Debates

WEEKLY HANSARD

Legislative Assembly for the ACT

SIXTH ASSEMBLY

1 JULY 2008

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Tuesday, 1 July 2008

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The Assembly met at 10.30 am.

(Quorum formed.)

MR SPEAKER (Mr Berry) took the chair, made a formal recognition that the Assembly was meeting on the lands of the traditional owners, and asked members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

Legislative Assembly—privilege
Statement by Speaker

MR SPEAKER: Members, on 25 June 2008, Ms Porter gave written notice of a possible breach of privilege concerning certain actions of Mr Smyth and Mrs Dunne when writing a dissenting report for the Select Committee on Estimates 2008-2009. Ms Porter alleged that, in quoting from the minutes of a private meeting, they had revealed private deliberations of an Assembly committee in contravention of standing order 241 (b).

I present a copy of Ms Porter's letter for the information of members:

> Alleged breach of privilege—Letter to the Speaker from Ms Porter, dated 25 June 2008.

Under the provisions of standing order 71, I must determine, as soon as practicable, whether or not the matter merits precedence over other business. If, in my opinion, the matter does merit precedence, I must inform the Assembly of the decision, and the member who raised the matter may move a motion without notice and forthwith to refer the matter to a select committee appointed by the Assembly for that purpose. If, in my opinion, the matter does not merit precedence, I must inform the member in writing and may also inform the Assembly of that decision.

I am not required to judge whether there has been a breach of privilege or a contempt of the Assembly; I can only judge whether the matter merits precedence.

I have examined the matter and note that, had the report of the select committee been tabled, as planned, on the morning of Tuesday, 24 June, along with the minutes of proceedings of the committee, then this matter would not have arisen.

Standing order 279 instructs the Speaker when considering whether matters should merit precedence over other business to adjudge contempts against the Assembly or its committees when matters substantially obstruct the members in the performance of their business. Having considered the matter, I have concluded that the matter does not merit precedence. I have written to Ms Porter today to inform her formally of my decision.

Legal Affairs—Standing Committee
Statement by Speaker

MR SPEAKER: Members, on 27 June 2008, Mr Corbell gave written notice of a possible breach of privilege concerning certain aspects of the conduct of the chair of the inquiry of the Standing Committee on Legal Affairs into ACT fire and emergency service arrangements. Mr Corbell indicated that he had received advice that the request for the documents which he had received as the responsible minister was not authorised by the committee, and he sought my advice as to whether there has been any breach of the standing orders or privilege.

I present a copy of Mr Corbell's letter for the information of members:

> Alleged breach of privilege—Letter to the Speaker from Mr Corbell (Minister for Police and Emergency Services), dated 27 June 2008.

Under the provisions of standing order 71, I must determine, as soon as practicable, whether or not the matter merits precedence over other business. If, in my opinion, the matter does merit precedence, I must inform the Assembly of the decision, and the member who raised the matter may move a motion without notice and forthwith to refer the matter to a select committee appointed by the Assembly for that purpose. If, in my opinion, the matter does not merit precedence, I must inform the member in writing and may also inform the Assembly of the decision.

I am not required to judge whether there has been a breach of privilege or a contempt of the Assembly; I can only judge whether the matter merits precedence.

I am unaware of how Mr Corbell received this advice, however, the allegation that a member has purported to send a request on behalf of a committee when the committee has not considered it is a serious one. This matter was also raised in evidence before the legal affairs committee by Mr Corbell. Having considered the matter, I have concluded that the matter does merit precedence over other business.

Privileges—Select Committee
Establishment

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (10.35): Mr Speaker, I move:

> That:
>
> (1) a Select Committee on Privileges be established to inquire into and report on the actions of Mr Stefaniak as the Chair of the Standing Committee on Legal Affairs in relation to a letter written to Mr Corbell on 16 June 2008 as part of the Committee's inquiry into ACT fire and emergency services arrangements;
>
> (2) the Committee is to consider:

(a) whether Mr Stefaniak acted without the authority of the Committee when he made the requests to Mr Corbell for certain documents as outlined in his letter of 16 June 2008; and

(b) whether this constitutes a breach of privilege by Mr Stefaniak;

(3) the Committee shall report by 26 August 2008; and

(4) the Committee shall be composed of:

(a) one member nominated by the Government;

(b) one member nominated by the Crossbench; and

(c) one member nomination by the Opposition;

notified to the Speaker by 4 p.m., Tuesday, 1 July 2008.

Mr Speaker, obviously these motions are treated very seriously in this place, and I note that you have this morning recognised that the matter is serious enough to warrant precedence so that a motion can be moved without notice on this matter. The issue that needs to be examined is that on 16 June Mr Stefaniak, as chair of the Standing Committee on Legal Affairs, wrote to me in relation to that committee's inquiry into ACT fire and emergency services arrangements. I acknowledged that request and responded to the committee on 19 June, a couple of days later, providing a number of documents that the committee had requested.

It has since been brought to my attention, Mr Speaker, that it appears that the request made by Mr Stefaniak on 16 June was not authorised by the committee. Indeed, I raised the matter with Mr Stefaniak during the committee's public hearing. At that time, Mr Stefaniak did not deny that and, in fact, refused to confirm that his request had been authorised by the committee prior to it being received by me and responded to by me.

Mr Stefaniak requested a range of significant documents, including a copy of a document which is cabinet in confidence. The issue of concern to me, Mr Speaker, is that a chair of a committee conducting a public inquiry appears to have requested information of a minister without the authority of the committee, and the minister has supplied most of that information. For me, this raises a very important point: if ministers are to respond to requests for information in this place as part of public inquiries, they should have the confidence to know that those requests, when they are received from the chair of a committee on the letterhead of the committee stating to be on behalf of the committee, are actually being made with the authority of the committee.

My concern is that it would appear to be the case that Mr Stefaniak made this request without the authority of the committee. He effectively demanded documents of a government minister without the authority of the committee. As the responsible minister, believing, quite reasonably, that the request was made on the part of the committee, I supplied that information. I then subsequently discovered that it would

appear that the committee had not actually requested that information at the time that Mr Stefaniak wrote to me.

That is a serious matter. If it is true, it undermines the proper authority of committees in this place. It undermines the confidence that I and other ministers can have in requests made by committee chairs if those requests are not duly authorised by the committee. I think it is appropriate that we appoint this committee to inquire into whether or not Mr Stefaniak has acted with or without the authority of the committee in making this serious request and whether or not, if he has, indeed, acted without the authority of the committee, this constitutes a breach of privilege by Mr Stefaniak. Clearly, if members purport to be acting on behalf of an Assembly body and they have no authority or resolution of the committee to do so, then that is a very serious matter.

Mr Speaker, that is the intent of this motion today. I make no final judgement about whether or not Mr Stefaniak has acted without the authority of the committee, but there would appear to be sufficient doubt for that matter to be investigated. Indeed, Mr Stefaniak's answers, when I raised the matter with him in the public hearing and a couple of days after the date of his letter, would seem to suggest that that was the case, although it is unclear from the advice he gave me at the time.

It is wrong for members to assert they are acting with the authority of an Assembly inquiry when the Assembly committee conducting that inquiry has not authorised the actions taken by the chair. That is the matter that needs to be determined. Those are the issues that we need to get to the bottom of. That is why I think that you, Mr Speaker, have quite rightly recognised that this matter does warrant precedence in allowing me to move this motion. I commend to members the establishment of this committee so that we can get to the bottom of what occurred in this matter. I commend the motion to members.

MR STEFANIAK (Ginninderra) (10.42): Firstly, might I say, Mr Speaker, that I am somewhat appalled—I just had no idea that this was occurring. I would have thought that natural justice and common decency would mean that I would have been told about this after it had been referred through you to start with. The first I heard about it was that I was told in my office to get down here quickly because the Attorney-General was moving some motion in relation to setting up a committee of inquiry into something I have done or not done. I am, frankly, quite appalled that a government that tries to pride itself on the issue of human rights has totally denied basic procedural fairness in relation to this to start with.

The government obviously has the numbers to do whatever it likes in terms of setting up any witch-hunt, Star Chamber, kangaroo court or whatever. If you want to a fight, you are going to get. It is indicative of your arrogant attitude to things in this chamber. I have absolutely no problems with talking to any sort of committee about anything I may or may not have done, Mr Corbell.

I am appalled that I found out about this only when you started to move the motion. I would have thought that, given that this is supposedly important enough as to warrant precedence over all matters, you would have had the common courtesy and decency

and due regard to my human rights to have let me know that you were actually going to do it. That is just common decency and, I would have thought, common practice given that most of these things seem to come through Mr Speaker.

Obviously the government has the numbers and will get this through. When you raised this matter at the committee, I was somewhat concerned that obviously someone on the committee was perhaps imparting to you information about what goes on in committee, which is also improper and that, in itself, could constitute, if you wanted to be highly technical, a breach of privilege as well. If anything goes wrong like this, it is something that needs to be taken up with the committee in the first instance and then further action can be taken if necessary.

Mr Corbell referred to a letter. Yes, I sent you a letter. I think it says "request", not "require". It related to a series of documents we had all been discussing in the course of fairly lengthy hearings. I would have thought it was somewhat procedural. I have already spoken to my committee in terms of that, and we have dealt with that. I indicated that, if I had done anything wrong, I would apologise for that and we would move on. I regarded that as procedural, and if you go through the transcript, you will see all of those documents requested. You are a big boy, Mr Corbell; you are the minister. At the end of the day, you can refuse a request. The next step a committee would take, which would have to be the whole committee, would be to require, to demand, those documents, hence the meeting we had before the actual hearing commenced where the committee came to a decision.

Might I also say that I have the most experienced committee secretary in the Assembly who drafted the letter that I sent off. If the letter did not go to other members, fine, because it is procedural. If the committee secretary seems to think that is okay, then why on earth would I think otherwise?

On a number of occasions the need for these documents was discussed, and the letter I sent you was a request, not a requirement. The committee met and made some further requests—they might have even been demands in relation to certain matters—and decided not to proceed with other ones in the light of your letter in response. It is a very minor matter, Mr Corbell. By all means, set up your witch-hunt; set up your select committee. I wonder what you are trying to hide here yourself. I think there might be some other issues in relation to this about your knowledge of it anyway. By all means, let us have your select committee. There is no way we can stop you, but I do think it is totally wrong. I think the secret way you are going about it—the ambush today—is concerning in itself.

I think I made it fairly plain at the time, but I will make it fairly plain to you again Mr Corbell—it was a letter requesting documents. It was procedural; it went through the committee secretary. All right, it might not have gone to the other two members, and I apologise for that. I did that on the day we had our private meeting. We then proceeded to have our hearing. We then proceeded to require, I think, documents from you which, again, you would not supply. One perhaps wonders why you are not supplying some of these documents. What are you trying to hide, Mr Corbell? With the government's numbers in this place, this is just a waste of time. By all means have your committee; you have got the numbers to do it.

The letter actually says that the Standing Committee on Legal Affairs "requests" that you bring to the hearing a number of documents that it then lists. You actually did bring some; some you did not. I think you have consistently not brought some. The point is that this letter was drafted by the secretary and signed off by me, and you are absolutely clutching at a very, very minor straw here, Mr Corbell. I said that if I had done anything wrong, I would apologise for it. End of story there.

By all means, set up your committee, Mr Corbell. Go for your life. It is a total waste of time, but there might be a few other things we might like to inquire into in relation to it. I would think the most sensible thing for you to do is just get on with your government business. If I have done anything wrong, I apologise for it. I am sure that the committee secretary would also be quite happy to apologise if she has done anything wrong in not saying, "We'd better send this to the rest of the committee first."

I would have thought that what we requested was so procedural and was so obvious, having been asked for on several occasions, I think, and having been mentioned in the transcript, that it would have come as no surprise to you. It came as no surprise to get your documents back. It actually came as no surprise to me after the committee met and required some further documents that you still refused to produce one of them. I think it was the Ellis report. I think you are twisting here, and you are just making an absolute mountain out of something which is very, very minor indeed.

I do not think there is too much more I can say, Mr Speaker. I have indicated that I am more than happy to apologise for any indiscretion or anything I did wrong. I have already done so with the committee, and I have done it here now. I would imagine that, if she wants to, the committee secretary can, too. I think you are putting her in a difficult position, because it was a letter drafted by her, signed by me and then sent off. Neither of us, it seems, thought too much about it. I think you are being precious in the extreme.

With a government like yours, I will be absolutely squeaky careful next time just to dot every 'i' and cross every 't' in case you come up with spurious rubbish like this. Go ahead! Have your committee, Mr Corbell. But I just do not think there is much more to add. If you want to pursue witch-hunts, you should do them better on issues where you have got a little bit more substance.

MR GENTLEMAN (Brindabella) (10.50): I was not going to speak in this debate but I will do so, after hearing the comments made by Mr Stefaniak this morning. In those comments, I am concerned that Mr Stefaniak was trying to sheet the blame for any incident that has occurred to the committee secretary. It would be, of course, the committee chair—in this case Mr Stefaniak—who signs any letter of request for the committee. Mr Speaker, this debate this morning is as a result of the decision you made in according it precedence over Assembly business.

Ms MacDonald: It is a matter for the privileges committee.

MR GENTLEMAN: That is right. It is a matter for the committee, if established, to consider. Whether or not any action comes out of that will be as a result of an

investigation that takes place. Once again, I am concerned that Mr Stefaniak this morning has already made some admission, in saying that he has had to apologise to his committee, and he apologised again this morning. I think it is important that the committee be established so that it can look into this matter.

MR SESELJA (Molonglo—Leader of the Opposition) (10.51): I think we are seeing a clear pattern here from a government that has clearly been on the back foot for some time. This is its attempt to smear Mr Stefaniak with respect to totally unfounded allegations. In particular, we are seeing a pattern. First, Ms Gallagher complained about being quoted in a public forum and raised an issue of privilege. Second, I understand that this morning Ms Porter raised a matter of privilege, and of course that was rejected. Now, third time lucky, we have hit the jackpot and Mr Corbell has been able to move his motion. This is indicative of a government and a Labor Party in this place that simply wants to use its majority to—

Mr Gentleman: Mr Speaker, I raise a point of order. I am concerned that in Mr Seselja's speech there was a reflection on you as the Speaker in your decision.

MR SPEAKER: I missed it. I will review the *Hansard*. If I can see anything, I will come back to it.

MR SESELJA: It is not a reflection on the Speaker. Mr Speaker, we have a government and a Labor Party in this place which is desperate to deflect attention from its own performance, which is desperate to try and somehow find fault in what clearly was a procedural matter. What Mr Corbell is essentially saying to us is that committee chairs should never, ever write letters, that they should always get formal resolutions—

Ms Porter: No, not saying that.

MR SESELJA: In fact, he is. He is saying that because Mr Stefaniak did not have a formal resolution—and, by the way, how did Mr Corbell know, because I did not know whether there was a formal resolution or not? That is another matter that we have to look at here. Mr Corbell, in bringing this forward and saying that documents were requested of him without a formal resolution of this committee, is apparently aware of the internal goings-on of that committee in order to know that it was never done.

Mr Corbell: Mr Stefaniak refused to confirm that there were.

MR SESELJA: He refused to confirm it? So where did you get your confirmation from, Mr Corbell, to be so certain as to establish this committee? Could it be the case that another member of this committee spoke to you about the internal goings-on? That is the only way that you could know. So what we have here is Mr Corbell actually getting information in an inappropriate way, it would seem, in order to try and use it against my colleague Mr Stefaniak. This is a stunt; this should be seen for what it is.

It is a desperate Labor Party that is now trying to have arguments on technical points about whether or not Mr Corbell was requested by Mr Stefaniak and whether or not he

had a resolution. Mr Corbell and this government routinely do not provide documents to committees when requested. So Mr Corbell was free to say no. It is instructive that Mr Corbell is so sensitive about providing documents on this particular matter, because when we look at this inquiry, it has been particularly embarrassing for the government. In fact, we are still seeing the failure of Mr Stanhope to appear. I would have thought he would make himself available. I would have expected that Mr Stanhope would have made himself available for this inquiry, given his comments after the coroner handed down her findings, saying that she made political judgements. He should have come along and set the record straight for us, but he is not coming. The Chief Minister is not prepared to front up and say what he did and to answer questions about his role.

Mr Corbell is particularly sensitive about providing documents. Some of the things that have been uncovered as part of this inquiry are uncomfortable—how badly this government has mismanaged emergency services in this territory, going right back to before the 2003 bushfires, and including on the day. So we see a heightened level of sensitivity from Mr Corbell. But his central case here is that he was written a letter by Mr Stefaniak requesting a document, and because Mr Stefaniak apparently did not go through the formal procedure of having two committee members support that, that is a breach of privilege.

This is taking it to a new low, Mr Speaker. We see the pattern. We saw Ms Gallagher try to do so because she was quoted in a public forum. We saw Ms Porter try, and now we see Mr Corbell bringing this ridiculous motion before the House. This motion should be rejected. It is an attempt by this government and by the Labor Party in this place to deflect attention from what has been a very bad period. It has been a very bad period for them, Mr Speaker, and this is their attempt to use their majority to try and cast doubt on the performance of Mr Stefaniak. There is absolutely nothing in this. There is no substance to it, and it should be rejected as having absolutely no substance.

DR FOSKEY (Molonglo) (10.56): I want to speak briefly against Mr Corbell's motion. I believe that this issue was handled within the committee, and I was very surprised to see today that the government thought it was something that should be brought out under the glare of the public eye.

I feel that to some extent it is an interference with the political process. Of course, we know that the government has got the numbers and that the privileges committee is very likely to be established, and it will all be paraded through there. If we are going to reflect on all the sorts of issues that chairs and other members of committees have perhaps been involved with over the last four years, that is all well and good, but why is this one being selected?

I was aware that Mr Corbell certainly did not appreciate the fact that the letter had been sent, but I believe that these things really should be dealt with by committees. I feel that it was dealt with by the committee. Anything else I have to say, I will say to the privileges committee. I will not be supporting this motion.

MR SMYTH (Brindabella) (10.58): It is very interesting that this should happen today and it is very interesting that it should happen in this way. It comes at the end of

a difficult period for the government, and it is interesting that it is a matter of third time lucky. I am quite surprised at what is clearly a breakdown in communication where members accused of something by other members do not have it brought to their attention before it is aired here in the house.

Mr Speaker, you very courteously sent to me a complaint raised by the Minister for Health—a spurious complaint in the end—which I answered, and you found that there was no case to answer. I am saddened to hear that Mr Stefaniak did not have the same courtesy extended to him because I think a number of things have occurred here. The committee, over a number of hearings, had asked for several documents—

MR SPEAKER: Mr Smyth, that is a reflection on a decision which I took in accordance with the standing orders, and I would ask you to withdraw that reflection.

MR SMYTH: I withdraw any reflection, Mr Speaker. I am concerned that, in effect, what has happened is that over a period of time the committee have asked for several documents that they have not received, for a very long period, from a minister who thumbs his nose at and snubs authority on many occasions. The chairman has simply written to remind the minister that these documents had been requested by the committee.

The government has the numbers, so this motion will go through, but it will be interesting to see if the government has the integrity to look at the greater issue, which is how the minister purports to have come by this internal discussion of the committee, who delivered that information to the minister, who breached the privilege of the committee and who flouted the committee rules. I have circulated an amendment in the Assembly which I now move:

> Insert new paragraph (2(aa)):
> "(2(aa)) how Mr Corbell became aware of the fact that the Committee had not authorised the letter;".

I do apologise; there is a drafting error at the top and it says "estimates" when it should actually read "privilege", so I ask members to take that into account. The amendment asks the committee to also inquire into how Mr Corbell became aware of the fact that the committee had not authorised the letter. When Mr Corbell appears before the committee to answer this question, it will be interesting to see if he has the same zeal for this committee then and whether or not the committee will get the answers to questions that they may well ask.

Mr Speaker, I refer to page 640 of the *House of Representatives Practice*. Under "Procedural authority"—and this is a procedural matter, no doubt—it says:

> … formal authority over select and standing committee procedures therefore lies with the chair …

This is simply a procedural matter and the government, third time lucky, are trying to issue a little bit of payback, I suspect, to the opposition because they are very tender and tetchy over (1) their behaviour and (2) the poor media they have been getting with respect to their arrogant approach to things like estimates and committee inquiries into the bushfire inquiry—a very important inquiry.

Mr Speaker, over time—and I have attended some—you have called together all the chairs of committees. Why have you called together the chairs of committees? You have called them together because they have procedural authority on behalf of their committee and you called them together to discuss the arrangements as to how committees operate in this place under the authority of the Assembly. You call the chairs together—you do not call all the committee members together—because the chairs operate under the procedural authority as outlined by the *House of Representatives Practice*, on behalf of the committees.

When committees have not come together between meetings and something needs to be done to effect the smooth running of the committee, it is quite appropriate for chairs to write letters. It was drafted in consultation with the committee secretary, and I believe it was drafted with the authority of the *House of Representatives Practice*, which of course helps to govern the way we behave here.

Let us have no mistake about this: this is just a revenge motion. This is to try and take the focus off a government—

Mrs Burke: Petty.

MR SMYTH: Yes, a government that is petty, a government that is faltering, a government that is seen as out of touch and a government that is seen as arrogant in the community. It is a government that flouts the rules when it suits it because it has the majority.

This motion will get up and the committee will be established. The interesting question will be: is Mr Corbell, in his zeal to reach the truth, willing to tell how the privilege of the committee was breached? Is he willing to behave in the manner that he asks this Assembly to authorise today? It will be interesting to see whether or not the government approve the amendment that I have moved. If the government do not agree to this amendment then they are simply saying there is one rule for them and one rule for everybody else.

If the government agrees to this amendment then Mr Corbell may well be obliged to attend this committee and reveal the source of his information in the committee regarding this supposed crime. In terms of the integrity of the committees—and I make no judgements on what happened; that is for the committee to determine—if Mr Stefaniak has made a mistake, which he has already apologised for and which, by his own words, he said has been corrected in the committee, this should go away.

Mr Speaker, it will be interesting to see whether Mr Corbell has conviction regarding the zeal in which he wrote to you and whether or not he is willing to reveal to the select committee who revealed this information to him, because that is the greater breach here. Having regard to the way the committee system operates in this place, it does rely on a large amount of trust. We all have reports, we all have drafts and we all know what goes on in the meetings. Until that is revealed through the minutes and those are tabled in this place, they are confidential. The foundation of the committee system is the trust inside the committee that things said in the committee remain in the committee.

If Mr Corbell, in his stunt today, is willing to cast one judgement on Mr Stefaniak but is not willing to reveal his source on the other then this can only be seen for the stunt that it is. Not only will it be a stunt; it will be a gutless stunt by a desperate government whose arrogance has now caught up with them.

It is very important, I believe, that my amendment gets up. It will be a very important test of the credibility of the government as to whether or not they have an equal standard for all. Mr Stefaniak spoke about his human rights and the Labor Party being the party of equality. If anybody here knows, perhaps they could stand up now and tell the Assembly how Mr Corbell came by this knowledge. Somebody here might like to apologise to the Assembly, as Mr Stefaniak has done, for the leaking of this information. But I suspect that will not happen because what we have here is a dual standard. It is the standard of arrogance; it is the standard that majority government brings to one part of the house. It is a standard which they seek to impose on another part of the house.

I do not believe that Mr Stefaniak has done anything wrong. If a letter is drafted in consultation with the secretariat staff who assist all of the committee and who, in particular, assist the chair, and do so very well—and I compliment all the staff of the committees, because we have seen in the estimates process over the last couple of weeks the level of dedication and professionalism that they bring to this task—and if this is an oversight then it is an oversight and it is not worthy of being sent to a privileges committee.

If there is some blurring of the lines of privilege, which I doubt, perhaps we need—and, indeed, it is the recommendation of the estimates committee—some greater guidance to committees, and in particular to committee chairs, on the conduct of committees in this place. That is perhaps a sign of the maturing of this place and maybe that is a necessary recommendation that you, Mr Speaker, through the committee system, will have to consider.

But with regard to this motion, this is a stunt; this is a case of third time lucky. This is desperate stuff from a desperate government that are seeking to put the spotlight on others rather than themselves. Rather than apologising, rather than being honest, open and accountable, as they promised and rather than hiding behind commercial and cabinet-in-confidence, perhaps they should provide documents which they have sought to suppress and hide, and perhaps they should assist the committee in getting to the nub of what it is inquiring into, instead of delaying the process and hiding documents which could reasonably be put into the public realm, or at least given to the committee in camera.

That is at the heart of why Mr Stefaniak wrote the letter. He sought to clarify requests that had already been made by the committee, on behalf of the committee, in the committee, to the minister regarding documents they had not received. I do not see what the crime is in putting that in writing. This is simply a stunt from an arrogant minister in particular who is very much under the pump for his handling of the emergency services portfolio, the transfer of things like the headquarters to the airbase, and his failure to answer, and particularly to allow officials to answer, questions in a committee.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (11.08): Mr Speaker, the government will be happy to support the amendment. It is very disappointing to hear from the opposition an attempt to defend what is really a very serious matter, an attempt to trivialise what is a very serious matter. This is not just some procedural process that people are quibbling over. What occurred was that a person who is a chair of a committee demanded documents of a minister—

Mrs Dunne: I raise a point of order, Mr Speaker. I think Mr Corbell is going beyond putting the case for why a committee should be established and is attempting to prosecute the matters that should reasonably come before the committee. I would ask you—

MR CORBELL: No more than you just did.

Mrs Dunne: I have not spoken in this debate, Mr Corbell. I ask you, Mr Speaker, to ensure that the minister sticks to the principle of why there should be a committee, rather than prosecuting the matter.

MR SPEAKER: Yes. I do not think we should be anticipating the work of a committee. It has been a rather wide-ranging debate up to this point—

MR CORBELL: It has, and those opposite—

MR SPEAKER: with some reluctance, stated reluctance anyway, to get into the work of the committee, but it still seems pretty wide ranging to me. I ask members to be cautious about that.

MR CORBELL: Those opposite have had no hesitation in saying that Mr Stefaniak did nothing wrong. I assert that Mr Stefaniak did do something wrong. I assert, as I asserted in my letter to you, Mr Speaker, that Mr Stefaniak requested documents of a minister that he had no authority to request.

This is not just some procedural motion confirming that a meeting is taking place at 11 am on Friday morning and "we expect you and your officials to be there". No, this was a letter that said, "The Standing Committee on Legal Affairs requests that you bring to the hearing the following documents: the report written by RFS officer Tim McGuffog outlining preparations for the bushfire season; all exit interviews of RFS Chief Officers and staff from 1/7/07 to date; version 2 of the strategic bushfire management plan or as much of that plan that is complete; the Yellow Edge report and the Stuart Ellis report."

It was an explicit request, Mr Speaker, and it was a request that I took seriously. I provided all of those documents, with the exception of the exit interviews—I indicated to the committee they were staff-in-confidence—and the Stuart Ellis report, which was, and remains, a cabinet-in-confidence document. I took the committee's request seriously. I provided those documents that I felt I was in a position to provide. I explained why I was unable to provide the other two documents. I provided three of

the five documents requested and I explained why the other two could not be provided to the committee.

I assumed that the committee had said, "These are important documents. We need them and we want you to provide them." The bottom line, as far as I can tell, is that the committee did no such thing. How is it that a chair of a committee can assert the authority of the committee to demand documents of a minister? That is the effect of this letter. Imagine if I had said, "I am going to ignore that; it is not a resolution of the committee."

I took it seriously because I assumed the committee wanted it. The committee made no such resolution. That is the problem. This is not just some procedural matter. This is a serious, detailed request putting a minister on notice that certain documents must be provided to a committee inquiry. A requirement for documents by a committee is a serious matter, Mr Speaker. It is a serious matter. It is not some minor procedural trifle. It is a serious matter when committees request documents, particularly executive documents.

I assumed, quite reasonably, that when the committee said, "We want the Stuart Ellis report," which is a cabinet-in-confidence document, the committee itself had resolved to pursue the matter and to seek that document. I therefore treated the request with much seriousness. But it would appear that that was not the case, that this was Mr Stefaniak, acting of his own volition, going around demanding documents from ministers with no authority from the committee.

Mr Speaker, it is simply not acceptable for committee chairs, of their own volition, to make such serious demands of any minister. They should get the agreement of their committee.

Opposition members interjecting—

MR CORBELL: I know the Liberal Party do not like this because they feel they have been caught out on this matter; they have been shown up on this matter. Any decent committee chair should say to their committee, "I believe these documents need to be pursued. Do you agree for me to ask the minister to require that he bring them?" That is what this letter does.

But this chairman apparently did not do so, and I acted on a false premise. I believed that the committee required these documents. That is how I read the letter, and any sensible minister would read it that way. I read the letter to mean that the committee was saying, "We want the documents; bring them." That is how I read it. But the committee required no such thing. Mr Stefaniak, on his own authority, did so.

I am quite happy to get to the bottom of how this information came to my attention. I have no problem with that whatsoever. I am happy to appear before a privileges committee and explain it. I have got no problem with that. The privileges committee can ask me any questions they like about that, and I will very happily answer them.

The issue at stake here is: are we going to allow committees and the powers of committees to be abused in this way? It is an abuse for a committee chairman to run

around and decide to demand serious documents—documents that have certain protections afforded to them—without any consultation with committee members. That is what occurred here, that is why it is wrong and that is why a privileges committee should be established.

MR PRATT (Brindabella) (11.16): Mr Speaker, this is more than an attempt by Mr Corbell to discredit Mr Stefaniak. My colleagues have already covered the issues around this motion, which go to the heart of vindictiveness and revenge, and I do not need to go over those again. I want to add to the debate by saying simply that this is much more than an attempt to discredit Mr Stefaniak. This is an attempt by Mr Corbell to discredit the inquiry.

Mr Corbell: Mr Speaker, I raise a point of order. That is really a serious reflection on me. I ask Mr Pratt either to move a substantive motion or withdraw the assertion.

MR PRATT: Mr Speaker, I not believe that I have made a wild assertion.

MR SPEAKER: I have not made a ruling.

MR PRATT: I believe that I have made—

MR SPEAKER: I have not made a ruling. I think it is a pretty serious imputation against a member that they are trying to influence the outcome of an inquiry. I would ask you to withdraw that.

MR PRATT: Speaker, I shall abide by your ruling.

Mr Corbell: Withdraw it.

MR PRATT: I withdraw it. Mr Speaker.

MR SPEAKER: Thank you.

MR PRATT: Thanks, Simon. I do not need you to hand feed me, mate.

Mr Corbell: Well, you just need to do what the Speaker asked you to do.

MR PRATT: You just struggle over there with your petty nature.

Mr **Corbell**: You guys have been calling out all morning on this.

MR SPEAKER: Order!

