



Debates

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Thursday, 21 August 2008

Corrections Management Amendment Bill 2008	3413
Legislative Assembly (Members' Staff) Amendment Bill 2008	3414
Legislative Assembly—Ethics and Integrity Adviser.....	3426
Public Accounts—Standing Committee	3426
Public Accounts—Standing Committee	3427
Questions without notice:	
Rhodium Asset Solutions Ltd	3445
Political advertising	3449
Rhodium Asset Solutions Ltd	3449
Gas-fired power station.....	3450
ACTION bus service—patronage.....	3451
Rhodium Asset Solutions Ltd	3454
Health—clinics	3454
Housing affordability	3456
Gas-fired power station.....	3458
Chief Minister—suspension.....	3459
Budget—surplus	3460
Personal explanation	3462
Paper	3466
Homelessness strategy	3466
Pathways for homelessness into home ownership (Ministerial statement)	3469
Planning—infrastructure (Matter of public importance)	3476
Legal Affairs—Standing Committee	3493
Standing orders—suspension.....	3493
Road Transport (Third-Party Insurance) Amendment Bill 2008.....	3494
Superannuation (Legislative Assembly Members) Amendment Bill 2008.....	3504
Sexual and Violent Offences Legislation Amendment Bill 2008.....	3506
Court Legislation Amendment Bill 2008.....	3534
Long Service Leave Legislation Amendment Bill 2008.....	3537
Adjournment:	
Chief Minister—suspension.....	3539
Public Accounts—Standing Committee	3540
Chief Minister— <i>Crikey</i> reports	3541
Gungahlin Drive extension	3543
Stanhope government.....	3544
Schedules of amendments:	
Schedule 1: Road Transport (Third-Party Insurance) Amendment Bill 2008.....	3547
Schedule 2: Road Transport (Third-Party Insurance) Amendment Bill 2008.....	3547
Schedule 3: Sexual and Violent Offences Legislation Amendment Bill 2008.....	3547
Schedule 4: Sexual and Violent Offences Legislation Amendment Bill 2008.....	3555
Answers to questions:	
Finance—home loans (Question No 2003).....	3557
Mental health—enduring power of agreement (Question No 2082)	3558
Compensation—wrongful convictions (Question No 2100)	3558

Alexander Maconochie Centre (Question No 2117)	3559
Women—prison policies (Question No 2121)	3560
Gas-fired power station (Question No 2150).....	3561
Development—Causeway (Question No 2177).....	3562
Roads—Maria Place, Lyons (Question No 2178)	3562
Environment—energy efficiency standards (Question No 2181).....	3563

Thursday, 21 August 2008

MR SPEAKER (Mr Berry) took the chair at 10.30 am and asked members to stand in silence and pray or reflect on their responsibilities to the people of the Australian Capital Territory.

Corrections Management Amendment Bill 2008

Mr Corbell, pursuant to notice, presented the bill, its explanatory statement and a Human Rights Act compatibility statement.

Title read by Clerk.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (10.31): I move:

That this bill be agreed to in principle.

The Corrections Management Amendment Bill 2008 introduces new sections 113 into the Corrections Management Act 2007 which expand the current power of the chief executive to direct ACT Corrective Services officers to strip-search a detainee.

Following the Alexander Maconochie Centre functional brief and the enactment of the Corrections Management Act 2007, Corrective Services investigated the use of body scanning technologies.

ACT Corrective Services undertook a trial of the Soter X-ray body scanner at the Belconnen Remand Centre in late 2006 and early 2007 with the explicit permission of the ACT Radiation Council. The Soter scanner allows a detainee to be searched for contraband concealed on them without requiring the detainee to remove their clothes or to be touched by someone else in the searching process.

Following the completion of this trial, Corrective Services submitted an application to the ACT Radiation Council to have the scanner registered for use in the territory, and for the council to grant a licence to use the scanner at the Alexander Maconochie Centre.

Under the Radiation Protection Act 2006, the ACT Radiation Council is charged with the legal responsibility to ensure that the use of ionising radiation technologies such as the Soter scanner will not pose a significant threat of harm to the health and safety of people and the environment in the territory.

I am advised that the council is currently considering the application from Corrective Services to use the Soter scanner on an ongoing basis at the Alexander Maconochie Centre.

The bill I am introducing today ensures the safety and security of detainees, correctional officers and visitors at the AMC in the interim period when it will not be possible to use the Soter X-ray body scanner.

The bill introduces a further authority for the chief executive to direct a corrections officer to strip-search a detainee under division 9.4.3 of the Corrections Management Act 2007. The bill restates the power that the chief executive has under the current section 113 of the Corrections Management Act to direct a corrections officer to strip-search a detainee.

However, the bill expands this power of the chief executive to direct a corrections officer to strip-search a detainee where the chief executive believes that it is proven upon reasonable grounds that a less intrusive means of searching is not available or appropriate in the circumstances.

These circumstances include where a detainee has not been under the control or immediate supervision of a corrections officer for a period and the detainee may have had the opportunity to obtain a seizeable item; and where a lower intensity search is not likely to detect more than a limited range of seizeable items.

This power is still subject to the requirement of proportionality that is contained in section 108 of the Corrections Management Act—that the exercise of the power must be necessary and rationally connected to the objective, the least restrictive in order to accomplish the object, and not have a disproportionately severe effect on the person to whom it applies.

To ensure that the power contained in this bill to strip-search detainees is not abused and is exercised in accordance with all relevant ACT legislation, the bill also introduces the requirement for the chief executive to develop a corrections policy or operating procedure in relation to strip searches conducted under division 9.4.3 of the Corrections Management Act.

I commend the bill to the Assembly.

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

Legislative Assembly (Members' Staff) Amendment Bill 2008

Debate resumed from 7 August 2008, on motion by **Mr Berry**:

That this bill be agreed to in principle.

MR ASSISTANT SPEAKER (Mr Gentleman): Members, I have received advice from the Clerk, with due regard to standing order 156, that members Seselja and Porter should refrain from debating and voting on this matter.

Mr Smyth: Mr Assistant Speaker, I would like an explanation of that. My understanding is that any of the staff in Mr Seselja's office are not covered by the proposals in this bill.

MR ASSISTANT SPEAKER: The advice I have received is that staff in Mr Seselja's office are covered by the code of conduct that this bill will affect and by standing order 156.

Mr Smyth: In future, will such direction be given, for instance, to members of the Labor Party who receive benefit from poker machines, when we have poker machine legislation?

MR ASSISTANT SPEAKER: Mr Smyth—

Mr Smyth: This is absolutely outrageous.

MR ASSISTANT SPEAKER: Mr Smyth, I have given an order.

Mr Hargreaves: Sit down. How stupid is that?

Mr Smyth: How stupid are you?

MR ASSISTANT SPEAKER: Mr Smyth, I have given a ruling. You can move against my ruling if you wish, but the ruling is in place.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (10.37): The government will be supporting this bill. The principles outlined in Mr Berry's bill are straightforward ones. They provide for protections against inappropriate relationships when it comes to the contractual obligations that members enter into when they employ staff. In particular, the bill provides for a prohibition on the employment of certain familial relations on the staff of a member.

These protections have been in place in one form or another in this place for some time, most recently in the code of conduct for members. However, Mr Berry is proposing in his bill that this be extended and be given statutory effect by being provided for in the Legislative Assembly (Members' Staff) Act.

The government supports this change. We believe it is desirable to put beyond doubt the question of the inappropriateness of employing close family members on the staff of MLAs. The points made by Mr Berry in his introductory speech are to be commended in that he highlighted the ability of such employment arrangements to undermine public confidence in the way members conduct themselves and the way their staff conduct themselves on a member's behalf. It also raises the prospect of nepotism, and that is one that can call into question the standing of members and the standing of this place.

For those reasons, we believe it is appropriate to enact this change into law and to make it clear once and for all that it is not appropriate for members of the Legislative Assembly to employ close family members in the conduct of their duties. The government will be supporting the bill.

MR SMYTH (Brindabella) (10.39): The Liberal Party will not be supporting this bill. We do not believe it is necessary to put this into legislation. Indeed, it is interesting to see the Labor Party trying to catch up to the stand that the Liberal Party took more than four years ago. We already have an agreement among members that they will not employ family members.

It does raise some concerns, though. For instance, what if a family member of a party is employed by another member? Is that a conflict of interest? What if a member employs, for instance, a member of the management committee of their party, seeking influence? Is that covered? That could be far more telling. What if a family member or a partner is employed by the Assembly? Is that a conflict of interest? Where does this stop?

We of the Liberal Party have always believed in merit—that people should be employed because they are capable of doing the job. Part of the ability to do the job is to have the integrity to act appropriately when doing that job. What this says is that there are two classes of people. So much for the Labor Party and its view of equity—that all should be equal. What this is doing is saying that there are two classes of people: those who can be employed by the Assembly and those who cannot. Perhaps it is timely that we have a real discussion about where this finishes, because what this starts is most unfortunate.

I would like to point out the dictionary definition to members. The dictionary definition refers to a family member who is:

- (a) a domestic partner of the person; or
- (b) a parent or step-parent of the person; or
- (c) a parent or step-parent of the person's domestic partner; or
- (d) a child or step-child of the person; or
- (e) a child or step-child of the person's domestic partner; or
- (f) a brother, sister, half-brother or half-sister of the person; or
- (g) a grandparent of the person; or
- (h) an uncle, aunt or cousin of the person.

I would like somebody—perhaps you would like to clarify your ruling, Mr Assistant Speaker—to identify the person in Mr Seselja's office who falls into those categories from (a) to (h). Unless you can—unless you can point that out—your ruling is false and inaccurate.

MR ASSISTANT SPEAKER: Mr Smyth, you can—

MR SMYTH: I am asking for clarification, Mr Assistant Speaker. You have made a ruling. I am just trying to clarify your words.

MR ASSISTANT SPEAKER: Mr Smyth, you can either debate the bill or move a motion in—

MR SMYTH: I am trying to debate the dictionary. Don't you like the dictionary, Mr Assistant Speaker? I am just asking you about the—

MR ASSISTANT SPEAKER: Take your seat, Mr Smyth.

MR SMYTH: I am just asking you about the dictionary.

MR ASSISTANT SPEAKER: I have ordered you to take your seat. You can debate this bill—you can be relevant to this bill—or you can move a motion against my ruling. That is up to you.

MR SMYTH: I am being relevant. I am talking on the dictionary. How can it not be relevant to talk about the dictionary in the bill that is before this place? This shows up the folly of this bill.

In regard to what the Speaker is trying to do, let me say that there needs to be clarity in the way that members behave and the things that we do. We all look to that. At the same time there needs to be fairness to all individuals that they actually do have a right to seek employment for a job that they are qualified for. Surely that should be the only measure in this place—that we employ people who are actually qualified to do the job.

If we are going to have a part in the act that excludes family members, will we exclude political members? Will we exclude factional friends? Will we exclude neighbours? Where does it end? And where is the fairness in it? We have taken a stand in our own regard, as the Liberal Party, that we will not employ family members, so that there is some clarity, so that we send a clear signal to the people of the city. I think legislating for it is most unnecessary.

DR FOSKEY (Molonglo) (10.43): As one of the few people who actually bothered to put in a submission to the review of the code of conduct and the only person who expressed in writing a concern that that aspect of the code of conduct was not actually being adhered to, it is fairly obvious that I will be supporting the bill. The comment I made in my very brief submission to the Standing Committee on Administration and Procedure under the heading “Conduct as employers” was as follows:

It is important to remind MLAs of their obligations as employers as the nature of work in this place puts a great deal of stress on staff, regardless of the MLA’s awareness of employment rights, etc.

Due to the fact that Mr Berry has introduced this bill, we are focusing today solely on the issue of members employing close relatives in their offices. But there are other issues about the way we deal with our staff, and I do not think we should forget those in our concern about this issue. It is not an ordinary employer-staff situation that MLAs have. Certainly in my office, it is much more a relationship of colleagues and a team. That is what works for me; I do not know what works for other people, but the stress of the job does put pressure on people.

In terms of the code of conduct and the employment of close relatives, I stated in my letter:

I note that there has been at least one instance of an MLA employing a family member which has not been dealt with by the Code. It seems to me that if we have a Code we should use it, or delete points that it is not intended to apply, or to apply unevenly.

In other words, if we have a code, then we should adhere to it. If the code is not written in strong enough terms so that people think that they can get around it, then we either get rid of that aspect of the code or we strengthen that aspect of the code. I make no comments at all about actual situations where it might apply. There are all kinds of reasons that people employ close relatives, friends and people with particular expertise. That is not for me to comment upon, but it is for me to say that if we have a code, we should apply it. If it is not being applied, then we either strengthen it or reject it. We have a bill to strengthen it, and I am going to support that bill.

MR BERRY (Ginninderra) (10.47), in reply: The first thing I would like to express is my disappointment in the approach that has been taken by members of the opposition, and I do that in the context of the report of the administration and procedure committee on this matter. The majority of the committee expressed the desire not only to oppose my proposed legislation but also to withdraw from the code of conduct the provision requiring members to avoid employing close family members.

I see now that the opposition are going to oppose this legislation, and they put the spurious argument that people ought to be appointed on merit. Are members of the opposition saying to me, to other members and to members of the ACT community that after the next election, if they were to form government, they would create a situation where the Liberal Party and all members in this Assembly would be able to employ family members?

Mr Smyth: No, we don't intend to. We've got our own rules.

MR BERRY: I think that is what you are saying, Mr Smyth. You are saying, "We will vote for open slather. That's what we will do. We will vote for open slather." Mr Smyth also said that they had taken a decision not to employ family members. It has not worked that well in the context of the code of conduct, Mr Smyth, because one of your members, of course, is in breach of it now.

Mr Smyth: Which part?

MR BERRY: Take a close look at the code of conduct: members should not employ close family members.

Mr Smyth: It's not in your definition.

MR BERRY: If Mr Smyth can just restrain himself from constantly interjecting, he should take a moment to read the code of conduct—it makes it clear. The difficulty here is that we have a situation where the Liberals, on the basis of some purity that they have been able to keep hidden for a long time, are bleating about a piece of law which would prevent a particular outcome while at the same time breaching the code of conduct which has been in place since 2006. Give us a break. What the Liberals intend to do is to have open slather. It is as clear as a bell, and they have got some form on this. The point is well made by standing order 156, which says:

A Member who is a party to, or has a direct or indirect interest in, a contract made by or on behalf of the Territory or a Territory authority shall not take part in a discussion of a matter, or vote on a question, in a meeting of the Assembly where the matter or question relates directly or indirectly to that contract.

Mr Smyth, that is why Mr Seselja cannot participate in the debate, and neither can Ms Porter.

Mr Smyth: What about the people who employ—

MR ASSISTANT SPEAKER (Mr Gentleman): Order, Mr Smyth!

MR BERRY: Mr Assistant Speaker, protect me from this constant interjector. That makes the point very well as to why a person's close family members ought not be employed in this place, but it also makes the very valid point that what the Liberals intend to do is open it up at the first opportunity. That is what this Assembly needs to be protected against.

Mr Mulcahy, my colleague and a member of the administration and procedure committee, made the point during our deliberations that plenty of family companies and so on have worked very successfully by employing family members.

Mr Mulcahy: So do unions.

MR BERRY: And so do unions, but they are not spending public money, Mr Mulcahy. You do not seem to get that there is a difference.

Mr Mulcahy: I think I get it very well.

MR BERRY: I do not think you get it at all.

MR ASSISTANT SPEAKER: Mr Berry, direct your comments through the chair.

MR BERRY: There is a difference between public money and other money. You just do not get it. Your move to try and remove—

Mr Mulcahy: On a point of order, Mr Assistant Speaker: if he has got a point of view, I suggest he run it through the chair.

MR ASSISTANT SPEAKER: Thank you very much, Mr Mulcahy. If you would stop interjecting, he probably would. Mr Berry, direct your comments through the chair.

MR BERRY: Mr Mulcahy's position is very clear: he wants the sorts of activities that occur in private business to start occurring in this Assembly. You read them as headlines in the newspaper. Would you want your legislature with those sorts of activities peppered through its administrative structures? I think not.

Mr Smyth made quite a point out of asking the question of where it will end. It will end, Mr Smyth, with the dictionary, because that is what the legislation says. You are a legislator, and you know that is where it will end—unless you amend it. It goes through a range of family members who will be prohibited, and that is as far as it goes. My advice when I was putting together this piece of legislation was that the scope of persons mentioned in the bill is adequate and covers the field. It is true that it does not

cover the field in respect of Mr Seselja's position, but the code of conduct very clearly does.

I do not intend to argue that Mr Seselja should immediately sack this person, because the person has been employed in good faith, I expect. However, I expect that the next time an appointment comes up—after the next election—that the Leader of the Opposition will be able to give a commitment in this place that he will not appoint somebody contrary to the code of practice which this Assembly has agreed to. Members of the opposition are in a very difficult position, I think, because you are the people now who will go to the next election with an open-slayer approach on employing family members.

It has been said that codes of conduct can be ineffective. They are only as effective as the people covered by them want them to be. In this case, I felt that the code of conduct for the employment of members in this place was not up to scratch, and that is why the piece of legislation has been introduced to cover the field. In my view, it will deal with it adequately. At some point in the future, members may wish to amend it to strengthen it or, in the case of Mr Mulcahy, he may wish to amend it by weakening it. But, in the end, members have to start thinking about the standing of this place out there in the community.

I had a look at some numbers on a poll conducted by the *Canberra Times*. Before people shriek at me that that is not an adequate poll, it is relevant to mention it. There were 540-odd voters in the poll, and 80 per cent of them thought it was a bad idea for MLAs to employ family members. I challenge Mr Mulcahy to put this on the front page of his election leaflet: "I support the employment of family members by MLAs". We will not be seeing him here next time if he does. It is important that these sorts of things come out before an election so that people know what some of their MLAs are thinking about on these key issues for the proper running of a democratic institution.

It is important to know that the party that sees itself as the alternative government supports the employment of family members amongst MLAs and the open-slayer approach. Mr Smyth tries to create the impression that the Liberal Party can be trusted in its party room on this issue. In the past, of course, they have had the worst record of employing family members. If you could not trust their party room in the past, do you think people out there in the community would trust them in the future? I think not.

We live in a public service town which knows about the dangers of patronage and favouritism and nepotism. It is a threat to real democracy, and it is a threat to the standing of this legislature. When I first became a member of this place, before I became the Speaker, I had to weather the criticism in the early days of self-government about the standing of this place, and it does it no good to see nepotism alive and well in this Assembly. I think this debate will better inform the community on what to expect of its members when it comes to the employment habits that members fall into in this place.

I urge members to support this bill. I thank those members who have shown their support for it, and I trust that it will arm this Assembly to be better respected by the community in the future.

Standing orders—suspension

Motion (by **Mr Corbell**) agreed to, with the concurrence of an absolute majority:

That so much of the standing orders be suspended so as to require a vote to be taken on the question—That the Bill be agreed to in principle.

Question put:

That the bill be agreed to in principle.

The Assembly voted:

Ayes 9

Noes 6

Mr Barr	Mr Gentleman	Mrs Burke	Mr Stefaniak
Mr Berry	Mr Hargreaves	Mrs Dunne	
Mr Corbell	Ms MacDonald	Mr Mulcahy	
Dr Foskey	Mr Stanhope	Mr Pratt	
Ms Gallagher		Mr Smyth	

Question so resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Bill, by leave, taken as a whole.

MR MULCAHY (Molonglo) (11.03): I would like to just speak briefly on this matter and particularly in relation to proposed new section 5 (1A). I sought advice from the Clerk, and that advice came back after the close of the debate. The reason I am seeking advice certainly goes to the genuineness of this initiative in that I believe that if one has a mind to support this sort of legislation, then I find it to be absolute, sheer hypocrisy to have a bill of this nature passed while the Speaker presides over an arrangement where the partner of a minister in the Stanhope government is employed by the Assembly.

I do not know how he can stand up in this place and lambast members who have raised concerns about the appropriateness of this bill and advocate this particular new section, which seeks to prohibit a member from employing a family member. Let me say I never have employed a family member in any capacity, and I have no intention to, so I approach this debate with clean hands.

Mr Stanhope: Well, I do not know about that.

MR MULCAHY: Well, I do know about that, Mr Assistant Speaker. I do not think he is fair dinkum on this matter. I do not think it is fair dinkum. I think it is political. For that reason, I think that if you were genuine about this matter, the coverage would be extended to everybody working in this place, especially those who ultimately come

under the province of the Speaker. He has been quite happy to live with different ground rules under the administration of this Assembly, but he wants to have different rules applying in relation to parliamentarians or members of the Legislative Assembly and their staff.

I do not have a major issue with the whole matter of whether you employ a family member. I think it is up to members as to whom they employ. I spoke to the Chief Minister about this issue. He has certainly had a change of heart from when we discussed this only two weeks ago, as has Ms MacDonald, whose name is on the report recommending the exact opposite to this.

Mr Stanhope: I raise a point of order, Mr Assistant Speaker. That statement misrepresents my position and—

Mrs Dunne: That is a debating point. You can stand up and speak about it later.

Mr Stanhope: Well, it may be a debating point, but I need to draw attention to it. I will respond to it in the debate.

MR ASSISTANT SPEAKER (Mr Gentleman): Mr Stanhope, respond in the debate.

Mr Pratt: Point of order. Standing order. Didn't you hear the warning again?

MR ASSISTANT SPEAKER: Order, Mr Pratt!

MR MULCAHY: There has been a change of position. I guess people are entitled to change their position on these issues but, as I read this particular bill now, it would impact adversely on people. I do not see it has the grandfathering provisions, unless someone can point that out to me. I am concerned that it could potentially impact people who are presently employed.

If I have misrepresented the Chief Minister in our brief discussion about this, then I am more than happy to apologise to him, but my understanding from him was that it was not intended to impact on people already employed. In relation to Ms Gallagher, I do not have an issue with the fact that her partner is employed in the place. My point about this particular clause, clause 4, is that you cannot set one set of rules in relation to employing family members in members' offices and then turn around and say it is okay.

After that dissertation about taxpayers' money I find it comical that the Speaker can preside over an Assembly where it is okay for one of his ministerial Labor colleagues to employ their partner in this place. You tell me that is being fair dinkum, but I find it very hard to be convinced.

I am concerned about a lack of genuineness on this matter. I think members ought to be able to make their own decisions. I have no intention of employing relatives. I know the Liberal Party have a policy where they basically do not approve of people employing members. I do not know what the Labor Party policy is. I assume they do not have one. I gather it was raised by Mr Berry in 1995—unsuccessfully, I gather. I certainly think that if you are going to do these sorts of things you have got to be fair

dinkum. If you do not want public funds used to employ relatives, then extend it across the spectrum and be genuine about it.

MR STANHOPE (Ginninderra—Chief Minister, Treasurer, Minister for Business and Economic Development, Minister for Indigenous Affairs, Minister for the Environment, Water and Climate Change, Minister for the Arts) (11.08): I need to respond to the assertion made by Mr Mulcahy in relation to my attitude to this bill. He asks rhetorically what the Labor Party's position is to employing our relatives. The Labor Party reflects its position and its view on that question through this bill. Quite clearly, it is the Labor Party's position and it is the position of the government. The government has supported the bill that we are currently debating. That reflects our position on the question of the employment of relatives by members of this place.

Mr Mulcahy, as you say, you and I did discuss this issue. My position, as I am sure I expressed to you—it is has been my consistent position and I regret it if I did not make my position clear to you and you were misled—has always been that I support in principle the principle reflected in the legislation that Mr Berry has brought forward. That has always been my position.

I am on the public record. I provided that position to media at an interview within the last month—that my position is one of support in principle for the principle expressed in the legislation, but that I had a concern about potential disadvantage that that might cause to existing employees. In particular, I was interested in exploring the situation of a member of the government, namely, Ms Porter, and her relationship with her chief of staff, her partner. That was an issue of genuine concern to me and to my colleagues.

That particular issue is no longer an issue for me or for the government. Ms Porter has taken certain decisions in relation to the employment by her of her partner. That particular issue is no longer a real or relevant or current issue for the government. It is in that sense that I and my colleagues have agreed to support this bill as a reflection of the government's position on the principle of members of this place employing their relatives.

My position that I expressed at the outset of this debate in relation to this particular issue is consistent and constant. I have always supported the principle, with a rider or a proviso that I was concerned that existing members of staff with familial relationships not be essentially dismissed as a result of the passage of this legislation. Ms Porter has taken certain decisions in relation to that. Ms Porter, I am sure, will actually give the detail of those as she thinks fit, but that is no longer an issue for me or for the government.

MR BERRY (Ginninderra) (11.11): I must say it gives me a great deal of pleasure to respond to attacks on my integrity by somebody like Mr Mulcahy. If you have a look at Mr Mulcahy's history, you can pretty well determine why he would not know an ethic if it popped up in his porridge.

Mr Mulcahy: I raise a point of order, Mr Assistant Speaker. This is beyond the pale. His reflection on another member, I think, is well outside the scope of the standing orders.

MR ASSISTANT SPEAKER: Yes, it is. Mr Berry, would direct your comments to the bill, please.

Mrs Dunne: No. Get him to withdraw them.

MR BERRY: I am happy to withdraw that, Mr Assistant Speaker. I merely said that he would not be able to recognise one.

Mr Mulcahy: Mr Assistant Speaker, will you ask Mr Berry to withdraw the remarks and not qualify them?

MR ASSISTANT SPEAKER: Mr Mulcahy, Mr Berry was just withdrawing the remarks.

MR BERRY: I am happy to withdraw those remarks. But, you know, you need to recall where Mr Mulcahy comes from. Here is someone who has worked in the tobacco industry, for heaven's sake, who is talking about ethics.

Mr Mulcahy: I raise a point of order, Mr Assistant Speaker. That has got absolutely nothing to do with the bill. I ask you to direct Mr Berry to confine his remarks to the bill and the debate.

MR BERRY: I am. This is about the ethical position of members in this place. Issues were raised about my standard of ethics in my role as Speaker in the Legislative Assembly. One of the big enemies to be found of politicians is a hypocrite, and I am merely pointing out some of the hypocrisy in the claims by Mr Mulcahy that there is something wrong with my ethical position. I just point that out for the sake of clarity so that members understand where Mr Mulcahy is coming from.

I have to say, too, that it was a most poisonous and grubby move by Mr Mulcahy to attack a member of staff in this Assembly. If Mr Mulcahy wanted to raise that question, I would have been delighted to deal with it in the committee of inquiry which looked into these issues to which he was party. I wonder why it was that he did not do that. I just wonder why that was. Was it because it was not a concern then or it has never been a concern or it is not an issue? It has just become an issue today because Mr Mulcahy has been attached, if you like, to a policy of open slather on the employment of family members by members of the Legislative Assembly and he feels a little bit caught out so he has got to attack anybody within range and spray everyone.

This demonstrates the indecency of what Mr Mulcahy has just done. Mr Mulcahy knows that the employee he has referred to here is employed by the Clerk. He is not employed by me. I have no role in the employment of this staff member—none at all. I consulted with the Clerk when I learnt about it to make sure that his employment arrangements did not interfere with the operations of the Assembly and that there could be no conflict and I was satisfied with the Clerk's explanation of the position to me.

The intemperate and ugly approach by Mr Mulcahy today, the indecent approach by Mr Mulcahy today, in his desperation to try and make a point about anything in this

legislation has demonstrated how shallow he is and how the electorate should completely ignore him. He is bad news for this Assembly.

Mr Assistant Speaker, the staff member who has been fingered by Mr Mulcahy will feel as though he is in a very different position from the one he was in yesterday. This is about as low as you can go. Why didn't you have the guts to raise it in the committee?

Mr Mulcahy: I raised a range of these things. You did not answer them.

MR BERRY: You did not raise that.

Mrs Burke: Mr Assistant Speaker, I raise a point of order under standing order 241 (d). I caution Mr Berry not to disclose anything that has been discussed in our committee meetings. Thank you.

MR BERRY: I could see why you would not want to it discussed. Give us a break! I am not dealing with anything that was raised in the committee, Mrs Burke. I am talking about the things that were not raised.

Mr Mulcahy: It is still a breach of the standing order.

MR BERRY: Oh!

MR ASSISTANT SPEAKER: Order, Mr Berry! I remind members that it is only a breach of standing orders if the report has not been presented to the Assembly. It has been presented to the Assembly. There is no breach of the standing orders.

MR BERRY: As have the minutes, Mrs Burke, which expose you as the representative of the Liberal Party who supports the employment of family members here.

Mr Mulcahy: And Ms McDonald?

MR ASSISTANT SPEAKER: Order, Mr Mulcahy!

MR BERRY: This is a desperate attempt by Mr Mulcahy to spray poison at anybody within close range. It tells us a lot about Mr Mulcahy that his potential electors need to know about. Mr Assistant Speaker, I support the proposal to deal with this bill as a whole. I urge members to support its early passage.

MR ASSISTANT SPEAKER: Just before we go to the vote, I remind members of the ruling I made under standing order 156.

Bill as a whole agreed to.

Bill agreed to.

Legislative Assembly—Ethics and Integrity Adviser

MR BERRY (Ginninderra) (11.18): I move:

That the resolution of the Assembly of 10 April 2008 establishing the position of the Legislative Assembly Ethics and Integrity Adviser be amended as follows: In paragraph (6) after “for the life of the Assembly” insert “and the period of three months after each election”.

This move is necessary to ensure that there is some continuity for the Assembly’s ethics and integrity adviser. At first the appointment was to run only to the end of this Assembly. That is reasonable in the ordinary course of events because the speakership changes at that point and a decision on the tenure of the adviser is something for the new Speaker to deal with. But it has been pointed out to me that if we were to do that the new Speaker would need some time to do the reappointment of the new adviser. This, of course, would take some time. It was felt that it would be better to extend it by three months so that there was a seamless arrangement in place for the ethics and integrity adviser. I commend the motion to the Assembly.

Question resolved in the affirmative.

Public Accounts—Standing Committee Report 17

DR FOSKEY (Molonglo) (11.20): I present the following report:

Public Accounts—Standing Committee—Report 17—*Review of Auditor-General’s Report No 1 of 2006: Regulation of Charitable Collections and Incorporated Associations*, dated 14 August 2008, together with a copy of the extracts of the relevant minutes of proceedings.

I move:

That the report be noted.

This report has been the result of deliberations by the committee for a couple of years. It is not one that elicited a large number of submissions, but the submissions that were presented to the committee showed great interest in the issue. Though it might seem a minor issue in relation to the size of the amounts of money we are talking about, it is very concerning when associations that have not presented audited books for a period of years are still able to operate as charities.

We made three recommendations. First, we recommended that:

... the Auditor-General undertakes a performance audit of the Office of Regulatory Affairs to assess the quality of its internal processes and how effectively it is contributing to the aim of reducing the burden of regulation.

We did note that there was a strengthened role for the office of regulatory affairs and that therefore some of the issues might have been dealt with, but we thought that it was about time that we checked on that.

The second recommendation we made was that:

... section 93 of the Associations Incorporation Act 1991 be amended to allow the registrar general to begin the process to remove an association's incorporation if the association has not lodged an annual return with the registrar-general in relation to each of the last 2 years.

Finally, recommendation 3 was that:

... section 93 of the Associations Incorporation Act 1991 be amended to allow the registrar-general to begin the process to remove an association's incorporation if the association has submitted three consecutive annual returns with qualified audits and the reason for the qualified audit is not merely technical.

So there are concerns. There are always concerns that the office of regulatory affairs lacks the resources to properly do this job, which is in a sense a policing job. We know that a sizeable amount of funds is given by people all over the world—certainly by Australians; we are a fairly generous crowd—to charities and other non-profit organisations. It is fair that they know that the organisations that they are donating to are safeguarding that funding, are spending it well. While we are aware that there is not a general problem across the sector, there is always the damage that a few bad apples can do. We need transparency, and properly audited books are a major part of that.

I commend our report to the Assembly and I look forward to the response of the next government.

Question resolved in the affirmative.

Public Accounts—Standing Committee Report 16

DR FOSKEY (Molonglo) (11.25): I present the following report:

Public Accounts—Standing Committee—Report 16—*Review of Auditor-General's Report No 5 of 2006: Rhodium Asset Solutions Limited*, dated 15 August 2008, together with a copy of the extracts of the relevant minutes of proceedings.

I move:

That the report be noted.

I know that there is a great deal of interest in this report. We are aware that in 2005 the Auditor-General was asked to do an inquiry into Rhodium and that the subsequent report that she produced became the focus of a great deal of interest because of the concerns that she raised.

I want to thank, first of all, all the other members of the committee who were involved in the public accounts committee inquiry into the report. Karin MacDonald and Brendan Smyth are the current members. I want to acknowledge Richard Mulcahy,

who was the previous chair of the public accounts committee. I also want to thank Andrea Cullen, who was the secretary until the middle of last year, and Hamish Finlay, who took over this and a number of other inquiries halfway through on her departure. It is not an easy thing to take up an inquiry when it is halfway through, but Hamish Finlay did that in a commendable fashion. Everyone involved has done a really good job.

Our report is a fair and consensual one. It points out grave failings in Rhodium—which may have been inherited from Totalcare, and we do discuss that. Whilst Rhodium is now perhaps not the major issue—since it is finally getting the direction from government, through the shareholders, that it perhaps should have been given in 2005—the lessons that the committee distilled from the experience are still of value in the government’s dealings with other territory-owned corporations. The other territory-owned corporations are Actew and ACTTAB. It is of interest, and totally appropriate, that they each made submissions to the inquiry.

I am afraid that all the players in this sorry process are condemned in this report to some extent—the management, the board and the shareholders. We began our inquiry in September 2006 and it ends with the tabling of this report in August 2008. The Auditor-General’s report had raised serious issues, and because that report was completed in 2006 a lot of water has gone under the bridge. The issues that the Auditor-General’s report raised are, I believe, well known, by members here at least. They related to governance of the territory-owned corporation; the actions of the chief executive officer; remuneration and other issues related to her employment; credit card usage; sponsorships which were deemed to be excessive, sometimes inappropriate; and a great lavishness in ordering the production of special Rhodium gifts and some very lavish entertainment.

The Auditor-General is not in a position to consider the issues in depth in the way that the committee can. That is why the committee’s inquiry and its report are still very relevant two years later. We should remember that the public accounts committee has representation from both of the major parties in this place and from the Greens, from the crossbench. At one stage, it had the other member of the crossbench on it, though at that stage he was a member of the Liberal Party. Thus we discussed the issues raised robustly and there was a high degree of agreement amongst us.

We received four submissions. They were from the ACT government, Actew, ACTTAB and Professor Roger Wettenhall, who had an academic interest in the issue. We held five public hearings.

I would like to read from the conclusion, because it really sums up our findings. It says, on page 52:

- 5.1 The unfortunate events at Rhodium Asset Solutions Ltd do not reflect well on any of the participants. Management, led by the former CEO, engaged in ill-advised spending, treated company assets and business as personal benefits and failed to establish policies and practices of even a basic acceptable standard. The Board failed in its duty to supervise management and did not place any priority on addressing key areas where they were aware of weaknesses. The shareholders, while not directly responsible for the day to day failures and questionable behaviour at Rhodium, failed to establish and communicate its expectations to the company.

So everybody had a role.

One of the interesting bits of evidence—I think it is fairly crucial to the way that the discussion around Rhodium went—was that Actew, as a territory-owned corporation, could see the implications of the Auditor-General’s report for its own activities. It had some legal advice prepared, and that legal advice contradicted the Auditor-General, who said in her report that there had been a lack of clear direction from shareholders.

I think this was borne out by Mr Stanhope’s comment in the hearing when he said that the shareholders had “a disinclination to hasten” and his tendency and his very direct laying of blame at the feet of the chief executive officer of Rhodium. The chief executive officer herself pointed out that there had been a disagreement, she believed, between the shareholders, who at that time were Mr Quinlan, as the Deputy Chief Minister, and Mr Stanhope. You will be aware that Mr Stanhope remains a shareholder and that Mr Quinlan’s role has been taken up by Ms Gallagher as the existing Deputy Chief Minister.

There were different views and different aims for the company. The chief executive officer—who, remember, had been employed by Totalcare, which was the parent company, just six weeks before she was given the job as CEO of Rhodium: an appointment, I might add, which was renewed twice—believed that her task was to grow the business. She justified her actions in terms of investment in the business. She believed, “You would not see returns until later, would you? It will be down the track.” The trouble was that other people did not share that vision of Rhodium.

The board seemed to go along with the chief executive officer’s aims for Rhodium and seemed to get quite a surprise when the chief operating officer went to the board in February and told the board that the chief executive officer had behaved inappropriately—had drawn an advance from Rhodium and had not yet paid it back. It is of concern to the committee that the board did not seem to really know what was going on. It is of concern to the committee that the shareholders did not demand more of the board and, through the board, the chief executive officer.

So the committee’s interpretation of the legislation was quite different from the legal advice that Actew had obtained. I should add that Mr Stanhope relied very strongly on that legal advice as well. He used that legal advice—not that he had it during the main years that Rhodium was in existence. He did not have that legal advice; what he had was the legislation. And the legislation, in the opinion of the committee, makes it very clear that there are very strong roles for the shareholders.

We were really concerned that the Territory-owned Corporations Act did not seem to have been really taken on board by the shareholders. The shareholders are the representatives of the government in the direction of a territory-owned corporation, and as a government they are meant to be acting in the best interests of the territory. According to the legislation, the shareholders do have ways in which they can direct a territory-owned corporation. Section 17 of the act reads:

(1) If—

- (a) the voting shareholders of a territory-owned corporation request it or a subsidiary to perform, cease to perform or refrain from performing an

activity or to perform an activity in a way that is different from the way in which the directors intend to perform the activity; and

- (b) the directors of the company advise the voting shareholders that compliance with their request would not be in the best commercial interest of the company;

the voting shareholders may, by written direction, require the company to comply with the request.

- (2) The company must comply with a lawful direction.

It further goes on to say:

- (3) The directors of a company are not taken to be in breach of any duty under a law or the constitution of the company only because of their compliance with a lawful direction.

But:

- (4) The Portfolio Minister must present to the Legislative Assembly—
 - (a) a copy of a direction; and
 - (b) a statement setting out the estimated net reasonable expense of complying with it ...
- (5) The Territory must reimburse the company for the net reasonable expense of complying with a direction.

Our recommendation addresses this. It points out the concerns that are raised when the shareholders have what could be an apparent conflict of interest in their ministerial roles. We propose that the Assembly set up a mechanism to deal with that.

We have suggested that the government have a look at the Territory-owned Corporations Act and that section 17 (4) be amended to require the portfolio minister to “provide a copy of a direction and a statement setting out the estimated net reasonable expense of complying with it within five sitting days of the issue of a direction”—rather than 15, as is currently in the legislation.

We believe, and we stated, that we need a mechanism whereby shareholders can resolve differences of opinion. One of the things raised by the CEO was that the shareholders apparently did have different opinions about the direction of the company and she saw that as one of the reasons for uncertainty about its future.

We also noted the lack of a draft business plan, which apparently was not prepared for some time. We noted that it should be an absolute requirement for a territory-owned corporation to supply the voting shareholders with a draft business plan and that these should be responded to within 30 days. That was another issue. The shareholders were very lackadaisical. Some of the comments by Mr Stanhope were in the proceeding slowly stage. We thought they thought that the company should have just known that it was meant to tread water during the period while it was wondering about its future.

We have also recommended that any newly established territory-owned corporation provide voting shareholders with copies of its policies and procedures. These did not exist in Rhodium until after the chief executive officer.

But primarily we recommended that the Treasurer explain to the Legislative Assembly before the last day of sitting of this Assembly why the ACT government required Rhodium to “take a contract against its best commercial interests without providing it with compensation as set out in the Territory-owned Corporations Act 1990”. (*Time expired.*)

MR SMYTH (Brindabella) (11.41): Mr Speaker, this is a damning report of the shareholders of Rhodium. The Chief Minister and the Deputy Chief Minister of the ACT have been held to account by the unanimous report of this committee, a report without dissent or without comment against its recommendations.

