of members of this Assembly are assiduous in their support of the rights of minorities. I understand that cigarette smokers now make up 20 per cent of the community. So I am a little puzzled and left wondering whether we have selective protection of minorities in this place—that some minorities are more politically correct than others and therefore it is deemed to be acceptable that they are to be protected by the custodians of this cotton wool capital.

I must come back to my colleague Mr Smyth's comment that it is legal to sell tobacco. The issue surely is: do you wish to ban tobacco? Come on, ban tobacco.

Mrs Cross: Will you support it? Both of you: will you support it?

MR CORNWELL: I am happy to raise this debate. But be aware, of course, and it is easy for an independent over there to say this—

Mrs Cross: You declare. Say that you will support it and we will bring it on.

MR CORNWELL: No, it is easy for an independent over there to say this. Think about all the employment prospects around Australia in the tobacco growing regions.

Mrs Cross: Oh, right. That's the problem then.

MR CORNWELL: My friend, Mr Wood, is from Queensland—

Mrs Cross: Does that mean you won't support—

MR SPEAKER: Order! Mr Cornwell has the floor.

MR CORNWELL: and he would be aware of that. The point I am making is: we are fiddling at the edges on this whole question.

Mrs Cross: Well at least she has done something.

MR CORNWELL: If it is legal to sell then it is very difficult, it seems to me, to pull them back.

Ms Dundas: It is legal to sell to those over 18.

MR SPEAKER: Order! Mr Cornwell has the floor.

MR CORNWELL: Lastly, there is also the question of the cost to clubs. Most of us would have received a letter from ClubsACT indicating that one club earned approximately $120,000 in commission I think on the sales and that at least some of the money goes into a charitable donation fund.

I am quite happy—as I say, albeit reluctantly—to support this. However, if as a result of what happens in September 2006 the amount of money coming into the charities goes down, I trust that those who are in support of this sort of thing will be happy to defend that to the charities.

Lastly, and perhaps most importantly, I find a rich irony here—and I will be waiting to see how people vote on this matter—that while we are planning to restrict the sale of a legal product, we have on the notice paper for debate an item entitled "Drugs of dependence, syringe vending machines". We are now apparently—

Mr Wood: Well, they are both related to harm minimisation, Mr Cornwell.

MR CORNWELL: Thank you. I like the euphemism, Mr Wood. So what was illegal is now legal, what was legal is now illegal. I find it difficult to get my head around it. Nevertheless, I am happy to support—I repeat, reluctantly, because I feel a bit of a hypocrite—the legislation and certainly the amendments that are going to be moved by my colleague.

MS DUNDAS (4.31), in reply: Mr Speaker, I would like to thank members for their contribution to this debate. I think some interesting points have been raised and I will respond to a few of them. I think the key issue that needs to be focused on is access. The sale of tobacco is legal to people aged 18 and over. It is not legal to sell tobacco to people aged 17 and under.

Tobacco vending machines do not ask for ID. They cannot make a judgement on whether or not somebody is legally able to access that product. It is an issue about access. That is the key point that some members seem to have forgotten. I think there is a real difference between a machine and somebody purchasing cigarettes at a bar, at a counter, where there are big signs talking about problems involved with smoking and where there is a discussion, a dialogue, between the person purchasing the cigarettes and the person selling them. That is the difference that we are talking about here. This is the key focus.

I am disappointed that members seem to have thought that this was an opportunity to have a go at some other issues that we will be looking at, without really looking at what is trying to be achieved here today.

We know that smoking continues to be one of Australia's largest health problems. The recent publication of the Australian Institute of Health and Welfare, *Australia's Health 2004*, stated that of all health factors, smoking is responsible for the greatest disease burden in Australia. It accounts for around 12 per cent of the total burden of disease in males and 7 per cent in females. Recent evidence here in the ACT shows that we have one of the highest rates of smoking among young people in Australia and nearly a third of teenage girls consider themselves as smokers and are smoking cigarettes daily.

So, yes, I recognise that this bill is tackling only one aspect of the problem, and that problem is the fact that cigarettes can still be sold in the ACT without ID and without proof of age being put forward. The 200 cigarette vending machines in the territory make it easier for children to buy cigarettes as they do not require human supervision for the sale. A machine cannot ask for ID, and a machine cannot refuse sale. The removal of cigarette vending machines can help prevent the procurement of cigarettes for minors, as requiring the sale to be made by a human being can place an additional social barrier for those considering making a purchase without the anonymity of a vending machine.

This strategy is not novel and it is not radical. Similar provisions have been in place in Tasmania for a number of years. The policy has formed part of the national tobacco strategy for many years now and has been included as an option in the World Health Organisation's framework convention on tobacco control.

There have been some issues raised. We have been told that tobacco vending machines need to be in a licensed area, and that there are restrictions on what happens in a licensed area and who can access licensed premises. But as we have seen in many of our clubs and in many of our licensed venues, you do not always get checked for ID at the door. Our clubs are very family-friendly places. They promote their services to families, so young people are quite often seen in clubs. The cigarette vending machine is not tucked behind a counter or hidden away. It is quite accessible for those who want to use it.

Since tabling this bill I have been contacted by a number of people who have pointed out the ease with which children can access cigarettes by way of vending machines because the vending machines, despite technically being located in a bar area, are often located in entrances or in general public areas, with little or no supervision. So it is very clear that the current restrictions on vending machines are not working as they should.

I want to make it clear that if people still choose to purchase cigarettes in a licensed venue, they can do so over the counter where they will be asked for ID. So a 16 or 15-year-old who is in a licensed premises and tries to buy cigarettes will be asked for ID and if they are under age they should not then be able to walk away with a packet of cigarettes.

We are looking at harm minimisation. We are looking at ensuring that our laws are working in the way that we intend them to. I recognise that this bill is not a cure-all for the prevention of smoking, or the prevention of smoking by young people. However, I believe it is an important step in the right direction. We need to continue our youth anti-tobacco initiatives and our quit smoking campaigns because we have a responsibility as legislators to do our best to support the community, especially children and young people, from highly addictive and harmful drugs.

I think it is important to repeat that access is a major issue in relation to young people smoking. Studies have shown that if young people cannot easily access cigarettes then they do not smoke them. If we can help to make it harder for them to access cigarettes then it is likely that more young people will just not start smoking. It will be too complicated, too hard and illegal for them to buy cigarettes, so they will find something else to do or they will just not think about it. Access is an important factor here, and that is what we are talking about.

I thank members for their support and contributions to this debate. I note that amendments are to be circulated and I will talk to them in the detail stage.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Bill, by leave, taken as a whole.

