DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

10 March 1999

Wednesday, 10 March 1999

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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.

ENERGY EFFICIENCY RATINGS (SALE OF PREMISES) (AMENDMENT) BILL 1999

MS TUCKER (10.31): I present the Energy Efficiency Ratings (Sale of Premises) (Amendment) Bill 1999, together with its explanatory memorandum.

Title read by Clerk.

MS TUCKER: I move:

> That this Bill be agreed to in principle.

Mr Speaker, it is with considerable frustration that I am tabling this Bill today, as I have been greatly disappointed by the Government's poor handling of the implementation of the legislation passed by this Assembly at the end of 1997 to require people selling their houses to disclose the energy efficiency rating of the house to potential buyers. At the time the legislation was passed, a 12-month implementation period was put into the Act to allow the Government sufficient time to prepare for the implementation. However, it was only in November 1998, just over six weeks before the commencement date, that the Government publicly announced the details of how the legislation would be applied.

People in the process of selling their houses who had little knowledge of this legislation were suddenly confronted with the need to get copies of their house plans and get a rating assessment. Not surprisingly, there was considerable adverse public reaction to this announcement and, in panic, the Government, on Tuesday, 8 December 1998, put up a Bill to defer the commencement date for a further three months. That was the third last sitting day of the year, so the Bill had to be passed by the Thursday of that week. The Assembly had three days to consider this deferral.

At the same time, the Law Society of the ACT raised with the Government and me a number of concerns with some technical aspects of the original Act. I did attempt to prepare some amendments to the Government's Bill to address some of the simpler concerns but, given the lack of time, I was not able to address all their concerns as I wanted to get other legal advice to test the validity of the Law Society's concerns. A major concern raised by the Law Society, and also the Real Estate Institute, was the fact that there was no phase-in period for the implementation of the Act. On the commencement date, every house on the market had to have an energy rating. People who had had their house on the market before the commencement date were in a difficult

position as they did not know whether they would be able to sell their house before the commencement date and thus not need a statement. They may have ended up spending the money to get a rating that they did not have to get if they sold the house before the commencement date.

I acknowledged this problem and prepared an amendment to provide that only houses that come onto the market after the commencement date required the rating. My office and the Parliamentary Counsel's Office went to some trouble to get these amendments done quickly for the debate on the Thursday. However, on that day the Minister said that the Government did not have enough time to consider my amendments. I did find this amazing as we often have to debate amendments that are tabled on the day of the debate, and the Government certainly expects other members to respond immediately to amendments that it tables at the last minute. In the end, I did not proceed with my amendments as it seemed like a waste of time.

I still believed, however, that there was scope to amend the Act before the commencement date at the end of March. I wrote to the Minister the following week to ask him to prepare a further Bill to incorporate the amendments suggested by the Law Society. I pointed out that this Bill would need to be tabled during the sitting week in February to allow sufficient time for its passing and gazettal before the end of March. I received a response from the Minister in the middle of January in which he agreed "that there is an opportunity to address any weaknesses in the Act by preparing a further amendment Bill". He also said that he intended "researching the options available to us in order to address these concerns". That gave me the impression that everything was under control, but I should not have been so confident. The February sitting period came and went and there was still no word about a further amendment Bill.

Officers of PALM then contacted me to arrange a meeting about the legislation on 24 February. "Good", I thought, "I will hear about the Bill the Government is preparing". I was in for a rude shock, Mr Speaker. At the meeting the PALM officers made the extraordinary statement - Mr Quinlan will enjoy this after his comments yesterday on resources - that they thought I should prepare the Bill as they were not able to prepare the Bill in time, that they had a resource problem and I would be able to do the job faster. Here was an admission that I would be able to do a better job with this legislation than the whole of PALM.

I replied that I was not happy about doing this work without some legal advice from the Government on the comments made by the Law Society. They said that they would get back to me with this advice. I have to say that I am glad that I did not wait for this advice as it was not until the middle of yesterday that my office got a phone call from a PALM officer providing some verbal comments on the Law Society's proposals. After the meeting with PALM I went ahead with getting drafted a Bill that covered the points where there seemed to be broad agreement on the need for amendments. I would like to express my thanks to the Parliamentary Counsel's Office for its quick response to my drafting request so that this Bill would be ready for today.

Let me outline quickly what is in the Bill, but first let me say what is not in the Bill. I have abandoned my previous amendments to introduce a phase-in period for the rating requirement as the Government was not supportive of that and the time has really passed to introduce it. I just hope that the Government is as prepared as it says it is for the 31 March commencement date. Instead, the Bill clarifies what premises are covered by the Act and clarifies the penalty provisions. There is no change to the intent of the Act. The Bill tightens up the definition of residential premises as there was a concern that the current wording of the Act could be interpreted to mean that caravans and mobile homes and commercial buildings that had sufficient facilities to provide accommodation would require a rating, which was not the intention.

The Bill also clarifies the offences in the Bill. The Law Society raised uncertainty about who would be guilty of an offence in the event of the publication of a misleading energy rating. In examining this issue it became apparent that the range of offences in the Act was not comprehensive, so two new offences have been included in the Bill. These are for preparing an energy efficiency rating statement that is false or misleading and giving to another person false or misleading information that is required for preparing an energy efficiency rating statement.

The Law Society also raised concerns that the Act allows a contract for sale to be rescinded if an energy rating statement is not provided by the seller. I am not convinced that this is a major problem, given that there are already provisions in the standard sale contract for rescission of the contract in other circumstances. I also understand that the Government does not support the Law Society's views on this matter. I have, however, included in the Bill a suggestion by the Law Society that the energy rating statement should form part of the sale contract.

In conclusion, I believe that this Bill will improve the workability of the original energy rating disclosure legislation. Let me foreshadow now that this Bill will need to be debated during the next sitting week if it is to have any chance of being in place when the original Act commences at the end of the month. I commend this Bill to the Assembly and I urge members to allow this Bill to be debated in the next sitting week.

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

CASINO CONTROL (AMENDMENT) BILL 1999

MR KAINE (10.39): Mr Speaker, I seek leave to present the Casino Control (Amendment) Bill 1999.

Leave granted.

MR KAINE: I present the Casino Control (Amendment) Bill 1999, together with its explanatory memorandum.

Title read by Clerk.

MR KAINE: I move:

That this Bill be agreed to in principle.

This is a fairly straightforward matter. It is not one that I imagine would cause too much concern within the Assembly. It is simply to correct an anomaly in the Casino Control Act which makes it inconsistent with virtually all other legislation that has been enacted by this place in that it allows the Chief Minister, simply by gazettal, to change the use of the piece of ground allocated to the casino. There is no other case to date that I know of where this can be done simply by gazettal. All other determinations, as far as I am aware, are subject to review by this place through the disallowance process. I merely seek to amend the Casino Control Act to make the same conditions apply to it as apply to all other Acts.

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

MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT) BILL 1998

Debate resumed from 18 November 1998, on motion by **Mr Hargreaves:**

That this Bill be agreed to in principle.

MR KAINE (10.41): Mr Speaker, I just want to indicate to the Assembly that I support this Bill. I cannot recall why in the distant past I adjourned the debate on this Bill. It may well have been because there was no government member present, so I moved the adjournment. But, Mr Speaker, I do support this Bill because it seems to me to be an eminently sensible approach that Mr Hargreaves is making. I know that it is a Bill which has the support of the Australian Federal Police Association.

They have pointed out to me that in their view this Bill will remove what they regard as a pointless section of an important piece of legislation yet retain the high standards of police accountability to the community. They have pointed out to me that the section 10A certificate achieves absolutely nothing of value or substance in the prosecution of alcohol-impaired drivers. Indeed, it only serves to tie the police up in red tape by duplicating other, quite extensive, paperwork. They have pointed out to me that the sort of information that has to appear in a section 10A statement appears in innumerable other places.

I would just note some of the places where this information is required to be stated in addition to this section 10A certificate. The information appears in such places as the Australian Federal Police notebook, the alcotest print-out, the summons, the statement of the informant, an AFP computer report, statements of facts to the court, and the AFP RBT statistics sheet. It is merely a duplication of the recording of information that requires the police to fill out yet another form which in their view serves no use whatsoever. It merely takes time to duplicate information that is available to the court

from many other sources. I think that our police have got enough to do with their time without sitting around at accident scenes filling out reams of unproductive and pointless paperwork. For that reason, I support Mr Hargreaves' Bill.

MR SMYTH (Minister for Urban Services) (10.43): Mr Speaker, the Government will not be supporting the amendment. Mr Hargreaves' Bill seeks to repeal section 10A of the Motor Traffic (Alcohol and Drugs) Act 1997. Section 10A of the Act requires that if a screening test, a random breath test, has been done and it indicates that a person's blood alcohol level is higher than is prescribed, or if that person fails or refuses to undergo a screen test, the police officer should provide a certificate to the person who was tested, and that certificate records the date, time, location, test results, if applicable, and identification of the police officer. The certificate is also signed by the officer and the screening test and certificate completion occur by the roadside at the time of the event.

Mr Hargreaves maintains that section 10A certificates are an unnecessary procedure, an unnecessary expenditure on stationery and an inefficient use of police time. Mr Hargreaves also submits that police record all the necessary information as part of other procedures, either at the police station or in preparation for appearance in court. These procedures include the blood alcohol test print-outs at the police station, the statement of the informant and the police notebook entries.

Section 10A certificates provide an important time reference in regard to the statutory two-hour time limit during which breath testing may occur in police custody, and it should be noted that section 14 of the Motor Traffic Act prohibits breath testing in police custody, which is usually done at the police station, if more than two hours have elapsed since a person ceased to be a driver of a motor vehicle, that is, when the driver underwent the initial roadside test. A copy of the section 10A certificate which is in the possession of the driver effectively means that the time of screening is not a matter of controversy. I think that is a very worthwhile protection, both for the police officers and for the driver.

Consequently, if Mr Hargreaves' Bill is passed by the Assembly and we dispense with the section 10A certificates, if they are no longer being issued to the drivers by the roadside, drivers and police officers will lose that protection. There is a clear chain of evidence that starts immediately with the event, not filled out later and not put together at some later time. It is given to the drivers. The police keep their records, so everybody is protected. If this important protection is lost, how is it that both driver and police officer are protected?

The important thing here is that the two-hour limit starts from the time of the test. It is not done from the time the reports are filled in back at the station. It is not possible to support this amendment because I think it exposes not only drivers but also the police officers. Were a judge to be unhappy with the evidence given or a driver to claim that he was tested outside the two-hour limit, we would then expose our police officers to unnecessary appearances in court, because the officers obviously would be called in to explain when they made the original roadside stop, made the original test and had the original result given through the breathalyser.

According to Mr Kaine, and this may well be true, most officers also record these details in their notebooks; so, were a driver to dispute the two-hour limit, clearly the constable would have to be called to court. Heaven help the constable if he or she had not written down this detail. I am sure that most judges would make short shrift of somebody who says, "It happened at such and such and I recorded it so many minutes later at the police station". This provision protects our police officers, but it also protects the liberties of our drivers. Mr Hargreaves claims that one of the reasons for this amendment is that it would save on unnecessary procedures and unnecessary expenditure. What we may well end up with is a lot more constables spending a lot more time in court giving evidence as to when they first stopped a driver. It seems inefficient to me that we would condemn them to that.

I am sure that all our officers are diligent in filling out their notebooks properly, but what we have here is a standard form that lists the information required to start the process that, hopefully, leads to full prosecution of all drink-drivers. I would hope that this Assembly would not pass something that could allow a drink-driver to get off. I would hate to think of that being an unintended consequence of this amendment. It is another little bit of paper that we have to deal with, but there are whole lots of little bits of paper that we all deal with every day. This little bit of paper, this section 10A certificate, gives both the driver and the police officer good protection. It sets the process in train. It clearly marks the time, the location and the officer who started this process so that right from the beginning there can be no doubt that the full procedures and the proper procedures have been covered.

I believe that we should not allow this amendment. I would hate to think that this amendment at some stage would let a drink-driver off because the proper chain of evidence had not been followed. With that in mind, the Government will not be supporting this amendment.

MR RUGENDYKE (10.50): Mr Speaker, it is my view from my experience that the section 10A certificate is, in fact, a superfluous document, an extra piece of paper that has no real place in the system. I thought it might be appropriate, Mr Speaker, to offer the Assembly a practical run-down on how drink-drivers are apprehended and the process that takes place with them.

At a random breath testing station, drivers are, obviously, randomly selected to participate in a screening test. The screening test is a process where, depending on the type of screening test device, a breath sample is taken and the device records whether a driver is over or under the limit. If it is the case that the driver is under the limit, the machine shows the word "pass" and the driver is able to go. If the screening test indicates that the machine believes that the driver has a higher concentration of alcohol than the law stipulates, the driver is asked to move over to the side of the road and the police officer makes a note in his notebook of the time, date, place, driver's name, date of birth, registration of the vehicle, and any other details that might be necessary to identify the driver of the vehicle. The driver is subsequently taken to a police station for a full breath analysis test.

That breath analysis test is conducted on a different machine - a machine that gives a print-out in triplicate. There are certain things on the print-out that indicate the time the test is being taken and the number of tests in the sequence of tests. It is a machine that self-tests with a zero reading prior to a person's breath test, it gives a reading after that breath test and it finishes by giving another zero reading to indicate that the machine is working properly. The print-out also indicates the reading of the person's breath alcohol. Obviously, if it is below .05, the driver is immediately released and is able to leave the station and go home. If the reading is over .05, there are several options that can be taken into consideration by the police officer and other people dealing with the situation, ranging from a diversionary conference, through summons, to arrest, if necessary.

The section 10A certificate itself is a small document that shows the things that the police officer has written in his notebook. Invariably, you can never find one at the station. If you look particularly hard, you might find one down the back of a drawer or under a table somewhere. You fill it out and give the defendant a copy. Then you go to the actual documentation that you have to fill out for your brief. That document is a sequential thing. It says the time, date, place, who it is, who the police officer is - all the details necessary in a fairly sequential order. The only area on that document that is out of sequence is the little position where you write the number of the section 10A certificate. It just does not follow. It is a superfluous piece of paper that they cannot even get in the right spot on the actual brief.

If the section 10A certificate were done away with, what would be the answer? What is wrong with attaching a photocopy of the police officer's notebook to the brief? It could be chronologically sequenced then on top of the brief. Mr Speaker, it would be my view that that would suffice and that that ought to satisfy the court that the police officer's first meeting was the time indicated by the photocopy of the notebook entry. My personal view, Mr Speaker, would be that if that was seen as inappropriate it would be yet another example of how the court system is being clogged up by ridiculous, mischievous and unnecessary proceedings. I support Mr Hargreaves' amendment to the Act.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (10.57): Mr Speaker, I do not think anyone could accuse the ACT Government of being hostile to the work that the Australian Federal Police do in this town. Indeed, very often in this place we have been accused of getting up to push through some piece of legislation that has the effect of overly endowing the police with powers necessary to do their job. The move-on powers debate is a good example of that. It raged for quite a few years in this place. So, I do not rise in this debate in any sense as an opponent of making the job of the Australian Federal Police any easier. On the contrary, I strongly support that being the case. But the issue in this debate is whether the removal of a section 10A certificate actually achieves that purpose.

Mr Speaker, I want to put to the Assembly that it does not do that, or at least has the serious potential not to do that. Let me address first of all the civil liberty argument about the section 10A certificate. That certificate is a document, a copy of which is handed to a motorist at the point where it has been issued. It is a piece of information available to the motorist when he or she has been pulled over. It tells them the details. I assume the reading is shown on it and the - - -

Mr Rugendyke: No, it is not.

MR HUMPHRIES: I defer to Mr Rugendyke's information about that, but my understanding is that that is the case, that it is provided - - -

Mr Hargreaves: Pass or fail.

MR HUMPHRIES: You got us a copy. Very good, Mr Hargreaves; you have done your homework. It shows the time at which the test has been conducted. That information is available to the motorist. The person has the information available to them and it is the only information available to them, except for the summons which will come through in due course. I am not sure whether the summons shows the time at which the particular test has been conducted.

Mr Speaker, there is a requirement elsewhere in the legislation, the Motor Traffic (Alcohol and Drugs) Act, that there be a test conducted within two hours of the person having driven the motor vehicle. Mr Rugendyke has argued in this place that the issuing of a certificate is of little consequence, that it does not make much difference, that it is not important to anybody. The fact is that the certificate is evidence available to the defendant - the person who has been charged with a particular offence - and that person has that as a piece of evidence on which they may rely and on which basis they can consider their position with respect to that particular offence. Removing that removes that person's capacity potentially to mount a possible line of defence in the court. That is one particular argument which I am a little bit surprised that those opposite, in particular, who have been concerned about civil liberties have overlooked.

The other argument is about the effectiveness of the provision from the point of view of those who actually have to bring the prosecutions through the court. I ask members to consider whether they have overlooked the implication of this for the court itself. Mr Rugendyke says that he does not think that the certificate is of much import in the particular process. My understanding is that the certificate at the moment, at the present time, is always handed up to the bench when a person is being dealt with by the court for a drink-driving offence. Although Mr Rugendyke may not see it as important in the part of the work that he used to do as a person who would apprehend alleged drink-drivers on the roads, it is actually, it has been put to me, quite important for the court to take evidence of a person having been tested within two hours of having driven their motor vehicle on the road. If that evidence is not available in the form of a section 10A certificate, what evidence does the court have that the person - - -

Mr Hargreaves: Gary!

MR HUMPHRIES: I will come to that. What evidence does the court have that the person has actually been tested within the two hours? Mr Hargreaves has interjected by way of holding up pieces of paper in this debate. He has got documents.

Mr Hargreaves: I'll tell you about them later, too.

MR HUMPHRIES: Yes, I am sure he will. But let me tell him something as a lawyer. A document filled in in that form, a document prepared by the police and processed through their internal paperwork processes, is not evidence which a court will receive of itself, because it is not evidence that has been put under oath or affirmation to the court and the court does not receive evidence unless it is either evidence taken on oath or affirmation to the court or evidence which is provided to the court pursuant to a statutory obligation to take notice of a particular piece of information.

The court has the obligation to take notice of the section 10A certificate, because that is provided for in the legislation at the present time. The court must assume, unless the evidence is rebutted, that what is on the section 10A certificate has actually taken place. That is why the court receives this piece of paper. In the absence of a police officer being present in the court, it receives the piece of paper saying, "Mr Bloggs was breath tested at 8.30 pm on 23 July and his reading was .06 blood alcohol content". Mr Rugendyke, you fail to understand. The court cannot receive what you are holding up there as evidence unless a police officer is available in the court to tender it. It cannot receive that unless a police officer is available in the court to tender it. It can receive the section 10A certificate because the court, as I understand it, is obliged to take into account that evidence - - -

Mr Hargreaves: That is not definitive.

MR HUMPHRIES: Let me finish, please, Mr Hargreaves. The court is obliged to take into account the section 10A certificate because the legislation says that the court will take into account the information presented in that certificate as evidence of the time of the testing of that person. The other things that Mr Rugendyke has referred to - the notebook of the police officer, for example; the brief on the evidence; the summary of incidents for that day - are not pieces of information that can be tendered independently of the police officer. In other words, to bring that as evidence in the court, the police officer would have to be present in the witness box and say, "Your Worship, this is the note that I made in my notebook at the time, which indicates the time at which I tested Mr Bloggs". Without the police officer being present in court, the court cannot receive the police officer's notebook. Mr Rugendyke will know that; Mr Osborne will know that. The court does not receive a document unless it has evidence from a living, breathing human being in front of it to verify that this document is actually what it says it is. The section 10A certificate is different because the court is obliged to take account of the section 10A certificate, under the legislation.

Mr Speaker, my concern is that what will happen if we pass this legislation is that we will end up with the courts calling police officers to court all the time to verify that an essential precondition for the prosecution has been met, namely, that the person was breath tested within two hours of having driven a motor vehicle. You might say, "This will be an issue only where a person pleads not guilty". I draw members' attention to something that happened only last week in the ACT Supreme Court. A person appeared to plead guilty to a particular charge and that plea was not accepted by the judge because His Honour detected that there may have been an essential element of the offence which was not made out. So, we cannot even be sure that, in the absence of evidence of

a testing within two hours, the magistrate is going to accept even a plea of guilty without there being evidence before the court that the person was actually tested within two hours.

Mr Speaker, that is not merely my view. It is the view also of other people in this process. I remind members that, during the abortion debate in this place some little while ago, they were very concerned to hear what the views of people like the Community Advocate and the Director of Public Prosecutions were and they berated those people who were supporting that piece of legislation for ignoring the views of people like the DPP. I can advise members in this place that the DPP is concerned; in fact, he opposes the repeal of section 10A because he believes that it would create difficulties in the administration of the criminal justice system. That is what the DPP says.

Mr Berry: Have you got something to table?

