DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

30 June 1999

Wednesday, 30 June 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.

CHIEF MINISTER
Motion of Want of Confidence

MR STANHOPE (Leader of the Opposition) (10.32): Mr Speaker, I move:

> That this Assembly no longer has confidence in the Chief Minister, Ms Carnell, MLA.

Mr Speaker, I rise today to address a simple notion: That the Chief Minister, in presiding over a government which has consistently broken the law in its management of the Bruce Stadium redevelopment, has lost the confidence of this parliament. It is a simple notion, but it goes to principles that are fundamental, not only to the operations of this Assembly, but also to the system of governance that is the basis of all contemporary Western democracies. Those principles, established more than 300 years ago, relate to the obligations of governments and Ministers. They are important principles which in this case have been so severely breached as to require the ultimate sanction this parliament can impose.

The fundamental principle that has been breached is the requirement that the Executive cannot spend the taxpayers' money without the approval of the parliament. This principle was established, as I say, over 300 years ago and has been explicitly adopted in the ACT in both the Self-Government Act - our constitution - and section 6 of the Financial Management Act. Section 6 is clearly expressed. It says:

> No payment of public money shall be made otherwise than in accordance with an appropriation.

The words of this section are taken directly from section 83 of the Australian Constitution and are repeated in some form in almost all other Australian jurisdictions. In the explanatory memorandum issued when she introduced the Financial Management Bill, the Chief Minister wrote, in relation to section 6:

> This clause provides authority for the fundamental proposition that public money should not be expended or legally committed in the absence of formal parliamentary authorisation.

According to Mrs Carnell, section 6 went to a "fundamental proposition": The expenditure of public money requires "formal parliamentary authorisation". Those were Mrs Carnell's own words to justify and explain her own legislation. This is the law that the Chief Minister has broken, her own law - a law Mr Osborne has described as

establishing for members a "sacred trust" over taxpayers' money. There may be occasions when a Minister can avoid responsibility for his or her actions or the actions of a department. This is not one of them.

The Financial Management Act was introduced by the Chief Minister in her capacity as Treasurer of the ACT. It is her Act and she cannot, therefore, possibly raise the argument that she did not know its requirements. Nor is it fair of her to seek to attempt to pass the buck to her department. The person responsible for bringing requests for appropriations to the Assembly is the Chief Minister and Treasurer. The budgets are her budgets. The failure to properly appropriate funds for the redevelopment of Bruce Stadium is her failure.

Unfortunately for her, an apology published in the press, or even made on the floor of this Assembly, will not cure such a fundamental breach of the law and parliamentary procedure. It is not just the ALP and its supporters that say she has breached the law. Three eminent legal advisers, engaged by all sides of this Assembly, have stated that the Government has breached this principle and these laws. The evidence is that clear and that unequivocal. The Government's adviser was Mr Richard Tracey, QC. Mr Tracey advised, among other things:

> ... the requirement that the expenditure of public moneys be authorised by legislative appropriation has been a feature of parliamentary government based on the Westminster model since the passage of the Bill of Rights in 1688 ... and is a requirement that lies at the heart of modern notions of responsible government ... The principle has been adopted and forms part of the system of responsible government which operates in the Australian Capital Territory.

Mr Osborne engaged emeritus Professor Jack Richardson and Mr Jim Colquhoun to provide advice. According to them:

> ... the effect of giving guidelines a retrospective operation would, if valid, be to legalise expenditure of public funds which at the time would be illegal in the absence of a covering parliamentary appropriation. In our opinion, a court would ... decline to uphold an action of the Executive seeking ... to validate the use of public funds which at the time it had no right to use.

The Opposition briefed Mr John Sackar, QC. Mr Sackar advised, among other things:

> On the facts given to me it is beyond question that $9.714 million expended on Bruce Stadium in the year ended 30 June 1998 was unlawful expenditure by the ACT Government. The obtaining of the loan by the ACT Government from the Commonwealth Bank of Australia and the repayment of that loan between 30 June 1998 and 1 July 1998 was unlawful. The purported retrospective guidelines said to cure the consequences of that unlawful conduct were themselves unlawful, at least to the extent that they purport to have retrospective operation.

The breach of the law came about because of the actions of the Chief Minister in driving the redevelopment of Bruce Stadium. Her actions caused the breach; she is responsible. She has at least admitted that she is the responsible Minister, but has refused to accept that in failing to meet her responsibilities she has no option but to vacate the office she holds. She has now to face the ultimate sanction of this Assembly.

Mr Speaker, the redeveloped Bruce Stadium is an excellent venue. I find bay 69 in the eastern bowl a great vantage point from which to watch the Raiders. But what will be the true cost to Canberra, not only in terms of dollars, but also in terms of the damage done to the reputation of government and this Assembly by the unlawful behaviour and mismanagement, and the Chief Minister's secretive behaviour and contemptuous dismissal of the facts of the matter? How can retrospective legislation correct the damage done to this Assembly by the Chief Minister's past refusal to comply with the law? What damage has the Chief Minister, in her arrogant disregard of the law, done to the rule of law and respect within the community for the law and its enforcement?

Bruce Stadium is an excellent venue, but its redevelopment has been a fiasco. There is no kinder description. We have a new stadium, designed to seat 40,000 spectators at Olympic soccer games, but built to seat 25,000. We have a project that has to date run 62 per cent over its construction budget on the Government's figures. It is a project running 62 per cent over cost, when contemporary building contracts are written around a budget allowance of overruns in the order of one or 2 per cent.

The Government has spent more than $1m on refurbishing the kitchens at Bruce, possibly so that it can use excess capacity to provide cook-chill meals to the Canberra Hospital. It sold the right to the video replay screen and scoreboard to ACTTAB for $5,700 for the rest of the football season, when the business plan assessed the value of those rights at $780,000. Who knows how much the Government gave away in guarantees to the major tenants of the stadium - the Raiders, the Brumbies and the Cosmos? It is a deal that remains too secret for the long-suffering taxpayer to be let in on.

The Government promised a public exposure limited to $12.3m, a promise oft repeated by the Chief Minister. As recently as 18 February this year the Chief Minister told Mr Kaine, in answer to a question, that the $12.3m government contribution stood. On 18 February this year, Mrs Carnell told Mr Kaine that the $8m up-front private sector injection still stood. But now she proposes to ask the Assembly to retrospectively appropriate the entire alleged cost of the redevelopment, currently, according to the latest government figures revealed only this morning in the *Canberra Times*, $44.1m. There you have the extent of the Government's incompetent financial management of this project - a $27m redevelopment that so far has cost more than $44m.

Who knows what the end result will be? As Mr Osborne has said, it has been like pulling teeth to drag the detail out of the Government - the same Government that boasts about the importance that it places on transparency and now seeks to sponsor the creation of a parliamentary ethics commission. Critically, we have this mess to deal with - this mess of the Chief Minister's doing. It is a mess that will take a good deal of unravelling. The attempts of this Assembly to do that have not been helped by the Government's determination to hide behind inflated notions of commercial-in-confidence to hide any paper trail. But this is a ball of string that the Assembly will need to take some time

unknotting if it is to reveal the extent to which the Government and the Chief Minister have abused due process. At the very least, there have been fundamental breaches of the law that her Government has committed while she has attempted to talk and smile her way around, rather than condescend to consult this Assembly. The Chief Minister claims one law for herself and a different law for everyone else.

Mr Speaker, no-one on this side of the Assembly denies that the redevelopment of Bruce Stadium was born of a good idea, worthy of pursuit. It has always been obvious that next year's Olympics in Sydney would present opportunities for Canberra business and our community. They are opportunities worth chasing down. We would all like to be part of the Olympic experience, and so much the better if we could do it on our home turf. We all have memories of Bruce Stadium as the scene of great deeds done by Raiders and Brumbies teams. We all know what it is like to cheer our champions from the field and we all want to see them stay in Canberra. And we know the pressures on both organisations to stay viable. So, the redevelopment of Bruce as an appropriate home and one that might help guarantee their local futures was also an idea worth pursuing. But if you read the press clippings you will see that the seeds of the Chief Minister's secretive, can-do approach to the redevelopment were sown at the very earliest stage.

It will take me some little time, Mr Speaker, but let me run you through the sequence of events. On 30 October 1996, the *Canberra Times* revealed the $27m redevelopment proposal that was to be put to a SOCOG assessment team the next day. On 1 November, the *Canberra Times* reported that, while the Chief Minister and SOCOG delegates knew of the plan, others in her Government were taken by surprise. On 19 December, the Chief Minister and her sports Minister, Mr Stefaniak, announced that Canberra's push for Olympic soccer had been successful. Significantly, there was no mention of the redevelopment project in the 1996-97 budget and budgets are, as we all know, the usual method for the Executive to obtain the Assembly's approval for expenditure.

Bruce Stadium did, however, surface in the Government's draft capital works program for 1997-98, a report that was the subject of examination by the Assembly's Standing Committee on Planning and Environment, chaired by the then Independent, Mr Michael Moore. In the draft capital works program, the Treasurer's overview noted that the Government had earlier in the year:

> Indicated its commitment to redevelop Bruce Stadium at an indicative cost of $27m on the basis of attracting Olympic soccer games to Canberra ... The Draft Program supports financing of $12.3m of works over three years. The remaining $15m is proposed to be financed through a $7m loan by Bruce Stadium Management and $8m upfront revenue obtained from non-government sources.

Mr Moore's committee reported that officials had told it that two developers had been short-listed to provide financial packages. I quote from Mr Moore's report:

> Officials said it is up to the developers to come up with detailed proposals both to fund the stadium and manage it on a long-term basis.

Mr Moore's committee was sceptical of the Government's claims of an Olympic bonanza. It recommended that all details of the justification of projects linked to the Olympic Games be made public. In other words, Mr Moore was recommending that the SOCOG agreement be made public. That is a recommendation, of course, that remains unmet.

In the context of today's debate, there are a number of particularly intriguing aspects of the Planning and Environment Committee's examination of the 1997-98 capital works process - first, the Treasurer's assertion that the redevelopment was driven solely by the opportunity to get Olympic soccer games played in Canberra; secondly, the plan for the project to be financed by $8m in up-front revenue; thirdly, the requirement of the short-listed developers to detail proposals to fund the redevelopment and manage the operations of the stadium. Let me say this about the first point: The expenditure of $27m to obtain two weeks of Olympic soccer matches is a highly optimistic investment. It would be interesting to learn whether the Government conducted any cost-benefit studies on the proposal. Even factoring in the long-term benefits of retaining the Raiders and the Brumbies in Canberra - of course, that rationale was not part of the original redevelopment push - the break-even point must have been in the extremely distant future.

Mr Speaker, the two short-listed developers referred to by officials before the Planning and Environment Committee were CRI Ltd, in association with Graf Consulting International, and Lend Lease. According to the Government, in answer to a question I placed on notice during this year's Estimates Committee proceedings, each bidder was required to address issues of design, construction method and program, financial consideration, and options for future management. CRI, according to the Government, included with its submission a business plan that took into account various revenue streams, including that from ticket sales. Lend Lease did not provide a business plan, but offered various alternatives to fund the project, including different mixes of debt, equity and ACT Government capital contribution.

CRI was chosen as project manager for the redevelopment based, again according to the Government - and this is ironic in retrospect - on its ability to sustain a government contribution of $12.3m and to develop a business plan identifying all possible sources of private sector revenue and enhancing the viability of the three major hirers. The Government has refused, unfortunately, to release the Lend Lease tender - because it is too secret for us to see - so members have yet to discover what the company may have offered had it won the job to manage the project. I, for one, would like to see what warranties Lend Lease made in relation to keeping the project within the $27m budget and what private sector financing possibilities Lend Lease was prepared to guarantee. The Auditor-General may report on that. Even if he does not, I propose to ask Lend Lease to appear before the Assembly Select Committee on Contracts and Procurement to discuss its bid in detail.

On 25 March, the *Financial Review* reported CRI's successful bid. According to the report:

> The developers will source finance for more than half the construction costs and project manage the redevelopment ... The ACT Government will contribute just over $12m to the project. The remaining finance will be sourced by CRI, which has begun negotiations with potential stadium users and service providers.

CRI's chairman, Mr Peter Wills, told the *Financial Review* that the company's experience in having been a bidder for Stadium Australia "really equipped us with knowing where the income sources are for projects such as this". Mr Wills said that potential income from stadium users, service providers and advertising and sponsorship deals "would underwrite the remaining $15m in finance".

On 29 May, the *Canberra Times* reported that contractors had been short-listed for the redevelopment construction contracts. According to the *Canberra Times*:

> The ACT Government will pay $12.3m toward that project and has said it expected the developers would come up with a range of options to find the rest of the money.

Quite clearly, both the Government and CRI had an understanding that the company would have an important responsibility in organising the private sector finance. Of course, the private sector finance never arrived. With that failure, the Government's Olympic vision was in trouble, and it came right from the start. The up-front revenue never arrived, it never materialised. Three times during the life of this project attempts to find private sector backing have collapsed. The Assembly does need to know why, if members are to understand the extent of the Government's incompetence in this matter.

Mr Speaker, the as yet unanswered question is why the up-front revenue did not eventuate. We do know that the original business plan prepared by Graf International was based on wild and unsustainable crowd figures - average attendances in excess of 18,000 for the Raiders, 16,500 for the Brumbies and 10,000 for the Cosmos. This business plan was subsequently described as rubbish by the Chief Minister in the Estimates Committee hearing on 25 May this year. It is a business plan rewritten as many as 12 times in its two-year history. Why, and by whom, was it ever accepted in the first place?

Despite the shaky basis of the crowd and revenue assumptions in the first iteration of the business plan, the up-front money remained critical. Without the money, there would be no expenditure beyond the Government's $12m, according to the Chief Minister, whose spokesman was reported in the *Canberra Times* of 25 October 1997 as saying:

> The additional $8m expenditure [over the Government injection and $7m guaranteed loan] will be financed from upfront sales such as signage and corporate suites. That expenditure will only be authorised on the basis of dollars-in equalling dollars-out.

But the up-front money did not eventuate and the dollars out continued to flow. Initially, there was money appropriated to cover the contractor payments; $5.6m was set aside as a capital injection for works at Bruce Stadium in the 1997-98 budget.

Mr Speaker, it is now that we come to the crux of the matter. Phase 1 of the project was committed. The money appropriated for phase 1 was spent. Mr Speaker, the bucket was empty and the election loomed - an election at which the Chief Minister intended to run on the strength of her financial management skills. Phase 1 had taken all the funds, but the eastern stand was still to be covered and the prospect of private sector finance had vanished. What to do, Mr Speaker, what to do? The answer? Do not worry about the law, do not go back to the Assembly for approval, just spend.

At this point it is relevant to refer to the minutes of meeting No. 5 of the project control group, included in papers released to the Assembly by the Government, to get some understanding of what was occurring within the Government. *(Extension of time granted)* As I said, at this point it is relevant to refer to the minutes of the meeting to get an understanding of what was occurring and to understand the scenario at the time of the minutes - November 1997. Point 5.6.2 of the minutes says:

> East Stand contract award and tender process is contingent upon agreement to fund Phase 2 works. It was agreed that this contract must be let prior to Christmas period 1997 -

two months before the election; phase 1 was under way and the money had run out -

> Mick Lilley confirmed that project financing will be provided consequent upon a clear understanding of a funding "takeout" prior to 30 June 1998.

Mr Speaker, what does that extract from the minutes reveal? Put plainly, it reveals that those compulsive gamblers, the Chief Minister and Treasurer and the Under Treasurer, put their money on a horse called private sector financing. If their horse had come home, they could have put the money back in the till. But the horse did not complete the race and they needed another way out. Cabinet considered its options at a meeting in December. The formal decision was taken to continue to spend, to ignore the requirement that only the parliament can appropriate the expenditure of public money.

Mr Speaker, that is the moment that the law was breached. The first cheque was written - for $1.8m, and one of seven totalling $9.714m - on 24 February 1998. It was a cheque that should have carried the signatures of at least nine members of this Assembly, but it had only those of the Government. The Government took this action apparently confident that a second attempt to secure private sector finance could be secured by 30 June. But the proposed financing structure negotiated at that stage with Deutsche Morgan Grenfell and County Natwest also fell through.

In any event, with the collapse of this second attempt to secure private funds, someone twigged, late in the financial year, that the books would not look too flash when the Auditor-General undertook his annual inspection. So a scheme was dreamt up to balance the books for the end of the financial year. We know now what that scheme was: The Commonwealth Bank loaned the Government the $9.7m for 24 hours. It was, in the view of Mr John Sackar, a daylight facility. I have also heard such transactions referred to, quaintly, as balance day transactions. It was certainly curious and, in Mr Sackar's view, unlawful.

Mr Sackar was also of the view that the subsequent unappropriated and unauthorised repayment of the loan was unlawful, a view shared by his colleagues Mr Richard Tracey, who was briefed by the Government, and Professor Jack Richardson, SC, who was briefed by Mr Osborne. The device worked in that it covered the appearance of the books for the auditor. But it also excited the Auditor-General's interest. While he signed off on the books, he sought a legal opinion on what Mr Sackar called extremely curious circumstances - the overnight loan.

That legal opinion, which the Government eventually sought from Mr Tracey, led to two more extraordinary actions by an increasingly desperate Chief Minister. First, she concocted another device, this time to validate the actions which Mr Tracey found were taken in contravention of the Financial Management Act and the ACT Self-Government Act. She created financial management guidelines and backdated them, and the guidelines defined an "investment" that would seemingly allow expenditure on property such as Bruce Stadium. Secondly, she revealed the extraordinary, complex corporate structure designed to entice the Commonwealth Bank to join the project as a private sector financier. It was a structure that looked like an outdated atlas of the 1980s corporate world, rather than a plan to fund the redevelopment of a football stadium.

Within a fortnight the guidelines had to be rewritten as the Government staggered from bomb crater to bomb crater. Now, this third attempt to secure the long-awaited private sector finance has collapsed and the Chief Minister proposes to appropriate the entire cost of the redevelopment. This is an admission by the Chief Minister that until now she has regarded the Assembly as an irrelevant stumbling block to the achievement of her personal goals. She would not be facing this motion today if she had taken the Assembly into her confidence two years ago and come back and asked for the moneys to be appropriated.

Mr Speaker, this is a government waiting for Godot. In the meantime, as is its wont, it has scrambled for justifications and explanations of its behaviour. On 24 April, the *Canberra Times* reported a government spokesman as saying:

> The stadium has been cash-managed in the knowledge that the private sector will be paying for the balance.

On 29 April, the Chief Minister told ABC radio that the unappropriated expenditure was being "cash-managed across the government". It was like spending money to treat hospital patients from New South Wales, in the sure knowledge that the New South Wales Government would eventually cough up. It was a question of net appropriations; spending the money, but making sure that at the end of the financial year the books balanced. The Auditor-General, in evidence to the Estimates Committee on 4 June this year, said that he was not aware of what the term "cash managed" meant, or if it had a meaning at all.

The Financial Management Act provides for three classes of appropriations - outputs, capital injections and payments by departments on behalf of the Territory. Section 9 of the Act provides for a net appropriation of outputs. Clearly, Bruce Stadium is bricks and mortar. Clearly, the Bruce Stadium redevelopment is a capital project and an output. Clearly, this defence of the Chief Minister does not stand.

On 28 April, the Chief Minister told the *Canberra Times* that there had been a "possible technical problem with the legislation that may need to be amended". But this is far from a technicality. As I discussed previously, and as the courts have ruled, the Government's actions in spending public funds without an appropriation by this Assembly are a breach of the most fundamental principles of government and the law. The Privy Council found in the Auckland Harbour Board case of 1924 - a case that is still law and still applied - as reported by Mr Tracey:

> The days are long gone by in which the Crown, or its servants, apart from the Parliament, could give such an authorisation [for the expenditure of public money] or ratify an improper payment. Any payment out of the Consolidated Fund made without parliamentary authority is simply illegal and ultra vires, and may be recovered by the government if it can, as here, be traced.

Three times in different interviews on ABC radio between 29 April and 6 June the Chief Minister ran another defence about the Government's failure to raise the private sector finance. No longer was there any question of up-front revenue or no dollars out without dollars in. No, by now it was a question of the Government waiting until the end of the project, until all the bills were in and the final cost was known, of cash managing the middle bit and waiting for the cargo cult plane to land.

In one of those ABC interviews - on 30 April - the Chief Minister introduced the section 38 defence. It was first introduced on 30 April this year. For the first time, she revealed that the Government was looking at that section of the Financial Management Act which defines investments. Of course, on 19 May, three weeks later, the Government made its financial management guidelines, backdated to commence on 1 July 1997, which prescribe for the purposes of section 38(1)(e) an investment in Territory owned property as a prescribed investment.

Mr Speaker, I guarantee that, not until the Auditor-General wrote to the ACT Government Solicitor on 22 October 1998 for advice on the legality of the Government's action, had it occurred to a single person in the Government that the redevelopment of Bruce Stadium was an investment. It had not occurred to a single person in the Government or the Public Service until the Auditor-General wrote to the Solicitor on 22 October and said, "ACT Government Solicitor, I am worried that the Government has not abided by the law. Will you give me advice on this?". One can imagine the panic that occurred after that. How can we legalise what is patently unlawful behaviour?

Mr Speaker, I have searched every set of minutes of the Bruce project control group released to the Assembly by the Government - I have looked at and read every set of minutes of that group - and I could not find the word "investment" once. The decision to seek to describe Bruce as an investment was dreamt up as a lame excuse to try to legalise unlawful behaviour. The Auditor had sprung the Government. Instead of simply copping it sweet, the Chief Minister and the Government have assailed us with this range of absurd, insulting and derisory justifications and defences of their behaviour.

Another defence run by the Government is that a similar technical breach of the law occurred in New South Wales, was uncovered by the New South Wales Auditor-General, and fixed without fanfare or the prospect of any parliamentary sanction. *(Further extension of time granted)* In fact, as the New South Wales Auditor, Mr Tony Harris, told ABC radio on 28 April, the New South Wales Government spent $2.8 billion that the parliament had not authorised. But it was not a matter taken lightly. Mr Harris told the ABC:

> ... the Government took it seriously and the Government amended its processes so that the chances of it happening again are much reduced ... You'd like them to be a bit more conscious that the law is there and the Government is subject to the law. No man, no person is above the law, and the Government is not above the law.

Of course, the Chief Minister now proposes, in an effort to create some semblance of contrition, to make financial management guidelines disallowable, which is a curious thing, given her comments during debate on the Financial Management Bill in 1996. The Chief Minister spoke against such a proposal to make a guideline prescribing an investment disallowable. She said then:

> ... this amendment ... is unacceptable because controlling investments by law, including regulations, is flawed in principle and is ineffective in practice ... It is far better to rely on openness and transparency. Controls just do not work. All of the guidelines will be visible and transparent.

Mr Speaker, how are non-existent guidelines, or retrospective guidelines, in any sense open and transparent? Interestingly, the Chief Minister went on in the 1996 debate to say:

> The investments are for the purpose of liquidity management. The key is to maximise returns for the Territory and minimise risk ... Investments are not for any policy or political purpose ... The Territory should not be disadvantaged in its ability to respond quickly to unanticipated changes in market conditions; but a disallowable instrument would, and certainly could, involve significant time delays.

It is up to the members of this Assembly to judge whether an investment in Bruce Stadium is a question of liquidity management. It is up to the members of this Assembly to judge when the Government decided its commitment to the Bruce Stadium redevelopment was an investment designed to maximise returns to the Territory and not a capital injection in bricks and mortar and grass. It is up to the members of this Assembly to judge whether that decision was for any policy or political purpose.

Mr Speaker, if the Government's proposed corporate structure to secure the backing of the Commonwealth Bank looked like a map of the Cayman Islands, then this tortuous concoction of defences is Captain Hook's map leading to the buried treasure. And none of it stands scrutiny, as every member of this Assembly well knows.

Mr Speaker, this history of the Bruce Stadium redevelopment fiasco, constructed as it is from the scraps that media and Assembly scrutiny has dragged from the Government, reveals the farrago of inconsistencies derived from the Chief Minister's can-do mind-set. It describes her determination to impose her will, irrespective of due process; and in this case, irrespective of the law. It demonstrates, perhaps more comprehensively than any other issue before this parliament and community over the last four years, this Government's complete and utter disregard for process. It shows how completely this Government is wedded to the politics of the glib line and the showy picture opportunity. But it also paints a more serious picture of a government contemptuous of the most basic tenets of the democratic system upon which this Assembly relies, and it is for that contempt that the Chief Minister must go.

All the evidence is in and it is time to sum up against the Chief Minister. As those of us who have been involved in the law know - as Mr Osborne and Mr Rugendyke know only too well - a point comes in an investigation when any further evidence gathering is unnecessary. The Government's own legal advice referred to the fundamental requirement that the public moneys of the Territory must not be expended otherwise than in accordance with an appropriation. The consequences of a breach of this fundamental constitutional stipulation are serious. Mr Tracey drew the Government's attention to the words of the Privy Council in the Auckland Harbour Board case, and I will repeat those:

> For it has been a principle of the British Constitution now for more than two centuries ... that no money can be taken out of the Consolidated Fund into which the revenues of the State have been paid, excepting under a distinct authorisation from Parliament itself. The days are long gone by in which the Crown, or its servants, apart from Parliament, could give such an authorisation or ratify an improper payment. Any payment out of the Consolidated Fund made without parliamentary authority is simply illegal and ultra vires ...

Mr Osborne well knows the point. On 11 December 1997 he spoke in the Assembly about the importance of section 83 of the Constitution. He said then:

> Section 83 was meant to guarantee as far as possible in a society that the public could see how their money was being spent. That financial transparency ensured democracy.