MR SMYTH (Leader of the Opposition) (4.38): Mr Deputy Speaker, I seek leave to move amendments Nos 1 to 3 circulated in my name together.

Leave granted.

MR SMYTH: I move amendments Nos 1 to 3 circulated in my name *[see schedule 2 at page 3471]*.

I have already made the case for the amendments—that the bill should coincide as closely as possible with the 1 December 2006 changes that will affect all licensed premises. It gives the clubs and the pubs time to adjust as appropriate, and will have the long-term effect desired by Ms Dundas.

MS DUNDAS (4.39): Mr Deputy Speaker, these amendments seek to change the commencement of this bill to September 2006. As the original bill stands, the provisions would commence in September 2005, as this was the earliest possible time for provisions to commence, given the administrative needs of the change. The date of 1 September has been identified as the time when the tobacco licences expire, and the new tobacco licences could easily be issued to take into account the changes created by this bill.

So we are seeing a delay in implementation of the bill, and I note that the government has indicated they support that. Of course, I would prefer this to be implemented as soon as possible, but I acknowledge there is an argument that the changes would be useful in the lead-up to the ban on smoking in enclosed public places that will take place in December 2006, particularly as part of increasing public awareness that the ban will be about to take place.

I would like to indicate for the benefit of members that in an article published by NOW.UC, Mr Samarcq of ClubsACT indicated that whilst this was not necessarily ClubsACT's position, he did see the benefit of the removal of cigarette vending machines in the lead-up to the ban on smoking in enclosed public places, and that they would work together hand in hand. So that is one view.

Whilst I remain convinced that this measure should be commenced at the earliest opportunity, I note that these amendments will enable the bill to receive the support of the Assembly. I thank members for recognising the need, at least some time in the future, to remove cigarette vending machines from public places.

MRS CROSS (4.41): Mr Deputy Speaker, I also want to comment on these amendments. I think I said enough in my speech on the substantive motion but I want to add a couple of things. I have concerns about supporting these amendments. I understand Ms Dundas's position in having to support them for this bill to get through. I will give the position I take on this matter some due consideration. I have got to say that if I do support the bill, I will do so reluctantly.

I must make a comment on what was said earlier by Mr Smyth about tinkering at the edges. I remember when you, Mr Deputy Speaker, introduced an initiative in here to ban spray cans. You considered that a good idea and I think you should be applauded for that initiative. For you and for many who supported that initiative—and I think I was perhaps one of those people—that could also be considered a small step in addressing what is a big problem. But whether or not that had gotten through, it was not the panacea or the complete solution to what is a very serious problem.

I agree with people who say in this place—and this is not just you, Mr Deputy Speaker, but also the Leader of the Opposition—that really tobacco is the problem and that we should be seriously looking at the tobacco issue. I agree. You are right—it is a serious issue. But in order for us to reach that stage we need at times to take small steps. What Ms Dundas is doing with this bill is a small step in your view. But I think it is a bit more significant than a small step—in the same way as your banning of spray cans initiative was not the total solution but a small step towards a bigger solution. I just use that as an example, Mr Deputy Speaker. I think it is irresponsible for us as legislators to stand by and not do anything unless we have the complete solution to the big problem.

I would also like to add that it is not very becoming of someone for whom I generally have a lot of admiration because of his very statesmanlike performance in this place to point to a member and say, "Well, you independent over there." I could say, "You Liberal, you Green, you Democrat." That is really silly and very pedestrian. We should not be getting down to the level where we refer to each other in that way just because we are not in a big pack like you are.

As I said, I have reservations about the legislation but I respect the pressure that Ms Dundas is under to support the amendments in order to get her bill through. It is interesting to note that when we were considering the smoking legislation last year there was a lot of lobbying by the clubs to either derail the legislation or convince us not to put it through. There has not been much of that in regard to this issue. If the minister's figures are correct—and I have not seen them—the vending machine issue represents only 1 per cent—

Ms Dundas: That was adults.

MRS CROSS: If that is correct, so what? What does the figure have to be for us to take this seriously? How many children have to die?

I think the sentiment behind the opposition's family commissioner initiative is a good one. But why is it that people come in and say that they are concerned about children, family, rights—all the things that you have also alluded to, Mr Deputy Speaker? You also alluded to perhaps the perception of a little bit of hypocrisy at times, in that we need

to give certain people rights but we seem to be taking it away from others. If those concerns are genuine, if everyone is genuinely concerned about the welfare of our children, why is it we are caving in on what is apparently a minor issue, according to the statistics that Mr Wood referred to earlier, which will affect 200 venues in the ACT? In fact, none of them has lobbied me on this issue. I know from the conversations I have had with some of them that they are not as concerned about this issue as they were about the smoking legislation, and they are getting used to that now—they are adjusting to it.

I am very reluctant to support these amendments simply on a matter of principle. If we genuinely care about the welfare of our children—and I ask members, many of whom have children, to think about this—why is it that the majority of members are considering supporting amendments that would just prolong the damage?

As Ms Dundas alluded to earlier, this legislation is important because it is legal to sell tobacco in Australia to people 18 years and over. Children under that age are accessing these vending machines and therefore that is an illegal access to a legal product. So I agree with Mr Smyth: I think we should ban tobacco altogether. I am prepared to do that. Let's take that giant step. Let's ban it. I want to see if the major parties in this town support such a step. I think you are right—this is a bigger issue. Will you take the step? I wonder.

I doubt very much that the major parties would have the guts to support such a measure, which is why we need to take little steps. I do not want to take the little steps—I would like to ban this now in the same way that I wanted to ban smoking sooner in enclosed public places. But we had to negotiate. So I am very reluctant on principle to support these amendments because I think all we are doing is prolonging the damage to our children.

Amendments agreed to.

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

Bill, as amended, agreed to.

Childhood obesity

Pursuant to standing order 128, Ms MacDonald fixed the next day of meeting for the moving of her motion.

Animal Legislation (Penalties) Amendment Bill 2004

Debate resumed from 13 May 2004, on motion by **Mr Stefaniak**:

> That this bill be agreed to in principle.

MS DUNDAS (4.48): I thought there would be a little more time before we moved onto this legislation, which has quite wide-ranging effects. In some ways it is quite controversial. I was discussing some of the issues just moments ago. This bill is intended to put the maximum penalties for violence against animals on a more comparable footing with the maximum penalties for similar offences against people. The Democrats have

a longstanding commitment against cruelty to animals. I support the intent of the bill, which is in keeping with that commitment. I expect that we have all heard of cases of severe and malicious violence towards animals and many people would agree that a maximum term of imprisonment of one year does not give magistrates enough scope to set an appropriate sentence for these crimes.