MR HUMPHRIES: No, I have not. I have got the view that has been processed internally in considering this particular Bill through the Cabinet process. I do not propose to table the Cabinet minute, but I am prepared to show members - - -

Mr Hargreaves: Verbal advice is not worth the paper it is written on!

MR HUMPHRIES: Mr Hargreaves, let me put something to you. The Director of Public Prosecutions is an independent statutory office-holder. He is, I know from past experience, extremely willing to discuss issues of this kind with any member of this Assembly - government, opposition or crossbench. Have you, as the mover of this Bill, discussed the matter with the Director of Public Prosecutions?

Mr Hargreaves: The Attorney-General meets a blank face.

MR HUMPHRIES: I think Mr Hargreaves, by his silence, has answered the question as no.

Mr Hargreaves: I will table the same verbal advice, if you like!

MR HUMPHRIES: Have you got verbal advice from the DPP that is different?

Mr Hargreaves: How can I table it if it is the same as yours?

MR HUMPHRIES: You cannot, obviously. Mr Hargreaves, you are bringing forward to this place a Bill which you say is going to fix a problem, with which I am telling the Assembly the Government has a serious problem, and which the Director of Public Prosecutions has told my department he is concerned about. Those concerns are also, I am told, reflected in the views of the Chief Minister's Department, the Legal Aid Office and my own department. Mr Speaker, I am simply putting this on the table.

My prediction is that the people who have come forward to Mr Hargreaves - the Australian Federal Police Association - and said, "Free us of this burden of the section 10A certificate", are going to come back to him within a few months, even a few

weeks, of this amendment being in operation, saying, "We are ending up having to come into court all the time to prove that the person was breath tested within two hours", or "People are being acquitted because the court has not got evidence before it of the taking of a sample within two hours".

I am all in favour of making the police's job easier. I am not sure that this proposal actually does that. I suspect, Mr Speaker, that the homework has not been done on this legislation before its being brought forward for debate here today. That is a warning that I put to the Assembly.

MS TUCKER (11.08): The Greens will not be supporting this piece of legislation. I have listened to the arguments today and I have done research before. Mr Humphries has just outlined very clearly the concerns with this legislation. I agree with him that it is not normally the inclination of the Government not to want to dispense with red tape if it is not necessary. I have had arguments with them about how much red tape they want to dispense with. I think they have put a very clear argument at this point about why this procedure is necessary. I would also agree that Mr Humphries is not one who is nervous about trying to assist the police. This Government obviously has a strong commitment to assisting them in their work. I did not hear Mr Rugendyke address the concerns that Mr Humphries has raised.

I think that this issue is quite serious because we do have a commitment in this place to trying to streamline processes for the police, which this Bill was about but which it is quite obvious could have the opposite effect. Not only that, we have a commitment in this place, all of us, to reducing drink-driving on our roads. It seems to me that there is a possibility that it could even have a negative impact on that, because of the legal points that could be raised if the requirement for a section 10A certificate were removed. I am not going to support the Bill. I urge the members of this place who were going to support it to reconsider their position, having listened to these arguments. I know that it is not always easy to do that when you have put a position, but it is obviously going to be quite a worry if this Bill gets up.

MR OSBORNE (11.11): I, too, have some concerns about this legislation. Perhaps the best option would be for me to adjourn the debate. However, I wish to say a few words after I do that. I will seek leave to speak. I move:

> That the debate be now adjourned.

I am happy to have it brought on later today, Mr Speaker. I seek leave to make a statement.

Leave granted.

MR OSBORNE: Mr Speaker, when I was approached initially by the Australian Federal Police Association and Mr Hargreaves about this legislation, I was more than happy to support it. Like the Government, I have demonstrated more times than Ms Tucker cares to remember that I am more than supportive of the police in trying to make their job a little bit easier, having spent seven years - - -

Mr Rugendyke: Only as a detective.

MR OSBORNE: Six years as a detective, Mr Speaker. I must admit, I did not lock up many old drunks; I was too busy doing important police work.

Mr Rugendyke: Rubbish!

MR OSBORNE: That is all they would let Mr Rugendyke do, Mr Speaker. Seriously though, the one thing that I recall from my policing days, especially in relation to drink-driving offences, was the issue of testing the driver within the two-hour timeframe. Obviously, it was the most important thing. In New South Wales we had a roving breath analysis operator. You would do the roadside test and then within two hours you needed to have somebody meet you at a police station with their machinery. Back in those days individual police stations did not have their own breath analysis unit, so we would get on the police radio and attempt to locate whoever was doing the rounds. I can recall a number of occasions where we would be anxiously looking at the clock because the breath analysis operator would be tied up at another station. Thankfully, at all times they made it within the two-hour timeframe.

My concern about this piece of legislation, if we pass it, is how the courts accept the evidence of the test being done within the two-hour timeframe. I would have enjoyed it during my time in the police force if, when I was required to go to court, the magistrate would just accept what I had written on a piece of paper, without having to go and stand up and defend it. I must admit that I have concerns that police will be required to attend court every time there is a matter in relation to a drink-driving offence before the magistrate. I intend to speak with the association shortly, Mr Speaker, to make sure that they are very clear on the potential of this legislation for their members. If they are still happy to go ahead with it, with the risk of clogging up the courts and taking police off the road, I will consider supporting it.

But there is a danger in passing this legislation if it is going to result in police being taken off the road to go and give evidence about breath analysis tests being done within that two-hour timeframe. As I said, I was more than happy to support the legislation, but I do think that I need to clear it with the police association that they understand that passing this legislation has the potential of causing a loss of time through being required to attend in court before I am prepared to support it. I thought the issues raised by Mr Humphries were very valid. As I said earlier, Mr Speaker, I have been more than happy over the four years that I have been in here to be a strong advocate for the police association. I think that they need to be very clear on what the passing of this legislation could do to their members.

Question resolved in the affirmative.

ADMINISTRATIVE APPEALS TRIBUNAL (AMENDMENT) BILL 1998

[COGNATE BILLS:

CORONERS (AMENDMENT) BILL 1998
OATHS AND AFFIRMATIONS (AMENDMENT) BILL 1998
SUPREME COURT (AMENDMENT) BILL (NO. 2) 1998]

Debate resumed from 26 August 1998, on motion by **Ms Tucker**:

That this Bill be agreed to in principle.

MR SPEAKER: Is it the wish of the Assembly to debate this order of the day concurrently with the Coroners (Amendment) Bill 1998, the Oaths and Affirmations (Amendment) Bill 1998 and the Supreme Court (Amendment) Bill (No. 2) 1998? There being no objection, that course will be followed. I remind members that in debating order of the day No. 2 they may also address their remarks to orders of the day Nos 3, 4 and 5.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (11.17): Mr Speaker, this is in a sense a restaging of a number of pieces of legislation which the Assembly has considered on a number of occasions before, that is, on a number of occasions the Assembly has considered Bills that remove references to the Queen and replace them with oaths or affirmations taken by various office-holders or persons taking various steps, in effect, to swear allegiance other than to the Queen. Mr Speaker, the Government has opposed those Bills on previous occasions and it opposes these Bills again for the same reason.

Mr Speaker, I do not propose to speak for very long on the arguments that have been put before about this matter. Members have heard those arguments. I do not think they need me to repeat them at any great length. But I will put one other argument which is more pertinent at the moment, given the referendum which is due to happen later this year, that is, the argument that to repeal references to the Queen in legislation could be seen, I think quite rightly, by many citizens in this community as a pre-empting of the referendum which is to be held in November of this year. That referendum will ask citizens of this country to decide whether Australia should remain as a constitutional monarchy or should become a republic. Clearly, if Australia as a whole decides to become a republic, then references to the Queen and other references to the Crown throughout not just legislation but a whole host of other institutions and manifestations of that institution within our community will have to be removed.

I make no bones about the fact that, although I do not support the move to a republic, if Australia votes to become a republic, clearly we will have to take certain steps to accomplish that particular process. I am a democrat above all else and I believe that, if Australia makes that decision, we should all abide by the decision and move down the path of implementing the decision that the Australian people make. Mr Speaker, it also needs to be put on the record that at this point in time Australia has not made that decision and that many people would say that the ACT Legislative Assembly, by going

through the process of removing references to the Queen before a referendum is held in November of this year on this very subject, is being anti-democratic and insulting the prerogative which we have asked the Australian people to exercise, to make a decision about this matter in November.

Some would argue - I assume Ms Tucker would argue - that we should remove references to the Queen irrespective of whether Australia becomes a republic. That may be Ms Tucker's view and it may be the view of others but I think that, whatever is the appropriate course of action, the symbolism of taking this step only a few months before we are actually to make a decision about a republic could be seen as pre-empting that decision by the Australian community and in some way derogating from the decision taken by the Australian community, as if to say, "We politicians know what is best for you. We know that ultimately you are likely to accept the need for a republic, so we will ease the path for you by just starting to clear away the clutter that blocks our inevitable path to the formation of an Australian republic".

I do not think that is a process which does any credit to the Assembly. I think there are many people who would argue that there needs to be some measure of consultation with the community about this exercise before that step is taken. Ms Tucker in particular has had many things to say about consultation in the past. She has said very often that the Assembly needs to strengthen its processes of consultation. I would have thought that the ultimate consultation is a referendum. It is pretty hard to get anything better than that when it comes to getting people's opinion on something. The referendum in November will be a direct expression, not just by the Australian people as a whole, but by the ACT population as a discrete unit, on what they think about the idea of a republic.

I really think that a measure like this can and should wait until the Australian people have exercised a say on this question of a republic. Whether we should remove references to the Queen is perhaps irrelevant to that. The fact is that the Australian electorate, including every single voter who lives in the ACT in November of this year, will have the chance to decide whether they support the retention of the Queen as our head of state or the move to an Australian republic. For us, in a sense, to say that we are going to ignore that debate coming forward and make a decision now about a closely related issue - should there be references to the Queen in these Acts - could be seen as ignoring or thumbing our noses at the sentiment of the Australian electorate, particularly the electorate of the ACT.

Mr Speaker, I do not make any bones about the fact that I will not be voting for the republic and I do not support the moves that have been taken by Australian republicans, but I do think that it is important that we observe some processes here. It seems to me that these processes are quite wrong. Steps of this kind should not be taken on the eve of an important referendum like that. People will say, and I certainly will say if these Bills pass today, that some politicians have already made up their mind on what is going to happen and are making decisions as if they have won that vote in November. I think that is a great discourtesy to the community and a great insult to the intelligence of the electorate to be able to make this decision at that time. Mr Speaker, I would ask

members to consider whether they are doing the right thing by our electorate in passing these Bills today and whether, if only for the sake of appearances, they should put off these Bills until after the referendum in November.

MR OSBORNE (11.25): Mr Speaker, I move:

> That the debate be now adjourned.

I seek leave to make a short statement.

Leave granted.

MR OSBORNE: Mr Speaker, I will be supporting the legislation, but I will be moving amendments similar to those I moved on the swearing-in issue. Given that Australia is in the middle of a debate on a republic, I do not think that we should be ruling out giving people the opportunity to swear allegiance to the Queen. So I will be drafting some amendments to Ms Tucker's legislation to give people that option, Mr Speaker.

Question resolved in the affirmative.

MINISTER FOR URBAN SERVICES
Motion of Censure

MR CORBELL (11.26): Mr Speaker, I seek leave to move a motion of censure against the Minister for Urban Services for misleading statements to the Assembly over the discussion paper on rural residential development.

Leave granted.

MR CORBELL: Mr Speaker, I move:

> That this Assembly censures the Minister for Urban Services for misleading the Assembly by claiming that the Discussion Paper on Rural Residential Development was an "independent discussion paper" on 29 October 1998 and again on 9 March 1999.

Mr Speaker, the Labor Party has no option but to move this motion of censure this morning because of the Minister's continued insistence that the discussion paper released by him on 29 October last year was an independent discussion paper prepared by independent consultants. Quite clearly, that is not the case.

Quite clearly, we have seen in a range of questions presented in question time yesterday and in the Minister's comments yesterday that he still believes this is an independent discussion paper, even when comments I obtained under FOI show that the consultant came under considerable pressure to change the report and the consultant complained that the report was being massaged and changed to suit the Government's point of view.

Mr Speaker, it is a black-and-white question to be put to the Assembly today. The Minister has said it is an independent discussion paper. The documents reveal otherwise. He has misled this Assembly. When given the opportunity yesterday to refute that or to change his position, he did nothing. On 29 October last year the Minister released the discussion paper on rural residential development. At that time he said:

> ... today I am releasing for community consultation an independent discussion paper on rural residential development in the ACT.

He went on to say in his tabling statement:

> The discussion paper was prepared as part of an independent study for the Territory by an expert team of planning and economic consultants ...

That is the Minister's statement, clear and unequivocal - an independent discussion paper. We had no reason and this Assembly had no reason to doubt the credibility of the Minister's statement. Whatever our individual views are on rural residential development, we must put them aside on this issue. We must ask: Was the Minister honest in presenting this document as an independent discussion paper?

I would like to draw members' attention to what "independent" means. I have gone to a very basic source, the *Concise Oxford Dictionary*. What does the dictionary say? It has a number of meanings of "independent". The two most relevant to this discussion are "not depending on authority or control" and "self-governing". The third meaning of "independence" which is most relevant to us is "not depending on others for one's opinion or conduct". I ask members to bear that in mind. Not being influenced in your opinion or conduct by others is what "independent" means. I made an FOI request relating to the development of the rural residential discussion paper. I received about 7,000 pages of documents. I made copies of about half of those. What has emerged is a very clear pattern of deliberate and significant change to the document to suit the Government's policy agenda. I will go through the documents one by one.

The first, and perhaps most significant, is a file note of a discussion from Mr Trevor Budge, the lead consultant on the rural residential development discussion paper, to Mr Lincoln Hawkins, the executive director of PALM. In this file note a range of concerns are raised as to the independence of his process for consultancy. One of the comments is this:

> go much further and it is no longer their paper

That is the comment the consultant made to Mr Lincoln Hawkins - clear and unequivocal. That is what Mr Hawkins has said. Mr Speaker, I seek leave to table that document.

Leave granted.

MR CORBELL: I thank members. I was very concerned about that. Members may be interested to see copies of these documents. I have them here available. I am sure that they can be circulated. The second comment is even more concerning than the first. Again, it is from Mr Trevor Budge, the lead consultant for the planning document, the rural residential development study. He says that the paper is being massaged. A fax from Mr Budge to an officer in parliament states:

> ... the paper is being massaged ... Most points are a repeat of 7.1 and are not the only issues which emerge from the paper, rather they are a collection of any point which is favourable to the governments point of view.

They are not my words but the words of the consultant conducting the "independent" consultancy. Quite clearly, in this document the consultant says, "My report is being changed to suit the Government's point of view". I ask members: Is that what you believe is independent? Is that what you believe is outside of the control of others? Mr Speaker, I seek leave to table those documents.

Leave granted.

MR CORBELL: I thank members. There are a range of other issues raised as part of the discussion paper and there are further comments from Mr Budge which reinforce the changes the Government went to. The next comment is again from Mr Budge, again to an officer of PALM. He says:

> I wont debate the issues section any more, but it still reads as an advocacy rather than a realistic summary of the issues raised by the paper.

Again Mr Budge says, "This has been changed to be an advocacy of the Government's position, to support rural residential, rather than a realistic summary of the issues raised by the paper". Is that this Government's idea of an independent study? Is it independent? Is it separate from outside interference? Is it separate from influence from others, or has it been changed to suit the Government's position? The reality is that it has been changed. I seek leave to table that document, Mr Speaker.

Leave granted.

MR CORBELL: I thank members. The final document I want to table is an excerpt from a draft document circulated within the ACT government service. A page from the document has a paragraph which outlines concerns raised in the consultation process by people who were consulted over the preparation of the document. It raises concerns about the Government's change of policy direction. I read from the document:

> The commissioning of this study can be seen as a significant departure from a long standing widely understood approach to the planning of Canberra's rural areas. The 'agreement' which was entered into by the ACT Government with a private developer for the Kinlyside area to

> provide for a rural residential development has further heightened the perception that the ACT has departed from its earlier position. That perception has remained even though that agreement has now been terminated.

That is a fairly critical comment by the consultant on the Government's policy approach. It is critical of the Government's handling of this policy. It is critical of the Government's development of this policy. It was removed. It was not removed by the consultant. It was removed because the ACT Government decided that it was an embarrassing statement that could not be seen in the final document as it was released. Is that independent? Is that independent of government, separate from the influence of others? The answer must be no. Mr Speaker, I seek leave to table that document.

Leave granted.

MR CORBELL: I thank members. This, as I said at the beginning, is a black-and-white case. I have just presented for members five separate instances of evidence where quite clearly the consultant objected to changes being made to his study. The Government removed sections of the study which were embarrassing to it. Is that independent? If the Minister had stood up in this place and said, "This is the Government's discussion paper" then we would not have a case, nor would we pursue the matter, because we would understand that what was being presented was the Government's own discussion paper presenting its policy position. But the Minister did not do that. The Minister stood up in this place and said, "This is an independent study, separate from government, prepared by independent experts". What I have tabled this morning quite clearly demonstrates that that was not the case at all. That is why this Minister has misled this Assembly, Mr Speaker.

There are other important issues that members must consider when they consider this censure motion. The Minister released this discussion paper and then put it out for consultation. The Minister presented it to the community as independent, and he sought their advice on that basis. He said, "We will respond to the consultation, the objections and other comments raised as part of the consultation process". Again, that would be a legitimate process but only if it was a case of independently putting their view, the community responding to that view and government responding to the community's opinions and the independent paper.

But what this Government did and what this Minister did was release a paper which the Minister knew was not independent and had been changed to suit the Government's position. He sought consultation on the basis of what the Government's position was, as presented in that paper, and then had the hide to stand up and say, "Now we are going to respond to the comments on our own discussion paper". That is not an acceptable process. It is not an acceptable process for this Assembly and it is a misleading of this Assembly and the Canberra community.

The Minister may stand up shortly and say, "I had no knowledge of this". The Minister may stand up and say, "I was not aware that this process took place; that these changes were requested". First of all, we drew these issues to his attention yesterday. Was he in

any way unequivocal about them? Did he in any way equivocate? Did he say, "This is news to me; I will investigate the matter."? No. Yesterday the Minister stood up in this place and said, "This report is independent". Even when we drew to his attention the changes that had been made, he still insisted that it was independent.

There is a deeper and more fundamental principle at stake here, and that is that he is the responsible Minister. He is the person who is accountable for the actions of his officers. That is a fundamental concept underlying responsible government through a legislature and the dynamic between a legislature and an executive. It is that simple. He is responsible for the actions of his officers. If he was not aware of them, he should have been taking action to make sure he was aware of them. He should have been taking action to make sure he knew what was going on in his department. Ignorance is not an excuse under the Westminster system. Ignorance is not an excuse in any parliament. He is responsible for the actions of his departmental officers. He knows that this report was changed and that when he claimed it was independent clearly it was not.

Mr Speaker, the Minister must take responsibility for his actions. This parliament cannot afford to have a Minister presenting a report as independent when it has been changed significantly and when the consultant complained repeatedly of the changes that were being made to his study. It is that simple. It is a black-and-white argument and I urge members to support this censure motion.

MR SMYTH (Minister for Urban Services) (11.41): Mr Speaker, as Mr Corbell has said, it really is a black-and-white case today. The black and white is that Labor do not like this policy. They have opposed it from the start. It is black and white that they do not like the Assembly decision from May last year that the Government should proceed with rural residential development in the ACT. That is quite black and white. When you cannot attack the decision, you go for the process. I am the Minister responsible, and I take responsibility for what is done. It is interesting that Mr Corbell would quote the first couple of lines from my statement last year but not go on a little bit further. Perhaps there is an "independent" in there that is in the incorrect place, and I would take responsibility for that, but the full quote reads:

> Mr Speaker, today I am releasing for community consultation an independent discussion paper on rural residential development in the ACT. The community will have a period of six weeks from 30 October to 14 December 1998 in which to consider the study and make comments. The discussion paper was prepared as part of -

part of, Mr Speaker -

> an independent study for the Territory -

the independent part -

> by a team of expert planning and economic consultants, TBA Planners, in association with Spillin Gibbin Swann and Planning Australia Consultants. The study was undertaken in the context of the

> Assembly's resolution of 28 May 1998 supporting the Government's commitment to rural residential development in the ACT.

Mr Speaker, the involvement in this process is that PALM prepared for the Government a way forward on their commitment for rural residential development. In the Government's response to the Rural Policy Taskforce in 1997, Mr Humphries said quite clearly - and he took it to the election - that the ACT Government was in favour of rural residential development. We employed a consultant to assist us to prepare this discussion paper, to prepare the way forward for the implementation of rural residential development. Mr Speaker, it is quite clear and it is curious. We took this to the election. If you want to consult some of the booth results out at Hall, I think you will be surprised that the Liberal vote out there far outweighs the Labor vote.

