Contents

DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

30 April 1998

Thursday, 30 April 1998

Contents

Thursday, 30 April 1998

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

VISITORS

MR SPEAKER: I would like to recognise the presence in the gallery of Year 5 students of Duffy Primary School who are here for their local government area of study. Welcome to your Assembly.

MAGISTRATES COURT (AMENDMENT) BILL 1998

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (10.32): Mr Speaker, I present the Magistrates Court (Amendment) Bill 1998, together with its explanatory memorandum.

Title read by Clerk.

MR HUMPHRIES: Mr Speaker, I move:

> That this Bill be agreed to in principle.

This Bill provides for significant reform of the current system of fine enforcement in the ACT. The fine is, of course, a sanction commonly used by our courts. The ACT currently has no fine enforcement mechanisms for fines imposed by courts other than imprisonment. At present the Magistrates Court enforces fines solely through issuing a warrant for the commitment of a defaulter to prison. Such warrants are the enforcement responsibility of the Australian Federal Police. The Supreme Court, in contrast to the Magistrates Court, has no fine enforcement mechanisms and has been unable to enforce the payment of overdue fines. The inefficiency and uncertainty of the present system encourages people to believe that they are able to avoid their obligations. Anecdotal evidence suggests that it is generally this, rather than a lack of capacity to pay, which contributes to substantial nonpayment.

The Auditor-General has recently conducted a performance audit of court imposed fines and has been critical of the present collection procedures. The audit report found that the present collection practices are less than satisfactory, with 53 per cent of fines imposed by the Magistrates Court not collected within the time specified and 30 per cent of those fines remaining uncollected after 12 months. This level of default is occurring despite the

fact that the courts, before imposing a fine, must take into account the financial circumstances of an offender, as far as they can be ascertained, to ensure that fines are not imposed on people who cannot afford to pay and who are likely to default and end up in prison. In addition, the court may allow time for payment and may also direct payment by instalments. Despite these provisions, the amounts of court fines currently outstanding as at 6 April 1998 were: For the Magistrates Court, 1,911 defaulters, adding up to $983,173; for the Children's Court, 87 defaulters, adding up to $21,765; and for the Supreme Court, 25 defaulters, adding up to $20,726.

This Bill, in conjunction with the other Bills in this package - the Motor Traffic (Amendment) Bill 1998, the Children's Services (Amendment) Bill (No. 2) 1998, the Remand Centres (Amendment) Bill 1998 and the Crimes (Amendment) Bill 1998 - creates a scheme for enforcing unpaid court imposed fines. The main aim of the scheme is to ensure that the integrity of the fine as an order of the court is maintained through providing an effective sanction for noncompliance. The proposed scheme provides a range of options to avoid, as far as possible, imprisonment and to encourage payment.

The sanctions for noncompliance have been framed taking into account the need to ensure equitable application of the sanctions for nonpayment, the need to reduce the number of fine defaulters in custody, and the need to ensure that the fine enforcement system is efficient and effective. There is a duty on the Registrar of the Magistrates Court, who is tasked with enforcing the scheme, to ensure that the fine enforcement procedures maximise the collection of moneys due to the Territory. It is my belief that this can be achieved by improving the certainty of enforcement and the awareness of the enforcement procedures within the general community. The proposed system does not seek to rely upon imprisonment as an incentive to pay fines, although imprisonment is retained as a last resort. It is intended that, by having an efficiently managed and timely enforcement procedure in place, offenders will pay their fines because they know they will not be able to avoid the enforcement measures as they can at present.

I propose to improve the process of enforcement and to reduce the incidence of nonpayment of fines by the implementation of a new fine default scheme. The scheme encourages payment of fines by offenders through increasing the expectation that defaulters who have the capacity to pay will be made to pay or will be subject to new enforcement measures. The scheme enables determination at an early stage of the capacity of an offender to pay; it provides for driving licence suspension as an initial enforcement measure; it provides, in addition, for civil enforcement procedures where there is a capacity to pay; and it enables imprisonment to be imposed as a last resort. The scheme will apply to all fines and levies imposed by ACT courts - that is, the Supreme Court, the Magistrates Court and the Children's Court. It will be administered by the Registrar of the Magistrates Court.

The new scheme for the enforcement of court imposed fines has the following features: The court will make an order which will include a fine and specify a time to pay. A penalty notice will be sent to an offender advising the amount to be paid and possible enforcement action upon default in payment. A default notice to pay will be served on an offender, once the time to pay has expired and the offender is in default, notifying the enforcement action that will be taken if the fine remains unpaid. Where a defaulter is licensed to drive and the fine remains unpaid at the expiration of the period specified

in the default notice, the registrar shall notify the Registrar of Motor Vehicles to suspend the defaulter's driving licence or right to drive within the ACT. Where a defaulter is not licensed, the registrar will make an order requiring the Registrar of Motor Vehicles to suspend the defaulter's vehicle registration or ability to obtain or renew a licence.

A default notice will include a requirement that a defaulter provide to the registrar detailed financial information concerning their property and financial circumstances, to enable the registrar to determine the capacity of the defaulter to pay. The registrar will assess the written financial information and will also be able to review relevant personal information from other government departments to distinguish those defaulters who cannot pay from those who will not pay. The registrar may, where he or she believes that the defaulter has the capacity to pay, make an order for civil enforcement action against the defaulter.

Where there is no capacity to pay or the defaulter refuses to pay, the registrar will, by warrant, commit the defaulter to a period of imprisonment. The civil enforcement procedures include a garnishee order which directly debits the defaulter's earnings or attaches to amounts owed to the defaulter and property seizure orders, including land or goods owned by the person. Offenders will be able to apply to the registrar for extension of time to pay or instalment payments at any stage of the process prior to a custodial order being imposed.

Under the scheme the bailiffs will serve a writ of execution on every fine defaulter who does not comply with a default notice. It is intended that the bailiffs will, in all cases where it is possible, make contact by telephone with the defaulter to advise them of the impending expiration of the penalty notice period and the consequences of nonpayment. It is anticipated that this telephone contact will reinforce to defaulters that outstanding fines will be pursued by the courts.

It is accepted that there will be occasions when some people will have difficulties in paying fines. I propose that these cases will be addressed in a number of ways. Payment of fines will be assisted by providing for the payment of the fine by credit card or periodic debit authority where payment by instalments has been arranged. Fine defaulters will be encouraged to sign bank authorisations to permit direct payment of the fine. As I have indicated, time to pay will also be available.

Mr Speaker, it may be suggested that it is not appropriate that a driving licence and motor vehicle registration suspension scheme should apply where the fine default relates to an offence which is not a traffic or parking offence. However, I do not believe that there must necessarily be a nexus between the type of offence and the method of enforcing the payment of the fine. We need to be pragmatic if we hope to achieve the objective of cutting the number of fine defaulters and the number of fine defaulters who are imprisoned.

The philosophy underlying the suspension proposal, which forms the basis for the ACT fine enforcement system, involves the notion that if the Government is to grant a right - that is, the right to drive on the Territory's roads - then members of the public who are in default of an undertaking to the Crown - that is, payment of a fine - can have that right removed.

The sanction of driving licence or vehicle registration suspension is an attractive cost-effective enforcement alternative to imprisonment. It has been proven to be an extremely effective measure to encourage payment of infringement notice penalties and, in other jurisdictions, has been successful in prompting payment of court imposed fines. The new New South Wales fine recovery scheme also utilises this very effective enforcement mechanism.

Mr Speaker, I propose that any suspension order, for driving licence or registration, imposed for default in payment under this scheme will be deferred in the event of the granting by the registrar of an extension of time to pay or an instalment payment plan being accepted. However, in the event of the first default in repayment pursuant to such an arrangement, the suspension will be reimposed and not lifted until the fine is paid in full.

The proposed scheme will apply to all existing court fines and levies. The withdrawal of existing commitment warrants for outstanding unpaid fines and the application of the new scheme to the unpaid fines will be staged progressively, with the warrants being chronologically withdrawn from the AFP. To assist in the smooth introduction of the new system, an amnesty will be offered for outstanding fines for a three months period prior to the new system being commenced. This will be preceded by a major media campaign to inform the general community of the new system, how it works, and the need for fine defaulters to pay their fines or to make arrangements to pay off the fine prior to the new scheme coming into force.

Mr Speaker, I propose that the fine enforcement scheme will be structured to eventually permit the recovery of unpaid infringement notice penalties where the existing infringement notice enforcement procedures have not resulted in the payment of the penalty. Statistics provided by the Magistrates Court indicate that approximately 6,028 ACT offenders are in default of payment of 12,475 traffic infringement notices valued at $2,115,564. Approximately 6,394 ACT offenders are in default of payment of 10,763 parking infringement notices valued at $679,491. The extension of the fine default scheme to include all infringement notices will permit a consistent approach to be adopted for the recovery of outstanding fines to the Territory. It is not proposed that the application of the scheme to unpaid infringement notice penalties commence until the scheme has been established in relation to court imposed fines.

Mr Speaker, I commend the Bill to the Assembly so that the Territory will, at last, have in place an effective scheme for encouraging payment of fines and penalties and for taking action to collect fines where offenders refuse to pay.

Debate (on motion by **Mr Stanhope**) adjourned.

MOTOR TRAFFIC (AMENDMENT) BILL 1998

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (10.44): Mr Speaker, I present the Motor Traffic (Amendment) Bill 1998, together with its explanatory memorandum.

Title read by Clerk.

MR HUMPHRIES: I move:

> That this Bill be agreed to in principle.

The Motor Traffic (Amendment) Bill amends the Motor Traffic Act to provide incentives for the payment of fines. Where a fine defaulter has been sent a penalty notice and then a default notice and has still not paid the outstanding fine, the Registrar of the Magistrates Court will notify the Registrar of Motor Vehicles. The Registrar of Motor Vehicles will then put in place the following action: If the defaulter holds a driving licence that licence will be suspended. If the defaulter does not hold a driving licence but is the registered owner of a motor vehicle that registration will be cancelled. If the person owns more than one vehicle the registrar will suspend the registration of the vehicle which has the shortest period of registration to run.

If the defaulter has neither a driving licence nor a vehicle registration they will be disqualified from holding a driving licence. During the time that a person is disqualified they will be unable to obtain a driving licence or register a motor vehicle. If a defaulter is from interstate, disqualification means that an interstate driving licence no longer entitles them to drive in the ACT. The suspension, of whichever kind, will be lifted once the fine is paid, the fine is remitted, the person has served a period of imprisonment in relation to the fine, or the conviction which gave rise to the fine is quashed.

This part of the fine default package is modelled on a system that has been in place for some years to deal with people who default in paying parking and traffic infringement notice penalties. The introduction of that system resulted in greatly increased compliance in paying infringement notice penalties. I expect that the present proposals will greatly increase the rate of payment of court imposed fines.

Some people may criticise the use of these measures to enforce the payment of non-traffic fines. I would say to those people that all of us in society have rights and obligations. Society cannot operate if people exercise their rights but refuse to meet their obligations. Where there is an obligation to pay a fine and that obligation is not met, I see nothing unacceptable in depriving the person of some right as an incentive to pay the fine. Mr Speaker, I commend the Bill to the Assembly.

Debate (on motion by **Mr Stanhope**) adjourned.

CHILDREN'S SERVICES (AMENDMENT) BILL (NO. 2) 1998

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (10.47): Mr Speaker, I present the Children's Services (Amendment) Bill (No. 2) 1998, together with its explanatory memorandum.

Title read by Clerk.

MR HUMPHRIES: Mr Speaker, I move:

That this Bill be agreed to in principle.

The Children's Services (Amendment) Bill (No. 2) 1998 amends the Children's Services Act 1986 so that fines imposed on children may be recovered under the new fine recovery scheme proposed by the Magistrates Court (Amendment) Bill 1998. The procedure for dealing with defaulters, including children, is now set out in the provisions of Part IX of the Magistrates Court Act and the amended provisions of the Children's Services Act which enable the registrar to commit child fine defaulters to a period of detention at a juvenile institution.

Debate (on motion by **Mr Stanhope**) adjourned.

REMAND CENTRES (AMENDMENT) BILL 1998

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (10.48): I present the Remand Centres (Amendment) Bill 1998, together with its explanatory memorandum.

Title read by Clerk.

MR HUMPHRIES: Mr Speaker, I move:

That this Bill be agreed to in principle.

The Remand Centres (Amendment) Bill 1998 amends the Remand Centres Act 1976 to enable fine defaulters to serve out their period of imprisonment in respect of fine default at a remand centre. Section 15 of the Remand Centres Act 1976 sets out the categories of persons who may be detained in a remand centre. The amendment made by this Bill enables persons committed to imprisonment on default of payment of a fine under the new scheme to serve that period of imprisonment at a remand centre. This is intended to provide some flexibility to ACT Corrective Services when determining where a fine defaulter will serve the period of imprisonment required under the new legislation.

It is not contemplated that persons liable to undergo a lengthy period of imprisonment in default of payment of a fine will be detained at a remand centre. It is more likely that such persons will go to prison in New South Wales as is presently the case. However, where a person has to serve only a few days in respect of a fine, it is considered appropriate to facilitate that imprisonment being served in a remand centre in the ACT.

Debate (on motion by **Mr Stanhope**) adjourned.

CRIMES (AMENDMENT) BILL 1998

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (10.50): Mr Speaker, I present the Crimes (Amendment) Bill 1998, together with its explanatory memorandum.

Title read by Clerk.

MR HUMPHRIES: Mr Speaker, I move:

> That this Bill be agreed to in principle.

The Crimes (Amendment) Bill 1998 amends provisions of the Crimes Act 1900 to reflect the changed arrangements for commitment of defaulters to imprisonment. Under the new scheme the registrar, rather than the court, will issue warrants of commitment. The amendment effected by clause 4 ensures that, under the new arrangements, periods of imprisonment for fine default will be served cumulatively. There will be no discretion in the registrar to order that such periods of imprisonment be served concurrently.

The Bill also makes a series of amendments to the provisions which enable a fine defaulter to perform community service work as an alternative to imprisonment for fine default. Various provisions are omitted as they are inconsistent with the proposed new enforcement arrangements under the Magistrates Court Act which do not include community service work for fine defaulters. The changes to the community service provisions of the Act in relation to fine default effected by the Bill will not apply in relation to a person who is already the subject of a community service order when the new scheme commences.

Debate (on motion by **Mr Stanhope**) adjourned.

SUPREME COURT (AMENDMENT) BILL 1998

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (10.51): Mr Speaker, I present the Supreme Court (Amendment) Bill 1998, together with its explanatory memorandum.

Title read by Clerk.

MR HUMPHRIES: Mr Speaker, I move:

That this Bill be agreed to in principle.

Last year a review of court enforcement procedures was undertaken by a working party comprising representatives of the then Attorney-General's Department, the Registrar-General, the Law Society, the registrars of the Supreme Court and the Magistrates Court and the sheriff. In its report the working party made a number of recommendations and this Bill arises from one of those recommendations. The Bill is, apart from formal matters, the same as the Supreme Court (Amendment) Bill 1997 which was introduced into the Legislative Assembly in December last year but which lapsed after the Assembly rose without dealing with it.

This Bill will give the Supreme Court the capacity to order the sheriff to make a forced entry of premises occupied by a judgment debtor for any purpose connected with executing a judgment against the judgment debtor. The Bill will correct an inconsistency between the capacity of the Supreme Court and that of the Magistrates Court. The Magistrates Court (Civil Jurisdiction) Act 1982 already allows the Magistrates Court to make an order allowing a bailiff to make a forced entry to premises to seize property where the judgment debtor has refused entry or cannot be contacted.

The Bill will allow the court to make an order to enforce entry only in specific circumstances. The sheriff must first either have been refused entry by the judgment debtor or other occupier, after having informed or made reasonable attempts to inform the debtor or occupier of the procedure in relation to execution and the sheriff's intention to seek an order if entry is refused, or have been unable to contact the debtor or occupier to obtain consent after having made reasonable attempts to make contact.

On application by the sheriff, the court will be able to make an order if satisfied that the judgment debtor resides at the premises or there is property on the premises that the sheriff is entitled to seize, or that the sheriff is entitled to sell the premises themselves in execution of the judgment. The Bill will provide for the sheriff to enter premises using whatever force is necessary and reasonable, with the assistance of police if necessary, and will provide an immunity for acts done or omitted to be done in good faith in carrying out an order. At present, in contrast to a bailiff, the sheriff has no power to make a forced entry of a judgment debtor's residential premises, although the sheriff can make a forced entry of non-residential premises. This Bill will correct that anomaly but will also require the sheriff to seek an order of the court in order to make a forced entry of non-residential premises occupied by a judgment debtor.

Providing for a forced entry of residential premises to seize property may also assist in avoiding what is a most undesirable circumstance - that of a judgment debtor having his or her house sold in order to satisfy a judgment debt. Members will remember an unfortunate incident some time ago when a house was sold under a writ of venditioni exponas for a sum considerably less than its real value. While there is no suggestion that allowing the sheriff to make a forced entry to seize property in that case would have made any difference to the outcome, it may be that, in other cases, a forced entry would permit personal property to be seized and sold without the need for the sale of any interest in land. I should stress, however, that, even with the capacity to order a forced entry to seize personal property to satisfy a judgment debt, there will always be cases where the sale of an interest in land is the only possible result. The court, after all, must be able to enforce its judgments and a creditor is entitled to satisfaction. However, allowing the court also to order a forced entry for the purposes of the sale of the premises may result in a better price being obtained at the sale.

Debate (on motion by **Mr Stanhope**) adjourned.

MAGISTRATES COURT (CIVIL JURISDICTION) (AMENDMENT) BILL 1998

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (10.55): Mr Speaker, I present the Magistrates Court (Civil Jurisdiction) (Amendment) Bill 1998, together with its explanatory memorandum.

Title read by Clerk.

MR HUMPHRIES: Mr Speaker, I move:

> That this Bill be agreed to in principle.

This Bill will replace section 349 of the Magistrates Court (Civil Jurisdiction) Act 1982 with a new section 349 and is, apart from formal matters, the same as the Magistrates Court (Civil Jurisdiction) (Amendment) Bill (No. 2) 1997 which was introduced last December but which lapsed when the Assembly rose without dealing with it. Section 349 provides the Magistrates Court with a power to order a bailiff to make a forced entry of a judgment debtor's premises to seize property to satisfy a judgment debt in circumstances where the judgment debtor has refused entry or cannot be contacted.

The new section 349 will retain this capacity but will extend the Magistrates Court's powers, in that an order will be able to be made for any purposes connected with executing a writ of execution and when either the judgment debtor or another occupier of the premises denies entry or is unable to be contacted. The Bill will also provide specifically for police assistance for a bailiff in forcing an entry and will provide an immunity for a bailiff for acts done or omitted to be done in good faith in carrying out an order of the court.

The amendments to section 349 are part of a package of amendments to the enforcement powers of the court. The Supreme Court (Amendment) Bill 1998 will amend the Supreme Court Act to provide the Supreme Court with the power to order a forced entry by the sheriff. This Bill will provide consistency in relation to forced entry as far as is appropriate between the Magistrates Court (Civil Jurisdiction) Act and the Supreme Court Act.

Debate (on motion by **Mr Stanhope**) adjourned.

CRIMES (AMENDMENT) BILL (NO. 2) 1998

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (10.57): Mr Speaker, I present the Crimes (Amendment) Bill (No. 2) 1998, together with its explanatory memorandum.

Title read by Clerk.

MR HUMPHRIES: Mr Speaker, I move:

> That this Bill be agreed to in principle.

Some members of the Assembly will be familiar with this legislation. I introduced a Bill in the same terms in this place last year. Unfortunately, on that occasion the Assembly did not support the Bill. I am reintroducing the legislation to provide a further opportunity for the Assembly to consider the two quite significant amendments to the sentencing principles contained in the Crimes Act 1900 which it would effect. Those principles were inserted into the Act in 1993 by legislation introduced by the previous Labor Government. That legislation was influenced by a report on sentencing that was prepared by the Australian Law Reform Commission in 1988. A main aim of the legislation, as explained by the then Attorney-General in his presentation speech, was "to promote consistency in approach amongst sentences and to state clearly the principles upon which sentencing decisions are made".