However, I flag at the outset that I am not perfectly happy with the legislation as put forward by Mr Stefaniak. I have two amendments that go some way to addressing my concerns. The first amendment is to ensure that the penalties for negligence causing harm to an animal do not exceed the penalties for negligence causing grievous bodily harm to a person. I think that the community can generally accept that, although criminal neglect of an animal is certainly serious, cruel neglect of a human being is even more serious. So I would not be comfortable supporting legislation that carried a maximum sentence for neglect of an animal that was three years longer than the same crime against a human.

It should also be noted that this is not a mandatory sentencing bill. It gives magistrates and judges greater discretion in setting penalties, as opposed to imposing a mandatory sentence. There are almost always mitigating circumstances that need to be considered in sentencing, and the maximum penalties may well never be used. However, the option will be there if this bill passes into law.

The second amendment that I will be moving goes to the question of why people commit crimes of violence against animals. The causes of violence against animals are of particular importance because animal cruelty and human abuse are not mutually exclusive. Many people who abuse animals also abuse the children or adults close to them. Adolescent cruelty to animals is considered so seriously in the United States that the American Psychiatric Association recognises it as a symptom of a conduct disorder. Most people who commit seriously violent crimes against humans began by initially hurting animals and early intervention gives us the opportunity to reduce the risk of future violence against humans.

One by one, each state in the United States has moved towards treating cruelty to animals as the marker of a psychological problem that needs to be treated. California was the first state to enact a law that required psychological assessment of people charged with violence against animals. Iowa, Colorado, New Mexico, Florida and Indiana have all quickly followed that lead. New Jersey, Illinois, Maine, Texas and Nevada have made it mandatory for juvenile animal cruelty offenders to receive psychological counselling. Another 14 states of the United States have followed with laws that require the psychological assessment or counselling of all animal cruelty offenders or of all juvenile offenders.

I am not yet aware of any jurisdiction in Australia that has followed this lead, but I think we could rightly be proud if we were the first. Treating violent offences in this way is an attempt to tackle the cause of crime instead of simply the symptoms. I believe that it is likely that someone who lacks empathy with the animal they are hurting is likely, in some way, to be disturbed. Intervention has a chance of reducing the chance of future acts of violence. I repeat the word "violence" as I am not proposing that this psychological assessment be considered in cases of neglect.

Reducing the incidence of violence against animals will protect future generations. Children who witness violence are more likely to become perpetrators of violence. A 1995 study in the US found 32 per cent of victims of domestic violence alleged that one or more of their children have hurt or killed a pet. An earlier study in 1983 had similar findings. So a cycle of violence and victimisation was created and was seen to be becoming entrenched. So it is important that those who respond to family violence understand the connection between animal cruelty and human violence.

There is concern that sending a violent offender for psychological assessment may be assuming that they have a mental illness. This is not an argument that I support. The assessment may or may not find evidence of mental disorder. Courts are currently at liberty to order such assessments, but in practice they rarely do. My amendment will seek to make this a routine occurrence. We are trying to address the underlying causes of crime, as opposed to just the punishment side of crime.

I hope in the in-detail stage my amendments are successful, but I am interested in hearing other members' contributions to this debate and to have a discussion about how members will see this bill working and whether it is one that they think they can support.

MS TUCKER (4.54): This bill significantly increases the maximum penalties under the Animal Welfare Act. Most of these increases are five times the penalties available now. Mr Stefaniak's bill raises an important issue. It is not okay to abuse, harm or neglect animals. The Greens are committed to improving the conditions for domestic animals and farm animals. I have raised in the Assembly before the issue of treatment of intensively farmed animals and much more has to be done to improve the conditions for intensively farmed animals like chickens and pigs.

In the battery cage system, hens live in cages of four to five birds, with each bird having an area of less than an A4 page in which to live out its wretched life. The hens' lives are totally geared around the production of eggs and they are unable to undertake normal hen behaviour such as scratching the ground, preening, stretching, nesting or perching. Often their feathers get rubbed off and their feet get deformed from being surrounded by wire mesh. Their beaks have to be trimmed soon after birth to stop them from pecking other birds in the cramped conditions.

In Australia there are 300,000 breeding sows in pig farms or piggeries. Intensive pig-farming sows are seen as production units, not animals needing space, comfort, a warm soft place to lie and ample food. Almost 200,000 breeding sows in Australia are confined in metal and concrete stalls smaller than a child's cot. The sow cannot walk, turn around, or even lie down in comfort.

These sorts of issues should be considered as part of the discussion on animal welfare. However, the Greens are concerned about the inference that Mr Stefaniak is making in his bill that increasing penalties is an effective deterrent to the crime. I think that that link is tenuous at best. The bill also does not increase all the penalties under the act. For instance, is there a need to increase the penalties relating to rodeos?

I am aware that this has been an issue for the RSPCA and animal welfare. For all offences, getting the penalties right is important, but, as I have said, simply making the

penalties higher does not address the causes of the crimes and it is really very unlikely to act as a deterrent. I understand further that the courts do not usually apply the maximum penalties currently available. I understand to some extent the argument that penalties indicate the seriousness with which an offence is regarded, but I am not prepared at this stage to support increasing these penalties.

Ms Dundas's amendment relating to mandatory psychological assessment before sentencing has some potentially serious implications for the operation of the courts. I am not comfortable with straying into the territory of requiring a particular sentence for a particular offence. However, it would be very useful to have the psychological issues drawn to the attention of the court and others involved in animal abuse offences, and Ms Dundas's first amendment would achieve that.

I will be moving an amendment to Ms Dundas's amendment changing the word "must" to "may". This retains the effect of bringing to the fore the option of psychological assessment and the option of sentencing to include counselling programs such as anger management or drug rehabilitation. This kind of approach gets at the underlying issues of the crime.

Animal welfare organisations have been circulating reports of studies showing links between domestic violence offenders and animal welfare offenders. They are putting the argument that violence against animals often leads to violence against people. This bears further investigation. This amendment will remind the courts of the option open to them to try to get something in place to help the offender to deal with underlying issues and thereby reduce the chance that they will offend again. I will not be supporting Ms Dundas's second amendment as it also increases penalties.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (4.59): The government will not support the Animal Legislation (Penalties) Amendment Bill to amend penalties determined under the Animal Welfare Act 1992 and the Animal Diseases Act. The bill proposes that some, but not all, animal welfare offences under these two acts are increased fivefold.