In 1998 the Government commissioned a study into rural residential development in the ACT, and the study was undertaken by an independent team of planning experts and economic consultants. They are not from my department. They are clearly independent of the Government in that response. The report itself included a broad financial analysis of the merits of rural residential development and identified possible sites - Kinlyside, Melrose Valley and North Gungahlin. It also incorporated reference to the Assembly's resolution of 28 May 1998 supporting the introduction of rural residential development. The report was released as a discussion paper for broad community consultation on 29 October, for an initial period of some six weeks, but we actually extended it. A total of 31 submissions were received. A report on the results of that consultation process is now being prepared.

It is curious that Mr Corbell thinks that this implementation of government policy is in fact some sort of analysis of government policy. If you want to have input into government policy, you can come and join the Liberal Party and attend our policy conventions, as many members do. But this is about implementation. It is not an independent analysis of the Government's policy. It is not an inquiry into government policy. We brought in some consultants to help us develop a path forward because they had some special knowledge of this and we wanted to make use of it.

Mr Speaker, I would say again that perhaps in that first line that first "independent" should not have been there, but it is quite true the discussion paper was prepared as part of an independent study for the Territory, and this is what we have. It is part of the discussion paper. Mr Corbell has seen these documents, and he will see that a number of government agencies were consulted. They included the Office of Asset Management, Environment ACT and the Emergency Services Bureau. Indeed, ACT Housing were included in these discussions. Oddly enough, some non-ACT government groups were consulted during the paper's development, including the National Capital Authority, neighbouring New South Wales councils, the Conservation Council of the South-East Region and Canberra, the Hall and District Progress Association and the Rural Lessees Association.

This is a process about putting in place government policy. This is a process about putting in place a resolution that the Assembly passed that rural residential development should go ahead and that we should have a path forward. This is about the path forward.

We did employ some independent consultants to help. We employed people outside the Government to assist us in the preparation of this. We went to other groups to help us assist in this. The decision here is: What is this about? This is only about the fact that the Labor Party do not like the concept of rural residential development. You cannot attack the Assembly's decision because the Assembly has voted in favour of the Government's move to put rural residential development in place, so you go for the process.

For the information of members, it was curious that when I went to mention this yesterday Mr Corbell jumped to his feet and said, "That has no relevance here". Approximately 5,000 pages of material were involved in the FOI. Given that a large amount of work has been done, given that that material was there and Mr Corbell is entitled to FOI it, as is his right - and we waived the fees for it - and Mr Corbell chose to take some 1,650 pages of it, it shows quite clearly that the process is there. The process has been followed. Input from others was received but, for instance, for the assessment of sites we brought in specialist knowledge. We brought in independent knowledge to make sure that we had something to work with.

Mr Speaker, the introduction to the discussion paper makes it quite clear that PALM, in the ACT Department of Urban Services, commissioned the preparation of the discussion paper on rural residential development following a number of inquiries over previous years and that the paper was prepared in the context of the Legislative Assembly resolution of 28 May 1998 supporting the introduction of rural residential development in the ACT and progressed the Government's response to the Rural Policy Taskforce. The study provides an analysis of rural residential development as a separate land use and identifies suitable sites, and this is what we have gone ahead and done. We brought in some independent consultants to help us with that. Again I would say perhaps the "independent" in the first line is an unfortunate use, and for that I would apologise. But the study was done independent of PALM. Then, in conjunction with other groups, including non-government groups, the study was brought together for a discussion paper. What have we done with the discussion paper? We have put the discussion paper out for discussion so that people can have their say on what is in it. Many people knew of this process. The process is appropriate. I am told it is the process that is normally followed when the Government is implementing its policy.

If some form of corruption was found, of course you would go to an independent assessor or indeed to the police as appropriate. You would refer something to the police for an independent discussion in that regard. But in this case we brought in independent consultants to give us advice on how we should proceed with this. My reference yesterday to "independent" is accurate in that they were prepared by consultants. Then other groups were brought in to discuss them.

Mr Stanhope: This is like Michael Moore's three principles. These are the three principles of independence.

MR SMYTH: These groups are independent. You cannot deny that they are independent of government. You just do not like this decision. You do not like it that we are getting onto providing options for the people of the ACT in rural residential

development. You do not like the fact that the Assembly vote was with the Government that we should proceed with this. When you cannot get the decision, you go for the process.

It might have been going too far to suggest that the discussion paper itself was independent. The consultant was clearly asked to reflect both the Government's and the Assembly's view of rural residential development. I would regret any confusion that this has caused. But what we have here is a clear process. There is nothing untoward in this process. The process has gone along clearly to implement the Assembly's resolution that we should have rural residential development. There are those in this place who do not like it. There are those in this place who voted against it.

Mr Stanhope: We just want it to be independent.

Mr Berry: We want somebody to tell us the truth. Do not lie to us.

MR SMYTH: No, there is absolutely no need for an independent study to implement government policy. If you want to come and help the Government develop policy, you can come and join - - -

Mr Humphries: Mr Speaker, I rise on a point of order. Mr Berry has used the word "liar" in this debate. He knows that is not parliamentary and I ask him to withdraw it.

Mr Berry: Do not mislead us deliberately.

MR SPEAKER: Mr Berry, withdraw that too, please.

Mr Berry: No, that is the substantive motion before the house, Mr Speaker.

MR SPEAKER: You used the word "mislead", I thought.

Mr Berry: Yes. That is what the motion says.

Mr Stanhope: Yes, it is a censure motion.

Mr Berry: It is a censure motion about misleading.

MR SPEAKER: Yes, but you were not referring to the motion before the house.

Mr Berry: Well, I sort of was. It is the one about - - -

Mr Quinlan: We are just referring to him.

MR SPEAKER: Order! Mr Corbell was heard in silence. This is an important motion and I think that the Minister deserves to be heard in silence as well.

Mr Quinlan: Can he answer the question then?

MR SMYTH: I think I am addressing the question. The question here is that they do not like it that we are going forward and implementing something that has Assembly approval. We have a recommendation. We had a vote last year from the Assembly approving rural residential going ahead. We are exploring options. We have brought in independent advice to help us with that. The discussion paper has now been released. I would say again that I regret the "independent" perhaps in the wrong place.

Independent advice helped to put this together, then in consultation with various arms of government and indeed the community the discussion paper was put together. The discussion paper is out there. The process is clearly documented in the papers that Mr Corbell has chosen, the 1,600 out of the 5,000 that he possibly could have taken. Discussion papers have various iterations. It is quite a clear process.

I remember a debate not so long ago when we were talking about some four drafts of the superannuation committee's discussion papers that changed, I would assume, over time and that changed without some of the members seeing copies of them. In one case I think Mr Hird jumped from version 2 to version 4 without seeing version 3. Clearly the process of drafting will see changes. Clearly consultants like the work they do and are defensive of what they come up with, but this was a paper that was about implementing government policy, about implementing a decision made by the Assembly and affirmed by the Assembly. The process is fine. I would regret that people have misunderstood or that I have made an inadvertent use of "independent" where I should not have but, Mr Speaker, the discussion paper is out there. This policy will go ahead and the black and white of it is that Labor do not like the whole thought of rural residential development. They have opposed it from the start, but it is important that we get on as a government with introducing and implementing our own policy and with implementing the will of the Assembly.

MR STANHOPE (Leader of the Opposition) (11.54): This is, as you said, Mr Speaker, a very important motion. Censure motions are not brought lightly by any member of this place. This Minister stood up last year in the face of community concern about the development of a rural residential policy for the ACT and said that he had commissioned an independent process for assessing, independently of the Government, the prospect of a rural residential policy for the ACT. The Minister was quite specific about that. He has spoken consistently of an independent process, of an independent investigator, of an independent consultant. He told us as recently as yesterday that yes, he stood by his claims; that he had produced and circulated an independent study.

Mr Humphries: Yes, and he has retracted that today.

MR STANHOPE: That was not a retraction. The words used yesterday by the Minister - and we need to reflect on those - put the lie to the nonsense that the Minister has now just spoken in rebuttal of this motion. Yesterday Mr Smyth said:

> We have had a process. I believe that it is an independent study and that the process here has been followed. The process of departments dealing with consultants in this has produced an independent study, yes.

That is what the Minister said to us yesterday. The Minister was asked three questions yesterday on this subject and repeated those claims three times. The Minister had an opportunity, until this motion was moved today, to correct the record had he felt that what he said yesterday was wrong. In his weaseling attempts to retract his answers of yesterday, what did he just say? He said, "In what I said yesterday I might have been going too far". This is now propounded by the other side as a retraction of the misleading that occurred yesterday in this place in three separate answers. The Minister has been given plenty of time to correct the record. He did not take that opportunity. He now stands up, when faced with a censure motion, and says, "Yes, I might have been going too far. Perhaps I used the word 'independent' in the wrong place". That is simply not good enough.

The people in this Assembly and the people in this community have a right to expect that when a Minister stands up and says, "We, the Government, have produced an independent discussion paper" that will be interpreted in accordance with the usual meaning of the word "independent". My colleague Mr Corbell has given the usual meaning, the *Oxford Dictionary* meaning, namely, "done without coercion, authority or control". What does the record show here? The record shows quite clearly from the mouth of the consultant, the independent consultant who was commissioned to produce an independent report, that this document was massaged; that this document was adjusted to reflect the position of the Government.

The Minister has made much of the fact that there were 5,000 pages of documents. The Minister, for reasons that escape me, has made much of the fact that under the FOI request put in by Mr Corbell we sought to obtain access to 1,600 of those. The sad fact for the Minister, of course, is that perhaps there were 5,000 pages but it has taken only one page to show the extent to which this Minister has misled this place and the people of Canberra. We did not need the 1,600 pages. It has taken one page to show that he is a goose, two pages to show that he has misled this place, three pages to show that he is incompetent. We did not need the other 1,597. They are clear, on the face of it.

Let us just read these documents again. This is just stark. This is from the consultant:

> Foreword is good.
>
> I wont debate the issues section any more, but it still reads as an advocacy rather than a realistic summary of the issues raised by the paper.

In other words, the consultant is saying, "You have spent $22,000 to use my name and my independence as a consultant to run the Government's line". Why do we need to run the Government's line? Let us go to some of the history of this. We need to run the Government's line because of the awful, embarrassing mess that this Government made over Hall/Kinlyside. This Government paid out $120,000 on a contract which it subsequently repealed. It probably expended $200,000 to $300,000 in government resources through the use of staff to work up the Hall/Kinlyside proposal. If we do some rough sums, Hall/Kinlyside cost us half a million dollars. It was an appalling

embarrassment for the Government and we need to retrieve some ground on it by proving that rural residential is really a great idea; that the basic plans that the Government had in relation to Hall/Kinlyside were sound and should go ahead. The Government said, "We will pay another $22,000 to show that all along we were right in that inherently flawed process. We are trying to cover up the damage that we did to ourselves".

This is a black-and-white case, as Mr Corbell has said. This is a case in which a Minister has come into this place and led the members of this Assembly, and through this Assembly the people of this community, to believe that we were engaged in an independent, arm's length, objective assessment of rural residential development. We were not. We were not involved in an independent, arm's length, objective assessment of rural residential development.

Ms Carnell: That is not what it was meant to be.

MR STANHOPE: That is what the Minister told us we were involved in, and it is not what we were involved in. We were involved in the payment of significant moneys to a consultant to prepare a document which was so massaged and amended by the Minister's officers that the consultant himself went on the record to claim, in effect, that he could no longer claim ownership of this document because it no longer reflected his views; it was simply an advocacy of the Government's position.

Those people in the community who have been duped into responding to this independent discussion paper have been grievously misled. They have been asked to respond to a paper which simply reflects this Government's peculiar view of rural residential development, a view which arose out of the fact that it was so embarrassed over the appalling mistakes, mismanagement and maladministration surrounding the Hall/Kinlyside proposal. That is what this is all about.

This Minister has simply found himself incapable of rising above that appalling background to start afresh, to start with a clean slate, to learn perhaps from the debacle that was Hall/Kinlyside, and to be involved in a constructive consideration of the issues going to the establishment of rural residential development in the ACT - a lost opportunity to do the right thing, to deal with it objectively, and a complete misuse of consultancies. If all the Minister wanted was a document which reflected the Government's position to allow the Government to implement their policy on rural residential development, then he could simply have asked his department to prepare the document. We did not need to go through this charade of seeking an arm's length, outside, objective source to give us objective advice that might be the basis of a rural residential policy that was sustainable.

The documents showing the extent to which this Minister has misled this place and the community have been circulated. They are stark. Members can look at yesterday's *Hansard*. Members can look at the extent to which the Minister simply dug in, apart from conceding that he was not necessarily aware of what his department does. The "I am not aware" response which the Minister persistently gives to questions in this place will be the Minister's political epitaph - "Mr Brendan 'I am not aware' Smyth, Minister for Urban Services".

In conclusion, Mr Speaker, the case is clear. The documents have been circulated. Members have the *Hansard* in front of them or have access to it. The statements are completely contradictory. The Minister is at complete odds with the consultant in this matter. The consultant named in this sorry affair does not believe it was independent or at arm's length. The Minister has persisted in it. He has mouthed some weasel words that he might have been going too far in calling it an independent discussion paper; that he did not really understand what it was that he was saying; that he was wrong. But the fact remains that he has misled this place. He has misled this place grievously and he should be censured. There is no step available for the members of this place other than to censure the Minister for misleading them in this place.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (12.04): Mr Speaker, let me say at the outset that I think Mr Stanhope and the Opposition have seriously misconceived what the discussion paper was meant to do. I think the debate has become a little bit off the mark by discussing what the discussion paper was meant to do, because this is a motion about censuring the Minister for what he had said in the Assembly, not about what the discussion paper said. But it has been raised, and I think it should be addressed.

It has been suggested that the discussion paper was intended to be an independent assessment of whether we should go down the path of rural residential development in the ACT and that, because clearly the consultants, during their preparation of the paper, were asked to reflect the views that had been stated already by the Government - and, indeed, by the Assembly - on the question of rural residential, therefore this particular objective was not achieved.

Mr Speaker, let me make it absolutely clear. The report was not intended to be a clean-slate examination - a blank sheet of paper, starting point examination - of whether we should have rural residential in the ACT. That was not the purpose of the discussion paper. The discussion paper was meant to be the next step in implementing a stated government policy - a policy stated by the Government, and, incidentally, by the Legislative Assembly.

Ms Tucker: Some of them.

MR HUMPHRIES: Okay, I concede Ms Tucker's point - by a majority of the Legislative Assembly. But that majority included, I might say, every single member of the Australian Labor Party, because they indicated their support for rural residential development quite clearly during the debate before the election.

Mr Corbell: You are unbelievable, Gary.

MR HUMPHRIES: If you doubt me, Mr Corbell, I have still got Dr Steve Garth's comments on the ABC on this subject.

Mr Stanhope: Who?

MR HUMPHRIES: He was a Labor candidate. Are you saying that he did not speak for the party? He made it clear that the party supported rural residential development, because he was asked about it on the ABC.

Mr Stanhope: I think his views are about as relevant as Lucinda Spier's, and we know what she thinks.

MR HUMPHRIES: All right. Let us forget about Dr Steve Garth. I will not talk about Steve Garth. Let us talk about your views. Mr Hargreaves, you laugh. You voted for rural residential.

Mr Quinlan: Let us talk about Brendan Smyth's incompetence.

MR HUMPHRIES: You voted for rural residential just a few months ago, Mr Quinlan.

Mr Hargreaves: When did I do that, Mr Humphries? Mr Magic Memory, when did I do that?

MR HUMPHRIES: You did. Have you forgotten?

Mr Quinlan: Quote me.

MR HUMPHRIES: I do not have to quote you. You appear in the minutes of the Assembly. I have not got the minutes with me. I will bring them back and I will seek leave to table those minutes of the Assembly later. You voted for it, Mr Hargreaves. You voted for it, Mr Quinlan. You voted for it, Mr Berry, Mr Corbell and Mr Stanhope. You all voted for a motion last year - - -

Mr Hargreaves: When?

MR HUMPHRIES: Well, they have obviously forgotten about that.

Mr Quinlan: And so have you, because you cannot say when.

MR HUMPHRIES: I will obtain those minutes and I will bring them to this Assembly. You can see it. The fact is that every one of you voted for a motion - I think it was put by Mr Osborne - in this place which, among other things, supported the concept of rural residential development in the ACT.

Mr Hargreaves: We have not misled this Assembly.

Mr Quinlan: We are talking about misleading here.

MR HUMPHRIES: Mr Speaker, I would ask for a little bit of protection here. We are talking about that.

Mr Hargreaves: How about going to relevance then?

MR SPEAKER: Order, please!

MR HUMPHRIES: Mr Speaker, we are also talking about the purpose of the paper that Mr Smyth referred to yesterday. I am making the point to the Assembly that that report was not intended to be a completely out of context assessment of rural residential. We were not saying to these independent consultants, "Come into the ACT and just tell us what you think about rural residential". That was not the purpose of the exercise. The purpose of the exercise was to progress to the next stage the stated position of the Government and of the Legislative Assembly on rural residential development. That is what it was all about.

Ms Tucker: The consultant did not seem to understand that.

MR HUMPHRIES: No, he did not. I concede that. The consultant certainly at some point - - -

Ms Tucker: What was the problem there? A contract problem?

MR HUMPHRIES: Well, perhaps it was.

Ms Tucker: Again?

MR HUMPHRIES: Perhaps it was, Ms Tucker; but let me make the point that the consultant clearly departed from the view that the Government had taken on rural residential in the course of discussions with the department and others about the process of rural residential development. In that respect, the department - not the Government, not the Minister - as far as I am aware, made it clear that the consultant should reflect the views that the Government had already taken on this. He was not being asked: Is rural residential a good thing or a bad thing? He was asked to progress the way in which rural residential would go forward in light of the Government's and the Assembly's views on this subject. That is what that document was all about.

Mr Speaker, that is fine. We have got the position stated as to what that paper was all about. Mr Smyth came into the Assembly yesterday and described that as an independent report. He was right to the extent that it was a report commissioned independently of the Government; that is, it was obtained from people who were not employed by the Government, whose views were being sought, to be provided to the Government and, once the paper was prepared, to the community, on issues connected with rural residential development. But it was, as he himself has conceded, probably an overstatement to say that therefore the product of that work, when the discussion paper was finally available, was independent of the Government. Clearly, officers of the Government represented the Government's views to the consultants, and it seems fairly clear that the consultants changed their view or what they produced as the end product of their work to conform with what the Government had already stated was its view about rural residential development and, as I repeat, what the Assembly had said about rural residential development.

Mr Wood: If the Government wants to send its views out, it does it itself; it is as simple as that.

MR HUMPHRIES: No, that is not the case. The Government has the power - as indeed your Government had, Mr Wood - to commission consultants to assist it in developing its views to put before the community. And you did it too, Mr Wood, incidentally.

Mr Wood: No. If we wanted the Government's view, the Government would do it. It was as simple as that.

MR HUMPHRIES: Yes, you did, Mr Wood. It was not about whether we should have rural residential. It was a discussion paper about how to implement rural residential, in effect. It was a study about rural residential development in the ACT, issues to do with the development of that concept.

Mr Speaker, Mr Wood raises a question about independence of reports. Let me just draw Mr Wood's attention to what happens when independent reports are produced by a government which does not like those reports and does not want to deal with them. We at least have put this report on the table. What happened to the McBeth report, Mr Wood?

Mr Stanhope: It is your report.

MR HUMPHRIES: No, it is not. It was your report. The McBeth report was your report. The Follett Government produced a report, which came to it in September of 1994, about fire hazard reduction practices in the ACT, and what did you do about it? You suppressed it. You suppressed the report. It did not conform with the Government's views. So you suppressed it. You put it in a bottom drawer, where it lay until March 1995, when this Government came to office and had to produce it. That is what happened to it.

We take a different approach in this Government. We believe that the work that is being done by consultants at the expense of the ACT community has a role to play in informing public debate. But, of course, it has to be put on the table with the proviso that the Government is not going to commission consultants to, in effect, provide for a hampering of the process which has been begun by the Government and which has been supported by the Assembly.

Mr Stanhope: You can't possibly believe this, Gary.

MR HUMPHRIES: I absolutely do, Mr Stanhope, and when you are in government one day - and let us suspend disbelief and pretend that it will happen one day - you will do precisely the same thing. Believe it or not, Mr Stanhope; you will ask consultants for views sometimes which you do not agree with. If you are pretending to me that you are going to just put this on the table without any modification and say, "Oh, we have got

this report but we do not agree with it. We will put it on the table anyway", you are pretending that I am pretty gullible, Mr Stanhope, and you know and I know that that is not the case.

Mr Speaker, we take a different approach from the approach taken by the former Government. *(Extension of time granted)* It should be put on the table. It has been, but it does reflect the Government's views. There are no two ways about that.