Until 1993 there were no statutory provisions dealing with the determination of a sentence in the ACT. When the courts made a decision about sentencing, they were bound by common law principles. When the 1993 Bill was debated I supported, with some qualification, the codification of this area of the common law. I said it would be helpful to have a clear statement of the principles to be taken into account in relation to sentencing.

Since the amendments came into effect two problems have become apparent and the present Bill aims to overcome those problems. The problems have occurred because, in two areas, the 1993 statement of sentencing principles appears to have departed from the common law. The result is that courts may, from time to time, be required, depending on the particular circumstances of a case, to impose a more lenient sentence than if the common law continued to apply. The aim of the present amendments is to make it clear that the sentencing principles in the Crimes Act are a reflection of common law principles.

The first of the amendments is to subsection 429(2) of the Act. This provision deals with an offender's rehabilitation into society and the making of reparation to a victim. These are important factors to be taken into account in sentencing and would be taken into account under the common law. However, this provision can be interpreted as requiring a court to give these factors greater importance than would be the case under the common law.

Under the common law there are five fundamental purposes for which a sentence may be imposed. They are to punish the offender, to deter the offender or others from committing criminal acts, to rehabilitate the offender, to express the community's disapproval of the crime and to protect the community from the offender. In determining a particular sentence, these factors provide the underlying framework for the court's decision. The importance of each factor varies according to the circumstances of each offender and the facts of each case. For instance, in the case of a young offender or a first-time offender, rehabilitation will be of particular importance and may outweigh the other factors. In other cases, such as where the crime is serious and the offender has previous convictions, punishment and community protection may be the dominant factors.

It has been argued that subsection 429(2) gives rehabilitation and reparation greater importance than the other sentencing factors. The Full Court of the Federal Court, which serves as the court of criminal appeal for the ACT, held by a two to one majority in the Stafford case last year that the 1993 amendments did not change in "any significant way, the fundamental objectives of sentencing from punishment to the rehabilitation of the offender and restoration of the victim to his or her situation pre-offence".

However, given that the minority judgment of Justice Miles concluded that the effect of the 1993 amendments was that "rehabilitation and reparation are elevated in importance beyond all other criteria which are specified" - of course, Justice Miles is also the Chief Justice of our own Supreme Court - uncertainty as to the effect of the amendments remains. The High Court might take a different view from the Federal Court and the split decision in the Stafford case could encourage further testing of this issue.

Mr Speaker, the Government's view is that it would be unfortunate if the view that the 1993 amendments elevate rehabilitation and reparation above other sentencing factors were to prevail. There is no doubt that the rehabilitation of an offender is a very important factor in sentencing and that offenders should be encouraged to make reparation to victims. However, these should not be elevated in importance above other sentencing factors. The Government favours amending the Crimes Act to put the matter beyond doubt.

The present Bill achieves this by repealing section 429 and replacing it with a statement of the traditional common law purposes for which a sentence may be imposed. The five factors are those I mentioned earlier. The factors are in no particular order of importance. It is up to the court to assess the weight to be given to each factor in the light of the particular circumstances. The amendment to section 429 requires a small amount of tidying up of section 429A. Subsection 429A(1) contains a list of particular

matters which a court takes into account in determining a sentence. At present it includes some but not all of the factors in the new section 429 - that is, it is a bit of a jumble of the fundamental purposes of sentencing and of matters relevant to the particular circumstances of the offender and the offence. Clause 5 of the Bill does this tidying up.

I would point out that although reparation is not included in new section 429 it will continue to play an important role in the sentencing process. It is found in the list of matters to which a court must have regard in determining a sentence - at paragraph (f) of subsection 429A(1) - and detailed provisions for the making of reparation orders are found in section 437 of the Act.

Mr Speaker, the second problem that has become apparent in the 1993 amendments is found in paragraph (e) of section 429B of the Act. This provision prevents a court, when it determines a sentence, from increasing the severity of the sentence because of the prevalence of the offence. This is another instance of the 1993 amendments departing from the common law. Under the common law there is plentiful authority for the proposition that a court may impose a longer sentence than it otherwise would because of the prevalence of an offence. For instance, in the High Court in 1992 the present Chief Justice of Australia said that "an offence may be prevalent in one locality and rare in another, and sentences in those localities may properly reflect those factors".

When the 1993 amendments were debated I expressed concern about this provision and predicted that it was going to cause problems. I moved an amendment that it be deleted, but that amendment was defeated. The provision has caused considerable unease among the judiciary. One judge has strongly criticised the provision for needlessly restricting the discretion of the court in sentencing. The Chief Justice and the Director of Public Prosecutions - or at least the recently retired one - have also expressed concern. The way that prevalence is taken into account under the common law is shown in a case tried in the New South Wales District Court. An accused person pleaded guilty to conspiring to import heroin into Australia. The judge said that, owing to the prevalence of heroin in New South Wales, he was anxious to impose a sentence that would deter like-minded people from attempting the same crime. The judge sentenced him to 12 years' gaol with a nine-year non-parole period.

Mr Speaker, it is of great concern that the law in the ACT could prevent courts from acting as forcefully as they might think appropriate in order to deter people from committing crimes that are particularly prevalent in our community. It is equally worrying that sentencing courts may, in all cases and regardless of particular circumstances, be required to give particular importance to two sentencing factors and downgrade the importance of others.

The amendments to the sentencing principles proposed in this Bill are modelled on the approach taken in legislation in Victoria, Queensland and the Northern Territory. It appears that those jurisdictions were more successful in codifying the common law in this regard than was the ACT in 1993. I commend the Bill to the Assembly.

Debate (on motion by **Mr Stanhope**) adjourned.

RESIDENTIAL TENANCIES (CONSEQUENTIAL PROVISIONS) BILL 1998

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (11.06): I present the Residential Tenancies (Consequential Provisions) Bill 1998, together with its explanatory memorandum.

Title read by Clerk.

MR HUMPHRIES: I move:

> That this Bill be agreed to in principle.

I am pleased to present this Bill to the Assembly. The Residential Tenancies (Consequential Provisions) Bill proposes consequential amendments to a number of Acts and makes transitional arrangements with respect to the Residential Tenancies Act 1997 and its commencement on 26 May 1998. The transitional arrangements proposed relate to the status of bond moneys, condition reports, requests for payment of bond moneys and notices to quit formerly regulated by the Landlord and Tenant Act 1949. The Bill also proposes the repeal of the Landlord and Tenant Acts and Regulations. I commend the Bill to the Assembly.

Debate (on motion by **Mr Stanhope**) adjourned.

RESIDENTIAL TENANCIES (AMENDMENT) BILL 1998

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (11.08): I present the Residential Tenancies (Amendment) Bill 1998, together with its explanatory memorandum.

Title read by Clerk.

MR HUMPHRIES: I move:

> That this Bill be agreed to in principle.

The Residential Tenancies (Amendment) Bill proposes some minor and technical amendments to sections 62, 64 and 73 of the Residential Tenancies Act. The Bill also amends the definition of an "approved mediator" in the Residential Tenancies Act and repeals Division 3 of Part VI of the Act upon the commencement of the Mediation Act on 1 July 1998. The first amendment defines an approved mediator as a mediator registered under the Mediation Act. The second amendment repeals Division 3 of Part VI of the Act, which will not be needed once the Mediation Act commences. I commend the Bill to the Assembly.

Debate (on motion by **Mr Stanhope**) adjourned.

REMUNERATION TRIBUNAL (AMENDMENT) BILL 1998

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (11.09): I present the Remuneration Tribunal (Amendment) Bill 1998, together with its explanatory memorandum.

Title read by Clerk.

MR HUMPHRIES: I move:

> That this Bill be agreed to in principle.

Members will be aware that the Remuneration Tribunal makes determinations about the remuneration, allowances and entitlements of members of the Legislative Assembly. In particular, it determines the remuneration paid to members by reason of their holding particular offices, or performing particular functions, in relation to the Legislative Assembly.

For the avoidance of doubt about the power of the tribunal to make specific determinations about various offices which may arise because of the way in which section 73 of the Australian Capital Territory (Self-Government) Act 1988 is framed, this Bill particularises Assembly offices to be paid. In accordance with past practice, these offices include Leader and Deputy Leader of the Opposition, the Government and Opposition Whips, and the presiding member of an Assembly committee. The Bill does not deal with the power of the tribunal in respect of Ministers or other members of the Assembly.

Mr Speaker, I give notice that I will be seeking to have this Bill put forward for debate later this afternoon, and I commend it to the Assembly.

Debate (on motion by **Mr Stanhope**) adjourned.

SCHOOLS AUTHORITY (AMENDMENT) BILL 1998

MR STEFANIAK (Minister for Education) (11.11): Mr Speaker, I present the Schools Authority (Amendment) Bill 1998, together with an explanatory memorandum.

Title read by Clerk.

MR STEFANIAK: Mr Speaker, I move:

> That this Bill be agreed to in principle.

Mr Speaker, I am pleased to present the Schools Authority (Amendment) Bill 1998. This amendment deletes references to the Schools Authority Advisory Committee in the ACT and ensures that we are not in breach of the legislation.

The Schools Authority Act is out of date and requires revision. In fact, this amendment begins the process of making sure the legislative basis for education in the ACT accurately reflects current needs for governance, administration and appropriate delivery of education. The second part of this process of review, which I would like to foreshadow now, is a revision of the Education Act 1937. Changes to this Act will be part of a separate legislative amendment. The Education Act is now 61 years old and it is certainly time that it too was brought up to date.

Last year Mr Moore drew the Assembly's attention to the fact that the Schools Authority Advisory Committee specified in the Schools Authority Act 1976 no longer operated. Mr Moore was correct. Following self-government, the Schools Authority Advisory Committee lapsed. Its last meeting was held in July 1989. The government of the day established a Consultative Committee on Schools to advise the Minister, which observed the intent of the legislation. Over the intervening period other consultative and advisory bodies representing client and interest groups have continued to advise successive Ministers on matters relating to education. This function is presently accomplished through two bodies, the Ministerial Advisory Council on Government Schooling and the Ministerial Advisory Committee on Non-Government Schooling.

Mr Speaker, as I said earlier, the Schools Authority Act predates self-government in the ACT. The function of the advisory committee prior to self-government was to advise the authority rather than the Minister. Under self-government it is also more appropriate to have a committee advising the Minister directly. The Government, in line with its election commitment, intends to undertake a review of education legislation this year. I will announce details of this review shortly. Because there is widespread community interest in education in the ACT, community consultation is of paramount importance in reviewing education legislation.

My thinking at this stage, however, is that a discussion paper on the review of education legislation would be prepared to facilitate widespread consultation. The paper would propose the terms of reference for the review, examine other States' approaches to education legislation review, and explore the key issues for education in the ACT. The main issues would include such things as school governance, and the role and power of government school boards, which is a particularly important issue in the light of the implementation of school-based management. Focus sessions with stakeholders could be conducted later this year. An exposure draft of a new education Act could be released for comment early next year, and final legislation could then be prepared.

As we work towards enhancing partnerships with parents and the broader community in the Territory and continue our work towards enhancing schools' capacities to manage their own affairs, we must have a legislative foundation incorporating and guiding these concepts. I consider that this process for the review of the legislative basis for education in the ACT, beginning with the above amendment, is a vital step in maintaining the excellence and the innovative nature of education in the ACT.

Mr Speaker, I commend the Bill to the Assembly. This amendment rectifies the situation noted by Mr Moore. It is important to proceed with this amendment, albeit prior to the consultation process on the full review of education legislation, to rectify a technical breach of the Act.

Debate (on motion by **Mr Corbell**) adjourned.

REPORT OF THE REVIEW OF GOVERNANCE - SELECT COMMITTEE
Reference

MS CARNELL (Chief Minister and Treasurer) (11.15): Mr Speaker, I need to amend this motion, so it might be an idea to do that up front. I ask for leave of the Assembly to amend my motion by inserting "the Review of" after "Report of".

Leave granted.

MS CARNELL: Mr Speaker, I move the motion, as amended, standing in my name on the notice paper. The motion now reads:

> That the Report of the Review of the Governance of the Australian Capital Territory be referred to the Select Committee on the Report of the Review of Governance for inquiry and report.

I tabled the Report of the Review of Governance of the ACT on Tuesday this week. On that day the Assembly also established a select committee to consider the report. I now wish to refer the report to the committee for its consideration. Mr Speaker, I am proposing that the committee report back to the Assembly in the first sitting week of August this year, 1998. This will ensure that there is ample time for the committee to fully consider all the recommendations contained in the report and still allow time for any recommendations to be dealt with quickly.

MR STANHOPE (Leader of the Opposition) (11.16): The Labor Party is very pleased to support this motion. It was, after all, an idea which I floated after the disaster we experienced in relation to the Executive committees. I think the initial proposal was that this matter be referred to an Executive committee. I think we are all very aware of the disaster that befell that proposal, and quite rightly. We are very happy to see that the Chief Minister has picked up our idea that there should be a select committee to look into the Pettit report. We look forward to playing an active part on that committee. I propose to nominate as the ALP representative on the committee and I look forward to getting the support of the other members of that committee, when they are nominated, in being appointed chair of the committee.

This is a very important report. I think it is a little bit of a pity that it has been pre-empted to some extent. Some of the work of the committee perhaps has been affected by the fact that the Assembly has already resolved not to accept a couple of the recommendations by its actions the other day in relation to the establishment of the standing committees.

Recommendations 22 and 24 have already been rendered irrelevant by the Assembly, and I think that is a pity. There are, of course, a number of significant issues that do need to be addressed, and I look forward to doing that.

MR MOORE (Minister for Health and Community Care) (11.18): Mr Speaker, I am absolutely delighted that this matter will be referred to a select committee. It was always my intention that that would be the case from my perspective. It seems to me that we have been through a long process to get to this point. The process can really work only when there is general agreement within the Assembly about what we are trying to achieve.

I have to say that, on reading through the Report of the Review of Governance that was conducted by Professor Pettit, there are a number of things that I find quite disturbing. No doubt other members look at it and find quite disturbing things that I think are very good. That is one of the reasons why it is appropriate that we do refer it to a select committee. I would add, though, that Professor Pettit, when he went around and talked to members before the report came down and basically shared with us pretty well the general tenor of what was in it, made it very clear to Ms Tucker and me when he spoke to us, and I presume to other members, that he did not see his report as the tablets of stone coming down from Mount Sinai. He saw it as containing matters to be discussed, to be considered carefully, and then to be either adopted or rejected by the Assembly. Decisions will be made. Sometimes a majority decision will be taken on issues, but where possible we should see where we have agreement.

One of the most interesting things to me in the report that came down was the suggestion that the system that we operate is a cross between a Westminster system and a Washington system. Perhaps we should refer to it, as Crispin Hull wrote in his article the other day, as a Washminster system. Often things have been justified and actions taken because this is not Westminster. I think we have to be very careful about that. We have to remember that the Westminster system, after all, has as its house of review a house that is not elected.

Mr Corbell: It does not perform a review function anyway.

MR MOORE: I do not think anybody in Australia would be keen to have a house of review that matched the House of Lords. As Mr Corbell interjects, it has an entirely different function.

Mr Corbell: It does not have any review function at all. It has no power.

MR MOORE: It has an entirely different function. I called it a house of review. I should have called it the upper house rather than the house of review. Yes, you are quite right. It seems to me that we need to open our minds to the range of possibilities. Mr Speaker, there is another factor, I think, in considering this in terms of the select committee. So far the proposal has been that it be a three-member select committee. I have had a chance to discuss this with some of my colleagues on this side of the house and with you, Mr Speaker, prior to this afternoon's debate on the appointment of the personnel to be on the committee. It would seem to me that there would be some advantage in having you, Mr Speaker, on that committee as well, and I was pleased when I spoke to you that you would be willing to do that.

I would ask members, particularly from the Labor Party and from the crossbenches, to consider how they feel about the Speaker being on that committee as well, thus bringing the extra knowledge and experience he has from the position in which he sits and from the way he sees the house, so that the committee can ensure that it takes into account the roles that he performs. When the motion relating to the membership of the committee comes before us, I hope that suggestion will receive widespread support.

I chaired a committee with four members on it throughout the last Assembly. It worked particularly effectively. This is slightly different because it would mean having two Liberal members. My nomination of you, Mr Speaker, will be much more as Speaker and the way you play your role in the Administration and Procedure Committee, rather than as a Liberal member. That would be the perception that I would want to put on that, although, obviously, you never lose sight of the fact that you are a member of the Liberal Party. I want to flag early notice that that is what I am considering, so that members can come back to me and say, "No, this is a crazy idea", or, "Yes, perhaps that has merit", and perhaps I can discuss it further. The principle behind this motion is the referral of that report to a select committee for proper consideration by this Assembly of the range of ideas that Professor Pettit has presented, from electoral reform right through to reform of the Assembly itself. I wish the members who are on that committee very well in that process.

MR RUGENDYKE (11.23): It is with great pleasure that I rise to welcome this reference to the select committee on behalf of Mr Osborne who is somewhat indisposed at the moment. He was last sighted heading down the corridor chasing a couple of his toddlers. It is now more than 12 months since Mr Osborne began to focus on reform of the Territory's system of government and it was a feature of his election campaign. That process has now completed another step with the report of the Pettit committee and is entering perhaps its most crucial phase with its referral to the select committee.

Pettit has given us some ideas. Some are acceptable to all parties and Independents in this place and, clearly, some are not. Now the select committee must weigh up the ideas and work out what is practical, achievable and, above all, in the best interests of the people of Canberra. I hope that the committee, with the input of all members in this place, will find common ground. We both look forward to working together on this.

MR CORBELL (11.24): Mr Speaker, the Labor Party certainly welcomes the proposal put forward by the Chief Minister to introduce a select committee to inquire into the various recommendations and points raised by Professor Pettit. The Labor Party has indicated already, though, its concern that the Assembly has pre-empted proper consideration of the issues in a number of areas that have been quite rightly raised by Professor Pettit. Indeed, our view all along has been that it is with ill haste that we rush to create new committees without fully examining and considering, as a parliament, the implications of how they may affect our operation as a legislature. We would have preferred to see the existing committee structure remain in place prior to consideration of the select committee's report. Nevertheless, the Assembly has agreed already to institute a new regime of committees, and the Labor Party, of course, accepts the decision of a majority of the Assembly.

Mr Speaker, I wish to address one particular point in relation to Mr Moore. Mr Moore raised the point that he would be interested in seeing the Speaker as a member of the committee. We have no in-principle objection to that, but when we consider membership of the committee in the debate this afternoon we want to consider having maybe five members on the committee so that we have a fair balance proportionally, as standing orders require, of Opposition, Government and crossbench members on the committee. We are open to discussion on that. I am sure there will be discussion throughout the morning as to whether or not there needs to be a Government member plus the Speaker, or whether there needs to be simply the Speaker as Speaker and as a member of the Government party.

Mr Speaker, most importantly, our concern is to ensure that the select committee operates in a way which ensures that detailed and serious consideration can be given to many of the recommendations of Pettit and that in no way does the Assembly attempt further to pre-empt what that committee may come down with, because, obviously, one of the strengths of this parliament is its committee system. I would hope that the committee would be able to present a bipartisan report, but we will wait and see the deliberations on that. That may not occur. I would hope that we are able to come forward with a strong set of recommendations that will continue the process of creating a still more open and more accountable government and operation of the parliament in the ACT.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (11.28): Mr Speaker, just to take this debate about membership one stage further - it is probably not relevant, but no-one has taken the point of order - I will make my comments as well. I think it would be better - - -

Mr Berry: It is allowed now. You can just do it any time you want.

MR HUMPHRIES: Yes, that is right, Wayne. You do not carry a chip on your shoulder, do you? No, not at all.

MR SPEAKER: Order! Just settle down.

