

1998-99

**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

MINUTES OF PROCEEDINGS

No. 62

TUESDAY, 12 OCTOBER 1999

1 The Assembly met at 10.30 a.m., pursuant to adjournment. The Speaker (Mr Cornwell) took the Chair and asked Members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

2 PETITIONS

The Clerk announced that the following Member had lodged petitions for presentation:

Mr Hird, from 98 residents, requesting that the Assembly provide sufficient resources to support public education to:

- reduce class sizes;
- allow successful integration of disabled students;
- improve community-based support to young children and families in crisis;
- support students “at risk” in high schools;
- improve the standards of school facilities;
- improve curriculum and teaching practices; and
- provide adequate teaching salaries.

Mr Hird, from 480 residents, requesting that the Assembly gives favourable consideration to the Development Application and Draft Variation to the Territory Plan No. 94: Red Hill section 56 block 1 (Federal Golf Club).

3 BELCONNEN LANDFILL - PROVISION OF REPORT TO ASSEMBLY

Ms Tucker, by leave, moved - That this Assembly:

- (1) censures the Minister for Urban Services for misleading the Canberra community on the extent of the government’s response to the disposal of lead-contaminated metal flock at Belconnen Landfill and the extent of lead contamination of this waste material;
- (2) calls on the Minister for Urban Services to assure the Assembly that the recent events at the Landfill will not occur again by providing a report to the Assembly by the first day of the December 1999 sitting period on:
 - (a) proposals to improve the environmental management procedures at the Landfill;

- (b) procedures for checking the acceptability of waste delivered to the site; and
- (c) the amount and appropriateness of interstate waste being disposed at ACT Landfills.

Debate ensued.

Mr Smyth (Minister for Urban Services), by leave, was granted an extension of time.

Debate continued.

Mr Kaine, by leave, moved the following amendments together:

“(1) Paragraph (1), omit the paragraph.

- (2) Subparagraph 2 (a), after ‘Landfill;’, add ‘and’; subparagraph 2 (b), after ‘site;’, omit ‘and’; and subparagraph 2 (c), omit the subparagraph.”.

Debate continued.

Mr Moore (Minister for Health and Community Care), Mr Stanhope (Leader of the Opposition) and Mr Hird, by leave, were granted extensions of time.

Papers: Mr Hird, by leave, presented the following papers:

Belconnen Landfill - Lead-contaminated metal flock -

Test results and maximum allowable concentrations on TCLP extracts - Facsimile (dated 6 September 1996) of letter from Manager-Environment Services, ETRS to Metal Recyclers NSW Pty Limited, dated 4 September 1996.

Copy of report number NA96-1032/1 from Manager-Environment Services, ETRS to Metal Recyclers NSW Pty Limited, dated 21 August 1996, detailing the description, test methods and test results of the analysis of solid sample identified Shredder Floc MJS.

Debate continued.

Mr Rugendyke moved the following amendment to Mr Kaine’s proposed amendments:

Add the following words:

- “(3) And omit from paragraph (2) the words ‘assure the Assembly that the recent events at the Landfill will not occur again by providing’ and substitute the word ‘provide’.”.

Debate continued.

Mr Berry, by leave, was granted an extension of time.

Debate continued.

Paper: Ms Tucker, by leave, presented the following paper:

Belconnen Landfill - *One load of metal car waste being tested at Belconnen Tip* - Facsimile of media release from Brendan Smyth MLA (Minister for Urban Services), dated 24 September 1999.

Ms Tucker, by leave, was granted an extension of time.

Question - That Mr Rugendyke’s amendment to Mr Kaine’s proposed amendments be agreed to - put.

The Assembly voted -

Ayes, 9

Noes, 8

Ms Carnell

Mr Moore

Mr Berry

Mr Stanhope

Mr Cornwell

Mr Rugendyke

Mr Corbell

Ms Tucker

Mr Hird

Mr Smyth

Mr Hargreaves

Mr Wood

Mr Humphries
Mr Kaine

Mr Stefaniak

Mr Osborne
Mr Quinlan

And so it was resolved in the affirmative.

Question - That Mr Kaine's amendments, as amended, be agreed to - put and passed.

Question - That Ms Tucker's motion, as amended, viz:

That this Assembly calls on the Minister for Urban Services to provide a report to the Assembly by the first day of the December 1999 sitting period on:

- (1) proposals to improve the environmental management procedures at the Landfill; and

(2) procedures for checking the acceptability of waste delivered to the site -
be agreed to - put and passed.

4 BELCONNEN LANDFILL - STATEMENT BY MINISTER - PAPERS

Mr Smyth (Minister for Urban Services), by leave, made a statement and presented the following papers:

Belconnen Landfill -

OH&S and Landfill Working Group Meeting (Mugga Lane Landfill) - Copy of minutes of meeting of 6 September 1999.

Copy of letter from Chief Executive, Department of Urban Services to Mr Brendan Smyth MLA, Minister for Urban Services, dated 12 October 1999.

Mr Moore (Minister for Health and Community Care), by leave, also made a statement on the matter.

5 QUESTIONS

Questions without notice were asked.

6 PRESENTATION OF PAPERS

The Speaker presented the following papers:

Study trips - Reports by -

Mr Corbell, MLA - Sydney, NSW, 18-20 June 1998.

Ms Tucker, MLA - Adelaide, SA, November 1998.

Legislative Assembly (Broadcasting of Proceedings) Act, pursuant to subsection 8 (4) - Authority to broadcast proceedings of a public hearing of the Select Committee on Public Housing for Tuesday, 28 September and Wednesday 29 September 1999, dated 22 September 1999.