As you go through the various chapters of this report, it is quite clear that, right from the start, the shareholders neglected their duty. You have to go back to some of the acts and amendments that have been passed in this place unanimously. In 2004 Mr Quinlan moved an amendment to the Territory-owned Corporations Act, and he said:

The government, as owner of the territory-owned corporations and subsidiaries, has a legitimate right to access regular and timely financial and operational information, and other information, in order to review and monitor their performance.

The shareholders must monitor their performance—that is what Mr Quinlan was saying—and they need the information to do it. The only way that you can monitor the performance of a territory-owned corporation is to take an interest in that corporation. Paragraph 4.18 of the unanimous report quotes the Auditor-General as saying:

Audit considers that the uncertainty of Rhodium’s future, and a lack of clear direction from the shareholders, made it difficult for the Board to provide and commit to appropriate long-term business strategies to drive Rhodium in achieving the best outcome for the shareholders.

The shareholders failed. In paragraph 4.20 the Auditor-General tells the committee that there:

... is no legal responsibility for the shareholders to provide input ... the shareholders could not stay away from certain involvement ... to ensure that the board’s strategic directions reflected the objectives of the government.

The shareholders are the Chief Minister and the Deputy Chief Minister. In paragraph 4.23, when talking about what the Auditor-General says, the report goes on to say:

What the comment does recognise, however, is the influence that shareholders—

the Chief Minister and the Deputy Chief Minister—

have over TOCs.

So they have influence. What did they do with that influence, Mr Speaker? They left Rhodium rudderless, and thereby let down the people of the ACT who, indeed, own an asset that is now probably worthless or worth very little. In paragraph 4.27 the committee goes on to say:

In Rhodium's case the Committee is left with the impression from the Board minutes of an organisation still finding its way and waiting for a political decision.

A decision from the shareholders. It goes on:

As the chair put it the Board was "looking for ... some guidance from the government in terms of its expectations of us." The Board was getting—

(Quorum formed.) It is great to see that the shareholders have arrived, because what the committee says is:

... the Committee is left with the impression—

Mrs Dunne: The shareholder is just leaving again. He doesn't want to hear it.

MR SMYTH: The chief shareholder has just bolted. He does not want to hear it. The committee says in paragraph 4.27:

In Rhodium's case the Committee is left with the impression from the Board minutes of an organisation still finding its way and waiting for a political decision.

Mr Seselja: I occasionally come down—

MR SPEAKER: Order, Mr Seselja!

MR SMYTH: There goes the other shareholder. Just as they failed in their responsibility to the board, the shareholders are now failing their responsibility to the Assembly by bolting. Paragraph 4.27 continues:

As the Chair put it the Board was "looking for ... some guidance from the government in terms of its expectations of us." The Board was getting "not formal but informal mixed messages about Rhodium's future."

Mr Seselja: Backroom discussions.

MR SPEAKER: I have called you to order once, Mr Seselja.

MR SMYTH: I move on to paragraph No 4.29. You would think that the shareholders would know what they were doing, but they failed to agree. Indeed, even the Chief Minister told the committee:

... there was not unanimity across government in relation to the extent to which Rhodium as a business would optimally achieve the government's policy objective.

Not only did they not know but they gave no guidance. Paragraph 4.30 makes it quite clear that the shareholders failed, and I will read the paragraph:

The Committee believes that the shareholders of Rhodium failed in their duty. They failed to give guidance to the Board in what was expected of it and sent mixed messages about Rhodium's future.

The Chief Minister and the Deputy Chief Minister of the ACT failed the board and the people of the ACT in this regard. Then there is the whole issue of the business plan. Who was in charge here? According to Mr Quinlan, the shareholders were there to monitor and review what was going on, and that was the purpose of the amendments to the Territory-owned Corporations Act that were passed unanimously by this place. Paragraph 3.8 states:

On 24 December 2004 the voting shareholders requested the Board to provide them with a business plan within six months. The draft business plan was completed in April 2005 and identified a number of areas for possible expansion. The Board did not receive any feedback on the business plan.

Again, the Chief Minister and the Deputy Chief Minister failed. There was some discussion about responsibility under the Corporations Act, but we need to take that in the context of the Territory-owned Corporations Act, because it defines what the shareholders can do. It should be remembered that this report is the unanimous report of the committee, without dissent or comment. The Greens, Liberal and Labor agreed to this. In paragraph 4.47, the committee says:

The Committee believes that it may have been appropriate for the Government to have issued a direction to Rhodium under section 17 of the Act. Provision for directions exist for just this type of circumstance, where the Government desires a TOC to take an approach that may not be in its best commercial interest. The issuing of such a direction would have been a transparent way of approaching the matter and may have resolved much of the uncertainty facing Rhodium, although it would have exacerbated difficulties in attracting private sector expertise to join the company.

Again, the shareholders failed to tell the board what was required of it and to give it the direction they were actually required to provide under section 17 of the Territory-owned Corporations Act. The amendment to that act was made when Mr Quinlan was around and in charge. The shareholders have to review and monitor what goes on in these corporations; they have an obligation.

In paragraph 4.50 the committee says:

It appears that the shareholders have failed to comply with the Territory-owned Corporations Act 1990.

The Chief Minister and the Deputy Chief Minister broke the law; they did not do their duty. They did not give the direction and offer the compensation that is detailed in

section 17 of the act. There it is—the shareholders have failed to comply with the Territory-owned Corporations Act 1990. They broke the law. They should have done their job; they should have reviewed; they should have monitored; they should have issued the direction; they should have paid the compensation. They failed, and in failing to do so they broke the law.

Mr Hargreaves: On a point of order, Mr Speaker, I would ask you to rule on that statement from Mr Smyth. He says they broke the law. I suggest that that is inappropriate in this context, and I would ask that he withdraw that particular part of his accusation.

MR SPEAKER: I am concerned that there may be an imputation. Mr Smyth, were you referring to recommendation 17?

MR SMYTH: No, I am referring to paragraph 4.50 of the report, where it says:

It appears that the shareholders have failed to comply with the Territory-owned Corporations Act 1990.

I am quoting from the report, Mr Speaker.

Mr Hargreaves: On the point of order, Mr Speaker, Mr Smyth actually said, “They broke the law.” That is an imputation, and I would ask that he withdraw it.

MR SPEAKER: The report says that it appears that the shareholders have failed to comply, and I think it is fair enough for you to say that, Mr Smyth. However, nobody has found that they have broken the law. I think you should withdraw that.

MR SMYTH: Mr Speaker, under your direction, I withdraw it. The report goes on. In paragraph 4.53 it says:

The Committee believes that establishing Rhodium as a TOC and then discouraging it from focusing on its growth opportunities hindered the company in either preparing for privatisation or effectively managing its assets.

The shareholders have a responsibility under the act to review and to monitor. That is what Mr Quinlan told us when he made those amendments. Those amendments were agreed to by the Chief Minister and the Deputy Chief Minister, and they failed to comply with them.

In paragraph 4.54 the report states:

As a consequence of what has happened with Rhodium, the failure to sell Rhodium has seen the dramatic reduction in the value of Rhodium and the winding up of the Corporation, thereby losing the ACT taxpayers significant funds.

Yet again, what we have is failure by the Chief Minister and the Deputy Chief Minister to effectively administer the law that they are responsible for under the Territory-owned Corporations Act to review and monitor, as Mr Quinlan said in his tabling speech. They are obliged to get information in order to review and monitor the

performance of the TOC. The Chief Minister failed. He failed when it was set up; he failed as it progressed. Because of his failure, the taxpayers now pay a financial price because the corporation is virtually valueless. All we will get is the winding-up costs of the garage sale to get rid of the furniture. That is all there is left.

I will go to the conclusion of the Rhodium report. Dr Foskey read much of paragraph 5.1, but it needs to be put quite clearly on the record:

The shareholders, while not directly responsible for the day to day failures and questionable behaviour at Rhodium, failed to establish and communicate its expectations to the company.

Yet again, it is quite clear that they failed to communicate; they failed to deliver for the people of the ACT what they are charged to do under the Territory-owned Corporations Act.

The defence will be that somehow the Liberal Party is responsible for Rhodium. Rhodium was created by the Labor government; they sold off the rest of the assets of Totalcare. But they will get up and say that somehow this is the fault of the previous Liberal government. That is not correct. Rhodium is the creation of Jon Stanhope, the Chief Minister, and the then Deputy Chief Minister, Ted Quinlan. The current shareholders are Jon Stanhope as Chief Minister and Katy Gallagher as Deputy Chief Minister of the ACT. What we have in this unanimous report of the committee—without dissenting comment from the Greens, Labor and Liberal—is that the shareholders failed.

The shareholders failed on so many issues: they failed to monitor; they failed to give direction; they failed to answer on the business plan; they failed to even agree what they wanted from Rhodium. “We’re going to set up Rhodium because we’re going to set up Rhodium. We don’t know what we’re going to do with Rhodium, because we just don’t have any business acumen and, quite frankly, we’re not interested.” You can see the same with Actew. The current shareholders are the shareholders of Actew, and we can see the lack of interest that they took in the power station. The Deputy Chief Minister is also the Minister for Health. She had a seat at that board table, but she did not use it.

What we have got is this lackadaisical approach, first at Actew and now at Rhodium. Actew was quite concerned about this report, and it went and got some legal advice that it is clearly established that it is the directors of a corporation formed under the Corporations Act who are responsible for setting the strategic direction of the corporation, not its shareholders. That is true under the Corporations Act, but we are not talking just about the Corporations Act here; we are talking about sections 16 and 17 of the Territory-owned Corporations Act, which puts to the shareholders certain responsibilities and obligations to seek information and, if necessary, to make directions and, if they have to, to give compensation for directing a territory-owned corporation to act in a way that is contrary to the Corporations Act. That is why we have the Territory-owned Corporations Act—they are different. Those corporations are owned by the government on behalf of the taxpayers, but the directors are the Chief Minister and the Deputy Chief Minister.

I have clearly pointed out that in this case we have a litany of failures by the Chief Minister as shareholder to assume his responsibility. The Chief Minister and the Deputy Chief Minister failed. The report unanimously says that they failed, and they failed because there was uncertainty about what was needed. They failed because they did not use the influence that they had to ensure that the outcome was beneficial to the people of the ACT. They failed because they left the board rudderless—failing to answer questions, failing to give directions and failing to approve the business plan. The shareholders failed to agree; they did not know what they wanted. The litany of failures goes on.

The business plan languished from December to the following April, because the shareholders could not be bothered, did not have the knowledge, did not have the wherewithal or did not care, and they failed to approve the business plan. They failed to advise under section 17 of the Territory-owned Corporations Act of what they wanted. They failed to give that clear direction, leaving the board languishing in an area of uncertainty about what it was to do.

Paragraph 4.50 of the report makes it quite clear that the committee believes it appears that the shareholders failed to comply with the Territory-owned Corporations Act 1990. That is what it says:

... the shareholders have failed to comply with the Territory-owned Corporations Act 1990.

Mr Stanhope: On a point of order, Mr Speaker, the report does not say that.

MR SMYTH: I am reading from the report.

MR SPEAKER: That is not a point of order.

Mr Stanhope: Isn't it? I beg your pardon. I will respond to it during debate.

MR SMYTH: Yes, you got kicked out for this yesterday. The report says:

It appears that the shareholders have failed to comply—
there it is—
with the Territory-owned Corporations Act.

Then they shredded the value; they lost the value of the corporation, because they could not even sell it. They could not run a car park at a hospital and they could not run a hire company. This is a litany of failure, and that is unanimously agreed to by all of the members of the committee.

MS MacDONALD (Brindabella) (11.58): After that diatribe from across the chamber I would like to pull this back by looking at the report as a whole. Before doing that let me say that Dr Foskey put on the record her thanks to the previous committee secretary, Andrea Cullen, and also Hamish Finlay, the current secretary. She made

some comments about that and, as the other member of the committee who was there throughout the entire process of the Rhodium report, I think it is important that I place my thanks on the record as well. I also thank Mr Mulcahy for his efforts while on the committee because he was very interested in and focused a lot on this report. I know he took a great interest in the Auditor-General's report and worked very hard on this matter. Many of the questions at the hearings came from Mr Mulcahy. I particularly thank Hamish Finlay because this was not an easy report to pull together; it was all over the place. A lot of information was gathered together and a number of hearings had been held by the time Hamish Finlay came on board.

On the whole, I believe Dr Foskey talked about the report in a balanced way and gave the general picture of the report. I agree with a lot of what she had to say about the report, but I do have to say that I disagree with her comment that the shareholders are condemned by this report. I will come to Mr Smyth in a moment. Mr Smyth went on for 15 minutes about one particular part of the report. Anybody would think from Mr Smyth's speech that there was only one chapter. In fact, there were only half a dozen paragraphs in this report condemning the shareholders. The report looks at the entire management of Rhodium and the entire sorry process that occurred.

I think we should acknowledge in this place the behaviour of the shareholders. Even if they had a disagreement about the direction of Rhodium it is absolutely no excuse for the inappropriate behaviour of the previous CEO and the previous management of Rhodium. It is all very well and good to say that Rhodium lacked direction and therefore as the CEO, "Rhodium lacks direction" or, as a manager of Rhodium, "There is a little bit of confusion here. I know, I'll go and use my credit card to buy a pair of shoes"—that is effectively what happened—or "I know, I'll go overseas and I'll then get management to go and give me a \$10,000 advance, which I will conveniently say that I thought came from my own home loan and a drawdown, but I didn't notice that \$10,000 hadn't been added to my home loan." That is what the former CEO said.

It is incredibly unfortunate, I believe, that the board at the time took their eyes off the ball. The report states—and I cannot remember the exact number of the paragraph—that, given Rhodium's history, the chequered history of Totalcare, it was unfortunate that the board had not paid more attention. To suggest that the shareholders are responsible for the absolutely disgraceful mismanagement by the previous CEO and the previous managers underneath her is ridiculous. We cannot expect that the shareholders would micromanage every territory-owned corporation and every agency that exists in the ACT. That would be ridiculous. Mr Speaker, I have an expectation, you should have an expectation and the people of the ACT should have an expectation that the board and management will behave in an appropriate fashion and certainly not behave in the way that the former management behaved.

I also want to talk about Mr Smyth's comments. He says this is a damning report of the shareholders. That is just rubbish, absolute rubbish. There are a few paragraphs in this report—

Mrs Dunne: "There are some" is enough.

MR SPEAKER: Order! Members of the opposition, come to order.

MS MacDONALD: Thank you, Mr Speaker.

MR SPEAKER: Ms MacDonald, the question is that the report be noted.

MS MacDONALD: Thank you, Mr Speaker. Maybe if Mrs Dunne is so amused she should go and have a good laugh outside. It is such an amusing report about the mismanagement by the former CEO and the former management—

Mr Seselja: Your speech is amusing.

MR SPEAKER: I have called you to order, Mr Seselja.

MS MacDONALD: and the fact that the board took their eyes off the ball that we should all laugh at it. It is not a laughable matter. Mr Smyth has made much of the fact that there is no dissenting report—I do not shy away from that—but Mr Smyth would highlight certain sections of the report and not take into account all the others. This is a balanced report—I do not shy away from that—and it is incorrect to infer that the shareholders were responsible for the behaviour of management and the lack of due diligence by the board. I know that Mr Smyth would like to make much of those particular areas because that suits his cause with it being an election year, but the report does need to be read as a whole. With respect to people who go into management positions, even in a territory-owned corporation now, there is the comment at the beginning of chapter 4, that a halfway house is a dangerous place to be.

There is that difficulty with territory-owned corporations, especially for Rhodium, in trying to work out what it was supposed to be and quite probably there was a difference of opinion between the shareholders at the time about the direction. I go back to what I said before: I have an expectation, as a ratepayer in this town and a legislator, that the people that are employed in our agencies will behave in a correct and proper fashion. We all have that expectation. Those are the people that have failed, not the shareholders.

Mr Seselja: Well, that's not what you said in the report.

MR SPEAKER: Order!

MS MacDONALD: It is not the shareholders that have failed. Mr Smyth has failed to focus on all 14 recommendations. He has focused on a few paragraphs and has suggested, first of all, that what they had done was illegal. That was specifically ruled out and we did not put that in the report. I believe that this report makes some significant recommendations. I commend the report as a whole, not parts of it.

MR STANHOPE (Ginninderra—Chief Minister, Treasurer, Minister for Business and Economic Development, Minister for Indigenous Affairs, Minister for the Environment, Water and Climate Change, Minister for the Arts) (12.08): As members would appreciate, I have not yet read the report. I look forward to doing so and I certainly look forward to taking legal advice on some aspects of it. It is interesting, particularly in relation to the hysterical approach adopted just now by the Deputy

Leader of the Opposition regarding the report, that we do give some calm consideration to it. I have only looked at the report very briefly, but it is interesting to go to the chapter headed "The Rhodium shareholders" and read the opening paragraphs which, it appears to me, have been completely ignored as the chapter proceeds. I will just read the first few paragraphs:

One comment by the Auditor-General regarding the role of the shareholders in Rhodium gained particular focus in submissions at the committee's hearings. In a section considering Rhodium's strategic direction the Report reads—

this is the Auditor-General's report—

Audit considers that the uncertainty of Rhodium's future, and a lack of clear directions for the shareholders, made it difficult for the Board to provide and commit to appropriate long-term business strategies to guide Rhodium in achieving the best outcome for the shareholders.

The public accounts committee has taken that particular recommendation. Essentially, that recommendation is the whole and sole purpose for the public accounts committee entertaining this inquiry; it is what the entire report was about. It is a blatantly political exercise. It is interesting, isn't it, that the inquiry was commissioned two years ago. Isn't it interesting that the committee has taken two years to actually investigate and prepare this and brings down a report focused on this recommendation of the Auditor-General's report in the last sitting week of the Assembly, a few weeks out from an election?

I wonder at the coincidence of that. I think it gives some real insight or understanding as to why this inquiry was undertaken, why it took two years to produce the report and why it was brought down eight weeks out from an election. It was, of course, so that the findings of the auditor could be distorted in the way that they have been distorted so that both the Greens and the Liberal Party, opponents of the Labor Party in an election in eight weeks time, could grandstand in the particularly grubby political way that they have this morning.

It is informative then to go on to read the next paragraph following that recommendation from the auditor. This is a comment by the public accounts committee on the Auditor-General's report:

This comment raised concern at ACTEW—

another territory-owned corporation—

who sought legal advice—

I think from Mallesons, one of Australia's leading legal firms—

to clarify the responsibility of TOC shareholders. That legal advice stated that:

It is clearly established that it is the directors of a corporation formed under the Corporations Act who are responsible for setting the strategic direction of the corporation, and not its shareholders ... it would be completely wrong to suggest that voting shareholders bear any responsibility—

Let me just repeat that. This is from Mallesons:

it would be completely wrong to suggest that voting shareholders bear any responsibility or duty to determine the direction of the TOC ...[a]s to the issue of uncertainty ... in some circumstances, the legal duty of the board may in fact be to “tread water” rather than commit to long term strategy.

That is the only significant and substantial legal advice pertaining to this matter. It is available to anybody as of this minute. I will now commission additional legal advice because of this scurrilous report and suggestion that the advice of Mallesons was wrong. The intriguing part about the chapter and its construction in this report is, having headed the chapter with advice from Mallesons in relation to the roles and responsibilities of shareholders, the committee then goes on to completely ignore it. Of course, the legal geniuses on the committee, having ignored Mallesons’ advice in relation to the role of shareholders, then come down with their own legal interpretation of the role, duty and responsibility of shareholders with these classic bits of legal interpretation and insight.

The committee, having taken advice from Mallesons, now ignores that. It has a different view—the QCs who constituted the committee. The committee believes that it may have been appropriate for the government to have issued a direction to Rhodium under section 17 of the act. There was no reference to any legal advice or legal expertise. We now have these brilliant legal experts, the QCs of the Assembly, quoting Mallesons as setting out the law that applies in relation to this and then completely ignoring it and saying: “Oh well, Mallesons have a view, but the committee has a contrary view. The committee believes”—Deb Foskey QC, Brendan Smyth QC, Senior Counsel—“we don’t need to interpret legislation or refer to it.” Deb Foskey QC and Brendan Smyth QC believe that the government should have given a direction under section 6. On what basis does the committee think that? On what basis does the committee conclude, “It appears that the shareholders have failed to comply with the act”? Mallesons did not think so. Mallesons thought that it would have been derelict, almost certainly contrary to the law, for the shareholders to have actually given such a direction, to have interfered in that way.

It is clear under corporations legislation, it is clear in the only advice available, and the only legal advice available to the committee, that the shareholders should not have intervened, and yet the committee, without taking any advice from any legal source, without quoting the basis on which they come to this definition of section 17, completely ignore the extant advice, the advice they had available to them, and say: “Oh look, let’s not worry about advice from Mallesons, let’s not worry about the only legal advice available to us on this particular issue. Let’s ignore and discard that completely. Let’s not forget there’s an election in eight weeks time. And let’s not forget that this is an inquiry we’ve been holding on to for two years and it really has to be brought to a head eight weeks out from an election. Let’s not worry about the niceties of the law, let’s just defame the shareholders. Let’s make allegations in relation to their behaviour and their responsibilities that are completely unfounded, that reflect very adversely on them. Let’s not worry about any integrity in this matter. After all, there’s an election in eight weeks time.” The Greens, of course, need to boost their vote and the Liberal Party, as we know, needs to boost its vote enormously.

Mr Gentleman: Which team?

MR STANHOPE: Yes, both the A and the B teams, of course. So they say: “Let’s actually get into the gutter and ignore the advice that’s available. Let’s be as blatantly and shallowly political as we can and let’s bring down a report of absolutely no substance and a grubby, nasty little report at that.” I have just read and interpreted the opening paragraph which actually refers to advice from Mallesons—quite succinct advice. I will read it again:

It is clearly established that it is the directors of a corporation formed under the Corporations Act who are responsible for setting the strategic direction of the corporation, and not its shareholders ... it would be completely wrong to suggest that voting shareholders bear any responsibility or duty to determine the direction of the TOC ... [a]s to the issue of uncertainty ... in some circumstances, the legal duty of the board may in fact be to “tread water” rather than commit to long term strategy.

They say: “Let’s ignore that. Let’s forget we read that. Let’s then go on and actually make allegations in relation to the behaviour of the shareholders in relation to this particular matter on the basis that perhaps Rhodium did tread water,” consistent with the only legal advice which the committee had before it. This interpretation, this spin, this outrageous politicking which Mr Smyth most particularly has played with this report and on this issue in relation to the shareholders and their responsibilities should be treated with the utter contempt that it deserves. It is quite interesting that the report goes on to state:

During the Chief Minister’s appearance before the Committee he was clear that the idea that the shareholders should have a role beyond that outlined in ACTEW’s legal advice caused him “surprise and ... some disquiet” and went on to say that the legal advice suggests:

that the Auditor-General’s Office has misconstrued in a legal sense the nature of the relationship between a territory-owned corporation and the shareholders, to the point where, if one weren’t careful in one’s interpretation of the comments which the Auditor-General has made, there is a serious prospect of both shareholders and directors of our territory-owned corporations being in breach of the law.

That remains my concern. This report does nothing to explore this particular issue or to allay those concerns. The report continues:

The Committee agrees that this is an area that needs clarification. While the Committee understands the concern that this comment has raised, the Committee does not believe that the Auditor-General intended to suggest that shareholders ...

There we have it: the committee understands that the auditor did not intend to suggest that shareholders should have overstepped their legal authority. But the committee thinks otherwise. (*Time expired.*)

MR MULCAHY (Molonglo) (12.20): I have been deeply involved in the investigation of Rhodium through my former role as chair of the public accounts

committee. Therefore I have familiarity with the work of the committee up to the point where I left. I wish to share some perspective with the Assembly.

I listened intently to what the Chief Minister just said. There are issues that have been raised in my mind in relation to this report. The recommendations are on the light side, in my view.

I do subscribe to the view about director responsibility. Based on probably 30 years of my being involved with corporations and the like, that does not seem to attract sufficient focus in this report. I know there are complexities in terms of directors, but for all intents and purposes the responsibilities of the directors are consistent with the Corporations Law. I am yet to think of a single corporate collapse in Australia where the receiver and manager or the liquidator have said, "This is the shareholders' fault." It normally rests with the directors.

Mr Stanhope: Absolutely.

MR MULCAHY: Complexity under this system—

Mr Stanhope: Except when politics is involved.

MR SPEAKER: Order, members, please!

MR MULCAHY: Aside from that issue, the complexity in this issue is the fact that you have trustee shareholders or shareholders holding a share in trust on behalf of the ACT people. When those people are ministers, you run into the other issue of ministerial accountability, with a minister—in this case the Treasurer, from memory—being responsible in this place to deal with matters that are raised in relation to that corporation.

I was amazed to see in the index that there was no mention of the board at all. It is addressed in part in different areas but it is quite extraordinary, given the events, that it is dealt with in such a light fashion.

Mr Stanhope: They are not standing for election, Mr Mulcahy.

MR MULCAHY: That could be the reason, and it could be lack of understanding of the Corporations Law. I do not know if Mr Smyth mentioned the one on page 39, because I was distracted a bit when he spoke. Point 4.30 says:

The Committee believes that the shareholders of Rhodium failed in their duty. They failed to give guidance to the Board in what was expected of it and sent mixed messages about Rhodium's future.

That is a pretty strong statement. I am not sure that the shareholders in fact are the ones who have the duty to the board. There is certainly scope for the shareholders to issue directions, as is pointed out earlier in the report. And there was certainly an issue that emerged about mixed messages coming from the former Treasurer and the current Deputy Chief Minister as shareholders.

But I have some real reservations in my mind that that is where the entire responsibility lies. I think the directors in the first instance have a significant responsibility, but management—and I agree with that aspect of what Ms MacDonald said—have a fair bit to explain in terms of the conduct. Directors can be misled. I have little doubt that, whilst they may have been not as attentive as I might have been if I were in that role—or some of the others here, with the benefit of hindsight—there is no getting away from the fact that they were very badly served by the management of this corporation. I would say, I suppose with the benefit of parliamentary privilege, that they were somewhat deceived in terms of the way that that corporation was run. They have, I think, a legal responsibility but I think they have mitigating factors considering what emerged.

When I first came into the Assembly in 2004, I gave my inaugural speech on an important topic, the dangers of government excursions into business. Little did I know that only two years later a serious issue would arise on precisely that topic. Indeed, the very first bill on which I spoke, some couple of days later, was to create Rhodium Asset Solutions. I expressed my concerns at that time, but Mr Quinlan assured me as a new chum here that I had nothing to worry about.

I worked extensively in business before entering the Assembly and I know at first hand the kind of devotion and skill it takes to succeed in business ventures; it is not an area that one can undertake as a side project. Running a successful business is an onerous commitment. It is not a job for ministers, who are usually run ragged with other government commitments. Ministers lack the time needed to properly oversee a commercial business venture; often they also lack the skills needed to run a successful profit-driven enterprise. Ministers are used to receiving the revenues they need from legislative fiat rather than through dealing with customers on a voluntary basis. As a result, they are often unprepared for the difficulties involved in actually creating wealth.

The policy directions of government can also give mixed messages to these kinds of business enterprises, as is evidenced in the report, since the government is not a profit-maximising entity. When you put those objectives to be a profit-maximising entity in there with other social objectives, you have the real potential to ultimately confuse those you charge with the task of developing the bottom line.

Problems at Rhodium illustrate the danger of government business operations. In the case of Rhodium, we have a company which operates under a part-time board of directors. I know there is sensitivity because some of those directors are to be too critical, but the fact of the matter is that they take those responsibilities; they are paid for it. It has been very unfortunate for them that they have been immersed in all this. And we have the sole shareholders being the Chief Minister and the Deputy Chief Minister, who are trustee shareholders.

This level of oversight means that a large amount of effective control in fact rests with the CEO of the company. The events at Rhodium have shown us the enormous danger of this situation. On 26 February, the chief operating officer of Rhodium informed the board of instances of alleged malfeasance by the CEO, which ultimately led to the investigations by the Auditor-General and the public accounts committee.

These investigations showed several problems in the company. In June 2005, the CEO arranged to be paid a \$10,000 advance by the company due to having her bag stolen while on holiday. Incorrect accounting treatment of this amount meant that it was not repaid until the next year, with no interest accrued. Errors in salary arrangements also led to the former CEO being overpaid by \$14,599. The investigation by the Auditor-General found numerous instances where business credit cards were used for personal expenditure and several instances where documentation for credit card expenditure was insufficient or non-existent.

Testimony from the chairman of the board of Rhodium showed that the CEO had exceeded her authority in undertaking sponsorship arrangements. The CEO entered into sponsorship agreements on behalf of Rhodium for over \$200,000, more than double the amount approved by the board. These agreements provided perks to the officers at Rhodium but did not lead to any appreciable benefit to the company.

The investigations also found that the chief executive officer had drafted her own employment contract, which included a luxury car. The board was not aware of the cost of the car until it was purchased by the CEO on behalf of Rhodium. The investigation also found that the CEO hired several family members as employees in the company—I am sure you would not approve of that, Mr Berry—without disclosure of this fact to the board.

While these kinds of problems can potentially occur in any company, investigation into the events showed that the detail in reports and accounts presented to the board was insufficient for them to identify these problems. Moreover, testimony that we heard from the chairman of the board showed that there was some confusion over the direction the government wished to take the company. But I do not accept that as a justification for the problems that beset Rhodium.

There was a draft business plan submitted to the ministerial shareholders. This plan was put on hold by the absence of a response from the ministers. The chairman of the board testified that he felt that the board was receiving informal mixed messages from the government.

The risks go beyond the normal risks faced by governments that invest in businesses through the stock market or other diversified investment avenues. Under more diversified investment schemes, the government is not exposed to this level of risk. Moreover, these schemes are well served to passive shareholding as they allow the shareholder to delegate responsibility of oversight of the investment to professional investment managers.

I have some issues—time is going to beat me here today—with the recommendation that the voting shareholders should delegate to a separate decision maker any ministerial powers that relate to current or proposed TOC activity. I just do not see how you can start on one hand having ministerial accountability and on the other hand saying, “We’ll delegate it to somebody else and give them all the ministerial power.” I might be misunderstanding that recommendation—I have skim-read this report, as it has only just been tabled—but I do have some real issues with that recommendation. I think that the ministers are charged with the task as acting on behalf of the beneficial

owners of the investment—that is, the people of Canberra—but I also do not believe that it is the responsibility of shareholders in any corporation to take day-to-day responsibility for management. If you do that, you might as well have a government department and work on the more conventional processes.

The poor management of Rhodium is a sad chapter. It should be a lesson to all political parties about getting into government business ventures. It is a tragic cause of embarrassment for the territory. There has been a lot of loss of income and a lot of embarrassment, and a lot of lives have been disrupted. That is very regrettable. But I do commend the committee for the time they have put into the report. (*Time expired.*)

MR SPEAKER: At this point I would like to acknowledge the presence in the gallery of students and a teacher from St Clare’s. Welcome.

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

Sitting suspended from 12.29 to 2.30 pm.

Questions without notice Rhodium Asset Solutions Ltd

MR SESELJA: My question is to the Chief Minister. Chief Minister, you are one of two shareholders in Rhodium Asset Solutions Ltd. In a unanimous report from the public accounts committee, the committee concluded that you and your fellow shareholder, Katy Gallagher, failed to comply with the Territory-owned Corporations Act. Chief Minister, why did you and Ms Gallagher fail to comply with your responsibilities and obligations under the Territory-owned Corporations Act?

MR STANHOPE: I thank the Leader of the Opposition for the question. I am pleased to be able to respond in full to the allegations contained within the committee’s report by reference to an advice from the ACT Government Solicitor which I have received today on the matter. In oral briefings I received from the ACT Government Solicitor earlier today, his preliminary advice to me was that the report was a nonsense. He has now formalised that advice. I am happy to read, for the information of members and the community, the advice of the Australian Capital Territory Government Solicitor on the committee’s report. It states:

The Legislative Assembly’s Standing Committee on Public Accounts ... has delivered its report reviewing the Auditor-General’s report regarding Rhodium Asset Solutions Limited.

In a section titled “The Rhodium Shareholders” and “Rhodium as a TOC” ... the Committee has expressed opinions as to the role and responsibilities of the voting shareholders.

You have sought my ... advice regarding the views expressed by the Committee.

The Committee has, in my opinion, misconceived the legal status and responsibilities attaching to the voting shareholders.

A company is managed by its board of directors. Directors are obliged to act in the best interests of the company. There is extensive law developed over many years to support this proposition, now embodied in the duties of directors set out in the Corporations Act ... Directors cannot act in accordance with any other allegiance (for example on the direction of a person who has nominated them as a director) unless that action may reasonably be regarded as being in the best interests of the company.

The relationship between the shareholders of a company and a company is determined by the company's constitution. In the absence of an express provision to the contrary, the shareholders owe no duty to the company and may indeed act entirely in their own interest when, for example, voting on resolutions at the annual general meeting.

Some constitutions give shareholders special rights of approval of certain matters. There has been some "fine tuning" of these principles ...

Shareholders have no proper role in the management of a company and indeed for them to do so may lead them to be construed as "directors" under the definition contained in the Corporations Act and thereby subject to the duties and responsibilities thereby attaching. This is commonly known as a "shadow director". Accordingly, it is always important that there be a clear delineation between the role of the shareholder and that of the directors as managers of the company.

The *Territory-owned Corporations Act* ... does not alter the fundamental obligations of directors, nor the legal capacity and role of a shareholder. The TOC Act provides additional governance and reporting mechanisms and makes clear the unique role of the voting shareholders as both ministers and shareholders of the company. The TOC Act provides, amongst other things, for the voting shareholders to give a direction to the company in relation to particular matters or policies and the Territory must meet the costs incurred by the company in complying with that direction. Directions under the TOC Act are rare. Indeed, they are properly to be regarded as a "last resort" in the absence of agreement by that company that, for example, complying with a particular government policy will necessarily be in the company's best interest.

The voting shareholders hold their shares in Territory-owned corporations as trustees for the Territory. The voting shareholders are entitled (and indeed obliged) to exercise such powers as they may have in the Territory's best interests. They may request ... to adopt a certain course of action. It may be that the Territory's interests will coincide with those of the company, but if not, no ... criticism may be made—

I will repeat that: "no criticism may be made"—

of voting shareholders for acting in the Territory's interests in priority to those of the company.

In the event that the directors of the company decide that a course of action or a policy is not in the best interest of the company the TOC Act provides for a direction to be given by the voting shareholders and directors, by complying with that direction, will not be regarded as breaching their duties to the company. Any detriment to the company is met by the obligation on the Territory to meet the cost ...

I have not had the opportunity to review the findings of the Committee in detail. To suggest, however, that the voting shareholders were under an obligation to give a direction in relation to the ACT Fleet Management Contract held by Rhodium is wrong. To infer that the voting shareholders should have undertaken a more active role in influencing the management decisions of TOCs misapprehends the proper relationship, for were they to do so, the voting shareholders would have been in breach—

I repeat: “the voting shareholders would have been in breach”—

of the well-accepted separation between shareholders and directors in undertaking responsibility for the management of a company ...

The ACT Government Solicitor has today, in the most unequivocal way—unequivocally, flatly—described this report, in its findings in relation to the role of shareholders as misconstruing the legal principles, as wrong. Had the shareholders—this is the remarkable thing—acted as the public accounts committee had directed, we would have been potentially subject to legal action. (*Time expired.*)

MR SPEAKER: Is there a supplementary question?

MR SESELJA: Thank you, Mr Speaker. Chief Minister, how can the Canberra community trust you to protect any public asset when you have abrogated your responsibility over the protection of this one?

MR STANHOPE: Thank you for the supplementary question. I can actually expand on the theme that I was just warming to.

Mr Seselja: Maybe you should answer the supplementary.

MR STANHOPE: In answering this supplementary about how we can be trusted, I note that we have here, in this instance, the fingerprints of the Deputy Leader of the Opposition all over a report—Brendan Smyth QC! I find this remarkable. I was, for a significant time, secretary of the House of Representatives Standing Committee on Legal and Constitutional Affairs. I have a significant background in the operations of committees and committee reports. I have a significant background in the law. I have never, in my time of involvement with committee offices, parliamentary committee reports and parliamentary procedures, seen an instance where the members of a parliamentary committee, without legal qualifications, have taken it upon themselves to develop an interpretation of a provision of a piece of legislation or to proffer legal opinions on certain actions or non-actions. I know of no other example of a committee that would deign to give a legal opinion without reference or recourse to legal advice, a lawyer or any understanding of first principles.

We see the consequences of a committee that does that. We see it here today in a committee report tabled this morning, only four hours ago, and already rejected by the leading, most senior lawyer in the ACT government service as simply wrong—and suggesting not just that the report is wrong but that the course of action suggested by the committee as a course of action which the shareholders should have pursued would potentially lead the shareholders to be in breach of fundamental legal provisions in relation to Corporations Law.

It is absolutely remarkable that we have the Leader of the Opposition standing today and urging on me and fellow shareholders a course of action which the Government Solicitor, as the most senior lawyer in the ACT government, has already ruled as wrong—not that it was maybe wrong or that it could be wrong, but that the view and opinion of the public accounts committee is wrong.

Mr Smyth: Will you table the advice?

MR SPEAKER: Order, Mr Smyth! Cease interjecting.

MR STANHOPE: It is wrong. That is the opinion of the ACT Government Solicitor, Peter Garrisson. If you would like a more fulsome or expansive opinion on the degree to which it is wrong and the areas in relation to which it is wrong, I do intend to commission such an opinion, to put to bed once and for all this arrant nonsense that has been dished up to the Assembly and the people of Canberra today.

This set of recommendations, findings or conclusions in a committee report was made on legal issues without reference to a lawyer, without reference to a legal opinion and without a request for advice from a lawyer. It is just wrong; it was just made up. Brendan Smyth QC and Deb Foskey QC: “Oh, let’s just devise a bit of law here. Let’s write a bit of law. Let’s construe it and construct a bit of law. Look, it is only eight weeks till the election, after all. We’ve got a great opportunity here. We’ve been working on this report for two years, but let’s just save it up. We’ll just make it up. We’ll become lawyers for the day.”

Mr Seselja: So Karin just made it up?

MR SPEAKER: Cease interjecting, Mr Seselja.

MR STANHOPE: “We’ll dredge from our understanding of that legal show”—what is the name of that legal show that Mr Seselja indicated?

Ms MacDonald: *Boston Legal*.

MR STANHOPE: *Boston Legal*. “We’ll just conjure up all of the advice and inspiration that we’ve achieved from *Boston Legal*.” It’s easy to do: you see it on *Boston Legal*. You just write a bit of an opinion. It doesn’t have to have any relevance to the law. It doesn’t have to be right. It doesn’t have to be true; it’s all right if it’s wrong. But as long as we can score a political point or two off the Chief Minister or off the Labor Party, that’ll do, with eight weeks to an election. Let’s just make up the law. Let’s just cast aspersions. Let’s use the public accounts committee, let’s use the committee office, for this rank political purpose.”

With respect to this report, this committee stands condemned today. This is an indictment; it is a disgraceful thing you have done to the committee office and system today through this report. It has taken three hours for an opinion from a most senior solicitor to say this is rubbish. (*Time expired.*)

Political advertising

MR MULCAHY: My question is to the Chief Minister. Chief Minister, last month your federal counterparts introduced tough new guidelines for taxpayer-funded advertising by the government. These new guidelines included mandatory reporting every six months on political advertising and giving the Auditor-General the power to review campaigns above a set threshold. Chief Minister, will you adopt the same guidelines as your federal counterparts?

MR STANHOPE: I thank Mr Mulcahy for the question, and it is a proposal that is worthy of serious consideration in the context and the culture that applied under the previous Liberal government. What was the final sum that Howard and Costello totted up?