The nominated increases seem to be arbitrary, without consideration of the adequacy of existing penalties as well as consistency with other penalties in the ACT statute book. The bill puts the maximum penalty available to a magistrate for an animal welfare offence at $50,000 and/or five years imprisonment. This is more than double the present maximum penalty available to magistrates for a common assault against a person.

As a matter of principle the government cannot support an increase of the maximum penalties for an offence against an animal to a greater level than an assault against a person. The bill attempts to increase what has been described by Mr Stefaniak as woefully inadequate animal welfare penalties.

At 5 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 STANHOPE: It may be of interest to the Assembly to know that presently the ACT imposes the fourth-highest monetary maximum penalty within Australia and the

third-highest jail term for welfare offences against animals. In all offences that have been identified in this bill to be increased, the ACT already has higher maximum penalties than New South Wales.

This bill also proposes increases in the maximum penalties for uncommenced provisions under the Animal Welfare Act. There is no sound reason for increasing the maximum penalty for an uncommenced provision. Giving magistrates access to a higher penalty level for an offence does not mean that magistrates will automatically increase all fines imposed on a person convicted of an offence. Fines imposed in recent times are generally well below the maximum available irrespective of the level of offence.

The government supports the concept of wanting cruel and abhorrent acts of violence perpetrated against animals to be appropriately punished. However, randomly increasing the maximum penalty levels for some of the offences listed under these acts does not mean that magistrates will automatically increase the penalties imposed upon conviction by a multiple of five. Some direction needs to be provided to magistrates to allow an assessment of the intent behind a person's actions of a cruel act against an animal to be able to be judged as a more serious offence.

To show that the government is sympathetic to what Mr Stefaniak is attempting to achieve, I propose to move amendments to the principal acts that will improve the concept behind Mr Stefaniak's bill by introducing new offence provisions in the near future. After discussion with and submission from key animal welfare stakeholders as well as government agencies, the government agrees in principle that some cases of animal cruelty warrant a more structured and harsher offence penalty. As such, I do propose, as I say, in the near future a new offence provision where a person's reckless conduct causes serious harm or death to an animal to be included in the Animal Welfare Act.

The penalty would appropriately reflect the seriousness of the person's conduct. This proposed amendment to the Animal Welfare Act will act as a guide for magistrates in sentencing offenders. Elements of the Animal Welfare Act have been reviewed by the Animal Welfare Advisory Committee, which advises me about animal welfare matters. The government is reviewing its recommendations and will address the penalties provisions of the act as part of the review.

In relation to the proposals by the Democrats, essentially that offenders who have been convicted of deliberate cruelty to animals should be subject to mandatory psychiatric assessment, I point out that there already exists a pathway for the courts to refer persons of concern for mental health assessment and treatment if it is required. ACT Health court liaison officers are available. Where members of the judiciary have significant concerns for a person appearing before them, they can refer the person to the Mental Health Tribunal. The Mental Health Tribunal can make assessment orders and subsequently advise the referring courts as to the best mental health options for finalising the person's matters.

This provision allows the issues raised in the amendment to be adequately addressed should the matter be of concern to the courts. Mental dysfunction of any kind is a serious matter for individuals, their families and the broader community. The government has an important role in providing for diagnosis and treatment, and legislation provides for this.

It is not appropriate for animal welfare legislation to single out a matter that is already addressed more comprehensively by specific legislation. The government will also be opposing the amendment designed to ensure that the penalty for negligence causing harm to an animal does not exceed the penalty for negligence causing grievous bodily harm to a human. The government believes that the penalty is high. The levels that currently exist in the Animal Welfare Act are properly balanced and are more consistent with the comparable seriousness that the community expects in respect to harm to humans and harm to animals. Accordingly, the government will not support the proposed amendments.

MR STEFANIAK (5.04), in reply: I am somewhat disappointed in the government's approach, although I am not surprised by it. Quite clearly from what the Chief Minister has indicated, this is a case of: "Why didn't we think of it? That is a good idea. Let us find some spurious excuse to knock it out, do some work ourselves and catch up so we get ownership of it." I introduced this bill because I had a lengthy conversation with Simon Tadd from the RSPCA. He has been very disappointed for many years at the inadequate penalties available to a court for cruelty to animals.

Mr Stanhope: He has never raised that at the Animal Welfare Advisory Committee.

MR STEFANIAK: That is a pity. I think he might have after we had some correspondence. There was something in the media about it several months ago. But he has certainly been quite concerned about that, and it does not surprise me. Over at least a couple of decades magistrates have raised this very point. To those of you who think maximum penalties are ever really imposed—maybe they should be—it is a fact of life in courts around Australia, and especially in the ACT, that it is very rare for a maximum penalty to be imposed. I can think of one occasion in the ACT where John Gallop in the Supreme Court used the maximum penalty of 12 years as a head sentence in a particular case. I cannot think of any other instances of serious matters where that has occurred.

I would be scratching my head to even think where it is applied in PCA matters where, for example, there was a $3,000 maximum penalty. I can think of someone who got a $2,000 penalty once, but even there it was someone who had committed about 10 offences, and the magistrate used a high fine, rather than jail the person, otherwise he would have been in jail before the maximum was reached. Anyone who thinks, "Oh yes, it is a one-year maximum, the court should do that," is showing their ignorance. History is against it.

Simon Tadd has indicated quite clearly in his conversation to me—and I thought it was fairly simple—that the penalties for more serious types of matters involving cruelty to animals need to be increased. It is a sad and disappointing day that champions of civil liberties like Mr Stanhope and Ms Tucker—unless Ms Tucker has a re-think about this—are going to knock out the most significant part of this bill, that is, to bring penalties into line with approximately where they should be. I am quite amazed to hear the Chief Minister say—and again it is an absolutely spurious suggestion—that these penalties will make the maximum penalty a bit more than two times higher than the penalty for common assault. Common assault is touching someone who does not want to be touched, maybe slapping someone—not drawing blood, not breaking any bones, not necessarily leaving any marks. Common assault is the lowest form of assault for a human.

Five years is the maximum penalty for assault occasioning actual bodily harm on a human, which is basically punching someone in the head and breaking their nose or splitting their lip. That is assault occasioning actual bodily harm. That is the maximum penalty I am proposing for even the most wanton cruelty to poor, dumb, defenceless, helpless animals—animals that, in many instances, look up to the humans who are supposedly there to help them and look after them—who are often brutally and viciously treated by people who deserve to face a reasonable penalty for their acts. According to a lot of work done by the RSPCA and other groups, these people are very likely, if they start off torturing animals, to go on to be sadistic and vicious to human beings as well.