7 ANNUAL REPORTS (GOVERNMENT AGENCIES) ACT - ANNUAL REPORTS - DIRECTIONS FOR 1998-99 - PAPERS AND STATEMENT BY MINISTER

Ms Carnell (Chief Minister) presented the following papers:

Annual Reports (Government Agencies) Act -

Amendment to Chief Minister's Directions for 1998-99, pursuant to subsections 7 (2), 8 (2), 8 (6) and 8 (7) - Annual Reports, dated 7 September 1999.

Copy of letter from Chief Executive, Chief Minister's Department and Auditor-General to Mrs Kate Carnell MLA, Chief Minister, dated 8 October 1999 -

and, by leave, made a statement in relation to the papers.

8 ACT DRUG STRATEGY 1999 - FROM HARM TO HOPE - PAPER - MOTION TO TAKE NOTE OF PAPER

Ms Carnell (Chief Minister) presented the following paper:

ACT Drug Strategy 1999 - *From harm to hope*, dated September 1999 -

and moved - That the Assembly takes note of the paper.

Debate adjourned (Mr Hird) and the resumption of the debate made an order of the day for the next sitting.

9 PRESENTATION OF PAPERS

Mr Humphries (Manager of Government Business) presented the following papers:

Subordinate legislation (including explanatory statements) and commencement provisions

Agents Act - Appointment of specified persons to be members of the Agents Board - Instrument Nos 231 and 232 of 1999 (No. 39, dated 29 September 1999).

Children's Services Act -

Appointment of Chairperson of the Children's Services Council until 30 June 2000 - Instrument No. 218 of 1999 (No. 36, dated 8 September 1999).

Appointments of members to the Children's Services Council until 30 June 2000 - Instruments Nos 219 and 220 of 1999 (No. 36, dated 8 September 1999).

Courts and Tribunals (Audio Visual and Audio Linking) Act 1999 - Notice of commencement (1 September 1999) of remaining provisions (No. 35, dated 1 September 1999).

Cultural Facilities Corporation Act - Appointment of Chair of the Cultural Facilities Corporation until 1 July 2002 - Instrument No. 222 of 1999 (No. 37, dated 15 September 1999).

Evidence (Amendment) Act 1999 - Notice of commencement (1 September 1999) of remaining provisions (No. 35, dated 1 September 1999).

Firearms Act - Firearms Regulations (Amendment) - Subordinate Law No. 17 of 1999 (No. 37, dated 15 September 1999).

Firearms (Amendment) Act 1999 - Notice of commencement (1 October 1999) of remaining provisions (No. 37, dated 15 September 1999).

Food Act - Food Regulations Amendment - Subordinate Law No. 18 of 1999 (S56, dated 16 September 1999).

Gungahlin Development Authority Act -

Instrument of appointment of Chairperson and Deputy Chairperson of the Gungahlin Development Authority (No. 37, dated 15 September 1999).

Instrument of appointment of members to the Gungahlin Development Authority (No. 37, dated 15 September 1999).

Health and Community Care Services Act - Determination of fees and charges - Instrument No. 230 of 1999 (No. 39, dated 29 September 1999).

Health Complaints Act - Appointment of the Community and Health Services Complaints Commissioner - Instrument No. 229 of 1999 (No. 39, dated 29 September 1999).

Independent Pricing and Regulatory Commission Act - Reference for investigation into ACTION fares under section 15 - Instrument No. 202 of 1999 (No. 35, dated 1 September 1999).

Mental Health (Treatment and Care) Act -

Appointment of Mental Health Officer - Instrument No. 199 of 1999 (No. 35, dated 1 September 1999).

Revocation of appointment of Mental Health Officers - Instruments Nos 206 to 213 of 1999 (inclusive) (No. 36, dated 8 September 1999).

Motor Traffic Act -

Motor Traffic Regulations Amendment - Subordinate Law No. 16 of 1999 (S53, dated 3 September 1999).

Drivers' Licence Fees - Instrument No. 223 of 1999 (No. 37, dated 15 September 1999).

Parking charges - Instrument No. 221 of 1999 (No. 37, dated 15 September 1999).

Vehicle Inspection Manual - Instrument No. 227 of 1999 (No. 38, dated 22 September 1999).

Motor Traffic Regulations – Declaration of declared holiday period (from Friday 1 October 1999 to Monday 4 October 1999) (inclusive) – Instrument No. 226 of 1999 (No. 38, dated 22 September 1999).

National Exhibition Centre Trust Act - Appointment of member to the National Exhibition Centre Trust - Instrument No. 217 of 1999 (No. 36, dated 8 September 1999).

Pharmacy Act - Determination of fees - Instrument No. 205 of 1999 (No. 36, dated 8 September 1999).

Public Place Names Act -

Determinations of nomenclature in the Division of Amaroo -

Instrument No. 215 of 1999 (No. 36, dated 8 September 1999).

Instrument No. 228 of 1999 (No. 38, dated 22 September 1999).

Omit one street name in the Division of Dunlop - Instrument No. 216 of 1999 (No. 36, dated 8 September 1999).

Omit one street name in the Division of Barton - Instrument No. 214 of 1999 (No. 36, dated 8 September 1999).

Public Sector Management Act - Management standards - No. 2 of 1999 (No. 36, dated 8 September 1999).

Radiation Act - Determination of Fees - Instrument No. 224 of 1999 (No. 37, dated 15 September 1999).

Roads and Public Places Act - Code of Practice for the placement of moveable signs in public places - Instrument No. 225 of 1999 (S55, dated 13 September 1999).

Taxation (Administration) Act - Determination of fees - Instrument No. 201 of 1999 (No. 35, dated 1 September 1999).

Water Resources Act - Determination of fees and charges - Instrument No. 204 of 1999 (No. 36, dated 8 September 1999).

