

WESTERN AUSTRALIA

# LEGISLATIVE ASSEMBLY

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## VOTES AND PROCEEDINGS

No. 150

SECOND SESSION OF THE THIRTY-SIXTH PARLIAMENT

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TUESDAY, 19 OCTOBER 2004

### 1. Meeting of Assembly

The Assembly met at 2.00 p.m. pursuant to adjournment.

The Speaker took the Chair.

Prayers were read.

### 2. Brief Ministerial Statements

The following brief Ministerial Statements were made by -

The Minister for Disability Services on the Local Area Coordination programme reforms.

The Minister for Planning and Infrastructure on the Port Kennedy project.

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#### *Paper*

The following paper was presented and ordered to lie upon the Table of the House -

By the Minister for Planning and Infrastructure -

Port Kennedy Project - Deed of Variation of the Port Kennedy Development Project Agreement 2004 between the State of Western Australia and the Western Australia Beach and Golf Resort Pty Ltd, ACN 097 109 067 (2891).

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The Minister for State Development on the implementation of the recommendations contained in the Final Report of the Review of Environmental and Public Safety Impacts of Mining in the Kalgoorlie Area (Cooke Review).

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*Papers*

The following papers were presented and ordered to lie upon the Table of the House -

By the Minister for State Development -

Cooke Review - Review Report by Mr Allan Skinner on three cases of “misinformation” referred to in the Cooke Review, 29 March 2004 (2892).

Cooke Review - Independent Review of a proposal to raise the Fimiston 1 Tailings Dam at Kalgoorlie, Final Report by Thompson and Brett Pty Ltd October 2004 (2893).

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The Minister for Community Development, Women’s Interests, Seniors and Youth on the International Federation on Ageing Global Conference in Singapore, 4 to 7 September 2004.

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*Paper*

The following paper was presented and ordered to lie upon the Table of the House -

By the Minister for Community Development, Women’s Interests, Seniors and Youth -

International Federation on Ageing - Report on Global Conference in Singapore, 4 to 7 September 2004 (2848).

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The Minister for Planning and Infrastructure on the South West Highway near Harvey High School.

### **3. Questions**

Questions without notice were taken.

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*Paper*

The following paper was presented and ordered to lie upon the Table of the House -

By the Deputy Premier -

Corruption and Crime Commission of Western Australia - Details relating to the execution of a search warrant on the office of the Minister for Housing and Works on 23 September 2004 (2894).

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Questions on notice Nos 3236 to 3268 were asked.

Questions on notice Nos 2998, 3031, 3074, 3084, 3088, 3172, 3184, 3188, 3211 and 3212 were answered.

### **4. Messages from the Governor**

Messages from His Excellency the Governor were reported assenting to the following Bills -

No. 46 - 28 September 2004

Professional Standards Amendment Bill 2004, Act No. 25 of 2004

No. 47 - 7 October 2004

Evidence Amendment Bill 2004, Act No. 24 of 2004.

Criminal Law Amendment (Criminal Property) Bill 2004, Act No. 26 of 2004

No. 49 - 14 October 2004

Sentencing Legislation Amendment Bill 2004, Act No. 27 of 2004.

Civil Judgments Enforcement Bill 2003, Act No. 28 of 2004.

Criminal Injuries Compensation Amendment Bill 2004, Act No. 29 of 2004.

Victims of Crime Amendment Bill 2003, Act No. 30 of 2004.

Small Business Guarantees Repeal Bill 2004, Act No. 31 of 2004.

Public and Bank Holidays Amendment Bill 2004, Act No. 32 of 2004

Message No. 48 from His Excellency the Governor was reported recommending that appropriations be made for the Community Protection (Offender Reporting) Bill 2004.

## **5. Community Development and Justice Standing Committee**

The Speaker advised members that he had received a letter dated 21 September 2004 from Mr L. Graham submitting his resignation from the Community Development and Justice Standing Committee effective from that date.

## **6. Economics and Industry Standing Committee**

The Speaker advised members that he had received a letter dated 23 September 2004 from the Chairman of the Economics and Industry Standing Committee, advising that the Committee will now report to the Assembly on its inquiry into Energy Efficiency and Renewable Energy in Western Australia by December 2004.

## **7. Petition**

Yalgorup National Park - Mr A.D. Marshall presented a petition from 21 persons requesting that the Government develop more walk trails in the Yalgorup National Park (P. 409).

## **8. Papers**

The following papers were presented and ordered to lie upon the Table of the House -

By the Deputy Speaker -

Corruption and Crime Commission of Western Australia - Annual Report 2003-2004 (2819).

Inspector of Custodial Services, Office of the - Annual Report 2003-2004 (Received by the Clerk of the Legislative Assembly on the 31 August 2004 and held for a period of thirty days as directed by section 109N(4) of the Prisons Act 1981) (2820).