This is why I am quite happy with Ms Dundas's amendment. The RSPCA has indicated that the LA should consider an amendment to help safeguard our human population from violence as well. It refers to a number of learned scientific studies conducted to verify a link between animal cruelty and violence against humans that I am sure Ms Dundas will refer to when she is moving that amendment.

The studies go on to say, whilst investigations have revealed that almost all mass murderers first abused animals: Martin Bryant—remember him—kitten mutilation; Columbine High School murderers—remember them—killing many pets in sadistic ways. It is more common statistically that perpetrators of cruelty to animals will go on to commit domestic violence. A big issue, I am sure, to Mr Stanhope and Ms Tucker is sexual crimes against women and children, and general bullying and violent antisocial behaviour. To help address this link and provide an alternative way forward the RSPCA suggested what Ms Dundas is proposing.

I remember Ms Gallagher speaking before the Legal Affairs Committee about industrial manslaughter and saying, "The penalty needs to be high." A high penalty is a deterrent. She said it. The Chief Minister has used that. Ms Tucker—who is pretending to be sound asleep now—has even accepted that the penalty for industrial manslaughter needs to be high as a deterrent. Why is it good enough for industrial manslaughter and not good enough to have a much more reasonable penalty, which magistrates have asked for over 20 years, for some of the most vicious crimes imaginable to defenceless, helpless animals?

I find the arguments for not going ahead with this spurious in the extreme. For the government it is a case of: "Oops, good idea, we should have done it," and it wants to put its name to something. I suspect that is very much behind it. I put this bill forward as a fairly simple piece of legislation that I expected all members of the Assembly to back. I am really quite annoyed and disgusted that that has not been the case.

I thank Ms Dundas for her support. She had one problem with one particular section, and I am happy to concede that one. I do not necessarily share her concerns but I think it is a fair point. I understand Mrs Cross is supporting this as well and I thank her for that. I expected that this would have been common sense, but it is not. One cannot expect any common sense in this place, even on something as simple as this.

So the government wants to do its own thing. If nothing else, this has probably shamed it into doing something. However, I am a little concerned to hear that the Chief Minister is going to introduce a new offence, reckless conduct. He probably will not have time in

this Assembly. Reckless conduct is obviously very bad, but I wonder what that new offence is going to do. Is it going to have a much bigger penalty? I suggest that cruelty to animals—administering poison, electrical devices, working an animal to death basically, things which are knowingly, wantonly cruel—is deserving of much higher penalties than something that is reckless. Look between sections 18 and 27of the Crimes Act to see the difference between reckless offences and offences where someone deliberately goes out to do something. I do not think that is going to be a panacea at all, but we will wait and see.

So I am quite disappointed with the attitude of the government and Ms Tucker. I would have appreciated Ms Tucker's office letting me know a little bit earlier. We might have been able to improve the situation, although I doubt it. However, I suppose something might be salvaged with the amendment the RSPCA wants and which may offer some assistance. Certainly this is something the opposition will be bringing back. I am going to keep a watching eye on this as long as I remain in this Assembly.

I have prosecuted a few of these offences. I know what the magistrates have been saying. I know that only one person has gone to jail in the ACT for three years for atrocious cruelty to animals. I know that person had extensive form for assaulting humans as well.

I remind members that courts rarely, if ever, use the top of the range penalty. But if we gave courts a more significant fine to apply and a greater range of jail terms for the worst crimes, maybe a more realistic penalty would be used, as the court itself has said on numerous occasions. Maybe that would also act as a deterrent. Higher penalties for ideologically sound crimes like industrial manslaughter are quite valid, but apparently not for this.

So it is with some disappointment that I hear the views of certain members in this place. The creatures that are going to miss out here are fundamentally defenceless animals. Not increasing the fines will send a very strong message to some people who might not think two bob about being cruel to animals, knowing that they are only going to get a $300 fine. Yesterday, when Simon Tadd and I were discussing some of the more recent cruelty incidents that he had had reported to him and which he was taking up with the authorities, he was bemoaning the fact that they will only result in about a $300 fine. You are not deterring anyone by knocking this out, ladies and gentlemen. I just want you to know that, but I thank the couple of members who have the sense to see the benefit of this.

Question put:

> That this bill be agreed to in principle.

The Assembly voted—

Ayes 8		Noes 7	
Mrs Burke	Mrs Dunne	Mr Berry	Mr Quinlan
Mr Cornwell	Mr Smyth	Ms Gallagher	Mr Stanhope
Mrs Cross	Mr Stefaniak	Mr Hargreaves	Mr Wood
Ms Dundas	Ms Tucker	Ms MacDonald	

Question so resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clauses 1 to 3, by leave, taken together and agreed to.

Clause 4.

MS TUCKER (5.19): I will be opposing this clause.

MR STEFANIAK (5.19): I will just say something very briefly on this clause and my comments can be included for the rest of the clauses so that we do not waste too much time. Cruelty is really the crux of this bill—cruelty to defenceless, helpless animals.

MR DEPUTY SPEAKER: Order! There is too much conversation. Mr Stefaniak has the floor.

MR STEFANIAK: It basically encapsulates it all. It includes wanton cruelty that leads to the death of animals. This clause encompasses the serious types of offences, including murdering defenceless animals in a cruel way. So, of any clause, this one should have an increase in penalty. Of course, the other clauses stipulated here are ones where the maximum penalty in the current legislation was one year's imprisonment, so, similarly, they are very serious offences. But the cruelty one encapsulates it all, that is, effectively, cruelty when you actually kill animals. I just want to make that point. That is how serious this is. It is a shame that, whilst Ms Tucker has voted for this in principle, she just refuses to accept this clause and the clauses that flow from it.

Mr Stanhope mentioned that we are fourth in something and third somewhere else. I know a number of states have lifted their game. In Queensland, for example, some offences carry seven years. For the offence in this clause, in Queensland it is five years and $75,000, according to information I have from the RSPCA. So I do not think the ACT has anything to be proud of in this area.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (5.21): The government will oppose this clause.

MS DUNDAS (5.21): I am disappointed the government did not take the opportunity to articulate further why it is opposing this clause. There has been some interesting debate in the in-principle stage about the difference between trying to work to stop a crime being committed, working with those who are committing offences and just straight out penalties. Ms Tucker put forward some very interesting points about the problems with accepting that a raised penalty will fix an ongoing problem. That point is very well made, and we need to further assess what we are trying to do by just upping penalties. That is why I will move an amendment later.