Mr Barr: I think it was nearly the entire ACT budget that was spent—\$3 billion.

MR STANHOPE: By the end of the day, it was almost the entire budget, Mr Barr interjects. I do know, or seem to recall, that one campaign alone actually came in at \$300 million. That was one of the advertising campaigns run by Howard and Costello in the last desperate throes of that government. They actually racked up a cost to the taxpayer in the order of \$300 million. That was just one, single campaign. Of course, in the context of that behaviour by the previous Liberal government, I think it is unsurprising that provisions have been put in place by the current Labor federal government.

That sort of reckless behaviour, that sort of reckless expenditure of taxpayers funds, has not and has never been a feature of ACT governments. It is important that any government, including this government, informs and keeps the community involved in relation to activities and policies and projects, and we do that. Having said that, Mr Mulcahy, I have no real issue, as a matter of principle, to the proposal, and would be happy to seriously consider it.

MR SPEAKER: A supplementary question, Mr Mulcahy.

MR MULCAHY: I thank the Chief Minister for his answer. Chief Minister, can you advise the Assembly how much taxpayer money your government will spend on government advertising between now and 18 October?

MR STANHOPE: I would have no difficulty doing that. I am not aware of any significant advertising that the government has in train or proposes or intends between now and 18 October, but I am more than happy to pursue the issue, Mr Mulcahy.

Rhodium Asset Solutions Ltd

MR SMYTH: My question is to the Deputy Chief Minister. Deputy Chief Minister, you are one of the two shareholders in Rhodium Asset Solutions Ltd. Are you aware of your powers under section 17A of the Territory-owned Corporations Act 1990?

MS GALLAGHER: Yes, I am.

MR SPEAKER: Supplementary question, Mr Smyth?

MR SMYTH: Yes, Mr Speaker. Minister, are you aware that under section 10 of the Territory-owned Corporations Act 1990 your obligations—under the legislation—are in addition to any other legal obligations that you have under any other law?

MS GALLAGHER: I did not hear the first part of that supplementary, but I would prefer to take it on notice and get back to you, Mr Smyth.

Gas-fired power station

DR FOSKEY: My question is to the Chief Minister. It is in regard to the proposed Mugga Lane data centre.

In discussions regarding government decision making that was at the core of Mr Seselja's no confidence motion in the Chief Minister, my staff and I were firmly advised by a spokesperson of the proponents of that proposal that if an EIS was required for the development, the other partners would walk. Can the Chief Minister advise the Assembly if the project is now at risk and if there has been any suggestion to him that project partners are reconsidering their position?

MR STANHOPE: Thank you, Mr Speaker. I thank Dr Foskey for the question. Dr Foskey, I am aware of no suggestion that the project is at risk; far from it. I think the best and clearest way for me to answer your question is to say no, I am not aware that the project is at risk. You might repeat the second part of your question.

DR FOSKEY: Has there been any suggestion to you that project partners are reconsidering their position?

MR STANHOPE: Thank you, Dr Foskey. No, I have no information or advice that the project is at risk. It would be at risk, of course, if the EIS or the development application is not satisfactorily or ultimately approved, but that is part of the process. That is not any personal or private opinion that has been expressed to me. I am not aware that it is at risk and I have not been advised or informed by anyone associated with the consortium that it is at risk.

DR FOSKEY: Thank you. Was the Chief Minister aware of the proponents' concerns in May or June? If so, how did he respond to those concerns at the time?

MR STANHOPE: I have had a number of discussions with proponents of the data centre in which they did raise issues around the then consultation and the processes in place and the road or the route that needed to be followed in relation to seeking formal approval for the project to proceed to the construction stage.

So, yes, I have been involved in discussions in which the proponents have raised issues around perceived difficulties and obstacles in the proposal proceeding. But at no stage did I ever respond to those concerns otherwise than by insisting at all stages that there was a formal statutory process in the ACT that needs to be followed and successfully concluded. Of course, that is the case in every other jurisdiction in

Australia. It is a response that I often give in relation to conversations I have with developers—and I have a lot—seeking to invest or do business.

From time to time, as part of discussions or negotiations, reference is made to aspects of our planning system. I always respond, “Well, that is what it is. It is independent. It is an independent statutory system that has the full support of the ACT government for very good reason.” I draw attention always to the fact that our system is not seriously or significantly different to planning systems or regimes that operate in other places. That has always been the position I have put to the proponents. There is a statutory process and it will run, and what will be will be.

ACTION bus service—patronage

MR GENTLEMAN: My question is to the Minister for Territory and Municipal Services in his capacity as minister responsible for transport. Minister, can you tell the Assembly what impact the introduction of ACTION’s new network 08 has had on patronage levels?

MR HARGREAVES: I thank Mr Gentleman for the question and for his longstanding interest in transport matters in the ACT.

Mr Pratt: That is what you say everywhere.

MR HARGREAVES: I also acknowledge Mr Pratt’s lack of knowledge of and interest in matters of transport in the ACT over the time he has been here.

I am delighted to inform the Assembly that the introduction of ACTION’s new network has had a marked and positive impact on patronage levels. The new network has seen ACTION reach a most significant milestone. For the first time, ACTION has recorded 25,000 adult boardings in a day. Not just once but on 14 separate days since the introduction of the new network on 2 June last more than 25,000 adult Canberrans have chosen to take the bus.

On 5 June, just three days into the operation of the new network, 25,026 adults used ACTION services. By the 17th, the figure had risen to 25,246 and on 24 June patronage hit a record of 25,674 adult boardings. The figure has twice gone beyond 25,500. That is a clear indication that the commuting public of Canberra has regained its confidence in ACTION.

The landmark 25,000 patronage figure was the highlight of the first weeks of operation of the new network, but that is not the whole story. ACTION increased the number of its services by approximately 10 per cent in network 08 compared to network 06. For the first 11 weeks of network 08, ACTION buses operated 16 per cent more trips and had 7.5 per cent more boardings than in the same 11-week period in the previous year.

Members will be interested to learn—those on this side of the chamber will be interested; those opposite are not: in fact, the shadow minister for transport is busy talking to somebody else—that 7.5 per cent of the increase in total boardings was made up of—get this, Mr Speaker—a 9.3 per cent increase in adult boardings; a 6.7

per cent increase in concessional boardings; a 352.7 per cent increase in free boardings, as a result of the introduction of the bike and ride and gold pass programs; and a 1.6 per cent increase in school boardings.

Compared to the 12 months prior to the introduction of the new network, average weekday boardings increased by 4.5 per cent, excluding school and public holidays. The 4.5 per cent increase in total boardings was made up of a 7.3 per cent increase in adult boardings; a 0.6 per cent decrease in concessional boardings as a result of the introduction of the gold pass program, reducing the number of concessions; a 198.2 per cent increase in free boardings, a result of the introduction of bike and ride and gold pass programs; and a 3.1 per cent increase in school travel.

The ACT government is committed to building a better service for the Canberra community. That is the reason behind the introduction of network 08, which, as I said, was introduced on 2 June following a comprehensive review of ACTION's services.

ACTION has received over 2,500 pieces of feedback from customers regarding the new bus network. All feedback is being considered by ACTION's scheduling and customer service teams, and travel solutions/options are being provided to customers.

In response to feedback, ACTION has introduced a number of immediate changes. Some examples that members may be interested in include the following. Route 25/225 has now been redirected to service Mirinjani residents at Weston Creek. A new school service has been provided for students residing in the Gungahlin area. There are two earlier bus services for Giralang and Kaleen residents. There is an additional morning service, route 60, from Tuggeranong to the city and there is an additional afternoon service, route 51, from the city via Gungahlin Marketplace to Belconnen.

ACTION will continue to assess requests for changes to specific route services and, where possible, will introduce those at the beginning of the next or following school terms.

It is pretty obvious that people in Canberra who had a rough time with network 06 are now embracing network 08. We are seeing a significant shift out of the car and onto public transport. This is an absolute credit to the officers and drivers of the ACTION bus network.

MR SPEAKER: A supplementary question, Mr Gentleman.

MR GENTLEMAN: Minister, what has been the nature of the commuting public's response to the introduction of ACTION's network 08?

MR HARGREAVES: I thank Mr Gentleman, again, for his longstanding interest in this subject. We have received a most positive response to the network. For the interest of members, let me read some of the feedback received. This is one example:

Dear ACTION, I discovered today that there was a new bus service for Radford College taking Nicholls and Ngunnawal residents directly to their suburbs. This is very welcome news indeed and caters perfectly for this community. It is the

most convenient service we have had in 7 years of living in Nicholls. Thank you very much for your consideration of the difficulties we faced. My daughter should now be home by about 4.00 pm—the earliest ever. Neighbours who have never used the bus service because it took too long are now going to use it.

Here is another one:

Many thanks, that is excellent news and I am very grateful that at least there will be an earlier scheduled service from Giralang to Civic. You have restored my faith in the ACT public transport system. Once again, many thanks.

And another:

A big thank you for taking our feedback/request into account in introducing a morning service to Telopea School. The proposed bus 504 morning service from the Woden interchange is a big relief for us and will ensure we get to work on time, as we no longer have to worry about how to get our children to school first. We know other parents who have commented the same.

That is not all, Mr Speaker. He is another bit of positive feedback - a set of steak knives for those across the way here:

Dear ACTION—thank you very much for your assistance. I sent a note earlier this morning as well—to say a big thank you as this morning was excellent—bus came, took me on board and all was good. I really appreciate your responsiveness. Best wishes.

And just one more:

Thank you, knowing someone has read the mail and taken some action is a great feeling. I must also comment: the routes I have been on in the new time table have been good. The less “rat race” near the exchange makes the new route a pleasure to ride. (route 43). The Xpresso from Macgregor with an extra service was a welcome change also. Keep up the good work.

Mr Speaker, this is a welcome confirmation that ACTION’s new network is delivering to the commuting public, and that in itself is a confirmation of the government’s commitment to ensuring that Canberrans have a responsive, efficient public transport system—an increasingly important necessity in these days of high fuel prices, strains on family budgets and growing concerns about the threats to our environment for issues like climate change.

What did these positive comments result from? Clearly, as I have indicated, the words “extra services”. There are extra services now, and there is a much more comfortable ride. It is a much more predictable service. There are more services and they are more responsive. There is better connectivity at the interchanges. The information that we provide to people at the interchanges, on the web and by phone is superior to that which was provided previously. The work that we have done and are continuing to do around interchanges, making those spots more comfortable and less dangerous, is impacting positively on our clientele.

What is coming through from the emails to my office is that I am not seeing the negative feedback that I may have seen two years ago. I am seeing positive feedback; people are saying, "Good on you for doing this." If there is one constant complaint, thought, it is that people cannot get on the buses—the buses are too full. I have to say that that is good news. The problem we had before was buses travelling along the routes with one or two people in them. There were 70 bus routes that had only the bus driver or a maximum of one person on the bus when we did the evaluation of network 06. Now we have people complaining because there are not enough spots on the buses, which is terrific, because we can now respond positively to that.

The other initiative that has taken off like a rocket—these folks over here do not have the grace to acknowledge it—is the gold card for people over 75 years of age. That has been embraced incredibly well. Mr Speaker, three weeks after we introduced it, 25 per cent of people in the ACT over the age of 75 had applied for and received a gold card. There are 16,000 people over the age of 75 in the ACT, and 4,000 of them have applied for and received their gold card. This is what we have to do for our senior citizens—we have to make it an attractive option for them to get out of their cars when they are perhaps a little frail. Having enticed them out of their cars, it is up to us to provide a good bus service, and I believe that we now have a bus service that we can be eminently proud of and that we can continue to provide to the people of Canberra.

Rhodium Asset Solutions Ltd

MRS DUNNE: My question is to the Attorney-General and relates to the report from the public accounts committee into Rhodium Asset Solutions Ltd. Attorney, this unanimous report states: "It appears that the shareholders have failed to comply with the Territory-owned Corporations Act 1990." Attorney, will you investigate this matter to determine if the law has or has not been complied with?

MR CORBELL: I think the Chief Minister has already answered that question.

MR SPEAKER: Is there a supplementary question?

MRS DUNNE: Thank you, Mr Speaker. Attorney, how can the community trust that you will protect the public interest if you refuse to even answer a question about an investigation in relation to this unanimous report? Is your response a result of you not having any legal qualifications and therefore not having any understanding of the application of the law?

MR CORBELL: I have every confidence that the advice of the ACT Government Solicitor is accurate in all respects.

Health—clinics

MRS BURKE: My question, through you, Mr Speaker, is to the Minister for Health. Minister, you stated in this place on 19 August 2008 that the walk-in clinics will be outposts of the emergency departments. However, you have now stated that there will be no GPs at these clinics. How can these clinics be outposts of emergency departments if they do not have any doctors?

MS GALLAGHER: Our emergency departments do not have any GPs either, Mrs Burke. It is simple, actually. There are emergency department specialists. Occasionally we have GPs, but they are employed as emergency department specialists, not as general practitioners.

As to the walk-in centres, I welcome the opportunity to talk at length again about the policy the Liberals have tried to adopt, but done in such a terrible, problematic way. The walk-in centres will be run as outposts of the emergency department. In fact, a group have just come back from the United Kingdom where they have witnessed how these walk-in centres work.

They often work inside hospitals, but they also work in community settings. There is a clinical governance structure set up which operates across the health system. The idea behind the walk-in centres—this is the fundamental point that Mrs Burke fails to understand—is that they are being set up because there are not enough doctors around, but also because the health workforce needs to diversify and roles need to change. The use of the nurse practitioner, the advanced practice nurse, is a critical component of how we will deal with the broader health workforce problem in years to come.

It also creates wonderful opportunities for nurses to operate in a nurse-led centre dealing with less urgent conditions. There is a lot of sense to it. It gives nurses the autonomy to practise. Of course, there are constraints on nurse practitioners practising outside the hospital system because they are not able to access MBS and PBS as the doctors are able to do. So we need to set them up as outposts of the emergency department.

Yes, the ACT government would fund it. But that is quite a different arrangement to any arrangement such as the Liberals are trying to mislead the community about with the model they can establish. There is no bulk-billing in these walk-in centres because the costs are fully met by the ACT government, whereas the Liberals are trying to run away with a policy that says, “We will bulk-bill the ACT government.” I am at a loss to understand how they are going to do that unless they are going to create their own Medicare benefits regime here in the territory solely for the use of these three clinics that they are supposedly going to be able to set up.

The idea behind the walk-in centres is precisely that. They are nurse led. They deal with less urgent conditions. They take some of the burden off our medical workforce because these conditions do not necessarily need the attention of a doctor. If they did need the attention of a doctor, then there would be protocols established in the walk-in clinics to trigger that. Of course there would be clinical governance over these arrangements, just as there are over every aspect of public health.

There is a fundamental difference between the clinics that the Liberals are saying they are going to establish and the reality of the fact that these can be established. We are able to staff them and they will offer a very comprehensive service in response particularly to the needs of the Tuggeranong community, which is where we will be establishing the first of these walk-in centres—hopefully within the next year.

MR SPEAKER: Is there a supplementary question?

MRS BURKE: Thank you, Mr Speaker. Minister, isn't your solution to the GP shortages in the ACT in fact the opening of medical clinics with no doctors?

MS GALLAGHER: Poor Mrs Burke! You just do not understand the concept of a nurse-led service. Nurses nurse, and nurses offer medical solutions to patients when they need to. They do it now. In fact, our fast-track program at the emergency department is largely nurse-led, and they do things like—wait for it!—suturing, administration of pain relief, early diagnosis and the ordering of tests that may be needed. Doctors are not the only people able to provide solutions to people's health issues when they have them.

We do need the support of the medical fraternity; we do need the support of the doctors to get these walk-in clinics operating, if only from the point of view that I would like to have broad agreement around the protocols that need to be established to govern this. But the idea is a very exciting one. In the UK, these are highly successful. The patient satisfaction rates are incredible, and the throughput is absolutely amazing. When you open these clinics, the people come, and the treatment they receive is first rate. It offers nurses in the ACT the ability to work in an environment where they can't currently work to the capacity that an outpost walk-in clinic, nurse-led, would offer them.

In fact, recently I received an email from an ex-matron of a walk-in centre in the UK who is now living over here. She said: "This all looks very exciting. I've got extensive knowledge of how these operate and am prepared to come in and talk with you about how they do that." That is an offer that I am going to take up, because the only solutions to the workforce problems in health have to be realistic and achievable, and that is what a nurse-led walk-in clinic offers to the people of Canberra. To try to offer the people of Canberra a service that is unfunded, undeliverable, does not cover all the costs that will be incurred and is currently not able to be done under the law is not achievable or realistic. That is the fundamental difference between us and them. I think the people of Canberra have already cottoned on to that.

Housing affordability

MS PORTER: Mr Speaker, my question, through you, is to the Chief Minister. Chief Minister, could you advise the Assembly on the government's achievements in improving the affordability of housing in Canberra for first home buyers, particularly through increasing the supply of land release?

MR SPEAKER: Before I call the Chief Minister, I indicate that there are too many conversations going on. If members would like to have a conversation, they should go to the lobby. The Chief Minister has the floor and would like some silence.

MR STANHOPE: Thank you very much, Mr Speaker, and I thank Ms Porter for the question and the opportunity to talk about the government's progress on addressing the national issue of housing affordability at an ACT level. This government is committed to ensuring that all Canberrans have access to safe, secure and affordable housing. In fact, while the ACT remains the most affordable city to live in, in the view of the Real Estate Institute of Australia's housing affordability index, with

22.4 per cent of the average household income required to meet loan repayments compared to 38 per cent nationally and with 17.5 per cent of the average household income required to meet average weekly rents compared to 24.7 per cent nationally, the government does, of course, understand that not all Canberrans are as prosperous and as well off as others and that there continues to be significant housing stress for very many Canberrans.

It is because of our acknowledgement and sensitivity that the government are deeply concerned about making housing more affordable for all Canberrans, particularly those on low to middle incomes. This government understands that to truly be able to manipulate the housing market, we need to consider supply and demand mechanisms, and our affordable housing action plan does just that. Unlike those opposite, who propose to actually drive up demand and, through that, drive up house prices, this government is seeking supply-side solutions.

Through the affordable housing action plan, the government has accelerated the release of land to the market. We released more than 3,400 blocks in 2007-08, the largest residential land release program since self-government. We propose to release 4,200 blocks in this financial year, with an average of 2,750 blocks over the following four years. To ensure that the government are in a position to respond quickly to further increases in demand, we are developing a supply of release-ready sites. These sites will have the appropriate planning in place and be available for release, if required.

Home buyers also now have more options than ever before. The government are now releasing land in more ways than ever before, with land now being offered for sale directly through the Land Development Agency, through ballots and directly over the counter. Land is also available through private developers and builders. In fact, right now, today, there are over 600 new blocks of land and house and land packages available for sale in Canberra. Families and individuals looking to purchase their new homes or land can buy land or house and land packages in Casey, Forde, Franklin, Bonner, Dunlop, West Macgregor and Uriarra. In addition to those 600 land or house and land packages currently available for sale, there are 2,300 blocks about to be released in Casey, Bonner, Forde, Franklin and West Macgregor. These blocks will all become homes for Canberrans, future homes for all of us.

Mr Speaker, it is only through increasing supply that we can improve the affordability of housing in the territory, and the government are doing just that. We can see the proof that our action plan is working. The latest Housing Industry Association state outlook for the ACT released, I think, just this week shows that first home buyer affordability in the ACT increased by 10 per cent in the June quarter of 2008. That is a sure sign that the government strategy to tackle affordable housing is having a real impact on affordable housing, through initiatives such as our requirement that at least 15 per cent of all house and land packages in new estates must be under \$300,000 and through our innovative land rent scheme. The government is serious about ensuring that all Canberrans have access to affordable housing, regardless of their personal circumstances.

MR SPEAKER: Supplementary question, Ms Porter?

MS PORTER: Will the Chief Minister advise the Assembly on how Canberrans can access the land rent scheme he mentioned?

MR STANHOPE: The groundbreaking land rent scheme is raising an awful lot of interest in the community. Land rent, which makes up part of our affordable housing action plan, provides yet another option to help more Canberrans realise that great Australian dream of owning their own home.

The land rent scheme is designed to help people get a foot in the housing market—people who otherwise would have no alternative but to rent as they save for a home of their own. The scheme gives a choice to people to buy the land they are renting at a later date once they have had an opportunity to save some money or their financial situation has improved. Alternatively, they may wish to continue renting the land, knowing that they have ongoing security of tenure in their own home. The land rent scheme will make housing more affordable by allowing households on incomes as modest as \$50,000 a year to rent rather than buy the land component of a house and land package at a concessional rate.

Since the introduction of the scheme on 1 July 2008, the Canberra Institute of Technology has run five three-hour-long information sessions on the land rent scheme for interested Canberrans. All five of the information sessions were fully booked, with places in future sessions filling fast. Attendance at one of these sessions is compulsory for anyone who would like to access the new scheme, to ensure that people who engage in the land rent scheme understand their commitments and to ensure that the scheme is in fact suitable for them.

The very first land rent agreements are now being finalised and I look forward to welcoming the first Canberrans to this scheme shortly. This is despite claims from the opposition that the scheme would not work, that the scheme would only result in negative equity.

Detailed analysis by Treasury found that both land and house prices increase in value over time. Treasury has done a detailed analysis of a reasonable sample of homes in Canberra that had been newly constructed in the last six years. The study was mindful not to include properties where the houses had been significantly altered since they were constructed. What did the Treasury analysis find? On average, house prices increased by around 10 per cent a year and land prices increased by around 16 per cent a year. In no case in the Treasury sample did the value of a single house fall.

That puts the lie to the opposition's claims. All we have ever seen of the Liberals' policy for housing affordability is a suggestion from a leading financial institution, Westpac, that removing stamp duty for first home buyers will make the cost of housing for all Canberrans more expensive. The land rent scheme will provide Canberrans on low incomes with the opportunity to own their own home without going into negative equity.

Gas-fired power station

MR STEFANIAK: My question is to the Minister for Planning. Minister, in your written directive to Mr Brooke O'Mahoney relating to the Tuggeranong power station

and data centre EIS, you state that the “health impacts” are not considered a “significant risk” or a “very high risk” but rather are relegated to the category of “medium risk”. Minister, why have you made the health risks to Tuggeranong residents such a low priority?

MR BARR: I haven’t, Mr Speaker.

MR SPEAKER: Is there a supplementary question?

MR STEFANIAK: Thanks, Mr Speaker. Minister, doesn’t your letter confirm Professor Capon’s fear that your EIS process would limit the investigation of the health risks of this project?

MR BARR: No, Mr Speaker.

Chief Minister—suspension

MR PRATT: My question is to the Chief Minister. Chief Minister, in relation to your being thrown out of the chamber yesterday, you repeatedly stated in the media that you had not heard the Speaker warn you before you were then named by him. But the record shows that at the time you were warned you immediately leapt to your feet and took a point of order. How can you say you did not hear the Speaker—

Mr Corbell: I raise a point of order, Mr Speaker.

MR PRATT: when you argued with him at the time?

Mr Corbell: Mr Speaker, this is not a question that relates to the Chief Minister’s portfolio responsibilities. It is out of order.

MR SPEAKER: I uphold the point of order.

Mr Pratt: On the point of order, Mr Speaker, this is a question which goes to the heart of the conduct of the Chief Minister and therefore is a relevant question to be asked in this place.

MR SPEAKER: It has to do with the minister’s portfolio responsibilities. It has to have to do with the minister’s responsibilities, and it does not.

Mr Pratt: Gutless.

MR SPEAKER: Order!

Mr Stanhope: I raise a point of order, Mr Speaker.

MR SPEAKER: Who was that directed at—at me?

Mr Pratt: No, the opposition.

Mr Stanhope: Mr Pratt just called you gutless, Mr Speaker.

Mr Pratt: Those opposite.

MR SPEAKER: I do not care who it was referring to.

Mr Pratt: Mr Speaker, it was directed across the chamber.

MR SPEAKER: I am sorry that you do that because I was the one that ruled your question out of order. So if it was directed across the chamber, you should withdraw that, too. It was untimely.

Mr Pratt: I withdraw it, Mr Speaker.

Budget—surplus

MS MacDONALD: My question is to Mr Stanhope as Chief Minister. Chief Minister, can you update the Assembly on the current state of the territory's finances?

MR STANHOPE: I thank the member for the question. The first responsibility of any government is fiscal responsibility. Without that, there is of course nothing: no capacity to deliver the services a community relies upon; no ability to cushion a local economy against unexpected shocks. The ACT has lived through deficits before—successive Liberal deficits. The last time that the Liberals were in government, successive deficits under the Liberal Party amounted to \$800 million over their term in government—\$800 million in accumulated, successive deficits under the Liberal Party. That is the Liberal Party's record in government.

By contrast, Labor has delivered an unbroken spring of surpluses since it came to government. Under a future Labor government, the people of Canberra could look forward to that unbroken record of proven and responsible management continuing for the next four years.

The cumulative forecast general government sector net operating balance surplus published in the 2008-09 budget is \$244 million over the next four years. These are modest, proven surpluses—surpluses that have allowed Labor to maintain the best services in the country for the people of Canberra: the best public schools, the best public hospitals, the best police force, and the best parks and recreational facilities.

These are modest, proven surpluses that have allowed us to embark on the biggest infrastructure program in the history of self-government—the first phase of the rebuild of our public health system to prepare for the demands of the future. Modest, proven surpluses that leave us ready for the future—surpluses delivered by a united, energetic and experienced team.

There are a number of reasons the government has run such surpluses year after year and why it will continue to run surpluses into the future. Such surpluses maintain a buffer against fiscal shocks and provide capacity to respond to unforeseen circumstances. They allow for investments in infrastructure that support the growth of a city. They allow for the government to invest in social infrastructure too—things like schools, parks, paths, hospitals and health centres.

Surpluses ensure that we do not leave unfunded costs for future generations or future governments. They increase our capacity for future spending by reducing the government's interest costs. Importantly, they allow us to maintain our AAA credit rating.

It has to be said that all that work is today at risk from an alternative government and alternative chief minister. The election commitments announced by the Liberals to date have racked up hundreds—I repeat: hundreds—of millions of dollars over the next term of government. Their additional expenditure and revenue commitments total \$200 million over the four years. Their new capital commitments total \$97 million.

These features alone—with many more to come I can only assume over the coming weeks—will send the territory into deficit for the first time since the Liberals were last in government. “Into the red with Zed” will be the campaign slogan of the Liberal Party. Back to the bad old days of unfunded promises—unfunded and undeliverable.

As I mentioned, the cumulative forecast general government sector net operating balance published in 2008-09 is \$244 million over the cycle. In just seven easy steps, in the form of seven election commitments published on the website since April this year—this is just since April this year—the Liberals would slash that four-year cumulative surplus to \$44 million. That is just in the last four months. That is without taking into account the \$97 million worth of capital promises made in the same time; without factoring in the depreciation, the operating costs, repairs and maintenance of that capital program, all of which have an impact on the operating balance.

The government has worked hard to deliver budget surpluses. We are proud of our prudent approach to managing public finances. It is an approach that has allowed us to invest in significant social and physical infrastructure in the ACT—most recently the billion-dollar capital program that I announced in the recent budget. These investments that will increase the productive capacity of our economy, help our economy grow and give Canberra an edge against other urban centres when we compete for the best people.

All this hard work, all this responsible financial management, all this prudence will be for nought if the Liberals actually delivered on the preposterous, undeliverable promises that they are making to the people of Canberra. I can only assume that these are promises that were never intended to be kept or delivered. These are promises—we have seen it just in this last week or two—made by a party that will say anything and do anything to get into government. They are promises that have been cobbled together on the hop in response to issues of the moment. A GP bulk-billing clinic—

Ms Gallagher: That doesn't bulk-bill.

MR STANHOPE: That is right: that does not bulk-bill. It would have been illegal. It is a classic. I reckon it is the classic in policy-making and delivering in a campaign. (*Time expired.*)

MR SPEAKER: A supplementary question, Ms MacDonald?

MS MacDONALD: Chief Minister, do you have any concerns that the future balance sheet of the territory may be at risk?

MR STANHOPE: I have very serious concerns that the future balance sheet, most particularly the surplus, is at dire risk. We see that in the numbers and the promises that have been made, and we have seen it again just this week—

Mrs Dunne: On a point of order, Mr Speaker, the question is out of order as it asks for an expression of opinion: “Do you have any concerns?”

MR SPEAKER: I think Mrs Dunne has a point.

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

Personal explanation

MR HARGREAVES (Brindabella—Minister for Territory and Municipal Services, Minister for Housing, Minister for Multicultural Affairs): I seek leave to make a personal explanation under standing order 46.

MR SPEAKER: The member may proceed.

MR HARGREAVES: Yesterday, when talking about the ANU hot rock facility in a speech on Dr Foskey’s motion, Mrs Dunne said she had asked the people at the ANU whether urban services or the minister had visited and they said no. She said then, “So they could go around the world but they could not cross Marcus Clarke Street to see something that works in our own town.” Personally, Mr Speaker, it is the HotRot system, not the hot rock system. It is not the Hard Rock Cafe, but it is in there.

In relation to the ANU facility, I would like to put on the record a couple of points which go to counter—

MR SPEAKER: Make sure this is a personal explanation and not a policy statement.

MR HARGREAVES: It is, Mr Speaker. They counter the accusation by Mrs Dunne that I do not know what is happening at the ANU.

MR SPEAKER: I think the accusation was that you had never been there.

MR HARGREAVES: No, Mr Speaker. I was quoting Mrs Dunne and I will do so again. She said, “So they could go around the world but they could not cross Marcus Clarke Street to see something that works in our own town, which is emblematic of everything,” blah, blah, blah.

Firstly, I have spoken to the people at the ANU. Indeed, I gave a bronze award to the ANU Food Co-op at the No Waste Awards in 2006. Also, on 12 June of this year officers from sustainability programs went and saw the program at the ANU. The people who attended then came and gave me a report on it. So I do know about it. I am aware of it.

The TAMS party were: Mr Rob Thorman, director of sustainability programs and projects; Chris Horsey, senior manager of ACT NOWaste; Graham Mannall, manager of ACT NOWaste; David Riddell and Larry O’Loughlin. Mr Speaker, I table the following documents that substantiate the view.

HotRot—

Copy of email from Larry O'Loughlin, Operational Policy and Business Coordination, ACT NoWaste, to Lee-Anne Wahren, dated 21 August 2008.

Visit to see the HotRot in Action—Copy of article from TAMS Intranet, dated 21 August 2008.

Copies of photographs (3).

Mrs Dunne: Mr Speaker, I raise a point of order. I seek leave to make a statement in relation to Mr—

MR SPEAKER: That is not a point of order.

Mrs Dunne: You are quite right. I seek leave to make a statement in response. It will be a very brief statement.

Leave not granted.

MR SPEAKER: You sought leave generally to make a statement in response to Mr Hargreaves and leave was not granted.

Standing orders—suspension

MRS DUNNE (Ginninderra) (3.28): I move:

That so much of the standing orders be suspended as would prevent Mrs Dunne from making a statement in relation to Mr Hargreaves' personal explanation.

This is again another sign of the churlishness of the Stanhope government, which is emblematic of everything that they stand for. What we have today is a simple request for a two-line statement to be introduced, but because the manager of government business is so churlish we will actually spend some time having a debate about whether or not I should have permission to make a statement.

It is very simple. Mr Hargreaves wants to cover his back because he is not up to date with what is going on in the ACT in relation to waste management. I actually sought leave to make a statement to clarify my position and to congratulate Mr Hargreaves for having some of his people get across the road many months after Mr Pratt and I had made the same journey. But, no, we have a churlish government that does not allow the forms of the house to apply to enable a member to make a simple statement like that. As a result we have to have a lengthy debate about the suspension of standing orders.

The minister is out of touch. The manager of government business is out of touch. He thinks that he can do anything that he likes. He spends all his time trying to push the boundaries of the forms of the house. At the same time, by pushing the boundaries of the forms of the house, he disrupts the free progress of things in the house. This is why we are now in a situation where, again, members of the opposition have to attempt to suspend standing orders to make simple statements.

If the Stanhope government wants to go down this path, they will have their time wasted, or they could be generous and act in a collegial way and not have the time of the house wasted. It is their choice, but if they choose not to give members leave for simple things, they will have their time wasted, Mr Speaker.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (3.29): Mr Speaker, the form of this place is that you address questions in this house or you make explanations, as provided for under the standing orders. It is not a form of this place that just because you have got something to say because you do not like what somebody else has said you get leave to say it. That is exactly what Mrs Dunne is asking for. She cannot handle the fact that the minister has made a personal explanation and corrected the record. She has got to have the last say. That is all it is about.

Through you, Mr Speaker, Mrs Dunne should not lecture us here about abusing the forms of the house. Mrs Dunne is the only person who is abusing the forms of the house. Mrs Dunne wants to have the last say because she cannot cop the fact that the minister has corrected something that she claimed and which was wrong in her speech yesterday.

Mr Speaker, the government have been consistent on this matter. We do not support the suspension of standing orders just so that a member can go off on their own little dalliance about something that they feel is important when there is no question before the chair and where there is no need for explanation, as provided for under the standing orders. That is why we are refusing to support the motion today, Mr Speaker. It has been our consistent position. It will remain so.

MR PRATT (Brindabella) (3.31): Mr Speaker, a suspension of standing orders in this case is justified. Under standing order 46 Mrs Dunne is quite entitled to make a statement. Standing orders do not state—

Mr Corbell: But she did not. That is not what she sought, Mr Pratt.

MR PRATT: that a personal explanation cannot be made under standing order 46.

Mr Corbell: She did not seek to make a personal explanation under standing order 46.

MR PRATT: Mrs Dunne is entitled to make a statement under standing order 46 to correct a misleading statement by Mr Hargreaves, who had never been anywhere near—

Mr Corbell: She did not, Steve. You do not know what you are talking about.

Members interjecting—

MR SPEAKER: Order! Mr Pratt, withdraw your accusation that Mr Hargreaves misled.

MR PRATT: I withdraw that.

MR SPEAKER: Thank you.

MR PRATT: Mr Speaker, Mrs Dunne is entitled to refer to standing order 46 to correct an erroneous statement made by Mr Hargreaves, who had, in fact, not been anywhere near the HotRot site before Mrs Dunne and I went there some years after that particular project commenced. All Mrs Dunne is doing is attempting to rectify the record. She has a right under standing order 46 to do that. Mr Corbell is wrong.

Standing order 46 explanations are not there for people to take on a one-by-one basis. If the minister says something that is entirely incorrect, as he did in this particular case, Mrs Dunne is quite entitled to stand up and correct that. If she is refused leave to do that—after we gave the minister leave to make a personal explanation—Mrs Dunne has no choice but to seek to suspend standing orders. As Mrs Dunne said, this is churlishness and arrogance on the part of this government.

MRS DUNNE (Ginninderra) (3.33), in reply: Again, this is about the forms of the house. Mr Corbell likes to stand with his hand in his pocket and gesture and show how much he knows about the forms of the house. But he is the principal abuser. I sought to make a statement because Mr Hargreaves pointed out that there was some inconsistency in what I had said yesterday. It is important that I correct the record at the first opportunity and now that has not been afforded to me in accordance with the forms of the house.

Mr Barr: Pick it up in the adjournment debate, Vicki.

MRS BURKE: No. The standing orders state that if there is an inconsistency or if someone has said something which is wrong, it should be corrected at the first opportunity. I am here. Mr Hargreaves has expressed a particular point of view which contradicts what I said. I sought leave to acknowledge that what I said yesterday was wrong and to congratulate the minister for eventually having someone walk across the road to look at it. It was a two-sentence statement which could have been addressed in the normal form, but Mr Corbell and Mr Hargreaves have now abused the forms of the house.

Question put:

That so much of the standing orders be suspended as would prevent Mrs Dunne from making a statement in relation to Mr Hargreaves' personal explanation.

The Assembly voted—

Ayes 7

Noes 10

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

Question so resolved in the negative.

Paper

Mr Speaker presented the following paper:

Study trip—report by Mr Stefaniak MLA—visit to the NSW Judicial Commission—Sydney, 4 to 6 June 2008.

Homelessness strategy Papers and statement by minister

MS GALLAGHER (Molonglo—Minister for Health, Minister for Children and Young People, Minister for Disability and Community Services, Minister for Women): For the information of members, I present the following papers:

Homelessness Strategy—Breaking the Cycle—

Third progress report for the period July 2006-June 2007, dated November 2007.
Evaluation, dated December 2007.

I ask leave to make a statement in relation to the papers.

Leave granted.

MS GALLAGHER: I am pleased to table in the Assembly today the third annual progress report on the implementation of *Breaking the cycle: the ACT homelessness strategy*, and the final evaluation of *Breaking the cycle: the ACT homelessness strategy*.

This third annual progress report provides an overview of the range of activities associated with implementation from July 2006 to June 2007. The report notes numerous highlights from the strategy's third year of operation. A few of these are: finalisation of the ACT homelessness charter—a statement of rights for homeless people and a service guarantee for homelessness service providers; development of policies, strategies and frameworks designed to improve service responses and coordination by reducing the number of contact points supplied; finalisation of research into children's experience of homelessness; and development of an implementation plan to incorporate key findings of the research into SAAP sector practice.

While this and the preceding annual progress reports have clearly documented the activities and actions taken to implement the strategy, the final evaluation builds on that work by identifying how well as a whole these activities and actions have improved outcomes for people who are homeless or at risk of homelessness.

The final evaluation of *Breaking the cycle: the ACT homelessness strategy* assesses the impact of the strategy on people who are homeless or at risk of homelessness against a number of measures. In doing so, it considers the short-term and likely long-term benefits for government, service providers and individuals, and makes recommendations about areas for future focus.

The social and economic costs experienced by people experiencing homelessness are high. It has a significant impact on an individual's ability to participate in the community and to maintain relationships with friends and family. It can affect an individual's ability to maintain employment and for younger people to attend school.

The final evaluation documents how the homelessness strategy provided a framework for a coordinated community response to homelessness so as to reduce these negative impacts and enable individuals and families to lead safe, active, participative and rewarding lives.

The strategy set out an ambitious program for social change. The evaluation documents the considerable improvements made in the short term and outlines potential long-term benefits for people who are homeless or at risk of homelessness in the ACT.

We have moved a long way from the environment that existed prior to the development and implementation of the strategy, where discrete services for homeless people often operated in isolation and mainstream services, such as public housing, were often hard for homeless people to access.

The evaluation highlights that from its first year of operation, one of the most significant achievements of the strategy has been engineering the evolution of the homelessness sector from a series of discrete services to a coordinated service system that includes homelessness services, and public and community housing.

Stakeholders report that there is now a culture of mutual learning across all organisations and of addressing issues and challenges that arise in an open and collaborative manner. Closer working relationships and a better appreciation of how integrated responses provide better outcomes for clients are likely to have the long-term benefits of continuing to streamline access for all clients, whilst also assisting with future sector development by improving data.

From its first year of operation, the strategy began to change the landscape of homelessness services in the ACT. The capacity of the sector was increased through the establishment of new services and additions to existing services for single men, men with children, families and crisis accommodation for men. Outreach services were introduced to provide more flexible support options to people at risk of homelessness and at various stages of the homelessness continuum.

The Canberra emergency accommodation service was launched to provide brokerage and an important entry point into crisis accommodation. A youth homelessness action plan was developed to guide responses for young people experiencing homelessness and head leasing arrangements were introduced to support high risk and complex clients whose tenancies with Housing ACT were at significant risk.

As the strategy has progressed into its second year, the reorientation of the homeless services sector continued to move towards an integrated service system. The reforms assisted the repositioning of services along a continuum of care for people experiencing homelessness or at risk of homelessness with Housing ACT providing the post-crisis response and SAAP providing the crisis response.

The strategy has informed numerous reforms along this continuum, including major reforms within Housing ACT that established a service system that is built around the needs of clients and provides community-based support from the start of an application for assistance.