Register of Members' Financial Interests - Annual Returns as at 30 June 2004 and Additional Information for Returns 2002-2003 of the Legislative Assembly under Members of Parliament (Financial Interests) Act 1992 (2890).

The following papers were presented and ordered to lie upon the Table of the House -

Agricultural Practises Board of Western Australia - Annual Report 2003-2004 (2821).

Albany Port Authority - Annual Report 2003-2004 (2822).

Alcohol and Drug Authority, Western Australian - Annual Report 2003-2004 (2823).

Art Gallery of Western Australia - Annual Report 2003-2004 (2824).

Boxing Commission, Western Australia - Annual Report 2003-2004 (2825).

Building and Construction Industry Training Board - Annual Report 2003-2004 (2826).

Broome Port Authority - Annual Report 2003-2004 (2827).

Bunbury Port Authority - Annual Report 2003-2004 (2828).

Bunbury Port Authority - Statement of Corporate Intent 2004-2005 (2829).

Construction Industry Portable Paid Long Service Leave Act 1985 - Regulations (Construction Industry Portable Paid Long Service Leave Amendment Regulations (No. 2) 2004 G.G. 12/10/2004) (2830).

- Culture and the Arts, Department of - Annual Report 2003-2004 (2831).
- Curriculum Council - Annual Report 2003-2004 (2832).
- Dampier Port Authority - Annual Report 2003-2004 (2833).
- Dog Act 1976 - Local Laws (City of Geraldton Dogs Local Law (Amendment No. 2) 2002 G.G. 15/10/2004) (2834).
- East Perth Redevelopment Act 1991 - Ministerial approval under Section 44(1) of the Act for Development Application EPRA-DAP-04-0745, being detailed conservation and upgrade works of the Flour Mill and Miller's Residence, at Lots 609 and 611 Lindsay Street, Northbridge (2835).
- Education Services, Department of - Annual Report 2003-2004 (2836).
- Egg Marketing Board (Golden Egg Farms) Western Australian, The - Annual Report 2003-2004 (2837).
- Electricity Industry Act 2004 - Regulations (Electricity Industry (Independent Market Operator) Regulations 2004 G.G. 30/09/2004) (2838).
- Electricity Industry Act 2004 - Regulations (Electricity Industry (Wholesale Electricity Market) Regulations 2004 G.G. 30/09/2004) (2839).
- Electricity Industry Act 2004 - Rules (Wholesale Electricity Market Rules G.G. 05/10/2004) (2840).
- Energy, Office of - Annual Report 2003-2004 (2841).
- Environmental Protection Act 1986 - Regulations (Environmental Protection Amendment Regulations (No. 3) 2004 G.G. 12/10/2004) (2842).
- Environmental Protection Authority - Annual Report 2003-2004 (2843).
- Equal Opportunity in Employment, Director of - Annual Report 2003-2004 (2844).
- Esperance Port Authority - Statement of Corporate Intent 2004-2005 (2845).
- Fair Trading Act 1987 - Regulations (Fair Trading (Product Safety Standard) Amendment Regulations 2004 G.G. 01/10/2004) (2846).
- Fish Resources Management Act 1994 - Regulations (Fish Resources Management Amendment Regulations (No. 9) 2004 G.G. 30/09/2004) (2847).
- Forest Products Commission - Annual Report 2003-2004 (2849).
- Fremantle Port Authority - Statement of Corporate Intent 2004-2005 (2850).
- Gender Reassignment Board of Western Australia - Annual Report 2002-2003 (2851).
- Gender Reassignment Board of Western Australia - Annual Report 2003-2004 (2852).
- Government Employees' Housing Authority - Annual Report 2003-2004 (2853).
- Government Employees Superannuation Board - Annual Report 2003-2004 (2854).
- Government Railways Act 1904 - Regulations (Government Railways (Appeal Board) Amendment Regulations 2004 G.G. 12/10/2004) (2855).
- Guardianship and Administration Board, Western Australia - Annual Report 2003-2004 (2856).
- Great Southern Development Commission - Annual Report 2003-2004 (2857).
- Housing and Works, Department of - Annual Report 2003-2004 (2858).
- Keep Australia Beautiful Council WA - Annual Report 2003-2004 (2859).
- Local Government Act 1995 - By-laws (Town of East Fremantle - Repeal of By-laws Relating to Advertising Devices, Hoardings and Billposting G.G. 12/10/2004) (2860).
- Local Government Act 1995 - Local Laws (City of Perth - Parking Amendment Local Law 2004 G.G. 15/10/2004) (2861).
- Local Government Advisory Board - Annual Report 2003-2004 (2862).

Local Government and Regional Development, Department of - Annual Report 2003-2004 (2863).

Main Roads Western Australia - Annual Report 2003-2004 (2864).

Mentally Impaired Defendants Review Board - Annual Report 2003-2004 (2865).

Metropolitan Cemeteries Board - Annual Report 2003-2004 (2866).