MR HUMPHRIES: Mr Speaker, I think it is probably better not to have a large committee. I would suggest that, if the Labor Party feels that the Speaker equates with the Liberal Party, we are quite content for there to be only one nominee from the Liberal Party on that committee, and that would be - - -

Ms Carnell: That will be the Speaker.

MR HUMPHRIES: That would be the Speaker.

MS CARNELL (Chief Minister and Treasurer) (11.28), in reply: I would like to thank members for their support for this referral. I hope that every member of the committee - I am sure this will be the case - will address the Report of the Review of the Governance of the ACT with an open mind. I am sure everyone would be very concerned if this was played in any way along party lines.

I was disappointed, I have to say, with Mr Stanhope's speech because just two days ago Mr Stanhope, in his inaugural speech, made the point that this was a brave new world for the Labor Party; that this brave new world was going to be about less adversarial approaches and all of those sorts of things.

Mr Stanhope: You will choke, Chief Minister.

MS CARNELL: They are not my comments; they are those of those opposite. I agree that this was the Labor Party's idea. We took it on board because it was a good idea. We will continue to take that approach, as we did for the last three years, and as we will in the future. It was fascinating that just two days later, Mr Speaker, just two days after those wonderful comments, Mr Stanhope could not even accept and could not even be gracious in a situation like this. That really does not matter, Mr Speaker. Anyway, that is fine, Mr Speaker. We are very happy that we do have the support of the Assembly on this issue. I am confident that this committee will bring forward some very real reforms or will support some very real reforms to this Assembly, ones that will mean that we will serve the people of Canberra even better.

Question resolved in the affirmative.

ADMINISTRATION AND PROCEDURE - STANDING COMMITTEE
Report on Standing Order 8 - Temporary Deputy Speakers

MR SPEAKER: I present a report of the Standing Committee on Administration and Procedure entitled "Standing Order 8, Temporary Deputy Speakers".

MR CORBELL (11.30): I move:

> That the report be adopted.

On behalf of the Administration and Procedure Committee, I would like to indicate that this is a unanimous report of the committee which emphasises the importance of ensuring that all parties in the Assembly and all groupings and Independent members of the Assembly are represented in the various positions and forums that we have in this place. One that has been a matter of some oversight for a period of time has been the positions of Temporary Deputy Speaker.

Currently the standing orders provide for two Temporary Deputy Speakers and, by convention, they have been chosen from the Government and Opposition sides of the chamber. At the request of the crossbenchers, the Administration and Procedure Committee has considered whether or not it is appropriate to provide for a third person to be nominated from the crossbenchers collectively so that all groupings in the Assembly are represented on the panel that can replace the Speaker from time to time, and the Deputy Speaker if he also is unable to chair the Assembly. I think it is a sensible recommendation and I urge the Assembly to support it.

Question resolved in the affirmative.

EXECUTIVE BUSINESS - PRECEDENCE

Motion (by **Mr Humphries**) agreed to:

That Executive business be called on.

INTERPRETATION (AMENDMENT) BILL 1998

Debate resumed from 28 April 1998, on motion by **Mr Humphries**:

That this Bill be agreed to in principle.

MR STANHOPE (Leader of the Opposition) (11.32): The Labor Party supports this Bill. This is a machinery amendment, Mr Speaker. As I indicated earlier, the Labor Party was not all that comfortable with the committee structure that we have developed this time around, but we have had that debate. We accept this as a very useful and necessary amendment, Mr Speaker.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (11.33), in reply: I thank members for their support for this Bill.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

Sitting suspended from 11.34 am to 2.30 pm

VISITORS

MR SPEAKER: I would like to take the opportunity to welcome a group in the gallery from the University of the Third Age. Welcome to your Assembly.

QUESTIONS WITHOUT NOTICE

Employment - Private Sector

MR STANHOPE: Mr Speaker, my question is to the Chief Minister. The Chief Minister has claimed that the number of private sector jobs in the ACT has grown by 20 per cent over the past two years - from 75,000 to 90,000. Can she explain why the document she tabled yesterday in support of this claim shows only a 4 per cent growth in private sector jobs - from 83,800 to 87,400? Why has the Chief Minister misstated the extent of growth of private sector jobs in Canberra?

MS CARNELL: Mr Speaker, I do not even know when I made the statement that Mr Stanhope is talking about. I do know that one of my staff, when speaking to a member of the *Canberra Times* staff, as I understand it, made a comment along the lines that the changes in employment in the ACT have moved it from about fifty-fifty to about sixty-forty. What the *Canberra Times* might do with that information is really in the hands of the *Canberra Times*, Mr Speaker. So, I have to say: Mr Stanhope, wrong again!

MR SPEAKER: Do you have a supplementary question, Mr Stanhope?

MR STANHOPE: Yes, Mr Speaker. In question time yesterday the Chief Minister said, and I shall quote just part of it:

> That means that the private sector employment was 87,400. I have to say that maybe the *Canberra Times* got it wrong. It was not 60,000 : 90,000; it was 68,000 : 87,000. I do not think that is a huge difference.

Could the Chief Minister explain her previous answer in which she claims that she has never made such a statement?

MS CARNELL: Mr Speaker, that is exactly what I said. Mr Speaker, I understand that Mr Stanhope said that a member of my staff - - -

Mr Stanhope: You agreed yesterday.

MS CARNELL: Mr Speaker, the figures that I tabled yesterday showed that, as I remember. Mr Speaker, the *Canberra Times* quoted a staff member of mine as saying, I think, that there were something like 60,000 people in the public sector and 90,000 in the private sector. The figures that I tabled yesterday showed that the reality is that we - - -

Mr Berry: I take a point of order, Mr Speaker. I think the supplementary question goes to the issue of the Chief Minister's statement yesterday that it was 68,000 : 87,000. I would ask that the Chief Minister address the subject of the question.

Mr Humphries: Mr Speaker, Mr Berry is doing what he has done many times before - apparently nothing has changed in this Assembly - that is, simply using points of order to restate a question. That is not what points of order are about. The Chief Minister has barely begun to answer the supplementary question and ought not to be put upon in that way.

MR SPEAKER: Order! I am sure the Chief Minister knows the supplementary question. Have you finished or are you finishing?

MS CARNELL: Mr Speaker, the initial question, as I remember, was that Mr Stanhope was concerned that a staff member of mine was quoted in the *Canberra Times* as saying that there were 90,000 people in the private sector and 60,000 people in the public sector in the ACT. Mr Stanhope wondered where those figures came from. Yesterday, I tabled the statistics to show that the figures that the 60,000 and 90,000 were based upon were actually 68,000 people in the public sector and approximately 87,000 in the private sector, which I did not think was all that different from 60,000 and 90,000. I have to say that I should have been a bit concerned because for us to underestimate the number of people in the public sector by 8,000 is probably something that we should not have done. It just shows you that the ACT employs many more public sector people than we thought. Mr Speaker, I do not think that anybody in the ACT - - -

Mr Corbell: Loose with the truth.

MS CARNELL: Mr Speaker, the figures were tabled yesterday. Poor old Mr Stanhope, after only a week in this place, is - - -

Mr Humphries: I rise on a point of order, Mr Speaker. Mr Corbell, from the party that does not believe in personal invective, has accused the Chief Minister of being loose with the truth. I think that was the phrase he used. That is tantamount to saying that she is telling a lie, and he should be asked to withdraw.

MR SPEAKER: I did not hear it. If that is true, Mr Corbell, I ask you to withdraw it.

Mr Corbell: I withdraw the comment, Mr Speaker.

MS CARNELL: Mr Speaker, the figures that I tabled yesterday, of approximately 68,000 people in the public sector and 87,000 people in the private sector, are the figures that were the basis, I understand, of the comment made to the *Canberra Times* journalist of approximately 60 per cent to approximately 40 per cent. That is exactly what happened. Poor old Mr Stanhope should try to find some questions on issues that actually affect the people of Canberra.

Youth1000 Program

MR HIRD: Mr Stanhope, the Leader of the Opposition, has been hit by a bolt of lightning on jobs.

MR SPEAKER: Ask your question, Mr Hird.

MR HIRD: My question is to the Chief Minister and it is on jobs. Can the Chief Minister advise the parliament whether the Government's Youth1000 employment program reached its target of 1,000 jobs - 1,000 jobs, Mr Stanhope - for young Canberrans before Easter this year? I also ask: How many businesses participated in this scheme?

MS CARNELL: Mr Speaker, all of those people who were in the last Assembly - of course, quite a number of the ones opposite were not - would remember very definitely how this scheme was actually opposed by those opposite, was run down, was said to be not up to scratch. Mr Speaker, in August of last year the Government announced, as we know, that it would undertake what, I have to say, was a bold new employment program in partnership with the CES and the private sector. The program, known as Youth500, aimed to place 500 young Canberrans under the age of 21 in jobs by Christmas.

The reason I say "bold", Mr Speaker, is that it is always tough to set targets like that, because we know that if it had been 490 Mr Stanhope would have said, "Shock, horror! Your figures were wrong, Chief Minister". The fact that 490 people got jobs would not have mattered, Mr Speaker. So, it was a bold initiative. Following the outstanding success in achieving the 500 target, we decided to take another risk and expand the program to Youth1000. That risk was well worth taking because, I have to say, the scheme is now widely regarded as the most successful employment initiative carried out since self-government - and it is regarded as such not just by the Government, but by all of the people involved.

Mr Speaker, I would like to confirm that earlier this month the target of 1,000 jobs was reached. For the record, the 1,000th person was Noel Alchin, who was employed by Terry Pulford Smash Repairs in Fyshwick in the week before Christmas. So, in just 35 weeks an average of 30 placements a week was achieved and 1,000 teenagers were able to access new employment, training and apprenticeship opportunities. This is a program that those opposite opposed. Mr Speaker, I think the fascinating part about this was that almost 40 per cent of those placements were of young people who had been unemployed for six months or more - 40 per cent of the 1,000 had been unemployed for six months or more. Also, I am sure those opposite will be very interested to know, 337 apprenticeships and 444 traineeships were created under Youth1000. In other words, almost 80 per cent of the placements were in long-term training positions.

Mr Speaker, I want to use this opportunity to give credit to a number of the people who took part in the program, and to the people who actually came up with the idea. This idea did not come from government. It came as a result of a youth employment symposium that was put together by the non-government sector more than 12 months ago. It came in response to a challenge that I issued at that conference in asking the government and community sectors to come up with, I suppose, an approach to address the issue of

youth unemployment. They did that, Mr Speaker. I think it is important right now to mention particularly the contributions of John Gregg and David Matthews from the youth sector. They really were the driving forces behind that seminar, and they have continued to be very supportive of this whole approach. I think it is important also to thank the staff of the CES, particularly taking into account that the CES finishes in its old guise today. So, this is a good opportunity, I think, to say thank you to all of those staff that committed themselves absolutely to this program. Also, the Vocational Education and Training Authority and the ACT Public Service were involved and really made this scheme work.

Mr Speaker, I think the real credit for Youth1000 should go to the 680 Canberra businesses and other organisations that took part in it. That is right, Mr Speaker: 680 organisations helped us to achieve our aim of creating jobs for 1,000 young people in less than nine months. Mr Berry has been interjecting, as usual. I assume he has been saying - I did not quite hear because I tend not to listen - all the way through that they are only public sector jobs. He has regularly made that comment. The reality is that 90 per cent of those 680 organisations were private sector firms. Mr Speaker, without the support of local businesses, this program could not have worked. For the record, only two organisations in the whole of the ACT opposed Youth1000 - and that includes the youth sector, the community sector and the business sector. The two organisations, Mr Speaker, were the ACT Labor Party and the Trades and Labour Council. Do I need to say any more?

MR HIRD: I have a supplementary question, Mr Speaker. Could the Chief Minister identify those two groups again, for the benefit of the people opposite?

MS CARNELL: Mr Speaker, the ACT Labor Party and the Trades and Labour Council opposed getting jobs for 1,000 young people under the age of 21, predominantly in long-term training positions. Forty per cent of the 1,000 were young people who had been unemployed for longer than six months, and those opposite opposed it, Mr Speaker.

ACTEW - Scoping Study

MR QUINLAN: My question is to the Chief Minister and Treasurer. The Fay Richwhite report on ACTEW states that 3 per cent of the value of ACTEW is at risk from market or regulatory forces. Given that only 3 per cent of the value of that business - a business worth $1½ billion - is subject to real risk, will the Chief Minister concede that any scoping study done on the privatisation of ACTEW should focus primarily, if not solely, on that area?

MS CARNELL: Unfortunately, it seems that Mr Quinlan does not understand the figures. He certainly does not understand the Fay Richwhite report. It seems that Mr Quinlan does not understand the difference between economic value and such important things as profit and revenue.

Mr Berry: I take a point of order, Mr Speaker. Mr Quinlan's understanding of the issue was not the subject of the question. The subject of the question was clearly set out and the Chief Minister should attempt to answer it.

MR SPEAKER: The Chief Minister is beginning to answer the question. There is no point of order.

MS CARNELL: Mr Speaker, I am very happy to answer the question. Again, the economic value that Mr Quinlan quotes has absolutely nothing to do with either the revenue or the profitability of ACTEW. In fact, 9 per cent of ACTEW's clients are non-domestic. That is not a lot. They make up - wait for this - 62 per cent of ACTEW's revenue. We know that those non-domestic clients are the ones that are open to contestability right now. I think it shows very definitely that there is significant risk for ACTEW right across the board if we do not do anything. But I have to say that we have not made a decision, unlike those opposite, on the way forward for ACTEW at the moment. In fact, the whole basis of the scoping study is to look at things such as whether ACTEW should be disaggregated, which the board of ACTEW has asked us to look at, and what sort of approach we should take in the future - whether it should be to increase the risk profile for ACTEW or whether it would be something like a merger, maybe a franchise arrangement or maybe a total sale. Maybe we should be looking - and we certainly will be looking - at selling or other forms or approaches for certain pieces of ACTEW. That is what a scoping study does, Mr Speaker.

I am very pleased that Mr Quinlan supports the scoping study, and supports the scoping study looking at really important issues such as which bits of ACTEW should go to the market and which bit should not, or should the lot go to the market. But it is fascinating, Mr Speaker, because those opposite really cannot get their act together on this. Mr Quinlan has indicated that he is willing to look at the electricity retail part going to the market; I think he said that this morning. At lunchtime I heard Mr Corbell say, "I did not think he wanted anything to go to the market". Mr Quinlan made the point on radio the other morning that he could understand that electricity prices would have to go up. On the same day Mr Berry said that he would not accept a situation where commercial users of electricity stopped subsidising the domestic users - exactly what Mr Quinlan had said that morning. I think they should get their act together across there.

MR QUINLAN: I have a supplementary question, Mr Speaker. Are all of the businesses that got a listing in the *Canberra Times* this morning subject to the same level of risk, or is this just a scare tactic to muddy the waters in relation to ACTEW?

MS CARNELL: Mr Speaker, all of the businesses that were listed in the *Canberra Times* this morning have to be reviewed under national competition policy.

Public Service - Advertising with Pay Slips

MS TUCKER: My question is to the Chief Minister. Chief Minister, you are probably aware that, for the first time, today's ACT Public Service pay slips also contained junk mail as a result of a revenue-raising deal with a private advertising company. In this case, the A4 size advertisement was promoting an insurance company. According to a memo sent to all staff by the Commissioner for Public Administration, the advertising company engaged by the Government is to implement a marketing strategy to attract advertisers. We do wonder what sorts of goods and services might get a plug. The Minister also will be aware that many people do not like receiving unsolicited advertising, which is why so many Canberrans have "No Junk Mail" stickers on their letterboxes. My question is: Will you recognise the distaste many people have for junk mail by giving public servants a choice about whether they receive such material with their pay slips, or do public servants who object to such material now need to put "No Junk Mail" stickers on their pigeonholes and in-trays as well?

MS CARNELL: Mr Speaker, a pilot pay slip advertising scheme is being trialled in the ACT Public Service; actually, it commenced yesterday. It is proposed that this trial be for a 12-month period. The period will allow for adequate time to assess the viabilities and the impacts of the scheme. A similar scheme has already been successfully undertaken by the Queensland Government. This scheme is anticipated to generate approximately $15,000 in revenue per year. All revenue received from the scheme will be reinvested in training and development opportunities for ACT public servants to improve service delivery to the ACT community. This represents another example of the ACT Public Service's commitment to seeking out new and innovative ways of doing business.

A private sector advertising firm operating in Canberra - TMP Worldwide - has undertaken a comprehensive marketing strategy to attract potential advertisers to the pilot scheme, with an excellent initial response, including the CPS Credit Union and SmartCover. I will not make any comments on the people who are involved in SmartCover, but those opposite would know them quite well, Mr Speaker. Guidelines have also been developed to ensure that advertising material is suitable and does not conflict with Government policies, activities or legislation. All advertising will be approved by the ACT Government prior to inclusion with pay slips and will be focused on providing information of benefit to staff.

MS TUCKER: I wish to ask a supplementary question. The question was not answered. I said, "Will you give public servants an opportunity not to be part of this pilot scheme?". I assumed you to mean that they will not be. My supplementary question is: Given that the revenue raised is to be used for training and development programs, does this mean that the level of training and development of ACT public servants will now be contingent on how many advertising dollars the Public Service can attract? For what other aspects of government activity will we need sponsorship?

MS CARNELL: Mr Speaker, this is extra money that will go into training every year. I do not think there is any organisation that could say that extra training dollars would not be of benefit. This proposal has come from the Public Service itself. I do not think my Cabinet colleagues would have even known about it. It has come from the public sector.

It is a public sector initiative, looking at ways of improving the service that they give to the people of Canberra. I think we should congratulate them for being innovative. I have to say that, whenever innovative ideas come forward from the Public Service that could or will improve the service that they provide, I will support them.

Ecowise Services Ltd

MR HARGREAVES: My question is to the Deputy Chief Minister. In the past couple of days we have heard in this place that the Chief Minister is happy to leave the decision on the sale of Ecowise Services to the board of ACTEW. That organisation is reported to hold assets to the value of $400,000 and employ around 50 people. If the Minister is, or is to become, the other voting shareholder of ACTEW, can he give the Assembly an indication of what it would take for him to take a direct interest in an organisation in which he holds a 50 per cent shareholding in trust on behalf of the people of Canberra?

MS CARNELL: Mr Speaker, that is a question that I will take because I am the Treasurer. Mr Speaker, I can - - -

Mr Corbell: Mr Speaker, I wish to raise a point of order. The question was specifically directed to Mr Humphries in his capacity as a shareholder of ACTEW. He has responsibilities, too, as a 50 per cent shareholder of that organisation. We want to know Mr Humphries's view of how he intends to undertake his responsibilities as a shareholder.

Mr Humphries: Mr Speaker, on the point of order Mr Corbell has raised: Both Mrs Carnell and I are shareholders in ACTEW; but our role as shareholders is determined by the policies of the Government, on whose behalf we hold those shares. Therefore, the Treasurer, whose primary responsibility it is - and I assist her in that role - to determine what the policy should be in respect of ACTEW and component parts thereof, is the appropriate person to answer that question.

Mr Berry: Further to the point of order, Mr Speaker: Mr Humphries is a voting shareholder. It is not just some symbol in the night. He is a voting shareholder, and the community is entitled to know and understand what his position is in relation to the matter.

MR SPEAKER: I am about to rule on the point of order, Mr Berry.

Mr Berry: May I restate the standing order, Mr Speaker: Questions may be put to a Minister relating to public affairs - I think a voting shareholding in ACTEW is a public affair - with which that Minister is officially connected. I think it is pretty official that Mr Humphries is a voting shareholder.

MR SPEAKER: Order! The house will come to order. It is also true, however, that *House of Representatives Practice*, at page 505, under the heading "Direction of Questions - to Ministers", states that questions may be transferred to other Ministers.

That has happened in this house before, certainly in the last three years. Therefore, there is no point of order. If the Chief Minister chooses to answer that question, it is quite within standing orders for her to do so. As members are well aware, if our own standing orders do not cover particular issues, we refer to *House of Representatives Practice*. I repeat that page 505 allows the transfer of questions. I call the Chief Minister.