Other reforms within Housing ACT improved the process for priority setting for housing assistance to focus on people with complex and high needs, and the establishment of a multidisciplinary panel, drawing on representatives from across government and community service sectors, to assist in the categorisation of Housing ACT applicants with high and complex needs.

During this period a women's pathway group was established to identify service gaps and blockages in the system that reduced the level and availability of assistance to women, particularly those involving domestic violence. As a direct outcome, the domestic violence Christmas initiative was funded, providing short-term crisis support for women and children escaping domestic violence over the Christmas-new year period. The initiative had long-term benefits that led to the development of the transitional housing program, which provides additional options for individuals and families leaving SAAP services, freeing up space in those services for people who need a crisis response.

The report outlines how in the third year of the strategy work initiated in the first two years was built upon to consolidate working relationships in the creation of an integrated service system. As a result, service providers reported a change across organisations, with a better, more informed focus on providing a client-focused service.

Other highlights from the strategy's third year include the finalisation of the homelessness charter—a statement of rights for homeless people and a service guarantee for homelessness service providers, finalisation of research into children's experience of homelessness and the development of an implementation plan to incorporate key findings of the research into SAAP sector practice.

Overall, the evaluation finds the strategy delivered improved outcomes against a number of measures to specific groups including women, young people and families. The strategy introduced initiatives which have provided short-term crisis management and there are early indications that long-term outcomes will be delivered.

This work has been delivered within an environment that has at times been challenging. As you would recall, the 2006-07 budget required the homelessness service sector to make savings in the order of \$1 million. However, I am also pleased to say that the ACT government continues to provide \$3 million over matched funds for homelessness services every year, as well as our \$6 million yearly contribution to SAAP.

Those involved in the delivery of the strategy have risen to its challenges. The evaluation finds that the strategy was implemented and managed appropriately and efficiently in a way that was particularly successful in creating a strong, maturing service system. The success of the strategy would not have been possible without the

collaboration, effort and commitment of key stakeholders, both at the service provider and departmental level.

The ACT Homelessness Committee oversaw the implementation of the strategy. It was comprised of members from the Australian government, ACT government agencies and the community. The role of community agencies, from peak bodies such as ACTCOSS, ACT Shelter, ACT Churches Council and the Youth Coalition of the ACT, to the front-line homelessness services, in the successes so far cannot be overstated.

Although this strategy has enjoyed numerous successes, we cannot afford to rest on our laurels. There is hard work ahead of us, and much of it. The evaluation of the strategy outlines for us the elements and focuses that need be considered as we take forward the work carried out so far.

In the next steps on carrying the work forward, as announced on 14 August, the Chief Minister has reconvened an affordable housing steering group. The steering group will advise government on options for an array of housing types. It will also consider the homelessness policies being developed by the commonwealth, including through the Council of Australian Government Housing Working Group, and it will examine how the ACT government can expand on or complement these.

The steering group will be chaired by the Chief Minister's Department and will include officers from the Department of Treasury and the Department of Disability, Housing and Community Services. Other agencies will be involved on specific issues as necessary. An advisory group made up of representatives from peak housing bodies, welfare organisations and social services will feed its expertise into the project.

The steering group will provide an interim report to government by February 2009, with a final report by April 2009. In tabling this report, I would like to acknowledge the work of the ACT Homelessness Committee, and I would like to thank its members for their work over the past three years. I would also like to acknowledge the contribution under Minister Hargreaves's leadership of Housing ACT to providing the post-crisis response to homelessness. Its reforms were instrumental in our struggle against homelessness.

I would also like to acknowledge the work of the Department of Disability, Housing and Community Services, with which the overall responsibility for the delivery of the strategy has sat. I also look forward to our future achievements as we address and respond to the causes and effects of homelessness as a community and build on the work of *Breaking the cycle: the ACT homelessness strategy*.

Pathways for homelessness into home ownership

Ministerial statement

MR HARGREAVES (Brindabella—Minister for Territory and Municipal Services, Minister for Housing, Minister for Multicultural Affairs) (3.48): I seek leave to make a statement relating to homelessness and to home ownership.

Leave granted.

MR HARGREAVES: I thank members opposite for their unbounded and unlimited generosity.

Mrs Burke: Unlike yours, of course.

MR HARGREAVES: Mine is unbounded and unlimited, with love. Mr Speaker, housing is one of the most important social policy challenges facing governments across Australia. It requires national leadership and a close working relationship between the commonwealth, state and territory governments.

I am delighted that the new Australian government has prioritised housing through the appointment of a dedicated Minister for Housing and has the commitment to establish a comprehensive national affordable housing agreement. This will bring together under the one agreement policy and program responsibility for homelessness, social housing and affordable housing.

In the ACT we are well advanced in developing a system that provides housing options and outcomes for people at all levels. The new national agreement will be an opportunity to further achieve housing and support continuum from homelessness to home ownership.

Mr Speaker, as a result of the work of this government, the ACT now has a housing system that is truly responsive to the changing circumstances of individuals and families, providing long-term benefits. It is a system that recognises people often have complex issues, including disadvantage and poverty, for which it is well-equipped to respond.

It is a system which acknowledges that many people have significant life events, such as family violence and breakdown, separation and divorce. Such events can have a major impact on people's housing outcomes. Unemployment, ill health or mental illness can also have a detrimental effect on people's ability to access and/or sustain housing. This is true for both the rental and home ownership markets.

The increasing cost of living and pressures facing families also highlight the need for an integrated system able to respond to people's individual circumstances. As Minister for Housing, I have been dedicated to improving housing services and implementing reforms aimed at providing a housing system that is more targeted and responsive.

It was for this reason that I convened a Housing Consumer Forum and Housing Summit in February 2006, where I sought input from public housing tenants and community stakeholders on ways to improve housing services. Many of the public and community housing reforms which have been implemented over the last two years were first raised or canvassed through this forum.

It is these forums that have led to the development of an effective service continuum, supporting people to transition from homelessness to long-term sustainable housing, including home ownership. In particular, we have been working to ensure that low to moderate income earners are able to realise their aspirations to long-term housing and home ownership through reforms to the social housing system.

A key step in achieving housing reform has been the recognition that social housing is more than just a bricks and mortar response. It is a critical human service. It must recognise and respond to the tenants and have the capacity to link people with appropriate supports that assist their economic and social well-being.

To assist this, Housing ACT has effectively developed links with the community organisations and has been particularly successful in working with the homelessness sector to support people as they transition from homelessness into public housing tenancies that they can sustain.

Many of the reforms achieved by Housing ACT have focused on positioning public housing as part of a post-crisis response. Specialist crisis services are provided by the ACT's homelessness services. Mr Speaker, you can see what interest the opposition and the Greens have in this issue, except from that of Mrs Burke, of course. I believe she does have the same interest in this as I do. I note Mr Stefaniak is on the backbench also, but I also notice that those people charged with giving an imprimatur to homelessness policy into the future are not here.

In April 2004 the government launched *Breaking the cycle—the ACT homeless strategy*. Its key policy commitment to improving responses to homelessness was just referred to by the Deputy Chief Minister when she dealt with its evaluation. Underpinning breaking the cycle was additional ACT government funding aimed specifically at addressing gaps in the existing service system and responding to priority target groups.

This funding established additional services for families, including fathers with children and couples without children, and single men, and targeted outreach services for Aboriginal and Torres Strait Islanders, young people, single men, fathers with children, and women.

The addition of these services increased the overall capacity of the ACT sector by 30 per cent and resolved some key issues about the overall quality of the ACT's homelessness response. For example, prior to the establishment of the service for couples without children, men and women regularly had to separate in order to gain access to specific services for single men and single women.

Likewise, homeless families were splitting up to access support, with men going into the ACT's only single men's refuge, while women and children primarily accessed domestic violence services. These examples clearly demonstrate a homelessness sector in which the prevailing service model governed the responses available, often to the detriment of individual and family outcomes.

It also demonstrated that homelessness agencies were operating as individual and discrete agencies, as opposed to a service system which provided a continuum of support and worked together to meet the needs of people experiencing homelessness. The new services established under the ACT homelessness strategy represent a suite of innovative and contemporary service models.

The services moved away from congregate living responses, accommodated individuals and families within their own dwelling and offered tailored, flexible

outreach support based on need, which steps down over time a client needs are resolved.

The new services demonstrated that crisis support could successfully be provided in a different way to the traditional refuge model and still achieve positive outcomes, especially for children. These strategic successes formed the basis for ongoing service and sector development work undertaken as part of the implementation of the ACT homelessness strategy.

This work, undertaken in partnership with SAP-funded community agencies, sought to consolidate the movement of SAP from being a model-based service approach, to a client-focused and responsive approach working as a system in which the availability of accommodation no longer determined the availability and nature of support available.

Considerable administrative efficiencies and increased coordination were also gained through the amalgamation of a number of crisis and medium-term services. The ACT had a number of stand-alone medium-term services which operated as individual agencies and many of these services were provided by the same agencies which also provided crisis services.

The ACT government amalgamated these services, revising the service models accordingly. Services were able to provide a mix of crisis and long-term accommodation and support services which did not require clients to exit one accommodation service and enter into another as their support requirements diminished.

A key part of an effective crisis response is having established exit points for clients that have moved beyond the initial period of crisis and require a long-term housing option. Housing ACT has worked closely with the sector to streamline and create appropriate exit points into public, community and private rental housing.

To facilitate access to crisis services and as an exit for those no longer in crisis from homelessness services, a transitional housing program was established in 2006-07. The transitional housing program uses vacant housing stock that is awaiting development or is hard to let as a stable platform in which people who have been in crisis can continue to receive support while waiting for their long-term housing option to become available. Properties are available for three to six months. This program also ensures that people who require intensive support to resolve their issues have access to crisis services, while those that have lesser support needs are able to move through the system for public or community housing.

Mr Assistant Speaker, public housing also provides stable and secure housing people can participate in and contribute positively to their community. As Minister for Housing I will continue to implement the ACT government's reform program to establish a fairer and more responsive public housing system targeted to those most in need.

Housing ACT has continued to achieve the benefits associated with the implementation of the new public rental housing assistance program—PRHAP—

which commenced on 1 October 2006. The new program encompassed changes to eligibility criteria, a tightening of the ACT residency requirements and major changes to the priority allocation system by moving to a needs-based allocation system which recognises complex needs in the assessment and allocation processes.

Changes in service delivery have improved our responsiveness to the needs of our clients and our tenants. Reforms to the public housing allocation system have resulted in significantly reduced waiting times for those most in need, and the public housing waiting list now also accurately reflects the number of people who need public housing. The process of streamlining commenced with changes to the public housing eligibility requirements and an overhaul of the priority allocation system in 2006.

These changes have reduced the waiting list to 1,112 applicants at July 2008, compared to 2,418 in June 2006 and 3,005 at 30 June 2005. Applicants in need of priority housing are being housed as at 22 July 2008 within 55 days, compared to in excess of nine months under the previous priority system. This has had a positive impact on both those in need of priority housing and on homelessness services that may have been unable to take new clients due to waiting for existing clients to be housed. The benefit has also flowed to those on the high needs and standard waiting lists in the form of greater movement from those lists.

Support to tenants has been expanded to include time on the waiting list prior to housing allocation. A triage model assists people in need through the application process. Free allocation and case conferencing assists in identifying any support agencies currently supporting applicants and may also assist in referring people to agencies that may be able to assist them immediately and/or in the future. Case conferences provide an opportunity for the applicant, Housing ACT and the support agencies to establish a cooperative working relationship aimed at a sustainable tenancy.

Work with support providers as our community partners has included involving them as members of the multi-disciplinary panel assessing applications for priority housing. This involvement increases Housing ACT's capacity to ensure that appropriate supports are in place to assist tenants with complex needs to plan for and sustain their tenancies. There is a focus on ensuring that organisations funded to provide homelessness services provide the response to crisis, while Housing ACT provides a longer-term housing option.

To increase Housing ACT's capacity to provide housing assistance to those most in need I announced further reforms in April 2007 aimed at better utilisation of housing stock. These reforms related to tenants with sustainable incomes over \$80,000 per annum and to tenants with two or more bedrooms in excess of their current requirements.

Mr Assistant Speaker, following consultation with residents, a right sizing program has been established which is encouraging and supporting people to move to properties which better meet their needs. It takes into account each person's specific circumstances, such as age, location and family and community commitments. These measures have been progressed by means of extensive public consultation in August and September 2007 to ensure the reforms are sensitive to the aspirations of tenants,

while enabling them to consider opportunities for other housing options that may better suit their changed circumstances.

Options could include moving to smaller accommodation for those in large dwellings who are still in need of assistance, or home purchase for those who have moved beyond the need for housing assistance. To support tenants to move to home ownership the sale-to-tenants scheme has been extended and will be augmented by a shared equity scheme. The shared equity scheme will allow tenants who cannot afford to buy the full value of their home to buy a percentage, while Housing ACT retains the remainder until it is also purchased by the tenant.

The changes to the provision of public housing were also introduced in specific consideration of appropriate responses to those whose housing needs have changed. Tenants with two or more spare bedrooms were advised that they may be asked to move to another Housing ACT dwelling after full consideration of their individual circumstances. Housing ACT undertook to find suitable alternatives in negotiation with the tenant and also meet relocation costs. Costs will include removalist fees and charges for reconnection of utilities.

Mr Assistant Speaker, this initiative is already having results, as can be seen by the following case study. Jane—not her real name; it could be Brenda, it could be Carol, it could be Jacqui—approached Housing ACT after hearing about the downsizing initiative at one of our tenant forums. She contacted Housing ACT to advise us she is currently living in a five-bedroom property in Woden and wanted to move to something smaller and more manageable. Jane is a 49-year-old woman who relies solely on Centrelink payments. She has care of her two grandchildren. She has been a tenant of Housing ACT in a number of properties since 1994 and she has resided in the five-bedroom property since 2005.

The housing reforms officer organised a time to meet Jane at her property to assist with filling out the transfer application and to discuss her needs. Jane advised us she had a number of medical issues, including lupus, and had recently been diagnosed with multiple sclerosis. She told the housing reforms officer that her current property was too large to maintain and that her family was only using three of the bedrooms. Jane also stated that her grandchildren were having issues at their current school and she would like a fresh start in a completely different area.

Property requirements, area preferences and supports were discussed with the client. She advised that she was willing to move to a three bedroom property in the Woden, Belconnen or Gungahlin areas as long as the property was reasonably close to a school. Jane was approved for the management transfer downsizing category for a three-bedroom accommodation. The housing reforms officer contacted a removalist and organised for some packing boxes to be delivered to Jane.

Jane was made an offer of a property in Gungahlin on 5 June 2008. The housing reforms officer met the client on site at the property. The property was in close proximity to schools and the local shopping centre, and Jane accepted the property. The housing reforms officer gave Jane contacts for the education department so that she could change her grandchildren's enrolment and organise for a removalist to contact her to move her belongings. Jane signed a new tenancy on 11 June 2008.

Jane's five bedroom property has since been offered to a family from the transfer list needing larger accommodation for their family of seven people, which includes five kids. Mr Assistant Speaker, this case study demonstrates how effectively housing assistance policy responds to changing needs.

Another example of flexible housing assistance is the provision of rental bond loans. The rental bond loan scheme can assist people on low to moderate incomes to rent suitable properties in the private sector through the provision of a loan for up to 80 per cent of the bond. The loan is repayable to Housing ACT. Rental bond loans can assist people to access housing who may have the desire and means to rent privately but who may not have the start-up costs associated. There are also people who choose not to access public housing. This initiative creates additional housing choices across the continuum of housing responses.

It is appropriate at this juncture to discuss other policy responses relating to appropriate housing. One element of this is the strengthening of the community housing sector. In April 2007 the government announced an expansion of community housing in the territory to increase the supply of affordable rental properties and dwellings in the ACT. Community housing is a small but important element of the social housing mix meeting important social needs and providing critical support to people experiencing housing stress. It provides an alternative to public housing and additional housing options in the system.

The expansion of community housing will see Community Housing Canberra become a major provider of affordable housing in the ACT. This is a not-for-profit company that operates both as a community housing asset manager as well as a provider of affordable housing.

The ACT government is providing Community Housing Canberra with an injection of equity of \$40 million through the final transfer of title of 135 properties already under CHC's control which the company will leverage to increase the amount of available affordable housing.

The ACT government will also provide CHC with land at market prices, a revolving \$50 million loan facility at government borrowing rates, \$3.2 million of capital and a \$250,000 annual capital subsidy for three years. In return, CHC will develop an additional 500 affordable dwellings over the next five years, increasing to more than 1,000 over the next 10 years. CHC will also offer a shared equity program to eligible tenants.

Implementation of the 62 initiatives contained in the government's affordable housing action plan is well advanced. The government has increased land supply to 3,400 in the 2007-08 year and mandated the delivery of house and land packages priced between \$200,000 and \$300,000.

It has also produced the own place initiative which allows eligible buyers to purchase quality built homes in Land Development Agency estates for under \$300,000 and it has provided generous concessions to help first home buyers into the market, including the home buyer concession scheme, the deferred stamp duty payment scheme as well as the first home owners grant. The government has also introduced a

land rent scheme, which attracts strong community interest. These initiatives are designed to improve the supply of affordable housing, making home ownership a possibility for more Canberrans.

The government has also increased the number of community housing places available in honouring its commitment to transition Ainslie Village from a crisis accommodation site to a community housing site. After an extensive consultation process with residents and stakeholders, the government announced a tender process in October 2005 from an existing community housing organisation to provide housing management services at Ainslie Village. Havelock Housing Association was successful in this tender process.

Mr Speaker, the ACT housing system has been reshaped providing housing options and outcomes for people at all levels. The reforms I have outlined today demonstrate the extent of the change. The ACT now has a housing system that is truly responsive to the changing circumstances of individuals and families providing long-term benefits to them and the community as a whole.

In finishing, I would like to acknowledge those who have contributed to the paradigm shift that has found expression here. I would like to thank those in the housing sector and those officers in the Department of Disability, Housing and Community Services—Sandra Lambert, Martin Hehir, Maureen Sheehan, David Matthews and many others. I would also like to thank the Deputy Chief Minister and her staff, because it has been a joint ministerial task brought to fruition.

Lastly, I would like to thank my staff, particularly Geoff Gosling and Kim Fischer, and recently Jennie Mardel, for contributing and for their assistance. I should not forget my former staff, Andrew Barr and Liz Lopa. Andrew, of course, has gone on to bigger and better things and so has Liz; and may her maternity all go well.

The Canberra community is better off now that the paradigm has changed.

Planning—infrastructure

Discussion of matter of public importance

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

Planning and delivery of infrastructure in the ACT.

MR STEFANIAK (Ginninderra) (4.12): Yesterday, the Chief Minister used some words, in relation to his suspension from the Assembly, that were rather prophetic. Those words were “embarrassed”, “chastened” and “regretful”. And well may he use those words in relation to his behaviour because I think those words could equally apply to his government’s performance in the planning and delivery of infrastructure in the ACT.

Before I go into a rather lengthy dissertation in terms of how much of the capital works has been spent and how the government, even in its promise of \$1 billion over five years, has actually scaled back its capital works budget, can I say that I think the government's failure in terms of planning and delivery of infrastructure in the ACT can really be highlighted by dealing with a number of projects. The one that really springs to mind to start with is the GDE.

The GDE, as you know, Mr Speaker, has been around for a long time. There was an Assembly committee in the nineties which looked at it. It recommended, for a four-lane road with two lanes each way, the western route. There was then a rather tortuous history dating from about 2000 until fairly recently, with the current government not liking that route. That caused a lot of delays. There were federal government concerns as well. There were court actions by the Save the Ridge people, naturally enough, as was their right. You may not agree with them but they had the right to take the matter to court, so we had further delays.

It was a project that initially was costed at about \$53 million and it has blown out to well and truly over \$100 million, and it is going to cost well and truly over \$100 million more to fix it. But at the end of the day, after all of those processes, and after finding that it had to go on the eastern route, which is where it should have gone all the way through, if it was built at all, it is clear that it should have been built with two lanes each way. For some inexplicable reason, the government built a very expensive road, costing \$130 million or more, which had one lane each way.

I remember asking the minister for transport a question several months ago—in fact, it was probably longer ago than that—about what would happen with this marvellous one-lane road if a big truck broke down on a bridge. It would be unusable, basically, for hours and hours on end. It is a lovely road for 22 hours of the day, but for one hour in the morning and one hour at night, it is a nightmare. Having just been on it at about 8.30 to 8.40, in turning right at Belconnen Way to go around Black Mountain, after about 15 minutes and having advanced about 70 metres, I managed to turn onto the off-road to Aranda. So it is an absolute nightmare.

That was a road that the government knew, or certainly should have known, would be at capacity, even before Mr Hargreaves cut the ribbon to open it. That was a road that the government, through its minister, said at the time would not be duplicated for five to 10 years. We then saw the rather unedifying spectacle of the government jumping in to try to gazump an opposition election announcement that we would do the bleeding obvious, which we intended to do when the thing first got the tick-off in about 1999—that is, build Gungahlin Drive with two lanes going south and two lanes going north. The government jumped in and made a very hurried promise in relation to that.

How much is that going to cost the ACT? What an absolute fiasco! Blind Freddy could have told you that that road should have been a four-lane road, not a two-lane road. It was painfully obvious, yet the government went ahead on that basis. I do not know how much money the government has wasted on that, not to mention time and not to mention people's frustration, especially those in Gungahlin, in terms of that much-needed facility. The fact is that we are going to have to spend another

\$100 million or more to fix up a mess that should never have happened to start with. The government has panicked in realising what a horrible blue it had caused, which was painfully obvious. It has tried, rather pathetically, to gazump an opposition announcement, and everyone saw through what the government was doing in that regard. That road has become one of the collar weights for the Chief Minister as he stands on the blocks for the election race.

There are another couple of interesting examples. There is, of course, the arboretum. I understand that it started at a cost of \$10 million and went to \$12 million. Then, of course, in the horror budget, as a result of the Costello report of 2006-07, the Chief Minister scaled it back to a cost of some \$6 million. However, at the time, the ACT was in the grip of the worst and longest drought on record, and we are still in a drought. The people of Canberra were wondering how this arboretum was going to be watered when they were on level 4 water restrictions.

Another example is the prison. The prison, at a cost of \$131 million, is, I am told, the second most expensive prison in the country. It has certainly been scaled down in size and scope, but not in dollars. No matter which way you look at it, whether it is in pure dollar terms or in terms of the scale and scope being delivered for the dollars allocated, the prison is yet another example of the Stanhope Labor government's abject incompetence when it comes to managing large-scale capital projects.

Housing infrastructure is another failure of this government. For years, it has been stashing land and only releasing it when it can get the best economic gain for its sale. It is one of the reasons for our housing crisis in Canberra in terms of both housing stock and housing affordability. The government's addiction to maximising its proceeds from land sales has meant that it has arrogantly disregarded Canberra's young people, who are despairing at their inability to achieve the great Australian dream of owning their own home. It is painfully obvious that we hoarded land at a time when there was a great demand for land in Canberra. People simply could not get it. We saw rents increase, and people had great difficulty in renting. Now, with the slowdown in the economy—in fact, with the bottom falling out of it, thanks to Mr Rudd and Co, amongst other things—we finally have the Chief Minister agreeing to release quite a significant amount of land. It is a little bit late. If he had done that two or three years ago, it may well have worked.

Of course, it just goes from the sublime to the ridiculous. Another project is the doozy of them all—the gas-fired power station and data centre. There was no consultation. People suddenly found—and this should have been blindingly obvious to anyone—that there was going to be a power station about 600 metres from a residential area in Macarthur. The government has a very short memory, because there was talk—it might have even been a furphy—of having, God forbid, a dragway at Macarthur back in 2004. That certainly got the good burghers of Macarthur up and running in a big way. The minister at the time—it might even have been Mr Hargreaves—at least had the sense to can that idea. But that should have been a little bit of a precursor to the government about actually consulting with people and talking to them if you are going to do something fairly substantial nearby. Within the space of four years, the people of Macarthur suddenly realised that there was going to be this whopping big power station about 600 metres from a residential area.

How silly can you get? There were four sites, apparently, then. There was one in the industrial area of Hume where, I must admit, we knew we would get a power station. Most people thought a power station was a great idea which would provide employment for the territory and a really good backup system—fantastic. Everyone thought it would be in Hume. The government did not pick the obvious site there. It did not even pick a site down the road, which at least was away from the residential area, because there were Indigenous artefacts there. It is interesting that it used that as an excuse for not going to that site but then, suddenly and conveniently, they were removed and that site, I understand, has now been offered for sale.

We then had the fiasco of there being no independent health impact study until the government was forced into it. Then, a few weeks later, it abandoned it. The people who were involved in that study were complaining that their expertise was not going to be used. So there has been fiasco after fiasco. Again, blind Freddy could have told you that you do not suddenly foist on people, in a suburb where there already had been a problem about four years ago, another whopping big piece of infrastructure, with no environmental impact statement until the government was forced into it.

We have now had a downscaling of the project. I am not sure what has happened to the idea regarding Williamsdale because, in a way, it makes a lot of sense. Why wasn't that announced as the site to start with? What was the problem there? Was that some sort of afterthought? It makes a fair bit of sense. There are a few farmhouses around. The gas pipeline that comes up from the Victorian coast actually goes through there and then hives off towards Hoskinstown before it goes back to the coast. So one would think that site would have a hell of a lot of merit. There is nothing much around there. There might be a few farmhouses; you might have to do a little bit of land acquisition there. I think there is the disused Williamsdale quarry in the area. Surely, you would not have the same problems you would face with what the government did. Also, there would be no need to do too much with the gas line because you are pretty well right on top of it, from what I understand. That would save costs as well.

The power station was not amongst the weights hanging around the Chief Minister's neck as he stands on those election starting blocks, but perhaps it should have been proudly hanging there, along with the GDE, as well as the bushfire and school closures. Earlier, I mentioned this year's budget and the government's building the future program—a program worth \$1 billion over five years. That is supposedly for new infrastructure projects and is in addition to the government's other capital works activities. Of most interest is the fact that the actual spend is scaled down from the very ambitious target that the government set itself for 2007-08 of \$430 million, of which less than half had been spent by the end of the third quarter. For the 2008-09 budget, it is \$250 million, or just over half of the budget for 2007-08. So despite all the trumpeting, this government has actually scaled back its capital works program. Perhaps it, too, has suddenly realised its incapacity to deliver that. The Chief Minister, in his statement heralding the building the future program, said:

Infrastructure is an essential input to almost all economic activities. For state and local governments, infrastructure is an important vehicle for delivering services to the community. Its timely provision and optimal utilisation not only increase economic efficiency, but also serve the social needs of the community.

The Chief Minister is right, of course: infrastructure is an essential input for almost all economic activities. But in order for that input to have any effectiveness at all, it has to be delivered, and it has to be delivered on time and on budget. The government, in its record on delivery, stands condemned.

That is also why the territory is not where it should be economically. When you look back at the botched major infrastructure projects, the government has blindly gone off and done things that the average man or woman in the street would just scratch their heads about. I refer again to the GDE—a project that had been there for so long. Clearly, once you decide to go ahead with it, you should do it properly. Once a route is actually selected, you should do it properly. With a growing area in Gungahlin—and we are lucky here in Canberra; we do not have a huge amount of peak hour traffic—it is painfully obvious to anyone that even a moderate amount of traffic on a one-lane road each way is going to cause some bottlenecks at peak hour, and that is exactly what we are seeing. Of course, we had the panicky attempt to get out of it. It was just like the amazing contortions we saw from the government on the gas-fired power station.

A lot of this comes down to consulting with the community. If you want to get major infrastructure projects through—you are always going to have nimbies; you never completely satisfy them—and if you want to take most of the people with you, you talk to them. The gas-fired power station is a classic case in point. If the government had done that properly and had talked to people, maybe it could have ruled out some sites pretty early in the piece, such as the obvious one at Macarthur. Maybe it could have saved itself a hell of a lot of trouble. In 2007 it could have said: “Well, we’re looking at this power station. Here’s a few sites we could put it on.” There could have been community consultation. Naturally, the obviously bad ones would be ruled out. And then you might get somewhere. We might end up with a reasonable piece of infrastructure that is built on time, and that will really benefit the people of the ACT, rather than arrogantly and arbitrarily saying, “Right, this is what we’re actually going to do,” and not engaging in any meaningful consultation.

Clearly, in terms of planning and delivery of infrastructure projects, the government has badly failed the people of the ACT. Because it is such an important area it can be a very costly failure, not just in terms of the frustration that people feel, for example, about the GDE at present, but in terms of really helping the economic advancement of the ACT. I think the government has seriously dropped the ball here. Of course, it will be judged at the election that is coming up very shortly.

MR STANHOPE (Ginninderra—Chief Minister, Treasurer, Minister for Business and Economic Development, Minister for Indigenous Affairs, Minister for the Environment, Water and Climate Change, Minister for the Arts) (4.27): I thank the member for raising this matter of very significant importance to the community. I also thank the member for providing the government with an opportunity to highlight its reforms and achievements so far, as well as its plans and commitments for the future in relation to infrastructure.

As articulated on 3 July 2008, in response to a very similar matter of public importance from the opposition, the government understands the importance of

infrastructure. The government's commitment to the delivery of high-quality services and to improving the social and economic wellbeing of the community is unparalleled since self-government. Indeed, it is fair to say, if one looks at this year's budget and our commitment for the future, that it is unparalleled probably at any time in the domestic administration of the Australian Capital Territory.

Infrastructure is an important vehicle for delivering services to the community. It is an essential input to almost all economic activities. It is for that reason that the government has placed such a large emphasis on the maintenance and provision of high-quality infrastructure to support the economy and services to the community since we came to office.

Our record on delivering infrastructure speaks for itself and eclipses that of the previous government enormously. In fact, the comparison between our record in the delivery of infrastructure and that of the previous government, the Liberal Party, could not be more stark. Before we came to office in 2001—and it is amazing how short the memory is; and Mr Stefaniak, of course, was a member of that previous government—the average annual expenditure on capital works by those opposite between 1998-99 and 2000-01 was \$76 million. It is amazing to see the shameless way in which Mr Stefaniak, a minister in that government, could stand here today and lecture this government about infrastructure capital and its delivery. In his last term in office as a cabinet minister, from 1998 to 2001, Mr Stefaniak and his colleagues delivered \$76 million a year in capital.

This year, the 2008-09 budget papers forecast—indeed, it was delivered—a level of expenditure for the financial year of \$315 million. That is four times higher than what occurred under the previous Liberal government. Just compare that: our record, on the record, achieved and delivered \$315 million. The Liberal Party's record in a single year was \$76 million. In its entire term, the Liberal Party did not deliver as much as this government has delivered in a single year. That is the comparison: we have planned and delivered at levels that those opposite simply did not and could not deliver.

The recent attacks on the government's performance regarding the planning and delivery of capital works do not stack up. As I said, one year's expenditure by this government would eclipse expenditure in a whole term by those opposite. I acknowledge that expenditure on capital works programs can sometimes be delayed. We all know that; you would have to be mad if you thought it would not be. However, that is due almost always to factors that are largely outside the control of government. Factors such as workforce availability due to the high level of construction activity which has been experienced in the ACT over recent years, weather conditions, legal proceedings, and the need to carefully schedule works to minimise disruptions and to maintain continuity of service, impact on the government's ability to deliver programs on time. Given all the factors which can influence the delivery of the program and the size of the capital works program, the government's delivery record of capital works is a significant achievement.

The government is not resting on its laurels; it is continuing to work on the capital works procurement process to streamline and improve delivery. The government has introduced an annual capital upgrade program which has assisted in the delivery of the

capital works program. Agencies have certainty of base funding allocations and are able to more effectively plan procurement activities around this considerable component of the program.

Just a few short weeks ago, I announced that the government would draw up an infrastructure plan to set out the longer term priorities facing the territory. The infrastructure plan will establish longer term priorities for most of the coming decade, including major investments that could be achieved in partnership with the commonwealth once Infrastructure Australia had investigated and determined projects of national significance.

The drawing up of a longer term infrastructure plan will help future governments to properly schedule works according to their priority and according to how they fit in with other major private and public works. The development of the infrastructure plan will build on and complement our billion-dollar investment in infrastructure announced in the 2008-09 budget. Building the future sets out the most urgent infrastructure priorities which the government believes deserve investment over the coming five years. The infrastructure plan will be updated annually to allow it to remain flexible and responsive to emerging priorities.

My government's ability to plan and deliver infrastructure projects speaks for itself: record planning for capital works and record spending on capital works. Why those opposite, whose record on infrastructure planning and delivery was nothing short of a disaster, would raise this topic of infrastructure continues to amaze me. Canberrans will not quickly forget the Bruce Stadium fiasco—the blow-outs, the deception, the freshly-painted green grass. The people of Canberra remember that that is how the Liberals plan and deliver infrastructure. When the people of Canberra think of “infrastructure” and “Liberal” in the same sentence, they immediately think of Bruce Stadium.

Mr Gentleman: They can feel the power now!

MR STANHOPE: That is right. When they think of Bruce Stadium, they immediately think “fiasco”. It is one of those little word tests: when this words is said, what do you think? When you test people with the word “Liberal”, they think “fiasco”. “Liberal Party”—“Bruce Stadium”. “Power—they think “Liberal fiasco”. “Jujitsu”—they think “Liberal fiasco”. “Impulse Airlines”—they think “Liberal fiasco”. And so it goes on. It is quite amazing how many words we can use in Canberra in those word game competitions to which the automatic and immediate response is “Liberal fiasco”. “Hospital implosion”—“Liberal fiasco”; “Bruce Stadium”—“Liberal fiasco”; “Impulse Airlines”—“Liberal fiasco”. And so it goes on: “Williamsdale quarry”—“Liberal fiasco” et cetera. I always like these debates and motions on infrastructure because of the imagery they always manage to create. We know about the Liberal Party and capital. We know about the Liberal Party's capacity to plan and deliver.

Looking to the future, this government is continuing to plan and deliver an unprecedented investment in the territory's infrastructure. The \$1 billion building the future program is over and above the normal annual capital works program. It is not a substitution; it is in addition to the normal program. This is part of the government's strategy to increase the productive capacity of the economy, ensure that infrastructure

is in place to meet future needs, reduce potential future costs and support the growth of the city.

Along with the normal annual capital works program, the government has committed around \$1.5 billion to infrastructure in the 2008-09 budget. The program reflects priorities for the community and long-term investments in infrastructure that prepare the territory for the future.

Today's matter of public importance provides the opportunity to again highlight key aspects of the building the future program—a program which has largely been funded by the strong surpluses that my government has delivered since it came to office. The higher than anticipated revenue growth over the last six budgets, coupled with prudent and necessary structural reforms to our expenditure, has allowed the territory to build a strong balance sheet that is the envy of other jurisdictions. This strong balance sheet position has allowed the government to deliver its five-year \$1 billion building the future program without the need for any borrowings.

The government has wisely invested heavily in high-priority services and the territory's infrastructure to expand the productive capacity of the economy, reduce future costs and support growth of the city. The government has invested wisely to establish a health system to serve the needs of the next decade, improve the transport system, meet the challenges of climate change, improve urban amenities, invest in public service infrastructure and provide for the growth of the city and its economy. These areas of infrastructure investment will provide direct benefits to Canberrans.

The government has allocated \$300 million from the building the future program as the first tranche of investment to set up a health system for the next decade and beyond. We anticipate that that particular major investment in health will, before we are finished, involve investment of at least \$1 billion over the next 10 years in health infrastructure.

Specific projects include a women's and children's hospital and a suite of mental health facilities, including a young persons unit, an adult acute in-patient unit, a secure adult unit, a mental health assessment unit, a surgical assessment and planning unit, a new neurosurgery operating theatre, an intensive-care high-dependency unit at Calvary Hospital, and a new community health centre in Gungahlin. Provision is also being made for planning, feasibility and forward design studies for the reconfiguration and the redevelopment of the health facilities in both hospitals and the community.

These are significant investments that will benefit many of us at some stage in our lives. These are investments to meet the health needs of the next decade and beyond and are structured, as a result of our health planning, to ensure we have that capacity to meet what we know will be a burgeoning surge or spike in demand as a result of the ageing of the baby boomers.

Contrast that planning for the future, that commitment of funds—\$300 million in a first tranche, \$1 billion over 10 years—with what we inherited: the closed beds, the 114 beds that the Liberal Party took out of the system. Contrast our plan, our vision for and our commitment to the healthcare needs of the people of Canberra by providing the necessary infrastructure to that of the Liberals. In their last term in

government, they closed 114 beds in our public hospital system. One of their election commitments—and I find it quite ironic that, in their last term in office, having closed 114 beds—

Mr Gentleman: “We promise to put them back”!

MR STANHOPE: They promise they are going to put them back. It is quite an amazing promise: “We took them out last time; we’ll forget about that.” This government has replaced them, plus some. The Liberal Party, without blushing, through their deputy leader, at a time when I think he was the opposition spokesperson on health, have committed to replacing those 100 beds at a cost of \$63 million. I am not sure how he is going to pay for them. But it is one of the great ironies of this campaign that, having left us with a deficit of 114 beds as a result of their time in office, they now promise blithely, innocently and without embarrassment, it seems, to replace them—although without saying, of course, how they are going to pay for those 100 acute care beds at \$63 million a year, which they have promised, and which would wipe out the surplus, and still meet all the other promises that they are making willy-nilly now. They are either promises that they have absolutely no intention of keeping because they know they cannot pay for them or they will have to drop them.

Let us hope that at some stage they are honest about this. Will they be honest enough and have the courage to say, “Well, we did promise 100 acute care beds and people within the community have probably relied on that, but that’s not a promise we intend to keep because it simply can’t be kept”? Of course, they do not say at any stage in their form, position or promise on the 100 acute care beds at \$63 million, where they would be housed and what infrastructure they would be prepared to provide. They do not actually provide any capital, in terms of infrastructure and promises made.

It is an appropriate time to consider this: they have a promise on the books for 100 additional acute care beds at \$63 million in recurrent costs, but they do not actually say where they would put them—which structures, which capital, what investment and what infrastructure they would fund. Of course, in their promises in relation to that, they have at no stage costed the infrastructure they would provide for the housing of those 100 beds.

As we consider, in the context of this debate, the Liberal Party’s attitude to capital, we do have to ask how they would ever pay for anything. It is quite interesting that the promises they have made today, including for the GP clinics, in relation to proposed additional expenditure just for the coming financial year, involved \$61 million; the year after \$132 million; by 2010-11 \$156 million; and then for 2011-12 \$168 million. That, of course, does not take into account the revenue that they propose to forgo. They propose to forgo, in their promises on stamp duty cuts, utility tax cuts and water abstraction charge cuts, to forgo \$97 million next year, followed by a massive \$218 million by 2009-10.

That is what the Liberals have promised. They are on the record as promising that they will forgo, in 2009-10, \$218 million in revenue, followed the year after by \$244 million, and followed the year after that by \$259 million. These are Treasury costings on promises made on the record by members of the Liberal Party in the term

of this Assembly. These are promises on the record that have been costed by Treasury. They are the Treasury costings of Liberal Party promises to date. It makes absolutely fascinating reading. The net operating balance computed by Treasury, having taken into account the proposed additional expenditure, the policy announcements, the election commitments and the proposed loss in revenue, is a deficit in 2008-09 of \$12 million, a deficit in 2009-10 of \$147 million, a deficit in 2010-11 of \$191 million, and a deficit in 2011-12 of \$226 million.

That is the bottom line of the Liberal Party's election commitments to date. And that does not take into account any infrastructure. They are just the recurrent hits without taking into account the massive infrastructure promises that they have made in relation to the GDE, the Tennent Dam et cetera. So this opposition cannot ever talk about infrastructure with any credibility in the face of the reckless promises they have made.