Optometrists Registration Board of Western Australia - Annual Report 2003-2004 (2867).

Parks and Reserves Act 1895 - By-Laws (Parliamentary Reserve Amendment By-Laws 2004 G.G. 08/10/2004) (2868).

Parole Board - Annual Report 2003-2004 (2869).

Perth Market Authority - Annual Report 2003-2004 (2870).

Poisons Act 1964 - Regulations (Poisons Amendment Regulations 2004 G.G. 05/10/2004) (2871).

Port Hedland Port Authority - Annual Report 2003-2004 (2872).

Public Sector Standards Commissioner, Office of the - Annual Report 2003-2004 (2873).

Public Transport Authority - Annual Report 2003-2004 (2874).

Queen Elizabeth II Medical Centre Trust - Annual Report 2003-2004 (2875).

Racing and Wagering Western Australia - Annual Report 2003-2004 (2876).

Racing and Wagering Western Australia - Statement of Corporate Intent 2004-2005 (2877).

Racing, Gaming and Liquor, Department of - Annual Report 2003-2004 (2878).

Recreation Camps and Reserve Board - Annual Report 2003-2004 (2879).

Reproductive Technology Council, Western Australian - Annual Report 2003-2004 (2880).

South West Development Commission - Annual Report 2003-2004 (2881).

Sport and Recreation, Department of - Annual Report 2003-2004 (2882).

Sports Centre Trust, Western Australian - Annual Report 2003-2004 (2883).

Sport, Western Australian Institute of - Annual Report 2003-2004 (2884).

State Trading Concerns Act 1916 - Regulations (State Trading Concerns (Authorisation) Amendment Regulations (No. 2) 2004 G.G. 01/10/2004) (2885).

State Training Board - Annual Report 2003-2004 (2886).

Weapons Act 1999 - Regulations (Weapons Amendment Regulations 2004 G.G. 01/10/2004) (2887).

Western Australian Land Authority Act 1992 - Ministerial approval under section 17A of the Act for authority to enter into a contract with Georgiou Group Pty Ltd to undertake civil works for Stages 5A and 5B Harvest Lakes, Atwell (2888).

Western Power Corporation - Annual Report 2003-2004 (2889).

## **9. Correction to Tabled Paper**

The Deputy Speaker advised members that he had authorised corrections under Standing Order No. 156 to the following Tabled Paper tabled on 14 September 2004 -

State Records Commission - Annual Report 2003-2004 (2712).

## **10. Notices of Motion**

### **11. Matter of Public Interest - Tax Relief for Western Australians**

The Speaker informed the Assembly that he was in receipt of a notice from Mr C.J. Barnett that he intended to move a motion on a matter of public interest.

At least five members having risen in support,

Mr C.J. Barnett moved,

That this House calls on the Gallop Labor Government to provide the maximum level of tax relief for Western Australian families and businesses instead of giving a \$110 million tax break to one private consortium.

Debate ensued.

The Minister for Education and Training moved,

To delete all words after "House" and substitute the following -

" calls on the Gallop Labor Government to continue its good management of the State's finances that this year provided further tax relief and record low State debt without resorting to the botched privatisations of the previous Coalition Government.

".

Debate resumed.

On the question, That all words after "House" be deleted,

Question put.

The Assembly divided.

Ayes (28)

Mr P.W. Andrews	Mr J.C. Kobelke	Mr J.R. Quigley
Mr J.J.M. Bowler	Mr R.C. Kucera	Ms J.A. Radisich
Mr C.M. Brown	Mr F.M. Logan	Mr E.S. Ripper
Mr A.J. Carpenter	Ms A.J. MacTiernan	Mrs M.H. Roberts
Mr A.J. Dean	Mr J.A. McGinty	Mr D.A. Templeman
Mr J.B. D'Orazio	Mr M. McGowan	Mr P.B. Watson
Dr J.M. Edwards	Ms S.M. McHale	Mr M.P. Whitely
Mrs D.J. Guise	Mr A.D. McRae	Ms M.M. Quirk ( <i>Teller</i> )
Mr S.R. Hill	Mr N.R. Marlborough	
Mr J.N. Hyde	Mr M.P. Murray	

Noes (22)

Mr R.A. Ainsworth	Mr B.J. Grylls	Mr P.G. Pental
Mr C.J. Barnett	Ms K. Hodson-Thomas	Mr M.W. Trenorden
Mr D.F. Barron-Sullivan	Mr M.G. House	Mr T.K. Waldron
Mr M.F. Board	Mr R.F. Johnson	Ms S.E. Walker
Dr E. Constable	Mr W.J. McNee	Dr J.M. Woollard
Mr J.H.D. Day	Mr A.D. Marshall	Mr J.L. Bradshaw ( <i>Teller</i> )
Mrs C.L. Edwardes	Mr B.K. Masters	
Mr J.P.D. Edwards	Mr P.D. Omodei	

Question thus passed.

