



LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

2004–2005–2006–2007–2008

MINUTES OF PROCEEDINGS

No. 156

WEDNESDAY, 27 AUGUST 2008

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

2 **PETITION**

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

Mr Mulcahy, from 24 residents, requesting that the Assembly disallow any planning application to fence in Griffith Oval No. 1.

3 **SUSPENSION OF STANDING ORDERS—CONSIDERATION OF PRIVATE MEMBERS' BUSINESS**

Mr Corbell (Manager of Government Business) moved—That so much of the standing orders be suspended as would prevent orders of the day Nos. 1 and 2 and notice No. 6, Private Members' business, relating to the Criminal Code (Drug Equipment) Amendment Bill 2008, the Protection of Public Participation Bill 2008 and law reform in the area of abortion, being called on forthwith.

Debate ensued.

Mr Mulcahy addressing the Assembly—

The time allotted for the debate having expired—

Question—put.

The Assembly voted—

AYES, 11

Mr Barr	Mr Hargreaves
Mr Berry	Ms MacDonald
Mr Corbell	Mr Mulcahy
Dr Foskey	Ms Porter
Ms Gallagher	Mr Stanhope
Mr Gentleman	

NOES, 6

Mrs Burke
Mrs Dunne
Mr Pratt
Mr Seselja
Mr Smyth
Mr Stefaniak

And so it was resolved in the affirmative, with the concurrence of an absolute majority.

4 **SPEAKER'S RULING—MATTERS OF PUBLIC IMPORTANCE**

The Speaker informed that Assembly that, pursuant to standing order 130, the proposed matters of public importance lodged by Mrs Burke, Mr Pratt, Mr Smyth and Mr Stefaniak were out of order as they anticipated debate on notice No. 7, Private Members' business.

5 **CRIMINAL CODE (DRUG EQUIPMENT) AMENDMENT BILL 2008**

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.

The Assembly voted—

AYES, 7

Mrs Burke	Mr Smyth
Mrs Dunne	Mr Stefaniak
Mr Mulcahy	
Mr Pratt	
Mr Seselja	

NOES, 10

Mr Barr	Mr Gentleman
Mr Berry	Mr Hargreaves
Mr Corbell	Ms MacDonald
Dr Foskey	Ms Porter
Ms Gallagher	Mr Stanhope

And so it was negatived.

6 **PROTECTION OF PUBLIC PARTICIPATION BILL 2008**

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 10, by leave, taken together—

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

7 **QUESTIONS**

Questions without notice were asked.

8 PAPER—PETITION OUT-OF-ORDER

Mr Corbell (Manager of Government Business) presented the following paper:

Petition which does not conform with the standing orders—Playground facilities in Gungahlin—Mrs Burke (188 signatures).

9 MATTER OF PUBLIC IMPORTANCE—DISCUSSION—SUSTAINABLE ENVIRONMENT FOR THE A.C.T.

The Assembly was informed that Mr Gentleman, Ms MacDonald, Mr Mulcahy and Ms Porter had proposed that matters of public importance be submitted to the Assembly for discussion. In accordance with the provisions of standing order 79, the Speaker had determined that the matter proposed by Mr Gentleman be submitted to the Assembly, namely, “The importance of working together to maintain a sustainable environment for the ACT”.

Discussion ensued.

The time for discussion having expired—

Discussion concluded.

10 PROTECTION OF PUBLIC PARTICIPATION BILL 2008

The Assembly, according to order, resumed consideration at the detail stage.

Detail Stage

Clauses 1 to 10—

On the motion of Mr Corbell (Attorney-General), by leave, his amendments Nos. 2 to 7 (*see* Schedule 1) were made together, after debate.

Paper: Mr Corbell presented a supplementary explanatory statement to the Government amendments.

Clauses 1 to 10, as amended, agreed to.

Dictionary agreed to.

Title—

On the motion of Mr Corbell, his amendment No. 1 (*see* Schedule 1) was made.

Title, as amended, agreed to.

Question—That this Bill, as amended, be agreed to—put.

The Assembly voted—

AYES, 16		NOES, 1
Mr Barr	Mr Hargreaves	Mr Mulcahy
Mr Berry	Ms MacDonald	
Mrs Burke	Ms Porter	
Mr Corbell	Mr Pratt	
Mrs Dunne	Mr Seselja	
Dr Foskey	Mr Smyth	
Ms Gallagher	Mr Stanhope	
Mr Gentleman	Mr Stefaniak	

And so it was resolved in the affirmative—Bill, as amended, agreed to.