MR PRATT: Mr Speaker, this move by Mr Corbell is a diversionary stunt. What else was Mr Stefaniak to do as the chair of an inquiry who had been struggling for some time to obtain documents, witnesses and evidence that he needed to collect as part of his duty? This is a smokescreen by Mr Corbell to discredit Mr Stefaniak. It is a diversion to cover the failings of this minister and the failings of this government in its management of emergency services.

This is a witch-hunt; it is a vendetta. Mr Stefaniak made the good point that it is a hypocritical move by a government that prides itself on exercising human rights. Here they are pursuing Mr Stefaniak today with absolutely no warning whatsoever. I believe that Mr Corbell has moved this motion simply to cover his failure to provide documents to this inquiry. He has moved this motion to cover the fact that he has failed as a minister to sort out the morale problems in emergency services. He knows that Mr Stefaniak is getting close to determining that there have been systemic failures by him and his department, but particularly by Mr Corbell, to bring his CEOs and his commissioners to heel for what is a very serious issue regarding the morale of emergency services.

Mr Speaker, this is nothing but a diversionary stunt. In fact, it is bullying by a minister who allows bullying in his department to go unfettered. I absolutely object to and reject this motion.

MRS DUNNE (Ginninderra) (11.20): It is ironic, Mr Speaker, that we are here today with Mr Corbell objecting to being asked for material. This is essentially why we are here. This minister is a serial offender in relation to withholding information from Assemblies. We have to remember that back in 2003, after the estimates hearings, a privileges committee was set up to inquire into Mr Corbell's failure to provide waiting list data to the estimates committee. On 3 November that year the privileges committee found that Mr Corbell was in contempt of the Assembly for withholding information from the estimates committee. This is another attempt by Mr Corbell to try and find a means of weaselling out of providing information, reasonably requested by the committee—on a number of occasions, I understand—of the minister.

The letter to which I understand Mr Corbell objects was one of a series of letters—not the last in a series of letters—that the minister received in relation to providing information to the Assembly standing committee inquiring into the operations of the Emergency Services Authority. This man, this minister, in his multiple guises, has proved to be a serial offender in withholding information. It is on the record, Mr Speaker, that he has been found to be in contempt in the past. This really is just an opportunity to get back at people.

The minister is under pressure for his administration and this is an opportunity to deflect attention away from him and his management of his department and in some way try to discredit the chair of the standing committee. It is a pretty poor attempt and it will be seen by those people in the community who have an interest in this matter as just that—a poor attempt. It is a poor attempt by a minister who is under pressure, a minister who has form in refusing to provide information when requested by the Assembly.

Quite frankly, if he were on the sporting field, he would be called a big girl for the way that he has carried on here today. He has been saying, "How dare the committee require me to do things." The letter states, "The committee requests that you bring these documents with you." No-one was demanding. No-one was invoking the standing orders. It was a request—a cumulative request. One after the other there have been requests in relation to this material. From listening to the proceedings it is my

understanding that there have been a number of requests of the department for documents. This was one of the series. I understand from what Mr Stefaniak says that there have been subsequent—not requests—demands, which this minister, I presume, will refuse to comply with.

The only reason that the minister will not be held in contempt of the committee is that a Labor Party majority government would never be prepared to send Simon Corbell once again to a privileges committee. He is behaving in the same way and with the same arrogance that he displayed in 2003. He can get away with it now because he has the protection of the numbers in this Assembly. This is a stunt, Mr Speaker. This is a stunt by Mr Corbell. He is under pressure and he is trying to deflect that pressure onto somebody else.

MRS BURKE (Molonglo) (11.24): I want to add my support to Mr Stefaniak in this matter. It was interesting to hear Mr Corbell refer to abuse of powers in this place today. I think it is really rich coming from a petulant government that has moved this motion today. This is an abuse of power. It really is no more than a pathetic diversion. On today of all days, when we are supposed to be passing the biggest piece of legislation through the Assembly, the minister moves this motion. It is no more than a stunt. It is a trivial issue that could have been dealt with by the chairs of committees. Why did it get from there to there? Why not take the incremental step in the process? It is slightly disingenuous for the minister to talk about abuse of powers in this place. This motion is a diversion.

What Mr Stefaniak did was what every good chair would do when being hamstrung at every step to try and get information from a reluctant government—and what they were hiding, we do not know. Mr Corbell was asked and requested for the information. It was not demanded. Mr Corbell keeps using the word "demanded". That letter was not a demand; it was a request. Mr Corbell duly complied with that request—bar some information that still needs to be tabled, I understand. Clearly the committee has been trying to get this information for quite some time. Possibly the letter embarrassed Mr Corbell, and maybe this is his little bit of rage. Maintain the rage, Mr Corbell, on Mr Stefaniak.

It is ridiculous that we are wasting time today. I support Mr Stefaniak. I will not be supporting the motion. I think we do need to know how Mr Corbell became aware of what went on in the committee. I think that would be interesting to know. It is a pity that this is the best that this government can do today to fill up the working day.

MR STEFANIAK (Ginninderra) (11.27): I am speaking to the amendment. I note that the government is actually supporting it, which, I suppose, at least shows some consistency. But I do stress again the absolutely trivial nature of this. Yes, this committee will be established. Yes, it will probably take a considerable amount of time and unnecessary Assembly resources for what is a very minor matter indeed, which I have already discussed.

I discussed it with the committee. I have mentioned it here again today. I am not going to labour the point, but I think it shows a very strange mindset by the attorney if he wants to pursue this. That, I think, has got to be far more worrying than any oversight or anything else in relation to this.

Might I reiterate that I have two letters here now. One is to the attorney, dated 16 June, after two requests were made in open hearing. No-one dissented from those; they were commonly agreed. Also there were some more general requests earlier which obviously will come out in the course of this inquiry. I sent a letter on 16 June requesting that he bring certain documents—five documents. He wrote back indicating he would bring some and not bring others. None of it was rocket science. All of these matters had been aired in the various hearings we had had to date.

I have already indicated that if there is anything I did wrong, I am sorry for it. Everything was done, certainly in good faith—very routine, I would think. If we need to revise the rules so that even routine things all have to go through everyone on the committee, fine.

I have another document which I am happy to table at this stage, a letter from me on 20 June. This was in relation to Mr Corbell's response to my letter of 16 June. This was sent after the committee dealt with the matter which Mr Corbell is now trying to send off to a select committee. We did not deal with new paragraph 1 (a) but that in itself perhaps is hardly rocket science either.

The further letter thanked him for his letter of the 19th. This was passed through the committee before we sat at 9.30, typed and sent to the attorney, who appeared at 11.00 or 11.30 that day. The letter states:

> However, I note that the following documents have not been supplied:
>
> - the exit interviews of RFS Chief Officers and Staff from 1/7/07 to date; and
>
> - the Stuart Ellis Report.
>
> The Legal Affairs Committee considered this matter at a private meeting this morning. The Committee requires the Stuart Ellis report as a matter of urgency and the Committee would appreciate receiving that document when you appear at the public hearing later on this morning. The Committee will not be pursuing the request for the exit interview documents at this time.

We considered your letter. This document came out as a response. There was no question of my sending it after the secretary typed it up. It was decided on by the committee, typed up by the secretary and sent to you because, after getting your letter of the 19th, after considering everything—and this covers comments you made today—we required a document which you did not supply.

I am not even going to go into whether you should or should not, Mr Corbell. You are a big boy. You have been a minister for a long time. This shock, horror you are coming up with today, I find, quite frankly, pathetic and a waste of time. And you can smirk all you like, Mr Corbell. I think this is a total waste of time. I think this document, which I tabled, shows it. That is actually a letter requiring something.

MR SPEAKER: You will need leave, Mr Stefaniak.

MR STEFANIAK: I seek leave to table it.

Leave granted.

MR STEFANIAK: I present the following paper:

> Inquiry into ACT fire and emergency services arrangements—Copy of letter to the Minister for Police and Emergency Services from Mr Stefaniak, Chair, Standing Committee on Legal Affairs, dated 20 June 2008.

That, I think, basically says it all. Yes, there was one of the documents we did not require; we discussed it; but we still required a document. The minister indicated, "No, I am not going to provide that; it is cabinet-in-confidence." And he stuck to his digs on that and he would not supply it. That has been the case all the way along. If the minister feels he is able to reply and wants to actually send us documents, he would do so; if he did not, he refuses to do so. Then we have a letter requiring him to and he says, "No, cabinet-in-confidence; we will not do it." Leaving aside whether he is right or wrong, that surely just makes a nonsense of some of the things he has been saying here today.

Ladies and gentlemen, I do not really believe I need to say any more. I think Dr Foskey has probably said it very ably, as the crossbench member of the committee, somebody who does not have any thing to gain from any argy-bargy the major parties might play here. She has made her position quite clear.

Members interjecting—

MR SPEAKER: Order, members! Mr Stefaniak has the floor.

MR STEFANIAK: If you think the major parties are playing argy-bargy on this and just playing silly buggers, fine. Mr Corbell, I believe, is. But I think Dr Foskey has basically summed it up perfectly. This is a waste of time. As I said earlier, if I have done anything wrong, I certainly apologise.

I do draw members' attention to the fact that we do have rules for routine matters. I considered this to be routine because of what had gone on before and the minister's responses when he had not exactly been forthcoming. This was not some earth-shattering event. If people want to construe it as such, I am sorry. We can make sure we dot i's and cross t's a little better next time around. But let us get on with the job of representing the people of Canberra and doing the real business of government and not wasting time on very trivial matters such as the attorney raises here today. You have got the numbers; you will have your inquiry; but what a monumental waste!

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (11.33): It is disappointing to me and to my colleagues that those opposite, when faced with a serious motion about their own actions and about the actions of one of their own members, immediately play the man, not the ball. As soon as there is a question about the appropriateness of their conduct in this place, it has got nothing to do with the issue at hand; it has got everything to do with what a horrible person I am.

I am not interested in playing the man in this debate; those opposite are. Those opposite are very happy to impugn my motive, my personality or my character. But that is just typical from those on that side of the place. They are very happy to play the man. They are very happy to drag down someone's character. But they have not been prepared to address the issue.

Mrs Dunne: On a point of order, Mr Speaker: this is not the place to address the issue about whether or not there has been a contempt.

MR SPEAKER: That is a debating point, Mrs Dunne. Resume your seat.

MR CORBELL: They are not prepared to address the issue. The issue is: why did a committee chair demand documents of me—

Mr Stefaniak: No, "request"; get the word right.

MR CORBELL: Why did they demand those documents when the Assembly committee itself had not resolved to do so? That is the question. They made a very clear demand to me that documents be provided.

Mr Stefaniak: On a point of order, Mr Speaker: the minister can say whatever he likes, but can he please get the word right? The word in the letter states "requests".

MR SPEAKER: That is not a point of order. Resume your seat.

Mr Stefaniak: He is misleading the Assembly by using the wrong word.

MR SPEAKER: Withdraw that, Mr Stefaniak.

Mr Stefaniak: I will withdraw it if you like, Mr Speaker.

MR SPEAKER: I like.

Mr Stefaniak: But I ask you to get him to use the correct words.

MR SPEAKER: You cannot use the standing orders as a ruse to re-enter the debate, Mr Stefaniak.

MR CORBELL: Those opposite have talked about demanding documents themselves. They should be a bit careful about their language if they want to take that point. The point is that a very clear and unambiguous requirement was put on me—to provide documents. I treated it seriously. I responded in due course and I provided documents and I had to explain why in other circumstances I could not provide documents.

I believed that that was done with the authority of the committee. It would appear that it was not done with the authority of the committee. It is as simple as that. I replied on the basis that I assumed the committee had resolved to seek those documents. It would

appear that the committee did not resolve to do that. I acted, as a result, under a false premise, and that is a serious matter. It is also serious that a committee chair asserted the authority of the committee without having the committee's authority to do so.

Those are the matters that warrant this matter being given precedence. Let us not forget that. The Speaker in this place has said the matter warrants precedence. It is serious enough to have precedence over all other business. That is not my decision; that is not the government's decision; it is the Speaker's decision.

This opposition need to treat it a little more seriously than simply trying to play the man, simply trying to drag down someone's character and simply trying to suggest some improper motive. They need to address the substance of the motion, and the substance of the motion is: was there a breach of privilege? Did Mr Stefaniak act without the authority of the committee?

I believe that is the case. That is why I brought it to Mr Speaker's attention and that is why I now, with the Speaker's authority, with the Speaker's permission, am moving this motion this morning. I think it is about time that the Liberal Party applied to themselves the same principles and the same level of scrutiny of their actions as they require of people on this side of the chamber. How about a bit of consistency? How about a bit of consistency in action, consistency in behaviour, consistency in asserting and use of authority?

It is for those reasons that the government believes that this motion should be passed today. It is for those same reasons that the government is very happy to accept the amendment moved by the opposition, because we want to get to the bottom of it and we want to make sure that, when ministers are requested, required, demanded to provide documents, those requests are made legitimately and with the authority of an Assembly committee, not just on the whim of the committee's chair. I commend the motion to the Assembly.

Amendment agreed to.

Question put:

> That **Mr Corbell's** motion, as amended, be agreed to.

The Assembly voted—

Ayes 9		Noes 6	
Mr Barr	Ms MacDonald	Mrs Burke	Mr Stefaniak
Mr Berry	Mr Mulcahy	Mrs Dunne	
Mr Corbell	Ms Porter	Dr Foskey	
Ms Gallagher	Mr Stanhope	Mr Seselja	
Mr Gentleman		Mr Smyth	

Question so resolved in the affirmative.

Children and Young People Bill 2008

[Cognate bill:
Children and Young People (Consequential Amendments) Bill 2008]

Debate resumed from 6 March 2008, on motion by **Ms Gallagher**:

> That this bill be agreed to in principle.

MR SPEAKER: I understand it is the wish of the Assembly to debate this bill cognately with executive business order of the day No 2, the Children and Young People (Consequential Amendments) Bill 2008. That being the case, I remind members that in debating the Children and Young People Bill 2008 they may also address their remarks to the Children and Young People (Consequential Amendments) Bill 2008.

MRS DUNNE (Ginninderra) (11.42): There is no more important duty that a community has than to look after its children, and its future by so doing. I would say, as a parent, that this is a sacred trust. It is one that, as a community, we must take seriously, and as a legislature we must take it extremely seriously. I suppose that a tome of some 750 pages indicates to some extent some measure of the seriousness with which we deal with the welfare of our children and young people.

I suppose it is timely that we are debating this issue when, across the nation, we are seeing a range of cases that cause the community to question what we are doing to our children. They cause governments everywhere to reassess the way we manage the administration of systems that are aimed at helping children who do not have the best start in life. Our aim should be to provide children with the best start in life. Sometimes, unfortunately, a stable and safe home is not what every child comes into this world or goes through their formative years experiencing.

One of the things that we have to be absolutely vigilant about, in dealing with the welfare of our children and our young people, is the attempts we make to ensure that the management of the systems that we put in place are seamless and really do meet the needs of our young people. We have to ask, after all the time and effort that we put into this, and as it is now nine years down the path since we had the passage of the original Children and Young People Bill: are things any better for our children than they were in 1999? I think the jury is out on that, Mr Speaker. I think that, in the climate that we are experiencing at the moment, the community is seriously questioning how effective governments are in dealing with children at risk.

The big question is: has anything changed and have things got better? While I do not propose to answer that question today, it is one that we must contemplate. In passing this legislation today, we must do so not just with the intention of passing a big fat piece of legislation. Big fat pieces of legislation will not, by themselves, make the lot of children better.

This is a big chance for the community as a whole—not just the legislature and not just the people entrusted by the government to carry out this legislation, but the whole

community—to reassess how seriously we take our responsibilities as a community towards our children. The aim of this legislation is to ensure that our children are better off. I hope that this is what it does.

This bill is intended to replace the Children and Young People Act 1999. The Children and Young People Act provided for an operational review three years after that act commenced—in 2002. The results of the operational review have been a long time coming. They have been helped along, in some cases slowly—in saying that I do not mean to be critical about it—by a number of major reviews and some amendments along the way.

This review has been informed by a huge amount of investigation and inquiry—things like the inquiry into the rights, interests and wellbeing of children and young people by the Standing Committee on Community Services and Social Equity in August 2003, *The territory as parent*, known as the Vardon report, *The territory's children*, known as the Murray report, and the *Human rights audit of Quamby Youth Detention Centre*, just to name few.

As a result of those inquiries and the others that went with them, we have seen an iterative change in the way we deal with children and young people. We have seen in 2005, 2006 and 2007 a range of amendments to the Children and Young People Act which have, amongst other things, provided for the making of standing orders for places of detention, expanded the regulation-making power under the act, introduced new principles to help families to understand care and protection procedures, instituted the process of cultural planning for Aboriginal and Torres Strait Islander children and young people, changed the rules and made some exceptions for mandated reporters, dealt with prenatal reporting of young women at risk, which is an initiative on which I particularly congratulate the government, and a revised search and seizure scheme for Quamby Youth Detention Centre.

In supporting this bill, I put on the record that we do so despite some serious reservations. This is an extraordinarily large piece of legislation; without doubt, it is the largest piece of legislation, at 752 pages and about 281 pages of explanatory statement. It is an extraordinarily complex piece of legislation. In addition, there are consequential amendments.

There are some issues regarding the process, the content and the structure of this legislation, as well as substantive issues in the legislation, about which the opposition has considerable concern. I will start with the process. The government has said that it has undertaken extensive consultation with the community, and I do not disagree with that. It is quite clear that there has been extensive consultation with the community. It seems that the only people that the government is not prepared to consult with are the members of this place. It is a rarity for this government, since it has become a majority government, and arrogant in that majority government status, to refer matters to committees. I know that both Dr Foskey and I, at various stages, have requested that this matter be referred to a committee and the government has steadfastly refused to do so.

There have been, to my knowledge, two briefings of the education and young people committee in relation to this bill, but there has been no inquiry. I cannot think of a

circumstance in any other jurisdiction where such a wide-ranging piece of legislation would not be referred to a committee. I take the example of the New Zealand parliament, which is also a unicameral parliament. The standing orders for the House of Representatives in New Zealand, which acts pretty much like the Legislative Assembly does, require that all legislation be referred to the relevant select committee unless they are declared urgent for some reason.

It is only appropriate for this parliament to have legislation of this nature, which deals with the most fundamental responsibilities we have as a legislature and as a community—the protection of young people—openly examined by a committee that has received submissions from people with an interest in the area, so that there can be a report to the Assembly on this matter. This is a fundamental role of the legislature, and this fundamental role has been usurped by the arrogant Stanhope government.

There are more transparent ways of proceeding than having consultations prior to the preparing of legislation and then presenting the bill as a fait accompli. I do not have a problem with the consultation process. I would just have liked the Assembly to have the opportunity to review that consultation process. If, as the minister said, everything was fine in the dairy and everyone was happy with the consultation process, that would have emerged and it would have given greater strength and greater support to the minister's process.

In relation to the content, the Children and Young People Bill 2008 is a rewrite of the 1999 act. The explanatory statement says that this bill "once enacted, will become the primary law in the ACT which provides for the protection, care and wellbeing of children and young people in the Australian Capital Territory". In the reviewing of this legislation, everything was supposed to be on the table. However, there are some notable exceptions where the government has dropped the ball, most principally in relation to the question of age of criminal intent and at what stage a child becomes capable of forming the intention to commit a crime.

By way of an aside, I do want to compliment the government on their attempts to brief members and their openness to briefing. I was given a very good hearing and the minister was quite assiduous in coming back with answers to my questions. However, I have to say that, in answering my questions, it was pretty much a rehash of what was in the explanatory statement. It was pretty much a take-it-or-leave-it approach.

I raised this issue in the briefings, and I was quite simply told, "We didn't look at it because there's a national approach and we're looking at it in terms of the national approach and what's happening in Europe and other places." I do not think it is sufficient to say this. If this is supposed to be a from-the-roots-up, complete review of the legislation, this is a fundamental issue. The issue of when a child is able to form a criminal intent is a fundamental issue, and the government has dropped the ball.

I note that Dr Foskey has circulated amendments in relation to this matter, but the Liberal opposition will not at this stage be supporting them, simply because Dr Foskey is in the same position that the government is in. She has a view about what is an appropriate age of forming criminal consent, but that has not been tested in the community. I think it behoves Dr Foskey to demonstrate that there has been active

and appropriate consultation. I would like to see a proper, much needed conversation with the community on this issue before we are prepared to change the law. It is reprehensible, however, that the government has not done so.

This legislation, as I have said, runs to 752 pages. There are some concerns about the way the legislation is drafted. It throws together in one law provisions dealing with child protection, tattooing, childcare licensing, employment eligibility and, of all things, work experience legislation. On top of that, it currently contains all the sentencing provisions. However, I am pleased that, through this process, we will see the breaking down of the big, one-stop shop piece of legislation, because once this legislation passes, all the sentencing provisions will go into sentencing legislation and will disappear from the Children and Young People Act.

In 1999, we had the one big piece of legislation, and I think this is an outmoded approach. The idea that everything needs to be in the one place is of concern to me. I understand that this was a fad in drafting, and it is something whose time has passed. I think that it somehow demeans and undermines the important status we should give to child protection when we are putting things relating to work experience and tattooing in the one piece of legislation. There is some scope for laws relating to child employment to be contained in, for instance, the OH&S legislation. Tattooing could be in health legislation and work experience could also be in the OH&S legislation. There is no need to have such an extraordinary and daunting piece of legislation.

We also have some issues about the quality of drafting. Sentencing and the "guidances" by which detention centres are to be administered stand out as a problem. There seem to be about 15 different ways in which we can talk about sentencing and guidances, and it seems there are contrary things that could be construed from that, and there is no clarity.

A further example is the way in which light work—that is, work that is suitable for a child to do—is dealt with. What is "light work" is fairly clearly set out in the current law. The current law says that light work is "work that is not contrary to the best interests of a child or young person". I think that is reasonably helpful, and it then gives examples that have effect according to the Legislation Act, and which are even more helpful. The provision then says "that to remove any doubt, an example of the definition of light work is not light work to the extent that it is contrary to the best interests of a child or young person". That seems to be a roundabout way of saying the same thing they said in the first place. Finally, the legislation provides a further example. It says that "acting as a photographic subject if the nature and environment of the workplace makes it contrary to the best interests of a child or young person" is not light work.

By the time you get through this process, it becomes fairly heavy work for anyone trying to work out what is light work for a child. It is interesting that the final exception to light work involves being a photographic subject, which has had some coverage lately in relation to the Henson exhibition in Sydney and what is appropriate for children.

In addition to the foibles of drafting and things like that, there are some serious issues that we are concerned about. There are issues in relation to the length of detention and

the removal from the act of the statutory remission scheme, which my colleague Mr Seselja will speak about. There are considerable concerns about the manner in which the sentencing provisions are drafted. The proposed new chapter 8A to be included in the Crimes (Sentencing) Act adds a gloss to the provisions already contained in the Crimes (Sentencing) Act that deal with sentencing principles, considerations to be taken into account when sentencing, and pre-sentencing report matters.

The object, as the opposition understands it, is to have a chapter that simply sets out the provisions that apply to children and young people. To that end, a proposed dedicated section 133D adds, for example, some additional relevant considerations when sentencing young offenders. However, sentencing already requires an examination of cultural background, character, antecedents, age and physical or mental condition of the offender. In that case, the opposition asks: what does proposed section 133D add to the law? My colleague Mr Stefaniak will speak more about this.

The opposition is concerned that the provisions relating to the sentencing of young offenders are unnecessarily complex and could give rise to inconsistency of approach, which is clearly undesirable when considering the liberty of citizens. This is a matter that the opposition, the Canberra Liberals, will be keeping under review and, if necessary, we will bring forward amendments.

In relation to child protection, there are issues relating to mandatory and voluntary reporting, of which there were 8,710 last year. The bill proposes reducing the threshold for voluntary reporting from requiring a reporter to report where there is a reasonable belief that a child or young person is in need of care and protection to a belief that the child has been abused or neglected. While the explanatory memorandum suggests that the new legislation will streamline the manner in which reports are considered, the opposition is concerned that care and protection could drown in mandatory reports, as seems to have happened in New South Wales, and that trivial reports will take up time when people should be looking at the hard cases.

I hope that the minister can explain to the Assembly how the reports are to be streamlined and offer a crystal-clear guarantee that there are staff available to consider child abuse reports. I think that there are some issues about staff that the minister has discussed in another context.

There are some issues about family conferencing. While I agree with the principle, there are some concerns about when the chief executive must apply to the courts to have these matters dealt with. I am not satisfied with the answers provided by the minister and I will be keeping a close eye on the operation of the registering of the results of family group conferencing.

There are also provisions in relation to Aboriginal and Torres Strait Islanders. There is no real disagreement about the notion of keeping kinship groups together, but I have concerns, and there have been concerns expressed, that in practice sometimes the overriding instinct to keep Indigenous children in Indigenous families may not necessarily be in the best interests of the child.

The opposition will be supporting this bill. We do not have any amendments because we think it is something that needs a holistic approach, and I do not propose to take a piecemeal approach to such important legislation.

DR FOSKEY (Molonglo) (12.03): This bill represents a mammoth effort and the work over years of many people. I would like to thank the departments and Ms Gallagher and her staff for their hard work and their assistance and readiness to brief me and my staff on the bill and for answering the very many questions that we submitted to them.

This bill has a lot of positive changes for the children and young people of the ACT, and it is still, in my opinion, a work in progress. My office has been advised that not all parts of the bill will commence at once, that its implementation will be monitored and that there will be room for future amendments. The size of this bill has been criticised by many, including the Office of the Public Advocate, and I agree that it would have been much easier to address if it had been presented in separate bills. The sections are clearly divided, which suggests to me that it could have been presented as separate pieces of legislation. Such a brick of a document is hardly child friendly.

As you will be aware, I have proposed amendments to the bill, which have been circulated and which I will be putting later. After consulting very broadly with many of the agencies and organisations that represent the interests of young people, we believe that these amendments are important to ensure the rights of children and young people to participate in the decisions affecting their lives and to bring the age at which people are deemed to have criminal responsibility better into line with human rights practices.

Prior to the bill being tabled, and incidental to it, my office organised a range of meetings with organisations and individuals involved with the welfare of children and young people in the ACT. Mr Speaker, you might say that I have consulted exhaustively around issues of care and protection of children, and I did this because I was concerned that the Vardon report was released some time ago. I was very interested to know the extent to which the recommendations made in that report had been implemented. Not content with just hearing about that from the government and the department, I contacted pretty well every organisation that I knew that represented the interests of young people, especially young people in care.

That consultation brought to light a broad range of issues affecting the lives of our children, and it provided the lens through which I and my staff were able to look at the legislation. Some of my concerns about care and protection have been addressed by this bill, and I would like to commend the government on the provisions improving stability and long-term planning and the measures for early intervention. The department has informed my staff that the out-of-home care review is in its final stages before consultation, and I hope that the consultation process is thorough and that the government will enter into it with an open mind.

Concerns remain, however, about the legislation's focus on the crisis end of the problem, about kids transitioning from care and about the resources—human and

infrastructure—being used to implement these changes. Care and protection is and always will be contentious. We only need to look at the headlines which recur in our papers with unfortunate regularity. We have had a recent spate of cases, and we know that the media and opposition parties are always alert to issues, often tragic, which occur in our community and which can be used as a barb to point at governments, ministers and overworked departments.

These are contentious issues, but they are also really important, because they get at the heart of our most vulnerable community members—our children, and often our least advantaged children. No matter how wonderful our legislation is and how diligent and effective our care and protection officers are, there will, sadly, always be children who suffer abuse and neglect. This bill is a step in the right direction towards dealing with the situation, but I would be interested to know what extra resourcing and what extra measures are being provided to the department and the community groups to put this legislation in place.

During my meetings I was advised by many sources that staff turnover in child protection services is a problem both here and across jurisdictions. I totally understand why. This is one of the most difficult jobs in our community. The department has informed me that the ACT is better in this regard than many jurisdictions, and I am really pleased about that. But I am hearing over and over again that staff turnover is causing trouble for the new staff coming in and for the existing staff who must support and mentor them. There are problems in consistency of care and record keeping which affect the children, their families and those caring for them. The result is that we can have inconsistent responses to recurring issues.

The legislation gives a good groundwork for improving the stability and security of kids in care, but if you have a different case worker every six months, how much is even the world's best practice legislation actually going to help? Care and protection is a demanding and challenging field of employment, and high turnover is to be expected. I cannot imagine how difficult it must be to work with vulnerable children and families day after day; to be that knock on the door that those families dread. The ACT government may be one of the best at keeping its staff happy, and there may be little more that it can do to keep them. If it cannot keep them—and a variety of anecdotal evidence is suggesting that it cannot—then other ways have to be found to address the inconsistency and the lack of continuity created.

The legislation includes a section regarding family group conferencing. I am pleased to see the government giving this level of attention to working with families to overcome problems before they reach crisis. I will be interested to see the family group conferencing standards when they are complete. Encouraging families to seek support and to work together is a vital component in protecting vulnerable kids, and I believe it helps to build trust, which is also important for assisting these families.

Trust was raised repeatedly as an issue in the recent hearings of the inquiry of the committee on health and disability into the early intervention and care of vulnerable infants in the ACT. The Women's Centre for Health Matters, amongst others, noted that fear is a big factor impeding families approaching and utilising support services. People fear that if they use one service then that service will tell others or tell the

department, and there is that awful fear that their children will be taken away. While mandatory recording and collaboration between the department and the various support agencies is fundamental to improving outcomes for these children and young people and their families, it can create distrust and make things more difficult.

The bill does have provision for wraparound services, and the department is running some great programs. We need to be mindful that there are people who have had bad experiences with care and protection or who have poor knowledge of how the system works and who will be unlikely to ask for help until it is too late. Is the mother with a drug issue going to report that she is having trouble looking after her children when she fears that she will be criminalised? There are so many issues that people will have to toss up, and I can understand that even people with the best of intentions for their parenting may have reluctance about seeking help. That is why we need more liaison with the community. We need to develop community awareness, but not in a punitive way. It must be done in a way that is about a caring community.

I have to commend the work that is being done in the child and family centres. I think that is a really excellent approach. I think the early childhood schools, if they do what the government hopes they will do, will also assist in this process. Really, the basis needs to be the education of families in a child-friendly and easy-to-understand manner on how the care and protection system works and how they can use it to make their lives better for their kids. I think that is the intention of this legislation.

We need to ensure that any services which interact with families can help or at least point to help. We need greater use of schools, childcare services and community organisations to make sure that the information is out there and accessible and that people see it as supportive and not punitive. We need to make the care and protection offices themselves more child friendly and inviting places to visit. One comment made to me was that when they were out in the community, out in the town centres, they were much more accessible. Now, with the security arrangements, they are extremely unfriendly places for people to visit.

Funding to community organisations needs to be less specific and more flexible to allow appropriate responses for the benefit of children and their families with complex needs. We also need to recognise that children do not become self-sufficient, well-adjusted adults with full knowledge of the law and how to access services at 18 years of age just because they are 18.

