DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

13 October 1993

Wednesday, 13 October 1993

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MADAM SPEAKER (Ms McRae) took the chair at 10.30 am and read the prayer.

VOICE OF THE ELECTORATE BILL 1993

MR STEVENSON (10.31): I present the Voice of the Electorate Bill 1993.

Title read by Clerk.

MR STEVENSON: I move:

That this Bill be agreed to in principle.

Madam Speaker, four years of surveying Canberrans has shown that they want a greater involvement in democracy, and not just on one day every three years, when with a single vote they supposedly approve about 1,000 policy objectives of a political party. What they want is the right to introduce, amend or repeal laws by direct vote at a binding referendum. This principle, this law, we have called the voice of the electorate. It has often been called a binding citizens-initiated referendum, but it is done by the voice of the electorate. Indeed, the first four letters of that phrase stand for VOTE. This Bill sets out how the citizens will introduce a referendum and then make a decision on the approval or rejection of any proposal.

The VOTE Bill - the Voice of the Electorate Bill - has three main stages. The first stage is the registration. First of all, a group of individuals or an individual decides that there is something they believe the citizens of Canberra should have a right to approve or reject, and 400 people would sign what we call an electors Bill. There is also a requirement that 100 of those people appoint an electors Bill committee of 12 people. They are responsible to guide the process through to a binding referendum. There is much detail in this VOTE legislation. People must work hard, first of all, to ensure that the electors Bill is done correctly. There are requirements to draft the Bill. There are strict requirements about who can work at different stages.

The second stage is the qualification, where Canberrans either accept or reject a particular proposal. There are safeguards in appointing, first of all, those people who collect the signatures of Canberrans for their approval or rejection of the proposal. These people are called electors Bill representatives. They have certain duties clearly outlined in the Bill. Frivolous referenda proposals are deterred. First of all, if 2 per cent of Canberrans indicate their approval for a referendum to be held, at the next general election in the ACT a ballot-paper would be included along with the ballot-paper to elect people to this Assembly. It does not trigger an immediate referendum; it simply has the question or questions put at the next available time. However, if 5 per cent of those people who cast a valid vote at the last election in the ACT, and that would be some 8,000 people, indicate that they wish to have an opportunity to reject or approve a proposal, the referendum would have to be held within three months, and that is a binding referendum.

Let me talk about these percentages, because they are very important. New South Wales has a population of just a touch under six million people. They have 3.8 million voters, so 5 per cent of New South Wales voters would be 190,000 people. Obviously, Canberra has a population more appropriate to a local government, a local council. The percentages that have been selected around the world in those countries and communities where this principle operates are usually between 2 and 5 per cent. There are a number of reasons for this, but one very important one is social justice. There are many minority groups within our electorate that could be termed disadvantaged. Some people have physical disadvantages; some people have disadvantages because of their birth; others are low income groups. There may be people who are single and have children and are also working.

This voice of the electorate must be available to all groups. If we go too much above the 2 to 5 per cent I have indicated, we will rule out the very people who may most need the right to have a valid say at a referendum or the right to have a say as to whether a question or questions should be put to a referendum. If you increase the percentage, you place the power in the hands of those people who have the money, the support, to gain approval from enough people. You would create not a lobby industry, which we have already, but an industry of people going out to collect petition signatures. We must keep social justice in mind.

The third stage of the process is the binding referendum. The Bill places limitations on what can be put to a binding referendum. The Bill is detailed, and there are limitations. It would allow the people in the ACT to act like a Senate. As we know, all States of Australia, apart from Queensland, have a Senate-type house, a house of review. In Canberra we do not have this. The Voice of the Electorate Bill will allow the people to act in much the same way as a house of review, and I think that is fitting.

In Australia we have many firsts when it comes to the principles of democracy. Australia was a pioneer in giving the vote to women, after Wyoming and New Zealand. The secret ballot was first used in Australia. In America it is even called the Australian vote. We all understand that Australia's Constitution, the Commonwealth Constitution, was adopted after a great deal of discussion in the electorate and after approval of its various details by a referendum of the people, and the Constitution begins, "Whereas the people ...". This proposed law is not about people governing themselves but about people having the right to approve or reject legislation. The government will go on doing the governing. Indeed, citizens do not want to have a say on every issue. They simply want a say on those issues that they feel will have a significant effect on their lives and the lives of their family.

Professor G. de Q. Walker is the dean of the law faculty at Queensland University. In an excellent book, a collection of essays entitled *Citizen Participation in Government*, edited by Margaret Munro-Clark, he says:

> Above all, initiative and referendum tackle the root cause of much of our constitutional and political malaise, which is fear. I do not believe that most politicians behave the way they do because of megalomania. Their subterfuges, prevarications, deal-making,

> tampering with the rules and so on stem, not so much from a lust for power, as from a fear of what the other side will do if it comes to power. Under present constitutional arrangements and doctrines, a government that wins an election gains what is virtually dictatorial power for the next three or four years.
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> In that time there is little or nothing to stop it from using its parliamentary majority to destroy society's most precious institutions or trample on its most cherished values. Those who adhere to A.V. Dicey's theory of parliamentary sovereignty would assert that an act of parliament requiring that all blue-eyed babies be killed would be a valid statute with the force of law.
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> Direct legislation changes all this. A government that used its temporary majority to enact outrageous statutes would find itself facing referendum ballots on them. As the referendum mechanism enables people to challenge legislation as soon as it is enacted, the government would be unable to impose unwanted laws on the people by enacting them immediately after an election and hoping that other issues would be preoccupying the voters when they returned to the polling booths in three or four years' time.

It could well be said that the voice of the electorate principle is the next correct step in developing Australian democracy. Who would benefit under such a law in the ACT? The people, the members of parliament and democracy. Let me illustrate why. People in Canberra, we are told, were given self-government. I think we would all agree that the voice of the electorate principle would give the people more power to be self-determined. It has often been said that voters are apathetic. I have never believed this. I think it is simply that they are not sure what to do. When you talk to people - when you talk to your neighbours, when you talk to anyone in the street - they are not apathetic about unemployment, they are not apathetic about the cost of living, they are not apathetic about the family and our youth situation, particularly in Canberra. They care, but they are not sure of what to do that will have a useful effect.

Let us look at a couple of benefits around the world. In Italy in 1985 the Italians, at referendum, rejected an indexation measure that would have given many people higher pay in the short term, but at longer-term cost. In New Zealand, in Tauranga, where I visited recently, the people were asked at referendum, "Do you want pesticides continually used in your electorate?". They were also told that if they said no it would cost an extra $NZ900,000. Well, 70 per cent of people said no anyway. And what happened? The pesticides were no longer used and the environment was cleaned up. More importantly, we found that they did not need to pay the $NZ900,000. It was actually cheaper than the method that had been used already. So we need to go into the details when we are told that something will cost more money. Often, it can cost less.

In the ACT we have alarming rates of suicide. We have alarming rates of unemployment, particularly with our youth. We have bankruptcy rates that are unacceptable. We were told recently that sex offences have increased by 137 per cent and violence has increased by some 60 per cent. Who is responsible? Is it just members of this Assembly? Of course not. We are all responsible. Every citizen in the ACT is responsible. But we certainly have a large responsibility because it is we who make the laws.

There are benefits to members of parliament of citizens-initiated referenda or, as we call it, the voice of the electorate. Few politicians would claim that our profession is held in high esteem. I believe that the principle of the voice of the electorate will lift that esteem. It will make members of parliament more accountable. It will see a coming together of different groups in the community and members of parliament. One of the most important things it does is to reduce the power of special interest groups. People will be able to call a referendum where they can contest a law that has been introduced and see whether it was the consequence of pressure from a special interest group or whether it was a necessary law.

Will democracy benefit? Democracy means literally people rule. It is the opposite to aristocracy, where we have the divine right of the best born to make the decisions. Should we work towards aristocracy or make democracy live again in Australia in the ACT? In Australia, and in Canberra, the power comes from the people. Is it valid to give the people more power? There is an absolute wealth of talent in the ACT - in the unions, in the public service, in the business sector and in the community in general. The Voice of the Electorate Bill will give those areas more power to influence and improve the lot of Canberra.

When this law is introduced, will citizens always make the best decision? I would not think so. Do politicians always make the best decision? I know that they do not. Nevertheless, when the citizens have the power to have a valid say in those relatively few important decisions they select, at least they have the responsibility and they can respond with ability. Some people have suggested that people do not cast a vote correctly. This law will improve that problem in a major way. It will let Canberrans know that when they cast a vote at a binding referendum it means something valuable. It encourages the community to be more concerned about the political process, to be more concerned about those issues that come before the Assembly and affect their everyday lives.

There are valid questions raised about binding citizens-initiated referenda, about the voice of the electorate principle. The question of cost is a valid point. Under this legislation that I today table, 2 per cent of voters' signatures is required to have a referendum question or questions put at the next ACT general election, so there is minuscule cost there. However, if 5 per cent of the electorate - some 8,000 people at present - require the right to approve or reject a particular proposal, it would be put to referendum within three months. There is a cost involved in holding such referendums.

However, there are methods that can be used to take a poll of an entire electorate that have very little cost. First of all, in this day of electronic advances, electronic voting can be used with PIN numbers. I have no doubt whatsoever that it will be only a short time before this comes in in countries around the world. There is no doubt about that; we are talking about only when. I have been given plans on how this would work in a democratic and inexpensive way. A referendum could be held at a number of locations throughout the ACT - not on one day, but over a period of two to four weeks. It could be held at post offices, for instance, and the ballot-papers collected each evening. So cost is not always a major factor.

It is interesting to note that when members of parliament have stood up and said, "We must have a referendum, we must take this matter to the people", I have never heard the word "cost" used. I have asked thousands of people about this, and no-one has ever put up their hand and said that yes, they have heard a member of parliament, when proposing a referendum - not in opposition, but when they are proposing the referendum - use the word "cost". It is only when the people want the right to hold a referendum that we hear about cost.

The *Canberra Times* on 12 October, in an editorial headed "Governing by opinion poll", said:

> Politics is not just about populism ...

(Extension of time granted) I read from the *World Book Dictionary*, volume 2:

> populism: Belief in or devotion to the needs, rights and aspirations of the common people.

The *Canberra Times* says that politics is not just about populism. Perhaps if we moved more towards populism it would be beneficial. However, I do not doubt that the editor misunderstood the word. He certainly misunderstood the law. He said:

> it is about making hard choices and rationing scarce resources.

In Australia, the most wealthy, resource-rich nation on earth? Come on! He went on to say:

> The critical choices which politicians must make are rarely reduced to simple yes and no questions. The latest flirter with CIR, Kate Carnell, leader of the ACT Liberals, has instanced the closure of Royal Canberra Hospital as a referendum question. But such a question would, to be legitimate, have to give *choices*: Should we close Canberra hospital and maintain the general level and standard of health services? *Or* should we retain Royal Canberra but sack 200 health workers to keep costs at national average levels, *or* retain Canberra hospital and increase rates by 10 per cent?

If he had read the Bill, or asked me, he would understand that in subclause 23(6) we cover preferential voting. Of course you need to cover a situation where there may need to be multiple choices. The editor went on:

> Far from dispelling the power of special interest groups, as some suggest, CIR could make politicians hostage to them.

What absolute nonsense! We need to understand that a referendum is not an opinion poll. First of all, details are required as to the number of people needed - as I said, perhaps 8,000 in the ACT - to initiate the referendum. It is not an opinion poll. It is put to every elector in the ACT to make a decision, after lengthy discussion in the community and after the detailed provisions of the questions and the draft electors Bill have been put to the people of the ACT.

Some people have said, "If you do not like the decisions we make as the Government, if you do not like the decisions we make as members of parliament, wait until the next election and throw us out". Let us have a look at whether this is an intelligent suggestion or one that lacks credibility. Let us imagine that a government is approved of by the majority of people on the majority of issues. However, there is one issue close to the hearts of people that the government says it is going to introduce. No amount of writing letters, lobbying members of parliament, holding public rallies or anything else will change the opinion of the government. Is it intelligent to say, "Throw us out at the next election"? Would it not be far more valid and relevant to say on that one issue, "We shall have the right to approve or reject"? Never just say no. Some may think the people will approve or reject a particular issue; but, when it comes down not to an opinion poll but to a referendum such as the one on self-government, you may find a different situation. People's opinions, I have found, are not their convictions. When you come to a referendum where they know that on a specific issue or issues their vote can and will make a difference, this changes.

Have we seen countries around the world introduce this principle? Most of us know that over some 140 years people in Switzerland have developed this principle. Is that a good thing or a bad thing for Switzerland? They have inflation at negligible rates, unemployment at 4 or 5 per cent, low interest rates. I think most of us would agree that they are doing well economically. However, Switzerland is not Australia, nor is Italy, nor is America, where half the States have various forms of the voice of the electorate principle. But when we look at these examples around the world we find that, once the principle has been introduced into the law, the citizens have never removed it. Not in one single instance, at local government, state government or federal government level, has this principle ever been rejected by the people. Indeed, it is not being rejected around the world; it is being increasingly supported.

Some years ago in Australia we had a constitutional commission, which took submissions from people on dozens of issues relating to what constitutional changes would benefit Australia and Australians. Of those dozens of issues, there was one issue alone that encompassed the majority of the submissions, and that was the right of citizens to have a binding say at referendum. Indeed, every time this debate has proceeded anywhere in the world, the same arguments have been brought up, usually by members of parliament. I respect their right to bring these things up, because they understand well the political process; but these concerns, these questions, these arguments, have never been shown to bear fruit. Nevertheless, we will have the same debate in the ACT that has been going on for 140 years, and it should be the same debate. When the law is introduced and the citizens of Canberra have the right, on those issues that they feel have a significant effect on their lives, to have a say, we too will realise that the arguments, while valid in discussion, have no validity in practice.

Who in Australia has supported this principle of the people having a valid say? I must admit that the Labor Party has done so more than anybody else, and indeed it was a left-wing principle. With the founding of the Labor Party in the 1890s, they had citizens initiative and referenda not as a policy of their party but as one of the very reasons for its existence, a major goal of the party. It was there

for 70 years, until 1963, when at the instigation of Mr Don Dunstan it was removed. Why was it removed? The predominant suggestion was that the people of Australia would not have the ability to understand the legislation introduced by the Labor Party and might vote against it for that and other reasons. I do not think many Canberrans believe that that is a problem.

In Queensland in 1919, after many years of support, the principle was introduced before the parliament in legislative form. T.J. Ryan, the Labor leader, and the Labor members supported it strongly. If it had not been for Ted Theodore being elected at the following election, I believe that it would have been instituted. From 1936, at least at local government, local council, level in Queensland, we have had the right of citizens to call a referendum. In Burnie in Tasmania, and in North Sydney, pioneered by Ted Mack, citizens at local government, local council, level have the right to call binding referenda. The Liberal Party have taken it on federally, the Democrats have supported it for 15 years, and most other political parties in Australia support it. This legislation will enhance democracy. It will restore faith in our political process. I call on every single member here to support this principle on behalf of all Canberrans and to introduce, for the first time at State or Federal level, this right.

Mr Berry: Madam Speaker, I raise a point of order. I think standing order 170 may apply to this Bill. Mr Stevenson's Bill has explanatory notes, as I understand it, including a summary in the form of a flow chart. The way in which the Bill has been presented makes it clear that these notes form part of the proposed law. It is not clear what legal effect the Bill might have with some of these notes included. I ask that you examine the Bill and rule whether it is prepared in accordance with standing orders and, if not, that it should be withdrawn under standing order 170.

MADAM SPEAKER: Mr Berry, I will take that point of order on notice. I will allow the Bill to proceed for the time being and rule on the point of order at the next sitting.

Debate (on motion by **Ms Follett**) adjourned.

DOG CONTROL (AMENDMENT) BILL (NO. 2) 1993

Debate resumed from 16 June 1993, on motion by **Mr Westende**:

That this Bill be agreed to in principle.

MS SZUTY (11.03): I intend to speak very briefly to Mr Westende's Bill. I commend Mr Westende for the work he has done in examining the issue of dangerous dogs. His work builds on the work I did some months ago on the question of attacking dogs and takes the issue that next step. I also commend the Minister for the Environment, Land and Planning for the work he has done in drafting a series of extensive amendments to Mr Westende's Bill, which have resulted in what I believe is a comprehensive review of these provisions. These amendments have been circulated to members this morning. It is appropriate that Mr Westende's work on dangerous dogs has come to the Assembly at this time, and we are aware that further amendments will be proposed by the Minister once his review of the work done by the working party on dogs has been completed. Madam Speaker, I support the thrust of Mr Westende's Bill and also the Minister's amendments, and I urge the Assembly to support them.

MR WOOD (Minister for Education and Training, Minister for the Arts and Minister for the Environment, Land and Planning) (11.04): Madam Speaker, I have indicated before that the Government will be supporting Mr Westende's Bill. We have agreed on certain amendments to consolidate and improve the Bill as presented. I think the Assembly is pretty much as one on the way we are treating this matter. All members regard it as quite unacceptable that dogs should be free to roam in the streets and, in particular, in a position where they can attack, sometimes very brutally, the ordinary citizen. With the original Bill I introduced a couple of years ago to bring in quite tough measures, Ms Szuty's amendments, and now Mr Westende's amendments, I do not think we have ever had disagreement. It is an indication of a concerted effort to see that the problem of dog attacks in particular and roaming dogs generally is removed.

The provisions already in the Act are strong, and they will become stronger. We keep working at it, and we now have a Dog Control Act that surely is amongst the strongest, if not the strongest, in Australia. We have introduced on-the-spot fines, and they are increasing in number. We are launching more prosecutions. More than that, the fines that are now being imposed are more substantial. Along with this, there is a great deal of publicity. I cannot imagine that there is anybody in the community who is not aware that there is a problem and that we are taking serious steps to contain the problem.

Let me tell you this: I do not think it is working yet. There is no evidence that there is any particular change on the part of many members of the community. I say that it is not working yet because I think measures such as this take quite some time to have an effect. We are looking to bring about a cultural change, a change to the way people think. There is obviously a large number of people who think they can have a dog and not have to take much responsibility for that dog, that the dog can pretty well do as it likes. So we are addressing a cultural change, and any measure to change the culture is one that has to be worked through very slowly. It takes some time.

I do admit that I thought the measures would work rather more rapidly than they appear to be doing. With the amount of publicity it has had, I thought it would become apparent in a fairly short space of time that people were taking greater control of their dogs. Certainly that is the case with responsible owners. It is now commonplace to see people walking their dogs on a lead beyond their own boundaries. That is almost the norm, but it is still commonplace to see dogs running around uncontrolled. A great number of people in our society have attended to the problem, but it is very difficult to get to those other people who have not.

We have in the budget provided money to employ two new dog patrol people. Very importantly, we have provided $50,000 for an education program, which I think is going to be the key. Perhaps in the overall context of trying to change the culture of some people, $50,000 is not a great amount of money, but it is a start and it is a means by which we can get to those people. We will try to target it as well as we can, to convince irresponsible dog owners that they have to take control of their animals, that they have to be responsible for them. It is a start. Madam Speaker, I will be bringing in further amendments, perhaps later this year, although it might be into next year before I can get them into the Assembly, that will further toughen this legislation. Let me say that we will continue on the path of trying to change the approach that a few people have to control of the animals they own.

MR WESTENDE (11.10), in reply: Madam Speaker, we on this side of the house are very pleased that this matter has come up. Even though the issue of the control of dogs can get very emotive at times, we believe that we have arrived at a reasonable solution, through cooperation and consultation, to provide legislation which is practical and worth while to the Canberra community as a whole. I wish to thank my colleagues on this side and other members for their input to this Bill, and also the various organisations we consulted, including the Minister's working party. I am very pleased with the overall outcome and I thank the Minister and his staff for at all times being available on this matter, which is still of concern to the community. I believe that we have come up with the best possible solution, including the Minister's amendments.

Let me go over the amendments agreed to recently by the Minister and me, with the assistance of the Registrar of Dogs, other staff and the legal representatives. Firstly, it was agreed that in clause 4 we would define the terms "dangerous dog licence" and "keeper's licence". The original clause 5 is to be deleted and a new clause 5 substituted to include a keeper's licence and a dangerous dog licence. Part IIA of the Act has been amended by inserting the word "keeper's" where appropriate, and we have agreed to insert a new Part IIB, which clearly sets out the requirements for keeping a dangerous dog. Clause 5 now clearly sets out the registrar's obligations. It is explicit in relation to the registrar's power in granting a licence and it is explicit in stating the consequences of non-compliance under a keeper's licence and/or dangerous dog licence.

