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DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

26 May 1998

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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.

NATIONAL SORRY DAY

MS TUCKER (10.32): Mr Speaker, I seek leave to move a motion regarding National Sorry Day.

Leave granted.

MS TUCKER: I move:

> That this Assembly acknowledges and supports National Sorry Day, as recommended by the *Bringing them home* Report.

I rise today in support of National Sorry Day, which was recommended by the *Bringing them home* report. Sorry Day will acknowledge and honour the stolen generations whose stories need to be told and heard. Sorry Day will be a time of sorrow for pain, wrongs and loss. Sorry Day will celebrate the *Bible*, healing and the beginning of new understanding and call for commitment to reconciliation, with justice between all Australians.

Mr Speaker, this is the time for us to take responsibility for reconciliation and justice and not just leave it for future generations to deal with. In this place, as an Assembly and a parliament, we have already apologised for the wrongs that have been done to our indigenous people. We have made strong statements in support of reconciliation. We have, standing in our parliament, flags of the Aboriginal and Torres Strait Islander people. We have obviously, as a parliament, made strong statements towards reconciliation. Today is the first National Sorry Day. I believe that this is the first of such days forever into the future. What we are doing by acknowledging, once a year, the stolen generation report is participating in an ongoing process of healing. This is a process whereby not only are we sorry, but also we are hopeful, we are positive and we know that we can move towards a just relationship with our indigenous people. I believe that all members of this Assembly are in support of such a motion.

I must say that this morning, while I was listening to the radio and reflecting on where we have come as a country, I was disappointed, as most Australians would be, in John Howard's response to this issue. I believe that, as a nation, we are showing compassion, wisdom and maturity by embracing in such a broad way the concept of Sorry Day. It is definitely a symbol of hope and we can move on from this point.

I was also interested to see last night on television Aboriginal and Islander people making statements to the effect that this is not about feeling guilty; this is about being sorry and moving on. I think that is where the hope lies. I think it is something that, as Australians, we can all be proud of.

I hope that, in fact, we will see the sentiments expressed in an apology actually supported by governments in terms of their policies for direct service provision to Aboriginal and Torres Strait Islander people, because there is no doubt that they are still a very marginalised and disadvantaged group in our society. We have to follow up our symbolic gestures and our apologies with policies which actually support what we are saying. I do look forward to seeing, in the next budget, a recognition of that from Mrs Carnell.

MS CARNELL (Chief Minister and Treasurer) (10.36): Mr Speaker, I think all of us today acknowledge those members of the indigenous community that were removed from their families. As we know, this Assembly has already said sorry to those people for their removal from their families. It was on this day just 12 months ago that the *Bringing them home* report was tabled in Federal Parliament. In response to the report, the ACT Legislative Assembly unanimously passed a motion formally apologising to the Ngunnawal people and other indigenous people in the ACT for the hurt and distress inflicted upon any people as a result of the separation of Aboriginal and Torres Strait Islander children from their families. The motion also assures the indigenous and non-indigenous members of the ACT community that the ACT Legislative Assembly regards the past practices of forced separation as abhorrent, and that the Assembly expresses sincere determination that such practices will not happen in the ACT.

There are a lot of people who believe that they should not say sorry because they were not responsible for taking children from their mothers' arms. To these people I say that "sorry" does not have to imply guilt or blame. It is possible to say sorry to people because you feel for their pain. Very few of us could understand the feelings of those children at being taken away from their families or the feelings of parents whose children were taken. Few of us can know the pain or the suffering they endured. But, Mr Speaker, we can be sorry that it ever happened and we can and must acknowledge that what happened was not acceptable and that we must be prepared to help and be part of the healing process.

Others argue that removing indigenous children from their families was in the best interests of the children; yet the *Bringing them home* report is full of stories of children being physically, mentally and emotionally abused by those responsible for their care. How could this treatment be in the best interests of the child? I thank those people who have bravely told their stories - some in this place - so that we all can understand a little bit better and know the truth.

We in the Legislative Assembly were honoured - I was and I am sure others were - when members of the ACT Aboriginal and Torres Strait Islander communities came before the bar of the Assembly to tell their stories. We were told stories of children being separated from their families, of life in foster care, of years of searching for mothers and fathers, and of a continuous fight for recognition of their cultural identity.

We heard how three generations of one family were affected by forcible removal policies. These survivors of the stolen generation showed to all of us present that forced removal of Aboriginal and Torres Strait Islander people from their families and communities was totally devastating.

Sorry Day gives us an opportunity not only to say sorry for the atrocities of the past but also to help in the healing process. I am confident that all of the people in Australia - children, leaders of churches, members of this Assembly, members of parliament generally, the community generally - will reaffirm on this first Sorry Day our commitment to help with that healing process, to be part of that healing process and, I suppose, to ensure that something as abhorrent as the stolen generations episode does not happen in this country again. Mr Speaker, let us hope that every Sorry Day we have in the future will be a milestone for better recognition of our indigenous people, their rights, their cultures and their futures.

MR STANHOPE (Leader of the Opposition) (10.40): I would like to join with Ms Tucker and the Chief Minister to express the support of the Labor Party for Sorry Day today, to acknowledge the importance of a day such as this in terms of its capacity to keep a national focus on the fact that in the two centuries of white occupation of this continent indigenous Australians have been devastated and to concentrate our attention on the fact that indigenous people in Australia today still suffer appallingly as a result of the destruction of their culture and the entrenched poverty that afflicts so many of them.

The *Bringing them home* report was a very important milestone on the road to reconciliation between indigenous and other Australians. We cannot underestimate the significance of that inquiry and of that report to indigenous people. However, on a day such as today - the first anniversary of the tabling of the report in the Federal Parliament - it is good for us to think a little bit about the continuing discrimination suffered by indigenous Australians and for us to focus on the pain and the suffering which a policy such as the forced separation of children created for so many Australians and the appalling unfairness and distress that that policy caused.

It is important that we do not gloss over the continuing discrimination which indigenous Australians suffer. I think it is worth putting on the record in this place and continually reminding ourselves of some of the statistics that starkly reveal the circumstances of indigenous Australians. I will now do that. Today, in 1998, indigenous Australians die, on average, 15 to 20 years earlier than other Australians and are far more likely to suffer infectious diseases and chronic diseases. The unemployment rate for indigenous people is an estimated 23 per cent, as against about 8 per cent for the general community, and incomes for indigenous people are approximately two-thirds of the Australian average.

Less than one-third of Aboriginal and Torres Strait Islander students are finishing secondary school, compared with a national retention rate of around 70 per cent. Aboriginal people are overrepresented in the criminal justice system by a factor of at least 15. Aboriginal people are far more likely to live in poor and overcrowded housing

without essential services. It is relevant that we focus on the fact that the Aboriginal communities in Australia suffer from entrenched poverty, that is, poverty that is self-perpetuating. It is a vicious cycle which, because of the failure of government policies, Aboriginal people have not been able to break from.

In any discussion of Sorry Day, any discussion of the events of this week, any consideration of reconciliation, it is important that we keep those sorts of statistics in mind, to give a proper focus to what it is that Sorry Day represents. The Labor Party is very pleased to be able to support Sorry Day today and the events of this week, and we give our commitment to maintaining the pace of reconciliation and our determination as a party to seek to meet the aspirations of indigenous Australians.

MR OSBORNE (10.44): I rise to support Ms Tucker's motion. I thank her for raising this issue, as I believe that it is something all Australians should be concerned with. I believe that if we as a nation are to build a better future we must acknowledge the mistakes of the past. There can be no doubt not only that Aboriginal people were dispossessed but also that their society was fractured almost beyond repair by the practice of separating children from their parents. This is something which this society should acknowledge responsibility for and apologise for, and then move on.

I am glad that last year I played a part in this chamber's acknowledgment of past injustices. One of my proudest days in the Assembly, but also one of the saddest days, was the day when we had members of the Aboriginal community address this Assembly, responding to the apology which we issued last year. That was a very moving day, as members who were here will recall, and certainly was well worth the effort. I would hope that soon the Federal Government will see its way clear to make a formal statement of apology on behalf of all Australians. I find the stance of John Howard in particular quite intriguing.

As all members will recall, last year we had a proposal for a Canberra-Nara peace park in front of the Hyatt. When it was discussed and when it became apparent that we as a Territory wished to use the word "peace", we had a number of people within the Federal Government, in particular John Howard, working behind closed doors to undermine that process. His justification for doing that was that the Japanese Government had never formally apologised for what had happened in World War II. As you will recall, Mr Speaker, the following day I tabled the front page of the *Canberra Times* from, I think, 1953, on which I think the headline was "Japanese PM apologises". That was not good enough for the leader of our country. He feels that it is good enough for him to apologise personally to the Aboriginals but feels no responsibility for the Government as a whole to apologise. He felt that the Japanese Prime Minister coming to this country and apologising personally, as Mr Howard had done to the Aboriginals, was not good enough. That whole issue really left a very bitter taste in my mouth. Mr Speaker, I do not believe that we as a country should have a black armband view of our history, as I think there is much to be proud of; but I also do not believe that we should tie a black blindfold over our eyes.

Mr Speaker, many people make a lot of disparaging remarks about my involvement with football. When I was actually playing the game, they said that I was too slow. Now that I have finished playing the game and have entered politics, they paint me as being probably not as quick as others. Mr Speaker, I reject both charges. One person I met while playing rugby league, and one of my best mates, was Ricky Walford. He was an Aboriginal winger with me at St George. He is very well known. I recall the many times that I went to Walgett with him and stayed with his family there and had a terrific time. Ricky remains one of my closest friends, and when I say sorry today I am thinking about him and his family. I congratulate Ms Tucker for bringing this matter up. I am pleased that we as an Assembly will be supporting the motion as a whole.

MR HARGREAVES (10.49): I also rise to support comments made by previous speakers. Last night, at a function, I spoke to a young lady who had been born in Germany and had come to Australia when she was about three or four. She told me that she did not understand what the sorry thing was all about because she had lived with taunts and being called Hitler all the way through her school years. Really it had nothing to do with her. She was not here; her forebears were not here. When we spoke about it, a couple of things became very evident. When we talk about something - any subject at all - one of three things occurs: We are very happy with it, we could not care less about it, or we have a regret about it. We may not have an involvement, but we always have those three emotions. When we teach our kids about the things that they do wrong, we teach them to say sorry when they have hurt somebody else. It is not an admission of guilt; it is an expression of regret.

Mr Speaker, I am one of those people who were not born in this country, but I grew up around the country and I saw for myself the treatment of indigenous peoples. I can remember as a 12-year-old being appalled by it. In those days I felt a sense of shame. When I was looking at the *Bringing them home* report, that shame came back to me by the bucketload.

When we say sorry for something, it also has a hint of promise. It is a promise that whatever we have done will not happen again. There is a hint of positively moving forward. In that expression of contrition we also indicate that we have learnt a lesson. I would suggest that not enough people in this country have learnt a lesson from the *Bringing them home* report. I was listening very briefly last night to Father Brennan outside the High Court talking about this issue. He was saying that he would like to see the Federal Government make an expression of apology on behalf of us, because he could see the issue dragging on and on, and we would have to have an annual Sorry Day so that every year we would have to go back and say, "We are sorry that these events have occurred".

It would require one motion of contrition on the part of the Prime Minister to fix that up. We are not asking the Prime Minister to accept personal responsibility for these things. We are not asking the Prime Minister to say that his forebears were connected with them. What we are saying to the Prime Minister is, "Please make an expression of sorrow for sins in the past; make an expression of the sense of shame and the sense of hurt that all sensible people feel about this thing".

When we talk about National Sorry Day, it has an implication for the inclusion of indigenous peoples as just one of us. We talk long and with a lot of emotion about multiculturalism, bringing the European cultures in and bringing the Asian cultures in. We forget that we have a non-European culture in our midst, and we do not do enough about it. We pay lip-service to it. There is no emotional commitment to it. National Sorry Day goes a little way towards creating that emotional commitment.

Mr Speaker, the stolen children story is a story of blatant kidnapping. It is to be regarded with outrage, shame and sorrow that it is in our history. Now we can acknowledge that and make genuine expressions of regret and contrition.

MR RUGENDYKE (10.54): I would also like to express my endorsement of the inaugural Sorry Day. I think it is an important step for our society to recognise the errors of our past ways in relation to the indigenous community and particularly the stolen generation. I believe that it is a sign of our society's maturity that we can say sorry. We must acknowledge that the stolen generation was treated wrongly and poorly. Sorry Day does exactly this. It recognises past discrimination, but at the same time it is a point in time which allows us to move on and help our efforts to promote reconciliation.

Mr Speaker, my experience with the indigenous community is an important one. I have friends in that community, people such as Mr Johnny Huckle, a fine Koori musician. I recall a time when I was at a community radio station for a particular event and Mr Huckle was also there. He sang a particularly emotional song about his grandmother and his mother and how they were treated by the society of the time. That remains a particularly emotional and interesting experience for me.

I also applaud the work of organisations such as the Gugan Gulwan Youth Centre and people such as Kim Davison and people such as Julie Tong at the Woden Valley Hospital. They are always willing to help the Aboriginal community and to assist the white community in the process of reconciliation. I have also had contact with the Aboriginal community through foster care, learning the concept of kinship as it applies to the care of children within the Aboriginal community. I believe that from kinship white Australians can learn about the way children could be and need to be cared for.

I mention those experiences of mine because I believe that they assist in the process of reconciliation, which is the bottom line in what we are doing here today. Apart from apologising to the Aboriginal community, we are always looking for ways to advance the process of reconciliation.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (10.57): Mr Speaker, I also wish to associate myself with this motion and to participate in a process of reconciliation in which this Assembly can play a part in the ACT community. I think that the important element of any Sorry Day needs to be not necessarily the activities undertaken by governments, or even parliaments, but rather the activities that percolate up from the ordinary members of our community, such activities which help to change the hearts and minds of people whose actions historically in this country, we have to concede, have certainly had strong racist overtones. That process is the most important part of any exercise in bringing Australians to a genuine reconciliation with our indigenous brothers and sisters.

I believe, Mr Speaker, that the sorts of activities which are taking place in this community are a positive step along that path. In that spirit it is appropriate for the Assembly itself to take part in, and acknowledge the contribution which we can make to, that process and to reflect that community involvement and concern. Many of us will have signed the sorry book which Mr Stanhope brought to the Assembly a couple of weeks ago, and in the course of today others will be involved in activities which will make a testament on the public record of the Government's and the Assembly's concern about the need to ensure that the wrongs of the past are acknowledged and a new course is set for the future to guarantee that such injustices are not perpetrated again.

The day last year when members of the Aboriginal community came to the bar of the Assembly and told their stories in their words to this chamber was a turning point in this debate. I certainly felt very differently about the issue of the stolen generation after that event. I have to confess that before that day I felt a little bit in dread of the idea of bringing people onto the floor of the Assembly to address us on this issue. I felt that the event could be either politically very unsettling or, at worst, very tedious. I have to say that listening to the stories of those people as they told them at the bar of the chamber was an extremely moving experience, one which I believe would change the view of any fair-minded Australian who heard those stories. Frankly, it was hard to avoid tears on occasions, listening to the stories that those people had to tell.

Mr Speaker, Sorry Day as a public commitment towards regret and a desire for change is itself important, but of perhaps much greater importance are tangible, substantial acts of restitution. This Assembly plays a pre-eminent role in being able to bring forward such acts and to ensure that such acts are seen in the public eye and constitute a genuine attempt to acknowledge the wrongs of the past. The ACT Government's most important exercise in this respect concerns the settlement of native title claims in respect of parts of the ACT.

Mr Speaker, I again put on the record this Government's determination to ensure that claims are settled on just terms and at the earliest opportunity, to ensure that dispossessed members of the indigenous community of this city and this area have an act of restitution made in their favour. That will be a process with a number of hurdles to overcome, and we have encountered some of those already; but I hope that we can call on all members of the Assembly to support the process of settling those matters as soon and as fully as possible, to back up with substantive action the words of regret we use in this place. Mr Speaker, I believe that will be a further step in the process towards genuine reconciliation with the indigenous people of this land.

MR CORBELL (11.03): Mr Speaker, I commend Ms Tucker for bringing this motion forward this morning. In reflecting on the debate, I feel very strongly that it is very important that members of this place emphasise the activity and enormous involvement of ordinary people in Sorry Day activities, in the many activities that have led up to this day and in the very many activities that have been involved in the reconciliation process more generally. I have been struck very strongly by the enormous commitment that ordinary members of our community are showing to the process of reconciliation. To me, that is

an act of real leadership on the part of ordinary citizens in our community and in Australia generally. It is their actions, their activities and their voice which have given strength to the process for reconciliation and for recognising the enormous harm and hurt done to members of the stolen generation.

I want to commend an enormous number of people today for the activities that have been occurring and continue to occur in Canberra and around Australia. Their voices are very much a sign of an active, healthy democracy where, if a government is not prepared to acknowledge the hurt that has been caused by past actions, at least the people are. That is a very hopeful sign. I commend Ms Tucker's motion to the house.

MR SMYTH (Minister for Urban Services) (11.05): Mr Speaker, I also would commend Ms Tucker for bringing this motion to the house. I support it heartily. It was curious to see last night on the television some of the Aboriginal community, particularly around Botany Bay, explaining that this is not about guilt or about laying blame but about the acknowledgment of past wrongs and that, with that acknowledgment, we could truly bring home the memory of what was done and help lay it to rest - never forget it, but certainly help lay it to rest.

The Sorry Day that we celebrate today highlights simply one of the tragedies that have occurred since European settlement of Australia. There are many others that we should also be aware of. I have a hope that in the future Sorry Day could well be a day when perhaps we bring home the lost history of the Aboriginal people in total since European settlement. It is curious that the motto of the Royal Military College, Duntroon, is "Doctrina vim promovet", which is "Knowledge is strength". I think we, as a community, as a nation, can draw great strength from those things that we know about.

I think there is still a lot that we do not acknowledge in regard to the history of the Aboriginal people since 1788. I would hope that Sorry Day becomes a day when we start to tell all of these stories, not just those about the stolen generation but indeed those about how the Aboriginal people and the Torres Strait Islander people have lived and what has occurred to them since European settlement. Knowledge is power, and from that empowerment comes understanding. Until we understand how they lived and until we understand their civilisation and their society, it is impossible for us to come to grips with the way that they take their place in our modern society.

Before the stolen generation, the lost generation, was discussed, my understanding, certainly as a schoolchild, was that right from day one of the arrival of the First Fleet the Aboriginal people acquiesced and we were given this land, almost gratefully; that there were not that many of them and therefore it did not matter. What is important to get onto the record and start talking about is some of what Mr Osborne referred to when he mentioned the black armband view of history. History is a curious thing. The victors normally get to write the history. In writing modern Australian history up to the early 1970s, I think we totally emasculated the role of Aboriginal people in our history.

One of the reasons that we have a lack of respect for Aboriginal culture - certainly, this was my experience as a boy growing up in the 1960s - is that we were not taught about it and that for many of us it simply did not exist. If you asked people of my generation who their heroes were when they were children, I think you would find that we knew more

about Cochise and Geronimo and about the Sioux and the Arapaho than we did about Aboriginal heroes like Pemulwuy, Windradyne, Yagan and Jandamarra - people who in their own way defended their homeland with as much strength and vigour as we would defend modern Australia.

I think Sorry Day could well become a day when we tell all the stories. I would certainly like it to become a day when we acknowledge the lost generations and the stolen generations but also put everything into context and ensure that the stories are told that the Iora tribe around Sydney did not give Governor Phillip the land, and that the Wiradjuris in about 1824 caused martial law to be declared in Bathurst because the Aboriginal tribes had cut the town of Bathurst off from the rest of the colony. The majority of us do not know these stories. These stories are not told. I do not know how well they are taught in our schools.

There is a part of our history that we are missing. I think that for all of us as a nation Sorry Day is about that part of us which is missing and about making us a complete nation. That complete nation can come about only when we fully understand what has occurred. I get back to where I started. Sorry Day is not about laying guilt; it is not about laying blame. It is about acknowledging what actually went on in the past. I am sure that members here would have all seen the film *Zulu*, in which we saw the African tribesmen come storming out of the hills and the British hold them off with their superior weaponry. There are places in Australia where that happened, most notably Battle Mountain north of Cloncurry, where in the 1880s mounted troopers went into the hills to weed out the pests that the Aboriginals were seen to be. The Aboriginal tribe, I think the Kalkadoons, not only stood their ground but fought back and indeed almost carried the day. These are some of the other stories. I think Sorry Day is a day when we could take the opportunity to put into focus the great love that the Aboriginal people have for this country that we now all call Australia.

For me, Sorry Day is very important. I think it is a very powerful day. It is a day that helps build a better nation. It is a day that will help build a great nation in time. We need to look at this one particular period in Australian history, this one tragedy of the stolen generation; but then I think we need to go beyond it and look at the other tragedies that occurred. We need to put it all into perspective and then, as a nation, use that to move forward. I have absolutely no problem in saying sorry. If somebody, such as a little kid, falls over and scrapes their knee, you say, "Sorry, darling. Sorry that you hurt yourself". I think all parents do that. As a Territorian, I acknowledge those in the former Assembly who took the action they did and formally apologised. I would salute you for your courage in doing that. Today, the first Sorry Day, we have an opportunity to lay a sound foundation based on knowledge, not on discrimination and prejudice, as we come to an understanding of how we got here by the paths and the roads that we have travelled and together use those paths and roads combined to create a much better society.