The Create Foundation's transitioning-from-care report card shows up the ACT as one of the worst jurisdictions in Australia for supporting kids who are exiting care. The minister's officers informed my staff that individual arrangements can be made for assistance past the age of 18, generally for education purposes, but that this requires an aware young adult who is able to do further investigation and research and additional resources and commitment. If they are not aware they need advocates, who is?

I would like to raise a few points in relation to the corrections aspect of this bill. Clause 171—access to the open air for two hours a day—is just not good enough. This is particularly so at present when "open air" can mean access to a small, internal,

enclosed concrete exercise yard with the sky just visible through heavy reinforced steel mesh. The minimum standard should be at least four hours, and access to a natural environment with grass, trees and maybe the odd bird is surely necessary, assuming the purpose of incarceration is not to deprive children and young people of their physical and mental wellbeing.

The salutary effect of a natural environment is well known, and contact with animals is a positive thing. It also gives staff insights into the psyche of the detained children. I must commend the current arrangement between the animal welfare shelter and Quamby; it is a very positive thing. While some people might consider this unrealistic, I still think that resources spent on establishing fruit and vegetable gardens and orchards with some farm animals, poultry, milking cows, goats, sheep et cetera will actually enhance the responsibility for children for whom relationships with their peers is often difficult. They have not had good times in their relationships with adults, and a relationship with animals is really an important part in building their trust and affection. I hope that the new facility at Bimberi has that access.

The definition of "unreasonable discipline" in clause 740 was very vague and noted by the scrutiny of bills committee. While I think that including yelling might be a bit extreme, I will not be opposing the government's amendments in these areas. I note that Mr Mulcahy has similar amendments.

The definition of "light work" for the purpose of the clause is also vague, and the examples are particularly interesting given the recent hoo-ha over Bill Henson's work. I am pleased to see that the government is amending this definition to provide more clarity.

I am generally happy with the changes being made to childcare services, particularly as the department has assured my staff it seeks balance between regulation and support for childcare services. I would like to mention the removal of the public declaration of an intention to operate a childcare service. While I accept that there was rarely a public response, I have been advised that it was a way at least for the industry to be aware of what was going on amongst the sector. To keep this flow of information going, I would ask the minister to ensure that communication between department and industry groups is open and continuous.

The level of transparency provided by the public declaration was helpful, but the level of administration required probably outweighed the benefit. For reasons of competitive neutrality, the removal of the declaration makes sense, and I will not be opposing it. But I would like the minister to assure me that the information can be made available on request and that communication and consultation with agencies will continue.

I do want more research undertaken. Although this bill does not have a legislative review period, I have been advised that review and consultation will be ongoing and dynamic. I hope this is the case. I would like to see some time lines and processes set out to ensure that this takes place.

Ensuring the wellbeing of our children is paramount and requires involvement from all sectors of the community. Though not all the concerns raised by the various

submissions during the consultation process have been addressed, I am relatively happy with what the government has presented, and I will be supporting the bill.

MR STEFANIAK (Ginninderra) (12.18): The Children and Young People Bill is the largest piece of legislation ever to come before this place. Was this bill referred to a committee for detailed analysis of its more than 750 pages? No, it was not, despite requests from the opposition that that occur. I do not think it is appropriate that it only be examined by the scrutiny of bills committee, which has specific and somewhat narrow terms of reference in terms of bills. It is to look at technical aspects of bills and other instruments of a legislative nature.

Indeed, the committee's report on the Children and Young People Bill does exactly that and does little more than draw to the Assembly's attention a number of technical points. It makes no recommendation. That is the role of that committee. It is not the role of that committee to delve into the operational aspect of bills and legislative instruments that come before this place; that is the role of select and standing committees. For example, the Select Committee on Estimates does not look at the technical aspects of the relevant legislation; it looks at the detail, the operational aspects, how the legislation will affect the lives of the people of Canberra.

This bill should at least have been referred to the Standing Committee on Education, Training and Young People. It probably should have been referred to a select committee to conduct a full public inquiry into the effect the bill would have on children and young people and, indeed, their families, networks and the people of Canberra generally. So if this bill does not achieve what it sets out to achieve or if it has unintended consequences for the many stakeholders, be it on the government's head.

There are six chapters to this bill, chapters 4 to 9, devoted to criminal matters, and these chapters comprise over 180 of the 750 pages of the bill. Indeed, leaving out the schedule to the bill which covers amendments to other legislation, the bill proper is 655 pages, which means more than one-quarter of the bill is taken up by the provisions relating to criminal matters.

It is ridiculous that this volume of material was not either incorporated into existing legislation that deals with the kinds of matters covered or made into a new, separate piece of legislation. This is especially relevant if it is intended that the treatment of children and young people should be distinct from that of adults. Even so, there is potential for confusion with the proliferation of cross-references from one place to another. Indeed, we already see a government amendment to this bill that clearly has come about because of the confusion this government's grab-bag approach has created.

I will turn now to the sentencing provisions of the bill. Proposed new chapter 8A of the Crimes (Sentencing) Act adds a glossary to its provisions of considerations to be taken into account on sentencing and presentencing report matters. The object, I understand, is to have a chapter that simply sets out the special provisions that apply to children and young people. To that end, proposed section 133D adds, for example, some additional relevant considerations when sentencing young offenders. And they are:

(a) the young offender's culpability for the offence having regard to his or her maturity;
(b) the young offender's state of development;
(c) the past or present family circumstances of the offender.

However, sentencing law already requires an examination of the cultural background, character, antecedents, age and physical or mental condition of the offender. In this case, what does the addition propose to be made by section 133D add to the law as it stands?

There is a provision contained in proposed subsection 133C (2) of the act, which says that a court "must have particular regard to the common law principle of individualised justice". It is currently the case that common law sentencing principles effectively run concurrently with provisions contained in the Crimes (Sentencing) Act. However, what does this subsection add? What does "particular regard" mean in this context? If the common law sentencing provisions still run, this provision is pointless. Alternatively, this provision could have the effect of negating, by implication, common law sentencing principles.

Self-evidently, if youths are to be sentenced according to different criteria from adults, the clear thing to do would be to expressly state what should be considered in a discrete area of the law. And the opposition remains concerned that the provisions relating to the sentencing of young offenders is unnecessarily complex, which can give rise to inconsistencies in approach, which is clearly undesirable when considering everything from the rights of the offenders themselves through to the rights of victims and the community.

I want to comment on the principle of detention as a last resort, which has been articulated in this bill. That is a common principle throughout our justice system and sometimes I think it is taken to absolute extremes by courts to try to excuse not jailing people who should be jailed. But it is a principle and it is in our legislation. It is in varying forms within legislation interstate. I think the provision here is probably somewhat more extreme than what would apply similarly, say, in New South Wales or other jurisdictions. But it is a fundamental principle which does flow through our system, both here and interstate.

Detention, of course, is not always the right solution for changing the behaviour of children and young people, and there are other ways of rehabilitating them than detention alone. However, I do not think anything here should be taken as an indication to courts in terms of sentencing generally that people are never to be jailed. Extreme circumstances, last circumstances, circumstances of a last resort, are to be taken as incredibly extreme.

Quite clearly, there are exceptions. One has to look at the seriousness of the offence. Indeed, in the past, young people who have committed incredibly serious offences have been jailed even though they had no prior convictions. That is right; that is proper. I should not say jailed; I should say put in detention, sent to Quamby. There is a difference, a very real difference, and necessarily so, when one considers juvenile

justice and adult justice. But at the end of the day young people, unfortunately, will commit crimes. Many could be very serious, which means the community expects a term of incarceration in a youth detention facility.

It is a worry of course, with the ACT courts being notoriously lenient when it comes to sentencing adults and, indeed, individuals, that they might go off on a bit of a tangent in relation to provisions such as this. It is important, I think, that courts abide by community expectations. Too often we do see victims of crime complaining that justice has not been served; too often we do see courts too give consideration to the feelings and emotions of offenders, and do that much more than they have to the feelings and emotions and, indeed, fears of the victims of crime; and too often we have seen police frustrated by what they see as a waste of time in preparing evidence in cases, or indeed often even charging offenders, because they see offenders, sometimes serious and repeat offenders, treated with too much leniency and given bond after bond, regardless of the breaches.

I have previously proposed a regime of sentencing guidelines for the ACT. I think the bill, in about the fourth edition, is still before this Assembly. It is much like the regime which the Labor government in New South Wales introduced and passed. It works very well. I think we do need consistency with our interstate colleagues, especially in New South Wales. The area of sentencing is something which the opposition will be looking very carefully at in the operation of this particular bill.

Indeed I go back to my initial premise. I think there should have been two separate bills, one dealing with the criminal aspects and one dealing with the care aspects for young people. I think the scrutiny committee has made some valid comments too, which I would commend to the Assembly.

I think it is very important that, generally when it comes to sentencing not only of juveniles but of adults, we do bring ourselves into line with sentencing practices interstate. Clearly, the bills that we have been introducing over the past four or five years would form the basis of it should we be elected to government in October this year. People do want a justice system that delivers on community expectations and they do want a justice system that does provide justice for all and is not skewed one way or the other.

Mention was made of—and it is one of the problems here—proposed new chapter 8A. The legislation we have at present contains a statutory remission system which can permit a young person subject to a detention order to be released on licence, if, for instance, they have been of good behaviour whilst detained. I can see what the government is doing here. It is providing a regime where the courts, for example, would sentence someone to 12 or 18 months detention, suspended after six months, to be of good behaviour. That has been a common practice for decades in our justice system. I think they miss a bit of flexibility there. In some instances, that may encourage the courts to impose a shorter term of incarceration as a head sentence than is actually necessary.

The current provisions, as I understand them, available to courts, for both adults and children, are, in short, that someone could be sentenced to 18 months incarceration.

However, there are provisions in the law which would mean if that person was going exceptionally well, they were of good behaviour, they had been rehabilitated very well, perhaps after 10 months that person could then be let out on a licence.

You might say, "What is the real difference?" The difference is that you can reward a person's good behaviour whilst they are in custody, as opposed to a court deciding initially, "This is 18 months but, for whatever reason, I am going to let him out after six." It does not matter how good or bad that person is in the youth detention centre, they will be let out after six months, go onto a bond to be of good behaviour for the rest of it and, if they breach the bond, or theoretically at least, they come back before the court and they should be sentenced for the remaining 12 months. Sadly, in practice, that rarely applies in the ACT which I think does not really advance our justice system very much either.

The flexibility inherent in the current system is to be commended. I think it is better if someone is given a term of incarceration to start with, but there is then provision for them to be rewarded for good behaviour, rewarded for undertaking rehabilitative programs that are working and then being released into the community on licence. I think that is a system that enables a greater degree of flexibility and is able, especially with young people, to reward good behaviour.

Even with the young people who are incarcerated, what do we want to see? Surely it is that they will be rehabilitated; they will not get on that treadmill of getting involved in the adult system and end up being an old lag in the criminal justice system, in adult prisons. We would like to see some break in that behaviour, some rehabilitation, some attempt at deterring that person from perhaps a lifetime of crime, through good measures undertaken whilst they are incarcerated in the new youth detention centre. Hopefully, they will be deterred from a life of crime.

If a young person is responding to that, I think a licence system is a very good way of rewarding the good behaviour and keeping tabs on them to make sure they are doing the right thing. If they regress to a very bad pattern of behaviour, they can then be re-sentenced; they can then forfeit the term of imprisonment that they had been allowed out on licence for and come back and serve it. So I think by getting rid of that there are problems.

Those are the points I want to make on this particular bill. We do not have amendments. We will be monitoring it very closely. We considered making a series of amendments but it is the government's bill. They have to live with it. It is a very complex bill. We will see how it works. We will continue to monitor it, as certainly I will continue to monitor the criminal law aspects of it. I am hopeful that it will succeed in what it purports to do but we will see what occurs. There are, I think, some significant problems still that perhaps need to be resolved. We will monitor the bill and seek to make any necessary amendments to the bill that may crop up if required as a result of the bill not quite doing what it is meant to do.

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

Sitting suspended from 12.31 to 2.30 pm.

Questions without notice

Policing—protection orders

MR SESELJA: My question is to the Attorney-General, Mr Corbell. Minister, can you advise the Assembly how many protection orders in the ACT are breached on a yearly basis?

MR CORBELL: No, I cannot. I will need to take the question on notice, Mr Speaker.

MR SPEAKER: Supplementary question, Mr Seselja?

MR SESELJA: Thank you, Mr Speaker. Given that there are a large number of protection orders breached in the ACT annually, why was it deemed necessary by ACT Policing to issue a media release on Wednesday, 25 June regarding a 35-year-old woman in Ainslie breaching a protection order, and is this common practice?

MR CORBELL: These are operational decisions made by the police. I would need to seek some advice from the Chief Police Officer as to the particular circumstances.

Planning—Turner

MR MULCAHY: My question is to the Minister for Planning and relates to the development of an unsightly area in Turner. Minister, I understand the Turner Residents Association has made a submission to the government to assist in the development of an area at the end of Sullivans Creek that is unsightly and in need of work. Minister, have you reviewed the submission and can you advise whether any consideration has been given to developing the area?

MR BARR: I thank Mr Mulachy for the question. I have seen some correspondence from the Turner Residents Association. I understand they had a public meeting last month on this matter. This is the first that I was aware of the detailed nature of the group's submission. I am very happy to consider the submission that has been put forward and will happily provide further advice to the Assembly once it has been given that full consideration.

Children—protection

MRS DUNNE: Mr Speaker, my question is to the Minister for Children and Young People and relates to the publicity of the removal of four children from their home by ACT Policing on 22 June and the associated press release issued by ACT Policing on Wednesday, 25 June. Minister, ACT Policing state in their release that the children were taken into custody of Care and Protection Services after police contacted them. Minister, what is the standard process initiated between ACT Policing and your department in cases when children are taken into custody and require to be relocated for their own safety?

MS GALLAGHER: The arrangements between ACT Policing and the Department of Disability, Housing and Community Services work very well. We work very closely

with the specialised team at ACT Policing that deals with child protection matters. In fact, in light of some of the issues that have come to our attention through the particular case that Mrs Dunne refers to, we have sought and have actually met with the police just to work through whether there are any issues that need to be resolved. It was an unusual case in that it was not the child protection team that responded in this particular case. That did lead to the child protection police who we normally work with very closely not dealing with this matter. As late as today, the chief executive of disability, housing and community services has met with ACT Policing to continue to look at that and work through any issues that have been raised by this case.

MR SPEAKER: A supplementary question, Mrs Dunne.

MRS DUNNE: Thank you, Mr Speaker. Minister, are you satisfied with the process between your department and ACT Policing, and are you satisfied that it was managed effectively in this instance?

MS GALLAGHER: I think there have been some issues brought to our attention through this particular case and the fact that the police who specialise in care and protection matters were not the police that responded in this instance. It has brought to our attention a number of areas that we want to work through further with the police. The police have been more than happy to assist disability, housing and community services with that. We will continue to work through that. But the concerns that I had that were shared by the chief executive have been brought to the attention of the police. As I said, there have been a number of meetings, including as late as today, to work through those.

Children—protection

MRS BURKE: My question is also to the Minister for Children and Young People, and relates to the removal of four children from their home by ACT police on Sunday, 22 June. Minister, how did the media come to be notified of the address of the children?

MS GALLAGHER: I am not aware of that. I understand there were reporters in the Magistrates Court, and that may be the way that that information became public. Certainly, I am not personally aware.

MR SPEAKER: A supplementary question, Mrs Burke?

MRS BURKE: Thank you, Mr Speaker. Minister, who authorised the media to film the home?

MS GALLAGHER: I do not believe anyone authorised the media to film the home.

Capital works projects

MS PORTER: My question, through you, Mr Speaker, is to the Chief Minister. Chief Minister, can you advise the Assembly about the success of ACT capital works projects at Friday night's MBA awards?

MR STANHOPE: Thank you, Mr Speaker, and I thank Ms Porter for the question. I am more than happy to inform the Assembly of the success of ACT capital works projects at Friday night's MBA awards. It is interesting that on Friday night we debated the budget and were aware during that particular debate of very serious doubts being cast by the opposition on the government's ability to deliver capital works. There was a very interesting comparison of the meagre capital works budgets of successive Liberal governments during their period in government with the record of this government, exemplified by the fact that in this last financial year this government delivered $340 million of capital works on the ground as against a Liberal Party average of somewhere in the order of $60 million a year during their period in government.

It is interesting that this government over the last financial year delivered on the ground in capital what the Liberal Party in government delivered in five years in toto. It gives some interesting comparison of the capacity or interest of the Liberal Party in infrastructure and capital that in five years in government they managed to deliver only the amount which we delivered over the last financial year.

In the context of that particular debate it was quite ironic that, as the Liberal Party were berating this government and this government's performance and actually drawing attention to the paucity of their own effort, the Master Builders Association presented its most significant awards night. I think we all regret that we were unable to attend this year.

I was particularly regretful, in light of the fact that two ACT government projects, most specifically, the Gungahlin Drive extension project, received the ultimate honour from the construction industry within the ACT. The Gungahlin Drive extension project was voted project of the year by the Master Builders Association. The ultimate, the crowning acknowledgement or achievement of the annual Master Builders Awards is, of course, the project of the year.

This year the project of the year within the Australian Capital Territory was an ACT government project, namely, the Gungahlin Drive extension. It is a significant acknowledgement by the construction industry within the Australian Capital Territory of this government's ability to successfully deliver capital projects, indeed, major capital projects.

I think there is no greater proof of this government's capacity to deliver a major project of outstanding quality than the fact that the Master Builders Association would grant the major civil project award, indeed, the major construction project award over the last year to the Gungahlin Drive extension—an ACT government project, and a very significant project that delivered seven kilometres of road and 10 bridge and underpass structures. It was an extremely complex project involving traffic management and major intersections and construction of various bridge types, including the 74-tonne super T spans—the largest made—and four bridges within 50 metres at three different levels. Considerable consultation was undertaken and it is a great acknowledgement of this government's capacity to deliver major projects.

In addition to the Gungahlin Drive extension, the Tidbinbilla Nature Discovery Centre won the environmental management project award for Iqon Pty Ltd. That is a civil environmental project combining landscape and building works that create an education centre for all ages. The government worked closely with the successful firms, the Federal Highway Joint Venture and Iqon, in delivering these two projects that were major winners of Master Builders Association awards.

The government is very pleased that two of its projects, most specifically, the Gungahlin Drive extension project, are regarded and judged by those most intimately involved in construction and development in the ACT as the No 1 project of the year. It is an ACT government project. The Gungahlin Drive extension is the number one civil construction project in the ACT. It is an enormous accolade, something in which we, with due humility, of course, acknowledge our small part.

MR SPEAKER: A supplementary question.

MS PORTER: Thank you, Mr Speaker. Can the Chief Minister advise the Assembly about the government's plans to follow up on the success of its future infrastructure program?

MR STANHOPE: Thank you, Ms Porter. Indeed, as is evident through the budget that was passed last Friday, the government is quite clearly committed to growth of the territory, committed to making the city world class and committed to improving the look and the feel of Canberra. We have a proven track record in delivery. Indeed, the Master Builders Association now regards ACT government projects as the best projects that are delivered within the ACT. We now have that status with project of the year. We deliver the best major capital or infrastructure projects of anybody in the territory. We acknowledge that quietly and humbly. That objective industry sector, the Master Builders, has not hesitated in acknowledging that it is ACT government projects that are the best delivered in the territory.

We have every intention of delivering more high-quality infrastructure. Indeed, as members would be aware, having just voted on and agreed to the $1 billion building the future infrastructure program which is a central feature of the budget that was passed this year for 2008-09, in addition to the $1 billion in infrastructure in building the future, there is, of course, the standard ongoing capital works budget, enhanced, too, through this particular budget. It is certainly by far the largest infrastructure program that there has been not just in the history of self-government but, in terms of municipal infrastructure, it is the largest ever.

It was as a result of this government's good financial management that we have been able to make this very significant investment in infrastructure in the future of the ACT. The government has achieved hard-won gains by pursuing reform and, through those hard-won gains, we are ensuring that the territory is ready to meet the future that awaits us all. The investment program will further increase the productive capacity of our economy, reduce future costs, provide for the continued growth of the economy and give Canberra a competitive edge.

As members, I am sure, are aware, the 2008-09 budget includes $300 million through a first-tranche investment to establish a health system for the future—$300 million of a first-tranche of a billion dollars over the next 10 years; $250 million for the territory's transport system, to increase its efficiency and meet the needs of a growing economy; $100 million for improvements to urban amenities; $50 million for cutting-edge information and communications technology; $100 million for adaptation to climate change; a $200 million boost to the existing capital works program to support growth, particularly in the land supply program; and $31 million in feasibility studies to plan for future infrastructure needs.

To support this stunning investment, the government is undertaking a number of actions to ensure the continued delivery of the infrastructure investment program. We are investing $51 million over four years on a range of initiatives to address the local impacts of the national skills shortage, including a range of initiatives aimed at addressing vocational and trade-based skills, including $4.2 million over four years to support vocational and education training through Australian apprenticeships in the ACT.

The successful live in Canberra campaign will also be continued, with $838,000 over four years to ensure that we continue to provide funding to raise awareness around Australia and the world that Canberra is a great place to live and work and to attract skilled workers.

The budget also includes $600,000 to replace ACT Procurement Solutions' dedicated IT business system, to improve the effectiveness of delivery of capital project management services by ACT Procurement Solutions to government clients.

We are also finalising a review of the prequalification system. A draft paper has been circulated to industry and other stakeholders for comment. The changes to the prequalification process are largely aimed at making it easier and more attractive to industry to bid for ACT government work.

We are also reviewing the template contract documents used for tendering, the aim being to simplify and shorten the procurement tendering process, provide greater clarity to contractors and provide greater transparency in relation to ACT government standard requirements.

All these initiatives are aimed at improving and enhancing the deliverability of our capital program and are aimed at turning a good system into a great system.

Indeed, to reinforce the basis of the question, namely, acknowledgement of ACT capital programs and acknowledgement by the Master Builders Association, the leading industry sector representing organisations in relation to civil contracts for construction in the ACT, at its major awards night last week, acknowledged the ACT government project, the Gungahlin Drive extension, was the project of the year, the No 1 ACT government project. We know how to deliver infrastructure; we know how to deliver capital works. We lead the ACT in the delivery of capital works infrastructure in the territory.

Canberra spatial plan

DR FOSKEY: My question, which is to the Minister for Planning, is in regard to the Canberra spatial plan. The minister would be aware that, when the plan was introduced in 2004, the commitment was made for its implementation to be regularly monitored, reviewed and updated. The plan stated:

> The first review will occur within two years of the adoption of the Plan, with the review to report to Government and be provided to the Legislative Assembly. Subsequently, monitoring will occur biennially and there will be a major review every five years …

I might have missed it, but can the minister advise if a review of the plan was conducted after two years, if it has been or will be provided to the Assembly, and what the time line is for the required five-yearly major review?

MR BARR: I do not have that detail in front of me, Dr Foskey. I will take it on notice and get back to you later this afternoon.

MR SPEAKER: Is there a supplementary question?

DR FOSKEY: Could the minister please assure the Assembly that the major review of the spatial plan will give specific consideration to wildlife and biodiversity corridors, particularly in the context of the proposed industrial corridor and the increasing commitment to medium and high-density development?

MR BARR: I thank Dr Foskey. I can certainly advise the Assembly that those matters will be considered. I can't say that they will be the highest priority in such a review, as there would be a range of issues that would need to be considered, but I am very happy to take those on board as part of the future policy review.

Gas-fired power station

MR SMYTH: Mr Speaker, my question is to the Chief Minister and concerns the proposed Tuggeranong power station and data centre complex. Chief Minister, the proponent's second block of preference was block 18 of 23, which was rejected because it was deemed unsuitable due to the discovery of Indigenous artefacts and the subsequent perceived time delays. Chief Minister, when was the investigation into the Indigenous artefacts completed, and is it now deemed suitable for development?

MR STANHOPE: I do not know that level of specificity. I will take the question on notice.

MR SPEAKER: A supplementary question, Mr Smyth.

MR SMYTH: Chief Minister, I assume the investigation has been completed and there are no foreseeable delays, because the land was advertised for sale in Saturday's *Canberra Times*. Have there been any discussions as to whether the proposed power station and data complex could now be developed on this block?

MR STANHOPE: I will take the question on notice, Mr Speaker.

Theft—motor vehicle

MR GENTLEMAN: My question is to the Minister for Police and Emergency Services. Minister, can you please inform the Assembly about the government's latest initiative to tackle car theft in the ACT through the expanded engine immobiliser scheme?

Mrs Dunne: How many times has he asked this question?

Mr Stefaniak: This is about the sixth time. Are you a slow learner, Mick?

MR CORBELL: It is disappointing that those opposite are not interested in the issue of reducing car theft in our community. Of course, they are not interested in practical solutions that help Canberrans on these important issues.

Mr Speaker, today I was very pleased to launch phase 2 of the ACT government's engine immobiliser program. This second phase expands the engine immobiliser subsidy to all Canberrans who own older motor vehicles. Previously, the subsidy has only been available to concession card holders and pensioners, who have received a full $200 rebate for the provision of an engine immobiliser. Of course, those opposite and other members would be aware that the installation of an engine immobiliser is the most effective way of helping to prevent a vehicle from being stolen, particularly in instances of opportunistic car theft.

Today, with the launch of phase 2, the subsidy is being extended to all members of the community who own an older motor vehicle, regardless of their income. Most vehicles manufactured around 1980 to the mid-1990s are not fitted with an engine immobiliser as standard, and this is an opportunity for owners of such vehicles to take advantage of this new rebate. The rebate is $100, which is 50 per cent of the cost of purchasing and installing an immobiliser, with the other 50 per cent being made available by the motor vehicle owner.

This is a significant program that is designed to help drive down motor vehicle theft in our community. Indeed, the ACT has seen a very significant reduction in motor vehicle theft since the program was first launched some years ago. Now, with its expansion, we are hoping to reach over 5,000 Canberrans who need an engine immobiliser fitted. This will make it one of the largest schemes of its type in the country. Given that our older motor vehicle fleet is only around 10,000 cars, we expect that it can have a very significant impact on the level of motor vehicle theft in our community.

The scheme is very easy for Canberrans to access. They simply need to contact Canberra Connect, who can then provide them with a voucher which they can then simply take to an accredited auto-electrician to have the immobiliser fitted. The auto-electrician will then redeem the voucher through the Council on the Ageing, which, in partnership with the ACT government, is administering the scheme.

Those Canberrans who are on a pension or concession card will continue to be able to access the full subsidy to the value of $200. There is no up-front payment for them at all. Those Canberrans who are not on a pension or who do not hold a concession card can now access a 50 per cent subsidy. I look forward to seeing many more Canberrans taking advantage of the engine immobiliser program as we continue to take steps to drive down the level of motor vehicle theft in our community.

Gas-fired power station

MR STEFANIAK: My question is to the Minister for Planning and concerns the Tuggeranong power station. What did you do to attempt to arrange fee relief, as you promised to do in your letter to Mr Mackay, on which you were questioned last week?

MR BARR: From recollection, I referred the matter to the Chief Minister.

MR SPEAKER: Is there a supplementary question?

MR STEFANIAK: Minister, did you or your office have discussions with anyone from the Chief Minister's Department regarding the provision of fee relief? If so, what was the nature of those discussions?

MR BARR: I am not aware of any discussions that took place. I would have to check with each staff member in my office to be 100 per cent assured that no staff member had any discussions, but I personally had none.

Gas-fired power station

MR PRATT: My question is to the Chief Minister and Treasurer. Last week, the Minister for Planning confirmed that he had referred an application from ActewAGL for fee relief for the Tuggeranong data centre to you. Have you made a decision as to whether or not to grant fee relief for this project as yet? If so, what did you decide? If not, when will you make a decision on this issue?

MR STANHOPE: I thank the member for the question. I will take the question on notice.

Disability services—funding

MS MacDONALD: My question, through you, Mr Speaker, is to Ms Gallagher in her capacity as minister for disability services. Minister, could you update the Assembly on negotiations with the Australian government for increased investment in disability services in the ACT, please?

MS GALLAGHER: I thank Ms MacDonald for the question. The ACT has done very well out of the latest deal with the commonwealth. I should start by saying it has been a very different way to conduct negotiations, compared with the previous federal government. In fact, we had been trying for over a year to reach agreement on the commonwealth-state and territory disability agreement which culminated in

Mr Brough, at the time, laying an ultimatum on the table at a ministerial meeting and then walking out. At this meeting, on 30 May, I think it was, state and territory ministers met with the commonwealth to talk on how we can better support families who require support and to talk about the allocation of the Australian government's $1 billion commitment to families, their carers and people with a disability.

Under the previous federal government, we had been told that whatever we put on the table the commonwealth government would match. As a result, the ACT government did inject $15.8 million in the 2007-08 budget into disability services. That money has already gone out and been allocated to families and to non-government organisations to provide additional individual support packages, more respite care, more accommodation support places and increased community access places.

Under the agreement that we have reached with the commonwealth, we will get $15.23 million to go to all of the areas that we had already applied money to; so we had our money matched. This is a really significant injection of resources into the disability sector. In addition, the commonwealth will provide us with $1.69 million of capital funding which will be used, again, to provide additional accommodation options.

Throughout the country, once all states and territories and the commonwealth's money is put together, it will provide an extra 2,300 in-home support places, 2,300 supported accommodation places, 9,900 individual support packages and 10,000 more, much-needed respite places. This has been a very significant result, I think, for families and people with a disability. Many people with a disability and their families were present at this meeting, awaiting the outcome because of the long delay in negotiating the commonwealth-state-territory disability agreement. But we have got through that now.

We have got a pretty good allocation. I am sure we would have liked some more; we certainly sought some more. But I think, at the end of the day, it was a fair result for the ACT. It will complement the money that we have already put into meeting our unmet needs that we know about and increasing the capacity of non-government organisations to provide further support options for people. We need to keep working on it.

One of the areas that we certainly know we need to do more on is post-school options and looking at those people that are coming through the education system and moving into needing further daytime support and accommodation support as parents age and the people with a disability themselves age. Certainly, I argued long and hard for a good deal for the ACT.

This agreement will deliver, over the next four or five years, an additional $30 million in funding for people with a disability, their families and their carers. I think it is an important achievement that we have been able to make, and we have been able to do it by federal, state and territory governments working together.

MR SPEAKER: A supplementary question, Ms MacDonald.

MS MacDONALD: I thank the minister for that answer. Minister, could you provide further details of the ACT government's investment in disability services?