Mr Speaker, let me make one last point in this debate. The convention about motions of censure has been that Ministers, or others, for that matter, who mislead the Assembly - that is, who make statements which are false and misleading - should be censured for that. This Government has supported that principle. The Opposition has certainly supported the principle. We have all supported that principle. I ask Ms Tucker to listen very carefully to this point in particular. There has always been the view that, if members are prepared to undo the damage that they may have done by their earlier statements, to correct any misleading impression which may have been created, at the first available opportunity, then they should not experience the effect of a motion of censure. That has always been the Assembly's view.

Members are faced today with the position that the Minister has come back and has qualified what he said yesterday. I would ask members to cast their minds back to the motion of censure of Mr Corbell last year about outages in Victoria. Mr Corbell gave inaccurate information to the Assembly about the reliability of power supplies after privatisation in Victoria. Mr Corbell came back to the Assembly, quoted his source and said, "Well, I was accurately quoting my source. If I had had other information available to me - in fact, the full picture available to me - I may have said something different to the Assembly".

Mr Smyth has not used any less honest an appraisal of his position today in the Assembly. It would be a travesty if Mr Corbell were not to have been censured on that occasion but Mr Smyth were to be censured today in the same circumstances. Mr Speaker, to be consistent about censure motions, I say that members should not support this motion today.

MR OSBORNE (12.17): Mr Speaker, I tend to roll my eyes when anyone stands up and talks about censure motions because I think that over the years they have tended to become quite meaningless. I think I said when Mr Stanhope moved the motion against Mr Moore that, if you are serious about getting stuck into a Minister, you move a no-confidence motion. I have to say, though, that this debate is not about the issue of rural residential, because I have stood up in this place and indicated my support for the concept and I will continue to support the concept. This is about the use of the word "independent" by the Minister - not outside in private meetings but in this chamber.

Obviously, today he has to a certain extent clarified the position. I think it was an apology. I think that to a certain extent he has explained his role in the situation, Mr Speaker. When I was approached by Mr Corbell yesterday, I must admit that

I chuckled, because I have always believed that every time the Government commissioned an independent report it was giving the consultant the answer and saying, "Write the question". Unfortunately, in this case, Mr Smyth has been caught out.

I must admit to rarely believing that any of the reports that have come down from governments over the years have been completely at arm's length. However, Mr Smyth quite clearly indicated to the Assembly that this report had nothing to do with the Government; that it was independent in the context of the definition that Mr Corbell has provided. However, as he has explained today, that is not exactly the case.

I think that this Assembly does need to wrap him over the knuckles. I think it was a feather duster that was used last time with the motion to express grave concern. The matter is reasonably serious. The Minister has clarified the position. I think that is commendable.

I will not be supporting the censure motion, but I will follow the lead of the Labor Party and move a motion to express grave concern. I would have thought the hospital blow-out of $10m warranted a censure motion, but it did not happen. Mr Stanhope had a discussion with me about it today. I was keen to do something against the Minister in relation to school buses; but the word I got back - although Mr Stanhope denies it - was that the Labor Party would not support a censure motion.

Mr Stanhope: Let us talk about it again, Ossie. It must be three strikes and you're out with this bloke.

MR SPEAKER: That is true, Mr Stanhope. Two, in fact, here.

MR OSBORNE: Obviously, the Minister has been caught. He has apologised; but I do think that we need to at least register our concern at the use of the word "independent". As I said, I will not be supporting the censure motion. By Mr Smyth standing up and, as I said earlier, I think, apologising, or at least clarifying that they were involved with the report, he has certainly calmed down what could have been a more serious situation. As I said, I believe that the Assembly does need to register our concern, given the fact that the Minister has more than once certainly given the impression to members in here that this rural residential report was completely independent.

Mr Speaker, I support the concept of rural residential and I intend to support it in the future. This debate is not about that. I do believe that those opposed to it will use every possible avenue to try to disrupt it. I think that this Assembly, the Government, all of us, learnt a lesson over the Hall/Kinlyside situation and that that mistake will not be repeated; but we need to look beyond that and be positive about what I think will be a tremendous shot in the arm for the building sector in the Territory. I intend to support it when it comes before the chamber again. But this motion is not about that issue. It is about the use of the word "independent". That is why I will move an amendment to Mr Corbell's motion.

MS TUCKER (12.23): I will be supporting the censure motion, even though I have heard Mr Smyth acknowledge that he did mislead in some way, or was incorrect in his language, or however he expressed his moving back from his original position. I have heard what Mr Osborne has just said. He is going to attempt to reduce the censure motion to an expression of grave concern from the Assembly. I would stay with the censure motion because I want to actually send a message to the whole Government through this. I notice from interjections throughout this debate that there has been a defence from members of the Government saying, "This is how you do business. This is how it is always done". I find that pretty concerning, because I think it is misleading to the community.

Obviously, there are sometimes issues about ownership when a government department employs a consultant to do work for it. But this is a discussion paper which gives the impression that it has been prepared by consultants as their paper and it is prepared for the Department of Urban Services. Members of the Government have said that this was not about giving an objective picture on the question of rural residential. Well, I am sorry, but the community was under the impression that that was exactly what it was about. Obviously, the consultant was under the impression that that was what he was producing. So, there are a couple of issues there for a start - how what was required in the contract was specified in the contract. Obviously, it was not well put together, if the consultant was under the impression that he was actually producing an objective picture of issues related to rural residential.

I think it is quite enlightening to look at these FOI documents and to see his distress at how that process was conducted. I have to say that I am actually very concerned about the likelihood of that particular consultant getting a job in this town after this, because there is a general sense that you do create what the Government requires and he has got his professional credibility at stake as a consultant to produce what he thought was an objective paper on these issues, which clearly it is not. There is an absolute classic in one of these dot points. It says:

> Selective use of rural residential development at the interface between the hill and buffer areas, and urban areas of Canberra may be used to create a more environmentally sympathetic edge to the urban edge of the metropolitan area.

And the comment on the side from the consultant is:

> Putting houses in the environment would be more sympathetic to the environment than leaving it alone?

How could anybody suggest that, when we already have planning documents which have specifically decided that we would have this buffer zone and that this was part of the identity of the national capital? It really is of grave concern.

The papers obtained by Mr Corbell also appear to confirm my original impression of the discussion paper, in that it appears that the consultant was pressured to change his report to fit government policy. The deletion of references to the bungled Hall/Kinlyside

development proposal has already been mentioned by Mr Corbell; but I have identified a further anomaly regarding one of the other areas recommended for rural residential development in the report, and that is the Melrose Valley.

On the last sitting day in 1998, I asked Mr Smyth a question regarding how the Government had determined that Melrose Valley was suitable for rural residential development in its response to the Rural Policy Taskforce report, which pre-empted by some nine months the release of the Government's discussion paper on rural residential development where the assessment of suitable sites was supposed to have been undertaken. I had grave suspicions that a decision had been made some time ago within the Government that Melrose Valley was to be redeveloped for rural residential and that the discussion paper was merely rubber-stamping this prior decision.

Melrose Valley stood out particularly because it is currently a working rural property, and in the Rural Policy Taskforce report it was recommended that such properties be given 99-year leases. However, in the Government's response to the task force report, Melrose Valley was the only location that was excluded from consideration for a 99-year lease because of the Government's intention to undertake a study into rural residential development.

The Minister took the question on notice, but I was not provided with a response until the beginning of February, and only after some prompting. Unfortunately, the response was totally inadequate, as it referred only to the Government's discussion paper.

Ms Carnell: On a point of order, Mr Speaker: I think Ms Tucker is actually debating the report, rather than debating the motion that is in front of us. I think we were all willing to allow that to happen for a little while, but this is getting ridiculous.

MR SPEAKER: There is a question of relevance. I do uphold the point of order.

MS TUCKER: Mr Speaker, I would like to argue that. Basically, what I am saying here is that there has been an impression that we have been seriously misled about the independence of this report and I am actually giving more evidence as to why I believe that is not an independent report.

MR SPEAKER: You are supporting the argument?

MS TUCKER: I am.

Mr Humphries: Mr Speaker, it has been conceded in this debate that, in the sense that Ms Tucker has referred to it, the report is not intended to be independent, and therefore this is all irrelevant to the debate. We are not debating the report. We are debating whether the Minister should be censured for what he has said about it.

MR SPEAKER: Again, I uphold the point of order. Please come back to the point of the motion, Ms Tucker.

MS TUCKER: All right. Basically, I guess what I have been trying to make quite clear is that there has been a suspicion for some time that this report is not independent. We are hearing the Government say that they are not actually concerned about whether it is independent or not. It was about representing their position. I find that absolutely totally unacceptable, because not only has it misled members of this Assembly, but it has misled people in the community who, in good faith, have made submissions in relation to this discussion paper. I think we need to get a very clear message through to this Government now that this particular mentality is not acceptable to members of this Assembly or to the community.

We see it across a number of areas, whether it is about contradictions in how conflict of interest is used or about the imperilling of the committee system by this Government because its agenda is threatened. It is an "anything goes" approach, which is actually not to do with good process or integrity. For that reason I will support this censure motion.

MR OSBORNE (12.31): I seek leave to move the amendment circulated in my name, Mr Speaker.

Leave granted.

MR OSBORNE: I move:

> Omit all words after "Assembly", substitute "expresses its grave concern at the use of the word 'independent' by the Minister for Urban Services in relation to the Rural Residential Development paper.".

MR CORBELL (12.31), in reply: Mr Speaker, what we have presented in this debate today is a straightforward proposition. I will reiterate it for the benefit of members who are still undecided. What we have said today is this: The Minister, on 29 October last year, said:

> ... today I am releasing for community consultation an independent discussion paper on rural residential development in the ACT.

He did not say "a discussion paper prepared by independent consultants" but "an independent discussion paper". Mr Speaker, the Minister also said:

> The discussion paper was prepared as part of an independent study ...

Therefore, this was an independent part of an independent study. That was clear and unequivocal, Mr Speaker.

Now I want to address the comments made by Mr Smyth and by Mr Humphries in their assertion that the Minister has apologised for the inadvertent use of "independent", to use Mr Humphries' and Mr Smyth's words. Mr Smyth has said, "I apologise for using the word 'independent' discussion paper on 29 October last year". He has said, "I apologise for that. That was wrong of me. I will clear up any misunderstanding". Mr Speaker, the Minister knew over a month ago that I had requested papers about the preparation of this

report. The Minister knew two weeks ago that I had viewed copies of the documents associated with the preparation of this report. The Minister knew a week ago that I had requested copies of those documents. The Minister knew that last Friday I received copies of those documents. The Minister knew what I requested from all the documents associated with this study. But he did nothing to correct the record.

Mr Speaker, yesterday we drew to the Minister's attention five separate instances of changes required of the Government and/or complaints by the consultant in relation to the so-called independent discussion paper. We drew it to the Minister's attention during question time yesterday and we asked him whether or not in light of those comments he still believed that the report was independent. I will quote to you, Mr Speaker, what the Minister said:

> I believe that it is an independent study and that the process here has been followed. The process of departments dealing with consultants in this has produced an independent study, yes.

They are not my words, but Mr Smyth's words. He has not withdrawn those comments. He has said absolutely nothing about those comments. As late as yesterday, even when we drew it to his attention, he said, "I believe that it is an independent study". Mr Speaker, he is still insisting that it is an independent study. After question time yesterday he had about three hours to check his comments, to reflect on what he said and to come back to this place and say, "I was wrong. I apologise. I need to draw to the attention of the Assembly some comments I have made which it has been pointed out to me are wrong". He did no such thing. Mr Speaker, he had an extra hour first thing this morning to come down into this place, seek leave and make an explanation. He did no such thing. He has said only, "Oh, I may have said the wrong thing", when we moved the motion of censure.

It took this Opposition moving a motion of censure against the Minister for him to back down. That is not acceptable. He was given plenty of opportunities, Mr Speaker, and he took no action whatsoever. The fact that he was so ready to admit in this debate this morning that he had used the word "independent" when he should not have shows that he knew well beforehand that what he had said was misleading; but he made no attempt yesterday afternoon and he made no attempt this morning to correct the record. Instead, he thought he could try to bluff it out. He thought he could try to hold the line and hopefully we would not pursue it. Well, he was wrong. He was dead wrong. That is why we are moving the motion of censure against him this morning.

Mr Speaker, I would now like to briefly reiterate the other points that are important in this debate. The first is the comment made by Mr Osborne. Mr Osborne has said that he believes that a motion expressing grave concern is appropriate because that is the same thing as we did to Mr Moore. Therefore, the levels of responsibility must be about the same. I have to dispute Mr Osborne's perceptions, and the reason is this: Mr Moore had a motion of grave concern moved against him because of the way he was managing his portfolio, because of the Assembly's concerns about his management of the health system. We have moved a motion of censure against Mr Smyth because he has misled

the Assembly. That is a far more serious accusation. It is a far more serious breach of the conventions that govern the administration through a parliamentary democracy such as ours.

If he has misled this Assembly, it is not a matter of grave concern; it is a matter for censure. It is a matter for censure, because our democracy is based on the foundation that the executive will not mislead the parliament. If we do not have that concept in place, the notions of accountability that go with having a parliament scrutinising the activities of the executive go out the window. If this Assembly today decides that it can just move grave concern in the Minister, then we are throwing out the window any ability to effectively scrutinise the activities of this Government.

He misled this place. I have provided members with five distinct examples of how he has misled this place and I have demonstrated that his claim that this is an independent study is fundamentally flawed, Mr Speaker. The Government may not like it; but they have been, to use Mr Osborne's words, caught out, and caught out badly. Mr Speaker, I do not think there is much more to be said. Quite clearly, the Minister claimed that it was an independent study. As late as yesterday afternoon he was still insisting that it was an independent study. We have shown that that is not the case. He has misled this place. He is responsible for the actions of his public servants, and he must be held responsible, through supporting this motion of censure.

Question put:

That the amendment (**Mr Osborne's**) be agreed to.

The Assembly voted -

AYES, 8	*NOES, 7*
Ms Carnell	Mr Berry
Mr Cornwell	Mr Corbell
Mr Hird	Mr Kaine
Mr Humphries	Mr Quinlan
Mr Osborne	Mr Stanhope
Mr Rugendyke	Ms Tucker
Mr Smyth	Mr Wood
Mr Stefaniak	

Question so resolved in the affirmative.

Motion, as amended, agreed to.

Sitting suspended from 12.42 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Drug Trial

MR STANHOPE: Mr Speaker, my question is to the Chief Minister in her capacity as Acting Minister for Health. Yesterday the Chief Minister announced that the ACT would conduct a trial of naltrexone and noted also the current trial of buprenorphine.

Ms Carnell: I actually announced it in 1997.

MR STANHOPE: Mr Speaker, the Labor Party is supportive of these trials. In response to the Chief Minister's interjection, the Chief Minister announced that the ACT would conduct the trial in the near future. Last month the Minister for Health briefed me on these issues and specifically asked me to keep the date of the trial confidential so that the scientific efficacy of the trials would not be compromised, and management problems would not arise as a result of both local and interstate drug users attempting to get on the trials. Last November a member of my staff was briefed by the Department of Health to the same effect, with my staff also being asked by the department to treat the issue confidentially. It was raised last week in discussions that I had with Dr Gabrielle Bammer. Can the Chief Minister tell the Assembly why she does not share the concerns expressed to me by the Minister for Health and why she does not share the concerns expressed to my staff by the Department of Health about the need to keep the timing of the naltrexone trial confidential?

MS CARNELL: Mr Speaker, there are actually two trials, one trial that is on at the moment and one trial on naltrexone. My press release, by the way, was approved and sanctioned by the department. The trial that is going on at the moment, which we will not talk about, is the trial that Mr Stanhope is talking about. He has just got confused, Mr Speaker, which is not unusual. The trial that is going on at the moment is not one that is being publicised. By the way, it is not a naltrexone trial directly. Scientific efficacy requires that the trial be not publicised. The people who access the trial need to be dealt with in a particular way to achieve scientific efficacy, I am advised.

The naltrexone trial which is due to start later this year is not in the same bracket. I think the person who did the interviews on that trial was the doctor, the professor or associate professor of general practice, who put that trial together. It certainly was not me who did any interviews that were required on naltrexone.

Mr Speaker, it just seems that Mr Stanhope has got confused but again between two different trials that are occurring, two different scientific protocols. Unfortunately, Mr Speaker, this shows but again Mr Stanhope's total lack of understanding in this important area.

MR STANHOPE: I have a supplementary question. I would like to ask the Chief Minister whether or not she believes a bipartisan approach is an essential element of any successful strategy to tackle Canberra's drug problems. Seeing that she seems to think that I have some confusion in my understanding, and given that the Minister for Health has provided me, by way of briefing, with various legal advisings on the problems

surrounding the Government's proposal to establish a drug injecting room and that there is undoubted public and media interest in this issue, I wonder whether she might clarify for me whether she thinks it would be appropriate for me to release the legal advisings.

MS CARNELL: Mr Speaker, what a stupid question. Mr Speaker, you have to start worrying about question time. To start with, the supplementary question had absolutely nothing to do with naltrexone trials. You would have to ask about the supplementary question in terms of its capacity at all. Mr Speaker, it is not appropriate for legal opinions to be released in this place.

Mr Berry: They are not legal opinions to you. They were provided to us.

Mr Humphries: Not to you either.

MR SPEAKER: Order! Chief Minister, please go on.

MS CARNELL: Thank you, Mr Speaker. They were not, as Mr Humphries says, legal opinions to the Opposition as well. Mr Speaker, I believe very strongly that a bipartisan approach is the only way forward in the drug area. These are very difficult areas, very important areas. I have to say that the ACT has been right out there, leading Australia, in terms of the debate. There are people in this house who have very different views in areas of drug law reform, safe injecting places, heroin trials, naltrexone trials, buprenorphine trials or whatever. There are very different views in this place, as you would know, Mr Speaker. It is essential, though, that we have a bipartisan approach, in fact, maybe a nonpartisan approach, to this important area. Mr Speaker, I am not sure that a nonpartisan approach would run to a question in question time on the scientific efficacy of particular trials and why I might have put out a press release. If those opposite were really interested in a nonpartisan approach, Mr Stanhope would have asked me a question about why that press release went out and why Dr Nick Glasgow was the person who was available for interviews on the naltrexone trial. Then he would not have been embarrassed.

Mr Stanhope: I do not feel a bit embarrassed.

MS CARNELL: Well, you should be embarrassed. We are always very keen to go down the path of a nonpartisan approach - - -

Mr Stanhope: What, that I respect something in confidence? I have learnt not to do it again.

MS CARNELL: Mr Speaker, maybe the Opposition could learn a lot from - - -

Mr Stanhope: I have learnt not to trust the Government.

MR SPEAKER: Order!

MS CARNELL: Mr Speaker, maybe the Opposition could learn a lot from the position that - - -

Mr Stanhope: We have learnt.

MR SPEAKER: Order! Please!

MS CARNELL: Thank you. Mr Speaker, I think the Opposition could learn a lot from the Opposition leader in Victoria, Mr Brumby, who on Friday morning, before the special meeting of Premiers and Chief Ministers in Melbourne, came out and totally supported Jeff Kennett, something that I am sure Mr Brumby has not done terribly often, with regard to his position on heroin trials and other extraordinarily important areas. He gave the Premier his support in such areas. Mr Speaker, on the basis that Mr Kennett's position on this is fairly similar to mine, I have been waiting with bated breath for our Opposition to do the same.

Mr Stanhope: I take a point of order, Mr Speaker. Just on that point, the Labor Party, and I can speak on behalf of all six of us, supports the drug trial. All six members of the Labor Party, Mr Speaker.

MR SPEAKER: Order! There is no point of order. If you wish to make a personal explanation at the end of question time you can do so.

John Dedman Parkway

MS TUCKER: My question is to Mr Smyth and it relates to his announcement today that the Government will be proceeding with a plan variation to allow the John Dedman Parkway, the Gungahlin Drive extension as it is now called, to be built to the east of the AIS. Minister, is it correct that you now have revealed the true reason why you doubled the bus fares for Gungahlin residents in the new ACTION network - so that they will be forced to use their cars more and therefore will be right behind your proposal to build the John Dedman Parkway, oops, the Gungahlin Drive extension, along the most environmentally destructive route and against the wishes of affected residents in Kaleen, O'Connor and Aranda?

Mr Corbell: I want an announcement, Brendan. Gary made this announcement 1½ years ago.

MR SPEAKER: Order! Settle down everybody.

MR SMYTH: Let us think about what Mr Humphries announced 1½ years ago. Mr Speaker, no, we have not announced this today as some means of forcing people into buses and to pay double the fare. We have followed the process that Mr Humphries started some years ago before the election when he said that we would adopt the eastern route. We have had that work done now and it is appropriate to put out the draft variation.