On the question, That the words be inserted.

Debate resumed.

Mr D.F. Barron-Sullivan moved,

To amend the amendment moved by the Minister for Education and Training by deleting all words after "calls" and substitute the following -

" supports tax relief for families and small business instead of WA Inc style preferential treatment of one large private consortium.

".

Debate resumed.

On the question, That all words after “calls” be deleted in the amendment proposed by the Minister for Education and Training,

Question put.

The Assembly divided.

Ayes (22)

Mr R.A. Ainsworth	Mr B.J. Grylls	Mr P.G. Pental
Mr C.J. Barnett	Ms K. Hodson-Thomas	Mr M.W. Trenorden
Mr D.F. Barron-Sullivan	Mr M.G. House	Mr T.K. Waldron
Mr M.F. Board	Mr R.F. Johnson	Ms S.E. Walker
Dr E. Constable	Mr W.J. McNee	Dr J.M. Woollard
Mr J.H.D. Day	Mr A.D. Marshall	Mr J.L. Bradshaw ( <i>Teller</i> )
Mrs C.L. Edwardes	Mr B.K. Masters	
Mr J.P.D. Edwards	Mr P.D. Omodei	

Noes (28)

Mr P.W. Andrews	Mr J.C. Kobelke	Mr J.R. Quigley
Mr J.J.M. Bowler	Mr R.C. Kucera	Ms J.A. Radisich
Mr C.M. Brown	Mr F.M. Logan	Mr E.S. Ripper
Mr A.J. Carpenter	Ms A.J. MacTiernan	Mrs M.H. Roberts
Mr A.J. Dean	Mr J.A. McGinty	Mr D.A. Templeman
Mr J.B. D’Orazio	Mr M. McGowan	Mr P.B. Watson
Dr J.M. Edwards	Ms S.M. McHale	Mr M.P. Whitely
Mrs D.J. Guise	Mr A.D. McRae	Ms M.M. Quirk ( <i>Teller</i> )
Mr S.R. Hill	Mr N.R. Marlborough	
Mr J.N. Hyde	Mr M.P. Murray	

Question thus negatived.

On the question, That the words be inserted, as proposed by the Minister for Education and Training.

Question put and passed.

On the question, That the motion, as amended, be agreed to.

Question put and passed.

## 12. Paper

The following paper was presented and ordered to lie upon the Table of the House -  
Premier and Cabinet, Department of - Annual Report 2003-2004 (2895).

## 13. Messages from the Legislative Council

Messages from the Legislative Council were reported returning the following Bills without amendment -

23 September 2004

Sentencing Legislation Amendment Bill 2004 (Message No. 163).

28 September 2004

Criminal Injuries Compensation Amendment Bill 2004 (Message No. 164).

29 September 2004

Public and Bank Holidays Amendment Bill 2004 (Message No. 165).

29 September 2004

Small Business Guarantees Repeal Bill 2004 (Message No. 166).

28 September 2004

Victims of Crime Amendment Bill 2003 (Message No. 167).

#### **14. Acts Amendment (Domestic Violence) Bill 2004**

Message No. 161 dated 23 September 2004 from the Legislative Council was reported as follows -

The Legislative Council acquaints the Legislative Assembly that it has agreed to the *Acts Amendment (Domestic Violence) Bill 2004* subject to the amendments contained in the Schedule annexed; in which amendments the Legislative Council desires the concurrence of the Legislative Assembly.

*Schedule indicating the amendments made by the Legislative Council in the Acts Amendment (Domestic Violence) Bill 2004*

##### **No. 1**

Clause 1, page 2, line 3 - To insert before “*Domestic*” -  
“ *Family and* ”.

##### **No. 2**

Clause 4, page 3, line 15 - To insert before “**domestic**” -  
“ **family and** ”.

##### **No. 3**

Clause 5, page 3, line 22 - To insert before “domestic” -  
“ family and ”.

##### **No. 4**

Clause 5, page 3, line 24 - To insert before “**domestic**” -  
“ **family and** ”.

##### **No. 5**

Clause 5, page 4, line 6 - To insert before “**domestic**” -  
“ **family and** ”.

##### **No. 6**

Clause 5, page 4, after line 11 - To insert -

“

“**imagined personal relationship**” means a relationship where one person claims to have, or have had, an intimate personal relationship, or other personal relationship, with another person but that other person disagrees with that claim;

”.

##### **No. 7**

Clause 6, page 6, line 18 - To insert before “**domestic**” -  
“ **family and** ”.

##### **No. 8**

Clause 6, page 6, line 20 - To insert before “**domestic**” -  
“ **family and** ”.



**No. 9**

Clause 7, page 8, line 5 - To insert before “**domestic**” -  
 “ **family and** ”.

**No. 10**

Clause 7, page 8, line 8 - To insert before “**domestic**” -  
 “ **family and** ”.