MS GALLAGHER: The government's record on disability services is very strong. During the last agreement, the ACT government committed an additional 25 per cent of funding over and above what was initially agreed. We have increased funding overall by 69 per cent, so the budget has risen from $37 million in 2001-02 to $62 million in 2008-09. This was another area of chronic underfunding and under-resourcing from those opposite when they were in government. We have turned that around in just a few short years. In five to six years, we have managed to turn that around, and we now have an adequately resourced disability system, particularly now that we have the extra money coming from the commonwealth. We have not just stopped there. It is not just about additional money; it is around changing the way we deliver services. It is much more about individual needs; it is about individuals choosing their own support requirements and being able to pay for them.

We have also done a lot of work around the therapy services, including providing new buildings. It is to the credit of Disability ACT that, having come from a pretty dark background in 2001, it is delivering in 2007-08 what it is delivering with pretty high levels of satisfaction. There is always going to be unmet need. We know there is unmet need in the community now, and we need to continue to work on our processes to make sure that we can deal with that unmet need. It grows every year. The additional money that we have been able to secure from the commonwealth, along with the additional funding from the ACT government, will go a long way to meeting some of those support requirements that we know are out there.

In this area of government, I would always like to do more. It is a very hard area when you hear the stories from individual families of what their lives are like at home and how they struggle to care for people from time to time. But Disability ACT has a very good grasp on who those people are and is always looking at ways to supplement the resourcing that can be provided to those families.

The work is not yet finished. We need to do more; we need to get to those families that are struggling and that, even though they may be getting support, may not be getting the support they would like. This additional resourcing over the next four to five years will go a long way to meeting the unmet need that we are aware of in the community.

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

Supplementary answer to question without notice
Gas-fired power station

MS GALLAGHER: Last week in question time Mr Pratt asked me, "When was your department officially made aware of the proposed power station," and the answer is on 6 September 2007, "and its possible effects on the respite facility?" Those are yet to be established.

Papers

Mr Speaker presented the following paper:

> Study trip—Report by Mrs Burke MLA—Meeting of State and Territory Shadow Ministers for Health—Sydney, 23 May 2008.

Financial Management Act—instruments
Papers and statement by minister

MR STANHOPE (Ginninderra—Chief Minister, Treasurer, Minister for Business and Economic Development, Minister for Indigenous Affairs, Minister for the Environment, Water and Climate Change, Minister for the Arts): I present the following papers:

> Financial Management Act, pursuant to section 17—Instruments, including statements of reasons, varying appropriations relating to Commonwealth funding for the following Departments:
>
> Department of Disability, Housing and Community Services, dated 27 June 2008.
>
> Department of Education and Training—
>
> Dated 26 June 2008.
> Dated 30 June 2008.

I seek leave to make a statement relating to the papers.

Leave granted.

MR STANHOPE: As required by the Financial Management Act 1996, I table three instruments issued under section 17 of the act. The direction and statement of reasons for the instruments must be tabled in the Assembly within three sitting days after it is given. These instruments relate to the 2007-08 financial year. Section 17 of the Financial Management Act enables a variation to an appropriation to be increased for any increases in existing commonwealth payments by direction of the Treasurer.

Following receipt of additional funding from the commonwealth government, this package includes three instruments signed under section 17. The details are as follows: the Department of Education and Training received additional commonwealth funding of $953,000, consisting of $821,000 for joint schools and $132,000 for vocational education for ANTaR contracts; the department of education has also received $115,000 of commonwealth funding for investing in our schools program; and, finally, the Department of Disability, Housing and Community Services has received additional commonwealth government funding of $1.8 million, consisting of $1,690,000 for the commonwealth, state and territory disability agreement and $110,000 for supported accommodated assistance for the national child protection framework.

I commend the papers to the Assembly.

Financial Management Act—instrument
Paper and statement by minister

MR STANHOPE (Ginninderra—Chief Minister, Treasurer, Minister for Business and Economic Development, Minister for Indigenous Affairs, Minister for the Environment, Water and Climate Change, Minister for the Arts): For the information of members, I present the following paper:

> Financial Management Act, pursuant to section 18A—Statement of authorisation of expenditure from the Treasurer's Advance in 2007-2008.

I seek leave to make a statement in relation to the paper.

Leave granted.

MR STANHOPE: The Financial Management Act 1996 requires that I table a summary of expenditure under section 18 of the act. Section 18A of the Financial Management Act requires that where the Treasurer has authorised expenditure under section 18 within three sitting days after the end of the financial year the Treasurer must present to the Assembly a summary of the total expenditure authorised for that financial year.

The 2007-08 appropriation act provided $29,200,000 for the Treasurer's advance. The final expenditure against the Treasurer's advance for 2007-08 was $26,056,000, leaving a balance of $3,144,000 to return to the 2007-08 budget. I commend the paper to the Assembly.

Mr Smyth: Mr Speaker, could the Chief Minister move that the statement be noted, please?

MR SPEAKER: That is a matter for the Chief Minister. Mr Smyth asks whether you would be prepared to move that the statement be noted.

MR STANHOPE: I am not inclined to do that, Mr Speaker.

MR SPEAKER: Members, when I seek the chamber's authority for leave to be granted, it is warming to have so many enthusiastic yeses, but the one I am really listening for is the no. So silence would probably assist me.

Stanhope government—community consultation
Discussion of matter of public importance

MR SPEAKER: I have received letters from Mrs Burke, Mrs Dunne, Dr Foskey, Mr Gentleman, Ms MacDonald, Mr Mulcahy, Ms Porter, Mr Pratt, Mr Smyth and Mr Stefaniak, proposing that matters of public importance be submitted to the Assembly. In accordance with standing order 79, I have determined that the matter proposed by Mr Stefaniak be submitted to the Assembly, namely:

The Stanhope Government's performance in community consultation.

MR STEFANIAK (Ginninderra) (3.06): I am very glad I had an OzLotto quick pick tonight; I do not usually win these things.

This speech simply could take the form of a list. The record of the Stanhope Labor government is well known, and community consultation is not one of its strong points. One would need to look very hard to find any strong points. Indeed, the government's propensity to take a bulldozer approach to decision making has become a hallmark of its utter arrogance—and the community know it. We have seen it time and again, even in this place, when the bulldozer of majority government is fired up in the chamber to close down and stifle debate when the government does not like what it is hearing.

This bulldozer approach, this arrogance, is the single biggest complaint the constituents of all political persuasions make to us, and they make this complaint to us because government simply will not listen to them. I get sick of the number of stories I hear about government ministers who refuse to meet people to discuss issues of concern. It is very rare, I must say—and very concerning to me as a longstanding member in this place—to hear of a minister actually meeting people. That is good, that is what they should do, but it is so very rare you just do not hear it these days—and that, quite frankly, is pathetic.

Just last week we had the case of the public protest rally in Civic Square about the Tuggeranong gas-fired power station, and the best the government could do there was to send an anonymous adviser or two out to observe proceedings. The Chinese embassy do that with Falun Gong, and Mugabe sort of does more than that in terms of some of the things they do over there. That is not appropriate. No member of the government had the guts to face public opinion on this issue.

This government has forgotten that it is here to serve, to deliver, the needs of the people of the ACT. But how can a government deliver if it does not know what those needs are and it will not listen? The government's arrogance—its attitude of "we know better than you" or "we will deliver what we think you need"—is what will bring this government undone in October this year. And it this arrogance, this high-horse attitude, that has caused this government to fail the people of Canberra.

What is the government's response to that? Because this government has no answers, because it has no understanding of the needs and aspirations of the community, and because it thinks it can ride roughshod over that community, its only way out is to respond in desperation, and the government of course seeks to divert attention away from the real issues.

Recently, we saw the Chief Minister's apparently futile attempt to somehow draw the home address of my colleague Mr Seselja into a debate over the gas-fired power station. For what purpose? Does he hope these kinds of claims will magically change the entire news cycle? They might get a minute or so, but that is about it. The focus of the media and the people of Canberra is sharply on this government's failures, and will remain so because these failures are so obvious and are becoming more and more obvious every day.

The focus is sharply on the fact that this Stanhope Labor government is totally out of touch; the fact that it has had its chance over the last seven years to deliver and it has utterly failed the people of Canberra; and the fact that this government has grossly underestimated the intelligence of the people of Canberra, and indeed even the media. The people will not be fooled by a government that is so grossly out of touch with their needs and aspirations, their concerns about their lifestyles and their interests in seeing this city achieve its potential.

Let me go to the list. I am now going to speak about a very disturbing current example, and it is actually getting worse every minute. The most recent example is this government's failure to consult with local residents in Osburn Drive, Macgregor, on the installation of a roundabout at the intersection with a new road that leads into the west Macgregor affordable housing development. It would be handy if the minister for municipal services listened to this.

Let me first place something on record, before anyone opposite attempts to make some kind of news revelation about it: I live in Osburn Drive. I live a few houses up from the intersection of Osburn Drive and Archdall Street, which is a major thoroughfare between Macgregor and Dunlop, which carries a lot more traffic than this building road ever will and which has a give way sign and serves the purpose very well. I am happy to give you the house address: it is No 30. You can all come around for a cup of tea if you like.

The government's failure to consult might be because it thinks it is not a big thing, and maybe that is so for the government—but it is a very big thing for local residents. I have spoken to about 10 local residents in the last day or two. Let me take Mr Gary Schmidt; it is a big issue to him. He is concerned about a road that is going to cut into his nature strip, which will place the roundabout within about five to six metres of his bedroom window and which will cut virtually across a little pathway which children use to go to Macgregor primary. He is concerned about people who might take that roundabout a bit too quickly and about the five or six cars he reckons will probably end up in his bedroom before the year is out, because, I hate to say it, people do speed up and down Osburn Drive. It is a big issue to him.

It is a big issue to Deb next door to him, who today rang up and said, "They are already cutting down the trees." It is a big issue to people. Mr Schmidt, by the way, came home on Thursday night—he went away, I think, on Tuesday or Wednesday and nothing had happened—and on Friday morning he sees all these pegs, this huge roundabout, opposite where there is going to be this access road into west Macgregor.

None of the residents want the access road. There is a ready-built access road provision in Cannan Crescent, about three or four streets down, where there is a gate, and planners 30 years ago planned for a future suburb. You can do it from there. But the government have bulldozed about 30 trees or so of green space and there is this big vacant patch there, and now, to add insult to injury, they are putting in this roundabout.

I will read through the list I was given by these people: the roundabout will take out a fire hydrant; it will take out a couple of gas mains and stormwater drains; it will take

out a traffic light and it will involve cutting down five or six trees—they have already gone, guys. That was happening at 10 o'clock this morning, with no consultation, no warning; it is happening. It will cut off two footpaths and it will run within a couple of metres of a footpath used by local residents and students to get to Macgregor primary school. I was there yesterday and I saw two mums with prams, one mum with a few kids. They took the kids to Macgregor primary school and came back and they showed where they had to negotiate this roundabout.

It will go within 10 metres of Clode Street, and that is a turnoff that leads to Macgregor primary. It will be amazing to see how that operates. You will come out of the roundabout, do a little jig and you will be in Clode Street. That is an engineering nightmare, and I will come to that in a second. It will also cut off part of Mr Schmidt's nature strip. Yes, it might drop his property value, but that is not his major concern. One would expect, though, that he and other residents would be at least told that the government were thinking about it. But more worrying for him is the fact that cars will end up in his house. There has been one fatality in the area already because, as I said earlier, that street is an area where people do speed. It is the first roundabout in that street. I said earlier when I told you where I lived—Ms Porter knows this very well because she has a relative who lives opposite me—that Archdall Street is a major thoroughfare and it survives with one give way sign.

You people should talk to ordinary citizens and do your basic maths properly. One give way sign probably costs less than $1,000 to install. One monstrous roundabout that you are going to foist on the citizens of Macgregor is going to cost you probably several million dollars. Be it on your heads if anyone dies or is seriously injured; I warn you. You are the government, and a government that consults and talks to people is able to say: "Hold it. Stop. This is a bad idea. Let's have a think. Let's talk to people and see what they want. Let's talk to people to see what is reasonable." You have been warned about this. The TAMS minister was on WIN last night; he knows. He had a letter delivered to his office from my office in the afternoon to tell him about it. He needs to get out there and talk to these people—not at them, to them—to understand what is happening. He is able then to say, "Let's have a look at this; let's stop it."

Everyone is up in arms about this. Another bloke, Peter—I am sorry, I forget his name, but he is a plumber—lives opposite where the road is going in. He said he was talking to engineers, who said, "This is crazy." Gary Schmidt has spoken to police officers in the traffic area who said this will cause all sorts of bottlenecks, that it is unsafe. I have a great regard for the Australian Federal Police. I have a great regard for the men and women who form the Australian Federal Police. I worked with them for 10 years—probably more, because I did a fair bit of private practice too. They are well respected. You people even say how well respected they are.

Why don't you consult with them? Why don't you listen to them? Why don't you listen to them and other citizens as well? You do not, because you are too arrogant, you are too smug, you are a majority government and you just do not think anything is going to happen to change that. Well, let me tell you that I am not too sure what is going to make up the composition of the next Assembly, but it certainly will not be a majority government. Your arrogance has seen fit to put a death to that—and probably well it should too.

It is crucially important that you talk to local people. I would like to see Mr Hargreaves go out there and have a chat to Gary Schmidt, to Peter, to Deb and to the mums who take their kids to Macgregor primary school.

Mr Hargreaves: You're going to look really stupid in a minute, Bill.

MR STEFANIAK: I would like to see that, but you are too arrogant to do that and that is—

Mr Hargreaves: You are going to look really silly in a minute.

MR STEFANIAK: Jesus Christ, it is pathetic. You know, it is like—anyway, it does not matter.

Mr Hargreaves: Give us a shovel.

MR STEFANIAK: I am actually quite angry about this, Mr Hargreaves, because it is so utterly basic and this is an indication of the arrogance of your government. Rosemary Follett's government, which I thought was not all that bad, was thrown out because it was perceived to be arrogant. Let me tell you: they were about 10 times more humble than you lot. They were pretty tardy in terms of seeing people, but I think they saw a hell of a lot more than you would.

Farces like the community cabinet where you probably have a few select people come and see you—that is no good. You have got to go and talk to people. They will tell you things you do not like, and at the end of the day, if you feel that what you are doing is right, you stick by your digs. There is no problem there—absolutely no problem there. But you will not speak to anyone. You can go, Mr Hargreaves, but I will just tell you one other person you should talk to—Kay Hewitt from Revolve. It was fine for you to talk to her when you were a backbencher—

Mr Hargreaves: We are going up now to talk to Kay Hewitt.

MR STEFANIAK: I am delighted, minister. It has taken you four years—well done. For four years she has been trying to see you.

Mr Hargreaves: Have you been reading my mail?

MR STEFANIAK: It is the first time since you have been minister. It is now 1 July—

Mr Hargreaves: You don't want me to—

MR STEFANIAK: You are not going? I hope you are not misleading the Assembly there, Johnnie. It is 1 July and if you are doing that, thank God; it is better late than never. She has been trying to see you and the Chief Minister for the whole of this term and we have about 3½ months left in this term. That is pathetic. That organisation, which was started by a federal Labor government to help unemployed people get back

into employment, to encourage recycling, is a model. Mr Gentleman was there when we talked to a Welsh gentleman who thought it was just wonderful and said what a great shining beacon Revolve was to people throughout the world in terms of recycling. But the government made it as hard as possible for Revolve to get a release of what they were doing well at the Mugga tip and then tried to screw them over problems in terms of the 12 months site they gave them, hoping they would go away. I hope you have got some resolution to that one. I suspect you may have something in the pipeline there. I hope you do, but I doubt it very much.

You do not consult. The only time you attempt to do anything is when you react. When there is enough media pressure on you, you react because you think, "This is going to be a bad look," and you still do not consult. People should not have to go to the media to get action from a government. These simple basic things like Revolve, like the Macgregor tip, like even Macarthur, which has been the greatest botch of the century in terms of how you people have stuffed that up, can be resolved by simply talking to people.

They will not always agree with you. You will not always agree with them. You may have things you want to do, but you should put them on the table, talk to people about them and walk them through it. You nod, Mr Barr, and so you should. You should have done that with school closures.

Mr Barr interjecting—

MR STEFANIAK: You should have put on the table the fact that you were looking at it—instead of hiding it and springing it in the functional review, springing it after a memo from the then education minister sort of saying, "We'll have a look at a couple of things with schools, but nothing to do with closure."

Mr Barr interjecting—

Opposition members interjecting—

MR STEFANIAK: You sprang school closures on them.

Mr Barr interjecting—

MR STEFANIAK*:* That is your smug, arrogant attitude again; here we go.

MR SPEAKER: Order, members! Mr Stefaniak has the floor.

MR STEFANIAK: Thank you. If you had told people, "We have a problem here and we need to address it," that would have been different from what you said for 15 years, but who cares? At least you might have seen the light and said: "Yes, there is a problem. Let's talk about it. We will probably have to close some schools." You take the community with you—and you are not going to please everyone and you are not going to please probably a few people whose schools you close, but the rest of the community will say: "Well, at least we were consulted. We were told. They didn't leave us in the dark. They didn't treat us like mushrooms. They didn't spring something on us."

Gary Schmidt gave me a very good idea. He told me this government's idea of consultation is after a fait accompli. I do not think he actually got quoted on that on WIN, but I heard him say it and I thought, "That is a top line note; I will use it." It is so true. I have no idea how he votes and I do not particularly care; he is a concerned citizen. But he is frustrated. We talk to people who say they are Labor voters and they say they are utterly frustrated with your arrogance, your lack of consultation and the fact that you simply will not see people.

It is a hallmark of your government. And, by all means, from the opposition's point of view, continue—go for it. You are going to suffer at the polls because of it. But it is not good government. You have got a few months to redress that. You have got a few months to lift your bloody game and talk to people—talk to them, not at them. See people who want to see you and you might get somewhere.

MR STANHOPE (Ginninderra—Chief Minister, Treasurer, Minister for Business and Economic Development, Minister for Indigenous Affairs, Minister for the Environment, Water and Climate Change, Minister for the Arts) (3.22): It is interesting that Mr Stefaniak devoted almost his entire address regarding a lack of consultation to a specific example—namely, an example of road construction in Macgregor. We saw this, of course, featured on WIN television last night—a significant exclusive from Mr Stefaniak. Of course, the entire case developed by Mr Stefaniak is a complete fiction. It is actually deeply false. There were significant consultations on this particular development. It is quite remarkable that Mr Stefaniak—

Mr Stefaniak: Tell that to the residents, Jon, because none of them felt consulted.

MR STANHOPE: Well, let me just go through the consultation. The first round of community consultation occurred in October 2004. The second round of community consultation occurred in June 2006. The consultation was advertised in the Canberra *Chronicle*, in the *Canberra Times* and by direct letterbox drop in Macgregor and adjacent suburbs. Between 220 and 250 people attended the hut adjacent to Macgregor primary school for the community consultation on Osburn Drive. There were also 15 to 20 concerned horse riders who attended. Both ABC and WIN television attended the consultation, and both the ABC and WIN undertook interviews with the 220 to 250 concerned residents of Macgregor who attended the consultation.

The night presented information on site analysis, opportunities and constraints, planning principles and identified options, including vehicle connections in every direction. A number of issues were raised, including how much of the area would be developed, the impact of development on traffic, the implications for all roads and resultant traffic impacts. A site walk with members of the community was conducted in November, and, indeed, Mrs Vicki Dunne MLA, member for Ginninderra, attended the consultations.

We have just seen the charade of the entire 15-minute speech by Bill Stefaniak, resident of Macgregor, being about no consultation in relation to a specific

development in Macgregor, when there was a consultation meeting which was attended by up to 250 members of the community, which was advertised in every paper, which the ABC and WIN television attended and at which they interviewed residents and which Mrs Dunne attended. That was only the first of the community meetings.

At the second information session, there were between 150 and 200 members of the public, and they attended an information session at the Kippax library on this particular development. It included community group representatives from the Ginninderra Catchment Group, the Belconnen Pony Club, the ACT Equestrian Association and Pedal Power. Discussions around the concept plan followed. The major discussion that occurred was around potential impacts on existing residents and the protection of their amenities, most particularly amenities in relation to traffic.

We see today this false, concocted nonsense from Mr Stefaniak, embarrassed by his press release of yesterday that there was no consultation. There were two significant public meetings, letterbox drops in every suburb and advertisements in the *Chronicle* and the *Canberra Times*, residents were interviewed by both WIN and ABC television, and Mr Stefaniak's colleague, Mrs Dunne, attended the consultations. There was a site walk along the routes. Despite that, we have this nonsense today.

In Mr Stefaniak's presentation today on the notion of consultation, he concentrated almost exclusively on a particular example which is false. It is wrong. There were two detailed information sessions—220 to 250 attendees at the first and 100 to 150 at the second. In total, up to 400 people attended the information sessions to deal with this particular development. Yesterday Mr Stefaniak put out press releases, did a television interview as a resident of Macgregor and completely misled the people of Canberra, and today he comes in here and makes the same presentation on a major consultation. It actually makes the case about how well we do consult. The very example that Mr Stefaniak used—roads and traffic issues in Macgregor—to show that we do not consult is wrong. The facts are very different. I have the pamphlet that was distributed by ACTPLA in relation to this particular development proposal and the community implications of it.

Mr Barr: Turn to page 2 and the bit about the roundabout that's in there.

MR STANHOPE: Yes, that's right: a locality sketch. It is all there. It is in the documents delivered at the time and circulated throughout the suburb. The advertisements were included in the *Canberra Times* and in the *Chronicle*.

Mr Stefaniak: Look at it on the ground, Jon. Go out and talk to the residents, Jon.

MR SPEAKER: Order, Mr Stefaniak!

MR STANHOPE: Mr Stefaniak, you have just made the case for how well this government consults by picking an example that is entirely concocted. There was extensive community consultation on this proposal. I would be embarrassed too, Mr Stefaniak. Very rarely does a member of the Assembly make such a blooper. Rarely is a member of the Assembly guilty of such a serious and embarrassing

mistake as to actually use as an example for how the government does not consult which shows the exemplary way in which ACTPLA, in this particular instance, consulted with the relevant potentially affected community.

Mr Barr: There are five references to the roundabout in the master plan there. Table that.

MR SPEAKER: Order, Mr Barr.

MR STANHOPE: We will table these documents later. There are five references, the Minister for Planning tells me. It is actually raised no fewer than five times in the proposed master plan. This is the example that illustrates how poorly we consult! In the estimation of Mr Stefaniak and the Liberal Party, this is the example which goes to the matter of public importance—a failure of consultation. If the truth be known, it is actually a wonderful example or explanation or illustration of exactly how deeply the government consulted in relation to the roundabout, the subject of Mr Stefaniak's erroneous understanding, false press release and false commentary, including on WIN television last night.

Mr Stefaniak, you make the case: two rounds of community consultation, two public information sessions; advertisements in the *Chronicle;* advertisements in the *Canberra Times;* a direct letterbox drop; 220 to 250 people attending at the first meeting at Macgregor; 150 to 200 members of the community attending the second meeting at the Kippax library; every aspect of the proposal, including the roundabout, being fully disclosed, fully debated and fully discussed; and enormous community feedback being received. As you said in your presentation, Mr Stefaniak, it may be that there were some residents more significantly affected than others and who have a particular concern about a particular development. I do not dispute or deny that. But it is wrong to suggest that there was no consultation, that people were taken by surprise, that there was no forewarning. What more do you want than advertisements in the local press? What more do you want than public meetings that are open to the media at which both the ABC and WIN television attend and broadcast commentary from the community?

There was a high level of openness in relation to plans; there were maps; there were discussions; there was specific mention of this particular issue. I almost need to say or explain no more. I can give hundreds of examples of the level of detailed consultation that was undertaken. But Mr Stefaniak makes the case so superbly by using as an example something that is completely concocted and completely false. It is an example of how well we consult and of the extent to which our agencies go to to consult in relation to something such as the roundabout, the subject of his concern.

As I recall, for the last election campaign, the theme song backing for the then Leader of the Opposition, Mr Smyth, as he strode onto the stage to present the Liberal Party's campaign speech was Elvis Presley singing *A Little Less Conversation.* What was the campaign theme of the Liberal Party before the last election? The campaign theme of the Liberal Party before the last election was "stop talking and get on with it". They followed through the theme with Mr Smyth striding onto the stage to the sound of Elvis Presley singing *A Little Less Conversation*.

Mr Gentleman: "A little more action."

MR STANHOPE: That's exactly right—a little less conversation, a little more action. That was the Liberal Party theme at the last election. They were concerned that we were consulting too much; that we had developed the Canberra plan and the spatial plan and the economic white paper and that we had gone to enormous lengths to consult on all the constituent parts of those plans and that vision. That led the Liberal Party at the last election to campaign on the theme that this government talks too much; this government consults too much; this government engages in too much conversation. "In future, could we have a little less conversation?" Mr Smyth asked on behalf of the Liberal Party at the last election. It is amazing!

Just four years ago in another election campaign or context, the Liberal Party's election theme and election song backing up Mr Smyth was Elvis Presley and *A Little Less Conversation*. They wanted a little less conversation; they wanted a little less consultation; they wanted more action, they said. We ought to just reflect on the fact that the Liberal Party went to one election asking for a little less conversation and a little more action. I must say that the people of Canberra responded mightily when they invested in us. They voted on that occasion like their lives depended on it. They voted for me and my colleagues.

We have seen today a good amount of eye rolling and drum beating by Mr Stefaniak about the fact that we do not consult. They stand here today, at the depths of their hypocritical souls, arguing against the evidence that the government does not consult. There is enormous evidence of the extent to which the government consults, and Mr Stefaniak has given wonderful focus and attention to the extent to which we do consult through his one and only significant example today—namely, Macgregor. That issue was consulted on and consulted on: two major public meetings attended by significant numbers of residents and a whole planning study done.

As we move on to another election campaign, it is relevant that the theme has changed from a little less conversation, a little more action to: "Look, we tried that last time, it didn't work. We are trying a different approach and a different attack this time round in the election campaign. We'll forget the mantra and the song from the last election and we'll try this new approach. We'll just basically concoct examples where there was significant consultation but where we have identified some people who were not particularly happy with the outcome of that." As Mr Stefaniak himself said, there will always be someone that is most particularly affected or most particularly concerned. In the nature of life in a metropolis, in a city, one of the great and difficult issues is to balance the competing needs and the competing ideas of the entire community.

Unfortunately, there are decisions that have a disproportionate impact on some, but they are decisions that are taken in the interests of the community. Governments, of course, govern for the entire community, and governments must make decisions from time to time that have a disproportionate impact. It is a pity; it is to be regretted. But more often than not it is unavoidable in relation to issues around, for instance, the noise impacts of road location. That is something that governments grapple with all the time. We had it with the GDE—the need to build a major piece of road

infrastructure such as the GDE but to be able to respond to concerns from certain residents about the disproportionate impact of noise and emissions from cars. It is always a struggle that any decision maker or government has.

In terms of consultation, it is wrong to suggest that we have not gone to enormous lengths to consult, whether it be on Macgregor, whether it be on affordable housing, or whether it be on climate change and the major reports and developments that we include in relation to that. Another example is the feed-in tariff. Mr Gentleman has worn out a pair of shoes consulting on the feed-in tariff. We consult on almost every policy initiative we pursue, whether it be in relation to the laws and regulations around body piercing and tattooing, the concessions regime, disability services, a review of the Liquor Act, roadside drug testing, the security of our water supply, the creation of an Indigenous-elected body, the recognition of same-sex relationships, the children and young people legislation—the legislation we are debating today—and whether or not to ban fireworks. The consultation continues. We are currently consulting on future housing developments in north Weston, and we consulted for years on the new planning legislation, the new bus network and on plans for the Canberra centenary. We consult on every single policy initiative that we pursue. *(Time expired.)*

DR FOSKEY (Molonglo) (3.37): Consultation is one of those areas on which governments can always be caught out. In opposition, parties and members tend to speak very highly of its value; and usually there is plenty about which to be critical of the incumbents on this matter. In government, consultation seems to become an impediment to government decision making—a drag, something to be given token attention, if at all. At least, that is what I have observed. What I have also observed is the government getting into political hot water because it has failed to talk to key constituencies. I have also observed that the best decisions have not, as a result, been made.

Let us start off with consultation on bills. In 2005, I moved a motion which, had the government and the opposition supported it, would have required an explanatory statement for every bill, detailing the consultation which had been done. Time and again, when my office is consulting on legislation that we need to vote on, I have found that the key organisations have often not been consulted. But it would be helpful if organisations that were consulted were listed in a compulsory explanatory statement.

The opposition voted against my bill in 2006, primarily, perhaps, because the Liberal members did not want to have to produce an explanatory statement. On the one hand, Mr Stefaniak in his speech at the time paid little attention to the consultation elements of the bill. On the other hand, Mr Corbell, in replying for the government, implied that the bill did not go far enough because it did not require the results of consultation to be recorded. But I would have happily agreed if he had amended the legislation to include not just the names of the groups consulted but what they said and why it was not heeded.

I agree with Mrs Dunne about the superiority of the New Zealand process for the scrutiny of bills. When I represented the ACT Legislative Assembly scrutiny of bills

committee in Wellington last year, I was impressed with two things in particular: the human rights scrutiny of bills over there, which is reported upon in detail, unlike our throwaway "compatibility" statements, and the exhaustive process of committee inquiry into legislation. However, while we have only 17 members, I believe it would be very difficult for us to require every bit of legislation to go before the appropriate committee, although I do believe that we are long overdue to have better reporting on human rights compatibility.

The government still has an uneven approach to consultation on legislation. For instance, the bill that we may be debating today on housing assistance—we may not be debating it today; we may be debating it on Thursday—did not benefit from advice from the peak body on housing in the ACT: Shelter was not consulted. And remember that Shelter has been made responsible for community housing and given extra funding to take on that role. It might have been forgivable if ACTCOSS had been consulted, but it was not.

However, the other bill that we are debating today—the Children and Young People Bill—has been through an exhaustive process of consultation. Sure, it is long and legalistic, but my office could find little to amend after our own thorough reading and consultation. While we have concerns, we are saving them until we see how the act works on the ground. I refer to whether the alcohol and drug and mental health checks for parents called for in section 487 are onerous and incompatible with our human rights legislation, and whether children are adequately consulted about their future.

One might say that the planning and development legislation voted on earlier this year went through an exhaustive consultation process, too, but I would maintain that some groups were listened to more than others and that many people who will be affected do not at this point even know that the legislation exists.

It seems to me that there is a very spotted record between agencies and across departments in the government. I would commend the government's own community engagement manual to everybody. If that were followed, we would not be standing here today and complaining about consultation.

Let us look a little further at consultation on planning decisions. I have spoken at length about this topic in the Assembly. With the last iteration of the planning and development legislation, we have seen the death of proper community consultation on planning issues in the ACT. Never mind that the minister will cite statutory processes; we have seen ample evidence that the public on the whole will not find out about issues that concern them until the yellow notice goes up on the fence. Even then, they might not be bothered looking it up on the internet to find out how it affects them, so they will be taken by surprise when the new building goes up, or when they find out that the consultation period is over, or when they find out that they have no right to complain about it at all.