Annual Reports

Annual Reports (Government Agencies) Act, pursuant to section 14 -

Chief Executives, pursuant to section 7 -

Department of Urban Services - Report (2 volumes) and annual reports for 1998-99:

ACT Planning Authority.

Agricultural and Veterinary Chemicals Coordination Network.

Animal Welfare Authority.

Architects Board of the Australian Capital Territory.

Conservator of Flora and Fauna.

Bushfire Fuel Management.

Electrical Licensing Board of the Australian Capital Territory.

Essential Services Review Committee.

ACT Heritage Council.

ACT Occupational Health and Safety Council.

Plumbers, Drainers and Gasfitters Board of the Australian Capital Territory.

The Surveyors Board of the Australian Capital Territory.

The Trustees of the Canberra Public Cemeteries, including financial statements and the Auditor-General's report.

and financial statements and Auditor-General's reports for:

Department of Urban Services.

ACT Housing.

ACTION.

ACT Forests.

Trustees of the Canberra Public Cemeteries.

Nominal Insurer of the ACT.

ACT Workers' Compensation Supplementation Fund.

Public Authorities, pursuant to section 8 -

ACT Electoral Commission - Report for 1998-99.

ACT Health and Community Care Service - Report and financial statements, including the Auditor-General's reports, for 1998-99 for:

The ACT Health and Community Care Service.

The Canberra Hospital.

ACT Community Care.

ACTEW Corporation - Report and financial statements, including the Auditor-General's report, for 1998-99.

ACTEW Corporation Subsidiaries Report - Reports and financial statements, including the Auditor-General's reports for 1998-99, for:

ACTEW Energy Limited.

ECOWISE Services Limited.

ECOWISE Environmental Limited.

ACTEW Investments Pty Ltd.

ACTEW China Pty Ltd.

Australian Capital Territory Registrar of Financial Institutions - Report and financial statements, including the Auditor-General's report, for 1998-99.

Commissioner for the Environment - Report for 1998-99.

Gungahlin Development Authority - Report and financial statements, including the Auditor-General's report, for 1998-99.

Legal Aid Commission (A.C.T.) - Report and financial statements, including the Auditor-General's report, for 1998-99.

Milk Authority of the ACT - Report and financial statements, including the Auditor-General's report, for 1998-99.

10 CHIEF MINISTER'S PORTFOLIO - STANDING COMMITTEE (INCORPORATING THE DUTIES OF A PUBLIC ACCOUNTS COMMITTEE) - PUBLIC ACCOUNTS COMMITTEE REPORT NO. 19 - REVIEW OF AUDITOR-GENERAL'S REPORT NO. 10, 1998 - MANAGEMENT OF SCHOOL REPAIRS AND MAINTENANCE - GOVERNMENT RESPONSE AND PAPER - PAPERS NOTED

Mr Stefaniak (Minister for Education) presented the following papers:

Chief Minister's Portfolio - Standing Committee (incorporating the duties of a Public Accounts Committee) - Public Accounts Committee Report No. 19 - Review of Auditor-General's Report No. 10, 1998 - Management of school repairs and maintenance (*presented 1 July 1999*) - Government response.

Maximising opportunities in ACT Government schools - Information for schools considering amalgamation -

and moved - That the Assembly takes note of the papers.

Debate ensued.

Question - put and passed.

11 URBAN SERVICES - STANDING COMMITTEE - REPORT NO. 31 – DRAFT VARIATION (NO. 94) TO THE TERRITORY PLAN: RED HILL SECTION 56 BLOCK 1 (FEDERAL GOLF CLUB) - MOTION THAT REPORT BE NOTED

Mr Hird (Chair) presented the following report:

Urban Services - Standing Committee - Report No. 31 – Draft variation (No. 94) to the Territory Plan relating to Red Hill section 56 block 1 (Federal Golf Club), dated 8 October 1999, including a dissenting report and Annexure, together with a copy of the extracts of the minutes of proceedings -

and moved - That the report be noted.

Statement by Speaker - Petitions: Mr Speaker made a statement concerning the reference in the Committee's report to a petition that had not been referred to the Committee by the Assembly.

Debate ensued.

Debate adjourned (Mr Smyth - Minister for Urban Services) and the resumption of the debate made an order of the day for the next sitting.

12 JUSTICE AND COMMUNITY SAFETY - STANDING COMMITTEE (INCORPORATING THE DUTIES OF A SCRUTINY OF BILLS AND SUBORDINATE LEGISLATION COMMITTEE) - SCRUTINY REPORT NO. 11 OF 1999 - STATEMENT BY CHAIR

Mr Osborne (Chair) presented the following report:

Justice and Community Safety - Standing Committee (incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee) - Scrutiny Report No. 11 of 1999, dated 21 September 1999 -

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

13 URBAN SERVICES - STANDING COMMITTEE - REPORT NO. 32 - NATIONAL CONFERENCE OF PARLIAMENTARY PUBLIC WORKS AND ENVIRONMENT COMMITTEES - HOBART - REPORT NOTED

Mr Hird (Chair) presented the following report:

Urban Services - Standing Committee - Report No. 32 - Report on attendance of the Standing Committee for Urban Services at the National Conference of Parliamentary Public Works and Environment Committees in Hobart on 13-15 September 1999, dated 8 October 1999, together with a copy of the extracts of the minutes of proceedings -

and moved - That the report be noted.

Question - put and passed.

14 URBAN SERVICES - STANDING COMMITTEE - REPORT NO. 33 – DRAFT VARIATION (NO. 116) TO THE TERRITORY PLAN: CHARNWOOD SECTION 96 - REPORT NOTED

Mr Hird (Chair) presented the following report:

Urban Services - Standing Committee - Report No. 33 – Draft variation (No. 116) to the Territory Plan relating to Charnwood section 96, dated 28 September 1999, together with a copy of the extracts of the minutes of proceedings -

and moved - That the report be noted.