In clause 6, we have amended the fine, and in clause 7 we have added a further subclause about muzzling. In clause 8, the penalty for an attacking dog has been amended, and in clause 9 we have agreed to broaden the inspector's powers in relation to the seizure of dogs and dangerous dogs. Clause 10 was deleted and a new clause substituted to add a further subsection to section 31 of the principal Act providing for the awarding of costs of frivolous court actions against a person instituting proceedings. By deleting clauses 11 and 12 and substituting a new clause 11 we have strengthened the wording dealing with the destruction of dogs by the registrar under the keeper's licence and the dangerous dog licence provisions. In clause 13 we deal with minor changes to appeals, as well as broadening appeal reviews.

I believe that, with the incorporation of the above amendments, the ACT community will feel more comfortable in the knowledge that laws regarding dogs in general, and particularly the keeping of dangerous dogs, afford residents more protection than has been the case. In achieving this, I would like to thank my colleagues and other members for their support. It is not our intention to debate clause by clause the amendments proposed by the Minister. I believe that we can therefore proceed to deal with the Bill as a whole.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MR WOOD (Minister for Education and Training, Minister for the Arts and Minister for the Environment, Land and Planning) (11.14), by leave: I move:

Clause 4, page 2, line 3, omit "definition", substitute "definitions".
Clause 4, page 2, line 4, add at the end:

"'dangerous dog licence' means a licence granted under section 18L;
'keeper's licence' means a licence granted under section 18C;".

Clause 5, page 2, lines 5 to 25, omit the clause, substitute the following clauses:

Keeping more than 3 dogs

"**5.** Section 18A of the Principal Act is amended by inserting in subsection (1) "keeper's" before "licence".

Keeper's licence - application

"**5A.** Section 18B of the Principal Act is amended by inserting "keeper's" before "licence".

Keeper's licence - grant

"**5B.** Section 18C of the Principal Act is amended -

(a) by inserting in subsection (1) "keeper's" before "licence" (first occurring); and

(b) by inserting in subsection (3) "keeper's" before "licence".

Keeper's licence - duration

"**5C.** Section 18D of the Principal Act is amended by inserting "keeper's" before "licence" (first occurring).

Keeper's licence - amendment

"**5D.** Section 18E of the Principal Act is amended by omitting from subsections (1) and (2) "licensee" and substituting "person holding a keeper's licence".

Keeper's licence - cancellation

"**5E.** Section 18F of the Principal Act is amended -

(a) by inserting in subsection (1) "keeper's" before "licence";

(b) by inserting in subsection (2) "keeper's" before "licence" (first occurring); and

(c) by inserting in subsection (3) "keeper's" before "licence".

Keeper's licence - notice of proposed cancellation

"**5F.** Section 18G of the Principal Act is amended by inserting in subsection (1) "keeper's" before "licence" (first occurring).

Powers of inspection - keeping 3 or more dogs

"**5G.** Section 18H of the Principal Act is amended by omitting from subsection (1) "Part" and substituting "Act".

Insertion

"**5H.** After Part IIA of the Principal Act the following Part is inserted:

"PART IIB - DANGEROUS DOG LICENCES

Keeping a dangerous dog

"**18J.** (1) A person shall not, without reasonable excuse, keep a dangerous dog.

Penalty: $5,000.

"(2) Subsection (1) does not apply if a dangerous dog is kept in accordance with a dangerous dog licence.

Dangerous dog licence - application

"**18K.** An application for a dangerous dog licence shall be -

(a) in accordance with a form approved by the Registrar; and

(b) lodged with the Registrar together with the determined fee (if any).

Dangerous dog licence - grant

"**18L.** (1) On application for a dangerous dog licence, the Registrar shall -

(a) grant the licence subject to any specified conditions; or

(b) refuse to grant the licence.

"(2) For the purpose of making a decision under subsection (1), the Registrar shall have regard to the following matters:

(a) the type of dog to which the application relates;

(b) the size and nature of the relevant premises;

(c) the security of the premises;

(d) the adequacy of the facilities for keeping the dog on the premises;

(e) the likelihood of any nuisance to the occupiers of neighbouring premises;

(f) any other relevant matter.

"(3) The conditions that may be specified under paragraph (1)(a) include the following:

(a) conditions relating to confining the dog in a yard;

(b) restrictions on the dog leaving the keeper's premises.

Seizure of dangerous dogs

"**18M.** (1) Where -

(a) the Registrar refuses to grant a dangerous dog licence;

(b) the Registrar cancels a dangerous dog licence; or

(c) a dangerous dog licence ceases to be in force in relation to a dangerous dog;

the Registrar shall cause the dog to be seized.

"(2) If the Registrar is satisfied on reasonable grounds that the keeper of a dangerous dog has failed to comply with a condition of the licence, he or she may cause the dog to be seized, subject to subsection (3).

"(3) The Registrar shall only seize a dangerous dog under subsection (2) if, in his or her opinion based on reasonable grounds, the failure to comply with the condition of the licence is of such a nature as to justify the seizure.

Destruction of dangerous dogs

"**18N.** (1) Where the Registrar seizes a dog under section 18M, he or she shall order it to be destroyed if -

(a) in the case of a dog seized under subsection 18M(2) - in the Registrar's opinion based on reasonable grounds, the failure to comply with the condition of the licence is of such a nature as to justify the destruction; or

(b) in any case - in the Registrar's opinion based on reasonable grounds, the circumstances are such as to justify the destruction.

"(2) Subject to subsection (3), if the Registrar makes an order under subsection (1) for the destruction of a dangerous dog, he or she shall cause the dog to be destroyed.

"(3) The Registrar shall not cause a dog to be destroyed under subsection (2) if -

(a) the period within which application may be made to the Administrative Appeals Tribunal for review of the decision of the Registrar under subsection (1) has not elapsed;

(b) a decision of the Administrative Appeals Tribunal or a court relating to the decision of the Registrar under subsection (1) has not become final; or

(c) the Administrative Appeals Tribunal or a court sets aside the decision of the Registrar under subsection (1).

"(4) For the purposes of paragraph (3)(b), a decision of the Administrative Appeals Tribunal or a court referred to in that paragraph is to be taken to have become final if no application for review has been made, or appeal instituted, within 28 days after the date of the decision.

Dangerous dog licence - duration

"**18P.** Subject to this Part, a dangerous dog licence remains in force for the period (not exceeding 12 months) specified in the licence commencing on the date on which it is granted, and may be renewed in accordance with section 18Q.

Dangerous dog licence - renewal

"**18Q.** On application in writing accompanied by the determined fee (if any), the Registrar shall, before the expiration of a dangerous dog licence, renew the licence for a further specified period.

Dangerous dog licence - amendment

"**18R.** (1) A person holding a dangerous dog licence who changes his or her residential address shall give the Registrar written particulars of the new address within 14 days after the date of the change.

"(2) A person holding a dangerous dog licence who becomes the keeper of a dangerous dog not specified in the licence shall give the Registrar written particulars of the dog within 14 days of becoming the keeper of the unspecified dog.

"(3) A person who contravenes subsection (1) or (2), without reasonable excuse, is guilty of an offence punishable on conviction by a fine not exceeding $300.

Dangerous dog licence - surrender

"**18S.** A person holding a dangerous dog licence may surrender the licence by notice in writing to the Registrar, with effect from the date of the notice or such later date as is specified in the notice.

Dangerous dog licence - notice of proposed cancellation

"**18T.** If the Registrar proposes to cancel a dangerous dog licence under subsection 18U(1), no later than 14 days before the date of the proposed cancellation he or she shall give the licensee a notice in writing that -

(a) informs the licensee of the proposed cancellation date;

(b) specifies the grounds on which the Registrar proposes to cancel the licence;

(c) states the facts or circumstances that, in the Registrar's opinion, constitute those grounds; and

(d) informs the licensee that the licensee may, within 14 days after the date of the notice, give the Registrar a written response to the matters raised in the notice.

Dangerous dog licence - cancellation

"**18U.** (1) No earlier than 14 days after giving the holder of a dangerous dog licence a notice under section 18T, the Registrar may cancel the licence if -

(a) a ground for refusing to grant the licence exists;

(b) the licensee fails to comply with a condition specified in the licence; or

(c) the licence was obtained by fraud or misrepresentation.

"(2) For the purpose of making a decision under subsection (1), the Registrar shall have regard to any response given in accordance with the notice under section 18T.

"(3) The cancellation of a dangerous dog licence takes effect on -

(a) the date on which notice of the cancellation is given to the person under subsection 40AB(1); or

(b) if a later date of effect is specified in that notice - on that later date.".

Clause 6, page 2, line 33, proposed new subsection 21(4), omit "$1,000", substitute "$500".

Clause 7, page 3, line 8, proposed new section 24A, add at the end the following subsection:

"(2) It is a defence to a prosecution under subsection (1) if the keeper of the dog proves he or she had a reasonable excuse.".

Clause 8, page 3, line 11, omit "$10,000", substitute "$5,000".

Clause 9, page 3, lines 12 to 20, omit the clause, substitute the following clause:

Seizure

"**9.** Section 28 of the Principal Act is amended -

(a) by omitting from paragraph (1)(a) "or" (last occurring);

(b) by omitting paragraph (1)(b) and substituting the following paragraphs:

"(b) the dog is not restrained in accordance with subsection 21(4); or

(c) in the case of a dangerous dog - the dog is not wearing a device in accordance with section 24A."; and

(c) by omitting subsection (5) and substituting the following subsection:

"(5) Where an inspector has reasonable cause to believe that a dog that has attacked a person, a domestic animal, a farm-animal or wildlife is on premises occupied by the keeper of the dog, the inspector may -

(a) require the keeper to produce the dog for inspection; and

(b) in the case of a dog the inspector believes on reasonable grounds not to be registered - seize the dog.".

Clause 10, page 3, lines 21 to 30, omit the clause, substitute the following clause:

Detention of dogs

"**10.** Section 31 of the Principal Act is amended by adding at the end the following subsection:

'(4) Where proceedings for an offence against section 25 are found by the court to be frivolous or vexatious, the costs of impounding the dog shall be borne by the person who instituted the proceedings.'.".

Clauses 11 and 12, page 3, line 31 to page 4, line 12, omit the clauses, substitute the following clause:

Destruction and sale of dogs

"**11.** Section 32 of the Principal Act is amended -

(a) by omitting from subsection (1) "the dog" (first occurring) and substituting "a dog";

(b) by omitting from paragraph (2)(a) "licence" and substituting "keeper's licence or dangerous dog licence"; and

(c) by omitting from subparagraph (2)(b)(i) "licence" and substituting "keeper's licence or dangerous dog licence".

Clause 13, page 4, line 24, proposed new paragraph 39A(2)(b), omit "or animal".

Clause 13, page 4, line 27, proposed new paragraph 39A(2)(c), add at the end "or".

Clause 13, page 4, line 29, proposed new paragraph 39A(2)(d), omit "or" (last occurring).

Clause 13, page 4, line 30, proposed new paragraph 39A(2)(e), omit the paragraph.

New clause -

Clause 14, page 4, line 30, after clause 13, add the following new clause:

Appeals

"**14.** Section 40AA of the Principal Act is amended -

(a) by inserting in paragraphs (a), (b) and (c) "keeper's" before "licence"; and

(b) by adding at the end the following paragraphs:

"(d) granting a dangerous dog licence under section 18L subject to conditions;

(e) refusing to grant a dangerous dog licence under section 18L;

(f) seizing a dangerous dog under subsection 18M(2);

(g) ordering a dangerous dog to be destroyed under subsection 18N(1);

(h) cancelling a dangerous dog licence under subsection 18U(1).".

I bring forward these amendments to ensure that the intent of Mr Westende's amendments is supported. In some cases the changes are minor grammatical adjustments. Other changes are procedural and are designed to improve the administration of Mr Westende's changes. Mr Westende has been through the detail, and there is nothing more to add. I table the supplementary explanatory memorandum.

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

SCHOOL BASED POSITIONS

MS SZUTY (11.15): I move:

That this Assembly instructs the Minister for Education and Training to maintain all school based positions targeted in the 1993-94 Budget.

As has been widely reported, my colleague Mr Moore and I feel that the debate about school based education and its worth in the community should take place at this time, when the ACT government school system is facing very serious threats from the loss of 80 teaching and support positions in primary schools, high schools and colleges because of government budgetary cuts. Indeed, this motion has been proposed for debate today to fulfil the commitment that Mr Moore and I have made to Canberra's school communities to pressure the Government to change this decision.

The Government has aimed for a surplus of $12.8m in its recurrent budget for 1993-94. In a time of recession the Government is aiming for a recurrent budget surplus - and for what reason? So that it can point to good financial management? During the current recession we should be aiming to maintain the status quo in funding areas such as education which are tied to our prospects of emerging from the economic downturn and which leave us in the best position to capitalise on the future growth in the economy.

I feel that this can better be done by maintaining employment ahead of aiming for a recurrent budget surplus. We will also, I would suggest, benefit more from improved education outcomes for students in the longer term, which cannot be the product of reduced teacher numbers and the resultant stress placed on those teachers who remain. According to the September unemployment figures, the ACT moved against the national trend, recording an increase in the level of unemployment. It makes no sense to reduce teacher numbers at a time when education is being so firmly linked to future employment prospects.

Let me quote from an ALP policy document distributed during the 1992 election campaign. In the policy statement "Protecting Canberra's Schools" the ALP stated:

> The education of our young people remains the highest priority for Labor. A Labor Government will provide a quality education for its students to develop their talents and capacities to the full in achieving high standards of learning, self-confidence, optimism, self-esteem and respect for others.
>
> Labor acknowledges the qualities of ACT schools but recognises also that there are areas of difficulty, particularly high schools and the relatively small number of students who present with behavioural disturbances. In co-operation with parents, teachers and students the Follett Government will target those areas to improve the quality of ACT school level education.
>
> Labor believes the next three years should be a period of stability and consolidation. The debate should focus on the quality of education provided by the school system, not simply on the cost of schools and school buildings themselves.
>
> Labor recognises the crucial role of teachers and the need to ensure that they have appropriate opportunities for professional development, job satisfaction and career enhancement.
>
> ... ...
>
> The neighbourhood school system, therefore, must be maintained and protected.

Let me also quote from the ALP policy document "Better for Canberra's Young People":

> Labor will:
>
> provide extra resources to Government high schools to tackle the increasing need for improved pastoral care, counselling and careers advisory services to young Canberrans. Each high school will be given an additional two line allowances for staff to extend these services, at a cost of approximately $290,000. This allocation represents the first step in Labor's commitment to develop a plan to meet the needs of young people in high schools.

These two documents provided for the electorate an impression of a government which it felt it could trust to care for and protect the ACT school system. I feel that that trust has been betrayed by this decision. And what of the social justice agenda that the Government so often speaks of? There is no social justice in removing 80 teaching and support positions from the ACT work force and causing what could be irreparable damage to our young people by reducing the quality of education available in our schools. I and many others are convinced that the improvement of educational outcomes rests on the quality of our teaching staff. That quality cannot be maintained when resources are stretched.

Social justice principles would lead me to believe that the best educational outcomes for students - regardless of family status, family income or area of residence - are guaranteed by the Government. If the government school sector cannot provide the quality of education parents want for their children, then those who can afford to may choose to go outside that system, leading to a further eroding of staff numbers and options within the government school system. We need a strong government school system to ensure that a quality education is not a product of advantage but is universally offered, is mindful of the varying problems students can face and can cater for students with special needs. The Government stated in its social justice budget statement:

> The Government recognises the link between education and training and employment.

But what is it that the Government sees as the link? It is not just the tertiary and vocational training that happens after school based education stops; it encompasses the whole issue of a quality education up to that level which provides young people with the skills and learning that will make it possible for them to capitalise on these training opportunities. Tertiary education should be founded on a solid school based education which provides students with the knowledge and skills necessary to operate at tertiary, traineeship or apprenticeship levels. This cannot be provided by a school system that is being squeezed in its most essential resource area - teaching staff.

From reports I have had, 15 staff will go from primary schools, 30 from high schools, 30 from colleges, three from special education and the remaining two from "other schools". On top of this, of course, 10 positions will be cut from the department, although what form the final cuts will take has not yet been identified. In the ACT the removal of 30 teaching positions from the college system will seriously hamper a system which has long been lauded as a model for

senior school education in Australia. It also does not seem congruous that the Government, after early in its term talking of the advantages of having a school system which was easily marketable overseas, would now move to reduce the quality of that college system. In high schools the loss of 30 teachers will be an impossible burden.

As I have said, the Government has promised much. In December last year the Minister stated that the high school development program was largely written and would be tabled early in the new year. Earlier this year yet more forums and discussions were held to determine what we could do to improve our high schools. This was despite the fact that at least two other detailed studies had been carried out, and the education community has been waiting for some time to see the recommendations of these reports adopted and funded.

In primary schools we stand a very high chance of not identifying students with learning difficulties if we do not maintain teacher numbers. Fifteen teachers may not seem very many out of a total of 95 schools; yet we have, by the Government's own figures, 11.5 per cent of junior primary school classes with over 30 students in the class, compared to a national average of 9 per cent. Thirty-seven per cent of senior primary classes have over 30 students, which is far in excess of the national average of 11 per cent. Primary schools are already showing signs of stress, and I believe that they cannot tolerate further cuts. I am convinced that if the Government had the will it could harness the enthusiasm of school communities and find other areas for budget reductions which could meet any real fiscal imperatives forced on the ACT by cuts in Federal Government grants. I have suggested - and Mr Moore has also - that the Government look at increasing cost recovery from school bussing services and allow parents who wish to send their children to out-of-area government schools and non-government schools to bear at least a more realistic cost of that decision.

Madam Speaker, the Government will argue that cuts to the education budget have been forced upon it by the Grants Commission process. I do not accept that the Grants Commission process has a direct bearing on this decision. The ACT Council of Parents and Citizens Associations recently published a paper on the subject entitled "The Commonwealth Grants Commission: Fiscal Policeman or Political Scapegoat". It points out that the Grants Commission has become a scapegoat for politicians who wish to remove themselves from the responsibility of making unpopular decisions. There is no compulsion for any government to follow the dictates of the Grants Commission. As does the P and C Council in its paper, I quote from the Grants Commission itself:

> It is important to emphasise that equalisation applies to capacity, not performance. It is not for the Commission to tell the states what to do. We are dealing with untied general revenue grants. So, in principle, the policies followed by a state government do not make any difference to the grant it receives. Each state is free to determine its own priorities.

What actually happens is that the Grants Commission looks at expenditure by the States and applies its own criteria, calling spending over the weighted averages "inefficiencies". The Grants Commission arrives at a standard figure for expenditure on a budget item, and then, taking into account relativities between the systems, which are the things that are unique to that system which - - -

Mr Wood: Yes, we know all that.

MS SZUTY: I am going through it. Taking into account the things unique to the system which may impact on its running costs, the commission determines the level of "inefficiency". Therefore, the ACT's high retention rates, which were once allowed for in calculating the relative "inefficiency" of the ACT schooling system, are now not to be taken into account, and our "inefficiency" in the education sector is increased. Likewise, the special costs incurred by the ACT in educating the children of diplomats has also not been taken into account in the 1993-94 report - an issue that Mr Cornwell has raised in this Assembly.

It appears that the Grants Commission really decided to use a standard measure for the States and Territories, but I have two concerns about this. The first is that the lowest common denominator seems to have been adopted as the standard. My second and overall concern remains that the ACT Government has decided to use the Grants Commission report as a rationale for its budget decisions. As I stated earlier, the commission itself does not pretend to dictate to governments how they spend their revenue; decisions are in the hands of the ACT Government.

I should say that I do not agree either with the Liberals' stated approach to cutting education spending - that is, sacrificing bricks and mortar. These structures, the school buildings of Canberra, are vital and energetic parts of the local community which enrich the educational life of students by allowing them to study in the community in which they live. Further, the buildings and grounds are utilised by community groups and individuals who appreciate the green space and facilities they provide. The Canberra community has made its views on school closures very clear - views that led to the promise by the current Government not to close schools in this term. However, with the reductions in staff put forward in the 1993-94 budget and the projected savings of the budget papers forward estimates, I am not confident that the community has had its voice heard. I expect that the fight to maintain our school system and to enhance the learning opportunities for our young people will continue for some time.

This brings me to what I see as the need to strategically plan for education into the future. The ACT Government needs to decide how it will fund public schooling in the future and to make this information available to the wider ACT community. As I have mentioned previously, there is much energy and commitment in the school sector - including teachers, their union, principals associations, parents and citizens associations and school boards, who I am sure would commit themselves willingly to participate in such a task. The Government also needs to recognise the value to the community in investing in education. One of the difficulties with the current debate about education is that no-one wants to decide whether we see it as an asset or investment or as expenditure. In some forums we have education seen as the saviour of our society, the way to a bright and prosperous future. Yet in much of the research which is seemingly finding its way to government it is seen as pure expenditure, with no consideration being given to the desired outcome. I will argue, and Mr Moore will argue, that public education is an asset and an investment which needs more resourcing and not less.