**No. 11**

Clause 7, page 8, line 10 - To insert before “domestic” -  
 “ family and ”.

**No. 12**

Clause 7, page 9, line 4 - page 8, line 8 - To insert before “domestic” -  
 “ family and ”.

**No. 13**

Clause 7, page 9, after line 17 - To insert -

“

- (e) if the person who commits the act has an imagined personal relationship with the person against whom the act is committed, an act that would constitute an act of family and domestic violence if those persons were in a family and domestic relationship.

”.

**No. 14**

Clause 11, page 14, line 19 - To insert before “**domestic**” -  
 “ **family and** ”.

**No. 15**

Clause 11, page 14, line 23 - To insert before “domestic” -  
 “ family and ”.

**No. 16**

Clause 11, page 14, line 24 - To insert before “domestic” -  
 “ family and ”.

**No. 17**

Clause 11, page 14, line 28 - To insert before “domestic” -  
 “ family and ”.

**No. 18**

Clause 11, page 14, line 30 - To insert before “domestic” -  
 “ family and ”.

**No. 19**

Clause 11, page 14, line 32 - To insert before “domestic” -  
 “ family and ”.

**No. 20**

Clause 11, page 14, after line 32 - To insert -

“  
and that making a violence restraining order is appropriate in the circumstances.

”.

**No. 21**

Clause 12, page 15, line 17 - To insert before “domestic” -

“ family and ”.

**No. 22**

Clause 12, page 15, after line 29 - To insert -

“

(6) After section 12(2) the following subsections are inserted —

“

- (3) In having regard to the matters set out in subsection (1)(da), a past history of applications under this Act is not to be regarded in itself as sufficient to give rise to any presumption as to the merits of the application.
- (4) The Commissioner of Police, is, where practicable, to provide to a court any information in the possession of the Police Force of Western Australia referred to in subsection (1)(h) or (i) that is relevant to a matter before the court.

”.

”.

**No. 23**

Clause 18, page 18, line 13 - To insert before “domestic” -

“ family and ”.

**No. 24**

Clause 18, page 18, line 22 - To insert before “domestic” -

“ family and ”.

**No. 25**

Clause 18, page 18, line 25 - To insert before “domestic” -

“ family and ”.

**No. 26**

Clause 18, page 18, line 27 - To insert before “domestic” -

“ family and ”.

**No. 27**

Clause 18, page 19, line 5 - To insert before “domestic” -

“ family and ”.

**No. 28**

Clause 18, page 19, line 8 - To insert before “domestic” -

“ family and ”.

**No. 29**

Clause 18, page 19, line 10 - To insert before “domestic” -  
“ family and ”.

**No. 30**

Clause 18, page 19, line 23 - To insert before “domestic” -  
“ family and ”.

**No. 31**

Clause 18, page 19, line 27 - To insert before “domestic” -  
“ family and ”.

**No. 32**

Clause 18, page 19, line 29 - To insert before “domestic” -  
“ family and ”.

**No. 33**

Clause 18, page 20, line 15 - To insert before “domestic” -  
“ family and ”.

**No. 34**

Clause 18, page 23, line 27 - To insert before “*Domestic*” -  
“ *Family and* ”.

**No. 35**

Clause 20, page 25, line 15 - To insert before “**domestic**” -  
“ **family and** ”.

**No. 36**

Clause 20, page 25, line 19 - To insert before “domestic” -  
“ family and ”.

**No. 37**

Clause 25, page 28, line 13 - To insert before “**domestic**” -  
“ **family and** ”.

**No. 38**

Clause 25, page 28, line 19 - To insert before “domestic” -  
“ family and ”.

**No. 39**

Clause 25, page 28, line 19 - To insert after “relationship” -  
“ or an imagined personal relationship ”.

**No. 40**

Clause 26, page 29, lines 23 to 29 - To delete the lines and insert instead -  
“

- (6) If an application is made to vary —
  - (a) a restraining order that is a final order; or
  - (b) a misconduct restraining order,

which includes an application to vary the order by extending the duration of the order, then, despite anything else in this Act, the order is not to expire

”.

**No. 41**

Clause 28, page 31, lines 9 to 15 - To delete the lines.

**No. 42**

Clause 28, page 31, lines 26 and 27 - To delete “or cancel”.

**No. 43**

Clause 28, page 31, line 30 - To insert after “applicant” -  
“ serious and ”.

**No. 44**

Clause 28, page 31, line 31 - To insert after “hardship” -  
“ and that it is appropriate that the application is heard as a matter of urgency ”.

**No. 45**

Clause 30, page 32, line 21 - To delete “any affidavit filed” and insert instead -  
“ such record of evidence ”.

**No. 46**

Clause 30, page 32, line 22 - To delete “deponent” and insert instead -  
“ person who gave the evidence ”.

**No. 47**

Clause 35, page 35, line 7 - To insert after “less” -  
“ , unless the order is made under section 63A ”.