MS CARNELL: Thank you very much, Mr Speaker. To start with, Mr Hargreaves's question was actually wrong, because the Government has not given - - -

Mr Hargreaves: How could a question be wrong?

MS CARNELL: I do not know, but you are wrong. You are factually incorrect in your question. Mr Speaker, the shareholders have not given the okay for the sale of Ecowise. We have not yet been asked to do so, Mr Speaker. Certainly, if the decision of ACTEW in the end is to sell Ecowise, then that decision will come back to the shareholders. But, as I have said on both days of this sitting period, what has happened at this stage is that this issue has not come to a shareholders meeting. If a decision to sell Ecowise to its employees were made, it would, and then Mr Humphries and I would make a final decision.

This is probably a good opportunity to answer a question that Mr Corbell asked yesterday about a date. On 23 March, the chairman of the board and the chief executive of ACTEW indicated to me in a private meeting that they were interested in looking at whether a staff buyout of Ecowise Services had support from the staff members. As I have said in this place, I said to them, "I think that is a good idea. I think it is something that would be of benefit to the staff members. Go for it". That is exactly where it is up to at this stage, Mr Speaker. I do believe that it is a good idea. But no decision has been taken at this stage for Ecowise to be sold to its employees. If that decision is taken, then it will come to a shareholders meeting.

MR SPEAKER: Mr Hargreaves, do you have a supplementary question?

MR HARGREAVES: Yes, Mr Speaker. I address my question to the Deputy Chief Minister, the Chief Minister or any other Minister that wants to play table tennis about responsibilities in this regard. I am particularly interested in the response of the Deputy Chief Minister, who seems to have deferred his responsibilities as a 50 per cent shareholder. Can the Minister say whether this threshold of $400,000 or 50 people will permit this Government to abrogate its responsibilities to its shareholders and allow the sale of other smaller enterprises, such as the Cemeteries Trust, without reference to shareholders but with merely reference to a board?

MS CARNELL: Mr Speaker, as I just said, if the decision is taken to sell Ecowise, that decision will come to a shareholders meeting. The fact is that it has not come to a shareholders meeting because a decision has not been taken. What has been said, what has been determined at this stage, is that the decision on whether you go down the path that they are going down has to be left to the board. The board has to make

those sorts of decisions. That is absolutely true, Mr Speaker. What has to happen now, of course, is that, if a decision is taken by ACTEW to go down this path, it would come to a shareholders meeting. At that stage, both Mr Humphries and I would be totally briefed on the issue and a decision would be taken.

Police Force

MR RUGENDYKE: My question is to the Minister for Justice and Community Safety. Mr Humphries, there seems to have been a lot of confusion towards the end of the last Assembly and during the election campaign on the day-to-day police numbers, their responsibilities and the positions they fill. I wonder whether you could clear up the matter for us. On any given day, how many police do we have contracted to work in the ACT? On average, what percentage of them would be off on some sort of leave - recreation leave, sick leave - workers compensation, et cetera? What percentage would be public service positions? What percentage might be based outside the ACT but included in ACT figures? What number would be left who are actual operational police officers on a day-to-day basis in our community at the moment?

MR HUMPHRIES: Mr Speaker, I thank Mr Rugendyke for his question. I notice he has a question on the notice paper about police numbers over the last nine years or so. In the process of answering that question, I think some of the issues he has raised in today's question will be answered. But let me say that I certainly have been concerned since discovering about 18 months ago that the figures being supplied at that stage by the Australian Federal Police to the ACT Government were not accurate with respect to police numbers. As a result of that discovery, we have been very keen to get a much more accurate flow of information from the Australian Federal Police about police numbers in the ACT.

We have contracted 694, as you are aware. That does include staff positions as well as sworn officers. I hope it does not include anybody based outside the ACT, although I could not be absolutely certain that it did not until we had a better way of being able to engineer accountability from the Federal Police for numbers in the ACT. I will seek to get the information that you have asked for. I will be as interested as you are in seeing what the information discloses. Certainly, we have made it very clear to the Australian Federal Police, as we move to renegotiate the police contract with the Federal Government, that we have a much higher level of accountability for what goes on in the ACT with respect to policing. The level of information flow has not been satisfactory in the past. It is now much better, but it could go a lot further, I think. We look forward to being able to get that better information. I hope to be able to supply that information to Mr Rugendyke in due course.

MR RUGENDYKE: I have a supplementary question, Mr Speaker. I would be concerned if that figure of 694 included positions in the police technical unit, the special branch, the video unit and the diplomatic liaison posts. I would ask that in Mr Humphries's questioning of the AFP those positions be accounted for and not included in the figures.

MR HUMPHRIES: Included in the 694 there certainly are a number of particular units of operation which focus on work outside that of community policing in the ACT. Some of the units you have referred to may be included among the total number. Bear in mind, of course, that the ACT pays for only 600 or so of that 694, to account for work done on behalf of the Commonwealth by those police. There is a great deal of grey area that needs to be sorted out. I certainly would be interested in finding out which of those positions or areas of operation you have referred to are included in the figures and to what extent they should be there, based on whether they actually conduct any substantial operations on behalf of the people of the ACT rather than the Commonwealth Government.

ACTEW - Scoping Study

MR CORBELL: Mr Speaker, my question is to the Chief Minister. Chief Minister, today the chair of the ACTEW board echoed the Government's rhetoric that if we do nothing the value of ACTEW will decline. Labor trusts that this is not a planned strategy to force the Assembly to agree to the sale of ACTEW. It is the responsibility of the shareholders and the board of ACTEW to protect and improve the value of the taxpayers' investment in ACTEW. The Chief Minister and principal shareholder has abrogated her responsibility in this regard by stating that the future of ACTEW, particularly Ecowise, is up to the board. So that this Assembly can be assured that the board is acting in the best interests of ACTEW's owner - the people of Canberra - will the Chief Minister report to the Assembly on the board's activities and the outcomes of its efforts to maintain and improve ACTEW's customer base prior to commissioning the Fay Richwhite report as well as subsequently?

MS CARNELL: ACTEW, like all corporations, reports now under the Corporations Law. They also turn up in committees when they are asked to do so. They are a part of estimates committees.

Mr Humphries: The Australian Securities Commission.

MS CARNELL: Yes, the Australian Securities Commission. Mr Speaker, Mr Corbell has just shown what the problem is right now with ACTEW being able to compete in a private sector market. When questions like that are asked in a place like this of a corporation that is attempting to operate in a very difficult market, when slurs are made against people such as Jim Service, Michael Easson - a well-known Liberal Party member! - - -

Mr Corbell: I take a point of order, Mr Speaker. On no occasion did I mention any of those individuals. If anyone is slurring those individuals, it is the Chief Minister. I would ask you, Mr Speaker, to ask the Chief Minister to withdraw that comment. I made no such accusation.

Mr Humphries: Mr Speaker, he did talk about the chairman of the board being part of a game plan with the Government, implying clearly that there is some kind of being put up to this exercise. In any case, Mr Speaker, even if there were a reference to Mr Service which was unparliamentary, he does not enjoy the protection of standing orders in that respect. Of course, no such reference was made.

MR SPEAKER: That is very true.

Mr Corbell: I take a further point of order, Mr Speaker. Standing order 55 says:

> All imputations of improper motives and all personal reflections on Members shall be considered highly disorderly.

Mr Speaker, I put it to you that the comments that the Chief Minister has just made reflect on me and my motives, and I would ask you to rule that as disorderly.

MR SPEAKER: Very well. Chief Minister, if the member objects - - -

MS CARNELL: Mr Speaker, I have to say that those are the sorts of things Mr Berry says about me every single day.

MR SPEAKER: Yes; but, Chief Minister, if I may point out, at the risk of appearing biased, you are not Mr Berry.

MS CARNELL: Thank you very much, Mr Speaker. I am very pleased.

MR SPEAKER: Please withdraw it. If it is against Mr Corbell, withdraw it, Chief Minister.

MS CARNELL: Mr Speaker, I am happy to withdraw, but only because I want to get on with answering this question. I do not know what I am withdrawing, I have to tell you; but, whatever it might have been that upset Mr Corbell's sensitivities, I am very happy to withdraw it.

Mr Speaker, I am concerned that Mr Corbell did make some comments that the board of ACTEW could be somehow in collusion with the Government. I think that does reflect on the board of ACTEW. It is a board that I think is above reproach. Mr Speaker, those board members are people like Jim Service and Michael Easson, a well-known member of the Liberal Party - no, sorry; a well-known member of the Labor Party, Mr Speaker - and people like Bill Morris, a member of the ACT community who, I believe, is absolutely above reproach.

Mr Speaker, it was that board that put forward to me this week a resolution that I think made very clear the future direction that we need to take with ACTEW. I am happy to read into *Hansard* what they said. They said:

It was resolved that the Government should be promptly advised that the Board has serious reservations about the ability of the Corporation to maintain the value of the energy retail business in the medium to long term. These concerns are underscored by the conclusions of the Fay Richwhite Report (April 1998) and are based on:

. increasing competition from interstate competitors who are able to use their balance sheets to "buy" customers and to spread their risks; - - -

Mr Berry: Mr Speaker, the Chief Minister was asked whether she would direct the board to report - - -

Mr Hird: Is this a point of order?

Mr Berry: It is an issue of addressing the subject of the question again. The Chief Minister was asked whether she would direct the board to report to the Assembly prior to further review following the Fay Richwhite report on its activities and the outcome of the efforts to maintain and improve its customer base.

MR SPEAKER: There is no point of order.

Mr Berry: The Assembly, on behalf of the people, is entitled to know.

MR SPEAKER: There is no point of order. Continue, Chief Minister.

MS CARNELL: I am just telling you what the board has done, Mr Speaker, which, I think, is exactly the question that was asked. The resolution continues:

. the inability (and inappropriateness) of ACTEW to increase its electricity purchasing risk profile to the extent that it can, on the one hand, match competitor's prices and, on the other hand, provide the necessary assurance to the Government that this will not result in unacceptable financial losses.

It was further resolved to recommend to the Government that:

1. it note the likelihood of a substantial reduction in the value of the energy retail business and the possibility of a need to change the risk profile of electricity marketing operations; and

2. as a matter of urgency, undertake a study to develop options for reform, divestment and/or disaggregation or expanded development of the Corporation.

Mr Speaker, what ACTEW have done - and again I say that people such as Jim Service, Michael Easson, Bill Morris and John Turner are, we all know, above reproach - is told us what they believe the situation is for ACTEW, and they have said that what needs to happen now, as a matter of urgency, is that a study has to be undertaken to develop options for reform, divestment, disaggregation and expanded development of the corporation.

Mr Speaker, I have never said that the future of ACTEW is up to the board. It is not. The future of ACTEW is up to the shareholders. What I said yesterday in this place is that we are going down the path of a scoping study that will be tabled in this place and debated in this place, so everyone will be able to have their say. I have also said that the scoping study will allow members of the community to have an input to that scoping study. So, Mr Speaker, everyone will have a say; and I think that is absolutely essential.

Mr Berry: That is not an answer to the question, Mr Speaker, if I may persist - - -

MR SPEAKER: Order!

Mr Berry: It is on a point of order, Mr Speaker. Again I refer to the need to remind members, especially Ministers, to confine themselves to the subject matter of a question. The question simply was about asking the board to report on the activities and outcomes of its efforts to maintain and improve its customer base.

MR SPEAKER: Are you asking the question or is Mr Corbell?

Mr Berry: I wish the Chief Minister would answer the question.

MR SPEAKER: Mr Corbell, do you have a supplementary question?

MR CORBELL: Yes, I do, Mr Speaker.

MR SPEAKER: Mr Berry's comments are out of order.

MR CORBELL: Mr Speaker, I am glad that the Chief Minister has finally recognised that she has some responsibility in this matter and is not leaving it to the board. I am pleased also that the Chief Minister is willing to say that everyone is going to have a say. My supplementary question, Mr Speaker, is: Will the Government support proposals to allow the Assembly to vote to approve or disapprove any decisions on privatisation of the corporation before they are made?

Mr Humphries: I take a point of order, Mr Speaker.

MR CORBELL: Further, Mr Speaker - - -

MR SPEAKER: Order! A point of order has been taken.

MR CORBELL: I am still asking my question, Mr Speaker. Further, Mr Speaker, will the Chief Minister table the document she was quoting from in her earlier answer?

Mr Humphries: I rise on two points, Mr Speaker. First of all, I rise on the standing order about announcing government policy before it has been formulated or anticipating business on the Assembly agenda. Both those things are out of order under the standing orders. Secondly, Mr Speaker, there is a convention in this place that if members are quoting from documents, particularly Ministers during question time, they should not

be asked to table those documents. We have accepted in this place that briefing papers before Ministers for the purpose of answering questions are not asked to be tabled, unless a separate document is brought in for that purpose. Mr Speaker, that is not against standing orders, but it certainly is an abrogation of a convention in this place.

MR SPEAKER: Yes, I uphold that convention. I also uphold the earlier point of order made by Mr Humphries - that questions shall not ask Ministers to announce Executive policy.

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

MR SPEAKER: Would you like to rephrase it? It may be possible, Mr Corbell; I do not know.

Mr Corbell: Mr Speaker, there is no business before the Assembly on this issue; so Mr Humphries's point on that is just wrong. It is just plain wrong. There is no business on the notice paper about ACTEW, Ecowise or any other government corporation.

Mr Humphries: On the point of order: There are two alternative arms of this. Either it is Executive policy, which you are not in a position to ask us to announce before it has been determined, particularly, or it is business on the notice paper. Either way, Mr Speaker, there is no basis for asking that question.

MS CARNELL: The document that Mr Corbell asked me to table was tabled by me yesterday.

MR SPEAKER: On the question of business on the notice paper, it has been drawn to my attention that under Executive business orders of the day there is a point about ACTEW Corporation Ltd; so it is not a question of there being nothing on the notice paper. But, more than that, it is quite clear that standing order 117(c)(ii) states that questions shall not ask Ministers to announce Executive policy, whether or not things are on the notice paper. In this particular case it is.

Sport

MR OSBORNE: Mr Speaker, my question is to the Minister for Education and relates to sport. Minister, can you outline what value you place on sport in your portfolio responsibilities and tell us how the Government supports the sport industry and how it values it here in the ACT?

Ms Carnell: I would say "too highly sometimes".

MR STEFANIAK: The Treasurer might say "too highly", Mr Osborne; but where do you start, really? Res ipsa loquitur, the old Latin phrase, the facts speak for themselves, Mr Osborne. I think this Government particularly - of all governments we have had in the Assembly, and we are now starting the Fourth Assembly - has placed a very strong

emphasis on sport over the last three years. We have made some significant improvements in a wide range of areas, ranging from the facilities which have been completed and the magnificent facilities which are in the process of being completed now through to having the highest participation rate in sport in Australia. Some 40.6 per cent of Canberrans actively participate in sport and recreation. That is 3.1 per cent higher than our nearest rival, the Northern Territory, at about 37.5 per cent.

Particularly pleasing has been the increase in women playing sport, which is an area that a lot of people around Australia identified as being a bit of a problem area. That has gone up 9 per cent, I think, over the last three years. We are well in front of the national average there and again, I think, top the poll in terms of participation. We have some 21 teams now in national competitions. Really, Mr Osborne, how long is a piece of string? I could go on forever. We have the economic impact study which we provided $50,000 for ACTSport to commission. That indicated an economic impact of some $824m per annum generated in the ACT as a result of sporting activities.

I could go on forever, Mr Osborne, but I think the facts speak for themselves. I think it is quite clear that this Government places a very high emphasis on sport. I conclude by referring to another major improvement, namely, the Government's policy on physical education in schools which commenced at the end of 1995, with the first full year of implementation being 1997. It will pay considerable dividends in the years to come in terms of there being healthier children.

MR OSBORNE: That was a very impressive answer, Minister. If that is so, why have you downgraded the importance of sport in your portfolio, so that the Bureau of Sport now reports to a mid-level bureaucrat in the Department of Education instead of at the chief executive level as in the past?

MR STEFANIAK: The short answer to that, Mr Osborne, is that I have not. I have been very particular to ensure that in the new arrangements not only does the bureau report to a very senior officer - - -

Mr Osborne: I take a point of order, Mr Speaker. I think the Minister may have inadvertently misled, because my understanding is that the Bureau of Sport no longer reports to the chief executive of the Department of Education but that it reports to a mid-level bureaucrat. In the past, I believe, it reported to the chief executive of BASAT, but it no longer reports to the chief executive of the new department. That is what I want an answer on.

MR STEFANIAK: It is interesting that the bureau actually reports to two people. It reports to the manager of facilities and other things in the Education Department, Mr Trevor Wheeler, and reports direct to the chief executive officer as well. I will get you a flow chart which will show you that, if you like, Mr Osborne. Regardless of that bureaucratic structure, the importance of sport is hardly something that this Government is going to downgrade. I will give you that flow chart and you will be able to see exactly where it reports.

Visiting Medical Officers - Contracts

MR BERRY: My question is to the Minister for Health. In 1995 the Chief Minister and Minister for Health promised to save around $3m on the then new VMO contracts. As you would recall, Minister, with your help, we subsequently censured the Chief Minister for misleading us when the savings were lost by her mismanagement. As the contracts are now due for renewal, Minister, could you advise us whether any, in fact, have been signed or whether any agreements have been reached? If so, how many? What will be their budget impact? If none of the above has occurred, what negotiations are taking place in relation to the matter?

MR MOORE: Thank you, Mr Berry, for the question. Just yesterday afternoon I looked at a flow chart of how the negotiations with the VMOs were going. To the best of my knowledge, no VMOs have signed the contracts at this stage, although we are in a cusp area; an offer has been made. The current high level of fee-for-service contracts - I think, Mr Berry, you would be aware - is excessive when it is compared with those of other city teaching hospitals. That has been a major problem in our hospital system for some years. I certainly recall very clearly when you were Minister and were negotiating in a very strenuous situation with the VMOs.

Mr Berry: But Mrs Carnell signed the contracts.

MR MOORE: Indeed, I recall that. On 13 March of this year the draft model contracts were sent to VMOs, providing further information on the type of arrangement. Draft contracts offering New South Wales sessional rates were sent to 53 VMOs, advising them to respond by 24 April. The remaining 56 contracts were sent to VMOs between 20 April and 27 April, over the last week. The AMA has advised that it will send a negotiation package to VMOs to help them with their negotiations; and it is considered the negotiation package will slow the response rate from VMOs to offers by the Canberra Hospital.

I must say, through you, Mr Speaker, that I have been passed a note which states that three VMOs have actually already signed. I have only just received a note to that effect from my colleague Mr Humphries, who had responsibility for this portfolio until a couple of days ago. But generally we have not had a response yet; we do not expect it for the next short while. Mr Berry, no doubt you will come back with a similar question to this at the next sitting, and I hope I will be able to provide you with more information.

You did ask me about budget impact. The budget impact that we expect from this is in the millions of dollars. We are talking of a significant sum. My officer has passed me advice that what I said is correct - that three VMOs have signed at the Canberra Hospital and that we think about 15 VMOs are very close to signing. I should also say that I am advised that savings at this stage are unknown.

MR BERRY: I think that would be good advice. Mr Speaker, I have a supplementary question. I take it that the Minister intends to pursue savings with vigour in respect of these negotiations and contracts. Do the contracts that are already signed undermine the negotiating position in relation to the new contracts?

MR MOORE: Yes, I will be pursuing savings with vigour wherever I can find them. It has been very clear that for many years prior to self-government and certainly through the early stages of self-government the health budget blew out and blew out. You would be aware of that, Mr Berry. I will be pursuing savings because I see it as an important part of my role to ensure that we no longer blow out the health budget; that is part of ensuring that we can reduce the significant operating loss that the ACT Government still operates under. In terms of the negotiations - as you know, Mr Berry, better than anybody else, having been involved in industrial relations for a long time - there is always give and take on any set of negotiations. For me to provide a definitive answer along those lines at this stage is impossible.