I feel that it is important to get this into perspective. The ACT Government has defended the need to spend large amounts of money maintaining the ACT's road system because it was a high-quality asset at the time self-government was granted to the Territory. Indeed, the Government can see roads as capital assets

that need maintaining but apparently cannot see parallels with the need to maintain another, I would argue, more precious asset - our education system. Why is a road an asset more deserving of high-quality maintenance than our government education system? New roads need to be built, and this is achieved in a cost-effective and expedient way; but we are informed that to do any less than to maintain the high quality of our road system would be to run down a valuable asset. Why is education less well defended against moves to let it run down?

Unfortunately, I still see many areas where more money desperately needs to be spent in our education system - high school development, reading recovery, schools serving populations with socioeconomic disadvantage, and colleges to stem the rising rate of the students who leave early. These initiatives cannot be achieved by cutting teacher numbers. The Government has talked in terms of improved teaching occurring through the use of technology. While this may well occur, a computer will never be able to give a student the interpersonal skills he or she needs to learn. A computer or a video player can only impart information. Personal human contact enriches and reinforces the learning experience and gives students skills that enable them to keep learning. I am not convinced that technological improvements will compensate for lost teaching positions, as I am similarly not convinced that cutting teaching positions is an essential part of the Government's strategy to meet the shortfall in Federal funding.

If the Government remains determined that it does not place a high priority on quality public education, then the whole ACT community should be involved in looking at reshaping public education in the long term. The education system should not be subject to budgetary tinkering at the edges. We need to set goals, establish priorities and then look at funding the system in the long term. The process exists which could produce such an outcome. The "Future Directions for ACT Schooling" exercise could be expanded to include the addressing of the major question of declining resources into the future. This would give teachers, parents, students, the community and the department an opportunity to work together to achieve a satisfactory outcome for our young people. What the Government should not do is proceed with its announced intention to cut 80 teaching and support positions in schools. It should have the courage of its earlier commitments to young people to reverse this decision. What is needed is a closer and more thorough examination of the priorities we need to establish for school based education now and in the future. I commend the motion to the Assembly.

MS FOLLETT (Chief Minister and Treasurer) (11.32): The Government will oppose this motion. I would like, at the start, to put this budget decision into its proper context. I recognise that budget matters are of little interest to Independents and Opposition members. It is up to the Government to produce a budget and to take responsibility for it. But I am sure that all members know that the ACT is required to adjust to State-type levels of Commonwealth funding. We have been meeting that requirement year by year. In the past year, as a result of the Grants Commission review, the Commonwealth has sharply reduced its funding to us. That reduction of around $78m, or 19 per cent, has accelerated our transition to State-type levels of funding. Unlike Independents and the Opposition, the Government cannot ignore that fact. We must take account of it and, as a responsible government, we must acknowledge that this is a very major issue in our financial future.

In seeking to make the necessary adjustment, the Government has looked very long and hard at reducing the costs of all programs, whilst protecting the services to the community. All but one or two programs have been required to make reductions in their costs year by year and again this year. The Government's decision this year to look at where the savings could be made in education - and in health, incidentally - recognises the gravity of our funding situation. It is all very well for Ms Szuty to make light of that matter. She is not in government. The Government has to take it seriously.

Our decision also recognises that we have previously required, and we still require, substantial savings to be made in other areas which could also be regarded as vital to the community - for example, policing, emergency services, public transport and so on. The education budget, which constitutes about a fifth of the budget, simply cannot be quarantined in today's circumstances. In looking at the possibilities for making savings in education, the Government has choices to make. But I say again that I believe that we cannot ignore the need to make those savings.

In recent years the Grants Commission's report has highlighted the substantial differences between the Territory's education costs and those of the States. We must live with the fact that budgetary adjustments have to be made to cater for the Commonwealth's $25m transitional funding for education, which will be phased out over the next four years. We cannot ignore that. It is a fact. As I say, we had choices to make.

The Liberals' choice in previous years was abundantly clear. It was to close schools, and they set out with a target of 25 schools. This would undoubtedly have massively reduced services to the community. There is no way that anyone could sustain a pretence that closing all of those schools could retain the same standard of service to our community**.** Madam Temporary Deputy Speaker, you have only to recall the outcry from the community, who understood that issue all too well, to recognise the truth of what I say. There is also the option of reducing the costs of overheads and the costs of administration. This has been done. It has been done year by year, and it is being done again this year. In fact, in this year's budget, less than half of the savings required of the education program could be said to be school based. The figure is around $1.5m, less than half. In other words, the Government has kept to a minimum the savings required through schools, and it is a minimum that after very close and careful consideration we believe the schools can afford. We have been very careful, for instance, to differentiate between the different school sectors. We have done that to ensure that the savings are sustainable and are equitable.

As announced in the budget, a longer-term education plan is to be developed during the year and this will provide a planning base for the period 1994 to 1998. This plan is aimed at providing ongoing efficiencies within the program while still maintaining the quality teaching services. It will also provide the budgetary framework for the department over the forward years. The development of this strategy will, as Ms Szuty suggests correctly, be undertaken in wide consultation with school communities, with unions and with other major interest groups. It will also take account of the findings of the Auditor-General's performance audit of the government schooling program. I again draw that auditor's report to the attention of members. It is not something that can be overlooked.

Members opposite may believe that a report from the Auditor-General can simply be shelved or hidden away and ignored, but I do not believe that. I think it is a very careful and very thoughtful piece of work that has to be taken seriously. The strategies that are implemented this year will be linked to educational developments at the national level and will focus on improving the educational standards and vocational educational and training needs of this Territory.

In previous years substantial savings have been made in central office costs, as I have said, and such savings are again required this year. As school based costs represent a very large part of the education budget, it is simply not feasible to avoid altogether the need for greater efficiency in the use of school based resources. As I said, I draw members' attention again to that Auditor-General's report, but it is only one of a number of such reports which identify the scope for some savings in this area. Madam Temporary Deputy Speaker, the Government is definitely not about cutting the quality of educational services to students. What is required is a planned approach to educational services in the future, but we must ensure that that is within the Territory's financial constraints.

I recognise that Ms Szuty and Mr Moore find themselves in a bit of a bind here in that they have given guarantees on the Government's budget and at the same time they have got themselves into some political hot water in their comments on the education budget. So we must regard the motion today as making very clear their views, and fair enough too; but it is a political response to a political issue that we have before us. On the overall issue of the budget, I heard Mr Moore say this morning that the Government should wear the flak for this decision, as for other decisions. He is quite right about that. It is the Government's budget, and I take full responsibility for it. I understand in many ways where Mr Moore and Ms Szuty are coming from; but if the Liberals support this motion, as I strongly suspect they will, I would regard that as entirely opportunistic and an extremely cynical move. This is the party which sought to cut a massive swathe through this community's education services. Apart from denying children in many parts of Canberra access to a neighbourhood school, their decision to close 25 schools must have had the effect of reducing teaching numbers. How could it not? It is hypocritical in the extreme to say the opposite.

As I have said, the Government has to make decisions, and they are sometimes very difficult decisions. In this case it was a difficult decision, a decision which we explored thoroughly and which, I would say quite honestly to you, we agonised over; but it is a decision that we have made in the light of all the best information available to us. This decision is not at variance with Labor's commitment to education and to excellence in our public education system. Even in this year's very difficult budget we have continued to build on the provision of a better and better government school system. I again refer members to our decisions in this budget to open the Conder Primary School and Pre-School and to start schools at Gungahlin. Of course the Liberals would never have done that. We heard Mr Cornwell say that he does not believe that we should be building schools in southern Tuggeranong, that children there do not deserve the same standard of service as children in other areas.

Also in this budget we have funded the implementation of the national learning profiles, and that is in order to obtain a consistent measurement of students' achievement. That is a progressive move aimed at ensuring that children get the very best from our government schooling system. We have also expanded the integration of students with special needs into mainstream schools. I did not hear

anybody drawing attention to that matter; but it is, in my view, the very basis of social justice that these children should have available to them the same opportunities as other students have. It is something that Labor has initiated, something that Labor has expanded in this budget and something that I am very proud of. We are also promoting tolerance and justice in our multicultural society through our funding of community language skills.

I understand why this motion is being moved, but I am afraid that anybody who asserts that our approach to the education budget will lead to a reduction in the excellence of education in this Territory is merely posturing. That is how I regard this motion; that is how I will regard the Liberals if they support it.

MR CORNWELL (11.44): Madam Temporary Deputy Speaker, we will support this motion because we believe in its intent, but we certainly do not agree that it goes far enough. Ms Szuty mentioned that she was pressuring the Government. I suggest that this motion pressures the Government about as much as a blancmange would. Let the Assembly not ignore that this motion is simply a very desperate attempt by Ms Szuty and Mr Moore to salvage some credibility with the Australian Education Union and the P and C council. These two Independents have betrayed that constituency. They are in desperate trouble trying to shore up what is left of support there. I ask you: What is the purpose of moving this motion when we have had evidence recently that when a majority of the Assembly amended legislation - namely, the Boxing Control Bill - the Government ignored it? What do you think, Ms Szuty, they are going to do with a simple motion, if they ignore a piece of legislation that was amended? I suggest to you that they will do exactly nothing. But we will support you, because we can accept that you are as concerned as we are about these savage cuts of 80 teachers.

I was delighted to hear the Chief Minister admit that there are substantial differences in education funding between the States and this Territory. That is hardly surprising, because there are substantial differences in education between the States and this Territory. We have more students in Years 11 and 12, which obviously increases our costs. The larger number of AST teachers obviously increases our costs. For the first time I also heard Ms Follett admit that $25m had to be cut from education over the next four years. I think those are significant advances, so far as she is concerned. They show that she is learning, however slowly.

How do you advance education if you are going to cut 80 teachers? The breakdown of the cuts has been worked out. Ms Szuty gave some figures for the primary schools, the high schools and the colleges. There will be a 37 per cent cut at college level, a 37 per cent cut at high school level and a 26 per cent cut at primary school level. How do you overcome the difficulties that this will create when 11.5 per cent of ACT junior primary classes have over 30 pupils, when the Australian average is 9 per cent? That is another substantial difference, Chief Minister - who is not here to listen to this. Of the senior primary classes, 37 per cent have over 30 pupils, when again the Australian average is 11 per cent. I suggest that that is another significant difference with the States, Chief Minister. Further, we find that 25 per cent of Year 6 students are identified as requiring learning assistance in Year 7 and that only 32 per cent of these students return to mainstream classes in Year 8. So there is obviously another gap there.

We had a dispute in the Estimates Committee about the fact that only 11 per cent of students in ACT primary schools participated in the reading recovery program, when 19 per cent were identified as requiring reading recovery. This figure of 11 per cent was disputed. The matter was taken on notice. I am saddened to have to say that the figure was correct. I received the following answer:

> 1992 Coverage: 11.8% of Year 1 students received a full Reading Recovery program. A further 4% received a partial program ... Coverage is less than 15% because of teaching time lost through illness and assessment ...

I could go on, but I have identified a number of areas where we need assistance. We need additional assistance, not a cut in teachers. However, extraordinarily, in the Estimates Committee the departmental head, Ms Vardon, stated:

> ... the reductions are not to areas where supplementary resources are provided for children ...

So the reductions are in mainstream teaching. I then pointed out:

> Well, if you do not cut the supplementary resources, but you do cut the mainstream, will you not exacerbate the problems in the mainstream so that you will need more supplementary resources?

I would think that is a reasonably logical result. The Minister said:

> No, I do not believe that that is a necessary outcome.

I find that an extraordinary statement. It is interesting that, to date, Mr Wood has not participated in this debate or, indeed, in any debate in this Assembly relating to these 80 teacher cuts. It was significant, I am sure, that the Chief Minister found it necessary to lead on this matter for a government which, in the eyes of the education community, is discredited. Mr Wood, I think that you are embarrassed - and you have every reason to be embarrassed - by this disgraceful behaviour. You subsequently confirmed again that the cuts could not be made in the supplementary area. I repeat: If you are going to cut them in the mainstream, then you must have an effect upon the supplementary area.

Ms Follett, the Chief Minister, made much about the school closure proposals that she took to be the Liberals' option. She also suggested that I had opposed the building of Lanyon High School and schools in Gungahlin. I want to place on record that that is totally incorrect. I categorically deny it. I have supported Lanyon High School, as I support schools in Gungahlin. The interesting point Ms Follett overlooked, or chose not to mention, is that this Government has not ruled out school closures as an option in the future. I refer again to the Estimates Committee transcript. We asked whether or not schools would be closed in the future by the Government. Mr Wood replied:

> It is happening everywhere and schools will close in Canberra in the future, that is an inevitability.

Mr De Domenico: Were they his exact words?

MR CORNWELL: They are his exact words, Mr De Domenico. He went on to say:

> We support the provision of education services widely, but we also understand realities.

This is an option that this Government could have considered, rather than cutting 80 teachers. Because of the commitment of the Chief Minister that no school would close in the first three years of this Labor Government, this stubborn Chief Minister refuses to allow her Minister for Education to take that action, and instead has preferred to sacrifice 80 teachers from the teaching service, with the usual results - the inevitable results, I would suggest - in the standards of education. The option was there.

Furthermore, the Government has not ruled out more cuts in teachers in future years. I again refer to the Estimates Committee transcript. At page 196 I asked whether there would be reductions in teachers. I said:

> So we can assume that there may be further cuts in future years.

Mr Wood replied:

> If you have read the documents that is the case.

Again we have this stubborn adherence to cuts in fundamental aspects of education - namely, the teachers that our education services require. They are the ones to be sacrificed because the Chief Minister refuses to look at alternatives. I believe that that is an appalling indictment. That is why we are prepared to support Ms Szuty's motion. We expect Mr Moore and Ms Szuty to support our amendment to the Appropriation Bill in November when that matter is debated. The ball, Mr Moore and Ms Szuty, is therefore back in your court.

MADAM SPEAKER: The question is: That the motion be agreed to.

Mr Wood: I am waiting for Mr Moore and he is waiting for me.

Mr Moore: I will speak after Mr Wood.

Mr Wood: Put the question now. I will not jump ahead of you.

MR MOORE (11.54): Madam Speaker, Mr Wood is clearly waiting for me to speak first, so that he can rebut some of what I have to say, no doubt. But Ms Szuty has the right of reply and can resolve any of the issues that Mr Wood raises. The question that Ms Szuty and I have been dealing with in putting up this motion is a question of priorities. Labor went to an election arguing that their highest priority was education. It has been clearly demonstrated that they are breaking their election commitment in this area and directly in another area that I will get onto in a short while.

First, Madam Speaker, allow me to deal with the Liberal doublespeak. Some weeks ago, when we indicated that we would be putting a motion to this effect, the Liberals said that it was a wimp of a motion and that they would not support it. We are delighted that they have seen the light and changed their minds. At the end of his speech, Mr Cornwell invited us to support his amendment to the Appropriation Bill.

Mrs Carnell: When did we say that we would oppose the motion?

MR MOORE: Mrs Carnell interjects, "When did we say that we would not support this motion?". I suggest that she refer back to Mr Cornwell, who no doubt remembers saying words to the effect of "because it is wimping out". We are delighted that they have changed their minds. When it comes to the amendment to the Appropriation Bill, I believe that there will be no point in our supporting anything the Liberals raise, because there is simply no way that they have the power to effectively amend the Appropriation Bill. If their amendment is to the effect that there cannot be a decrease in teacher numbers, then it will be in contravention of section 65 of the self-government Act, unless a change to that Act goes through. If the amendment proposes something along the lines of taking $3m from the Treasurer's Advance and adding it to the government schooling division, division 230, the Minister need not spend it or, under the Audit Act, the Chief Minister can move it back again. I will be very interested to see whether the Liberals can legally amend the Bill.

I think that the Liberal doublespeak is quite clear, but I am much more interested in dealing with Labor than in dealing with Liberal opportunism. This motion deals with not only 80 teacher positions but also 120 more teacher positions that have effectively been identified for the next couple of years. Mr Cornwell appropriately drew attention to the words of the Minister for Education on this matter. The forward projections indicate clearly major cuts to education next year and the year after that can easily be translated into 120 teacher positions on top of the 80 teacher positions.

Madam Speaker, you, Mr Wood and I know how difficult it is for teachers to make a decision to go out on strike. They are always incredibly reluctant to do so and do so only when they think there is going to be a major impact on their students. Their recent decision to go out on strike is not based on their own welfare or what would be of benefit to them. Unlike the Transport Workers Union or the firemen's union, which on occasions during the last couple of decades have gone out on strike over their own conditions, teachers are prepared to go out on strike because they recognise the impact that this cut to teacher numbers is going to have on the students. It does not affect them individually and does not affect their conditions.

Madam Speaker, it is important, from Ms Szuty's perspective as well as mine, for members to recognise that we have made a commitment about the Appropriation Bill. We will not move from that commitment, but we will do whatever we can to put pressure on the Government to realise what a ridiculous decision this is and to change their minds. There have been suggestions by the Minister that cutting positions will not damage education. First of all, that is nonsense. Secondly, if we can get efficiencies in education, we can improve educational outcomes for our children. After all, that is what the Labor Party attempted to present to the people in their platform - that they were looking for the highest possible outcomes in terms of education for their children and that was what they were going to deliver, because supposedly education was Labor's highest priority. But that has not been delivered in this budget.

The Labor Government and the Chief Minister continue to use the Grants Commission as an excuse. They are allowing the Grants Commission to set the priorities for this Government, and this Minister does not even recognise it. Even if you accept the Grants Commission's suggestions that we are significantly overfunded, 65 per cent of that can be accounted for in retention rates.

So what do we want to do? We listen to the Grants Commission, reduce our retention rate and have even more kids unemployed and on the dole in a Territory that has the highest unemployment rates amongst its young people.

It is really a question for Labor. The Grants Commission suggested that you are free to set your own priorities. This Government does set its own priorities, and its priority for education is low. Its priority for education is lower than its priority for Floriade, for flowers; it is lower than its priority for the parks and gardens, in the same Minister's portfolio. I could run through a range of other areas where the priorities could be set differently, but it is the role of the Government to set its priorities and for us to be critical of those if they are set in a weird way.

Labor supposedly delivered on its policy of presenting an extra 0.5 positions for high school counsellors. Mr Wood is very proud of that, and so he should be because he delivered on his policy last year. Let me read to you, Madam Speaker, what the president of the Canberra High School P and C Association says about that priority:

> To cut teaching staff in high schools is absolutely deplorable. In the previous budget an extra half teacher per high school was provided to assist in promoting student welfare.

Obviously he was very pleased about that, and so he ought to have been. Now five times that level of resources is being taken away and must leave student welfare worse off than before the last budget, when the Government felt obliged to do something to improve it. On the one hand, the Government pretends to deliver its promise and then, under another guise, simply removes more than it delivered.

Contrast this Minister's approach - at least he has been honest enough to identify where he is going to make his cuts; he will cut 80 teachers - with that of the Minister sitting next to him, the Minister for Health. There will be $3m of cuts in health - somewhere, perhaps, if they think they might be able to get around to it at some stage. They do not know where the cuts will be. They are not going to tell us. In the Estimates Committee the Minister for Health said that he had to negotiate with the unions and go through all the processes, and that is why he could not tell us. The Minister for Education, on the other hand, is not worried about unions in this case. He says, "Sorry, unions. Eighty teachers are going and we are going to continue to cut education".

Labor has cut education for the last 10 years. When was the last time a Labor government having control of Canberra actually increased funding to education? Labor has been cutting education, and it intends to continue cutting education. The forward projections make it very clear that it is Labor's intention to lower the priority of education to the lowest common denominator. One thing that has given them a little bit of armament is their interpretation of the Auditor-General's report, but a fair interpretation of the Auditor-General's report - - -

Mr Wood: I have made no comment on it. I have made no interpretation.

MR MOORE: I have an interjection from this Minister, who clearly was not listening to his own Chief Minister. Perhaps if he listened occasionally he would have more of her respect. The Auditor-General's report falls into two parts.

The second part found that the schools in Canberra are hardworking and deliver a particularly effective service. Basically it sings the praises of teachers and the schools. On the other hand, the bean counter has said, "We have done a comparison across the other States and you are overfunded in salaries, and these are the areas that contribute to the high costs". *(Extension of time granted)* Thank you, members. On page 29 there are five dot points:

> The ACT has a high proportion of Level 1 teachers in the upper annual incremental steps of the teachers pay scale;
>
> A higher proportion of ACT teachers are receiving Advanced Skills Teacher (AST) allowances ...
>
> The number of teachers in promotions positions appears -

it is not even definite -

> high as a proportion of the total teachers in the system;
>
> The ACT has relatively low student per teacher ratios; and
>
> Face-to-face teaching hours of ACT teachers on average are less than in most other States.