Question - put and passed.

15 LAND (PLANNING AND ENVIRONMENT) ACT – VARIATIONS (NOS 94 AND 116) TO THE TERRITORY PLAN – PAPERS AND STATEMENT BY MINISTER

Mr Smyth (Minister for Urban Services) presented the following papers:

Land (Planning and Environment) Act, pursuant to section 29 – Variations to the Territory Plan, together with background papers, a copy of the summaries and reports, and a copy of any directions or reports required for:

Variation (No. 94) relating to Red Hill section 56 block 1 (Federal Golf Course);

Variation (No. 116) relating to Charnwood section 96 -

and, by leave, made a statement in relation to the papers.

16 GAMBLING LEGISLATION AMENDMENT BILL 1999

The order of the day having been read for the resumption of the debate on the question - That this Bill be agreed to in principle -

Debate resumed.

Question - That this Bill be agreed to in principle - put and passed.

Detail stage

Clauses 1 to 14, by leave, taken together and agreed to.

New clause -

On the motion of Ms Tucker the following new clause was inserted in the Bill: Page 8, line 24:

“14A Insertion

After section 45 the following section is inserted:

‘45A Casino licensee must comply with code of practice

The casino licensee must comply with the relevant code of practice (if any) prescribed under the *Gambling and Racing Control Act 1999*.’”.

Clause 15 -

Paper: Mr Humphries (Treasurer) presented a supplementary explanatory memorandum to the Bill.

On the motion of Mr Humphries the following amendment was made:

Page 8, line 26, insert “, 48A” after “Sections 48”.

On the motion of Ms Tucker the following amendment was made:

Page 8, line 33, proposed new paragraph 48 (1) (b), omit the paragraph, substitute the following paragraph:

“(b) impose conditions on, or vary the conditions of, the licence;”.

Clause 15, as amended, agreed to.

Remainder of Bill, by leave, taken as a whole -

On the motion of Ms Tucker, by leave, the following amendments were made together:

New clause -

Page 26, line 6, after clause 38 insert the following new clause in the Bill :

“38A Insertion

After section 20 the following section is inserted in Division 1 of Part 4:

‘21 Licensee must comply with code of practice

A licensee must comply with the relevant code of practice (if any) prescribed under the Control Act.’”.

Amendment -

Clause 42, page 27, line 18, proposed new paragraph 24 (1) (b), omit the paragraph, substitute the following paragraph:

“(b) impose conditions on, or vary the conditions of, the licence;”.

New clause -

Page 44, line 11, after clause 71, insert the following new clause in the Bill:

“71A Insertion

After section 31 the following section is inserted:

‘31A Licensed provider must comply with code of practice

A licensed provider must comply with the relevant code of practice (if any) prescribed under the Control Act.’”.

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

Question - That this Bill, as amended, be agreed to - put and passed.

17 TOBACCO (AMENDMENT) BILL 1999

The order of the day having been read for the resumption of the debate on the question - That this Bill be agreed to in principle -

Papers: Ms Carnell (Chief Minister), by leave, having added to an answer, presented the following papers:

AVESCO - Registration -

Copies of Articles (2) in Auto Action and Motor Sports News.

A.C.C.C. ends Australian Vee Eight Supercar Company Investigation - Facsimile of media release from Australian Competition & Consumer Commission, dated 12 October 1999.

Historical company extract - Facsimile from Canberra Tourism, pages 4, 5 and 6, dated 12 October 1999.

Debate resumed.

Mr Moore (Minister for Health and Community Care) addressing the Assembly -

Adjournment negatived: It being 5 p.m. - The question was proposed - That the Assembly do now adjourn.

Ms Carnell (Chief Minister) requiring the question to be put forthwith without debate -
Question - put and negatived.

Debate continued.

Mr Moore, by leave, was granted an extension of time.

Question - That this Bill be agreed to in principle - put and passed.

Detail stage

Clause 1 agreed to.

Ordered - That clause 2 be postponed.

Clause 3 agreed to.

Clause 4 -

Mr Moore moved the following amendment:

Page 2, line 19, paragraph (b), insert the following definitions:

“ ‘carton’ means a package containing packages of a tobacco product, or a package designed to contain packages of a tobacco product, but does not include a package containing individually-wrapped cigars (unless the package contains a further package or packages of the cigars);

‘cigar’—

- (a) means a roll of cut tobacco for smoking that is enclosed in tobacco leaf or the leaf of another plant; and
- (b) includes any other tobacco product prescribed as a cigar under the regulations;

‘display’, of a tobacco product at a point of sale display at a retail or wholesale outlet, means display to customers of the retail or wholesale outlet;

‘price ticket’—see section 3A;

‘product line’ means a kind of tobacco product distinguishable from other kinds by 1 or more of the following characteristics:

- (a) brand;
- (b) flavour (including menthol flavour);
- (c) nicotine or tar content;
- (d) the number of items in the immediate package in which it is sold;
- (e) in the case of cigars—by the fact that the cigars of the type in question are sold individually (whether or not cigars of the same type are also sold, packaged in multiples, in a different product line);

‘wholesale outlet’ means premises where tobacco products are available for sale exclusively by wholesale.”.

Mr Stanhope (Leader of the Opposition) moved the following amendment to Mr Moore's proposed amendment:

Paragraph (b), proposed new definition of "product line", omit from the definition "1 or more", substitute "2 or more".

Debate continued.

Question - That Mr Stanhope's amendment to Mr Moore's proposed amendment be agreed to - put.