MS TUCKER: I have a supplementary question. Mr Smyth, why are you not proposing to undertake a full environmental impact assessment of the specific route you have chosen for the parkway, given that the previous study was only a preliminary assessment covering a number of options for the route and that the route chosen is the most environmentally destructive option through a key part of Canberra Nature Park? Does this make you even more gravely concerned about yourself as the Minister for the environment?

MR SMYTH: No. Mr Humphries endorsed the route as recommended in the PA - it is the eastern route - in November 1997, noting that no further environmental assessment was required on the identification of the preferred route. This was largely because of the substantial work undertaken under the last Minister for the Environment and Planning on a wide range of environmental considerations.

Hepatitis C

MR QUINLAN: Mr Speaker, my question is to the Chief Minister as Acting Minister for Health. Last year the Minister for Health announced the Government's intention to launch the hepatitis C lookback program. The aim of the program was to identify people who may have contracted hepatitis C from infected blood in order to track them down, notify them of potential infection and provide adequate compensation if necessary. Can the Acting Minister for Health bring the Assembly up to date on how many people have been contacted under the program, whether any of them have been identified as having contracted hep C as a result of receiving infected blood and, if so, what compensation arrangements have been put into place to date?

MS CARNELL: Mr Speaker, I think we are creating history here. An Acting Minister is being asked more questions than a Minister normally is asked. I will take that question on notice.

MR SPEAKER: All right. Mr Quinlan, do you want to ask a supplementary question?

MR QUINLAN: My supplementary question involved the numbers. I am sure the Minister will be expansive on the numbers, as mentioned in her speech yesterday.

Public Housing

MR HIRD: I see the Leader of the Opposition looking over here, as usual.

Mr Stanhope: I assume you are going to declare your support for the drug trial, Mr Hird.

MR HIRD: Listen and you may learn.

MR SPEAKER: Order! Mr Hird, would you ask your question. Unless you are asking the Leader of the Opposition a question, I suggest you direct it to somebody, please.

MR HIRD: I am directing my question through you, as always, Mr Speaker. My question is to the Minister for Urban Services, Mr Brendan Smyth. They are a lot of rabble over there, Mr Speaker. In its report on government services the Productivity Commission compared the performances of the States and Territories in providing certain services. In particular, the commission made certain comparisons about public housing which make very interesting reading. Does the result of the commission's report have any bearing on the way the Government delivers housing services in the ACT?

MR SMYTH: Mr Speaker, I thank the member for his question, and I would thank all those in this place who have a concern with housing. I think we all do. Mr Speaker, members will know that the Productivity Commission report was released and that a particular part of that report refers to public housing. Members will know that the commission's report followed a positive report from the Auditor-General on the delivery of housing assistance in the ACT. In case it has slipped anybody's mind, I might mention what our Auditor-General found. I quote:

> The delivery of assistance through public housing has been very effective.

Of course, Mr Speaker, the Auditor-General also found that the provision of public housing was inefficient. The findings of the Productivity Commission tend to support both of these findings, although they do suggest that our efficiency is certainly moving in the right direction.

So, what were these key findings? Well, waiting times for public housing applications are the lowest in the country, with 46.5 per cent of applicants waiting less than six months to receive public housing, compared with a national average of only 15 per cent. Three-quarters of applicants in the ACT wait less than one year, while across the nation almost three-quarters of applicants are guaranteed a wait of more than one year. While nationally more than half of the applicants for public housing will wait more than two years, in the ACT only 7.4 per cent of applicants have to wait this long. Waiting times are drastically shorter than in any other State or Territory. Waiting times are not even in the same league really as in the rest of Australia. At the same time, according to the Productivity Commission, we are moving ACT Housing's efficiency in the right direction.

Ms Carnell: That entity often quoted by Mr Quinlan.

MR SMYTH: That wonderful document, yes. The cost of administering each dwelling has dropped by some $390 between the years 1996-97 and 1997-98, from almost $1,300 to just over $900. Our expenditure on public housing is well in excess of the national average on a per capita basis. Indeed, the Grants Commission estimated that the ACT spends above the national average by some $5.2m. The average turnaround time for normally vacated stock is well below the national average. We turn a house around in about an average of 22 days, whereas the national average is 31 days.

Mr Speaker, we have also moved from having the worst record with tenant arrears, in terms of the percentage of tenants in arrears, to the national average in just one year. I must point out at this stage that this change clearly reflects the hard work and the reform agenda that was put in place by my colleague, the former Minister for Housing, Mr Stefaniak.

So, Mr Speaker, we have the shortest waiting lists, our expenditure on public housing is three times the national average, and we are becoming more and more efficient. You might begin to think that ACT Housing is just about the perfect government agency, based on that. Well, obviously it is not and we have much more to do. Despite having the shortest waiting times in Australia, tenant assessment of their houses is lower than the national average. Tenant satisfaction is also below the national average. The quality of our housing stock is also below the national average. We have less choice in public housing between the government and community sectors than the national average.

Why is that so? The reason fundamentally, Mr Speaker, is that the Territory inherited a stock of poorly maintained and ageing houses from the Commonwealth and has dealt with the consequences ever since. Our housing stock now simply does not meet the needs of either our tenants or the people on our applicant list. Despite all the good news coming out of the Productivity Commission, we still have a lot of work to do. Despite the years that have passed since self-government, we have a long way to go to get our housing stock to an acceptable level to meet our tenants' needs. I refer again to Mr Stefaniak who started a lot of the important changes that will get us to that point and I think the big flat strategy is a major achievement. The challenge now is to deliver the change necessary for public housing in the ACT to continue the good work and address the issues of where we do not perform well.

MR HIRD: I notice that the Opposition is saying nothing because it is a good news story. Mr Speaker, my supplementary question is this: Your departmental officers, Minister, will not be sitting on their hands. They are going to keep up the good work and the positive results that we have already seen from the Productivity Commission. Is that so, sir?

MR SMYTH: Mr Speaker, I thank the member for his supplementary question. The Government has a number of strategies in place to address the problems identified in the Productivity Commission's report. The major problem we have to tackle is the mismatch between the stock that we have and the stock that our clients and potential clients need. Much of the older stock is based on what, 30 years ago, was the traditional family of two parents, two children, and many of our clients no longer fit this description. We have to remember that ACT Housing was not established to provide public housing, as such, but was really established to provide housing for public servants moving into the ACT in the 1960s and since, and as an encouragement for Public Service staff to relocate to Canberra.

We will be reducing our stock of housing that no longer meets our clients' needs. Mr Wood has asked questions on this several times. We will need to focus on the areas of emerging need. That means recognising that the needs of families are changing and recognising that the locations where people want to live in the ACT are also changing.

Our applicants are increasingly hoping to be located near their extended families and support networks, and these are not always in the inner north. We need to recognise the importance of these support networks and try, where possible, to locate people where they want to be located. A good example of this is the recent announcement of the redevelopment of Macpherson Court.

Macpherson Court actually highlights quite perfectly the strategies we are adopting to combat a number of the problems identified by the Productivity Commission. For a start, we are moving away from a type of housing that no longer meets our clients' needs. We are moving away from the traditional big flats strategy to better integrate public housing with the broader community. While our problems have not been to the same extent as associated with those, say, in Sydney or Melbourne, like Collingwood, Fitzroy and Redfern, this standard of housing has led to some social problems.

We are also moving to transfer the site to the community sector. I said earlier that we have one of the lowest levels of choice for public housing tenants, whether as the public provider or a community housing provider. By transferring stock to the community sector, we will be providing our tenants with a greater number of options in public housing.

Mr Berry: I raise a point of order. One accepts that Ministers might give complete answers to questions, but this is beyond the pale. This is a supplementary to a question and it really has developed into a ministerial statement. It is becoming a bit repetitious as well. I do not mind full and complete answers, but this is a bit over the top.

MR SMYTH: I do not believe I have repeated myself at all.

Mr Hird: I am listening to the answer.

MR SMYTH: Mr Speaker, I was responding in the Berry manner. I believe his answers took considerable time.

MR SPEAKER: There is a problem.

Mr Hird: Do not let it put you off. I want to know the answer.

MR SMYTH: Mr Speaker, I will be brief. I am almost finished. The redevelopment of Macpherson Court also demonstrates our approach to relocating the tenants and to meeting their needs. To date more than half of the tenants in Macpherson Court have accepted other housing arrangements, all, I am told, within their area of choice. Many tenants have chosen to remain in the city area, but some have gone to Belconnen and some have gone as far afield as Tuggeranong. I think members might remember the gentleman shown on the front cover of one of the newspapers who said it would take 100 cops to move him. He was one of the first to choose his site and he has a delightful flat in a new area. Mr Speaker, the Government is aware of its responsibilities in regard to public housing and we will continue to move to meet the needs of tenants as we can.

Bruce Stadium

MR KAINE: Mr Speaker, my question is to the Chief Minister and it has to do with the development of Bruce Stadium. Chief Minister, the original proposal in connection with Bruce Stadium was that it was a $27m project, $12.3m of public funds - - -

Ms Carnell: You would know; you were in Cabinet.

MR KAINE: It was originally, Mr Speaker, a $27m project, with $12.3m of public funding and the other $14.7m, approximately $15m, was to be produced by the three beneficiary clubs, the Brumbies, the Raiders and the Cosmos. That is well and truly on the record, so it is an established fact. Of course, the project is now beginning to blow out and the situation has changed. It is still allegedly $12.3m worth of public money, but all the rest, the Chief Minister tells us, is to come from the private sector, not from the three clubs. I presume that is because of two facts. One is that the costs are blowing out and the other is that none of the three clubs are capable of generating $15m anyway. But, since the responsibility for everything over and above $12.3m now resides with the private sector, I draw the Chief Minister's attention to some full-page ads that appeared in the media not so long ago trying to sell some aspects of the stadium. The company responsible for these ads is a company called Bruce Operations Pty Ltd. Chief Minister, is this the private sector company that is to marshal the private sector to deliver the excess cost over and above the $12.3m, regardless of how much it adds up to? If so, how is this private company funded?

MS CARNELL: Mr Speaker, that was a very long question. Almost all of the information that Mr Kaine put forward was wrong. That surprises me because Mr Kaine was part of the Cabinet that decided on such things as recommended tenders, submission 4905, I think, and a number of Cabinet decisions after that with regard to financing, management arrangements and so on. Mr Kaine was part of all those decisions. I have always been interested as to why those Cabinet submissions were not returned, Mr Speaker.

Mr Kaine: Mr Speaker, since the Chief Minister is prepared to call upon Cabinet positions and papers, would she like to table them?

MS CARNELL: I do not have them.

Mr Kaine: No, and you will not.

MS CARNELL: You do, though.

MR SPEAKER: Order!

Mr Kaine: You will not. You say my statement was incorrect and I say yours is. I can easily prove that what you say is incorrect.

MR SPEAKER: Order! There is no point of order.

MS CARNELL: Thank you, Mr Speaker. Mr Speaker, if Mr Kaine would like me to table the list of the Cabinet submissions he failed to return, I am more than happy to; but I am sure he would not like that.

Mr Speaker, the business plan was prepared by Graf Consulting International Pty Ltd right back when Mr Kaine was part of the Cabinet. Mr Humphries is here. Mr Humphries, did Mr Kaine ever complain about any of this, did he ever whinge?

Mr Humphries: Not that I can recall.

MS CARNELL: No, Mr Speaker, never once. Never once did he disagree with the approach that we were taking. Graf International Pty Ltd identified three main sources of revenue to fund the redevelopment. They were, as Mr Kaine rightly says - after that he got it a bit wrong - first and foremost, a $12.3m government contribution. That stands. It has not changed, Mr Speaker. Secondly, $8m would be raised from up-front revenue gathered from the sale of naming rights, corporate suites, food and beverage rights. That is still the case. The rest would be a loan to be repaid through operational revenue. Mr Speaker, there was never any amount from the three clubs. Mr Kaine should go back and read those Cabinet submissions he kept so that he would then know what the scenario is. Mr Speaker, that has always been the case and it remains the case.

Mr Speaker, BOPL - I will tell you exactly what it stands for, Bruce Operations Pty Ltd - was incorporated on 15 April 1998 and has the responsibility of managing Bruce Stadium. The company is limited by shares and is proprietary in nature. There are currently 12 ordinary shares held in the company by the Australian Capital Territory and it has a paid-up capital of $12. The amount paid up for each share is therefore $1. The Australian Capital Territory holds the beneficial interest in all shares in the company. The two directors of BOPL are Ms Moiya Ford, executive director of OBDT, and Mr Mick Lilley, the Under Treasurer. These two directors were appointed on 15 April 1998 after transfer from the directors of the shelf company on the same day. So now Mr Kaine well knows the financial arrangements of Bruce Stadium and what BOPL is. Mr Speaker, Mr Kaine's comment over the last few days that all of this is somehow secret means that he cannot read Cabinet documents or *Hansard*.

MR KAINE: I have a supplementary question, Mr Speaker. The Chief Minister tells us that this is a company with a $12 paid-up capital. She did not answer the second part of my question, and I will repeat it. What is the source of this company's funding to do the things that it is set up to do - with $12 paid-up capital? I do not think so.

MS CARNELL: Mr Speaker, of recent days Mr Kaine is showing that he is losing the capacity which maybe he once had - he was Treasurer at one stage, and certainly assisted me for a while - in terms of understanding finances. He is simply wrong. That particular company is involved in the management of the stadium. I already answered the first half of the question about exactly how the finances were going to be raised. Mr Speaker, again, $8m from sale of rights generally, things like naming rights and so on, and the rest from Bruce Stadium operations, like when people go along.

Mr Speaker, 20,100 people went along on Friday night. Wasn't that exciting? I thought that was pretty exciting. It was a great outcome. There is the operational revenue from the stadium, from the people who go. All of the operational revenue from the stadium. This is the management company. It is patently obvious that that is the case. For the life of me, I cannot understand why Mr Kaine cannot understand that. I also cannot understand why members of this place have to be chronically negative about anything. Stadium Australia opened on Saturday night last week, the night after our stadium ended up with a near-capacity crowd for our first game of the season. The general media and the position of politicians was positive. Guess what that stadium cost, Mr Speaker? My understanding is it was very close to $700m. The exposure of the New South Wales Government, I understand - I will certainly correct these figures if I am wrong - was something like $190m, and yet they were right behind that stadium because it is good for New South Wales and good for Sydney. Our $12.3m is good for Canberra.

School Enrolments

MR BERRY: Mr Speaker, my question is to the Minister for Education. Yesterday the Minister embarked on a cynical beat-up of a possible administrative irregularity in relation to school enrolments, as if it were of the magnitude of the pursuit of General Pinochet in the United Kingdom for crimes against humanity. This is the same Minister who exploited the vagaries of enrolment census figures in his much reported attempt to close Downer Preschool, an attack, incidentally, which was sensibly repulsed by this Assembly. Do you not think it is improper, Minister, to make such a politically motivated attack on the system because of this administrative failure, and when will you accept that the enrolment census arrangements are part of the problem?

Mr Humphries: Mr Speaker, I raise a point of order. I am happy for Mr Berry to ask questions and I expect it, but there is an investigation currently under way into this matter. It is not a matter that is sub judice, but it is certainly a matter under investigation in a way which I think members may risk or threaten if they are prepared to ask questions on the floor of this house about it. I would ask members, through you, Mr Speaker, to consider whether it is wise to ask or answer questions in respect of this matter while it is currently under investigation and could conceivably lead to criminal charges.

MR SPEAKER: Indeed. Do you have a point of order, Mr Berry?

Mr Berry: There is no point of order, Mr Speaker.

MR SPEAKER: "Do you have a point of order", I said.

Mr Berry: Well, I might as well respond to the one that has been made, by your leave. Mr Speaker, there is no point of order. This does not go to the questions which are under investigation or the people involved. It can therefore not be described in the way that Mr Humphries has said. It is not contrary to the standing orders to ask such a question. If you were to rule so it would be gagging members in this place.

Ms Carnell: So you are going to support whatever comes out? You support the action of whatever anyone did?

Mr Berry: I just want the Minister to answer the question.

MR SPEAKER: Order!

Mr Stanhope: He wants to answer it, too.

MR SPEAKER: Nevertheless, I would caution the Minister. I only know what I have read in the media today, but I would caution the Minister as to how he answers the question. Mr Stefaniak, do not reflect on matters that Mr Humphries has adverted to that may prejudice what I understand is a continuing inquiry.

MR STEFANIAK: Quite so, Mr Speaker. For Mr Berry to say the Government has embarked on a signal exercise is quite wrong. The Government and the department have a duty to treat this matter seriously. An investigation has started and for anyone to speculate on the outcome of that, or to speculate in relation to anything with regards to that, would be quite wrong. The Attorney-General's points are spot on in relation to that.

Mr Berry, I do not know what General Pinochet has to do with it. Really, this is the ACT Legislative Assembly, not Chile or a London hospital, but you do raise a couple of other points. You mentioned Downer Preschool, and I note that you made some comments yourself in the media on that. I will make some generic comments in relation to assessment of numbers. Again I stress that people should not comment in any way in relation to this ongoing investigation. You mentioned Downer Preschool and enrolment numbers and censuses. In our school system, Mr Berry, we have a census in about the middle of February in terms of how many students are at any particular school at any one time. There is another census later in the year. I understand that that is in June.

The Downer Preschool census, or any preschool census, Mr Berry, relates to anticipated numbers. That is kids who are going to be there next year. That is a very different type of census from a school census. So, yes, you have got that one wrong.

MR BERRY: Mr Speaker, my supplementary question is as follows: Is it not true that your attack on this issue is just a Trojan horse in your campaign to close schools and undermine the quality of the education system in the ACT? Is it not just a continuum of your announcement of late in relation to school spaces? Is this not just a continuation of your attack on the ACT education system, which began, incidentally, with your cuts to the education budget?

MR STEFANIAK: No.

ACTEW - Mitchell Depot

MR RUGENDYKE: My question is to the Chief Minister, Mrs Carnell. Chief Minister, during the ACTEW debate, my discussions with interested bidders indicated that they regarded ACTEW's blue-collar work force as equal to or better than the best in the world. Given this, why is it, as I understand, necessary for ACTEW to have seven managers to supervise about 20 of the world's best blue-collar workers at ACTEW's Mitchell depot?

MS CARNELL: I do not know, and it seems like a lot to me.

MR RUGENDYKE: As ACTEW is to have a 10 per cent cut to the work force in the next two years, could you advise the Assembly where those cuts are likely to be made, given that ratio of managers to blue-collar workers?

MS CARNELL: Mr Speaker, the CEO of ACTEW, John Mackay, did put out a statement on this prior to the debate in this place on the sale of ACTEW and he made it very clear that if we maintained ownership in public hands certain things would have to happen to ACTEW. He has made clear that that will mean a cut in staff of up to 10 per cent over the next couple of years. I think he has also made the point that the focus of that will be at the management end; that already the blue-collar workers in ACTEW have been reduced over time. That does not mean that no blue-collar workers will go, but it does mean that, of the 10 per cent that will have to go as a result of a vote in this place, the management will be the target.

CityScape

MR HARGREAVES: My question is to the Minister for Urban Services. This morning the general manager of CityScape, Allan Eggins, was on ABC radio speaking about the job losses at CityScape. His estimate is that 100 jobs will be lost. Will the Minister confirm that CityScape plans to axe 100 jobs? Why did the Minister say yesterday in question time, I believe, that 12 officers were providing the service at Woden/Weston at present, and not the 30 to 35 as is really the case? Was he trying to hide the extra 20 targeted for redundancy?

MR SMYTH: Mr Speaker, CityScape, for some time now, has been working to change its work force and its work practices. What we have is a full-time work force, whereas what we need is a concentration of workers, certainly in spring and summer, particularly when the grass arrives. We have a very busy time in the summer and a very quiet time in the winter. I understand they have been working to bring the total number of employees down to some 120.

Mr Hargreaves, if I recall yesterday's question, asked about the number of employees that Excell would employ and the number of employees that CityScape had said that they would employ in their contract. CityScape nominated 12 as the number of employees

that they would use in that contract, and that is the number that is directly affected by the loss of this contract. At the same time, there is a process that has been going now for some time to reduce the full-time number of employees that CityScape has.

MR HARGREAVES: I have a supplementary question. Can the Minister confirm the advice given by CityScape management to staff that it has approval to borrow funds to pay for the redundancies? From where will the funds be borrowed, at what interest rate, and how does the Minister propose that repayments be made when businesses are being eliminated progressively through the deliberate loss of contracts?

MR SMYTH: Mr Speaker, the redundancy program is properly the responsibility of the managers inside the department. I will seek advice from the CEO and find out how he intends to fund this program.

Canberra Injectors Network

MR OSBORNE: My question is to the Chief Minister in her capacity as Acting Health Minister. It follows on from Mr Kaine's question yesterday regarding your Government's recent announcement of $100,000 funding for a peer support program for injector drug users. Chief Minister, could you please provide the Assembly with any information on this program? How does it work, and what guidelines are they working under? Could you also provide us with the names of the people in the Health Department who are involved in the tender process and who in the Health Department will be evaluating this program, as you said, I think yesterday, in answer to Mr Kaine's question?