On a careful reading of this you can find holes all the way through it, other than in direct bean counting. What we should be looking at is the quality of service that we deliver. There is a whole series of ways in which we can measure educational outcomes. The most self-evident and the most expensive of those is the retention rates. They are the most obvious. They account for 65 per cent of the supposedly $26m-odd by which we are overfunded. The failure of this Labor Government to convince the Grants Commission that they were a factor is deplorable. Let us not let the Grants Commission set our priorities; let the priorities be set by this Government.

The biggest problem is that the Labor Government have not been able to set their own priorities. They are still running on the same set of priorities as when they came into government in 1989. After about five budgets they are still simply fiddling at the edges.

Mr Kaine: A nip and tuck approach to budgeting.

MR MOORE: Mr Kaine interjects that it is a nip and tuck approach to budgeting. That is what we have seen over the last five years. They are not prepared to set their own priorities. Our kids and our future will pay the penalty for their lack of willpower in setting their own priorities.

MR WOOD (Minister for Education and Training, Minister for the Arts and Minister for the Environment, Land and Planning) (12.07): Madam Speaker, the Independents are in a spot. They have been caught out, and this motion is the way they are trying to come through it. Mr Moore usually handles the media fairly well, but he was stumped on the Matthew Abraham program and he is frantically trying to dig his way out of a hole.

Mr Kaine: It was Matthew who suggested it, was it not, if I remember correctly?

MR WOOD: Was that it? The Independents have taken a deliberately belated interest in education spending. I will give Ms Szuty credit. She has shown a continuing interest in high school development. I keep sending documents and papers to her, so she is well informed on that; but there has been a belated interest in the budget.

I spelt out the budget six months before the budget was presented. I was constantly harangued by the media about what was going to happen in the budget. As reported in the *Canberra Times*, on a couple of issues in particular, and on the television, I was fairly open about it. I made it quite clear that there were going to be significant reductions. The *Canberra Times* spelt out broadly how those reductions would be made. I was trying to encourage a debate. I wanted a debate, but I got no interest from members opposite. I think Mr Cornwell might have asked me a question. There was no interest in the budget.

Ms Szuty said, "The debate should take place at this time". You have seen the spectacle - I do not think it happens any more because they have woken up - of pensioners on the steps of Parliament House on budget day. You know the system. You know that the time to have debate on the budget - and Mr Moore was hinting at this today - is well ahead of the budget. If you want to influence it, that is the time to do so. I was running that debate and there was no interest from the Independents. Interest is being shown now only because someone got into a hole. Even in the week of the budget we had a day without an MPI. I did not get a question. There was a strange question from Mr Moore to Mr Connolly, but nothing on education. This motion is belated, and there is no question about that.

You should take a responsible approach to the budget and to education spending. By means of the ABC the other day I got a patronising lecture from Ms Szuty, who said that the Government had acted responsibly in its approach to the Estimates Committee. Thank you very much. I thought it was patronising - indeed, pompous. But I restrained myself from ringing up and putting in another statement. I will forget for the moment the question of responsibility and whether it is responsible to promote the idea that jewellery is part of the burden that taxpayers should carry for members of parliament. I will put that aside. Let me give Ms Szuty credit. I can criticise Ms Szuty, but I can also give her credit because I think in general she and Mr Moore take a responsible approach to wide issues in the ACT. They generally take a responsible approach, but they have not on this occasion. This is simply an issue we have to face. The Chief Minister has pointed that out. We cannot avoid it.

Both Independent speakers have said that we are running to the tune of the Grants Commission. I can tell you that I take no notice of the Grants Commission. But I have a problem. Paul Keating and John Dawkins did. I can ignore the Grants Commission, but I cannot ignore the fact that the Federal Government made available $78m less for the ACT and, in doing so, pointed out that a very significant component was education. So do not lecture me about taking any notice of the Grants Commission. I can happily put the commission aside, but we have to face up to the budget realities. I think members opposite understand. Perhaps they know better than I do that the Federal Labor Government takes a very harsh approach to the ACT as they bring us back

to State level expenditure. We all know that story. The Liberals opposite would know that I think that John Hewson and company would take an even more severe approach, so I do not think that they should throw off too much about that.

Ms Szuty said that we have a recurrent surplus that we should use to save positions in the Education Department. That is a cop-out. It is simply saying, "Let us spend some more". That is the Kate Carnell approach - "Let us spend more money". It is no more than that. That is a level of irresponsibility that Ms Szuty does not often display in this Assembly.

So what is left to us? There is the option of school closures. I guess Mr Humphries will have something to say about this in a minute.

Mr Cornwell: You certainly did.

MR WOOD: I certainly did. I have said many times, and I say it again, that it is inevitable that in the future schools will close in the ACT.

Mr Humphries: When? How many?

MR WOOD: Have a look at what dates are in the budget, Mr Humphries. There are none. We will examine the position ahead of the next election, and again we will be honest, as we were last time. We will give commitments. Mr Humphries can get up and say that we are going to close schools, but we will be up front about what happens. I was looking at figures on schools only recently. There are no schools at all in the ACT at the moment that show signs of problems because of declining enrolments - not a one. I do not anticipate any change in the foreseeable future.

But Ms Szuty had better think about this. What else are we going to do? The Liberals' approach was to close schools. The range of options is diminishing. Closing schools and reducing teacher positions are two options. They are not the only options, Mr Moore should note. The Auditor-General's report says that $500,000 a year may be saved by, in part, staffing reductions when we close a high school, and close to a quarter of a million dollars may be saved if we close a primary school.

Mr Humphries: Non-teaching staff.

MR WOOD: So you close the school and you do not lose your principal straightaway, Mr Humphries?

Mr Humphries: Not a teaching principal, no; you do not.

MR WOOD: The principal just disappears. That is one of the reasons you close them.

Mr Humphries: It is not a teaching position. Most principals in our system are not in teaching positions.

MR WOOD: That is right.

Mr Humphries: So you can abolish them without losing teachers, can you not?

MR WOOD: You lose the position.

Mr Humphries: Not a teacher.

MR WOOD: I do not think a principal would appreciate being told that he is not a teacher. Ms Szuty had better look at this option. I know that she would avoid it. To save $1.5m, it is a matter of simple mathematics to determine the number of schools that you would have to close. But, of course, the Government is choosing a different path. There is pressure in this area. I admit it; I acknowledge it. It is written into the budget in the savings that we are looking to make in the next two years. Those savings do not have to be converted into teachers, as Mr Moore wants to do.

Mr Moore: You have just said that it is the only option.

MR WOOD: Mr Cornwell read out that the budget papers indicate the order of cuts in future years. We have to reduce our budget. We have been up front and we have indicated that. The savings do not necessarily have to come from teachers. There may be pressure in that direction; but, for example, the redundancy packages, the separation packages, which I think will be worked through eventually, provide us with the means of making quite significant savings.

We are looking at the future of education. We started this process at the end of last year, and we are looking at how we may do things differently and better. I give Mr Moore some credit. I am giving too much credit, I think. In relation to some issues, Mr Moore has been prepared to find a different and better way of doing things. I think he has some achievements to his name there. But with schools he does not want to take that proper approach. He wants to keep schools locked in exactly as they are now. *(Extension of time granted)* Thank you, members. Mr Moore does not want to see, as he does with drugs, different and better ways of doing things. He wants us to be locked into the way things are now. He is not prepared to have a different and better view. Ms Szuty is the same. She is not prepared to see that there are different ways of doing things.

The Chief Minister said that it was not easy to make these decisions. They are not decisions we willingly made; but I have acknowledged them in the end, for two reasons. Firstly, after what the Federal Government did and the acceleration of the move to State level expenditure, these reductions in budgets are absolutely inevitable. Secondly, I came to understand that these reductions can be managed and that there need be no diminution in the quality of our education. On that basis these reductions in expenditure can be controlled and the quality of our system can be maintained; indeed, the quality of our system can be enhanced.

Madam Speaker, Mr Cornwell made some comment about the size of classes. He quoted a couple of statistics, and no doubt he is absolutely right. He was a bit like Mr Moore, who did a quick ring around the schools. For every one of those classes above 30, I will find you classes below 30.

Mr Cornwell: They were figures you provided to me, Minister.

MR WOOD: Yes, I know. They are my figures. They are the department's figures. There is a good question arising from this. Where does all the money go? You can show me areas of education where the States appear to have more resources. For every one area you show me, I can show you 10 where we do better than the States. It is not difficult to pick out one, two or three areas in which it appears that we lag behind the States, but where do you think the extra 13.5 per cent gets spent, for heaven's sake? It is certainly not wasted. Nobody would claim that it is. For every area in which we may be behind the States, there are many more in which we are ahead of the States.

When Mr Humphries gets up he might clear up the confusion amongst the Liberals about where they would make their savings. Mr Kaine has said, "We have to cut education". I do not think the Liberals deny that. Mr Cornwell says, "Teachers before bricks and mortar". He would close schools. But Mrs Carnell, in an early radio interview, said, "Oh, no, we will not close schools". She was asked, "Would you go down the close the schools path?". She said no. On the voucher system she gave a flat no. I do not know where the Liberals would go to make the savings that they claim are necessary. Mrs Carnell said something about less face to face teaching time. That is not a path I would be willing to go down. It is an important time for teachers. I do not think we are at the stage where we have to think about that. Mr Humphries, maybe you will give us a clear indication of where you would make your savings.

MR STEVENSON (12.22): The question we must ask and answer is: Do Canberrans support a cut of 80 teachers? I think the answer clearly must be no. I will be brief. I know that there are other people who wish to speak and that we have only a few minutes left. Mr Wood said that it is inevitable that schools will close. I would ask why. It is also inevitable, I would suggest, that there will be more young people in the ACT.

Mr Wood: Populations move.

MR STEVENSON: That is reallocation. There is a big difference between suggesting that schools will close and saying that schools will be relocated and will perhaps increase. Mr Wood also mentioned consultation. I asked where it had been. He said that he was fairly open. Fair enough. He said that nothing really happened when he was fairly open about the fact that the education budget would be cut. If you say something and the people do not get the message, you say it again. A former Labor leader claimed a mandate for a particular policy because of something he said in reply to an interjection during an election campaign. In other words, he claimed, "Everybody would have known because I said something". If nobody did anything in response to consultation before you made the decision and took the action, why did you not do it a little bit better?

It is important to make the statement that is being made by a number of the Liberal people that this motion will have no effect. Why? Because the ALP take no notice of what this Assembly says. Unless we start passing no-confidence motions, they never will. When we in the majority are ignored by this minority administration, that is the way for this Assembly to have an effect. We must say that we will not stand for it. They will ignore this motion. They will walk out of this Assembly and go off to wherever they are going and not think twice about it.

We have the proof with the police. Mr Berry smiles. He thinks he has got me, and he is right. What about the kick boxing legislation? We know that he ignored that. What about the police rescue service? Mr Connolly ignored us on that. It just goes on and on. We need to take stronger action if we want to have some effect on behalf of Canberrans. One could debate whether or not the education system is effective, but that is another debate. People in Canberra do not want the working edge of education cut - certainly not the schools and certainly not the number of teachers.

Mr Wood says that he does not listen to the Grants Commission, but Keating and his Treasurer do. Whose money is it? I suggest that it is Canberrans' money. The Commonwealth takes it and gives it back, and we lose a lot in the exchange. But it is our money, and we should use it. It was also mentioned that the Federal Government is bringing us back to State level expenditure. What an absolute nonsense! The ACT was billed as the showpiece of the nation. No State-like expenditure can run it, and the sooner you acknowledge that and get stuck into the Federal Government and get them to accept the responsibility for this capital of Australia, the better. The best thing to do would be to take responsibility for health, education and law and order back from this bogus Assembly.

MR HUMPHRIES (12.26): I come to this debate able to hold my head up very high in terms of the educational outcomes which are now being delivered to the people of the ACT, because I - - -

Mr Berry: Madam Speaker, I raise a point of order. I think there was a reflection on this Assembly by Mr Stevenson. He described this as a bogus Assembly. I think he ought to be ordered to withdraw that.

MADAM SPEAKER: I will consider that point of order, Mr Berry. Continue, Mr Humphries.

MR HUMPHRIES: When I became Minister for Education in 1989 I set out on the task of asking community groups - - -

Ms Follett: To close 25 schools. We know.

MR HUMPHRIES: No. That is a lie, and you know it, Chief Minister. During 1989 and the early part of 1990 - - -

Mr Berry: He has to withdraw that, Madam Speaker.

MADAM SPEAKER: Yes. Withdraw that, please, Mr Humphries.

MR HUMPHRIES: I withdraw it. During the early part of 1990 and 1989 I took the trouble to talk to community groups, in particular education groups, about what was important about education. I said, "What is it that makes education in the ACT significant and important? How is it that we get the quality of education we have in Canberra at the present time?". Some of those groups were not particularly helpful in advising on that sort of question. Unfortunately, groups such as the parents and citizens association and the Teachers Federation were inclined to say, "Everything is important. Nothing can change. We do not want a penny less". That was a fairly consistent approach but unfortunately was not very helpful.

After having those discussions and after talking to teachers, to my department, to parents and to people involved in administration in our schools, I came to the conclusion that what was important in our system was teacher numbers. I came to the view that maintaining class sizes, indeed reducing class sizes, was an important goal that ought to be worked to. Every decision I made as Minister for Education reflected that goal. In not one of the school closures that were announced by the ACT Alliance Government was a single teaching position to be lost. Every teaching position in a school that was to be closed was to be transferred to somewhere else in the system. Every principal or other administrative position that was to be abolished, to the extent that it carried any teaching hours, was to be transferred to another part of the school system. I gave an absolute guarantee that no teaching positions would be lost as a result of that process, and I stand by that commitment. I took the view that classroom teaching was more important than bricks and mortar. I took the view that education infrastructure was less important than what was actually happening in our school classrooms.

The present Government rode into office on the back of the public education lobby. It promised people that it would be a champion of the public education system. The people were duped. People, fairly rightly, interpreted the commitment of the Labor Party as a commitment to public education as a whole. They thought that by supporting the ALP on the question of school closures they would preserve levels of public education spending as they were. That was never sustainable; that was never the intention of the Australian Labor Party in the ACT. You always knew that you would have to cut the education budget. You knew what the Grants Commission had said. You knew what the priorities in education would have to deliver, and you lied to the people of the ACT.

MADAM SPEAKER: Order! It being 12.30 pm, the debate is interrupted in accordance with standing order 77 as amended by temporary order.

Sitting suspended from 12.30 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Hospital Bed Numbers

MRS CARNELL: My question is to the Minister for Health, Mr Berry. Minister, the ACT has fewer public hospital beds per head of population than any other State or Territory. This morning on radio Dr Mark Hurwitz stated that nine out of the 14 beds in the short-stay area of Woden Valley Hospital are to close. Could this possibly be true?

MR BERRY: It possibly could be true.

Mrs Carnell: But is it?

MR BERRY: Here we go again. Lesson No. 23 today. The facts are that Health this year has been funded to provide the same rate of admissions as last year, and that is 50,500. Over the past several years we have steadily used fewer beds to provide steadily more services, and we do not expect that trend to change.

That means that the expectation over future years is that there will be fewer beds to provide either an equal amount of services by way of admissions or more. At the same time the number of beds within the hospital system has to be looked at against the background of traditionally quiet periods, like Christmas and other holiday periods.

Mrs Carnell: But you close them then.

MR BERRY: That is right. We do close them then. That is what I say; you have to look at the number of beds you use against that background. For example, you have to keep a steady average across the whole year to provide a given range of admissions. That is what Health plans to do. As part of the hospital redevelopment, the new renal unit will open on level 8 of building 1.

Mrs Carnell: What has that to do with it?

MR BERRY: It all has to do with it. Again, you do not want to get the big picture; you want just to focus on the minutiae. I will give you the big picture and you will not be able to go out there and mislead anybody.

As part of the hospital redevelopment, the new renal unit will open on level 8 of building 1. The 15 renal beds currently on 10A will move to the new unit, leaving 13 short-stay beds on 10A. This is not a viable number of beds on which to run a staff and to staff a ward, so a viability question comes into play. At the same time high dependency beds will be opened in the intensive care unit, which will provide more appropriate care for some of the post-operative patients who would normally have gone to the beds in 10A. Other short-stay patients will be accommodated in the other surgical wards in the hospital. Staff on 10A will be placed into existing vacant positions. With further redevelopment, additional day surgery beds will be opened in the D and T building, as you would recognise. The reduction of those beds will be offset by the continuing reduction in average length of stay, as I explained earlier. We are doing much better in Health, which means that fewer beds are required to provide the existing level of services. This is all about becoming more efficient, and we are good at that.

MRS CARNELL: I have a supplementary question, Madam Speaker. How many beds are actually going to be lost in this whole approach? How many fewer beds will we get when the 13 short-stay beds are closed?

MR BERRY: That is not the point. The point is: How many admissions will there be? We are funded for the same number of admissions as last year, and that is the key.

Mrs Carnell: Nine fewer beds.

MR BERRY: It does not matter.

North Duffy-Holder Development

MR LAMONT: My question is directed to the Minister for the Environment, Land and Planning. Can the Minister comment on a report in yesterday's *Canberra Times* from an undisclosed source that a deal has been done between his department and the ANU to allow the North Duffy-Holder residential development to proceed?

MR WOOD: The light-hearted Frith column related a rumour of a deal between the Department of the Environment, Land and Planning and the Australian National University concerning Mount Stromlo Observatory and Sylvia Curley House. The nature of her column may mean that there is no requirement to check for accuracy. The rumour is absolutely wrong and is offensive. Neither the ANU nor DELP work that way. If it is thought there is a silence, and I am not aware of a silence, it is because the ANU and DELP are engaged in a discussion on merits, on hard data, and on the basis of scientific examination of the effects of increased lighting. Some people find it difficult to comprehend that that is the way we proceed.

Doctors - Advertising

MR MOORE: My question is directed to the Minister for Health, Mr Berry. I refer to a letter in yesterday morning's paper, the *Canberra Times* of 12 October, from the chairman of the Medical Board. He perceives regulations controlling doctors' advertising to be part and parcel of government policy, which falls into your responsibility. When are you proposing to change regulations for a rational and logical approach to advertising the medical professional?

MR BERRY: I reckon that if you are around next Tuesday you will get an inkling about that. I can say to you that we intend to consult with the Medical Board and the AMA in relation to this matter, and that process is in place right now.

MR MOORE: I have a supplementary question, Madam Speaker. Minister, it seems to me that the Medical Board has put it entirely back in your field. In that letter it was quite clear that they would just administer what regulations you proposed. The question really is: What are you doing about it? While we are at it, what other changes have you proposed for the Medical Board? Clearly, there is a need for a great deal.

MR BERRY: In relation to the Medical Board, I saw what they wrote in the paper, but I also - - -

Mr Moore: They put the ball back in your court.

MR BERRY: That is fine. That is where it should be, and I can handle it; I can take it on the full. I also rely on the board, at times, for advice in relation to these matters, and I would not want to be accused of failing to consult. I am taking the consultation issue seriously and just a few moments ago I signed a letter to the board in relation to what regulations might be the case in the future. Similarly, what might be - - -

Mr Kaine: You are going to start consulting, after you have written the letter, are you?

MR BERRY: No, no. Similarly, I have written to the Australian Medical Association on the same score because they may have something positive to contribute. As I always do, I intend to follow the path of consultation, because I have embarked on it, and to do it with honour.

Hospital Services

MR DE DOMENICO: My question without notice is also to the Minister for Health, and I refer to his answer to the Leader of the Opposition's question. Minister, you suggested that you have allowed funding for the same admissions as last year. Is that correct?

Mr Berry: Yes.

MR DE DOMENICO: What will you do, and what will happen, if more than 50,500 people get sick and turn up at a hospital?

MR BERRY: Madam Speaker, Mr De Domenico gets it wrong again. It was not me; it was the Treasurer who provided the funding. So you are wrong there. The question is highly speculative, Madam Speaker, and is therefore out of order.

Fire Danger

MR WESTENDE: My question is to the Minister for the Environment, Land and Planning. Given the current warm and windy weather, which is the norm for Canberra at this time of the year, and given the fact that there is heavy backgrowth from previous years, is the Minister aware of the grave fire danger in the Territory to homes which back onto nature reserves, as well as the grave danger fire causes to the Territory's ecosystem in the event of an outbreak of fire? Furthermore, what is the Minister's policy on clearing areas in the Territory immediately adjacent to the rear and side fences of homes backing onto nature reserves? What is the Minister's policy on protecting the Territory's ecosystem with regard to nature reserves, especially those that are close to urban areas?

MR WOOD: Madam Speaker, it is Fire Awareness Week and it is appropriate that Mr Westende raises a question concerning fires. If it is not hot, it is getting that way, and blustery.

Mr Connolly: Yes, a bit like the Opposition, really - hot and blustery.