**No. 48**

Clause 40, page 41, line 27 - To insert before “domestic” -  
“ family and ”.

**No. 49**

Clause 41, page 42, line 19 - To insert after “practitioner” -

“

or a person acting under section 48 of the *Aboriginal Affairs Planning Authority Act 1972*

”.

**No. 50**

Clause 42, page 43, line 6 - To insert before “domestic” -  
“ family and ”.

**No. 51**

Clause 42, page 43, line 8 - To insert before “domestic” -  
“ family and ”.

**No. 52**

Clause 42, page 43, line 9 - To insert before “domestic” -  
“ family and ”.

**No. 53**

Clause 42, page 43, line 12 - To insert before “domestic” -  
“ family and ”.

**No. 54**

Clause 42, page 43, line 15 - To insert before “**domestic**” -  
“ **family and** ”.

**No. 55**

Clause 42, page 43, line 18 - To insert before “domestic” -  
“ family and ”.

**No. 56**

Clause 42, page 43, line 24 - To insert before “domestic” -  
“ family and ”.

**No. 57**

Clause 42, page 43, line 28 - To insert before “domestic” -  
“ family and ”.

**No. 58**

Clause 42, page 44, line 3 - To insert before “domestic” -  
“ family and ”.

**No. 59**

Clause 42, page 44, line 18 - To insert before “domestic” -  
“ family and ”.

**No. 60**

Clause 42, page 44, line 21 - To insert before “domestic” -  
“ family and ”.

**No. 61**

Clause 42, page 45, line 5 - To insert before “**domestic**” -  
“ **family and** ”.

**No. 62**

Clause 42, page 46, line 2 - To insert before “domestic” -  
“ family and ”.

**No. 63**

Clause 42, page 46, line 10 - To insert before “domestic” -  
“ family and ”.

**No. 64**

Clause 44, page 49, line 1 - To delete “protection” and insert instead -  
“ restraining ”.

**No. 65**

Clause 44, page 49, line 23 - To insert before “domestic” -  
 “ family and ”.

**No. 66**

Clause 47, page 52, line 21 - To delete “a court is to ensure that”.

**No. 67**

Clause 47, page 52, line 22 - To insert after “information” -  
 “ in the custody of a court ”.

**No. 68**

Clause 47, page 52, line 27 - To insert after “not” -  
 “ to be ”.

**No. 69**

Clause 47, page 52, line 27 - To insert after “court” -  
 “ or a clerk of the court ”.

**No. 70**

Clause 47, page 53, after line 24 - To insert -

“

- (4) In this section “under this Act” includes proceedings in which the existence of a restraining order is a material fact in the proceedings.

”.

**No. 71**

Clause 57, page 58, line 9 - To delete “repealed” and insert instead -

“

amended by inserting after “arrested” —

“ in an urban area ”.

”.

**No. 72**

Clause 62, page 59, line 23 - To insert before “domestic” -  
 “ family and ”.

**No. 73**

Clause 62, page 60, line 5 - To insert before “domestic” -  
 “ family and ”.

**No. 74**

New Clause 25, page 27, after line 18 - To insert the following new clause -

“

**25. Section 43A inserted and consequential amendments**

- (1) After section 43 the following section is inserted —

“

**43A. Decision under s. 42 in default of appearance may be set aside**

- (1) In this section —

**“respondent”**, in respect of a decision to dismiss an application in default of appearance of the applicant, means the person who was the respondent at the final order hearing at which the decision was dismissed.

- (2) Where the court —

- (a) has dismissed an application in default of appearance of the applicant under section 42(1)(a), that applicant may, within 21 days of becoming aware that the application was dismissed; or
- (b) has made a restraining order under section 42 in default of appearance of the respondent, that respondent may within 21 days of the order being served on the respondent,

or such further period as the court may allow at a hearing fixed under subsection (3), apply to the court, in the prescribed form setting out the grounds of the application, to have that decision set aside.

- (3) On receiving an application under subsection (2) the clerk is to fix a hearing, to be held in the absence of the other party to the proceedings, at which, subject to subsection (4), the court —

- (a) where the application was made out of time, is to grant leave for the person to continue the application out of time if satisfied that there was a reasonable excuse for not commencing the application within the time allowed; and
- (b) after taking into account the grounds of the application, is to —
  - (i) adjourn the hearing of the matter to allow the other party to oppose the matter if satisfied that the person who made the application may have had a reasonable cause not to attend the hearing at which the application was dismissed, or the restraining order made; or
  - (ii) dismiss the application.

- (4) If the applicant does not attend a hearing fixed under subsection (3), the court, if it is satisfied that the applicant was notified of the hearing, is to dismiss the application.

- (5) If the court adjourns the matter under subsection (3)(b)(i) the clerk is to fix a hearing and summons the other party to the hearing.