Hospital Waiting Lists

MR WOOD: My question is to the Chief Minister and Treasurer. Since January, the Government has received over half a million dollars a week from the Federal Government under the Medicare agreement, an agreement which the Chief Minister touted as good news for the Territory. Since then your Federal colleague Dr Wooldridge has often told us how the ACT is getting extra money and our elective surgery waiting lists will benefit. How is it then that between December and February the waiting lists have risen by 148 at Calvary and 463 at Canberra?

MS CARNELL: It is actually quite simple. The money did not start till after that time. In reality, this would be a question for Mr Moore as Minister for Health.

Mr Berry: Why did you keep it secret through the election campaign?

Mr Humphries: We did not have the figures then.

MS CARNELL: We did not have the figures then. Mr Speaker, I do not think anyone would say that the $551,000 per week is anything but a very good deal for the ACT. That money has predominantly so far been spent on new surgical equipment. So, $2.4m has been spent on new surgical equipment that was needed to make sure that the elective waiting list could continue to be addressed. One of the interesting things about hospitals is how many total kits of surgical equipment you need to ensure that you can always use a surgery when one becomes available or an operating theatre when one becomes available and so on. It was becoming quite evident that the amount of surgical equipment we had was less than was totally efficient. So, we spent $2.4m on that. More recently, Dr Wooldridge has given us the okay to spend some of the money on the asthma program that is aimed at improving the situation for the many thousands of asthma sufferers in the ACT, to try to keep them out of hospital.

Mr Speaker, the bonus payment started on 16 March, not in January. It was a bit hard for that to affect the waiting list figures in January. Regularly - in fact, every year - waiting lists go up after the Christmas break; it is just part of the deal. As people come back after the break over Christmas, as doctors have a bit of time to sort out their procedures

or their schedules for the next 12 months, waiting lists go up. In January, February and March, we then get on with addressing them, just as we did last year. We should never forget that over the term of the last Government we did reduce waiting lists by some 20 per cent - something that no other government has done.

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

Playground Equipment

MR SMYTH: I would like to add to an answer that I gave yesterday to Mr Hargreaves. The member from Brindabella asked yesterday for further information on playgrounds in the ACT. I have further information. There are approximately 440 playgrounds in the ACT. Obviously, as the city expands, we will continue to build more. All of these playgrounds conform to the relevant standards in force at the time of construction. Draft Australian standards specific to playgrounds have been under development for some 10 years and are currently still under review by Standards Australia. We are progressively upgrading our playgrounds to meet these draft standards. All playgrounds are inspected fortnightly for safety.

Mr Speaker, any safety issues which are identified in this inspection process and which require maintenance are attended to immediately. There is a continuing upgrade program for playgrounds which is managed by Canberra Urban Parks. The program is progressively reviewing the equipment facilities in all playgrounds and the program replacement or refurbishment as necessary to be consistent with the draft Australian standards being developed. This case is very much like the motor industry, for instance, where Australian standards are being continually reviewed. New vehicles are required to meet these standards, whilst older vehicles which were deemed to meet the standard requirement, if they continue to meet the standard in place at the time of construction, are not required to be modified to meet the new standard. In the case of the playgrounds, the Government is adopting a proactive approach and is renewing the playground facilities as the standards are being developed. In programming upgrading work ahead of the standards being officially adopted, the Government is ensuring that the facilities available to our children meet the highest standards available.

Building Industry - Training Levy

MS CARNELL: In question time on Tuesday I undertook to provide Mr Osborne with complete information regarding the use of funds provided by the Long Service Leave Construction Industry Training Fund to assist apprentices and trainees in the construction industry. I would like to table the letter which I sent to Mr Osborne yesterday which provided further information about the matters he raised. Upon reflection, I believe this letter may be of interest to other members in this place, particularly given a very grubby interjection by Mr Berry during question time yesterday.

COOOL Project

MR MOORE: At question time yesterday, following a motion passed by this house, Mr Wood asked me about developments with relation to Canberra's Own Options of Living project. I have made a series of decisions on that issue this morning. Those decisions are in writing, and I table copies of a series of letters - a letter I wrote to Mr Matthew Maurer, who is an advocate for some of the people; advice from ACT Community Care in relation to their capacity to undertake the task - I have authorised them to proceed; a letter by me to Ms Rosemary Follett, Discrimination Commissioner, this morning; and my letter to Ms Heather McGregor, Community Advocate, asking that she monitor what is going on now about the development of the issue. Just to clarify the timing on that, my advice from ACT Community Care is that they expect that they will have the first people in a Fisher house in about eight weeks, and people in a second Fisher house in about 10 weeks. I hope that when members look at that advice they will see that that does appear to be the fastest that we can operate. I still find it slow and I will be encouraging them to see whether they can work even faster than that. It was my judgment, on the advice I had, that to use any other option would have extended the period significantly beyond that time; so I determined this morning to proceed in this fashion.

MR WOOD: I seek leave to make a short statement.

Leave granted.

MR WOOD: Yesterday I asked, through that motion the Assembly supported, that the matter be treated with urgency. It clearly has been treated with urgency. I cannot argue that point; and I note it. Yesterday Mr Moore indicated that it could be a prolonged process; and today he has taken steps to shorten it. I will look with interest at the documents he has tabled. It is clear that he has rejected earlier processes and has set something new in place. I will be very interested to see how that goes.

TEMPORARY DEPUTY SPEAKERS

MR SPEAKER: I wish to inform the Assembly that, pursuant to standing order 8, I have nominated Mr Berry, Mr Hird and Ms Tucker as Temporary Deputy Speakers. They will take the chair when requested by either me or the Deputy Speaker, Mr Wood. I present my warrant nominating Mr Berry, Mr Hird and Ms Tucker.

ADMINISTRATIVE ARRANGEMENTS
Papers

MS CARNELL (Chief Minister and Treasurer) (3.35): Mr Speaker, for the information of members, I present the Sixth Carnell Ministry and Administrative Arrangements as contained in *Gazette* No. S100 of 31 March 1998, and the Seventh Carnell Ministry as gazetted in *Gazette* No. S112 on 28 April 1998. I move:

That the Assembly takes note of the papers.

Mr Speaker, I have tabled the Administrative Arrangement Orders for this Government, together with the new ministerial arrangements reflected by my announcement earlier this week of Mr Moore's appointment as Minister for Health and Community Care. I am particularly pleased to announce these changes in this first sitting week of the Fourth Assembly. These new arrangements show that this Government is committed to reform. We have implemented the Pettit review recommendation that effective government requires five Ministers. In doing this, we have followed the Pettit review's framework for widening the base of the Executive by including a member from the crossbenches.

The benefits for the Assembly from this arrangement are clear. The arrangement brings Mr Moore's considerable experience to the ministry, to a portfolio in which he has a special interest. It also brings a wider range of views to government and, I hope, takes us one step away from the limitations of government shaped by party allegiances. The revised Administrative Arrangements provide a significant move towards a more cooperative approach to government in the ACT. As the new arrangements directly align ministerial portfolios with departmental structures, reporting and accountability lines will be clear. Mr Moore's appointment makes this clearer. Now each Minister is responsible for a single department.

Mr Humphries will assume an additional role as Minister Assisting the Treasurer, which complements his appointment as a shareholder of the Government's corporatised entities. The new Administrative Arrangements bring a number of important functions into the Chief Minister's Department. In doing this, the Department of Business, the Arts, Sport and Tourism has been absorbed. I would like to take this opportunity to acknowledge the contribution of Annabelle Pegrum, who has been the chief executive of BASAT for the past 18 months. Ms Pegrum is now the executive director of the new Office of Asset Management within my department. The office will manage land development, including the joint ventures at Gungahlin and Kingston.

A task force has been set up within the Office of Asset Management to report to government before the end of this financial year on the office's role in relation to property and land development. The business, tourism and arts functions of BASAT will come within my ministerial responsibilities. A new Office of Business Development and Tourism will include business development, employment policies and programs,

and tourism policy. It will purchase services from the Canberra Tourism and Events Corporation and will maintain a close association with CanTrade. The sport and recreation function from the former BASAT has transferred to the newly named Department of Education and Community Services. Under the new arrangements, Mr Stefaniak continues to have responsibility for this function. Racing and gaming functions move into the new Racing and Gaming Unit in my department. This unit will also oversee the Casino Surveillance Authority.

My department will monitor Territory-owned corporations and appropriate GBEs and their commercial and financial performance. The Department of Urban Services continues to have responsibility for policy and regulation for particular industries, while my department has briefing responsibility for these entities. Mr Humphries retains responsibility for the Attorney-General's Department, which has been renamed the Department of Justice and Community Safety. This new name reflects the full range of functions covered by the department.

Mr Speaker, these new arrangements reflect a further streamlining of the approach that we as a government have taken to efficient and effective government in the ACT. Happily, the arrangements capture the spirit of the Pettit review and provide a basis for future consideration and implementation of the recommendations, of course after the select committee looks at the report.

Question resolved in the affirmative.

PUBLIC SECTOR MANAGEMENT ACT - EXECUTIVE CONTRACTS
Papers and Ministerial Statement

MS CARNELL (Chief Minister and Treasurer): Mr Speaker, for the information of members, I present, pursuant to sections 31A and 79 of the Public Sector Management Act 1994, copies of contracts with Stewart Ellis (long-term contract), Neil Morgan (Schedule D variation), Anne Thomas (long-term contract), Warren Dickson (long-term contract), Malcolm Murray (long-term contract), Ted Rayment (new performance agreement), Anna Lennon (Schedule D variation), James Ryan (Schedule D variation), Sara Cronan (short-term contract), Guy Thurston (long-term contract), David Marshall (new performance agreement), Harriet Elvin (long-term contract), Ross MacDiarmid (long-term contract), Michael Deegan (both short-term contract and Schedule D variation) and Mark Owens (new performance agreement). Mr Speaker, I ask for leave to make a very short statement with regard to these contracts.

Leave granted.

MS CARNELL: Mr Speaker, I would like, as usual, to ask members to respect the confidentiality of all information involved in these contracts. I thank members of the last Assembly for always respecting that confidentiality.

PUBLIC ACCOUNTS - STANDING COMMITTEE (THIRD ASSEMBLY)
Report on Magistrates Court and Dame Pattie Menzies Buildings - Government Response

MS CARNELL (Chief Minister and Treasurer) (3.42): Mr Speaker, for the information of members, I present the Government's response to Report No. 32 of the Standing Committee on Public Accounts of the Third Assembly entitled "Report on Lease/Leaseback of the Magistrates Court and the Dame Pattie Menzies Building", which was presented to the Assembly on 2 December 1997. I move:

That the Assembly takes note of the paper.

Mr Speaker, I am pleased to table the Government's response to this report by the Standing Committee on Public Accounts. The committee made one recommendation, and I am pleased to be able to say that the Government has already gone a long way to addressing the committee's recommendation. The Government undertook a comprehensive review of insurance risks during 1997-98. The review resulted in the Government setting up a centrally managed insurance fund to meet public liability claims and asset losses of an insurable nature. This practice is consistent with the financial management reforms implemented by this Government, including the asset management strategy. The financial management reforms also provide a basis for the management of interest rate risk. A key component of effective financial management is to match short-term assets with short-term liabilities and long-term assets with long-term liabilities. The lease/lease-back model fully meets this criterion.

This Government will provide the Assembly with a complete report on the management of insurance risks. We will also provide the Assembly with a report on the management of interest rate risk. However, it would be unreasonable for the Government to be unable to enter into a transaction, when it is cost effective to do so, pending a report from the Standing Committee on Public Accounts. I would like to thank the committee for its report and its attention to this important matter.

Question resolved in the affirmative.

FINANCIAL MANAGEMENT ACT
Papers and Ministerial Statement

MS CARNELL (Chief Minister and Treasurer): Mr Speaker, for the information of members, I present, pursuant to the Financial Management Act 1996, the consolidated financial management reports for the periods ending 31 January, 28 February and 31 March 1998, pursuant to section 26. The January and February reports were circulated to members when the Assembly was not sitting. I also present an instrument issued under section 15 and a statement of reasons, an instrument issued under section 15A and a statement of reasons, and an instrument issued under section 16 and a statement of reasons. I ask for leave to make a statement in relation to the instruments of transfer.

Leave granted.

MS CARNELL: Mr Speaker, as required under the Financial Management Act 1996, I have tabled the following papers: An instrument issued under section 15 of that Act, and a statement of reasons for the transfer, which allows the transfer between output classes within an appropriation unit; an instrument issued under section 15A of that Act, and a statement of reasons for the transfer, which allows for the reclassification of appropriations for Territorial payments as appropriations for the provision of departmental outputs, and vice versa; and an instrument issued under section 16 of that Act, and a statement of reasons for that transfer, which allows for the transfer of appropriations from one department to another in cases where responsibility for a service or function for which the appropriation was made transfers from one department to another. These instruments were signed recently and are tabled in the Assembly within three sitting days, as required by the Act.

Transfers under the Financial Management Act 1996 enable changes to appropriations throughout the year to be accommodated within the total appropriation limit passed by the Assembly. The section 15 instrument relates to an internal reprioritisation of resources within the Chief Minister's Department to allow the upgrade of the revenue collection system to commence in the second half of 1997-98. The section 15A instrument relates to a reclassification of funds from the expenses on behalf of the Territory appropriation to the Government payment for outputs appropriation within the Department of Justice and Community Safety. The responsibility for the escort of prisoners to and from the courts was previously provided by the Australian Federal Police and is now provided by Corrective Services. This reclassification of appropriations reflects the change in provision of services.

The section 16 instrument relates to the transfer of functions from the former Department of Business, the Arts, Sport and Tourism as per the Administrative Arrangements Orders announced on 31 March 1998 and are as follows:

> the Kingston foreshore function to Accommodation and Property Services within CMD;
>
> the sport and recreation function to the Department of Education;
>
> the heritage function to Heritage within DUS;
>
> the Agents Board function to the Department of Justice and Community Safety; and
>
> the remaining functions to Business, Employment, Tourism, the Arts, Regulatory Reform and Industrial Relations within CMD.

Mr Speaker, I commend the papers to the Assembly.

FINANCIAL MANAGEMENT ACT - APPROVAL OF GUARANTEE
Paper and Ministerial Statement

MS CARNELL (Chief Minister and Treasurer): Mr Speaker, for the information of members and pursuant to subsection 47(3) of the Financial Management Act 1996, I present an approval of a guarantee under an agreement between the Australian Capital Territory and the Commonwealth Bank of Australia. I ask for leave to make a short statement.

Leave granted.

MS CARNELL: In accordance with subsection 47(3) of the Financial Management Act 1996, I table a copy of an approval I have given in relation to a guarantee by the Territory. The approval relates to financing facilities within or between the Commonwealth Bank of Australia and Gold Creek Country Club Pty Ltd. As part of the restructuring of Harcourt Hill Pty Ltd, the Government acquired full ownership of the Gold Creek golf course. The Harcourt Hill joint venture had established Gold Creek Country Club Pty Ltd as a company to manage the golf course on its behalf. It was wholly owned by Harcourt Hill Pty Ltd. Ownership of this company was transferred to the Territory on 24 December 1997. The financing facilities held by this company were previously guaranteed by Harcourt Hill, which was in turn guaranteed by the Treasurer. With the separation of ownership of Gold Creek Country Club Pty Ltd from Harcourt Hill, a separate guarantee was required; and this is now tabled, for the information of members, in accordance with section 47 of the Financial Management Act 1996.

PAPERS

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer): Mr Speaker, for the information of Members, I present the following papers:

National Crime Authority - report for 1996-97, including financial statements and the report of the Australian National Audit Office, dated 19 September 1997.

ACT Administration of Justice - statistics profile for October to December 1997 and January to March 1998.

Annual Reports (Government Agencies) Act -

The Nominal Defendant (ACT)- report for 1997.

Canberra Institute of Technology - report for 1997 and financial statements, including the Auditor-General's report.

Vocational Education and Training Act - ACT Vocational Education and Training Authority and Accreditation and Registration Council - report for 1997.

Financial Management Act, pursuant to section 25A - quarterly departmental performance reports for the December to March quarter 1997-98 for the:

Minister for Arts and Heritage.

Attorney-General, including Director of Public Prosecutions and Emergency Services Bureau.

Minister for Business and Employment.

Chief Minister.

Minister for Education and Training.

Minister for the Environment, Land and Planning.

Minister for Health and Community Care.

Minister for Housing.

Minister for Regulatory Reform, Industrial Relations and Tourism.

Minister for Sport, Recreation and Racing.

Minister for Urban Services.

ACTTAB - OPERATING LOSS
Paper

MR QUINLAN: Can I just make a point about tabling something, Mr Speaker?

MR SPEAKER: You would need to ask for leave to make a statement.

MR QUINLAN: I seek leave to make a short statement.

Leave granted.

MR QUINLAN: I would like to table a piece of paper. On Tuesday, I asked a question regarding ACTTAB. I asked that the piece of paper in question be tabled. I was assured that it would be. Yesterday I met a journo who had a copy of it. It had not been tabled. So I asked about it yesterday, with your indulgence, Mr Speaker. I was informed that it had already been tabled in here.

Ms Carnell: It was.

MR QUINLAN: No; what was tabled was that.

Ms Carnell: It was what I had in front of me.

MR QUINLAN: What we discussed on Tuesday was that. You know that. Without all the acrimony that goes on in the games that we play here, I seek leave to table that document. It might be interesting later.

Leave granted.

EXECUTIVE BUSINESS - PRECEDENCE
Suspension of Standing Orders

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

> That so much of the standing orders be suspended as would prevent the order of the day, Executive business, relating to the Remuneration Tribunal (Amendment) Bill 1998 being called on forthwith.

REMUNERATION TRIBUNAL (AMENDMENT) BILL 1998

Debate resumed.

MR MOORE (Minister for Health and Community Care) (3.55): This piece of legislation probably originates from a letter that I sent to the Clerk. In fact, when I read the advice the Clerk wrote on the matter of Executive committees, I felt that, if the advice that he applied to Executive committees also applied to other officers within the Assembly, it would mean that for the last five or six years the payments made to chairs of committees, the Deputy Leader of the Opposition and so forth - in fact, it was Whips and Deputy Leader of the Opposition that occurred to me because the others were covered in standing orders - were in some doubt. On reflection, perhaps that added a complexity, but on the other hand it meant there was some doubt.

I think all this legislation actually does is clarify doubt. Rather than having this sort of thing challenged and sorted out by a court, it is far better to remove the doubt completely and ensure that people can be appropriately and adequately paid for a role and at the level the Remuneration Tribunal has decided. We have an umpire to decide those things and that is how it ought to be.

A suggestion appeared in the media at one stage that I had acted out of some devious and Machiavellian motive. Although I quite enjoy reading Machiavelli and even quoting from Machiavelli in my thesis, it does strike me that this was anything but Machiavellian. Had I been Machiavellian, I would have waited four or five months before raising this issue, or done it through the courts. That would have been a smarter way to do it.

But that would have been a reasonably pointless exercise. It is far better for it to be dealt with in this way and far better that all doubt be removed, and be removed from the beginning of this Assembly.

It is an interesting outcome, Mr Speaker, and really it is a leftover teething problem from self-government. New members would not be aware of it - certainly, Mr Humphries, Mr Berry and Mr Wood would know - but we have dealt with this sort of issue on quite a number of occasions as self-government has developed. I suppose, in some ways, that has been one of the most interesting parts of being involved in a brand-new Assembly and a brand-new parliament from its origins. Mind you, there were some other parts of being involved in this parliament that were anything but pleasant. I am sure that my colleagues who were here with me in 1989 will certainly notice the different tone in the community now and the different attitude people have to the ACT Assembly than they did in 1989. No doubt people like Mr Quinlan and other new members would also remember their own attitude to the Assembly, I imagine, in 1989 and the changed attitude they see here in the community.

It is incumbent on us all, Mr Speaker, to ensure that we can present to the people of Canberra the most effective Assembly that they can have. Certainly, in the inaugural speeches of new members earlier this week, I heard a great deal of hope in that area. I look forward to the Assembly operating in the most effective way. Dealing with this piece of legislation quickly, as we should, will help us to sort out one of those, I hope, last teething problems of self-government.