11 ABORTION—LAW REFORM

Mr Gentleman, pursuant to notice, moved—That this Assembly:

- (1) recognises the ACT Legislative Assembly’s progressive law reform in the area of abortion and a woman’s right to choose; and
- (2) reaffirms its support for the laws reformed including the de-criminalisation of abortion in the ACT.

Debate ensued.

Mr Pratt moved the following amendment: Omit all words after “this Assembly”, substitute: “notes that:

- (1) the issue of abortion has traditionally been a conscience vote for members of all major parties in all Australian jurisdictions;
- (2) Members of the Assembly and the community have a range of views on this subject;
- (3) regardless of those views, the incidence of abortion in our society is a concern;
- (4) the re-introduction of criminal sanctions is not the solution to this problem; and
- (5) providing greater support to women who experience crisis pregnancies is a matter of the greatest importance.”.

Debate continued.

Debate adjourned (Mr Corbell—Manager of Government Business) and the resumption of the debate made an order of the day for a later hour this day.

12 SUSPENSION OF STANDING ORDERS—CONSIDERATION OF EXECUTIVE BUSINESS

Mr Corbell (Manager of Government Business) moved—That so much of the standing orders be suspended as would prevent orders of the day Nos. 1 and 2, Executive business relating to the Corrections Management Amendment Bill 2008 and the Tobacco Amendment Bill 2008, being called on forthwith.

Question—put.

The Assembly voted—

AYES, 11

Mr Barr	Mr Hargreaves
Mr Berry	Ms MacDonald
Mr Corbell	Mr Mulcahy
Dr Foskey	Ms Porter
Ms Gallagher	Mr Stanhope
Mr Gentleman	

NOES, 6

Mrs Burke
Mrs Dunne
Mr Pratt
Mr Seselja
Mr Smyth
Mr Stefaniak

And so it was resolved in the affirmative, with the concurrence of an absolute majority.

13 ADJOURNMENT NEGATIVED

It being past 6 p.m.—The question was proposed—That the Assembly do now adjourn.

Mr Corbell (Manager of Government Business) requiring the question to be forthwith without debate—

Question—put and negatived.

14 CORRECTIONS MANAGEMENT AMENDMENT BILL 2008

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.

The Assembly voted—

AYES, 15		NOES, 1
Mr Berry	Mr Mulcahy	Dr Foskey
Mrs Burke	Ms Porter	
Mr Corbell	Mr Pratt	
Mrs Dunne	Mr Seselja	
Ms Gallagher	Mr Smyth	
Mr Gentleman	Mr Stanhope	
Mr Hargreaves	Mr Stefaniak	
Ms MacDonald		

And so it was resolved in the affirmative—Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Question—That this Bill be agreed to—put and passed.

15 TOBACCO AMENDMENT BILL 2008

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

Bill, by leave, taken as a whole—

On the motion of Ms Gallagher (Minister for Health), by leave, her amendments Nos. 1 to 5 (*see* Schedule 2) were made together.

Paper: Ms Gallagher presented a supplementary explanatory statement to the Government amendments.

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

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

16 ABORTION—LAW REFORM

The order of the day having been read for the resumption of the debate on the motion of Mr Gentleman, and on the amendment moved by Mr Pratt (*see* entry 11)—

Debate resumed.

Suspension of standing orders—Vote on agreement to motion: Mr Gentleman moved—That so much of the standing orders be suspended so as to require a vote to be taken on the question—That the motion be agreed to.

Question—put and passed, with the concurrence of an absolute majority.

Question—That Mr Pratt's amendment be agreed to—put.

The Assembly voted—

AYES, 6	NOES, 11
Mrs Burke	Mr Barr
Mrs Dunne	Mr Berry
Mr Pratt	Mr Corbell
Mr Seselja	Dr Foskey
Mr Smyth	Ms Gallagher
Mr Stefaniak	Mr Gentleman
	Mr Hargreaves
	Ms MacDonald
	Mr Mulcahy
	Ms Porter
	Mr Stanhope

And so it was negatived.

Question—That the motion be agreed to—put.

The Assembly voted—

AYES, 10	NOES, 7
Mr Barr	Mrs Burke
Mr Berry	Mrs Dunne
Mr Corbell	Mr Mulcahy
Dr Foskey	Mr Pratt
Ms Gallagher	Mr Seselja
Mr Gentleman	Mr Smyth
Mr Hargreaves	Mr Stefaniak
Ms MacDonald	
Ms Porter	
Mr Stanhope	

And so it was resolved in the affirmative.