MR WOOD: Indeed, Mr Connolly. Cool sometimes, though. I cannot be specific about every reserve. There is a general policy - and I want to get some detail on just what areas - that there is a strip cleared between the backs of houses and reserves, but we have so many nature reserves in Canberra that I do not want to guarantee that that applies in absolutely every instance. There certainly is a policy of mowing on the margins around Canberra. It is an important policy. Given the increasing area to be mown and the tough budget, I think the people who organise and do the mowing in the ACT do a brilliant job to see that so much more is done. They do it within a very tight budget. They have done it very well. In view of the seriousness of your question, Mr Westende, I think it is better if I come back and report on those areas where perhaps it is not always possible to do that. I think that is the best way to approach your question.

Windscreen Cleaning

MRS GRASSBY: My question is to the Minister for Urban Services. There has been some publicity lately about young people wishing to clean windscreens at traffic lights. Undoubtedly, people travel at between 60 and 70 kilometres an hour down some of our main roads. Is this activity safe and will you allow this to continue?

Mr De Domenico: They do not do it when the cars are moving. It is when the cars are stopped that they wash the windscreens.

MADAM SPEAKER: Order!

MR CONNOLLY: Madam Speaker, this is a serious question. It relates to safety, but the Opposition members are having a bit of a cackle about it. My office over recent months has received a lot of complaints from members of the public about being hassled at intersections, with people in many cases demanding payment for having wiped a windscreen. A lot of people, particularly elderly Canberra people, find that quite threatening. Mrs Carnell thinks it is very funny, but I can assure her that a lot of her constituents do not think it is very funny. We have nothing against people showing a bit of enterprise and initiative. Indeed, it is a good thing when young people show a bit of enterprise and initiative. But doing it in a way that breaks the law is not something that I would have thought the Liberals would want to encourage. Do you encourage people to show enterprise by allowing them to break the law? If so, you would be promoting people showing enterprise by allowing them to deal in narcotics. Clearly, if people want to show enterprise they ought to do it lawfully. Running a lawn-mowing business is a good example.

Running onto the carriageway, Madam Speaker, at an intersection controlled by lights is a breach of the Motor Traffic Act and carries a penalty of $100. I have seen fit to draw that to the public's attention and to say to these young people, "You are breaking the law; but, more importantly, you are engaging in a very dangerous activity". Knowing that this growing practice is a breach of the law and very dangerous, if the Government sat back and did nothing and failed to enforce the law, when the first young person was killed or injured we would be held to account in this Assembly. We are not prepared to do that.

Given that the Government says that the Earth is round, the Opposition has to say that the Earth is flat; so the Opposition got themselves into a lather yesterday saying, "You are beating up on enterprising young Canberrans". I was interested to hear from some of the TV crews who were chasing around yesterday to speak to some of these people that in fact many of them are not enterprising young Canberrans at all. They are international backpackers who tend to engage in this sort of fundraising exercise wherever they happen to be. One of the groups that one of the TV crews caught onto yesterday was a group of young Brits who are out here on a working holiday. So some of these people are not even your enterprising young Canberrans, Opposition. They are in fact visitors.

Madam Speaker, while we applaud enterprise in Canberra's young people, and we would applaud any teenager who is doing lawn-mowing rounds or whatever, running onto the carriageways of Canberra's major roads, particularly those roads that have speed limits of 70 or 80 kilometres an hour, which a lot of them do, to wipe the windows of cars is very dangerous to those pedestrians.

Being usually 16 or 17, they are, of course, invincible. They think they are in no danger at all, as all 16- and 17-year-olds think; but they are in danger. That is why the Government has said that we cannot turn a blind eye to this law. We warn people to desist from this practice in their own interests. Incidentally, we have received a lot of plaudits from the Canberra community, particularly from elderly Canberra residents, who find the behaviour intimidating and threatening.

Entombment of the Unknown Soldier

MR CORNWELL: My question is to Mr Wood, the Minister for Education. Has consideration been given, by either granting them a holiday or facilitating their attendance at the ceremony, to providing ACT schoolchildren with the opportunity of attending the entombment of the unknown soldier at the Australian War Memorial on 11 November?

MR WOOD: Madam Speaker, very serious consideration has been given to that question. We had an approach from the RSL asking that we declare a school holiday for that day so that students could attend at the War Memorial. I think it is a highly significant occasion - we all acknowledge that - and one that the Government and the Education Department would want to respect in every possible way. I gave very serious consideration to it. In the end, in consultation with others, I might say - I did not take this decision myself - it was decided that it was not the best thing to do to make it a broad holiday for public school students in the ACT. I think you would understand some of the reasons for that. It certainly can be very disruptive to homes. There is no guarantee, in any event, that any number of students would attend the War Memorial. So, not lightly, but after earnest consideration, we made the decision that we would not declare a holiday.

We have been in discussion with the RSL about what we may do and how our schools and students may be represented at the War Memorial on that day. I have had a further approach - as all States have - from the Commonwealth Minister to incorporate children into that ceremony, and we will be cooperating in that way as well.

MR CORNWELL: I ask a supplementary question, to clarify a point. So, the matter of facilitating some attendance by ACT schoolchildren is still under consideration; is that correct?

MR WOOD: Yes. We will discuss with the RSL the best way to do that.

Fortune Theatre Site

MS SZUTY: Madam Speaker, my question without notice is to the Minister for Urban Services, Mr Connolly. The Minister no doubt is aware of a departmental proposal to turn the former Fortune Theatre site into an unsurfaced car park. Members of the Renewal of Childers and Kingsley Streets group, or the ROCKS group, have proposed a temporary planting of the area on the basis that this is a much more environmentally sound and more pleasant option than a car park, and, further, that the current car parking in the area is already underutilised.

My question to the Minister is: Why have the members of the ROCKS group now been informed, after several promising discussions on the possibility of establishing a temporary planting until the area is redeveloped, that the recommendation from the department to use the area as a car park will proceed?

MR CONNOLLY: This issue has been going on for some time. Probably since the last correspondence from that group I have had a discussion with the Secretary of the Department, Mr Turner. I indicated that, on the basis that it is clearly accepted that it is a temporary purpose and that if we allow them to plant a few trees this piece of land, which is in a central Canberra position and which the Government obviously will have to make a decision about, does not magically become a green space and thus is to be protected for all time, we could favourably view the proposition of putting in some plants. At the moment we are looking at that in some detail. While there were some fairly strong departmental views that a car park was appropriate, I can see the sense in what the community group was saying. Provided they accept in good faith what they have said, that it is very temporary and that at some time in the future the Government will make a decision about that whole precinct, there may well be no problem with putting in a few plants there, and I hope to have a form of words to them in due course. I, like you, can see the sense behind what they were proposing. Our concern was that it would change for all time the status of the site.

Diesel Fuel

MR HUMPHRIES: My question is to the Treasurer. In Budget Paper No. 2 the Treasurer justifies the removal of the diesel fuel exemption for off-road users by saying:

> There is evidence to suggest that fuel purchased under exemption is being used for on-road purposes.

I ask the Minister: What evidence is there that she is referring to there, that people who use diesel fuel for home heating are using their fuel for on-road purposes?

MS FOLLETT: Madam Speaker, I think I had better take the detail of Mr Humphries's question on notice as he has asked specifically for on-road uses. I can answer the question in a broader fashion and advise that there are about 2,600 people in the Territory at the moment who currently hold these exemption certificates. The advice that I have is from the Commissioner for ACT Revenue, whose advice I have found always to be exemplary. The advice I have is that 91 per cent of those exemption certificates relate to domestic space heaters, 2 per cent relate to primary production, and 7 per cent relate to other off-road uses, for example, construction. That is the broad answer to the question, Madam Speaker.

Looking at that pattern of usage, you can readily see that the original intention behind this exemption is simply not being observed. The original intention, of course, was to provide an exemption for primary producers. Quite obviously, that is not the case in the ACT. As I said in the budget, and in speaking subsequently on this matter, I do not believe that a concession of this nature is justified and it is out of kilter with other forms of fuel use in the ACT.

The Government has been at pains in this budget to realign our concessions regime somewhat to ensure that it is fairer and that concessions are available to people who need them most. We also have been able to expand those concessions. I will, as I say, get Mr Humphries a detailed answer on the particular question that he has asked, but I think that members can readily understand the thinking behind the Government's move to change this particular exemption regime.

MR HUMPHRIES: I ask a supplementary question, Madam Speaker. The figures that the Treasurer has given indicate that something like 2,400 homes use diesel fuel for heating. The figures that she has supplied indicate that that comes to something like 3.5 million litres of diesel in the last 12 months alone. On 16 September she told Mrs Carnell:

> ... my advice is that there are a very small number of Canberra homes that use diesel fuel for home heating.

Would you concede that you misled the Assembly by describing 2,400 homes in the ACT as a very small number?

MS FOLLETT: Madam Speaker, no, I think I was absolutely correct in describing that couple of thousand homes, out of the total ACT homes of over 100,000, as being a very small proportion. It is.

Cancer Deaths

MS ELLIS: Madam Speaker, my question is directed to the Deputy Chief Minister in his capacity as Minister for Health. Could the Minister comment on recent media reports that the ACT has an above average rate of death of women from cancer?

MR BERRY: I thank Ms Ellis for the question. Madam Speaker, the Australian Bureau of Statistics usually releases single-year estimates of deaths. Given the small numbers in the ACT, a more reliable five-year average suggests that deaths from cancer for females in the ACT are no different from the Australian average. This comparison was made after adjusting for the young population in the ACT. The most recent ABS publication on causes of death also confirms this finding. If you look at a graph of what has happened you can see that, because of the small numbers in the ACT, it alters fairly wildly. The most recent ABS publication on causes of death also confirms that finding.

Mrs Carnell: If you had a proper cancer registry - - -

MR BERRY: Mrs Carnell says that if we had a cancer registry that would help. Well, it does not help. It is the small number of people in the ACT that wildly skews the figures. That is the problem, not the cancer registry. So that is another little lesson.

In relation to specific parts of the body, age-standardised five-year averages show that the top three cancer killers for females in the ACT do not occur at a higher rate than found nationally, with the biggest cause of cancer death being breast cancer. Males are also similar to the Australian average in their age-adjusted death rates, although death from lung cancer, the biggest cancer killer

among men, is significantly lower than the national average. In addition to deaths from cancer, recently ACT Health received data on the incidence of cancer in the ACT from the New South Wales cancer registry covering the period 1972 to 1991. The combination of death and incidence data will allow us to adequately monitor cancer in the ACT and to target many emerging problems. Consequently, Madam Speaker, the analysis of the data, coupled with the extensive programs and services offered by ACT Health, provides us with valuable tools to help us reduce the effects of cancer and make us a healthier region. We have to be careful about one-year figures because of the small numbers involved, and I have made that clear to members in the Assembly.

Territory Plan - Carport Approvals

MR KAINE: I have a question to Mr Wood, the Minister for Planning. Mr Wood, I asked you a question yesterday that had to do with the carport caper, and I understand that later in the day - - -

Mr Connolly: Carportgate.

MR KAINE: The carport caper. I understand that later in the day Mr Lamont informed some of the concerned small businessmen that they should not worry about the delays in processing applications because "he had half a million dollars that he could pay extra people with to process these applications". Minister, can you confirm that Mr Lamont has half a million dollars for this purpose? If you cannot confirm that he has half a million dollars, can you confirm that you have half a million dollars from which you might be able to pay additional people to process these applications quickly?

MR WOOD: Madam Speaker, I do not think it is a serious question. I am not sure that I have half a dollar, let alone half a million dollars. Mr Lamont's financial resources, I think, reflect his union background, et cetera, although I do not really know. You had better talk to him about those. I did indicate to you yesterday that I am looking at it. My office has been in discussion with the Planning Authority about the problem. I put "problem" in inverted commas too. I indicated yesterday, I think, that to the extent that there is a problem I want to have a look at it and see whether that additional time can be changed - I am not sure that it can be - if indeed that makes much difference to what the builders have to do. I cannot really say any more. I do not think the question is a serious one. I am trying to give a serious answer to that sort of question and I am running into trouble.

MR KAINE: I ask a supplementary question, Madam Speaker. Just to prove that my question was a serious one, if you do have additional money to pay additional staff, from which part of your budget is it going to come? We have just dealt with estimates and there was no such provision included.

MR WOOD: We will make do with existing staff. That is quite clear. We can look at the processes. When there is a period for notification, when there is a period for appeal, when there are guidelines and processes in the plan for what you can and cannot do without notification, I am just not sure how we may readily solve the problem, if it is a problem. There is certainly no additional money there for staff. We did provide money, $180,000 or $160,000, for the Planning Appeals Board, but that is a different area. That money would not be used for what you had in mind.

Legal Aid Commission

MR MOORE: Madam Speaker, my question is directed to Mr Connolly as Attorney-General. Minister, have you any intention for the Legal Aid Commission to become part of the ACT public service on its transition, or is it the intention that it remain a statutory body?

MR CONNOLLY: Madam Speaker, the Legal Aid Commission will retain its full independence when we go through the process of establishing an ACT Government Service. There is still some policy debate as to whether in maintaining their statutory independence it is necessary to have a separate statutory basis of employment for lawyers who work for the Legal Aid Commission, which will remain a statutory body. The Legal Aid Commission will remain a creature of statute. Whether it necessarily has to have an employment provision in its Act is a matter for some discussion. At the moment, as the Chief Minister has made clear in her proposals for a separate service, we have as many as 20 separate statutory bases of employment in the ACT. In my portfolio I have people employed under the Fire Service Act, the Electricity Act and the Legal Aid Commission Act. I can see real advantages in having a single basis for employment so that everyone has the same statutory basis of employment.

The key thing is that lawyers who work in the Legal Aid Commission must have statutory professional independence so that the Government which prosecutes cannot also be seen to be directing the legal aid lawyer who defends. Equally, the Director of Public Prosecutions' professionals, while they are employed under the general public service, need that statutory independence so that, again, the Government cannot be seen to be directing their professional activities. At the moment the question of employment type is still working its way through the policy making process, but our thinking is, as the Chief Minister has made clear, that we want to bring the 20 or more separate bases of statutory employment into one basis of employment. The key issue that I am sure you would be concerned about is that the legal aid lawyers have to have a statutory form of independence. It is certainly the Government's intention to maintain and entrench that statutory form of independence.

Ms Follett: I ask that further questions be placed on the notice paper, Madam Speaker.

PAPERS

MR BERRY (Deputy Chief Minister): For the information of members, I present the Department of Health Annual Report 1992-93 - Volumes 1 and 2, pursuant to section 34 of the Health (Consequential Provisions) Act 1993, including the financial statements and the Auditor-General's report, together with a number of reports from various health boards and councils; the Public Trustee for the Australian Capital Territory Annual Report 1992-93, including financial statements and the Auditor-General's report; and the Construction Industry Long Service Leave Board Annual Report 1992-93, including financial statements and the Auditor-General's report.

CROHN'S AND COLITIS DISEASE AWARENESS WEEK
Ministerial Statement

MR BERRY (Minister for Health, Minister for Industrial Relations and Minister for Sport): I seek leave to make a ministerial statement on Crohn's and Colitis Disease National Awareness Week.

Leave granted.

MR BERRY: I would like to acknowledge an event which was held last week, 2 to 9 October - Crohn's and Colitis Disease National Awareness Week. These two chronic diseases, both of which cause inflammation of the intestines, are often referred to as inflammatory bowel disease or IBD. Ulcerative colitis causes an inflammation of the mucous membrane layer of the colon and rectum, while Crohn's disease causes inflammation of the full thickness of the intestine which can involve any part of the digestive tract. While not fatal, both conditions are debilitating and painful and there is no known cure.

People in any age group can contract these diseases, although there does seem to be a peak between 15 and 30 years, with a possible secondary peak among the elderly. Twenty-five per cent of sufferers are children or teenagers. The youngest child so far was only two months old. One of the side effects, which particularly affects children who suffer from either disease, is poor growth and development. People who suffer from IBD will generally feel ill and suffer pain, and their appetite tends to decrease accordingly. Because affected people often suffer severe cramping after eating, they tend to try to eat less to avoid that pain. This reduces their intake of calories, and their bodies also may be depleted of fluids, proteins, vitamins and minerals. This problem is further exacerbated in those with Crohn's disease because, along with the problem of a reduced food intake, the small bowel has difficulty absorbing the food. As well as possibly suffering growth and development disorders, both young and old may experience weight loss, fevers, nausea and sometimes severe joint pains.

Researchers do not know what causes IBD, although it is thought that it is not contagious and it is not caused by food allergies or emotional stress. While food allergies do not cause IBD, attention to diet is a very important factor in treating these two diseases. Restoration of proper nutrition and maintenance of body weight are essential parts of the total treatment of anyone with IBD. Even though there is no cure, most people with IBD continue to lead full and productive lives, although they may need to take medication such as the steroids cortisone or prednisone, or immune suppressing agents. The use of medication is mainly aimed at improving the symptoms. Sometimes surgery is required to improve symptoms or because complications have occurred.

Normally there is only a risk of one to three people out of every 100,000 people getting Crohn's disease in any year. However, studies seem to indicate that Crohn's disease may run in families, and the likelihood of getting Crohn's disease may increase to a 5 to 10 per cent chance among parents, brothers, sisters and children of sufferers.

Research, funded by the Australian Crohn's and Colitis Association, is currently being undertaken at Woden Valley Hospital into the possible hereditary factors of Crohn's disease. The research includes the establishment of a bank of DNA and blood serum. This is being developed by taking blood donations from families where more than one member has the disease. It is hoped that the establishment of such a bank will provide information that will help in discovering the cause of the disease and determining whether Crohn's disease is hereditary. Families who are asked to participate attend a brief medical interview and donate about 50 millilitres of blood. The blood is stored and used in the search to identify the genes responsible for the possible inheritance of Crohn's disease.

Hopefully, Mr Deputy Speaker, it will not be too long before a cause and a cure can be found for this chronic, relapsing and debilitating disease. While the head office of the Australian Crohn's and Colitis Association is in Victoria, there is a branch in Canberra which sufferers and their carers and interested members of the community can approach for further information. I present a copy of this statement and I move:

That the Assembly takes note of the paper.

Question resolved in the affirmative.

CRIMES (AMENDMENT) BILL (NO. 2) 1993

Debate resumed from 25 March 1993, on motion by **Mr Connolly**:

That this Bill be agreed to in principle.

MR HUMPHRIES (3.07): The Bill before us today does not substantially change the law that applies in the Territory. What it does do is to put into statute form in one consolidated place what is both the common law in respect of sentencing policy in the ACT and the practice of the ACT bench - both the Supreme Court bench and the Magistrates Court bench - with respect to sentencing practice. There is great value in that consolidation and that codification, as it were.

As the Attorney observes in his presentation speech, this is an area of great discretion on the part of the bench. The individual judge or magistrate has traditionally been recognised as having considerable personal discretion as to what sentence he or she may impose. It is always possible to appeal a sentence on the basis of its being, in the case of the defendant, too severe or, in the case of the prosecution, too lenient. Generally speaking, courts will take the view on appeal that it is up to the judge or magistrate concerned to make a decision about sentencing a particular offender who has been convicted by the court, and that the circumstances - for example, the demeanour of the offender and so on - which are peculiarly within the knowledge of the trial judge or magistrate ought to be therefore judged by that trial judge or magistrate and not by other people on appeal. We do have an area here of considerable judicial discretion; but it is very important at the same time to provide a measure of common practice. This Bill attempts to provide a set of guidelines under which judicial officers in our system might appropriately apply those consistent principles of sentencing.

The Bill flows from a 1988 report on sentencing by the Australian Law Reform Commission, which dealt in detail with developments on sentencing around the country and proposed a series of recommendations that provided for greater consistency and greater fairness. This Bill, which results very substantially from that report - I understand that some of the people involved in preparing this report were involved in preparing the Bill - does not reflect exactly the policy of other States, but it is close to the policy in the other States, in terms at least of those States that have codified their practice. Therefore, by passing this Bill, we are also taking the step of creating a measure of common practice around the country. Given the width of that practice, putting it into statute is a major step forward.

I want to quote briefly from the sentencing report of the Australian Law Reform Commission. It sets out the principles which the framers of the report believed were important in establishing sentencing policy and which I believe we in this Assembly should also use as the principles we apply in the same area. The report states:

> Punishments imposed by the criminal justice system for offences must be just, that is, they must be of an appropriate severity, having regard to the circumstances of the offence and the offender.
>
> Consistently with a just punishment, rehabilitative goals and restitution for victims may also be pursued.
>
> Inhumane, cruel or vengeful punishments such as capital punishment, corporal punishment, and torture should in no circumstances be permitted.
>
> Goals such as the incapacitation of the offender or general deterrence should not be objectives of the imposition of punishment.
>
> Punishment must be consistently applied. This implies not only that offenders should be punished for the crimes they commit but also that similar offenders who commit similar crimes in similar circumstances should be punished in similar ways. It further implies that offenders who commit more serious offences should be punished more severely than those who commit less serious offences.