MS CARNELL: Yes.

MR OSBORNE: Mr Speaker, thank you for today's short answers from the Chief Minister.

Ms Carnell: You asked me whether I could and I said yes.

Mr Humphries: You want concise answers. You got concise answers.

MR OSBORNE: I am pleased. It just took me by surprise. Chief Minister, you may not be able to answer this, but can you tell us what process was involved in the tender and what other organisations tendered for the money? Do you have a copy of the report - I think you called it "Survival" - referred to yesterday in the Assembly? Could you provide the Assembly with that information as well? Do you have a copy of that report?

MS CARNELL: Mr Speaker, I think I said yesterday in the Assembly that "Survival", which was referred to in the *Canberra Times* article of 8 March, was commissioned by ADD Inc. and is an internal report to that organisation. It is not a government report. I personally do not have a copy of that document. Access to the document would need to come from the non-government organisation that commissioned that report, and I made that clear yesterday.

Yesterday I think I made the point that a tendering process was embarked upon under normal circumstances, I understand last year, and that this particular peer group service or peer service went out to tender. There were, to my knowledge, two tenderers. One was ADD Inc. and one was the new Canberra Injectors Network. I understand that that tender process was conducted in the normal manner in the Department of Health; that is, the person responsible for service purchasing was on the tender board. He is on all of the tender boards, as I understand it. Similarly, there was an external person on that tender board, which is also the policy, I think, right across government but certainly of the Department of Health. I understand that the tender board assessed both potential operators by a number of criteria. One of those, most importantly, was their capacity to represent injecting drug users.

I also indicated yesterday that the new body, Canberra Injectors Network, has been set up in response to injecting drug users' wishes to have an organisation which directly represents them, not merely speaks on their behalf. I have had a discussion with ADD Inc. on that and they made it clear that, yes, they thought they could speak on behalf of injecting drug users but could not actually directly represent them. As a result of that tendering process, CIN won the contract. CIN is a new organisation, as I explained yesterday, a very different organisation, and one that is incorporated with a board of management.

The old ACTIV League was not incorporated. It was simply, I suppose, a suborganisation to ADD Inc. and therefore did not have its own board, was not incorporated and was not, I suppose, funded directly. It was funded through its parent organisation.

Mr Osborne: I take a point of order, Mr Speaker. I did not ask the Chief Minister to repeat what she said yesterday. I think I was quite specific about the information that I want. She has provided a little bit of that, but I am really interested in the issue of the "Survival" report, whether the Chief Minister has seen a copy of it, and whether she could provide it to the Assembly.

MS CARNELL: You asked me whether I had a copy.

Mr Osborne: Have you got a copy?

MS CARNELL: Sorry, no. I have answered that question.

MR SPEAKER: It has been answered. You said it was an internal document, as I recall.

MS CARNELL: I said it is an internal document and I did not have a copy.

Mr Osborne: Have you seen it, Chief Minister? That is what I am asking.

MS CARNELL: I cannot remember seeing it, but that is a long time ago.

Minister for Urban Services - Planning

MR CORBELL: Mr Speaker, my question is to the Chief Minister. Given that the Chief Minister, her Cabinet and backbench this morning voted for an amendment that expressed grave concern about the actions of the Urban Services Minister relating to the so-called independent rural residential study, can she tell the Assembly how she proposes to ensure that Mr Smyth undertakes his duties responsibly in the future? Will she remove any duties from the Minister to ensure that his workload does not reduce his capacity to apply himself rigorously to his responsibilities to this Assembly? Does the Chief Minister still have confidence in Mr Smyth as planning Minister now that she has expressed grave concern about his actions?

MS CARNELL: I have every confidence in the Minister. No is the middle answer, that I would not take any functions away from the Minister. Boy, some people hate losing, don't they, Mr Speaker?

MR CORBELL: My supplementary, Mr Speaker, is this: When will the Chief Minister accept that Ministers have to lift their behaviour and performance to standards required by this Assembly so that she does not have to keep voting on matters of grave concern?

MS CARNELL: Mr Speaker, I do not think that is an actual area, but I can say that maybe it would help the Government if the Opposition was a bit better.

Public Housing Tenants - Water Bills

MR WOOD: Mr Speaker, my question is to Mr Smyth, and I am not on this occasion expressing grave concern. Minister, you have just indicated the negatives of the Productivity Commission report, as well as the positives. You noted that tenant satisfaction levels were lower than for the States. There is one step that I want to draw your attention to, if you have not already been apprised of it, that you can take to remove a gripe from tenants and to help raise that satisfaction level. Recently tenants have received their water bills, but there is a problem with them. They have no detail to indicate how much water has been used. They have to take the account on trust. When I get a bill for water it is properly inclusive of meter readings. Theirs are not. I do not know whether you have been aware of this, but will you look into the issue and come back and advise the Assembly when tenants will be provided with that quite necessary information?

MR SMYTH: Mr Speaker, I was not aware of that issue and I thank Mr Wood for bringing it to my attention. It would certainly be a concern that tenants are not being told how much water they have used and therefore how much they are charged. Certainly, I will investigate the report as quickly as I can.

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

PERSONAL EXPLANATIONS

MR KAINE: Mr Speaker, I seek leave to make a personal explanation under standing order 46.

Leave granted.

MR KAINE: Mr Speaker, during an answer to a question earlier today the Chief Minister again asserted that I retained Cabinet documents after I ceased being a Minister. That matter has been brought up in this place before. I refuted it absolutely then and I refute it absolutely now. I think the Chief Minister is overstepping the bounds when she continues to make that assertion. Unlike the Chief Minister, I do not even refer to Cabinet documents to which I was privy when I was a Minister in debates in this place. The Chief Minister seems to call upon them with impunity to try to imply something about my performance or my involvement or something. I think she is going outside the bounds of her responsibility when she does that.

Mr Speaker, in relation to this matter, I also draw your attention to standing order 55 which says:

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

I believe that the Chief Minister is guilty of being highly disorderly under that standing order. I ask you to take that matter under advisement and to make a ruling on it. I advise the Chief Minister to be careful, if she is going to continue to make this assertion, to confine it to this floor because if she goes outside and makes that assertion we will deal with the matter in another place.

MR SPEAKER: Thank you. I shall have a look at that matter for you, Mr Kaine.

MS CARNELL (Chief Minister and Treasurer): Mr Speaker, I also would like to make a statement under standing order 46.

Leave granted.

MS CARNELL: Mr Speaker, just to explain the comment I made: If Mr Kaine does not have the documents and we do not have the documents, who does?

Mr Kaine: It is your job to find out, not to accuse me of having them.

MS CARNELL: You did not return them. Ask your staff.

Mr Kaine: You are telling lies, Chief Minister. You are telling lies and you are going to have to substantiate it one of these days.

AUTHORITY TO BROADCAST PROCEEDINGS
Paper

MR SPEAKER: For the information of members, I present, pursuant to subsection 8(4) of the Legislative Assembly (Broadcasting of Proceedings) Act 1997, an authorisation to broadcast given to a number of television networks in relation to the public hearings on the inquiry into an appropriate tree management and protection policy for the ACT by the Standing Committee on Urban Services on 26 February and 19 March 1999.

WORKFORCE STATISTICAL REPORT - SECOND QUARTER 1998-99
Paper and Ministerial Statement

MS CARNELL (Chief Minister and Treasurer): Mr Speaker, for the information of members, I present the ACT Government Workforce Statistical Report for the Second Quarter of 1998-99. I ask for leave to make a short statement.

Leave granted.

MS CARNELL: Mr Speaker, for the information of members, I am tabling the Workforce Statistical Report for the Second Quarter of the 1998-99 financial year. It shows that the total number of staff in the ACT government work force at the end of December 1998 was 17,748. It should be noted that the second quarter traditionally has lower staff numbers than other quarters, as it falls during the Christmas period, when fewer casuals are employed.

PUBLIC SECTOR MANAGEMENT ACT - EXECUTIVE CONTRACTS
Papers and Ministerial Statement

MS CARNELL (Chief Minister and Treasurer): Mr Speaker, for the information of members, and pursuant to sections 31A and 79 of the Public Sector Management Act 1994, I present copies of long-term contracts made with Barbara Norman; short-term contracts made with Miriam Jamieson, Allan Towill, Phillip Thompson, Douglas Jarvis, Philip Mitchell and Edward Rayment; and performance agreements made with Davit Butt, Vlad Aleksandric, Penny Gregory, Gordon Lee Koo, Jill Farrelly, Peter Hade, Christine Healy, Allan Hird, Sandra Lambert, Peter Gordon, Narelle Hargreaves, Gerry Cullen, Trevor Wheeler, Mark Owens, Michael White and Anne Thomas. Mr Speaker, I ask for leave to make a statement in relation to these contracts.

Leave granted.

MS CARNELL: I make this statement, Mr Speaker, as I always do, to alert members to the issue of privacy of personal information that may be contained in these contracts. I ask members to deal sensitively with the information and to respect the privacy of individual executives.

FINANCIAL MANAGEMENT REPORT
Paper

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer): Mr Speaker, for the information of members, I present the consolidated financial management report for the period ending 31 January 1999, pursuant to section 26 of the Financial Management Act 1996. The report was circulated to members when the Assembly was not sitting.

REMUNERATION TRIBUNAL
Determination

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer): For the information of members, I present determination No. 43, including a statement, pursuant to section 12 of the Remuneration Tribunal Act 1995, relating to members of the ACT Legislative Assembly. See, Mr Berry, we are on the record as well.

PAPER

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer): For the information of members, I present an out-of-order petition, pursuant to standing order 83A, lodged by Mr Hargreaves, from 1,450 citizens, concerning the fare structure for buses for schoolchildren.

CORONIAL INQUEST INTO DEATH OF KATIE BENDER
Paper and Ministerial Statement

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer)**:** For the information of members, I present the timetable for submissions to the coronial inquest into the death of Katie Bender. Mr Speaker, I seek leave to make a short statement.

Leave granted.

MR HUMPHRIES: Mr Speaker, I wish to advise the Assembly and the community of correspondence I have received from the coroner with respect to the inquest being conducted into the death of Katie Bender on 13 July 1997. As members will be aware, the coroner concluded the reception of evidence in the inquest on 11 November 1998. The inquest sat for 118 days, received 628 exhibits into evidence and produced transcripts totalling 9,868 pages. Some 18 counsel have appeared to represent different parties and interests affected by this tragedy.

Since concluding reception of evidence, the inquest has resumed for three further directions hearings, on 12 and 20 November and 11 December 1998. The coroner, Mr Madden, has advised me that the Chief Magistrate has agreed to his being withdrawn from his duties as a magistrate, with effect from Monday, 8 March 1999, to prepare his report.

The parties to the inquest have agreed to a schedule for the presentation and reception of submissions. I now table a copy of the schedule, for the information of members. The coroner has advised me that he may make a report available by the end of June 1999.

I am making this statement to the Assembly today at the request of the coroner, on the ground that the Canberra community is entitled to know about the inquest's present status, particularly due to its duration and the fact that the actual demolition on Sunday, 13 July 1997, generated so much spectator interest.

MINISTER FOR URBAN SERVICES

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer): Mr Speaker, while I am on my feet, I want to correct a statement I made earlier today in the debate on the motion of grave concern about Mr Smyth. I suggested in those remarks that I made that the Labor Party had supported part of a motion in the Assembly, which happened to be on 28 May 1998, which supported rural residential development in the ACT. It appears on looking at the minutes of that occasion that the ALP did not, in fact, support that motion, although I note that a majority of members of the Assembly did.

CORONERS (AMENDMENT) BILL 1998

Debate resumed from 26 August 1998, on motion by **Ms Tucker**:

That this Bill be agreed to in principle.

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

OATHS AND AFFIRMATIONS (AMENDMENT) BILL 1998

Debate resumed from 26 August 1998, on motion by **Ms Tucker:**

That this Bill be agreed to in principle.

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

SUPREME COURT (AMENDMENT) BILL (NO. 2) 1998

Debate resumed from 26 August 1998, on motion by **Ms Tucker**:

That this Bill be agreed to in principle.

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

TERRITORY OWNED CORPORATIONS (AMENDMENT) BILL (NO. 2) 1998

Debate resumed from 17 February 1999, on motion by **Mr Quinlan**:

That this Bill be agreed to in principle.

MR RUGENDYKE (3.29): Mr Speaker, I see this Bill as a means of enhancing the role and input of Assembly committees in relation to the appointment of boards for Territory owned corporations. Apart from the positive attributes this presents to the committee system, I also view it as a positive addition for the government of the day. Openness and transparency can only promote credibility. This system will help quash the prospects of untoward innuendo regarding appointments. If appointments have to go through the process proposed by Mr Quinlan, there is less chance of the Government being accused of being part of a sweetheart deal. This Bill will assist in eliminating such rumours, which will add to the credibility of the Government, the Assembly and the committee system.

I note that the Government says that this Bill would be a constraint. I cannot agree with this thinking. The Government says that it is seeking the best performers. The thrust of this Bill is to ensure that the best performers are appointed. At the end of the day, we are talking about Territory owned corporations. These positions are prestigious and they are answerable to government. If people seeking appointment object to having their credentials scrutinised by an Assembly committee, we simply do not need them as directors. These are Territory owned corporations and we manage those by our rules. We should not be dictated to by prospective directors. I believe that involving the committee system will assist the appointments system, so I will be supporting the Bill.

MS CARNELL (Chief Minister and Treasurer): I seek leave to speak again, Mr Speaker.

Leave granted.

MS CARNELL: Thank you very much. Mr Speaker, the last time we debated this Bill, I made the point and I think many people have made the point - Mr Rugendyke, maybe Mr Osborne and others - that we do want the best possible people on our Territory owned corporations; that we want to make sure that the people who are running multimillion-dollar businesses on our behalf are the best possible people available.

Some of the people who are currently involved in our Territory owned corporations certainly have spoken to me and, I assume, to other members of the Assembly, making their point about what this Bill will do. Ms Tucker will not need to listen to this, because she wrote the letter; but I want to just show what I mean about the problem. Recently, I wrote to Ms Tucker's committee, the Standing Committee on Education, with regard to some recommendations of people to go on the Council of the University of Canberra. I also wrote to crossbench members with regard to this. Ms Tucker wrote back to me - on behalf of the committee, I assume, but certainly as chair - in relation to the proposed new part-time members, saying that the committee seeks additional information.

Mr Rugendyke and Mr Osborne, that additional information is interesting. This is reality. This is what is happening now, because it has happened in this situation. Mr Speaker, what Ms Tucker has asked for is for me to provide details of how the community was advised of the vacancies and the process for calling for nominations. Are we going to go to the *Canberra Times* and say, "Who would like to be on the board of ACTEW"? What a great process that is!

Ms Tucker: That is your suggestion, not mine.

MS CARNELL: Sorry; this is what is happening. This is in your letter.

Ms Tucker: I do not talk about going to the *Canberra Times.* That is your idea.

MS CARNELL: Mr Speaker, I am just using the letter. It says:

> Would you please provide details of how the community was asked of vacancies and the process for calling for nominations.

Mr Speaker, calling for nominations for the board of ACTEW - what a great idea! Boy, could we get some great nominations there! But she does not stop there. She said:

> Would you please advise the names of other people who were considered and their qualifications for the positions.

So, Mr Speaker, the people who did not get up are now going to have their names and their qualifications given to an Assembly committee to show why they have failed. This is exactly what the members who got in touch with Mr Rugendyke and Mr Osborne and others - well, Mr Rugendyke - said would happen, is it not? They said that we would end up with Assembly committees wanting to second-guess the nominations; that they would want the names of the people who did not get up to go to the committee.

Mr Speaker and members of the Assembly, if we want good people to put their names forward for multimillion-dollar corporations and if we are going to seek nominations from the community, apart from having to have a whole department to handle the number of people who put their names forward and then having the names of the people who do not get up go to committees, what do we think will happen? I have no problems with sensible committee behaviour; but, in this case, this shows categorically how

dangerous this is and why Mr Service - I am sure that he will not mind me using his name - is saying that he does not believe that people who are serious professional company executives should subject themselves to that.

In her letter, Ms Tucker does not say anywhere that she does not like or that she has any doubt about the CVs of the people we put forward. There is nothing about that anywhere, just "we want a bigger list, we want to know the people you knocked back and we want to know how you sought nominations". I have to say to members of the crossbench, members of the Opposition and Mr Quinlan that, if we pass this legislation today and you end up having to handle this legislation, to go out for nominations for people for multimillion-dollar Territory owned corporations and to have the names of the people who fail put to the committees, tell me how you will manage that. Mr Quinlan, you were part of ACTEW. You know that that is not the way it works.

Mr Speaker, if we end up with a situation here where the Assembly is able to go down the path that Ms Tucker has so ably shown can occur, we will end up with second best. This is not going to kill the Government. It is not a disaster. The people that are currently on our Territory owned corporations are there for a period of time. It is potentially the next government who will pick up the tab here. It will be the next government that ends up with - - -

Mr Wood: We will do that.

MS CARNELL: It more than likely will be us, if you guys keep up your current performance. But the fact is, Mr Speaker, that it is just stupid, and Ms Tucker has shown what will happen, all by herself. It is exactly what I said in my speech when this Bill was debated last time, and Ms Tucker has shown it to be the truth. Do we want the best or do we want the second best? Mr Speaker, I want the best. I would assume that other members of this Assembly want the best.

Is there any indication anywhere that the Government has put onto Territory owned corporation boards people who are not the best? Is there any indication of any political hacks, members of the Liberal Party, people who are on there for any of the reasons that anyone has spoken about? There is not one indication, not one example, Mr Speaker.

Mr Berry: We would do better.

MS CARNELL: Mr Berry says that they would do better. So, what he is already saying is that the Assembly wants to do the appointments, not the Government. But yesterday in the debate on the budget those opposite were saying that we are run by executive government. The Executive have to stand by their decisions; they have to stand up and be counted; it is a Westminster system; that is what this is about. Well, Mr Speaker, it is what it is about. Yes, we do stand by the decisions that we make. It is a Westminster system. It is an executive government.

Mr Speaker, I urge members of the Assembly to think twice about this matter. It will not undermine this Government at any particular level, but over time it has the potential to cause a problem. Is there a problem now? Do you fix a problem that does not exist?

No. Nobody can show a situation where there is a problem at this moment, yet Ms Tucker's letter has shown categorically how this Bill could produce a problem down the track.

Mr Speaker, I leave it at that and ask members to think extremely seriously. If, because of this legislation, we lose one person with the credentials of Jim Service we have done a disservice to the Canberra community - for no gain, because there is no indication of a problem. I will quote again Ms Tucker's comments, just to finish. Ms Tucker says:

> In relation to the proposed new part-time members the committee seeks additional information. Would you please provide details of how the community was advised of the vacancies and the process for calling for nominations. Would you please advise the names of other people who were considered and their qualifications for the positions.

Categorically, Mr Speaker, I do not have to debate this issue; Ms Tucker has done it for me. She has shown why this Bill is stupid.

MR SPEAKER: I call Ms Tucker.

MS TUCKER (3.41): Well, okay. I had not stood up.

Mr Quinlan: On a point of order, Mr Speaker: Is the Chief Minister going to move her amendment, or are we going to get another speech?

MR SPEAKER: It will be moved in the detail stage, Mr Quinlan. Ms Tucker did rise simultaneously with the Chief Minister, and I am giving her the call now.

MS TUCKER: I am speaking to the Bill, but I will speak to Mrs Carnell's amendment as well.

MR SPEAKER: We are still debating the in-principle stage.

MS TUCKER: I will be supporting this Bill because it is consistent with efforts that I made in the previous Assembly to improve the legislative provisions that govern the operations of Territory owned corporations. Mr Quinlan may not be aware that in mid-1996 I tabled a private members Bill to amend the Territory Owned Corporations Act. My Bill was also targeted at the appointment of board members, because it is quite clear that the make-up of a board of a particular corporation can have a major influence on the corporation's priorities and performance.

My Bill went further than Mr Quinlan's, however, in that I wanted the boards to specifically include two members who represented the interests of the customers and the employees of the corporations. In addition, where the corporation's operations had environmental impacts, such as ACTEW and Totalcare, I also wanted a person on the board who had environmental expertise. These three specified board members would have been nominated by the relevant peak community organisations in these areas. This move was to inject some real industrial democracy into the operations of Territory owned

corporations and to make them more accountable to the community at large. This is obviously a concept totally foreign to the Chief Minister. Industrial democracy is often talked about as a way of minimising industrial disputes and increasing productivity; but, unfortunately, it is too little practised by corporations in this country.

Unfortunately, my Bill was not debated during the last Assembly, and it lapsed. I requested the Parliamentary Counsel to update the Bill for re-presentation in this Assembly; but, for various reasons, this has been a slow process and Mr Quinlan has beaten me to it. Let me foreshadow, however, that I believe that these complications have been overcome and that I will be tabling my revised Bill in the next sitting week. I do not think that my Bill is in conflict with what Mr Quinlan is proposing here. In fact, it could be quite complementary.