- (6) At a hearing fixed under subsection (5), where the other party is present, or if the other party is not present the court is satisfied the other party was served with the summons, the court is to hear the matter and —
- (a) if satisfied that the applicant had reasonable cause not to attend the hearing at which the application was dismissed or the restraining order made, is to set aside the decision made under section 42; or
  - (b) is to dismiss the application.
- (7) Where, under subsection (6)(a), the court sets aside a decision made under section 42 —
- (a) if, immediately before the hearing at which the decision under section 42 was made, an earlier order was in force in respect of the matter, the court is to make an interim order in the same terms as the earlier order, unless any new ground or matter is raised at the hearing fixed under subsection (3) or (5); and
  - (b) the clerk is to fix a hearing as soon as is practicable and summons the respondent to the hearing.
- (8) The clerk is to prepare and serve an interim order made under subsection (7)(a).
- (9) At a hearing fixed under subsection (7)(b) the court is to re-hear the matter under section 42.

”.

- (2) Section 3 is amended in the definition of “final order hearing” by deleting “or 41(4)” and inserting instead —
- “ , 41(4) or 43A(7)(b) ”.
- (3) Section 3 is amended in the definition of “interim order” by inserting after “29(1)(a)” —
- “ , 43A(7)(a) ”.
- (4) Section 42(2)(a)(ii) is amended by deleting “or 41(4)” and inserting instead —
- “ , 41(4) or 43A(7)(b) ”.

”.

**No. 75**

New Clause 56, page 57, after clause 55 - To insert the following new clause -

“

**56. Further amendments related to the *Children and Community Services Act 2004***

- (1) The day fixed under section 2 of this Act for the commencement of this section cannot be before the commencement of —
- (a) sections 5(1) and (7), 18 and 35 of this Act; and
  - (b) clause 23 of Schedule 2 to the *Children and Community Services Act 2004*.



- (2) Section 3 is amended in the definition of “CEO (child welfare)” by deleting “Director-General within the meaning of the *Child Welfare Act 1947*,” and inserting instead —

“

CEO within the meaning of the *Children and Community Services Act 2004*;

”.

- (3) Section 3 is amended by deleting the full stop after the definition of “violence restraining order” and inserting a semicolon instead.
- (4) Section 3 is amended by inserting after the definition of “violence restraining order” the following definition —

“

“**wellbeing**” has the same meaning as in the *Children and Community Services Act 2004*.

”.

- (5) Each provision listed in the Table to this subsection is amended by deleting “welfare” and inserting instead —

“ wellbeing ”.

**Table**

s. 12(1)(c)  
s. 30B(d)  
s. 35(1)(b)

s. 35(2)(b)  
s. 50D(1) (in the first place where it occurs)  
s. 50D(2)(b) (in the second place where it occurs)

”.

Ordered, That consideration in detail of Legislative Council message No. 161 be made an Order of the Day for a later stage of the sitting.

**15. Community Protection (Offender Reporting) Bill 2004**

The Order of the Day for the resumption of the debate upon the second reading of the Bill was read.  
Debate resumed.

Mrs C.L. Edwardes moved, That the debate be adjourned.

Question put and passed.

**16. Criminal Code Amendment (Racial Vilification) Bill 2004**

The Order of the Day for the further consideration in detail of the Bill was read.

Clause 4.

The Leader of the House moved, That the debate be adjourned until a later stage of the sitting.

Question put and passed.

**17. Notice of Motion after the Time Prescribed**

Mr L. Graham was granted leave to present a late notice of motion.

**18. Variation to the Order of Business**

Ordered, That Government Business Order of the Day for the consideration in detail of Legislative Council message No. 161 be next considered.

**19. Acts Amendment (Domestic Violence) Bill 2004**

The Order of the Day for the consideration in detail of Legislative Council message No. 161 was read (see paragraph No. 14).

*CONSIDERATION IN DETAIL*

The Attorney General moved, That amendments Nos 1 to 75 be agreed to.

Questions put and passed.

Consideration in detail concluded and the Legislative Council acquainted accordingly.

**20. Variation to the Order of Business**

Ordered, That Government Business Order of the Day No. 2 be further considered.

**21. Criminal Code Amendment (Racial Vilification) Bill 2004**

The Order of the Day for the further consideration in detail of the Bill was read.

Clause 4.

The Attorney General moved,

Page 2, line 17 – To delete “, abuse of or severe ridicule of”.

Amendment put and passed.

The Attorney General moved,

Page 2, line 18 – To insert before “abuse” –

“ seriously and substantially ”.

Amendment put and passed.

The Attorney General moved,

Page 2, line 18 – To insert before “ridicule” –

“ severely ”.

Amendment put and passed.

Clause, as amended, agreed to.

Clause 5.

The Attorney General moved,

Page 3, line 5 – To insert after “**animosity**” –

“ **or racist harassment** ”.

Amendment put and passed.

The Attorney General moved,

Page 3, line 8 – To insert after “towards” –

“ , or harassment of, ”.