While I am on this topic, why don't advertisements in the *Canberra Times*—expensive as we know them to be—tell the reader the location of the development application that they are advertising? Why doesn't the yellow sign on the construction site-to-be say what kind of development is planned? It is hardly a transparent communication process.

During my time in Canberra, I have long had an interest in planning. I have seen LAPACs and neighbourhood planning processes, and I have seen the death of LAPACs and neighbourhood planning processes. I have read Meredith Edwards's review of stakeholder engagement in ACT planning—a very useful report which disappeared, not long after it appeared, from ACTPLA's website. And I viewed the sorry response to it, where resource-strapped community councils are now at the front-line of community engagement on planning in their towns. I have seen presidents and other office-bearers of community councils burn out and observed how difficult they are to replace, due to the very high volume of voluntary work expected of them.

The latest fiasco which exemplified the conservative approach of this government to consultation in planning was the gas-fired power plant. Enough has been said about that for me not to go into it, I believe.

Too often, consultation comes too late and is too little. This was frequently stated by the stakeholders who were consulted by the National Institute of Governance. At the big end, of course, we had the consultation which led to the Canberra spatial plan. Why did that not set a framework for the location of big utility projects like the gas-fired power plant so that residents could get in and have their say, long before their legitimate concerns are dismissed as self-interested, which is how the government seems to have responded to the Macarthur residents?

Of course, there is concern that the spatial plan, about which such a big deal was made at the time, and about which a very large number of expensive urban and non-urban studies were conducted, has been forgotten as soon as it was printed and as soon as the election was over. I am interested in what the Minister for Planning will now come up with, but we are meant to have had a review two years ago, and we are meant to be having a total and close look at the plan next year.

So how can people have faith? We need to question whether ACTPLA, without more resources and a conscious objective to improve its social planning and community engagement, does have the capacity to engage adequately with the community. Edwards pointed out:

> Effective community consultation is demanding and difficult, requiring considerable skill, persistence and good will. It is not typically a skill set planners, developers or bureaucrats acquire as a matter of course in their professional development.

Let me read to you "A planner's responsibility to the public", which is cited by Edwards and which was spelled out by the Ombudsman and Information Commissioner for Ireland in 1978, and cited in 2003:

> A planner's primary obligation is to serve the public interest. While the definition of the public interest is formulated through continuous debate, a planner owes allegiance to a conscientiously attained concept of the public interest, which requires these special obligations:

> 1. A planner must have special concern for the long-range consequences of present actions.
>
> 2. A planner must pay special attention to the inter-relatedness of decisions.

There is quite a lot more said here, Mr Speaker. I think that what is true for planners is true for all policy makers. The quote continues:

> 3. A planner must strive to provide full, clear and accurate information on planning issues to citizens and governmental decision-makers.
>
> 4. A planner must strive to give citizens the opportunity to have a meaningful impact on the development plans and programs …
>
> … … …
>
> 6. A planner must strive to protect the integrity of the natural environment.
>
> 7. A planner must strive for excellence of environmental design and endeavour to conserve the heritage of the built environment.

I commend that because it is not just an obligation for planners; also, government, bureaucrats and other policy makers do have an obligation to engage.

MR SESELJA (Molonglo—Leader of the Opposition) (3.47): I thank Mr Stefaniak for bringing forward this very important MPI today. The issue of consultation is a critically important one. It is critically important that governments are engaged with the community that they serve. It is critically important that governments honour their election promises and it is critically important that they do give the community a say in major decisions that will affect the day-to-day lives of Canberrans. These are fundamental principles. These are principles which we certainly believe in, and they are also fundamentally issues that the government has failed on, and failed on in a number of demonstrable ways.

There have been a number of different models of consultation from this government. It is worth reflecting on a couple of the different ways of consulting that have occurred. In relation to school closures, it is the "consultation to cover the broken promise" model, which is essentially a matter of going to the election, promising not to close schools and then, after the election, consulting on just how many schools you should close. So instead of being honest and up-front at the election about the plans, instead of being fair dinkum with the community, you then reduce consultation to a sham by saying: "Well, how many schools should we close? We think 39. What do you think?" In the end, of course, the magic number they came up with was 23.

That is not real consultation. Real consultation in that regard would have been to go to the election and be honest by saying: "We believe we need to rationalise the number of schools. We believe these schools need to close. You make your judgement about our policy." That would have been the honest and decent thing to do, but we did not see that. This is the "consult to cover for the broken promise" model.

Even putting that aside, even putting aside the breach of faith that that represents, the community was very concerned. The minister talks about the number of meetings that he went to, but we know that in many instances people were not really listened to. We know that in relation to particular schools they were not able to be given actual reasons why their school should close. Instead there was just the broad statement, "Well, we need to close schools because we've got all these empty desks." That is a failure of consultation. That is perhaps the most fundamental failure of consultation, but there are many more.

We saw the issue of pay parking at the hospital. This is more that can be put in the box and you can say that, if you had asked anyone in the community whether it was a good idea, you would have realised it was a dumb idea and you would not have done it. If you had actually had consultation, you would have realised very quickly what a ridiculous proposal this was—to have pay parking at the hospital on Saturdays and Sundays, on Sundays until 8.00 pm, when you do not have to pay for parking anywhere else in Canberra. Yet, at our hospital, if you were visiting a sick relative, you had to pay for parking.

That is in the category of: "If you'd asked any half-sensible person to tell you what they think about that, you would have known it's a dumb idea and not done it." That is where decent consultation may have been appropriate, although many would argue that those charged with making decisions on behalf of the community probably should have known that was a dumb idea. They probably did not even need to consult on that one. They could have just said: "No, that's a dumb idea. We reject it. We won't even bother to pursue it." Of course, this government did pursue it and then we saw the backflip once they realised what a dumb idea it was.

Probably the worst example of how this government treats the community was in relation to the Griffith library model of consultation. The Griffith library model of consultation is to say, "We would have consulted but we knew what you would say." The government essentially is saying: "The community is not going to like it; therefore let's not consult on it. Therefore, let's just ram it through." Once again, that is where we go back to the first point: it is incumbent upon governments to be honest about these issues before an election and take some of these things to the community. Of course, we have not seen that level of honesty, but we have seen from Mr Hargreaves a statement of principle as to what this government stands for and as to how this government treats the community. We could perhaps put it more eloquently—and this has been paraphrased in a number of ways—by saying, "We didn't consult you because we knew what you'd say." That is the model of consultation from this government. We have spoken at length about the way they treated the Tuggeranong power station issue—how poorly that has been handled.

I did want to go to another model of consultation, and that is the Tharwa bridge model of consultation, which I am sure Mr Pratt will have something to say about when he speaks. That was this sort of model of consultation: "We'll consult and we'll tell you stuff that's not strictly true. We'll tell you that if we don't build a different bridge, this bridge will fall down and then we'll use that against you." You give the community false information and then the community comes back and says, "I guess in that case,

if it's going to fall down, we may as well replace it." It turns out that that information was wrong. It turns out that the information that was given to the community was wrong. That response from the community, based on a false premise, is then used against the community. We saw the attempts to shift the blame onto the Tharwa community by the ministers involved there.

This is another model as to how the Stanhope government treat the community. They consult with them, they do not give them the full story, then they use the people's response, on the basis of that false information, against them, as a reason to dismiss them and to blame them for what was clearly a major stuff-up by this government.

The fact that the Chief Minister eventually—clumsily, it has to be said—stepped in in relation to this process and we got, after an inordinate amount of time going back and forth—

Mr Pratt: Two years.

MR SESELJA: After two years, we reached the position where we should have been in the first place. Once again, a cynical model of consultation was used to cover the government's tracks when they get it wrong: try and blame the community that you've consulted with, even though you didn't give them the full picture when you did consult with them. That is another brazen example of this government's attitude to consultation. It is another brazen example of this government's dismissive attitude to the concerns of the community.

I think we know why they felt they could treat the people of Tharwa in this way. It is because of the numbers. The message we have had throughout is: "If you don't represent a massive enough constituency, we will ignore you." It is reasonable to ignore the people of Tharwa because you can say: "Look, there's not many votes in Tharwa. There's only a bit over 100 or something." I remember Labor Party figures saying to me: "Why are you guys pursuing this? You're not going to get many votes out of it." Mr Pratt pursued it because of the principle. He knew there were not many votes in it for him, but he pursued it because it was the right thing to do.

Even in their small numbers, Mr Pratt needed to represent their concerns and their interests, and Mr Pratt did that in an absolutely exceptional manner which showed up his opponents, and which showed up the minister, who eventually had to be bailed out by the Chief Minister. Of course, in doing that, we saw the blaming of the community for daring to make a decision based on the false information that they had been given by the government.

I will finish off on the school closures issue. We have now had another consultation process about what should be done with the sites. The strongest piece of feedback coming from the community is that, firstly, they would like the schools reopened and, secondly, if they can't have their government school reopened they would like the site to be considered for non-government schools. And what is the response of the government? "Well, you can have some halls, you can have some parks." They are all nice; there is nothing wrong with a hall or a park, but the community did not ask for that. What they said was: "Please reopen our school. If you can't reopen our

government school, why don't you allow a non-government school to come in, because we would like there to be a school in our neighbourhood?"

Once again, consultation was undertaken, the clear feedback came from the community and the response from the government was to dismiss it and to give them something they did not want and that they never wanted. You do need to question why they bother to go through these processes for so long when they ignore them consistently. *(Time expired.)*

MR PRATT (Brindabella) (3.57): A litany of events has proved to the Canberra community that the Stanhope government has failed to adequately consult with the community on major projects. This is not a one-off occurrence. This is habitual behaviour that has resulted in a complete loss of faith and trust by this community in this government.

The power station, of course, is probably the largest example of this failure to consult, and in many respects the starkest! There was no consultation with residents who would have been only hundreds of metres from a power station that could well have emitted dangerous toxins, not to mention significant noise pollution. If residents trusted their local member, Mr Hargreaves, they would continue to believe his learned explanation that the noise generated would have amounted to that of a home air conditioner. In one of his emails to a constituent he states:

> Thanks for your email. I would be interested in your views on the new proposal which is to locate the actual large power station…The power modules for the new proposal are 2 x 14 megawatt units …

and so on. Then he says, in the most colourful way:

> I am informed that the gas emissions from the new proposal are less than those from a gas fired air conditioning unit in a residential home.

Can you believe, Madam Assistant Speaker, that the emissions from 28 megawatts—if you believe that all 42 are not going to be switched on—would amount to no more than an air-conditioning unit in a home? That is the sort of so-called consultation that is actually a deliberate mislead. The only problem here is that the person he was misleading happened to be an environmental scientist. He was well and truly caught out there.

Of course, the fundamental failure to consult goes to the nine public notices issued by a variety of government agencies and ActewAGL from October 2007 to April 2008, only one of which was very specific in detailing the actual proposed site mentioned in the *Canberra Times* story of 20 December 2007, which did, in fact, mention a site west of the Monaro Highway. Every other notice talked about Hume in general. It is no wonder that 330 people turned up on 28 April—only seven days, by the way, before the initial ACTPLA feedback consultation process was due to close, and a significant number by any measure in this town—to express total ignorance about a $2,000 million gas-fired project with 210 megawatts of output emitting 255 microcells per metric tonne—one half of one per cent below the national standard. Talk about flying by the seat of your pants, Mick—a project of that size located

within 600 metres of residences! So much for this government's consultation, and the rest we know about.

The Leader of the Opposition spoke at some length about the fait accompli decision on the Tharwa bridge. I think I advised him that this has been going on for two years, but really it is almost a three-year debacle. The preliminary phase in 2005-06 saw the bridge closed, reopened, closed, a bit of strengthening, a bit of light traffic and hemming and hawing about what to do about the bridge while keeping the community entirely in the dark.

They did not consult metre by metre with the Tharwa community about what options might be available for that bridge. Then, in about October 2006, the minister turned up at the Tharwa community. It was one of his few visits, by the way, to the Tharwa community. He turned up there in October 2006 and said: "Gee, you guys, this bridge is about to fall into the river. We need a concrete bridge." What he did not say, of course, was that he wanted to build an icon—a concrete memorial to himself and his glorious Chief Minister. The motive overrode any sensible attempt to consult; there was little prior consultation.

By 2007 the community of Tharwa had accepted the minister's advice that they had no choice but to have a concrete bridge, although that decision split the community. Half the community still really believed that that bridge could have been restored. Tensions were created by no prior consultation and bad leadership by the minister and the government. Finally, it became quite clear that the engineering evidence indicated that the bridge could have been restored—that if the right decisions had been made in the first place, if careful analysis had occurred and they had listened to the engineering and heritage council advice, they could well have come to a better decision much earlier and put the community out of its misery. One has to wonder, indeed, whether they deliberately dragged the chain to save the budget. I suspect there was a bit of that involved, too.

The Leader of the Opposition went quite carefully through one of the worst examples of no consultation—the Griffith library saga. I was actually a witness on the day that the minister, the same hapless minister that we have seen with his fingers all over the bridge affair, stood there on a Saturday morning and said to about 200 people, "Well, we knew what youse would say, so why would we bother to consult?" They knew what the answer would be, so they did not bother to consult. What a statement to make to the community. What sort of confidence does that give a community that this is a government fair dinkum about consultation?

All these bald statements that we have heard here today about what a wonderful government they are for consulting is just so much dust in the wind. It is a sham process. If they are talking about consultation this month it is only because we are three months out from an election and their own polling has shown that they have got a disastrous reputation for consultation and that for the last 3½ years they have taken the community for granted. This is a government that knows better. This is a government of experts and mates—old Labor mates—and they know better than you, the community. "Take what you get, community, because we will tell you what you can have and we will play the game around that."

Then, on the other hand, we see a shared consultation process with random roadside drug testing. If ever there was an issue where you do not need much consultation, this is it. Random roadside drug testing is a life and death matter. When you have got life and death matters you do not waste time with long, blown-out, convoluted, sham consultation processes. Why are they going through that now? It is because they want to delay the sensible decision that they know they should have to make. When you want to delay a decision you go through a so-called consultation process.

Here is a classic example of where there need not have been a significant consultation process at all. Instead, ministerial leadership should have been exercised. Again the hapless minister for municipal services—passion fingers—has his fingers all over this one. It is a sham consultation process because he cannot make the decision to provide safe roads for the majority of Canberrans. He is too tied up with the civil liberties to make a decision. He is all at sea. When we need consultation on environmental, social and community issues, we do not have it. When they need to make a fast decision on a life and death issue and they have got all the evidence available from a multitude of sources, they cannot make a decision and they go into a sham consultation process. *(Time expired.)*

MADAM ASSISTANT SPEAKER (Mrs Dunne): Order! The time for discussion of the matter of public importance has expired.

Children and Young People Bill 2008

[Cognate bill:
Children and Young People (Consequential Amendments) Bill 2008]

Debate resumed.

MR MULCAHY (Molonglo) (4.07): This is an important bill, of course, and one which has been brewing at least since the review of the Children and Young People Act in 2002. It is an important bill because it is the culmination of a long period of review and consideration and because it makes significant changes to the current provisions for the protection of children in the ACT. There are few more emotive subjects than the protection of children and there are few more important matters for consideration by this Assembly.

It is an unfortunate fact that some children in our society today are robbed of a chance to enjoy their childhood, and to grow into happy and secure adults, by negligence or abuse. It is certainly true that the primary responsibility for the nurture and rearing of children must always lie with families. However, the government must ensure that basic standards of law apply to ensure that serious negligence and abuse are not tolerated.

This is probably one of the more significant pieces of legislation that we have dealt with in this Assembly, certainly one of the most voluminous that I think I have seen in my time here. From its sheer size, we can see that this is a bill that will make a great deal of change to existing territory law. I will not have time to speak about every change in the bill. Many of the amendments are of a technical nature. Many have been

covered by the Minister for Children and Young People. However, I will speak about some aspects of the bill which I support and I will also be moving an amendment regarding one aspect of the bill that I do not support.

I am glad to see that the bill introduces quite comprehensive reporting provisions, including mandatory reporting provisions for health professionals, mandatory forwarding of reports from the Public Advocate to the chief executive of the Office of Children, Youth and Family Support and provisions for prenatal reporting on anticipated abuse and neglect. I understand that the reporting of anticipated abuse and neglect during the prenatal period is consistent with the view that the early response is critical to ensuring the wellbeing of children. This view seems to me to be a correct one. Whilst I have no professional experience in the area of child protection, it seems to me to be common sense that the earlier we act on a problem, or an anticipated problem, the greater our options and the greater our chances of success.

One particularly worthwhile aspect of the bill is the provision for reporting of anticipated neglect or abuse of a child which has been conceived but has not yet been born. The bill allows the chief executive to receive prenatal reports and to provide information to the person who made the report. This bill makes provision for cases in which the chief executive has consent of the pregnant mother and for cases where consent is withheld. My declared position, along with others, about the importance of protecting life in the womb is well known in this place.

Abuse or neglect might be anticipated in the prenatal period in circumstances in which a parent, particularly the pregnant mother, has a history of drug or alcohol abuse and there is a continuing danger of this kind of abuse. Abuse or neglect might also be anticipated in the prenatal period if the pregnant mother has previously been the victim of domestic violence from the father of the child.

These provisions ensure that the chief executive is able to begin to consider and deal with possible neglect or abuse before it arises. In some cases, it is possible that even the investigatory aspects of these provisions might provide a wake-up call to a pregnant mother who is asked to provide information pertaining to her circumstances.

The bill also ensures that prenatal information is regarded as sensitive information under the act and is subject to the protections applying to all sensitive information under the act. This is important to uphold the privacy of the mother and father of the child and to ensure that reports are not used improperly.

One of the things I would have liked to see in this bill is some greater provision for transparency about instances of abuse of children that are in the care of the Office of Children, Youth and Family Support. It seems to me to be imperative that we are able to ensure that instances of abuse in government care are reported frankly and fearlessly and are able to be scrutinised by outside bodies. While it is obviously important to ensure the privacy of children in government care, I think we also need to be able to ensure that government care is sufficiently transparent to ensure that instances of abuse are dealt with.

One of the other important changes that this bill introduces is criteria for therapeutic protection orders which allow the chief executive to confine a child or young person over the age of 10 years old to a therapeutic protection place if they pose a significant risk of significant harm to themselves or others. The requirements for such an order are quite strict, as they should be, for an order that will result in the loss of liberty of the child. Before making an order, the Children's Court must be satisfied, amongst other things:

> (a) confinement of the child is necessary to prevent the child engaging in harmful conduct:
>
> (b) there is no-one with parental responsibility who is willing and able to prevent the child from engaging in harmful conduct; and
>
> (c) the chief executive has tried or considered less restrictive ways of dealing with the child without success.

The bill also allows the chief executive to confine a child for up to two working days, without a therapeutic protection order, if the chief executive reasonably believes that the child or young person is in need of emergency therapeutic protection and meets the criteria for an order. This means that the government is able to take emergency action in situations where time is of the essence and there is an immediate risk of harm.

I am glad to see that the explanatory statement makes it clear that this is a measure of last resort and should be used for the shortest necessary time. I presume that, in such emergency situations, this urgent confinement will be used only to allow time to prepare and present an application to the Children's Court for an actual therapeutic protection order.

The bill includes detailed provisions on juvenile crime and sentencing. I note that, in the minister's presentation speech on this bill, the minister referred to rehabilitation as the primary purpose of sentencing young people but also referred to purposes such as community safety and accountability.

In dealing with young offenders, it is very important that all concerned realise the dangers of allowing children to grow up into a life of crime as adults. Rehabilitation and accountability go hand in hand in this endeavour and it is crucial that young offenders are given a clear demonstration of the serious consequences that await them if they continue to commit crimes into their adulthood. At this age, when long-term criminal habits are not yet formed, it is imperative that young offenders are confronted with the enormity of the choices that they are making and the long-term effects that those choices will have on where they end up in life. My own inclination is that one cannot separate accountability from rehabilitation at all unless the latter is merely code for some kind of coddling approach.

Young offenders are more amenable to be turned off the path of crime than adult offenders who have formed long-term criminal habits but they absolutely must be

held accountable for their actions. And it must be demonstrated to them that, if they continue with a life of crime, things will get worse and worse for them.

I am glad to see that the bill provides for a range of matters to be taken into account in sentencing young offenders, including recidivism. I am also glad to see that the courts are granted the power to impose good behaviour orders, including conditions such as education conditions, accommodation conditions and rehabilitation conditions. The bill also makes clear that juvenile offenders should not be put in custody with adults, and I am very glad that this is spelled out clearly in the bill.

I will be supporting this bill. While I have some concerns about how it is applied I think that, so long as the government is sensible in its application, the bill will assist in matters relating to children and young people. I will, however, be introducing an amendment to the offence provision in section 740 which I will speak about shortly.

MR SESELJA (Molonglo—Leader of the Opposition) (4.16): It is a pleasure to be speaking to this very significant bill today. Whilst this bill deals with a whole range of matters, I think all of us in the community are conscious, particularly at the moment, of the real issues that exist in relation to the care and protection of young children in our community, not just in Canberra but nationally. It is disturbing, to say the least, I think for parents, in particular, to be seeing the news reports that we have been seeing in recent weeks and months—the cases of neglect and alleged neglect of young children in particular.

We know that the best protection for young children is a loving family. It is only when those families, for whatever reason, fall down in their protection of those children or their care of these children that the state is forced to step in. It is always in less than ideal circumstances that that occurs.

We in the opposition certainly acknowledge the real challenges that are faced by the care and protection workers in stepping in in those circumstances, because there simply is too much of that. It simply should not be the case that the state has to step in as much as it does. But unfortunately that is the scenario that we are faced with every day, it would seem, both in the ACT and around the country.

The Children and Young People Bill 2008, once enacted, will become the primary law in the ACT which provides for the protection, care and wellbeing of children and young people in the Australian Capital Territory. The bill addresses a range of areas that impact on the lives of children and young people and how we all interact with children and young people in the territory, such as children and young people using childcare services, children and young people in employment, children and young people involved in the criminal justice system, and children and young people for whom there are care and protection concerns.

The bill, once enacted, will be the largest of its kind in the history of self-government and, by implication, we certainly do hope in that circumstance that lumping a number of different issues together into the one act does not end up causing more complexity than we would like.

In terms of specifics, I do wish to go to the length-of-sentencing provisions in the current legislation and those contained in the bill before us. The current legislation, which is being repealed once this is enacted, contains a statutory remission system which can permit a young offender subject to a detention order to be released on licence if, for instance, they have been of good behaviour whilst detained.

Section 133G, part 1.5 of schedule 1 of this bill, removes this scheme on human rights grounds because it is allegedly inconsistent with human rights, primarily because of this distinction between the fair trial requirements for administrative and criminal proceedings. Essentially, the remission system, as it now stands, is delegated from the executive and is administered through youth detentions administration.

The explanatory statement gives a lengthy exposition, citing cases before the European Court of Human Rights and English cases warning against the mixing of criminal and administrative procedures. For instance, in Engel v Netherlands in the European Court of Human Rights, it was determined that a set of criteria that enabled sanctions imposed upon a person by a state to be characterised as either criminal or administrative. Any sanction imposed by a state requires commensurate fair trial protections under human rights law.

The explanatory statement for this bill goes on to cite the case of Campbell and Fell v United Kingdom in 1985, which also followed the criteria in Engel, when the court considered whether the character of charges laid in a prison discipline process were criminal or administrative in nature and addressed the practice of granting and cancelling remissions.

The lessons the government derives from these and other precedents cited is that decisions concerning the remissions, therefore, must be dealt with by an independent body because the process that enables the executive to grant and revoke remissions administratively would be inconsistent with human rights jurisprudence that requires a standard of fair trial akin to a criminal procedure. This is a fair enough conclusion to come to but the logical consequence of this conclusion is that the government should be looking to set up an independent body to deal with remissions or parole for young offenders.

However, the government has decided to substitute the process of remissions with a combination of a sentence and a good behaviour order over a fixed term, neither with a flexibility of rewarding good behaviour. This is my principal concern. If we are to subscribe to and even use human rights principles to guide our dealings with young offenders then surely there must be sufficient flexibility to, indeed, reward good behaviour.

In contrast, the explanatory statement says the government has decided at this stage not to construct a parole system for young offenders in substitute for the existing statutory remission system because:

> The effect of combining a sentence of imprisonment and a good behaviour order with a supervision condition meets the rehabilitative goal of supervising a young person's return to the community akin to a parole system. If a young person

> breaches their good behaviour order, the person is brought before the sentencing court, and the Court's sentencing jurisdiction is re-enlivened.

This is not an explanation of the decision but, instead, a vague attempt at justifying the unjustifiable.

This is a curious human rights outcome, for the previous statutory remission system offered a young offender showing signs of early rehabilitation the prospect of early release, and is beyond the pale because of a mixture of judicial and administrative functions. Rather than that, the human rights conscious Stanhope government would prefer locking them up without the prospect of early release. Yet again, there is a contradiction between the government's stated agenda and the actual outcome in this case. It does seem scandalous that a young offender can be incarcerated for a defined period without hope of release on licence. Such a move would positively discourage good behaviour whilst in detention and, again, is a very real concern now evidenced by this bill.

I suggest that the bill should enshrine in law current Children's Court practice. In response to the opposition's queries on this matter, the minister said that the combination of a custodial sentence and a good behaviour bond has the same effect as the parole system; namely, that remaining at liberty is conditional upon good behaviour and compliance with specified conditions set out in the good behaviour order.

If the minister believes this, I think she fails to grasp the distinction between her policy proposal and the operation of a parole system. In a parole system, the length of sentence is finally determined by the behaviour of the person sentenced. There is flexibility built into the system. In the minister's proposal, there is no time off prison for good behaviour; there is no flexibility built into the system.

As a result, the opposition has concerns that cover both ends of the relative spectrum, on two very important grounds. First, the system proposed by the Stanhope government offers a detained young offender no incentive to show they are of good behaviour whilst detained. Secondly, there is concern that, because there is no prospect for release on licence, the Children's Court will impose a minimal detention order. In some circumstances, community protection considerations may not be appropriately served and victims may, in some instances, be rightly outraged with a lenient sentence handed down to an offender as a result of this system. As a result, the minister should explain to the Assembly precisely what the Children's Court practice is.

In summary: on this point, the opposition will closely monitor how this practice works. If it does become clear that the community is not protected or, alternatively, the prospect of no early release from detention is detrimental to the maintenance of good order in detention facilities, this is certainly something we will look at changing upon coming to government.

There are a range of new definitions in the bill which, I agree, are necessary to be cleared up and defined. I agree with the changes relating to young detainees who have

parents who continue caring for or have contact with their young child under six years old and who are not enrolled at school in the detention place, where this is in the best interests of the young child. This is without doubt a positive.

I also agree that the clarifying issues surrounding powers of search and seizure at the detention place in order to ensure a safe detention place are certainly needed, as are clear processes for addressing behaviour breaches through disciplinary processes.

In relation to the new youth detention facility at Bimberi, we certainly hope that it will be a success. We have supported this facility being built. It is clear to me that we need to have a system that looks to take young offenders and genuinely rehabilitate them rather than their ending up in the adult corrections system. That is how the new youth corrections system will be judged.

It is disappointing—and we have raised this on a number of occasions—that even after we build the new facility we do not see any expected reduction in recidivism as a result. I would certainly hope, and I think the community would certainly expect, that, as a result of building a facility which is more appropriate for young offenders—and we are spending a significant amount of taxpayers' money on this new facility—fewer of them would be reoffending, that the rehabilitation would be more significant and that far fewer young offenders would end up in the adult justice system.

I am not quite sure why the government does not have that as a goal or why in the projections going forward that we would not see it coming down. Certainly, after the new facility has been built, we would expect that but we have not seen any expectation on the part of the government that that indeed will be the case.

In summary, we do support the bill. It is a very complex piece of legislation and no doubt there will be parts of it that, in practice, do not work, as is the case with virtually all large pieces of legislation. I think it would be incumbent of course on oppositions and governments in future to keep a close eye on the working of it.

The final point to make is that it is not just about what is in the legislation. The legislation provides a framework for dealing with children and young people in a number of different forums. In particular in the issues of youth justice and in care and protection, there is much more to it than having the right legislative framework. We need to make sure that the resourcing is there; we need to make sure that the programs are targeted in the way that they should be; and we need to make sure that those workers who are dealing with this most difficult issue, referring now particularly to care and protection, are adequately resourced and are adequately supported so that, when the community does need to pick up the pieces as it so often does, we are well equipped to do so and do so well.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (4.28), in reply: I welcome speakers' contributions to the debate today. I appreciate the work that people have put into this legislation and the extent of members' interest in it. It is a very significant piece of legislation. It is the largest bill, I believe, that has come before the Assembly, dealing with perhaps the most complex

of issues that any Assembly and, particularly, any government faces; that is, how do we protect our children and young people; how do we establish a framework that seeks to support them; how do we position ourselves as the best in terms of our regulatory framework? All of that is attempted and, I believe, will be achieved through this legislation. That is pretty ambitious.

It is a core subject of national discussion at the moment. I think other members have commented on how this is a matter that is in the public's attention at the moment. But I should say that the issues that are in the public attention at the moment are not unusual issues; they are not issues that just come once a month every year; this is day-to-day life for many families and for staff that work in this area. It is only when they become public that others get interested or outraged at the situation. I deal with these matters on a daily basis and I know that staff who work in all of the areas outlined in this bill, including workers in childcare centres, workers at Quamby, workers in juvenile justice, workers in care and protection, deal with them every day. The ACT government has a responsibility to protect children and young people in the territory from harm and to promote their wellbeing.

Today, along with the Attorney-General, I am pleased to debate the Children and Young People Bill 2008 and the Children and Young People (Consequential Amendments) Bill 2008. We introduced this bill on 6 March 2008. It does propose significant reform to the law relating to care, protection and wellbeing of children and young people in the territory. The bill has been informed by an extensive consultation process, which commenced in 2002, with a wide range of community members, children and young people, community organisations, government agencies, legal agencies, ministerial advisory councils, unions and the judiciary. It has involved a range of forums, interviews, written submissions, consultations on related government reviews and inquiries and the tabling of three interim progress reports.

The bill addresses the welfare of children and young people at risk of abuse and neglect and the sentencing of people who have offended while they were a child or a young person. It also addresses the administration of sentences given to young offenders, the administration of the youth detention centre and the regulation of childcare services and employment of children and young people. This bill also implements a number of recommendations from reviews and inquiries relating to children and young people in the territory. We are the first Australian state or territory to review child welfare legislation in the context of a human rights act.

I note Dr Foskey's concerns about the age of criminal responsibility in the ACT. The age of criminal responsibility is highly controversial. To raise the age of criminal liability would require extensive consultation with the community, involving education and debate on the issue. The community is unlikely to embrace a surprise rise in the age of criminal liability without significant preparation and consultation, and this simply has not been done. However, in light of our position as a human rights jurisdiction, the government has tasked the Department of Justice and Community Safety and the Department of Disability, Housing and Community Services to prepare a discussion paper and a consultation plan on the issue.