MR PRATT (Brindabella) (4.43): I welcome the opportunity to discuss this important subject today, this MPI on planning and the delivery of infrastructure in the ACT. I thank Mr Stefaniak for having brought it on.

Let me immediately tackle the point made by the Chief Minister about the delivery of health infrastructure. Again we see the Chief Minister continuing to mislead the community about the Liberals' advertisements on our new policy on GP clinics. Chief Minister, from the first minute to now the position has not changed. The position has been consistent. We will deliver GP clinics and there will be bulk-billing. I am proud to say it. That has not changed. The government position is the propagation of a continual lie. It is the sort of propaganda that we see the Chief Minister trotting out because he fears that policy. He knows that policy is going to fill a gap which has been created after years of mismanagement by his government.

Let me get back to the other infrastructure issues. The lack of vision displayed by this government is bad news for Canberra residents. We only need to take a two-minute stroll around town—which is still in a deplorable condition, by the way—to see a city without the necessary infrastructure to adequately support a growing population. It normally takes decades of bad planning to achieve the kinds of mediocre outcomes that we have today, yet Messrs Stanhope, Barr, Corbell and all have managed to implement their short-sighted policies and produce a bad result within a space of five years. That is a gold medal performance—only five years required to make a mess of the place.

Let us look at a number of these examples. The Gungahlin Drive extension, the GDE, is a case in point in their ongoing competition with state Labor colleagues in their respective bids to design the worst city in Australia. Another gold medal, passion fingers achievement. The GDE was always meant to be a four-lane road. In fact, by the government's own admission in 2003, had they decided to build the entire four-lane road that year, the cost would have been \$120 million in 2003, real dollar terms. That is—yes, that is right—the exact amount the half-sized road ended up costing the taxpayer. That is wonderful delivery of infrastructure!

This government cannot be trusted to invest in the future infrastructure of this city and devise and implement an appropriate planning strategy consistent with the needs of a

growing and ageing population. There is the “live in Canberra” irony. While this government are busy flying around the world promoting Canberra and trying hard to attract people to live and work in Canberra, they have forgotten to invest in and improve the city that they are trying to grow. I wonder if they put school closures in their overseas brochures or if they talk up their poor public transport system, the second worst in Australia; the ageing and increasingly clogged road network; or their poor management of the taxi industry. Our new arrivals will be stuck at the airport. They will not be able to find a cab. If our new arrivals do find a cab, how will they be able to afford the cab fare, when Mr Stanhope has failed to address the issue of affordable housing in the city? Our new arrivals will be catching a cab to Queanbeyan because they will not be able to afford to live in Canberra.

This is the government that have a plan to close schools but no plan on how to efficiently move more students to fewer schools. Again, we see that they lied to the community before the 2004 election about school closures. That is infrastructure planning; that is ramming it beneath the radar.

That brings me to the next point: the power station and the data centre fiascos. We on this side of politics like catchphrases such as “diversifying our economic base”, “economic growth” and “increasing private sector jobs”. Indeed, our party is the champion of these causes. In fact, we are businesses’ best friend in Australia. However—unlike your mob, Chief Minister—we are also particularly fond of the concepts of community consultation, community engagement, social impact, environmental impact and the idea that planning in our territory can be done according to principles of sustainable development. One could be excused for thinking that this principle would cover developments that could potentially compromise the health and wellbeing of the community. We all know which project I am referring to now, don’t we? That is right; I refer to the project—much criticised for the flawed process followed by the government, in which they have made a humungous backflip—whereby the government led a transnational consortium up the garden path, giving blind and implicit support to build a 210-megawatt power station of 21 hectares in people’s backyards.

The government, through their poor management, managed to lose a billion dollars—and that is off the plan, I might add—to the ACT economy, for no other reason than their own incompetence to deliver significant projects to the ACT and their inability to appropriately plan for the future of our great city. This is a great city in the hands of an incompetent government. We see those passion fingers everywhere, destroying all the opportunities that our community deserves to enjoy and exercise.

On the matter of the humungous backflip, every Canberran and their dog told the government months ago that nothing less than a full and independent EIS would have to be submitted with the development application—the full application and even the scaled-down application. Yet Chairman Jon and Minister Barr have crowed all day about the virtue of the so-called statutory processes. They have even dared to suggest that we on this side are hell-bent on circumventing this statutory process. We are not; we respect the process and we will chase it right down, all the way through. Their own argument is absolutely flawed. If they think that they can hide behind a statutory process to disguise the fact that they sought to ram a project through against the community’s wishes and interests, it would suggest that the process is inherently deficient with regard to safeguards for the community.

Let us have a look at the scaled-down project—another case of lousy development and infrastructure delivery. The government would have been better served to have relocated the data centre and move it to another appropriate place—and many sites exist. Whilst we respect the process, we will now observe the process and we are ready to help the government to expedite the process, it would have been far better if, in terms of win-win-win, they had relocated the issue. But there we are; now we are going to see where this goes to.

On the 6 July briefing to the community by the health impact steering group, we heard the steering group admitting that the flawed ActewAGL plume study was going to be the only model that they were going to be focusing on. What sort of planning is this? What sort of standards does this government require? We then see the sacking of the HIA steering group because they perhaps questioned the fact that the plume study was far from adequate. When we question Mr Barr in this place—the planning minister, the minister responsible for delivering infrastructure—we see him avoiding the issue as to what model will replace the plume study.

We also hear the proponents talking about walking away. It will be very interesting. This government—having led the proponents up the garden path, having stuck a stick in a hornets nest and got the entire community offside—may well now lose a valuable project. We may not only lose the power station but also see the loss of the data centre project because of their incompetence—their incompetence, in leading the proponents up the garden path.

In this place we have often talked about the lack of vision in the network 08 transport service. We talk about the lack of vision in relation to public transport in general. This is also the government that have been talking down light rail for their entire time in government. I remember that way back in 2002 Minister Corbell sought to refuse the Assembly's involvement, and in turn the community's involvement, in the terms of reference for a light rail feasibility study. Thank goodness for minority government. Those were the days, weren't they, Mr Speaker?

The government are just waiting for their comrades on the hill to bankroll major infrastructure projects in this town. They have not got the guts, the foresight or the wherewithal to commit dollars where dollars ought to be committed—to underwrite projects for the delivery of infrastructure which this city badly needs.

This is a government which has wasted many opportunities. This is a government which lacks vision. This is a government which lacks creativity. This is a government which has wasted so much funding that it cannot be relied upon to spend money properly. It cannot be relied upon to deliver infrastructure. This is a government which has failed the ACT.

MR GENTLEMAN (Brindabella) (4.53): The planning and delivery of infrastructure is a very important function of government. The need to maintain and deliver infrastructure is about service delivery to the community. It is about economic activity; it is about maximising our use of existing infrastructure. I thank the member for bringing forward this matter, which is of significant importance to the community and to this government.

I start by pointing out that a necessity for the provision of infrastructure is a strong financial position. The opposition has criticised the government and questioned what we have done with the surpluses that have been generated since we came to office. The answer is simple: the strong surpluses that the government has delivered as a result of good economic management are what have allowed us to invest so heavily in improving the quality of infrastructure and services for the community.

Our record on the planning and delivery of infrastructure is something of which we are proud. We are proud of the way we have managed the territory's finances and we are proud of what this has enabled us to deliver—record expenditure on services and capital works. It is a record of doubling the health expenditure. It is a record of lifting the mental health expenditure from its lowest per capita in the country to one of the highest. It is a record of funding disability services and child protection services properly.

Let us look at the figures again. The ACT government is committed to creating a health system that is ready for the future. It has allocated \$300 million as the first stage of a \$1 billion upgrade in health infrastructure. A women's and children's hospital at the Canberra Hospital—\$90 million. An adult mental health acute in-patient unit—\$23.6 million. New community health centres at Gungahlin, \$18 million—and one down at Tuggeranong. Secure adult mental health in-patient unit—\$11.2 million. A 16-bed ICU and CCU facility at Calvary—\$9.4 million. Digital mammography—\$5.7 million. A neurosurgery suite at TCH—\$5.5 million. Redevelopment of community health centres—\$5 million. A 16-bed surgical assessment and planning unit—\$4.1 million. Twenty-four additional beds at TCH—\$2.4 million. A mental health assessment unit—\$2 million. A skills development centre—\$1.3 million. A mental health young persons unit—\$800,000. Provision of phase 1 of the clinical services redevelopment—\$57 million. Provision for project definition planning—\$63.8 million in health services.

It is also a record of strong economic growth, the lowest level of unemployment, high interstate migration and a high level of economic activity, in summary.

Infrastructure investment will continue to play a significant part in our strong economic performance. The Chief Minister has highlighted this government's record on infrastructure planning and delivery. Canberrans are used to and expect high-quality infrastructure. The territory has a large and varied asset base, mainly comprising roads, bridges, stormwater infrastructure, public housing and school and health facilities.

In 1989, when self-government commenced in the ACT, the territory inherited a large stock of this high-quality infrastructure. The government places a heavy emphasis on the importance of maintaining our existing infrastructure and delivering new, quality infrastructure in a timely manner. The government has carefully planned for and supported the growth of the city by investing in our physical asset base.

The examples of this commitment by the government are endless. I am pleased to reiterate a few now. The Gungahlin Drive extension has been completed, along with other road connections, providing improved access from Gungahlin and the new

northern developments to other suburbs of Canberra. A staged duplication of the GDE has already commenced. This demonstrates the government's responsiveness to community feedback and its responsible fiscal management.

There is the construction of a \$9.75 million specialised unit for elderly patients at Calvary Hospital, including a 20-bed psycho-geriatric unit; the redevelopment of the paediatric area of the emergency department of the Canberra Hospital to make it more child friendly; the Canberra Glassworks in Kingston, which is now up and running, providing a premier arts and tourist facility; the implementation of a school renewal program, with a funding injection of \$90 million for school upgrades and \$20 million for state-of-the-art information technology services and equipment; \$45 million for an advanced primary to year 10 school at west Belconnen; and \$54 million for the new preschool to year 10 school in Tuggeranong. There is the establishment of the Gungahlin and Tuggeranong child and family centres. A new correctional facility and youth justice centre have been constructed and will operate according to human rights principles.

A significant capital works program supports the government's land supply program and affordable housing action plan. Works include roads, stormwater, ponds, water supply, ovals, parks and other civil works packages that deliver our new housing estates to the community. The government's record on planning and delivery of capital works projects is outstanding. This government is not content to sit back, rest on its laurels and simply congratulate itself on a job well done in the delivery of capital works programs the size of which is unprecedented in the ACT's history of self-government.

The government is working closely with the commonwealth government, through Infrastructure Australia, in an effort to secure commonwealth assistance in financing a number of territory infrastructure priorities. The ACT has recently made a submission to the Infrastructure Australia group seeking an allocation of funding from the \$20 billion building Australia fund for a light rail system for Canberra, a very fast train linking Canberra and two or possibly three other eastern capitals; a major solar power station for the ACT; and construction of the Majura Parkway.

In the area of improving water security, the ACT government has listed two possible projects for "building Australia" funding: the massive enlargement of the Cotter Dam from four gigalitres to 78 gigalitres and the planned Murrumbidgee to Googong project under which water would be pumped from the Murrumbidgee River for storage in the Googong Dam. The government has asked for consideration to be given to funding for a backup power supply for the ACT, which would deliver greater security for energy supply, and the construction of a high-pressure trunk gas main. These projects not only have benefits for the ACT but also have economic benefits for the wider community and the economy in the region.

We are also planning for the longer term, with the recent announcement of the development of the infrastructure plan, which will look more closely at our infrastructure needs for the future. As part of its ongoing commitment to continually improving outcomes for the people of Canberra, this government has initiated a review of the internal procurement processes. This review is aimed at ensuring that we have the most efficient and effective framework possible for the delivery of capital works to the territory.

Planning for the delivery of the 2008-09 capital works program is already well underway. The government, through Procurement Solutions, is actively engaging industry and seeking to form partnerships and synergies with the private sector to coordinate the engagement of capital works providers to deliver this year's program. The government has approached its capital works program in a planned and strategic manner. This government has a proven track record in delivery, with record expenditure and record commitments.

It is hard to reconcile this approach with the approach adopted by the previous government. Where was the previous government's infrastructure plan? Nowhere. We have all heard the opposition's unfunded promises to create an infrastructure commissioner, but what did they actually do when they were in government? What did they invest in? Where were the results of their efforts? It was a Liberal fiasco.

Bruce Stadium was a shambles from the start, with the project not properly scoped or funded. No-one will ever forget painting the grass green at Bruce—a Liberal fiasco. Their procurement process, budget blow-outs and an illegal overnight loan were also a long Liberal fiasco. There are many more examples of the previous government's incompetence with capital works delivery. There was the hangar for the airline going out of business and the futsal slab—Liberal fiascos. It is clear that the Liberal government's approach to infrastructure was nothing but ad hoc. They demonstrated no vision for the city, no commitment to the city and its suburbs, no idea about how to support the growth of the city and its families and no commitment to make the hard decisions that are necessary to fund much-needed infrastructure.

There is no comparison between this government's proven track record in infrastructure planning and the delivery and appalling track record of the previous Liberal government—a fiasco. This government is committed to providing infrastructure for today and planning and delivering for the future. We are, and will continue to be, committed to providing quality services for all Canberrans.

MR SESELJA (Molonglo—Leader of the Opposition) (5.03): It is difficult to know where to start on this issue but I might start with some of Mr Gentleman's comments in relation to the delivery of infrastructure. It did sound a bit like some of those Labor Party ads we have been hearing recently about the Labor Party's record in office. I never quite know which ones I am hearing—whether I am hearing the government funded ones or the poker machine funded ones. But either way we have been hearing about the government's wonderful record on infrastructure and on all sorts of issues.

I was struck by the quality of some of those Labor Party ads. Essentially the ads were saying: "Look, we have been a wonderful government. The real problem is that people do not appreciate how good a government they have." That is the problem here. It is that we simply do not appreciate what a wonderful government we have been blessed with here in the territory—that the Stanhope government have been sensational but the problem is that the people have not heard about them: "If the people could just hear about the wonderful riches and treasures that have been bestowed upon them by this government, they would come flocking back to the Labor Party and overwhelmingly back them for another term of majority government, but that nasty opposition has stopped them from getting their message out." Those ads are

really high-quality ads. The Labor Party should get some more of that poker machine money and fund some more ads, because they are wonderful ads.

Mr Gentleman: On a point of order, Mr Deputy Speaker: the Labor Party has not run any ads.

MR DEPUTY SPEAKER: What is the point of order?

MR SESELJA: I do not think that there is a point of order, Mr Deputy Speaker. As usual, there is no point of order.

MR DEPUTY SPEAKER: Okay.

MR SESELJA: I think they actually have. If the Labor Party did not run those ads, that would be a fascinating point. I hope taxpayers did not have to fund that. It was clearly a party political ad that I heard on the radio. Mr Gentlemen's interjection is an interesting one. We will look into that—as to whether government funding was used for those ads. That is what Mr Gentleman seems to be suggesting to us—that the Labor Party has not run any ads.

But we did hear those ads. They were telling us what a wonderful job they have been doing, and we have been hearing more of it today—about what a sensational job they are doing. It is a fantastic, quality way to go. If they could only tell the people a bit more about how good they are and if the opposition would just get out of the way of their message delivery, everything would be all right!

It is worth looking at the record of this government. Once again, Mr Gentleman referred to their great plans. Many of their great plans involve begging the commonwealth for money. Their light rail plan is about the commonwealth coming in and building a light rail system for Canberra. Their dam plan now seems to be tied to commonwealth funding—which is interesting because I did not think that that was the case. We have also heard other plans that they have put forward in other areas which require commonwealth funding, like the \$100,000-a-year teacher salary plan that Mr Barr has put out there.

These are plans which they have no intention of delivering on or ability to deliver on. And the costings for these apparent plans do mount up. Take \$100,000 a year for teachers. I imagine that will be quite a recurrent hit on the ACT budget. The light rail plan is an interesting one, isn't it? They refuse to even commit money for a feasibility study for light rail, yet they are asking the commonwealth to come in and fund it. They will not even do the feasibility and figure out whether it would work, whether it would make sound financial sense and whether it could be delivered, but they are prepared for the commonwealth to come in and fund it. There is a schizophrenic attitude to light rail on the part of the ACT Labor Party. They are not committed to it.

We saw their fairly embarrassing announcement when it came to transport infrastructure, didn't we—the comprehensive transport plan that was about getting a few more cyclists on buses? I think that was the main part of the plan. There was nothing in that plan—nothing of vision, nothing of substance. All we see now is this. We again hear Mr Gentleman saying that they are going to copy some of our plans. They have announced an infrastructure plan. Fantastic! Just a few months late!

They have been copying a lot of things from us in recent weeks and months, but this one is the infrastructure plan. We announced it back in April, I think. I think that was when we announced “infrastructure Canberra”. Infrastructure Canberra, it must be said, is not a complete copy. What they have come out with is a poor imitation of what we have announced. They have come out with an infrastructure plan; that was part of “infrastructure Canberra”.

I might take Mr Gentleman and Mr Stanhope through some of that. Or do we refer to the Chief Minister as “Jon” now? I am not quite sure; I will refer to him as Mr Stanhope. We do have an infrastructure Canberra plan and it is a good plan. It has been interesting to see the silence on the issue from the government. We have seen hysteria on other policy announcements. We saw some hysteria yesterday. It is good to have the Chief Minister back in the chamber.

We did see some hysteria in relation to some of our announcements, but there was no hysteria—in fact, there was very little comment—on infrastructure Canberra. I do not know whether that means that they like it. They certainly copied part of it. The other parts are about an infrastructure commissioner. This would be an Australian first. Along with the infrastructure plan, this would gear the ACT towards the future in a genuine way. It would encourage governments and it would keep governments accountable—to look beyond the electoral cycle. Haven’t we seen a bit of that from this government? Haven’t we seen the short-term thinking when it comes to infrastructure delivery?

Mr Stefaniak outlined it well in his speech. On the GDE, we have seen short-term thinking from this government. This idea that a one-lane road was ever going to be adequate for the growing population of Gungahlin and Belconnen was a joke. We always knew that this would need to be duplicated and we now see the roadworks again. For the people of Gungahlin and the people of Belconnen who use this road, their gift from Jon Stanhope and the Labor Party is more delays. Under this government, I think the plan is to do it within five years. So it is another five years of delays under Stanhope Labor should they be re-elected—five years of delays.

This is a result of short-term thinking on infrastructure. They did not plan for the future; they did not take into account growing needs. It must be said that the infrastructure commissioner, as good a plan as it is, would not stop stupid decisions by governments. It would not. You can go only so far with advice, can’t you? I am sure that there were public servants giving advice to the government that they needed a two-lane road, but this government was determined to go ahead with its one-lane each way Gungahlin Drive extension.

The infrastructure commissioner can encourage a good government, keep a good government accountable for its actions and encourage it to look long term. That is why there would be an infrastructure plan. We are very flattered—we are extremely flattered—that the government has decided to copy the infrastructure plan. I think it even copied the board that would go with it to back it up—the industry and community representative board. I heard similar things coming out from the Labor Party on that issue.

It is nice that they copied our GDE promise; it is nice that they copied part of our infrastructure plan. I would encourage them to go the whole way and copy the whole policy: it is a good policy, it is the right policy and it is the policy that will take us out of some of the short-term thinking that has led not only to the debacle that is the GDE but to the power station. You have touched on that, Mr Deputy Speaker. We have also seen the issue around airport roads. Only now are we slowly starting to see some work occur on that, after years in which we could see this problem coming—we could see this bottleneck for people along that eastern corridor of Canberra. This government is now doing what is necessary to finally get going on that.

That is the kind of short-term thinking we have seen. We saw the short-term thinking on the dam, didn't we? We saw the short-term thinking: "No, we won't need a dam for 20 years, if ever." I think that was the Chief Minister's position in 2006: "We won't need it—unless it doesn't rain for a few months and then, jeez, we'll need it." That is how long term the thinking was. The plan was so sound that having a few months when it did not rain much meant that "20 years or never" went to "we need one soon". It was always going to be needed. This government could not get it done. We called for them to do it; we had it as our policy. They have finally said that they will build a bigger dam; they have finally said that. But in 2006 they thought that we would never need one; Mr Stanhope said that we would never need one.

This government has failed on infrastructure. It has failed in the delivery; it has failed in the management. It will stand condemned on its record on infrastructure development in the ACT.

MR DEPUTY SPEAKER: The time for this discussion has expired.

Legal Affairs—Standing Committee Statement by chair

MR STEFANIAK (Ginninderra): Pursuant to standing order 246A I wish to make a statement on behalf of the Standing Committee on Legal Affairs performing the duties of a scrutiny of bills and subordinate legislation committee.

In relation to the Road Transport (Third-Party Insurance) Amendment Bill 2008, which amends the Road Transport (Third-Party Insurance) Act 2008 with reference to the time for giving notice of a claim to the nominal defendant, the committee has examined the bill and offers no comment on it.

Standing orders—suspension

Motion (by **Mr Stanhope**) agreed to, with the concurrence of an absolute majority:

That so much of the standing orders be suspended as would prevent order of the day No 2, private members' business, relating to the Road Transport (Third-Party Insurance) Amendment Bill 2008, being called on forthwith.

Road Transport (Third-Party Insurance) Amendment Bill 2008

Debate resumed from 20 August 2008, on motion by **Mr Stefaniak**:

That this bill be agreed to in principle.

MR STANHOPE (Ginninderra—Chief Minister, Treasurer, Minister for Business and Economic Development, Minister for Indigenous Affairs, Minister for the Environment, Water and Climate Change, Minister for the Arts) (5.15): Have you introduced this bill, Mr Stefaniak?

Mr Stefaniak: I introduced it yesterday.

MR STANHOPE: I beg your pardon, Mr Deputy Speaker. I must say that I had missed the fact that Mr Stefaniak actually had presented the bill. Mr Stefaniak and I have cooperated on a number of matters in the past and this is a similar occasion. I find myself in partial agreement with Mr Stefaniak today with respect to the delay in commencement of the Road Transport (Third-Party Insurance) Act, and I am pleased to advise the Assembly that the second of Mr Stefaniak's concerns relating to the nominal defendant are being dealt with by the Treasury which, in our opinion, obviates the need for Mr Stefaniak's amendment at this time.

Accordingly, Mr Deputy Speaker, I will move an amendment to Mr Stefaniak's Road Transport (Third-Party Insurance) Amendment Bill which will amend clause 4 of Mr Stefaniak's bill to substitute the words "1 October 2008" for "1 March 2009" currently appearing. The government will oppose clause 5 of Mr Stefaniak's bill.

Mr Deputy Speaker, let me reiterate to the Assembly the record of the government in matters of law reform, particularly our compassion for and commitment to the rights of ACT citizens. My government has led the country in the protection of claimants' rights since it was first elected. The government has provided claimants with the most comprehensive protection of their rights to seek personal injury redress in the face of derision and threats from the insurance industry and others during the insurance crisis.

The Civil Law (Wrongs) Act 2002 was and remains the most humane version of tort reform adopted by any jurisdiction in Australia. We have never embraced easy solutions such as injury thresholds, damages caps or similar restrictions on access to justice. The Human Rights Act 2004 and recent amendments to it represent the most comprehensive set of individual rights protection in the nation. The new CTP scheme maintains those principles. There are no thresholds or caps. However, it is a compulsory, statutory compensation scheme and not the unfettered gateway to the common law that the previous scheme was.

A modern fault-based CTP scheme must be regulated prudently and managed efficiently. Accordingly, the rights of motor vehicle accident victims to better health outcomes are paramount. As I have said publicly on a number of occasions, the new CTP scheme is designed to achieve three main aims: choice of insurer by ACT citizens, improved health outcomes for motor accident victims and lower costs through greater scheme efficiency. These aims will be assisted by implementing procedural and regulatory changes provided in the principal act and the road transport (third party insurance) regulation 2008 that were finalised earlier this week.

Mr Deputy Speaker, we could go on all day about the need for lawyers to provide better services to their clients and how this might be achieved. The government could simply have stood fast and let the CTP scheme commence as planned. However, the departments advised me that they gave undertakings to the Australian Lawyers Alliance and other relevant members of the profession that they would provide for regulation in advance of the scheme's commencement and the government will stand by those undertakings. Departmental officers stand ready to discuss the regulations over the next five weeks. Accordingly, copies of the regulations will today be provided to the ACT legal profession, to NRMA Insurance and to prospective entrant insurers.

Mr Stefaniak has made much of the need for the regulation to be made available to the legal profession to give them time to meet their obligations to their clients under the new scheme. I can say, however, that the only relevant part of the regulation for local lawyers is part 6, 10 regulations pertaining to claims. The provision of the regulations needed to mirror their Queensland counterparts and the local profession was advised two years ago that the government intended to enact, and duly did enact, the majority of the Queensland claims provisions.

This has not jumped at the legal profession in the ACT out of the blue but there is a need for 2008 levels of accountability in relation to a modern compulsory statutory insurance scheme, whereas they had previously enjoyed the benefits of a 1948 law, virtually zero cost constraints and a monopoly insurance provider.

There were, and we acknowledge this, delays in producing the regulation. Three areas spring to mind and I will elaborate on them briefly for members. They represent two themes: protection of injured victims' rights, small claims and ensuring reduced barriers to entry. The first category was the innovation that provides the first \$5,000 of medical expenses to motor accident victims on a no-fault basis. No regulations existed in Australia on which Treasury could draw. The regulations had to be drafted from scratch.

Additional to that were the unique provisions to protect small claimants who decided to sue and not to settle their claims. The regulation needed to provide proper uplift fee incentives for lawyers whose clients are faced with low-ball settlement offers from insurers that might seek to take advantage of the scheme. These are unique provisions and there was considerable difficulty settling them.

The second category involved considerable additional work to ensure that insurer claims information requirements conformed primarily to the Queensland Motor Accident Insurance Commission's online claims data and management system. Queensland and New South Wales share the base operating system for claims data and management. Queensland insurers can access the system over the internet. The ACT government wishes to provide the same level of access to insurers who choose to do business here. The savings to ACT consumers will be considerable.

Mr Deputy Speaker, the government believes that extending the time for implementation of the scheme beyond the shortest practical time is not appropriate. Firstly, the sooner the legislation is effective, the sooner the provisions supporting

improved health outcomes come into effect. Secondly, it would send the wrong message to insurers. Insurers have expressed great interest in coming to the ACT market since the principal act was passed. Discussions are at an advanced stage, particularly around establishing various industry implementation committees. To delay the commencement of the act beyond the time I have proposed would cause insurers to rethink their commitment to both the time line and in-principle participation.

Finally, if the scheme is delayed significantly it is quite probable that NRMA would seek to revisit its premiums. Presently the ACT is the only jurisdiction where premiums have fallen in the past financial year. Insurers do want to enter this market and to compete. They see certainty and a clear cost management pathway where before they saw 60-year-old law and no clear indication of cost management or controls.

Turning to Mr Stefaniak's clause 5 amendment, as I indicated, the government opposes that amendment. It opposes the amendment not because it is unmindful of the issue Mr Stefaniak raises, but because it already has a strategy for dealing with it. The government received representations from lawyers about section 86 (2) of the act on the basis that delays in police reports might cause clients to lose the right to sue the nominal defendant. The government has been assured that police accident reports will be timely and provided guidance to the profession around that issue.

The department has also offered to recommend necessary amendments if the reports are not timely and the schedule proposed will not prejudice any nominal defendant claim under the new scheme. I understand the issue that Mr Stefaniak seeks to address. We do not believe it is an issue. We have sought specific assurances in relation to the issue that Mr Stefaniak raises. However, I will make that clear commitment that we will monitor this aspect of the legislation and if the sorts of concerns that Mr Stefaniak has raised come to pass we will not hesitate to respond to those. But our position on the basis of assurances we have is that there is not an issue.

There are, for instance, at present only 80 outstanding CTP claims against the nominal defendant in the ACT—just 80. Some of them date back almost as far as the establishment of self-government in the territory. There are few annual claims made against the nominal defendant and most recently an analysis of uninsured vehicles put the percentage at 0.29 per cent of registered vehicles.

We are well ahead of all other jurisdictions on account of the combined registration CTP system here. Thus the only issue at hand is that of delays in police reports. If that transpires, as I said, the government will take action. But on the basis of evidence, if the evidence is there it will manifest quickly and the necessary amendments will come immediately.

Mr Deputy Speaker, I know lawyers are not particularly happy with some aspects of this scheme. The fact is that it is necessary reform to contain costs, encourage competition and provide better health outcomes for accident victims. It is the obligation of every lawyer who represents a client in a compulsory statutory compensation scheme to shepherd their client towards recovery, to maximise their opportunity to engage treatment, rehabilitation and therapy and to protect their rights in relation to fair compensation for their injuries.

I am certain that the local profession will embrace these reforms enthusiastically, as I am sure the people of Canberra will. Change was required and this government is in the process of delivering it. Significant delay in implementing the new CTP scheme is not an option and it should not be pursued by the Assembly.

DR FOSKEY (Molonglo) (5.24): I thank Mr Stefaniak for bringing this bill before the Assembly and also the legal officers, the lawyers, who pointed out the need to do so. More and more of the effect of our legislation is governed by regulation. The new third party scheme passed by this Assembly earlier this year is such a beast. Given that the bill will commence next week, the issue of regulations comes to the fore.

This majority government has been erratic at best and often quite poor when it comes to following a good and proper process in developing legislation. It has also been erratic at best and often quite poor in ensuring that the Assembly has sufficient time to consider and respond to legislation and to concerns raised by the scrutiny of bills committee. The new work safety scheme is one completely blatant example where the need to secure an outcome acceptable to this government has taken precedence over real commitment to process in this place.

This majority government has also been erratic at best and often quite poor in its commitment to active and respectful consultation with stakeholders and the development and fine-tuning of its legislation. In today's case, with the new third party insurance act commencing next week, the regulations that would govern so much of its operations have not yet been made. Well, they certainly were not available yesterday although they might have been finished by today.

However, I understand that in the development of the new third party insurance scheme the government had made an undertaking to make the regulations widely available and to allow stakeholders time to respond.

My instinct was to support this bill in order to allow the government to deliver on its promises. However, I recognise that we do not want to slow down the implementation of this scheme any more than necessary. In that context, I am happy now to accept the government's freshly adopted approach as articulated in a briefing today to ensure that the act will not commence until October, that the regulations will be made available to interested parties by the end of today and that the next few weeks will be used to consult over the regulations and to reach agreement where possible.

I note also that any issues relating to the nominal defendant, should they occur—and that number would be very low—could be managed under provisions in the act relating to exceptional circumstances. I am afraid I cannot support Mr Stefaniak's amendment because it would, in my mind, unpick too much of the intention of this act, which is to put timely processes in place.

This certainly is a matter that needs to be watched and I understand that the police have given an undertaking to process their component of the claims process in a timely manner based, it would seem, on new systems that they have in place. If that proves to be impossible we will need to revisit it. But I believe the act, as it stands, will allow the courts to deal with any occasional instances that fall foul of these provisions.

I want to thank the officials who attended my office this morning and briefed my staff and I want to thank the Chief Minister's office for facilitating that briefing.

MR MULCAHY (Molonglo) (5.28): Mr Deputy Speaker, I have taken more than a casual interest in this piece of legislation from when we previously considered it. I understand Mr Stefaniak may be going to introduce an amendment to meet a midway point in terms of the date for the regulations.

I share his concern that with the territory going into caretaker mode and the distraction of the next eight weeks that the date of 1 October to settle this matter is ambitious. I do not think it will enable due consideration of some of the issues that I am having raised with me and no doubt that he has had raised by the ACT Law Society; so some midpoint between what the Chief Minister has initially indicated and where Mr Stefaniak started I think would be prudent.

I am also very supportive of clause 5 of his bill in relation to the three-month issue. I think I was a lone voice on this when it came up previously. I think I was told that I was just helping the lawyers. I think that was what I was accused of doing. Whether I am helping the lawyers or not, I am more interested in the clients of the lawyers. I flagged that this was an issue then. It is still an issue. The Chief Minister has indicated that he will be conscious of problems that might occur. We were told there are improvements in the way the police play a role. But I am advised that it isn't just there that the problems exist.

As recently as Sunday I received representations on this very issue. I want to highlight several matters. I know that the specialist adviser to the government is in the gallery today. I hope he will take on board some of these issues, some of which we canvassed previously and some are new matters that have been raised with me that I think need to be carefully examined in the context of the regulations, because the problem has already been identified.

On the issue of the nominal defendant, I am advised—I knew this—that if a claim is not brought within three months then the rights of recovery against the nominal defendant are extinguished. The problem is that there is no discretion available to either the insurer or a court to extend the time limit and this can create obvious problems. For example, the question was raised: what occurs when a claim is initially brought against a policy but that turns out to be the wrong vehicle? In such circumstances if this occurs outside the time limit there is no right of compensation.

The act now allows claims to be brought against the nominal defendant as long as there is a sufficient connection with the ACT. Also the exclusions relating to road or related area have now been narrowed to circumstances where the injured person was a trespasser or the vehicle was owned or registered by the commonwealth. The difficulty is that these changes have significant potential to flood the nominal defendant scheme. Firstly, given the harsh limitation problems it is anticipated that the plaintiff lawyers will bring a claim both against the identified vehicle and the nominal defendant whilst the issue is resolved.

Secondly, given the very wide scope of claims that can be brought against the nominal defendant, claims with even a tenuous link to the ACT will be brought. Again, this

has the potential to put a significant strain on the scheme. I am told from specialists in the field that there were no problems with the nominal defendant revisions and the Road Transport (General) Act 1999 and the question has been raised as to why they had to be changed. If changes are to be suggested to the 2008 act, there is a strong body of opinion that the old provision should be retained.

I also want to address the issue of cost. Obviously the lack of regulations has impeded this issue. The commencement date will obviously now be changed, but again I would reiterate that in assessing costs we note that general damages are to be excluded. Whilst this is obviously designed to eliminate smaller claims, it can also serve to disadvantage many plaintiffs. For example, if plaintiffs suffer multiple injuries such as fractures and bruising in an accident they could be hospitalised for several days, have a few weeks off work and they could access domestic assistance for a short period.

In such circumstances, the bulk of the claim will be general damages and if an award of, say, \$80,000 is made, \$50,000 will be for general damages and the rest for loss of earnings and care. In such circumstances, section 155 will operate in many cases to impose very harsh cost restrictions on the plaintiff to the extent that they may not recover any costs. The other problem is that it will mean there is no incentive for a plaintiff to rehabilitate. Why would they, in fact, want to return to work to their pre-accident capacity if it means that their compensation rights are limited?

The last thing I would like to say on this particular matter relates to mandatory final offers. It has been pointed out to me that there is another gap. If the Chief Minister can address this, that will be great. It appears that this part of the act has the potential to create some ludicrous results and does not provide any incentive for the parties to exchange mandatory final offers. For example, if there is a failure to comply with the time limit, the court must add the two offers together and divide by two.

What I do not understand is what there is to stop a plaintiff serving a ridiculously high offer, say \$2 million, for a claim that may, in fact, be worth \$50,000. The court has no discretion. These are some of the issues that I hope the officials will take into account as they go through this process. I hope Mr Stefaniak's amendment is accepted by the government because I think 1 October is too tight a time line, given the climate in which we are operating.

I foreshadow that I will be certainly supporting that amendment. I still think that the provisions that Mr Stefaniak has included in here, and that I was howled down about when I raised that concern previously, are sensible. I hope that the Chief Minister might come to see that point of view.

MR STEFANIAK (Ginninderra) (5.35), in reply: I thank members for their comments. I hope the government might be persuaded by the further argument here which I think makes sense, but if it is not, at least we are getting a little way along the road.

Mr Mulcahy made some very valid points in terms of some of the problems with the whole scheme and the regulations. Clearly, there have been some big issues here. Last Friday I attended a meeting of the plaintiff lawyers association, or the Lawyers Alliance as they call themselves now. There were probably about 40 or 50 lawyers

there. I also had individual briefings with very learned lawyers like Mr John Little, who is in the gallery, and his partner Craig Edwards. They are two of the lawyers who specialise in this area.

Generally, in the ACT I think we have been pretty well served. Whilst about 20 per cent of all claims go in costs, medical fees, lawyers fees, et cetera, the victims probably get a hell of a lot more than they tend to get in Victoria and New South Wales. I understand that, for example, in New South Wales something like 66 per cent goes off to the insurance company. So we are starting from a fairly good base here.

One of the biggest problems, it seems to me, from what I am advised, has been a lack of any real consultation. I thank the government for having the bill debated today, because if there is to be any change at all, it has to be done before 26 August, which is next Tuesday. Effectively, it would have commenced before we next sit. That is why it is an urgent bill. I thank the government and the Chief Minister for allowing it to be debated today; that is very important.

I understand from the briefing by the departmental officers—and I thank the government for making them available and for the time they spent—that they have undertaken to get the regulations out to the profession today. I think the Chief Minister alluded to that in his speech. I certainly hope that has occurred. There is a very narrow window of opportunity with respect to the government's amendment. Hopefully, people should now be getting my rather rushed amendment which would extend the date. I will come to that in a moment.

On 1 October we will be in the middle of the caretaker period. If there are any problems and anything needs to be changed urgently—and I can be corrected here—we have only until 12 September, when the caretaker period starts. So there will have to be some very heavy, detailed and quick consultation if there are any things that urgently need to be attended to. I suspect that may well be the case.

I can understand the Chief Minister's urgency in getting this up and running. I can understand some of the pressures there in terms of windows of opportunity and getting the scheme up and running, but it is important to get it right. I am now circulating a further amendment which basically proposes a middle date—a date which will enable us to go past the caretaker period and into the next Assembly. Traditionally, when you have an October election, the Assembly has its first fair-dinkum one-week sitting in late November or early December. My amendment would at least allow any necessary legislative changes to be made then. We would be well and truly out of the caretaker period. There would be a new government; the Seventh Assembly would be in place and able to do whatever was necessary.

My proposal, which you should now have before you, is an amendment to substitute 1 January for 1 October, which I hope would be the best of both worlds. It would give us enough time to get over that caretaker period, to have enough time for good consultation and make sure that any bugs are ironed out, yet it is soon enough to ensure that some of the problems alluded to by Treasury officials and the Chief Minister do not come to pass because it is still a relatively short period of time. But it does give us that additional sitting week in which any problems could be ironed out, if necessary. I commend that amendment to the Assembly.

I am advised that there are probably about three to five nominal defendant claims each year. I heard the Chief Minister say that there are eight outstanding claims. However, with respect to the problems with the three-month period and section 86, I hear the assurance that the police do a wonderful job in these matters, but there may be circumstances that are beyond their control. If someone gives false information, either wittingly or unwittingly, three months may not be long enough for a report, despite their very best efforts. We do need to have something in place to ensure that can be overcome.

With the government's short time frame, I do not know whether the assurances that the government has given will actually come into play. I understand that what the profession is going to do is that, if there is any remote chance that the nominal defendant might be involved, the nominal defendant's office will be notified of a claim as a matter of course. So your five claims a year might go up by goodness knows how much.

A far more sensible solution would be to accept what I have got there, at least in the interim. If there are only five claims a year, we are probably not going to have more than a couple between now and Christmas. If you do need to go past three months, I do not share the confidence that Dr Foskey expressed that there is enough in the legislation for a court to get around it. My understanding, from what I am told—and I am relying on advice from the Lawyers Alliance—is that there is not really anything there; that this is a blanket three-month provision. My amendment would simply give the court the ability to grant an extension.

If there is some better way of doing it, let us do it now. It is a bit like putting a pedestrian crossing in a difficult street after someone has been skittled. It would be far better, if you realise there is a chance of someone being skittled, to put that pedestrian crossing in now. I would much rather have something tidied up now rather than have a couple of situations arise where someone's claim—and we are talking often about victims who have horrendous injuries through no fault of their own—might be prejudiced because that three-month test cannot be satisfied; hence my amendment.