To the stolen generation, to those lost children, I say sorry. In the future I hope that we would never forget them; that we would always acknowledge them. I hope that in years to come we use this day to bring home the other lost histories, the other tragedies that we seem to ignore - I think through lack of knowledge, not ignorance - and that we use Sorry Day as a wonderful day to build a better Canberra, a better community, a better society and a better nation.

MR QUINLAN (11.13): Mr Speaker, I also would support the motion. I also played a little bit of football with quite a number of Aboriginal players, and let me tell you that there is a lot of talent and a lot of sporting talent that Australia draws upon from the Aboriginal race. One in particular I will mention. I had the rare privilege of playing old men's football, super rules, with one Syd Jackson. I venture to say that in his day he was even more talented than the majestic Ricky Walford whom Ossie played with, and played a better type of football. Syddy was no angel, let me say, but he was a great bloke. He had a very agile body and a very agile mind. He was a great ambassador for his race and eventually for Australia as he represented us overseas.

I have had some tangential contact with Aboriginals through respite care, and in that time I was very impressed to see how they would take care of their own. At the same time, I was equally perturbed to see the suspicion and reticence with which Aboriginal people viewed external involvement in their personal or family affairs. That is something we have to address. We have a long way to go in the process of inclusiveness in Australian society. I do not mean just inclusiveness in our society. We need to restructure our society so that, in fact, Aboriginals and people from other races are automatically included and we are included in society as they view it. I see Sorry Day as being merely a very small step towards creating a society in which we are equal and a society which is based on the experiences of all our people and not just ours.

MR WOOD (11.15): Mr Speaker, it is a very good and sound concept that we should say sorry. Therefore, I am happy to support Ms Tucker's motion. As proud citizens, we all take account of what has been done in the name of our nation over the years. We must acknowledge that in that there is a lot of good, of course - and that is what we tend to focus on most - but there is also a great deal that was not so good and there is a great deal that was simply bad. We must take account of all of that. I was at a gathering not so long ago when people were proudly displaying the national flag and I was asked, "Do you feel guilty; do you feel sorry?", as though I should not. It has often been asked why a person should feel guilty for something that has happened in the past. I do feel guilty. I do feel for what has happened in the past. I feel for those people whose circumstances are not so good - circumstances very much beyond their control, circumstances inflicted following European settlement in this country.

We are proud to wave a flag. If we are proud to claim to be Australian, let us acknowledge some of the worst things that have happened in our nation. As our children grow up we train them to acknowledge that they are sorry, yet there still seems to be a reluctance in some parts of Australia to acknowledge sorrow for deeds in the past. In acknowledging that sorrow here in this place and broadly, we should take steps to make amends for what has happened, to improve the circumstances of the people affected, particularly the Aborigines, on whom we focus today. Part of that sorrow is actively to seek reconciliation. Let us do it, and let us continue each year to reflect on that so that it will not be too long, we hope, before the circumstances of the Aboriginal and Islander community in Australia are very much better than they have been over recent years.

MR STEFANIAK (Minister for Education) (11.17): Mr Speaker, history is something I do not think we ever should forget. If we do not remember where we came from, we will have trouble working out where we are going. Back in 1990 I was browsing through an old bookshop in Hobart and saw a print of the last four remaining full-blooded Tasmanian Aborigines circa 1867 - one man and three women, all in late middle age, all in European clothing, basically the end of a race. I bought that print and it is hanging up on a wall in my home. It is a very good print but a very sad reminder of some of the excesses of the past.

I grew up in Canberra, as most members know, and I went to school here. I remember one of my friends at Narrabundah High School. His mother was English and his father was the first Aboriginal officer in the Australian Army, Reg Saunders. Reg served with distinction through World War II, attaining the rank of sergeant and then being commissioned in the field. He left the Army with the rank of captain. Again he served with distinction in Korea, winning a medal in a famous battle which was fought on Anzac Day in 1951, when Australian troops, including Captain Saunders, held out against overwhelming odds on a hillside near Kapyong in the face of a massive Chinese attack. I remember talking on many occasions to my friend's father, Reg, who was a most impressive man. He lived just down the road from us. I suppose that was my first real brush with our rich Aboriginal indigenous culture in Australia.

Like Mr Quinlan and Mr Osborne, I have played football with a number of very fine Aboriginal players. I have just signed a letter to John Hargreaves in relation to a particular event which I will mention, because I think it shows the way forward to the future. I have been very pleased to see steps taken in the ACT, over the last few years especially, to assist indigenous people. I was delighted to see the success our boys had in the recent Lloyd McDermott Cup. It was the first time two ACT indigenous teams had gone to Sydney to play in that competition. Allan Hird from the department and I went down for the day. The ACT reached the final in both the under-15s and the opens. I saw about three of the open games, and the boys were really impressive. The cup is organised by a number of very prominent Aboriginal sportsmen, including Gary Ella, one of the famous Ella brothers. It was just great to see how well the ACT teams went.

One of the assistants who took our boys down was a friend of mine, Bruce Garrett. Bruce and I played rugby at Royals in the early 1980s. Bruce, probably like me, is still trotting around. We should have more sense. He is about 43 now, but he still trots around and plays rugby league with, I think, a second division team which operates out of Boomanulla Oval. It was good to see two of Bruce's young blokes playing in the XV side. It was also good to see a couple of our departmental Aboriginal liaison officers who assist with the local Aboriginal community in our schools. I think our schools do a great job in ensuring that Aboriginal culture and traditions that go back thousands and thousands of years are made known to our students, unlike the time when I went through school, when I think you had only one unit of Australian history, which you were taught in third year. It did not deal very much with our indigenous history, which goes back some 40,000 years. It was good to see Bruce involved.

It was also good to see one of the indigenous officers who helps in our school system and who ran the opens team. In fact, he can really put a feather in his cap. I think he represented Australian schoolboys, and the team he played in beat probably one of the better teams that I ever coached - it included Michael O'Connor - in the grand final in the under-18s. I could not think of better people to look after those two teams of young ATSI kids who went to Sydney and did so well in the Lloyd McDermott Cup. That really did please me. It shows the advances that have been made in recent times. I had a good talk to a lot of the kids. I think there are some very good programs now, especially in the ACT. We are really putting into action a lot of programs that will greatly assist in the process of moving into the twenty-first century together as a community.

MR BERRY (11.22): I heard some radio commentary just recently, from an Aboriginal person, I think, that saying one is sorry need not be a personal thing. I think the commentator was trying to impress upon the nation's leaders that for them to say sorry on behalf of the Australian people need not involve their own personal feelings at all. It is hard to say how one could not have some personal feelings about this issue. I, for one, disagree with that view. I think it is a personal thing, but for a politician it is an issue on which leadership has to be shown.

I note that Mr Osborne mentioned the Prime Minister and his failure to say that he was sorry on behalf of the Australian Government. That, to me, is a matter of deep regret. It is easy to take a partisan line in relation to the Prime Minister's lack of response - and this applies to the leaders of Queensland and the Northern Territory as well - but I cannot, for the life of me, justify that, despite whatever extreme views they might have on the issue, they will not say sorry. It is a fairly simple process for me. Even if they do not believe in it themselves, it should be said on behalf of the people they represent. I think it is pretty important for them to say it, because the symbolism of the leaders of the States and Territories saying that they are sorry will be received with great significance by the Aboriginal people. That is something that I think many Australians might feel deeply ashamed about.

I go back to my earlier point. One cannot avoid feeling personally sorry as all of these events that we did not hear about in the past emerge. Each time that we express recognition of the past and the need for reconciliation, some other horrible event is reported to us. It seems to me that they are quite endless. I wonder whether in the future the list of these things will grow to outrageous proportions. It cannot be any more outrageous than it has been so far, but it seems that each day something is mentioned. It just gets worse. I also heard today a report about a meeting in the 1930s where some politicians and people in high places expressed the view that half-caste children should be taken from their parents and that eventually the Aboriginal race would die out. One thing that I am proud of is that the Aborigines are tough. They will fight on, and we will all come to understand how important it is for us to give them support for that fight when we say that we are sorry.

MR MOORE (Minister for Health and Community Care) (11.27): Mr Speaker, sometimes the worst excesses of society are the result of what is perceived as personal high motivation. In rising to support this motion that this Assembly acknowledges and supports National Sorry Day as recommended by the *Bringing them home* report, I recall the discussions that I had with my family and friends as we sat around the dinner table.

Every night in our family there were enthusiastic discussions with my eight siblings, my parents and usually Grandma, and it was very unusual not to have a few other people sitting at the table. My father always said, "Just add an extra cup of water to the stew", if somebody arrived. In discussions at that dinner table I remember quite clearly focusing on this issue. I will come back to that after I have set the context.

The small primary school that I attended had a fair proportion of orphans, because the school was run by the nuns who ran the orphanage down the road. The orphanage is a quite significant landmark in Adelaide near the Goodwood Road subway, for anybody who goes that way. I do not recall how many children in that orphanage were of Aboriginal descent. I do not think I would even have known, because there was no distinction in my family about whether somebody was an Aborigine, an Italian, a Greek or whatever. We had a wide range of cross-cultural friends.

I recall very clearly the discussion, the arguments, the debate, in my family about the positive and negative aspects of taking children from their Aboriginal parents and bringing them into society. I remember arguments, on the positive side, about how they would get a better education. Most significantly, I remember that the final conclusion was that at least they would come to know God. In the end, that was the weight of argument that carried the day in my family. It was felt that although there was a terrible downside this was in fact a positive thing. We could not have been more wrong, of course. That is something that we recognise now. I must say that I am proud at least to stand up here and say sorry, not because we had any specific dealings with the particular issues but because, like the rest of society, we discussed these issues and took them seriously.

It was not really until I was in my first promotion position as a teacher in South Australia that I came to know some Aboriginal people very well. Sure, I kicked a football around with them and certainly I remember playing basketball against them in some of the other local towns, but most importantly I came to know a number of absolutely wonderful people as very good friends. I knew some of the Koolmatries - a very common name in Meningie in South Australia, where I was teaching. Bill Abdulla, who had come from another area, was a teacher aide at the school. These people were making a fantastic contribution to the school and to the local community. When you teach in a school like that - in that case there was a fair percentage of Aboriginal students, many of whom came from the local Aboriginal community - you learn to understand just what an incredibly difficult time they had and how we, as other Australians, had set up the scenarios to make it difficult for them.

It was not just about the clear issue of the stolen children. That focuses our attention very clearly, but there are so many other ways that the dominant culture made it very difficult for the individuals involved. I reiterate the point that Wayne Berry made about toughness. I saw the struggle that so many of the young people I taught had to deal with. As I developed good relationships with their parents and became good friends with them, I came to understand the sorts of struggles and the sorts of issues they had to deal with. It certainly changed my perspective significantly. It was something for which I am incredibly grateful.

It is entirely appropriate that we have a National Sorry Day, and I think it is entirely appropriate that Ms Tucker has brought this motion to the Assembly. I am pleased to have this opportunity to stand with other members and say sorry.

MS TUCKER (11.34), in reply: Thank you, members, for supporting the motion. It is obviously something everyone is very supportive of and feels strongly about. In conclusion, I would like to pick up something that Mr Smyth raised, because I agree wholeheartedly. Probably the best way to explain the list of things that we need to acknowledge and be sorry for is to look at the eight key issues of reconciliation. Within those eight key issues you can see what needs to be acknowledged. The eight key issues are basically all about knowledge.

The first issue is understanding the importance of the land and the sea in Aboriginal and Torres Strait Islander societies. We obviously need to be sorry for the way we have not done that. We have the opportunity to say strongly how we feel we can redress the past injustices there, with the Wik debate still going on. The second issue of reconciliation is the knowledge of relationships between indigenous people and the wider community. Obviously, the fact that children were taken from their homes to "improve their cultural identity" and to make them "better Australians" fits into this issue. The third issue is knowledge of indigenous culture and recognising it as a valued part of our Australian heritage. Only recently has that started to happen. We need to be sorry that it has taken so long.

The fourth issue is knowledge of our history. A number of speakers have mentioned that. We need to be very sorry about how history has not been truthful. It has not acknowledged the incredibly terrible injustices that have occurred in our history. The fifth issue is knowledge about the degree of disadvantage. It is about debunking our myths. It is about standing up to Pauline Hanson. It is about saying that Aboriginal people are still extremely disadvantaged and are still suffering. The sixth issue is responding to the custody issues of indigenous people and the law. We still have a lot to be sorry about there. The seventh issue is about what sort of document we should have. There is ongoing discussion about it and we have to be open to it. Do we have a treaty as well as an apology? The eighth issue is about controlling destiny and knowledge. Obviously, it is horrific how little control our Aboriginal and Torres Strait Islander people have had over their destiny. We still have much to be concerned about there.

Saying sorry is part of changing the story. If as well as saying sorry we look at those eight key issues of reconciliation and support them with policy and with individual action as members of the community, then the sorry will be very constructive and lead to changes. Patrick Dodson described his vision for the new story that we should all be heading towards. It is for "a united Australia which represents this land of ours, values the Aboriginal and Torres Strait Islander heritage, and provides justice and equity for all".

Question resolved in the affirmative.

ESTIMATES 1998-99 - SELECT COMMITTEE
Appointment

MS CARNELL (Chief Minister and Treasurer) (11.37): Mr Speaker, I seek leave to move a motion to appoint a Select Committee on Estimates 1998-99.

Leave granted.

MS CARNELL: Mr Speaker, I move:

That:

(1) a Select Committee on Estimates 1998-99 be appointed to examine the expenditure proposals contained in the Appropriation Bill 1998-99 and any revenue estimates proposed by the Government in the 1998 Budget, and the Annual and Financial Reports for the financial year 1997-98;

(2) the Committee be composed of:

(a) one Member to be nominated by the Government;

(b) two Members to be nominated by the Opposition; and

(c) two members to be nominated by either the Independent Members or the ACT Greens;

to be notified in writing to the Speaker by 10.00 a.m. on Thursday, 28 May 1998;

(3) the Committee report by 25 August 1998 in respect of the Appropriation Bill 1998-99 and by 24 November 1998 in respect of the Annual and Financial Reports for the 1997-98 financial year;

(4) if the Assembly is not sitting when the Committee has completed either of its inquiries, the Committee may send the relevant report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker, who is authorised to give directions for its printing, publication and circulation;

(5) the Committee is authorised to release copies of its reports, prior to the Speaker or Deputy Speaker authorising their printing, publication and circulation and pursuant to embargo conditions and to persons to be determined by the Committee;

(6) the foregoing provisions of this resolution have effect notwithstanding anything contained in the standing orders.

The motion seeks to establish a Select Committee on Estimates to examine the 1998-99 budget estimates and the 1997-98 annual and financial reports. I propose that the committee be composed of one member to be nominated by the Government, two members to be nominated by the Opposition and two members to be nominated by either the Independent members or the ACT Greens, to be notified in writing to the Speaker by 10.00 am on Thursday, 28 May 1998.

I also propose that the committee report by 25 August 1998 in respect of the Appropriation Bill and by 24 November 1998 in respect of the annual and financial reports for the 1997-98 financial year. This reporting framework will allow the committee approximately eight weeks to consider the budget and approximately eight weeks to consider the annual and financial reports for the 1997-98 financial year. The committee is authorised to release copies of its report, pursuant to embargo conditions and to persons to be determined by the committee, prior to the Speaker or the Deputy Speaker authorising its printing, publication and circulation. Mr Speaker, I commend the motion to the Assembly.

MR BERRY (11.39): Labor will be agreeing to this proposition to establish the Estimates Committee, as proposed by the Government. I trust that it will be a repeat of successful estimates committee processes which have occurred in this Assembly since it first took off in 1989.

Question resolved in the affirmative.

SCHOOLS AUTHORITY (AMENDMENT) BILL 1998

Debate resumed from 30 April 1998, on motion by **Mr Stefaniak**:

That this Bill be agreed to in principle.

MR CORBELL (11.40): Mr Speaker, the Opposition will be supporting this Bill because it is a Bill that deals purely with mechanical issues associated with operations of the Schools Authority's consultative mechanisms, which have not been in place for many years; indeed, not since self-government, I understand. Mr Speaker, I understand that this Bill is in response to issues raised by Mr Moore in the last Assembly, when he alerted the Government to the fact that the Schools Authority Advisory Committee had not been operating since self-government in 1989 and that the Government was potentially in breach of the legislation by not ensuring that such a body was in existence. Mr Speaker, this is not to say that no consultative mechanisms have been in place. Indeed, since self-government day, there have been a number of consultative mechanisms put in place by successive governments to ensure that there is a clear dialogue between people who use the school system - teachers, parents, a range of individuals - and the Education Department. So, Mr Speaker, in principle, the Opposition has no concerns with this Bill. It clearly is a Bill designed to deal with some administrative arrangements that have, effectively, become redundant.

Mr Speaker, I do, however, want to signal a general concern about the current state of legislation which underpins the provision of government schooling particularly, but also non-government schooling, in the Territory. My understanding is that we have two pieces of legislation - the Schools Authority Act 1976 and the Education Act, which I understand is the New South Wales Education Act from around the 1930s. Clearly, these two pieces of legislation are quite old. The Education Act is of considerable age, from a very different time indeed, and the Schools Authority Act is from the 1970s, when the provision of education services in the Territory was very much on the leading edge.

However, since that time, we have had no real review or examination of whether or not that is an acceptable basis on which to continue providing education services in the Territory and, indeed, to make sure that we are providing education services that are still very much at the leading edge of education philosophy. So, Mr Speaker, I do welcome the Minister's announcement in his tabling speech in relation to this Bill, where he did indicate that the Government was intending to undertake a review of education legislation in the Territory. This, he reminded the Assembly, was a commitment of his Government during the election campaign. Mr Speaker, it was certainly also a commitment from the Labor Party that such a review was not only desirable, but indeed quite necessary.

Many things have changed in education philosophy, in the practice of teaching and how we can best educate young people in our community. For that reason, it is indeed appropriate that we now enter into a review process. So, I welcome the Government's commitment to do that. It is concerning, however, that we have reached a stage where we need to be making some piecemeal changes to Acts just because bits have become redundant. Perhaps Mr Moore's pointing out to the Government last year that parts of the Schools Authority Act were redundant has prompted the Government to undertake this review process. Mr Speaker, the Labor Party will be supporting this Bill. We look forward to examining closely the operation and the outcome of the review of education legislation in the Territory.

MR MOORE (Minister for Health and Community Care) (11.44): Mr Speaker, when I raised this issue in the estimates process last year, I was hoping that it would bring about a review; but I suppose that I was also hoping that the review would include this part of the legislation, rather than our having to do this first. On the other hand, I can understand Mr Stefaniak's approach. You will remember that this certainly went through Cabinet before I was a member of Cabinet. The issue I had raised with Mr Stefaniak was that he had a piece of legislation that he was not abiding by in the last Assembly. So, it is appropriate that he should move as quickly as possible, as the Minister, to ensure that either he comes to the Assembly to change the legislation or he abides by the legislation that is in front of him. This does deal with stage one.

It seems to me, Mr Speaker, that it is important to remember that the council of the Schools Authority, which was abolished in 1987, was not an advisory body at all; but it was, in fact, a very powerful body that made decisions on education. I suppose that it could have been regarded as a school board for the whole of the education system. This legislation removes that board, which was not an advisory board but a powerful body, as I say.

I think, in the review, we really ought to ask ourselves, "What is the best way of delivering education in the ACT?". We ought to go back and look at what was happening prior to self-government and say, "Was that just a system that suited us prior to self-government because we did not have a self-governing body; but what lessons can we learn from what was established there?". Remember that the college system that we have in the ACT is widely recognised as one of the most successful parts of our education system and one of the most successful parts of education systems right around Australia. It seems to me that we have to be very careful to ensure that we protect the good parts of our education system, while improving on them and improving on the rest of the education system at the same time.

MR STEFANIAK (Minister for Education) (11.47), in reply: I thank members for their comments, and I close the debate, Mr Speaker.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

CRIMES (AMENDMENT) BILL (NO. 2) 1998

Debate resumed from 19 May 1998, on motion by **Mr Humphries**:

> That this Bill be agreed to in principle.

MR STANHOPE (Leader of the Opposition) (11.48): This adjourned Bill is a Bill in relation to whether or not - - -

Mr Moore: On a point of order, Mr Speaker: I believe that Mr Stanhope has spoken. He would need leave to speak again, which I am sure we would be happy to give him.

MR SPEAKER: No, that is not the case, Mr Moore, actually. For members' edification, the people who have spoken are Mr Moore, Mr Stefaniak, Ms Tucker and Mr Wood.

Mr Moore: I apologise.

Mr Humphries: Mr Speaker, on the same point of order: I have with me a copy of the *Hansard* from last Tuesday, and I have just been reading Mr Stanhope's speech on this Bill.

MR SPEAKER: Not according to my information.

Mr Humphries: I think you should check your records, Mr Speaker. I can give you a copy of his speech, if you like. He certainly has made comments on this Bill.

MR SPEAKER: In that case, we can overcome the problem by Mr Stanhope seeking leave to speak again. I will be quite happy to allow that.