I think all those principles to some extent ought to be applied by us. It is important that, in doing so, we acknowledge that there have been different weights attached to those principles in different degrees by different benches. The Bill describes sentencing as being an option of last resort, and I quote particularly from proposed new subsection 429C(1):

> A court shall not pass a sentence of imprisonment on any person for an offence against a law of the Territory unless the court, after having considered all other available penalties, is satisfied that no other penalty is appropriate in all the circumstances of the case.

That is, I would respectfully suggest, in fact the policy of our courts, to a large extent anyway. I do not believe that there is any magistrate or judge sitting on our benches in the ACT who genuinely believes that it would be a good idea to impose a term of imprisonment as a device to achieve what could be called other goals than the rehabilitation of an offender or the protection of the community.

I think that in most part judges will apply that; but there is some disagreement around the community about whether this policy of using sentencing to imprisonment as a last resort is being pursued equally across the board. Certainly there are differences between jurisdictions; certainly there are differences between individual judges and magistrates. Lawyers talk about getting a hanging judge or a lenient judge. I think that this Bill might help alleviate the latter problem at least, that is, differences between judges and magistrates in the ACT, and bringing policy into line with other States will, hopefully, have the effect of reducing differences in policy between jurisdictions.

Mr Deputy Speaker, there are some elements of the Bill, I must confess, which are slightly troubling and which I think we need to think about very carefully. Sentencing policy previously, and still, to a large extent, under this Bill, is a matter for judges, but the principles to be applied need to be examined very carefully. The principles to be applied in the ACT after the passage of this Bill are set out essentially in proposed new subsection 429A(1), and those factors are quite extensive. Something like 23 different factors are referred to in that subsection.

We have criteria such as the nature and circumstances of the offence; if an offence forms part of a course of conduct consisting of a series of criminal acts, that course of conduct; any injury, loss or damage resulting from the offence; the degree of responsibility of the person for the commission of the offence; the need to ensure that the person is adequately punished for the offence; the cultural background, character, antecedents, age, means and physical or mental condition of the person who has committed the offence; the prospect of rehabilitation; the degree to which the offence was the result of provocation, duress or entrapment; a jury recommendation for mercy; current sentencing practice; whether the person has demonstrated remorse; and the reason or reasons why the person committed the offence. There are very extensive reasons given there. All of those things, to the extent that they are relevant and known to the court, must be considered by the court when passing sentence.

Similarly, in proposed new section 429B there is a list of matters which courts may not take into account when passing sentence. They may not take into account legislation which has not come into operation; they may not take into account the fact that the person chose not to give evidence on oath - I will return to that question in a moment; they may not take into account the prevalence of the offence - I will also return to that - or the person's behaviour in court; or the fact that a person chose to plead not guilty.

There is an inconsistency, I believe, between one provision in each of those two proposed new sections. The court shall take into account, to the extent that it is relevant and known to the court - I quote here paragraph (i) of proposed new subsection 429A(1) - "the deterrent effect that any sentence or order under consideration may have on any person". Similarly, or conversely, in proposed new section 429B, paragraph (e) says that the court may not take into account "the prevalence of the offence". It is my opinion that, in fact, those two things are different sides of the one coin. When a court comes to consider a particular crime which has occurred on a certain number of occasions in the preceding period in, say, the ACT, it is inevitable that, in considering the frequency of that crime, the court will be taking into account, when passing sentence on a person who comes

before it for that crime, the deterrent effect that that sentence will have on any person, particularly on other people who might be potential offenders against that particular provision. But surely, by doing so, they are also taking into account the prevalence of the offence.

We have to interpret these proposed new sections consistently. We would have to say, therefore, that when judges are interpreting those words they will try to find some difference between the two sets of words, particularly since they are distinguished by being in different sections. They are also couched in different terms and therefore some different meaning must be intended. I think it is very hard to interpret them in such a way that there is no element of overlap, and, quite clearly, there is in the minds of judges and magistrates in this Territory an element of overlap between those two things.

To prove that proposition I want to refer to comments by His Honour Justice John Gallop in the Supreme Court last year when he talked at some length about the impact that sentencing policy has on potential offenders in our system. He was quoted in the *Canberra Times* of 12 April last year when he referred to the "ridiculous leniency" of the Federal Court in reducing a sentence for armed robbery that year. He criticised that ridiculous leniency and suggested that it has some impact on the occurrence or the prevalence of that offence. He went on to say:

> All the courts can do to protect the public and particularly places like supermarkets, service stations and other easy marks, TAB agencies, post offices, things like that ... is to impose gaol sentences of substantial severity to mark the community's disgust and condemnation ...

He went on to say that such sentences would hopefully deter people who were minded to commit such offences, whether they were drug addicted or not. It is also worth noting that in the same report in the *Canberra Times* Justice Higgins was reported as saying that the Canberra community is demanding that the courts take a hard line with offences such as burglary and theft.

Returning to what Justice Gallop had to say, was Justice Gallop taking into account, using the language of this Bill, the deterrent effect that any sentence or order under consideration may have on any person when he made those comments about the Federal Court? Clearly he was. Was he also taking into account the prevalence of the offence? Without putting words into the judge's mouth, I think it is fair to say that he was doing that too. I think that in circumstances of this kind, where a particular kind of offence occurs in large numbers in the Territory over a particular period, there will be both issues of prevalence and issues of impact on other potential offenders which need to be taken into account by the court. It is my contention, therefore, Mr Deputy Speaker, that we should delete paragraph (e) of proposed new section 429B, and that particular argument is supported by the Law Society of the ACT.

Mr Deputy Speaker, there are other important issues that this Bill gives rise to. I might say that the Bill as a whole, I think, adopts a very laudable approach towards the need to provide consistent policy with respect to sentencing.

There are provisions that deal with whether original sentencing should be reinstated where a person has promised cooperation with the authorities, for example, with the prosecution of other offenders in similar circumstances, and that cooperation is not forthcoming. I believe that the codification of those provisions is a very appropriate one.

There is also a very important provision dealing with the necessity for the court clearly to explain a sentence to an offender. All too often people will stand in our courts and be sentenced and there will be confusion. There will be trauma on the part of the person who is being sentenced, and that person simply will not understand what is going on. It is extremely important, I think, that we do put an onus on our bench clearly to explain, if possible in non-technical language, what is happening to individuals who appear before the courts.

I recall one particular circumstance when I appeared in the Magistrates Court in the ACT for some young people who had been charged with under-age drinking. His Worship handed down a non-custodial sentence. He imposed, I think, a bond of some kind, and he said words to this effect: "I fine you a certain sum of money, in default three days in an institution of detention for young people". The young person standing behind me listening to this sentence almost fainted because she thought she was being sentenced to a term of imprisonment in a juvenile detention centre. That is the way the language of the courts is couched. It was, of course, a fine, and in default of payment of the fine a period of detention. That is the case for adults and children alike. But that was not clear to that person and the trauma was very evident. I have no doubt that she and the other codefendants in that case heard very little else of what the magistrate said. So, explaining in clear terms is very helpful. In fact I have an amendment coming forward which would go one step further and provide that that particular privilege, if you like, to the defendant should be extended to receiving a written version of the sentence or the remarks by a judge.

The Bill also deals with the question of pre-sentence reports. They are very important and I think that the provisions here, for the most part, are worthy of being supported. I note briefly, Mr Deputy Speaker, that one of the recommendations made by the Law Reform Commission dealt with the question of truth in sentencing. I quote very briefly from the summary of that report. It said:

> Another major theme of the report is the need to enhance 'truth in sentencing'. Under the present system, a substantial sentence of imprisonment may be imposed by the court, yet it is generally understood that the offender will be released on parole long before the period is served. Remissions further reduce this period. This had led to public disquiet and the procedure having been judicially described as an 'elaborate charade'.

I think, Mr Deputy Speaker, that we can argue on another day the question of whether the ACT should have a truth in sentencing policy. Clearly, the truth in sentencing policy legislation which is applied in the New South Wales prison system already applies to the ACT, to the extent that all of our prisoners serve their terms of imprisonment in the New South Wales gaol system; but we may have to visit again the question of truth in sentencing within our own sentencing policy. That is not a debate for today.

I want to touch briefly on two other matters. One is the question of the impact of this legislation on victims. I am pleased to note that proposed new paragraph 429A(1)(f) requires the court to look at the question of any action that the person may have taken to make reparation for any injury, loss or damage resulting from the offence. Indeed, the preceding paragraph refers to "any injury, loss or damage resulting from the offence". So it is clear that to some extent the impact on a victim must be taken into account when sentencing is determined.

The Victims of Crime Assistance League, I think, has written to several of us, perhaps all of us, about the question of whether a victim impact statement should be used as a tool in sentencing policy. I happen to take the view, and my party's policy takes the view, that there should be such a statement; but I accept the Attorney's view that this is a matter which should await the wash-up from the victims of crime report which we are going to debate later today, and I think it would be helpful for us to consider amendments to this Bill at a later stage. I also note that the Victims of Crime Assistance League has touched on the question of unsworn statements, as has the Legal Affairs Committee of the Assembly and as has the Attorney in recent weeks. The Legal Affairs Committee remains of the view that we should be examining the question of unsworn statements quite soon, to determine what place they should have within our justice system. It may be that they should not have any place, or that they should have at least a very modified place.

Mr Deputy Speaker, I think this Bill is a positive development. Although there are some amendments coming forward, I think that we will all be better off as a community by having these important matters clearly understood and clearly enshrined in a single place, namely, in the Crimes Act of the Territory.

MS SZUTY (3.27): I believe that the legislation we will be passing today is fair and equitable. I am not a supporter of proposing legislation for the sake of proposing legislation, but if we have the chance to clarify important issues for the benefit of the community we need to take that opportunity to do so. I feel that the Crimes (Amendment) Bill (No. 2) offers us, as legislators, the chance to put forward formal objective criteria against which a sentence handed down by a court can be interpreted. I acknowledge that the issues before us have always been considered by the courts during the sentencing process, as Mr Humphries has outlined; but people with little or no experience in courts often have been unable to understand the decisions of our judiciary. This Bill provides the community with a reference point.

This Bill enshrines the notion that prison is the sentence of last resort. This is a good move, given that prisons have not shown themselves to be models for helping people who offend against the rules of society to regain their place in that society. There needs to be the ultimate sanction of deprivation of liberty, but there also need to be ways of ensuring that people who have been found guilty of crimes against society are not summarily thrown into the harsh environment of prison with the optimistic view that it will teach them a lesson. Clearly, reoffending rates and other evidence show that prisons do not teach prisoners the lessons that society wants offenders to learn. We may also need to explain to the community the basis for this reasoning, as punishment by way of

imprisonment is often felt by victims and their families as necessary. We need to ensure that the community sees the judicial system as trying to reduce the level of crime in our society by giving offenders appropriate opportunities to make reparation for their crimes within society itself, not just by enduring prison life.

Currently the ACT judiciary exercises five types of sentencing options - prison sentences, fines, community service orders, suspended sentences and conditional releases. We need to look in the future at other options, such as periodical detention, intensive supervision and transitional release schemes which fulfil other needs within the criminal justice system. We are somewhat fortunate in the ACT in that we have a small population and our founders did not see the establishment of a prison as an important element in our infrastructure needs, and therefore we have not developed the mentality that prison is the only automatic option for offenders. I encourage the Government to continue to look at all sentencing options which have at their core the aim of the rehabilitation of offenders into normal community life. This will include looking at early intervention programs for young offenders. I believe that the Government currently is taking an interest in interstate programs - for example, the one at Wagga in New South Wales.

There are a number of very positive aspects that will be taken into account in deciding on a sentence after a person is found guilty of a crime. One of these is consideration of the cultural background, which I believe the Attorney-General is going to move by way of an amendment later in this debate. This does not mean, as some may interpret it, that special treatment is given to offenders who come from non-Anglo-Celtic backgrounds. The law is the law for all residents and citizens, and it should be dispensed without fear or favour. But cultural background can inform the courts on alternative sentencing options. I encourage the Government to explore such options with the many committees and councils which exist in the ACT to provide cultural awareness in the community.

I also welcome the separation of community service orders from "own recognisance" requirements. This clearly delineates these as separate sentencing options. They should never be confused. Once a person has breached a recognisance they should be brought back before they face the consequences, not be given a default sentence. If the proper sentence for the crime is community service, then that is the sentence. If "own recognisance" is the sentence, then that should be applied. They are two distinct sentencing options.

I am also pleased to see the emphasis placed on reparation to the victim. The Crimes Act 1900 already allows for reparations under section 437. However, the new emphasis gives the promise that possibly in the future the scope of reparations may be increased beyond what is currently handed out in the courts, which is mainly money for damages or, in vandalism cases, repairing the damage caused. This is one interesting aspect of reparation which may not be well known. Many juveniles who go before the courts are ordered to repair the damage. I feel that it is an option that has further potential for development. Other measures which may have an effect on sentencing and crime rates in general in the ACT are also eagerly awaited - for example, the proposed heroin trial which could see an expected fall in drug related crime. I and others are keen to see that proposal developed and implemented.

Before closing I would like to comment on what I see as adjunct measures to this amendment Bill yet to be developed - the adoption of victim impact statements and a review of the use of unsworn statements, both of which Mr Humphries referred to earlier. Both of these issues are before the Assembly at present and will be dealt with in their own time. I welcome the examination of those issues. Today we enshrine in legislation ways to ensure open, fair and consistent treatment during the sentencing process of people found guilty of crimes. Madam Speaker, I commend the Bill and the Government's amendments at this stage to the Assembly.

MS ELLIS (3.33): Madam Speaker, as the Attorney-General has said, this Bill is one of the many reforms to the criminal justice process for which this Government has been responsible. The Government is committed to ensuring that Canberra is a safe place in which to live. Nevertheless, the answer to such problems as those we saw arising in Civic last year does not lie in imposing unduly harsh penalties on a small number of individuals. The prevention and deterrence of crime is a community responsibility. As part of the Government's strategy in addressing these problems it is important that the process for dealing with those charged with a criminal offence is seen by the community to be fair and rational. It is also important that penalties which are imposed not only reflect the seriousness of the offence committed but also take into account the individual circumstances of the offender.

I believe that the Bill serves a useful function in stating clearly for those both within and outside the legal system the major considerations on which the delicate task of imposing an appropriate sentence hinges. Madam Speaker, in recent times we have heard several calls from the Opposition for the introduction of mandatory prison sentences for certain criminal offences. Such arguments ignore the complex social problems which underlie much offending behaviour, problems which include drug abuse and psychiatric illness. Such arguments demonstrate a lack of knowledge of the outcome of schemes which have been trialled in the USA and, to a lesser extent, in other Australian jurisdictions.

Research into such schemes has shown that the introduction of mandatory minimum sentences results in inflexibility in regard to individual cases and leads to a greater disparity in sentencing because police officers may avoid charging people under what they consider to be particularly harsh laws in individual cases. Numbers of dismissals also typically increase, so that fewer people are convicted, but those who are receive much harsher penalties. In addition, there has been no demonstrable impact on the incidence of drug use or use of firearms in those jurisdictions where mandatory minimum penalties have been introduced for these offences.

This Bill, I believe, presents a much more balanced approach to sentencing. While it details the major factors which courts must take into consideration and recognises, as the Attorney-General has pointed out, that imprisonment must be considered the punishment of last resort, sentencers will retain an appropriate degree of flexibility to deal with individual circumstances as they arise.

The Bill has some other significant social justice implications, particularly the requirement that the court, before imposing a fine, must take into account the offender's financial circumstances. It also addresses the broader issues of crime prevention by noting that, where appropriate, rehabilitation of the offender should be considered by the court. Nevertheless, the Bill does not ignore the concerns of victims of criminal offences. It specifically mentions the due regard which should be given to appropriate reparation to any victim of an offence and, as the Attorney-General mentioned, a comprehensive reference on these issues is currently with the Community Law Reform Committee. I commend this Bill to the Assembly.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (3.36), in reply: I thank members for their general in-principle support for this legislation. It is an important step in bringing forward a package of reforms to the criminal justice system in the ACT. It is part of the Government's overall strategy to try to simplify the criminal justice system. I would admit that, to a first observer, a piece of legislation which separates sentencing criteria into two proposed new sections, one of which runs up to paragraph (w), does not immediately appear to be a simplification of the law; but, as Mr Humphries indicated, agreeing with the government view, it is helpful to have these principles which are now found in the common law codified so that there is a clear touchstone of the principles which are to be taken into account in relation to sentencing.

Obviously this Bill in itself is not the end of the road in reform of sentencing and the criminal justice system. The Government is committed to bringing before the Assembly a package of reform in relation to corrections; a corrections law which will address many of the issues that Ms Szuty referred to in her remarks. The issue of protecting and giving statutory recognition to the rights of victims of crime is high on the Government's agenda. We have tabled in this place the report on the victims of crime reference from the Community Law Reform Committee. That report has been separated from its draft legislation because there was going to be some delay in getting the draft legislation ready. I felt that it was appropriate to get the thrust of the recommendations before the public by way of tabling in this Assembly. Members seem to agree with the Government that it would not be wise to hold this package up while we bring that to a conclusion. It would be more sensible to put this package through and then return, in due course, and introduce some victim statements into the Crimes Act.

The other issue that was adverted to is the issue of unsworn statements. I have indicated a view that I think they have little place in the criminal justice system. The ACT very soon will be the only jurisdiction in Australia which allows unsworn statements. In fact the ACT, Fiji, South Africa and Ireland will be the only places where unsworn statements are permitted. It is something that really does create a lot of injustice, particularly in sexual assault matters where regularly the survivor of the sexual assault is cross-examined, often quite strenuously, and the perpetrator in the dock can make a statement without being subject to cross-examination. I am pleased that the Assembly's Standing Committee on Legal Affairs is looking at that issue, and we may well be in a position where we are all at one on that before very long.

There are some amendments which have been circulated from the government side and which again, to the first observer, may look as though it is all rather complex. I understand that members who have expressed an interest in this legislation have availed themselves of the opportunity of the briefing from my officers that we routinely make available in relation to complex legislation. The Government's amendments are, in fact, quite straightforward. One, in effect, picks up a reference to the wrong section of the Act. The other amendments essentially relate to making it clear how cumulative and concurrent sentences will operate when a person is sentenced on separate days for a series of offences. Also, we pick up a point which Ms Szuty referred to. There had been some quite strong views in the community that we do need to have reference to cultural background in the Act; not to say that people are to be treated differently before the law because of their cultural background, but because a person's cultural background is a factor which needs to be taken into account in arriving at what is the goal of the legislation, and that is a just sentence.

Mr Humphries has circulated some amendments which came out of some community views in relation to this legislation. The Government will be supporting Mr Humphries's amendment to proposed section 450 which expands on the ability to get reasons, very much for the reasons Mr Humphries set out in his remarks, and will be agreeing to the circulated amendment to proposed new paragraph 455(1)(g). We will not be supporting the circulated amendment to proposed new subsection 454(3). The Government would argue that it would be impractical to have that. It is not a problem, although Mr Humphries may see it is as one. I think it is a question that is fairly fine and will not substantially alter the Bill one way or the other. We can address separate remarks to that for the benefit of independent members who may wish to make up their mind on these things.

The issue of perhaps greater substance is Mr Humphries's proposal to omit proposed new paragraph 429B(e), the reference to prevalence of an offence. Since Mr Humphries addressed that in his in-principle remarks, I might do the same in order to give independent members, who may be wishing to make up their mind, a bit more time to think about it before we get into the complex procedures of the detail stage. At the outset I have to say that it is a fairly fine point in that the Australian Law Reform Commission, in its major report on sentencing, from which this Bill draws heavily, acknowledged that it was a difficult issue. In fact, it was one of the few points on which the commission had divided opinion in its report. The majority view of the commission was that prevalence ought not be taken into account, but general deterrence could be.

The argument, in effect, is that it is appropriate to take into account general deterrence; but prevalence can work an injustice in that if a person commits an offence today the process of the criminal law always takes some time and by the time that person presents before court there may have been a media furore about the prevalence of a particular offence. That media furore may be correct or incorrect. We had an example in the ACT about 12 months ago when we had a high level of agitation about armed robberies. In fact, there had been a slight reduction in armed robberies from one year to the other. Media excitement about an offence may be misleading. Of more concern is the fact that a person who commits the offence today, if prevalence of the offence is taken into account, may receive a greater sentence because of events which occur after they commit the offence. They are not, in a sense, being held responsible for their activities, but could be held responsible, could get a greater sentence, because of the activities of others.