MR QUINLAN (3.59): I congratulate Mr Moore on his motivation for bringing this matter up, a motivation which had hitherto escaped me. I am glad that he has had the opportunity to clarify it. Sometimes, out of less than savoury motivations comes a reasonable result.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (4.00), in reply: I suppose I will have to take Mr Quinlan's remarks as being supportive of the legislation, although he did not actually say so. Mr Speaker, it is not necessary to say much, except that this does clarify a matter which is surprisingly not settled after almost nine years of self-government. Members will be aware that advice has been sought. I have a copy of the advice from the Government Solicitor. Rather than tabling it, I would be happy to show it to any members who are interested in reading it. I quote one paragraph which I think justifies the course of action we take today:

> In view of the doubts which I consider are associated with the question as to whether the services of the Deputy Leader of the Opposition and Party Whips are rendered in the Legislative Assembly and as to whether their services are rendered in respect of the office of member of the Legislative Assembly, I consider that it would be preferable for a declaration of those offices to be made pursuant to paragraph (g) of section 73(1) if it is desired that they be remunerated above the level payable to a member of the Legislative Assembly.

In the circumstances, I think it is wise to take that course of action, although it needs to be put on the record that it is not free from doubt that there is necessarily a problem that needs to be remedied in this particular matter.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

PERSONAL EXPLANATION

MR BERRY: I seek leave to make a personal explanation, pursuant to standing order 46. I claim to have been misrepresented.

MR SPEAKER: Proceed.

MR BERRY: In question time the Chief Minister made the claim, in as many words, that I had at one time indicated that all of the jobs in the youth jobs program that she had proposed, or had set up, had come from the Public Service. In fact, I pointed to about 50-odd jobs that were subsidised in the Public Service by the ACT taxpayer - some in her own department. I also pointed out during that debate that youth unemployment had remained high and was apparently unaffected by the program, and that many of the jobs that had been subsidised would have occurred anyway.

STANDING COMMITTEES
Membership

MR SPEAKER: Pursuant to the resolution of the Assembly of Tuesday, 28 April 1998, I have been notified in writing of the nominations of the following members to the respective committees: Mr Kaine to the Standing Committee for the Chief Minister's Portfolio; Mr Kaine to the Standing Committee on Education; Mr Hird to the Standing Committee on Health and Community Care; Mr Kaine to the Standing Committee on Justice and Community Safety; and Mr Hird to the Standing Committee on Urban Services.

Motion (by **Mr Humphries**) agreed to:

> That the members so nominated be appointed as members of the standing committees.

REPORT OF THE REVIEW OF GOVERNANCE - SELECT COMMITTEE
Membership

MR SPEAKER: Pursuant to standing order 222, I have been notified in writing of the nominations of Mr Cornwell, Mr Osborne and Mr Stanhope to be members of the Select Committee on the Report of the Review of Governance.

Motion (by **Mr Humphries**) agreed to:

> That the members so nominated be appointed as members of the Select Committee on the Report of the Review of Governance.

Alteration to Resolution of Appointment

MR BERRY (4.04): Mr Speaker, I seek leave to amend the resolution of appointment to provide for five members of this committee.

Leave granted.

MR BERRY: I move:

> That the resolution of appointment of the Assembly establishing the Select Committee on the Report of the Review of Governance be amended by omitting paragraph (2) and substituting the following paragraph:
>
> "(2) The committee be composed of 5 members.".

Mr Speaker, Labor has proposed this because of the oft spoken need to sample all of a wider spectrum of expertise in this place. Mr Speaker, to confine membership of this committee to three on such an important issue that will affect the future of the Territory for the foreseeable future - certainly, well beyond our own individual experiences - is rather more restrictive than it ought to be. There are many of us who are interested and can make a contribution to this committee. There is a new floor of members, if I can put it that way, in the place who have different ideas of self-government and how it might proceed. Many of us have a range of experiences in government, out of government, on the crossbenches, in committees, around the country - and indeed, for some of us, around the world - in respect of governance.

Mr Humphries: Is this Cuba you are talking about?

MR BERRY: I have no difficulty in talking about Cuba if Mr Humphries thinks it is relevant. I might even be criticised because I spent a couple of weeks in the USA. I might also be criticised because I spent some time in the UK. It depends from which - - -

Mr Humphries: I was certainly criticised for spending six weeks in France, according to you; so join the club.

MR BERRY: Six weeks in France? I would not mind trying that one on. I would not mind being criticised for being in France for six weeks.

MR SPEAKER: Advice on the slide night will be provided shortly!

MR BERRY: I do not think that the Government's arrangements in Havana are particularly applicable to the ACT and smoking is rather more difficult here than in Havana - cigars, that is.

The aim of the motion is to increase this committee to five members. It is in the process of being circulated now. I think it takes advantage of a broader base of members in the place and makes a bit of sense, to be frank. These are issues that interest a lot of members and contributions will add to the quality of the report on the remaining and outstanding issues left to that committee to report on. But it is a statement that has been made by many that I rely upon - that is, there seems to be an argument at large that it would be better to draw on a wider base of expertise in the Assembly. I think Pettit made that point himself. In respect of this particular issue, that is entirely relevant.

I trust, Mr Speaker, that the committee will consider this in a not so partisan way when dealing with the issues. I know there are matters which the committee will not agree on and there are matters that some members in this place have already made up their minds about. But this is essentially drawing upon the expertise of the Assembly by increasing it to five members. The motion will not specify where those five members will come from, but I will say at this point that one should come from the Government and one should come from the Opposition. If there is particular opposition to that, I am pretty flexible about it. I think that would be an appropriate course.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (4.09): Mr Speaker, I will be quite brief. I oppose the motion. It is all very well for Mr Berry to get up and say, "Let us have more members on committees", but inevitably in the task of operating government in the Territory you are left with only a small number of members on the government benches who are able to serve on committees. Both Mr Kaine and Mr Hird are already committed to three separate committees in their own right. Mr Cornwell has agreed to go on this committee in order to be able to relieve the other members on the Liberal backbench of that pressure. Appointing another member to this committee from the Government benches would certainly make it very difficult for members to be able to cover those bases. It is not in the interests of committees of the Assembly to have members who have - - -

Mr Berry: If the Government does not want to be on it we will have another crossbench member. I do not care. This is outrageous. People are shaking their heads. They talk about using a broader base of the talent - - -

MR SPEAKER: Order! Mr Berry, you have already spoken.

MR HUMPHRIES: It is not in the interests of committees to have members who are so hard pressed on other committee work that they cannot contribute adequately to those committees. Members of the Labor Party have the luxury of being members of only one or two committees each, which is not the case on the Government side of the chamber. I think the three-member committee we have already established is quite sufficient.

MR OSBORNE (4.11): I will be brief too, Mr Speaker. I think Mr Humphries does raise some valid points. If I were elected as chairman of the committee, I would be more than happy for any other members that had the time to be involved in all discussions and all meetings of that committee. I am a little intrigued that it is Mr Berry putting this motion up, given that my recollection of events is that he panned the whole inquiry of Professor Pettit. Even as late as last week, on radio, he accused Professor Pettit of running the agenda of certain politicians in this place. However, I am prepared to forgive him for that. Do not shake your head, Mr Berry. You know that is true. I heard what you said, Mr Berry. I will not be supporting this motion, mainly because of the arguments of Mr Humphries but also because it has been put up by Mr Berry, whose history on this whole report is not really good.

MR HIRD (4.12): Mr Speaker, I will be brief too. I must say that what Mr Berry is trying to do shows that he does not, or so it appears on the surface, have confidence in his party leader. This is one of the high-powered committees considering an important matter of 10 years of self-government. Mr Osborne, having advocated this, could be seen as the person that motivated this chamber and the Chief Minister to move towards the inquiry. Mr Osborne will serve on the committee, with your good self as the presiding officer, and the Leader of the Opposition. With your background, what further strength could you get by placing another two members on that committee? This does not do well for Mr Berry. He should have stopped and thought about it, instead of worrying about standing order 46. I urge members not to vote for this motion.

MS TUCKER (4.13): I rise to support this motion. This is a very important select committee and it is quite appropriate that there be broader membership. I am quite happy to support it.

Mr Osborne: Anyone can come.

MS TUCKER: "Anyone can come", Mr Osborne says, but I think it is important to also have members at the deliberative meetings of committees. If your offer is that there can be broader representation in the deliberative sessions of the committee, that is quite different.

Mr Osborne: They can be there. They just cannot vote.

MS TUCKER: They cannot vote. It is quite appropriate to have broader membership. I do understand the arguments of Mr Humphries about workload, but that is how it goes. It is only a select committee anyway. It is not going to be that you have to do that work for the whole term of this Assembly. So for this particular important discussion I think we will just have to find the time.

MR CORBELL (4.14): There has been increasing invective in this chamber over the past three days directed towards Mr Berry, simply because he is prepared to state a view that is supported by members of the Labor Party. Mr Speaker, not only the Pettit inquiry and the report from Professor Pettit but also the whole range of views right across this Assembly for a number of years now have continually emphasised the importance of including a broader range of people in the formal decision-making processes of this chamber.

We come to the test. The test is: Are we going to include more people? Are we going to include them in the deliberative processes of this place or a committee of this place? The answer we get from the very same people who have advocated the inclusion of a greater number of people has been, "No, it is not acceptable. You can come along and have your say, but you cannot vote; you cannot formally participate". That is contradictory - there is no doubt about it - and that is hypocritical.

It is important, on such a significant review and such a significant inquiry by a select committee into governance of the Territory, that as broad and as reasonable a number of people as possible be allowed to participate, to vote and to resolve what we believe is an appropriate course of action arising out of the review of governance. That has not occurred in this case. Five is a reasonable number of members on a select committee. It allows for a broader range of views and for a greater degree of expertise and experience to be represented in the deliberations of the committee.

It is hypocritical in the extreme to argue day after day, month after month, indeed year after year, for a greater involvement by a greater number of people in the decision-making processes of this house and then to say, "You can come along and have a chat, but you cannot vote". That is why the Labor Party is supporting Mr Berry's proposal.

MR SPEAKER: In relation to this matter and the matter of members attending committees, I would simply draw members' attention to standing order 234.

MR HARGREAVES (4.16): I will not take up very much time of the Assembly. There are a couple of observations I would like to make as a new member. I note the Government's commitment to improving the quality of governance in this town through the commissioning of the Pettit report. I think we all share a commitment to improving the standard of governance that we deliver to the people of the ACT, although we may often fight over the form and the process. One of the words used is "inclusiveness". Before members vote on this motion, I would ask them to consider where the harm is in including five people instead of three or four. Members opposite seem to think that the governance of this Territory is an auction. They are saying that we have to stack the committees. Perhaps it was from the people opposite and their antecedents that the Labor Party learnt how to stack. They are doing a wonderful job.

I do not believe that the Government has any commitment to Pettit. They have already implemented two of the most significant recommendations he made, so this committee stands a very real chance of just paying lip-service to something already decided. We have a fifth Minister. That was a recommendation. We could not wait for that.

Mr Humphries was doing a sterling job as Minister for Health, but we still had to have a fifth Minister long before we could think about it. We had to have the committees shadow agencies and ministries - another recommendation. We could not wait to do that either. The set of committees which existed in the previous Assembly were the one element of this Assembly's reputation that was in good standing, but we had to change things and pre-empt Pettit.

Mr Moore: It got to good standing because of the changes, did it not, Gary?

MR HARGREAVES: If the committees were not in good standing, it was because of the reputation of those members who directed them. However, I do not believe that they had a bad reputation. I think they had a good reputation, and I am very happy to say so. This committee is not up for auction. If we are truly committed to bringing in changes to the system, if we are truly committed to inclusiveness and all that sort of stuff, let me throw the gauntlet down. Back it up. There are people on both sides of this house and on the crossbenches who are really committed to making the thing work if we can. We can tinker, we can argue at the edges, we can interject across the chamber, and we can try to denigrate and ridicule everybody else, but at the end of the day all you do is denigrate this Assembly.

A significant number of members in this house were not here before the election. You have no idea of the commitment that we have to fair governance in this town because, firstly, you have not asked and, secondly, we would not tell you anyway because we do not trust you yet. We want to have a fair look at it; you want to stack the committee. You want to make sure that your will prevails. You are not prepared to have that will tested. You are not prepared to let Ms Tucker, Mr Rugendyke, Mr Osborne and new members like me have a go at what you have already decided will happen. The shame of it all is that you go outside and you pontificate on fairness and good governance. Quite frankly, you are not going to do it. Why do you not just allow the people to decide? Allow a free vote here. You could not give yourselves a free vote, could you? I challenge you to have a committee of five and have your predilections tested.

MR MOORE (Minister for Health and Community Care) (4.21): I would like to tackle a couple of arguments here. Mr Corbell suggested that we need to ensure that as many people as possible are involved in the decision-making. Of course, whatever the size of the committee, all 17 members of the Assembly will be involved in the decision-making process. Mr Speaker, to a certain extent, I believe I pre-empted this debate by suggesting that I would be happy to nominate a committee of four in order to include you.

Mr Berry: No; we made the decision days ago.

MR MOORE: Mr Berry corrects me. I am quite happy to be corrected on that. Mr Speaker, I was informed by your Manager of Government Business - and my Manager of Government Business, come to think of it - that you would be prepared to go on the committee as the Liberal nominee. That was what I was told. That met my concern. I thought it was appropriate for the Speaker to go on the committee.

If Ms Tucker had indicated that she wanted to be on the committee, then that would have added a different element to the committee and I certainly would have been happy to entertain that. But I do not think we should be tricked by these silly arguments that the decision-making process is incredibly enhanced because we have five members on a committee or three members on a committee when we are talking about the Assembly as a whole.

Mr Hargreaves: It is a question of trust.

MR MOORE: Indeed. Mr Hargreaves's argument was about inclusiveness, but the best part of all that he said was that the Labor Party has learnt from those opposite them how to stack. I must admit that I found that particularly entertaining. The Labor Party must know that nobody else has the stacking skills of the Labor Party. Mr Hargreaves went on to say - and this is the part that I found most interesting - that they have a commitment to the improvement of government. I do not doubt that part. The next thing he said was that they have never been asked. I realise that it was before your time here, Mr Hargreaves, but the Labor Party was asked quite a number of times towards the end of the last Assembly to make a submission and to be involved. They were asked. We know that there has been a change in attitude since the election, and I do not resile from that. I think that is very positive. It is important to understand that the Labor Party was asked to participate in the process from the beginning.

MR STANHOPE (Leader of the Opposition) (4.24): I will join the debate very briefly, Mr Speaker. I think the Pettit report is an incredibly important report. All the recommendations go to the heart of this place and to government in the ACT. The recommendations, if implemented, would have the most fundamental impact on the operations of the Assembly and the operations of government in the ACT. It really is an incredibly serious task that this select committee has been set. It seems to me that the work of the committee can only be enhanced and improved if the membership is increased to five. The range of experience and views that would be brought to bear would be so much broader and potentially the committee would represent the interests of all those represented in this place. That would open up the possibility of a much more thorough examination of the very significant issues that we will be asked to address.

As the Labor Party's nominee and as a nominee to chair this committee, it would be my view that the committee would be much enhanced if it had five serving members rather than three. I do not accept the argument that all members are at liberty to join in the deliberations of the committee. We all know that that really gives them just a Clayton's role of responsibility. It does not give them the opportunity to feel any ownership of the process or to be part of the process. It really is a furphy. It is not a sustainable argument. I think everybody here knows in their heart that the work of this committee or of any committee would be significantly enhanced if the membership were increased to five. I urge members to think seriously about this motion. It is really important work that this committee will do. It is a very important report. It has the potential to have the most profound and fundamental impact on this place and on the government of the ACT, and we should render it the seriousness and the respect that it deserves.

MR BERRY (4.27), in reply: What amazes me about this debate is the hypocrisy of the coalition. It was not long ago that they were all out there spouting the words, "We need to attract a broader base of expertise and the talent of the crossbenches".

Mr Humphries: From outside the Assembly.

MR BERRY: The talent of the crossbenches and other talents within the Assembly, but only from one group, it seems. This demonstrates the clear and undiluted hypocrisy of those opposite. Mr Osborne is a recent convert to change in the ACT Assembly. First of all, Mr Osborne spent a heap of time blackening the place and then created the impression that he was the agent for change. Mr Osborne claimed credit for the proposal for the committee system that was developed and ultimately adopted by this Assembly. In fact, that proposal came from the *Governing Canberra* report, which was discredited by all and sundry and which the Government ran away from. It ultimately became an important pillar of democracy in this place, which goes to show the sheer hypocrisy and positioning that have been going on in this place. Mr Osborne also raised some question about my comments in relation to Professor Pettit.

Mr Moore: I take a point of order under standing order 136. Mr Speaker, I drew the Clerk's attention to the fact that I think that this motion might be out of order. The minutes of 28 April 1998, on page 18, show that in respect of the motion regarding the Select Committee on the Report of the Review of Governance there was an amendment, I think put by Mr Berry, to omit paragraph (2) and substitute a paragraph stating that the committee be composed of five members. I think that, in substance, that is the same question. I think, therefore, that Mr Berry's motion to amend is out of order.

MR BERRY: Can I just speak to the point of order, Mr Speaker? The question to which Mr Moore refers was an amendment in relation to all committees of the Assembly. This amendment is specifically related to one committee. As I recall it, this committee was not mentioned in the batch of committees that were the subject of the original question. It has a different application, Mr Speaker.

Mr Moore: No, that is not how it is. Look at the minutes.

MR BERRY: I do not have them in front of me. It was in relation to all the other committees that were formed, Mr Moore, as I recall.

Mr Moore: I draw your attention to the top of page 18 of the minutes, Mr Speaker. Under the heading "Select Committee on the Report of the Review of Governance", the minutes state:

> (5) Omit paragraph (2), substitute the following paragraph:
>
> "(2) the Committee be composed of 5 members to be notified in writing to the Speaker - - -

MR BERRY: I accept that.

Mr Moore: I think we have dealt with the issue.

MR SPEAKER: However, Mr Moore, when Mr Berry moved this amendment, he sought leave of the Assembly to do so and leave was granted. I am advised by the Clerk that this would override standing order 136. There is confusion as to whether this related exclusively to the Report of the Review of Governance or perhaps the rest that you are claiming; but, in any event, leave was granted by the Assembly to move this motion. You may continue, Mr Berry.

MR BERRY: I am glad that that has been clarified. I am glad that we had your able assistance, Mr Speaker, and the assistance of your clerical staff. I must say that it had my head spinning for a minute.

Mr Osborne made some comments about my comments in respect of Professor Pettit. From the outset I have never made a secret of my position about the Pettit inquiry. It was an illegitimate child born out of a failed relationship at the National Capital Futures Conference. The National Capital Futures Conference was a political move by the Government to establish themselves as the agent for change in the Territory, trying to create the impression that something was wrong and they were fixing it. An overwhelming number of people were concerned about that, not the least Mr Moore and Ms Tucker, as I recall.

Mr Moore: I raise a point of order, Mr Speaker. Standing order 55 relates to "all imputations of improper motives". I think that Mr Berry is talking about the motives of people being improper.

MR SPEAKER: Mr Berry, do not be provocative.

MR BERRY: It was not about improper motives. It was my view of the world at the time, Mr Speaker. If anybody feels offended by that - - -

Mr Moore: Mr Speaker, that proves my point of order.

MR BERRY: That was my view of the world at the time. If people feel offended by that, I withdraw any imputation that they might feel I have laid against them.

The fact of the matter is that those were my views upon which I formed the opinion. Nobody at the National Capital Futures Conference called for this inquiry. It resulted from a deal struck between the Chief Minister and the relevant Commonwealth Minister. It was a very political statement from the Chief Minister. Nobody at the conference called for this inquiry. It was a political stunt from the outset. I made that clear from an early point. Mr Moore, as I recall, was reported in the paper as having some reservations about the inquiry as well at one point. Later on Mr Moore became a convert to the process, and a committee of inquiry was established. Professor Pettit was secured to chair the committee in circumstances which would hardly establish the view that the committee was independent. The Labor Party at the time - - -

Mr Hird: You are not putting a slur on the professor, are you?