Amendment put and passed.

The Attorney General moved,

Page 3, line 11 – To insert after “**animosity**” –

“ **or racist harassment** ”.

Amendment put and passed.

The Attorney General moved,

Page 3, line 14 – To insert after “towards” –

“ , or harassment of, ”.

Amendment put and passed.

The Attorney General moved,

Page 3, line 20 – To insert after “**animosity**” –

“ **or racist harassment** ”.

Amendment put and passed.

The Attorney General moved,

Page 3, line 28 – To insert after “towards” –

“ , or harassment of, ”.

Amendment put and passed.

The Attorney General moved,

Page 4, line 2 – To insert after “**animosity**” –

“ **or racist harassment** ”.

Amendment put and passed.

The Attorney General moved,

Page 4, line 11 – To insert after “towards” –

“ , or harassment of, ”.

Amendment put and passed.

The Attorney General moved,

Page 6, line 13 – To insert after “80C” –

“ , 313, 317, 317A, 338B or 444 ”.

Amendment put and passed.

The Attorney General moved,

Page 7, after line 23 – To insert –

“

#### **80I. Meaning of “circumstances of racial aggravation”**

In sections 313, 317, 317A, 338B and 444 –

“**circumstances of racial aggravation**” means circumstances in which –

- (a) immediately before or during or immediately after the commission of the offence, the offender demonstrates hostility towards the victim based, in whole or part, on the victim being a member of a racial group; or
- (b) the offence is motivated, in whole or part, by hostility towards persons as members of a racial group.

”.

Question put and passed.

Clause, as amended, agreed to.

New clauses.

The Attorney General moved,

Page 7 after line 24 – To insert –

“

**6. Section 313 amended**

Section 313(1)(a) is amended by inserting after “60 years” —

“

or the offence is committed in circumstances of racial aggravation

”.

**7. Section 317 amended**

Section 317(1)(a) (being the first provision so designated) is amended by inserting after “60 years” —

“

or the offence is committed in circumstances of racial aggravation

”.

**8. Section 317A amended**

Section 317A(a) (being the second provision so designated) is amended by inserting after “60 years” —

“

or the offence is committed in circumstances of racial aggravation

”.

**9. Section 338B amended**

(1) Section 338B(a) is amended by inserting after “years” —

“

or, if the offence is committed in circumstances of racial aggravation, to imprisonment for 14 years

”.

(2) Section 338B(b) is amended as follows:

(a) by deleting “any other case” and inserting instead –

“ the case of any other threat ”;

(b) by inserting after “years” –

“

or, if the offence is committed in circumstances of racial aggravation, to imprisonment for 6 years

”.

**10. Section 444 amended**

- (1) Section 444(a) (being the first provision so designated) is amended by inserting after “years” —

“

or, if the offence is committed in circumstances of racial aggravation, to imprisonment for 20 years

”.

- (2) Section 444(b) (being the first provision so designated) is amended as follows:

- (a) by deleting “in any other case” and inserting instead —

“ if the property is not destroyed or damaged by fire ”;

- (b) by inserting after “years” —

“

or, if the offence is committed in circumstances of racial aggravation, to imprisonment for 14 years

”.

”.

Question put and passed.

Clause 6 agreed to.

Title agreed to.

The Attorney General moved,

That the *Criminal Code Amendment (Racial Vilification) Bill 2004* be reconsidered in detail for the purpose only of considering the Minister’s proposed new clause as listed on the Notice Paper.

Question put and passed.

*RECONSIDERATION IN DETAIL*

New clause.

The Attorney General moved,

Page 2, after line 11 – To insert –

“

**4. Section 1 amended**

Section 1(1) is amended by inserting in the appropriate alphabetical position —

“

The term “**circumstances of racial aggravation**” has the meaning given to it in section 80I;

”.

”.

Question put and passed.

Reconsideration in detail concluded.

Ordered, That the third reading of the Bill be made an Order of the Day for the next sitting of the Assembly.

**22. Variation to the Order of Business**

Ordered, That Government Business Order of the Day No. 4 be next considered.

**23. Criminal Law Amendment (Simple Offences) Bill 2004**

The Order of the Day for the resumption of the debate upon the second reading of the Bill was read.

Debate resumed.

Question put and passed.

Bill read a second time.

Ordered, That the consideration in detail of the Bill be made an Order of the Day for the next sitting of the Assembly.

**24. Adjournment**

The Leader of the House moved, That the House do now adjourn.

Question put and passed.

The Assembly adjourned accordingly, at 10.48 p.m. until Wednesday, 20 October 2004 at 12 noon.

*Members present during any part of the day's proceedings* - All the members except Mr M.J. Birney and Dr G.I. Gallop.

**PETER J. McHUGH**  
Clerk of the Legislative Assembly

**HON. FRED RIEBELING**  
Speaker of the Legislative Assembly