The Assembly voted -

Ayes, 8		Noes, 8	
Mr Corbell	Mr Stanhope	Ms Carnell	Mr Rugendyke
Mr Hargreaves	Ms Tucker	Mr Cornwell	Mr Smyth
Mr Kaine	Mr Wood	Mr Hird	Mr Stefaniak
Mr Osborne		Mr Humphries	
Mr Quinlan		Mr Moore	

And so it was negated in accordance with standing order 162.

Question - That Mr Moore's amendment be agreed to - put and passed.

On the motion of Mr Moore, by leave, the following amendments were made together:

Page 3 -

Line 7, paragraph (b), proposed new definition of "immediate package", omit the definition, substitute the following definition:

" 'immediate package', of a tobacco product, means a package containing the product—

- (a) in the case of a tobacco product other than cigars—not including a package containing a further package or packages of the product; and
- (b) in the case of cigars—
 - (i) including a package constituted by the individual wrapping of a cigar, and a package containing individually-wrapped or unwrapped cigars; but
 - (ii) not including any other package containing a further package or packages of cigars (whether wrapped or unwrapped);".

Line 16, paragraph (b), proposed new definition of "point of sale", after "retail", insert "or wholesale".

Line 19, paragraph (b), proposed new definition of "point of sale display", omit "section 3A", substitute "Part 1A".

Line 26, paragraph (b), proposed new definition of "retail outlet", at the end of the definition, add "by retail".

Page 4, line 8, paragraph (b), proposed new definition of "variety of tobacco product", omit the definition.

Clause 4, as amended, agreed to.

Clause 5 -

On the motion of Mr Moore, by leave, the following amendments were made together:

Page 4 -

Line 11, omit “are inserted in Part 1”, substitute “and Part are inserted”.

Line 13, proposed new section 3A, omit the section, substitute the following section:

“ **3A. Price tickets**

In this Act—

“price ticket”, for a product line, means a label that—

- (a) includes no information other than any or all of the following:
 - (i) the name of the product line;
 - (ii) a bar code or similar identifying code;
 - (iii) the price of an item of the product line;
 - (iv) the price of a carton of the product line;
 - (v) a symbol indicating the country of origin of the product line;
- (b) consists of lettering and any graphics in a single colour (including black or white) on another single-coloured (including black or white) background;
- (c) is no larger than 35 square centimetres; and
- (d) otherwise complies with the regulations, and is displayed in accordance with the regulations.”.

Page 5 -

Line 14, proposed new section 3B, definition of “product information notice” after paragraph (b) of the definition, insert the following paragraph:

“(ba) with nothing attached to it (unless necessary for its support);”.

Line 15, proposed new section 3B, paragraph (c), definition of “product information notice”, omit the paragraph, substitute the following paragraph:

- (c) listing the product lines usually available for sale at the point of sale (with or without information about the prices of items or cartons of the product lines, or boxes of cigars);

Line 27, proposed new section 3C, paragraph (d), definition of “sell”, omit “and”.

Line 31, proposed new section 3C, definition of “sell”, paragraph (e), omit the paragraph, substitute the following paragraphs:

- “(e) supply for value (or offer or expose for supply for value); and
- (f) supply for free (or offer or expose for supply for free), to gain or maintain custom, or otherwise for commercial gain.”.

Line 35, proposed new subsection 3D (1), definition of “tobacco advertisement”, omit “is writing means”, substitute “means writing,”.

New part -

Mr Moore moved - That the following new Part be inserted in the Bill: Page 6, line 22:

“ **PART 1A—POINT OF SALE DISPLAYS**

3F. Restrictions on point of sale displays

At a point of sale display of tobacco products—

- (a) the products may only be advertised or displayed in accordance with this Part; and
- (b) no tobacco advertisement for the products may be displayed (or broadcast) other than as permitted by this Part.

Note: Paragraph (b) is inserted to emphasise the effect of the prohibition of tobacco advertising under s 10 other than at a point of sale. A display of a tobacco product in a shop is likely to be a 'tobacco advertisement' within the meaning of the definition in s 3D. This is due to the text and graphics on the package of the product, or on cartons of the product.

3G. Availability for sale of displayed products

'(1) At a point of sale display, the only tobacco products that may be displayed are those available for sale, or usually available for sale, at the point of sale.

'(2) If immediate packages of a tobacco product are not available for sale at a point of sale, subsection (1) does not prevent the display of an immediate package of a product line if a carton of the product line is available for sale (or usually available for sale) at the point of sale.

3H. Manner of display

(1) A point of sale display of a product line of a tobacco product (other than cigars) at a retail outlet may consist of the advertisement or display of the product line at the point of sale in 1 only of the following ways:

- (a) by a single representation of an immediate package of the product line in the form in which the package is available, or usually available, for sale (including the representation of an immediate package if only cartons are available for sale)—
 - (i) no larger than the actual size of the package, with the same appearance as the package; and
 - (ii) including a representation of the health warning (if any) with which the package is required to be labelled under the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations* of the Commonwealth;
- (b) by the display of a single immediate package of the product line in the form in which the package is available, or usually available, for sale (including the display of an immediate package if only cartons are available for sale);
- (c) by means of a stack dispenser for immediate packages of the product line that complies with subsection (3).