MR BERRY: No, I am not putting a slur on Professor Pettit. I am quite impressed with Professor Pettit.

Mr Moore: I rise on a point of order, Mr Speaker. Once again my point of order is under standing order 55. It seems to me, Mr Speaker, having heard Mr Berry speak very publicly on this matter on a number of occasions, that he has already imputed improper motives publicly. He is already going down exactly the same - - -

MR BERRY: To whom? Which member?

Mr Moore: To a member; me in particular. You also publicly impugn the motives of Professor Pettit, which is an appalling thing - - -

MR BERRY: Which member?

Mr Moore: In this case I am talking about me. You have imputed improper motives. Do not continue.

MR SPEAKER: Mr Berry, you must appreciate that people outside this chamber do not have any means of redress or recourse. I hope that no criticism or imputation will be made against them.

MR BERRY: Nobody outside this chamber will need to worry about that. The Labor Party was not consulted on the appointment of Professor Pettit. It was an arrangement principally between Mr Moore and the Chief Minister. Labor was informed that Professor Pettit was contacted by Mr Moore in New York and offered the position, and that was subsequently consummated in some way. I accept categorically that Professor Pettit, in the performance of this inquiry, brought with him expertise from an academic background which had to be appreciated. Nevertheless, I am entitled to question the circumstances which left the Labor Party out of the loop when it came to the consultation process.

MR SPEAKER: Order! The member's time has expired.

MR BERRY: I think it would do the public record good for me to have a short extension of time.

Mr Moore: No way.

MR BERRY: I will get one in the adjournment debate, Michael, and it will be worse if you do not let me have it now. *(Extension of time granted)* Those are the circumstances. Labor was left out of the loop. If you are left out of the loop, you do not feel inclined to participate in those circumstances. It was the wrong time for an inquiry - I said so at the time - because there was an election in full flight. It was an inappropriate time to do it. It was, in my view, political.

But the circumstances that prevail at this point are that Professor Pettit has come down with a report which is a matter of fact and has to be considered. It is an appropriate course for a committee of five of this Assembly to consider that report and to decide what recommendations should go to this committee. There are some quality recommendations in that report that deserve further investigation. The Pettit committee was not a committee of the Assembly; it was a committee of the Executive. I go now to the issue of the separation of powers, Michael. Had it been a committee of the Assembly, and had we been consulted on the issue, then it might have had broader acceptance in the first place.

Mr Moore: It was a motion of this Assembly. Give the full story, Wayne.

MR BERRY: Yes, Mr Moore, I will refer to that to make sure that nobody can claim that I have been unfair. Yes, there was a motion of this Assembly in relation to the inquiry, after the event. Once the inquiry had been established and everybody had been appointed, there was a motion of this Assembly which a majority of people, except the Labor Party, endorsed. But it has to be clear on the public record that the Labor Party was left out of the loop.

I can see now, in the consideration of these extra members for this committee, that the Labor Party is again going to be restricted in its contribution to this committee. This proposal that we are putting forward for five members is to take advantage of the hand of friendship which was allegedly put out by some opposite in relation to the use of a broader base of talent from within this Assembly. If the motion is not carried, that whole proposition will have been completely debunked and will be finished.

Question put:

That the motion (**Mr Berry's**) be agreed to:

The Assembly voted -

AYES, 7	*NOES, 10*
Mr Berry	Ms Carnell
Mr Corbell	Mr Cornwell
Mr Hargreaves	Mr Hird
Mr Quinlan	Mr Humphries
Mr Stanhope	Mr Kaine
Ms Tucker	Mr Moore
Mr Wood	Mr Osborne
	Mr Rugendyke
	Mr Smyth
	Mr Stefaniak

Question so resolved in the negative.

MR MOORE (Minister for Health and Community Care): Mr Speaker, I seek leave to make a personal explanation under standing order 46.

MR SPEAKER: Proceed.

MR MOORE: The style of events that Mr Berry puts misrepresents - I am not saying deliberately - what actually happened in terms of the way Professor Pettit was nominated for the committee. I thought that it would clarify matters if I explained exactly what happened. The Chief Minister having announced the committee, I approached the Chief Minister and said to her that I thought that I knew somebody who would be very good as the chair of that committee, Professor Pettit. I provided her with a copy of the propositional summary from the back of his book entitled, *Republicanism: A Theory of Freedom and Government*.

I reminded the Chief Minister that I had done a joint article with Professor Pettit which opposed her concept of citizens-initiated referenda; nevertheless I thought he would be the entirely appropriate person because of his understanding of the philosophical background in terms of political issues, political thinking and political philosophy. That is why I believed he would be an appropriate person. That is how the nomination occurred and that was the full extent of the exercise. Before I did that, I approached Professor Pettit to ask him whether he would mind if I nominated him. I would have thought that was a reasonable approach.

Although I cannot remember any specific cases, I believe that when the Labor Party was in government there were a number of times when I nominated people in a similar way when an idea was put up that perhaps somebody should be nominated. I have done it fairly regularly in the Assembly. Often those people were not chosen, but that was the process.

ADJOURNMENT

Motion (by **Mr Humphries**) proposed:

> That the Assembly do now adjourn.

Mr Alex Fyfe - Retirement as Principal Attendant

MR SPEAKER: Members, today marks the last day that our Principal Attendant, Mr Alex Fyfe, will be on duty. Alex will be leaving the Assembly from the close of business today and this will end seven years of very capable and conscientious service to the Legislative Assembly. Alex has been Principal Attendant since February 1991, having previously had a long and distinguished career in the police force in the ACT, Victoria and overseas.

When Alex first joined the Secretariat, there were just two permanent attendants, and he has seen that number grow to double that, as well as five sessional attendants. He has dealt with a range of changes as the Assembly has developed and moved to new premises. Alex has been a key player in the development and implementation of many of these changes.

Alex has played a particularly significant role in maintaining the security of members in and around this building, much of it behind the scenes. For this I give my particular thanks to him, and I am sure other members would join me in doing so. I also thank him for his professionalism and assistance over the years and wish him well for the future, and I am sure all other members join me in that. Thank you, Alex.

Mr Alex Fyfe - Retirement as Principal Attendant

MR OSBORNE (4.48): I was to rise in the adjournment debate to congratulate somebody else who has retired, Mr Eddie Weatherall from the Tuggeranong Vikings. However, I take this opportunity to congratulate Mr Fyfe. Both men have had long careers. I would like to wish Alex the best. In my three years here in the Assembly he has been a tremendous help. I hope whatever you do, Sergeant, things go well.

Mr Alex Fyfe - Retirement as Principal Attendant

MR BERRY (4.48): I rise to speak on behalf of the Labor Party. Our experience with Alex Fyfe goes back over many years. Bill Wood and I are the only remaining Labor members of the First Assembly. I would like to thank Alex for his skill, care and attention throughout my time here. At some times it has been difficult. Nevertheless, Alex has always performed his work in this place with dignity and has always treated all of our members with the greatest respect, and I suspect that the same applies to all other members in this place.

One of the things about a successful Assembly which the community quite often forget is the people who work in it in the back rooms. The people who take the limelight are, of course, the politicians in most cases. Some of us get very envious about the limelight, but that never shows up amongst the people who work behind the scenes in Assemblies. They are the ones who make these places successful. Alex Fyfe has made his contribution to a successful, sometimes turbulent, period of self-government. Sometimes this place has been a parliament which Alex might not have wished to discuss when he was having a beer or a cup of tea with his friends. Nevertheless, he has always responded to the call of this democratically elected parliament and I hope he remembers it warmly. We will remember him so.

Mr Alex Fyfe - Retirement as Principal Attendant

MS CARNELL (Chief Minister and Treasurer) (4.50): Mr Speaker, may I say the same from this side of the house? Thanks, Alex. You have looked after us well - I think it has probably been more than that - as a friend through some pretty tough times. Alex has had to sit there and listen. I reckon he deserves a medal. Good luck for the future.

Mr Alex Fyfe - Retirement as Principal Attendant

MR MOORE (Minister for Health and Community Care) (4.50): I would like to add one comment. In all the time that Mr Fyfe has been here I have waited and watched to see when he would get rattled. This is my last opportunity. The closest I have ever seen him to being rattled is at the moment. I remember one occasion - I am sure Alex Fyfe remembers it well - when there was some difficulty in the gallery. There was quite a deal of noise going on and interjections were coming from the gallery. I think there may have been an instruction to the effect that we were going to clear the gallery. I looked back and saw unionists, all of whom seemed to be about twice the size of Mr Osborne, and I looked over to the attendants. I cannot remember exactly where Alex Fyfe was, but I have this picture in my mind - perhaps I have imposed it - of Alex Fyfe taking some determined steps in that direction, at which time the Speaker decided that it might be a better course of action to close the Assembly down for a short while. I have waited for the chance to see Mr Fyfe rattled; but, as is the case with so many good attendants we have had in this place for so long, it just does not seem to happen. It looks like I am going to miss out on the opportunity. Congratulations and thank you very much.

Mr Alex Fyfe - Retirement as Principal Attendant

MS TUCKER (4.52): I thought I had finished for the day. I did not realise that this was Alex Fyfe's last day. I certainly would like to wish him the best. I have always found him very supportive, and I am very sorry that he is going.

Mr Eddie Weatherall - Retirement : Mr Alex Fyfe - Retirement as Principal Attendant

MR OSBORNE (4.53): Mr Speaker, I seek leave to speak on another subject.

Leave granted.

MR OSBORNE: I mentioned Mr Eddie Weatherall earlier when I was speaking about Mr Fyfe. Mr Weatherall has been the general manager of the Tuggeranong Vikings Club for about 400 years. He was there when it started. I would like to wish him all the best. He is retiring today or tomorrow. The Tuggeranong Vikings, although it is for supporters of a code that I do not think is worth worrying about, is certainly a club that has done tremendous things for the community. The main reason they have been able to do that is that they have had a tremendous general manager in Eddie. I wish him all the best in the future.

I would just like to relate one story, if I may, Mr Speaker, about Mr Fyfe. I was reminiscing and trying to think of the one time that I saw him flustered. I think all members will know that he has never called anybody here by their first name. It was quite annoying to me that he kept calling me Mr Osborne, even behind closed doors. When I brought his former colleague Mr Rugendyke in to meet him, he said, "Good day, Dave". I said, "What?". He went, "Uh-oh - Mr Rugendyke".

Question resolved in the affirmative.

Assembly adjourned at 4.54 pm until Tuesday, 19 May 1998, at 10.30 am

Contents

ANSWERS TO QUESTIONS

CHIEF MINISTER

LEGISLATIVE ASSEMBLY QUESTION

QUESTION NO 2

Chief Minister - Motor Vehicle Accident

Mr Berry - to ask the Chief Minister - In relation to the Chief Minister's accident, which resulted in another new car, in the last week of January:

(1) When and where did the accident happen.

(2) Did you or any other person require medical treatment.

(3) Did you undergo a breathalyser test.

(4) How much damage was done to each car.

(5) Were you charged, and if so what were the charges.

(6) Were you issued with an on the spot fine, and if yes what was the basis for the fine.

Mrs Carnell - the answer to the Member's question is as follows:

(1) The accident occurred at approximately 8.20am, 29 January 1998 on Commonwealth Avenue, Parkes.

(2) No.

(3) No.

(4) Minor damage was sustained to the rear of my vehicle.

(5) No.

(6) No.

The accident did not result in 'another new car' as stated by the Member. The vehicle was on temporary hire at the time until my permanent vehicle became available. It has since been repaired.

Contents

APPENDIX 1: Incorporated in Hansard on 28 April 1998 at page 53

ADVICE TO MEMBERS CONCERNING PROPOSED EXECUTIVE COMMITTEES

Introduction

Members have sought my advice concerning the recently announced proposal by the Chief Minister to establish a system of executive committees as part of a move towards a more co-operative approach to Government in the Australian Capital Territory. The committees would "deal with a number of key issues relating to the future of the ACT", would be chaired by members of the cross benches in the Assembly and would report directly to Cabinet as well as the Assembly. The committee chairs will participate in Cabinet discussions of their recommendations, will be able to appoint committee members from outside the Assembly and will be supported by staff from the ACT Public Service.

Background

It is understood from the Chief Minister's press release (see Attachment 1) that final details of their operation will be subject to further discussion but at this stage three committees are proposed:

- **Executive Committee on Information Technology and Multimedia**, chaired by the Independent MLA Michael Moore. To recommend action to enhance Canberra's status as a 'clever city' and to ensure that the ACT remains at the forefront of technological change.
- **Executive Committee on Government Reform**, chaired by Independent MLA Paul Osborne. To propose changes to the form of government in the ACT, taking particular account of the recommendations of the Pettit Inquiry, which is due to report at the end of April.
- **Executive Committee on Environmental Industries**, chaired by Greens MLA Kerrie Tucker. To develop sustainable technology and environmental industries in general in the ACT, with a view to enhancing Canberra's reputation as a world-class centre for environmental technology.[1]

It is reported that committee chairs may get a vote in Cabinet and may be allocated an extra $10,000 for staff for their offices (presumably personal staff). It has also been reported that steps may be taken to allocate extra payment to the Chairs (see Attachments 2 and 3).

A significant review under the chairmanship of Professor Pettit on the governance of the territory with respect to the operations and organisation of both the legislature and executive is due to report later this month, and latest press reports indicate that two of the proposed executive committee chairs prefer to wait until Professor Pettit has presented his report.

Members have sought advice on a number of specific matters in relation to the proposal. Central to their concerns are the following issues:

- the effect on the checks and balances inherent in a "Westminster style" system of parliamentary democracy;
- the implications for the current Assembly committee system and its effectiveness;
- would the chairs of the proposed executive committees become de facto members of the executive; and
- the likely impact on the role of Members who become chairs or members of the proposed executive committees.

[1] Press release, dated 26 March 1998

I will endeavour to answer the questions that have been posed, some in general terms. Certain of the specific queries would need more consideration than can be given in the time available and other matters, such as those relating to specific standing orders, will need procedural reviews by the Assembly if the proposal eventuates.

The advice I have set out below contains some significant queries concerning the public details of the proposal. It is given against the background of the ACT's current constitutional framework but it is also given with the realisation that the current arrangements are not immutable.

The proposal is not entirely without precedent. The Alliance Government in 1989 sought to establish a collegiate style Government with non-Ministers performing executive roles and this did have an effect on the operation of the Assembly.

The Assembly must be given the option to develop its practices and procedures so as to ensure there is good and representative government of the Territory. However, to change it in the way proposed within our current constitutional structure could have a significant impact on the Assembly's (including its committees') performance of responsibilities towards policy making and its role in scrutinising the Executive.

Constitutional framework

The *Australian Capital Territory (Self Government) Act 1998* (Commonwealth) (the Self Government Act) sets the constitutional framework for the Territory. It establishes the Territory as a body politic under the Crown, makes provision for an Assembly and its constitution (including the provision it shall consist of 17 Members), procedures and powers. It also makes provision for the election of Members to the Assembly.

It is a parliamentary democracy as these Members are elected by the Territory community, are representative of the Territory community and are accountable to the Territory community every 3 years should they seek re-election. They are the Assembly and, by electing a Chief Minister (who in turn chooses an Executive from among them), they choose the Government of the Territory and, should they see fit, they may remove that Government and replace it with another. They are the community's representatives in not only choosing who shall govern the Territory but in initiating, vetting and legitimising the laws for the peace, order and good government of the Territory, scrutinising the subordinate laws of the Territory and appraising and testing the Government's policy and administration.

The Self-Government Act also establishes the Australian Capital Territory Executive and provides that the Executive has the responsibility for governing the Territory with respect to a range of specified matters. It is the Executive that has the responsibility for governing the Territory, not the Assembly. The Members of the Executive are the Chief Minister and other Ministers appointed by the Chief Minister - their number is limited and they must be appointed from among 15 of the 17 Assembly Members (the Speaker and Deputy Speaker are ineligible).

The Self-Government Act provides that Ministers shall administer such matters "relating to the powers of the Executive as are allocated" by the Chief Minister and the particulars of these arrangements are known as the Administrative Arrangements. Ministers are not required to do this personally, as a Minister may by instrument delegate to a person all or any of his or her powers under an Act or a subordinate law. The *Administration Act 1989* and the *Public Sector Management Act 1994* deal with the delegation of ministerial powers or duties though I have not pursued this matter further. It is my understanding that it is not proposed to delegate any powers, other than the power to appoint members to the committees, to these committees or their chairs.

Issues

"Westminster Style" Government

The third edition of *House of Representatives Practice* gives a brief summary of the doctrine of the separation of powers - that is that there are three essentially different powers of government: legislative, executive and judicial and a country's liberty depends on each of these powers being vested in a separate body. *House of Representatives Practice* goes on to comment on the Australian (federal) constitutional position where there is a combining and overlapping of the legislative and executive functions:

> According to Bagehot, the relationship between the legislative and executive powers in the Westminster system is better described as a 'fusion of powers':
>
> > The efficient secret of the English Constitution may be described as the close union, the nearly complete fusion, of the executive and legislative powers.
>
> This fusion takes place in a Cabinet, which:
>
> > ...is a combining committee - a *hyphen* which joins, a *buckle* which fastens, the legislative part of the State to the executive part of the State. In its origin it belongs to the one, in its functions it belongs to the other.
>
> Although this fusion of powers in the Westminster tradition may be regarded as a strength, it is also recognised as a potential danger. It is accepted to be undesirable for all or any two of the three powers to come under the absolute control of a single body. There are therefore checks and balances which prevent the fusion of executive and legislative powers from being complete.[2]

The role of the Assembly is a derivative of that of the House of Representatives. It elects a Chief Minister who in turn forms a government and it may remove that Government should it see fit. Clearly the Assembly acts to develop the buckle that fastens the legislative part of state (itself) to the executive part, but the two continue to remain distinct and have clearly defined responsibilities and roles to play. The Assembly's law making function (including the examination of the Executive's subordinate legislation), its role in questioning and seeking clarification of and making recommendations concerning the Executive's policies, its role in scrutinising Executive administration and expenditure proposals and ensuring public money is spent in accordance with Assembly approval and in the best interests of the Territory are all predicated to a large extent on actions by the Executive and are conducted in co-operation with the Executive. It also has a role and a duty to the people of the Territory and while this relationship is present in all actions it is most paramount when it acts directly on their behalf, for example when it receives petitions from citizens of the Territory or airs or ventilates grievances raised by citizens of the Territory, grievances which may develop through Executive administration.

The development of the proposed executive committees with chairs taken from the body of the Assembly's membership is not only not explicitly provided for by the Self-Government Act, but also blurs the distinctions between executive and legislature. These distinctions currently are one of the major checks and balances that contribute to the health of the "Westminster style" of parliamentary democracy. To blur that distinction creates an opportunity for the system to become less of a servant to the people of the Territory and also creates an environment where responsibility for actions is corporate and accountability is therefore lessened.

[2] *House of Representatives Practice*, Third Edition, p. 70

The work conducted by the Assembly's Select Committee on Self-Government which reported in 1990 lends support to this view. The Select Committee was tasked with examining, amongst other things:

> the form of government most appropriate in the ACT taking into account the responsibilities of state, territory and municipal governments.

In examining the various options of the form of government most appropriate in the ACT the Committee noted that the executive committee system was tried at national level in two small island states, the Seychelles in the Indian Ocean and the Solomon Islands in the Pacific. After experimenting with the committee system both states moved to a more conventional ministerial system.[3]

The Committee gave consideration to an executive committee system modelled on the "Donoughmore version of Westminster" which included chairmen who have the status of Ministers and constitute an executive board. The system was designed to allow all political parties and independents to participate in administrative supervision and policy development, and to allow backbenchers and minority representatives an effective share of responsibility with a more consensus style of government utilising all available talent within the legislature resulting.