I foreshadow government amendments to address concerns raised in scrutiny of bills committee report No 53. They will clarify ambiguities in the criminal matters chapters

and rectify minor and technical errors across the bill. In response to the scrutiny of bills committee report, the operation of clause 8, titled "Best interests of children and young people paramount consideration", is clarified in relation to other provisions in the bill. Definitions of Aboriginal and Torres Strait Islander children and young people are updated. The meaning of key terms will be clarified in relation to offences relating to the ongoing duty of entities to update suitability information, unreasonable discipline of a child in childcare services, the concept of light work in relation to the offence, and the employment of children and young people under school leaving age.

I also foreshadow government amendments to schedule 1 of the bill that will amend part 3.9 of the Magistrates Court Act 1930 to change the procedure the Magistrates Court is to take when dealing with young offenders who default on the payment of a court-imposed fine. It will build on amendments the government made earlier this year to ensure that young people are not in prison because they cannot afford to pay a court-ordered fine.

Under the new procedure, the court will only have the discretion to order the imprisonment of a fine defaulter in a youth detention centre if the court finds that the young person has the ability to pay the fine but deliberately chooses not to pay the fine. The court can only order the imprisonment of a young offender that refuses to pay a fine after the following steps have been taken: the young offender is served notice of the fine but does not pay within the required period; the young offender has had the capacity to pay the fine assessed by the court and the court finds that they have the capacity to pay; the young offender is given an opportunity to make alternative arrangements for the payment of the fine, for example, to pay the fine in instalments, and the young offender refuses to enter into such an arrangement; and the young offender's drivers licence is suspended and they continue to refuse to pay the fine. If a young offender is imprisoned for refusing to pay a fine, the fine will be discharged in an amount of $300 per day of imprisonment up to a maximum of seven days imprisonment. Imprisonment can only occur at a youth facility if the person is still under the age of 18.

Further government amendments to schedule 1 of the bill will be technical amendments to ensure that young people are remanded or detained in a youth facility. Consistent with the bill's provision on young offenders sentenced to imprisonment, a person who is aged under 21 years and is denied bail in relation to an offence they allegedly committed when they were under 18 will be detained in a youth detention centre. As is the case with a young offender, it will be open to the chief executive responsible for the youth detention centre to use their power under section 110 of the new Children and Young People Act to order that the remandee be transferred to an adult correctional centre if it is in the best interests of the remandee or other detainees at the youth detention centre.

The Attorney-General and I also introduced the Children and Young People (Consequential Amendments) Bill 2008 on 8 May. This bill creates a new transitional provisions chapter for the Children and Young People Bill and amends various acts and regulations consequential upon the bill. I will not be proposing amendments to this bill.

Before I close, let me say that speakers earlier in the debate have raised some concerns. Mrs Dunne, I think, raised concerns about the size of the bill. I think she used the word 'clunky', although I do not think she used it in her speech. This was a policy matter which we looked at very closely and, in fact, had many lengthy discussions, and not too many arguments, about whether you put everything in together or you have separate acts.

In my discussions I felt that, because we were having such strong principles up-front in the act on the rights and interests of children and young people being paramount, and the fact that I fought to have youth justice elements remain in this bill and not become part of an addition to corrections legislation, it was more appropriate to keep everything in the one bill, under the same principles, with the same protection. I do not think the fact that it is all in the one place will make it more complicated or harder to read. When members of the judiciary got involved in the consultation they requested that, as much as possible, the sentencing areas be linked back to other legislation, and we have certainly responded to that, so that that is the case.

So I feel very strongly that it is appropriate to have all the laws relating to children and young people sitting within legislation that is founded by and named the Children and Young People Act, rather than sitting in separate bits as an add-on to adult legislation or matters that are traditionally adult matters.

I think Mrs Dunne's concerns on light work are addressed in amendments that I have already circulated.

In relation to the voluntary and mandatory reporting, Mrs Dunne and I are on the same page on this. The idea is that we can differentiate reports of concern about children—

Mrs Dunne: It is rare.

MS GALLAGHER: Listening to your argument, it is a rare and quite frightening moment. Reports of concern about children can be separated from those child protection reports so that when they come in they can assess whether these reports are of such concern that they need to go to that next stage or whether they can be dealt with in another way. That is so that we can ensure that the reports that get investigated and ultimately substantiated, which a percentage of them were, are the ones that are being focused on.

I do not believe that we will see a big increase in mandatory reporting under this scheme. We already deal more than any other jurisdiction. I think we have more mandated reporting here than anywhere else in terms of our share. I think we have already seen the big increase relating to mandatory reporting.

Dr Foskey spoke about resources. This is something that we look at every year in terms of our budget bids. We keep a very close eye on this area. We have increased our funding in this area—and I think Mr Seselja raised this—by 87 per cent over the last four years. The majority of that came in response to the Vardon review and that

did increase staff, if we look at care and protection, from around 50 positions to 110. We know we have got some vacancies there that we are working very hard on filling, but the resourcing is there. We need to, of course, attract staff. Our rate of retaining staff is very good, but we do expect some turnover and, in fact, some real difficulties in recruiting to this area.

There are a number of other issues which we could probably go into in detail in a substantive debate. In relation to access to open hours, that is merely a statutory minimum entitlement which I expect will be exceeded. If you have had a look at Bimberi you will see that the opportunity for being out and about is much greater than it is at Quamby, just in terms of the open space and the variety of locations at which that can occur.

Mr Stefaniak, Mr Seselja and Mrs Dunne raised concerns on the lack of a statutory remissions scheme in the bill. This is, as I have said, the first child welfare legislation that has been subject to a human rights compatibility test. I guess the issue here is—and the view that the government has taken—that the decision on sentence and good behaviour periods is really a decision that the judicial officers should make, not the executive. It does not mean that it cannot happen, but it does mean that at the point of sentencing the judicial officer can say, for example, an 18-month sentence with six months on good behaviour which does mean that only 12 months is served within the youth detention facility.

For all practical purposes, it will continue and it will be there, but the government has taken the view and accepted the human rights compatibility assessment that it should be the judicial arm making these decisions, not the executive arm of government. And we stand by that. We will, of course, monitor it as we monitor all matters and particularly new legislation as it goes through.

I welcome the opposition's support for Bimberi. I must say it was news to me that they were supporting it. I think the last time we discussed it in detail I was criticised for building some $40 million facility for 40 children. I think the media commentary at the time was $1 million per head, which we know is not the case. I sincerely welcome the opposition's position on this—late but nonetheless welcome all the same. It is due to open in three months time so I do not think they had anywhere else to go other than to support it.

In conclusion, I would really like to thank a whole range of people who have worked on this legislation. It has taken four years. I think I have said before that I have had two children in the time that we have been consulting on and negotiating this legislation and that certainly crystallised in my mind how long it has been on the table.

From DHCS, I would like to acknowledge Sandra Lambert, Martin Hehir, Bronwen Overton-Clarke, Meredith Whitten, Tracy Chester, Angela Buchanan, Fiona McIntosh, Megan Mitchell, Frank Duggan, Paul Wyles, Neil Harwood, Jenny Kitchin, Lou Denley and Ingrid Cevallos; from JACS, Renee Leon, Stephen Goggs, Sarah Byrne, Sean Moysey, Anthony Williamson, Nicole Mayo, Jessica Gallagher; from PCO, John Clifford, Mary Toohey, Sandra Georges, Julie Field, Felicity Keech; and, last, with 20 seconds to go, from my office,

Garrett Purtill and Sean Costello, who have worked pretty tirelessly. They will need post-traumatic stress counselling once this is over. But I really appreciate the work they have put in and the work they have undertaken with members' offices in getting us to this position today.

Question resolved in the affirmative.

Bill agreed to in principle

Detail stage

Clauses 1 to 6, by leave, taken together and agreed to.

Clause 7.

DR FOSKEY (Molonglo) (4.44): I move amendment No 1 circulated in my name *[see schedule 1 at page 2538]*.

I am presenting this amendment to clause 7 because I do not feel that the participation of children and young people is sufficiently enshrined in the principles of the bill as it stands.

In her submission to the exposure draft for this bill, the Public Advocate drew our attention to the fact that, while the bill does mention and makes efforts to provide for reasonable opportunity for children and young people to express their views, there is not enough consideration given to the process of participation. Though clause 7 in the government's bill states that services provided for the wellbeing, care and protection of young people take into account the views and wishes of children and young people, I do not feel that just taking them into account is adequate. "Take into account" suggests that while the decision makers may talk to the child they may not work their views into the decision. It does not suggest an active involvement by the child or young person, or their choice not to be involved. It does not suggest that any explanation be given about why a suggestion was incorporated or discarded.

My amendment ensures the participation of children and young people in the processes affecting their lives by ensuring that the services provided by or for government for the wellbeing, care and protection of children and young people are informed by processes which engage children and young people wherever possible as well as take their views into account. This gives them the opportunity to participate in decision making if they wish to and helps to ensure their involvement in each step of their interaction with government and non-government services. Further, it may assist them to own whatever decision is made about their future if they are involved in it.

We all know that the participation of children and young people in decision making is valuable and desirable. Article 12 of the UN Convention on the Rights of the Child states:

> 1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the

> child, the views of the child being given due weight in accordance with the age and maturity of the child.
>
> 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

When working through the ideas for amendments, my staff and I liaised with various groups, obtaining support for the ideas in general. The Public Advocate ACT supports that the principles/objects section of the bill needs to be amended to include the requirement that children and young people participate in decision-making processes. A number of groups mentioned that in other jurisdictions, New South Wales in particular, participation of children and young people is more fully enshrined in the legislation. The New South Wales Children and Young Persons (Care and Protection) Act 1998 has a separate principle, the principle of participation, section 10, which the Public Advocate has suggested is a good example of how another jurisdiction covers this area in legislation. It reads:

> (1) To ensure that a child or young person is able to participate in decisions made under or pursuant to this Act that have a significant impact on his or her life, the Director-General is responsible for providing the child or young person with the following:
>
> (a) adequate information, in a manner and language that he or she can understand, concerning the decisions to be made, the reasons for the Department's intervention, the ways in which the child or young person can participate in decision-making and any relevant complaint mechanisms,
>
> (b) the opportunity to express his or her views freely, according to his or her abilities,
>
> (c) any assistance that is necessary for the child or young person to express those views,
>
> (d) information as to how his or her views will be recorded and taken into account,
>
> (e) information about the outcome of any decision concerning the child or young person and a full explanation of the reasons for the decision,
>
> (f) an opportunity to respond to a decision made under this Act concerning the child or young person.
>
> (2) In the application of this principle, due regard must be had to the age and developmental capacity of the child or young person.
>
> (3) Decisions that are likely to have a significant impact on the life of a child or young person include, but are not limited to, the following:
>
> (a) plans for emergency or ongoing care, including placement,
>
> (b) the development of care plans concerning the child or young person,

(c) Children's Court applications concerning the child or young person,

(d) reviews of care plans concerning the child or young person,

(e) provision of counselling or treatment services,

(f) contact with family or others connected with the child or young person

I have not been this precise or wordy in my amendment, in the hope that the government would take the opening up to real participation provided by my much broader amendment to establish a workable, flexible framework, to use it as a step for further amendments in the future and for the development of their policy documents. The legislation is already very detailed, and I consider that principles provide a guideline for the specific processes used in a variety of circumstances.

The UK is another jurisdiction which is embedding active participation for children and young people in policy and is working hard to put its ideas into practice. In a recent report to the UN Committee on the Rights of the Child, the four commissioners in the United Kingdom stressed the need for participation but recognised:

> Although some progress has been made with regard to the participation of children in both collective and individual decision making, and the principle of participation is being progressively embedded in law and policy, this has not yet consistently filtered through into practice.

By making kids' engagement in decisions a key principle of this legislation, I am hoping that it permeates every policy and becomes a cornerstone for any interaction between government and children and young people and I think it will be easier for the ACT to move the idea and policy into well-established practice.

My office has closely liaised with the minister's office about this bill and about our amendments at almost every step of the way. We are not aiming to make life difficult for the government; we are aiming to improve the legislation to benefit our kids. I would like to thank the minister and her staff for their consultation on my amendments. I note that in my original version the amendment did not include the words "wherever possible". The government suggested this addition to provide for babies, whom it would be rather difficult to consult, and I consider this a reasonable change.

"Wherever possible" is firm and would require a very good reason not to consult. I would expect the government to issue guidelines to make it clear to decision makers that "wherever possible" means exactly that and the minister to maintain a watching brief to ensure that it is not abused. Perhaps there should even be a directive that the minister is to be informed whenever a child is not consulted or where their views and wishes are overridden. If the child is not consulted, the reasons for this must be made very clear.

I would suggest that a report about the involvement of children and young people in decisions be submitted to a relevant agency such as the Public Advocate. It is possible

that this reporting could be added to the existing reports made to the Public Advocate, for 267s, for example. New South Wales's reports to the Children's Court must outline how the child participated, and I think the ACT should be following the same practice.

As I have mentioned previously, this legislation is still a work in progress, and I expect principles for participation to be extended in the future. For now, though, I ask for the Assembly's support for this amendment.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (4.53): The government are happy to agree with this amendment. This is consistent with our commitment to allow and enable children and young people to participate in decisions that affect their lives. I thank Dr Foskey again for agreeing to the addition of "wherever possible".

The only word of caution I would have here is that, when you are looking at services provided by and for the government, that does incorporate a wide range of services doing a wide range of things. I would certainly be mindful of that if we are to establish guidelines around how this is to be done and look at some of the processes that Dr Foskey has raised, so as not to make this turn into something that we cannot deliver upon just though the complexity of what that cause encompasses.

It is very important to have it there—I am happy that it has been strengthened by the Greens' amendment—but I just want a bit of caution up-front in making sure that that happens all the time for every child regarding any decision that affects their life. You could take it to the nth degree. For example, if a community-based childcare centre determines not to have sandwiches on Wednesdays any more—children do not have be consulted about those sorts of decisions. I am just trying to think of a worst-case scenario that setting up a system like this could lead us to. So, with a little bit of caution, I am happy to agree to it.

Amendment agreed to.

Clause 7, as amended, agreed to.

Clause 8.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (4.57): I move amendment No 1 circulated in my name *[see schedule 2 at page 2539]*. I table a supplementary explanatory statement to the government's amendments.

Clause 8 enshrines the best interests principle as the paramount consideration for persons making decisions or taking action under the act. This government amendment inserts a new clause to remove any doubt that a reference in this act to the best interests of a child or young person does not limit the application of this section. This amendment addresses comments made in the scrutiny of bills committee report No 53 that there should be a stronger indication in the bill that clause 8 operates to qualify every other provision in the bill.

DR FOSKEY (Molonglo) (4.57): This amendment is, I believe, to clarify that every decision made must be in the best interests of the child. In light of the recent publicity, I would just like to seek assurance that this applies to all agencies that are involved with children who are at risk. I wonder if ACT Policing's decision, for instance, to put out a media release about the situation in Ainslie was actually in the best interests of the children involved. I seek the assurance of the minister and the Attorney-General that ACT Policing and care and protection will always act with the best interests of children as paramount and especially that they will liaise in any cases where this is in question. I want to be assured that there are proceedings in place to ensure this interaction.

I believe it was the choice of ACT Policing to make that situation public, but it is going to be very difficult to work out whether or not that was in the best interests of the child, because we do not have a control situation. It is all out there. I am concerned to find out what procedures are in place and, if they are not in place, if they can be put in place. If there are no such procedures, perhaps the Attorney-General could direct ACT Policing to liaise with care and protection in cases such as these before any decision is made in relation to the media.

MRS DUNNE (Ginninderra) (4.59): This is the important crux of the whole bill and it represents the signpost for a change of attitude to legislation regarding children and young people. It says that it is no longer appropriate for officials, parents and people acting in loco parentis to make patronising—in the literal sense of the word "patronising"—decisions on behalf of children in the system.

The way in which this rolls out is going to be extremely difficult but also crucial to the good operation of this legislation. The paramount test in everything that we do under this legislation is that it is in the best interests of the child. That means that from time to time the obvious course of action is not going to be the right course of action. I touched on this briefly at the end of my comments this morning when I spoke about the provisions for Aboriginal and Torres Strait Islander children. I expressed very briefly my concerns that the intent to, as far as possible, ensure that Aboriginal and Torres Strait Islander children if given out-of-home care or in difficult circumstances are accommodated within the Aboriginal community may not necessarily be in the best interests of the child and that we have to work very carefully in that instance, for example, to ensure that one test does not overwhelm the other test. That will be a very difficult thing to do and it will be a matter of some finesse.

I also want to comment on the remarks made by Dr Foskey about the current case that has been in the media. Dr Foskey has expressed here in the Assembly some of the concerns that I expressed yesterday to the departmental officials and members of staff from the minister's office about this matter. This became such a prominent issue because the national media had access to some pretty salacious footage and it helped to make the story and give the story considerable legs.

I have not had a satisfactory explanation about this. Neither minister today could give a satisfactory explanation as to how it came about that the Australian Federal Police issued a press release on this matter and how the identity of the children was revealed,

to the extent that their house has been open to national scrutiny in a way that everyone in this place would object to if their house was filmed in that way.

All of us protect our privacy and move to protect our children; that is a right of people in the territory and across Australia. This unfortunate family's situation has been made much worse by the salacious coverage in the media. Dr Foskey is right to ask for commitments about improved communication between the police and care and protection. I feel that the situation as it has transpired over the past week has shown a failure of communication, and I would like the minister to be able to point to those areas of the legislation here today that would help to ensure that that situation does not arise again.

Amendment agreed to.

Clause 8, as amended, agreed to.

Clauses 9 to 18, by leave, taken together and agreed to.

Clause 19.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.04): I seek leave to move amendments Nos 2 and 3 circulated in my name together.

Leave granted.

MS GALLAGHER: I move amendments Nos 2 and 3 circulated in my name together *[see schedule 2 at page 2539]*. These government amendments clarify that daily care responsibility includes the authority to decide who the child or young person must not have contact with by amending the second example in clause 19. The amendments are intended to allow people with daily care responsibility to protect the child or young person from harm or inappropriate or abusive behaviour by another person. For example, if a family friend who had been convicted of a sex offence against children wanted to have contact with a child or young person, the person with daily care responsibility would have the authority to deny contact with that person. This authority, however, is subject to a court order or care plan relating to the child or young person's contact with others.

For example, if a care and protection order with a contact provision or care plan required that a parent or other family member have contact with a child or young person, the authority exercisable by the person with daily care responsibility to limit the child or young person's contact would be subject to the order or care plan in force. The amendments continue the effect of section 20 (1) (d) of the Children and Young People Act 1999.

Amendments agreed to.

Clause 19, as amended, agreed to.

Clause 20.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.06): I move amendment No 4 circulated in my name *[see schedule 2 at page 2539]*.

Clause 20 sets out the meaning of the term "long-term care responsibility". The clause includes examples to indicate the range of matters subject to a court order or care plan that comprise long-term care responsibility. This list is not intended to be exhaustive. The government amendment adds training and employment to example 4. This amendment addresses comments made in the scrutiny of bills committee report to provide one consistent list of examples of long-term care responsibility. This amendment continues the effect of section 21 (1) (e) of the Children and Young People Act 1999.

Amendment agreed to.

Clause 20, as amended, agreed to.

Clauses 21 to 36, by leave, taken together and agreed to.

Clause 37.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.08): I move amendment No 5 circulated in my name *[see schedule 2 at page 2539]*. Clause 37 sets out the meaning of "entitled child or young person" for this part. The government amendment removes an unnecessary note from this clause.

Amendment agreed to.

Clause 37, as amended, agreed to.

Clause 38.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.09): I move amendment No 6 circulated in my name *[see schedule 2 at page 2539]*. This amendment provides for the appointment of official visitors. This government amendment adds a cross-reference to part 2.4, which deals with suitable entities—again, addressing the concerns raised in the scrutiny of bills committee report.

Amendment agreed to.

Clause 38, as amended, agreed to.

Clauses 39 to 69, by leave, taken together and agreed to.

Clause 70.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.10): I move amendment No 7 circulated in my name *[see schedule 2 at page 2539]*.

Clause 70 provides a new offence for failing to disclose suitability information in certain circumstances. Clause 70 (4) (b) provides guidance about what is to be reported to the chief executive in order to assess the entity's honesty and integrity. It is intended to encapsulate offences or findings of dishonesty that may affect the chief executive's assessment of the entity's reputation and character.

In the scrutiny of bills report, the committee queried whether the vagueness of the concept of an adverse finding in clause 70 (4) (b) meant that it was not compatible with the Human Rights Act 2004. To address the comments made in this report, the government amendment replaces clause 70 (4) (b) with a requirement on an entity to disclose a conviction or finding of guilt in an offence involving fraud or dishonesty by a court, and an adverse finding against the entity in relation to honesty or integrity, made by a tribunal or an authority or person with the power to require the production of documents or the answering of questions.

DR FOSKEY (Molonglo) (5.12): With respect to the proposed amendment to clause 70 (4) (b), I would have supported the government's original unamended provision, despite the scrutiny of bills committee's concerns. It merely put the onus on an entity to be forthright and forthcoming, and to err on the side of disclosure. This is no bad thing. This is an area where the good character and fit and proper person type qualifications are an ongoing requirement, and these provisions appear to be quite reasonable. An adverse finding would merely have had to be reported. The rules of natural justice would, and will still, apply before an adverse finding could be used to disendorse or otherwise adversely affect an entity.

This is an area that calls for complete candour, and I would have thought that the government could make allowances for this heightened responsibility and treat any information received with respect and in the utmost confidence. As it is, the amended clause could well be too narrow, in my opinion. I recognise that the numerous descriptions in clause 65 should capture the overwhelming majority of relevant offences and misdemeanours, but the original clause 70 (4) (b) cast a wider and, in my opinion, a more appropriate net which would capture adverse findings as well as actual convictions. This begs the question: why wouldn't the government want to know when a court made an adverse finding about an entity?

As it stands, the amended clause 70 (4) (b) excuses an entity from having to reveal if, for instance, they have had a series of serious driving convictions. But serious driving offences could well be relevant to the provision of services by the entity to young people. For instance, I know that taxi drivers and other drivers are required at times to drive some young people to their non-custodial parent.

A series of drink-driving offences would not be captured by the amended provisions. But, of course, the circumstances of a series of drink-driving offences could well be highly relevant, and could well amount to grounds to either cancel or apply conditions to the licence of a childcare provider, for instance—the condition that the entity should not drive children around to start with, perhaps. It will become obvious in time whether the clause is too loosely written. I just hope that does not become obvious through some bad event. I urge the government to keep a watching brief over these provisions and to reassure itself that the provisions are adequate.

Amendment agreed to.

Clause 70, as amended, agreed to.

Clauses 71 to 102, by leave, taken together and agreed to.

Proposed new clause 102A.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5:15): I move amendment No 8 circulated in my name, to insert a new clause 102A *[see schedule 2 at page 2540]*.

Chapter 5 of the bill sets out a scheme for the escort of children, young people and young detainees between youth detention centres, courts, health facilities, adult correctional centres, interstate detention centres and facilities and for leave purposes. The escorting of young detainees to and from police cells, courts, health facilities and correctional facilities is currently undertaken by ACT Corrections, the court transport unit, the Australian Federal Police, ACT Policing and the Department of Disability, Housing and Community Services—youth justice.

This government amendment enables the chief executive responsible for this act to make an arrangement with the chief executive responsible for the Corrections Management Act and the Chief Police Officer to escort children, young people and young detainees as required under this act.

Amendment agreed to.

Proposed new clause 102A agreed to.

Clauses 103 to 107, by leave, taken together and agreed to.

Clause 108.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.17): I move amendment No 9 circulated in my name *[see schedule 2 at page 2540]*.

Clause 108 provides for the transfer and secure custody of a young detainee in a health facility. Subclause (7) provides for the discharge of the young detainee into the custody of the chief executive. This government amendment removes subclause (7) as custody remains with the chief executive following the discharge of the young detainee unless the authority for detention lapses for the young detainee during their stay at the health facility. As drafted, subclause (7) could create unnecessary confusion about the custodial authority for a person in this circumstance.

Amendment agreed to.

Clause 108, as amended, agreed to.

Clause 109 agreed to.

Clause 110.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.18): I move amendment No 10 circulated in my name *[see schedule 2 at page 2540]*.

Clause 110 provides the chief executive with the power to direct the transfer of adult young detainees to a correctional centre. Subclause (5) enables the chief executive to direct an escort officer to escort the young detainee to the correctional centre and, once there, subclause (6) requires the young detainee to be dealt with as a detainee under the Corrections Management Act 2007.

This government amendment substitutes the reference to "taken" in subclause (6) with a reference to "admitted", to remove doubt that custody of the young detainee shifts to the chief executive under the Corrections Management Act 2007 at the point of the young detainee's admission to the correctional centre.

Amendment agreed to.

Clause 110, as amended, agreed to.

Clauses 111 to 135, by leave, taken together and agreed to.

Clause 136.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.19): I move amendment No 11 circulated in my name *[see schedule 2 at page 2541]*.

This government amendment changes the definition of "young remandee" to be consistent with the definition of "young remandee" under the Crimes (Sentence Administration) Act 2005.

Amendment agreed to.

Clause 136, as amended, agreed to.

Clauses 137 to 145, by leave, taken together and agreed to.

Clause 146.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.20): I move amendment No 12 circulated in my name *[see schedule 2 at page 2541]*.

Clause 146 provides for the declaration of prohibited areas in a detention place by the chief executive. This government amendment replaces subclause (2) with a requirement on the chief executive to take reasonable steps to bring each prohibited area to the attention of all young detainees. This amendment will allow the chief executive to notify all young detainees of prohibited areas through the general communications—for example, signs and resident handbooks—in contrast with notifying individual detainees. This amendment is expressed in similar terms to section 85 (2) of the Corrections Management Act 2007.

Amendment agreed to.

Clause 146, as amended, agreed to.

Clauses 147 to 150, by leave, taken together and agreed to.

Clause 151.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.21): I move amendment No 13 circulated in my name *[see schedule 2 at page 2541]*.

This government amendment is necessary to remove any doubt that a corrections officer can exercise the functions of a youth detention officer under the criminal matters chapters in accordance with any direction by the chief executive responsible for this act.

Amendment agreed to.

Clause 151, as amended, agreed to.

Clauses 152 to 171, by leave, taken together and agreed to.

Clause 172.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.23): I move amendment No 14 circulated in my name *[see schedule 2 at page 2541]*.

This government amendment adds the word "unreasonably" to qualify the word "deprive" in subclause 172 (4), as suggested by the report of the scrutiny of bills committee.

Amendment agreed to.

Clause 172, as amended, agreed to.

Clauses 173 to 183, by leave, taken together and agreed to.

Clause 184.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.23): I move amendment No 15 circulated in my name *[see schedule 2 at page 2541]*.

This government amendment removes clause 184 (2) (n) (v), which is a notice about segregation decisions made by an external reviewer. It is not necessary for this notice to be part of the register, as the onus to give notice is on the external reviewer and not the chief executive.

Amendment agreed to.

Clause 184, as amended, agreed to.

Clauses 185 to 207, by leave, taken together and agreed to.

Clause 208.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.24): I seek leave to move amendments Nos 16 to 18 circulated in my name together.

Leave granted.

MS GALLAGHER: I move amendments Nos 16 to 18 circulated in my name together *[see schedule 2 at page 2541]*.

Government amendment No 16 is just a technical amendment substituting words. Amendments Nos 17 and 18 substitute references to the "young detainee from engaging in harmful conduct" in subclause 1 (b) subparagraphs (i) and (ii) to

references to "an imminent risk of the young detainee harming himself or herself". The meaning of "harmful conduct" for this clause is potentially ambiguous, and amendment is necessary to achieve consistency with the criteria in clause 208 (1) (a), which requires the chief executive to believe on reasonable grounds that the segregation is necessary to prevent an imminent risk of the young person harming himself or herself.

Amendments agreed to.

Clause 208, as amended, agreed to.

Clauses 209 to 231, by leave, taken together and agreed to.

Clause 232.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.26): I move amendment No 19 circulated in my name *[see schedule 2 at page 2542]*.

This government amendment substitutes the second reference to "officer" with a reference to "person", as all persons are required to comply with a direction not to enter a detention place or to leave.

Amendment agreed to.

Clause 232, as amended, agreed to.

Clauses 233 to 243, by leave, taken together and agreed to.

Clause 244.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.27): I move amendment No 20 circulated in my name *[see schedule 2 at page 2542]*.

This government amendment adds a new subclause (3) to remove doubt that a young detainee is in the chief executive's custody while being taken to the correctional centre but that they are no longer in the chief executive's custody once they are admitted to the correctional centre, when custody shifts to the chief executive responsible for the Corrections Management Act 2007.

Amendment agreed to.

Clause 244, as amended, agreed to.

Clauses 245 to 272, by leave, taken together and agreed to.

Clause 273.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.28): I seek leave to move amendments Nos 21 to 23 circulated in my name together.

Leave granted.

MS GALLAGHER: I move amendments Nos 21 to 23 circulated in my name together *[see schedule 2 at page 2542]*.

The government amendment to subclause (1) (a) adds a new provision to enable the chief executive to conduct a scanning search, frisk search or ordinary search of people, other than young detainees, to uphold the safety and security at a detention place. This will permit the routine conduct of low-level searches of anyone working or visiting a detention place.

This power is expressed in similar terms in the Corrections Management Act 2007, section 101 (1), in relation to a corrections officer or anyone else working at or visiting a correctional centre. Subclause (1) (b) of this amendment retains the power to conduct a scanning search, frisk search or ordinary search of people, other than young detainees, if the chief executive suspects the person is carrying a prohibited thing or anything else that is at risk or likely to create a risk to safety, security or good order at the place.

The government amendment to subclause (2) requires the youth detention officer who conducts a frisk search or ordinary search of a person to tell the person about the search and the reasons for the search, to ask for the person's cooperation and to conduct the search in a private area or an area that provides reasonable privacy. Subclause (2) paragraphs (a) and (b) require that the youth detention officer who conducts the search is an officer of the same sex as the person, or that another person, not a young detainee, of the same sex as the person to be searched is present while the search is conducted. This is expressed in similar terms in the Corrections Management Act 2007.

Amendments agreed to.

Clause 273, as amended, agreed to.

Clauses 274 to 285, by leave, taken together and agreed to.

Clause 286.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.31): I seek leave to move amendments Nos 24 to 26 circulated in my name.

Leave granted.

MS GALLAGHER: I move amendments Nos 24 to 26 circulated in my name together *[see schedule 2 at page 2543]*.