If there is some better way of doing it, let us do it, by all means, but let us do it now. If we cannot, I would commend my amendment, because at least it ensures that potential victims are protected until such time as something better can be put in place. I commend my bill to the Assembly. I again thank the government for allowing it to be debated today. I commend my proposed further amendment. I think it is probably a very sensible compromise between the date of 1 October, when we do have problems because of the caretaker period commencing on 12 September, and what may have been too far away—1 March. I think that is probably the best of both worlds. I thank members for their support of the bill in principle and I commend my amendments and the subsequent proposed amendment to the Assembly.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

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

Clause 4.

MR STANHOPE (Ginninderra—Chief Minister, Treasurer, Minister for Business and Economic Development, Minister for Indigenous Affairs, Minister for the Environment, Water and Climate Change, Minister for the Arts) (5.43): I move amendment No 1 circulated in my name [*see schedule 1 at page 3547*].

In my response earlier, I went into some detail on the government's position in relation to the two substantive issues which Mr Stefaniak raises in his bill. The first of those matters is that the bill's implementation should be delayed until March next year. I have indicated that the government does not support that. We understand some of the arguments that led to Mr Stefaniak's position. I have indicated that the government is prepared to respond by extending for five weeks to 1 October the commencement of the legislation. The only argument that has been put by the opposition in supporting a midway extension to 1 January is the fact that the government goes into the caretaker period in a few weeks time. I simply cannot understand or accept that that has any relevance whatsoever in relation to the commencement of this piece of legislation.

You could run all sorts of arguments about consultation, readiness et cetera. I do not think any of those arguments has been substantiated. The only argument now being presented to support this, effectively, is that the fact that the government will be in a caretaker period somehow would impact on the capacity for the legislation to commence from 1 October. I do not think any cogent argument has been made to suggest that the government should change its position in relation to this, and we will not be doing so.

MR MULCAHY (Molonglo) (5.45): I think the point that has been missed by the Chief Minister is that the reason you should extend it to 1 January is that, if the consultation process with the regulations brings to light other problems—and I cited a number of problems that the legal profession have already briefed me on, and I gather Mr Stefaniak has had similar concerns raised with him—there would be no capacity for the territory government to change this act in that time frame because this place will not be sitting.

If we were to have a commencement date of 1 January, there will be at least one sitting of the Assembly before Christmas for the purpose of the swearing-in of members and so forth, and there would be that vehicle available to address some of the deficiencies that I am being advised by the legal profession do exist and which will not be able to be remedied if you have a 1 October commencement.

MR STEFANIAK (Ginninderra) (5.46): I move the amendment circulated in my name [*see schedule 2 at page 3547*].

I reiterate what I said earlier about that. I do think there is a very real problem. I reiterate what I said about the shortness of time. I appreciate the fact that there is now

going to be consultation. I hope it is quick and thorough. I certainly hope that, if Mr Stanhope insists on the date of 1 October, any problems can be rectified. I stand to be corrected here, but I believe they would need to be rectified by 12 September, when we go into the caretaker period.

My attempted compromise solution is a far better one because it allows sufficient time, on what is a complex set of regulations and a complex bill, for what will probably be fairly detailed consultation, just to make sure that we get it right. This is too important an area not to get right. We are not just talking here about the nominal defendant issue. That, obviously, is a relatively minor issue in terms of the whole scheme of this bill. But in terms of a very different way of doing third party insurance, in what is quite a complex way and with significant and important regulations, it is important to make sure that everyone gets it right. I think we do need a short but reasonable amount of time for that. In all the circumstances and for the reasons I have given, I feel that 1 January would be a much more relevant and appropriate date than 1 October.

Question put:

That **Mr Stefaniak's** amendment to **Mr Stanhope's** amendment be agreed to.

The Assembly voted—

Ayes 8

Noes 9

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

Question so resolved in the negative.

Amendment negatived.

Question put:

That **Mr Stanhope's** amendment No 1 be agreed to.

Question resolved in the affirmative.

Amendment agreed to.

Clause 4, as amended, agreed to.

Clause 5.

MR STANHOPE (Ginninderra—Chief Minister, Treasurer, Minister for Business and Economic Development, Minister for Indigenous Affairs, Minister for the Environment, Water and Climate Change, Minister for the Arts) (5.53): The government will oppose clause 5.

MR STEFANIAK (Ginninderra) (5.53): I reiterate what I said earlier in relation to the Treasurer's amendment No 2 and clause 5 of the bill.

Clause 5 negatived.

Title agreed to.

Bill, as amended, agreed to.

Superannuation (Legislative Assembly Members) Amendment Bill 2008

Debate resumed from 7 August 2008, on motion by **Mr Stanhope**:

That this bill be agreed to in principle.

MR SMYTH (Brindabella) (5.54): The objective of this bill is to bring the superannuation arrangements for members of the ACT Legislative Assembly into line with other Australian parliaments and into line with the provisions that are now in place for ACT public servants. I thank the Treasurer's office for arranging a detailed briefing on this bill.

To this point, we members have continued to have access to a defined benefit superannuation scheme. Moreover, our current superannuation arrangements are relatively generous when compared to those for parliaments in other jurisdictions. Only Queensland now retains access, as a choice, to a defined benefit option. All other parliaments have accumulation schemes. Of course, a significant mitigating factor is that the base member's salary in the ACT is the second lowest in Australia.

What is being proposed through this bill is that we bring new members into line with what is accepted as the general community standard by removing access to the defined benefit scheme and by having access to a choice of superannuation funds. It is quite reasonable for we members to expect that we should have superannuation arrangements that are aligned with the community standard. The ACT government has already acted to change the superannuation arrangements for ACT public servants and this bill will align new members of the Assembly with those arrangements.

The bill essentially has two components. One component deals with those members who are elected for the first time at the October 2008 election. For these members, their superannuation will comprise having a choice of funds that provide accumulation benefits or, if no choice is made, utilising the territory's default accumulation benefit fund; having employer contributions set at 14 per cent; and having an additional employer contribution of one per cent if the member contributes at least an additional three per cent.

I should observe that, while these members will lose having access to a defined benefit fund, the reality is that the community standard is now established as providing superannuation through accumulation benefit schemes. Each of the other parliaments has accumulation schemes for their members, with Queensland providing

a partial exception, and most have employer contributions at nine per cent. Consequently, the proposal for new members appears quite reasonable.

The second part deals with continuing members. These members will be grandfathered from the changes presented in this bill. Continuing members will maintain an employer contribution of 24 per cent, plus voluntary contributions if they choose. The change for continuing members will be that they will have a choice if they remain in the Assembly after the 2008 election: they can elect to remain in the defined benefit scheme or they can elect to have a fund of their choice and their existing entitlement would be rolled over into the fund of their choice.

It is also self-evident that the financial impact of the proposal in this bill will mean a reduced call on the ACT taxpayer. The opposition will be supporting the bill.

DR FOSKEY (Molonglo) (5.57): The Greens will not be opposing the bill but I suppose our support is a little qualified. There are some big questions behind the issues of superannuation. Current tax law greatly advantages people with superannuation against those without. So when you follow it through in detail, this averages out as advantaging richer people.

People with little or no superannuation and significantly less tax advantage seem to be blue-collar workers, poor people, people who have not had much employment in their lives, women rather than men and so on. If Australia wanted to take big steps in terms of equity and income support, it would increase pensions and universal services, rather than ensuring that superannuants receive their income tax free, no matter how high those income levels are.

However, the shift towards a universal approach to retirement income accrual is a way of planning for the future. If the safety net or support was also strengthened, and if superannuants on very high income levels did return some of that income to the community generally, that incremental growth in superannuation contribution by employers and employees alike would be a good thing.

More to the point, without a major commitment to improving social services, increasing supplies of public housing and so on, it does not make any sense to reduce superannuation in any situation. Of course, just before an election is not the time for any political party to go out championing more money for politicians. Here, of course, we are talking about a reduction in superannuation. But even to oppose that reduction would almost certainly open the door to the usual unreasonable invective directed at politicians for passing laws that are seen to be self-serving. The big issue that I have really stems from the 2006 decision to slash superannuation paid to territory employees which provides—

At 6.00 pm, in accordance with standing order 34, the debate was interrupted and the resumption of the debate made an order of the day for the next sitting. The motion for the adjournment of the Assembly was put and negatived.

Sitting suspended from 6.00 to 7.30 pm.

DR FOSKEY: I will continue on members' superannuation. While the Chief Minister at the time argued that the Australian Public Service is not a big competitor with the ACT and that somehow we should compare our situation to that of public servants in Perth or Sydney, that was clearly a hollow argument. It might be true if one was thinking in terms of benchmarks, but it is not true in terms of the actual market.

I am aware that the CPSU has kept superannuation for territory employees at the front of their industrial issues, but I cannot imagine that we will have any Treasury workers going on strike to ensure their equity any time soon.

I am also uncomfortable with endorsing any system where new employees are paid less than existing ones. While there are clear ethical issues around diminishing someone's entitlements after they have made agreements or signed contracts, I would have thought that some kind of gentle incremental process that would adjust to a lower rate over time might have been worth exploring, to spread the pain and all that.

Here we have new MLAs with lesser entitlements than existing MLAs—in order, one imagines, not to appear to be treated better than other territory employees. The thinking here is clear. The previous thinking going back to 2006 has always been unclear and uninspired. In a situation where we are competing with commonwealth employees, it is not particularly a good idea, but I will not be opposing the bill.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Sexual and Violent Offences Legislation Amendment Bill 2008

Debate resumed from 3 July 2008 on motion by **Mr Corbell:**

That this bill be agreed to in principle.

MR STEFANIAK (Ginninderra) (7.34): The opposition will be supporting this bill. In fact, I am amazed that it took so long. I am very pleased that it has come before the Assembly. I am pleased that we can debate it and pass it in this Assembly. Its genesis was in the DPP-AFP report of, I think, March 2005, which made a number of recommendations in relation to sexual assault matters. It is very timely, too, because for many years there have been some considerable problems in relation to the prosecution of sexual assault matters in the territory.

There was a learned article recently in the *Canberra Times* which showed how difficult it was to get a conviction for sexual assault matters, simply because of the drawn-out process that was involved. I found it rather interesting to see the author state that barristers representing accused would give the complainant a hard time in the committal proceedings and then ease off a bit in the Supreme Court, that it became a game. It is very much a game.

I have seen a learned opinion by my old colleague Ken Archer, which Dr Foskey might refer to and which is probably relevant in some of the amendments. It did become very much a game. It certainly concerned me to see the extensive cross-examination of sexual assault victims—more than would occur for other prosecution witnesses in other matters. It greatly concerned me to see that the situation probably got worse in the ACT. A victim of sexual assault could give evidence three or maybe four or sometimes five times.

One of the problems in our system was highlighted recently by a decision by Justice Gray, who seemed concerned that he was unable to accept evidence by the complainant which both the prosecution and the defence, by consent, wanted admitted in a case. That would have saved the complainant giving evidence and going back to court on about a fourth occasion.

Sexual assaults, especially very serious sexual assaults, are some of the most heinous crimes that can be committed. The complainants are usually very vulnerable. There is shame. There are all sorts of problems just in terms of coming forth to complain to the police. The success rate is incredibly small—it is something like three or four per cent—which is very different from other offences that go before the court.

It is crucially important to recognise that this is an area of the law that does need amending. The ACT has lagged behind other states. Other states have introduced sensible reforms that, whilst recognising the legitimate rights of the accused, make things easier and far more victim-sympathetic in terms of the giving of evidence by people who are complainants before the court.

For about the last 20 years now, we have had the ability for video evidence to be given. This is especially important in relation to offences involving children—children are often the victims of sexual assaults—but it is equally important in relation to a complainant who is a victim of a sexual assault and who has to relive the horrors of what occurred to her. It is usually a her; sometimes it is a male but usually it is a female.

It is unreasonable to expect a complainant to have to go through giving evidence in detail; to be cross-examined for days on end, which I have seen at times; and to maybe have to come back for further cross-examination on two, three or four occasions, depending on whether it is just a straight committal in the Supreme Court and the case is dealt with—that is two times to give evidence—or whether there is an appeal or a retrial, in which case it is three or four occasions.

I have been involved in a number of cases, one involving girls aged between nine and 18. It was a tragedy that the judge did not combine all the trials; we might have got a couple of convictions that way. The committal went for 2½ years—19 days a hearing. Then we split the trials—three different trials. I have the greatest respect for those girls; the oldest was 18 at the time of the offence, the youngest nine. They gave evidence. Whilst probably not at the highest scale of sexual assault, it was pretty nasty stuff. It involved a family neighbour, a neighbour where they lived, in the neighbourhood. One trial had a hung jury. We had a retrial and that was unsuccessful. Those girls had to give evidence at least two times, and in many instances three or four times.

Recently we saw a case where a complainant had to give evidence, again, for the fourth time, despite the fact that both the defence counsel and the prosecutor agreed to evidence going in. This is an area of the law which needs reform. This is an area of the law where we have a moral obligation—not only to the victims but to society—to reform the law.

I am not too sure if the Attorney-General has got this right. I have a great respect for Ken Archer, for example, and I have read an opinion by him. There might be a few issues there. There are some I disagree with, having a reasonable knowledge of it myself. There are other issues where he may have a point. There may well be teething problems. It is important for the attorney, or whoever might replace him if there is a change of government, to ensure that this area of the law is further amended if need be. I would hate to see further problems emerge as a result of this legislation.

Is the mark of a civilised society that it can protect its citizens, especially its most vulnerable citizens? Victims of sexual assault are often the most vulnerable citizens. Often sexual assaults are committed by family members or friends—so-called friends—people known to the victim. Sometimes they are horrendous crimes committed by animals, such as in the Anita Cobby rape and murder.

We have had a number of pretty horrendous crimes in the ACT. We have had a number of pretty nasty sexual assaults where, because of the system, people have got off who quite clearly were very much guilty. I have seen—and been powerless to act even though I objected a fair bit as a prosecutor—victims being cross-examined over the course of a full day or often even more than a day.

This law, as far as I can see, will ensure that a victim will be giving evidence once and cross-examined once. Yes, it will be a thorough cross-examination—I do not think anyone has a problem with that—but it will be a cross-examination that will be done, and the evidence will be given, in a sympathetic way. The victim will not have to front the animal—that is what they are, often: an animal—who perpetrated the crime. They will not have to go through that horrible trauma.

There are some sympathetic parts of this law which are well overdue and which will greatly assist in terms of the administration of justice. Justice is not about just bending over backwards for the rights of the accused. That is important. It is the mark of a fair society that even the worst animal—some of these people commit horrible crimes and are worse than animals—even the worst offender, has the right to be properly tried and his or her case proven beyond reasonable doubt. But we do not have to bend over backwards and forget the rights of the victim and, through the rights of the victim, the rights of society. There has to be a balance. In this area of the law, the balance has been far too much in favour of the accused for far too long. Other states have realised it, and it is about time the ACT did also.

I commend the attorney for at least bringing this forward. He flagged it last year. At the time, I said, “Why don’t you do it immediately?” Well, it is better late than never. He has now brought forward this legislation. This legislation will be passed tonight and it will be a significant boon for victims and for society.

It is not going to be at the expense of a fair trial for the accused. In many areas of the law, most cases do not even end up in the Supreme Court—although there is now a propensity to go there because it is far easier for a defendant to get off. The *Canberra Times* wrote an interesting article on that on Saturday. The vast majority of cases are decided at the Magistrates Court level where people just give evidence once.

So it is not startling to suggest that a complainant really needs to only give evidence once and be thoroughly cross-examined once. Yes, I am sure that there will be provision here and people will be cross-examined. Indeed, a complainant may be cross-examined for a day or more in the Supreme Court. But that complainant is not going to have to come back time after time to relive the horrific experiences inflicted on her, or him, in terms of sexual assaults.

The content and the intent behind this legislation are very sensible and very honourable indeed. To be critical of the government a bit, I am a bit amazed by one thing. When the DPP and the AFP—in March 2005, I think it was—put forward a paper, you would have hoped that we could have had a bit more action a bit more quickly. It would have been nice if we had had this in for 18 months. That would have been a reasonable time frame. March 2005. Look at it; consider it. Maybe at the end of 2006, in December, we could have had legislation and passed it. And we would be 18 months or more into the process now. But it is better late than never.

This is legislation which the opposition has been calling for and is pleased to see. There may be a few little hiccups. It is a bit of a shame that again—I said this yesterday in relation to another matter and I will say it again today—we have had a series of amendments dropped on us late in the piece. It would have been great if that could have happened one or two months earlier so that everyone could properly consider those.

There may be the odd teething problem with this legislation. I would certainly recommend that the attorney and his officials have a good close look at Ken Archer's letter. There are things there which may well be wrong but there are things there which may well be worthy of consideration. I would hate to see prosecutions fail simply because of a few little problems in this legislation with things that perhaps could have been done better. If things need to be amended, we will do that regardless of whether, after 18 October, we are in opposition or in government.

This is an area of the law where the ACT has lagged behind other states. We need to be in line with other states. As I have always said, I am a great believer in consistency across the states, as far as is possible, in most laws, especially in the criminal law. Crime knows no boundaries. It is crucially important that someone who commits a heinous crime in Canberra—and the victims and witnesses—can expect to get a pretty similar result and be treated in pretty much the same way as they would if that crime was committed in Queanbeyan.

In principle we support this legislation and we will be voting for this legislation. It adds a lot to our criminal justice system here in the territory. I suggest that the Attorney-General adopt some other sensible provisions from interstate—certainly in areas of sentencing, which the government still seems to balk at. But this particular

piece of legislation puts into place recommendations made three years ago. It complements some other reforms made by the attorney about 12 months ago in relation to other aspects of sexual assault issues and law. We are very happy to see it introduced and will be happy to see it passed before this Sixth Assembly finishes next week. The opposition welcomes the legislation and will be supporting it.

DR FOSKEY (Molonglo) (7.47): This bill is aimed at providing greater protection for the victims and witnesses of sexual and violent offences, and this is an aim that I commend. Assaults of this nature bring lasting damage to victims and the court process, as it stands, can often exacerbate their suffering. Often, as noted by other members, victims can withdraw from the court process or be too frightened or distressed to commit to legal proceedings. This has a huge impact on their wellbeing, and thus the wellbeing of the community.

The low prosecution rate in sexual abuse cases is a cause for deep concern. I acknowledge that the government is trying to address the problem with this bill. No doubt the changes will give victims a greater sense of safety and personal dignity in legal proceedings. This is an undeniably positive development which is long overdue.

The 2005 report *Responding to sexual assault: the challenge of change* by the sexual assault response program team, thereafter called SARP, which prompted this legislation is informative and raises some key issues for the judicial process. I would like to run through a couple of points that I have noted from the report.

The majority of recommendations are necessary and reasonable, and I am shocked that the SARP team even needed to raise some of them. I would have thought that things such as having guidelines for the investigation of sexual offences and ensuring that the sexual assault and child abuse team leaders were familiar with them would already be a part of ACT Policing policy.

The liaison with the Canberra Rape Crisis Centre on each case is also common sense and no doubt does much to help victims. I hope that the recommendations around improving liaison have been implemented. I also hope that funding for the centre has been increased in line with the extra workload. I hope that the recommendations surrounding training for personnel involved in the interviewing and liaison with victims and witnesses are implemented, and I would be interested in learning the progress of the victim one-stop shops.

Recommendation 12.1 of the report states:

A working group should be established in the ACT—along the lines of the Child Sexual Assault Jurisdiction Team Education Working Group in New South Wales—with representatives of the judiciary and magistracy, the Director of Public Prosecutions, Legal Aid, the Bar Association, the Law Society and other relevant organisations to discuss and plan training for judges and magistrates on legal and other aspects of sexual offences and child witnesses.

What is the status of this working group? Were they involved in the consultation on this bill? Perhaps the minister will respond on that one. Has a specialist sexual offences unit been established in the DPP? Will resources to the DPP be increased to allow for the extra workload that such recommendations and the government's spate of law and order bills will create?

While I wholeheartedly agree with the aim of lifting conviction rates and improving the court experience for victims of crime, I do regrettably have some serious concerns about this particular bill. I appreciate the briefing from Mr Corbell's staff and JACS officials and while that briefing and the government's amendments address some of these issues, I have proposed some further amendments to some aspects of the bill which I will discuss in the detail stage.

I have heard conflicting reports on the consultation on this bill. The department has assured me that the standard consultation was undertaken as with any piece of legislation. That said I have also heard that there was minimal consultation on the bill itself and that most of the consultation was actually for the SARP report. While I do acknowledge that a large number of groups were consulted on the SARP report, they were primarily victims groups and parties interested in prosecution. As Mr Ken Archer notes in his submission, the consultation list is of very like-minded people. Defence counsel and other parties likely to defend the rights of the accused were underrepresented.

Also, this bill proposes amendments to areas of ACT legislation that were not fully discussed in the consultation on the SARP report and therefore have not had the same level of community scrutiny as the changes suggested by SARP. I appreciate that the Attorney-General and his department have made some effort since the bill was introduced to speak with these groups and to listen to their concerns.

Although I have not been privy to many of the submissions and the concerns submitted to the Attorney-General about the bill, I have seen some very alarmed responses from various parties—the Human Rights Commission, Civil Liberties Australia and some prominent ACT legal practitioners, to name a few. I am surprised that the government could attach a human rights compatibility statement to this bill when the Human Rights Commission submission raised such glaring concerns which, I am pleased to see, have been somewhat addressed. Why were these groups not involved in discussions in the planning stage of such significant changes to our court procedures?

I believe the protection of victims is vital. No doubt I will be unpopular in some circles for criticising this bill, and I do not want to be seen as fighting for the perpetrators of assault because I am not. I am arguing for the right to a fair trial for both the complainant and the accused. As it stands, I believe there are aspects of this bill that undermine basic civil liberties and, according to a number of legal practitioners, also undermine many aspects of the court process.

The bill is well intentioned and had it been more carefully drafted after more comprehensive and more focused consultation I believe it would unquestionably be a welcome step towards improving the court process for victims of violent crime, but unamended it has the potential to raise more problems than it fixes. I ask the government to reconsider pushing this bill through today and to postpone its passage until the community has been given adequate time to fully consider the impact of the actual proposed changes in this bill.

I am not alone in suspecting that this bill has been hastily finalised with an eye to deflecting some criticism of the abysmally low conviction rate for violent sexual

offences and also to capture some of the tough on crime vote at the next election. Indeed, Mr Stefaniak's endorsement of the bill reinforces that impression.

The Attorney-General has been active in the *Canberra Times* defending his recent legislation. Unfortunately, he does not present a balanced argument, and the self-serving spin in those articles overwhelms the merit that many of his arguments undeniably hold. In last week's *Canberra Times* the Attorney-General said that the historical purpose of the committal process was to determine the question of whether there was a prima facie case against the accused and to provide full disclosure of the crown case. This is not just the historical purpose of the committal process. This remains the purpose of the committal hearing, and these amendments jeopardise that purpose by removing the court's discretion to compel a complainant to attend a committal hearing when it considers that a miscarriage of justice could occur if they do not appear.

It is another sign of this government's arrogance that it thinks its capacity to decide what will serve the interests of justice in the circumstances of any particular case is greater than or preferable to the judiciary's. These amendments will weaken judicial independence by removing judicial discretion. They weaken a power of the court that has traditionally been seen as one of the powers that define the constitutional separation of powers between the executive, legislative and judicial arms of government.

These amendments could have proceeded on the basis of retaining the court's discretion to decide whether to override the default position spelt out in the act, but the government has chosen not to trust the court's judgement by removing those discretionary powers. Let nobody doubt that time spent by an innocent person on remand is every bit as onerous—in fact, far more onerous—than time spent in jail by a guilty person.

I want to talk briefly about the minister's response to the scrutiny of bills committee report. The reasoning in the government's response to the committee is turgid and addresses arcane points of law. It is not the kind of material that can be adequately assessed within a couple of hours. I do have a few concerns with the Attorney-General's response, but without recourse to advice by senior legal counsel I am not in a position to pursue those concerns any further.

For instance, I have a concern with the Attorney's description of the rule in *Browne v Dunn* which is taken from a 1998 textbook and possibly does not accurately reflect the standing that this rule has in current Australian law. It seems to imply that a failure of an unrepresented defendant to cross-examine a witness on contradictory evidence would automatically amount to a breach of the rule. In the case of *R v Birks*, Justice Gleeson stated that ordinarily, it would be inappropriate to expect an unrepresented accused to be bound by the rule.

In the later case of *MWJ v R*, the High Court found that there was no obligation on defence counsel to question the complainant on an inconsistency or to have the complainant recalled for that purpose. It found that in some circumstances a failure to cross-examine may not constitute a breach of the rule; the onus of proof remains with the prosecution.

I worry that the effect of proposed new section 38C (4) (b) may be that a self-represented accused may be prevented from adducing contradictory evidence from another witness. However, the Attorney-General's report implies that the court retains the power to cope with an apparent breach of the rule in *Browne v Dunn* by allowing the prosecution to recall a witness to give fresh evidence-in-chief. This is the proper way for the court to deal with these circumstances. Why is proposed new section 38C (4) (b) necessary? It does not appear to amount to a warning, as suggested in the Attorney-General's response. It reads as a prohibition. It is hard to reconcile the Attorney-General's response with the proposed amendment.

As I said, the Attorney-General's letter contains a number of arcane discussions out of which emerges a statement that there are no human rights implications in this or that amendment. I have doubts about the veracity of a number of those statements. It seems to me that there are human rights implications. There are also good arguments why the restrictions on them are proportionate and justifiable, but no attempt has been made to justify them because there is a lack of acknowledgement that they exist.

Why did the Attorney-General's letter only arrive on our desks today? If I was the Chief Minister, I might turn up the histrionics and bang on about the timing of the letter being a blatant, grubby political stunt to deflect criticism and thereby score cheap political points. But if I did that everyone would see how transparently obfuscatory and ridiculous I was being. So I recognise the tardiness for what it is—a mixture of a very busy workload and a lack of resources in JACS combined with a lack of respect for the workings of the committee system and non-government MLAs.

The question remains: why is the Attorney-General so insistent on getting this bill through today in its entirety? If I thought I had any chance of succeeding, I would have suggested, as have others, that the bill is sent to a committee. However, given our proximity to the caretaker period and the election, I know that a referral to committee is highly unlikely to be successful. As I am sure everybody knows, I have a number of amendments to the bill. They have been circulated for some time and I look forward to discussion on those.

MR MULCAHY (Molonglo) (8.01): I will speak to a particular aspect of the bill which has given me cause for concern. It is one in which I think there needs to be a very serious examination. Like Dr Foskey, I am not qualified in the field of law, but I do have three legally trained people in my office and I have taken advice from other organisations. So I will detail the area of particular concern and hope the Attorney-General can give us some advice that will provide us comfort on these matters.

I am referring particularly to a recent letter which has come into my possession from Mr Ken Archer to the Attorney-General that highlights a serious potential problem with the evidentiary provisions before us. Mr Archer has been both a prosecutor and defence counsel and his experience in this area of law is quite impressive; so we should not dismiss his claims lightly. Mr Archer claims:

The passage of the legislation in its present form will cause a procedural breakdown in the Courts and embarrassment to the Government. It will

institutionalise investigative practices that are not considered best practice. It re-writes concepts of a fair trial that have existed for centuries.

Mr Archer claims that the proposed method of lengthy questioning and interviews by police rather than written statements by witnesses will lead to difficulties with the admissibility of evidence as police officers often may lack the special training to ensure admissibility. He believes that this practice will lead to large numbers of revisions before evidence can be admitted and will also lead to waste and delays as prosecutors, judges and juries trawl through hundreds of pages of transcripts to attempt to draw out the relevant facts.

Mr Archer claims that the evidentiary provisions of this bill will lead to inadmissibility of evidence under the Evidence Act 1995, which is a commonwealth act that cannot be altered by this Assembly. In particular, Mr Archer claims that the previously recorded statement may be regarded as inadmissible under the hearsay rule dealt with in part 3.2 of the commonwealth act.

The effect of this would be that crucial evidence may become inadmissible in a serious case such as a rape case and, as a result, a guilty offender may escape conviction on the basis of an unintended evidentiary error. If this occurs the prosecution will not get a second bite of the cherry because of the double jeopardy rule. We will not be able to come back to this Assembly and simply say, "Well, we made an error. Now we will fix it up." If a miscarriage of justice has already occurred it will be too late to do anything about it.

Mr Archer notes that the ACT is bound by the commonwealth Evidence Act and cannot escape these provisions in this context. He cites case law to this effect in *Somonfi v Dowden* in 1999 and in *R v EG* in 2002. He contrasts this with the position in New South Wales where the Evidence Act is amenable to qualification by New South Wales legislation. He also notes that the NSW Criminal Procedure Act expressly exempts the operation of the hearsay rule in this context, suggesting that the rule may indeed apply in the ACT to disqualify this kind of evidence.

Mr Archer notes that if an objection is made at the committal stage and parts of the interview that are essential to the prosecution case are excluded, then it is unclear whether the DPP may call the witness to make good on this problem. He notes that if this is not the case, then the prosecution will be dismissed. I would also note that even if the DPP are able to call the witness, then this would defeat the purpose of the current bill, which is to allow victims to avoid court testimony.

These are serious claims which must be taken very seriously as they have the potential to undermine the proper administration of justice in a serious criminal offence case. I understand from discussions with Civil Liberties Australia that they have asked the government to get an expert opinion from counsel on this issue to ensure that this evidentiary issue does not derail an important prosecution. We have heard lots today about the law and correctness in getting specialist advice. If the concerns that have been flagged by Mr Archer in his letter to the Minister for Police and Emergency Services and Attorney-General dated 14 August are found to be valid, then this legislature has cause for real concern.

I hope that the government and the minister in particular will take this claim seriously rather than pushing ahead at such breakneck speed with its legislation. I have talked earlier this week about my concerns about this leaving everything to the last minute approach with legislation. I think it is bad for democracy. Passing laws on that basis leads to the scope for problems to occur.

We heard earlier today about the issues with third party. I flagged those some months ago. I was howled down by my former colleagues and now they are proposing changes reflecting the concerns I raised. Again, I do not profess to be some constitutional legal expert, but when a barrister raises issues of this magnitude and depth and thoroughness, I very strongly urge the Attorney-General to give some regard to it and not to rule these things out of hand. There seem to be some significant issues here for this jurisdiction.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (8.07), in reply: I thank members for their support of the legislation, albeit in some circumstances qualified support.

Before dealing with some other issues in relation to the legislation, I will respond to the issues raised by Mr Mulcahy, in particular, about the application of this legislation to the commonwealth Evidence Act. It is the case that the commonwealth Evidence Act applies in the territory. We have not repatriated that act at this time. However, the commonwealth Evidence Act allows other ACT acts to continue unaffected. Therefore, the SARP amendments will operate unaffected.

The only ACT act affected by these changes is the ACT Evidence Act 1971, but we are not amending that act. So it is wrong, and the claim made by Mr Archer is incorrect in that regard. I have paid close attention to the claims made by Mr Archer but it is simply not the case that the framework we are proposing tonight is in any way barred by the provisions of the commonwealth Evidence Act. The commonwealth Evidence Act makes it clear that other ACT laws are unaffected by the application of that act, so it is wrong to make that claim. But the government has looked at that claim by Mr Archer and others carefully and, based on advice, we have concluded that it is not a claim that is accurate.

In relation to consultation, we heard some fairly turgid spin from Dr Foskey. She accuses the government of turgid spin, but, rather than debate the substance of the legislation, Dr Foskey does not seem to miss a chance to take the opportunity to put the boot in and provide a characterisation of what she feels about what is wrong with the world. I respond by saying that there was a comprehensive consultation process with stakeholders. That included, at the earliest stage, the Human Rights Commission, the legal aid office, the courts and the Australian Federal Police.

That consultation raised a whole range of very useful issues, and we have incorporated many of those into the final model. But we cannot, and should not, fool ourselves tonight that this is an area of law where there is consensus. There is not. It does involve the balancing of the rights of the accused versus the rights of the complainant. It is a highly emotive and complex area of legal construction and it should be recognised as such. But it does not mean that what the government is

proposing fundamentally undermines the rule of law. Assertions to that effect are really a call to a motion which is unnecessary and not based on the facts.

This bill will amend the Evidence (Miscellaneous Provisions) Act 1991 and the Magistrates Court Act 1930 to make it less stressful and traumatic for victims of sexual offences at committal proceedings and at trial. It will also provide special measures for victims of violent offences and other vulnerable witnesses when they give their evidence in court.

As I have foreshadowed and as other members have mentioned, the government will be moving a number of amendments, which I will discuss further in the detail stage of the debate.

The reforms in the bill in relation to sexual offences respond to the widely held perception that the criminal justice system fails to treat complainants with the respect they deserve. The bill recognises that it is no longer acceptable for a complainant to feel betrayed after participating in the prosecution process—the very process through which they seek justice. Victim concern about the fairness of the criminal justice system has contributed to the substantial underreporting of sexual offences. Victims themselves identify that as a major reason why they do not press forward with a complaint. This bill is aimed at alleviating some of those fears and encouraging potential victims to come forward and pursue a matter.

While it is generally accepted that victims of sexual assault offences should be protected from the stress, trauma and intimidation often associated with giving evidence, there has been a noticeable failure by legislatures generally to recognise that victims of other violent offences such as torture, threat to kill, kidnapping and stalking are also susceptible to mistreatment and revictimisation in the criminal justice process. The amendments in this field recognise that victims of certain violent crimes are also deserving of protection, to realign the balance of fairness between victims and offenders.

The reforms also introduce special measures for the giving of evidence by children and adults with an intellectual disability, acknowledging the deficit these witnesses suffer in being able to communicate in unusual environments like a courtroom.

The reforms in the bill recognise that a prosecution for a sexual or violent offence has very serious consequences for the accused and it is therefore vital to safeguard the minimum guarantees which everyone charged with a criminal offence is entitled to under international human rights law and, in particular, the Human Rights Act 2004. However, the amendments also recognise—and this is the important point, Mr Speaker—that protecting the rights of alleged offenders is not the sole purpose of the criminal justice system. The ACT community has an interest in encouraging the reporting of sexual and violent crimes and in apprehending and dealing with those who commit them. That is also an important purpose of our criminal justice system.

The significant reforms in the bill include an absolute prohibition on the calling and cross-examination at committal of children and adult sexual assault complainants. Their evidence will consist of a written statement or a transcript of a police interview. They will not be required to attend the committal to give alternative evidence or be

cross-examined. Cross-examination of alleged victims at committal, which is often more rigorous and intimidating because it is done in the absence of a jury, leads many alleged victims to seek to have the proceedings discontinued for fear of having to go through additional trauma and humiliation at trial.

The reforms will minimise the contact children and intellectually impaired complainants in sexual offence proceedings have with the court system, to considerably enhance their ability to recover from the traumatic events that they have experienced and allow them to move on with their lives. These witnesses will be able to give their evidence at a pre-trial hearing, held as soon as possible after a committal but before the actual trial.

A pre-trial hearing will be a unique pre-trial process involving a witness giving their evidence in a separate room to the courtroom and then being cross-examined and re-examined on this evidence via audiovisual link by the defence and prosecution, who will be in the courtroom in the presence of the judge, the accused and anyone else the court orders should be present. This evidence is recorded and later played at the actual trial as a substitute for the witness's oral testimony at trial, eliminating the need for the witness to attend the trial to give their evidence.

Prerecording evidence aims to address fundamental problems with the criminal justice system and how it deals with children's evidence. Delays in the court process are inevitable, but they work against children's ability to recount events long after they occur. For young children and for people with an intellectual disability, the ability to give cogent evidence many months or years after the event might be beyond their developmental and intellectual capacity despite the fact that they were able to give coherent descriptions at a time closer to the events in question. These reforms will have the most positive impact on the lives of children and intellectually impaired complainants involved in the court process.

Amendments also ensure that the court can order prerecording for adult complainants in sexual assault proceedings if it is satisfied that that is necessary.

The reforms will prohibit a self-represented accused in sexual and violent offence proceedings from personally cross-examining vulnerable witnesses. The prohibition is aimed at protecting witnesses from the distress, intimidation and humiliation that can occur as a result of having to respond to questions about intimate sexual or personal matters by the alleged offender. The prohibition maintains the accused person's entitlement to cross-examine these witnesses through a legal representative of their choosing or provided to them free of charge, if necessary.

Other important reforms include permitting the admission into evidence of a transcript of an audio or visual interview between police and children or intellectually impaired people in a committal proceeding; permitting the admission into evidence of a prerecorded audiovisual recording of an interview between police and children or intellectually impaired people who are complainants of sexual and violent offence proceedings; or permitting evidence which is prerecorded, either as part of a police interview or at a pre-trial hearing, to be admissible in later proceedings, such as a rehearing or an appeal, or in another proceeding arising as a result of the original proceeding, for example, in a Family Court matter.

Permitting complainants of violent offences and similar act witnesses in sexual or violent offence proceedings to give their evidence via audiovisual link in a room separate from the courtroom similar to other sexual assault victims is another reform. Similarly, there will be arrangements in the courtroom to restrict the view of the accused from complainants and similar act witnesses in sexual and violent offence proceedings.

The bill provides for the presence of support people for complainants and similar act witnesses in sexual and violent offence proceedings and for children and witnesses with a mental or physical disability in any court proceeding.

Finally, the bill provides a discretion for the court to be closed to the public while alleged victims and witnesses of sexual assault and violent offence proceedings are giving evidence and a more general discretion for other witnesses where the interests of justice require it.

These reforms are consistent with the approach taken in many other common law jurisdictions, including most other states and territories in Australia. I am confident that the bill achieves the necessary balance between reducing the trauma experienced by victims and other vulnerable witnesses in sexual and violent offence court proceedings and at the same time protecting the human rights of the accused to a presumption of innocence and a fair trial.

In conclusion, let me say that it is not surprising that there will be some stakeholders in the legal profession who will assert that these changes are not in the interests of justice. In response to those claims, I would say to members that you must first of all test the strength of those claims and whether they are indeed accurate—as I have indicated, in a number of instances, particularly around the commonwealth Evidence Act, they are not—and, secondly, understand the motivations of those stakeholders.

Someone who comes from a criminal defence perspective will argue for the maintenance of a status quo that gives the best possible opportunities to an accused. That is a rational course of action, but it does not mean that the legislation before us is one that fundamentally changes the balance between complainants and the accused. It does not mean that human rights are being undermined. It means that a range of rights are being considered in this context.

As I said earlier in my comments, it is the role of the criminal justice system not just to preserve and protect the right to a free trial for the accused but to pursue the interests of justice put broadly, including protecting the victims of crime when they come before a court to give evidence and encouraging the broader community to recognise that these are matters that will be taken seriously and that people will be treated fairly should they end up in the criminal justice process. I commend the bill to the Assembly.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail stage

Clause 1 agreed to.

Clause 2.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (8.21): I move amendment No 1 circulated in my name [*see schedule 3 at page 3547*] and table a supplementary explanatory statement to the amendments and also, for the record, a revised explanatory statement on the bill.

Clause 2 of the bill provides that the commencement date for the act is a day fixed by the minister by written notice. Where a date has not been fixed within the period of six months from the date of notification, the act will automatically commence on the first day after this period as a consequence of section 79 of the Legislation Act 2001. Government amendment No 1 amends clause 2 to remove the operation of section 79 of the Legislation Act 2001. The government amendment provides that the act will automatically commence on the day following a period of nine months from notification. Allowing a longer period before automatic commencement will ensure that the infrastructure and procedures necessary for implementing the amendments are in place. This highlights and refutes the claims that the government is ramming this legislation through.

Some of the things that need to be done include the fitting out of the remote witness facility, improvements in court technology and training for police. The automatic commencement provision will be consistent with the Court Legislation Amendment Bill, which makes similar amendments in relation to committal proceedings.