The concern of this Assembly on this matter has been obvious for months. It is a concern that the Chief Minister has shown no acknowledgment that she accepts that her Government has broken the law, no recognition that governments simply have to uphold their own laws, and no real commitment to right the wrong in a simple, straightforward and honest way. Dwight Eisenhower, during his 1952 election campaign, was asked:

> The Democrats have been in power a long while and, sure, they have made a few mistakes but their intentions are good. Why would we get rid of them for you?

Eisenhower replied:

> If the school bus driver ran off the road, crashed into a light pole, came back onto the road, hit a car and finished up in a ditch and no-one was hurt, you could say his intentions were good, but you would still get a new bus driver.

The intentions of the Chief Minister to bring Olympic soccer to Canberra and to keep the Raiders and the Brumbies in town may have been well meaning, but they can in no way excuse her for her refusal to follow due process, for her denial of the need for transparency and openness, for her misguided determination to treat the business of government as no different than the doing of business. They cannot excuse her for breaking a fundamental law. They simply do not excuse the Chief Minister for flouting fundamental principles of parliamentary democracy in spending taxpayers' money without authority, and for her contemptuous regard for both those principles and this Assembly.

The people of Canberra can see through this Chief Minister. They are sick of the gloss and the glib one-liners. There is no other inference to draw from the poll results reported in yesterday's *Canberra Times*. The Chief Minister may well rationalise the dive in her approval as the result of a continued assault on her by the media and the Opposition, but it is on her head. Every second person in the Territory - every second person in Canberra - believes that this motion should succeed and the Chief Minister should go. Mr Speaker, this Assembly and the Canberra community can have no confidence in a Chief Minister who has behaved in this way and, equally, has shown no sign that it might not happen again. Mr Speaker, I commend this motion to the Assembly.

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

> That Mrs Carnell have leave to speak without limitation of time.

MS CARNELL (Chief Minister and Treasurer) (11.11): Mr Speaker, a motion of no confidence is the most serious that can be laid before this Assembly. Together with rejecting an Appropriation Bill in its entirety, it is one of only two triggers available to this Assembly should it choose to dismiss a government. It is also the kind of motion that should never be moved lightly, because in doing so the mover risks creating enormous instability in the government of the Territory and creates the potential for the parliament to overturn the clear will of the voters as expressed at the last election. For those reasons, I regard today's debate with the utmost seriousness, as does everybody on this side of the Assembly. I therefore intend to spend a considerable amount of time responding to the allegations that have been made by those opposite and explaining my actions and therefore those of the Government.

Mr Speaker, some members of the Assembly have stated on several occasions, both here and outside the chamber, that I have personally broken the law and that I have acted unlawfully. Mr Stanhope probably made those comments in his statement just a minute ago. The imputation they have made is that I knowingly set out to break the law and deliberately flout its provisions. The allegations are completely untrue; but, all the same, there can be no more serious charge. My approach, and that of my colleagues, will be to use the facts rather than emotive statements to explain my actions and those of the Government, because, despite what Mr Stanhope has claimed in his motion, it is the actions of the Government as a whole, not just mine, that are at issue here.

First, let us review the allegations made by the Labor Party. They say that we have acted illegally; they say that we have spent money that was not in an Appropriation Act, and they say that there was not full disclosure. To address these allegations, I would like, firstly, to explain to the Assembly exactly how the Bruce Stadium development came about and detail the decision-making process adopted by Cabinet and the Government that led to the construction being authorised. Secondly, I will detail the legal position regarding the various transactions that have been called into question. Thirdly, I will detail what steps the Government has taken to rectify the problem that has been identified within our financial management laws and to revise the way that Bruce Stadium is funded. Finally, I will review in detail the allegations and show why there is no basis for this motion to succeed.

What I intend to show is that the Government, be it any Minister or any public servant, did not set out to deliberately break any laws, even though a mistake did occur in the implementation of our decision in relation to Bruce Stadium. I will show that, despite Mr Stanhope's claim, there are clear provisions under which public money can be spent without resorting to a specific Appropriation Act. These provisions have been used not only by this Government, Mr Speaker, but also by the Labor Party when they have been in office and by every other government in this country. I will demonstrate that the Government fully disclosed all the transactions relating to the financing of Bruce Stadium. In summary, Mr Speaker, whilst the Government apologises for the error that occurred, it was not as a result of any deliberate act or wrongful intent, and therefore does not warrant my dismissal or the dismissal of the Government.

Mr Speaker, let us look, firstly, at the background to the project. In 1996 the Government agreed to redevelop Bruce Stadium to meet the standards required to host Olympic football and to ensure that we were able to retain the Canberra Raiders and the ACT Brumbies in Canberra. This decision was made only after assessing an enormous range of professional advice provided by a range of external consultants. Advice was sought first from CRI Project Management and from Graf Consulting International. Mr Speaker, we did not just accept that advice. To test the rigour of the advice of these two firms, their business assumptions were subsequently checked by two other independent firms, Andersen Consulting and IMG. Based upon this extensive advice, the Government decided that the project was capable of being funded through a contribution of $12.3m from the capital works program and the rest from private sector sources.

We chose to go down this path for one reason only, Mr Speaker, and that was to minimise the financial impact on the people of the Territory. It is true, Mr Speaker, that right from day one we could have put the lot into capital works. We chose, though, to go in a different direction and to get the best outcome for the least risk to the people of Canberra. The proposed financing structure was based upon independent and professional advice, and at all times the Government believed that it was acting totally within the law. This was no ad hoc decision-making process. Make no mistake, it was a major project about which decisions were reached only after lengthy processes for obtaining and testing information. In fact, those opposite will know that, Mr Speaker, from the boxes of information that we have provided to them over recent weeks. A huge

volume of information has been provided already to both the Auditor-General and members of this Assembly, proving beyond any doubt that this was an exhaustive and considered process.

Under the original plan, the $15m balance of the construction project was to be realised from a private sector loan of $7m and the remaining $8m was to come from revenue generated by the stadium for such things as naming rights and the sale of corporate suites. This plan was publicly disclosed on several occasions, both in this Assembly on 26 and 27 August 1997, not exactly yesterday, and in the Estimates Committee hearing on 20 July 1998, not to talk about all of the situations of disclosure over the last six months or so. There is also no doubt that the Government made its intentions clear in relation to funding the upgrade through a mixture of public and private sector financing.

Construction began in September 1997 and, as is well known, the capital works contribution of $12.3m from the Government was to be provided over three years. By December 1997, it was evident that the private sector involvement in Bruce Stadium financing would not occur in sufficient time for the construction to continue without the need for temporary working capital. Without this working capital, there would have needed to be a pause in construction. This would have had the effect of increasing the construction costs, due to delays and restarting, as well as jeopardising the timing for completion, which was critical to the stadium being fit to host rugby league and rugby union matches for the 1998 home and away series. Mr Speaker, any delay would have resulted in lost revenue and higher costs, not something, I would assume, that any government would accept.

Cabinet was advised in December 1997 that the appropriate approach was for project financing for the full redevelopment to be sourced from the Central Financing Unit pending finalisation of private sector funding before the end of June 1998. Cabinet accepted this advice. It should be noted at this stage that Mr Kaine was a member of the Cabinet who made this decision; in fact, at the time, he was Assistant Treasurer. The temporary working capital was provided in the form of a repayable loan to the Bruce Redevelopment Authority, which at the time was, in fact, a section within the Department of Business, the Arts, Sport and Tourism. The loan would be repaid once private sector funding had been obtained, and in any event by the end of the then current financial year.

The provision of temporary working capital in the form of a repayable loan was not an unusual practice, Mr Speaker. Similar loans have been provided under this Government and under previous governments to ACT Forests, the Australian International Hotel School, the Gungahlin Development Authority, CanDeliver and Totalcare. And guess what, Mr Speaker? These loans were not separately appropriated. A good example, Mr Speaker, is that the initial funding for the hotel school was agreed to on 23 December 1992, when those opposite were in power. Under the agreement, CIT borrowed $150,000 from ACTBIT, which was the precursor of the current Central Financing Unit, for establishment work. So, $150,000 was borrowed by CIT from ACTBIT for establishment work. That was not through any Appropriation Bill. It did not come anywhere near the Assembly. In these cases, the preference for a loan rather than a capital injection is based upon the need for appropriate commercial accountability

from the borrower. The same view can be taken for Bruce Stadium. Mr Speaker, I can give any number of examples of situations like that done by all governments in this Territory.

Cabinet decided that, until private sector funding had been secured, the Bruce project should continue using loan moneys advanced by the Government. It was Cabinet's intention that those loans would be repaid once private financing had been successfully negotiated. That brings me to a crucial and critical issue. In making these decisions, Cabinet proceeded on the understanding and advice that the loans to be made by government were within its legal capacity. In fact, Richard Tracey, QC, found that Cabinet did have the power to authorise such loans under section 38 of the Financial Management Act. So, Mr Speaker, it is very important to say that Cabinet did have the legal capacity to make that decision.

Having made that decision, it then fell to the Office of Financial Management within the Chief Minister's Department to make the necessary financial arrangements. To implement Cabinet's decision, OFM created a loan facility with its Central Financing Unit, which then provided a series of loans to finance the continuing construction of the stadium. A total of $9.7m was advanced in seven transactions during 1997-98. A further $14.3m was advanced in 12 transactions during 1998-99. These loans were advanced on terms which included an obligation to pay interest as well as repayment of the principal.

The loans were arranged by the CFU in accordance with procedures which it was accustomed to using for many years. So, this was not a one-off situation, as those opposite would like to indicate, Mr Speaker. Officers of the Central Financing Unit followed the practice that they had become accustomed to under the previous Audit Act, which, of course, was in place under the previous Government, for loan transactions. They used similar documentation, similar repayment and interest terms, and similar authorisation processes. Throughout, officers described these transactions as loans in the same way as they were described when the old Audit Act applied.

Mr Speaker, section 38 is the only provision in the Financial Management Act under which loans can be made by government, just as section 86 was the sole authority for loans under the old Audit Act. This is where the mistake occurred. Under the Financial Management Act, unlike the Audit Act, a guideline should have been issued to allow for additional investments under section 38. Mr Speaker, this guideline was not issued. Clearly, the establishment of appropriate guidelines at the commencement of the Financial Management Act would have provided a lawful basis for all of the investment transactions. However, the changed procedural obligations were not complied with, which rendered a number of transactions, including the Bruce Stadium loans, invalid. So, Mr Speaker, this is about a guideline that was not issued. The extent of the problem was not uncovered until the practices of the CFU were subjected to a careful legal analysis later on.

Mr Speaker, let us be clear: A mistake was made. It was made by staff of the Office of Financial Management, who did not recognise the need to issue guidelines to meet the requirements of section 38 of the Financial Management Act. The mistake happened because staff were following the practices in place under the old Audit Act, which required only the simple approval of the Treasurer to authorise an investment.

As Chief Minister, I take responsibility for that mistake and take this opportunity to formally apologise for the fact that it occurred. However, it is important to stress that the actions of every public servant were well intentioned and were not the result of any improper or unlawful motive. The people concerned acted as they had always done, believing that they did so fully in accordance with the law. Mr Speaker, what this history shows is that the Bruce Stadium upgrade was not carried out in an ad hoc fashion, or with any improper or unlawful motive. I would like to say that again, Mr Speaker: This history shows categorically that the Bruce Stadium upgrade was not carried out in an ad hoc fashion, or with any improper or unlawful motive.

Mr Speaker, I will now turn to the legal issues surrounding the validity of the Bruce Stadium loan transactions. A number of questions were raised by the Auditor-General and these questions were submitted for advice by senior counsel - Richard Tracey, QC, of the Melbourne bar. In essence, Mr Tracey was asked to advise whether the loans and their repayment were legally authorised under the Financial Management Act. If Mr Tracey decided that the loans made by the CFU were not legal, he was asked then to advise whether the reason was that the legislation did not permit such transactions at all, or whether any illegality followed as a result of administrative defects. Mr Tracey was also asked to advise on the effect on his answers to these questions of a new financial management guideline which was given retrospective effect to the date of commencement of the Financial Management Act.

Mr Speaker, it is important for members to remember what Mr Tracey said. Remember, it is important that Richard Tracey, QC, is one of the most eminent administrative lawyers in this country. Mr Tracey said that, since the Bruce loan payments did not fall within the range of prescribed investments, they were not authorised under the Financial Management Act. He went on to say that, for the Bruce Stadium loans to qualify within the range of prescribed investments, it was necessary to have in place a guideline pursuant to section 38(1)(e) of the Act which permitted an investment of that kind, and no such guideline had been made by the Treasurer.

He went on to say that Bruce Stadium could have been made a prescribed investment if an appropriate guideline existed at the time of the transactions, and if such a guideline had existed, Mr Tracey would have advised that the transactions were lawfully valid. In other words, Mr Speaker, the transactions were capable of being undertaken using the authority conferred on the Treasurer by section 38 of the Act, but a flaw in the process, that is, the failure to make the necessary investment guideline, rendered the transaction invalid. Therefore, although expenditure of money by government must be authorised by appropriation made to it by the Assembly, it is possible for the Government to make investments which do not require an Appropriation Act. I will say that again, Mr Speaker: Therefore, although expenditure of money by government must be authorised by appropriation made to it by the Assembly, it is possible for the Government to make investments which do not require an Appropriation Act. That is a key fact, Mr Speaker, which I will come back to later.

It was also discovered that many other transactions undertaken by the CFU were similarly affected. To rectify this problem, a guideline was made by me in terms which authorised investments such as Bruce Stadium and the other, more routine, transactions affected by this procedural flaw. This guideline was given retrospective effect, thus

filling the crucial procedural gap identified by Mr Tracey. After this guideline was made, Mr Tracey was asked to advise on its effect on the validity of the Bruce transactions. He concluded that the retrospective guideline rendered the transactions lawful. Mr Speaker, once the guideline was issued, Mr Tracey, QC, concluded that the retrospective guideline rendered the transactions lawful.

The Government was advised that such a guideline could be made to have retrospective effect by no less an authority than the Parliamentary Counsel for the ACT. Yes, Mr Speaker, the Parliamentary Counsel that everyone in this house relies on for advice on just about every piece of legislation that goes before this place. Mr Speaker, a formal written opinion on the subject was prepared by the Parliamentary Counsel, and that opinion was released for public information. The Parliamentary Counsel's opinion on this aspect was accepted by Mr Tracey, who is an eminent practitioner in administrative law. Apart from the legal basis for the retrospective guideline, the desirability of rectifying in this way the procedural flaws identified by Mr Tracey also needs to be understood. Whilst many of the transactions entered into by the CFU since the Financial Management Act commenced have been concluded, there are a number that are still active.

Since Mr Tracey's opinion was publicly released, it has been claimed by the Labor Party that the Bruce development is incapable of being an investment, another issue that Mr Stanhope raised earlier. For the benefit of the Assembly, let me explain why it is simply wrong. In the Financial Management Act, the word "investment" has a plain and ordinary meaning. It does not have a technical or restricted meaning. The ACT acquired a lease in relation to Bruce Stadium and, through the redevelopment, is restructuring the facilities on the lease. These improvements will materially affect the use to which the stadium can be put. In turn, this is expected to generate a commercial return to the ACT over time.

The redevelopment is characterised as an investment for two reasons. Firstly, the redevelopment constitutes an investment as an improvement in real property for the purpose of securing a monetary return on the money invested, obtaining rental profit, permitting a subsequent sale or obtaining a capital appreciation on the property. No doubt those things occur, Mr Speaker. Secondly, the transactions underlying the redevelopment constitute an investment as an internal loan undertaken for the purpose of obtaining interest revenue in relation to the improvement in the real property.

These purposes are entirely consistent with the documents generated at the time by the officers of the Central Financing Unit, which clearly describe the transactions as loans. Mr Speaker, earlier Mr Stanhope said that there was no indication at all that the Government had thought about this as an investment until recently. Mr Speaker, as you can see, the documents generated at the time by the officers of the Central Financing Unit clearly describe the transactions as loans. At the time of establishing the loan from the Central Financing Unit to the Bruce Redevelopment Authority, it was clearly an investment, Mr Speaker, and still is. In summary, what the Government did was perfectly legitimate under section 38 of the Financial Management Act, but for the fact that a guideline was not issued - a technical flaw, Mr Speaker.

Mr Stanhope also indicated in his speech that somehow the Government had done nothing to rectify the problem. Again, Mr Speaker, rubbish. As soon as the Government was advised that there may be a problem, we took immediate action. After seeking advice from Parliamentary Counsel, a guideline was made by me in terms which retrospectively authorised investments such as Bruce Stadium and the other, more routine, transactions that were affected by this procedural flaw. It was done immediately we knew that we had a problem. After this guideline was made, Mr Tracey was asked to advise about its effect on the validity of the Bruce transactions. He concluded that the guideline rendered the transactions lawful.

Even though the financing of the Bruce Stadium upgrade was legal under section 38 of the Financial Management Act, the Government acknowledges that some Assembly members have some concerns about the current structure of the redevelopment and the financing arrangements. In response to these concerns, the Government has taken the view that the appropriate way to resolve the issue and take it forward in a manner that will be to members' satisfaction is to seek to include funds for the redevelopment of the stadium in an Appropriation Act; in other words, Mr Speaker, responding to the requirements and to the concerns of this place. Members will be aware that amendments have been circulated to achieve this outcome.

I should point out, Mr Speaker, that the private sector did not walk away from this project, as Mr Stanhope seemed to indicate in his speech. Mr Speaker, we have actually circulated a letter from the Commonwealth Bank making that totally clear - maybe Mr Stanhope was just forgetting some of the facts in his speech. Mr Speaker, at the time of the Government's decision to seek to include the full cost in an Appropriation Act, the Government was also considering a proposal from the Commonwealth Bank which would have resulted in the private sector providing the majority of the required funding. This private sector proposal worked for the benefit of both the ACT community and the private sector because it minimised the ACT Government's direct investment, whilst ensuring a high-quality stadium and a commercial return to the private sector investors. Whilst the structure may have appeared complicated to some members of the Assembly who are not involved in investment and financial transactions on a daily basis, it worked because it provided the private investor with a commercial return which was maximised through access to depreciation benefits and limited the Government's direct exposure.

Mr Speaker, as a consequence of this problem with the lack of guidelines, the Under Treasurer has already directed an immediate review of the Central Financing Unit, the Superannuation Provision and Insurance Unit and OFM generally to ensure that all the necessary delegations and instruments to effect the proper administration of the FMA are in place or will be put in place. Mr Speaker, that happened immediately we realised there was a problem. A similar review in relation to all agencies that operate within the boundaries of the FMA is under way. It is being facilitated by OFM to ensure that all the practices and procedures under the FMA have been complied with across the whole of government. So, Mr Speaker, any allegations by Mr Stanhope that we have done nothing are simply untrue.

Mr Speaker, I will now turn to the allegations specifically levelled at me by Mr Stanhope. It has been alleged by the Labor Party that I have acted unlawfully. In fact, they seem to have used that as the basis for this whole no-confidence motion.

Mr Speaker, whilst we concede that there was a mistake which left the Bruce Stadium transactions without proper authorisation, there was no intent on the part of any person to break the law. In the course of examining the transactions associated with Bruce Stadium, Mr Tracey, QC, concluded that the transactions decided on by the Government were within its power to carry out. Again, Mr Tracey concluded that the transactions decided upon by the Government were within its power to carry out. In other words, the Government could have provided the project financing for Bruce utilising the authority conferred by section 38 of the Financial Management Act. The difficulty was the lack of an appropriate guideline to extend the range of investments to include Bruce Stadium. That was an oversight by the Government which was clearly unintentional. Obviously, Mr Speaker, it could have been rectified at any point if the Government or the officials had known that there was a problem.

It is important to highlight a couple of examples where Territory governments have acted without authority, but where that breach was not the result of a deliberate action, or was discovered only after the fact - similar situations where governments have acted without authority, but the breach was not deliberate or maybe was discovered after the event. Let us look back to 1990. Mr Kaine was Chief Minister at that stage. Mr Speaker, the Business Franchise ("X" Videos) Act was introduced to provide for the regulation and licensing of the X-rated video industry and as a means of taxing the wholesale sale of X-rated videos. It was introduced by the Alliance Government, again with Mr Kaine as Chief Minister. However, Mr Speaker, as you will remember, the High Court ruled in December 1993 - by this stage the Labor Government was in power and had been levying this tax for a period of time - that the imposition of the tax by the ACT Government contravened section 90 of the Constitution, being a Commonwealth taxing right that could not be delegated to the Territory. The court ruled that the Alliance Government's X-rated video tax was therefore invalid.

Mr Moore: A court there, not just a legal opinion.

MS CARNELL: Yes, not just a legal opinion, Mr Speaker or Mr Rugendyke - a ruling of the High Court. Mr Kaine and his colleagues would rightly say, as I am sure would the Labor Government which also levied the illegal charge, that they believed that they were acting lawfully at the time when they made a decision to introduce the tax and to levy it; just as this Government is right in saying that we believed that we were acting within the Financial Management Act when we made our decisions in relation to Bruce Stadium. What did the Assembly do in the X-rated videos case, Mr Speaker? It got on with the job of fixing the problem. To protect revenue already collected, two legislative changes were effected in 1993 with a retrospective application to taxes and fees paid under the invalid legislation - retrospective legislation.

To cite another example, members will recall that in 1997, in the Ha and Lim case, the High Court cast doubt on our ability to collect franchise fees in relation to tobacco, petroleum and liquor. In other words, previous governments as well as this one had, in fact, been acting unlawfully for years and years by collecting these franchise fees, which were worth literally hundreds of millions of dollars, Mr Speaker. Was there a no-confidence motion in this Government, the previous Government and every other government in this country over this unlawful action? Of course not, Mr Speaker, because all of those governments believed that they were acting within the law.

What happened in that case, Mr Speaker? The Government and the Assembly got on with the job of fixing the problem that had been identified. And we have done so here, Mr Speaker. Of course, that legislation to fix up the section 90 issue had to be done retrospectively, Mr Speaker; exactly what we have done.

More recently, the New South Wales Labor Government and its parliament were confronted with an issue very similar to the one that we are confronted with today. Previously, it had been a longstanding practice of the New South Wales Government to facilitate a number of transfers of funding after the end of the financial year and after the appropriations for the particular year had lapsed. Finally, after the Auditor-General had signalled his intention to qualify the State public accounts, a piece of legislation was introduced and passed which retrospectively validated the appropriations and the expenditures and therefore resolved the breaches involved. Mr Speaker, the retrospective legislation was not about $20m; it was about over $3 billion. By the way, that was done with the support of the parliament, understanding that sometimes these things happen and they have to be fixed. I think that that illustrates just how complex the issue of financial management is under financial legislation, not just in the ACT, but right round this country.

Mr Speaker, I think it is important to quote here some comments made by the New South Wales Labor Treasurer, Michael Egan, on these issues. I quote directly:

> Advice from the Crown Solicitor has pointed to the problem of ambiguity in the provisions of the Public Finance and Audit Act and the inability of the Act to accommodate practical issues arising from new financial systems such as accrual accounting.
>
> The way to deal with those problems is by legislating to fix the system, not by prosecuting people for doing their jobs in good faith in accordance with instructions.
>
> If it took the Auditor-General so many years to decide that the established financial system involved breaches of the law, how can this Parliament expect public servants to be prosecuted if they have not reached the same conclusion?

He went on:

> If there have been breaches of the Public Finance and Audit Act - and it should be noted that no court decision has so determined -

as there is not here -

> any such breaches would be technical in nature. There is no question of fraud, deceit or the misuse of public funds involved.

Those are telling statements, Mr Speaker, by the New South Wales Labor Treasurer, Mr Egan, and I think that they have particular relevance to the ACT. In summary, there was an unintentional technical breach that was fixed by a retrospective legislative instrument, as had been accepted practice in the past. Mr Speaker, there was an

unintentional technical breach that was fixed by a retrospective legislative instrument, as was the practice in the past - not just in this Assembly, although we have done it here, but in New South Wales and every other State in this country.

Mr Speaker, I now turn to another issue that Mr Stanhope raised, that is, the issue of appropriation. It has been suggested that all moneys spent by the ACT Government must be included in an Appropriation Act. Several people, including Mr Stanhope, have been asserting that an Appropriation Act is required for every dollar the Government spends. Mr Speaker, that is simply not true; but, unfortunately, it is the sort of spin that characterises the way that the members of the Opposition have misrepresented the facts here. The fact is that, whilst all money spent by a government must be authorised, it is not necessarily subject to an Appropriation Act.

Let me make the difference quite clear, Mr Speaker. There is no doubt about authorisation. It is a fundamental principle of our system of representative democracy that the levying of taxes and the expenditure of public money must be authorised by law. This principle is reflected in section 58 of the Australian Capital Territory (Self-Government) Act and in section 6 of the Financial Management Act. Section 6, also quoted by Mr Stanhope with a slightly different spin, says:

> No payment of public money shall be made otherwise than in accordance with an appropriation.

However, it is most important to understand that the word "appropriation" in this context means authorised by law. It does not necessarily mean an Appropriation Act. This is a very important distinction, Mr Speaker. The key point here is this: The expenditure of public money must be authorised, but it does not have to be authorised by an Appropriation Act. In other words, the expenditure of public money can be authorised in a number of ways, apart from an Appropriation Act.

Under the Financial Management Act, there are two different sources of appropriation under the law - one that this Assembly or a past Assembly actually passed. First, there are the annual appropriations, which provide for most of the expenditure of the Territory. The structure of the Appropriation Bill is defined under section 8 of the Financial Management Act. The second type of appropriations is called standing appropriations. The Financial Management Act authorises money to be paid direct as standing appropriations without a separate Appropriation Act. In these circumstances the Financial Management Act is, itself, the appropriation; that is the authorisation. I will just quote that again, Mr Speaker. In these cases, the Financial Management Act is, itself, the appropriation.