However, the Committee had a number of reservations about the model. Accepted avenues of political accountability could be blurred by the opposition parties effectively becoming a part of the executive.[4] Further, it noted the absence of an individual ultimately responsible and accountable for a particular portfolio as the establishment of executive committees diffuses responsibility and denies ministerial responsibility.[5] Finally, it asserted that the Executive committee system does not sit well with public questioning and scrutiny of the executive by the minority parties, or "opposition", which is a feature of the Australian Parliamentary system.[6]

Available evidence suggests that providing a governing role for the executive committees chaired by Assembly Members or with MLA's as members would seriously compromise the scrutiny role of the Assembly.

Impact on Role of Assembly Committees

Since its inception the Assembly has had a vigorous and active committee system with the committees undertaking both a policy making and scrutiny role, often performed under difficult circumstances. All standing committees have inherent in their terms of reference a role in monitoring and evaluating the performance of the executive and the Public Service. The Assembly has also seen fit to include in the laws of the Territory specific responsibilities for its committees. An indication of the increasing policy role of the committees is the decision of the Assembly, in May 1995, to adopt a standing order providing the authority for committees to prepare and present discussion papers to the Assembly for its consideration. These committees have undertaken their duties with limited membership and limited staffing and financial resources.

The effect of the operation of Assembly committees during the period where Executive Deputies existed was considerable. In December 1989 the then Chief Minister, Mr Kaine, appointed 5 Executive Deputies in addition to the 4 Ministers comprising the Executive. On 14 December 1989 Mr Kaine tabled in the Assembly guidelines for the relationship between Ministers and their Executive Deputies and these are shown at

[3] Select Committee on Self Government, Report, 20 April 1990, p.39
[4] ibid, p. 37
[5] ibid, p. 58
[6] ibid,p.39

Attachment 4. In a ministerial statement on the subject, Mr Kaine indicated that the arrangements concerning the Executive Deputies were predicated on three basic principles, namely:

- Ministers would be entirely responsible for all matters in their portfolio in accordance with the Self-Government Act;
- Ministers would be responsible in the Assembly for all matters in respect of the portfolios;
- The role of Executive Deputies was to provide an additional source of advice and assistance to Ministers in the exercise of their ministerial authority.

In some instances, Executive Deputies were elected as chairs of committees where the subject matter of the committee overlapped with that of the Executive Deputy's responsibilities. In those instances the then Opposition refused to participate in any committee inquiry, and, as a consequence, the effectiveness of Parliamentary committees was significantly impaired.

The reason for the non-participation in Assembly committees was perhaps best spelt out by the then Leader of the Opposition, Ms Rosemary Follett:

> I repeat what I have said many times before - that we stand ready to participate fully in the life and work of Assembly committees. But committees must be an arm of the Assembly and not simply a rubber stamp for Government decisions.
>
> ... It is extremely important that there is a clear separation of powers between the Executive Government and the Assembly and this separation must not only occur in fact but it must also be seen to occur - even by the casual observer.
>
> The Labor Party will not be seen as part of a committee which appears to be an executive committee. [W]e will not serve on a committee which is chaired by an Executive Deputy who has portfolio responsibilities in that committee's area of responsibility.".[7]

Mr Connolly later developed the view in his Statement attached to the Standing Committee on Legal Affairs' report on the *Inquiry into Defamation Law in the Australian Capital Territory*, where he stated:

> As a legal principle a decision maker must not only be free from bias, but must be seen to be free. This is the nub of our concern. We make no accusation that Mr Stefaniak cannot distinguish between his Executive Deputy role and his committee Chair role. Rather, we say the public cannot have confidence in a committee chaired by a person held out to be a Government spokesperson. The public must wonder at the impartiality of an Executive Deputy in these circumstances. As Lord Denning said in Metropolitan Properties Co v Lannon [1969] IQB557 "The Court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right minded persons would think that in the circumstances there was a real likelihood of bias on his part then he should not sit".[8]

Clearly the Assembly's previous experience in a related issue suggests that a question critical to the continued wellbeing of the Assembly's committee system as it has operated is - would the chairs of executive committees be appointed to Assembly committees, particularly committees with terms of reference connected with the terms of reference to the relevant executive committee. If the answer to the question is yes, then depending on the actions taken by the Members (if any) who are not serving on the executive committees the future of the Assembly committee system cannot remain untouched. If the Members who do not serve on the executive committees take a similar stance to that taken during the Alliance Government towards executive deputies holding the chair then the work of Assembly committees will be impaired. Another option is that all Members

---

[7] *Hansard*, 27 March 1990, p. 879

[8] Standing Committee on Legal Affairs Report on the *Inquiry into Defamation Law in the Australian Capital Territory*, June 1991, p. 43

serve on both executive committees and Assembly committees. I suggest that the relationship that will develop will be one of duplication rather than symbiosis. Neither avenue bodes well for the continued active operation of the Assembly committee system.

Another option is that Members serve concurrently on both executive and Assembly committees. The resources available to Assembly committees are already very limited - particularly in their access to the time of the 13 available Assembly Members (if you include the Speaker and the Leader of the Opposition). In additional comments and again in a dissenting report presented to the Assembly in reports by the Standing Committee on Social Policy at the end of 1997, Mrs Littlewood MLA expressed dissatifaction with the time frames of the Committee's inquiries.

> Given the timeframe of this report the Committee has not been able to have an in depth look into some areas.[9]

To disperse the already limited time that Members have available for committee work across a wider range of committees can only further limit the time that Assembly committees have to consider any inquiry in any depth. A corollary is that the nature of the inquiries undertaken by Assembly committees may need to be limited to those that can be completed in the short to medium term and that any longer term inquiries (which tend to be those concerned with the development of policy issues) could not be undertaken.

The question must also be addressed as to the outcome should an executive committee choose to meet (or a chair was requested to undertake executive duties, say at an important conference or ministerial meeting) whilst the Assembly or an Assembly committee with common membership was meeting. Which body would have the pre-eminent claim to the services of the Member(s).

Another related issue is - would the chairs of executive committees, (by having an executive role) be called before relevant Assembly committees for questioning on the relevant expenditure or administration of the area under scrutiny.

Access to the physical and human resources of the Assembly is also an issue that would need to be addressed. The resources include both accommodation (meeting rooms etc) and technical resources (eg access to the IT infrastructure). It is naive to assume that there will never be a situation where the demands of the executive committees for access to meeting facilities will be in direct conflict with those of Assembly committees. In the past when Executive boards of inquiry have utilised Assembly resources competing demands have resulted in some awkwardness emerging and disappointed clients.

The advent of executive committees could see a major encroachment on the operation of Assembly committees with the clear possibility of Assembly committees being marginalised and left with a vestigial role with their places being taken by hybrid bodies with a governing and scrutiny role, not really answerable to anyone yet answerable to everyone. The core question which then emerges is - why cannot these policy advisory roles be undertaken by Assembly committees? The proposed executive committee on government reform is quite clearly encroaching on a matter that it would be expected that the Assembly may refer to one of its own committees or establish a committee to examine and report on. Why cannot an Assembly committee that is clearly representative of the Canberra community undertake this role and in due course report to the Assembly? The Executive's views on the matter can be fed into the inquiry. The Executive's attitude to the report can be tested when it responds in the Assembly to any recommendations the committee may make.

There is no reason why an adequately resourced Assembly committee cannot examine, report on and monitor these matters. If necessary resources are available, specialist advisers can be appointed pursuant to standing order 238.

---

[9] Standing Committee on Social Policy, Report No. 7, Report on the inquiry into Services for Children at Risk in the ACT, December 1997, p 151

De facto Members of the Executive?

The executive committee chairs would notionally be private Members but would also be fulfilling an executive role. The Chief Minister has indicated that they would be reporting both to the Assembly and to the Cabinet. One major procedural concern to address is the need to amend the Standing Orders to provide for the executive committee chairs and their new roles.

Currently the Standing Orders provided that the presiding member of a committee can present discussion papers and reports to the Assembly when there is no other matter before the Chair. Each committee must also adhere to the Standing Orders during the preparation and consideration stage of a report prior to its presentation. The presiding member may also make a statement on behalf of the Committee. The Standing Orders further provide that the Assembly can consider a report or discussion paper after a Member has moved an appropriate motion. Should debate on the matter not be finalised on the day of presentation, consideration of the report is set down for a future sitting during Assembly Business time.

The priority of Assembly Business items for Assembly consideration is determined by the Standing Committee on Administration and Procedure. Will any debate outstanding on an executive committee report also be regarded as Assembly Business and if so is there not a risk that Assembly Business time will be hijacked by executive committee business. Should the membership of the Standing Committee on Administration and Procedure include executive committee chairs or members it could also have implications for the oganisation of private Members' business. Such Members would notionally be private Members but they may have an executive responsibility and perhaps obligation.

Another procedural matter that arises relates to Question Time. As the primary purpose of questions without notice is to scrutinise the Executive, would the chairs of executive committees participate in the process of asking or/and answering questions, either with or without notice either generally or in relation to those matters that are relevant to the responsibilities of their executive committees.

Standing order 275 of the Legislative Assembly states that any question relating to procedure or the conduct of business of the Assembly not provided in the Standing Orders as practices of the Assembly shall be decided according to the practice of the House of Representatives. Whilst the House of Representatives does not have executive committee chairs, the closest comparison is parliamentary secretaries. The similarities between parliamentary secretaries and the proposed roles for ACT executive committee chairs are of particular interest in that they both:

- sit in cabinet in relation to their areas of responsibility and give advice (but don't have a formal vote). [I am presuming that this will be the case with executive committee chairs];
- are appointed to assist the Executive in the performance of their duties;
- are not paid a salary for the duties performed;
- can have their appointment revoked at any time by the Prime Minister or Chief Minister.

Parliamentary secretaries sit in the row of seats immediately behind the ministerial front bench because of their role in relation to the Executive. It is of note that parliamentary secretaries, due to their role assisting the Executive, cannot participate in a number of parliamentary functions reserved for private members, namely:

- not being able to ask questions without notice;
- as a general rule, not being a member of a Committee of Inquiry;
- not participating in Private Members business.

Should such principles apply in the Assembly if the establishment of executive committees as proposed proceeds? If the ruling made by the then Speaker on 13 February 1990, after the appointment of Executive Deputies (see Attachment 5) is followed, any questions without notice to executive chairs would be ruled out of order. Further, if the House of Representatives' practice in relation to parliamentary secretaries is followed, the number of private Members could be dramatically reduced and this would have implications for the time allocated to private Member's business.

Likely Impact on the Role of MLAs who become Chairs or Members of Executive Committees

Members and their duties

The Assembly's committee system has made a vital contribution to the Assembly's performance of its role. Its standing orders require that the membership of its committees be "composed of representatives of all groups and parties in the Assembly as nearly as practicable proportional to their representation in the Assembly". These "representatives" are representatives of the community chosen by the community and accountable to the community and in their role on committees (or for that matter in the Assembly), whether it be policy making or appraisal or scrutinising expenditure proposals, the public accounts, legislative proposals or government administration, they are performing their roles in an open and transparent manner with certain immunities and powers that enable them to operate effectively.

In carrying out their representative functions, Members do so often in a critical manner, which is perceived on occasion as being too adversarial or over the top, but for the health of the system there is a need for a public questioning and testing of the Government's policies and administration. Should those Members who are not appointed to the Executive accept a dual role, that is, as well as being an Assembly Member they are chair of an executive committee, or a member of such a committee, the dynamics will change. The change may be imperceptible, but whether they be cross bench, opposition or coalition or Government backbenchers, there will be a corruption in the performance of their parliamentary role and, on the issues particular to the executive committees at least, their role as parliamentarians will be diminished.

It could be argued that the proposed role of an executive committee is limited or non specific in nature and problems will not occur. The proposed areas of responsibility are, however, of great importance. From the perspective of responsibility, if the year 2000 problem were to become critical to businesses in the Territory the question arises as to who would bear the responsibility in the Assembly, the responsible Minister or the relevant executive committee chair? From the perspective of encroachment on the Assembly's scrutiny role, a question that must be posed is - what if the Executive decided to establish an executive committee which was chaired by an Assembly member on the draft 1998-99 estimates of expenditure and forward estimates?

Disqualification provisions

There is a real danger that the chairs of the proposed executive committees, should they be Members of the Assembly and accept payment or an allowance for the duties they perform, could disqualify themselves as Members of the Assembly.

Section 14 of the Self-Government Act provides that a Member vacates office if the Member:

(a) at any time after the beginning of the first meeting of the Assembly after a general election, is not qualified to take a seat as a member; ...

(c) takes or agrees to take, directly or indirectly, any remuneration, allowance, honorarium or reward for service rendered in the Assembly, otherwise than under section 73.

In relation to paragraph 14(a) of the Self-Government Act, section 103 of the *Electoral Act 1992* provides that a person is not eligible to be a Member of the Assembly if, inter alia, the person:

- holds an office or appointment (other than a prescribed office - ie, office of Speaker, Deputy Speaker, Chief Minister, Deputy Chief Minister, Minister or MLA) under a law of the Territory, the Commonwealth, a State or another Territory;

- is employed by the Territory, the Commonwealth, a State or another Territory authority or a body (whether corporate or not) established by a law of the Commonwealth, a State or another Territory,

and is entitled to any remuneration or allowance (other than reimbursement of expenses reasonably incurred) in respect of the office, appointment or employment.

This provision is not dissimilar to the provisions of Section 44 of The Constitution which, I believe, emanates from a strong historic concern regarding and even mistrust of the influence of the Crown in the House of Commons. In fact, in the House of Commons a Member cannot relinquish his or her seat and Members who wish to retire accept office under the Crown which were offices or places of profit in former times.

In relation to paragraph 14 (1)(c) of the Self-Government Act, section 73 of that Act lists various offices (including that of a Member of the Assembly) where provision can be made for the payment of remuneration and allowances for services rendered. I am of the opinion that the proposed executive committee chairs could not be remunerated for services rendered in their positions without jeopardising their seats as Members as they are not Ministers and any such remuneration could not relate to their duties as a Member. Also, although paragraph 73 (1)(g) of the Act does make provision for an office to be declared by enactment to be an office to which section 73 applies, should the Assembly proceed to enact such a law, it would have to give very careful consideration to the rationale behind the provision. It could be argued that any payment of the chairs would not be for "services rendered in the Assembly" but account would need to be taken of (a) the fact that it is proposed that the executive committees report to both the Assembly and cabinet and (b) the provisions of section 103 of the Electoral Act.

Particular care would also need to be taken in regard to the payment of any travel allowance (as currently, travelling allowance for Members applies to travel on "Assembly business") and in the allocation of an extra staffing allowance to ensure that Members who chair or participate in the proposed executive committees do not vacate their seats as Members.

The Proposed Executive Committees

There are a number of matters that need to be addressed in relation to the procedures of executive committees and no doubt these matters are under consideration. There are three specific matters however, that I would like to address - membership, staffing and their powers and immunities.

In relation to the membership of the proposed executive committees, I have doubts whether the chairs could legally appoint members as indicated in the Chief Minister's press release as that is an executive function and would have to be the prerogative of the responsible Minister. Issues arise as to the criteria for appointment. These can be summarised as:

- they would not be appointed by the community as are Members of the Assembly;
- would the membership be representative of the community or lobby groups; and
- would the Minister appoint representatives of lobby groups, the community or the Public service on the committee or what mix of members would be appointed.

The staffing of the committees also raises questions. The Chief Minister has indicated that the committees would be supported by staff from the ACT Public Service. This gives focus to two particular issues, viz:

- would the committees receive the same advice as government Ministers - in fact would the very people who are providing the core advice and providing administrative support for the executive committees be providing advice for the Executive; and
- would these staff be located in Members' offices and if so, apart from the obvious basic and very important accommodation and access to resources questions that arise, would they be inevitably involved in the day to day operations of the office, deal with constituency matters and have access to material specifically provided to Members in their role as Assembly Members - particularly briefing material and other material confidential to Assembly committees.

Committees of the Assembly, in pursuing their role as defined by the Assembly, have access to certain powers and immunities and the protection of the Assembly is available to witnesses who give evidence before those committees. These particular parliamentary powers and immunities would not be available to the proposed executive committees and that matter would need to be taken into account by any MLAs proposing to chair or serve on those committees. In addition, it should be noted that I have noticed an assumption in the past that an order by the Assembly authorising publication of a document or a report subsequent to its prior publication somehow gives that document or report the protection of parliamentary privilege. In anticipating a possible move to have the Assembly authorise the publication of records of the proceedings of and the reports of executive committees, I draw Members attention to the following comments in the 8th Edition of *Odgers' Australian Senate Practice*:

> The prior publication by other means of a document which is subsequently published by order of a House or a committee is not protected by parliamentary privilege. Similarly the content of a document which has come into existence independently of proceedings in Parliament, for example, a report or letter which is exchanged between two or more parties and is subsequently submitted to a House or a committee, is not protected by parliamentary privilege.[10]

On a related matter, there has also been an assumption that the particular authority held by Assembly officials when assisting in the maintenance of order in the Assembly or Assembly committee proceedings could be accessed by other bodies when meeting on Assembly premises. This is not necessarily the case.

Conclusion

Members have sought advice on the implications for the Assembly and its Members of the proposed system of executive committees chaired by Assembly Members. In seeking this advice the Members have also asked that other possibilities such as a widening of the membership of the proposed committees to include other Assembly Members be taken into account.

The governing of the Territory has a particular constitutional framework (as provided by the Self-Government Act) based on the Australian adaption of "Westminster style" parliamentary Government. It may well be that this may change and in the future a new structure will be put in place as a result of the current review of governance of the Territory, or from other proposals that emerge in the future. However, given our

[10] *Odgers' Australian Senate Practice*, 8th Edition, p. 47

current structure I have to advise that the proposals for executive committees as outlined could, instead of enhancing community participation in government (if that was intended), actually act to its detriment and by eroding the current tools for scrutiny of government (ie.the Executive) there would be a tendency to disenfranchise the community. It is essential to emphasise how important these constitutional elements are.

There is a real possibility that, should the proposal proceed, the scrutiny role performed by the community's representatives could be seriously compromised and there will be a lessening of the accountability of the Executive to the community. I am not suggesting that in accepting an appointment as a Minister a Member is not fulfilling his or her constitutional role, but it is in the blurring of the lines that the danger exists.

The proposals if implemented could have other serious implications resulting in a significant encroachment on the operation of the Assembly committees, with the precious time available to certain of their members being taken up in an executive role and their increasing marginalisation and replacement by better resourced hybrid bodies that are really responsible to no-one but to everyone. The chairs would not be appointed to the Executive (ie. as Ministers - an entirely proper course) but would be de facto members of the Executive and there would tend to be a corruption, however imperceptible, in their parliamentary and representative roles. In addition, the community's perception of the impartiality of the Members concerned could also be affected and there would be increased confusion in the minds of the community as to responsibility for Executive administration.

There would also be other serious issues of responsibility to address, with lines being blurred - who in the Assembly would be answerable to the Assembly for the relevant area of Executive responsibility - who would be scrutinised and undertake the scrutiny when Executive administration or proposals were being examined by Assembly committees.

Finally, as chairs of the proposed committees, Members would need to be particularly careful they do not disqualify themselves and vacate their seats as Members by breaching the constitutional provisions set down in section 14 of the Self-Government Act.

Mark McRae
Clerk of the Assembly

3 April 1998

Contents

Electronic copy of this page is not available but it is included in the printed Hansard.

Electronic copy of this page is not available but it is included in the printed Hansard.

Contents

Electronic copy of this page is not available but it is included in the printed Hansard.

Electronic copy of this page is not available but it is included in the printed Hansard.

Contents

Electronic copy of this page is not available but it is included in the printed Hansard.

Electronic copy of this page is not available but it is included in the printed Hansard.

Contents

Electronic copy of this page is not available but it is included in the printed Hansard.

Electronic copy of this page is not available but it is included in the printed Hansard.

Contents

Electronic copy of this page is not available but it is included in the printed Hansard.

APPENDIX 2: Incorporated in Hansard on 29 April 1998 at page 140

[Photocopied and hand numbered pages 289 and 290 attached]

Contents

Electronic copy of this page is not available but it is included in the printed Hansard.