DR FOSKEY (Molonglo) (8.23): In rising here, I speak to all the government amendments. We are very happy that the government have made these changes to the bill. It shows that they have listened to at least one of the problems raised by the community since the bill was tabled—arguably, one of the most fundamental of the many issues that I have been made aware of—and that is changing the definition of violent offences.

There is a very comprehensive definition in the next government amendment. It is important because the definition is the key to ensuring that the restrictions placed on the court's discretion and the rights of the accused apply only in cases where the victim is obviously in need of additional protection. They might be instances of sexual assault or domestic violence. I had been in the process of drafting my own amendment to this definition, but I feel that the government's changes are adequate and work towards improving the court process for all involved. Therefore, I will be supporting all the government's amendments.

MR STEFANIAK (Ginninderra) (8.24): Just very briefly, I would like the minister to explain why we are going for nine months rather than six. I do not have a serious problem with the definition of violent offender, but in the explanatory memorandum I do not think he has quite explained why we now have a nine-month period instead of a six-month period for notification. I might have missed something there, but could you just clarify that.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (8:24): As I said in my earlier comments in moving this amendment, there are a range of procedural issues that need to be addressed prior to this bill taking effect. They include the putting in place of a range of infrastructure, including the fit-out of the remote witness facility, improvements in court technology and training for police. These provisions recognise that that will take a period of time. The advice from my department and the courts is that that is the period of time required to ensure that those procedures are in place.

Amendment agreed to.

Clause 2, as amended, agreed to.

Clause 3 agreed to.

Clause 4.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (8:25): I seek leave to move amendments Nos 2 and 3 circulated in my name together.

Leave granted.

MR CORBELL: I move amendments Nos 2 and 3 circulated in my name together [*see schedule 3 at page 3548*].

The bill currently affords special protections for the giving of evidence to victims and other vulnerable witnesses in violent offence proceedings. The term “violent offence” is currently defined by reference to a list of violent crimes under the Victims of Crime (Financial Assistance) Act 1983. Government amendment No 2 inserts two new definitions of “less serious violent offence” and “serious violent offence” into the bill. The new definition is to distinguish between violent crimes on the basis of the severity of punishment that would be imposed. Less serious violent offences are categorised as offences punishable by a term of imprisonment of five years or less. Serious violent offences are characterised as offences punishable by a term of imprisonment of more than five years.

Government amendment 3 is consequential to government amendment 2 and makes the requisite changes I have just outlined in the other part of the bill.

Amendments agreed to.

Clause 4, as amended, agreed to.

Clauses 5 and 6, by leave, taken together and agreed to.

Clause 7.

DR FOSKEY (Molonglo) (8.27): I move amendment No 1 circulated in my name [*see schedule 4 at page 3555*]. As I said before, I have moved some amendments which, if passed, would address some of the major concerns that I share with the parties who have consulted me about this bill. This amendment changes the government's clause 7. The bill states:

A complainant is not required to attend and give evidence at a committal proceeding in relation to a sexual offence.

My amendment changes that to:

A court may direct that a client is not required ...

The committal process should be a place to test the veracity of the evidence to avoid an accused being held in remand awaiting trial when early testing of the evidence might produce a different outcome. Last year an accused was held for a lengthy period in remand, only to find the case was dropped at the Supreme Court.

In conversations my office has had with members of the Law Society it has been suggested that the police may be likely to proceed with spurious cases if their evidence cannot be challenged at committal and legal professionals Jennifer Saunders, Ken Archer and John Harris—and John Harris is a spokesperson for the ACT Bar Association—have echoed these concerns in their comments on this bill. If the government's clause passes unamended, the only evidence required to be given by the prosecution at the committal hearing would be a written statement, including a statement in the form of a transcript of a recording made by a police officer.

As Mr Archer outlines in his letter to Mr Corbell, there are concerns about the admissibility of such evidence, both at committal and at summary hearings and though the government has made some attempt at addressing this in subsequent clauses, I think it is important to be aware of these issues. My amendment takes one further step towards preserving the value of the committal process.

You will note that I have not changed this clause to mandate a complainant's attendance at committal hearings. I have left it to the court's discretion to decide if the complainant should attend. This leaves room for the court to decide if the committal process may have a detrimental impact on the complainant, especially to the extent where it may not proceed to a full hearing.

It has been suggested to me that the failure of cases has more to do with poor police and prosecution investigations than with the rigours of the court process. The CLA has stated:

The bill has a clear focus on the court process with no acknowledgement that a significant weakness in the current processes is the often poor standard of police and prosecution briefs of evidence.

Until this is addressed no amount of legislative amendment will overcome the current systemic problems in the successful prosecution of sexual offences. This amendment, its related amendment No 7 and the other amendments I am proposing are attempts to

correct the bill's drafting to maintain the integrity of our court system while still allowing protection for victims, which is the government's commendable aim.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (8.31): Amendment No 1 proposed by Dr Foskey is also consequential upon her amendment No 7. As they are related, I will discuss them together now.

This amendment strikes at the heart of the scheme and it is unacceptable to the government. It strikes at the heart of the scheme because basically it opens up again the prospect of a complainant being cross-examined at committal. I am yet to hear any strong, compelling argument about why their evidence needs to be tested in cross-examination more than once. I think that is the issue that Dr Foskey must answer.

It is not that there is not a disclosure, because there is disclosure in the committal process. The committal process will still provide for complete disclosure of the Crown's case. That is one of the purposes of the committal. But it is not the purpose of the committal, and it has never been the purpose of the committal, for the defence to have two bites of the cherry: to pursue a line of questioning at committal and then to try and draw out inconsistencies which will then be used in the trial process.

That is not the purpose of the committal process. In addition, it is extremely traumatic for the complainant. The government does not accept this change. It strikes at the heart of the scheme. We might as well not do all these other things because it basically means the complainant is subject to cross-examination at the discretion of the court. Quite frankly, it will be a provision that is exercised, in my view, frequently. It is not one that the government is prepared to support for the reasons that I have outlined.

It is also important to remember that cross-examination at committal is done in the absence of a jury; so often the cross-examination is much harsher than it would be in front of the jury because the defence counsel knows that you can test certain propositions in the committal that perhaps would be viewed unfavourably if they were tested in front of a jury. There are a range of reasons why this proposition is not acceptable and the government would simply not be supporting the amendment.

MR STEFANIAK (Ginninderra) (8.34): I wholeheartedly agree with what the attorney has said. In my experience, which is not inconsiderable, that is exactly what has happened in the past in courts and to my knowledge continues to happen.

I do have some sympathy—and I said this to the Council of Civil Liberties—with the idea in some cases of having a robust committal system. But I think we have seen so much injustice to victims in sexual assault cases and, indeed, in some of the serious violence cases that it is unreasonable to expect some poor victim to go through cross-examination rigorously on two or more occasions. The whole point of this legislation and the point of similar legislation interstate is to ensure that there is one real go where an accused can vigorously subject a complainant to cross-examination, but the complainant does not have to go through that two, three, four or five times. I am pleased to see the attorney say this will be used more often than not.

Dr Foskey also says that these cases often fail because of the poor standard of police work and prosecution evidence. My experience of police work in Canberra, in terms of the evidence, is that it is far better than what the police do interstate. That is probably because they have to jump through more hoops in our court system than police elsewhere. Yes, we have had a few little problems with prosecutions too and, yes, they have lost six staff out of 26. That does not help either, and a lot of the staff are fairly junior.

One of the biggest problems faced by the prosecution and the police in the ACT is the attitude of the Supreme Court, which is completely out of kilter with every other jurisdiction in Australia. I think that they need to lift their game. It has got nothing often to do with the prosecution of the police. It is just a rather strange attitude adopted by some of our judicial officers, which maybe I can politely call “defendant-centric”.

I have absolutely no confidence about what would happen if this amendment were passed. In fact, I have probably got every confidence that if this amendment got up, rather than just giving the court a discretion, the court in fact would invariably direct that a person has to give evidence again. That does defeat the whole aim of this legislation.

Let us see how this goes. I perhaps have much greater sympathy for a robust committal proceeding for people who are not the victims of sexual assault or any violent crimes—less traumatic, different types of offences. I think a strong case can be made there. A committal is actually to tease out exactly what the evidence is. It is to find out how strong the prosecution case is. If it is a weak prosecution case often it will be dropped then and there.

We used to have in New South Wales, and I think in the ACT, the old *nolle prosequi* situation. We would not proceed with the prosecution if the committal found out that a case was weak. But I think there are enough checks and balances here. We have moved on enough here. We have had enough instances of the sexual assault laws, the way the courts have operated, the way the law has operated and the way that practitioners have operated to really bring home the need for some change here to put the system back in kilter, to ensure proper fairness to both defendant and accused. The accused should not be treated like some treasured citizen. We should have a little balance in the system.

Yes, there are potentially some problems here. I have the greatest regard for Ken Archer, and it worries me when he said there may be problems with admissibility of evidence and that the prosecution may have trouble getting up. I certainly hope the government officials who are present in the chamber—I see Mr Quinton smiling and shaking his head; I hope he is right—have taken it on board. I would hate to see this, but there might be a few little problems here which might make it harder for a prosecution to get up. We do not want prosecutions to get up when it is wrong that they get up.

I have seen people who believe that if an accused is not guilty the police would not have brought the person to court. That is going to the other extreme. But by the same

token, we do need to ensure fairness. We need to ensure that a strong case actually does get up. People who deserve to be convicted should be convicted. If there is any problem in the system in terms of evidence not being admissible because of some quirk, that needs to be fixed.

Mr Archer has a point there. I hope he has not, but if he does let us make sure we fix that up. I would have to agree with the attorney that unfortunately Dr Foskey's amendment here, even though it is only a note—it is still quite persuasive—would indeed be like a red rag to a bull. It would tend to defeat the purpose of the exercise. You would find that 99.9 per cent of the time a court would in fact direct that the complainant actually has to come back and give evidence at the committal, which does go against the whole scheme.

I think this is fundamentally a good scheme. Let us see how it goes. Let us do the necessary amendments, if we have to, to make it better. Let us tweak any problems with it. Unfortunately on this occasion, Dr Foskey, I entirely agree with the attorney and we will also be opposing the amendment.

Amendment negated.

Clause 7 agreed to.

Clause 8.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (8.39): I seek leave to move amendments Nos 4 to 6 circulated in my name together.

Leave granted.

MR CORBELL: I move amendments Nos 4 to 6 circulated in my name together [*see schedule 3 at page 3549*].

Government amendment 4 inserts new section 38AA into division 4.2 of the act. This new section defines relevant person for division 4.2 to clarify which relationships between a witness and an accused are recognised for the purpose of automatic protection under the special measures in the bill.

New section 38AA defines “relative” and provides a cross-reference to the Domestic Relationships Act 1994 for a definition of domestic relationship to aid the definition of relevant person.

In relation to my amendment No 5, new section 38B permits the court to arrange the courtroom to provide that complainants and similar act witnesses in sexual or violent offence proceedings are not required to view the accused or anyone else the court orders to appear while they are giving evidence in the proceeding.

Government amendment 5 replaces section 38C (1) to amend the circumstances in which the court can order the use of this protection dependent on whether the crime falls into the category of a serious violent offence or a less serious violent offence.

Under the new regime, the court will continue to be able to make arrangements to block the view of the accused from complainants and similar act witnesses in sexual and serious violent offence proceedings. However, the court will only be able to make these arrangements for complainants and similar act witnesses in less serious violent offence proceedings if the court is satisfied that the complainant or similar act witness is a relevant person in relation to the accused or the complainant or similar act witness has a disability that affects their ability to give evidence in the proceedings.

The amendment recognises that there are some situations where it may be unnecessary for a complainant or a similar act witness in a proceeding of a less serious violent crime to be afforded automatic protection. Protection will be afforded to these witnesses where the court is satisfied that there is a need for the witness to be protected. However, the amendment recognises that a relationship between the accused and witnesses such as parent and child, husband and wife, or domestic partners would be sufficient grounds for ordering protection.

Finally, in relation to amendment 6, new section 38C prohibits a self-represented accused from personally cross-examining any of the following witnesses for the prosecution in a sexual or violent offence proceeding: complainant, child, a similar act witness, or a witness with a disability that affects their ability to give evidence. Government amendment No 6 replaces section 38C (1) to amend the circumstances when this protection applies dependent on whether the crime falls in the category of a serious violent offence or a less serious violent offence.

Under the new regime, the protection would continue to apply automatically to complainants and similar act witnesses in sexual and serious violent offence and to children and disabled witnesses in sexual, serious violent and less serious violent offence proceedings. However, the protection will only apply to complainants and similar act witnesses in less serious violent offence proceedings if the court is satisfied that the complainant or similar act witness is a relevant person in relation to the accused or the complainant or similar act witness has a disability that affects their ability to give evidence in the proceedings.

Amendments agreed to.

DR FOSKEY (Molonglo) (8.44): I seek leave to move amendments Nos 2 and 3 circulated in my name together.

Leave granted.

DR FOSKEY: I move amendments Nos 2 and 3 circulated in my name together [*see schedule 4 at page 3555*].

These amendments address the major criticism from each person and organisation who have made complaints to me about this bill. The right to defend oneself in person is centuries old. Prior to the amendments, this bill placed an extraordinarily far-reaching and unreasonable restriction on that right. While I accept that the government's amendments correct the most concerning aspect of restricting the right of the defendant to cross-examine the witness by changing the definitions of violent offences, I do think that they have gone quite far enough.

In their submission regarding this bill, the ACT Human Rights Commission states:

The Commission accepts that criminal proceedings involving sexual offences justify a restriction on the rights of the accused to defend themselves to the extent they are prevented from cross-examining the complainant directly. This is because there is extensive research that documents the extent of psychological and emotional harm that is caused to the complainant from cross-examination by the accused ... To extend the provisions to “violent offences”, however, may not constitute a reasonable restriction on the human rights of accused.

I agree with that. In some circumstances the damage that could be done to a complainant, in both sexual and non-sexual assault hearings, if cross-examined by the defendant warrants such a restriction. However, this is not the case in all proceedings of this nature, which is why my amendment gives the court the discretion to decide if a defendant defending themselves should be allowed to cross-examine the complainant. The Human Rights Commission has noted:

Western Australia gives the court a discretion (rather than mandates it) to make various orders in relation to the manner and form of an accused’s cross-examination of a witness, including, if necessary, the power to direct any questions to be passed to the witness via the judge or other approved person.

This is what my amendment echoes. The prime thing is to allow the court to make a decision based on each particular case. I hope that members note that it does not mean the accused necessarily cross-examines directly the witness, which I am sure was at the heart of the government’s concern.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (8.47): The bill currently prohibits absolutely a self-represented accused from personally cross-examining vulnerable witnesses in sexual assault or violent offence proceedings. The prohibition maintains the right of the accused to cross-examine these witnesses through legal representation. Dr Foskey’s amendment No 2 would remove the absolute prohibition and provide the court with the discretion to determine whether the self-represented accused would be entitled to cross-examine a witness directly or not. The government remains committed to removing the potential for an accused to use cross-examination to re-traumatise their victims and other vulnerable witnesses. The importance of the prohibition in relation to sexual offence proceedings is widely recognised in most common law jurisdictions, including the other states and territory.

The unique nature of sexual offence proceedings is such that questions dealing with matters of considerable intimacy relating to sexual approaches, details of sexual acts and the aftermath may have to be put to an alleged victim. As these questions are likely to cause the alleged victim to feel demeaned or humiliated, requiring or allowing for the accused to put these questions personally offends the proper administration of justice in ensuring everyone enjoys the rights and obligations recognised by law. Sparing victims this ordeal not only will ensure that victims are treated with the respect and dignity they deserve; it would also potentially increase the accuracy of evidence they give during cross-examination.

Complainants in violent offences suffer from the same vulnerabilities commonly recognised as unique to sexual offences. Violent offences invariably involve a power imbalance between the two parties in favour of the alleged offender. For example, in offences such as torture or abduction the offender often obtains a degree of power or dominance over the victim, leaving the victim fearful or intimidated and often feeling ashamed or embarrassed. In the government's view it is inappropriate that an accused should be able to gain any advantage out of this relationship that may be conferred by personal confrontation and personal cross-examination.

Experience has shown that the powers which the courts have to control their courtroom in relation to forbidding or disallowing questions which appear to be intended to insult, harass, intimidate or annoy are used sparingly. In cases where an accused is self-represented the courts may be reluctant to control cross-examination because of the need to be, and be seen to be, fair to an accused person who is unfamiliar with legal procedure. It may also be difficult for the court to detect words, gestures or body language which were a feature of the relationship between the complainant and the accused which could be used by the accused to intimidate the complainant during cross-examination.

For these reasons, the government is determined to ensure that the accused is not provided with the opportunity to gain an advantage over a complainant or other vulnerable witnesses, and we will not be supporting these amendments.

MR STEFANIAK (Ginninderra) (8.50): Nor will the opposition, although it is a rather vexed issue which Dr Foskey rightly raises. Historically, it was probably about 150 years ago that we started having defence counsel representing the accused. The practical facts of the matter are pretty much as the attorney stated. He made the good point that the courts do—and rightly so—bend over backwards to assist unrepresented people with their case. They will give them a lot a more latitude than is given to a legal practitioner. In terms of violent crimes, and especially sexual crimes, that could be a problem.

The other practical thing here is that I cannot recall—I have probably been out of it for about 13 years—in the last 30 years someone representing themselves in a serious sexual assault case. Invariably, they are represented, often by legal aid or often by the private profession. I am really scratching my head to think of anyone who has represented themselves in such cases. Having appeared in a lot of cases—and I still go to court and watch cases when I can—I know that you do get the odd self-represented defendant in areas, but it does not tend to be in this area. So it may not be quite the same practical problem.

I express a word of warning here. This is an area that we do need to watch and see how it goes. Historically, a person does have the right, no matter how bad they are, to represent themselves. With other checks and balances, maybe there is a way that you can do it. I can think of some horrendous cases where it would be just unconscionable to allow an accused who has absolutely monstered some poor victim to put the victim through further trauma by cross-examining them. Certainly, there have been instances where self-represented defendants have attempted to monster people when representing themselves in other types of matters. I think the attorney raises some

good points there and we will also be opposing these amendments, but we will monitor it to see how it operates.

Amendments negatived.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (8.53): I move amendment No 7 circulated in my name [*see schedule 3 at page 3552*].

New section 38D provides an entitlement to a complainant or a similar act witness in a sexual or violent offence proceeding to have a support person seated close to them and within their sight while they are giving evidence. Government amendment No 7 replaces section 38D (1) to amend the circumstances when this protection applies, depending on whether the crime falls into the category of a serious violent offence or a less serious violent offence.

The court can order a support person for a complainant or a similar act witness in a sexual or serious violent offence proceeding but can only order a support person for a complainant or a similar act witness in a less serious violent offence proceeding if the court is satisfied that the complainant or similar act witness is a relevant person in relation to the accused or the complainant or similar act witness has a disability that affects their ability to give evidence in the proceeding.

Amendment agreed to.

Clause 8, as amended, agreed to.

Clause 9.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (8.54): I move amendment No 8 circulated in my name [*see schedule 3 at page 3552*].

Section 39 provides the court with the discretion to order the court to be closed to the public while a complainant or similar act witness in a sexual or violent offence proceeding is giving evidence. Government amendment No 8 replaces section 39 (1) to amend the circumstances when the court orders a closed court depending on whether the crime falls into the category of a serious violent offence or a less serious violent offence. The court can close the court to the public while a complainant or a similar act witness is giving evidence in a sexual or serious violent offence proceeding but can only order a closed court for a complainant or a similar act witness in a less serious violent offence proceeding if the court is satisfied that the complainant or similar act witness is a relevant person in relation to the accused or the complainant or similar act witness has a disability that affects their ability to give evidence in the proceeding.

MR STEFANIAK (Ginninderra) (8.55): We will be supporting the amendment. I note that in the explanatory memorandum the attorney refers to principles under the Human Rights Act. I heard Dr Foskey say that she thought some of these might not be compatible with that. She might have a point here but I do not think it is a problem

because that act provides for the government to say, “This is not compatible with the Human Rights Act but we have very good reasons for that to be the case.” The government does not have to pussyfoot around in terms of that. My views on the Human Rights Act are well known; I am not going to go into that. But there will be instances when it is very much in the public interest to have some law which might be incompatible with it, and the government should say so. I just make that point, but we will be supporting this amendment.

Amendment agreed to.

DR FOSKEY (Molonglo) (8.56): I move amendment No 4 circulated in my name [*see schedule 4 at page 3556*].

This amendment and amendment No 6, to which I will speak now as well, allow the media to access the court even when it has been closed to the public. In the recently passed Children and Young People Bill, there were specific provisions in schedule 1 which outlined access by the media to court proceedings involving children or young people that are not open to the public. It states that people who may be present at the hearing of the proceeding—and I quote:

for a criminal proceeding—a person who attends the proceeding to prepare a news report of the proceeding and is authorised to attend for that purpose by the person’s employer ...

Of course, it is an offence to publish certain information about proceedings involving children as laid out in the Criminal Code, section 712A. My amendment in no way crosses into that territory. Currently, the bill states that the court may order that the court be closed to the public while all or part of the witness’s evidence is given and that the accused is entitled to a fair and public hearing but the court may exclude the press and public in certain circumstances. So there is some discretion for the court to allow the press to be in attendance.

My amendment, however, gives the media a legislated right to attend and report on proceedings provided that they do not disclose any information which might identify a party to the proceeding. To quote Civil Liberties Australia, “In order that justice is done, justice must also be seen to be done.” Allowing the media to witness court proceedings is one way of protecting fair trials and, while I acknowledge that there are problems with defining who should be recognised as media, these are problems that I believe could be resolved. I am pleased that the government has given me an assurance that it will support this amendment.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (8.59): As Dr Foskey has indicated, the government was originally hesitant about including a provision such as this which specifically allows media access to closed courts due to the expanding nature of the term “media” and who would be caught by that term. However, the government will be supporting this amendment for two reasons.

At this point in time it is still possible to meaningfully distinguish between the traditional media and other observers within a courtroom. In the future, this may be a

more difficult task. However, the presence of the traditional media in the courtroom provides an additional standard of accountability which may add some level of comfort to those who have some concerns with this legislation as we move down this path. The government will be supporting it.

MR STEFANIAK (Ginninderra) (9.00): The opposition will also be supporting this amendment. The court can still close the court when it has to. Courts have always had that ability and this bill gives them that ability. Clearly, there are accountability issues. I think it is often in the interests of everyone and, indeed, I think it would be quite beneficial to the victim, in terms of the healing process, to have the matter in the media. Of course, the media is sensitive to names. Our media do that regularly here, so it seems to be a reasonably sensible amendment. The opposition will be supporting it.

Amendment agreed to.

Clause 9, as amended, agreed to.

Clause 10 agreed to.

Clause 11.

DR FOSKEY (Molonglo) (9.01): I move amendment No 5 circulated in my name [*see schedule 4 at page 3556*].

This bill makes some significant changes to evidence requirements and places a lot of emphasis on the use of audiovisual recordings of witnesses. Using these recordings as evidence to take the pressure off witnesses in the court arena is well intentioned. Although concerns have been expressed about the use of these recordings to the exclusion of other types of evidence, I do support their use in some circumstances. However, to ensure that judges and the jury are given the full amount of information available from such a medium, I have proposed this amendment to ensure that as much of the witness making the statement is as visible as possible.

Body language has been recognised by many experts and agencies as important in assessing a witness's reliability and credibility. If the witness were giving this statement in court, the judge and/or the jury would be able to view and evaluate every aspect of their demeanour. Regardless of the credibility we give to the value of body language in revealing underlying mental states, we all make these assessments subconsciously, anyway. It is an integral part of human communication. Denying the judge and the jury the opportunity to see the body language of a witness serves no useful purpose and is an unnecessary denial of the right of an accused to a fair trial.

Under the government's amendments as they stand, the witness's face will be visible to the judge and the jury as well as to the accused. My amendment merely seeks to ensure that audiovisual evidence is as close as possible to the testimony that the judge and/or jury could expect to see if the witness were actually present in court.

Discussions with the Attorney-General's office have indicated that, while the government supports the intent of this amendment, it does not support the wording of

the amendment. There is an indication that the government will be making its own changes to the court rules later on to provide for visibility of body language and demeanour. I have no choice but to accept its decision, but I do hope to see these changes to the court rules soon.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (9.04): If Dr Foskey keeps foreshadowing the government's position I will not have to say anything.

Dr Foskey: I can read your mind!

MR CORBELL: The government does agree that it is very important that the witness's demeanour and body language are visible to the people or person viewing the recording. That is why the government has invested significantly in new audiovisual technology—indeed, a multi-million-dollar package—to provide for high-quality audiovisual presentation of witnesses' evidence that is given remotely. That includes high-quality television screens or monitors, an off-site witness facility and so on.

However, the advice I have, and which I accept, is that it is not necessary to provide for these procedural requirements in the legislation. Indeed, they will be addressed, as Dr Foskey has indicated, through the court procedure rules, and I believe that is an appropriate place for them. But the intention is clear and the government's intention, for the record, is that I would expect somebody who is giving evidence remotely to be able to be presented effectively and as close as possible to the manner that they would present if they were in the witness box. That is the intention of the government's reforms and its investment in the technology.

MR STEFANIAK (Ginninderra) (9.05): Obviously, the attorney has the numbers so something will happen there. The opposition will be supporting Dr Foskey's amendment. I suppose it is difficult for Dr Foskey in that she does not have the numbers, but it is terribly important to, as best you can, ensure that a witness's demeanour and body language are visible to whoever is viewing the recording. That is a very important part, especially for a jury. I think it is rather sad that people are opting not to have jury trials in the ACT. They do so for a very good reason—they are much more likely to be acquitted. That is a systemic problem in our courts and it is something the attorney has said he will address, and we certainly will if he does not. That is for another day.

Whilst this legislation as a whole is so important, because the pendulum has swung far too much in favour of the accused rather than the victim, in sexual assault cases it certainly has been the case, on occasions, that someone will maliciously take someone to court, make a complaint and might be quite convincing. Demeanour and body language are terribly important in that regard, certainly for jury and also for any judicial officer. So Dr Foskey has made a very valid point and we are happy to support it. We note what the attorney has said. Whilst this amendment will go down, it is something that will be picked up by the government in some way. We think that is certainly desirable.

Amendment negatived.

Clause 11 agreed to.

Clauses 12 to 15, by leave, taken together and agreed to.

Clause 16.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (9.07): I move amendment No 9 circulated in my name [*see schedule 3 at page 3553*].

Clause 16 of the bill currently substitutes a new section 42 to provide that division 4.3 applies whether the evidence given by a complainant or a similar act witness in a sexual or violent offence proceeding is to be given on oath or otherwise. Government amendment No 9 replaces clause 16 to substitute a new section 42 to provide that division 4.3 applies if the complainant or similar act witness is to give evidence in any of the following proceedings, whether the evidence is to be given on oath or otherwise: a sexual offence proceeding; a serious violent offence proceeding; or a less serious violent offence proceeding if the court is satisfied that the complainant or similar act witness is a relevant person in relation to the accused or they have a disability that affects their ability to give evidence in the proceeding.

Amendment agreed to.

Clause 16, as amended, agreed to.

Clauses 17 to 24, by leave, taken together and agreed to.

Clause 25.

DR FOSKEY (Molonglo) (9.09): I move amendment No 6 circulated in my name [*see schedule 4 at page 3556*].

This amendment just gives life to my earlier amendment, amendment No 4, which was about allowing the media to access closed proceedings. I would expect that that would get the support of the Assembly.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (9.09): This amendment is contingent on or is a consequence of Dr Foskey's amendment No 4 relating to the provision of media in the courtroom and the government supports it.

Amendment agreed to.

Clause 25, as amended, agreed to.

Proposed new clause 25A.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (9.10): I move amendment No 10 circulated in my name which inserts a new clause 25A [*see schedule 3 at page 3554*].

Government amendment No 10 inserts a new part 10 into the act. New part 10 provides a transitional provision to the effect that the amendments in part 2 of the act do not apply to a proceeding if the hearing of the proceeding has started before the amendments in part 2 commence. It is intended that the new amendments will apply to all cases that are on foot, unless a hearing has already commenced. It will not be relevant when the charges were laid or the offence occurred, but if a hearing or sentencing proceeding has commenced then the new provisions will not apply.

Proposed new clause 25A agreed to.

Clauses 26 and 27, by leave, taken together and agreed to,

Clause 28.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (9.11): I move government amendment No 11 circulated in my name [*see schedule 3 at page 3554*].

Government amendment No 11 inserts three additional definitions of less serious violent offence, relevant person and serious violent offence into the dictionary of the act, as a consequence of government amendments 2 to 9. The additional definitions provide cross-references to sections 37 and 38AA of the act where the terms are defined.

Amendment agreed to.

Clause 28, as amended, agreed to.

Clauses 29 to 32, by leave, taken together and agreed to.

Clause 33.

DR FOSKEY (Molonglo) (9.12): Amendment No 7 was contingent upon my amendment No 1 being passed, so I will not move it.

Clause 33 agreed to.

Proposed new clause 34.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (9.12): I move amendment No 12 circulated in my name which inserts new clause 34 [*see schedule 3 at page 3554*].

Government amendment 12 inserts a new chapter 12 into the act. New chapter 12 provides a transitional provision to the effect that the amendments in part 3 of the act

do not apply to a proceeding if the hearing of the proceeding has started before the amendments in part 3 commence. It is intended that the new amendments will apply to all cases that are on foot, unless a hearing has already commenced. It will not be relevant when the charges were laid or the offence occurred, but if a hearing or sentencing proceeding has commenced then the new provisions will not apply.

Amendment agreed to.

Proposed new clause 34 agreed to.

Title agreed to.

Bill, as amended, agreed to.

Court Legislation Amendment Bill 2008

Debate resumed from 26 June 2008, on motion by **Mr Corbell**:

That this bill be agreed to in principle.

MR STEFANIAK (Ginninderra) (9.13): The bill contains a new and improved method for commencing criminal proceedings in the Magistrates Court called a court attendance notice. It is issued at the time of charging and contains the following information: the name of the person; the offence to which it relates; the outline of the particulars in the offence and, unless a warrant is issued for the arrest of the person or bail refused, the time and date to appear in court and consequences if the person fails to attend.

The bill also allows reference appeals to be heard by the Supreme Court and the Magistrates Court, and I will come back to that in a second. The bill reduces the requirement for a written statement admitted as evidence to be a statutory declaration. It amends the Supreme Court Act to give effect to a recent High Court decision regarding the jurisdiction of the Court of Appeal and also amends the Director of Public Prosecutions Act to allow the DPP to have a non-legal practitioner's member of staff appear at the callover list. That is pretty sensible because that is what the private profession has been doing for quite a while.

I think the CAN system is a more efficient process. It has certainly been used in New South Wales for a number of years, as the attorney alluded to in his presentation speech, and it will enable better use of police and court time. The proposed 12-month trial, I understand, is to allow flexibility so we will see how that actually operates.

Reference appeals—they have been allowed for the Supreme Court, but they have not been allowed for the Magistrates Court—may resolve questions of law in criminal proceedings, which may assist future prosecutions. Effectively, it is a judgement which becomes a precedent. That is irrespective of the outcome of the original proceedings. It makes it clear that a reference appeal option is not actually limited to matters where a plea of not guilty has been entered. That, I suppose, is a positive thing.

We have had a number of appeals, and I remember one quite clearly in the Supreme Court. The Chief Justice—he was not the Chief Justice then—let someone off because the police warrant did not have its I's dotted and T's crossed. The defendant shot a police officer and almost killed him. The charge of manslaughter, or whatever it was, was dismissed because of the warrant.

MR SPEAKER: Mr Stefaniak, I draw your attention to standing order 54 and ask you not to reflect on judicial officers.

MR STEFANIAK: I am sorry about that. There have been a couple of strange decisions in the courts and reference appeals have probably assisted in terms of ensuring that they do not occur again. It is not a bad idea to extend that to the Magistrates Court.

Perhaps it is a shame that the attorney did not go further. Several months ago he indicated that he was mindful of amending legislation to ensure that the Crown actually have a right of appeal from the Supreme Court to the Court of Appeal when a judge gets it wrong—for example, misdirects a jury or goes off on a tangent and makes an error of law which ensures an acquittal.

At present, if there is an acquittal, that is it; the prosecution cannot bring another case. If the attorney is going down that path, it is a pity that the party did not go down that path in 2000-01 when I, as Attorney-General, introduced that suite of amendments to the criminal law. But it is better late than never.

I am pleased that the attorney has flagged that. I think it is a bit of a shame that, rather than just introducing the reference appeal, which is a step in the right direction, he did not go further and bring us into line again with other states where the Crown pretty much has the same right as the defendant who does not agree with a decision in a superior court to appeal to the Court of Appeal.

The former Director of Public Prosecutions—now Justice Refshauge—said in an estimates hearing several years ago that there are at least two cases a year in the ACT where, in the interests of justice, the right to appeal to a superior court, the Court of Appeal, would be very handy and if they were successful the matter would then be reheard, be it a fresh trial or otherwise in the Supreme Court.

So whilst we commend the attorney for the reference appeal, that is small beer, I think, compared with what he has flagged in giving that full right of appeal to the Court of Appeal to the Crown when the court gets it wrong, or at least when the Crown says the court gets it wrong. That right has been called for by the standing committees of the DPP a number of times. It is in force in most other jurisdictions and it has been flagged here. It would have been an ideal situation for it to be put in here.

But for the late entry of this bill we might have been able to formulate an amendment ourselves. It is not all that difficult. It is a shame that the opportunity has been missed. Should you be the government after the next election, you will pick that up. Should we be the government after the next election, we will pick that up. We have tried that before.

Apart from that the bill is pretty much uncontested. There is not too much contention on this bill. There are a couple of sensible amendments. It is a pity it has not gone further. We will be supporting it.

DR FOSKEY (Molonglo) (9.19): Just briefly, this bill updates and streamlines various processes for the DPP, the courts and other relevant parties. We will be interested to see the results of the trial of the court attendance notice. We are looking forward to feedback, whether from the prosecutors or the defence. I hope that will be documented and, of course, taken on board.

Given the current resource pressures on the DPP it does make sense to streamline practices where we can, but this should not happen at the expense of proper court process. Indeed, the changes in this bill are all reasonable and I hope and expect that they make a positive difference to all parties involved in our judicial system. If that is not the case, I hope that it is reviewed.

MR CORBELL (Molonglo—Attorney-General, Minister for Police and Emergency Services) (9.20), in reply: I thank members for their support of this bill. This bill contains a number of reforms to the ACT's court legislation, which has been the subject of progressive reform since the Court Procedures Act was passed in 2004.

This bill contains new initiatives such as improved reference appeal procedures and time saving changes to requirements for written statements admitted as evidence. The main feature of the bill is the introduction of a new and improved method for commencing criminal proceedings in the Magistrates Court, known as the court attendance notice or CAN.

The current process requires police officers to attend court to lay information before a magistrate so that the court can issue a summons for the attendance of the defendant on a particular date. This has resulted in a waste of time and money for the police, courts, the Director of Public Prosecutions and other court stakeholders. It is inefficient and results in a poor rate of attendance by defendants and a diversion of court resources from more substantive issues.

CANS has been used successfully in other jurisdictions, including New South Wales and Queensland, for a number of years now. A CAN is issued at the time of charging and provides all the information required by the defendant or accused, including a brief outline of the particulars of the offence, the time and date that the defendant or accused must be in court and the consequences of non-attendance.

The CAN process delivers a number of improvements, including keeping more police on the street and allowing more time for the courts to deal with substantive issues. It will also reduce the amount of time accused people remain in police custody as it will significantly simplify the process by which their criminal matters are commenced.

Another benefit to the accused is the receipt of more information about the charge when they are released from custody and greater certainty about the nature of the charge. The current information and summons procedures will remain in the legislation for a 12-month trial period after which it is expected that the existing

procedures will be repealed if the trial is found to be successful. I thank members for their support and commend the bill to the Assembly.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Long Service Leave Legislation Amendment Bill 2008

Debate resumed from 26 June 2008, on motion by **Mr Barr**:

That this bill be agreed to in principle.

MR STEFANIAK (Ginninderra) (9.22): The opposition will be supporting this bill. I have been attempting to get some guidance and assistance from some of the main players in town. Despite emails and phone calls they have not responded, which suggests that perhaps this bill is somewhat non-contentious and is accepted by the industry.

I think there are some sensible aspects to it. Seven-year lumps rather than five-year lumps seems to be eminently sensible, and I think that is a step in the right direction. Needless to say, there are a couple of issues there which potentially cause me a bit of concern, but I will give them the benefit of the doubt in view of the fact that no-one has actually come beating on my door with great concerns about it. Accordingly, we will monitor how it goes. The opposition will be supporting this piece of legislation.

DR FOSKEY (Molonglo) (9.24): Portable long service leave serves a number of purposes. For people in the cleaning industry the shifting nature of cleaning contracts means that workers often find themselves working within the industry for a number of employers. Construction work is very much contract based. Maintaining seven or 10 years employment with the one construction company or even at the one location is unlikely for most workers so a decision has been made that workers in those industries are disadvantaged in their employment compared with those in more sustained employment situations. Indeed, more and more people are in this situation of short-term employment in contract situations.

Long service leave has come to be accepted as an entitlement and this bill extends that entitlement to a broader range of employees. Some of the amendments in the bill are designed to assist in the operation of these two portable schemes and bring some minor references up to date.

I do not think we can let these small adjustments to existing long service leave schemes go through without referring to the community sector and the somewhat different purpose of a portable long service leave scheme for that industry if it were ever to be introduced, as the government has over many years suggested was about to happen.

One of the key workforce issues faced by the community sector is the fairly short time in which people remain engaged in the sector and, more particularly, within one organisation in that sector. Very often people develop skills, take on responsibilities and make a substantial contribution, but they become a little dispirited and exhausted or, as we say, burnt out and move on to public or private sector employment where they are generally going to enjoy better wages and/or a more secure work environment and greater promotional opportunities.

The provision of a portable long service scheme that is managed independently of the small community organisations that fund it would at least offer some benefit to those people in the sector who remain committed to the sector. These are the historical benefits of long service leave.

The scheme in this context would give people who have made a substantial contribution to the sector extended leave allowing them both rest and replenishment and a chance to reflect on their work. Such a scheme would operate to support the continued involvement of senior and experienced people in the sector, and that is something that is desperately needed. In supporting this bill I am expressing my disappointment that the more important work of setting up new schemes such as the one for the community sector has moved forward so slowly.

MR BARR (Molonglo—Minister for Education and Training, Minister for Planning, Minister for Tourism, Sport and Recreation, Minister for Industrial Relations) (9.27), in reply: I thank Mr Stefaniak and Dr Foskey for their comments in support of the legislation. The amendments in this bill will further simplify and streamline long service leave arrangements under the Long Service Leave Act 1976 and the Long Service Leave (Building and Construction Industry) Act 1981 and make them more practical for both employers and employees by allowing employees within the private sector to gain access to their long service leave on a year-to-year basis after serving an initial seven-year period with the same employer.

The government has sought to enhance long service leave arrangements for employees. With regard to the Long Service Leave (Building and Construction Industry Act) 1981, a formula that has been confusing to employers and employees has been removed and simplified and a less complex method for calculating reimbursements to employers has been introduced.

I think we can be proud that we have a model that allows access to long service leave after only seven years of service compared with the national average of 10 years. We can be proud that we will shortly have a genuinely progressive private sector model that will provide year-to-year access to long service leave after an initial seven years of service with the same employer. This additional benefit will also further enhance the attractiveness of employment within the ACT's private sector without creating any additional financial burden to business. I thank members for their support of the legislation.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Adjournment

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

That the Assembly do now adjourn.