Let me give you some examples. In the event that there is a delay in the budget being passed, the Financial Management Act, section 7, provides for money to be spent to meet the ongoing requirements of government. Salaries have to be paid, accounts have to be honoured, so the Financial Management Act allows those payments to be made without being expressly passed by this Assembly. In fact, Mr Speaker, only yesterday I signed an instrument issued under section 7 of the Financial Management Act, which is the authority to spend on lapse of an appropriation, and section 37, which is the authority to issue public money, for - wait for this, Mr Speaker - $722,990,000. This instrument relates to the authority to issue an appropriation and expend public money from

1 July 1999 until the commencement of the 1999-2000 Appropriation Act. Mr Speaker, it is clear that we will not have an Appropriation Act passed by this Assembly by tonight. That means that from tomorrow we will need to be able to pay wages and do other things.

Mr Speaker, that is a valid authorisation to spend public money, but it has been nowhere near this place. It is not part of a Bill that has been passed in this place, but is a normal part of government.

Also, the Government can spend money on providing, for example, health services without a specific appropriation on the condition that it eventually gets the money back by being paid for those services. This applies to agencies that have been given a net appropriation. Mr Speaker, that comes under section 9 of the Financial Management Act.

Example No. 3: The Treasurer can increase the amount of funding passed on from the Commonwealth without having to come back to the Assembly for a new appropriation. That comes under sections 17 and 19B. That means that if the Commonwealth gives us more money than we expect we can pass it into the budget and - guess what, Mr Speaker? - spend it without an Appropriation Act. The Financial Management Act at section 38 makes it clear that the Treasurer has the power to apply public moneys in a range of investments.

There are at least 10 additional standing appropriations allowing for payments such as the repayment of loans, mid-term transfers of money within and between appropriations, refunds and, of course, act of grace payments. Act of grace payments are able to be made by me without a separate appropriation. It is beyond doubt, Mr Speaker, that the Financial Management Act provides for expenditure which is not subject to a specific Appropriation Bill.

Mr Stanhope's reliance on section 6 is inadequate because he addresses only a selective part - and a very small part, I have to say - of this issue. He attempted to use it to assert that every dollar of public expenditure requires an Appropriation Bill. I think, Mr Speaker, that that is just aimed at misleading this Assembly, rather than informing it. Mr Speaker, the decisions taken under section 38 to invest public funds in Bruce Stadium are, by definition, appropriated - that is, authorised - because they get their authority from the Financial Management Act. Mr Speaker, I think that this is a really crucial issue. The decisions taken under section 38 to invest public funds in Bruce Stadium are, by definition, appropriated - that is, authorised - because they get their authority from the Financial Management Act; just as when I signed an instrument under section 7 to ensure that public servants will be paid next week, that money was also appropriated, or shall we say authorised, under the Financial Management Act. Accordingly, no Appropriation Act was required for the transaction.

In fact, it was under the old Audit Act that a transaction involving the establishment of a loan facility of $1.5m for forestry operations within the ACT took place - a decision made by the previous Labor Government. Mr Speaker, that $1.5m that was loaned to forestry operations was not separately appropriated. It did not come near this place, Mr Speaker, nor did it have to. Therefore, using Mr Stanhope's logic, the former Labor Government spent money that was not appropriated. If you accept that every dollar has

to be in an Appropriation Bill, which is not the case, I have to say, that $1.5m loan to forestry operations should have been separately appropriated. It was not, Mr Speaker, because it did not have to be. These funds were also used to provide a loans facility between departments, to provide an overdraft capacity for departments and to provide seed funding for new projects. So, it was not just a loan to forestry; it went much further than that.

For the record, Mr Speaker, I think it is important to run through a number of things that have happened previously to show that what I am saying is quite valid. Working capital advances were issued by ACTBIT - that is, the CFU predecessor, for those who were not here then - in 1992-93, and I will just use that year. Capital advances were issued to Environment and Conservation, to the land section, to Urban Services, to forestry, to the Canberra Theatre, to the CIT and to the Agents Board. All of those entities got working capital advances from ACTBIT. And guess what, Mr Speaker? These working capital advances were not listed anywhere in any Appropriation Act, nor were they approved by the Assembly. So, if you use Mr Stanhope's logic here, the Labor Government spent money that was not appropriated.

Mr Speaker, who can forget the famous VITAB loan, the money that had to be loaned to ACTTAB to get it out of the hole that Mr Berry had created for it? Guess what, Mr Speaker? This money, all $3.1m of it, was never separately appropriated. It was loaned to ACTTAB by ACTBIT. It was not approved by the Assembly; it was loaned under these provisions by ACTBIT to ACTTAB. In summary, the financing of Bruce Stadium did not need to be included in an Appropriation Act and I think, Mr Speaker, that I have cited enough cases to show that this has happened regularly.

Mr Speaker, another issue raised by Mr Stanhope was that of disclosure. It has been suggested by the Labor Party that the Government attempted to mask or conceal the transactions in relation to Bruce Stadium, thereby somehow concealing its motives. For the benefit of members, I refute this suggestion right here and now. The arrangements were reviewed by the Auditor-General, an Estimates Committee, the Chief Minister's Portfolio Standing Committee, chaired by Mr Quinlan himself, and the Standing Committee on Urban Services, without any adverse comments being received - none, Mr Speaker. So, what was disclosed? In the financial statements for the Chief Minister's Department for the 1997-98 financial year you will find references on pages 188, 198, 200, 204 and 209 of volume 2. On page 200, in a note to the financial statements, it is disclosed:

> A loan amounting to $9,714,700 was raised from the Commonwealth Bank of Australia by the Bruce Property Trust on the 30th of June 1998 ... pending formation of the Trust, interim funding via the CFU Whole of Government Account was issued until the external financing structure was put in place.

Absolute disclosure, Mr Speaker, line and verse. Remember, these financial statements were then audited by the Auditor-General, who provided an unqualified opinion on 21 September 1998. The statements were then referred to the Assembly's Estimates Committee, which also made no comment about the Bruce Stadium loan arrangements, either during the public hearings on 19 October 1998 or in its final report on

24 November 1998, knowing, as it did very well, that the loan had been produced, that it had come from the Commonwealth Bank, that the money had been made available via the CFU. It was all on the record and it all went to the Estimates Committee.

Mr Speaker, in Report No. 9 of 1998, which was released in December, the Auditor-General detailed on pages 51 and 55 the Bruce Stadium transactions, including the loan. He concluded that the responsible agency had managed both its departmental and territorial operations to its budget. The Auditor-General's Report No. 9 was then scrutinised by the Chief Minister's Portfolio Standing Committee, chaired by Mr Quinlan. Mr Kaine was a member of that committee. The committee's report was tabled in the Assembly on 22 April this year and no reference or recommendation was made about the legality or otherwise of the transaction. In fact, Mr Speaker, I understand that all that was said was that the Auditor-General was looking at it.

Additionally, on 30 November last year, the Auditor-General provided an unqualified audit to the Assembly on the consolidated annual financial accounts of the Territory for 1997-98. Included in those statements is a statement of appropriations for the financial year which showed that the appropriation covering Bruce Stadium which had been approved by the Legislative Assembly had not been exceeded. So, the Auditor-General himself indicated that the appropriation covering Bruce Stadium which had been approved by the Legislative Assembly had not been exceeded.

In 1997-98 the draft capital works program was scrutinised during public hearings by the then Standing Committee on Planning and Environment. No formal recommendations relating to Bruce Stadium were made by that committee. The 1998-99 draft capital works program was also scrutinised via a similar process and no mention was made by the Urban Services Committee of the disclosed expenditure on Bruce Stadium. Put simply, to suggest, as the ALP have done, that these arrangements were hidden is absolutely ludicrous. Mr Speaker, the paper trail is as long as your arm, as I am sure that those opposite are finding out now that they have boxes and boxes of pieces of paper. It is also true, Mr Speaker, that quite a number of committees of this place have scrutinised the Bruce Stadium financing deals.

Mr Speaker, in summary, it is important to quote from a briefing note that was sent to me in late May following the receipt of the legal advice from Mr Tracey. The note, from senior officers within both the Chief Minister's Department and the Department of Justice and Community Safety, provides an excellent summary of the events surrounding the financing transaction. In part, it says:

> In the course of examining the transactions associated with Bruce Stadium, senior counsel has concluded that everything the Government did, it could have done legally. However, the Government has been let down by defects in some of the administrative processes used to implement its objectives.
>
> In this respect, the normally high standards of administration and process control achieved by the Chief Minister's Department have not been met. It is not so much that officers have acted without diligence or improperly but that they relied on long-standing practices of, ultimately, dubious legal value.

The brief goes on to say:

> Underlying many of these issues is the acceptance of past administrative practices. The extent of influence of past practices on contemporary transactions is illustrated by the acceptance of these practices by both internal and external audit reviews. This acceptance has fed a false sense of security about the validity of these older practices. Officers, like others, concluded that the legality of their actions had been confirmed by the long-standing nature of the practice. They believed that they were acting appropriately.
>
> It is accepted that this does not excuse these problems but is offered by way of explanation of the identified deficiencies and other weaknesses in administrative practice.

Mr Speaker, that document was publicly released on 3 June but, for the information of members, I will table it now, because it is important that all members read it. Mr Speaker, this document has never been quoted by the media, nor by any members of this Assembly, yet it has been widely available. When Cabinet authorises a transaction, it is entitled to assume that those charged with carrying out that decision will do so in accordance with the requirements and processes of the law. Even though we have conceded that a mistake was made, for which I take responsibility, Cabinet was entitled to believe that its directions in relation to Bruce Stadium would be given effect to lawfully.

I will summarise the case that I have put before this Assembly. The accusation has been made that I acted illegally. No, Mr Speaker, I did not. I have demonstrated that that is simply not the case. At all times, my ministerial colleagues, public servants and I have acted in good faith with the sole motivation of trying to save taxpayers' money and minimise their exposure to the costs of the redevelopment. There is no way that I, as Chief Minister or Treasurer, or any other members of Cabinet, which, I have to say, included Mr Kaine, could have known that a guideline that was required to make investments or loans legal under the Act had not been issued. If Mr Stanhope had been in the Chief Minister's role at that stage, he could not have known either. I challenge any member of this Assembly to say that, when presented with the same evidence as Cabinet was, in our shoes they would not have acted in exactly the same way. The fact is that all of us would have.

I have shown that the funds for Bruce Stadium were not included in an Appropriation Act, but that the approach taken by the Government was a legitimate way of spending public moneys. There are ways other than an Appropriation Act that public money is spent, not just by this Government, but by every government in Australia. Mr Speaker, put simply, I have shown categorically that you can spend money, and must, without that money being listed in an Appropriation Act. If that was not the case, no public servants would be paid after today.

Put simply, I am on trial today because a set of guidelines was not put in place. Is there any evidence that Mr Stanhope has presented which shows that I, or any of my colleagues, including Mr Kaine, knowingly set out to flout the laws of the Territory? Is

there any evidence at all, Mr Speaker? Has there been any evidence offered to support the view that we did not believe that we were acting within the law? None whatsoever, Mr Speaker. No public money has been misused. Every single dollar has been accounted for, and every single one of those dollars has been disclosed.

I have not misled the Assembly. I have not lied about the project. I have not covered up any aspect of the financing. Ultimately, it was a technical error which contributed to the legal opinion that the Government had acted unlawfully. Neither I nor any other member of Cabinet knew about that oversight at the time, including Mr Kaine. Yes, mistakes were made, Mr Speaker, and I am sorry that that happened; but there was not a deliberate attempt to contravene the laws of this Territory. There are plenty of precedents which show that similar problems have occurred in the past and that, rather than hang governments for them, the Assembly in the past has worked to rectify the problem to ensure that it does not happen again.

Mr Speaker, in considering Mr Stanhope's motion, you have to ask yourself the following questions: Was there any evidence given by Mr Stanhope of impropriety? Was there any evidence given by Mr Stanhope of a lack of disclosure about this redevelopment? Absolutely not, Mr Speaker. Were the Government's accounts qualified because of these transactions? Absolutely not, Mr Speaker. Was there any evidence of fraud, misuse of money or anybody personally benefiting from this transaction? There was not even an allegation, Mr Speaker. Is there any information that anybody on this side of the house, I particularly, had any intent whatsoever to break a law of this Territory? Absolutely not, Mr Speaker. Until last week, did any Assembly committee question the validity of any of the transactions? They have been in front of a number of Assembly committees, with full disclosure, and nobody has questioned the transactions. The answer to all of these questions, beyond any shadow of doubt, is no.

Mr Speaker, there was no intent to break the law and there was no damage and, therefore, no money wasted; in fact, quite the opposite. We now have one of the best stadiums in Australia. We have a stadium that is value for money, and nobody is doubting that, Mr Speaker. We are an Olympic city and we have a guarantee that the Raiders and the Brumbies will be with us for the next eight to 10 years. Mr Speaker, where is the damage? There was no intent to break any law and no damage as a result of the guideline not being issued. Mr Speaker, does that indicate a case for sacking a government? Absolutely not.

MR QUINLAN (12.15): Mr Speaker, I shall try to be briefer than the previous two speakers. I believe that the case against Mrs Carnell has already been made. It has been made today by Mr Stanhope and it has been made in the weeks and months before today. The law was broken. Three eminent lawyers have stated quite clearly that the law was broken. They included the Queen's Counsel engaged by the Government itself. I think Mrs Carnell's explanation is: "It got broke". I believe that Mrs Carnell was knowingly involved in the perpetration of illegal acts in relation to the financing of the Bruce Stadium redevelopment. Looking back on the chain of events and the stratagems that the Government has put in place, the only logical explanation is that there has existed a very crude attempt to legitimise illegal actions well after the event. There is no other plausible conclusion than that Mrs Carnell was knowingly involved in the measures taken to cover up the illegalities.

When did the chain of deception start? Clearly, the deception started on day one. The business plan for Bruce Stadium contained estimates of attendances and revenues that were obviously fanciful - so fanciful that I am given to understand that they were dismissed out of hand in about 10 seconds flat by primary stakeholders. Given the track record, you could be excused for suspecting that Mrs Carnell had already made a decision to redevelop the stadium and only needed the inevitable consultants to rationalise that decision. She has form on that score - just look at the shifting numbers during the ACTEW debate.

I have written a couple of times asking the Chief Minister for a copy of that business plan, because I have only some parts of it. I have made public calls for that plan to be published. The Chief Minister has steadfastly refused - not a bureaucrat; the Chief Minister, under her own hand, more than once. Why do you think that might have been? Mrs Carnell was aware that the plan was based on some totally and obviously ridiculous estimates. It was a rationalisation, not a reasoning behind the decision to redevelop Bruce Stadium. It was the first part of a protracted deception and the first part of the tangled web. Mrs Carnell said in her speech that the redevelopment project was not an ad hoc decision. If not, it was a considered choice to adopt crazy figures.

At a point in time the Auditor-General scheduled a performance audit. Let me just interrupt myself there to say that originally the Bruce Stadium performance audit was put on the Auditor-General's program by the public accounts committee that I chaired because we did have concerns about it and we had very little information, so my committee did not examine it and did not examine the presentation and disclosure. My committee referred it to the Auditor-General because we had doubts.

After the Assembly had resolved that all the documents were to be made available, we found the Government rapidly trying to cover its tail. We found out at the Estimates Committee proceedings on 25 May that the original figures of attendance were 707,000-plus. The revised figures in a year - that is, the attendance for the year - were 286,000, some 40 per cent of the original figures. The considered decision was based on the original figures and I think everybody who saw them once would have said, "You've got to be kidding"; but we wanted to bat on. Is anyone surprised? Of course not.

You cannot convince me that the Chief Minister did not know that the estimates supporting her decision were not straight from fairyland. In this town, few decisions are taken without the Chief Minister's knowledge. Most power is centralised in her department. I have written and spoken previously of the parallel empires. There is the official Executive and administration which, I am sorry to say, lads, is largely ineffectual - and I do agree with your self-assessment in relation to taking the Chief Minister's position if she is rolled today - and there is the other empire which supports Kate Carnell, the phenomenon; I do not know Kate Carnell, the person. Kate Carnell, the phenomenon, is supported by a strong PR machine, one or two favoured bureaucrats and several characters from the business world, characters that I believe hold Mrs Carnell firmly by the ego and lead her by the nose. Frankly, I do not want my town run by visiting merchant bankers. But I do believe that she knows the detail of what was actually happening and the millions that were at stake.

Mrs Carnell talked in her speech - a long speech - of other loans and drew them into it. The speech was designed to confuse rather than to clarify. She threw a list of these loans at the Auditor-General during the Estimates Committee hearings. The Auditor-General responded promptly by saying, "No, sorry, Mrs Carnell, they were all okay". So, introducing those into your speech just means that the chain of deception continues into today and into this debate.

We have had illegal acts and we have had several ruses to mask those illegal acts. Overall, we can distil the underlying cause to sublime arrogance and deception. The alternative explanation is blinding, screaming, gob-smacking incompetence - woops, where did that $25m go? On either count, Mrs Carnell should have had the good grace to resign by now.

I give you the third alternative to deception or incompetence: Deception and incompetence. The Bruce Stadium fiasco has got to be one of the most ham-fisted cover-ups of all time - excuse the pun, but a botch-up of Olympic proportions - and it is not what the electors elected this Government for.

Let me return to the progressive deception. Already we know of illegal payments. We know that the Chief Minister's Department was lending money to itself. It tossed around the title Bruce Stadium Redevelopment Authority, a non-existent body that was invented to allow deliberate overexpenditure to appear legitimate as an investment - clearly a deception. Legal opinion furnished by Professor Jack Richardson confirmed that the strategy failed miserably.

I will take a lot of convincing that the public servants that found it necessary to create this device would not have been in touch with the boss. We have all witnessed the high level of information provision during question time and difficult debates. There is obviously support coming up. If you want evidence, just take a roll call of the passing parade in the anteroom today.

We all know of the overnight loan, itself a contrivance and a deception. It is impossible to accept that the need for that dodgy deal, that overnight loan, was not communicated to the Chief Minister. The first defence that we heard in this place was of net appropriations; we cash managed it. That rationalisation, that excuse, came and went fairly quickly. It had to; it did not stand up. However, we should not forget that defence. At one time it was Mrs Carnell's explanation - an explanation made in public, made through the media. If it was a truthful explanation and it was proven unsustainable, what should have followed then was a public admission of a mistake and remedial action. That did not happen immediately. We must assume that the original justification was not a justification at all; therefore, it was an attempt to deceive us. What else?

What was the next excuse. The Chief Minister then took refuge behind the claim that it was a technical breach of the law. That goes close to being the ultimate insult to our intelligence. For months we were given assurance that the Bruce Stadium would involve a maximum contribution of taxpayers' funds of $12.3m, and a commitment to underwriting a loan of another $7m. That $19.3m was the bottom line, time and again stated by the Chief Minister. We are now past $44m and still going, as far as I know. About $25m is the difference. If you tell the world, and the parliament, that you are going to spend or commit the odd $19m and you spend it without signing the petty cash

docket or you spend it in a different time period from that originally approved, that is a technical breach. That explains a lot of the confusion that you may hear about New South Wales. Catching up with the impacts of introducing accrual accounting is the explanation for the problems New South Wales had. It had nothing to do with spending double the approved funds without reference to parliament. The New South Wales case is a red herring and another attempt at deception.

If you tell the world, and the parliament, that you are going to spend or commit $19m or $20m and you spend or commit $44m without the approval of the parliament, that is not a technical breach; that is misappropriation. That is what has happened. That is what has been done, purely and simply, and at every turn of this debate every person in this Assembly should remember that we were told $19m, repeatedly - $12m in cash and a $7m loan. The Government - Mrs Carnell - spent $44m without referring to us. Remember that.

The next defence concerns section 38 of the Financial Management Act. As Mrs Carnell herself concedes, it is a crucial point in her defence. Section 38 of the Financial Management Act exists to facilitate short-term, possibly mid-term, cash management. It is not there to facilitate unapproved investment and unapproved funds. Be very sceptical regarding anything you hear about guidelines being overlooked. The guidelines did not exist until the Chief Minister was caught out. They were an optional extra available under the Act, necessary only if you want to do something particularly exotic in your financial management, or to set down guidelines on how to do things. They were not intended for capital projects. Many of us will know that businesses with a large cash turnover, possibly varying in rates through time, invest on the short-term money market and in other readily negotiable instruments. Sometimes it closes overnight. It is an earner that they operate on the side of their business. That is the reason for section 38. I happened to ask the Auditor-General in estimates the following question:

> Can I ask you your opinion first on Section 38 of the Financial Management Act which, on my reading of it, was quite obviously intended to facilitate cash management, generally short term cash management. Would you agree with that?

In reply, the Auditor-General said:

> Yes, that is my understanding.

I will repeat that: "What is section 38 for, Mr Auditor-General? Is it only for short-term cash management?". "Yes, that is my understanding". *(Extension of time granted)* Most of what you will hear about section 38 of the Financial Management Act in relation to this exercise is also a red herring and a further deception.

Then we had the no corruption defence. After recent events and recent revelations, nothing would surprise me; but I am yet to hear substantiated claims of brown paper parcels or other forms of direct corruption. On the other hand, the Chief Minister has a lot to gain by squeaking past this latest disaster following Kinlyside, following Feel the Power, and following the manipulation of figures during the ACTEW debate. She is the victim of her own vanity, and her actions in relation to the Bruce Stadium will not be forgotten for a long time. It is a shambles, no matter what today's outcome.

The Chief Minister has been hiding behind public servants - "They broke the law, not me". The same Chief Minister has manipulated other matters so that public servants have been in the crossfire of debate, and then has oozed pious outrage that they might be impugned indirectly in a debate. That is fairly corrupt action as far as I am concerned.

The next defence is that the end justifies the means. We have to ask ourselves whether we have got value for our money, for taxpayers' money. Combine Bruce Stadium and Manuka Oval and we are over $53m. If we were starting from scratch, would we come up with the present solution? Would we split our resources over two facilities? Manuka Oval has a beautiful setting. It is a beautiful oval in the older tradition. Is that ambience and that sense of history going to be sacrificed on the altar of Mrs Carnell's appalling judgment, insatiable ego, and propensity to be led by the nose by merchant bankers and international consultants? Is there any guarantee that the populace will stand for the installation of high-mast lighting at Manuka? Or will it become a second-class facility without the beauty that it now has? Bruce is a pretty good stadium. It has design faults and it could not possibly stack up to the superlatives that have been thrown at it by this Government, but it is pretty good. It is also fairly clear that with good management it could have been a little cheaper and a lot more flexible. The end does not necessarily justify the means. If you have got to spend $53m in doing up ovals in this town, I think you should bring that sort of decision to the Assembly, to the parliament.

In the course of this debate we have had other deceptions. We have had the Cayman Islands financing nonsense. That arrangement was simply preposterous. In estimates, the Chief Minister brought in a map of the arrangements for Stadium Australia with boxes all over it and said, "Look, how complex is it?". The one she brought in has the Coca-Cola franchise on it. It had nothing to do with shareholdings and financing. Again, it was an insult to our intelligence and an attempt to confuse.

In summary, Mr Speaker, none of the defences, excuses, rationalisations or downright misinformation stand any degree of scrutiny. The net appropriation defence did not stand the light of day, so we moved on. The technical breach defence - technical breach, $25m of unapproved expenditure! - does not stand up in any way. You spent $44m. The reliance on section 38, the investment process, was debunked by the Auditor-General in estimates a couple of weeks ago. As to the end justifying the means, we have no proof that we have got the best value for our dollars, and time may condemn us or the Government for building a stadium that has alienated Australian rules and cricket.

I repeat the observation that Mr Stanhope has made several times. This is not about a change in government; this is about the Chief Minister. The change of government bit is poker playing on your part, although, as I mentioned earlier, I do agree with your self-assessment. Mr Humphries should resign as Deputy Chief Minister if he is not prepared to step up. It is about the integrity of the Chief Minister and the integrity of the Government. It has been about the breakdown of integrity in this whole process. It has been about the whole framework of contrived get-out clauses, all of which have failed one by one. They were bound to fail. If you commit $25m of the taxpayers' money and you have not got approval, there is really not much you can do to justify it. Yes, I do believe that there was deliberate intent on the part of the Chief Minister and I commend the motion.

MR STEFANIAK (Minister for Education) (12.37): Mr Speaker, I am at a bit of a loss, firstly, as to just what Mr Quinlan is saying. We have had wild accusations without any evidence whatsoever. He was making claims without any substantiation. Evidence is required in a serious motion such as this. The Government is facing some serious accusations today. These accusations need to be substantiated with evidence, not just the vociferous comments which came from Mr Quinlan. Today's debate should not be about the Government being guilty until it proves its innocence; it should be about proving the Government guilty. I would say that that proof should be beyond reasonable doubt.

I will deal with another point Mr Quinlan made before I get into some other arguments, Mr Speaker. He made a number of comments about Bruce and Manuka, including comments about their costs. He made comments also about alienating the AFL and cricket. I do not think the sports agree. I think the sports are overwhelmingly happy with what has occurred at Bruce and with what the Government has proposed for Manuka and with what it will do to assist, along with help from the Federal Government.

Mr Smyth: And they looked pretty happy yesterday.

MR STEFANIAK: They certainly looked very happy yesterday. Mr Speaker, it seems to me that the arguments put forward by the Labor Party boil down fundamentally to one issue and one issue only: Was there any intent by the Chief Minister or, indeed, the Government to operate outside the framework of the Financial Management Act - in particular, section 6 of that Act - or any other legislation?

The question of intent is very important, Mr Speaker, because without it Mr Stanhope has failed to make any case whatsoever against the Government. From what I have heard so far today, he has been unable to answer the following five very basic questions: Firstly, has the Labor Party produced any evidence which shows that any member of the Government or any public servant knew that they were acting outside the Financial Management Act? The answer to that, quite clearly, is no. Secondly, has the Labor Party produced any evidence which shows that any member of the Government or any public servant deliberately tried to avoid the provisions of the Financial Management Act? The answer to that, quite clearly, is no.