MR OSBORNE (11.49): Mr Speaker, perhaps I could speak briefly before Mr Stanhope does, just on one issue which I think Mr Stanhope will be talking about.

MR SPEAKER: Yes, if you wish, Mr Osborne. You can seek leave to speak again, Mr Stanhope, if you wish.

MR OSBORNE: I do have a scrutiny of Bills report to table a little bit later, Mr Speaker, and I was going to speak on this particular Bill, given that it was adjourned because of some comments made in our report last week. The issue was raised with our legal adviser this morning. I think the main issue is around this one sentence:

> It would be undesirable for a sentencing court to attempt to ascertain the state of the common law in 1993 as a guide.

As I said, we raised this with our legal adviser this morning, and he said that, if Mr Humphries were to clarify the position, he would be satisfied, so as to clear it up. So, perhaps when Mr Humphries is closing the debate, he will clarify the Government's view on that. I think that will ease our concerns in the scrutiny of Bills committee and also the concerns of other members.

MR BERRY (11.51): Mr Speaker, Labor opposes this Bill, and for very good reason. It is part of a pattern which seems to be developing in this place of toughening up laws in the Territory - on the one hand, attacking the civil liberties of members of the community; but, on the other hand, putting in place what we consider, at any rate, to be inappropriate considerations that we require magistrates to take into account.

It has already been said in this place many times that the prevalence of a crime should not be a matter which magistrates concern themselves with in relation to the sentencing of somebody who has been found guilty of a particular crime. It is quite wrong for a person who has committed a crime to pay the price for crimes that have been committed by somebody else. It just does not make a lot of sense to me, and I think I am representative of the broader community. It is not a concept that many in the community would support. A range of issues are taken into account in relation to sentencing people who are guilty of crimes. They include the punishment, or retribution, and also public safety, rehabilitation and so on. But to take into account the prevalence of a crime in the community, I think, is a serious, backward step in the development of law in this Territory.

It is said that it happens in other States. That just does not make it right. It just does not make it right that it happens in another State. Because two other States do it does not make it right. The fact of the matter is that we have to take into consideration the effect on individuals arising from this. It is just not right, as I said earlier, for somebody who has been found guilty of a crime to pay a price because a number of other people have

committed the same crime. It just does not make sense. It is not logical. It takes the notion of retribution too far. It is very popular for politicians to beat the old law-and-order drum and say, "We should lock them away and keep them there until they rot". This is a very easy, simplistic and populist theme to leap upon. But anybody who has any notion of what is fair could not support this particular Bill.

Mr Humphries: Like the judges? The judges think this should happen.

MR BERRY: Not all judges think it should. I think we have heard some discussion about that. Mr Humphries says, "Judges think it is fairer". Judges do not make the laws in this Territory.

Mr Humphries: They make the common law.

MR BERRY: They do not make the black-letter law of this Territory. It is made by the legislators. Indeed, by inviting them to take these sorts of issues into consideration, we invite them to unfairly punish people who have been convicted of a crime. The pattern is set here, and I think we would be falling down in our duty on behalf of the community if we endorsed this particular legislation. It is a backward step, and it is something that we will not be thanked for. Civil libertarians will criticise us, rightfully, for it, because it is an unfair step to take.

MS TUCKER (11.55): I seek leave to speak again on this Bill.

Leave granted.

MS TUCKER: I want to make just a couple of comments - firstly, on the process. When we were debating this Bill in the last sitting week, I was concerned to see that, in fact, there was a scrutiny of Bills report which we did not have, and a Government response too, which members had not had time to really look at. Yet the debate was expected to be concluded on that day. It is only because Labor and I sought to have an adjournment that, in fact, we have had time to have some discussion about this. As a result of that, Mr Humphries is now going to clarify the questions in the report on scrutiny of Bills. I just want to say that I hope that in the future there will be greater respect given to the importance of the comments that come from the Bills committee.

I have already spoken on why I think this is not a fair piece of legislation; that is, that one person will basically have a greater sentence because of the actions of others. The other issue here that concerns me is the politicising of the judiciary. Basically, now it is going to be up to the judiciary to make an assessment about the prevalence of a crime. That is something that, according to the Australian Law Reform Commission, well-respected people who think long and hard about issues of the law are very concerned about. They do not like that principle of prevalence in sentencing. I have been very concerned to see the way it has been picked up.

Mr Berry said that many people in the community share that concern, and there was laughter from the Liberal side of the house. I believe that Mr Berry is quite right. There is very grave concern in the community about this law. I think we will regret it.

I hope that somehow in the future - obviously, the numbers are here now - it will be changed again because it is not seen to be good law. We do not want to see the judiciary politicised. The question of prevalence is obviously fraught with problems. Are you going to say that a crime is prevalent because it gets a lot of media coverage? If that is the case, then we are really worried straightaway. I would say that one of the most prevalent crimes would be abuse of children; but mostly that is not reported at all.

I was interested also to note that in the 1980s there was a tendency at one point for surveys of crimes to be brought into courts by prosecutors. It was interesting, because it was shown that they were flawed. They were often skewed and not reliable at all. If members of the community are concerned about crime, they come to the people they have elected to talk about their concerns. It should not be left to the judiciary. That is about politicisation of the judiciary, and it is very worrying.

MR RUGENDYKE (11.59): I rise to support this Bill, and I will be brief. In June 1997, the Chief Justice of the Supreme Court, Jeffrey Miles, made a comment from the bench regarding section 429 of the Crimes Act. The gist of what Justice Miles said was that, the way the ACT Crimes Act was written, it elevated rehabilitation and repatriation above other elements in the Act. He believed that it did so at the expense of an equally important consideration in the law - the protection of the community.

The Chief Justice is not the only critic of the Act. To my knowledge, it has also come under fire from the DPP and Justice Ken Crispin. The problems stem from 1993 amendments to the Act. One of the things they did was to hamstring the court by preventing it from increasing the severity of a sentence because of the prevalence of the offence. The 1993 amendments are a clear departure from the common law. More than that, the principle of prevalence in sentencing has been given the seal of approval from no less an authority than the High Court of Australia. In 1992, the then Chief Justice of the High Court said that "an offence may be prevalent in one locality and rare in another, and sentences in those localities may properly reflect those factors".

Mr Speaker, I do believe that our system of justice should be humane. I do believe that it should, wherever possible, attempt to redeem those who have fallen foul of the law. However, we should never lose sight of what I believe is the primary aim of our justice system, and that is to protect the community. People who break the law are supposed to be punished by the court. Where the community is suffering a spate of problems with a particular crime, it should be open to the court to send a loud and clear message that such behaviour will not be tolerated. In so doing, we are not removing the ideals of rehabilitation and repatriation from the law. What we are doing is giving the courts the power to take all the circumstances of the crime into account when delivering a sentence. It is still open to the court to act with mercy. What this amendment will do is ensure that it is also open to the court to deliver justice to the community.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (12.02), in reply: Mr Speaker, I am very pleased to be able to close this debate, because, I have to say, I do not think that the Assembly has covered itself in glory in this particular debate. To be quite frank, in the course of this debate there have been a great many errors made by people who ought to have known better. I would like to address some of those immediately.

Much was made of the Australian Law Reform Commission report of 1988 on sentencing policy. That report is now 10 years old. That report reflected a state of affairs 10 years ago, which, you would have to concede from looking at the statistics on crime in this community, was very different from that of today. It also needs to be noted that the report has almost universally been ignored by the law-makers of this country.

Mr Moore: Does that make it right?

MR HUMPHRIES: No, it does not make it right. Indeed, it is in good company in that respect, because there is a large number of Australian Law Reform Commission reports which have been ignored. So, perhaps it is not exceptional in any sense. But it needs to be noted, Mr Speaker, that no other jurisdiction has picked up the recommendations of the ALRC in 1988 - not one. Not even the Commonwealth, whose report it was, has picked up those recommendations. Even they, in their Crimes Act, retain provisions which preserve the common law - the common law, of course, being that the prevalence of offences is a factor which courts can, and should, take into account when passing sentence. Let us not put too much weight on a report which is now old, out of context and generally not reflected in the laws of any part of this country, except the ACT at the present time.

Mr Speaker, in that respect, Mr Stanhope and Mr Moore both made some fairly extraordinary statements about what courts may take into account. In particular, they made comments about the way in which they take into account other crimes in the community. Mr Stanhope said, for example - this was in a speech which he supposedly did not give, but I assure you that he did:

> ... it is not a sound criminal justice principle or sentencing principle to rely on the perceptions of local media, or of politicians, or of those within our community who do express concern about the prevalence of particular offences within the community. The so-called law and order push does exist.

Then he went on to make this rather extraordinary statement:

> They -

that is, the judges and magistrates -

> do not have an independent capacity, when they have a certain person before them, to determine whether or not their perception of the extent or the prevalence of a particular crime is matched by the statistics.

Mr Speaker, there is a fairly subtle form of judge bashing going on here.

Mr Berry: What a pathetic defence of your position!

MR HUMPHRIES: No; I think this is, Mr Speaker. What members in this place have been saying, and Mr Moore also said it, is that judges and magistrates will sit down in front of the television set and watch reports, presumably of their own courts in action - - -

Mr Moore: We said that it is not their responsibility; it is the responsibility of this house.

MR HUMPHRIES: Mr Speaker, I heard members in silence during their remarks.

MR SPEAKER: Order! You might not like what Mr Humphries is saying, but he has the right to say it.

Mr Wood: Judges themselves have been saying it.

MR HUMPHRIES: They do not, Mr Wood. You are talking rubbish. Mr Speaker, members have been saying that they will sit down in front of the television set, and their view about prevalence will be determined by what they see on television or read in the newspaper. Mr Speaker, judges and magistrates in this community are highly intelligent people, and they rely on the statistical evidence which is produced regularly for their benefit and the benefit of others. Why would a court rely on what they read in the newspaper, when they can simply go to their own libraries and see accurate statistical information about exactly what is happening with the prevalence of offences?

This is now published each quarter - I tabled it in the last sitting - "ACT Administration of Justice - Statistics Profile", which includes detailed information about offences, confirmed incidents, clear-up rates and classes of people committing offences. It is extremely detailed information. Why do members assume that judges and magistrates will not look at this material? Frankly, to suggest that they would ignore this accurate material - available in published reports, published every quarter in this community - and instead rely on what they see on Channel 10 or what they read in the Canberra *Chronicle*, is an insult to the judges and magistrates of this community. It is highly insulting.

Mr Speaker, quite rightly, those very judges and magistrates - at least, in this case, it is the judges - and the Director of Public Prosecutions have come back and said, "In passing sentence, we need to take into account the accurate information available in those reports" - the accurate information, not the misconceptions, not the impressions, not what they might hear about on the grapevine; but what they actually see.

Mr Stanhope: You do not know whether they see that stuff. You do not know whether they read it.

MR HUMPHRIES: It is published. It is available to them. You do the judges of this community a grave disservice by assuming that they would not rely on the information available to them. The law will say in respect of this matter that they will have to take into account the prevalence of offences. What does that mean? Does that mean what you see on television? Of course, it does not. It is information available in this accurate form.

Again, if those people around this place seem to think that judges and magistrates are likely to take into account other, extraneous matters, then obviously they have a very low opinion of the judges and magistrates of this community. Mr Moore made reference in his remarks to what we are doing here. He obviously labours under a very serious misconception.

Mr Moore: Did you say "labours" under a misconception?

MR HUMPHRIES: Perhaps it is the wrong word to use. He said:

> The Bill moves away from the ancient principle that each accused should be judged on their own merits in their own circumstances.

Mr Speaker, do you know how old this ancient principle is? It is less than five years old. It was placed in the statute books by the former Government in 1993.

Mr Moore: Rubbish!

MR HUMPHRIES: Mr Moore, listen to me. The ancient principle is that prevalence of offences - - -

Mr Berry: It seems a long time ago to me. I have been listening to you since then. It makes it longer.

MR SPEAKER: It just feels that way, I am sure.

Members interjected.

MR HUMPHRIES: Mr Speaker, if I could be allowed to be heard - - -

MR SPEAKER: Yes. Order! Settle down.

MR HUMPHRIES: Mr Speaker, the ancient principle is that the prevalence of offences is taken into account. That is the ancient principle. That is the principle which has operated since white men set foot on this land over 200 years ago and which has continued to be the case in every Australian jurisdiction, except the ACT since 1993. So, the ancient principle is not that we do not take into account other people's circumstances. We do; and we always have, Mr Speaker. In the ACT, in the last five years, the trial of a different concept has not worked. That is not my view. I do not have exposure to these issues. I am not sitting in the courts every day. It is not my opinion. It is the opinion of the judges, magistrates, prosecutors and other lawyers who have come to the Government and said, "This law needs to change". The law needs to change, Mr Speaker, and that is why the Government is acting in this way.

I ask members to imagine what would have happened if the situation had been reversed. Let us suppose that the law said, as we propose that it should say, that the prevalence of offences should be taken into account; and let us suppose that the Chief Justice and two of his brother judges and the Director of Public Prosecutions had all come to the Government and petitioned the Government to change the law to not let the prevalence

of offences be taken into account. Imagine what you members here would be saying in those circumstances, if the Government resisted that course of action. You would be saying, "How dare you ignore the views of the judges and the prosecution in this community! Are you not being terribly unfair to our courts?". You would be up in arms. You people would be banging on the Government's door.

Mr Moore: No, we would not. We would say, "Sorry, Your Honour; you have got it wrong". "You have got it wrong", is what we would say.

MR HUMPHRIES: No. You would agree with what they were saying there in that case, Mr Moore. You would be saying that they had got it right. Mr Speaker, I think members in this place should take a little time to think about these things. There have been some quite nonsensical things said about this legislation. The Government is not revolutionising the law. The Government is merely reinstating the law as it stood before 1993 and as it stands at the moment in every other Australian jurisdiction.

Mr Moore accused us of following conservative jurisdictions when we reflected the decisions of codification of the law in other places. I might point out that the Queensland Act was actually put in place by the Goss Labor Government, not by the National Party Government in that place. So, Labor governments have also operated under the same common-law principles, and we seek to reinstate that now. Mr Speaker, Mr Stanhope said:

> I think there is not a single judge or lawyer in town who does not believe that we have, at this stage, a Full Federal Court decision that basically accepts that the situation that we have is quite satisfactory; that it is not confusing. We do not need to beat up a supposed problem on the basis that a judge in the minority felt that there was an issue.

I am not quite sure what that means; but, Mr Speaker, if he is saying that there is not a single judge or lawyer in town who believes that we should be taking this step, then I would invite him to telephone the Chief Justice and go and have a talk to him about the matter, because a number of judges take that point of view.

Mr Speaker, I am also asked to respond to the Justice and Community Safety Committee report - what I will call the scrutiny of Bills report - on this matter. Mr Speaker, I do so with some slight regret, because I have to say that this report gives me a little bit of concern. There were two comments in this report which were relied upon by members earlier in the debate to suggest that they should not pass this Bill. One was under the heading "Undue trespass on personal rights and liberties". I will quote the comments in full:

> The Committee draws to the attention of the Assembly the potential impact of these amendments on the range of choices which would be open to a sentencing judge or magistrate. It is however impossible at this point to predict just what effect (if any) there might be in this respect.

I am asked to comment on that. Mr Speaker, I do not know that I can pass any comment on that. It is, indeed, impossible to predict what effect might be had on such matters, on the range of choices. The body of the comment does not make any reference to rights or liberties at all, but the heading does. The comment is a little bit inscrutable, with great respect to the committee and to its legal adviser. If the committee is saying, as it seems quite literally on its face to be saying, that it is impossible to predict the outcome of the legislation, with great respect, that could be said of any legislation which has been passed.

However, Mr Speaker, I would point out that there is a fairly reliable way of predicting what will happen, and that is to look at what has happened in our courts, both in other Australian jurisdictions and in the ACT before 1993. That gives you a perfectly accurate picture of what is likely to happen, because that is what has been happening. This principle, I repeat, is simply a reinstatement of the common law. So, we can predict what the effect of the amendment will be. We know very well what it will be. It is in the present common law.

Ms Tucker: What will it be?

MR HUMPHRIES: It will be that the prevalence of offences is taken into account and that sometimes people will get a heavier sentence because judges and magistrates feel the need to send to the community a signal that certain offences are not to be committed again. That is clear; but it is already clear in other courts in this land and it was clear in the ACT courts up until 1993.

Mr Stanhope: It is unjust.

MR HUMPHRIES: It may be unjust; but it is quite unfair and inaccurate to describe it as being a new principle, or something which has been invented by this Government. It has not been.

Ms Tucker: If it is unjust, why are you doing it?

MR HUMPHRIES: It is not unjust, Ms Tucker.

Ms Tucker: You just said that it may be unjust.

MR HUMPHRIES: No; I am quoting back his comments, Ms Tucker. I am not saying that I adopt those comments at all.

The second comment in the scrutiny of Bills report relates to the common law before 1993. The comment points out:

> The common law is not a static body of principle, and particularly so in respect of sentencing principles.

I might draw that comment to Mr Stanhope's attention, because he just made the comment that judges merely interpret the common law rather than make it. That comment would seem to reflect otherwise, with great respect. It then goes on to say:

> It would be undesirable for a sentencing court to attempt to ascertain the state of the common law in 1993 as a guide.

Mr Speaker, the common law in 1993 is as I have suggested it is. It is as the Bill, in fact, proposes that it should be. That is that the prevalence of offences is a matter which the court may take into account when passing sentence on a particular offender. That is the common law, as I understand it, and that is as succinct a statement of the law as I can make. If members want to know what the common law was in 1993, with great respect, they should look at what the Bill says. That describes it to them. *(Extension of time granted)* If they seek some further explanation or clarification of exactly what the common law meant, Mr Speaker, I cannot help them. The Government is merely reinstating the common law. It is not up to the Government to describe fully the common law beyond what is contained in the Bill.

Bear in mind that the common law was changed by the legislation which came forward in 1993 and said that, in sentencing somebody, the prevalence of an offence will not be taken into account. That is section 429B of the existing Crimes Act. We are simply removing that provision. So, we will be reinstating the common law. To accurately and fully describe what the common law might be, in all the possible permutations on that, is not the job of the Government, with respect; nor is it possible for any government to do that. I would respectfully suggest to the Justice and Community Safety Committee that these comments are very unhelpful and simply raise a point which, in a sense, is axiomatic or obvious, but which does not actually advance the argument very far. It is true that the explanatory memorandum does not fully explain the common law; but to do so would require, potentially, in some cases, many volumes. In any case, there are very good commentaries on the common law available in other places. I suggest that people refer to those, as judges and magistrates will, if they have to take into account those principles when sentencing particular offenders.

Mr Speaker, I want to make one more comment before I sit down. In this debate, members have also made reference to the undesirability of looking at the conduct of others when passing sentence in a court. Mr Stanhope, for example, said:

> Our law has been founded on the basis that we should not do that. As a matter of principle it is not appropriate that a particular offender who has committed an offence should have added to the punishment which we as a community seek to impose on that person a measure of punishment which is a response to what other criminals do.

My first quibble with that is that that is not what our law is based on. Our law is based on the principle of prevalence being taken into account. But let us assume for a moment that he was right, and that we should not take into account what other criminals do. There is already a principle in the Crimes Act - specifically, in paragraph 429A(1)(i) - which allows the court to take into account the deterrent effect which any sentence or order under consideration may have on any person.

I would ask members to reflect on what the difference between deterrence and prevalence might be. I would suggest to members that the only difference is that prevalence refers to what has already occurred and deterrence refers to what is yet to occur. But they are, effectively, two different sides of the one coin. They are both a reflection of what other people do - other than the person who is actually before the court being sentenced.

If members genuinely believe that we should not allow the behaviour of others to influence the sentencing principles which are affecting a particular individual before the court at that time, they ought also to remove from the Crimes Act the reference in subsection 429A(1) to "deterrent effect", because that is exactly the same thing - taking into account the potential behaviour of others when passing sentence on a particular individual. I am happy for members to move that amendment if they wish to. Obviously, it will not get support from this Government; but it is the logical outcome of their arguments.

Mr Speaker, I would suggest to them that they reconsider their position, because, clearly, you do have to take into account the behaviour of other people. It is the role of the court - it is incumbent on the court - to send signals to other people about behaviour through the way in which sentences are passed. It is incumbent on the courts - indeed, it is their obligation - to attempt to stem particular problems in the community by sending clear signals through sentencing policy. Mr Speaker, that is what this legislation attempts to do and what I hope the Assembly will support the legislation in doing.

Question put:

That this Bill be agreed to in principle.

The Assembly voted -

AYES, 9	*NOES, 8*
Ms Carnell	Mr Berry
Mr Cornwell	Mr Corbell
Mr Hird	Mr Hargreaves
Mr Humphries	Mr Moore
Mr Kaine	Mr Quinlan
Mr Osborne	Mr Stanhope
Mr Rugendyke	Ms Tucker
Mr Smyth	Mr Wood
Mr Stefaniak	

Question so resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

JUSTICE AND COMMUNITY SAFETY - STANDING COMMITTEE
Scrutiny Report No. 2 of 1998 and Statement

MR OSBORNE: I present Scrutiny Report No. 2 of 1998 of the Standing Committee on Justice and Community Safety (incorporating the duties of a Scrutiny of Bills and Subordinate Legislation Committee). I ask for leave to make a brief statement on the report.

Leave granted.