Chief Minister—suspension

MR PRATT (Brindabella) (9.29): I quickly want to refer to a matter around an incident that we saw occurring here yesterday in the chamber, a sensitive matter. I am going to reflect not on the incident itself but on what has happened since in the media. I refer to the expulsion of the Chief Minister yesterday from this place. In relation to his being thrown out of the chamber yesterday, Mr Stanhope repeatedly stated in the media that he had not heard you, Mr Speaker—

MR SPEAKER: Mr Pratt, I fear that you are about to reflect on a vote of the Assembly.

MR PRATT: No, no.

MR SPEAKER: Just to remind you of the process, my role in this is to name the member. Then the Assembly decides on the outcome. You should be wary about reflecting on a vote of the Assembly.

MR PRATT: I do not have any issue with decisions taken in this place yesterday. I will not be reflecting on the Speaker or the Speaker's decisions. I intend to reflect on the behaviour of the Chief Minister and the statements made by him in the media since his expulsion from the chamber yesterday, because it needs to be put on the record. I will take care not to contravene rulings or matters of order that have occurred in this place.

MR SPEAKER: To be fair, you should also mention that he apologised to the house.

MR PRATT: Yes. Mr Speaker having raised that, I will put back on the record that, against the background of what occurred yesterday, the Chief Minister did apologise to the house for his conduct yesterday. There is no question about that.

What I am reflecting on here is the spin doctoring which has occurred outside the chamber, beyond the rightful apology that he made—and he should have made one too, by the way. On 2CC this morning, and in the media overnight, he said that he had not heard that he had been warned. There is of course a chance that he did not hear that he had been warned, because of his belligerent, bellicose and extremely loud, rambling behaviour. That might be the case. That may be the case. But it would appear to those who witnessed the occasion that he was so shocked at having been warned that he instantly sprang to his feet. He has said in the media that he really did

not hear that he had been warned. However, to those of us who witnessed the occasion—and I was in that particular debate, as were others—he very quickly—

Mr Barr: When are we seeing your TV ads, Steve? I'm really looking forward to yours.

MR PRATT: He very quickly, I recall, after he had been warned—

Mr Barr: I've had my night of watching the Olympics.

MR PRATT: I recall that, after he had been warned, he sprang immediately to his feet to take a point of order. The point of order taken was instantaneous. It seemed to most of us that, having been challenged by this side of the chamber about what standing order he was raising, he simply rambled off into some diatribe about how he was just checking to see the relevance of the debate.

We do not quite see it that way, Mr Speaker. We think that this was a very poor reflection. It is a great pity that the Chief Minister has gone to such lengths overnight to mislead the community about the facts surrounding the incident which occurred in this place yesterday. It is very deeply disappointing. It is deeply disappointing that Mr Stanhope should have spun that the way he has spun it. I hope he reflects on his conduct. He is the Chief Minister; he is the first minister. He must set an example. That extends to making sure that he does not pull the wool over the community's eyes about that sort of behaviour, and that is what he is trying to do.

Public Accounts—Standing Committee

DR FOSKEY (Molonglo) (9.34): Thank you, Mr Very Tired Speaker.

MR SPEAKER: I've got a bit of life left in me yet.

DR FOSKEY: I just wish to speak a little; I am sure that you will pull me up if I am out of order. I think you will pull me up if I am out of order. We will just see if you are listening, Mr Speaker.

I would like to respond to things the Chief Minister said this morning in response to the tabling of the public accounts committee's report on Rhodium. We did, of course, table two reports today. One has hardly got a mention, but I am sure that you will all find that riveting reading as well.

Mr Stanhope responded in question time with some advice that he received from the Government Solicitor. I believe that he said he would table that advice. I am not sure whether other members recollect him saying that, but I would hope that that advice would be tabled. Of course, I do not have the transcript of question time in front of me. Anyway, I certainly would encourage and urge the Chief Minister to table that advice given that that advice is so important to the arguments—

Members interjecting—

MR SPEAKER: Order!

DR FOSKEY: Thank you. I was having trouble hearing myself in that instance.

MR SPEAKER: Order, members! Dr Foskey has the floor. I am taking some detailed instructions here.

DR FOSKEY: I would like to comment on that legal advice. I note that the legal advice itself pointed out that the whole report had not been read. I really feel that that is the whole problem with the Chief Minister's response. As I remember, he was not even in the chamber when the report was presented, did not hear most of my speech but did what he so often does: go off on one word. As I said to the media this afternoon, methinks the Chief Minister does protest too much. Often, the depth of that protest indicates the concern that he has about the recommendations of the report.

I just want to say that in my opinion the legal advice he received from the Government Solicitor in no way contradicts our report. Our report did not say that the shareholders should give bad directions. That seemed to be the way that the Chief Minister was interpreting the advice. He said that directors are under no obligation to follow shareholders' directions if the directions are not in the best interests of the company. Exactly. In fact, if the shareholders have directions that are not in the best interests of the company, as seen by the board, then, as the legislation says, the company must be compensated.

But isn't that the last resort? Don't the shareholders meanwhile engage in dialogue with the board? If it gets to the extent where the shareholders are requiring the directors to do something that they think is against the best interests of the company, I think that there has been a failure with the dialogue. That is clearly, as I think the report points out, what has been missing—good communication, clear communication. The report was given in the sense of "These are the lessons learned from Rhodium; let's make sure they do not happen with other territory-owned corporations."

Legal advice, of course, is generally self-serving. In this case, the Government Solicitor's advice did not contravene our report. We look forward to hearing what he—or she; it could be a female—has to say when they have read the whole report. (*Time expired.*)

Chief Minister—Crikey reports

MR SMYTH (Brindabella) (9.39): I know the Chief Minister is busy and probably does not get a chance to read all of his emails personally, so I thought I would just update him a bit on a few items that have appeared in that electronic journal of note *Crikey* over the last couple of months. The first one appeared on 4 June 2008. It reads this way:

The chief minister of the ACT, Jon Stanhope, is out of favour with the federal government over his push for gay legislation. Talk is he was favoured for a diplomatic posting until he ruffled feathers (again) with his pro-gay rights stance. He is now saying publicly he is staying around for the long haul but privately scurrying for an assignment that will allow him to leave ACT politics with dignity. ACT Labor insiders concede his government is on the nose and very likely to lose the next election in November.

That was on 4 June. On 26 June this year, *Crikey* again ran an article. It goes like this:

The ACT chief Minister, Jon Stanhope, has directed his staff to find as much dirt on the new opposition leader, youngish Zed Seselja, as they can. The problem is this: Zed is clean. Stanhope, on the other hand, is tainted with an odour that refuses to be washed away: his latest gaffe is the gas-fired power station debacle. Yesterday, he announced yet another major new Power Station project, after weeks of exposure over his bungled “Gas project mark1”. The troops say he is resigned to a policy of “attack is the best line of defence”. One wonders how much longer a weary Canberra electorate will tolerate his media games.

And again, on 27 June:

Re. ACT Chief Minister Jon Stanhope’s instructions to staff to start looking for dirt on Opposition Leader Zed Seselja, here’s one trick that’s sure to backfire. Even rusted-on Labor supporters are impressed by Seselja, who has shown himself to be hardworking, serious and smart (and by the look of things, up to the job of ousting Stanhope: why the dirt file, otherwise?). Labor staffers and the ACT media are tired of Stanhope’s many, many indiscretions, which have been indulged and tolerated only because the ACT Liberals couldn’t come up with a viable alternative for Chief Minister ... until now. Stanhope’s attempts to smear Seselja, who is widely regarded across Canberra as a good guy, may finally lead to his own very messy public unmasking.

On 22 July 2008, there was one titled, “Optimistically patting the dog”:

The Liberal Party candidate who fearlessly engenders goodwill by giving my American bulldogs a pat every morning at the local coffee shop is in an optimistic mood about the chances of the Labor Party losing majority government status when the Australian Capital Territory goes to the polls in October. He is surprised at the civility with which he is being greeted while door knocking in what is normally a very strong pro-Labor town. The style of Chief Minister John Stanhope, he says, is the biggest thing going for non-Labor candidates like him.

And then, on 24 July this year, *Crikey* continues:

ACT Labor in panic mode. The unofficial ACT election campaign is well and truly underway. We knew that from the moment government instrumentalities started pumping out those tax payer funded adds pretending to provide information about services while in reality attempting to create the impression that the incumbent government had done a very good job. Today the issue has become one of roads with the Stanhope team almost admitting it made a mistake in building only a two lane road connecting the suburbs of Gungahlin with Canberra’s south. That road was only opened in March and now the Chief Minister Jon Stanhope has rushed out a press statement saying that work will start on doubling the size of the road. I say rushed because he wanted to beat an announcement planned for this morning by his Liberal Party opponents promising to do exactly that. This ACT Labor Government is surely in panic mode.

Gungahlin Drive extension

MRS DUNNE (Ginninderra) (9.43): I would like to dwell for a moment on that road. As someone who uses the road every morning, or just about every morning, I think it is instructive to see the panic mode that the Stanhope government have gone into over the GDE, to the point where they are now in a situation where they are out there every single day reminding people that they got it wrong in the first place.

Firstly we had Mr Stanhope coming out and saying, “We are going to duplicate it and we had to get out in front of Mr Seselja”—in the unprecedented process of announcing a major policy at quarter to six on a Wednesday night. And then there has been a fair amount of argy-bargy about exactly what it is that they are going to do. We have now found that they are going to spend about \$4 million because the GDE came in under budget. This is a road that is four years late. It was originally to cost less than \$60 million—now \$120 million. It is half the amount of road that we were originally extending. Then somebody can say with a straight face that this was a road that came in under budget.

They have \$4 million to spend, so what they have done in the last little while is go out and do this. First of all they put out a whole lot of what are essentially stakes with flags on them which pointed to where they were going to have to extend the road to to duplicate a little bit of the road between Aranda and the Glenloch interchange. As you go down Caswell Drive towards the Glenloch interchange past Aranda, there is a double bridge halfway down the road. There is a little line of stakes with flags on them pointing to the perimeter of the new extended road, marching like little soldiers down the beautifully created swale with stormwater drains in it. I do not know what they are going to do with the stormwater drains if they build a road over there.

That is until we get to the double bridge. But the double bridge is not wide enough to accommodate the little line of soldier-like stakes that go down the path. Very soon, somewhere along the line, some of that \$4 million is going have to be used in extending the bridge a bit. Currently it is not wide enough—if the stakes are in the right place; the stakes may be in the wrong place.

And what are we doing now? As of yesterday morning, we have a range of plastic and concrete barriers that push all the traffic over into the bicycle path. There is almost no road left on the southbound lane of Caswell Drive south of Aranda on the way to the Glenloch interchange, which means that for the last two mornings the traffic snarl has been significantly worse than it has ever been in that area south of Aranda.

It is a masterly piece of campaigning on behalf of the Liberal Party and anyone who wants to campaign against the Labor Party—for Mr Hargreaves and his friends to go out and, every morning between now and the election, remind the government that they got Gungahlin Drive so wrong that, within six months of the last paint on the line markings being dry, the workers of Mr Stanhope and Mr Hargreaves are out there trying to fix the mess that they made. The people of the ACT who use that road every day will every day be reminded of the failures of the Stanhope government.

We have another instance of the failures of the Stanhope government in relation to the Rhodium report. I do not often feel like this, but I must say that I actually felt for Ms MacDonald today. One of the things that seems to have been overlooked by the Chief Minister—maybe he just does not care because Ms MacDonald is leaving and he thinks that he does not owe her any loyalty—is the attack upon the members of the public accounts committee that we heard today in relation to this report.

Mr Stanhope, of course, did not like the report. Jon told us the other day that he does not have a glass jaw anymore. I am not quite sure what you call it. His behaviour this week has been spectacularly glass jawed.

Mr Seselja: Ceramic.

MRS DUNNE: Maybe it is ceramic.

Mr Seselja: Hysterical.

MRS DUNNE: He has been hysterical. Today his hysteria extended to Ms MacDonald when he said that this was a grubby report, this was a disgraceful report and the people who were responsible for the writing of it were grubby and disgraceful people. That was the line that went on and on. He seemed to either conveniently forget or not care that one of his own colleagues was a signatory to that report. She did demur from this report.

This is the second time today that we have seen the Chief Minister ride roughshod over the women on the backbench of the ALP, Ms MacDonald and Ms Porter. Ms Porter has been forced to sack her staff or give her staff notice because of the political expediency of the Labor Party. It is a disgraceful day for the Labor Party.

Stanhope government

MR SESELJA (Molonglo—Leader of the Opposition) (9.49): I pick up where Mrs Dunne left off but I would like to first touch on another matter. Mr Gentleman took a point of order during the MPI. The point of order said that the Labor Party had not been running any ads. I do not think that is a point of order technically, but nonetheless that was the point of order. We have checked the Labor Party website and the ad is actually on the Labor Party website. Clearly there has been some sort of breakdown in communication; Mr Cossey is not communicating with the backbench any more and letting them know about the advertising that is going on. Perhaps it is because he was embarrassed by the quality of the ads; I am not sure.

I guess we have to reflect on what else the backbenchers have not been told about what has been going on. The power station is one. I wonder whether they knew about the push poll. I wonder if they have been told about the push poll that is going on from the Labor Party. That is the poll that says, “Do you think the Liberals are really, really terrible and by the way do you think the Labor Party is united and a strong team?”—clearly questions designed to get genuine answers from the listeners!

Maybe Mr Gentleman did not know about that poll. He might not have even known about another poll. Mr Barr must have known about the poll that said that he and Katy are going to be the next team and then asked, I think, “Do you think Mr Stanhope is arrogant?” We thought that might have been a push poll from someone else, but apparently it was a Labor Party poll which said, “Do you think Jon Stanhope is arrogant, and by the way what do you think of Katy, and by the way what do you think of Andrew?”

Mrs Dunne: You are on first-name terms, are you?

MR SESELJA: The first names are in, Mrs Dunne. Apparently they have taken off now. We no longer call each other Mr Stanhope and Mr Barr. It is Jon—J-o-n. It is apparently now cool to be called by your first name. There is a marketing angle there for Mr Stanhope. “Jon” is the new way to go.

Mr Pratt: Jonno.

MR SESELJA: Jonno.

Mr Barr: Coming from you, Zdenko, that is quite a—

MR SESELJA: I am happy to have started the trend, I suppose. I am a little bit flattered. He was once Jonathan; it is Jon. I was Zdenko—Zed. I am really grateful that he has now followed that lead and it is Jon. Come the election—

Mr Barr: You’re the artist formerly known as Zdenko, are you?

MR SESELJA: According to Labor Party press releases, it is actually the artist formerly known as Zed. They have actually reverted to the strategy that was there six months ago: “the leader who we dare not speak his name”. Earlier on, they would not mention me and I was very disappointed about that. Then they went to mentioning me all the time. Now it is back to “We will not mention the person’s name.” It is “Liberal leader” or some other such description.

Certainly these things are in, but in terms of Mrs Dunne’s comments in relation to the divisions, we are seeing them open up. We have seen the amazing, extraordinary attack from the Chief Minister on one of his backbenchers today, essentially criticising her intelligence. He was criticising her character really. He was criticising the character of all the members of the committee, saying that this report was a grubby report and that Ms MacDonald had voted for a report that was timed to coincide with the election. Apparently the three of them got together and created the situation whereby Jon Stanhope would have a report dropped on him as close to the election as possible. The allegation that has been levelled by Jon is that Karin was apparently conspiring with Deb and Brendan to bring about this scenario.

It is quite extraordinary. We saw Mr Stanhope kicked out yesterday, with none of his colleagues willing to vote to keep him in. I thought the Labor Party still had the numbers for a couple more weeks. I thought they actually had the numbers until at least 18 October. I would have expected that they would have jumped to the defence

of their Chief Minister, that they would have kept him in the chamber. I have informed my troops tonight that if similar things happen after October I would expect them to defend me if the Speaker were to kick me out. There are quite extraordinary events, lots of entertainment and lots more food for thought as we approach the election.

Question resolved in the affirmative.

The Assembly adjourned at 9.54 pm until Tuesday, 26 August 2008, at 10.30 am.

Schedules of amendments

Schedule 1

Road Transport (Third-Party Insurance) Amendment Bill 2008

Amendments moved by the Treasurer

1

Clause 4

Proposed new section 2

Page 2, line 18—

omit

1 March 2009

substitute

1 October 2008

Schedule 2

Road Transport (Third-Party Insurance) Amendment Bill 2008

Amendment moved by Mr Stefaniak to the Treasurer's amendment No 1

1

Amendment 1

Clause 4

Proposed new section 2

Page 2, line 18—

omit

1 October 2008

substitute

1 January 2009

Schedule 3

Sexual and Violent Offences Legislation Amendment Bill 2008

Amendments moved by the Attorney-General

1

Clause 2

Page 2, line 5—

omit clause 2, substitute

2

Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

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

Note 2 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)).

- (2) If this Act has not commenced within 9 months beginning on its notification day, it automatically commences on the first day after that period.
- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

2

Clause 4

Proposed new section 37, new definitions of *less serious violent offence* and *serious violent offence*

Page 3, line 9—

insert

less serious violent offence means an offence against any of the following provisions of the *Crimes Act 1900*:

- (a) section 21 (1) (Wounding);
- (b) section 22 (Assault with intent to commit certain indictable offences);
- (c) section 23 (1) (Inflicting actual bodily harm);
- (d) section 24 (1) (Assault occasioning actual bodily harm);
- (e) section 25 (Causing grievous bodily harm);
- (f) section 26 (Common assault);
- (g) section 28 (Acts endangering health etc);
- (h) section 29 (4) and (5) (Culpable driving of motor vehicle);
- (i) section 31 (Threat to inflict grievous bodily harm);
- (j) section 35 (Stalking);
- (k) section 37 (Abduction of young person);
- (l) section 41 (Exposing or abandoning child).

serious violent offence means—

- (a) an offence against any of the following provisions of the *Crimes Act 1900*:
 - (i) section 12 (Murder);
 - (ii) section 15 (Manslaughter);

- (iii) section 19 (Intentionally inflicting grievous bodily harm);
- (iv) section 20 (Recklessly inflicting grievous bodily harm);
- (v) section 21 (2) (Wounding);
- (vi) section 23 (2) (Inflicting actual bodily harm);
- (vii) section 24 (2) (Assault occasioning actual bodily harm);
- (viii) section 27 (Acts endangering life etc);
- (ix) section 29 (2) and (3) (Culpable driving of motor vehicle);
- (x) section 30 (Threat to kill);
- (xi) section 32 (Demands accompanied by threats);
- (xii) section 34 (Forcible confinement);
- (xiii) section 36 (Torture);
- (xiv) section 38 (Kidnapping);
- (xv) section 40 (Unlawfully taking child etc);
- (xvi) section 42 (Child destruction);
- (xvii) section 43 (Childbirth—grievous bodily harm); and
- (b) an offence against any of the following provisions of the *Criminal Code 2002*:
 - (i) section 309 (Robbery);
 - (ii) section 310 (Aggravated robbery).

3

Clause 4

Proposed new section 37, definition of *violent offence*

Page 3, line 21—

omit the definition, substitute

violent offence means a serious violent offence or a less serious violent offence.

4

Clause 8

Proposed new section 38AA

Page 5, line 20—

insert

38AA Meaning of *relevant person*—div 4.2

- (1) For this division, ***relevant person***, in relation to an accused person, means—
 - (a) a domestic partner of the accused person; or

Note A **domestic partner** need not be an adult (see Legislation Act, s 169).

- (b) a relative of the accused person; or
 - (c) a child of a domestic partner of the accused person; or
 - (d) a parent of a child of the accused person; or
 - (e) someone who is in a domestic relationship with the accused person.
- (2) For this section, a **relative** of an accused person—
- (a) means the accused person's—
 - (i) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or
 - (ii) son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or
 - (iii) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or
 - (iv) uncle, aunt, uncle-in-law or aunt-in-law; or
 - (v) nephew, niece or cousin; and
 - (b) if the accused person has or had a domestic partner (other than a spouse)—includes someone who would have been a relative mentioned in paragraph (a) if the accused person had been legally married to the domestic partner; and

Note **Domestic partner**—see the Legislation Act, s 169.

- (c) includes—
 - (i) someone who has been a relative mentioned in paragraph (a) or (b) of the accused person; and
 - (ii) anyone else who could reasonably be considered to be a relative of the accused person.

Examples—par (c) (ii)

- 1 if the accused person is an Aboriginal or Torres Strait Islander, the following people:
 - (a) a person the accused person has responsibility for, or an interest in, in accordance with the traditions and customs of the accused person's Aboriginal or Torres Strait Islander community;
 - (b) a person who has responsibility for, or an interest in, the accused person in accordance with the traditions and customs of the accused person's Aboriginal or Torres Strait Islander community
- 2 a person regarded and treated by the accused person as a relative, for example, as an uncle or aunt

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

- (3) In this section:

domestic relationship—see the *Domestic Relationships Act 1994*, section 3.

5

Clause 8

Proposed new section 38B (1)

Page 5, line 22—

omit proposed new section 38B (1), substitute

- (1) This section applies to the complainant or a similar act witness (the ***witness***) giving evidence in—
- (a) a sexual offence proceeding; or
 - (b) a violent offence proceeding in relation to a serious violent offence; or
 - (c) a violent offence proceeding in relation to a less serious violent offence if—
 - (i) the witness is a relevant person in relation to the accused person; or
 - (ii) the court considers that the witness has a disability that affects the witness's ability to give evidence because of the circumstances of the proceeding or the witness's circumstances.

Examples—par (c) (ii)

- 1 the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence
- 2 the witness is intimidated or distressed because of the witness's relationship to the accused person

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

6

Clause 8

Proposed new section 38C (1)

Page 6, line 15—

omit proposed new section 38C (1), substitute

- (1) This section applies to the complainant or a similar act witness (the ***witness***) giving evidence for the prosecution in—
- (a) a sexual offence proceeding; or
 - (b) a violent offence proceeding in relation to a serious violent offence; or
 - (c) a violent offence proceeding in relation to a less serious violent offence if—
 - (i) the witness is a relevant person in relation to the accused person; or

- (ii) the court considers that the witness has a disability that affects the witness's ability to give evidence because of the circumstances of the proceeding or the witness's circumstances.

Examples—par (c) (ii)

- 1 the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence
- 2 the witness is intimidated or distressed because of the witness's relationship to the accused person

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

- (1A) This section also applies to a child or witness with a disability (the *witness*) giving evidence for the prosecution in a sexual or violent offence proceeding.

7

Clause 8

Proposed new section 38D (1)

Page 8, line 14—

omit proposed new section 38D (1), substitute

- (1) This section applies to the complainant or a similar act witness (the *witness*) giving evidence in—
 - (a) a sexual offence proceeding; or
 - (b) a violent offence proceeding in relation to a serious violent offence; or
 - (c) a violent offence proceeding in relation to a less serious violent offence if—
 - (i) the witness is a relevant person in relation to the accused person; or
 - (ii) the court considers that the witness has a disability that affects the witness's ability to give evidence because of the circumstances of the proceeding or the witness's circumstances.

Examples—par (c) (ii)

- 1 the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence
- 2 the witness is intimidated or distressed because of the witness's relationship to the accused person

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

8

Clause 9

Proposed new section 39 (1)

Page 9, line 13—

omit proposed new section 39 (1), substitute

- (1) This section applies to the complainant or a similar act witness (the **witness**) giving evidence in—
- (a) a sexual offence proceeding; or
 - (b) a violent offence proceeding in relation to a serious violent offence; or
 - (c) a violent offence proceeding in relation to a less serious violent offence if—
 - (i) the witness is a relevant person in relation to the accused person; or
 - (ii) the court considers that the witness has a disability that affects the witness's ability to give evidence because of the circumstances of the proceeding or the witness's circumstances.

Examples—par (c) (ii)

- 1 the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence
- 2 the witness is intimidated or distressed because of the witness's relationship to the accused person

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

9

Clause 16

Proposed new section 42

Page 26, line 20—

omit proposed new section 42, substitute

42

When does div 4.3 apply?

- (1) This division applies if the complainant or a similar act witness (the **witness**) is to give evidence in any of the following proceedings, whether the evidence is to be given on oath or otherwise:
- (a) a sexual offence proceeding;
 - (b) a violent offence proceeding in relation to a serious violent offence;
 - (c) a violent offence proceeding in relation to a less serious violent offence if—
 - (i) the witness is a relevant person in relation to the accused person; or
 - (ii) the court considers that the witness has a disability that affects the witness's ability to give evidence because of the circumstances of the proceeding or the witness's circumstances.

Examples—par (c) (ii)

1 the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence

2 the witness is intimidated or distressed because of the witness's relationship to the accused person

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

(2) In this section:

relevant person—see section 38AA.

10

Proposed new clause 25A

Page 32, line 20—

insert

25A New part 10

insert

Part 10 Transitional—Sexual and Violent Offences Legislation Amendment Act 2008

150 Application of amendments

The amendments to this Act made by the *Sexual and Violent Offences Legislation Amendment Act 2008*, part 2 do not apply to a proceeding if the hearing of the proceeding has started before the commencement of that part.

151 Expiry—pt 10

This part expires 1 year after the day it commences.

11

Clause 28

Dictionary, proposed new definitions

Page 34, line 9—

insert

less serious violent offence, for part 4 (Evidence in criminal proceedings)—see section 37.

relevant person, for division 4.2 (Sexual and violent offence proceedings—general)—see section 38AA.

serious violent offence, for part 4 (Evidence in criminal proceedings)—see section 37.

12

Proposed new clause 34

Page 38, line 13—

insert

34 New chapter 12

insert

Chapter 12 **Transitional—Sexual and Violent Offences
Legislation Amendment Act 2008**

460 **Application of amendments**

The amendments to this Act made by the *Sexual and Violent Offences Legislation Amendment Act 2008*, part 3 do not apply to a proceeding if the hearing of the proceeding has started before the commencement of that part.

461 **Expiry—ch 12**

This part expires 1 year after the day it commences.

Schedule 4

Sexual and Violent Offences Legislation Amendment Bill 2008

Amendments moved by Dr Foskey

1

Clause 7

Proposed new section 38 (4), note

Page 4, line 18

before

complainant

insert

court may direct that a

2

Clause 8

Proposed new section 38C (2)

Page 6, line 22—

omit

A self-represented accused person

substitute

The court may, by order, direct that a self-represented accused person

3

Clause 8

Proposed new section 38C (3)

Page 7, line 2—

after

a witness,

insert

and the court has made an order under subsection (2),

4

Clause 9

Proposed new section 39 (4)

Page 10, line 1—

omit proposed new section 39 (4), substitute

- (4) However, an order under this section does not stop the following people from being in court when the witness gives evidence:
- (a) a person nominated by the witness;
 - (b) a person who attends the proceeding to prepare a news report of the proceeding and is authorised to attend for that purpose by the person's employer.

Note Publishing certain information in relation to sexual offence proceedings is an offence (see s 40).

5

Clause 11

Proposed new section 40E (2A)

Page 13, line 14

insert

- (2A) The audiovisual recording must show enough of the witness's body to ensure the witness's demeanour and body language is visible to a person viewing the recording.

6

Clause 25

Proposed new section 81D (4)

Page 32, line 12

omit proposed new section 81D (4), substitute

- (4) However, an order under this section does not stop the following people from being in court when the witness gives evidence:
- (a) a person nominated by the witness;
 - (b) a person who attends the proceeding to prepare a news report of the proceeding and is authorised to attend for that purpose by the person's employer.

Note Publishing certain information in relation to sexual offence proceedings is an offence (see s 40).

Answers to questions

Finance—home loans (Question No 2003)

Dr Foskey asked the Attorney-General, upon notice, on 2 April 2008:

- (1) In relation to the home loan market debate held in the Assembly on 22 August 2007, what progress has the Ministerial Council on Consumer Affairs made on the issue of no-doc and low-doc home loans;
- (2) What progress has the ACT Government made on the issue of no-doc and low doc home loans;
- (3) When does the ACT Government intend to present legislation regarding this type of lending.

Mr Corbell: The answer to the member's question is as follows:

1. Low-doc loans to consumers must comply with the Consumer Credit Code and the *ACT Consumer Credit (Administration) Act 1996*. The Code does not mandate how the lender should assess risk, although if a lender ignores capacity to repay, the loan may be challenged and can ultimately be rewritten.

The Ministerial Council on Consumer Affairs (MCCA) is developing national finance broker legislation which will require brokers to be satisfied that the consumer can afford the loan and a requirement for a broker to justify recommendations made.

The policy development process to date has included a major national roundtable; a detailed consumer-advocate research paper; two comprehensive regulatory impact statements; two rounds of national consultation with a range of stakeholders, including broker peak bodies, credit provider peak bodies, consumer advocates, consumer credit specialists and related regulators; extensive negotiations with the Office of Best Practice Regulation (Clth); and the development by NSW (on behalf of MCCA) of a draft template exposure bill that has been circulated to key stakeholders and was the subject of a further national roundtable at the end of June 2007. The results of this roundtable were released in a final exposure bill at the end of 2007. Submissions have been received and NSW is now working on revising the bill based on the comments received.

2. The ACT is progressing these issues through MCCA and the Committee under MCCA that is responsible for developing the national bill. This is due to the desirability of ensuring legislative consistency with other jurisdictions on matters of consumer credit.
3. COAG has recently agreed that the Commonwealth will take over responsibility for the regulation of mortgage broking, margin lending and non deposit lending institutions as well as remaining areas of consumer credit. COAG has indicated that "national regulation through the Commonwealth of consumer credit will provide for a consistent regime that extinguishes the gaps and conflicts that may exist in the current regime. The new regime is anticipated to introduce licensing, conduct, advice and disclosure requirements that meet the needs of both consumers and businesses alike. A seamless national regime will assist in ensuring that consumers are better protected in their dealings with credit products and credit providers, including brokers and advisers."

The transfer of responsibility for credit to the Commonwealth means that the ACT Government will not be able to present legislation regarding this type of lending. It is anticipated that the work undertaken on the bill will underpin the transfer of responsibility for finance brokers to the Commonwealth.

Mental health—enduring power of agreement (Question No 2082)

Dr Foskey asked the Attorney-General, upon notice, on 17 June 2008:

Does the Enduring Power of Attorney discriminate against people with a mental illness with regards to treatment; if so, are there any plans to change this legislation.

Mr Corbell: The answer to the member's question is as follows:

I believe what the Member wants to know is whether the *Powers of Attorney Act 2006*, which provides for making an enduring power of attorney, discriminates against people with a mental illness in relation to treatment. The answer is 'no'.

The Powers of Attorney Act provides for 'special health care matters' in relation to which an attorney, appointed under an enduring power of attorney, cannot make a decision. Treatment for mental illness is a 'special health care matter'. This is not discriminatory against people with mental illness, but it reflects the protection provided to patients by the *Mental Health (Treatment and Care) Act 1994*, which empowers the Mental Health Tribunal to make orders relating to treatment of people with mental illness. Section 143 of the *Mental Health (Treatment and Care) Act 1994* provides that, despite any thing in the Powers of Attorney Act 2006, or in a power of attorney, an appointed attorney is not entitled to give consent to treatment for mental illness. This is also reflected in section 7B(e) of the *Guardianship and Management of Property Act 1991*, under which a guardian is prohibited from giving consent for a 'prescribed medical procedure' which includes treatment for mental illness, electroconvulsive therapy or psychiatric surgery.

Neither the relevant legislation nor the making of an enduring power of attorney discriminates against people with a mental illness in relation to treatment. They are designed to operate, and do operate, as a protection for those people by ensuring that decisions are made by the appropriate entity. I should note that an attorney appointed under an enduring power of attorney may act for health care matters, but not for 'special health care matters', only where the principal (that is, the appointer) has impaired decision-making capacity. Further, not everyone with mental illness has impaired decision-making capacity.

Compensation—wrongful convictions (Question No 2100)

Mr Mulcahy asked the Attorney-General, upon notice, on 25 June 2008:

- (1) In relation to payments and offers for payment for wrongful conviction under section 23 of the Human Rights Act 2004, who, or what body, within the Government will determine the amount of compensation offered to a person who has been wrongfully convicted;

- (2) Is the amount of compensation offered by the Government determined on the basis of the principles of tort law, for example, to put the person back in the position they would have been in if not for the wrongful conviction; if not, what principle is used to determine the amount of compensation offered by the Government;
- (3) What procedures and guidelines currently exist for assessing and paying the appropriate amount of compensation;
- (4) What mechanisms for review or appeal exist if a person who has been wrongfully convicted is unsatisfied with the level of compensation offered by the Government;
- (5) Is the Government aware of concerns raised by Hoel (<http://www.aic.gov.au/publications/tandi2/tandi356t.html>) about the ambiguity of this section; if so, does the Government believe that greater detail is needed to be clear on entitlements to compensation; if so, what action has the Government taken in this regard.

Mr Corbell: The answer to the member's question is as follows:

- (1) Compensation provided to a person who has been wrongfully convicted is made as an act of grace payment under section 130 of the *Financial Management Act 1996*, and is determined in accordance with Department of Treasury guidelines on such payments.
- (2) On application, the determination of whether there is a case for compensation, and the amount of any compensation, is determined on a case-by-case basis. Payment is authorised by the Treasurer on the advice of a minister.
- (3) There are no procedures and guidelines for assessing and paying compensation other than through act of grace payments.
- (4) Act of grace payments are not reviewable.
- (5) The government is aware of concerns raised by Adrian Hoel in his work, *Compensation for wrongful conviction – trends and issues in crime and criminal justice*, no.356, Canberra: Australian Institute of Criminology, May 2008. The current mechanism for compensation in the Territory is, however, act of grace payments.

**Alexander Maconochie Centre
(Question No 2117)**

Dr Foskey asked the Attorney-General, upon notice, on 1 July 2008:

Have the ACT Women and Prisons Group, the Women's Information Resources and Education on Drugs and Dependency and the Canberra Alliance for Harm Minimisation and Advocacy applied, and been accepted, as a community group providing services to the Alexander Maconochie Centre; if so, why was this group not included on the list given as a response to Estimates question taken on notice No 421.

Mr Corbell: The answer to the member's question is as follows:

Yes, the ACT Women and Prisons Group, the Women's Information Resources and Education on Drugs and Dependency and the Canberra Alliance for Harm Minimisation

and Advocacy have applied for Authorised Visitor Status at the AMC, and have been accepted.

The list that was provided in Estimates Question on Notice 421 was a list of community groups who advised they were interested in becoming authorised visitors at the AMC following the first request for interest by the AMC Project Office. The organisations on this list have not necessarily completed their application to become an authorised visitor.

Since completing Estimates Question on Notice 421, the approval process for those organisations that have applied for authorised visitors status has taken place. Following is a list of authorised visitors as at 8 July 2008. Please note that community organisations can apply for authorised visitor status at any time.

ACT Hepatitis Council Inc
 ACT Women and Prisons Group
 ADFACT
 AIDS Action Council of the ACT/PLWHA ACT
 Alcoholics Anonymous - ACT
 Alternative to Violence Project Inc - NSW
 Anglican Diocese of Canberra and Goulburn
 Australia Red Cross
 Belconnen Community Service
 CAHMA (Canberra Alliance for Harm Minimisation and Advocacy)
 Canberra Rape Crisis Centre - ACT
 Catholic Archdiocese Canberra
 Centacare
 Directions ACT
 GROW – World Community Mental Health Movement
 Inanna - ACT
 Marymead Child and Family Centre
 Mental Health Foundation – ACT (at individual prisoner's request only)
 Parkway Church
 Prison Fellowship Australia
 Prisoners Aid - ACT
 Relationships Australia - ACT
 Salvation Army
 Southside Community Service - ACT
 St Vincent de Paul Society
 The Big Issue (at individual prisoner's request only)
 Toora Women Inc
 WIREDD (Women Information Resources and Education on Drugs and Dependency)

**Women—prison policies
 (Question No 2121)**

Dr Foskey asked the Attorney-General, upon notice, on 2 July 2008:

- (1) When will the Women's policy from ACT Corrective Services be available for comment;
- (2) Will the policy be made publicly available in draft form prior to finalisation;

- (3) What are the criteria that a woman must meet to have her child with her in the Alexander Maconochie Centre;
- (4) Will a safe place be set aside for mothers and children, separate from the other women's facilities;
- (5) What criteria will women need to meet in order to be able to request to see a female general practitioner;
- (6) Will the clothing issued to women be the same as what is currently offered in the remand centres; if not, how will it differ;
- (7) Will women be able to wear their own underwear; if not, why not.

Mr Corbell: The answer to the member's question is as follows:

1. The ACTCS Women's Policy will be in place prior to the opening of the AMC.
2. The development of the ACTCS Women's Policy has involved a program of consultation with community stakeholders. No further public consultation is envisaged.
3. The ACTCS Caregiver Policy is currently being finalised. A protocol between JACS and DHCS will be put in place, under the auspices of the Shared Partnership Agreement, to facilitate the Caregiver Policy. Eligibility criteria for participation in the Caregiver Program will be incorporated within the Caregiver Policy.
4. Women participating in the Caregiver Program will reside in one of the women's cottages, within the mainstream women's area of the AMC. Security assessments will be made regarding the placement of other female prisoners within cottages accommodating mothers and children.
5. All health services delivered to remandees and prisoners will be provided by ACT Health. ACT Health has scheduled weekly clinics for women with a female General Practitioner.
6. Female remandees and prisoners will be issued with new uniforms at the AMC. The current tracksuits will be replaced by maroon polo shirts and grey twill pants.
7. Each woman will be issued with around four sets of underwear. Additional underwear will be available for purchase through the AMC 'buy-up' system if required.

**Gas-fired power station
(Question No 2150)**

Dr Foskey asked the Minister for Health, upon notice, on 6 August 2008 (*redirected to the Minister for Disability and Community Services*):

- (1) In relation to the impact of the Hume data centre development on the health/respite facility in that area, if the health/respite facility is moved due to the data centre development, where does the ACT Government intend to move it to;

- (2) What is the process for possible site selection, including a timeline and any community consultation measures;
- (3) How will community concerns and objections impact on the placement of the facility.

Ms Gallagher: The answer to the member's question is as follows:

- (1) - (3) Any decisions on the respite centre and potential impacts would be dependant on the results of the Environmental Impact Statement on the Hume data Centre development.

**Development—Causeway
(Question No 2177)**

Dr Foskey asked the Minister for Planning, upon notice, on 7 August 2008
(*redirected to the Minister for Housing*):

- (1) When will the residents of the Causeway, Kingston be informed about the future of their homes and community;
- (2) Will the ACT Government allow the Causeway to remain as it is currently built.

Mr Hargreaves: The answer to the member's question is as follows:

- (1) At a meeting with representatives of the ACT Planning and Land Authority and the Department of Disability, Housing and Community Services on 22 July 2008, the residents were informed that no decision had been made on the future of the public housing properties in the Causeway.

The Causeway is subject to a planning study being undertaken by the ACT Planning and Land Authority. Once the planning study is finalised and any changes made to the Territory Plan, the Government will be in a position to consider its impact on the houses owned by Housing ACT.

- (2) No decision has been made about the future of public housing dwellings in the Causeway. Any decisions in the future will involve consultation with the tenants.

**Roads—Maria Place, Lyons
(Question No 2178)**

Dr Foskey asked the Minister for Planning, upon notice, on 7 August 2008:

Will the Minister provide a copy of the traffic study prepared for the Maria Place, Lyons development; if not, why not.

Mr Barr: The answer to the member's question is as follows:

- (1) A traffic study was not provided in support of the Development Application for 9 Maria Place, Lyons. The absence of a traffic study was considered in the assessment of

the DA. This, together with a number of other issues, has resulted in refusal of the Application.

**Environment—energy efficiency standards
(Question No 2181)**

Dr Foskey asked the Minister for Planning, upon notice, on 7 August 2008:

Will the current ACT Government introduce regulations to require energy efficiency standards for all commercial buildings given that 72% of the ACT's greenhouse emissions come from stationary energy.

Mr Barr: The answer to the member's question is as follows:

No. Regulations are not required as the ACT already has energy efficiency standards for commercial buildings. These are contained in the Building Code of Australia.