Thirdly, has the Labor Party produced any evidence which shows that, prior to any decisions being made by the Government, there was advice provided to the Chief Minister or any public servant that the approach being taken was unlawful or conflicted with the provisions of the Financial Management Act? Again, the answer is no. Fourthly, has the Labor Party produced any evidence which shows that the Chief Minister or any public servant tried to conceal the financial arrangements for Bruce Stadium so that they would not be subjected to public scrutiny? No. In fact, as we heard today in that very long and most detailed explanation of what occurred, the Chief Minister, the Government and the public servants have been most forthcoming there.

Finally, Mr Speaker, could the Chief Minister or any member of Cabinet have been expected to know that the guidelines required under section 38 of the Financial Management Act had not been issued? The answer to that, again, is no. Do not take my word for it; take Mr Quinlan's. On 4 June, less than one month ago, during the Estimates Committee hearings into Bruce Stadium, Mr Quinlan made the following observation:

> I am sure the intention was not to commit an illegal act.

Let me repeat that so that members can be absolutely clear about it. Mr Quinlan said:

> I am sure the intention was not to commit an illegal act.

Note what he said, Mr Speaker. He did not say that he thought that the intention was not to commit an illegal act, but that he was sure that the intention was not to commit an illegal act. If he is sure, why has his leader adopted a different view?

Mr Speaker, the Labor Party has tried to build its case around one word here - illegality - in the hope that it will smear the Chief Minister and her good name and have some people in this city believe that she is somehow a criminal. Yet, quite clearly from what Mr Quinlan said there, he does not think so; what is more, he has said so publicly. So, even before Mr Stanhope had decided to move this motion, it seems that his deputy did not believe what his leader has spent the last few weeks trying to argue.

There was no intent to act illegally. There was no fraud. There was no misuse of public moneys. There was no personal gain. There was no corruption. There was no other form of reprehensible conduct. The evidence presented today clearly shows that the Government and its agencies believed not only that what they were doing was right but also, more importantly, that what they were doing was being done for the sole purpose of trying to minimise the potential cost of the redevelopment to taxpayers. That is basically what the Chief Minister has said in her speech to the Assembly today. Mrs Carnell has admitted, as have other members, that a mistake was made in carrying out the Government's decision to finance the Bruce Stadium redevelopment. She has apologised on numerous occasions, including in this place today.

That brings me to a very important issue for members to consider. Has the fact that guidelines were not issued to cover section 38 of the Financial Management Act caused any damage, any waste or any misuse of money? Mr Speaker, the answer to that is no, it has not. In fact, the same transaction would be done identically if it were done again today after the proper guidelines had been issued. So, whether the guidelines were issued or not, this did not make any difference to the way the transaction was conducted. The Labor Party has not proved that there was any intent to step outside the law, that we knowingly proceeded to deliberately flout the law, nor that there was any damage caused.

Let me talk a little more about this question of intent, Mr Speaker, because it is very important. I have looked at this question from both a formal legal sense and a broader linguistic sense. There are a number of definitions of intent. Firstly, as to the attempts to portray the Chief Minister as having done something unlawfully, something criminally,

Watson and Purnell's *Criminal Law in New South Wales*, Volume 1, in dealing with indictable offences, talks about the issue of intent and states, in terms of criminal liability and capacity, on page 21:

> An act is intended when it is willed and when the ordinary consequences of the act are contemplated and desired.
>
> It is generally necessary also that the act or default should be associated with a legally blameworthy condition of mind. This is traditionally expressed in the maxim actus non facit reum nisi mens sit rea - the act itself does not constitute guilt unless done with a guilty intent.
>
> For a legally normal person to be guilty of a crime the prosecution must establish -
>
> (a) that his conduct contributed either directly or indirectly to the act complained of;
>
> (b) that this conduct on his part was voluntary;
>
> (c) that he foresaw at the time that his acts or omissions might produce or help to produce certain consequences. The nature of these consequences is fixed by law for each specific crime.
>
> The general rule in all the graver cases of crimes is that the accused is not guilty if he had an honest and reasonable belief in the existence of facts which, if they had really existed, would have made his act both legally and morally innocent.

That is a 1971 edition.

Mr Moore: Read that last part again.

MR STEFANIAK: I will read it again. Obviously, "he" means he or she in our more modern parlance. It states:

> The general rule in all the graver cases of crimes is that the accused is not guilty if he -

or she -

> had an honest and reasonable belief in the existence of facts, which if they had really existed, would have made his -

in this case her -

> act both legally and morally innocent.

Watson and Purnell go on at page 22:

> Unless a statute clearly or by implication rules out mens rea a man -

we can read that as a woman now -

> should not be convicted unless he -

or she -

> has a guilty intent.

Page 23 reads:

> It is a general rule that a person who does an act under a reasonable misapprehension of fact is not criminally responsible for it even if the facts which he believed did not exist.

Again, read "she" for that. That, Mr Speaker, is the criminal law.

It is interesting, looking at the editorial in the *Canberra Times* today, to see their point of view. The editorial is headed "Carnell should not be ousted". In dealing with the issue of the Financial Management Act, the editorial summarises the position very succinctly in the second full paragraph in the second column:

> In doing so, it -

that is, the Government -

> engaged in the processes laid down in the old Audit Act for investment. Those sorts of investments do not need parliamentary approval. However, a new Financial Management Act had since been passed to provide more flexibility and accountability. It required investment guidelines to be issued by the Treasurer before investments could be made. A guideline to carry the Bruce investment had not been issued. So the Bruce investment did not comply with the Financial Management Act. But it would have been only a formality to make it comply. There are no criminal penalties in the Act. It is a procedural requirement, not a criminal offence.

So much for the criminal definition of "intent". An interesting definition of "intent" in terms of the civil law can be found in a judgment by Lord Devlin - Devlin J, as he then was - in 1957 in St John Shipping Corporation v. Joseph Rank Ltd, (1957) *1 Queen's Bench*, 267 at page 288. His Honour said:

> Caution in this respect is, I think, especially necessary in these times when so much of commercial life is governed by regulations of one sort or another, which may easily be broken without wicked intent.

> Persons who deliberately set out to break the law cannot expect to be aided in a court of justice, but it is a different matter when the law is unwittingly broken.

Let me repeat that last part in case anyone missed it, Mr Speaker:

> ... it is a different matter when the law is unwittingly broken.

That is a very interesting point, Mr Speaker, because that eminent judge tells us that, if the law is broken unwittingly or inadvertently, then it is quite different from a deliberate act to consciously break the law. We also have definitions of "intent" in the dictionaries - the normal, everyday meaning of intent. I picked up the *Australian Concise Oxford Dictionary*, Third Edition, and found "intent" defined there as:

> Intention; a purpose (*with intent to defraud; my intent to reach the top; with evil intent*). adj. ... resolved; bent; determined, (*was intent on succeeding*) ... attentively occupied ... earnest; eager; meaningful ...

Those opposite might well say that the Chief Minister was firmly fixed on a particular outcome in relation to the Bruce project. Quite clearly, the Government was fixed on building a good stadium and was intending to build a good stadium. But in doing that did the Chief Minister set out deliberately to break the law? Did any public servant set out to break the law? Did any member of the then Cabinet, including our former colleague Mr Kaine, set out to break the law? Of course not. There has been no evidence produced today to back up such an allegation. Was a mistake made? No doubt. Mrs Carnell has already apologised to the Assembly and to the people of Canberra. Mistakes do happen, Mr Speaker.

Mr Moore: With 20,000 public servants, you will get mistakes.

MR STEFANIAK: Exactly. For the benefit of the Assembly, let me share with members what another prominent politician recently had to say about mistakes being committed by Ministers and governments. On 25 February, this politician told ABC radio:

> Inadvertent errors are not a hanging offence.

I repeat what he said:

> Inadvertent errors are not a hanging offence.

Guess who that was? No, it was not one of our colleagues here. The person was, in fact, Simon Crean, deputy leader of the Australian Labor Party. It is a comment that is particularly applicable to this situation, because the mistake made by the Government here was inadvertent and it was unintentional. These kinds of mistakes, as we have heard, have occurred across every government in every jurisdiction in Australia and probably around the world. Because we are human, they will probably continue to occur in the future, regardless of who is in government.

Mr Speaker, in criminal law charges of murder downwards require that the prosecution must prove deliberate intent. Mr Stanhope, who is a lawyer, should know that he has to prove a deliberate act on the part of the Chief Minister, and he has to prove that, I would suggest, beyond any reasonable doubt; he has to prove that she deliberately set out to break the law. He has not done so. He has not done so beyond reasonable doubt. He has not done so even on the balance of probabilities. In fact, he has not done so at all. He cannot, Mr Speaker, because there is no evidence that that is what was intended. There is no evidence because there was no such intent. There was no such intent, Mr Speaker, because the Government at all times believed that it was acting lawfully. All the Cabinet Ministers, including Mr Kaine, and all the public servants - everyone - acted as they did because there was at the time no hint that there might be anything unlawful about the actions being proposed concerning the need to continue funding the Bruce Stadium redevelopment.

It was only when the legal opinion was obtained from Mr Tracey that the warning bells were rung. And what happened then? As soon as the Government was made aware of the technical deficiency, action was taken to rectify it, as the Chief Minister has said. She approved the retrospective guideline. And she was entitled to do so; Parliamentary Counsel and Mr Tracey have confirmed that she could. It validated the act, it then made it legal. Further actions flowed from that. The Chief Minister has then indicated what she did when that did not satisfy the Assembly.

Mr Speaker, this is certainly not a hanging offence. I do not think that the members of the Labor Party have proven their case in any way. But, Mr Speaker, if we are to set a new standard here today and make an inadvertent error a hanging offence, as the Labor Party would want us to do, then I have to say that we are setting an amazing precedent that you can be sure will spell the end for every Chief Minister at some time in the future, be they Liberal, be they Labor or be they even from the crossbench. *(Extension of time granted)*

I began my remarks by talking about the central issue in this debate - intent. The Labor Party has not shown that there was any intent to act inappropriately by any person. Put simply, they have not demonstrated reprehensible or reckless conduct or misleading of the Assembly, which is the normal standard for a motion of this extreme gravity.

Mr Osborne had already made his position clear prior to this debate, but I think that it is important all the same to remind members of what he said about this subject late last year. On 3 September last year, he said:

> I think the people of the ACT need to know that, apart from gross misconduct or things like that, the Government that is voted in at the start of each term is there to stay.

Two words are significant - "gross misconduct". I think the people of the ACT would accept that. I think the *Canberra Times* recognises that in its editorial today. Yes, a mistake was made. Yes, the standard of administration could have been higher. But gross misconduct, no. What we have heard today is that there was no fraud, there was no dishonesty and there were no cover-ups. It was just a government trying to ensure that the taxpayers would be required to find as few dollars as possible for the Bruce Stadium redevelopment. Put simply, no gross misconduct was shown to have occurred.

We have had the recent *Canberra Times* poll about Bruce Stadium and what did we see in terms of the outcome? We saw that 65 per cent of the voters like the stadium and 65 per cent of the voters wanted it built. I have already mentioned the opinions of the sporting codes which use it. People who go there are very impressed with it; it is an excellent stadium. Only recently I was talking to some people who went to Sydney to see the new Stadium Australia and they complained about it. The big difference between it and Bruce Stadium is that you can get into sections in Stadium Australia and it is very difficult to see the players on the ground as they are like ants. It is too big. The beauty about Bruce Stadium is that it is a much more compact stadium. It is a stadium where you really can get involved as a spectator. It is an excellent asset to the Territory.

Finally, as a former prosecutor in the ACT, I must say that I would be embarrassed if I were to appear in court with a case as weak as the one presented by the Opposition. In fact, I do not know whether I could, in all conscience, show my face in public if I was going to try to prosecute this Chief Minister with this little evidence. I think my peers would laugh me out of court. I would not get past the prima facie stage. In fact, I doubt very much whether the DPP would even contemplate running a case like this one, so it probably would not even get to court.

Mr Stanhope's peers, the members of this Assembly, should take the same view. There has not been any evidence provided to back up this charge and Mrs Carnell should be allowed to continue her good work for the Territory. She was voted in with a huge personal vote and a substantial majority, compared with the vote of the Labor Party, only some 16 months ago and I think that she should be given every right to continue to do the excellent job that she has done for the Territory in over four years as Chief Minister, often through some very difficult times. Remember, even Mr Quinlan has said that he was sure that the intention was not to commit an illegal act. For all these reasons, Mr Speaker, especially on the question of intent, Mr Stanhope's motion fails any reasonable test.

Sitting suspended from 12.55 to 2.30 pm

MR WOOD (2.31): Mr Stanhope and Mr Quinlan have well laid out the case against the Chief Minister. My purpose is to focus on the procedure today and to put it into the context of other no-confidence motions in this Assembly, or, more precisely, the successful no-confidence motions in this Assembly. As a member here for 10 years, I have sat through two successful no-confidence motions. The first was on 5 December 1989, when Rosemary Follett was toppled, and the second was on 6 June 1991, when Mr Kaine was toppled. I have reread those debates and they are very interesting.

Contrary to what Mr Stefaniak claimed at the end of his speech, before lunch, the carriage of this motion today would not set an amazing precedent. It would not set a new standard. Indeed, in the context of those earlier successful no-confidence motions, the bar today is higher than it was on those two other occasions. Mr Moore nods. It is clear that the issue presented by Mr Stanhope today is a most serious, a most compelling argument to say to the Chief Minister, "You should not continue in that job". Other members have explained those issues.

What were the issues in 1989? Well, for the most part, it seems it was the X-rated video tax. That is how the debate started. There was also a grab bag of other issues relevant to that day. In 1991 the issues were generally based on the instability of the then Alliance Government and the various policies it was proposing. In this no-confidence motion debate the Opposition here could well raise a range of policy issues more relevant, more serious, I believe, than those debated in 1989 and 1991. In the same way, we could raise very serious administrative issues, more serious than those in the earlier debates. But the issue on this occasion is so much more serious. The bar, the standard, is so much higher, and the arguments proposed here well and truly meet that standard.

What we are looking at this time is a most serious breach - a failure to seek and to secure appropriation, a failure to act within the law. The issues in those other motions were nowhere near as serious. They were minor in comparison. Based on those two precedents, this most serious motion should be carried. The weight of the various legal opinions alone makes it clear that there was an unlawful act.

There was another successful no-confidence motion that I should refer to. On that occasion it was not directed against a Chief Minister but to the Minister for Health, Mr Berry. What was the charge on that occasion? Let me quote some words. The charge from the present Chief Minister, among other things, was that Mr Berry did not inform the Assembly. It was not anything to do with the details of the VITAB affair. That was acknowledged as not being the reason. It was that he did not come into this Assembly and inform the Assembly. Well, if it was true then, it is true today, and the Chief Minister has not informed the Assembly in relation to Bruce Stadium. Mr Moore maintained, in general terms, that Mr Berry had to go because he created the impression that everything was okay.

Mr Moore: When it was not.

MR WOOD: Well, what is the difference? I will acknowledge your interjection. What is the difference between that statement by Mr Moore then that the impression was that everything was okay and Mrs Carnell's impression that everything was also fine? So those are, I think, very pertinent points about the history of those no-confidence motions.

But there is another matter. I want to read those no-confidence motions on those two other occasions and there is a very significant difference. The first one was in December 1989. It was Mr Collaery who moved it. He said:

> I move:
>
> > That this Assembly no longer has confidence in the Chief Minister of the ACT and the minority Labor Government and has confidence in the ability of Mr Kaine to form a Government.

Eighteen months later the motion moved by Ms Follett read:

> That this Assembly has no confidence in the Chief Minister, Mr Kaine, and his minority Government.

On each of those two previous successful occasions the motion was against the Chief Minister and the Government. On this occasion the motion is against the Chief Minister. That is a very significant difference. It is a very significant difference indeed. We are arbitrating on the Chief Minister.

The first thing that will happen today is that we will vote on our confidence or otherwise in the Chief Minister. That will be the first vote. It may be the only one, but it will be the first vote. If that is carried there will then be other votes. A new Chief Minister will need to be elected. We can put aside this nonsense that we have seen hyped up last week about the fact that if the Chief Minister goes we all go; it is Mrs Carnell or Mr Stanhope. I do not think anybody swallows that, least of all the two leading contenders on that side.

Mr Humphries: Find out.

MR WOOD: We will find out. I know where I will put my money. I understand that some people have been ringing around assessing support and that sort of thing, beyond this chamber I might say. So that is nonsense. That is an empty threat. The Labor Opposition, in moving this motion, as Mr Stanhope has made clear, is making the point that this is about Mrs Carnell. If the motion is successful I have no doubt that Mr Stanhope will be a candidate, amongst other candidates. But the motion is against Mrs Carnell; it is not against the Government. So remember that. That is the first vote that we will have today. I might wish otherwise, and I will surely vote otherwise, but at the end of the day the ACT could still have a Liberal government, but with a different Chief Minister. So, those are the patterns of previous successful no-confidence motions, and I think we need to bear that in mind as we come to our decision later today. We are not proposing against the Government, and the nature of this no-confidence motion is really very, very important. The terms are much more significant than those other two motions.

This motion is about the Chief Minister and her style. The Bruce Stadium is the most monumental example of how that can lead to mistakes, of how that style can bring problems. There are many examples of that style in the last four years, the overstatements, the hype, the hyperbole; that projects will go well, and they do not always do that. The Chief Minister, it has been said by Mr Stanhope, quite clearly, would not come back to this Assembly. When the problems of the lack of private sector finance emerged, the Chief Minister would not come back to this Assembly. I believe the fact that the election was just around the corner was a very significant factor in that refusal. It would not do, with the image that was being created, to have to come back ahead of a vote of the community and say, "Well, we have mucked this up. It hasn't really worked".

We have heard a continuing series of justifications, of excuses, of arguments. I think we heard another one today. Mr Quinlan pointed out how the excuses had changed from week to week, although the one now, the strong one, the consistent one, generally seems to be that this was an unintentional technical breach by public servants. An unintentional technical breach. It is as though the office boy forgot to get a voucher when he went out and bought something with petty cash. They would have us believe it is at that sort of level.

Well, just bear this in mind. This involves many millions of dollars. It is a major project. Perhaps it was the biggest thing on the Government's slate at the time. It was being dealt with by the Chief Minister and by the most senior bureaucrats, the top bureaucrats - no-one somewhere down the bottom of the heap - and it was their legislation. They knew about it. Yet we are led to believe that this was an inadvertent, unintentional technical problem. Well, I do not think anybody swallows that. It cannot be swallowed. So the arguments emerged. After other arguments did not hold any water, it was said that this was an investment and we just did not get the guidelines in place. The arguments were smokescreens. That is what they were. They were smokescreens to disguise the problem. Mr Quinlan, I think, has shown that quite well.

The arguments put up by the Government are unconvincing. They have not convinced at least half of the ACT community. They certainly have not convinced the legal experts who have a pretty clear consensus, except on one point, that what happened was simply not legal. On that basis this default by the Chief Minister is much more serious than the problems that emerged for previous Chief Ministers who lost their jobs. It is clear that this Assembly, on the basis of the record of 10 years, on the basis of what has happened with Bruce Stadium, must pass this motion of no confidence in the Chief Minister.

MR SMYTH (Minister for Urban Services) (2.44): Mr Speaker, the Opposition would have you believe that there is only one reason for this motion and that is that the Financial Management Act has been breached, but there are in fact two reasons for this debate. It is just that the Labor Party has been denying their real reason. I will come back to the second reason at a later point, Mr Speaker. The only reason we should be having this debate, given the Government's acknowledgment that the Financial Management Act was breached, is to determine the Government's intent.

Mr Quinlan said he believed that the Chief Minister had deliberately set out to break the law, but at no time did he give any evidence. Mr Stanhope said quite early in his speech that those of us who have been involved with the law know. Well, if you have been involved with the law and you do know, you do know that the onus of proof, the onus of producing evidence, is always there. In this case we are yet to see any such evidence.

Mr Speaker, did the Government deliberately set out to flout the law? Did it act recklessly? Mr Stefaniak addressed his comments to the issue of intent, and it is important that we focus on that issue and the key question of reprehensible behaviour. As Mr Wood started to point out but could not prove, the bar on these motions of no confidence should be high. These are serious issues because it is about the governance of the ACT for the people in the gallery, the people we represent.

Mr Speaker, the question is whether or not the Government deliberately set out to break the law. If the Government did set out to break the law, that would constitute reprehensible behaviour. The way Mr Wood just told it, if you look at it logically, is that we, as the Cabinet of the day, made a Cabinet decision to proceed, because we knew that it was legal to do so, but then deliberately proceeded improperly so that we could undo our own decision and end up with this farce that we have here today. There is no logic, there is no evidence, behind this at all.

It was some time ago that we heard Mr Stanhope talking in a speech about the killer blow that he was about to deliver. I think we all remember that. I think he left his notes upstairs on the day or something. To have a killer blow today you have to have evidence. You just cannot stand up and say, "She's guilty", or, "They're guilty". It does not work like that because we are a democracy.

Let us look at what sort of killer blow Mr Stanhope should have delivered today. Perhaps one of the members of the Labor Party who will speak to this motion later will deliver the killer blow. But what sort of killer blow would we want? What we need is a piece of paper, Mr Speaker, from a senior bureaucrat - we are all interested in senior bureaucrats today - that said something like this: "Chief Minister, despite the previous advice to Cabinet, to proceed with the financing of Bruce Stadium in the way suggested would require a breach of the Financial Management Act". Mr Quinlan, Mr Stanhope, Mr Wood and the rest of the Labor Party would have you believe that that is what happened, and that across the top of such a furphy piece of paper the Chief Minister had written, "Just do it", and we would do it to spite ourselves. But where is this evidence? Where is this killer punch? Where is this blow that will prove the case?

Mr Speaker, there is no such thing because it does not exist. There is no evidence. In any case like this what you must prove is that there was intent. As Mr Stefaniak did so ably this morning, you must back that up with evidence. Why? Because that is how the system works. We do not run this chamber as a star chamber, which is what Ted Quinlan is trying to do. We do not run this chamber as a kangaroo court. This is Jon Stanhope's personal kangaroo court. That is all we have here today. They want lynchings without evidence. It is wonderful, Mr Speaker.

Mr Speaker, given the technical nature of the breach of the Financial Management Act, there was simply no reason to deliberately go out and breach the Act. There was no reason. The Government's legal advice makes this clear and essentially states that the Bruce transaction could have been undertaken lawfully but it was not, due to faults in the process. It also points out that the process could easily have been satisfied. All that was required, according to the Government's legal advice, was that a guideline was in place determining that the investment in Bruce was permissible.

If the Government believed that that was all that was required, then such a guideline would have been drawn up quickly and with little fuss; but, Mr Speaker, the guideline was not prepared. Why was that? Because the need for the guideline was overlooked by officers from the Central Financing Unit. This was a mistake. It was a simple mistake. It was an honest mistake. It was a mistake that the Government, through the Chief Minister, has not only acknowledged but has apologised for. It is a mistake that the Chief Minister has taken responsibility for. She has not walked away from it. She has said, "We understand. We know that the mistake has been made". Mr Speaker, it was not a deliberate act designed to break the law. It was an inadvertent omission, but an omission nonetheless. It was inadvertent. There was no intention to break the law.

Mr Quinlan has failed to give us any evidence. He said, "I believe that the Chief Minister did intend to break the law". But where is the evidence? When asked for evidence, what was the answer? There was no answer. How do we know this? Because he simply resorts to the ALP debating manual. What does the ALP debating manual say? It is probably a New South Wales Right edition. It says, "Kick the living daylights

out of the person involved. Ignore the facts, and certainly do not present any evidence". It is there in their manual, Mr Speaker. You know he is using the manual because when you do not have any evidence, what do you do? You simply turn up the volume.

What did we get? We got Mr Stanhope's speech. He was trying to present a case. What did we get from Mr Quinlan? Nothing. All he said was: "Let's turn up the heat. We'll turn up the volume. We can all talk much louder into our microphones and make it sound far more dangerous". But it is not. Forget the facts; speak loudly; therefore it must be true. But that is not the case. Opinion and obfuscation will beat evidence any time, according to the Labor Party. It is a sad state of affairs, Mr Speaker, when, as Mr Stefaniak quite clearly pointed out, Mr Quinlan said on 4 June, "I am sure the intention was not to commit an illegal act". He then went on to say, "We are not talking here about corruption". This motion of no confidence in the Chief Minister extends to all her Ministers because we hold our warrants from her; not from this place but from her as Chief Minister. There is no intent. There is no evidence. The Labor Party even admits there is no corruption, so why are we here?

When Mr Stanhope was off in the media making all kinds of outrageous accusations, he actually said that there had been an illegal act and it should be referred to the DPP. Well, why hasn't he done so? We all have the right to go to the DPP when we believe that there has been a crime, when we believe that there has been law-breaking. I do not believe that Mr Stanhope does, and I do not believe he will. It is quite clear, Mr Speaker, from what Mr Quinlan said, that he believed the Government thought it was acting within the terms of the Financial Management Act, and this is not surprising. Mr Quinlan had every right to assume that the Government's will was being carried out in accordance with the Financial Management Act, as did the Cabinet of the day.

Mr Speaker, it is quite appropriate to quote Jack Waterford here. Much has been made of the belief that the Chief Minister should know of every transaction that goes on, but Jack Waterford said this:

> It would be beyond the wit of any mortal to be across the details of each individual piece of administration, in which, probably, several million decisions a day are made touching the rights or property of its citizens. Any such decision might be made routinely in an office ... by a clerk that the minister would never, in the course of ordinary business, be expected to see.

Mr Speaker, when the four members of Cabinet considered this matter in 1997 they did not believe that they were considering the possibility of an illegal act. Mr Kaine can correct me on this, but I am sure that that is his understanding of it as well. When both Mr Stanhope and Mr Quinlan get up here and impugn the integrity of those Ministers, what they are saying is that they set out to deliberately break the law. But, yet again, we get no idea of the intent. We get no hint of evidence. There is not a whiff of evidence in this debate, Mr Speaker.