'(2) A point of sale display of a product line of cigars at a retail outlet may consist of the advertisement or display of the product line at the point of sale in 1 only of the following ways:

- (a) by a single representation of an immediate package of the cigars in the form in which the package is available, or usually available, for sale (including the representation of an immediate package if only cartons are available for sale)—
 - (i) no larger than the actual size of the package, with the same appearance as the package; and
 - (ii) including a representation of the health warning (if any) with which the package is required to be labelled under the *Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations* of the Commonwealth;
- (b) by the display of a single immediate package of the cigars in the form in which the package is available, or usually available, for sale (including the display of an immediate package if only cartons are available for sale);

- (c) by means of a stack dispenser for immediate packages of the cigars that complies with subsection (3);
 - (d) by a single representation of 1 of the cigars in the form in which the cigar is available, or usually available, for sale (including the representation of a cigar if only packages of the cigars are available for sale), no larger than the actual size of the cigar, with the same appearance as the cigar;
 - (e) by the display of either or both of the following:
 - (i) up to 13 of the cigars in an open box, or in any other manner;
 - (ii) a single closed box full of the cigars in the form in which the box is available for sale.
- ‘(3) The display of a product line by means of a stack dispenser for immediate packages of the product line is permitted at a point of sale if—
- (a) in the case of packages stacked directly behind each other (from the point of view of the customer’s side of the customer service area) (‘an angled stack’)—the most that is displayed at the front of the stack is the face, or any part, of a single package;
 - (b) in the case of an angled stack—only the following parts (if any) of the other packages in the stack are displayed:
 - (i) the tops;
 - (ii) the sides;
 - (iii) the bottoms; and
 - (c) in the case of packages stacked on top of each other—no part of more than a single package in the stack is displayed.
- ‘(4) A point of sale display of tobacco products may not consist of the display of the products, packages of the products, or representations of the products or packages, so as to constitute a tobacco advertisement itself as distinct from the display of each product, package or representation.
- ‘3J. Display of cartons**
- ‘(1) At a retail outlet, a point of sale display of a product line may not include the display of a carton of the product line, or any part of the carton.
- ‘(2) At a wholesale outlet, a point of sale display of a product line—
- (a) may include the display of 1 or more cartons of the product line, but with only the smallest (or 1 of the smallest) sides of the carton (or cartons) facing the customer service area; and
 - (b) must otherwise comply with this Part.
- ‘3K. Location of display**
- ‘(1) A point of sale display of tobacco products (other than cigars) may only be located—
- (a) at a point of sale; and
 - (b) except in the case of a vending machine—on the seller’s side of the point of sale, not less than 1 metre away from any part of the customer service area in relation to the point of sale.
- ‘(2) A point of sale display of cigars may only be located—
- (a) for a display of cigars mentioned in paragraph 3H (2) (e)—within a customer service counter at the point of sale, if the cigars or boxes may only be viewed by customers

looking down through the (transparent or semi-transparent) top of the counter (and may not otherwise be viewed from the customer's side of the counter); or

- (b) for a display of cigars mentioned in paragraph 3H (2) (e), or for any other display of cigars mentioned in subsection 3H (2)—
 - (i) at a point of sale; and
 - (ii) except in the case of a vending machine—on the seller's side of the point of sale, not less than 1 metre away from any part of the customer service area in relation to the point of sale.

‘3L. Other display requirements by regulation

A point of sale display must comply with any requirements prescribed under the regulations additional to those imposed by this Part.’”.

Mr Rugendyke, by leave, moved the following amendments to Mr Moore's amendment together:

Proposed new paragraph 3H (1) (c), omit the paragraph, substitute the following paragraph:

“(c) by means of—

- (i) a single stack dispenser for immediate packages of the product line that complies with subsection (3); or
- (ii) if permitted under subsection (1A)—2 stack dispensers for immediate packages of the product line that comply with subsection (3).”.

After proposed new subsection 3H (1), insert the following subsection:

“(1A) A point of sale display of 1 or 2 product lines at a point of sale may consist of the advertisement or display of the product line (or product lines) by means of 2 stack dispensers for the product line, or 2 stack dispensers for each product line (as the case may be).”.

Debate continued.

Question - That Mr Rugendyke's amendments to Mr Moore's proposed amendments be agreed to - put and negatived.

Mr Stanhope moved the following amendment to Mr Moore's proposed amendment:

Proposed new subsection 3K (1), omit the subsection, substitute the following subsection:

“(1) A point of sale display of tobacco products (other than cigars) may only be located at a point of sale.”.

Debate continued.

Question - That Mr Stanhope's amendment to Mr Moore's proposed amendment be agreed to - put and negatived.

Question - That Mr Moore's amendment be agreed to - put and passed.

Clause 5, as amended, agreed to.

Clause 6 agreed to.

Clauses 7 to 13, by leave, taken together -

On the motion of Mr Moore, by leave, the following amendments were made together:

Clause 10, page 10, line 31, proposed new subsection 8 (7), definition of “tobacco product package”, paragraph (b), omit “variety of”, substitute “product line of a”.

Clause 12, page 11, line 8, proposed new section 9A, after “retail outlet”, insert “or wholesale outlet”.

Clause 13, page 11 -

Line 15, omit “section is”, substitute “sections are”.

Line 30, after proposed new section 9B, insert the following section:

“ 9C. **Health warnings at point of sale displays**

‘(1) An occupier of a retail outlet or a wholesale outlet must display a health warning notice that complies with this section at or adjacent to each point of sale display at the outlet—

- (a) so as to be clearly visible from the customer service area in relation to the point of sale; and
- (b) so that the lowest point of the notice is at least 1 metre above the floor, as measured from the highest point on the seller’s side of the point of sale.

Penalty:

- (a) for an individual—50 penalty units;
- (b) for a body corporate—250 penalty units.