17 ADJOURNMENT

Mr Corbell (Manager of Government Business) moved—That the Assembly do now adjourn.

Suspension of standing orders moved—Consideration of Private Members' business: Mrs Dunne moved—That so much of the standing orders be suspended as would prevent notices Nos. 1 to 5, Private Members' business, relating to the Duties (First Home Owner Exemption) Amendment Bill 2008, the Civic Development Authority Bill 2008, the Health Professionals Amendment Bill 2008, the Adoption Amendment Bill 2008 and the Emergencies Amendment Bill 2008, being called on forthwith

Closure: Mr Corbell moved—That the question be now put.

Question—That the question be now put—put.

The Assembly voted—

AYES, 10

Mr Barr
Mr Berry
Mr Corbell
Dr Foskey
Ms Gallagher
Mr Gentleman
Mr Hargreaves
Ms MacDonald
Ms Porter
Mr Stanhope

NOES, 7

Mrs Burke
Mrs Dunne
Mr Mulcahy
Mr Pratt
Mr Seselja
Mr Smyth
Mr Stefaniak

And so it was resolved in the affirmative.

And the question—That the standing orders be suspended—being accordingly put—

The Assembly voted—

AYES, 6

Mrs Burke
Mrs Dunne
Mr Pratt
Mr Seselja
Mr Smyth
Mr Stefaniak

NOES, 11

Mr Barr
Mr Berry
Mr Corbell
Dr Foskey
Ms Gallagher
Mr Gentleman
Mr Hargreaves
Ms MacDonald
Mr Mulcahy
Ms Porter
Mr Stanhope

And so it was negatived.

Debate ensued.

Question—put and passed.

And then the Assembly, at 10.59 p.m., adjourned until tomorrow at 10.30 a.m.

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

Tom Duncan
Clerk of the Legislative Assembly

SCHEDULES OF AMENDMENTS

Schedule 1

PROTECTION OF PUBLIC PARTICIPATION BILL 2008

Amendments circulated by the Attorney-General

1

Title

omit the title, substitute

A Bill for

An Act about protection for participation in public debate and matters of public interest

2

Clause 5

Page 3, line 1—

omit clause 5, substitute

5

Purpose of Act

The purpose of this Act is to protect public participation, and discourage certain civil proceedings that a reasonable person would consider interfere with engagement in public participation.

3

Clause 6

Page 3, line 23—

omit clause 6, substitute

6

Meaning of *improper purpose*

For this Act, a proceeding is started or maintained against a person (the *defendant*) for an *improper purpose* if a reasonable person would consider that the main purpose for starting or maintaining the proceeding is—

- (a) to discourage the defendant (or anyone else) from engaging in public participation; or
 - (b) to divert the defendant's resources away from engagement in public participation to the proceeding; or
 - (c) to punish or disadvantage the defendant for engaging in public participation.
-

4**Clause 7****Page 4, line 13—***omit clause 7, substitute***7****Meaning of *public participation***

(1) In this Act:

public participation means conduct that a reasonable person would consider is intended (in whole or part) to influence public opinion, or promote or further action by the public, a corporation or government entity in relation to an issue of public interest.

(2) However, *public participation* does not include conduct—

- (a) that contravenes a court order or constitutes contempt of court; or
- (b) that constitutes unlawful vilification under the *Discrimination Act 1991*; or
- (c) that causes, or is reasonably likely to cause, physical injury or damage to property; or
- (d) that constitutes unlawful entry at residential premises; or
- (e) that constitutes an offence punishable by imprisonment for longer than 12 months; or
- (f) if—
 - (i) the conduct is communication by a party to an industrial dispute between an employer and employee, former employee, contractor or agent; and
 - (ii) the communication relates to the subject matter of the dispute; or
- (g) that constitutes the advertising of goods or services for commercial purposes; or
- (h) that incites others to engage in conduct mentioned in paragraphs (a), (b), (c), (d) or (e).

(3) Subsection (2) applies in relation to a person's conduct whether or not the person has been convicted or found guilty of an offence for the conduct.

5**Clause 8****Page 5, line 10—***omit clause 8, substitute*

8 Application of Act

- (1) This Act applies in relation to a civil proceeding in the Supreme Court or Magistrates Court in which the plaintiff may claim damages.
- (2) However, this Act does not apply in relation to any of the following:
 - (a) a cause of action for defamation;
 - (b) a proceeding prescribed by regulation;
 - (c) a proceeding that is started in the Supreme Court or Magistrates Court before the day this Act commences.
- (3) Subsection (2) (c) and this subsection expire 1 year after the day this Act commences.