Just upping penalties from $100 to $500 or one year to five years will not fix this problem of animal cruelty. Mr Stefaniak has put forward arguments that there have not

been a lot of prosecutions; only one person has been sent to jail in the past three years, I believe. That does not necessarily indicate a problem with the options open to the magistrates or to the courts. That identifies a problem with reporting animal cruelty, police and RSPCA follow-up of animal cruelty and getting a case to the stage where it is presented to the courts. I understand there is a successful rate when prosecutions go to court, so further investigation needs to be done into how actions of animal cruelty are being reported, how they are being followed up by the police and brought through the courts. A whole range of things needs to be investigated. That being said, I can see the points put forward by Ms Tucker are in need of support.

Question put:

> That clause 4 be agreed to.

The Assembly voted—

Ayes 6		Noes 9	
Mrs Burke	Mr Stefaniak	Mr Berry	Mr Quinlan
Mr Cornwell		Ms Dundas	Mr Stanhope
Mrs Cross		Ms Gallagher	Ms Tucker
Mrs Dunne		Mr Hargreaves	Mr Wood
Mr Smyth		Ms MacDonald	

Question so resolved in the negative.

Clause 4 negatived.

Clause 5.

MS DUNDAS (5.28): I move amendment No 1 circulated in my name *[see schedule 4 at page 3472]*.

I move this amendment to express a concern that some of the penalties put forward in Mr Stefaniak's original bill were too severe and would not work as a deterrent. This area talks about negligence, and there would have been scope to impose a greater period of imprisonment or fine on somebody who negligently treats an animal cruelly as opposed to those who negligently treat a human cruelly. That was something I could not support. Although it is quite apparent that even if this clause is amended it will then be defeated, that serves to indicate that there is further work to be done in relation to how penalties are being seen as a deterrent and whether or not just increasing the penalties would stop people committing the crime.

MR STEFANIAK (5.29): The opposition will be supporting this. I indicated that to Ms Dundas yesterday. I assisted her office with this and I thank her office for the courtesy of having a good chat about it. Indeed, I do not accept the reasons given as to why this should be lower than some of the other penalties I had but, at the end of the day, it is not unreasonable. Funnily enough, now it probably will be twice as high as the rest of the penalties, but again, I have always been one to take a gradualist approach. Having been in this place for a while, I think something is better than nothing, which is another reason why I am more than happy to support this. When the Chief Minister gets around

to having a go at this and brings in his own bill, we might see some increased penalties that are probably even more deserving than this section. Twice as high a penalty as what exists at present is not as good as what I had, but I am quite happy to support it.

Amendment negatived.

MS TUCKER (5.31): I will oppose clause 5.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (5.31): The government opposes the clause.

Clause 5 negatived.

Clauses 6 to 20, by leave, taken together.

MS TUCKER (5.31): I will be opposing these clauses.

MR STEFANIAK (5.31): Obviously I am not going to repeat what I said but, in discussions on this, I was advised that certain members of the government were initially keen to support this bill. I wonder what happened. That was a point I neglected to make. That was passed on to me by persons in the area, and probably just reinforces the earlier points I made in principle as to why the government is opposing it.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (5.32): The government will be opposing these clauses.

Clauses 6 to 20 negatived.

Proposed new clause 20A.

MS DUNDAS (5.32): I move amendment No 1 circulated in my name, which will insert a new clause 20A *[see schedule 3 at page 3471]*.

As I indicated at the in-principle stage, this amendment goes to the question of why people commit crimes of violence against animals. It will cause courts, before sentencing a person found to be treating animals badly or violently, to issue a court order that the person submit to a psychological assessment, and that assessment and any recommendation for counselling or treatment arising from that assessment be taken into account when the court is handing down the sentence.

This goes to the heart of the problem that we have been debating today. It is looking at those root causes of crime and what we can do to prevent those root causes. We know that in some cases locking up people is a deterrent, but in other cases it is not. We have to understand why a crime has been committed in the first place and help those people deal with the issues leading them to commit crimes of violence against animals.

This was a specific amendment that the RSPCA asked be given consideration by this Assembly. It put forward the case that many studies have been conducted that verify a link between animal cruelty and violence against humans and that we should be looking at how we can be more proactive to break the cycle of violence that is

perpetrated by some members in our community. In that sense we will be focusing on those committing violent acts, people who are deliberately going out of their way to harm animals, not negligent acts of cruelty against animals. We are trying to make sure that the problems that have led them to the state where they believe that animals are fit to be harmed are addressed. That is why I move this amendment this afternoon.

MS TUCKER (5.35): I move amendment No 1 circulated in my name which amends proposed new clause 20A *[see schedule 5 at page 3472]*.

I support Ms Dundas's amendment as we have spoken to the RSPCA about this legislation. It has agreed that this is the greater priority, the higher priority. It is important. I understand it is possible that people can be referred to counselling anyway, but it is useful in this bill to make this option more specific because of the evidence that supports a relationship between cruelty to animals and later cruelty to human beings. Cruelty to animals by people who are mentally distressed can obviously be linked to later behaviour.

I am amending Ms Dundas's amendment because she has said that there must be referral to counselling. I am saying "may be", because of what I have already said in my original presentation. I am not comfortable with saying "must". So Mr Stefaniak does not feel wounded, I can tell him I was listening. I have been struck down by the flu today and I am light sensitive. I am closing my eyes when I can but I can assure him I was not asleep. I was listening to what he said.

I am really pleased to see he is so passionate on these issues. I look forward to him assisting us stopping intensive farming, because obviously that is also horrendously cruel. We can work together on that one. Mr Stefaniak did go on at some length about the industrial manslaughter legislation, which we supported after a committee inquiry. It was basically to capture fragmented employment arrangements that exist now, and the industrial manslaughter offence was to show recognition of the fact that we need to be able to capture responsibility. Mr Stefaniak is very well aware of that.

We were not introducing some new penalty; there was already an offence of manslaughter. Industrial manslaughter was particularly about fragmented employment relationships, corporations, and so on. The Greens are prepared to say that manslaughter is a serious crime. It needs to be clear that, if someone is guilty of manslaughter, they can be found guilty of that and not be able to avoid it through various corporate arrangements. I do not see that as relevant.

Mr Stefaniak knows very well that we have opposed from the beginning of our time in the Assembly his tendency to want to up the penalties on everything because he thinks that makes a difference. The Greens have consistently said we appreciate where Mr Stefaniak is coming from but we think he is wrong. We need to be able to work with cause and the social and complex factors around crime. Industrial manslaughter is more about capturing particular relationships in the corporate sector with their workers.

I have probably said everything I need to. I am happy to support Ms Dundas's amendment but with my amendment to it.