The contrary view in the Law Reform Commission's report was, to paraphrase it, similar to that of Mr Humphries, who argues, in a sense, that you cannot distinguish between general deterrence and prevalence and it is foolish to try to do so.

Mr Humphries: There is overlap.

MR CONNOLLY: They are overlapping. When the Law Society commented on this legislation it seemed to be divided. The majority of the Law Society's subcommittee looking at that suggested that it should be deleted from proposed new section 429B but should not be included in proposed new section 429A - that is, that you should not consider it, but you should not not consider it either. The Law Society again acknowledges that there was a difference of views there. So we have the Law Reform Commission divided in its base report, coming down, on balance, saying that it should be excluded. We have the Law Society here divided and coming down, on balance, saying that it should not not be excluded. We are getting into double negatives here, but I think members know what I am saying. The Law Reform Commission agreed, on balance, that it should be excluded, which is the Government's view. The Law Society of the ACT seems to have taken the view that it should not not be excluded.

We would support the argument that there can be an injustice if a person has taken into account a perception of prevalence, and it can be difficult to judge that prevalence. The commission said at page 96 of its report:

> A court may increase the severity of a penalty for a particular type of offence which the court believes is occurring too frequently with the purpose of deterring others from committing that type of offence, but without taking the view that the offence is inherently more serious than it had previously been seen to be. In this case, the court would be responding to a perceived 'crime wave'. In the Commission's view, to do so would be inconsistent with the principle that individual offenders should, as far as possible, be punished only in accordance with the severity of their particular offence and their own culpability. Secondly, there may be a perception that particular offences are more prevalent than they previously were. As more attention is focussed on these offences, the courts may conclude that they should be regarded more seriously than before. Increased penalties will result. The perceived 'crime wave' has caused the courts to reconsider the seriousness of the offence in all cases, not just for the limited purpose of 'stamping out' the perceived crime wave. The principal difficulty with both cases is that the courts are not designed to amass and digest the kind of information needed to base a policy decision of this kind - the detailed statistics necessary to determine whether there has been an increase in the particular offence and the appropriate way all elements of the criminal justice system should respond to it. Responses to the prevalence of offences should come, not from the courts, with their limited capacity to amass and digest the kind of information on which policy decisions of this kind should be based, but from the parliament or the executive, by adjusting appropriately all the elements of the criminal justice system.

In effect the commission is saying that it is difficult for courts to make real decisions about prevalence. If a particular type of offence is seen by the community to be increasing in prevalence, if there is a perception that a particular crime is getting out of control, the appropriate course may be for the Assembly to increase the penalty. It is difficult often to tell whether a particular crime is increasing or decreasing. The recent agitation about armed robbery would indicate that.

Speaking of armed robbery, there is a point that I do want to get off my chest, and it is one that I think the Opposition would endorse. It is a criticism of the Canberra media. There was an offence yesterday which was widely reported, and it was widely reported as a daring robbery. Madam Speaker, I do not think there is anything daring about taking a revolver and shoving it in the face of a young bank officer who is unarmed and defenceless.

Mrs Carnell: Then showing pictures of it.

MR CONNOLLY: Indeed. I think it would be helpful if the media would refrain from describing a criminal who walks into a bank and shoves a gun in somebody's face as being daring.

Ms Follett: Cowardly.

MR CONNOLLY: Cowardly, as the Chief Minister mentions, would be a more appropriate description of that type of person. There is perhaps a concern that, if the media describes such offences as daring, people may think that it is a glamorous form of activity to engage in. I can assure you, Mr Humphries, that I will not be blaming the media in relation to any argument about an increase or decrease in armed robberies, but it is something that Canberra's journalists and editors might like to consider when they report these matters.

Madam Speaker, the essential argument that I think we will have on the floor of the Assembly today is about that issue of prevalence. It is an issue on which there are two comparatively finely balanced views. After considering very carefully the arguments, being aware that the Law Society has taken a view that reflects the minority view in the Law Reform Commission report, the Government's view is that the majority Law Reform Commission arguments are sound and that there is a potential danger in taking prevalence into account. Madam Speaker, that apart, I am pleased that there is general support for the principle of the legislation. While it may appear to be a rather complex script as we work our way through the amendments, by and large there seems to be general support for the legislation.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

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

Proposed new clause 3A

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (3.48): Madam Speaker, I move:

Page 2, line 4, after clause 3 insert the following new clause:

> **Maintaining a sexual relationship with a young person**
>
> "**3A.** Section 92EA of the Principal Act is amended by omitting from subsection (8) 'subsection 443(3)' and substituting 'subsection 443(1)'.".

This corrects an error in the original Bill in relation to the numbering of the relevant clause. The Bill amends and re-enacts section 443 of the Act. The Government proposes that this new clause be inserted. It provides that the reference in subsection 92EA(8) of the Act to subsection 443(3) of the Act be changed so that it correctly refers to subsection 443(1) of the Act, which is the correct section when it is renumbered. I think, although I am not sure, that this may have been picked up by the Scrutiny of Bills Committee as a minor typographical error in references. Madam Speaker, I table at this point the explanatory memorandum for all of my amendments.

Proposed new clause agreed to.

Clause 4

MR HUMPHRIES (3.50): Madam Speaker, I move:

Page 4, line 11, proposed paragraph 429B(e), omit the paragraph.

The arguments were dealt with in the in-principle stage of the debate. I will refer to just a couple of issues. Mr Connolly makes a point about where a court is considering sentencing a particular offender who has committed a crime of a kind which is then prevalent. It may be that that is a particular problem. It seems to me that that problem might be addressed by amending proposed new section 429B(e) by saying, for example, that they may not take into account the prevalence of a crime at the time when a particular offender is sentenced. That would seem to deal with that problem. To leave that paragraph in as it now stands, it seems to me, is bound to generate some confusion.

I ask members to imagine that they are a team of three judges on a bench and they have seen a wave of crime of a particular category. They, as the people responsible for sentencing people who commit those crimes, are not deceived by any media bias or any claims by an opposition in parliament. They know that there is a particular problem with a particular kind of crime. They take the view that there should be a hardening of judicial policy in order to effect some change in the incidence of that crime. Are they not considering, when they come to that conclusion, both the question of prevalence and the question of sending a signal to potential offenders? They are surely doing both at the one time.

It is impossible not to say that they are doing both. I think, therefore, that to leave both these provisions in - paragraph (i) of 429A(1) and paragraph (e) of 429B - is going to generate confusion.

Mr Connolly made a comment about perceived crime waves and made a point about armed robbery, saying that there was a belief that it had gone up and, fortunately, there had been a slight decrease. If he has in mind the particular case that I do - I think it was at this time a year ago - he was certainly able to come into this place and announce that there had been a slight decrease in armed robbery, but subsequently he had to come back into the Assembly and announce that he had made a mistake in advising the Assembly that that was the case. In fact, using the same calculation, there had been an increase in armed robbery. So sometimes the perception can be very close to reality. Perhaps he has another occasion in mind, but that is the one that springs to my mind.

Madam Speaker, I press this amendment. I suggest that although we cannot allow courts to want to make an example of an individual - that is certainly not the intention of the amendment, and it should not be the policy of the courts - they ought to be able to consider the question of the level of crime in the community in determining what level of penalty is appropriate. I think it is probably fanciful to imagine that we could divorce this question from the minds of our judiciary. It is impossible to expect members of our judiciary not to take those matters into account, and they therefore should have that reflected in the legislation that governs the sentencing policy.

MS SZUTY (3.54): Madam Speaker, I have had the benefit of receiving a copy of the submission that the Law Society wrote to the Attorney-General on this Bill. I noted their comments about this clause. There was considerable controversy about it and the committee did not come to a united view. I further note that in the Attorney-General's response to the Law Society he did background the work that the Australian Law Reform Commission has done in this area. I have to agree with that view that has been put forward and I will not be supporting Mr Humphries's amendment on this occasion.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (3.54): Madam Speaker, the Government's position essentially was outlined. We are supporting the ALRC position, although it is a fine point. If a court is confused it obviously will look at this debate, and what we are saying refers them to the Law Reform Commission report. That report says that general deterrence is something you should be looking at, but not prevalence, in order to avoid the injustice of the person being made an example of. Mr Humphries himself indicated that it would be unfair if a particular person became a scapegoat for a real or perceived increase in the prevalence of a particular type of offence.

Amendment negatived.

Clause agreed to.

Clauses 5 and 6, by leave, taken together, and agreed to.

Clause 7

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (3.55), by leave: Madam Speaker, I move:

Page 5, line 13, proposed subsection 443(1), omit "sentence or sentences" and substitute "part of any sentence".

Page 5, line 22, proposed paragraph 443(2)(b), omit "sentence or sentences" and substitute "part of any sentence".

Page 6, line 14, proposed paragraph 443(7)(b), omit "an uncompleted sentence" and substitute "any uncompleted part of any sentence".

This is the second of a series of amendments which the Government believes should be made to proposed new section 443. Under proposed new section 443 there will be a clear presumption of concurrent sentencing unless the court otherwise orders, or in specified circumstances. Under the existing section there is no such presumption. During the consultation period for the Bill it was submitted that proposed substituted section 443 could be difficult to interpret when sentences are imposed on different days. It was argued by the Law Society, amongst others, that when sentences are imposed on different days it is not clear whether the later concurrent sentence is to commence on the day it is imposed or on the day the former concurrent sentence was imposed. In these circumstances the Government agrees that there is a need for amendment and proposes that three amendments be made to proposed substitute section 443 to clarify that a later concurrent sentence is to be served at the same time as that part of the former concurrent sentence which is uncompleted when the later concurrent sentence is imposed.

Amendments agreed to.

Clause, as amended, agreed to.

Clause 8

MR HUMPHRIES (3.57): Madam Speaker, I move:

Page 8, line 9, proposed section 450, add at the end the following subsection:

"(3) Where -

(a) a court explains or causes to be explained to a person, in accordance with subsection (1) or (2), the matters specified in that subsection; and

(b) that person is to serve a term of imprisonment;

the Registrar of the court shall provide or cause to be provided to that person, or his or her legal representative, a written record of those matters.".

I referred in the in-principle debate to the question of people who are sentenced in the courts understanding what is happening to them. It seems to me that the problem is particularly severe when a person is sentenced to a term of imprisonment. They need to be able to access a clear statement of what has happened to them, particularly when they have arrived at their place of imprisonment and they are wondering what is going on. They are in a state of some shock and they need to know what is going on. I think that very often the comments that a judge or magistrate makes in those circumstances are lost. They do not make any impact on a defendant. Having a written record of what has been said is, I think, extremely important.

This amendment deals only with people who are sent to prison rather than those who are given a suspended sentence or those who are given bonds or something of that kind. Those people would not be subject to this, but those who are to serve a term of imprisonment would be able to receive a copy of what has been said by the judge or magistrate. The written record might consist of no more than an extract from the court proceedings rather than some formal document that has been drawn up. Generally they are not very long documents, and I think it would be helpful if they were supplied to defendants in those circumstances.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (3.59): Madam Speaker, the Government will support this amendment. In the overall majority of cases where imprisonment is imposed a written decision is handed down. We are advised by the Magistrates Court that there may be up to 100 cases in a year in that court where a period of imprisonment - usually a short period because it is a comparatively minor matter - may be imposed without a formal written judgment being handed down, although, in every case, there will be reasons given from the bench. As Mr Humphries pointed out in his earlier remarks, a defendant, in the traumatic circumstances of a court appearance, may not fully comprehend what was said. Even if they hear it, they may have difficulty understanding it, or they may forget it in the subsequent trauma. Mr Humphries's proposal does not add an additional burden on the magistracy by requiring them to write a written judgment. It does impose an obligation to provide a transcript, and that is a reasonable thing in the circumstances. We think this amendment will be workable and we will support it.

Amendment agreed to.

MR HUMPHRIES (4.00): Madam Speaker, I move:

> Page 9, line 9, proposed subsection 454(3), add at the end "unless the person has indicated that he or she proposes to plead guilty to the offence".

This is to add some words. This proposed subsection, as it stands now, requires that a court not order a pre-sentence report in respect of a person before the court finds that person guilty of an offence. That seems reasonable on its face, but there is a problem with its operation. Often people will come before the court having indicated that they intend to plead guilty of an offence. It may be the sort of case where a sentence of imprisonment is quite possible, even likely, and in those circumstances the court will need the benefit of a clear pre-sentence report to be able to decide what the situation is.

On occasions, I am advised, pre-sentence reports can take some time to prepare. For a person not in custody, I am advised that reports may take anything up to six weeks or more to prepare. That is no great burden when someone is not in custody; they are not sweating on the document to arrive, at least in the sense of their liberty being deprived. Not infrequently, I understand, the period of waiting for a pre-sentence report when a person is in custody can range between one and two weeks. That is the advice given to me by practitioners in the ACT. Consider the situation of a person who is sitting in a gaol cell who, obviously, wants to get out and who is waiting for a pre-sentence report which may free him or her. That person, I think, is entitled to some expedition, particularly if the result of the report is that the judge or magistrate decides not to impose a sentence of imprisonment.

I think, Madam Speaker, that there ought to be the flexibility for a court to order a pre-sentence report in certain circumstances. The circumstances I propose here are where the defendant has indicated that he or she proposes to plead guilty to the offence. There is no question in these circumstances that a person who is innocent or a person who proposes to plead that they are innocent is subject in any way to a preliminary verdict of the court. They are not going to be prejudged in any way. This person is prepared to admit that he or she is guilty, and therefore it is appropriate that the process of getting a pre-sentence report and preparing for the day in court where the sentence is imposed be begun. Without this amendment a person will have to spend some time in a cell waiting for the pre-sentence report, or it will be incumbent on the people preparing pre-sentence reports to do so on the spot; to have a report available on the spot to deliver to the court almost instantaneously.

I am advised by the Attorney that that is often the case. Often they can prepare a report and deliver it orally to the court, but in those circumstances presumably the court will not want to order a pre-sentence report in advance. It will rely on the capacity of the pre-sentencing authorities to deliver the pre-sentence report orally on that occasion. I think, Madam Speaker, that we have to put some faith in the courts to exercise the power conferred by this amendment on occasions when it is actually desirable. Members of the Law Society have written to all of us in this chamber, I think, and have urged strongly that there be that capacity for the court to order a pre-sentence report before the sentence is to be delivered, before the verdict is reached, so that there is a capacity not to leave somebody sitting in a gaol cell for an unnecessarily long period.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.04): The Government will not be supporting this amendment; but it is, I have to acknowledge, a fairly fine point. We could waver and go one way or the other. The Law Society indicated support for amendments along the lines of Mr Humphries's proposal. The advice that I have received is that the cases where there is a long delay usually involve very regular clients, where it is pretty certain that the outcome will be one form of custodial sentence or another. Often the pre-sentence report may take quite some time. Everything that can be done is done to try to limit the period, but it is accepted as a given that there will be a period of imprisonment. Where it is a finer question, Corrective Services do endeavour to meet, and I am advised that they do meet, the deadlines and to get, if needs be, an oral pre-sentence report in a very short time.

Mr Humphries's proposal would mean that where there is a plea of guilty, or an indication of a plea of guilty, which, of course, may change or may not necessarily be accepted by a court, the process could start earlier. That may mean some pre-sentence reports being compiled unnecessarily, but we will see how it works. If, as I believe, it gets passed, it may be that the suggestions of the Law Society are valid. On balance, although it was close, we do not favour supporting this amendment. I accept that, if it is the will of the Assembly, it could well work.

MR MOORE (4.06): It may well be the will of the Assembly, Madam Speaker. I think Mr Humphries's amendment puts a little more faith in the courts. The proposed section does say that if a court finds a person guilty "it may", and then goes on to deal with the same thing. The court still has the choice over the situation that Mr Humphries proposes. It seems to me an eminently sensible proposal that Mr Humphries has put into this amendment, and I will be supporting it.

MR STEVENSON (4.06): Yes, I also support the amendment. It seems that we should take the advice of the Law Society here. It is unfortunate in this case, perhaps, that the Attorney-General did not see fit to do the same.

Amendment agreed to.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.07): I move:

> Page 9, line 17, proposed paragraph 455(1)(b), insert "(including cultural background)" after "background".

This amendment relates to some consultation that we got back on the issue of what should be involved in pre-sentence reports. There has been a strong view that that should include issues such as cultural background. While we accept that everyone is equal before the law, cultural background is a relevant factor in the pre-sentence report. For that reason we agree with the community view that that should be included.

MR HUMPHRIES (4.07), by leave: Thank you, Madam Speaker, and thank you, members. This amendment simply refines a reference to the social history and background of the offender as a factor which should be taken into account when a pre-sentence report is being given. I think it is important to state an important distinction to be made here. It is not the intention of the Assembly, I believe, that the mere fact that a person comes from a particular cultural background should be a relevant factor in the sentencing of that person. What is relevant is the extent to which their cultural background might be relevant to the sentence which could be imposed upon them. There is a very fine distinction there, but I think it is worth making.

The suggestion for this change was made by the Chief Minister's Aboriginal Advisory Council. It was concerned about the position of Aboriginal people before the courts. I do not think the effect of this amendment would be that Aboriginal people were to be treated any differently from other people, and Ms Szuty made that point; but that, if there were particular elements of their Aboriginality which were relevant to that sentence or to that offence, then they could be taken into account. I think that is an acceptable position to take. For that reason we will be supporting the amendment.

Amendment agreed to.

MR HUMPHRIES (4.09), by leave: Madam Speaker, this is a very simple amendment. I move:

> Page 9, line 24, proposed paragraph 455(1)(g), insert ", or has complied," after "complying".

It simply means that the pre-sentence report may take into account the extent to which an offender has complied with previous orders. It seems to me to make sense to be able to indicate that a person has complied with a previous order and could therefore, for example, be trusted with a further order of the same kind, or one that relies on a certain amount of goodwill on the part of the particular offender.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services (4.09): Yes, Madam Speaker, that is eminently sensible. The Government supports the amendment.

Amendment agreed to.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.10): Madam Speaker, I move:

> Page 9, line 29, proposed subsection 455(1), at the end of subsection (1) add the following paragraphs:

"(k) the authorised officer's opinion about -

(i) the offender's attitude to the offence; and

(ii) the offender's propensity to commit further offences;

(l) any other facts which the authorised officer considers to be relevant.".

This again relates to pre-sentence reports. There was a view from the Law Society, amongst others, that the offender's attitude towards the offence and the offender's propensity to commit further offences should be relevant factors. In order to ensure that we have covered all bases we also suggest that any other facts which the authorised officer considers to be relevant should also go into the pre-sentence report. Essentially it is expanding what may go into the pre-sentence report.

Amendment agreed to.

Clause, as amended, agreed to.

Clause 9 agreed to.

Title agreed to.

Bill, as amended, agreed to.

VICTIMS OF CRIME - COMMUNITY LAW REFORM COMMITTEE REPORT
Paper and Ministerial Statement

Debate resumed from 15 September 1993, on motion by **Mr Connolly**:

That the Assembly takes note of the papers.

MR HUMPHRIES (4.11): Madam Speaker, we are still on the subject of crime and, in this case, we are looking at the question from the perspective of people who are victims of crime. I think we would all agree that the trend in recent years has been that there is a need for more focus on that perspective. The paper presented by the Government on victims of crime is a welcome document. I welcome the tabling of this report by the Community Law Reform Committee on the victims of crime.

The terms of reference for the inquiry relate to the effectiveness of our justice system in dealing with victims of crime. It is true that for many years our justice system has dealt primarily with the rules of evidence from a point of view which emphasises the position and the rights of the accused. The emphasis has been on constructing our system of justice so as to prevent an accused wrongfully being found guilty of an offence. The maxim that it is better for nine guilty people to go free than for one innocent person to be convicted is part of the system that has been built. In the course of that happening an emphasis has moved onto the position of the accused to the detriment of the victim and that has caused some community backlash.

In establishing the terms of reference for this inquiry the ACT Alliance Government sought to recognise the very valid concern expressed by victims of crimes and their representative organisations that they were being left out of the justice system. Effectively, a victim's part in the crime was seen to be over once they gave evidence in court. My party has argued for some time that there is a need to take greater account of the effects of crime on its victims. For example, the use of victim impact statements is a welcome recommendation of this report. Victim impact statements are already in use in the ACT, more by practice than by requirement. The use of the statements must be widened, I think, to include all cases where there is a victim of a crime. I note that the report says:

> The Committee recommends there be statutory provision for the tender of a voluntary victim impact statement in all cases of indictable offences against the person or involving violation of a person's property whether by theft, fraud, robbery or otherwise, punishable by imprisonment for five years.