6

Clause 9

Page 5, line 14—

omit clause 9, substitute

9 Civil penalty

- (1) This section applies if—
 - (a) a person (the *plaintiff*) starts or maintains a proceeding to which this Act applies against someone else (the *defendant*) in relation to the defendant's conduct; and
 - (b) the court is satisfied that—
 - (i) the defendant's conduct is public participation; and
 - (ii) the proceeding is started or maintained against the defendant for an improper purpose.
- (2) The court may order the plaintiff to pay to the Territory a financial penalty of not more than the amount (if any) prescribed by regulation.
- (3) The financial penalty must be worked out in accordance with a regulation.

Note An amount owing under a law may be recovered as a debt in a court of competent jurisdiction (see Legislation Act, s 177 and Court Procedures Act 2006, s 20, def *judgment* and s 31).

- (4) The court may make an order under subsection (2)—
 - (a) on application by the Territory; or
 - (b) on its own initiative.

Note If a proceeding is for an improper purpose, the court's power to award costs of the proceeding includes power to order that the costs be assessed on an indemnity basis (see Court Procedures Rules 2006, r 1752).

7

Clause 10

Page 6, line 9—

omit clause 10, substitute

10 Regulation-making power

The Executive may make regulations for this Act.

Note Regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

11 Review of Act

- (1) The Minister must review the operation of this Act as soon as practicable after 1 January 2012.
 - (2) The Minister must present a report of the review to the Legislative Assembly within 3 months after the day the review is started.
 - (3) This section expires on 1 January 2014.
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Schedule 2**TOBACCO AMENDMENT BILL 2008**

Amendments circulated by the Minister for Health

1**Clause 2****Page 2, line 3—***omit clause 2, substitute***2****Commencement**

- (1) The following provisions commence on the day after this Act's notification day:

- sections 16 to 18
- section 22.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) The remaining provisions commence on a day fixed by the Minister by written notice.

Note 1 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 2 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

2**Clause 22****Proposed new section 100 (1) (b)****Page 17, line 8—***omit*

31 August 2007

*substitute*31 August 2008

3**Clause 22****Proposed new section 100 (2)****Page 17, line 13—***omit*

31 August 2008

*substitute*30 November 2008

4

Clause 22**Proposed new section 100 (5)**

Page 17, line 19—

omit

31 August 2008

substitute

30 November 2008

5

Proposed new clause 22A

Page 17, line 19—

*insert***22A****New section 101***insert***101****Transitional—application of new point of sale display provisions to tobacconists**

- (1) The new point of sale display provisions do not apply until 1 January 2010 in relation to a person (a *standard tobacconist*) who—
 - (a) holds a retail tobacconist's licence or wholesale tobacco merchant's licence in relation to premises; and
 - (b) carries on business as a retail tobacconist or wholesale tobacconist at the premises; and
 - (c) is not a specialist tobacconist.
- (2) The new point of sale display provisions do not apply until 1 January 2011 in relation to a person (a *specialist tobacconist*) who—
 - (a) holds a retail tobacconist's licence in relation to premises that are not part of premises used by the person for other retail purposes; and
 - (b) carries on business at the premises the main purpose of which is selling smoking products by retail.
- (3) Until the new point of sale display provisions apply in relation to a standard tobacconist or specialist tobacconist, the old point of sale display provisions continue to apply in relation to the tobacconist.
- (4) In this section:

new point of sale display provisions means the following provisions of this Act, as in force after this section commences:

 - (a) part 2 (Points of sale), other than section 8 (Numbers of points of sale);

- (b) section 20 (Display of smoking products);
- (c) section 23 (Prohibited smoking advertising);
- (d) section 24 (Removal of smoking advertisements);
- (e) section 56 (Disciplinary action—general).

old point of sale display provisions means the *Tobacco Regulation 1991* and the following provisions of this Act, as in force immediately before this section commences:

- (a) part 2 (Point of sale displays);
- (b) section 20 (Display of smoking products at points of sale);
- (c) section 22 (Health warnings at point of sale displays);
- (d) section 23 (Prohibited smoking advertising);
- (e) section 24 (Removal of smoking advertisements);
- (f) section 56 (Disciplinary action—general).

retail tobacconist's licence—see section 43.

wholesale tobacco merchant's licence—see section 43.

- (5) This section expires on 1 January 2011.
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