MR STEFANIAK (5.39): The opposition will be supporting Ms Dundas's amendment. As a result of the gutting by everyone of the penalties, I think it is even more important now that the word "must" should stay in there rather than "may". That imposes a certain rigour on what the court will be required to do by her amendment. Even with Ms Tucker's amendment it is better than nothing. According to Ms Dundas's amendment, before the court can sentence someone involved in a violent act towards animals it must require the person to submit to a psychological assessment, consider the assessment and recommendations from that and impose any sentence order they need. That is eminently sensible, especially when what I read from the RSPCA shows that people who are cruel to animals often show very nasty tendencies to other human beings, including mass murder at the highest end of the scale. So a provision like this that is requested by the RSPCA is a very sensible one.

Because of that link, what Ms Dundas has proposed is preferable to what Ms Tucker is suggesting which would merely water it down. I note too that it has a quite significant maximum penalty, which I do not have a problem with. So, I think Ms Dundas's amendment is the preferable one. Ms Tucker has been consistent, generally, on sentencing and she has opposed most of the sensible provisions I have put forward over the years.

But I reiterate what I said about industrial manslaughter. She did not seem to have too much of a problem with a significant penalty being a deterrent, indeed, a penalty that was initially five years higher than for normal manslaughter. Of course, she accepted the opposition's amendment to make that 20 years.

Ms Tucker: I thought that was going to be brought up later, and you know that was about parity. Do not misrepresent it.

MR SPEAKER: Order! Mr Stefaniak, please do not provoke Ms Tucker.

MR STEFANIAK: I also note that Ms Tucker supported the opposition amendment to at least make it consistent with the normal law of manslaughter. I acknowledge that. But I maintain the point I made in my in-principle speech in relation to that offence, as opposed to a number of other offences I have tried to improve over the years. As she says, she has quite consistently voted against that.

The opposition will be supporting Ms Dundas's amendment. If that fails, we will support Ms Tucker's amendment to the amendment.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (5.42): I indicated earlier in my remarks on the bill that the government would not support the amendment that Ms Dundas had foreshadowed. I explained the reasons for that in summary. The capacity already exists for the Mental Health Tribunal to be involved in a case involving anybody coming before the courts. Where the judiciary have significant concerns for a person appearing before them, the judge or magistrate can refer any person to the Mental Health Tribunal for an assessment order and for the making of recommendations or suggestions in relation to treatment that might arise out of the appearance of a person before the Mental Health Tribunal.

There are very good reasons for not including in animal welfare legislation a specific provision for the referral of people to the Mental Health Tribunal when there is a general and overarching capacity for any person appearing before a court to be referred to the Mental Health Tribunal. I have a genuine concern that this amendment will raise the spectre that anybody who commits an act of cruelty to an animal must by definition have a mental dysfunction. This provision essentially scapegoats people with mental dysfunction. It suggests that if you commit an act of cruelty against an animal, you must, by definition, be mentally ill.

Ms Dundas: No, it does not.

MR STANHOPE: Yes it does. The only specific legislation in which it is felt necessary to provide a reference to the Mental Health Tribunal for a specific crime is to be this legislation. We do not feel it necessary in relation to other offences. We do not feel it necessary to say, "If you have committed murder or if you have been charged with murder, you must be referred to the Mental Health Tribunal." We allow the magistrate that discretion. What we are doing here, as a legislature, is saying, "If you have committed an act of cruelty against an animal, by definition you must have a mental issue."

Ms Tucker: No, "may".

MR STANHOPE: Well, yes. There is a fine distinction, and I will support Ms Tucker's amendment, but this issue causes me genuine concern. As I am advised, this will probably be the only piece of legislation, in relation to animal cruelty, in which this legislature has felt it necessary to say, "We must assume that the person has a mental dysfunction and must be referred to the Mental Health Tribunal."

We do not do it with people charged with murder. We do not do it for people charged with rape. We do not assume that someone who rapes a woman must be suffering a mental dysfunction and therefore must be referred to the Mental Health Tribunal. It is almost like saying, "We can excuse that behaviour. We can excuse rape, because they have a mental dysfunction. We can excuse animal cruelty—look, they have a mental dysfunction and people with mental dysfunction do things like that. That is what people with mental dysfunction do. They commit acts of cruelty against animals."

I oppose the suggestion that we need a specific reference in this legislation that anyone who commits an act of cruelty against an animal must be referred to the Mental Health Tribunal, because it is obvious, as everybody knows, that you can only be cruel to animals if you have an issue. The proposal of the Democrats should be rejected. We are prepared to accept the amendment proposed by the Greens because of the discretion involved. I think it is unnecessary, but we will support it.

MS DUNDAS (5.46):I thank Ms Tucker for moving this amendment. In light of the debate today, it is an amendment I am happy to support to allow at least some discretion. I point out, again, the provision relates specifically to offences involving violence, not just offences involving neglect. It is targeted at people who specifically act cruelly and commit a violent offence towards an animal. We have had extensive debate today about

the causes of crime. We have had extensive debate about the impacts of crime and connections between criminal activities.

Mr Stanhope has made some interesting points in relation to other offences and why we need them specifically. I note that only yesterday the Chief Minister tabled an exposure draft on sentencing reform. Possibly we will have this debate in the future, looking at counselling and psychological assessments and how we can use the information gained from such to end the violence and cycle of crime that exist in our community.

It is necessary to have this specifically in animal welfare legislation, because this is the debate we are having today, about whether or not our current law is adequate to deal with those people who commit negligent or violent acts against animals. The argument has been put forward that it is not adequate, that reviews are in place. I think everybody agreed that, whilst we are not necessarily looking to up the penalties, we recognise that this is a serious situation and that more work needs to be done. This becomes part of that.

I completely dismiss the claims made by Mr Stanhope that we are making the link that if you commit an act of violence against an animal you are mentally ill. We are asking for an assessment to be made and for the court to consider this as part of its sentencing. We are not making the determination before the assessment is made. That is an important distinction that the Chief Minister has missed. He has labelled everybody who might go through an assessment as mentally ill, without necessarily looking at the outcome of the assessment.

We are just looking at ways to break the cycle of crime. We recognise that locking people away does not automatically break the cycle of crime and more work has to be done by the entire community, particularly by our courts, in how they look at sentencing and how they support members of the community to end acts of criminal activity. I am disappointed that Mr Stanhope cannot recognise that.

Ms Tucker's amendment agreed to.

Proposed new clause 20A, as amended, agreed to.

Clauses 21 and 22, by leave, taken together.

MS TUCKER (5.51): I oppose these clauses.

MR STANHOPE (Chief Minister, Attorney-General, Minister for Environment and Minister for Community Affairs) (5.51): The government will oppose these clauses.

Clauses 21 and 22 negatived.