Mr Speaker, the Chief Minister did not believe that she was acting contrary to the Financial Management Act. Not even the officers of the OFM believed that they were acting contrary to the Financial Management Act. Every party involved in this transaction believed that they were acting in good faith. There was simply no intention

to act against the spirit, let alone the letter, of the law. We have systems in place to check these decisions. They go to the Auditor-General and they go to Mr Quinlan's standing committee. Neither of them detected any evidence that the law had been broken. We ended up with a situation where a mistake was made. The Chief Minister has apologised for that mistake.

Mr Stanhope made a comparison and said that this was like waiting for Godot. I do not know what his knowledge of English lit is like but it certainly is like waiting for Godot when you are waiting for the Labor Party's case. It is like waiting for something to happen. We have had three speeches now and we have not heard anything that we have not seen or heard in a press release. We have had a little bit of innuendo mixed up with a press release. I think it is actually more like *Rosencrantz and Guildenstern are dead*, and what we are up to is flick of the coin 65, kick her again; 66, kick her again; 67, kick her again; 68, kick her again. What happens in Rosencrantz and Guildenstern? It just goes on and on and on. Mr Speaker, in the words of Thomas Jefferson: "We are wiser than we were, by having an error the less in our catalogue". The Labor Party should listen to this. The point, Mr Speaker, is that we have learnt from our error and we wish to correct it.

Mr Speaker, on 19 March 1998 Mr Stanhope said in this place that a new Labor Party – a Labor Party with a new approach - "will work willingly and cooperatively". In recent events we have seen political parties of all kinds across the country work willingly and cooperatively to rectify mistakes that were pointed out by courts. The Chief Minister has quoted several examples. In those parliaments people worked together, where mistakes were unintentionally made, to bring about a resolution.

Mr Stanhope's claims were quite bold, and understandably so, coming from a leader who back then probably believed that he could make a difference. Mr Stanhope also brought to this place a considerable background in civil liberties. As a prominent member of the Council for Civil Liberties, one would expect from him a high degree of probity and attention to process to ensure that the rights of others were protected.

Let us look at what civil liberties is about, Mr Speaker. Professor L.J. Cooray defines civil liberties in his book *The Australian Achievement: From Bondage to Freedom*. Among the elements that make up civil liberties, one of the key points is the right to a fair trial by a competent and independent court. Does Mr Stanhope believe that this is a fair trial by a competent and independent court? Can he, having moved this motion, sit in judgment as an independent court? Can he, with so much political gain to be had from this motion if it is successful, guarantee a fair hearing? Of course he cannot, because this is politics, and he has absolutely no interest in a fair hearing.

Mr Stanhope even chooses to ignore the speech. That is because he has no interest in an independent umpire. Let us contrast that, Mr Speaker, with, say, Mr Osborne's position. Mr Osborne has indicated that he will put his faith in an independent umpire, the Auditor-General, but Mr Stanhope will not.

It is not surprising that we have seen such a shift in the views of Mr Stanhope because Mr Stanhope has been talking for some weeks about a no-confidence motion in the Chief Minister. It is curious that he now chooses to leave, Mr Speaker. These events, we are told, are serious. Courtesy is extended to all others, but Mr Stanhope just wanders off. He wanders off when he is confronted by the lack of intent and by the lack of evidence.

Mr Speaker, what is today about? Well, it is like being the Queen of Hearts in *Alice in Wonderland*. Mr Stanhope has been saying, "Sentence first; we will get a verdict afterwards". That is what today's motion is all about. It is about sentencing the Chief Minister. It is about passing judgment on the Government before all the information and all the options are available. Mr Stanhope knows that the Auditor-General is in the process of considering this matter, yet he is determined to press on with his flawed motion.

What does this say about Mr Stanhope's belief in civil liberties? What does it say about his claim that there is a new Labor Party? It says that Mr Stanhope clearly believes in a fair, open approach, except, of course, where it involves the Liberal Government. Civil liberties are fine, according to Mr Stanhope, as long as he is not fighting for government. Mr Stanhope's position now appears to be that when Labor is fighting for government all the rules simply go out the window. Goodbye decency; goodbye waiting for all the evidence; goodbye civil libertarian values; hello kangaroo court; hello star chamber, as long as Labor can get into government.

Mr Stanhope revealed his motives at the Labor Party conference on the weekend. This is not about good government; this is not about the sanctity of the law. This is simply about damaging the Government and damaging the Chief Minister. *(Extension of time granted)* It is fascinating that after five years in the wilderness and after four Leaders of the Opposition the Labor Party still has a belief that it is the natural party for government, both in the ACT and elsewhere, and they cannot still quite define how the electorate got it so wrong.

Mr Speaker, it was curious that Mr Stanhope raised the example of the Cayman Islands. He said the management chart for managing Bruce is somewhat like a chart of the Cayman Islands. When the first Carnell Government came to office in 1995 it took them some two years and a group of law firms to work out how Harcourt Hill works. There is the chart. They are all in there. If Bruce looks like the Cayman Islands then the chart of management for Harcourt Hill looks like the entire West Indies. You can see quite clearly the Bahamas. There is the Greater Antilles. There is the Netherlands Antilles. The Cayman Islands are there. There is a spot for Jamaica. There is even a spot for Cuba because it is so convoluted. It is not understandable, Mr Speaker, and I table that. I think it would be in the interests of all members to look at it. I might table the map of the Cayman Islands so that those opposite understand where the Cayman Islands fit in relation to the whole of the West Indies. They are the masters of the convoluted position. They are the masters who will hide things. What we have done here has been quite open the whole time.

The conduct of this motion so far, and the conduct in the media of Mr Stanhope is one of continual and deliberate misrepresentation. Mr Stanhope has alleged that the Government has engaged in criminal conduct. We have not. If we have we would have had that evidence. It would have been the first cab off the rank this morning. We still wait for the evidence. We still wait for the intent. As I have already said, their legal advice suggested it should go to the DPP. Well, why has it not? Mr Stanhope has simply peddled innuendo and misrepresentation as fact and hoped that some of it would stick. It is a testament to the grubby depths to which the Labor Party will sink when this motion is being debated.

The Labor Party has also attempted to describe this as a secret deal. It has accused the Government of using a shady deal to hide the Bruce transaction. This is absolutely laughable. It is in the annual reports. The Chief Minister has spoken of it. Not only did the Auditor-General go over the accounts last year, but so did Mr Quinlan's own committee. The expenditure was accounted for and disclosed in a number of places. The documents are that secret that the rest of the world calls them annual reports.

Mr Speaker, this is about chipping away. When you live in a policy vacuum you just continue to do silly things like move censure motions and motions of no confidence. We saw that earlier in the year. On the day of days for the Leader of the Opposition when he gets a free kick, when he gets to deliver his budget response, what happened? Mr Humphries was attacked in a surprise no-confidence motion. Mr Speaker, we saw that no-confidence motion fail as well. The Labor Party, quite clearly, is willing to continue with this recklessness and to treat truth very lightly.

Mr Speaker, this motion is simply about power. It is about obtaining power at any cost. It is like fairy floss. It is based on a single grain of truth, a grain of truth that we have never denied. When it became apparent that the Act had been breached, we owned up and the Chief Minister apologised. This is fairy floss. It is based on that single grain of truth that the guideline was not signed. The grain of truth has been whipped like sugar. It has been fluffed with innuendo and misrepresentation into a lightweight, unsustainable fairy floss. It is an argument that does not stand up to any heat. When the heat is applied to this, their argument dissolves because there is no argument. They are yet to prove that we intended to do it; they are yet to prove or show anybody any evidence that we connived to do it.

It is disappointing to have to stand here and go through this no-confidence motion today. It damages the standing of the Assembly and all the politicians in the eyes of the community. I think it also has an effect on people's confidence in the ACT. I think it has an effect on the future of the Territory.

Mr Speaker, malice and politics will always find bad motives for well-intended actions, and we have seen that today. What we are seeing here is the lowering of a bar. Mr Wood talked about the bar being higher. You know, the bar has gone up since the other no-confidence motion. Mr Wood said, "We are setting it right up here because this is really serious". Mr Speaker, a Cabinet decision was made. It was made legitimately. A legitimate desire of Cabinet would be put into operation. There was no direction to break the law. There was no need to break the law because we could have achieved it through the Cabinet decision.

The simple truth is there are a number of precedents for financial transactions which have occurred and which later were found to have been illegal. The Chief Minister has already spoken about the collection of excises, and the High Court in relation to Ha and Lim that found billions of dollars of revenue were collected illegally by all the States and Territories. These were illegal transactions and all governments were engaged in them. But, Mr Speaker, where are the political carcases? Where is the string of no-confidence motions that should have run across every State and the Commonwealth? Why is there not a group of ex-Premiers and Chief Ministers calling themselves "the victims of '97"?

The same applies, Mr Speaker, to the High Court decision in Capital Duplicators. In this case the High Court ruled that an ACT tax was illegal. The Territory had been collecting taxes for more than two years which the Constitution did not allow it to collect. Where is the Treasurer and the Chief Minister responsible for this decision now? Were they hounded from office in disgrace? Did they suffer a no-confidence motion at the hands of the Assembly? No, of course they did not, Mr Speaker, because there was no intention to act against the law.

Mr Speaker, I will quote another case and it is the case of ACT Forests. It happened in 1993, oddly enough under a Labor government. In 1993 the then Treasurer Rosemary Follett authorised a loan to ACT Forests that had not been specifically appropriated. This situation is surprisingly similar to the Bruce transaction, except in one unfortunate aspect. To start with, both of the transactions were provided for by legislation under the investment powers conferred on the respective Treasurers. Both transactions were for capital improvements. Neither was specifically dealt with by a line in an annual Appropriation Bill. Both involved loans from the Central Financing Unit of the government of the day. Both were the result of Cabinet decisions, with terms and conditions determined by the Under Treasurer, and both were in accordance with the standard government and ACT Treasury practice at the time. The key difference is that the Forests transaction was legal under the Audit Act, and the Bruce transaction was illegal and not consistent with the Audit Act's successor, the Financial Management Act. *(Further extension of time granted)*

Another case that is relevant is that of a payment made by the Office of Sport and Recreation in 1992 to the New South Wales Office of Racing. The payment of over $14,000 was made for a study set up out of the racecourse development fund and was made despite legal advice that it was outside the scope of the relevant Act. This happened in May 1992, Mr Speaker. In fact, the Office of Sport and Recreation had actually obtained legal advice which specifically confirmed that the administrative costs could not be paid from the RDF.

The Auditor-General found a serious lack of accounting and internal control procedures, and that there had been a number of serious breaches of the provisions of the Act, including contravention of that Government's own legal advice. Indeed, Mr Speaker, one case was even referred to the then Investigations Unit of the Chief Minister's Department. Most interestingly, Mr Speaker, the Minister of the day who should have taken responsibility for this act never did. Was there a no-confidence motion against him? No, there was not. Was there a censure motion against him? No, there was not. Did Mr Berry get away with it? Yes, he did, Mr Speaker. That is the difference between what has happened here with Bruce Stadium and what happened then with the RDF.

Mr Speaker, there is much more to say, and others will say it. One of the conclusions from what Mr Wood has said is that perhaps other candidates will come forward. I would like to say here and now in this place that I for one will not accept a nomination from anybody else. The Liberal Party will nominate our own candidate. Our candidate will be Mrs Carnell.

Mr Speaker, what has happened here today? Let us just come back to Bruce. There was an error, but that is all there was. Was there any intent here? No. Did Cabinet mean for the Act to be breached when it proposed this action? No. Did the Government order the law to be broken? No. Did the staff at OFM believe that they were acting outside the law? No. Was there any money misappropriated? No. Is there any money unaccounted for? No. Does anyone consider the money to be misspent? No. Does anyone believe that there has been an attempt to mislead the Assembly? No. Has the Assembly been misled? No. Should this motion pass? No.

MR QUINLAN: Mr Speaker, I wish to make a personal explanation under standing order 47. Two speakers have already quoted me from estimates, Mr Stefaniak and Mr Smyth, and I think much of what they tried to say swings on that quotation. For the record, let me read what I said immediately after the quotation that they have used. It goes:

> For the record I am saying at this moment I am not talking about corruption, okay. I reserve the right at any future time, based on further legal opinion and further reading of what is available, to alter that position.

Thank you, Mr Speaker.

MR HARGREAVES (3.10): The issue of Bruce Stadium has been bubbling along now for many months. Finding out information has been tortuous, difficult and fraught with cloudiness and murkiness. It is an issue which, at first pass, seemed just as the Chief Minister has portrayed it - one of a technical deficiency which could have been fixed. However, on closer examination and with the additional information which has come to light, it has emerged as a most serious issue - an issue which, at its base, goes to the heart of the fundamental question of trust and integrity.

There are, Mr Speaker, two quite distinct issues. These issues are whether an act has been performed illegally and what are the consequences of this, and the issue of the extent of the problem. Of course, it would be nice to see the full extent of the problem before deciding on the fate of anyone found to have acted illegally. But, Mr Speaker, this is not a necessary precondition. Where it has been proven that an act has been performed illegally, and this has been proven beyond reasonable doubt, there is no earthly reason why it cannot be dealt with. Indeed, there may be very good reason to deal with it, even though the whole picture has not been presented.

Mr Speaker, I am reminded of part of a speech Mr Rugendyke made during the censure motion against the Chief Minister over the Kinlyside affair. Mr Rugendyke was quite right at that time when he said, and I quote from the *Hansard* of 25 August last year:

... there is a major difference between a cock-up and a conspiracy ...

What we are seeing here is expenditure of millions of taxpayers' dollars without parliamentary approval. It is just not tenable to accept that this could be a technical hiccup. The amounts and the fundamental principles here are far too serious to be a mere hiccup. I am not suggesting that a conspiracy exists, but rather suggesting that the seriousness is significant enough to warrant the most severe of penalties.

Mr Rugendyke went on to say that he was wondering "just exactly what standard of truth we might need to establish that this motion" - he was referring to the censure motion - "should be supported - the balance of probabilities, as in a civil court, or beyond reasonable doubt, as in a criminal court". He said that was his background and that his standard of proof was beyond reasonable doubt. It is incumbent upon the Opposition to prove beyond reasonable doubt that there exists proof of the illegal acts. I hope that this has been done, and I will try to add some further weight to the proof presented.

But before that, the question is: Why not wait for the Auditor-General's report, due now in October? The answer lies in the nature of the other Bills before the Assembly. It should be noted that two of the legal advices said that the guidelines were illegal. The Appropriation Act amendments presented by the Chief Minister attempt to make those guidelines legal. Further passage of an Appropriation Bill amounts to an expression of confidence in a government, and thus the passage of this particular Bill would result in such an expression which would provide a difficulty later on when the Auditor-General's report is tabled.

The order of testing, shall we say, is for this Assembly to consider the motion of want of confidence, the Appropriation Bill with its amendments, and then any issue which may arise from the Auditor-General's report later this year. The issues should be separated because the want-of-confidence motion goes to the heart of illegal acts, the Appropriation Bill seeks to negate the illegal acts, and the Auditor-General's report shows the problem in its accounting entirety. The difference between the want-of-confidence motion and the Auditor-General's report is that the consideration of illegal acts is a matter for lawyers and courts, and consideration of the extent of financial process is for accountants and auditors. They are quite separate and not necessarily dependent on each other. The second merely exposes the extent of the problem.

Further, with regard to the illegal acts, there is only one party responsible for this. The Chief Minister must answer the accusations of illegality. However, fixing the problem will fall to whichever government is incumbent at the time. In other words, it matters not who fixes the problem. The Auditor-General will outline the extent of it, and then it must be addressed. Indeed, the Auditor-General may well expose other irregularities, but essentially he has to address why decisions were taken, were there acceptable risks, and was the process proper. In fact, he will investigate whether it was a wise thing to embark on in the first place. An Auditor-General is to advise on whether due process has been followed, not to make judgments on whether such processes were illegal. He would point out that certain legislative imperatives were acknowledged in transactions, but whether those actions were legal or not is for others to discern.

Such is not the case with the current situation of breaches of the Financial Management Act in the expenditure without parliamentary approval, the repayment of the loan, nor the issue of guidelines to retrospectively fix illegal actions. We know about these issues. To let them lie would be to ignore the seriousness of them. We must consider them now.

The Financial Management Act, unlike its predecessor, contains no sanctions. It is thus incumbent upon us in this Assembly to decide whether an act has been perpetrated illegally, and then, if proven, to decide on the fate of the perpetrator. The only course of action open to us is to seek the resignation of the responsible party.

Let us turn to the proof required by Mr Rugendyke. This proof must be beyond reasonable doubt. The Government commissioned Mr Tracey, QC, to advise on the illegalities. He found, and I quote:

> I have been unable to find any appropriation to the Chief Minister's Department in respect of the Bruce Stadium.

He quoted the Auckland Harbour Board case, as did the other two legal advisers, saying that the Privy Council - in those days a higher court even than the High Court - found that "any payment made out of the Consolidated Fund without parliamentary authority is simply illegal and ultra vires and may be recovered by the Government". The Government's own adviser has found that payments were made illegally. He underscored the illegality by saying, and again I quote, "In the absence of an appropriation, the payments by the Unit" - that is, the Central Financing Unit - "to the departments and the subsequent expenditure of the same funds by departments was, in my opinion, unlawful". I will repeat that in case people think he did not say that there was something illegal. He said the subsequent expenditure of the same funds by the departments was, in his opinion, unlawful. This is pretty clear, Mr Deputy Speaker.

Ms Carnell: Then he goes on to say that if the guidelines had been issued it was legal.

MR HARGREAVES: Do you want me to keep going? Mr Tracey also found that the repayments of the loan were illegal because there had been no delegation to sign warrants under section 37 of the Financial Management Act. As for the original expenditure, there was no appropriation for the loan repayment. The second illegality has been highlighted, again by the Government's own adviser.

Both Mr Sackar, QC, and Professor Richardson agree with Mr Tracey. Mr Sackar found that the payment of the $9.7m in expenditure was unlawful as there was no valid appropriation of those funds. He also found that the obtaining of the loan, "daylight accommodation", was unlawful. He further found that the issue of retrospective guidelines was unlawful because it was an improper abuse by the ACT Treasurer of the guideline-making power. It is noteworthy that Mr Sackar felt the seriousness of such illegality was such that the papers should be referred to the DPP. So here we have two QCs agreeing that at best there were two illegal acts. Mr Tracey felt that the guidelines could retrospectively fix the illegalities, but Mr Sackar felt that the guidelines were in themselves illegal.

Enter the emeritus Professor of Law, Professor Richardson, SC, at Mr Osborne's request. Professor Richardson found, and I quote:

> As section 6 of the Financial Management Act, 1996 states. No payment of money shall be made otherwise than in accordance with an appropriation.

He said:

> It is paramount that the source of any expenditure of public money by the Executive has to be found in an Assembly enactment. Otherwise, such expenditure is illegal.

He questioned the definition of investment when he said:

> It is beyond question that "investment" is the spending of money or use of capital in order to secure profitable returns, especially interest or income.

Later, applying this to the loan, he said:

> At the time the facility -

that is, the loan -

> was provided there was no real prospect that the unit would pay interest and the loan was not, in our opinion, a genuine exercise of power vested in the Treasurer under section 38(1)(e).

In other words, the loan was shonky. He went on to say, in terms of the legality of the guidelines, that "the issue of financial management guidelines retrospectively cannot rectify the situation", and "no financial management guidelines were in place when the facility was provided and hence ... the loan was not in accordance with that section". He further said:

> A decision made without reference to the guidelines cannot be converted into a decision made in accordance with guidelines operating retrospectively because -

this is an important point that he made -

> this would impute to the Treasurer a state of mind which he or she did not have at the time of making the decision.

Adding to this he said:

> A Court ... in the light of the Auckland Harbour Board case, would decline to uphold an action of the Executive seeking to validate the use of public funds which at the time it had no right to use.

Mr Deputy Speaker, what we have here is three learned advisers proving that there were at least two illegal acts. They disagree on the third. What remains is the inescapable truth that two illegal acts were perpetrated. It is also obvious that the measures taken regarding the guidelines were designed to make legal these illegal acts. One has to question the integrity of this approach. How can anyone have confidence that those charged with making our laws will abide by them and not seek ways to go back and make legal previously illegal acts? That is where one of the questions of confidence comes from.

Mr Deputy Speaker, why do we have to do this now? Why not wait until the entire story is in? The reason is that the legal advisers have all shown beyond reasonable doubt that acts were perpetrated illegally. We need no further proof. The Auditor-General will not come back and say there was no illegality. He will come back with mountains of information on the size of the problem to be fixed. He may well expose more illegal possibilities. All three advisers pointed to the Auckland Harbour Board case ruled on by the Privy Council, showing that, as with this Treasurer's actions, payment without appropriation is illegal.

There is a penalty to be paid when an illegal act is performed. Normally, as our good former policemen will attest, it is up to the courts to find guilt or innocence and then to pass sentence if the case if proven. In this case there is no court. We are it. The Financial Management Act contains no provisions for sanctions, charging before the courts, and thus we must perform that role. The Opposition is saying that beyond reasonable doubt the Treasurer has acted illegally. We are saying that judgment must be made before passage of the Appropriation Act gets a chance of retrospectively making these acts legal. We are saying that the Assembly no longer has confidence in the Chief Minister. The Opposition is also saying that the matter must be fixed, and it will be once the Auditor-General has delivered his report. It matters not which colour government addresses the problems at that time, but it matters much right now whether this Assembly will condone those actions by rejecting a want-of-confidence motion.

Mr Deputy Speaker, whether the Chief Minister is allowed to treat the law of this Assembly and the people of the ACT with contempt is in the hands of Mr Rugendyke and Mr Osborne. I have noted Mr Rugendyke's need for proof beyond reasonable doubt and I put this proposition. *(Extension of time granted)* Mr Deputy Speaker, I will just reiterate a little. I have noted Mr Rugendyke's need for proof beyond reasonable doubt, so let me put this scenario to you. Consider Mr Tracey as the defence counsel, consider Mr Sackar as the prosecuting counsel, and consider Professor Richardson as counsel assisting the judge. The defence counsel and the prosecuting counsel are both agreed that at least two illegal acts were performed. It is only now for the judge to record that that is so and then to get on and pass sentence.

MR CORNWELL (3.27): Thank you, Mr Deputy Speaker. As you know, it is rather unusual for me to step down from the Speaker's chair and address the Assembly. However, I do this on occasions of great moment, and I believe that this is one of them. The granting of confidence to, or the withdrawal of confidence from, the Executive - and let us make no mistake; we are talking about the Executive, not the Chief Minister - is perhaps the most important single power of any legislature. Here, as elsewhere, this results in these motions taking precedence, as you are aware, over all other matters.

Unlike in other legislatures in the Westminster system, in this Assembly the defeat of any initiative is not normally taken as a want of confidence. It is really only the defeat of a budget - which has never happened, fortunately - or a specific vote of this Assembly that can see a government fall. Here in the ACT, with what I think I can call our modest parliament, without the external checks or balances of a Governor or an Administrator, you must establish mechanisms for stability and good government here on the floor of the Assembly.

In the 10 years of the Legislative Assembly I believe that we have worked very hard to establish its credibility in the face - initially, at least - of considerable hostility, scepticism and derision. I believe we have worked hard to develop a system of government that has been flexible, inclusive, open and accountable. We have done this because the reality of government in the ACT is the reality of minority government.

The positive aspect of our Assembly is that each and every member of this place must act in the most accountable way possible and is subject to the highest level of scrutiny. The obverse of this openness and accountability is the possibility that governments and individual members, because of the small size of this place, can be held to ransom or can even be preyed upon by people, internally or externally. There was some evidence of this in the First Assembly, I think it would be fair to say, for members who were there. But generally speaking members here have resisted the temptation to engage in this type of thuggery.

As recently as last Sunday Mr Stanhope acknowledged that "minority governments put serious constraints on effective government" and said that he "would rather see Ms Carnell with a majority in her own right than the system we currently have". I have no argument with that. It is a matter for another debate and another report which hopefully will be brought down soon. But I think that the smallness of this place does highlight the problems that we can face.

In considering a motion of want of confidence, the Assembly must adopt the highest possible standards of process. Given the seriousness of the motion and that it takes precedence over all other business at a particularly crucial time in this parliamentary year, bearing in mind that we have the estimates and the budget to come forward, the rigour with which we must approach this debate is great. The conclusion we come to must be above reproach and stand up to the close scrutiny of our fellow Canberrans. The demands of good government require that executives - I repeat "executives" - not Chief Ministers, are not to be dismissed on whim.

I would caution members. Serious disruption flows from a change of government, and usually significant changes in policy, which would take a long time to be implemented and to succeed. A decision today to dismiss the Executive will have enormous repercussions for the Australian Capital Territory. Apart from the arguments that appeal to sentiment, this I have to say is the most popular Chief Minister and Government that Canberra has seen. This Chief Minister and Government have brought Canberra through some of its darkest economic days. We must look rationally at the disruption and chaos that will be caused by a decision to dismiss, I repeat, the Executive.

The nature of this motion of want of confidence goes to the very heart of the stability of the parliamentary system. I certainly have a particular interest in this aspect. If Ministers were to be vulnerable to a low standard of removal, the Assembly would quickly become ungovernable.

The Leader of the Opposition, by moving his motion, has laid serious charges against the Chief Minister. Members of this Assembly will fulfil the various roles of prosecution and defence, of course, and in the end all of us will have to sit in judgment upon the evidence provided. The task of the proponents of this motion, however, must be, firstly, to articulate the changes which allege that the Chief Minister's conduct is reprehensible and that the Chief Minister has failed her responsibility and, secondly, to produce evidence that the Chief Minister's conduct is reprehensible. Mere assertions, rhetoric or even circumstantial evidence will not be sufficient.