Clause 286 (1) (i) establishes a behavioural breach of being disrespectful or abusive towards someone in a way that is likely to provoke the person to be violent. This amendment changes that to establish a behavioural breach of being disrespectful or abusive towards another person. This will enable the chief executive to address disrespectful or abusive behaviours of young detainees towards any person at or in relation to a detention place regardless of how the person responds to a young detainee's behaviour.

Amendment 25 adds a reference to an interstate leave permit under clause 241. This amendment is necessary to ensure conditions of an interstate leave permit are adhered to. Finally, government amendment No 26 omits clause 286 (1) (v) and substitutes the words "planning, conspiring or attempting, or assisting anyone else planning, conspiring or attempting, to commit a behaviour breach". This will enable the chief executive to intervene, circumvent and potentially avoid and address potentially harmful behaviour at an early stage in circumstances where intelligence is received of young detainees who are planning or conspiring to commit a behavioural breach.

Amendments agreed to.

Clause 286, as amended, agreed to.

Clauses 287 to 305, by leave, taken together and agreed to.

Clause 306.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.33): I move amendment No 27 circulated in my name *[see schedule 2 at page 2544]*.

Clause 306 empowers a review officer who has reviewed a charge imposed by an administrator to impose disciplinary action in response to a behavioural breach by a young detainee. Subclause (5) requires the review officer to inform the young detainee in writing of the review officer's decision under this clause, including their right to apply for an external review. A young detainee would only apply for an external review of the decision if he or she were adversely affected by a decision to take disciplinary action under subclause (2). Therefore this government amendment requires that notice be given to the young detainee only in relation to a decision under subclause (2) and not all of clause 306.

Amendment agreed to.

Clause 306, as amended, be agreed to.

Clauses 307 and 308, by leave, taken together and agreed to.

Clause 309.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.34): I move amendment No 28 circulated in my name *[see schedule 2 at page 2544]*.

This is a technical amendment and substitutes a reference to clause 602 with a reference to clause 602 (2).

Amendment agreed to.

Clause 309, as amended, agreed to.

Clauses 310 to 472, by leave, taken together and agreed to.

Clause 473.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.35): I seek leave to move amendments Nos 29 and 30 circulated in my name together.

Leave granted.

MS GALLAGHER: I move amendments Nos 29 and 30 circulated in my name together *[see schedule 2 at page 2544]*.

Both of these amendments respond to concerns in the report of the scrutiny of bills committee.

Amendments agreed to.

Clause 473, as amended, agreed to.

Clauses 474 to 503, by leave, taken together and agreed to.

Clause 504.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.36): I move amendment No 31 circulated in my name *[see schedule 2 at page 2544]*.

The government amendment removes examples under clause 504 in relation to long-term care responsibilities and replaces this with a note to clause 20, which sets out examples of long-term care responsibility. Again, this is in response to concerns of the scrutiny of bills committee.

Amendment agreed to.

Clause 504, as amended, agreed to.

Clauses 505 to 511, by leave, taken together and agreed to.

Clause 512.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.37): I move amendment No 32 circulated in my name *[see schedule 2 at page 2545]*.

This amendment relates to cultural plans and is again in response to the report of the scrutiny of bills committee. The amendment adds the words "as an Aboriginal or Torres Strait Islander person".

Amendment agreed to.

Clause 512, as amended, agreed to.

Clauses 513 to 524, by leave, taken together and agreed to.

Clause 525.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.38): I move amendment No 33 circulated in my name *[see schedule 2 at page 2545]*.

The government amendment inserts a cross-reference to clause 843, which provides the meaning of "protected information." It addresses a comment by the scrutiny of bills committee.

Amendment agreed to.

Clause 525, as amended, agreed to.

Clauses 526 to 586, by leave, taken together and agreed to.

Clause 587.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.39): I move amendment No 34 circulated in my name *[see schedule 2 at page 2545]*.

This government amendment inserts a cross-reference which sets out the rules and requirements for dealing with body searches, addressing a comment by the scrutiny of bills committee.

Amendment agreed to.

Clause 587, as amended, agreed to.

Clause 588.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.40): I move amendment No 35 circulated in my name *[see schedule 2 at page 2545]*.

This government amendment inserts a cross-reference which sets out the rules and requirements for dealing with strip searches, addressing a comment raised by the scrutiny of bills committee.

Amendment agreed to.

Clause 588, as amended, agreed to.

Clauses 589 to 709, by leave, taken together and agreed to.

Clause 710, including part heading.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.41): I seek leave to move amendments Nos 36 and 37 circulated in my name together.

Leave granted.

MS GALLAGHER: I move amendments Nos 36 and 37 circulated in my name together *[see schedule 2 at page 2545]*.

These are technical amendments amending the headings.

Amendments agreed to.

Clause 710, including part heading, as amended, agreed to.

Clauses 711 to 737, by leave, taken together and agreed to.

Clause 738.

MR MULCAHY (Molonglo) (5.42): I move amendment No 1 circulated in my name *[see schedule 4 at page 2553]*.

I seek leave to withdraw the amendment.

Leave granted.

Amendment withdrawn.

Clause 738 agreed to.

Clause 739 agreed to.

Clause 740.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (5.45): I move amendment No 38 circulated in my name *[see schedule 2 at page 2545]*.

The scrutiny of bills committee report queried whether the vagueness of the concept of unreasonable discipline in clause 740 meant that it is not compatible with the Human Rights Act 2004. To address these comments the government amendment creates a non-exhaustive definition of "unreasonable discipline". It includes using any form of physical punishment and any form of behaviour management strategy likely to cause emotional or physical harm to the child. Examples are included of behaviours considered to be within the meaning of unreasonable discipline.

MR MULCAHY (Molonglo) (5.47): I move amendment No 1 circulated in my name to Ms Gallagher's proposed amendment No 38 *[see schedule 3 at page 2552]*.

I have spoken on some of the matters in this bill which I believe are important to ensuring that children are protected from abuse and neglect. However, I would also like to speak about my concerns about one aspect of the bill which has led me to propose an amendment.

I should say that I am always a little bit sceptical whenever a bill of this size is introduced to the Assembly dealing with disparate matters that are within the same general class of law, and I think Mrs Dunne alluded to this a while back. The bill in question deals with many different subjects under this broad subject matter. Like others in this place I have heard the legislative horror stories from the US where strange policies and spending commitments are attached as riders to bills which they really have nothing to do with and it all gets passed as a big package deal.

I am glad in this instance that the subjects covered by the bill are all within the general category of issues relating to children and young people. Nevertheless, there is still a danger that we package-deal some good provisions on one matter with some more questionable provisions on another tenuously related subject matter. This means that we must analyse each of the aspects of the bill very carefully.

My main concern with this bill relates to the provisions relating to childcare. The government's amendment seeks to amend clause 740 of the Children and Young People Bill, which makes it an offence punishable by imprisonment for a childcare worker to use unreasonable discipline on a child in their care. Previously the term "unreasonable discipline" was left undefined; hence it was for the courts to decide the standards of reasonableness within the context of the offence provision. However, the government's amendment seeks to define unreasonable discipline so widely as to include even yelling at a child as an imprisonment offence.

More broadly, the government's amendment defines unreasonable discipline to include not only physical punishment but any behaviour management strategy that is likely to cause emotional harm to a child. There is no threshold for this emotional harm. According to the clause any likelihood of any emotional harm will do. There is no requirement for this emotional harm to be substantial, long lasting or serious. In other words, any likelihood of any emotional harm, no matter how immediate, insubstantial or transient, is treated as sufficient to warrant prosecution and potential imprisonment of a childcare worker.

As anyone who has ever dealt with young children is aware, it does not take a great deal to tip the emotions of a small child. It does not take much or even anything to have a child burst into tears. To make matters completely clear, the government's example of unreasonable discipline specifically includes yelling as being a practice that causes emotional harm. Again, no limitation is placed on this example so that apparently any yelling at a child is grounds for imprisonment. This is quite unbelievable. The government's amendment would literally mean that a childcare worker who yells at a child causing them even the most immediate and cursory emotion harm could be imprisoned as a common criminal.

Dr Foskey also picked up on this and mentioned in her speech that she regards the inclusion of yelling in this section as being "a bit extreme". This appears to be part of the government's effort to forcibly impose its own vision of a nurturing environment on childcare centres. In its wield of power, the government has no room for the frustrations and difficulties of childcare workers. If any of them lose their cool, even for a moment, and yell at a child, then they are to be branded as criminals under this bill and can potentially be thrown into prison.

To be perfectly clear here, the issue is not whether yelling at children is good behaviour management strategy. Probably it is not, although I do not believe that there are never circumstances when a raised voice might not be warranted. The issue is whether hard working childcare workers are to expose themselves to criminal punishment and possible imprisonment for even the most minor loss of patience with children. For a government that pretends to care about the plight of people with difficult and often frustrating jobs this really is something bordering on an insult.

Some may imagine that I am over-reacting and that the offence provisions would never be applied in such a way as to punish childcare workers for minor incidents of yelling. But this argument is untenable as the government's amendment makes it perfectly clear that yelling is an example of unreasonable discipline. There is no qualification on this example. Even if we are to rely on prosecutorial discretion this is a dangerous road to go down. It is a recipe for increasing irresponsible government power to define excessively wider offence provisions and then rely on the discretion of government agents to prevent abuse. This kind of practice gives no certainty to childcare workers other than the certainty that they are at the mercy of their government.

In order to rectify this situation I have moved an amendment to the definition of "unreasonable discipline" to qualify the general principles and examples listed in the

government's amendment. With respect to emotional harm my amendment restricts the meaning of unreasonable discipline to behavioural management strategies that are likely to cause significant emotional harm to children. This ensures that childcare workers are not branded as criminals for insignificant emotional harm to children, such as the kinds of tantrums and emotional reactions which we know that children sometimes have to perfectly reasonable requests and instructions.

My amendment also amends the examples of unreasonable discipline to make it clear that only abusive or excessive yelling should be regarded as unreasonable and only seriously threatening or humiliating language. This would ensure that a single instance of a loss of patience leading to yelling at a child would not be regarded as an offence so long as it does not cause significant emotional harm. In other words, if a childcare worker loses their patience and yells at a child and the child cries then this on its own would not be enough to form an offence unless the court regarded this as abusive or excessive yelling or believed that this was likely to cause significant emotional harm to the child.

I think that these amendments strike a sensible balance between the legitimate expectations of parents in the community when they leave their children in childcare and also the legitimate rights of childcare workers not to be railroaded into potential prison situations for minor lapses of judgement in the workplace.

DR FOSKEY (Molonglo) (5.53): I am inclined to support Mr Mulcahy's amendment. While I grew up in a home where yelling never occurred, I certainly did not grow up in a home where there was not approbation and emotional abuse expressed in other ways. Interestingly enough, I used to be quite shocked when I visited my friends—certainly I have observed this as an adult—and discovered that in other households yelling and shouting is just part of the normal run of things. Everyone shouts; everyone yells. It is not my style, it is a cultural thing and I do not think it is up to me to condemn it.

I am also aware, having been a teacher, that sometimes one has to yell. "Yell" is an interesting word, isn't it? The word "shout" would have less of a connotation—

Mr Gentleman: There is a connotation of harm. That is the point.

DR FOSKEY: Yelling does not necessarily connote harm to me.

Mr Gentleman: It has to have caused harm.

DR FOSKEY: Yes. I certainly do not agree that we should yell or shout in a way that would cause harm. I feel, however, that we do need to be aware of the cultural issues and the fact that somebody might yell out of frustration or just lose their cool for a moment. I can tell you that when working with children that can happen to the most wonderful, saintly otherwise law-abiding person. I am not sure of the degree of difference that Mr Mulcahy's amendment would make. If someone will hand me a copy of the government's amendment I will make an informed comparison.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for

Women) (5.56): The government will not be agreeing with this amendment. I think the concerns that Mr Mulcahy has raised are important but I do not think that they cannot be dealt with by the government's amendment. Under proposed new subclauses (2) (a) and (b) "unreasonable discipline" is specified as physical punishment or any behaviour management strategy likely to cause emotional or physical harm to a child. Yelling is given as an example of activity that would cause physical or emotional harm to a child.

Mr Mulcahy's amendment raises the threshold fairly high and includes words such as "significant emotional harm". If the Assembly accepts this amendment today, we are saying it is okay to yell and it is okay to smack if it does not cause significant emotional or physical harm to a child. I cannot stand here and support that because I can tell you that if someone did that to my child in day care and forced them to cry I would be very unhappy with the quality of day-care services being provided.

These are trained professionals. Parents pay extraordinary amounts of money to have their children cared for and educated in a warm, friendly and safe environment, and if we accept this amendment today we, the Assembly, are saying that it is okay to engage in a whole range of behaviours if they do not significantly harm the child. My test is a lot lower. It specifies "any behaviour management strategy likely to cause emotional or physical harm to a child". It is still causing harm, but Mr Mulcahy says it is okay if you do not cause significant harm.

That is a pretty high threshold and one that I imagine courts would have to look at pretty closely. What constitutes significant harm? What constitutes abusive or excessive yelling? You are not allowed to yell in day care. There are standards in the provision of childcare. You are not allowed to smack in day care. You are not allowed to use seriously threatening or humiliating language. I would be very worried if this Assembly decides today that it is okay to engage in behaviour management strategies up to a point at which they cause significant damage to a child. That is what we would be doing if we agreed to Mr Mulcahy's amendment today. I am shocked that Dr Foskey would consider supporting Mr Mulcahy's amendment.

MRS DUNNE (Ginninderra) (5.59): This is an interesting debate. I take the point that Mr Mulcahy is making about not making provisions which are too draconian, but I also take the minister's point about what is significant and what is insignificant. I think the point that Mr Mulcahy is trying to make is that if a childcare worker shouts out in a loud voice it could be something like, "Don't touch the stove, Mary Jo."

At 6.00 pm, in accordance with standing order 34, the debate was interrupted. The motion for the adjournment of the Assembly having been put and negatived, the debate was resumed.

MRS DUNNE: I hope my comments would be a guide to a court if they actually came to make some decisions on this. Although I am sympathetic to Mr Mulcahy's proposal I have the same problems with the wording as the minister does. I would like to put some context around that for the edification of any court that might have to make some decisions on this.

It could be a reasonable lapse or an understandable lapse for a childcare worker to yell out across the room, "Mary Jo, don't touch the stove," and that Mary Jo might be offended by that and might burst into tears. That is a transitory harm to her in that she might be a bit upset for a while, but it would not be a reasonable reason to prefer charges against someone that actually incur a prison sentence. I think this is the fine line.

My problem with Mr Mulcahy's amendment is his use in his proposed subclause (2) (b) of the word "significant". There is a view that it could be mild emotional damage, but it may not be transitory. I think the point that Mr Mulcahy is probably making is that it is about some sort of transitory emotion that causes someone upset. This is going to be an extraordinarily hard thing to judge, but I do not want to set the bar too low. On reflection, I will not be supporting Mr Mulcahy's amendment.

DR FOSKEY (Molonglo) (6.02): I am glad to have the chance to speak again, because, I did not have the original amendment in front of me earlier. I want to thank Mr Gentleman for coming over and pointing out that word "significant", which is the major word in (b). Hearing all the arguments has certainly assisted me, and I do not support the amendment. I just want to say, though, that these are tricky things, because these words are qualitative. We would have problems because they mean something different for different people. The words "significant emotional or physical harm" obviously mean something negative to Mr Mulcahy, but how that is judged is really difficult.

The Greens in New Zealand introduced legislation which would have made smacking and physical punishment illegal. I know that was the cause of huge amounts of debate, and these sorts of issues often are contentious. I suspect that if we were talking about the family home, it would be much more contentious, but, because we are talking about childcare centres, which are like schools, there really needs to be a framework of behaviour about which everyone is certain, and we need as few grey areas as possible. In that way, the word "significant" adds a grey area that then creates difficulty in interpreting whether some behaviour was significant or not. It is possible that any breach may be being argued in courts some years later when nobody really remembers what the initial issue was, anyway. I just wanted to clear the air about that. I will not be supporting Mr Mulcahy's amendment.

MR MULCAHY (Molonglo) (6.04): First of all, there is not any dispute here about the physical punishment issue, so I am not quite sure what the relevance is of what the Greens did in New Zealand. There is no debate; my amendment does not contemplate any change there. What my amendment deals with is the very scenario that Mrs Dunne sought to utilise but she then did not go ahead and suggest a way in which this would in fact adequately protect the childcare worker. One might say to a child, "Don't touch the hotplate" or "Don't touch the oven" or "Don't assault the other child," and the child might have an outburst as a result of that direction. Under this provision, there is emotional harm if the child were to break into tears, and there would be a full opportunity for action to be taken. The reason I have lifted the threshold of the second point is simply to avoid those sorts of vexatious matters being pursued.

This is a litigious environment. I spoke to a childcare operator the other day who said that a little child had a block and hit one of the assistants, and she is now in litigation against the centre. It is a WorkCover case where she is saying she was emotionally distressed by that. That is an extraordinary example of what lengths people will go to over the most trivial matters in this day and age. Whilst the minister talks about lowering the threshold, I think it is a very sensible measure. I am disappointed the Liberal Party has not taken this on board in a serious way. By not accepting this amendment you put a lot more pressure on the industry and those working in it for potentially frivolous matters being brought forward. Anyone who knows anything about education, which Mrs Dunne and Dr Foskey do, and anyone who is a parent will know that there are scenarios where people will take the extreme course of action if there are provisions enabling them to do so.

I am going to stay with this amendment. I believe it is reasonable in terms of including the term "significant". Any reaction from the child could reasonably be argued to be an emotional response. Children do react and people do raise their voices, and that is often for the wellbeing of the child. I have seen situations where my own children, when they were little, were in imminent danger. To alert children to stop doing something that could be injurious to them, such as approaching a radiator or racing ahead to cross a road, you do have to raise your voice and say, "Stop." Sometimes just that direction brings an adverse or emotional response from the child. Surely no-one in this place in their right mind would say that if a childcare worker yelled while attempting to protect a child they should face a prison term if the child was upset by those events. The extreme basis of the minister's amendment is silly. I know the amendment was made after we raised concerns about this provision, but, in my view, it still does not provide adequate protection for those working in the childcare industry.

Question put:

That **Mr Mulcahy's** amendment be agreed to.

The Assembly voted—

Ayes 1	Noes 12	
Mr Mulcahy	Mr Barr	Ms Gallagher
	Mr Berry	Mr Gentleman
	Mrs Burke	Ms MacDonald
	Mr Corbell	Ms Porter
	Mrs Dunne	Mr Smyth
	Dr Foskey	Mr Stefaniak

Question so resolved in the negative.

Ms Gallagher's amendment agreed to.

Clause 740, as amended, agreed to.

Clauses 741 to 772, by leave, taken together and agreed to.

Clause 773.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (6.12): I move amendment No 39 circulated in my name *[see schedule 2 at page 2546]*.

This amendment adds a cross-reference to sections 170 and 171 of the Legislation Act, which deal with the application of privilege against self-incrimination and client legal privilege. It addresses a comment made by the scrutiny of bills committee.

Amendment agreed to.

Clause 773, as amended, agreed to.

Clauses 774 to 791, by leave, taken together and agreed to.

Clause 792.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (6.13): I move amendment No 40 circulated in my name *[see schedule 2 at page 2546]*.

The scrutiny of bills committee queried the vagueness of the concept of "light work" in subclause 792 (1), which is a critical element of the offence provision of subclause 794 (1). It means that the offence is not compatible with the Human Rights Act 2004. To address comments made in the report of the scrutiny of bills committee, the government amendment defines "light work" at clause 792 (1) to mean "work that is not contrary to the best interests of a child or young person and is declared by regulation". This amendment also removes examples from the bill. The amendment has the effect of giving the executive responsibility and flexibility to define light work by regulation.

MRS DUNNE (Ginninderra) (6.14): Mr Speaker, I welcome this amendment. Generally in dealing with a bill this large you are going to find some clangers, and this was a classic one. I am pleased to say that we have now got five lines to do what we were previously doing in 37 lines. I applaud the move.

Amendment agreed to.

Clause 792, as amended, agreed to.

Clauses 793 to 833, by leave, taken together and agreed to.

Clause 834.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for

Women) (6.14): I seek leave to move amendments Nos 41 and 42 circulated in my name together.

Leave granted.

MS GALLAGHER: I move amendments Nos 41 and 42 circulated in my name together *[see schedule 2 at page 2546]*.

Government amendment 41 omits the words "must not" and replaces them with "may". Government amendment 42 omits the word "except". This amendment addresses concerns expressed by the scrutiny of bills committee.

Amendments agreed to.

Clause 834, as amended, agreed to.

Clauses 835 to 867, by leave, taken together and agreed to.

Clause 868.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (6.15): I move amendment No 43 circulated in my name *[see schedule 2 at page 2547]*.

Again responding to the report of the scrutiny of bills committee, this amendment adds a cross-reference to clause 875.

Amendment agreed to.

Clause 868, as amended, agreed to.

Clauses 869 to 888, by leave, taken together and agreed to.

Schedule 1, amendments 1.1 to 1.20, by leave, taken together and agreed to.

Schedule 1, proposed new amendment 1.20A.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (6.17): I move amendment No 44 circulated in my name *[see schedule 2 at page 2547]*.

This amendment inserts a new note in section 18 of the Crimes (Sentence Administration) Act 2005. The note refers to the provision in new section 320 DA dealing with young remandees.

Amendment agreed to.

Schedule 1, proposed new amendment 1.20A agreed to.

Schedule 1, amendments 1.21 to 1.25, by leave, taken together and agreed to.

Schedule 1, amendment 1.26.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (6.18): I move amendment No 45 circulated in my name *[see schedule 2 at page 2547]*.

This is a technical amendment and fixes a problem in the formatting of the clause.

Amendment agreed to.

Schedule 1, amendment 1.26, as amended, agreed to.

Schedule 1, amendments 1.27 and 1.28, by leave, taken together and agreed to.

Schedule 1, amendment 1.29.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (6.19): I seek leave to move amendments Nos 46 to 50 circulated in my name together.

Leave granted.

MS GALLAGHER: I move amendments Nos 46 to 50 circulated in my name together *[see schedule 2 at page 2547]*.

Amendment No 46 clarifies that proposed new section 320C will apply in relation to young offenders as well as young remandees. A young remandee is a remandee aged under 21 years who is on remand in relation to an offence allegedly committed when they were under the age of 18 years.

Amendment No 47 clarifies that proposed new section 320D will apply in relation to young offenders as well as young remandees and is similar to the previous amendment. Amendment No 48 creates a new section 320DA in the Crimes (Sentence Administration) Act which will provide that a person who is aged under 21 years and who is denied bail in relation to an offence they allegedly committed when they were under 18 years of age is to be detained in a youth detention centre.

Amendment No 49 is technical in nature and changes the heading of proposed new section 320E of the Crimes (Sentence Administration) Act to read "Young offenders—administration of sentences other than imprisonment". Amendment No 50 clarifies that an agreement under proposed new section 320E must be made in respect of any sentence imposed on a young offender other than a sentence of imprisonment.

MR STEFANIAK (Ginninderra) (6.21): We will be supporting the amendments. I do flag one thing that the opposition is concerned about, and it relates to young

remandees. In terms of these amendments another relevant clause to refer to is clause 94 (f), which reads:

> (f) a child or young person may only be detained in custody for an offence (whether on arrest, on remand—

which is what we are talking about here—

> or under sentence) as a last resort and for the minimum time necessary;

One of the big problems expressed to me, especially by police and, indeed, the DPP and other people involved in the court system, is that until now, and over the last few years, juvenile remandees have been treated quite differently from adult remandees, and that section 9D of the Bail Act has not been applied, especially by the Supreme Court. For members' edification, section 9D relates to where a person has been charged or is put before the court for repeat offences, having already been bailed for similar offences—serious offences as defined in section 9D—and is back before the court for additional offences committed while they are on bail or while they are on some type of remand.

There is an automatic presumption that, unless there are exceptional circumstances, a person in that category should be remanded in custody. The intent of the Bail Act is that it is to apply not only to adults but to juveniles. Certainly, it has been brought to my attention on occasions that the court—especially the Supreme Court—has not been applying section 9D but has been applying section 68 of the previous act, which will be repealed by this provision.

In the briefings we were given, it was clearly the intention of this new act to bring this legislation into line with previous legislation, certainly in relation to things like sentencing, unless it is specifically detailed otherwise, and certainly in relation to things like remand, so that measures like the Bail Act will apply to young persons as well. Obviously, they will be detained in different circumstances, in different types of accommodation, and different types of provisions will apply to them. But our concern is that a section such as 94 (f) may well be used by a young remandee to get around the very clear provisions of the Bail Act.

This is something that has occurred in the past. We were certainly assured that the idea was to encompass all relevant sentencing and other legislation in applying the same law to everyone, with the obvious proviso that, when young people are detained, they are detained in different circumstances and in a different way from adults. Of course, that is a given.

I would certainly hate to see something like 94 (f) used when it comes to young remandees who breach section 9D of the Bail Act, or any other part of that act, so that they are treated differently from adult remandees—except, of course, that they would be remanded at the youth centre rather than at what will be the prison, which is obvious and is a given.

I want to make that point quite clear. I was certainly told in the briefings that the law would be the same for all. A loophole like that, where young people can be treated

quite differently, and quite wrongfully differently, in terms of not being remanded in custody when they should be, and getting around the clear provision of section 9D of the Bail Act, is certainly something that I do not think this Assembly wants to see occur. Certainly, it is something that the police and victims do not want to see occur.

We expect to see young people treated in accordance with the law. They should be treated differently from adults in terms of their remand conditions—where they serve their remand. But I hope it is not anticipated that section 9D of the Bail Act will be got around by anything in this bill. I simply make that point in relation to these amendments which the minister is seeking to make.

Amendments agreed to.

Schedule 1, amendment 1.29, as amended, agreed to.

Schedule 1, amendments 1.30 to 1.33, by leave, taken together and agreed to.

Schedule 1, proposed new amendment 1.33A.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (6.25): I move amendment No 51 circulated in my name which inserts a new amendment 1.33A in schedule 1 *[see schedule 2 at page 2549]*.

This amendment inserts a new definition of "young remandee" that mirrors the definition of "young offender". A young remandee is a person under 18 who is on remand or a person who is over 18 but under 21 and is in remand for an alleged offence committed when they were under 18.

Amendment agreed to.

Proposed new amendment 1.33A, as amended, agreed to.

Schedule 1, amendments 1.34 to 1.81, by leave, taken together and agreed to.

Schedule 1, proposed new amendments 1.81A to 1.81D.

DR FOSKEY (Molonglo) (6.27): I move amendment No 2 circulated in my name which inserts new amendments 1.81A to 1.81D *[see schedule 1 at page 2538]*. I flagged this earlier, during my speech in the in-principle debate. Certainly, it has not gone without comment. The minimum age of criminal responsibility in the ACT is currently set at 10. This is our version of the longstanding common law doctrine of "doli incapax" or "incapacity to commit crime".

For children accused of committing crimes between the ages of 10 and 14, doli incapax is only a rebuttable presumption, and the Director of Public Prosecutions can always present a case that the accused child fully understood the gravity, implications and wrongfulness of their actions and therefore should not be afforded the protection of the presumption.

I do not want to change the upper limit of 14 for criminal responsibility, but I agree with international human rights experts who consider that the lower limit should be raised to 12 years of age. Our current minimum age of criminal responsibility of 10 years is contrary to mainstream international jurisprudence and has been the subject of severe criticism by bodies such as the United Nations Committee on the Rights of the Child. While there are undeniably reasons for keeping the age limit as it is, I think on balance that the reasons for raising the limit outweigh the reasons for keeping it at 10.

The real thrust of this approach is to move young offenders from a criminal to a welfare trajectory, with the object, of course, of identifying risk factors and changing behaviours before they become established. It is not as if I am advocating ignoring the behaviour of young offenders, and I am assured that there are a number of programs and agencies that would take responsibility for addressing the child's behavioural problems.

Nothing ensures recidivism more than a spell in a criminal institution, and if this initiative helps to divert children from that path then it will have proved its worth. Of course, criminal behaviour is a multifaceted phenomenon, and if the root causes of the behaviour are generated by the home environment, or lack of a home environment, the odds of positive outcomes are commensurately reduced. I hope the government has put in place the resources to be ready for the added responsibility which this will place on its child welfare agencies.

I understand that the government is working through COAG towards a national approach, but we should not be so backward in being forward when it comes to protecting the interests of children, and mere administrative convenience and neatness are not excuses for failing to act now. I understand that the ACT government has set in train a process for lifting the minimum age to 12, either bilaterally with Victoria, which is the other human rights jurisdiction, or through COAG. But, really, that is too slow and it could be done through this legislation now.

While I am aware that this issue has the potential to bring out the "lock 'em up and throw away the key" brigade, the government should know that any progressive human rights ideas do attract this kind of right-wing nonsense. The government should implement legislative change now rather than waiting for the glacially slow COAG or SCAG process to bear fruit, if it ever does. Hopefully a coalition with Victoria will convince cabinet that any right-wing backlash would be worth weathering.

However, I do have sympathy for the view that if I push ahead with my proposed amendment I will have given the opponents of this change some advantage, by locking the government into formulating and advocating reasons as to why my amendment should not be supported. Having locked themselves into position by opposing my amendment, it will be that much harder for the Attorney-General, the health minister and whoever has relevant responsibility for child welfare to argue the exact opposite when their staff are ready with a bilateral or national model bill of their own.

Mr Speaker, having moved this amendment, and it having been on the program, I now seek leave to withdraw it, given the fact that I have argued myself out of it.

Leave granted.

Amendment withdrawn.

Schedule 1, amendments 1.82 and 1.83, by leave, taken together and agreed to.

Schedule 1, proposed new amendments 1.83A to 1.83F, by leave, taken together.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (6.33): I seek leave to move amendments Nos 52 to 57 circulated in my name together.

Leave granted.

MS GALLAGHER: I move amendments Nos 52 to 57 circulated in my name together *[see schedule 2 at page 2549]*. I spoke about these measures when I closed the in-principle debate. They relate to young offenders who are fine defaulters. They amend a couple of pieces of legislation and set in place a process to avoid their being unnecessarily sent to a detention centre. They put in place a process to deal with that.

MR STEFANIAK (Ginninderra) (6.35): These amendments were brought to my attention this morning. I have been trying to find, in the various acts, including the current act, what the adult provision is. Clearly, with children, courts often do not impose fines, for the simple reason that young people do not have any money to pay them. They usually rely on other orders. In some instances, however, young people may be working and they may have the capacity to pay. It is quite common, for example, for a 17-year-old driver charged with drink-driving to be fined $300 or $400 and, in default, a certain of amount of time would normally be served. They would be given time to pay; indeed, the courts have always been quite reasonable in ensuring that people have enough time to pay a fine. People can usually apply to the registrar if they need a bit of extra time, and that is an eminently sensible suggestion.