Title.

MS TUCKER (5.51): I need to move an amendment because of what has happened with these amendments. Therefore, I move amendment No 1 circulated in my name *[see schedule 6 at page 3473]*.

We have to omit in the title, page 1, "and the Animal Diseases Act 1993". That is a consequential amendment necessary because of what has happened during this debate. That is my amendment.

Amendment agreed to.

Title, as amended, agreed to.

Bill, as amended, agreed to.

Adjournment

Motion (by **Mr Wood**) proposed:

> That the Assembly do now adjourn.

Marriage

MRS DUNNE (5.52): At lunchtime today I attended the national marriage forum at Parliament House. It was an all-day event but because this was a sitting day I did not have the opportunity to attend other than at lunchtime. From reports given to me, I understand that the Prime Minister, the Deputy Prime Minister and various representatives of church, state, law and academia all spoke feelingly of the importance of marriage. When I talk about marriage I mean it in terms proposed by the amendments to the Marriage Act, a union of man and woman voluntarily entered into for life.

I commend the organising ability of the National Marriage Coalition, in particular Brigadier Jim Wallace from the Australian Christian Lobby, who knows a thing or two about logistics, and the Australian Family Association. It is fair to say that the organisers of this event were surprised by its success. They had hoped to get several hundred attendees. When I arrived I was told that they had 1,600-odd and they were arriving literally by the busload.

Why were they all there? In a nutshell, concern about the Senate—that is to say, specifically the ALP and the crossbench senators—referring the Marriage Act to a committee. At this stage of the electoral cycle that rang alarm bells in not a few heads, at a time when gay marriage is being touted both locally and internationally. As columnist Angela Shannahan pointed out this morning, this issue is not being driven by overwhelming pressure from the gay lobby. Many in the gay lobby are at best ambivalent about the idea of putting forward gay marriage. It is not about seeking to gain access to public benefits or being recognised as married because, as we all know, most of those are illusory. The role of government in relation to marriage is primarily about protecting children and the structures that raise and nurture them.

While we are talking about who spoke—the Prime Minister, the Deputy Prime Minister and Senator Guy Barnett, Liberal senator from Tasmania spoke—it is important to note that this was a bipartisan event and there was a degree of politicking. It is important that I claim this was overall a broad coalition supporting a traditional view of marriage and very few opposing it. We heard from the federal Labor shadow Attorney-General, who

represented Mr Latham, and she made her position and her party's position quite clear. She said Labor is opposed to recognising gay marriages, including those contracted overseas. I was wondering if this is the same Labor Party to which Jon Stanhope belongs.

Marriage

MS DUNDAS (5.55): I believe the statement Mrs Dunne just made needs to be clarified. It was the Liberal government, at this stage in the electoral cycle, that opened up the debate in relation to marriage and who is legally entitled to undertake that act. That is why it went to a Senate inquiry. It was not something that magically found itself in the Senate in the inquiry stage; it was the federal Liberal government deliberately stirring up this debate in quite a disingenuous way at this stage in the electoral cycle.

It smacked of political opportunism and showed a high disregard for the diversity of relationships, the diversity of people currently living in Australia who are all trying to get on with their lives and see no reason why their relationships or their lifestyle is being deemed inappropriate or out of step by a government or by a parliament that is meant to be protecting all Australians. I am outraged by moves by the federal Liberal and Labor parties to say that some members of this community should not have access to the same rights as other members of this community. That is what is going on here.

Question resolved in the affirmative.

The Assembly adjourned at 5.57 pm.

Schedules of amendments

Schedule 1

Hemp Fibre Industry Facilitation Bill 2004

Amendments moved by Ms Tucker

1
Clause 15 (2)
Page 11, line 24—

omit

convicted or found guilty within the previous 10 years of a serious offence

substitute

convicted or found guilty within the previous 5 years of an offence involving drugs that is prescribed under the regulations

2
Clause 16 (a)
Page 12, line 3—

omit clause 16 (a), substitute

(a) has been convicted or found guilty within the previous 5 years of an offence involving drugs that is prescribed under the regulations; or

3
Clause 18 (a)
Page 13, line 11—

omit clause 18 (a), substitute

(a) has been convicted or found guilty within the previous 5 years of an offence involving drugs that is prescribed under the regulations; or

4
Clause 37 (a)
Page 23, line 4—

omit clause 37 (a), substitute

(a) the licensee is convicted or found guilty of an offence involving drugs that is prescribed under the regulations;

5
Dictionary, definition of *serious offence*
Page 48, line 1—

omit

Schedule 2

Tobacco (Vending Machine) Ban Amendment Bill 2004

Amendments moved by Mr Smyth

1
Clause 2 (2)
Page 2, line 9—

omit clause 2 (2), substitute

(2) The remaining provisions commence on 1 September 2006.

2
Clause 14
Proposed new section 49B (1)
Page 5, line 21—

omit

1 September 2005

substitute

1 September 2006

3
Clause 14
Proposed new section 49B (2)
Page 5, line 23—

omit

1 September 2005

substitute

1 September 2006

Schedule 3

Animal Legislation (Penalties) Amendment Bill 2004

Amendment moved by Ms Dundas

1
Proposed new clause 20A
Page 6 line 16—

insert

20A New section 104A

insert

104A Court orders—offences involving violence

(1) This section applies if a person is found guilty or convicted of an offence against this Act, or another Act, involving violence towards an animal.

(2) Before sentencing the person, the court must—

(a) make an order requiring the person to submit to psychological assessment; and

(b) consider the assessment and any recommendation for counselling or treatment arising from the assessment.

(3) The court may, in addition to any other sentence it may impose, make an order requiring the person to undertake a program of counselling or treatment mentioned in subsection (2) (b).

Example of program

an anger management treatment program

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(4) A person commits an offence if the person intentionally contravenes a requirement of an order under this section.

Maximum penalty: 1 000 penalty units.

Schedule 4

Animal Legislation (Penalties) Amendment Bill 2004

Amendment moved by Ms Dundas

1
Clause 5
Page 3 line 12—

Omit

"500 penalty units, imprisonment for 5 years or both."

Substitute

"200 penalty units, imprisonment for 2 years or both."

Schedule 5

Animal Legislation (Penalties) Amendment Bill 2004

Amendment moved by Ms Tucker to Ms Dundas' amendment

1
Proposed new subclause 104A(2)—

omit

"must"

substitute

"may"

Schedule 6

Animal Legislation (Penalties) Amendment Bill 2004

Amendment moved by Ms Tucker

1
Title
Page 1—

omit

"and the *Animal Diseases Act 1993*"