The nature of ministerial responsibility requires that Ministers account to the Assembly for the administration under their care, but it does not at all follow that every mistake made in their portfolios requires their dismissal. Dismissal must be based on a personal failing. Neglect, recklessness, ignorance of advice and misleading the Assembly are cases of personal failing. We must ask ourselves: Has the Chief Minister been guilty of any of these - neglect, recklessness, ignorance of advice, misleading the Assembly? I believe the answer to all four is no.

The current case does not disclose personal failure. It does display openness. It displays a desire to achieve an improvement in facilities. It displays a desire to minimise the cost to the ACT taxpayers, as has been mentioned in earlier debates. It does not reveal avarice. It does not reveal corruption. It does not reveal intent to break the law.

Members have a very difficult part to play today. We must exercise judgment; we must display responsibility; we must dispense justice. We must put away prejudice and we must put away any preconceived ideas. In deciding whether there is a case to answer, we must weigh up the evidence, and that evidence must be substantial. If we go lightly into this matter, we will be allowing incoming executives and the people of Canberra to be held to ransom.

The business of this Assembly and the smooth running of the ACT Government should not be lightly disrupted. Motions like this should not be lightly brought on. Their currency should not be debased by frivolous use. Executives should not be brought down except in exceptional circumstances. We should not show bad faith in removing Ministers for ulterior motives, such as destabilising our opponents or seeking a change of government. It is interesting to note, Mr Deputy Speaker, that of 104 motions of want of confidence moved in the House of Representatives not one has succeeded. We cannot say that they have all failed to succeed, because of majorities in the House of Representatives.

Mr Quinlan: Why not?

MR CORNWELL: Because at various times since 1901, Mr Quinlan, there have not been majorities in the house. Significantly, no want-of-confidence motion in the House of Representatives has succeeded. Here, however, in 1989 the successful vote of want of confidence had its origins in the actions of the then Chief Minister attempting "to secure by persuasion the vote of the Speaker for [a] Bill". The Speaker in that First Assembly, as members will remember, was in fact an Independent, so there was a reason for moving that particular motion. In 1991 the successful vote came about because members of the Government withdrew their support.

Today I submit we have a very different scenario. The Leader of the Opposition alleges - I repeat "alleges" - law-breaking by the Chief Minister. So far, I believe, he has not produced the evidence to substantiate this allegation. The Chief Minister certainly has agreed that mistakes were made, and she has apologised for them. That is vastly different from substantiating allegations made by the Leader of the Opposition.

However, as I said earlier, it does not at all follow that every mistake made in their portfolio requires the dismissal of the Minister responsible. If that were the case, we might as well put a revolving door out there in the front of the Assembly, because we would have a cavalcade of Ministers passing in and out. The latest names on that long list, at least at the Commonwealth level, would be all the Attorneys-General in the Commonwealth who have recently been found to be in breach of the Constitution over cross-vesting.

In weighing up a case such as this, Mr Deputy Speaker, the Assembly has a responsibility to be above reproach. It must assess the motion justly and, in doing so, in my opinion, it must come to the conclusion that the evidence is not there and that the Chief Minister does not have a case to answer. I would ask members to seriously consider their vote.

MR CORBELL (3.37): Mr Speaker, I join with my colleague the Leader of the Opposition to support this motion of want of confidence in the Chief Minister, Mrs Carnell. Before I do so, Mr Speaker, I should draw to your attention comments you made in your speech. There is no doubt that a want-of-confidence motion is indeed one of the most significant and gravest actions that a parliament can undertake. But it is wrong of you to portray as fact that no motion of want of confidence has been passed in a government on the floor of the House of Representatives. I can recall at least two occasions in this century when that has occurred. The first was in the early days of the Second World War, when the Menzies Government was toppled on the floor of the House of Representatives and the Curtin Government was elected. The second and perhaps more notorious example was the motion of no confidence in Malcolm Fraser as caretaker Prime Minister, which was passed in 1975 just prior to the proroguing of that parliament. It is important, Mr Speaker, that we get our facts straight when dealing with this issue.

The reasons for this want of confidence are clear and they are unambiguous. The Chief Minister has been responsible for the illegal expenditure of $9.7m of taxpayers' money. This illegal expenditure occurred during 1998. It is expenditure which occurred without explicit, or indeed implicit, approval of this Assembly. As my colleague Mr Stanhope has said, it is a fundamental breach of that most significant of all notions in a contemporary Western democracy that no money can be taken out of the Consolidated

Fund of the Territory, or indeed any other jurisdiction, except under distinct authorisation from the parliament itself. Those are not my words, Mr Speaker. Those are the words of at least two legal counsel. All members have seen those advices.

That is the fundamental issue here. That is why we are moving a no-confidence motion. The Government has argued that it is a technical breach. The Government has argued that it is a minor matter, but I challenge any member in this place to stand up and say to the people of Canberra that the illegal expenditure of $9.7m is a technical and minor matter. It is not. It cannot be.

Mr Speaker, I have raised the issue of the fundamental breach of that most significant notion in our Western democracies that no expenditure can occur without the approval of the parliament. It is clear that illegal expenditure did occur in relation to the Bruce Stadium and that Mrs Carnell did indeed attempt to conceal the fact that it did occur. She endeavoured to do that through a variety of excuses which we heard outlined in the debate earlier today. Indeed, this Government is still attempting to conceal the fact that it bulldozed ahead with expenditure of at least $9.7m without the approval of this place, through the use of the technical defence and the investment defence under section 38 of the Financial Management Act. Those are their excuses today. We have heard their excuses previously. They are excuses. They are an attempt to conceal the fact that they spent money illegally.

They spent $9.7m without the approval of this place. We must say that it is at least $9.7m, because that is the only figure that is clear and that the Auditor has identified. But all in this place should know that it is highly likely that the figure does not stop at $9.7m. It has been revealed to us only today that the total cost of the redevelopment of Bruce Stadium is now $44m, of which only $12.3m has been legally appropriated by this place. Those are important facts to consider.

Mr Speaker, I would like to highlight two key areas of Labor's argument about why Mrs Carnell must be sanctioned by this place and sanctioned in the gravest manner possible. The first is that the Chief Minister is responsible for this illegal activity. An Executive is formed from the parliament to administer the affairs of the Territory and to be the people accountable for that administration. That is why they are there. That is the job we pay them to do - to administer the Territory and to be accountable and responsible to the legislature, to the parliament, and to the community of the ACT. They are there to be accountable for the actions of public servants, to be indeed accountable for the achievements in their area of administration. We certainly see this Government, as indeed we see all governments, quite happy to be accountable for their achievements. But they are also accountable for their shortcomings and their failings.

Mrs Carnell is the Treasurer. She is responsible for the administration of the Financial Management Act. Indeed, this morning she herself demonstrated in her speech that she apparently has a very strong grasp of the Act. She outlined a whole range of issues. Why then does she insist that she had no knowledge of the fact that the expenditure at Bruce was occurring illegally if she had such a strong grasp of the Act? Why was she unaware of the alleged guideline issue?

Surely, if she has such a strong knowledge of the Act and such a strong grasp of the requirements for appropriations - or, as she puts it, authorisations - she should have known all about the legality or otherwise of the illegal expenditure at Bruce. After all, that is her job. That is why we pay her. That is what we expect her to do. Mr Speaker, clearly she did know but she does not want to admit it. She knew, because she continued to produce excuses for the illegal expenditure, excuses which were found one by one to be flawed and to be wrong.

If the Chief Minister was so confident that her actions over expenditure at Bruce were legal, that they were allowed, that they were not unusual, that $25m was being spent legally, then why did each of the excuses that the Government has put forward fall over one by one? Why indeed were they abandoned by the Government one by one? As my colleague Mr Stanhope has pointed out, we have had a range of excuses put forward over the past month to justify their actions. We have had the net appropriations defence, and we have had a range of other defences. All of them have been shown to be without any foundation. Mr Speaker, these defences fell over and were abandoned by the Chief Minister because something wrong had occurred. Money had been spent without an appropriation. When you attempt to justify it in a way which is not true, it is usually revealed as just that. That is what has happened here.

Let us go quickly over one of these defences. The Chief Minister claimed that it was a cash management issue, but that did not last. Only later did she claim that the expenditure was authorised under the terms of an investment under section 38 of the Financial Management Act. But it is interesting to note the time when the Government introduced the defence of an investment. They introduced this defence after the Government had sought legal advice from Mr Tracey on behalf of the Auditor-General. They did not ask it up front; they did not ask the Auditor-General up front for his opinion on the Government's actions. They asked him to give his opinion on the investment issue after they had asked him to give an opinion on the range of other issues that the Auditor-General had asked for information about.

Why on earth would they do that? Members only have to read the legal advice and associated documents provided by Mr Tracey to realise that the Government sought to introduce the investment issue late in the day - indeed, after the Auditor-General had sent his request for advice. If the Government had been acting consistently, as they say they have been, and if the Government had been acting openly on this issue, as they say they had been, then surely the investment issue, the use of section 38 of the Financial Management Act, would have been used up front at the beginning. If there was nothing to hide, if they were acting normally, why did they not use that defence at the beginning? They did not use it at the beginning. It is because they did not use it at the beginning that members of this place can draw only one conclusion, and that is that the Government endeavoured to conceal what had occurred.

Mr Speaker, they used other excuses, and after they failed they eventually found the loophole that they needed to justify their actions - the investment loophole. The Chief Minister found the loophole she needed to justify her actions. Mrs Carnell knew she was responsible for the illegal action of her Government. She attempted to excuse it away as cash management but failed in that. She attempted to excuse it away as net appropriation but failed in that. She resorted to the investment excuse late in the day.

If the Government was confident, and if the Chief Minister was confident, that her actions were legal all the way along, then why did it take so long for the Government to create this excuse that an illegal expenditure was actually an investment under section 38 of the FMA? Clearly the Government knew it had acted illegally and the Chief Minister knew she was responsible for illegal actions. Otherwise, why did she not produce the excuse that she is using now up front at the beginning?

Mr Speaker, I come back to the fundamental issue that other Labor members and I have raised in this debate. The Government and the Chief Minister cannot expend moneys without the explicit, or indeed implicit, approval of the parliament. I make the point that Ministers in this place must be held accountable for the actions of their Government. In 1956 Sir Ivor Jennings said:

> Each Minister is responsible to Parliament for the conduct of his Department. The act of every Civil Servant is by convention regarded as the act of his Minister.

That is a fundamental tenet of parliamentary democracy and accountability in Westminster democracies and it is the key reason why this Assembly has no choice but to sanction the Chief Minister.

Mr Speaker, many of the other issues have been raised by my colleagues in debate. I do not intend to reiterate them further. But I make one final point. The Government says that it was unaware of the law in this regard, that it was unaware the law was being breached, and that it was a technical breach. This side of the house says that ignorance of the law is no excuse. Everyone knows that. Ignorance of the law is no excuse.

Let me put it this way, Mr Speaker: Imagine you were driving down the street outside your home, you were caught speeding and the police officer said, "Why were you speeding, sir?". If you said, "I was not aware of the speed limit", do you think that would be an excuse, when you knew what the law was; when you knew what the requirements were; when you should have been aware of the speed limit on your own street? That would not be an excuse, Mr Speaker. Neither can the Government claim now that it was unaware of the law, that it was unaware of the requirements of the Financial Management Act and that it breached them technically. Mr Speaker, I commend the motion to the Assembly.

MR MOORE (Minister for Health and Community Care) (3.52): Mr Speaker, I will begin this speech with a reply to the silly notion Mr Corbell just put up about speeding. Of course the Government knew the law. In fact, it was this Government in this parliament that passed the law that raised the standard of accountability from the Audit Act to the Financial Management Act, that required extra accountability and that required the issuing of guidelines. It was the action that Ms Carnell took in bringing that to this parliament and introducing it to the law that in fact set a new level of accountability.

Mr Speaker, I come to this debate with a history of being the balance-of-power Independent on the one occasion when a similar motion has succeeded, the motion against Mr Berry. On that occasion the bar was set high, and charges were specified and proved by those who brought the allegations. I would not vote for a motion simply because I had a political wish to see a Minister out or another Minister in. I would preserve the stability of government regardless of policy or politics unless the Minister's conduct had been reprehensible. On that occasion the accusers had prepared their evidence and had proved their case against Mr Berry, which was that he had misled the Assembly. It was classic reprehensible conduct, and that is why the motion won my support.

Mr Wood mentioned a couple of other no-confidence motions of the First Assembly, but we know, and it was always clear, that those motions were not about reprehensible conduct. Mr Wood knows it. They were not about where the bar was set. They were simply about the numbers. A group of people had the numbers to form government and they were going to do it, and the tool to do it was a no-confidence motion. There was no pretence about anything else at the time.

This current motion has not proceeded in the same clinical and dignified manner as that moved against Mr Berry. The accusers have only rhetoric and abuse. The case is sloppy. The facts, when examined, do not support it. The accusers are acting to secure political advantage and are motivated by a predetermined desire to remove the Government. It is not a justifiable move against any personal conduct which is reprehensible. Proof, being totally absent, has been replaced with repeated propaganda and allegations. Dr Goebbels spoke of the method of the big lie.

Mr Quinlan: The editor of the *Canberra Times*.

MR MOORE: I hear the interjection from Mr Quinlan, who says, "The editor of the *Canberra Times*". I think it is entirely unfair, Mr Quinlan, that you would refer to the editor of the *Canberra Times* as Dr Goebbels. It would be sensible for you to stand up and withdraw. You do not want to withdraw? Okay. Dr Goebbels spoke of the method of the big lie. The bigger the lie, the more likely it is to be believed.

Mr Berry: Mr Speaker, "Goebbels-speak" has been ruled on before. Mr Moore imputes that the Opposition speaks - - -

MR SPEAKER: No, I do not think he does impute at all. There is no point of order. I was not aware that there was any imputation going on.

MR MOORE: Mr Speaker, I was just quoting Dr Goebbels. It was Mr Quinlan who made an allegation about the editor of the *Canberra Times*, so Mr Berry's point of order is actually about Mr Quinlan, and it would give Mr Quinlan the opportunity to withdraw, which would seem to me to be a very sensible thing.

MR SPEAKER: I did not hear the reference to the editor of the *Canberra Times*. I suppose it is up to Mr Quinlan whether he wishes to withdraw it or not. But I do not uphold Mr Berry's point of order in relation to Mr Moore's comments. Mr Moore is talking about Dr Goebbels. He is not suggesting that he is in this Assembly.

MR MOORE: The bigger the lie, the more likely it is to be believed, he said. So it has been with the utterly false accusation that the Chief Minister has broken the law, a glib and false sentence crafted to create in the public mind - - -

Mr Berry: There is the parallel, Mr Speaker, if I may raise a point of order. He attempts to draw the parallel that the Opposition is behaving like Dr Goebbels in accusing the Chief Minister of breaking the law.

MR SPEAKER: There is no point of order. That bow would be so long, Mr Berry, that I simply could not entertain it.

MR MOORE: The false accusation that the Chief Minister has broken the law is a glib and false sentence crafted to create in the public mind the image of personal wrongdoing. We saw the effect of this in yesterday's poll, which plainly showed the damage Mr Stanhope's smear campaign has done to the reputation of the most popular MLA in the history of this Assembly.

Let us dwell upon the base motivations for this motion. The Labor members are in opposition. They seek to seize government. They have no policy direction of their own. They have put up so little in this Assembly. Failing that, as Mr Stanhope said at its ALP conference, they hope to damage the Government. The loss of a leader and Minister of Mrs Carnell's undoubted quality would be damage indeed, but for all of Canberra, not just for the Government.

Simon Corbell says that the Chief Minister was hiding all this information. Clearly that too is a misrepresentation. Mr Speaker, I table for the benefit of members some of the documents in which the information was made public. They include Auditor-General's Report No. 9 of 1998. On page 51 it says:

> This year 14.7m was spent in cash on the Bruce Stadium ... the shortfall was met by borrowing $9.7m from the Commonwealth Bank;

The annual report of the Chief Minister's Department for 1997-98, under "Bruce Stadium Redevelopment", sets out exactly how the operation proceeded. On page 200, the borrowings are set out in very clear and concise terms. Mr Corbell's comments were just another misrepresentation from those opposite.

It is undisputed by this Government that a mistake was made in the Office of Financial Management during early 1998. The Chief Minister and others have described in full detail what occurred. A course of action within the Government's legal powers was decided upon for perfectly good reasons, but paperwork was bungled in such a way as to take away the lawful basis of the relevant investment transactions.

All the players genuinely believed that their actions were well founded. So sure were they that no-one realised this error for over a year. Upon receiving legal advice six weeks ago, the Chief Minister has publicly taken responsibility, apologised to the Assembly and moved to remedy the situation. Far from acting reprehensibly, she has at every stage acted correctly and responsibly on the advice that she had. What more can

be asked? What superhuman expectation can this Assembly demand of her or any other Minister? Remember this: Nothing has been lost to the public through the error in paperwork.

Let me repeat the simple fact at the core of this issue. Even though the rules relating to section 38 investments were not adequately observed, at all times the Chief Minister, and indeed all the officials, believed that they had been. Mr Speaker, I tabled the documents before. I ask that those papers be circulated. Even if the Assembly is minded to insist that such investments be disallowed, such a conclusion does nothing to replace the Chief Minister's genuine and justifiable belief that the Government had power to decide what it did.

Mr Stanhope hangs his argument on the strength of section 6 of the Financial Management Act, yet his presentation of even this issue is simply another of his misrepresentations. He, with his legal training, more than anybody should certainly know that and understand that. Section 6 does not control the power to make investments under section 38.

I also heard an argument that somehow Bruce was not an investment. I think that was clarified earlier by the Chief Minister. Of course, when we put an extension on a house we make an investment. We expect a capital gain on that. It is a normal investment, in the normal use of the word, as Mr Stefaniak pointed out very clearly. The Government made no appropriation in any Bill for the investment, because no appropriation was needed. The legal authority required from the parliament - nobody is debating the requirement for authority from the parliament - came from the Financial Management Act. The Financial Management Act will be the authority tomorrow for public servants to be paid.

If indeed there is a change of government, the new Chief Minister will not have an Appropriation Act in place in order to spend the money. Mrs Carnell mentioned some $700m that would not be authorised through a specific appropriation but supported by an enactment of this house, the Financial Management Act.

Justice requires that the case Mr Stanhope has presented be rejected. Mr Stanhope, who draws attention to a professed belief in civil liberties, has brought a case without evidence and without arguments to connect the accused to the mistakes. He has conceived his attempt for the basest political reasons and he has prepared his ground amongst the media, the public and the crossbench MLAs with a gross campaign of distortion and hypocrisy. He knows all this to be true. Mr Stanhope has done all in his power, and has manipulated the media with all his available energy, to present an illusion of Ministers deliberately breaking obvious laws. Why? Why would the Treasurer deliberately set out to flout a law, when it was entirely within her power to issue the guideline, had she been properly advised? It was just simply so easy. Think about the words of paragraph 38(1)(e). Look at the unfettered power it gives the Minister. Why would a Treasurer deliberately set out with any ill intent to evade such a requirement? It just does not make sense.

Mr Hargreaves: Because there was an election on.

MR MOORE: Mr Hargreaves interjects, "Because there was an election on". All the more reason for her simply to introduce the guidelines. There is no reason not to do it. The intended crime which Mr Stanhope alleges of Mrs Carnell not only never took place; it is simply preposterous to suggest that any intelligent person would attempt it.

Mr Quinlan, Mr Corbell and Mr Hargreaves continue the argument that the money was spent without enactment. In black-and-white terms, perhaps you could argue that there is something correct about that, because the guidelines had not been issued. Why not? Mrs Carnell and this Assembly would have set a new standard by requiring the guidelines to be issued. She would have expected it to be done, but busy public servants who continued to do things as they had done them before acted as though the Audit Act was still in place - a perfectly normal thing, but not good enough, and she has apologised for that. But it was what we would expect to be a perfectly normal thing.

Mrs Carnell did nothing either intentionally or by neglect. On the contrary, she was responsible for the guidelines going into the Act to set a new standard. She did nothing intentionally or by neglect to break the law. She has not broken the law. It is simply an assertion which Mr Stanhope gloated to his party on the weekend is damaging the Chief Minister. Calumny does damage people.

Do other members believe in fair play? Have those who have declared themselves ready to condemn Kate Carnell no shame for the lack of evidence and their demand for ultimate penalties for the error of Ministers' employees? What will Ms Tucker say? Ms Tucker, I am going to address a question to you. I hope you will pay attention for one minute. Through you, Mr Speaker, I would like to address a rhetorical question to Ms Tucker. I understand her to have a desire to see a different party in government. But I also understood Ms Tucker to believe in justice. Will she now admit that the personal charges against Mrs Carnell have no merit and that her decision today, understandably, is about supporting Labor for government as she did when the Assembly first sat? I think it would be an honourable position to take if she said, "What has been put up does not have grounds, but I would prefer to have a Labor government in place". I would accept that, and we could understand that, but the evidence simply has not been put today. Mrs Carnell has not broken the law. She is entitled to a reasonable sense of justice.

Members, this exercise represents one of the lowest days of the Assembly. It represents the personalisation of politics which the ALP has practised bitterly against Mrs Carnell since she took over her party and threatened Labor's hold on power that it so craves. The smear campaign of the last few months has been so appalling, so misrepresentative of the facts and so plainly defamatory that any ordinary citizen would have sued long ago. Yet a politician is expected to endure this abuse, this calumny and the loss of public support which it inevitably causes. This is the style of the Labor Party - not policy, not good parliamentary contribution to the community, not cooperative government, merely the urge to destroy that which you fear and hate.

Contrast this with the community's expectation of cooperative government, an expectation to which all parties paid deference at the last election, perhaps other than Wayne Berry, who lost more support than any other group. Jon Stanhope, in spite of telling this Assembly in his first words here that he would work cooperatively, has almost single-handedly thwarted any progress towards cooperation with his poisonous

tactics in this Assembly. *(Extension of time granted)* He has brought with him to this Assembly his experience as a staffer in the Keating Government and has applied the worst type of New South Wales right-wing Labor politicking here to our Assembly.

Sadly, this affair has tempted other members to become involved in political intrigue. Ms Tucker seeks a change of government, as we are all aware. Mr Kaine's unworthy motivations are also perfectly well known to each and every one of us. The less partisan of the crossbench members - Mr Osborne and Mr Rugendyke - have been invited to explore whether they can use this occasion to see the Liberal leader replaced by another Liberal more to their liking. They have been tempted to participate in intrigues that end in short-term advantage for the benefit of the few, at the cost of the interest of the whole Assembly and the community it serves. Such internal intrigues have been a sad feature of the Assembly in the past. They utterly ruined the First Assembly. Members, they diminish and demean all who participate in it.

To their immense and permanent credit, Mr Humphries, Mr Smyth and their Liberal colleagues have utterly rejected participating in all the intrigues which the situation presents. From such shabby arrangements, stability, authority and good government cannot possibly arise. They have displayed the higher ethics of a mature political party - loyalty, integrity, honour. They have stood by their leader for the best of all possible reasons - a genuine sense of justice. They stand by her faithfully at the risk of the Government, at the risk of their ministries, because she has done absolutely nothing wrong. That is the same reason that I stand by her.

I sincerely hope that Mr Osborne and Mr Rugendyke will have the strength to stay above such low politics. Indeed, Mr Osborne, despite a few harsh public comments which I would not support, has had the sense of fairness to announce that this current motion is unsupportable. Although he reserves his position for the future, we await the announcement of Mr Rugendyke's position, and in more ways than one the fate of the Assembly depends on it being the right one.

The sentiments of eight members who have declared themselves against Kate Carnell are utterly unworthy. They diminish this Assembly. They damage the future success not merely of Mrs Carnell but of all of us. They invite the destruction of public credibility. They invite the destruction of a vibrant crossbench. They present the spectre of future majority governments and the lack of public accountability which would follow.

Mr Hargreaves raised the issue of "beyond reasonable doubt" when he was speaking. Quite right. But even if it was the balance of probability that we were looking at, there is still not enough evidence, because it is about intent. It is about the intent of somebody to break the law. The former public prosecutor Mr Stefaniak described what is meant by intent. The only argument, you could say, is that there were three legal opinions that provided the evidence. But those three legal opinions - Mr Hargreaves referred to them as one being the defence, one being the prosecutor and one being counsel assisting, which was just another misrepresentation - were selectively quoted from, to take just one side of the view, as we have now come to expect.

It appears that the announced position of 16 of us has placed the final vote in Mr Rugendyke's hands. As such, he bears great responsibility for the future of this Assembly. But Ms Tucker, Mr Kaine and the six members who sponsor this motion must share equally in that responsibility.

As we have exposed, the case presented by Mr Stanhope is unjust and unsupportable. His smearing, slurring approach, relying on innuendo, accusations and misrepresentation, has dragged this Assembly to new depths. When I listen to Mr Stanhope present his case, I understand that he has taken on the worst characteristics of a political hack. He has learnt to believe his own lies. Follow that with the approach of Mr Quinlan. If you know you have lost the political argument, attack the individual. How did Mr Quinlan attack Mrs Carnell? He used the words "vanity", "deception", "brown paper parcels", "gob-smacking incompetence", "oozed pious outrage", "impugned", "corrupt actions", "ham-fisted" and "manipulation". Now he nods and says, "Yes, yes, yes". It is just calumny, and you know the impact of calumny.

When it comes to the final decision for each of us and the final thing in politics, it was Senator, now Professor, Peter Baume who once said to me, "In the end, as a politician, there is only one way to judge how well you are going. It is when you wake up at 2 o'clock in the morning and you look in the mirror and you decide that you can live with yourself". Mrs Carnell has not broken any law, either intentionally or by neglect. Anybody who votes for this no-confidence motion on those grounds, surely would not be able to get up at 2 o'clock in the morning, look at themselves in the mirror and be able to live with themselves in a reasonable way.