The committee expressed a view that for more minor offences that may not be appropriate. I would take the view that a victim impact statement should be presented for every crime involving a victim, particularly in cases of crime against the person. Even though these offences might be deemed to be minor in the eyes of some people, any offence against the person has the potential to cause long-term damage and lasting effects on the victim. We ought not to assume that, because an offence is minor, the impact on the victim of that offence is also minor. I understand that the concerns of the community were expressed at paragraph 137 of the report, where the committee said:

> The Committee believes that the preparation of VISs for all offences would not necessarily be the most appropriate use of finite resources.

Paragraph 138 says that the definition of which offences should be the subject of victim impact statements need not necessarily exclude minor offence categories but should allow what the committee calls flexibility and discretion. I think, Madam Speaker, that this is a very sensible idea. On some occasions, even though the offence may be, in terms of the law, a minor one, the circumstances may make its effect on the victim considerably different from those normally evident. This is, to some extent, what the lawyers call the eggshell skull principle. The judge or magistrate hearing the case should be given discretion to call for the presentation of a victim impact statement when he or she deems it necessary or beneficial to the range of sentencing options which are being considered.

I must say that I concur with the view of the report that victim impact statements cannot be used by a victim in order effectively to seek vengeance or to dramatise criminal proceedings, and that, unfortunately, is occasionally the case. However, having said that, I think it is essential that the court be made aware of the need to balance proceedings when they take place; to give the victim some input into proceedings, which, frankly, has not been available in a very positive way in the past.

The report makes some comment about sets of purposes being achieved by the presentation to the court of victim impact statements. One of the most important purposes achieved by the use of these statements is to offer victims a direct input into the court to be taken into consideration by the judicial officer in handing down a sentence to the offender. In turn, this provides some satisfaction to the victim in that the victim will be able to have his or her perspective put clearly before the court. The problem with our system has been that all too often victims feel left out. They feel no involvement in the process of justice and no satisfaction at the end because their views were perceived to be, if not in fact, ignored.

Madam Speaker, I welcome the recommendation in this report to guarantee victims the right to an explanation of a decision to accept a plea for a lesser charge. I note that the Attorney is proposing to commission, or in fact already has commissioned, the drafting of a Bill to effect some of the recommendations made by this report. I believe that it would be very helpful to know what those particular recommendations are. There are some elements of this report which my party strongly supports and which I would like to see put into legislation at the first opportunity.

All too often victims of quite serious crimes are left perplexed at the decision by counsel to accept a plea bargain; yet, in some cases, this would be a perfectly valid decision - for example, where the prosecution needs to obtain sufficient evidence to prove the original charge and cannot do that; where it is either impossible or unlikely that they will have sufficient evidence to do just that. An explanation by the prosecution to the victim on why a lesser charge was accepted might help to restore the victim's faith in the justice system. I think failure to explain what has gone on in a court case very often causes hurt and resentment. Explanations to victims of reasons not to proceed with prosecutions are essential for the same reasons.

Madam Speaker, the Opposition also welcomes the recommendation to tighten the availability of bail to the extent that the needs of the victim are taken into account in that determination. The committee, in its recommendation, sets the following as a standard:

> Where a victim demonstrates or perceives a need for protection from physical violence or harassment by an alleged offender he or she should be entitled to have that need placed before a court considering an application for bail.

Frankly, Madam Speaker, we have seen some shocking examples in the past of cases where alleged offenders have been granted bail when the court, frankly, has had no clear assurance that the victim would be free from harassment. There were some particularly unfortunate cases in the ACT in the last few years which I am sure come to all our minds. The court needs to be empowered to take into account the needs of a victim when determining that question of bail.

I also want to mention briefly reforms in the area of the Criminal Injuries Compensation Act. The recommendation to allow the court to make an interim award on a greater basis than has been the case up until now is a good one. From time to time victims of crime need financial assistance to pay for various expenses such as medical costs. To expect them to have to pay out large sums of money with no prospect of reimbursement for years to come is, frankly, impracticable in some cases.

I have some difficulty with the conduct of criminal injuries compensation cases at present. One particular case I brought to the attention of the Attorney concerned a person who was brought before the court in the ACT for a sexual offence. That person pleaded guilty to a minor or lesser range of offences with which he was charged. He was convicted and a fine was imposed. Subsequently a criminal injuries compensation claim was made by the victim in that case. In that claim the victim alleged the more serious offences which had not been proceeded with in the court. At the end of the day an award was made by the court which clearly took into account the more serious offences which in fact had not been proven in a court or admitted to by the defendant. A large sum of compensation was payable as a result of that determination and the defendant in that case felt some hurt about the matter. I have, for that reason, some difficulty with the blanket recommendation contained in the report that we should repeal sections 29A and 29B of the Act.

The case I cited was an example of where perhaps the ACT should not proceed to recover all or most of the amount which was awarded by the court in respect of that criminal injuries compensation claim. It is one thing to say that, but it is quite another to say that we should remove the right of the Territory to seek reimbursement from offenders in all cases for money which has been paid out of Consolidated Revenue for a person who has been injured in a particular case. Frankly, where an offender has the capacity to pay, he or she should be required to. Where an offender does not have the capacity to pay, he should be required to make some contribution at least to the Territory by way of reimbursement. Ruling out totally the option of seeking reimbursement is not sensible.

In the particular case I mentioned earlier it would be inappropriate to seek reimbursement from an alleged offender who was never proven guilty of committing the acts for which the compensation was awarded. I think, Madam Speaker, that some judgment could be used to determine whether reimbursement should be sought, and the extent to which that reimbursement should be sought.

The report recommends in paragraph 321 that the Government not avail itself of the option to pursue reimbursement unless the victim seeks damages through the civil courts. I am reluctant to support that recommendation as a legislative measure because, quite simply, the Government does not operate as a bottomless money pit from which compensation is payable. The Government already has indicated its intention to limit the extent to which it is liable for making payments of compensation under this Act. In some cases it will be practical to seek reimbursement so that the pool from which the compensation is payable is not operating without some measure of seeking a return where possible.

Madam Speaker, many of the comments relating to children, particularly those who are intellectually impaired, make a great deal of sense. The need to make some reform to our justice system to bring the system into line with modern understanding of child psychology is quite evident. The Liberal Party is particularly keen to see advances in the field of children giving evidence in court. We would like to be looking, in the near future, at supporting proposals which allow the use of videotaped evidence in court on a greater basis than is presently possible and perhaps even using other technology to enhance the capacity of a child to do just that.

The Opposition welcomes this report, as I said. It is a very valuable study into the rights of victims and the important role that the justice system plays in repairing, or at least going some of the way to do so, the damage caused to them by the infliction of crime. Our history has shown us that to be more concerned about the rights of the accused, without taking into account the needs of the victims and the wider community, is a wrong attitude. We are now preparing to make major advances in the treatment of victims through the judicial system and, I might say, it is not before time. I hope that this report will be implemented quickly by the Government. I look forward to some advice about the way in which it will do so, and what legislation it will bring to the Assembly to enact many of the specific recommendations contained in this report.

MRS GRASSBY (4.25): The victims of crime report is an excellent report. Mr Humphries undoubtedly has covered most of what is in the report. I would like to congratulate the Minister who authorised this report. Victims of crime are people who have suffered harm and physical, mental and emotional suffering, including grief. I am sure that there is not one person in this house who does not know someone to whom this has happened. The report has gone a long way in providing information on victims of crime.

The Community Law Reform Committee has recommended that victims who are to be witnesses should receive information concerning what will be required on their part. It is hard enough for anyone to have to give evidence in a court. If you are a victim of a crime I think it would be much harder. We know that information can influence some members of the public in giving evidence. The victim of the crime must be kept in mind at all times. We know the stress that victims of crime suffer when brought face to face with the perpetrator.

This stress also appears when an offender is let out on bail. Much care has to be taken in this area. We all know of very sad cases we have seen on television and have heard about on radio recently. Women have been bashed and killed. Whether it is a crime of passion or obsession, it is still pretty horrifying for the victim and for the family which is left behind. Whether it is done out of passion or hate, it is still a disaster. Where a victim demonstrates a need for protection from violence or harassment, she or he should be able to appear before the court and to oppose an application for bail. Also, the victim must be advised of the outcome of all such bail applications.

The committee suggested that the victim has a right to express concern about the release of an offender. Victims are in a vulnerable position and they should be protected and helped by the system, not alienated by it. Alienation only serves to compound any problems victims suffer as a result of crimes against them. The Community Law Reform Committee report on victims of crime has gone a long way towards making us understand the problems that our new age living brings to us. I commend this report and congratulate the Minister on bringing it before the house.

MR CONNOLLY (Attorney-General, Minister for Housing and Community Services and Minister for Urban Services) (4.28), in reply: I thank members for their contributions. The report on victims of crime is a landmark report and recommends a path for the ACT which will see us in the forefront of reform in this area, redressing the significant imbalance which has crept into the criminal justice system. Many see that the rights of the accused or the criminal have taken paramountcy over the rights of the victim. This report recommends a redressing of the balance. The recommendations in relation to bail in particular could be very important. We have seen difficult situations in the ACT and recently a Sydney case received a lot of publicity. Apparently a court did not have proper information about the enormous mortal terror that a victim was in in relation to an accused who went on to commit a murder. This report could work significantly to redress the balance. I look forward to bringing before members fairly shortly the Government's proposed legislative response to this report.

Question resolved in the affirmative.

ADJOURNMENT

MADAM SPEAKER: Order! It being 4.30 pm, I propose the question:

> That the Assembly do now adjourn.

Question resolved in the affirmative.

Assembly adjourned at 4.31 pm

ANSWERS TO QUESTIONS

CHIEF MINISTER FOR THE AUSTRALIAN CAPITAL TERRITORY
LEGISLATIVE ASSEMBLY QUESTION

Question No. 823

Austouch System Tenders

MR HUMPHRIES: To ask the Chief Minister - In relation to a Purchase Reference -

(1) What services were provided by Interactive Information Network System to the value of $359, 165.

(2) When were the services provided, or when are they to be provided.

(3) If the services have been provided, have they met expectations.

(4) Were ACT firms invited to tender and, if so, did any tender.

MS FOLLETT - the answer to the members question is as follows:

(1) The sum of $359,165 has been used to purchase the components that make up the AUSTOUCH system. This includes:

hardware (incl. kiosks) $178 500
software $ 18 665
services 1 2 0
$359 165

The services being provided for $162 000 include systems integration, data services, maintenance and training.

(2) The first AUSTOUCH kiosk has been delivered for initial acceptance testing

Following approval, the remaining nine kiosks will be received, tested and implemented.

(3) A strategy has been implemented to ensure that the AUSTOUCH system is extensively evaluated during the six month pilot. The collection of relevant information for comparative purposes has begun. The evaluation will review issues including effectiveness, efficiency and management of the system.

(4) Twelve ACT firms expressed interest in the project, but did not proceed to tender. The six firms who were able to address the specifications all have an ACT office.

3451

MINISTER FOR HEALTH
LEGISLATIVE ASSEMBLY QUESTION
QUESTION 949

Cervical Cytology Register

Mrs Carnell - asked the Minister for Health - In relation to the Ministers statement in the Assembly on 19 May 1996 that "A pap smear register is being established"

(1) What progress has been made ?
(2) Who is going to administer the register ? -
(3) How are privacy concerns being addressed ?
(4) How much of the funding is being provided from the Government ?
(5) When will the pap smear register be fully functional ?
(6) Will the pap smear register be run in conjunction with a general cancer register ; if not. why not?
(7) Has the possibility of funding the ACT Cancer Society to run a joint cervical, breast and general cancer registry been investigated ?
(8) If so, how do the costings compare with a Government run register; if not, why not ?

Mr Berry - the answers to Mrs Carnells questions are as follows

The ACT Government, as part of a national program, is proceeding to improve the management of early detection and management of cancer of the cervix. The program is multifaceted with the establishment of a cervical cytology register being an important ingredient in an overall approach to the better management of this health problem

There has been considerable progress made in the implementation of the cervical cytology register. This progress has been achieved through a process of consultation with a range of government, non government and professional bodies who formed an advisory committee together with appropriate consumer representation.

Consultation with professional bodies and agencies such as the Cancer Society and Family Planning Association on issues such as confidentiality, regulation, education, clients nights, privacy and management of the program has taken place through committee members.

3452

The committee has been involved in amending the draft regulations exploring the privacy / confidentiality implications, ensuring that appropriate provision is made for the education of the public and health workers, examining interstate models and various options for the operation of the register.

Naturally this consultative process has taken some time, but it is one that cannot be rushed especially when the outcome has such a crucial bearing on --he health of women of the ACT. Therefore the register will be fully operational as soon a. is practicable and not before the concerns and issues of the interested parties are taken into account. Specific concerns such as privacy will be dealt with by regulation.

Funding for the register is provided by the Government on the basis of a joint Commonwealth / Territory cost shared agreement. The register will be administered by ACT Health as part of the joint co-ordination unit which is also responsible for the administration of the ACT Breast Screening Clinic.

This arrangement has a considerable cost advantage in that by utilising an already existing g administration resource it avoids the duplication associated with establishing a separate service. The Government has investigated the possibility -r a non government agency running the register but has decided that the responsibility -for this initiative should lie with the Government. This is consistent with all states except NSW where an alternative model has not been demonstrably successful.

The information consolidated on the register in the vast majority of cases will deal primarily with healthy pathology data relating to pap smears whereas a cancer register will deal with information relating to all cancers irrespective of the--- site. Because the data holdings of both registers serve two quite different purposes _: a not felt that there would any cost or service advantage in the creation of a combine cervical, breast and general cancer register.

Naturally information relating to cancer of the cervix held on the cervical cytology register will be a subset of the overall information held on the career register.

3453

MINISTER FOR HOUSING AND COMMUNITY SERVICES
LEGISLATIVE ASSEMBLY QUESTION
QUESTION N0.970

Housing Trust - Broken Families

MR. CORNWELL - Asked the Minister for Housing and Community Services -

(1) Is housing being provided for people as a result of family break-up

irrespective of assets and if so, why.

(2) What procedures exist in such circumstances to ensure that

following, say, the sale of the family hone, the assets accruing to the Housing Trust tenant are taken into account when assessing future rent or future eligibility.

(3) What evidence is sought to substantiate claims at (2).

MR. CONNOLLY - The answer to the Members question is as follows:

(1) No. However, the ACT Housing Trust =.3s allocated public housing on a restricted tenancy to persons in extreme need where they are registered for public housing and their family house is to be sold as part of the property settlement.

(2) The Housing Trust obtains from housing ; applicants documentation in the form of letters from solicitors, rep estate agents and banks concerning their assets. Where housing =s provided on a restricted tenancy pending the realisation of the asset from the sale of the family home, the Housing Trust monitors any progress of the proposed sale. When the assets of a Ho,,:-sing Trust tenant who is on a restricted tenancy are realised, their eligibility for public housing is reassessed. The tenancy is renewed if the tenant fulfils the eligibility criteria for public housing.

Rental rebate is assessed on the tenant: income from all sources.

(3) Refer to answer at (2) above.

MINISTER FOR HEALTH
LEGISLATIVE ASSEMBLY QUESTION
QUESTION NO. 973

Hospital Waiting Lists

Mr Moore - asked the Minister for Health:

In relation to funding to reduce waiting lists in public hospitals that was provided recently by the Federal Government -

(1) Is it all being used for the purpose assigned.

(2) What improvement in waiting lists can be expected.

Mr Berry - the answer to Mr Moores question is:

(1) In 1992-93, the Commonwealth made available to the ACT Government $647 000 under the Hospital Access Program (HAP) to reduce waiting lists. Some of this money has been used for structural reform of the waiting lists. In addition $407 200 (of which, $65 000 was "rolled over" into 1993-94) was allocated to Woden Valley Hospital (WVH) and $98 000 to Calvary Public Hospital to provide additional elective surgery to target public patients waiting for prolonged periods.

(2) A total of 320 patients received elective surgery as a result of these funds being made available, 252 at WVH and 68 at Calvary Public Hospital.

Elective surgery waiting lists are highly volatile and are easily affected by many external factors, including the addition of extra people to the waiting list (which the hospitals have relatively little control over). As a result of the many extraneous factors, the overall impact of the HAP funding appears marginal.

3455

MINISTER FOR HEALTH
LEGISLATIVE ASSEMBLY QUESTION
QUESTION No. 980

Wright Corporate Group Companies

Mrs Carnell - asked the Minister for Health:

(1) Has the ACT Government and any of its agencies had any business or other dealings with any of the following companies or organisations (a) Cinnavon Pty Limited ACN 061 141295; (b) Canberra Mail and Print Pty Limited ACN 008 537 406; (c) Canberra Mailing and Print Company Pty Limited ACN 008 537 406; (d) Canberra Mailing Co. Pty Limited ACN 008 537 406: (e) THe Wright Corporate Group Pty Limited ACN 008 557 668 (f) Austwide Communications Pty Limited ACN 008 557 668; Professional Fund Raising Services Pty Limited ACN 008 557 668; Envelope House; and (i) Wright Anderson Pty Limited ACN 061 340 010.

(2) On what date did these dealings or transactions take place, and what was the value of the transaction.

(3) What was the nature of the dealings or transactions.

(4) How was any work or contract awarded and who approved it.

(5) If the tender was not the cheapest, why were any of the above entities selected and who approved it.

Mr Berry - the answer to Mrs Carnells question is

(1) The Radiation Safety Section has conducted business with Canberra Mail and Print Pty Limited ACN 008 537 406.

(2) The business was arranged on 22 September 1992 and was valued at $114.

(3) The company was responsible for printing envelopes for the Radiation Council.

(4) & (5) The work was arranged by the Public Affairs Branch. Chief Ministers Department in accordance with the Government Directive that all printing be contracted out by that Department.

MISTER FOR HEALTH
LEGISLATIVE ASSEMBLY QUESTION
QUESTION NO. 994

Health Portfolio - Advertising

Mr Humphries - asked the Minister for Health

In relation to the 1992-93 financial year.

(1) What services were advertised by (a) the Ministers Department; or (b) each of the agencies under the Ministers control

(2) What was the total cost of advertising of these services by (a) the Ministers Department; or (b) each of the agencies under the Ministers control.

(3) In what publications were advertisements placed by (a) the Ministers Department; or (b) each of the agencies under the Ministers control.

(4) How many advertisements were placid for positions vacant by (a) the Ministers Department; or (b) each of the agencies under the Ministers control.

(5) What was the total cost of advertising positions vacant by (a) the Ministers Department; or (b) each of the agencies under the Ministers control.

(6) How many positions vacant were tiled by external applicants with respect to advertisements placed and detailed in (4) and (5).

Mr Berry - the answer to Mr Humphries question is:

(1) It is not possible to determine the se:-,-ices advertised as records are kept in categories only. Advertisements we-,. made in the following categories:

• Hospital and Medical • Tenders • Public Notices
• Early General News • Computer Pages • Entertainment

(2) The total cost of advertising indicated in question 1 for the 1992-93 financial year was $32,922.17

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(3) The publications utilised for the placement of advertisements during 1992-93 were:

- Sydney Morning Herald
- Australian
- Canberra Times
- Valley View
- Medical Journal of Australia
- New Zealand Herald
- Melbourne Age
- Chronicle
- Australian Association of Speech and Hearing
- British Medical Journal
- Real Estate & Community Times
- Goulburn Post
- Hobart Mercury
- Newcastle Morning Herald
- Brisbane Courier Mail
- Adelaide Advertiser
- Annals of Thoracic Surgery
- Perth Chronicle

(4) There were 349 employment advertisements placed during 1992 -93 financial year.

(5) The total cost of employment advertisements during 1992-93 were $208,031.34.

(6) I am not prepared to authorise the use of the very considerable resources that would be involved in providing the detailed information to answer part 6 of the Members question.

3458

MINISTER FOR SPORT

LEGISLATIVE ASSEMBLY QUESTION

QUESTION NUMBER 996

Sport Portfolio - Advertising

Mr Humphries - asked the Minister for Sport - In relation to the 1992-93 financial year
(1) What services were advertised by (a) the Ministers department; or (b) each of the agencies under the Ministers control.

(2) What was the total cost of advertising of these services by ;a) tie Ministers department; or (b) each of the agencies under the Ministers control.

(3) In what publications were advertisements placed by (a) the Ministers department; or (b) each of the agencies under the Ministers control.

(a) How many advertisements were placed for positions vacant by ;a) t_^.e Ministers department; or (b) each of the agencies u:-:der she Ministers control.

(5) What was the total cost. of advertising positions vacant by ;a) ..^e Ministers department; or (b) each of the agencies under the Ministers control.

(6) How many positions vacant were filled by external applicants with respect to advertisements placed and detailed in (4) and (5).

Mr Berry - the answer to the Members question is as follows:

The amount of time and resources required does not perm-t the total breakdown as requested by the Member.

I would refer the Member to the Answer prepared for Question on Notice Number 999. The information and answer provided related to the Department of the Environment, Land and Planning as a whole, including the Arts and Sport portfolios.

3459