In terms of the detail of Mr Quinlan's Bill, the requirement in the Bill for the Government to consult with an Assembly committee on the appointment of board members is consistent with the approach taken by the Government on the appointment of a range of statutory positions. This Bill acknowledges the value of the Assembly's committee system in providing input to government decision-making and in promoting government accountability - although, obviously, after listening to Mrs Carnell now, we realise that we are not allowed to challenge or question in any way. It was okay as long as we rubber-stamped it. However, by not binding the Government to the committee's recommendations, the Bill still recognises that the Government, as the corporation's shareholders, is entitled to have the final say over appointments. This Bill is a quite reasonable attempt to improve government accountability in its control of Territory owned corporations, and I am happy to support it.

Mrs Carnell was very clear in her statements that the letter was totally Ms Tucker's letter. I do not know how Mrs Carnell chaired committees when she was not in the Government; but I actually work with the committee, and this was a letter from the whole committee, including the Liberal member, Mr Hird. We did ask for further information. That seems perfectly reasonable. What is the point of referring appointments to a committee if we are not allowed to ask any questions?

Apparently, Mrs Carnell would have been satisfied if we had said that we do not like or we do not accept a person, Mr Speaker. But we chose not to do that. What we chose to do instead was to actually look at who else was on offer and what processes are used by the Government. Mrs Carnell seems to think that that would mean the *Canberra Times*. If that is the only link she and her Government have with the community, that is a statement in itself.

Mrs Carnell also seems to think that it is not our role. My understanding of that legislation from Mr Moore originally was that it did actually bring some more accountability into the whole process and that it did allow Assembly committees to actually make comment. I know that this does not happen very often. I can remember once or twice that we might have written with some concern about particular people appearing very often on numerous boards or committees. I can recall sending one letter to that effect. We were concerned about the workload, particularly for those people, or the reasons why there was not more diversity in representation. So, we have actually

asked questions before this, which maybe Mrs Carnell would also think was totally inappropriate. But, as I said, what is the point of anything going to a committee, if this is an accountability measure, if we are not allowed to ask for more information?

I am very interested that Mrs Carnell thinks it is "dangerous" - to quote her - that we have an input into these discussions. It actually makes me believe even more firmly that, in fact, this piece of legislation that Mr Quinlan has presented today is very important, because the Labor Party at least is acknowledging that we need to have diverse views on these sorts of boards and we do not necessarily just want the business heads. The community is getting concerned about that.

It is not true to say that you will always have a fight if you have people representing different perspectives in the community. That is entirely up to the group concerned. We have seen groups where that has not happened. In fact, interestingly enough, the Competition Policy Forum was made up of a quite diverse range of people. I believe that they worked very well together on the whole, even though they came from very different positions. If we do not move into a position of maturity as individuals working in these groups, representing different people, we will not see decisions made which do represent a broad view. I think it is pretty clear, from much of the polling that is occurring around Australia now, that people are not in any way convinced that the narrow economic view is the only one that needs to be represented in discussions.

MR QUINLAN (3.48), in reply: First, Mr Speaker, I cannot find in this small amendment Bill any provisions for requesting a list of nominations, the names of other people considered or the process. Might I also say that I was approached, or lobbied, by three highly qualified people who contribute a considerable amount to this town in terms of the operation of government business. I have to say also that I was contacted by all of them in the space of about 15 minutes. We will put that down to coincidence, I presume. At least one of them was reassured, let me say, when I informed him that this was a regular process that occurred in this place for a plethora of boards, et cetera, and that we had not really had anybody particularly vilified in this Assembly in a public way.

A real difference this Bill makes is that, when that happy day comes and we are in government, this review process will exist. This will be one of those parameters that are in our minds when we actually make appointments. As the Chief Minister knows, I, as chairman of her portfolio committee, wrote quite a long time ago expressing some concern and the concern of that committee that we seem to have a panel of a very few people performing quite a number of tasks and that we do not seem to cast the net very wide. Occasionally, I am let out amongst business people, and I ask them whether they have ever been approached to be on statutory bodies or Territory owned corporations, and they have not.

We have had circulated in this place an amendment proposed by the Chief Minister that what we do is just advise this Assembly. I believe that there is cockeyed logic in presenting that amendment, because, if people in this Assembly genuinely object to the appointment of a given person and the first time we hear about it is when we are advised per medium of this Assembly, and if we still feel moved to object to that appointment, then the situation you have painted of some particular nominee or appointment being

decried in this place may well occur. In fact, the probability that that event could occur is more likely under the Chief Minister's proposed amendment than it is under the Bill as it will be in action.

In her earlier speech, the Chief Minister referred to subsidiary boards and how complicated all this can become. I actually think that it denigrates the Assembly as a whole to suggest that it could not handle this process sensitively. Successive governments have been appointing people to boards. Those appointments have been referred to committees. I see nothing of this vilification of people who might be appointed to government positions because their nomination is reviewed by a committee. Mr Speaker, I ask: What is to stop any member in this place rising and challenging, in whatever manner you would permit within this place, the appointment, the qualifications and the suitability of any government appointment to a board or a corporation?

In fact, what we have heard from the Chief Minister so far today is just so much nonsense. The point of this legislation is to ensure that the members of this legislature, which is governed by a minority government, are not totally disenfranchised. We have witnessed in recent times an increase in the number of government owned corporations, with Ministers as shareholders and a board of management effectively appointed by a Minister or two. We have also witnessed the Chief Minister, amongst others, on more than one occasion responding to questions or challenges that we have put relating to TOCs by shrugging off the question and telling us, "Well, that is a matter for the board". This happened as recently as after the debate on ACTEW, a multimillion-dollar organisation. The response to a question or so was to shrug it off and say, "Well, the board will have to sort that out". I do not really think that that is a satisfactory response.

We do believe that boards run corporations. All that this legislation wants to do is allow the prospective appointees to be reviewed by a committee in a committee session, as is done for most of the boards that are appointed by government. The situation is certainly not unique. You will understand that, these days, many members of this Assembly are quite nervous regarding the operation of our businesses. Our businesses seem to be disappearing. After all, it was the board of ACTEW that initiated the sale debate, apparently.

We had a crazy situation this year - it did not involve a TOC, but the principle would still come through - where we had a Summer Festival of Sport. It was transferred from one area, Sport and Recreation, somehow to under the umbrella of CTEC, and then CTEC defunded it. So, we came in here and asked, "What have you done to the Summer Festival of Sport?". We were told, "That was decided by CTEC. They are a board. That is their job". So, all of a sudden, we have this abrogation by the use of these particular agencies.

We have a committee system in this place that was formulated, after much debate, at the beginning of this Assembly. It is not exactly the one we prefer. Nevertheless, it is one that we are committed to making work. This is simply part of allowing that committee structure, including the committee that I chair, to perform its function of review. Might I add that the Bill that I have put forward also enhances the original Bill by allowing for

that rare situation where you might have a board resign en masse. It still allows for an immediate appointment of that board and the review process to take place ex post. I commend the Bill to the Assembly.

Question resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MS CARNELL (Chief Minister and Treasurer) (3.57): Mr Speaker, I move:

Page 2, line 4, clauses 4 and 5, omit the clauses, substitute the following clause:

"**4. Insertion**

After section 12 of the Principal Act the following section is inserted:

'12A. **Information to relevant committee on appointment of director**

'(1) Where the voting shareholders have -

(a) appointed a director of a Territory owned corporation; or

(b) consented to the appointment of a director of a subsidiary, and the director has been appointed;

they shall inform the relevant committee of the name, qualifications and experience of the director.

'(2) In this section -

"relevant committee" means -

(a) a standing committee of the Legislative Assembly nominated by the Speaker of the Legislative Assembly for the purposes of this section; or

(b) where no nomination in paragraph (a) is in effect - the standing committee of the Legislative Assembly responsible for the scrutiny of public accounts.'.".

I present a supplementary explanatory memorandum to the Bill.

Mr Speaker, the amendment to the Bill that I have moved proposes that, instead of consulting with the Assembly committee responsible for the scrutiny of public accounts prior to the appointment of directors of Territory owned corporations or their subsidiaries, the voting shareholders shall inform the relevant committee of the names, qualifications and expertise of the directors after they have been appointed. Mr Speaker, this will ensure that members of the Assembly or members of the relevant committee are informed of nominations. Yesterday, comments were made by those opposite with regard to executive government and the importance of taking responsibility. I seem to remember those opposite - Mr Hargreaves, Mr Quinlan and others - saying yesterday that we were elected to government, and therefore we had to take responsibility for government. I think the argument yesterday was: "Shock, horror; you rotten Government; you are trying to share the responsibility here. Go back and be the government you were elected to be". This amendment will ensure that there is transparency. It will ensure that members of the Assembly will know who has been appointed, what their qualifications are, what their experience is, and so on.

Mr Speaker, before, when Mr Quinlan was speaking, I think he was talking about CTEC appointments. He said that somehow the CTEC events grants process has showed how boards can be used by government to abrogate its responsibility. That is simply not the case. Mr Speaker, CTEC appointments, I think, are subject to Assembly consultation already, because it is a statutory authority. So much for that argument! It is simply not the case.

Also, Mr Speaker, in terms of giving out grants, we have had grants organisations - in Mr Stefaniak's area, in health, in all sorts of areas - that, of course, make decisions on who gets grants and who does not get grants. It is not the role of government to second-guess that grants process. In fact, I have often made the point, as we have in Cabinet, that I do not believe that Ministers should get involved in that process. The whole point of having experts - whether it be in the arts, sport, health or, for that matter, events and tourism - to determine who gets a grant and who does not is to have those decisions made at arm's length from government. And that is the way we operate, I have to say, Mr Speaker.

If the Assembly accepts this amendment, we will achieve accountability and we will achieve transparency. At the same time, we will do what those opposite suggested yesterday we should do, and accept that there are responsibilities of executive government. This is one of them, Mr Speaker. It will also ensure that the concerns raised by various high-profile ACT business people who are currently involved in boards are considered and that we get the best possible people for our Territory owned corporations, rather than potentially lose even one or two of those people to a process that is seriously unnecessary.

MR QUINLAN (4.01): As I indicated earlier, Mr Speaker, this is a dopey amendment. To inform us after the event means absolutely nothing, and you have to ask yourself, having been informed that a particular individual has been appointed, if you want to object, how you do that. You can do it only by raising the stakes and, in fact, creating that situation which, you state, people like Mr Service are concerned about - having their names mentioned or having their qualifications questioned.

What this legislation does, unamended, is allow a review process by the committee. It allows questions to be raised and resolved without doing that in the public forum. The amendment paints non-government members of this Assembly into a corner should the day come when they genuinely, seriously object to the appointment of a given individual to a given Territory owned corporation. In the short time that I have been in this place, many board appointments have been made, with no real fuss. I anticipate that, in the main, that situation would continue. However, if, as some of us fear, we might be edging towards ACT Inc., then I think there needs to be in place a reasonable review process.

All this does is ask for the potential appointments to be referred and for the comments of the committee involved to be taken into account. This does not have to become a matter of public airing, public debate or public angst. It just means that we have a process that will work. If you have an objection to the legislation, I think your amendment makes the situation that you object to, in relation to the original legislative change, worse rather than better. So, obviously, we do not support the amendment.

Question put:

That the amendment (**Ms Carnell's**) be agreed to.

The Assembly voted -

AYES, 6	*NOES, 9*
Ms Carnell	Mr Berry
Mr Cornwell	Mr Corbell
Mr Hird	Mr Hargreaves
Mr Humphries	Mr Kaine
Mr Smyth	Mr Osborne
Mr Stefaniak	Mr Quinlan
	Mr Rugendyke
	Mr Stanhope
	Ms Tucker

Question so resolved in the negative.

Bill, as a whole, agreed to.

Bill agreed to.

MOTOR TRAFFIC (ALCOHOL AND DRUGS) (AMENDMENT) BILL 1998

Debate resumed.

MR OSBORNE (4.09): Mr Speaker, I will be supporting this legislation. My office has made contact with the Australian Federal Police Association, which I said that I intended to do, and relayed the possible consequences of this legislation. The police association have indicated that they are more than happy for the legislation to be passed and to go to court. I am still somewhat nervous about it, Mr Speaker, but I will give the police association the benefit of the doubt on this issue. I just hope that in six months' time we will not be back here overturning this decision because of police finding that they have to go to court every time. I have waged this campaign for many years, Mr Speaker: I think that magistrates should just take what the police say as gospel. I think that we waste a lot of time on court matters through defending solicitors daring to hector police who do not get it right every time. I hope that the magistrates will adopt this very sound philosophy on this issue. As I said, Mr Speaker, I am still unsure of what the outcome will be, but police are very supportive of Mr Hargreaves' Bill. I shall therefore support it.

MR HARGREAVES (4.11), in reply: I took on board what Mr Humphries was talking about this morning, but it did not quite ring true with me. As Mr Rugendyke put it quite well today when he described the process - - -

Ms Tucker: He didn't talk about the certificate at all.

MR HARGREAVES: He talked about the process, and if we can revisit the process just a little bit - - -

Ms Tucker: He didn't talk about that.

MR HARGREAVES: Are we all finished? Okay. He talked about the process. I would like to go through it again just a little and refer as I do to the things that Mr Humphries was talking about. One of the big concerns Mr Humphries had was about proving when the two-hour timeframe kicked off. Firstly, Mr Speaker, I have here the sheet which is filled out by another constable when everybody is pulled up. It does not matter whether you are positive or negative, there is a record of the time the vehicle is actually stopped on the roadside for a random breath test. It is a fact, Mr Speaker, that currently a section 10A certificate is filled out. It does not contain the signature of the motorist, Mr Speaker; it has just got the signature of the policeman on it.

Ms Tucker: It's got the test result on it, too.

MR HARGREAVES: Mr Speaker, I have heard it said that it has the test result on it. As a matter of fact, it has not. All it says is that the test is negative or positive. It is true that the presence of a positive test at the roadside is insufficient proof to convict in a court. That is why the people are taken back to the police station to undergo a test. When they undergo the test, Mr Speaker, the strip I show you on this document is actually filled in. That strip is what actually convicts people. The other part is merely proof that the policeman had sufficient suspicion to ask you to go and do that.

Ms Tucker: What about the two-hour bit?

MR HARGREAVES: When any car at all is stopped, the first document is actually filled in as to whether you are positive or negative. If you are one of the motorists pulled over, that document records the time and the registration. I will address that in a minute. The second document is the actual proof that you are over the limit and are going to be booked. As I said, the section 10A certificate is not signed by the motorist. In fact, in practice it is not actually filled out at the time; it is filled out at some time down the track. What is actually completed when the alcotest has been done is this statement of the informant and the approved operator. It contains all of this information. In fact, it contains a lot more. It contains the time and the location of the incident. It also talks about the time and the location of the screening test.

Mr Humphries: But you cannot hand it up without a policeman being there in the court.

MR HARGREAVES: Mr Speaker, I wish to address this issue. I do not wish to have a conversation with Mr Humphries. He has had his go and I sat here in predominant silence and listened to him. I would ask him to do the same.

Mr Humphries: Predominant silence!

MR HARGREAVES: Yes. Apart from calling you an affectionate name, Mr Humphries, I do not think I said anything.

Mr Osborne: Watch out, he might kiss you.

MR HARGREAVES: Not with his trousers down. This document also says what the subject was doing.

Mr Osborne: Keep those pants on, Mr Humphries.

MR HARGREAVES: That is a terrible thought. What actually happens when you go to court? Certainly, that document is handed up to the bench, but that in itself is insufficient to convict for a driving under the influence charge. All of these other papers are required as well, otherwise no magistrate in this town would convict anybody. This document does not say how far you are over the limit, so there is no indication of whether you are .09 or you are 2.1. There is nothing in there on that. In fact, the machine which does this test does not give you that answer with sufficient validity.

There are statistic sheets and there are all sorts of other pieces of paper which go up to the bench, but let me say this: If you are driving down the road really wobbly and you happen to be picked up by a policeman on a bike who does not have a random breath testing machine on his person, he can still require you to accompany him to the police station to undergo this test and you can front the court and be done for DUI without a section 10A certificate being completed. So, it happens only in some of the cases.

Let us look at a different offence altogether - shoplifting. If a bloke comes flying out of a store and hurls the stuff into a bin but is nabbed later on, the police are not going to arrest him, because they cannot. But they can require him to go and talk to somebody about it; in other words, take him into custody. You do not get a piece of paper at that time. This is the only time when you are supposed to get a little piece of paper.

Mr Smyth: But you do not have to have a blood test for shoplifting.

MR HARGREAVES: Why? It is because one magistrate has said to Mr Humphries, "I am going to make sure, as the people would like that". How many times have you been done for DUI, Minister?

Mr Smyth: Not once.

MR HARGREAVES: Then you would never have seen one of those documents.

Mr Smyth: That is correct; but if you are done, then you should be given the protection that the law should afford you until you are proven guilty.

MR HARGREAVES: There is no assault on your liberties at all in the non-filling-in of this document. There is none. It is the same as for any other offence. You are required to go and have this test. The test convicts you; this document does not. You are saying to me, Minister, that this test convicts you.

Mr Smyth: How many other offences have a two-hour time limit in which a test must be done? Name one.

MR HARGREAVES: There is record after record after record which says what time the test starts, the time the two-hour bit starts, which is what you are talking about. It is sitting there at the time. At the time you stop your motor car it is filled in. It is filled in whether you blow the bag or not. It is filled in and, of course, it is offered to the court in the parcel of pieces of paper to sustain the charge that the police have brought. The suggestion that no indication is given to the magistrate that the two-hour timeframe has been exceeded is an absolute falsehood; it is rot. The document I have displayed is a copy of that. Further justification of that is the fact that when a person has blown over the limit and is to accompany police to a station, the police contact the station to which they are going through the communications centre and it is recorded at that time that somebody is coming in. If anything, we have met the benefit of doubt with that; so, this is absolute rot. It is a furphy of the first order.

It is being said that one of the magistrates is going to call the police to the court all the time and just waste police time. That is absolute poppycock. I would be grossly disappointed with any magistrate who, given all of this information on which every other case is based, then says, "Oh, sorry, I'm missing this one sheet of paper which you haven't got the motorist to sign". How pedantic is that? That is being absolutely pedantic. There is no need to do that. I do not believe what Mr Humphries has said.

If we remove this piece of paper from the process, the offence will be treated in exactly the same way as any other, with the exception that there is the record of the two-hour timeframe kicking off. It exists. It also exists in the police notebook. It can be provided as well, if necessary. If the magistrate is not happy, he can still get the police in. That happens now. There would be no difference. If there were, in fact, any further calling of police to the court because of this sort of thing, I believe that it would be either because of an exercise in pedantics on the part of the magistrate who does it or because they have been set up. I would urge members to vote to exclude the requirement for this piece of paper from the legislation.

Question put:

That this Bill be agreed to in principle.

The Assembly voted -

AYES, 8	*NOES, 7*
Mr Berry	Ms Carnell
Mr Corbell	Mr Cornwell
Mr Hargreaves	Mr Hird
Mr Kaine	Mr Humphries
Mr Osborne	Mr Smyth
Mr Quinlan	Mr Stefaniak
Mr Rugendyke	Ms Tucker
Mr Stanhope	

Question so resolved in the affirmative.

Bill agreed to in principle.

Detail Stage

Bill, by leave, taken as a whole

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (4.24): Mr Speaker, I want to make one further comment about the legislation. I have already put on record my fear about what the courts are likely to do and the views of the Director of Public Prosecutions. That is fine; I am on the record on that subject. If we have to come back for some reason to rectify a problem, that record will be there for people to behold at the time.

Mr Speaker, I think we need to be able to be a little bit empirical about what this Bill is designed to do. This Bill is about reducing the time police supposedly are spending on filling out a particular certificate which they give to motorists, thereby freeing up police resources to do other things. I hope that those who have supported this Bill will accept, if the result of the Bill is that more police time is being spent in courts because the courts

are requiring the attendance of police to prove the two-hour breathalysing limit after a person has driven, that the Bill has failed in its objective and that members will be willing to repeal or modify the legislation.

I have maintained that magistrates will not accept the evidence available in those other forms Mr Hargreaves has referred to. Mr Hargreaves said that they will. We will see what happens. If it appears that police are spending more time in the courts, if the evidence is that that is occurring, I hope that members will treat that as a measure of the success or failure of the legislation and will come back and consider it again. I will ask the police to monitor the amount of time police are spending in court and to record any increase in time required by the police to attend on the courts because of the requirement to prove that a breath test was conducted within two hours of a person having driven a motor vehicle.

Bill, as a whole, agreed to.

Bill agreed to.