MS TUCKER (4.15): When the Greens were preparing to first contest the ACT elections in 1995, one issue which we had to develop a position on was whether the Greens would support a no-confidence motion in a Chief Minister. There is a traditional view that a party which is fairly elected to govern should be able to serve out its term and then let the voters decide whether it deserves to govern again. The system of majority government in most parliaments around Australia has usually meant that this is the only way to get rid of bad governments. However, there is another view, which is that, if a government gets so bad, it is the responsibility of the parliament to take action to remove that government mid-term. This view is particularly relevant to a minority government that relies on support from outside its own party to maintain government. If that support is removed, then that government can no longer stay in power.

The Greens came to the view that, while in most cases a party should be able to stay in power between elections for the sake of providing stability in government, we would be prepared to vote against a Chief Minister if the Government was grossly mismanaging the Territory's affairs. There comes a point when the need for stability in government must be overridden by the need to ensure honesty and competence in government.

Of course, it is very difficult to define in advance what constitutes gross mismanagement. The circumstances of the situation would need to be assessed thoroughly and judgments made. However, some criteria can be set for assessing a government's actions. It would obviously have to involve questions of whether the government had acted incompetently, negligently or corruptly. It may not necessarily be

the case that the government had acted illegally, but if there was some illegality involved then obviously that would provide greater weight to not having confidence in their ability to govern.

There is also the question of how accountable Ministers should be for the actions of their departments. It would be reasonable for a Minister not to take responsibility for the actions of an individual in their department who intentionally broke departmental rules or policies. In this case, the individual officer would be personally guilty of misconduct. However, I believe that a Minister must take responsibility for actions within their department where departmental officers have acted under the directions of policies of the Minister.

A Minister cannot just say that it is their department's fault. They are the ultimate heads of their departments and have the responsibility for providing direction to their departments on how they want government policy implemented. Even though a Minister may not directly supervise the staff within the department, they are responsible for establishing the management structures through which departmental actions are taken. In applying these principles to the Bruce Stadium issue, it becomes quite clear that the Government has violated the confidence that this Assembly has placed in the management of the ACT's finances.

I note that Mr Osborne believes that we should wait until the Auditor-General has finished his report in September or October. But I believe that there is already sufficient evidence to damn this Government. We already have three separate legal opinions, with various supporting documents. There is all the material that came out of the Estimates Committee's hearings. The Auditor-General has also made comments already about the Government's actions, through the Estimates Committee and through other documents that have been given to Assembly members.

The Auditor-General's report may be useful in bringing all this information together, and for the Auditor to provide his opinion on all aspects of the affair, but my view is that it can only provide even more damning evidence than we have now. The fact that the Government spent $9.7m of public money in 1997-98 on the redevelopment of the Bruce Stadium without appropriation is quite clear. It is also quite clear that all three legal opinions agree that this spending was illegal. All the legal opinions state that the requirement that the expenditure of public money be authorised by legislative appropriation has been a feature of the Westminster model of government for about 300 years and is enshrined in the self-government legislation and also the Financial Management Act. Government actions that break this tradition cannot be treated lightly, as this would be downgrading a key feature of our democratic system.

The Chief Minister tried to get out of this misappropriation by saying that the net appropriation was still going to be $12.3m. As long as the books balanced at the end of the project, then it was okay to overspend now. However, her faith that the private sector was going to rush in and invest in this stadium has been very misplaced. The original expectation of attendances and revenue from events at the stadium has been greatly overstated, and there was no guarantee that the overexpenditure of public money on the stadium would ever be recovered.

After losing that argument, the Chief Minister then said that this was just a technical breach; that it was nothing to worry about and could be easily fixed through the retrospective issuing of financial guidelines. However, I do not think the issue is as simple as that. The fact that the Under Treasurer sought a loan of $9.7m from the Commonwealth Bank, which was provided on 30 June 1998 and which was then repaid the next day but in a new financial year, is very strong evidence that someone in the Government knew that the overexpenditure was not allowed under the Financial Management Act and that something needed to be done to make sure that the books still balanced at the end of the financial year.

On the matter of financial guidelines, I will remind members that in the initial debate on the Financial Management Act the Greens did put an amendment which would have required that financial guidelines be disallowable. This was because we recognised the importance of such measures and therefore saw the need to have an accountable and open process for their development. Unfortunately, at that time we did not get support from either Labor or Liberal.

The actions of OFM were not just an isolated technical breach by public servants who were confused by the complexity of the Financial Management Act, as Mrs Carnell would have us believe. It seemed more like the first stage of a continuing attempt to get the Government out of an illegal financial mess. It was not the complexity of the Act that was the problem; it was the complexity of the stadium deal that the Government wanted pushed through.

The Government also said that everything was disclosed in the financial statements that were reviewed by the Auditor-General and the Chief Minister's Committee, with the implication that if the information was publicly available then it must be legal. However, she neglected to mention that the Auditor-General was not that happy with the arrangement and was seeking further legal advice from the Government Solicitor, which is very long in coming and which was subsequently overtaken by the Government seeking its own advice.

Then the Government used the line that payments by the Central Financing Unit to the Bruce redevelopment did not need an appropriation because they were really an investment. However, they glossed over a very important issue. Firstly, there were no financial guidelines in place at the time that prescribed this type of investment. Secondly, even if there were guidelines in place, it would be very hard to justify that this expenditure was in any real sense an investment. Section 38 of the Financial Management Act, which covers investment, gives the clear impression that this section is about investing money which is surplus to the immediate requirements of government in a financial institution as a short-term measure. It is not about the transfer of money from one part of government to another for the purpose of paying for capital works. The Auditor-General also raised the point in estimates about whether this so-called investment conforms to the accepted accounting definition of an investment. It is also interesting to note that no interest was ever paid on the supposed investment.

The Government, however, persevered with the line that all it needed to do was to respectively apply new financial guidelines to call the unappropriated money an investment. However, the two non-government legal opinions were quite clear that the Treasurer did not have the power to make retrospective guidelines under the Financial

Management Act. They both concur that the intention of the Act was that the guidelines must be in place beforehand so that the Treasurer could know whether an investment was prescribed or not before investing the money.

Even the Government's own legal advice is not clear cut on this matter. Mr Tracey, QC, says that he was not asked to advise separately on whether the financial guidelines could be made retrospectively. He only said that if such guidelines did exist then the previous misappropriation would be legal. The advice about retrospectivity came from the Parliamentary Counsel, and even this advice is contradictory. Mr Leahy admits that it would not be possible to make guidelines expressly validating investments already made. However, he then says that it may be possible to make the guidelines take effect from a date before the unauthorised investments were made. The approach he then suggests gives the impression that he was asked to find loopholes in the Financial Management Act and Subordinate Laws Act to achieve an objective that was never intended.

The Government then abandoned this approach and sought to amend the Financial Management Act via the Appropriation Bill to validate its retrospective guidelines. But even this approach was questioned by the Clerk as to its relevance to the Appropriation Bill. The Government is now introducing new separate Bills to make the misappropriation legal.

The Government's efforts to dig itself out of the hole it has created with the Bruce scandal just seem to be creating an even bigger hole. Mrs Carnell is asking the Assembly to accept her apologies. She has admitted that mistakes were made and said that the Government has moved as quickly as possible to resolve any outstanding issues. But really I have to ask: Is this enough? Can the Assembly and the community trust this Government to act responsibly in the future? I believe the answer is no.

The Bruce Stadium affair is just the most blatant example of this Government's willingness to bend the rules to achieve its objectives, its can-do approach. It is quite clear in this case, however, that the law was broken. It has been commented that the Financial Management Act does not contain any penalties for non-compliance with the law. On the other hand, the Financial Management Act is not like other laws, because it goes to the heart of the operations of governments in managing taxpayers' money. The community's confidence in this Government's ability to manage the Territory's finances has been seriously shaken.

There is really only one ultimate penalty for non-compliance with the Financial Management Act and that must be that the responsible Minister be removed from that position. I believe this also must translate into a lack of confidence in the whole Government. I am not of the view that this is just about the Chief Minister. It is about this Government. The Chief Minister and I agree on that much, maybe for different reasons. A can-do approach is good up to a point but after that it becomes dangerous. No wonder the community is cynical about politicians.

Who else in the community can retrospectively change an offence which they have committed to be not an offence? Where is the integrity in such an action? If the Chief Minister and her Government had decided just to admit the mistake once it was realised instead of progressing into damage control measures which have reached the

level of farce, we would not be debating this motion. We would have been concerned, of course, but we and many in the community are much more than just concerned now. We are incredulous at the series of events which have occurred. We are shocked at the lengths to which this Government has gone to try to get themselves out of the mess. It is obviously about winning and little else.

The arguments put up this morning from the Chief Minister only add more to our concern. The main argument appears to be, firstly, that ignorance of the law is a legitimate defence. The community will certainly be interested to hear that coming from government. I have heard the story already told here of someone speeding. The next time any citizen in this community is caught speeding, they could say, "I was not aware that this was a 60 zone, so therefore I am not responsible". What is also clear is that if these public servants have been acting in ignorance of the law this would surely show gross incompetence within the department, which should surely bring into question the Chief Minister's management of the Territory's finances and the department.

The second argument I heard was that there have been similar transactions in the past - for example, the loan to ACT Forests. The Auditor-General said in his statement to the Estimates Committee that he had checked all the loans provided to him by the Chief Minister and it appeared that all fully complied with legislation, except for the CanDeliver loan.

Thirdly, we heard that, because under the Financial Management Act there are mechanisms for expenditure other than by appropriation, therefore the Bruce expenditure is somehow legitimised. This is clearly a spurious argument. Of course, there are provisions for particular types of expenditure in the Financial Management Act, such as act of grace payments, maintaining supply and so on. But these types of payments are totally different from the capital works expenditure on Bruce. The logical conclusion from that particular argument that was put this morning would be basically that anything goes. I think we would not have to bother at all about section 6 of the Act. We might as well just delete it.

The fourth argument was that other governments in the past were found to have acted illegally and no action was taken against those governments. An example given was the money collected by governments as franchise fees, which was found to be invalid by the High Court. There is a very significant difference between governments acting according to law which was later found to be invalid and the Bruce case, where the Government was not even acting in accordance with the current law.

The final argument was that great emphasis was put on the intention of the Government; that its intentions were always good and well meaning. *(Extension of time granted)* From my reading of this saga of events, the absolutely clear and consistent intention showed by government in this matter has been to get themselves out of the mess they created in any way possible, and that is not necessarily an honourable intent.

While this issue is about the Government's appalling mismanagement of the spiralling costs of redeveloping Bruce Stadium, there is another important issue we cannot lose sight of. Expenditure on the redevelopment of Bruce Stadium has blown out to over $44m. This redevelopment has come at a cost to other government services. In the 1999 budget we have seen cuts to the college system and to CIT. We have seen environmental

initiatives that have come at a cost to other parts of the urban services budget. We have also seen continuing neglect by the Government of important mental health services for children and adolescents. They are just a few of the areas that have experienced cuts or neglect.

It is offensive in the extreme for people in the community who are struggling to get basic services to see this expenditure on Bruce. I can tell you - and I received another email at lunchtime - that this is definitely the sentiment of the community. People say, "Why is it that we can find these millions and millions of dollars suddenly when we cannot get basic services?".

Mr Moore: Can you explain the difference between "capital" and "recurrent"?

MS TUCKER: Mr Moore interjects to ask whether we can explain the difference between capital works and recurrent funding. That is such a politician's answer. This is going to matter to the person in the community who does not have support for her child with a disability. This is going to make a big deal of difference to her, Mr Moore.

This no-confidence motion is about addressing the specific actions of the Government in trying to make legal appropriations that were illegal, but this expenditure cannot be seen in isolation. It must come at a cost to other very important areas of government activity. The community is watching what happens here today very closely. Many people feel real concern about the way this Government has been operating. They recognise that government has to be rigorous and accountable in its processes. This is an absolutely critical bottom line for good governance. Unfortunately, this Government has failed seriously in this area.

The Greens do take this matter of no confidence very seriously. It has not been a decision which was taken lightly. It is clear from our reading of the formal advice and from the community sentiment that has been expressed to the Greens party and my office that this motion must be supported.

MR OSBORNE (4.33): Mr Speaker, I would like to start by addressing the issue of ignorance of the law. Although I was in the Police Academy many years ago, one of the few things I do recall was that it was no defence. I do not remember much more, but ignorance of the law was no defence. Another issue, I suppose, is whether punishment fits the crime, and that is an issue I think we all are facing here in the Assembly today.

Mr Speaker, I have not enjoyed sitting in judgment over the past few weeks on this matter that is before us today. In fact, to some extent I have personally resented being placed in this position, but I have nonetheless done my best to make sense of the facts as they have progressively come to light. I have listened closely to many things that have been said, and, in particular, references to some of my comments from previous *Hansard*s in relation to the financial management of the Territory. I would have to say, Mr Speaker, that I do not move from any of that. Neither do I move from my comments in 1998 when I said that I require, and I quote, "a clear and compelling case of gross misconduct, corruption or negligence on the part of the Executive". Let me say the first part again, "clear and compelling". I would have to be convinced that it was a clear and

compelling case. It would not be sufficient for the Opposition to claim that there was such a case. To paraphrase Sir Thomas More: In such a case, what would matter would be that I believe it to be true.

It is obvious to me, Mr Speaker, that in order to take such a drastic step as is being proposed today, and that is to remove the Chief Minister, all the information must be on the table. I think it is only fair that we here should agree to that. I have faith in the role that the Auditor-General will play in this debate, and I am certain that he will provide valuable information in relation to this issue. As that is the case that I believe, Mr Speaker, I have made it public that I think that is the fairest thing to do, and I will wait for his report in relation to what I intend to do with the Chief Minister. That is why I will be voting against the motion today.

I have, via the press, been attacked by the Leader of the Opposition in the last couple of days in relation to the stance that I have taken. I do understand his motivation. However, I believe that the road that I have chosen is the fairest. I have ignored the attacks by Mr Stanhope because I do not wish to begin a fight with the Labor Party when they are not the ones at fault over this issue. I believe, Mr Speaker, that a stable Assembly, a stable government, is very important. That is why I will not be running to anyone else's timetable. I will run to my own. I have a responsibility to the people who voted for me to treat this issue with the respect it deserves. I believe that it is serious, and I believe also that we in here have the responsibility to do what is right. I believe, Mr Speaker, that Mr Stanhope believes that all the information that is needed is on the table. I do not.

I need to make one final point, Mr Speaker. My voting against this motion should not be read by anyone as support for the Chief Minister. I sought advice from the Clerk about adjourning the debate. However, I feel, after having met with him, that the standing orders require me to vote on the issue today. Upon receipt of all that information, Mr Speaker, I announced what I did.

I have taken on board what the Labor Party has said today. Once all the information is on the table, once I have the Auditor-General's report in my possession and I have had time to look at what he has had to say, and if there is enough information, I will support a no-confidence motion at a later date. I still have grave, grave concerns about how this issue was handled and it will not be finalised, Mr Speaker, until all the information is on the table, as I have said. I have faith that the Auditor-General will provide very valuable information on the Bruce Stadium development.

MR KAINE (4.39): I believe that this debate that we are participating in today marks a defining moment in the history of this legislature because, in effect, we are asking ourselves a very fundamental question and that is this: Is it appropriate for a Chief Minister who has acted unlawfully, one who, in fact, has committed a number of unlawful acts, to continue to serve in that high office? That is the question at issue.

Mr Speaker, it is not just the Chief Minister that is accountable here. The credibility of this entire Assembly is at stake. The credibility of every one of us, collectively and separately, is on the line, especially Mr Moore's. Shed of all the sophistry and dissembling that we have heard over the debate today, it comes down to this simple question: Do we members of this parliament sanction as head of the Executive a person

who has acted contrary to the law or do we not? We are not only dealing with that question on our own behalf; we are dealing with that question on behalf of 300,000 Canberrans. I can do no better than to quote our Speaker, Mr Cornwell. He said, "This place must be beyond reproach". Dead right. He is absolutely right. The chief executive of this place must, of all people, be beyond reproach. Mr Cornwell got it right.

There has been a lot of debate today. It has been going on for 4½ hours or more already. There has been some repetition, but since I am, with the exception of Mr Humphries and Mr Rugendyke, the last speaker, I think some of that material bears repetition. What are the facts of this case? We have heard the arguments for and against the proposition that the Chief Minister has acted unlawfully. She maintains she has not; the Opposition maintains she has. Well, what are the facts? I think they are simple enough and they are clear enough, despite the rhetoric from members of the Government.

During the year 1997-98 the Carnell Government spent more than $9.7m on the Bruce Stadium redevelopment project which had not been appropriated through the budget processes of this place. In the 1997-98 financial year that led them to the result that on the last day of the year they were $9.7m approximately short in their books, and they borrowed the money and repaid it the next day. Why did the Government do that? Why did they bother borrowing the money and replacing it the next day if everything was open and above board? It was not open and above board at the time, and it took some time after that day, 30 June, for even the beginnings of the truth to emerge about Bruce Stadium.

The Chief Minister talks about openness and transparency. She was not open and transparent right from that point. She had to do what she did because a private sector funding deal which she had been trying to arrange had fallen through. As an article in the *Australian Financial Review* on 4 June this year pointed out, the money was illegally advanced to the Bruce Stadium people "when the Government was unable to secure a private investor to help underwrite the redevelopment of the stadium, the cost of which has blown out to $33m". Of course, that was only a month ago, when it had not yet been publicly acknowledged by the Chief Minister that $32m was not the figure. We are only talking about less than a month ago.

A bit of propaganda put out selectively by the Chief Minister only yesterday to selective members of the media provides information that has not even today been put on the table by the Government and that is, as revealed in the *Canberra Times* this morning, that the total cost of this project is now $44m, not $32m, not even the $34.5m that the Chief Minister is now acknowledging. It is $44m. When did the Chief Minister put that on the table? She still has not, and she talks about openness and transparency.

The Government's error that they fell into in 1997-98 was compounded during the financial year 1998-99, this current financial year just ending, when a further $14.3m was spent on the stadium project without appropriation. Again this Assembly was not informed. We only find these things out when we act like a dentist and get in there with the forceps and start pulling things out.

When the Government's unlawful activities finally did begin to come to light, when a few people started asking a few questions and when the Auditor-General raised the question about the appropriateness of the $9.7m loan, Mrs Carnell started to come up with this series of increasingly incredible excuses that we have heard about all the afternoon. "It was all okay", said the Chief Minister, "because the Cabinet endorsed it".

Mrs Carnell knows that Cabinets endorse lots of things, but, when the Minister in that Cabinet goes out and implements those Cabinet decisions, it is the expectation of every other member of the Cabinet, and of the public, that they will be implemented within the law. Did Mr Humphries and Mr Stefaniak expect, when they sat in that Cabinet that made the decision that a certain course of action should have been taken in connection with Bruce Stadium, that the Chief Minister would go forth and act unlawfully? Of course they did not. They assumed, as I assumed, as I was there as a member, that she would go away and she would do that within the law.

There was another proviso, Mr Speaker, on that Cabinet approval that the Chief Minister has been careful to avoid. In the propaganda sheet that she put out yesterday, selectively, to certain people in the media only, she said, and I quote:

> The government also agreed that interim finance could be provided by the Central Financing Unit (the Government's bank) until an external financier was signed up.

There is a new concept for you, the CFU is the Government's bank, but this was to be done. What she did not say was that there was a time limit on it and that that temporary financing arrangement through the CFU was all to be wound up, finalised, by 30 June 1998. Well, it has not been, has it? It is now 30 June 1999 and it still has not been wound up. So we get these half-truths. The Chief Minister talks about openness and transparency, but you never get the full story. Even in the propaganda sheet put out yesterday to selected members of the media the Chief Minister could not bring herself to tell the whole truth, just the bit that she wants the media to know and that puts a spin on the story. Anyway, so much for the Cabinet decision that made it okay. It did not make it okay, and Mr Moore knows that it did not make it okay.

Then Mrs Carnell said, "Well, even though the Cabinet-decision argument did not go down, it was okay because we acted within the net appropriation concept". Well, that was soon exploded because net appropriations have nothing to do with borrowing money for capital expenditure. So that one did not last very long either. In any case, Mrs Carnell then said, "It's actually an investment and therefore is covered with the new guidelines under the law that I've just issued". She did not tell us about that either. We only found out two weeks after the guideline had been issued that she had issued it. Open and transparent, are we not? We are making sure that everybody knows what is going on. Of course, that fails also.

First of all, the Auditor-General himself has queried whether it is actually an investment. More importantly, one of the legal advices that were obtained came from Professor Richardson, and is the Chief Minister or any member of the Government going to stand up and say that Professor Richardson's view does not count? He goes to great lengths to explain that under the system that was in force at the time it could not have been regarded as an investment because, and I quote:

> In our opinion, there is no such intention revealed in the Financial Management Act but rather a contrary intention. Thus the investment must be one "prescribed by the financial management guidelines -

"the" is underlined -

> The language points to it being a condition precedent to the exercise of the discretionary power that guidelines must be in place at the time the decision is made.

I am quoting again:

> A decision made without reference to the guidelines cannot be converted into a decision made in accordance with guidelines operating retrospectively because this would impute to the Treasurer a state of mind which ... she did not have at the time of making the decision.

That is Professor Richardson. So the argument about it being an investment, whether under the revised law or the precedent law, does not stand up. Then Mrs Carnell said, "Well, it was only a minor technical flaw". It was only a minor technical flaw. There was a missing guideline. Well, there has been a lot said about that too, and the legal opinion, again, knocks that contention right on the head. It was not a minor flaw and it is a very significant and major event.

Today we heard yet another justification from the Chief Minister. She has not run out yet. Today she said, "Well, it wasn't appropriated but it was authorised". That is a very strange and new concept in public accounting. It was not appropriated, but it was authorised, and I will come back to that. Kirsten Lawson, writing in the *Canberra Times*, summed up the Chief Minister's squirming perfectly in an article on 12 June. She wrote:

> Since the legal doubts were made public ... Carnell has been in a state of denial. The justifications are made, then crumble with each justification, and new justifications are found. Her story is always upbeat, but the words and emphases shift like sand. And always a refusal to admit wrongdoing, with each admission and each concession squeezed from her.

We know that since 12 June the Chief Minister has now said, "Well, yes, I did it and I'm sorry", and that makes it okay, but at the time that Kirsten Lawson wrote that she was spot on.

More recently, of course, and after all of these series of events, everything else having failed, everything else having gone down the big black hole, Mrs Carnell made the following demand of us as members of this place - not a request, no repentance, no humility, but a demand: "Here is my amendment to the Appropriation Bill and you will okay it. It is a package deal and, along with appropriating money to make all my expenditure legal, you will also exonerate me from all illegal activity". What sort of

a demand is that coming from a Chief Minister who finally had to acknowledge that she had acted unlawfully? She puts that to this place as a demand. We know that she has had to back off from that. I think the response from the majority of members in this place was: "Not on your nelly, Chief Minister". So she had to go away and think again.

In short, the Government's actions, and specifically Mrs Carnell's, have been characterised over a period of nearly two years by secrecy, by excuses and by scapegoating. "It was not my fault, it was Jon Stanhope's fault. It was not my fault, it was Trevor Kaine's fault. He was in the Cabinet at the time we made a decision about this". Finally, she says, "It is not my fault. Some poor, obscure public servant in the Chief Minister's Department did not understand the law". So, at the end of the day, if we are not careful, some public servant is going to carry the can for this because the Chief Minister will not. Through all of this, of course, there is an interlacing of absolute administrative and, dare I say, even political incompetence.

In terms of that last point, just look at the record of the Chief Minister over recent days. She had to have two attempts at amending the Financial Management Act to try to get it to her own satisfaction. She made two attempts, not one. She published an amendment. Then she found that did not work so she had to go back and publish another amendment, and, of course, that did not work either. She did the same thing with the appropriation. She tried to amend that. She had to take it away and come back with a revised amendment because the first one she knew she was not going to get through. So, even in the heat of the moment, she has to go through the process twice, first of all to amend the law, and, secondly, to try to seek an appropriation.

At the end of it all, Mr Speaker, she had to come back to the Assembly at the end of the day anyway, because what she was trying to do was not something that she was going to succeed in. Of course, when she came back she said, essentially, "I'm putting everything on the table now. I want you to know everything". *(Extension of time granted)* "I want to tell you everything. I'll come clean. I'm guilty. I did it. I'm sorry. It's all fine, and I'd like you to put these amendments through. I'm putting all the facts on the table".

Well, as I indicated a little while ago, Mr Speaker, the document circulated secretly yesterday, or privately to a couple of privileged journalists, not to the members of this place, contains information that the Chief Minister has never told us, not even today, and it has to do with two things. It has to do firstly with the total cost of the project. It is now, we understand, $44m. Anybody who read the *Canberra Times* today would have got that figure, so there is confirmation that that is now the figure, $44m. The other thing is that in terms of financing this money there is a loan from the Commonwealth Bank of $10.3m. I recall that only about three or four weeks ago the Chief Minister complained that the Leader of the Opposition had torpedoed the loan from the Commonwealth Bank and it was not going ahead. According to this document it did go ahead. How come the Chief Minister did not come back and tell us that? We are back to the old openness and transparency, if you can believe it.

Now, Mr Speaker, to come to the three independent legal opinions about the Chief Minister's actions, whichever way you read these legal opinions, all three jointly and separately come to the inescapable conclusion that the Chief Minister, and possibly certain senior public servants, have committed a series of unlawful acts. These are facts.

There is no embellishment, no fiction, no fantasy. These are cold, hard, legal opinions. One of the opinions even recommended that all of the papers connected to these matters should be sent immediately to the DPP.

Mr Humphries: What is the basis for that?