MR OSBORNE: Our legal adviser has looked over most of the Bills from the last sitting, and the committee has made a comment on the Crimes (Amendment) Bill (No. 3) - I have indicated to Mr Rugendyke that there are a number of issues in there that he would need to address - and a short comment on the Crime Prevention Powers Bill, which I have taken on board, and on the Litter (Amendment) Bill, indicating that there is perhaps undue trespass on personal rights and liberties. I am sure that Mr Moore will address that issue. Comment has been made on the Water Resources Bill as well, Mr Speaker. I commend the report to the Assembly.

Sitting suspended from 12.26 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Competition Policy Forum - Belconnen Aquatic Centre

MR STANHOPE: Mr Speaker, my question is to the Chief Minister. On ABC radio on 8 May the Chief Minister said that the Government had not referred the Belconnen pool issue to the Competition Policy Forum because the forum had decided it did not want the Government to refer matters to it. The Chief Minister also said, in relation to the Belconnen pool:

> I understand that the forum has been offered a briefing on this on a number of occasions but at this stage haven't taken that up.

On 20 May the Chief Minister reaffirmed this view when she told the Assembly:

> ... the forum wanted to be able to investigate the things that it wanted to investigate or believed needed to be investigated, not the things that the Government wanted investigated.

I have had correspondence from three members of the forum now, in which they refute both of those statements and in which they claim them not to be true. Can the Chief Minister confirm that she was wrong about the forum's views on referral of issues and briefing, and that she has misled the people of Canberra and the Assembly?

MS CARNELL: Mr Speaker, it is certainly my advice that the forum made it very clear that they did not want public servants involved in the meetings and they wanted to set their own agenda. Quite clearly, that is my advice, and I stand by it.

Mr Corbell: That is not what you said the other day.

MS CARNELL: It is exactly what I said.

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

MR STANHOPE: Given the views expressed to me by its members, will the Chief Minister confirm that the advice which she has referred to and which she appears to stand by is true? If it is written advice, will she table that advice? Will she, subject to her findings on that, refer the Belconnen pool issue to the Competition Policy Forum?

MS CARNELL: Mr Speaker, I will stand by that statement. It is verbal advice to me. In fact, I checked with the chairman of the forum this morning that his understanding was that the forum had made it clear that they did not want public servants present and they wanted to set their own agenda. Quite simply, I ran that past him this morning and he said that that is exactly the situation.

With regard to referring the Belconnen pool issue to the forum, the forum has every capacity to have a look at the Belconnen pool issue. I have to say, Mr Speaker, that the forum would not be, in the first instance, the mechanism that would be used. The requirement under the competition policy agreement, signed by Rosemary Follett and put forward by the previous Federal Labor Government, requires the setting up of a competitive neutrality complaints mechanism. That mechanism has been set up. I understand that we published the appropriate guidelines and so on in, I think, 1996, Mr Speaker. That mechanism is in place for people who complain. Two people complained and that mechanism under the process that was signed by Rosemary Follett had to be followed, and it was followed, Mr Speaker. There is no reason why the forum cannot have a look at the Belconnen pool issue, or, for that matter, any other issue with regard to competition policy. In fact, we would welcome them doing so.

Native Title Claims

MR HIRD: Mr Speaker, I also will ask a question of the Chief Minister, but my approach will be totally different from that of the Opposition. I will listen in silence because I need to know the answer to the question, not like those people opposite. Can the Chief Minister advise the parliament as to the current status of the native title claims by the various Aboriginal groups within the Territory?

MS CARNELL: I thank Mr Hird for the question. I think it is really appropriate, Mr Speaker, for this question to be asked on National Sorry Day, and I am sure that members will not mind if I provide a bit of background information.

Mr Speaker, two native title claims covering areas of the ACT have already been lodged and accepted by the National Native Title Tribunal. These claims were made by Mr Nurri Arnold Williams and Mr Phillip Carroll. A third group led by Mrs Agnes Shea has applied to be a party to both of those claims. Now a third claim has been lodged by the Bell family which covers the areas of Parliament House and the High Court. This claim is currently being considered by the chair of the Native Title Tribunal, Mr Justice French.

Members should be aware that the genealogy prepared to support the Williams claim has not been accepted by the other parties and the need for further research has been identified. To address claims made by the Bell and Carroll groups, and I think the Shea group as well, that they have not been given adequate resources to pursue their respective claims, the Aboriginal and Torres Strait Islander Commission has funded a barrister to represent them. As we know, barristers are very expensive. I am also pleased to report that the tribunal, the barristers for all the groups involved in the claims, and Dr Nicolas Peterson, senior lecturer at the ANU Anthropology Department, have now agreed upon a methodology to develop an acceptable genealogy report for all of the groups. Mr Speaker, this is a real breakthrough. This methodology involves reviewing the current genealogy submitted for the Williams claim, identifying and researching any gaps and consulting all relevant families.

To this end, Mr Speaker, the Government has allocated $20,000 to fund this research, which is expected to be completed by the end of July. The Native Title Tribunal and this Government hope that from this work one combined claim will be developed that covers the interests of all claimants. I am confident that everyone in this Assembly would support that as well. This Government, as I have said on numerous occasions, is committed to negotiating a local agreement with all of the Ngunnawal peoples. Once the genealogical research is complete I am extremely hopeful that negotiations can recommence.

I am disappointed, as I am sure all members are, that it has taken this long to reach this point; but we are now closer than ever to reaching a consensus viewpoint, and that has to be good news for everybody involved. As I have said many times before, the less we have to do with lawyers and the less money is tied up on expensive legal manoeuvring, the better it is for the Government, and for everyone involved. If we can come up with an agreed position on the genealogy and on the way ahead and can conclude a model regional agreement, we will be able to show the rest of Australia just how this is done without tying the issue up in court for many years.

Mr Speaker, let me just say, finally, that throughout this process we have endeavoured to keep members informed about the progress towards achieving a native title agreement here in the ACT. I am sure that all members of the Assembly would support us in this. I can assure the Assembly that as significant events occur we will keep everybody updated.

Belconnen Aquatic Centre

MR QUINLAN: Mr Speaker, my question is addressed to the Minister for Education. In today's *Canberra Times* Mr John Boland, managing director of the Kippax Pool and Fitness Centre, asserts in relation to his complaint to the Competitive Neutrality Complaints Unit about the proposed construction of Belconnen pool:

> The Minister for Sport and Recreation was also aware of the submission prior to the ceremonial turning of the sod ... prior to the last election.

When was the Minister first aware of complaints lodged with the unit by Mr Boland and the management of the Big Splash at Jamison?

MR STEFANIAK: I thank the member for the question. It was interesting. I saw that letter too, Mr Quinlan, and I think Mr Boland might need to get his facts right. I checked my diary. I recall that the announcement of the site was the day after I got back from leave, and I recall seeing Mr Boland on Friday, 16 January. In terms of when he or anyone else actually lodged their complaint, the exact dates were not known to me until some considerable time later. Mr Boland, on 19 January, first raised the possibility, I think, of him adopting certain courses of action; but I was certainly unaware of when he intended to do so. I note, Mr Quinlan, that I think he did so later on that month.

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

MR QUINLAN: Minister, will you say that Mr Boland is wrong, or is he misleading us?

MR STEFANIAK: How can I say anything like that, Mr Quinlan? Do not be ridiculous. I can tell you, Mr Quinlan, that I saw Mr Boland on Friday, 16 January, as I checked my diary. That was when I saw him. That, you might recall, was after the announcement of the actual site, which I believe occurred on the Monday of that week.

Competition Policy - Belconnen Aquatic Centre

MS TUCKER: My question is to the Chief Minister. On page 1 of the ACT Competitive Neutrality Complaints Unit report on the Belconnen pool the complaints unit comments that, although the competition principles agreement requires that the competitive neutrality principles be applied to significant government business activities, the Government has determined that in the ACT there is a benefit in applying the principles to all government-owned businesses and business activities, rather than restricting the application to significant businesses. Mrs Carnell, when did the Government make the decision to apply competitive neutrality to all government business activities in the ACT, and what processes were followed before the Government took this decision?

MS CARNELL: I do not think we have, Mr Speaker.

Mr Humphries: And what processes were followed?

MS CARNELL: What processes? We cannot have had a process if we have not made that decision from a Cabinet perspective. Mr Speaker, that decision has not gone to Cabinet. I have to say that the complaints unit is quite able to make recommendations to government.

MS TUCKER: I have a supplementary question. If it has not been a decision of the Government but the complaints unit thinks that it has, will the Chief Minister give an undertaking to clarify the position of the Government on this with the complaints unit?

MS CARNELL: Mr Speaker, I do not think the complaints unit thinks that that is the case, but I am certainly willing to clarify the situation. I think everybody is very well aware - - -

Mr Stanhope: It does. The whole report is based on that assumption.

MR SPEAKER: Order!

MS CARNELL: Thank you, Mr Speaker. I think everyone is very well aware that when the complaints unit gets a complaint of this nature it must investigate it. Under national competition policy, under the agreement that was signed by those opposite and put forward by a Federal Labor government, that is a requirement of the process. The forum looked at the issues involved and recommended to the Government that a detailed feasibility study should be undertaken, including reference to all of the factors involved in making a major capital works decision, including both competitive neutrality impacts in the marketplace and also the financial returns that might be expected from an investment of this scale. I think that is a quite reasonable approach, and I have to say it is the approach the Government is going to take.

At this stage, Mr Speaker, the project, as we have said, is on hold, but it is certainly not cancelled. What we are doing is following the recommendations of the report. If we do not we could have our competition policy payments endangered. Some people in this Assembly do not care about that. It is obvious that they have never put together a budget in the ACT, because that amount of money is extraordinarily important to the ACT. The Belconnen pool is a $15m project. It is clearly significant business. Surely, Mr Speaker, it is significant business by anybody's measure. I do not know that Ms Tucker was trying to suggest that somehow the Belconnen pool was not significant business. Yes, the ACT Government looks at everything from a competitive neutrality perspective for significant business reasons, because if we do not our payments may be at risk. But that does not mean that we look at every single thing that government does.

Rural Residential Development

MR CORBELL: Mr Speaker, my question is to the Chief Minister. Chief Minister, last week you advised the Assembly that the exclusive preliminary agreement or contract that the Government had with developer Derek Whitcombe for a rural residential development near Hall was terminated because Mr Whitcombe found he had authority to negotiate over only one lease, block 630, I understand, rather than the three he had originally brought to the table. Can you now confirm that 95 per cent of the proposed development was in fact intended for block 630? If so, can you indicate what relevance there was to the leases of blocks 629 and 495? Further, can you say why Mr Whitcombe would withdraw from such a potentially lucrative agreement simply because he had no explicit authority to negotiate over only 5 per cent of the land available?

MS CARNELL: Mr Speaker, of course I cannot answer on what Mr Whitcombe may or may not be thinking or why he might have made a particular decision. What Mr Whitcombe brought to the table were three leases and the Bolton property of Hillview. When it became apparent to the Government two weeks ago, or a week-and-a-half ago, that two of those leases had already been passed back to government and there was only one lease that could be negotiated, we believed, and I think in the end Mr Whitcombe believed too, that the preliminary agreement in its current form could not proceed.

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

MR CORBELL: Yes, Mr Speaker. Will the Chief Minister confirm - she failed to do so in her answer - that 95 per cent of the proposed development was intended for block 630? Can the Chief Minister say what was the real reason for Mr Whitcombe's withdrawal from the exclusive preliminary agreement or contract, because clearly the excuse she has given is not it?

MS CARNELL: Mr Speaker, you may like to make a ruling on people asking the same question as a supplementary question to the first question.

MR SPEAKER: You cannot answer the second half of the question.

MS CARNELL: I make the point again. Mr Whitcombe brought three leases to the table. At that stage, Mr Speaker - - -

Mr Corbell: Ninety-five per cent. Is that true or is that not true?

MR SPEAKER: Order!

MS CARNELL: Mr Speaker, when the preliminary agreement was signed, to my knowledge there had not even been a breakdown of the number of blocks involved, or even where those blocks would be. The basis of the preliminary agreement was to look at planning issues, environmental issues and financial issues surrounding the proposed joint venture. That, of course, would mean looking at the number of blocks that may or may not be available, and the sorts of financial impacts and environmental impacts that that sort of break-up would have. To my knowledge, Mr Speaker - I am fairly confident that I am right - there was not even a breakdown of where the blocks would be when the preliminary agreement was signed.

Public Sector Wage Negotiations

MR OSBORNE: My question is to the Chief Minister and is about public sector wage negotiations. Chief Minister, when negotiating enterprise bargaining agreements with the ACT public sector work force back in 1995, the Government's first offer was put on the table on or about 22 August that year, effectively allowing four months for the Government to complete its negotiations before the agreements that were already in place expired. As you would be aware, Mrs Carnell, instead of taking four months to complete, those negotiations took around seven-and-a-half months. The ensuing industrial dispute, according to your own estimate in 1996, cost the Canberra community over $5m. Given that the current EBA runs out in just three months' time, when do you intend opening negotiations with the relevant parties? Do you intend negotiating with the union movement as a whole via the TLC or, as last time, with each individual union?

MS CARNELL: Mr Speaker, significant negotiations have taken place already with regard to the enterprise bargains. Before the election I made it very clear that this Government was committed to agency specific enterprise bargaining, and we will be maintaining our commitment to that approach. I think it is only sensible, knowing the diversity of the ACT Government and the services that we provide, that we ensure that the enterprise bargains or agency agreements that are made are specific for that particular workplace.

There are 20 enterprise agreements in place covering the ACT Public Service. Fourteen of those are due to expire at the end of September 1998 - so, not all of them by any stretch, but certainly some of them. Most agreements contain a requirement that the negotiations for a replacement agreement should commence about six months, I understand, before the expiry date. I know that those negotiations are well under way, as are the negotiations for award simplification. The negotiations will happen at agency level. We have set up an advisory group in the Chief Minister's Department to aid the Government in this sort of area. I have to say that some people on it are not traditional members of the Liberal Party, and they certainly have a good knowledge of the labour movement, Mr Speaker. The negotiations are certainly under way. My understanding is that they are progressing quite well at agency level.

Rural Residential Development

MR WOOD: My question is to Mr Humphries and it concerns the proposed Kinlyside development. I ask him to pay careful attention to the dates that I indicate. Last week, on 20 May, in response to a question you said this:

> As it transpired - and this information became clear, at least to the Government, only very recently; that is, in the last seven days - the three blocks which supposedly were brought to the table by Mr Whitcombe in this arrangement were, in fact, at best, only one block; that is, what is now block 630.

The Chief Minister said something of the same sort just a few minutes ago. Minister, I ask you how then you explain this letter to the president of the Hall and District Progress Association, Mr Kearney, written on 14 August last year, as the then Minister for the Environment, Land and Planning, in which you said:

> I understand the Boltons' lease is over the area now known as Block 630 ... and is leased on a month to month basis.

You were talking in August last year about one block. What happened that you discovered that, or rediscovered that, only a week or so ago? You have an inconsistency there. Will you explain it?

MR HUMPHRIES: Mr Speaker, on this occasion the Opposition reminds me a little bit of my dog which occasionally finds an old bone in the garden, digs it up, shakes it off, gets all the dirt off it, gives it a good lick, puts it back in the ground, leaves it for a few more weeks and then comes back. Frankly, the whole thing stinks after a while. I have to say on this occasion that this particular matter ought to be buried, Mr Speaker. It ought to have been buried quite some time ago. I have the letter to which Mr Wood refers in front of me. What Mr Wood may not have in front of him is the letter from Mr Kearney, the president of the so-called Hall and District Progress Association, to which I was replying - a letter of 27 July. In that letter - and I will table this in a moment - Mr Kearney asked me:

> Could you please advise us of:
>
> ... ...
>
> the status of the lease of the Bolton Farm "Hillview" (I believe that the farm is located at Block 496 Gungahlin);
>
> ... ...

My response was drafted, of course, by my then department and I responded to the question he asked. I said:

> I understand the Boltons' lease is over the area now known as Block 630 -

that is the block previously known as 496 -

> (as shown on the attached plan) and is leased on a month to month basis.

So I was responding precisely, Mr Speaker, to the question Mr Kearney asked me, and that is why I have referred to it in that way. I table the letters referred to.

Olympic Games - Travel Proposal

MR RUGENDYKE: My question is to the Chief Minister. It is not about Hall. I will leave the Hall questions to the Labor Party. Ms Carnell, I read with interest on Friday details of a proposal from the Sydney Organising Committee for the Olympic Games to include free public transport in tickets to games events held in Sydney in the year 2000. The free transport proposal is applicable to a zone extending from Scone in the north-west to Goulburn in the south-west, but excluding the ACT. Due to the fact that our city has committed itself to a $27m project at Bruce Stadium in order to host Olympic soccer, I am concerned that people from Canberra stand to miss out on the benefits offered by a free transport zone. Chief Minister, I would like to know whether the Government was consulted about the free public transport proposal by SOCOG.

Mr Humphries: Mr Rugendyke wants a seat, obviously.

MS CARNELL: I do too. As far as I know, we were consulted, Mr Rugendyke; but I will take that up with the officials who are doing the negotiations with SOCOG. I do not think that is fair either. I think they should provide transport. If they are going to do it to Goulburn they should do it to the ACT as well. Similarly, we would like some free transport into the ACT out of New South Wales to get in for our soccer games as well. I think that is a really good question and I will follow it up.

MR RUGENDYKE: I have a supplementary question. Can I take it from your answer that you may be writing to Michael Knight urging him to reconsider the proposal and that you will include the question about free travel to our area?

MS CARNELL: I am very happy to write to Michael Knight. He was in Canberra yesterday, I think, to look at Bruce Stadium. I am sure he now understands what a fantastic stadium it is, and what a great Olympic venue we have here in the ACT. I hope that he would be positive about any request.

Rural Residential Development

MR HARGREAVES: My question is to the Chief Minister and, Mr Speaker, it is a very short question deserving of a very short answer. Chief Minister, in relation to the exclusive preliminary agreement or contract over the proposed rural residential development near Hall that the Government entered into with Mr Derek Whitcombe, can the Chief Minister tell the Assembly whether the agreement was drafted by a government legal officer or a consultant legal firm?

MS CARNELL: Mr Speaker, I do not know who drafted the agreement. We use both internal solicitors and external solicitors. I am happy to take the question on notice.

MR HARGREAVES: I have a supplementary question, Mr Speaker. To clarify the issue, I am interested to know, if a private firm was used, which firm it was and how much it cost. If it was done by the government legal office, when did that take place?

MS CARNELL: Mr Speaker, I am more than happy to take that on notice. As I said, from a Government perspective, particularly in commercial areas, we regularly use external advice because that is not an expertise necessarily of the ACT Government. But we also use internal solicitors as well. I am happy to take it on notice.

Roadworks

MR KAINE: Mr Speaker, I have a question to the Minister for Urban Services. Minister, this year's budget, the budget ending 30 June, makes provision for just over $800,000 for the upgrading of the intersection of Erindale Drive and Drakeford Drive. That work, according to the budget, is to be completed this year. I drove through there within the last 48 hours and there is no sign that any work is ever to be undertaken there. Can you tell us when that work is to begin, and when do you expect it to be finished?

MR SMYTH: Mr Speaker, I thank the member for his question. I am aware that such work has been listed in the capital works for this year. I will have to find out a fuller answer for him as to when it is to start and when it will be finished.

MR KAINE: I have a supplementary question, Mr Speaker, and it relates also to the capital works program. Some months ago we received a significant sum of money from the Commonwealth for a black spot program. One of the black spots is the intersection of Monaro Highway and Tharwa Drive. We have had that money for some months. In this year's budget I see no reference even to the drafting of that project. In fact, there is no reference at all to it. There was another accident there yesterday morning. It is a black spot. We have had the money for months. When does the Minister expect that we might do something about spending the Commonwealth's money and rectifying that major black spot on our roads?

MR SMYTH: Thank you, Mr Kaine, for the question. Again, I will consult with the department and find out the timetable for that process, and I will get back to you as soon as I can.

Visiting Medical Officers - Contracts

MR BERRY: My question is to the Minister for Health, Mr Moore. I gave Mr Moore some advance notice that I would be raising this issue with him. In the weekend paper, Minister, there was a report of a visiting medical officer being suspended for one month for the practice of charging a booking fee. You may recall that this practice came to my attention about five years ago, and to the attention of the Auditor-General. It led to the insistence that VMO contracts contain a ban on this practice. I am sure you agree that the uncovering of this predatory practice on vulnerable women is another sorry chapter in the delivery of obstetric services in the ACT. Regrettably, by association, it unfairly brings into disrepute many of this VMO's hard-working colleagues who run their businesses ethically. This morning's *Canberra Times* tells us that the doctor who was suspended

for one month is Dr Bates. He is the very same VMO who was named in the Assembly in 1993 for charging booking fees and he arrogantly continues the practice. At the same time, this person was the president of the AMA during contract negotiations. He is still doing this and has been found very guilty of charging booking fees in breach of his contract. I must say I was appalled this morning, Minister, to see the doctor in question trying to justify his position. He was reported as saying that, because the private health insurance system was an "extremely poor product", doctors had to run their own insurance system for patients to try to accommodate their needs and requests. What an outrage!

MR SPEAKER: What is the question, Mr Berry?