CHILDREN'S SERVICES (AMENDMENT) BILL 1998
Suspension of Standing and Temporary Orders

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

> That so much of the standing and temporary orders be suspended as would prevent a motion being moved to rescind the resolutions of the Assembly of 17 February 1999 relating to the agreement to the Children's Services (Amendment) Bill 1998, as amended, and Mr Osborne's amendments, and to reconsider the Bill in the detail stage forthwith.

Rescission and Reconsideration of Resolutions

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

> That:
>
> (1) the resolutions of the Assembly of 17 February 1999, relating to:
>
> (a) the amendments moved by Mr Osborne to the Children's Services (Amendment) Bill 1998; and
>
> (b) the agreement to the Bill, as amended;
>
> be rescinded;

(2) as there has been no notification in the Gazette of the passage of the proposed law under section 25 of the Australian Capital Territory (Self-Government) Act 1988, any action taken by the Clerk and/or the Speaker pursuant to standing order 193, be rendered null and void; and

(3) the Bill be reconsidered in the detail stage, pursuant to standing order 187; and

(4) reconsideration of the Bill in detail stage commence forthwith.

Detail Stage

Debate resumed from 17 February 1999.

Clause 1 agreed to.

Clause 2

MR OSBORNE (4.28): I move amendment No. 1 circulated in my name:

Page 1, line 6, omit the clause, substitute the following clause:

"2. Commencement

This Act commences on 1 May 1999.".

Mr Speaker, I will save my comments till the end.

Amendment agreed to.

Clause, as amended, agreed to.

Clauses 3 and 4, by leave, taken together, and agreed to.

Clause 5

Amendment (by **Mr Osborne**) agreed to:

Page 2, line 10, proposed new section 20, add the following subsection:

"(3) A magistrate shall be designated to be the Childrens Court Magistrate for a period of not less than 3 years.".

Amendment (by **Mr Osborne**) agreed to:

Page 2, line 10, after proposed new section 20, insert the following section:

"20AA. **Deputy Childrens Court Magistrate**

'(1) The Chief Magistrate shall, by instrument, designate a magistrate (other than the Childrens Court Magistrate) to be the Deputy Childrens Court Magistrate.

'(2) An instrument under subsection (1) may designate the Chief Magistrate to be the Deputy Childrens Court Magistrate.

'(3) A magistrate shall not be designated to be the Deputy Childrens Court Magistrate for a period of less than 1 year.

'(4) Where a person is designated under subsection (1) -

(a) a reference in a law of the Territory (including this Act) to the Childrens Court Magistrate includes a reference to that person; and

(b) that person has all the powers, functions and duties conferred or imposed upon the Childrens Court Magistrate by this Act or by any other law of the Territory.".

Amendment (by **Mr Osborne**) agreed to:

Page 2, line 19, proposed new section 20B, add the following subsection:

"(2) Subsection (1) does not by implication preclude a magistrate (being a magistrate other than the Childrens Court Magistrate) from exercising a power or performing a function conferred on a magistrate under a provision of this Act.".

Clause, as amended, agreed to.

MR SPEAKER: Order! Mr Osborne, it has been drawn to my attention that amendment No. 5, proposing two new clauses, clauses 5A and 5B, is out of order in that proposed clause 5B does not come within the title of the Bill. Therefore, I am obliged under standing order 181 to rule it out of order.

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

> That so much of the standing and temporary orders be suspended as would prevent Mr Osborne moving amendment No. 5.

Proposed new clauses 5A and 5B

Amendment (by **Mr Osborne**) agreed to:

> Page 2, line 19, insert the following new clauses:
>
> "**5A. Further amendments**
>
> The Principal Act is further amended as set out in the Schedule.
>
> **5B. Consequential amendment of Magistrates Court Act**
>
> Section 10G of the Magistrates Court Act 1930 is repealed and the following section substituted:
>
> '10G. **Arrangement of business of Courts**
>
> '(1) The Chief Magistrate is responsible for ensuring the orderly and prompt discharge of the business of the Magistrates Court and accordingly may, subject to such consultation with the Magistrates and special magistrates as is appropriate and practicable, make arrangements as to the Magistrate or special magistrate who is to constitute that Court in particular matters or classes of matters.
>
> '(2) The Chief Magistrate is also responsible for ensuring the orderly and prompt discharge of the business of the Childrens Court.'.".

Proposed new clauses agreed to.

Remainder of Bill, by leave, taken as a whole

MR OSBORNE (4.32): I seek leave to move amendments Nos 6 and 7 together.

Leave granted.

MR OSBORNE: I move:

> Page 2, line 24, after clause 6, add the following new Schedule:

'SCHEDULE Section 5A

FURTHER AMENDMENTS

Section 21 -

Omit 'section 20', substitute 'this Part'.

Paragraphs 22(1)(a) and (b) and (2)(a) -

Omit '20', substitute '20B'.

Subsection 25(1) -

Omit 'section 20', substitute 'Part III'.

Subsection 25(2) -

Omit 'Section 20', substitute 'Part III'.".

Long title, page 12, line 1, omit the title, substitute the following title:

"**An Act to amend the *Children's Services Act 1986* and for a related purpose**".

Amendments agreed to.

MR OSBORNE (4.32): Mr Speaker, that was a very painful exercise. I would just like to thank the people involved in resolving this issue. I know that Mr Humphries intends to speak, and I do not want to drag the fight on any longer. Quite clearly, there was an oversight in relation to this Bill. I, for one, do not agree with the hype that was generated by the Government. However, all the problems have been resolved in relation to the Bill. The disappointing thing for me was that I felt that this was a very positive piece of legislation, one for which a number of people in the community involved in the area had been looking for a number of years.

I was disappointed that the primary issue - the passing of this Bill and the setting up of a specialist Children's Court magistrate - was somewhat clouded over by the antics of some people. However, I accept that we needed to fix the problem. I am unsure, even at this stage, where the actual problem lay. I think it was in the original Bill and that it was missed at a number of stages. However, I believe that the situation has been resolved. I believe that the department, the Parliamentary Counsel, my office and Mr Humphries' office - those of us in favour of the legislation - are pleased with the outcome, although I do not know whether the Government is.

As I said, this Bill is a very positive piece of legislation. I understand that there is a resistance within the judiciary to it. However, I believe that in the long run it is going to be a very worthwhile piece of legislation. The role is one that I hope will enhance the Children's Court and help the young people who are in vulnerable positions in the situations in which they find themselves. Once again, I thank members for their patience on this Bill and I thank all the wise men and women upstairs who have been involved in redrafting this Bill.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (4.34): Mr Speaker, I will be brief in my comments on the amendments. I thank Mr Osborne for his willingness to deal with a number of issues which the Government raised in respect of the Bill which passed on the last sitting occasion. I appreciate his willingness to work with us and the Parliamentary Counsel to ensure that the issues have been comprehensively addressed in the amendments which the Assembly is passing today. I repeat my hope that the usual processes for dealing with Bills, particularly Bills that have been referred to a committee and that need a government response to committee reports, will be adhered to in the future so that, hopefully, incidents of this kind can be avoided. I hope that we will be able to ensure that the Bill is able to operate as intended. In saying that, I do not indicate any change in the Government's view about the caution required in respect of this Bill. That remains a concern of the Government, but I am at least relieved that we have been able to deal with the legislation so that it is technically effective and does not have any unintended consequences of the kind that were referred to a couple of weeks ago.

MR STANHOPE (Leader of the Opposition) (4.36): As previously indicated, the Labor Party is supportive of the notion of a specialist Children's Court magistrate. It is a concept that we think worth trialling in the ACT. Significant numbers of young people are coming before our courts and I think that this is an area in relation to the administration of law where communities and societies should be particularly careful and particularly sensitive in terms of sentencing and other options. It is obvious that many of the problems which we as a community and a society suffer arise as a result of the interface between young people and the criminal justice system. If we cannot address problems of children and the courts and children and the law in the optimal way, then it really is a recipe for continuing dysfunction. Many of the problems that persist within our community, I have no doubt, go back to the early treatment of children in the criminal justice system.

I think this is an incredibly sensible move. I know that there is some resistance in some quarters to it, and I regret that. I get the impression that there is some resistance in some parts of the court to this proposal, and I regret that. I think it is a very sensible thing to do. I think that the more we bring greater focus to the special needs of the children facing the criminal courts the better it is, not just for those children but for the community, in the long term. There is enormous concern within the community at the extent to which young people present as lawless. There is tremendous concern within the community at the extent to which young people, children, actually appear to be flouting accepted behaviour and flouting the law. It seems to me that we should do everything that we can as a community to address those problems. The establishment of a specialist

Children's Court magistrate is a particularly wise move. I really do hope that the Magistrates Court - the Chief Magistrate and the other magistrates - will grasp this opportunity to play that leading role we entrust to them.

I will comment just briefly, since the Attorney-General felt the need to bring it up, on the question of the way that this Bill was initially dealt with and the Government's response to those happenings. I would be inclined to be less restrained than Mr Osborne. I do believe that some of the utterances of both the Attorney-General and the Chief Minister in relation to the passage of this Bill when it came before the Assembly were really just quite outrageous. Some of the things that were said in this place, some of the things that were said and reported in the *Canberra Times*, and some of the things that were said on the ABC were palpably just wrong. Some of the spin that was put on the implications of the passage of that Bill by the Attorney-General and the Chief Minister was just outrageous. I will continue to believe that they reflect extremely poorly on the Attorney as the Attorney. I would like to say more about that matter, but I will not. I think I will let it go through to the keeper. It is, perhaps, a matter that might not go away.

Having said that, the Labor Party is quite pleased to support this amendment. We are now pleased to see that it will pass through and we are now pleased to think that the ACT will have a specialist Children's Court magistrate to deal with the significant and serious issue of that interface that children have with the criminal justice system.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (4.40): Mr Speaker, I want to make one brief comment. As far as the comments of the Chief Minister and my comments are concerned, I can understand Mr Stanhope not wishing to pay much attention to our views. In fact, he made some very disparaging comments about our views on the effect of the original legislation. But I would hope that he would have more regard for the views of another key stakeholder in this process, views which he has seen and which, I suspect, are a little harder to dismiss in the way that he has dismissed the views of the Chief Minister and of me.

Remainder of Bill, as amended, agreed to.

Bill, as amended, agreed to.

PROPOSED STANDING ORDER 229A

MR BERRY (4.41): I move:

> That unless otherwise ordered new standing order 229A be adopted:
>
> **"Presiding Member may adjourn or suspend sitting of Committee**
>
> 229A. In the case of grave disorder arising either when a committee is taking evidence or deliberating, the Presiding

> Member may adjourn the committee without the question being put, or may suspend the committee. The Committee shall reconvene at a time to be named by the Presiding Member or at a time to be fixed by the Speaker or, in the absence of the Speaker, the Deputy Speaker, on receipt of a request in writing from an absolute majority of members of the Committee.".

Mr Speaker, this motion has its origins in Estimates Committee proceedings in, I think, August of last year when, as a result of the community consultation which was established by that committee, members of the community approached the committee in relation to budget matters. Mr Speaker, the motion has its origins there, but it is a motion which would give the presiding member of a committee some authority to maintain order in respect of the deliberations of the committee - in particular, in relation to public hearings involving members of the community.

Last August we had Professor Williams and Professor Freyon before us in relation to arts funding in the ACT which, as you may recall, was a matter of some contention and which involved a long and successful picket by musicians outside this place. It also involved significant contributions to the Assembly's Estimates Committee. During these proceedings, a member became quite unruly and I found myself quite powerless to do anything about it. It was the first time that I had ever come in contact with that sort of behaviour in an Assembly committee. It certainly troubled me that I or any other presiding member might be put in the same spot where they were not able to do anything about it.

Mr Speaker, you have got adequate powers to deal with members who defy your rulings and you have exercised those powers in the past. Some of us have applauded the exercising of those powers; some of us have not been so happy about it. Nevertheless, you have those powers to exercise. The difficulty for presiding members is that they have no powers to deal with these matters. One has to be careful in drawing up a motion or another standing order to deal with this matter to ensure that the presiding member is not able to usurp the authority of the Assembly. For example, it would be, in my view, a little extreme if the presiding member was able to exclude a member from the deliberations of a committee, because the member of the committee had been appointed by this Assembly. In my view, it would be inappropriate for them to be excluded from performance on those committees.

The best that I could come up with in the form of a motion after consultation with staff from the secretariat was the motion which is before you. That merely gives the presiding member the opportunity to take the heat out of any circumstances which arise in committee proceedings. There are times when members become unruly. Indeed, even I have even been a little bit elevated in my criticism of certain matters in committee meetings. But I must repeat that it has never been in circumstances such as that.

Mr Humphries made the point of referring to the *Hansard* of the committee proceedings at the time and said that he did not think there was anything particularly wrong as far as he could see from the *Hansard*, as I recall it.

Mr Humphries: I do not think I did, but I will take your word for that.

MR BERRY: I think you missed the atmosphere a bit and the atmosphere really does not show up in the *Hansard*. In my experience - not recent - it struck me as the circumstances one might expect just before a bar room brawl, because it was - - -

Ms Tucker: The *Canberra Times* cartoon should be tabled as it shows the atmosphere.

MR BERRY: If you care to get it for me, I will table it. But it was quite out of control, and many members of the committee were upset by the proceedings as well. I am not able to say with accuracy what was the cause of the disorder, but I am able to say that it was unacceptable. It was unacceptable to all of the members there, but none of the members, including the chair, could have done anything about it. This motion, if passed, will give the presiding member the opportunity in the case of grave disorder to adjourn the committee without a question being put or suspend the committee.

The committee shall convene - I am just quoting from the motion - at a time to be named by the presiding member. I had to put in a safeguard to ensure that the presiding member did not have the power to hold up a committee, so the Speaker can fix a time for the committee to reconvene or, in the absence of the Speaker, the Deputy Speaker on receipt of a request from a majority of members of the committee. I repeat my earlier comments in relation to the powers of presiding members. They ought not to be able to prevail over the powers of this Assembly. That is why the powers that you have in respect of members here have not been replicated. That, I think, would fly in the face of the Assembly's wishes in respect of membership of those committees. Mr Speaker, I urge members to support this motion.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (4.48): Mr Speaker, the Government does not propose to oppose this amendment to standing orders because, on the face of it, it appears to be obvious that a presiding member should have the power to deal with, in effect, the affairs of the committee, including grave disorder on a committee. If this crystallises the powers the committee chair has or should have in respect of these matters, then it is appropriate to put them in standing orders. Let me say that I do not think it is free from doubt that the powers do not already exist on the part of the committee chair. There are common-law powers in these circumstances which, I would have thought, extended to a committee chair being able to shut down proceedings that are clearly out of control. If there is any doubt about that - I suppose there must be if I have put it in that way - then it needs to be made clear. The proposed amendment appears to do that.

I also think it is worth recording, notwithstanding what might be put forward by the mover of the motion, that this should not be seen as an amendment cast around a particular individual or one particular occasion. I have seen occasions on committees of the Assembly where affairs have got fairly hairy.

Mr Berry: Passionate, you are thinking of there, I think.

MR HUMPHRIES: Passionate is another euphemism that springs to mind. All sorts of epithets might be used and they do happen from time to time. The only quibble I have with the motion is that, perhaps, the word "grave" is out of place. There may be all sorts of occasions when the chair needs to close down a committee for certain things to happen that would resolve our problems and so on, but I want to put on record that this amendment should not be characterised as an amendment about a particular member, about a particular occasion or about a particular committee. It is about giving a committee the power to deal with matters appropriately before that committee and to confirm or affirm the powers that a chair ought to have in these circumstances to protect the conduct of the committee, as is his or her duty.

MS TUCKER (4.51): The Greens will be supporting this motion as well. I want to put on record that I can see that there is a safety net, if you like, within the motion in that the committee shall reconvene at a time to be named by the presiding member or at a time to be fixed by the Speaker or, in the absence of the Speaker, the Deputy Speaker, on receipt of a request in writing from an absolute majority of members of the committee. That is important because if, for any reason, this power is abused there is a mechanism there for that to be dealt with. I experienced a situation in the last Assembly where I was slightly concerned. I think it is quite useful to have that power in case there is very inappropriate behaviour.

Question resolved in the affirmative.

MOTOR TRAFFIC (AMENDMENT) BILL (NO. 3) 1998

Debate resumed from 26 August 1998, on motion by **Ms Tucker**:

That this Bill be agreed to in principle.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (4.52): This legislation provides for 50 kilometres per hour speed limits on Canberra streets. I understand that there is a proposal that this matter be referred to an Assembly committee. In pre-empting that move, I would indicate my support for that position. As a parent with young children, I must say that I have become much more sensitive about the speed limits on suburban streets in recent days. I must say that I am feeling much more angry about seeing drivers who exceed the speed limit by sometimes quite large amounts on streets which are intended, under any guise, for people to travel reasonably slowly, certainly not over 60 kilometres per hour.

I do not approach this issue with any sense of absolute opposition to what Ms Tucker is attempting to do. But the issue is a very sensitive one. I imagine that there will be strong views expressed on all corners of the community about this issue. It is an important issue which affects every citizen of the Territory. There is not one citizen who would not either drive a car or travel in a car from time to time. There would be, therefore, probably as many opinions about 50 kilometres per hour speed limits as there would be citizens, at least adult citizens, and I think it is important that we carefully gauge what the community thinks of this proposal before we take the step of actually

doing it. Mr Speaker, in making those comments about this legislation, I hope that when we consider the legislation and vote upon it our views will be tempered by extensive discussion with the community about the appropriateness or otherwise of this step.

MR HARGREAVES (4.54): Mr Speaker, I seek leave to move a motion to refer the Bill to the Standing Committee on Urban Services.

Leave granted.

MR HARGREAVES: Thank you. I formally move:

> That the Motor Traffic (Amendment) Bill (No. 3) 1998 be referred to the Standing Committee on Urban Services.

MS TUCKER (4.55): I would like to make a couple of comments. I am interested in the statement of Mr Humphries that he has become more sensitive to amenity on our streets because he has young children. The Greens have come up with this proposal because we have done a lot of work and research on the issue and all the reports are in agreement with each other, basically. It is about basic physics; it is about being able to stop more quickly if you are travelling more slowly. There are significant advantages in terms of injury on our roads if you reduce the speed generally travelled.

There are often arguments that people break the speed limit anyway, but usually do not break it by more than a certain amount. If you reduce the speed limit, they may still break the speed limit, but that would still mean a reduction in the average speed travelled. We believe that there are real benefits in this proposal, even if we do not see a huge increase in resourcing. Of course, driver education is always desirable. I am supportive of its going to a committee, because people here are, obviously, still uncertain about the issue. I do believe that, once they have had an opportunity through a committee process to look at the evidence, they will come out in support of this proposal because it is a really important road safety initiative. Many countries around the world have already introduced it, with benefits. It is about making our city a safer place to live.

MR RUGENDYKE (4.57): Mr Speaker, I would submit that, if this Bill is to be passed on to a committee, it ought to be passed on to the Justice and Community Safety Committee for consideration, because it would be the police who would be endeavouring to enforce this matter if it were to be implemented. Mr Speaker, it is my submission that the Justice and Community Safety Committee is the appropriate one to cover all aspects of this amendment, including how it would be enforced and which streets it ought to be applicable to, although this amendment does not say. It refers to all 60 kilometres per hour streets at the moment. Southern Cross Drive! What rot!

MR CORBELL (4.57): Mr Speaker, I rise to refute the comments of my colleague on the Urban Services Committee. Quite clearly, the portfolio responsibility for this Bill falls with the Minister for Urban Services, and a majority of this Assembly agreed 18 months ago on the establishment of a portfolio system for committees. I am pretty sure that Mr Rugendyke was one of the members who supported the portfolio system of

committees for this Assembly. Without labouring the point too much, Mr Speaker, the whole point of that system was to shadow the activities of Ministers to a greater degree and to clearly set out the responsibilities where issues lay. It seems to me, Mr Speaker, to be pretty logical when the Minister for Urban Services has responsibility for this Bill that it go to the Urban Services Committee. I will not labour the point any more; but, quite clearly, the proposal of my colleague Mr Hargreaves is the most appropriate course of action.

MR SMYTH (Minister for Urban Services) (4.59): Mr Speaker, I take the opportunity to mirror what Mr Corbell has said. I am the Minister responsible for the Act. It is most appropriately dealt with in the Urban Services Committee. To allay some of Mr Rugendyke's fears, my understanding of the proposal is that more major rather than suburban roads would not be affected, so some of the main thoroughfares that have a speed limit of 60 kilometres per hour would not be affected. It is actually streets in the suburbs that would be looked at with a view to reducing them from 60 to 50 kilometres per hour. That is one of the things that need to be looked at, understood and studied. We support the referral of the Bill to the Urban Services Committee.

Question resolved in the affirmative.

ADJOURNMENT

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

> That the Assembly do now adjourn.

Question resolved in the affirmative.

Assembly adjourned at 5.00 pm