‘(2) A health warning notice must—

- (a) have an unbroken flat surface, coloured white, with an area of at least—
 - (i) 10% of the total display surface area of the point of sale display, or 1 square metre, whichever is smaller; or
 - (ii) if regulations are made prescribing a different minimum area—the area prescribed under the regulations;
- (b) display 1 of the following health warnings in Helvetica Medium capitals, in black letters in a single line:
 - (i) “SMOKING KILLS”;
 - (ii) “SMOKING IS ADDICTIVE”;
 - (iii) any other text prescribed under the regulations;

- (c) display immediately beneath the health warning the following words in Helvetica Medium lower case type, with initial capitals, in black letters of at most half the height of the letters of the health warning, in a single line:

“Government Health Warning”;

- (d) display no other text or graphics unless required or permitted under the regulations; and
- (e) have nothing attached to it (unless necessary for its support).

‘(3) The area of the smallest rectangle that can be drawn around the text (and any graphics) in the notice must represent at least 80% of the total area of the notice.

‘(4) In this section—

“point of sale display” does not include a vending machine;

“total display surface area”, of a point of sale display, means the total surface area of all the following elements of the display (not including any intermediate areas within the point of sale):

- (a) representations of immediate packages of tobacco products;
- (b) the displayed faces of immediate packages of tobacco products;
- (c) the transparent top (or front, if the cabinet is mounted vertically) of each display cabinet or humidor of tobacco products at the point of sale display;
- (d) the area of the lid of each open and closed cigar box on display, unless contained within a display cabinet or humidor;
- (e) for a wholesale outlet—the area of the displayed side of each carton of a product line on display.’”.

Clauses 7 to 13, as amended, agreed to.

Clause 14 to 17, by leave, taken together -

On the motion of Mr Moore, by leave, the following amendments were made together:

Clause 15, page 12, line 27, paragraph (c), omit the paragraph, substitute the following paragraphs:

“(ca) a single product information notice at or adjacent to a point of sale;

(caa) a single price ticket at a point of sale display for each product line on sale (or usually available for sale) at the point of sale;”.

Clause 17, page 15 -

Line 31, proposed new subsection 11A (7), definition of “object”, omit the definition, substitute the following definition:

“ ‘object’ does not include a tobacco product.”.

Line 32, after proposed new section 11A, insert the following section:

“ ‘11AA. **Tobacco product giveaways**

‘(1) A person must not supply a tobacco product for free if the supply promotes the sale of any tobacco product for value.

Penalty:

- (a) if the offender is a natural person—50 penalty units;

(b) if the offender is a body corporate—250 penalty units.

‘(2) In a prosecution for an offence against subsection (1), for the purpose of establishing whether the supply of a tobacco product for free promotes the sale of any tobacco product for value—

- (a) it is sufficient to prove—
 - (i) that any material published (or caused, permitted or authorised to be published) by the defendant in relation to the supply would be likely to cause a reasonable person to believe the sale of any tobacco product for value to be promoted, or intended to be promoted, by the supply; or
 - (ii) that there are other reasonable grounds for believing the sale of any tobacco product for value to be promoted, or intended to be promoted, by the supply; and
- (b) the sale of any tobacco product for value may be found to be promoted by the supply irrespective of the actual belief of the defendant.

‘(3) In this section—

“promotion”, of the sale of a tobacco product for value, includes the inducement of the sale of the product for value;

“supply”, of a tobacco product for free, includes the offer or exposure of the product for supply for free.”.

Clauses 14 to 17, as amended, agreed to.

Proposed new clause -

Ms Tucker moved - That the following new clause be inserted in the Bill: Page 16, line 40:

‘17A Prohibition of sponsorships

Section 12 of the Tobacco Act is amended by omitting subsections (3), (4), (4A) and (5) and substituting the following subsections:

‘(3) This section does not apply in relation to a scholarship given, or agreed to be given, by a manufacturer or distributor of a tobacco product to an employee, or a member of the family of an employee, of the manufacturer or distributor.

‘(4) This section also does not apply in relation to a contract, agreement, undertaking or understanding mentioned in paragraph (3) (b) of this section, as in force immediately before the day the *Tobacco (Amendment) Act 1999* was notified in the *Gazette*.’.

Debate continued.

Question - That new clause 17A be inserted in the Bill - put and negatived.

Clause 18 -

On the motion of Mr Moore, by leave, the following amendments were made together, after debate:

Page 18, line 39, proposed new subparagraph 12D (2) (b) (i), after “product information notices,”, insert “price tickets,”.

Page 19, line 5 -

Proposed new subparagraph 12D (2) (b) (ii), omit “or” (last occurring).

After proposed new subparagraph 12D (2) (b) (ii), insert the following paragraph:

- (iia) to impose conditions relating to the sale of tobacco products to under 18 year olds; or”.

Page 21, line 27, after proposed new section 12G, insert the following section:

“ ‘12GA. **Exercise of powers by authorised officers who are police officers**

The powers conferred by this Part on an authorised officer who is a police officer are additional to the powers the officer may exercise in his or her capacity as a police officer.”

On the motion of Mr Stanhope, by leave, the following further amendments were made together, after debate:

Page 22, line 3, proposed new paragraph 12J (1) (a), omit the paragraph, substitute the following paragraph:

“(a) enter the premises of any retail outlet or wholesale outlet at any time at which tobacco product are available for sale at the outlet;”.

Page 22, line 26, after proposed new subsection 12K (2), insert the following subsection:

“(2A) In proceedings for the purposes of this Act, evidence obtained as a result of the entry onto any premises by an authorised officer under paragraph 12J (1) (b) is inadmissible unless an acknowledgment under subsection (2) is produced in evidence.”.

Page 23, line 11, proposed new paragraph 12L (1) (f), omit “any person on the premises”, substitute “the occupier of the premises, or any person whom the officer has reasonable grounds for believing to be an employee or agent of the occupier (if present in his or her capacity as employee or agent), or otherwise to be concerned in the occupier’s business at the premises,”.

Mr Moore, by leave, moved the following further amendments together:

Page 23, line 2, proposed new subsection 12L (1), omit “(1)”.