MR BERRY: I am happy to see that some penalty has been levied; but does the Minister agree, considering the wilful and persistent breaches of his contract by this VMO, that the community is entitled to expect more than this unethical and predatory behaviour? Further, considering the wilful and persistent breaches of the contract, does the Minister consider that it is appropriate to offer this VMO a new contract at all?

MR MOORE: Thank you, Mr Berry, not only for the question but also for the couple of hours' notice which allowed me to get a full answer for you. I will give some background to the situation. A complaint was received in January 1998 from a patient following the cancellation of surgery. On investigation, the patient alleged that she had been advised by Dr Bates that the payment of an additional fee would guarantee her admission to hospital on a certain date. The patient subsequently, on 11 March 1998, signed a statutory declaration outlining the sequence of events leading to her complaint. She also provided the hospital with the receipts for the money paid to Dr Bates. Dr Bates submitted an account to the hospital for the service he provided to the patient as a Medicare patient. This account was paid on 12 March and the cheque presented on 20 March 1998.

Legal advice was subsequently sought regarding options which the hospital could pursue under the terms of the existing visiting medical officer contract. As a result of the advice received, the executive director of clinical services advised the chief executive of the hospital on 4 April 1998 that there were reasonable grounds to believe that Dr Bates had been guilty of serious and wilful conduct in terms of subclause (9)(1)(c) of his VMO contract and recommended that the agreement should be suspended. The chief executive of the hospital met with Dr Bates and the executive director of clinical services on the matter on 6 April 1998. At that meeting Dr Bates indicated that there must have been a misunderstanding and that this had not happened before. I will come back to that.

As required in the contract, the chairman of the Clinical Privileges Committee was consulted. Dr Bates was interviewed on 17 April 1998 and handed a letter from the chief executive of the hospital advising him of the determination to suspend his VMO contract for a period of 30 days from 17 April 1998. The period of suspension was determined following legal advice. Clause 11.3 of the VMO contract which Dr Bates had signed - the contract that is still, for another few days, in existence - says:

> ... the practitioner shall not obtain, request or accept, 'booking fees', 'attendance fees', or like payments or any other payments, considerations, benefit or advantage from any patient or on behalf of any patient to ensure that the practitioner is available to provide services to the patient, or to ensure the patient is given priority in the receipt of services for which remuneration is payable to the practitioner under this agreement.

Mr Berry, you will find this very interesting, considering that you answered a question from Ms Ellis on 25 November 1993 and drew attention to the sort of practice that Dr Bates was then involved in. The same Dr Bates was heading the AMA that negotiated the wording of this contract. That irony is not to be missed.

Mr Berry: I do not think he asked me to insert it, though.

MR MOORE: I do not think he asked you to insert that clause. However, as you correctly pointed out, there was an Auditor-General's report and a series of other issues that led to this clause. The clause is in the contract and every VMO is subject to that. As you rightly point out, we have one example of somebody who lets down his colleagues.

The other issue that I think is important is this: You asked about the renewal of a contract. I spoke to Professor Ellwood earlier today. Professor Ellwood is handling the negotiations with gynaecologists and obstetricians. He indicated that he has put out the new contracts, including a contract to Dr Bates. I think that last Friday Dr Bates indicated to Professor Ellwood that he would not be signing that particular contract. Professor Ellwood assures me that he will not be offering any different contract to any gynaecologist or obstetrician. That is the contract that is available for any of them. They will sign it or they will not have a contract. That is the position that we are in.

Additionally, the hospital has advised me today that in the light of the information contained in the *Canberra Times* today - I presume that is what Dr Bates considered as his justification - the hospital is moving to withdraw its offer of a new contract, or of any contract, to Dr Bates pending further inquiries. That being the case, there are only a few days left for Dr Bates to respond in a positive way to that contract. There will be no other contract offered to him with any other conditions. So, Mr Berry, although we have paid large sums of money to Dr Bates over the last few years, the chances of him being involved in practising at the Canberra Hospital in the future are very slim indeed.

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

MR BERRY: Thank you, Mr Speaker, and thank you, Mr Moore, for the comprehensive answer to the question. It is a refreshing change from the Government benches.

MR SPEAKER: No critiques in preambles, because you cannot have any preambles.

MR BERRY: Just a little one is okay. Mr Speaker, will the Minister tell the Assembly how much this VMO has received in ACT health payments under the contract he breached, and has any estimate been made of how much extra he received in booking fees?

MR MOORE: To answer your last question first, Mr Berry, I will leave it up to you to make the estimate of the extra money. I cannot comment on that. You could look up last year's annual report on health services and you would see that approximately $230,000 was paid to Dr Bates from the public purse in the year 1996-97. To date, to 14 April 1998, in this financial year Dr Bates has been paid $211,267.18. I will say that, in speaking individually to other VMOs, they always point out to me that the money is not going directly to their pocket, because there are other doctors who are paid similar sums of money. I think we have to remember that they also keep staff on to do things. It is also important to understand that the visiting medical officers also earn money separately from the money that is paid by the hospital. So it is very large sums of money that we are talking about.

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

Competition Policy - Belconnen Aquatic Centre

MS CARNELL: Mr Speaker, in response to Ms Tucker's question earlier, I am advised that competitive neutrality principles are applied to all government activities and they are included in the competitive neutrality guidelines.

ACT Housing Properties - Tenants with Disabilities

MR SMYTH: Mr Speaker, Mr Hargreaves recently asked a question about the arrangements between ACT Housing and the Department of Health in relation to finding properties for people with disabilities. I have a short answer for him.

ACT Housing consults with the Rehabilitation Unit of the Canberra Hospital before proceeding with requests from clients with disabilities for modifications to government properties. Where the modifications are only minor, such as the installation of grab rails, ACT Housing may proceed with the work independently. Major modifications are recommended by the Rehabilitation Unit. Over the years, ACT Housing has modified a number of properties to meet the special needs of public tenants and applicants with disabilities. When these properties become vacant, ACT Housing reviews its applicants list to identify people who have indicated that they have special needs. With the assistance of the Rehabilitation Unit, ACT Housing endeavours to allocate these properties to people with physical disabilities.

To respond to the second part of Mr Hargreaves's question, all applicants for public housing undergo an assessment as to their eligibility. This is done through the Applicant Services Centre. Applicants must meet basic eligibility criteria concerning income and asset limits and residency. Where applicants present with particular difficulties, including physical disabilities, an assessment of the need for the priority allocation of a public rental property can also be made. This usually includes an assessment as to whether a suitable property to meet the person's or the family's needs may be available in the private rental market.

ACT Housing has been provided with a budget of $300,000 to modify government dwellings for clients with special needs. With such limited funds, it is necessary to seek the assistance of the Rehabilitation Unit in prioritising major requests for modifications. The recommendations of the Rehabilitation Unit may involve clients on ACT Housing's applicants list or tenants whose special needs have arisen since they occupied their government property. As a first step, ACT Housing inspects the property to ensure that it is suitable for modification. If the property is assessed as being unsuitable to be modified, ACT Housing will find one that is suitable and, if applicable, will transfer the tenant when modifications are complete. If a client's special needs are exceptional and cannot be met through modifying an existing property, ACT Housing will consider building a house for them and incorporating the modifications in the design.

STANDING ORDER 117 - RULES FOR QUESTIONS
Statement by Speaker

MR SPEAKER: Members may recall that at the last sitting of the Assembly Mr Corbell, by leave, asked me to examine the Chief Minister's response to a supplementary question he had asked during questions without notice. I was specifically asked to review the *Hansard* and look at it in terms of standing order 117(h), which provides:

> A question fully answered cannot be renewed.

Mr Humphries also addressed comments to me on the matter, and I undertook to examine the *Hansard*. The supplementary question that was the subject of the request related to the proposed Kinlyside land development at Hall and asked a series of specific queries of the Chief Minister.

I have examined extracts from the proof *Hansard* for the period 19 to 21 May and have to advise that the specific issues raised in Mr Corbell's supplementary question were not the subject of a question in the Assembly over the period. Over the period, however, there were 11 questions relating to the proposed rural residential development, together with the same number of supplementary questions. In other words, we had some 22 questions over that period.

I have concluded, therefore, that the supplementary question asked by Mr Corbell did not infringe the provisions of standing order 117(h), in that he did not repeat a question or renew a question that had already been asked. However, here the remarks of Mr Humphries are relevant. Ministers may refuse or decline to answer a question.

That is the practice of the House of Representatives, which I will apply in the Assembly. Whilst the Chief Minister may have been taken to have implied that the question was out of order and it may have been clearer if the Chief Minister had indicated that she had nothing further to add on the matter, or if she had referred the member to her answers to earlier questions, Mr Corbell's question itself was not out of order. Nor, however, do I believe that the Chief Minister's answer was out of order, in the sense that she believed that she had already, in her responses to earlier questions, dealt with the matters raised.

AUTHORITY TO BROADCAST PROCEEDINGS

MR SPEAKER: Pursuant to subsection 4(3) of the Legislative Assembly (Broadcasting of Proceedings) Act 1997, I present an authorisation for the broadcasting of proceedings to specific government offices.

FINANCIAL MANAGEMENT ACT - INSTRUMENTS
Papers and Ministerial Statement

MS CARNELL (Chief Minister and Treasurer): Mr Speaker, for the information of members, I present, pursuant to section 14 of the Financial Management Act 1996, an instrument directing a transfer of funds between appropriations, and a statement of reasons; pursuant to section 15 of the Financial Management Act 1996, an instrument directing a reallocation of funds, and a statement of reasons for the reallocation; pursuant to section 16 of the Financial Management Act 1996, two instruments relating to the transfer of funds resulting from the transfer of functions between departments, and a statement of reasons; and pursuant to section 17 of the Financial Management Act 1996, an instrument varying appropriation related to Commonwealth funding, and a statement of reasons. Mr Speaker, I ask for leave to make a short statement.

Leave granted.

MS CARNELL: As required under the Financial Management Act 1996, I have tabled an instrument issued under section 14 of the Act, which allows for transfers between appropriations, and a statement of reasons for the transfer; an instrument issued under section 15 of that Act, which allows for transfers between output classes within an appropriation unit, and a statement of reasons for that transfer; two instruments issued under section 16 of the Act, which allows for the transfer of an appropriation 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, and the reasons for the transfer; and an instrument issued under section 17 of the Act, which allows for an appropriation to be increased for any increases in existing Commonwealth specific purpose payments, that is, SPPs, by direction of the Treasurer, and a statement of reasons. 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 14 instrument for the Department of Urban Services relates to consolidation of environmental functions within Environment ACT. To complete this consolidation, a section 14 instrument is required to transfer water quality monitoring functions from Planning and Land Management, PALM, to Environment ACT. The section 15 instrument for the Department of Urban Services also relates to the creation of Environment ACT. The section 15 instrument allows output classes to be realigned to more accurately reflect the consolidation of environment functions under Environment ACT. The section 16 instrument relates to the transfer of the Dangerous Goods Unit from the Emergency Services Bureau to the Department of Urban Services as per the administrative arrangements orders announced on 31 March 1998. The other section 16 instrument for tabling relates to the appointment of a fifth Minister to the Executive, a Minister for Health and Community Care, in line with the administrative arrangements orders announced on 27 April 1998. The section 17 instrument relates to the Department of Education and Community Services. The department's appropriation relating to the Commonwealth grant, non-government schooling, was increased to allow for the on-passing of increased Commonwealth revenue. Mr Speaker, I commend the papers to the Assembly.

SUPERANNUATION - TOWERS PERRIN REPORTS
Papers

MS CARNELL (Chief Minister and Treasurer) (3.19): Mr Speaker, for the information of members, I present reports prepared by Towers Perrin entitled "Report on the Financial Management of ACT Government Financed Superannuation Liabilities" and "Report on the Development of Alternative Superannuation Arrangements for the Australian Capital Territory Public Sector". I move:

> That the Assembly takes note of the papers.

Today I am tabling two reports which are part of the review of superannuation for the ACT. These reports are the "Report on the Development of Alternative Superannuation Arrangements for the Australian Capital Territory Public Sector" and the "Report on the Financial Management of ACT Government Financed Superannuation Liabilities". The ACT Government commissioned the consultancy firm Towers Perrin to address two significant issues. The first issue is the way in which superannuation coverage should be provided to new staff of the ACT Public Service, after the anticipated closure of the PSS. The second issue is the financing of superannuation liabilities.

The report on superannuation coverage for new staff was prepared in the context of two Commonwealth Government decisions which will affect the ACT Public Service. These are decisions to introduce choice of superannuation fund and to close the PSS to new members. Both changes were originally intended to operate from 1 July 1998. It is important to note that the Commonwealth has not yet implemented either of these decisions. The Commonwealth has announced that the starting date for both will now be 1 July 1999, subject to the passage of enabling legislation. Even though the commencement of choice of fund and the PSS closure have been deferred to next year,

I believe it is important for the ACT to consider its position in relation to the superannuation coverage of new employees. I would stress that the proposals under consideration will have no impact on entitlements or benefits of existing employees of the ACT Public Service, who will continue their membership of the CSS, the PSS or other schemes. The report confirms the need to contain the growth in accruing superannuation liabilities.

We also need to address the management of the unfunded liabilities which have built up since self-government in 1989. If we simply maintain the current arrangements, the report shows that we will face an annual emerging cost of $138m, in today's terms, by about the year 2023, or about 10 times the current annual cost of superannuation payments. The unfunded liability, which currently stands at just under $700m, is estimated to reach a peak of $1,700m in 15 years' time. These projections reflect the future impact of the entitlements for existing staff who are members of the CSS and the PSS. Clearly, the massive costs that this would impose on future taxpayers demand action now if we are to ensure that the superannuation of existing ACT Public Service employees is properly funded when they retire, without recourse to big cuts to government services.

It is clear from the consultants' report that most governments have already moved to provide new employees with superannuation benefits which are closer to the community standard applicable across the private sector. As a first step, we propose to follow the lead of the State governments and most private sector employers by developing arrangements for new staff which will be more affordable for future ACT taxpayers. These new arrangements will apply from the closure of the PSS, now anticipated to be 1 July 1999. From that date, all new starters will be given the opportunity to nominate the superannuation fund into which they want the Government's employer contribution to be paid. That choice will be unlimited and will give new employees the flexibility to continue in an existing fund or to select a fund which best meets their needs. This arrangement will be consistent with the Commonwealth's intention to make it compulsory for a choice of superannuation fund to be offered to new employees. We have a very diverse range of occupations within the ACT Public Service, and unlimited choice of funds recognises that diversity rather than mandating a single scheme.

The Government will move to establish a default scheme, to be selected following a tender process, to be used in the event that an employee does not nominate a fund. The employer liability in the fund chosen by the employee will be fully funded, to ensure that there is no increase in the ACT's unfunded liability relating to new staff. Having set out the Government's intentions for superannuation, it is important to recognise that superannuation should not be considered in isolation but needs to be considered as one component of employee remuneration. The detail of the new arrangements will necessarily be the subject of further negotiation. The report charts a course through new territory for the ACT Public Service and recommends a careful and well-considered approach which aims to provide maximum protection for our employees while providing them with a real choice. In considering the options available to us, I am conscious of the need to maintain a competitive position in the employment market while at the same time acknowledging the impact any new arrangements might have on the overall position of the Territory with regard to the unfunded superannuation liability that already exists, which is addressed in detail in the second report.

The report on financing of the Public Service superannuation liabilities reinforces the need for increased funding, irrespective of any changes we make in relation to new staff. It is simply unacceptable that we take no action to reduce the burden on future taxpayers resulting from the superannuation benefits payable to staff who currently are employed in the provision of services to the community. Without appropriate action, the future annual benefit costs, estimated at up to $138m, will significantly impact on the capacity to maintain the standard of future service provision. In terms of establishing a funding policy, the report notes that it is possible to give separate consideration to two elements - first, the financing of future accruing liabilities; and, secondly, the financing of the past service unfunded superannuation liabilities. Fully funding superannuation liabilities for new employees addresses only part of the problem. The unfunded liability relating to existing employees is the major cost burden to be faced over the next three decades. The unfunded superannuation liability also constitutes the major single contribution to the ACT Government's annual operating loss.

The report presents the financial consequences of different options for the management of the accruing costs and the unfunded liabilities. The value of increasing the pace of funding is compared by calculating the present value of the required series of appropriations in each case. The report also gives consideration to the feasibility of taking advantage of the Government's AAA credit rating to meet all or part of the unfunded liability through borrowings. The funds would then be invested to meet the borrowing costs, with any surplus available to reduce the need for other funding. The results indicate that, by making contributions earlier, the Government can reduce the present value of the total ACT Government appropriations over time and reduce the emerging unfunded liability. The report emphasises that these considerations for increased funding should be made soon rather than in, say, 10 years' time when the emerging cost obligations have increased to levels where there will be little flexibility for variation. There is clearly no easy solution for these superannuation financing issues. We must look for a proper balance between paying now or paying later, within the constraints of the limited potential to divert current or future funds from the essential service delivery functions financed through the budget.

Mr Speaker, I table these reports, for the information of members of the Legislative Assembly and, of course, the staff of the ACT Public Service and the community. This is an absolutely essent4ial issue for this Assembly to come to grips with. It is an issue that, if we do not address now, will be a cost that future governments and the future community in the ACT simply will not be able to afford. It is a challenge; it is not an easy decision, but it is one that we must face.

MR QUINLAN (3.30): We recognise, along with the Chief Minister, that there are no easy solutions and that this liability is the No. 1 problem facing this Assembly as a whole in its deliberations on future financial arrangements for the Territory. Over the course of this Assembly, we do wish to participate to the maximum in addressing this problem, rather than see the hole dug bigger. We do note, I have to say, that previous ALP governments made a greater provision against this liability than has been made in recent years. Nevertheless, the problem is huge; there is no single silver bullet to solve it.

In that regard, it does concern us that the only measure that seems to be on the table at the moment is an effective reduction in the salary packages that apply to lower and middle level public servants in terms of a reduction in their overall superannuation. That, we do not think, is sufficient.

Ms Carnell: It is not sufficient.

MR QUINLAN: No; of course, it is not. With that, we recommend that the reports be noted.

Question resolved in the affirmative.

LITERACY
Ministerial Statement and Paper

MR STEFANIAK (Minister for Education): Mr Speaker, I seek leave of the Assembly to make a ministerial statement on literacy.

Leave granted.

MR STEFANIAK: Thank you, members. This Government is committed to the fundamental importance of literacy and numeracy development to a student's educational success. We also recognise that these skills are vital to students' lifelong opportunities as productive and fulfilled members of society. I am talking about literacy in a very broad sense, because literacy today as well needs to be founded on the basic skills of reading, writing and spelling. But the skills young people need go well beyond those basics. For instance, students need to understand and be comfortable with the language, structure and capacities of computers; they need to understand the peculiarities of the way electronic and print media messages are directed and delivered; they need to understand the covert messages embedded in advertising material; and, to achieve competency in these complex facets of communication, they need to be very well groomed in those essential basic tools of literacy I spoke of initially - reading, writing and spelling.

The ACT is leading the nation in ensuring that our students are literate. Their high levels of literacy competency will equip them to take their place in society and in the work force. The world of work, as all members will know, is vastly different to the one most of us entered at the completion of our education. The low-skilled entry level positions that used to be available are a thing of the past. Employers expect and demand high standards of every worker, including those new to the work force. The competition for jobs is rigorous. So, each and every student must leave school with the most highly developed literacy skills, which we can provide and they can attain, as a vital part of the diverse range of skills they will need to succeed in work and in society. That diverse range of skills cannot be achieved if students do not first have confidence and competency in literacy.

We in the ACT have not merely been led by the national/Commonwealth agenda on literacy; our own firm beliefs about the immutability of every child's entitlement to acquisition of a full range of literacy skills are longstanding. These beliefs have made us proactive participants in the nationwide quest for improved literacy skills for all our young people. We are determined to recognise that the importance of literacy goes beyond rhetoric. We are determined to support teachers in ACT classrooms to improve learning outcomes for all students. The quality of our assessment materials allowed us to make some comparisons with the draft national benchmarks. In general, ACT students performed well in those comparisons. Information about the outcomes of the ACT assessment programs has been made publicly available. But we cannot afford to be complacent; there are students in all of our ACT schools who require support and targeted intervention programs to ensure their learning success. That, Mr Speaker, is what sustains this Government's commitment to literacy enhancement.

Last year I worked with my national colleagues, through the ministerial council, to achieve agreement on national literacy and numeracy goals. This agreement states:

> ... every child leaving primary school should be numerate and able to read, write and spell at an appropriate level ...

Further:

> ... every child commencing school from 1998 will achieve a minimum acceptable literacy and numeracy standard within four years ...

In agreeing to this goal, we recognise that a very small proportion of children suffer from severe educational difficulties. As I have said, the literary achievements of our students compare very well with the national position. However, it is clear that requirements for literacy are increasing. The goals we have set to meet these increasing needs should be an accepted integral part of any education system, because literacy and numeracy outcomes for Australian students are not yet good enough to take them with confidence into the twenty-first century.