My understanding—and I stand to be corrected here—is that these amendments take out the word "must" and put in "may". As I said, I am uncertain as to whether these amendments merely follow amendments in the adult jurisdiction or whether they are somewhat different, having regard to the use of the word "may". I will give a caution in relation to this matter. If a young person clearly has the capacity to pay and they are thumbing their nose at the system, what is proposed here in terms of a default of one day for each $300, or up to seven days, is quite reasonable. In those sorts of situations, I would hate to see a court fettered by having the word "may" included in this proposed section rather than something stronger. Quite clearly, if it is appropriate and if someone has the capacity, and if they simply thumb their nose at the system, the whole idea of having a default system is to ensure that there is some penalty attached to not paying, and some detention is necessary. What is proposed here is eminently reasonable in terms of a young person in that regard.

Those are the concerns that I put on the record in relation to this matter. We will see how it goes in practice. A lot of what is in here is quite sensible in terms of ensuring that, for a young person who may have the capacity to pay in six months time, it can be reassessed. Those things are quite sensible. It merely puts into the legislation what has been the practice probably for 20 or 25 years in our jurisdiction, and it is a sensible practice. I certainly make those comments in relation to young people who thumb their nose at the system. I am a little concerned that this may make it more difficult, when they should perhaps do time in lieu, for that to occur.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (6.38): I will speak briefly to these amendments. Government amendments to schedule 1 of the bill amend part 3.9 of the Magistrates Court Act to change the procedure that the Magistrates Court is to take when dealing with young offenders who default on the payment of a court imposed fine. It will build on amendments that the government made earlier this year to ensure that young people are not imprisoned because they cannot afford to pay a court ordered fine.

Under the new procedure, the court will only have the discretion to order the imprisonment of a fine defaulter in a youth detention centre if the court finds that the young person has the ability to pay the fine but deliberately chooses not to pay it. The court can only order the imprisonment of a young offender who refuses to pay a fine after the following steps have been taken: the young offender is served notice of the fine but does not pay within the required period; the young offender has had their capacity to pay the fine assessed by the court and the court finds that they have a capacity to pay; the young offender is given an opportunity to make alternative arrangements for the payment of a fine—for example, to pay the fine in instalments—and the young offender refuses to enter into such an arrangement; and the young offender's drivers licence is suspended, if they have one, and they still continue to refuse to pay the fine.

The policy objective, of course, is to avoid imprisonment of young people simply for fine default, and I think that is a sensible measure. The proposal that the government is putting in place through this amendment will help to inform our decision making around reform of fine default for the adult jurisdiction as well and whether or not improvements are needed there. In my view, improvements are needed in relation to adult fine default. We are one of the few jurisdictions left in the country where imprisonment for fine default remains a common alternative. It is important that we revisit that matter, and that is a piece of policy work which my department is pursuing at this time.

This approach will pave the way for similar thinking—not necessarily exactly the same but similar thinking—in relation to adult offenders, and it will further allow us to ensure that every alternative has been taken and explored prior to a young person being imprisoned for fine default.

MR STEFANIAK (Ginninderra) (6.40): I thank the attorney for that explanation. Obviously the amendment will go through. We will monitor that, attorney. Might I just say, from certainly my time in private practice, that it is amazing how people have

the capacity to pay a fine when they know the alternative might be some time in custody. I have seen that time and again in my time in practice, which admittedly finished in about 1995 in terms of my last court case.

We will have a look and see how this one goes. It is obviously a different situation with young people because very few of them have the capacity to pay a fine. Adults are quite different, so I am a little bit concerned to hear what you are saying in relation to adults; but that is for another day.

Amendments agreed to.

Schedule 1, proposed new amendment 1.84 agreed to.

Dictionary.

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women) (6.42): I seek leave to move amendments Nos 58 and 59 circulated in my name together.

Leave granted.

MS GALLAGHER: I move amendments Nos 58 and 59 circulated in my name *[see schedule 2 at page 2552]*.

These amendments go to the definition of "Aboriginal" and of "a Torres Strait Islander person" in response to the scrutiny of bills committee's concerns. Again we have amended the definition of "Aboriginal" and of "Torres Strait Islander" to mean a person who is accepted as an Aboriginal person or a Torres Strait Islander person by an Aboriginal community or a Torres Strait Islander community.

Amendments agreed to.

Dictionary, as amended, agreed to.

Title.

MRS DUNNE (Ginninderra) (6.43): As I have said before in the in-principle debate, I really do not like the title because I think that we should have a piece of legislation which is more discrete and bundled up in more bite-size bits. I think Dr Foskey used the term this morning that a brick like this is hardly child friendly.

But in concluding the debate I think we need to pay testament to the work that has been done over about five years on this piece of legislation—not the gestation of an elephant but at least the gestation of two Gallagher children. There are important issues that we need to keep in our mind. This is not the end of the process. This is the beginning of a new process and we have to remind ourselves and the community that this is an ongoing process. It is one that requires constant vigilance and constant tweaking, and I would see it as a test of whoever is the minister for child protection to

see this legislation back being amended on a fairly regular basis so as to make sure that we are up to date—

MR SPEAKER: Which part of the title does that refer to?

MRS DUNNE: All of the title, Mr Speaker; this all relates to the title. We should come back to this legislation, and we may even see a different title at some stage in the future. But we need to put on the record that, with the best will in the world, we have not finished the work today; we have just started a new process.

MR SPEAKER: Order! Come on—back to the title.

MRS DUNNE: On the subject of the title, "children and young people" is a bit of a flavour of the month at the moment; it has become pretty much a national issue. I notice that the federal government want a whole lot of initiatives in a national approach to children and young people, which we should take with some caution. Having legislation dictated from the top into an area such as this is a matter of some concern. The commonwealth is often good at the high-level policy bits, but delivering effective legislation for children and young people is a matter more appropriate to the states and the territories because it has that element of subsidiarity. I would hope we do not end up with a national approach at high-level legislation which may end up being poor legislation.

Of course, if the federal government want to make a contribution to the Children and Young People Act and its effective operation in the ACT, they have a large surplus, and I am sure that any government of whatever hue would welcome the initiatives in the areas of early intervention and child protection for the benefits of children and young people. But I hope that, as has happened with some of the other issues where the federal government has entered into forays in the past, they do not end up in the too-hard committees of COAG, like the binge drinking initiative did.

Ms Gallagher: Okay, back to the title.

MRS DUNNE: Children and young people are deeply affected by the processes in relation to binge drinking. In closing, I would like to pay testament to the, I suspect, tens, maybe hundreds, of people who have contributed to this, from the big picture people like the former Community Advocate—

MR SPEAKER: Mrs Dunne, give me a break; get back to the title.

MRS DUNNE: Heather Macgregor, who raised issues of concern some time ago—

MR SPEAKER: Mrs Dunne, this is about the title; this is not a wide-ranging debate about the rest of the bill. I think you have had a fair go.

MRS DUNNE: Okay, Mr Speaker. I commend members for the work that they have done on this bill.

Title agreed to.

Bill, as amended, agreed to.

Children and Young People (Consequential Amendments) Bill 2008

Debate resumed from 8 May 2008, on motion by **Ms Gallagher**:

> That this bill be agreed to in principle.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Privileges—Select Committee
Membership

MR SPEAKER: I have been notified in writing of the following nominations for the membership of the Select Committee on Privileges 2008: Mrs Dunne, Mr Gentleman and Mr Mulcahy. Congratulations.

Motion (by **Mr Corbell**) agreed to:

> That the Members so nominated be appointed as members of the Select Committee on Privileges.

Adjournment

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

> That the Assembly do now adjourn.

New South Wales Judicial Commission

MR STEFANIAK (Ginninderra) (6.48): Mr Speaker, by now hopefully you have got my study trip report in relation to the New South Wales Judicial Commission but, given that very few people tend to read these things, I think it is worth putting on record what an excellent organisation it is and its possible benefits for the ACT.

I went there early last month. It was a commission set up by the previous New South Wales Labor government after a spate of allegations about some judges, magistrates and others, as well as community complaints over sundry matters. The commission was set up after some initial concern from some of the judiciary but that abated once it got up and running. It has three main roles: it handles judicial education, it tries to ensure consistency in approaches to sentencing and procedures in both the criminal

and civil jurisdiction and it also investigates complaints against the judiciary. That was the most controversial point, but now it raises little controversy.

The New South Wales commission investigates about 100 complaints a year and deals with many more grievances that do not become formal complaints; that often might simply mean pointing people in the right direction by telling them their appeal rights. The commission follows a certain process with these complaints, which I have set out in my study report, which I commend to the Assembly. It is a pretty fair system. It ultimately could lead to a conduct division being set up if the complaints really are investigated very thoroughly; there have been only some 18 conduct divisions set up in 20 years. They comprise three members—two members of the judiciary plus a non-judicial member appointed by parliament—and the two non-judicial members in most recent times were a former police commissioner and woman involved with victims of crime.

The commission has had an interesting history with those 18 complaints over 20 years, which is not many. Six judicial officers resigned. Of the four complaints that went to a hearing, only one went to parliament; with the other three the judicial officers resigned. The one incident that got to parliament related to Justice Bruce sitting on judgements, and members are probably aware that he survived on a vote of the parliament. Western Australia is looking to set up a similar judicial commission based on the New South Wales model. Queensland taps into the very good data the commission has in New South Wales.

In relation to the commission's sentencing role—this is probably particularly handy for the ACT because we could probably lock in terribly cheaply, as Queensland and indeed the commonwealth do—all New South Wales judicial officers have a sentencing handbook and that is continually updated. Also, all sentences in all courts in New South Wales, be they in a Magistrates Court through to the Court of Appeal, are accessible via the web. They are constantly updated, on a daily basis, and they are categorised, so that literally by pressing a few buttons on the computer—I saw Ernie Schmatt, the CEO, do this when I was there—any judge or magistrate in any New South Wales court can see what the usual tariff is for any kind of offence and for basically any list of possible offenders who might fit various characteristics of an offender before the court.

The commission also provides a criminal and civil trials bench book and a Magistrates Court bench book, and these books include such things as suggested directions to juries for hundreds of offences. They are available electronically with direct links to the Crimes Act, relevant case guideline judgements and summaries of cases and decisions prepared and put in by the commission. The commission now has some 2,000 pieces of legislation on its database, updated daily. It has 38 staff, including retired judges. It runs the Queensland and commonwealth sentencing information systems; Queensland pays a small sum for it. Naturally Ernie would not tell me how much because that is commercial-in-confidence. I would strongly suggest that the ACT could do the same here.

In New South Wales, judicial officers, the legal aid office, the police and the Public Defenders Office all use the system for free. Private practitioners have to pay for it, as

do interstate bodies, although it does not seem too much; for a firm of two people I think they charge $1,600 per annum for their licence.

The data also is linked to subordinate legislation. The commission also researches and publishes papers on such things as sentencing trends. It has an educational function, which includes orientation programs for new judicial officers and papers on such things as circle sentencing, crown appeals against sentences and others. The information effectively before the commission provides what was described to me as the collective wisdom of the courts. As I said, it would be very easy for us to lock into the system.

In May 2008 the New South Wales system had 84,000 hits from its 700 users. Half of those users were from the DPP, legal aid, police and the Public Defenders Office. Everyone I spoke to, including members of the profession, members of the judiciary and indeed even the shadow Attorney-General all spoke very highly of the system. It is also used for judicial education. A judge I spoke to said she herself had assisted the commission in some educative papers over the last few years and found it a particularly useful tool.

We have some pretty good educative ways of doing things in the ACT, but certainly this is something that the ACT could very easily tap into. It is very relevant and other jurisdictions are taking it up. I have made some suggestions as to how we could perhaps have some part-time position for complaints and that type of thing, but certainly the database is of great assistance.

World Youth Day—Days in the Dioceses

MS PORTER (Ginninderra) (6.54): Today I had the pleasure, on behalf of the Chief Minister, to recognise the significant event that is happening very shortly in our city: the arrival of 6,500 young people aged between 16 and 35—pilgrims coming here to celebrate "Days in the Dioceses" as part of World Youth Day.

We all know that the larger event, World Youth Day, will take place in Sydney, and in terms of participants that is going to be bigger than the Sydney Olympics, as it is expected that 500,000 people will attend. As I said, Canberra will play host to 6,500 young pilgrims and they will be hosted and billeted by Canberra families and supported by the ACT government.

We trust that the young people from places as far flung as Germany, France, Nigeria, Tonga, the USA and Aruba will enjoy their stay despite the cold weather and that they will take the opportunity to visit some of our national institutions and some of the NAIDOC events courtesy of the free ACTION bus travel at their disposal.

I also note that Raiders Michael Weyman, Joe Picker and Troy Thompson and Brumbies Matt Toomua and Francis Fainifo are supporting the pilgrims during their stay by acting as ambassadors.

May I place on the record here my thanks to the organising committee and all the volunteers who have worked so tirelessly for a number of months for the event and to the families that will be billeting the young people.

Arts—Fresh Funk performance

MR MULCAHY (Molonglo) (6.55): On Sunday night my wife and I had the pleasure of attending the Fresh Funk performance entitled "Larger Than Life" in Erindale and I want to put on the record my very strong and positive impressions of the work of the Fresh Funk coordinators who work very closely with the folks at the Tuggeranong Arts Centre.

It is particularly important to recognise the great contribution those organisers have made towards young people in Canberra and it is reflected in the large body of interest amongst young Canberrans to join with these dance activities. I understand that there were around 300 performers involved in "Larger Than Life" over the weekend and they all they deserve commendation for and recognition of their efforts.

All up, around 1,300 people attended three performances over the weekend. It was a fantastic experience and a highly entertaining show that the whole audience became a part of and enjoyed. I understand that the show took some six months to prepare. The high standard of choreography and talent available from young Canberrans was clearly evident. I would like to specifically single out the two choreographers and program managers, Leena Spry and Geza Szanto, who did a wonderful job in bringing the whole show together. The standard of choreography was, as I said, very high and it was plainly evident from the performance.

I have tried to get to the shows over the last several years. One of my children is very active in this group. But the standout feature for me was to see an activity that so many young Canberrans can be involved with and that is so completely positive. The praise that the young people involved have for the organisers is widespread and I think it is important that we try and recognise people who are making such a contribution to positive, sensible and creative activities for particularly teens living in the territory.

I might also just add tonight that we heard some positive comments earlier this week about an initiative for grandparents leave. I put a statement out and did some media praising that initiative. One of the statistics I heard revealed in a radio news coverage of this issue was that 100 people—I believe, if I heard correctly—over the age of 70 are still employed in the territory.

It is fitting tonight to recognise, without giving away age, that our most senior employee in this establishment is having his birthday tomorrow, Mr Peter Litchfield, and I would like to wish him well and I am sure members will join with me, as he is our most senior in years of service attendant, in wishing him all the best for tomorrow.

Question resolved in the affirmative

The Assembly adjourned at 6.59 pm.

Schedules of amendments

Schedule 1

Children and Young People Bill 2008

Amendments moved by Dr Foskey

1
Clause 7 (e) (ii)
Page 6, line 7—

omit clause 7 (e) (ii), substitute

(ii) are informed by processes which engage children and young people, wherever possible, and take their views and wishes into account; and

2
Schedule 1
Proposed new amendments 1.81A to 1.81D
Page 719, line 5—

insert

[1.81A] Section 25 heading

substitute

25 Children under 12

[1.81B] Section 25

omit

10 years

substitute

12 years

[1.81C] Section 26 heading

substitute

26 Children 12 and over but under 14

[1.81D] Section 26 (1)

omit

10 years

substitute

12 years

Schedule 2

Children and Young People Bill 2008

Amendments moved by the Minister for Children and Young People

1
Proposed new clause 8 (3)
Page 7, line 3—

insert

(3) To remove any doubt, a reference in any section of this Act to the best interests of a child or young person does not limit this section.

2
Clause 19 (1), example 2
Page 14, line 20—

after

may

insert

, or must not,

3
Clause 19 (1), proposed new examples
Page 14, line 22—

insert

4 everyday decisions, including, for example, about the personal appearance of the child or young person

5 daily care decisions about education, training and employment

4
Clause 20 (1), example 4
Page 16, line 15—

after

education

insert

, training and employment

5
Clause 37, note
Page 27, line 10—

omit

6
Clause 38 (3) (b), proposed new note
Page 27, line 19—

insert

Note Suitable entities are dealt with in pt 2.4.

7
Clause 70 (4) (b)
Page 48, line 18—

omit clause 70 (4) (b), substitute

(b) any of the following occurs:

(i) a court convicts the entity, or finds the entity guilty, of an offence involving fraud or dishonesty;

Example

A conviction, or finding of guilt, against the entity under the Criminal Code, ch 3 (Theft, fraud, bribery and related offences).

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).

(ii) a tribunal, or an authority or person with the power to require the production of documents or the answering of questions, makes a finding against the entity about its honesty or integrity; and

Example

The discrimination commissioner substantiates a discrimination complaint under the *Human Rights Commission Act 2005*.

8
Proposed new clause 102A
Page 74, line 21—

insert

102A Arrangements for escorting people

The chief executive may make an arrangement for escorting a child, a young person or a young detainee as required under this Act with—

(a) the chief executive responsible for administering the *Corrections Management Act 2007*; and

(b) the chief police officer.

9
Clause 108 (7)
Page 78, line 23—

omit

10
Clause 110 (6)
Page 80, line 9—

omit

taken

substitute

admitted

11
Clause 136, definition of *young remandee*
Page 99, line 15—

omit the definition, substitute

young remandee—see the Crimes (Sentence Administration) Act 2005, dictionary.

12
Clause 146 (2)
Page 106, line 21—

omit clause 146 (2), substitute

(2) The chief executive must take all reasonable steps to ensure that the prohibited area is brought to the attention of all young detainees.

13
Proposed new clause 151 (3)
Page 110, line 6—

insert

(3) A corrections officer providing assistance under this section may exercise any function exercisable by a youth detention officer under the criminal matters chapters in accordance with any direction by the chief executive.

14
Clause 172 (4)
Page 124, line 23—

after

not

insert

unreasonably

15
Clause 184 (2) (n) (v)
Page 137, line 21—

omit

16
Clause 208 (1) (a)
Page 156, line 10—

omit

themself

substitute

himself or herself

17
Clause 208 (1) (b) (i)
Page 156, line 12—

omit

the young detainee from engaging in harmful conduct

substitute

an imminent risk of the young detainee harming himself or herself

18
Clause 208 (1) (b) (ii)
Page 156, line 15—

omit

the young detainee from engaging in harmful conduct

substitute

an imminent risk of the young detainee harming himself or herself

19
Clause 232 (1)
Page 172, line 16—

omit

the officer

substitute

the person

20
Proposed new clause 244 (3)
Page 185, line 15—

insert

(3) However, a young detainee transferred to a correctional centre under a direction under section 110 is taken to be in the chief executive's custody only until the young detainee is admitted to the correctional centre.

Note See s 110 (6).

21
Clause 273 (1)
Page 207, line 4—

omit clause 273 (1), substitute

(1) The chief executive may direct a youth detention officer to conduct a scanning search, frisk search or ordinary search of a person at a detention place who is not a young detainee if the chief executive—

(a) believes on reasonable grounds that the search is prudent to ensure—

(i) the safety of anyone; or

(ii) security or good order at the place; or

(b) suspects on reasonable grounds that the person is carrying—

(i) a prohibited thing; or

(ii) anything else that creates, or is likely to create, a risk to—

(A) the personal safety of anyone else; or

(B) security or good order at the place.

22
Clause 273 (2)
Page 207, line 12—

omit clause 273 (2), substitute

(2) The youth detention officer who conducts a frisk search or ordinary search of a person mentioned in subsection (1) must—

(a) tell the person about the search and the reasons for the search and ask for the person's cooperation; and

(b) conduct the search in a private area or an area that provides reasonable privacy for the person.

(2A) The youth detention officer may conduct a frisk search of the person only if—

(a) the person is of the same sex as the officer; or

(b) if that is not the case—another person of the same sex as the person to be searched is present while the search is being conducted.

(2B) The other person mentioned in subsection (2A) (b) must not be a young detainee.

23
Clause 273 (3)
Page 207, line 17—

omit

However, part

substitute

Part

24
Clause 286 (1) (i)
Page 218, line 25—

omit

someone in a way that is likely to provoke a person to be violent

substitute

another person

25
Clause 286 (1) (s)
Page 219, line 13—

after

section 240

insert

or an interstate leave permit under section 241

26
Clause 286 (1) (v)
Page 219, line 17—

omit clause 286 (1) (v), substitute

(v) planning, conspiring or attempting, or assisting anyone else planning, conspiring or attempting, to commit a behaviour breach;

27
Clause 306 (5)
Page 233, line 16—

omit

this section

substitute

subsection (2)

28
Clause 309 (1)
Page 234, line 22—

omit

section 306

substitute

section 306 (2)

29
Clause 473, definition of *parental responsibility provision*, paragraph (b) (i), note
Page 359, line 14—

omit the note, substitute

Note Daily care responsibility is dealt with in s 19.

30
Clause 473, definition of *parental responsibility provision*, paragraph (b) (iv), examples
Page 360, line 12—

omit the examples, substitute

Note Long-term care responsibility is dealt with in s 20.

31
Clause 504, note
Page 384, line 6—

omit the note, substitute

Note Long-term care responsibility is dealt with in s 20.

32
Clause 512 (3), definition of *Aboriginal or Torres Strait Islander cultural plan*
Page 391, line 6—

after

of the identity of the child or young person

insert

as an Aboriginal or Torres Strait Islander person

33
Clause 525, definition of *personal information*, paragraph (a), proposed new note
Page 402, line 25—

insert

Note For the meaning of ***protected information***, see s 843.

34
Clause 587, proposed new note
Page 442, line 14—

insert

Note Body searches are dealt with in subdiv 16.3.5.5.

35
Clause 588, proposed new note
Page 442, line 26—

insert

Note Strip searches are dealt with in subdiv 16.3.5.4.

36
Part 19.3 heading
Page 518, line 1—

omit the heading, substitute

Part 19.3 Standard of proof

37
Clause 710 heading
Page 518, line 2—

omit the heading, substitute

710 Standard of proof

38
Proposed new clause 740 (2)
Page 538, line 18—

insert

(2) In this section:

unreasonable discipline includes—

(a) physical punishment; or

(b) any behaviour management strategy likely to cause emotional or physical harm to a child.

Examples

1 smacking

2 yelling

3 using threatening or humiliating language

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).

39
Clause 773 (5), proposed new note
Page 565, line 10—

insert

Note The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

40
Clause 792
Page 580, line 8—

omit clause 792, substitute

792 What is *light work*?

In this part:

light work means work that—

(a) is not contrary to the best interests of a child or young person; and

(b) is declared by regulation to be light work.

41
Clause 834 (1)
Page 612, line 12—

omit

must not

substitute

may

42
Clause 834 (1)
Page 612, line 13—

omit

except

43
Clause 868 (1), proposed new note
Page 640, line 24—

insert

Note For the meaning of ***confidential report***, see s 875.

44
Schedule 1, part 1.4
Proposed new amendment 1.20A
Page 686, line 4

insert

[1.20A] Section 18 (1), new note

insert

Note For a young remandee, see s 320DA.

45
Schedule 1
Amendment 1.26
Page 687, line 1—

omit amendment 1.26, substitute

[1.26] Section 213

substitute

213 Meaning of *registered victim*

In this Act:

registered victim—

(a) in relation to an offence by an offender (other than a young offender)—means a victim of the offender about whom information is entered in the register kept under section 215; and

(b) in relation to an offence by a young offender—means a victim of the young offender about whom information is entered in the register kept under section 215A.

46
Schedule 1
Amendment 1.29
Proposed new section 320C
Page 692, line 19—

omit proposed new section 320C, substitute

320C Young offenders and remandees—references to correctional centre, corrections officer and Corrections Management Act

(1) A reference in part 4.2 (Serving full-time detention) to a correctional centre or an ACT correctional centre is, in relation to a CYP young offender, a reference to a detention place under the *Children and Young People Act 2008*.

(2) In subsection (1), ***CYP young offender*** means a young offender required under the *Crimes (Sentencing) Act 2005*, section 133H to serve his or her sentence of imprisonment at a detention place.

(3) The reference in section 105 (Good behaviour—agreement to attend court) to a corrections officer is, in relation to a CYP young offender, a reference to a youth detention officer under the *Children and Young People Act 2008*.

(4) In subsection (3), ***CYP young offender*** means a young offender for whom the chief executive (CYP) is responsible in accordance with a decision under section 320E (Young offenders—administration of sentences other than imprisonment).

(5) A reference in this Act to the *Corrections Management Act 2007* is, in relation to a young offender in detention under the *Children and Young People Act 2008* or a young remandee, a reference to that Act.

47
Schedule 1
Amendment 1.29
Proposed new section 320D
Page 693, line 4—

omit proposed new section 320D, substitute

320D Young offenders and remandees—references to chief executive

(1) A reference in this Act to the chief executive is, in relation to a function to be exercised in relation to a CYP young offender or a young remandee, a reference to the chief executive responsible for the *Children and Young People Act 2008*.

(2) In this section:

CYP young offender means—

(a) a young offender serving a sentence of imprisonment at a detention place; or

(b) a young offender serving a sentence (other than a sentence of imprisonment)—

(i) who is under 18 years old; or

(ii) who is over 18 years old and for whom the chief executive (CYP) is responsible in accordance with a decision under section 320E (Young offenders—administration of sentences other than imprisonment).

48
Schedule 1
Amendment 1.29
Proposed new section 320DA
Page 693, line 8—

insert

320DA Young remandees—remand to be at detention place

(1) This section applies (instead of section 18 (1)) to a young remandee.

(2) The chief executive must—

(a) keep the young remandee in custody under full time detention under this Act and the *Children and Young People Act 2008* under the order for remand; and

(b) return the young remandee to the remanding authority as ordered by the remanding authority.

49
Schedule 1
Amendment 1.29
Proposed new section 320E heading
Page 693, line 9—

omit the heading, substitute

320E Young offenders—administration of sentences other than imprisonment

50
Schedule 1
Amendment 1.29
Proposed new section 320E (1)
Page 693, line 12—

omit

community-based sentence

substitute

sentence (other than a sentence of imprisonment)

51
Schedule 1
Proposed new amendment 1.33A
Page 696, line 18—

insert

[1.33A] Dictionary, new definition of *young remandee*

insert

young remandee means a remandee—

(a) who is under 18 years old; or

(b) who is over 18 years old but under 21 years old and is on remand in relation to an offence alleged to have been committed when he or she was under 18 years old.

52
Schedule 1
Proposed new amendment 1.83A
Page 723, line 3—

insert

[1.83A] Section 152 (5)

after

section 154D (Fine defaulters—imprisonment)

insert

or section 154E (Young fine defaulters)

53
Schedule 1
Proposed new amendment 1.83B
Page 723, line 3—

insert

[1.83B] Section 153 (3) (c)

after

section 154D (Fine defaulters—imprisonment)

insert

or section 154E (Young fine defaulters)

54
Schedule 1
Proposed new amendment 1.83C
Page 723, line 3—

insert

[1.83C] Section 154D (4)

substitute

(4) This section does not apply to a person if—

(a) the person's liability to pay the fine is derived from a reparation order under the *Crimes (Sentencing) Act 2005*; or

(b) section 154E applies to the person.

55
Schedule 1
Proposed new amendment 1.83D
Page 723, line 3—

insert

[1.83D] New sections 154E and 154F

insert

154E Young fine defaulters

(1) This section applies to a fine defaulter if the offence in relation to which the fine was imposed was committed when the person was under 18 years old.

(2) The court may order the imprisonment of the person if the court—

(a) has assessed the person's capacity to pay the fine and is satisfied the person has the capacity to pay; and

(b) has offered the person an arrangement under section 152 (Special arrangements) about the payment of the fine; and

(c) has notified the road transport authority as required under section 153 (1) (Notice for suspension of driver licence etc).

(3) The order, or any warrant under the *Crimes (Sentence Administration) Act 2005*, section 12 (Warrant for imprisonment), must not be given effect if the amount of the outstanding fine is paid to the Territory, or to someone acting for the Territory, before the person is imprisoned.

(4) The period for which the person must be imprisoned is the lesser of—

(a) a period worked out at the rate of 1 day for each $300, or part of $300, of the outstanding fine; and

(b) 7 days.

154F Young fine defaulters—no capacity to pay

(1) This section applies to a fine defaulter if—

(a) the offence in relation to which the fine was imposed was committed when the person was under 18 years old; and

(b) the court—

(i) has assessed the person's capacity to pay the fine; and

(ii) is satisfied that the person does not have capacity to pay the fine.

(2) The court may not order the imprisonment of the person.

(3) However, the court may (on application or on its own initiative) review the person's capacity to pay, but not more than once in any 6-month period.

56
Schedule 1
Proposed new amendment 1.83E
Page 723, line 3—

insert

[1.83E] Section 157 (1) (a)

after

section 154D

insert

or section 154E

57
Schedule 1
Proposed new amendment 1.83F
Page 723, line 3—

insert

[1.83F] New section 158A

insert

158A Outstanding fine satisfied by imprisonment—young fine defaulter

A person imprisoned under section 154E (Young fine defaulters) discharges the person's liability to pay the outstanding fine—

(a) at the rate of $300 for each day or part of a day for which the person is detained under the warrant for imprisonment; or

(b) if the person is committed for 7 days—at the end of the 7 day period.

58
Dictionary, definition of *Aboriginal*, paragraph (b)
Page 732, line 23—

omit paragraph (b), substitute

(b) either—

(i) for any person—regards himself or herself as an Aboriginal; or

(ii) if the person is a child—is regarded as an Aboriginal by a parent or family member; and

(c) is accepted as an Aboriginal by an Aboriginal community.

59
Dictionary, definition of *Torres Strait Islander*, paragraph (b)
Page 750, line 10—

omit paragraph (b), substitute

(b) either—

(i) for any person—regards himself or herself as a Torres Strait Islander; or

(ii) if the person is a child—is regarded as a Torres Strait Islander by a parent or family member; and

(c) is accepted as a Torres Strait Islander by a Torres Strait Islander community.

Schedule 3

Children and Young People Bill 2008

Amendment to Ms Gallagher's proposed amendment No 38 moved by Mr Mulcahy

1
Proposed amendment 38

Proposed new clause 740 (2)
Page 538, line 18—

omit proposed new clause 740 (2)

substitute

(2) In this section:

unreasonable discipline means—

(a) physical punishment; or

(b) any other behaviour management strategy that is likely to cause significant emotional or physical harm to the child.

Examples

1 smacking

2 abusive or excessive yelling

3 using seriously threatening or humiliating language

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).

Schedule 4

Children and Young People Bill 2008

Amendment moved by Mr Mulcahy

1
Section 738 (1) (c)
Page 537, line 22

insert

(c) is reckless as to whether or not they are taking the reasonable precautions required in (b).