Page 23, line 16, proposed new subsections 12L (2) and (3), omit the subsections, substitute the following sections:

“ 12LA. **Exercise of powers in public places**

‘(1) This section applies to offences against the following sections (“tobacco sale or promotion offences”):

- section 4 (Supply of tobacco to under 18 year olds)
- section 5 (Purchase of tobacco for under 18 year olds)
- section 7 (Non-smoking tobacco)
- section 8 (Food and toys resembling or promoting tobacco products)
- section 9 (Sale of cigarettes in quantities fewer than 20)
- section 10 (Prohibited tobacco advertising)
- section 11A (Tobacco product promotions)
- section 11AA (Tobacco product giveaways)
- section 11B (Competitions that promote tobacco products).

‘(2) If an authorised officer has reasonable grounds for believing that a person in a public place can provide evidence about the commission of a tobacco sale or promotion offence, the officer may, for the purposes of this Act, with the consent of the person, do any or all of the following:

- (a) inspect anything held by the person;
- (b) take copies of any documents in the person’s possession;
- (c) take photographs of anything in the person’s possession;
- (d) open and inspect any package held by the person that the officer has reasonable grounds for believing to contain a thing connected with a tobacco sale or promotion offence;

- (e) seize anything held by the person connected with a tobacco sale or promotion offence;
- (f) ask the person for information, or ask the person questions, or both.

‘12LB. Consent to exercise of powers in public places

‘(1) Before obtaining the consent of a person to exercise a power under section 12LA (Exercise of powers in public places), an authorised officer must—

- (a) produce his or her identity card; and
- (b) tell the person that he or she may refuse to give consent.

‘(2) If an authorised officer obtains the person’s consent, the officer must ask the person to sign a written acknowledgment of—

- (a) the fact that the person has been told that he or she may refuse to give consent;
- (b) the fact that the person has voluntarily given consent; and
- (c) the date and time when the consent was given.

‘(3) An exercise of a power by an authorised officer in reliance on the person’s consent is not lawful unless the consent was voluntary.

‘(4) If—

- (a) it is material, in any proceeding, for a court to be satisfied that a person consented to the exercise of a power under section 12LA; and
- (b) an acknowledgment under subsection (2) is not produced in evidence;

the court must assume, unless the contrary is proved, that the consent was not voluntary.

‘12LC. Provision of information—claim of privilege

If an authorised officer asks a person to provide information, or to answer questions, under subparagraph 12L (f) (ii) or (iii), or paragraph 12LA (2) (f), the person is not required to do so in relation to any information in respect of which he or she is entitled to claim, and does claim, legal professional privilege, or privilege against selfincrimination.”

Mr Stanhope moved the following amendment to Mr Moore’s amendments:

Proposed new sections 12LA, 12LB and 12LC, omit the sections, substitute the following section:

“ ‘12LA Provision of information under s 12L (f)—claim of privilege

‘(1) This section applies if an authorised officer requires a person to provide information, or to answer questions, under subparagraph 12L (f) (ii) or (iii).

‘(2) The person need not comply with the requirement in relation to any information in respect of which he or she is entitled to claim, and does claim, legal professional privilege, or privilege against selfincrimination.

‘(3) Before the person provides the information, or answers the questions, the officer must—

- (a) produce his or her identify card; and
- (b) tell the person that he or she need not comply with the requirement in relation to any information in respect of which he or she is entitled to claim, and does claim, legal professional privilege, or privilege against selfincrimination.

‘(4) The officer must ask the person to sign a written acknowledgment of—

- (a) the fact that the person has been told that he or she need not comply with the requirement in relation to any information in respect of which he or she is entitled to

claim, and does claim, legal professional privilege or privilege against selfincrimination; and

- (b) the fact that the person has, or has not, claimed legal professional privilege, or privilege against selfincrimination, in relation to information specified in the acknowledgment; and
- (c) the date and time when the requirement was made.

‘(5) In proceedings for the purposes of this Act, evidence obtained as a result of the requirement is inadmissible unless an acknowledgment under subsection (4) is produced in evidence.’.

Question - That Mr Stanhope’s amendment to Mr Moore’s proposed amendments be agreed to - put and passed.

Question - That Mr Moore’s amendments, as amended, be agreed to - put and passed.

On the motion of Mr Stanhope the following further amendment was made:

Page 24, line 13, proposed new paragraph 12N (1) (a), after “magistrate”, insert “by a police officer”.

On the motion of Mr Stanhope, by leave, the following further amendments were made together:

Page 24, line 24, proposed new paragraph 12N (2) (c), omit “subsection 12L (1)”, substitute “section 12L”.

Page 25 -

Line 2, proposed new paragraph 12N (4) (c), omit “subsection 12L (1)”, substitute “section 12L”.

Line 13, proposed new subsection 12P (2), omit “12L (1) (f)”, substitute “12L (f)”.

Line 34, proposed new subsection 12Q (4), definition of “seized item”, omit “12L (1) (e)”, substitute “12L (e)”.

Clause 18, as amended, agreed to.

Clauses 19 and 20, by leave, taken together and agreed to.

Clauses 21 to 23, by leave, taken together and agreed to.

Clause 24 agreed to.

Clause 2 agreed to.

Title agreed to.

Question - That this Bill, as amended, be agreed to - put and passed.

18 ADJOURNMENT

Mr Moore (Minister for Health and Community Care) moved - That the Assembly do now adjourn.

Debate ensued.

Question - put and passed.

And then the Assembly, at 5.59 p.m., adjourned until tomorrow at 10.30 a.m.

MEMBERS' ATTENDANCE: All Members were present at some time during the sitting.

M.J. McRAE
Clerk of the Legislative Assembly