This Government has affirmed the goals of the Ministerial Council for Education, Employment, Training and Youth Affairs - MCEETYA, as it is known as - and will continue to reiterate them until they are reached consistently and by every child. The key elements of the national plan specifically designed to achieve those fundamental goals are - and I am quoting here, Mr Speaker, from the MCEETYA resolution of March 1997:

> (provide) a comprehensive assessment of all students by teachers as early as possible in the first years of schooling ... identifying those students at risk of not making adequate progress towards the national numeracy and literacy goals
>
> intervene as early as possible to address the needs of all students identified as at risk

> from 1998 onwards, assess students against the Year 3 benchmark to be numerate, and to be able to read, write, and spell, using rigorous state/territory based assessment procedures ... (and to accomplish the same, against the Year 5 benchmark, as soon as possible)
>
> (achieve) progress towards national reporting by systems and school authorities on student achievements in reading, writing and spelling against the Year 3 and 5 benchmarks to report in 1999 on 1998 results
>
> provide professional development to support the key elements of the national plan.

Finally, the ministerial council resolved to "begin reporting against the sub-goal of each level from 1988".

As I said earlier, the ACT is in the forefront in implementing and developing literacy initiatives. We have already embarked on a number of important initiatives. The ACT literacy strategy, which I am about to discuss in some detail, incorporates and is focused on the key elements of the national plan. In fact, a number of the programs we have undertaken predate current Commonwealth proposals. The most recent initiative we have undertaken is an ACT literacy strategy for preschool to Year 10. As members will know, the strategy was officially launched in this very building this week. Its title says it all - "Literacy Matters". It was developed following extensive community consultation informed by a literary discussion paper. The discussion paper included an analysis of effective teaching practices for literacy and was widely circulated for a three months consultation period. It outlined current literacy programs and proposed a number of strategies for consideration by the department, by schools, by key players in the education community and by industry. Respondents to this discussion paper included primary and high school staff members, school boards, the ACT Council of P and C Associations, the AEU, professional associations and university education staff. The Government has also received valuable feedback from industry groups, including the ACT Chamber of Commerce and Industry.

The input received from these groups is vital to the success of the strategy. They represent those teachers who will ultimately be responsible for implementing the strategy; parents who have intimate knowledge of the needs and the capacities of their children; tertiary institutions familiar with both education practice and the literacy needs of higher education; and industry, which of course has long been crying out for workers with high standards of literacy and numeracy. Comments from these groups, along with current research into the most effective literacy teaching and learning, and the skills and knowledge of departmental staff who have worked so hard on the strategy, have resulted in a plan that will ensure the ACT continues to take a lead in literacy outcomes.

We now have an ACT literacy strategy which reflects the community's comments and the community's needs. We have a working plan to ensure that ACT students develop the literacy skills they need to sustain their pursuit of lifelong learning and their capacity to thrive in an environment that is increasingly demanding of literacy skills.

The ACT literacy strategy is designed to provide a focus on literacy development for all of our students - girls and boys, Aboriginal and Torres Strait Islander students and students with special learning needs.

A significant development which underpins the implementation of the strategy is the establishment of a literacy team. This new team draws together into a coordinated unit all staff members with the responsibility for diverse aspects of literacy. This team has already commenced work. We are wasting no time in reaching our literacy goals. For the first time, we have a team approach to the delivery of English as a second language, ESL; learning assistance; reading recovery; language understanding across curriculum, LUAC - a high school program; and first steps. The highly skilled members of this team will be working in schools to enable them to deliver against the goals of the strategy. In particular, the literacy team will support schools in the development and implementation of another key plank of the strategy - school literacy plans. School literacy plans are at the core of the strategy to improve literacy; they are an explicit statement that literacy is valued and enable schools to focus their attention and resources on the acquisition of fundamental literacy skills by their students. The recommendation to develop these school literacy plans is yet another of the eight initiatives in the Government's literacy strategy. Other literacy initiatives in the strategy include:

> providing professional development for primary and high schools which enables schools to share the excellent literacy programs already operating in many of our government schools
>
> working in partnership with parents to develop information for parents about supporting their children in their literacy development
>
> the primary school assessment program which monitors, across the system, all year 3 and 5 students in government schools. As part of this program, parents receive individual student reports which clearly indicate how and what their child is achieving in literacy.

Mr Speaker, this assessment program is more comprehensive than that in any other State or Territory. The ACT program assesses and reports on all strands of literacy - reading, writing, speaking, listening and viewing. The breadth of our assessment program places us in an enviable position to report on the nationally agreed benchmarks in Years 3 and 5 because we have the capacity to collect this data without further work in schools. Another literacy initiative is:

> the Government has also given approval for the ACT to develop a literacy and numeracy assessment program for year 7 and 9 students in high schools.

This literacy and numeracy assessment will be applied to a number of learning areas. This is because we recognise that applying literacy and numeracy skills in other subject areas like science and technology is critical to students' success as they move towards further study or work. There will be a trial of items in June this year. From this trial a final selection of test items will be constructed for implementation in 1999.

The approach to this assessment will give us very sound information. Parents and schools will be able to track the performance of individual students; and we, as a government, will be able to monitor the performance of our ACT education system.

This Government, with other States and Territories, and as an extension of the national commitment I spoke of earlier, has recently signed an agreement to monitor student achievement at a number of points in a child's school career. This agreement endorses the following strategies:

> Early assessment in the first year of school to identify and support students at risk
>
> Assessment and reporting of the ACT achievement against the national benchmarks in years 3 and 5 and later in years 7 and 9 when benchmarks become available;
>
> This benchmarking information will eventually include non-government schools with government schools data.

In addition, the Government has recently recognised the importance of early intervention in the first years of school. Primary schools will receive an additional $400,000 to meet the learning needs of students through targeted early intervention programs. This funding is in addition to the $5.3m to support our students in the high school and primary school learning assistance program.

The Government has also established a literacy and numeracy fund, following the sale of Charnwood High School. This fund will generate continuing resources to support the literacy programs in our schools. Let there be no mistake, Mr Speaker: This Government is determined to make very sure our students acquire the highest standard of literacy they are capable of achieving; and we will take practical steps, both immediate and longer term, to fulfil that determination. Members who attended the literacy strategy launch on Monday cannot have failed to be impressed by the level of professional skill and dedication that has been provided for the development of the strategy.

I have every confidence that the national goals for literacy will be fulfilled with the same level of professionalism and to the same excellent standard as the ACT school system has historically achieved in meeting the needs of its students. I commend to this Assembly the work done by my department on enhanced literacy outcomes for every ACT school student. I formally table the following papers:

> 1998 literacy matters - Preschool-Year 10 - A literacy strategy
>
> Ministerial statement, 26 May 1998.

The literacy strategy document is the one that I launched. I move:

> That the Assembly takes note of the papers.

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

COMPETITION POLICY
Discussion of Matter of Public Importance

MR SPEAKER: I have received a letter from Ms Tucker proposing that a matter of public importance be submitted to the Assembly for discussion, namely:

> Competition policy and the public interest in the ACT.

MS TUCKER (3.45): I rise today to speak on this matter of public importance - competition policy and the public interest. I believe the debate on this matter has been lacking over the last couple of years and I am delighted to see that, finally, it has become something that has stirred up the concerns of the community and members of this place, as we start to see the consequences of it. I have been following the issue with great interest since the Competition Policy Reform Bill, which gives force to Part IV of the Trade Practices Act, was tabled in this Assembly.

As members of the last Assembly will recall, the Greens initiated a select committee to look at the implications of that legislation and associated competition policy reform. At that time, I was concerned at the breadth of the likely impact of competition policy on the activity of government, particularly the implications of the competition principles agreement, which sets out the framework for competition policy reforms in areas such as legislation review, structural reform of public monopolies and competitive neutrality. I was also concerned at how little public awareness there was about competition policy and its implications.

Competition policy was all signed, sealed and delivered by the Council of Australian Governments process, with virtually no public debate and little media interest. What has been even more concerning is the way that Hilmer reforms are being used to justify a sweeping micro-economic reform agenda. Even Hilmer has stated that the competition principles should not be used for human service delivery. While the horse has indeed bolted, and had already bolted at the time of that committee inquiry, we still have an opportunity to challenge the way that competition policy is implemented.

The committee report focused on the processes of implementing competition policy, trying to ensure that reforms were not just swept through secretly by government departments. The committee's report was a unanimous report, with the committee having a Green, a Liberal and a Labor member. The report states:

> The Committee considers that the implementation of competition policy may provide some economic benefits to the ACT and consumers, although this has not been shown conclusively, and the costs and negative impacts have not been adequately investigated. The Committee notes there is little choice but to enact the Bill but believes there must be serious consideration given to developing mechanisms for the protection of social and environmental concerns.

The Competition Policy Forum, which has been the subject of great debate in the past few weeks following the Belconnen pool fiasco, was also a recommendation of that report. When the Government ignored most of the recommendations of the report, I moved a motion in this Assembly for that forum to be established. The Government spoke against that motion. Mr De Domenico posed the question:

> How can exposing government businesses to fair competition disadvantage the community?

He continued:

> It does the opposite. It ensures that valuable government resources are not used to prop up inefficient bureaucracies and to hamper the growth and development of business in the city.

These comments highlight the very problem with taking a general philosophy like "competition is good" and applying it generally to government activities. Government is not a business. There are much broader issues that must be taken into account besides efficiency, which brings me to the crucial issue of public benefit.

A central element of competition policy is public benefit. When the Hilmer reforms were being implemented at the Federal level, social justice and environment groups fought a long and hard battle against the move to turn government into a business. The major concession that was gained was the capacity for exemptions from competition policy to be gained through recourse to the public benefit. Subclause 1(3) of the competition principles agreement sets out the public benefit criteria. Environmental sustainability, social welfare and equity considerations, occupational health and safety, and the interests of consumers are included in the list of public benefit factors. The ACT Government have stated in their progress report on the implementation of competition policy that they support a transparent process for assessing the public benefit. Unfortunately, most of the reforms of the ACT Government being conducted in the name of competition policy are far from transparent.

The Belconnen pool project is a classic example of a process used for working out the public interest that was far from transparent. This issue also provides us with perhaps the most public example of the application of the principle of competitive neutrality to public sector activities. I note from the report prepared by the complaints unit on that issue that, although the competitive principles agreement requires that the competitive neutrality principles apply to significant government business activities, the Government has determined that in the ACT there is a benefit in applying the principles to all government-owned businesses and business activities, rather than restricting the application to significant businesses.

In question time, I asked the Chief Minister about how that decision was made and, while initially she denied that that was the policy, I understood that she actually corrected that statement after question time. I seek leave to table two documents - one from the ACT Competitive Neutrality Complaints Unit, which clearly states that it is Government policy, and page 3 of the competitive neutrality in the ACT document produced by the

ACT Government, entitled "application of competitive neutrality in the ACT", where it is also stated quite clearly that the principles of competitive neutrality will be applied wherever it is considered to be in the public interest. I seek leave to table those documents and to have them incorporated in *Hansard*.

Leave granted.

Documents incorporated at Appendix 1.

MS TUCKER: Obviously, questions have to be asked about how these broad decisions are made. I have not heard any public debate on this issue. It was obviously decided on at some point by the Government, even though the Chief Minister was not aware of it to begin with. This is another example of competition policy being used to justify any number of market reforms.

I am not quite sure how the Government managed to assess the public interest in the Belconnen pool matter if the Competitive Neutrality Complaints Unit received evidence only from the complainants and the proponent department. There was no attempt to find out what any other persons or bodies had to say; nor was any evidence obtained on general user perspectives. Despite the approach taken, the complaints unit was able to recommend, through its market analysis, that:

> ... the potential cost to existing and potential competitors in the market due to the proposed facility is not outweighed by any apparent public benefit which would exclude the proposed Belconnen aquatic and fitness facility from application of the principles of competitive neutrality.

Despite all the claims to the contrary by the Chief Minister, there certainly is not a perception that this unit is independent. It is in the Chief Minister's Department. This report certainly does not inspire confidence in the Government's ability to assess public benefit. I think that future work on the Belconnen pool should not be using the report of the complaints unit as a starting point, because the public interest has not been assessed adequately or fairly.

A quick flip through the ACT Government's latest annual progress report on competition policy provides further insight into just how far-reaching competition policy is and how much of the assessment of public benefit is not transparent. For example, I have not heard of any transparent process for determining what are the public benefits of CityScape Services. According to the Government, CityScape Services is being "sufficiently restructured to reflect the need to be competitive". I am sure there are significant employment benefits from CityScape Services, such as providing employment to people who might otherwise be marginalised in the labour market. But there has never been, to my knowledge, any public or transparent debate on these sorts of issues, although they have certainly been raised with me by concerned members of the community.

The ACT Government appears to have chosen to define the public interest primarily in economic terms. To quote from their annual progress report:

> ... in general, reform of government businesses is expected to promote the public interest by increasing cost awareness and improving cost management in the public sector.

In terms of the scope of competition policy, we know about the Milk Authority, ACTTAB and ACTEW - and ACTION is bound to be next - with the annual progress report reporting that the Government has a commitment to phased commercialisation. Mr Speaker, the reforms to government trading enterprises are just the tip of the iceberg. Despite the fact that human services were supposed to be exempt from the application of the competition principles agreement, the Government has cited the fact that competition tendering contracts have been developed for schools to contract out cleaning, furniture, et cetera. Obviously, the reforms to vocational training are also directly linked to competition policy, and many concerns have been raised by the education community about how those reforms are being handled.

I would like to conclude by talking about the role of the Competition Policy Forum in all of this. Mrs Carnell has chosen to score cheap political points about the forum's performance. I do not think it is appropriate at all for her publicly to undermine the credibility of the forum or the individual members, who, besides being very busy people, are all doing this work unpaid. I concur with the members of the forum that I have spoken to that an independent mechanism to review and monitor competition policy - in particular, the public benefit - is absolutely essential. As members may be aware, I will be preparing legislation to establish the Competition Policy Forum as a statutory board. I believe this is very important to increase the status of this work, increase the transparency and independence of the forum, and ensure the implementation of competition policy is not driven solely by the Executive. The central and fundamentally important issue in competition policy is the public benefit. What is the point of competition policy if the public benefit is not there? An open and transparent assessment of where the public benefit lies is essential if we are to ensure competition policy does not actually cause greater harm than good.

MR SMYTH (Minister for Urban Services) (3.57): This issue provides a timely opportunity to remind ourselves about the benefits and disciplines of competition policy. It is a balancing act for government, as we strive to deliver benefits in an environment which is constantly evolving. Members are probably aware that the national competition policy arose from an inquiry undertaken by a committee of a Federal government under the chairmanship of Professor Hilmer. It was a process undertaken under a Federal Labor government and it was agreed to by the previous Follett Labor Government in the ACT.

National competition policy is aimed at improving the performance of the national economy, including: The creation of jobs; more efficient use of infrastructure assets to lower domestic prices for energy and commodities and to improve the cost-effectiveness of our exports; reforming public monopolies; providing economically efficient access to significant infrastructure; and extending the coverage of the Trade Practices Act 1974 to significant government business activities and to private sector businesses previously outside the ambit of that legislation.

All governments supported these objectives, resulting in all Australian governments signing the three agreements which constituted the national competition policy in April 1995. The three agreements covered different aspects of the reform framework. The first agreement, the conduct code agreement, applied the provisions of Part IV of the Trade Practices Act 1974 to those business activities that previously had been excluded from its effect, government business enterprises and unincorporated private enterprises. The competition principles agreement provided for prices oversight and a process to ensure a net public benefit when restructuring monopolies, the application of competitive neutrality principles to government-owned businesses, and review of legislation to ensure that there were no regulatory restraints on competition other than those which produced a net public benefit. The third agreement - the agreement to implement the national competition policy and related reforms - linked reforms in electricity, gas, water and road transport to the reforms outlined in the competition principles agreement.

I think that, by any measure, this is one of the most significant reform processes in recent Australian history. All Australian governments are working in concert, putting aside local differences. The reforms affect all levels of government, including local government as well as the State and Territory governments. All governments have agreed to subject their enterprises to reforms that encourage economic activity, provide access to nationally significant infrastructure, and encourage new entrants with new services into important industries, such as energy, transport, manufacturing and primary industry.

It is probably true to say that the vision for competition policy did not foresee the extent to which the application of the reform principles or practice would apply. Reform has not stopped at making changes to achieve efficiency gains in some nationally significant economic activities. Reform benefits are now being delivered not only to industry but throughout the economy. As a direct result of these reforms, the people in the ACT, as elsewhere, now enjoy cheaper energy, cheaper air fares and other transport, inexpensive personal and corporate communications, and cheaper entertainment. But those benefits are obvious. Most of the benefits of competition are more diffused, resulting in lower input costs for food and manufactured goods, and lower transport and distribution charges, which reduce the final consumption price for goods and services. These are benefits in the ACT as much as anywhere else in Australia.

While there are measurable benefits of competition policy, there are also costs. The reform process takes place under a system of incentives and constraints. The National Competition Council assesses the ACT's performance against its reform commitments. Failure to meet the spirit of the agreement puts at risk payments which will represent some $243m in competition payments to the ACT over the period up to and including 2005-06. These payments not only are competition policy payments, but also involve the real terms per capita general purpose funding guarantee that is associated with the related reforms and other agreements arising from our participation in COAG. Failure may risk a part or all of the tranche payments, which the ACT cannot afford. That is worth repeating: Failure may risk a part or all of the tranche payments, which the ACT cannot afford. Withdrawal from the agreements would have a significant impact on the ACT's budgetary position and the ability to attract and/or maintain private investment and, therefore, jobs. Even though the ACT would receive diffused economic benefits

flowing through the national economy, failure to participate actively would see the ACT's agenda taken out of our hands and, therefore, result in a loss of ability to ensure the full benefits that should accrue to our community.

The agreements require the Territory to implement some reforms, such as competitive neutrality, including the development of a competitive neutrality complaints handling mechanism. The assessments of each of the tranche payments depend to an extent on the ACT maintaining its progress in this area of reform. While the ACT is free to set its own agenda, guaranteed in clauses 3 and 5 of the competition principles agreement, we are constrained to meet certain criteria. Significant businesses must be subject to the competitive neutrality principles, aimed at achieving a level playing field between government-owned and privately-owned businesses when they compete. Government businesses must be subject to taxes or charges equivalent to those applying to competitors. Regulations applying to competitors must also apply to government-owned businesses. The prices charged by government businesses must reflect the full cost of service provision.

Similarly, in reviewing legislation to identify restraints on competition, several criteria must be satisfied if restraints on competition are to be maintained. Firstly, the proposed legislation must have a benefit to the whole of the community that exceeds the cost. Secondly, the objectives of the legislative proposal must be achievable by no other means than legislation. These criteria involve the application of several principles which have been bandied about over recent times, but which need some explanation.

Firstly, with regard to the resolution of competitive neutrality complaints, it is important to the community and the Government that complaints are handled promptly, fairly and quickly. In the Government's view, that requires a process that is independent from the business which is the object of a complaint and the agency that purchases the services of the business on behalf of the community. The arrangements in place in the Chief Minister's Department satisfy the test of independence within that constraint. The framework is similar to that in Victoria, which has been endorsed by the National Competition Council.

Secondly, there is a concern that competition policy reform is being applied to other than significant businesses. The ACT actually has few significant businesses, if the criteria which are used in Victoria, Queensland or New South Wales are applied here. The measure of significance in the ACT economy would be markedly lower than what would be sensible in those States. But, for instance, in any jurisdiction the proposed Belconnen pool would be classed as a significant business, with a capital value of about $15m.

We are not bound to follow slavishly criteria for reform in the ACT that are appropriate elsewhere. The point of the provision in agreements for parties to set their own agendas is that reforms should address and provide benefits where they are applied. The Government sees benefits in applying the reforms as broadly as possible, so that the benefits of the reforms may be as widespread and as effective as possible. There should not be any area of government activity that is inefficient, wastes resources, is ineffective or duplicates services provided elsewhere. There is no benefit to the community in government supplying services that are provided more efficiently by private enterprise.

But government is able to provide services that are beneficial but uneconomical for private enterprise to deliver. Government can also assist private enterprise to deliver services by financing market entry for new businesses, creating opportunities in our economy that did not exist previously, and subsidising long-term projects that will bring jobs and economic growth to the ACT in the future.

Pursuit of these agendas and decisions about the speed and direction of progress are subject to an assessment of public benefit. Public benefit is undefined, but is taken to include a broad range of issues reflecting impacts on employment, the environment, welfare, the economy in a broad sense, the national economy, export potential, and so on. It is a concept that is intentionally elastic, to enable the fullest assessment of all the costs and benefits to the community. As Graeme Samuel, president of the National Competition Council, indicated on radio in Canberra recently, public benefit is not about satisfying the needs of a section of the community, no matter that that group has a loud voice or large numbers, but the needs of the community as a whole. In many cases, that requires an extensive process of analysis and consultation. In other cases, the process is less extensive but no less profound, detailed and laborious.

In conclusion, Mr Temporary Deputy Speaker, I would like to draw members' attention to what I believe are the key issues. They are: Competition reform is nationally consistent and uniformly agreed, and we in this Assembly previously have signed up to that; the ACT participates in the reform process to ensure that our interests are protected and our voices heard, but our focus is on providing benefits to the ACT community; competition policy offers significant present and future benefits, which involve balancing benefits and constraints; the ACT must determine its own agenda, reflecting our needs and not the needs of others; the costs of failing to reform are very high, particularly for the ACT; and reform is not imposed by government but evolves from a debate between government and the community.

MR STANHOPE (Leader of the Opposition) (4.09): I am pleased to participate in this debate today. I think recent events in Canberra, specifically the use of the ACT's commitment to national competition policy as the basis for overturning an important election promise, bring very much into focus the importance of national competition policy and its application to a whole range of circumstances that I think the community probably does not fully understand. To put the debate about national competition policy into some context, we need to look at the situation that we find ourselves in today, and the catalyst for this debate today is certainly the Government's decision to put the Belconnen pool development on hold. I think we need to look at some of the history of that.

The circumstances are quite public and quite clear. In the lead-up to the last election both the Liberal Party and the Labor Party made a commitment to the development of an aquatic centre in Belconnen. It was a development that was advocated by the then Minister for Sport and Recreation, who is continuing as the Minister responsible for sport. It was a position which was advocated by a section of his department - the Bureau of Sport, Recreation and Racing - on the basis of a couple of significant consultancies funded by the people of Canberra in relation to the need for aquatic facilities or swimming pools in Canberra. Both of those studies recommended the construction of a swimming pool in Belconnen.

As part of the community consultation process, the Belconnen community, primarily through the coordinating role of the Belconnen Community Council and its president, Mr Graeme Evans, who I see in the Assembly today and who has taken a particular interest in this subject, engaged in extensive consultations with the people of Belconnen. The Belconnen Community Council consulted with over 1,000 people on their preferred views in relation to the construction of a pool in Belconnen. Some of the findings of those two consultancies and some of the recommendations of the Bureau of Sport, Recreation and Racing - those public servants in Canberra devoted to meeting the Government's objectives for creating an active Australian Capital Territory - were that the construction of an aquatic facility in Belconnen was something that would meet a significant public benefit in the ACT. I think this is the crux of the matter. We had a promise by the Liberal Party to build a facility. We had the spectacle of the Minister for sport turning the first sod.

At that time and around about that time - and the evidence is actually conflicting today - there were complaints. We have actually had one of the complainants writing to the *Canberra Times* today to declare that the Minister for sport knew about their complaint before he turned the first sod. That is what the complainant alleges in the *Canberra Times* today. The Government rejects that and believes that the complainant is wrong in that regard. He, in any event, handed his complaint to the Chief Minister, according to his letter in the *Canberra Times* today. Despite that, of course, the Government at the time - the Liberal Party - made no effort at actually qualifying its support for the construction of a swimming pool in Belconnen. It actually went to the election with it as a firm promise. It was a promise it continued to repeat. Those are the bald, tawdry political facts, I guess.

We actually had a party running to an election with a very determined policy of building a pool. Two months later the promise was broken. The promise was that the pool would be constructed over the next two years. That promise has been broken. What is the justification for breaking the promise? The complaint which was lodged in January with the Competitive Neutrality Complaints Unit actually has been shown to have some substance, apparently.

But we must look, I think, at the way in which that unit was established and the terms of reference of that unit. I think it is a major concern that I do not think anybody in Canberra knew there was an inquiry going on into the pool. The major proponents - the people of Belconnen, through their community organisation - - -

Ms Carnell: They knew there was a complaint.

MR STANHOPE: I do not believe that the Belconnen Community Council knew anything about a complaint, and I do not think the Belconnen Community Council was invited to make a submission. The only submission taken by the Competitive Neutrality Complaints Unit was the submission of the Bureau of Sport, Recreation and Racing, which the Competitive Neutrality Complaints Unit then proceeded to disregard.

The Competitive Neutrality Complaints Unit actually developed its own definition of public benefit. I think that is why this debate today is really important. It is because we - this Assembly and the people of Canberra - have no idea of the definition of public benefit that is actually being applied by the Competitive Neutrality Complaints Unit or this Government and that is then used to effect the application of national competition policies to the business of government.

The really worrying aspect of the situation that we find ourselves in is that we are actually being asked to believe, and the Competitive Neutrality Complaints Unit is actually telling us, that, on its definition of public benefit, the construction of a facility which the Bureau of Sport, Recreation and Racing determined would attract 600,000 visits a year by the people of Belconnen does not constitute or indicate a public benefit of any sort. The real problem with that sort of determination by the Competitive Neutrality Complaints Unit is that it actually indicates that the Government has taken to its bosom a definition of the public benefit which I do not think anybody else within this community accepts; and not only that, a definition which nobody else in this community has had an opportunity to challenge.

I think it is of concern when one actually looks at the Government's response to the report of the select committee inquiry into the Competition Policy Reform Bill and the great play which the Government at the time made about its commitment to community service obligations and how the Government would ensure that community service obligations were recognised and taken into account in the application of competition principles to business enterprises in Canberra. There is just one comment in the report that I would very much like to note for the amazingly prophetic nature of the comment in terms of some of the evidence that was given to the select committee at the time. There was a discussion about the obligation of the Government to deliver services and, in doing so, how it would determine the public interest. A comment that ACTCOSS made on that is included in the report of that select committee. It is just so prophetic, as we stand here today, in the context of this debate and the use of these principles to knock out a vital community facility delivering public benefit to the entire community, to read this comment. This was the comment of ACTCOSS two years ago:

> Our fear is, and our experience would suggest this, that we may find that those decisions -

in relation to public benefit and public interest -

> are being made internally within government without reference to the public. The public interest cannot by definition be determined by Government; we must be crystal clear about that. Government is not the only decider or arbitrator of the public interest and to take on that role, in many respects, would fly in the face of the competition principles agreement because they have explicitly indicated the range of interests that ought to be canvassed. I fail to see how they could canvass them but not communicate with the players who hold those interests.

I think that it is sad that we actually have the problems that we have today in relation to the application, willy-nilly, of national competition policy rules to public facilities like swimming pools without any notice to the people of Belconnen that their desire to have a significant facility constructed is simply thought to be of absolutely no interest, that the people of Belconnen would not have any view on what constitutes the public benefit.

It seems to me that we must go back to taws and that we must revisit the work of the Competition Policy Forum. Two years ago this Assembly resolved that we establish a forum. The evidence available to me, discussions I have had with members of the forum and communications I have had with them fly in the face of the stated position of this Government about the worth of the Competition Policy Forum. It seems to me that there has been a deliberate campaign by the Government and by the Public Service to undermine the operations of the forum. I think it is terrible. The fact that we have done that has actually led us to a situation today where the body which was established by this Assembly to facilitate the establishment of notions of public benefit has been undermined in the way that it has. It is something that we must revisit. The Competition Policy Forum must be given some legs and some support.

MR TEMPORARY DEPUTY SPEAKER (Mr Hird): Order! The member's time has expired. Does the member want an extension of time? No, you cannot have one.

Mr Wood: He had five minutes while you were reading.

MR TEMPORARY DEPUTY SPEAKER: Order, Mr Wood! Thank you for your lecture. I call Mr Osborne.

MR OSBORNE (4.20): Thank you, Mr Temporary Deputy Speaker. You are doing a fine job up there. You look good in that spot, actually. It is a shame that you could not get the numbers in the party room.

Mr Temporary Deputy Speaker, before I get into the subject of competition policy, I would like to make it clear at the outset that I have no problem with competition in itself; nor do I have any problem with free market economics. I think it is obvious that those societies which have shown a commitment to free markets this century generally have been free societies. The major competing economic theory this century has been the command economy - and it proved to be a social and economic disaster. I am also aware that India had a system that borrowed ideas from both capitalism and communism, called the "Third Way". You will notice the general Indian theme running through my office! India must have borrowed the worst ideas from both, because I do not think anyone would claim that it was an outrageous success.

I start by making my basic support of competition and free markets clear because I know how easy it is for the disciples of competition policy to paint anyone who criticises their god as an economic heretic. I know that in criticising elements of competition policy some will attempt to twist my words and claim that I am one of those Neanderthals who are opposed to any sort of competition. These people would be better served by taking

a long, hard look at what they are jamming down our throats and admitting that it may not be perfect; it may, in fact, be far from perfect. No, I am not anti-competition or against competition policy, but I am opposed to unquestioned faith in any particular economic theory.

I have two main concerns about the Australia-wide drive to embrace competition policy. The first is that the decisions have been made by the super-executive of the Council of Australian Governments without the proper scrutiny of Australia's parliaments. Debate on that issue has been raised many times in this Assembly, especially in the last 12 months. The second is that the policy itself may be flawed, or at the very least its implementation by this Government may be flawed. You will recall, Mr Temporary Deputy Speaker, that I have raised concerns about COAG in this place before. Last year I said that I had a growing sense of disquiet about decisions which were hammered out by the Prime Minister, Premiers and Chief Ministers and then delivered to parliaments around Australia as a fait accompli. The laws and rules COAG proposes are often broad in their sweep and have far-reaching and different consequences in different jurisdictions. The decisions are often tied to funding, as we all know, and anyone who dares to raise concerns about them is shouted down as a wrecker who is hell-bent on jeopardising funding for their State or Territory. So, Mr Temporary Deputy Speaker, there is no real opportunity for genuine scrutiny of this process.

Governments claim that these ideas have been around for a long time and that they have been widely debated, but I reject that. There is a difference between a debate held by policy wallies and a broad-based community debate. In reality, I do not believe most people know how sweeping these changes are, or how far they reach into everyone's life. The competition policy Bills will radically change the way in which we get basic services like electricity and water. They will also have implications for ACTION, ACTTAB and the taxi industry, to name a few. As we have seen, they can even reach down and swallow up a local pool. Where is Mr Stefaniak? They will affect the price of milk and reach into regulated private sector enterprises like chemists and newsagencies. In criticising the politicians driving the COAG process, I am well aware that, at least on the national stage, both the Labor and the Liberal parties have basically agreed on the process.

I have said a number of times inside and outside this place that we are reaping today the seeds sown by the Federal Labor Party and agreed to by the local Labor Party back in 1994. I think it is only fair and right to remember that the ALP drove this process from the start. It is not good enough for the Labor Party now simply to throw up its hands and criticise the result. It is up to the ALP to acknowledge their role in shaping the competition rules that we have today and to make a positive contribution to the current debate.

I am not the only one in this place who has drawn attention to the problems with the way COAG and its offshoots do business. The Greens have attacked the process, and even the Attorney-General and Minister for Justice and Community Safety, Gary Humphries, has recognised the problems inherent in national systems of legislation. In his speech to the National Futures Conference on 29 September last year, he said that the principle of merit review was well entrenched in the ACT's way of doing business and governance, but what threat there was came from schemes of national legislation. He said:

> ... the schemes of national legislation which are now being developed around Australia ... will, over a period of time, I am sure, produce a less open form of government if they are not carefully controlled. I haven't got time to ... detail ... the risks that poses, but I believe that it is an area that governments have to be very attentive to.

How true! I agree with Mr Humphries. I believe there are serious threats to the democratic process in the way these decisions are manufactured. But, beyond the decision-making process, I am concerned about some elements of competition policy itself and the way that it is being interpreted in this jurisdiction by this Government. I sometimes get the vague feeling that this Government goes above and beyond the call of duty in meeting its competition policy requirements. In other words, I believe competition policy is being used as a smokescreen for ideology. It is not so much that we have to do it, but that we want to do it. I see Mr Smyth chuckling under his breath.

Let us take one example that has been the subject of a lot of debate since the election - the ACT's milk industry. Mr Temporary Deputy Speaker, you would have thought that there would be plenty of grounds on which the Government could argue that the existing regime in the ACT was of obvious public benefit. We have the cheapest milk in the country and the greatest range of products, the industry employs a lot of people, and money is returned to the community by way of sponsorships. The first time I raised this question, I was told that the public benefit test in the Trade Practices Act was very narrow and was really limited to protecting health and the environment; so I had my office check it.

Section 151BC of the Trade Practices Act sets up the criteria under which the Australian Competition and Consumer Commission may exempt a body from the full force of competition policy. Subsection (1) says that an exemption may be made where "the conduct will result, or is likely to result, in a benefit to the public" and "that benefit outweighs, or will outweigh, the detriment to the public constituted by any lessening of competition". Subsection (2) says that, in making an exemption, the commission may have regard to several issues, including the promotion of health and safety and safeguarding the environment. However, subsection (3) then makes the point that the commission is not limited to the list in subsection (2). So, Mr Temporary Deputy Speaker, it appears that there may well be a wide range of matters which the commission will consider sufficient cause to grant an exemption under the public benefit test.

We have seen recently that the New South Wales Government has moved to protect part of its milk industry, claiming that it is doing so in order to protect rural jobs. When Mr Rugendyke raised last week what was happening in New South Wales, he was patted on the head and told that he really did not understand: The New South Wales milk industry was completely different to the ACT industry. New South Wales was proposing to continue regulating milk quotas and farm gate prices - something the ACT could not do, as our system of buying milk was different. It was the Government that missed the point, Mr Temporary Deputy Speaker. The point Mr Rugendyke was making was that it is immaterial what part of its industry New South Wales is continuing to protect, as all of it has been opened to competition under the agreements it has signed. To put it simply,

competition policy stretches from cow to carton. New South Wales has found an element of its industry which it believes is important enough to defend, and it will argue public benefit to do so. What we are saying is that there are elements of our milk industry worth defending, too, and maybe the Government would like to put up a bit of a fight to save it, or at least pretend to.

Finally, I would like to return briefly to the Trade Practices Act, as the wording of the public benefit test shines a light on the minds of the competition policy wonks. I am glad that is spelt with an "o", not an "a", Mr Temporary Deputy Speaker. Remember that the Act said that an exemption may be made where "the conduct will result, or is likely to result, in a benefit to the public" and "that public benefit outweighs, or will outweigh, the detriment to the public constituted by any lessening of competition".

There is an assumption there, Mr Temporary Deputy Speaker. That is not surprising because economics is based on assumptions about how humans will behave and is therefore fatally flawed, because people do not follow any regular set of rules. One of the wonders of our age is how often economists are allowed to be wrong and still be considered wise. Certainly, I have some concerns about competition policy, as I watch the clock wind down, and I will be following the actions of the Government, and also the Labor Party, in the next few months to see how they handle this very important issue.

MS CARNELL (Chief Minister and Treasurer) (4.30): Mr Temporary Deputy Speaker, I think it is important to start by quoting from an interview between Mr Samuel and Cathy Van Extel yesterday. Cathy Van Extel said:

> Do you think that some governments are using competition policy to justify unpalatable decisions? Is there that flexibility there?

Mr Samuel said:

> No, I don't think they are ... I think what's happening is that there are decisions that governments have to make under these arrangements that are causing some pain to those groups that have been protected from competition.

I think that is a pretty fair statement.

Mr Temporary Deputy Speaker, the Minister for Urban Services, Mr Smyth, addressed the general framework in respect of the application of competition policy in the ACT; so I will turn to several of the issues that appear to be exercising the minds of some members at the moment. There has been a lot of talk in the media about our decision to shelve - and I put that advisedly - the proposed Belconnen pool project and the operation of the Competition Policy Forum. The reports in the *Canberra Times*, one might say, were a little bit disingenuous, in that the language used to report decisions about the pool falsely created an aura of confusion amongst members of the Government on this issue. That is certainly not the case, Mr Temporary Deputy Speaker.

The pool proposal has not been shelved. Maybe it is a good idea to say that again: The pool proposal has not been shelved. It is merely at a stage of its assessment that requires the public benefits associated with the proposition to be established clearly and comprehensively. Without the benefit of a study as to whether there is a community benefit and what the full range of costs of the pool will be to the general community, the Government is not about to spend $15m. I am amazed that those opposite think we would.

The competitive neutrality complaint lodged in respect of the pool raised in a timely fashion the need for the full financial impacts of the pool development on the economy to be considered - that is, all of the costs. The engineering studies and the geotechnical studies undertaken as part of the development of the proposal were inadequate tools to address the matter of the economic impacts of the pool and the impact of the development in our obligations under competition policy. Those obligations are not intended to prevent the Government from delivering benefits to the community, but are tools to ensure that the benefits do not come at too high a price, that the Government is not subsidising one small section of the community at the expense of all others, and that the development and operating costs of the pool are transparent. Again, Mr Temporary Deputy Speaker, I would have thought all members would have thought that was a good idea. They ensure that the Government is investing in infrastructure that has an economic benefit and that provides services and facilities that are needed. Not to respond to the complaint would be to risk investing money in what really could not be effectively guaranteed to be in the overall public benefit. There are other services in the area.

I may add here that the question about competitive neutrality being confined to significant businesses is appropriate. The ACT has determined to extract maximum value from the reform processes and, therefore, will subject all of its major activities to scrutiny, to ensure that decisions are based soundly on robust processes that have the highest value community benefit as their objective. Again, I cannot understand why anybody would have a problem with that. "Significant" in the ACT is based on a lower threshold than might be the case in bigger States with bigger value assets. Our measures of significance are more modest but just as crucial to our economic wellbeing. The Belconnen pool would have been classed as a significant asset in any jurisdiction, based on its asset value and particularly its value in the ACT.

The Government would have failed the community if we had invested in assets that may be a drain on future resources and impose increasing cost burdens on the broad community; that is, if there is not a demonstrated community benefit. The complaint was lodged by people who have invested in the ACT, live in Canberra and provide Canberrans with jobs. The Government would have failed them if it had not considered their position seriously and determined whether they had a case that needed to be addressed. It appears again that those opposite think that case should be simply thrown out. In the end, the Competitive Neutrality Complaints Unit recommended that the pool be subjected to a financial feasibility study, including a public benefits test. Again, Mr Temporary Deputy Speaker, what the complaints unit recommended was a financial feasibility study, including a public benefits test. The Government considered the recommendation as both measured and sensible. No, the pool has not been thrown out; but there will be a proper financial study, a full financial study, and also a public benefits test. Guess what, Mr Temporary Deputy Speaker: The community will be able to have an input.

The pool is to be subjected in the next financial year to a final assessment process, which will allow the Government to determine whether the community as a whole will benefit from a pool built in Belconnen. The Minister has already drawn attention to the view of the president of the National Competition Council about what the public benefit means in these circumstances. The Government agrees with his view and will not be browbeaten into dancing to the tune of a few loud voices pursuing their own private interests at the community's expense.

At the moment the pool is in the final part of the process which will determine whether the Government will invest in that infrastructure proposal or, for that matter, in others. It needs to represent a higher value asset and be in the greater good of the community. Mr Temporary Deputy Speaker, the bottom line here for the Canberra community is to ensure that we know exactly what the Belconnen pool is going to cost, what the cost of running it will be, what the entrance costs would be if they were not subsidised, and then what sorts of community service obligations would be provided. That is all information that I would have thought this Assembly would need to have. Once that full financial study is done, a community benefit analysis can be run; but, for the life of me, I do not know how those opposite think we can do that without that information.

I turn briefly to the second issue, that is, the role of the Competition Policy Forum. The forum was established in response to a motion of the Legislative Assembly in 1996. The terms of reference provided by the motion were large in intent but fell short on practical application. As I understand it, the forum has met increasingly infrequently and has produced no body of advice to the Minister, or anybody, about any substantive matters, has been unable to attract a quorum for a couple of the proposed meetings, and has specifically requested to manage its own agenda without either the assistance or the support of public servants. This is not, in my view, a vision for a productive, engaged body acting in the community interest. The forum seems to have lacked an understanding of its potential to contribute to the reform process, the resources with which it might have sought to contribute, the processes to facilitate contribution and the processes from which it should be justifiably excluded.

The operation of the complaints unit is one such area. There should be no intermediary between the Chief Minister and the independent adviser on complaints. The recommendations do not bind the Government, which may decide on an alternative approach, subject to some principles of public accountability. The forum has an opportunity to consider issues arising from the Minister's decision after it has been made, in the same way as the Assembly could. Remember that the forum is not a watchdog, but a forum in which community views and concerns may be brought together with reform plans and policies by advocates with experience and sound judgment. I believe that the forum can be very useful; but, first and foremost, it should take some input from public servants, it should be willing to be part of a process, and it should and, hopefully, will be willing in the future to give government advice on such important things as the public interest with regard to such processes as the Belconnen pool.

MR TEMPORARY DEPUTY SPEAKER: Order! The discussion of the matter of public importance is concluded.

URBAN SERVICES - STANDING COMMITTEE
Report on Draft Variation to the Territory Plan - Northbourne Oval

MR RUGENDYKE (4.41): Mr Temporary Deputy Speaker, I ask for leave of the Assembly to present a report of the Standing Committee on Urban Services.

Leave granted.

MR RUGENDYKE: I present Report No. 1 of the Standing Committee on Urban Services entitled "Draft Variation to the Territory Plan No. 97: Braddon section 30 block 1 (Northbourne Oval) - B5: restricted access recreation land use policies", together with a copy of the extracts of the minutes of proceedings. I move:

That the report be noted.

On 15 May 1998 the Minister for Urban Services, Mr Brendan Smyth, referred to this committee the draft variation and background papers relating to draft variation No. 97, Northbourne Oval, which is Braddon section 30 block 1. The draft variation proposes to amend the Territory Plan by adding an area specific policy overlay to the existing restricted access recreation policy for the site to permit only one licensed club premises within the whole site. It is also proposed to amend the public land recreation reserve overlay by excluding the licensed club site.

On 22 May 1998 the draft variation came before the committee. The chair, Mr Hird, declared an interest in the matter, withdrew from the meeting and took no part in the committee's deliberations on this report. Therefore I, as deputy chair, took over the meeting. A senior government official from the Planning and Land Management Group, PALM, of the Department of Urban Services attended the meeting and responded to questions.

The committee met again on 25 May - yesterday - and finalised the nature of this report. The committee advises the Assembly that it has reached an impasse in relation to endorsing the draft variation to the Territory Plan No. 97, that is Northbourne Oval, Braddon section 30 block 1. One member, that is myself, considers that the draft variation should be endorsed on the following basis: Firstly, a full round of public consultation was instituted by PALM and the five respondents did not raise major concerns. I am satisfied that due process has been followed. Secondly, the deed of settlement cannot be implemented without the variation in place. Thirdly, there are no significant planning impacts flowing from the proposed change in land use, which in essence will enable the club and oval to be held in separate ownership. Finally, many other examples of the proposed land use exist. For example, most, if not all, of the Territory's enclosed ovals are on public land and are classified as restricted access recreation, just as is proposed for Northbourne Oval.

The second member of the committee, Mr Berry, considers that the draft variation should not be endorsed until the public is given further opportunity to comment on the proposal, for reasons that include the following: Firstly, the significance of the site, in planning terms, over many years, being so close to Civic and with a background of some controversy including with respect to commercial and residential development. Secondly, the concern of the Burley Griffin Local Area Planning Advisory Committee that the draft variation "is being used as a vehicle to resolve a conflict between private bodies". Thirdly, the concern of the same LAPAC that the draft variation "should not be seen as justification for similar arrangements on other restricted access recreation land". Fourthly, possible uncertainty about the public's right of access to public land that is given over to a limited company. Fifthly, the uncertainty about the full extent of consultation to date, especially given the fact that the public has not had the opportunity to input into the Assembly process. Finally, the short period of time available to committee members to consult the local community.

What Mr Berry and I do agree on is that the committee has done all it can at this stage. It is now up to the Assembly and the Government to take the matter further.

MR BERRY (4.47): As has already been said, I think, this is a matter that has been around for some time. There has been a dispute between parties associated with the parcel of land which has been referred to as Braddon section 30 block 1. It is true to say that the parties have had a long involvement in the matter. It is true to say that the Executive has had a long involvement in the matter. I must say that an Executive of different flavours has had a long involvement in the matter.

It is important to note that the consultation phase which has been carried out to this point has been managed by Planning and Land Management, and, in effect, in the wake of an Executive decision to endorse the plan - that is, to reach an agreement between the warring parties and come up with what they thought to be a resolution of the problem. That is a quite separate issue from public consultation being made available to the community with their elected members - that is, members of this Assembly who are non-Executive members of this Assembly. It is extremely important, where issues of possible controversy emerge, that this option is made available to the community so that they may, in the protected environment of the Assembly and its committee structure, give evidence to committees should they wish to do so.

It is true to say that there has been a circularisation by Planning and Land Management of a range of people which has resulted in some written submissions, but that is not to say that other people from within the community might not wish to offer verbal submissions. For example, the local area planning advisory committees which are referred to in the papers associated with this application would be the first people that I would invite to make a verbal contribution and to give evidence to the committee if it were - - -

Mr Humphries: They have made a contribution, have they not? They have made a contribution.

MR BERRY: Mr Humphries interjects. I am always delighted by Mr Humphries's erudite interjections. He says that they have made a contribution. It has been reported to us by PALM that they have made a contribution. They have made no contribution to the elected members of this Assembly - that is the point that I make - and they have been given no opportunity to do so.

Mr Humphries: So you want two consultation processes, do you?

MR BERRY: Mr Humphries, by his interjection, seeks to ignore the very clear need to understand the separation of powers which goes with this issue. Just because the Executive reaches an agreement with warring parties does not mean that everybody else has to. The point I make here is that there are people in the community who may be opposed to this proposal and who might wish to make a contribution, and they have had the right to address their elected members taken away from them. That is the point that I wish to make to Mr Humphries.

It is extremely clear that some sort of urgency is preferred by some members of my committee and by the Government. I must say that no evidence that came to me in my role on the committee suggested that any urgency was necessary. No evidence at all was submitted. Indeed, were this matter to go to a public meeting of the Assembly committee it would very likely not slow the process down and would give the community a valuable opportunity to have some input. It may well be that if the opportunity were to be presented to the community it would be ignored.

Mr Smyth: There has been a public consultation period. Do you want the dates?

MR SPEAKER: Order!

MR BERRY: Mr Smyth interjects and talks about the planning consultation period. He does not seem to understand the necessity to give ordinary members of the community access to their elected members either. If you cannot say something sensible, I suggest that you say nothing. Mr Speaker, the opportunity for - - -

Mr Smyth: You should apply the rule to yourself and sit down, because this is just tripe.

MR BERRY: Once Mr Smyth has been here long enough he will get to understand the importance of public access to elected members. Mr Kaine, I am sure, will be able to give it to you chapter and verse because he is an expert on the matter. Have a talk to Mr Kaine. I am sure he can give you a lecture on the matter. He has been around long enough to understand it fully and his wise counsel, I am sure, would be of value to you.

Mr Speaker, this is clearly an issue where an important matter of public consultation has been avoided. I think it would have been better for the public to have been given the opportunity. The Executive make it clear across the chamber that they do not think it is important. I note that the matter has been around for some years. Notwithstanding that, it is the first time that it has come to a position where it would have been available to a committee of this Assembly to properly assess the situation in order that members of the community could make a contribution.

My colleague Mr Rugendyke has roughly gone over my reasons in relation to the matter. This site is a significant one. It is a focal point one way or another in that important part of our city, and one which is of interest to the nearby community. Some members of the community may have wished to avail themselves of the opportunity to talk to their elected members. That will not be available to them.

Mr Humphries: What rubbish!

MR BERRY: There has already been mention of the various local area planning advisory committees. Mr Humphries interjects again. These little prompts are most helpful to undermine the Government's understanding and willingness to consult with the community. He says, "What rubbish", in response, I suppose, to my taunt that they have not had the opportunity to meet with their elected members in a committee process. Well, they have not, and it is going to be taken away from them, Mr Humphries. The fact of the matter is that this - - -

Mr Humphries: It was not a problem for you six months ago. You have changed your tune in six months, haven't you?

Mr Smyth: They have a different piper now, Gary.

Mr Humphries: That is right, yes.

Mr Smyth: He does not like the tune now.

Mr Humphries: You were all in favour of pressing ahead six months ago.

MR SPEAKER: Order!

MR BERRY: Thank you, Mr Speaker. This is a public access to elected members issue which ought to have been made available. It would have made no difference at all to the settlement of the matter, and it would have sent a message to the nearby community and others who might be interested that this Assembly is serious about consultation for the community. If there is any error in my position in relation to this, it is erring on the side of consultation. That is something that the Government will never be found guilty of.

MR HIRD (4.55): Mr Speaker, I rise not to take part in the debate but to inform the house as to why I stood down as chair of the Urban Services Standing Committee.

Mr Berry: That is good. That is a novel way of doing it. Ha, ha, ha!

MR HIRD: When laughing fellow over there finishes interjecting, Mr Speaker - - -

Mr Berry: Well, you still make a joke out of yourself.

MR HIRD: Do not look in the mirror; you will find a joke. The fact is that I am a life member of the local rugby league and I am also deputy president of the Leagues Club. Therefore, it would be improper of me to participate in the debate or in the deliberations of the committee. That is the rationale behind my withdrawing from this very important matter.

MR KAINE (4.56): Mr Speaker, this is an interesting report. This is the first time in my recollection that a committee has come back with a report that puts the Government in a bind. What the Government has is one member of a committee that recommends a course of action and another member of the committee that recommends against it. Members of this place are well aware, of course, that the Government can do nothing with this land variation proposal until it is endorsed by the appropriate committee of this Assembly. The committee has not endorsed it.

That raises an interesting constitutional question as to what the Government now does. It has negotiated an agreement with the parties to a lease which, on the basis of this report, it cannot put into place. Instead of Mr Hird referring to other members as Chuckling Charlie or something, he might take this report very seriously because it raises a very important question that the Government has to address, and that is: How do the Assembly and the Government proceed on this issue now?

The law of this Territory obliges the Assembly to refer this matter to the appropriate committee and, as I understand it, it cannot proceed unless it has the endorsement of the committee to either adopt or reject the proposal. It has neither. Perhaps we could hear from one of the learned members of the Government as to what they now intend to do, not only with this report but with the lease purpose under the Territory Plan which is required to be changed before the negotiated agreement can be put into place. I will be most interested to hear what the Government has to say on the matter.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (4.58): Mr Speaker, I am very pleased to rise and respond to a couple of issues in this debate. First of all, I will take the question that Mr Kaine has raised. I am checking the legislation, but I do not think, with respect, that the situation is as Mr Kaine has described it. My understanding is that the Government is compelled to have regard to reports of the relevant committee of the Assembly which considers draft variations to the Territory Plan. My understanding of that is that it is not compelled to reject a recommendation of the committee or to make - - -

Mr Kaine: There is no recommendation.

MR HUMPHRIES: Indeed. It is not in the position of being obliged to conform with the recommendation of an Assembly committee. If the committee recommended, for example, against this variation, the Government is still perfectly entitled to table the variation and the decision is made on the floor of the Assembly, not on the floor of the committee. That is always the case with every committee's work because a committee may recommend to the Assembly something which, on the whole, the Assembly might reject.

Mr Speaker, it seems to me that there is no other course of action open to the Government in these circumstances, where there is a tied vote on the floor of this particular committee, than for the variation to be tabled in this place and for Mr Berry to move his motion of disallowance, as is his entitlement.

Mr Berry: If I choose to. I do not choose to. I do not want to disallow it.

MR HUMPHRIES: Having heard those comments that Mr Berry has just made, Mr Speaker, I cannot see why Mr Berry would not want to table a motion to disallow the - - -

Mr Berry: Do not be a goose. All I said - - -

MR HUMPHRIES: Mr Berry has given a litany of arguments as to why this variation should not proceed, on the basis of there not being sufficient public consultation, Mr Speaker. I think anybody listening to what Mr Berry has just said would rightly draw the conclusion that he is opposed to this variation. Mr Berry is certainly opposed to the process whereby the variation is being put forward, and in every other circumstance where that situation has arisen in the life of this parliament it has led to a motion of disallowance. Maybe Mr Berry has had certain matters occur in the course of deliberations of his Caucus which have caused that - - -

Debate interrupted.

ADJOURNMENT

MR SPEAKER: Order! It being 5.00 pm, I propose the question:

That the Assembly do now adjourn.

Mr Humphries: I require the question to be put forthwith without debate.

Question resolved in the negative.

URBAN SERVICES - STANDING COMMITTEE
Report on Draft Variation to the Territory Plan - Northbourne Oval

Debate resumed.

MR HUMPHRIES: It may be that Mr Berry has had certain matters put to him in his Caucus which have led to him changing his course of action in this regard, Mr Speaker.

Mr Berry: No.

MR HUMPHRIES: Just for the record, Mr Berry says "No". Mr Speaker, I will take his denial at face value. I am sure he would not mislead the Assembly. Just to confirm the advice I gave earlier to the Assembly, section 26 of the Land (Planning and Environment) Act, in subsection (2), says this:

> Before exercising its powers under paragraph (1)(a) the Executive shall have regard to any recommendations of a committee of the Legislative Assembly in relation to the draft Plan variation, background papers and reports submitted to the Executive and the committee under sections 24 and 25.

The Act does not say that the Assembly may not act unless there is a recommendation one way or the other. In this case there are no recommendations, Mr Speaker.

Mr Kaine: That is a curious interpretation of the law. You have no recommendations, so you ignore it altogether.

MR HUMPHRIES: Mr Speaker, with great respect, I do not know what other course of action is available. Is the Government paralysed from making a decision because there is no recommendation?

Mr Kaine: You might refer it to a more appropriate committee to get a decision.

MR HUMPHRIES: Mr Speaker, if Mr Kaine is still concerned, I am very happy to get advice on that subject. My view, as Attorney-General, is that that is quite clear: We are to have regard to any recommendations if they are made; but, if they are not, there is no obstacle to proceeding to put a variation on the table. If Mr Kaine is concerned, I would be very happy to obtain better advice on that subject and take that course of action.

I want to come back to Mr Berry's position. Mr Berry, with great respect, is obfuscating on this question. Mr Berry opposes the variation. Mr Berry, in fact, in the report which is presented declines to endorse the recommendation - - -

Mr Berry: There is no recommendation.

MR HUMPHRIES: Well, to endorse the variation then. Paragraph 12 of the committee's report says:

> The second member of the committee (Mr Berry MLA) considers that the draft Variation should not be endorsed until the public is given further opportunity to comment on the proposal ...

If that is furnished, then, presumably, there will be a chance for Mr Berry to reconsider his position. I have to say - I think I speak on behalf of the Minister for Urban Services in this respect - that we do not propose that there be any further opportunity for public consultation. We have had six months of public consultation on this proposal. That six months of consultation has been quite comprehensive, and we see no reason to return to the subject.

We note Mr Berry's argument that there need to be two rounds of public consultation on such matters. I would argue that that is wasteful and unnecessary. I would argue that we ought to proceed, and I understand that the Minister proposes to table a variation very shortly. If Mr Berry believes, as he said in this report, that the variation should not be

endorsed until the public is given further opportunity to comment on the proposal, it seems to me that there is only one logical course of action for him to take and that is to oppose the variation. I do not see how any other course of action is open to him; but Mr Berry has shown endless capacity to surprise us in this place, and I have no doubt that he will attempt to do so again.

Mr Speaker, to put this debate into a bit of context, though, let us be quite clear about this. This is not a new matter before this Assembly. This has been before this place time and again over the last few years. In fact, it is my recollection that in late 1996 the Assembly received and passed, I think unanimously, a Bill which I proposed, as the then Minister for the Environment, Land and Planning, in a sense to force a resolution of a longstanding dispute over Northbourne Oval between the Canberra District Rugby League Club, as I think it was called, and the ACT Leagues Club. That proposal had unanimous endorsement, including, as I recall, endorsement from the Labor Party in this place. The then spokesperson for the Labor Party on planning matters, Ms McRae, always indicated to me her support for the Government's moves to settle the matter of dividing the lease of Northbourne Oval so as to provide for two leases to issue rather than one - a lease over the oval itself to the Raiders and a lease over the club site to the club. That was never indicated as any problem.

What the variation which has been proposed to the Assembly does, Mr Speaker, is to provide for that to take place; nothing more, nothing less. So it comes as a little bit of a surprise, I imagine, to some observers of this process to see Mr Berry's change of heart on the question of the variation. It is perfectly clear that this variation is necessary to allow the division of that block into two leases to occur. It has always been accepted that that is so. I have never had any argument or view put by any members that there is any other way of dealing with this problem. I think that members ought, therefore, to allow that to proceed as early as is reasonable.

I understand it was put to the committee that there were some issues concerning work to be conducted at the Leagues Club on that site, which would suggest that this variation should be done sooner rather than later. I would hardly suggest, I might say, that six months after the consultation period began is exactly soon; nonetheless, it is sooner than otherwise would be the case should Mr Berry move a motion of disallowance. Mr Speaker, I do not believe that that is necessary. I believe that this variation is appropriate and necessary, and I call on the Assembly to support it. I believe that the debate on this matter has been very extensive, both inside and outside this chamber. I would ask members not to further delay this process but to allow this longstanding dispute over this area of land in the ACT to be settled by the acceptance by the Assembly of the draft variation to the Territory Plan.

MR MOORE (Minister for Health and Community Care) (5.08): Mr Speaker, I was listening to some of this debate and I thought it was important to put forward some of the perceptions that I gained as chair of the Planning and Environment Committee for the last three years. There is a precedent because there were a number of committee reports on which the members were divided two-all on previous occasions, as Mr Humphries will remember. As I recall, of the 52 statements or reports made to the Assembly, we divided two-all and the Assembly therefore made the final decision.

In this case I must say, as a general principle on the way the committee operates, that I think Wayne Berry has it right. What he is saying is that a draft variation ought not be endorsed until the public is given further opportunity to comment on the proposal. The thinking behind that is that, although there is an opportunity for the public to comment through the processes of the bureaucracy, and they are very good processes, the community have always felt that on controversial planning issues, in particular, they want to put their views to the Assembly, and wherever it is possible for that to happen it should happen.

I can remember off the top of my head one exception by the previous Planning and Environment Committee. That was in relation to the development of aged persons units at St Andrew's Village in Deakin. I am sorry; it was not in Deakin. It was at Garran on Yamba Drive.

Mr Humphries: It is at Hughes.

MR MOORE: Hughes. We will get there - Deakin, Garran, Hughes. We made it finally. It was on Yarra Glen. In that case the committee decided, because of a series of time pressures and because there was widespread agreement already from the community and we had seen it, that we would pass that without using the public process. There were also a number of very minor variations to the Territory Plan about which we felt there was no conflict involved.

In this present case people talk about going back eight years. The problems and debate over Northbourne Oval began long before self-government. It was one of the early issues I remember being involved in when I became involved in planning issues in 1983 and 1984, or around that time. There has been long-term debate over this site. That is why, had I been on the Urban Services Committee, I believe that I would have taken the same approach that Mr Berry has taken and said that the public process really is necessary. The committee, by tabling a report in this fashion, has bypassed that public process. Clearly, Mr Berry's dissent is noted, but now it is up to the Assembly to deal with the variation.

As Mr Berry indicated in a response to comment from Mr Humphries, I think it is quite right to say that there is a difference between Mr Berry's comment on the process and his view on the variation. The view on the variation itself will be made now in the Assembly because this report does fulfil the statutory obligation for the committee to deal with the issue. When the variation is tabled, I presume that we will have a different debate on the merits of the issue itself.

Mr Humphries: I do not know whether we will. This is going to be a variation. He is not going to move a disallowance motion, so we will not have the debate.

MR MOORE: Unless, of course, as Mr Humphries indicates, there is no motion to disallow the variation. To a certain extent, it is the last opportunity for the public to have an input here. If there is no public outcry, if in fact it turns out that the judgment of Mr Rugendyke in this case was correct, and that there is no conflict or that this actually resolves the conflict, then neither Mr Berry, nor I, nor anybody else will move for disallowance and the matter will thus be resolved. So there is one final opportunity for

public comment or for influence on this issue where the decision is to be made, and where it ought to be made, and that is in the Assembly. However, as a general matter of process, I would say to the committee, from my experience, that it ought to put things out to public comment wherever it is possible.

Question resolved in the affirmative.

LAND (PLANNING AND ENVIRONMENT) ACT - VARIATION TO THE TERRITORY PLAN - NORTHBOURNE OVAL
Papers and Ministerial Statement

MR SMYTH (Minister for Urban Services): Mr Speaker, for the information of members I present, pursuant to section 29 of the Land (Planning and Environment) Act 1991, approval of variation No. 97 to the Territory Plan relating to Braddon, section 30 block 1, Northbourne Oval. In accordance with the provisions of the Act, the variation is presented with the background papers, a copy of the summaries and reports, and a copy of any direction or report required. I ask for leave to make a statement.

Leave granted.

MR SMYTH: Mr Speaker, the draft variation was released for public consultation on 29 November 1997, with comments closing on 9 February 1998. The draft variation was forwarded to an extensive mailing list, all lessees of properties around Northbourne Oval, and all the LAPACs, for comment. The draft variation was referred to the Standing Committee on Urban Services last week for consideration. I am surprised at the divided decision of the committee and Mr Berry's comments, given the extent of the consultation that has been genuinely undertaken.

The variation is a result of an ongoing dispute between the Canberra District Rugby League Football Club Ltd, the ACT Rugby League Inc. and the ACT Leagues Club Ltd over the ownership of Northbourne Oval. In July 1997 the dispute was resolved when the interested parties - the ACT Leagues Club Ltd, the Canberra District Rugby League Football Club Ltd, the Australian Capital Territory and the ACT Executive - agreed to a deed of settlement. The deed of settlement included a proposal that the Territory arrange the instigation of a variation to the Territory Plan in accordance with the Land (Planning and Environment) Act 1991 and the granting of separate leases following effect of the Territory Plan variation.

Mr Speaker, the variation was necessary because clause 2.2 of the restricted access recreation land use policy, which applied to the land, permitted a club only where it is ancillary to a predominant recreation use. The intention of the control was to ensure that any club would be associated with sporting activity. While this control is still satisfied in planning terms, the proposed leasing arrangements require a variation to this policy so that the control is strictly met. The new policy will permit only one licensed club premises within the whole site, but it will not be required to be ancillary to a recreation use.

Mr Speaker, the proposed variation does not significantly change the situation and the existing land use remains unchanged. The significance of the site as a recreation resource is strengthened by its inclusion on the interim Heritage Places Register. Under both the existing and proposed land use policies, commercial and residential development would not be permitted. The existing land use policy of restricted access recreation already restricts public access to this site. It is not uncommon to lease enclosed ovals which are included in public land, and examples where this has occurred include Ainslie Oval, Football Park in Phillip, Deakin Oval and the West Belconnen ground at Kippax. Under the Land Act a plan of management is required in these situations and one is currently being prepared for Northbourne Oval.

I consider the time period and extent of consultation undertaken for this variation to be appropriate. Mr Speaker, I now table variation No. 97 to the Territory Plan.

ADJOURNMENT

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

That the Assembly do now adjourn.

Assembly adjourned at 5.17 pm