MR KAINE: I note that the Attorney-General, who is about to interject, acted on that, did he not? He was not game because he knows what the results would be. So, acting as the chief law officer of this Territory, he sits on it and does nothing. Of course, Mr Speaker, this Attorney-General has been complicit in all of this. He has not sat there as the deputy leader of the party and the Minister Assisting the Treasurer during all this time without being privy to what is going on. He knows well what has been going on. So, to the extent that the law has been broken, it has been broken with the complicity of the Attorney-General. I just cannot imagine how much of the law our Attorney-General is prepared to sit there and see flouted before he does something about it. But, I suppose we cannot expect much better from an Attorney-General who was the receiver of stolen goods, namely, Cabinet documents stolen from the Federal Parliament, and did nothing about it. He stood up in here and acted as though it was perfectly acceptable.

Mr Humphries: I ask that that be withdrawn, Mr Speaker. It is totally untrue.

MR SPEAKER: Mr Kaine, please withdraw that. Please withdraw the imputation. This has been a good debate. It has been a well-behaved debate. I do not want to see it deteriorate.

MR KAINE: Mr Speaker, you cannot refute the facts. If the Attorney-General is offended by the facts, then I withdraw them, but the facts still stand.

MR SPEAKER: I want an unqualified withdrawal, please.

Mr Humphries: It is untrue, Trevor, and you know it.

MR KAINE: Oh, aren't we offended? Righto. The facts are on the table, but I withdraw them. Of course, we have the same sort of dissembling from Little Sir Echo over here, Mr Moore, haven't we, the Liberal fellow traveller. Compare the responses of the Attorney-General and Mr Moore to the charges that have been laid by the Leader of the Opposition against the Chief Minister and actions that have been taken within the administration. Unfortunately, Mr Stefaniak is involved in this too. Compare Mr Moore's performance today with the witch-hunt that he initiated when some allegation was made against a person in the health organisation about releasing some letter to the public. No stone remained unturned to find the culprit and punish that person as harshly as she or he can be punished under the Public Service Act. That was Mr Moore's response to a trivial thing like that. Of course, the same question can be asked about those minor functionaries in a public school somewhere who made some errors in putting their statistics together about the students, and the full force of the law is going to be brought against them; but the Chief Minister commits an illegal act and these people sit there complicit and they argue in defence.

Mr Speaker, I have to say that the charges laid by the Leader of the Opposition against the Chief Minister may even be trivial compared to another matter that looms on the horizon. I will give you a quote, Mr Speaker:

> A person who conspires with another person to effect a purpose that is unlawful under a law of the Territory -

and I emphasise this bit -

> or to effect a lawful purpose by means that are unlawful under a law of the Territory, is guilty of an offence punishable, on conviction, by imprisonment for three years.

That quote, Mr Speaker, comes from section 349, the conspiracy provisions, of the ACT Crimes Act. I do not believe that the Chief Minister sat up there in her office in glorious isolation and did all this by herself. I think there is a question of just how serious this matter is. The Chief Minister and these people are sitting over here. I notice Mr Smyth is smiling. This is just a minor, trivial affair. It may not be at the end of the day. So, Mr Speaker, we come to this debate on a want of confidence in this Chief Minister. There are some things that I still need to say, Mr Speaker, and I will be seeking a further extension of time.

Debate interrupted.

ADJOURNMENT

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

> That the Assembly do now adjourn.

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

Question resolved in the negative.

CHIEF MINISTER
Motion of Want of Confidence

Debate resumed.

MR KAINE: *(Extension of time granted)* First, Mr Speaker, I would like to say that the mythology relied on by some has to be dispelled. Contrary to what has been asserted, the Auditor-General is not the arbitrator in this matter. The Auditor-General is not the umpire. He is not the referee. A simple reading of section 10 of the Auditor-General Act 1996 will quickly establish this fact. Those who are relying on the Auditor-General to pull the irons out of the fire need to go and refresh their reading of that Act.

What is patently clear is that, in the absence of statutory penalties in the Financial Management Act, the provisions of the Financial Management Act are such that only this legislature can be the arbitrator. We are responsible, not the Auditor-General. It is our duty to make a decision about this matter and, of course, we have to rule on the evidence that is available to us. Mr Osborne, for one, must have a clear understanding of all this because he has made some previous statements on the matter. For instance, on 2 December 1997 he said:

> The spirit of the law is clear - that money raised from the people can be spent only after the purposes for which it is to be spent have been properly examined and approved by the people's representatives in parliament. It is perhaps the most important provision of the Constitution, and it is there to ensure that we do not become a banana republic.

Right on, Mr Osborne; right on. I have no doubt that Mr Osborne meant exactly what he said. In the same speech, less than two years ago, he went on and said:

> ... I would like the Liberals to listen hard to this, because they do not seem to understand it - you are not a business. Government is not a business, and you are not chief executives, no matter what you think. The standards required of you are infinitely greater and more onerous than those required of a business. You are dealing with public money and that is a sacred trust.

Right on, Mr Osborne. Nine days later Mr Osborne amplified his thoughts even further. He said this:

> Over the past five years, around Australia - and in Canberra - there has been a sinister new development. Public money is being spent on commercial deals stamped "never to be revealed to the community". This is done behind the smokescreen of commercial-in-confidence.

How many times, I ask you, members, have we heard this commercial-in-confidence bit over the last week or two? We have heard it constantly, and Mr Moore thinks that is okay. Mr Moore thinks it is fine. All I can say to Mr Osborne is: "We are with you, if indeed you are as solid in your views as you say you are". But, of course, he is not here to listen. Discussions that I have had with both Ms Tucker and Mr Rugendyke encourage me that they are sincere in their belief, and the time is long overdue to stop the rot.

I am aware that some people present have had some concern over that infamous and ill-advised jointly signed letter that the Liberals and their fellow traveller, Mr Moore, put about last week suggesting that if Mrs Carnell was forced from office no other Liberal would put up his hand for the job. I can say, with some evidence, Mr Speaker, that the letter was not worth the paper it was printed on. I can quote a similar letter that I received in 1989. I will read an extract out of that letter. It said:

> I am writing this letter to record, in a form that you may use as you see fit, that I will neither mount nor support any challenge to your leadership of the ACT parliamentary party at any time during the life of the first Assembly.

There is a signature on the bottom of that. The same signature appears on the bottom of the letter that was issued the other week. Anybody who reads history knows that that undertaking was not worth the paper it was written on, and anybody who knows that rule will also know that the same signature on the bottom of the piece of paper that was distributed last week is not worth the paper it was written on. I can assure those who have some doubts about that that they need not worry because, as a certain colleague of mine said to me only yesterday, "When the Chief Minister goes, there are two members sitting there loyally alongside of her and they will dislocate their shoulders getting their arms up". Both of them signed the piece of paper the other day.

Mr Speaker, I am coming to the conclusion. I have been having a good time just recapitulating what has happened so far, but I would like to refer to some of the things that Mrs Carnell said in her speech in defence. She said, "We did not set out deliberately to break the law; we did not knowingly set out to break the law". I think that matter has been dealt with sufficiently this afternoon. It is not a prerequisite that you deliberately or knowingly set out to break the law - if you did, that would make it more serious - but I think it has been pretty well established, and Mr Osborne has addressed the point, that that is no defence.

Mrs Carnell said, "What we are talking about here is only about guidelines that were not issued". That is not the case at all. Even if it did only deal with the guidelines, the guidelines that were issued have to be legal. They would have had to have had the effect of turning Bruce Stadium into an investment. The Auditor-General has questioned that, and Professor Richardson has shot it out of the water. So this is not just about guidelines that were not issued. The issue goes much deeper than that.

The Chief Minister also came up with a new definition of "appropriation". She said, "It does not have to be appropriated, it can be authorised". She referred, interestingly enough, to a standing appropriation. She referred to section 7 of the Financial Management Act and said, "I can spend money under a standing appropriation". But it is not an appropriation that is an authorisation. If she had read section 7 of the Financial Management Act she would have known that for this purpose the Financial Management Act is in fact an appropriating Bill, because the first sentence of that clause says:

> If, before the end of a financial year, no Act other than this Act has been passed appropriating public money ...

So this Act is, in itself, an Appropriation Bill for supply and it places some conditions on what that supply money can be used for; so it is, in fact, an appropriation, and the word "authorisation" does not appear anywhere in the Financial Management Act. "Authorise" or "authorisation" simply does not exist. So the Chief Minister is way off track on that matter again, and, of course, that supply Bill has to be validated by a subsequent Appropriation Bill anyway.

Mr Speaker, I had a couple of other remarks to make, but I think I have covered the field pretty well. I think the case is well and truly made, well and truly established. I think the Chief Minister is guilty as charged, and I think the Assembly should find her so.

MR HIRD (5.09): Mr Speaker, I am saddened after listening to the remarks of my colleague Mr Kaine in this debate. It is very clear to me that there is a lot of hate and a lot of ill feeling towards our Chief Minister.

Mr Kaine: You are a comedian, Harold.

MR HIRD: It saddens me, and I dare say you, Mr Speaker, because both of us have served the people of the ACT during a period of 25 years, along with the former Chief Minister, Mr Kaine. However, more about that later, Mr Speaker.

In speaking to this motion, I think it is worth all members considering what it is that we are talking about. By that I mean the new Bruce Stadium which, as you know, falls within my electorate of Ginninderra. It is a place where tens of thousands of Canberrans and visitors from interstate go to watch their favourite teams, and, hopefully in the future, their favourite entertainment acts perform.

There has been a lot of criticism and a lot of rhetoric from those opposite. Words like fiasco and scandal have been thrown about with gay abandon. It is obvious that not once has anyone opposite actually sat down and worked out exactly what has been achieved with this redevelopment. Remember that in late 1995 the Labor Party criticised this Government for, in the words of one of their former Opposition leaders, "failing to spend money needed to upgrade Bruce". Isn't it ironic? Three years ago the Labor Party was getting stuck into us for not upgrading Bruce Stadium. Today they are getting stuck into us for doing just that. Perhaps it is because Bruce symbolises the difference between the Labor Party and this Government. With Labor it is all talk and no action. With this Government it is about making it happen, making sure the job is well done, and about providing a great facility that will benefit not only Canberra for years to come but also the region.

The benefits to Canberra and the region from the upgrading of the stadium fall into several categories. They are the direct effects of construction activity; ongoing job opportunities; the opportunity to host Olympic Games football; the retention of Canberra-based teams in national and international sporting competitions; the opportunity to attract other entertainment events; and the value for money that has been obtained in carrying out this redevelopment. I would like to talk about each of these in turn, Mr Speaker.

As we all know, a total of $34.6m has been spent on the redevelopment over a period of three years. The Office of Financial Management has estimated that this expenditure directly employed 550 people, making Bruce Stadium one of the Territory's biggest construction projects in recent years. As well, it is estimated that this will create a flow-on effect of another 225 jobs, bringing to around 775 jobs the total employment generated by this redevelopment in terms of full-time equivalent positions.

Members may not be aware that the redevelopment has also generated a 50 per cent increase in direct employment at the stadium on game days. Prior to the upgrade there were approximately 200 jobs on game days. Today there are approximately 300. Most of these new jobs, Mr Speaker, are associated with the expanded catering operations at the stadium and have been filled by young Canberrans, thereby directly helping to alleviate youth unemployment in this city and the region.

The redevelopment of the stadium offers a wide range of opportunities to host non-sporting events such as concerts, conferences, business breakfasts, lunches, dinners and other function-based activities. The list goes on and on. As these opportunities are taken up, the stadium facilities will be used on a more frequent basis, generating a greater number of full-time positions, jobs, and significantly increased frequency of the periods in which casual staff are employed.

Mr Speaker, we also know that in December 1996, thanks to the efforts of this Government, and despite criticism from Labor, Canberra won the right to host Olympic Games football. Bruce Stadium will be the competition venue for five games of men's and six games of women's soccer, including a women's semifinal, from 13 September through to 21 September next year. Soccer, Mr Speaker, is the world's most popular sport. The 1998 World Cup was televised to an audience numbered in the billions around the globe. An audience of similar size is expected to watch the 2000 Olympic Games football tournament. That fact, by itself, offers Canberra unparalleled opportunities to profile our city and our region in an international arena. During these games, quite apart from the football teams and their support staff, a significant contingent of media and members of the Olympic family will visit Canberra for an extended period. Together with a substantial number of visiting spectators, this will provide a significant boost to the accommodation, hospitality and retailing sectors of this city.

Mr Speaker, another issue I want to turn to is retaining our national sporting themes in Canberra. It is a well-known fact that without the redevelopment of Bruce Stadium both the Canberra Raiders rugby league team and the ACT Brumbies rugby union side would not be here today. Do not take my word for it, Mr Speaker; just ask the management of the two teams. There may be some people who could not give a hoot whether we retained two of the world's best and probably best-known club sides here in Canberra, Mr Speaker. Well, I do give a hoot, and so do thousands of ordinary people in this city and within the region. Can you imagine the kind of stink that people like our colleague Mr Quinlan would have raised, Mr Speaker, if we had lost the Raiders because our main stadium was not up to scratch? If this Government had not pressed ahead it is more than likely that the Melbourne Storm we see today would probably have been the Melbourne Raiders, and the Brumbies would probably have been a second Super 12 side based in either New South Wales or Queensland, or perhaps Perth.

Only recently, Mr Speaker, the National Rugby League found that the new Bruce Stadium was only one of five existing venues that fully complied with the criteria for the NRL competition from the year 2000. The reality is that if the redevelopment had not gone ahead, Bruce Stadium would have been rejected as a home ground for the Raiders. Do not take my word for it, sir. Mr Kevin Neil, the Raiders' chief executive, issued a media statement on 30 April this year in which he said this:

> Without the redevelopment we would have been at real risk of being one of the three teams cut. The current debate about the financing of the redevelopment could not hide the fact that the $32m, however raised, had been well spent. Bruce is now one of the best stadiums being used in the NRL.

Mr Wood: Who said that?

MR HIRD: Mr Kevin Neil, the chief executive. Currently nine grounds, or more than half of those being used this year around Australia, have failed to meet the NRL's criteria. It may not be known, Mr Speaker, but a prominent civil engineer in this city with a number of international sporting arena projects on his books is on record as saying that the new Bruce Stadium is probably the best medium-range stadium in the world. That, Mr Speaker, is some rap for the efforts of this Government. Without the Raiders and the Brumbies, this Government would have had to make some extremely difficult decisions about upgrading Bruce solely on the basis of securing the Olympic football tournament. The decision to redevelop the stadium, not only to host the Olympic Games football but also to ensure the longevity of the Raiders and Brumbies and the Cosmos, clearly was soundly based.

In 1996 the Raiders commissioned accountants Price Waterhouse to undertake a cost-benefit study to demonstrate the economic importance of the team to Canberra and its surrounding areas. The results of this study showed that the Raiders have given a significant boost to the local economy and made an important contribution to the ACT's social and sporting fabric. A specific conclusion included in the study was that there were substantial net contributions to the region of around $6m in 1995 and $19m in 1996. Mr Wood, I see that you are the only person from the Opposition who is in the chamber. So much for the importance of the motion that we are debating. Raiders activity added 166 and 231 full-time equivalent positions in 1995 and 1996 respectively. The Raiders presence also made a net contribution to ACT tax revenue of around $35,000 and $1.2m in 1995 and 1996 respectively. While the Brumbies have not commissioned a similar study, it would be fair to conclude that the team's presence in Canberra provides a similar level of benefit to the ACT economy and the local community.

Prior to the redevelopment, Bruce Stadium was essentially a sportsground, although outdoor concerts were held there in 1991 and 1994. The new redevelopment delivers the opportunity to position the stadium as a premier outdoor concert venue, allowing Canberra to be included on the circuit for major international acts at marginal additional cost to the overall tour. In addition, the nature and standard of the corporate facilities mean that the stadium can also now host a range of other business, entertainment and community functions in the years to come.

It is when you look at the value for money question that you realise how well this Government has achieved its aim of minimising the cost of the upgrade to taxpayers. Mr Speaker, Bruce is not the only stadium to have been upgraded in the last three years. Let me elaborate. In fact, that is one of the reasons why there was an overrun on the original cost estimates. Let me share with members some broad comparative costings between the redevelopment of Bruce Stadium and other similar facilities that have recently been constructed or refurbished.

WT Partnership, the cost controllers for the Bruce project, have provided us with some very interesting examples. On construction costs alone, the redevelopment of Bruce Stadium cost about $1,384 per seat. Compare that with the refurbishment of the Gabba ground in Brisbane, which cost around $2,900 per seat, or the new southern stand at the MCG in Melbourne, also costing $2,900 per seat. In other words, they were more than double the cost of the Bruce project. When you look at the two new stadiums in Sydney and Melbourne, Stadium Australia and Docklands Stadium, both are costing around $4,000 per seat to be constructed. Mr Speaker, the WT Partnership report demonstrates beyond any shadow of doubt that the Bruce Stadium redevelopment is the most cost-effective project of its type in the country at this time.

I come back to what Labor has said about the stadium - that it is a fiasco or a scandal. *(Extension of time granted)* Tell that to Peter Beattie, the Premier of Queensland, about the Gabba in Brisbane. Quite clearly, Mr Speaker, this project was not a scandal. It was not a fiasco. It was another example of this Government getting on with the job of creating a facility that will benefit Canberra and the region for decades to come. It was another example of this Government seizing an opportunity that Labor was incapable of recognising, and delivering on a project that we should all be proud of. Again, do not take my word for it, Mr Speaker; just ask the thousands of Canberrans and other residents within the region who go out there on Friday nights, Saturdays and Sundays to see their favourite teams. This weekend you will be able to see the Brumbies and the Raiders. Ask any commentator who has called a game from Bruce in the last three months. They do not use words like "scandal" or "fiasco". They use words and phrases like "sensational", "fantastic", "long overdue", "best in the country" and so on to describe the new Bruce Stadium.

This Government has apologised for the mistake it made in relation to some of the administrative aspects of the financing of the redevelopment, but it will not and should not apologise for having the foresight to press ahead with this project, despite all the criticism and all the whingeing from those opposite. I am delighted to see a few of them come back into the chamber. The very thing that we are all talking about today, the stadium that sits out there at Bruce, is a world-class facility that is adding value to this community and the surrounding area.

Ms Carnell: It is a good investment.

MR HIRD: It is a good investment, Chief Minister. If it had been up to Labor - - -

Mr Corbell: It is an illegal investment.

MR HIRD: Listen, Mr Corbell. You might learn something. If it had been up to Labor we probably would not have ever had this debate because there would not have been a Bruce Stadium to talk about, not one of the calibre we have today. Mr Speaker, I also want to say a few things, sadly, as it hurts me, about Mr Kaine's performance in the house today.

Mr Quinlan: You're not going to get personal.

MR HIRD: I just heard an interjection from Mr Quinlan. He said, "Don't get personal". He got personal and went as low as I have ever heard any member in this chamber. He was talking about brown paper bags. I think there is a lot of shame there, Mr Quinlan. Thank you for reminding me. From listening to Mr Kaine, you get the impression that between 1989 and 1998 he was living in Antarctica rather than taking his place as a member of the Liberal Party in this Assembly. In relation to Bruce Stadium, Mr Kaine has given his version of history. I am now going to detail a series of facts that will cause everyone to question that statement made by Mr Kaine.

Mr Speaker, fact No. 1. Mr Kaine was Minister for Urban Services and Minister Assisting the Treasurer from January 1997 until February 1998. Today we have a no-confidence motion in Mrs Carnell as the Chief Minister and Treasurer. If Mr Kaine was the Minister Assisting the Treasurer during the period that the financing of Bruce Stadium was authorised, is he not also part of this motion? I would argue yes.

Fact No. 2. During Mr Kaine's time as Minister he was a member of the Cabinet which considered four submissions, as I understand it, relating to the construction, financing, tendering and hiring arrangements for Bruce. Four submissions, Mr Speaker. They were considered on 10 March 1997, 8 December 1997, 22 December 1997 and 12 January 1998. Do you know what the titles of two of them were? One was called "Bruce Stadium redevelopment - financing and management arrangements". The second was called "Bruce Stadium redevelopment - financing arrangements". So we have now established that Mr Kaine was not only Minister Assisting the Treasurer, but he was also a Minister who participated in four Cabinet meetings where the arrangements for the Bruce Stadium redevelopment were discussed and agreed upon. To use police terminology, we have the evidence that puts Mr Kaine at the scene.

Fact No. 3. Mr Kaine agreed with those Cabinet decisions. In fact, I am told that the recollection of the three other Ministers who were present is that he did not at any stage argue against them or express any opposition to the course being followed by the Government. In other words, Mr Kaine agreed with the direction taken by Cabinet on Bruce Stadium and its financing arrangements and management.

Let me now turn to fact No. 4. Let us assume for a moment that after the 1998 election Mr Kaine may have been so horrified with his involvement in these Cabinet decisions that he wanted no further part as a Minister in the Carnell Government. That would be okay except for the fact that I happen to know that Mr Kaine - I was not going to raise this, but I have to - sent to the Chief Minister a letter dated 4 March which says quite the opposite. Let me quote from part of that letter which was sent by Mr Kaine to Mrs Carnell. It says:

> Treasury has always been a primary interest for me -

we all know that -

> and to have the opportunity to be involved (without undue intrusion on your bailiwick) has been something that I have valued and would like to continue.

(Further extension of time granted) Mr Kaine went on, and you would be interested in this part, Mr Speaker:

> In case there is any doubt, I would have to say that I have little interest in the speakership. The idea of controlling the unruly in no way appeals to me.

Mr Speaker, I assume that Mr Kaine - - -

MR SPEAKER: At least he has been in the chamber.

MR HIRD: Yes. I assume that Mr Kaine still stands by this view about your job. But there you have it anyway. Mr Kaine's involvement in Treasury matters was something that he valued and wanted to continue. I can understand that and I am sure you would share that with me, as would other members. So the question of Mr Kaine not wanting to continue as a Minister has been dealt with. He did want to continue as one and the evidence is on the table to prove it.

Mr Speaker, what I have demonstrated today beyond any shadow of doubt is that Mr Kaine not only was involved in the decision-making process about Bruce Stadium, he also supported it. For this MLA to stand in this place and claim otherwise is remarkable, or he has a short memory. He might enjoy meeting new people every day. His contribution to this no-confidence motion must therefore be seen against these facts.

To now claim, as Mr Kaine does, that he had nothing to do with this process, that it was entirely the responsibility of the Chief Minister - to act like Pontius Pilate, wash his hands and do nothing - and that he never agreed with the management of the Bruce Stadium issue is beyond belief. At the very least Mr Kaine should have the courage to admit that he did agree with the Government's approach back in 1997 and 1998, but that he has now changed his mind.

Mr Speaker, it is therefore rubbish for Mr Kaine to claim that his support for this motion is based on his readings of the events that took place. His motives in seeking to get rid of Mrs Carnell as Chief Minister and the Government are entirely different. Put simply, sad as it is, Mr Kaine is a great hater who is consumed unfortunately with attempting to destroy the Chief Minister's political career by whatever means he can find, foul or fair. In this sense, Mr Kaine and Mr Berry have a lot in common. I could not make a speech without putting Mr Berry in.

You see, Mr Kaine hates Mrs Carnell and will stop at nothing in his pursuit of her. He has never forgiven her, nor will he ever, I believe, for taking away the leadership of the party. Her leadership has seen stunning electoral victories compared with his two losses at the ballot box. As well, Mrs Carnell has given the Liberal Party and the people of this great territory an unparalleled six years of stability, something neither Mr Kaine nor the Labor Party was able to match since the departure of Rosemary Follett.

Just as compelling, Mr Speaker, is the evidence as to how Mr Kaine actually comes to be sitting here during this debate. Mr Kaine stood for election as a member of the same party that you and I belong to, and under the same leader that he now says is guilty of acting illegally and should be thrown out of office. Mr Kaine made it to this place

because a significant majority of Canberrans believed in what Mrs Carnell and her colleagues had achieved for Canberra between 1995 and 1998, and what they wanted to get on with doing over the next 3½ years. He was elected on the back of preferences from his fellow Liberal candidates and got over the line by around 50 votes, as I understand it, thanks to the hard work of those colleagues who, I understand, he has never thanked once. I am sure members would be well aware of the efforts put in by Brendan Smyth, who is in the same electorate, and other Liberal members. If Mr Kaine had stood as an Independent - I can speak with some conviction on this - he would be enjoying retirement right now. I am sure Mr Osborne, who is from the same electorate, would agree. Now Mr Kaine is an Independent member and he expects us to believe that he has no history, that he carries no baggage, and that he what he once did and said as a Liberal Minister never happened.

Mr Kaine has argued that this Government acted illegally, even though he was part of the Cabinet that made these decisions and that at the time they were made every single person believed that they were acting within the law at the time. There was no intent, Mr Speaker, either by the Chief Minister or anyone else, to act outside the Financial Management Act. No member of Cabinet could possibly have known that the guidelines required under section 38 of the Act had not been issued. In other words, the question of intent is irrelevant to Mr Kaine. What he is saying is that it does not matter whether you knew what you were doing was unlawful. The fact is that it was later found to be, so you should be dismissed regardless.

I also want to talk briefly about what happened with the X-rated videos which the Chief Minister referred to earlier in this debate, Mr Speaker. Some members may not recall that Mr Kaine, when he was Chief Minister in the Alliance Government, was responsible for developing and introducing the franchise fee on X-rated videos. The legislation imposed a pretty hefty impost on the sale of these products in the Territory, a fact that ought to have rung alarm bells in Mr Kaine's mind if he had thought about the fairly negative views that the courts had taken on State-based taxes up until that time. Barely a couple of years later the High Court struck this tax down and declared it to be illegal. Was a no-confidence motion moved against Mr Kaine because of the fact that he initiated something that was later found to be unlawful, Mr Speaker? No, of course it was not, because Mr Kaine and his colleagues would say that they thought they were acting lawfully at the time they made their decision to introduce this tax. *(Further extension of time granted)* And they would be right in saying so, Mr Speaker, just as this Government is right in stating that it believes it was acting within the bounds of the Financial Management Act when it made its decision in relation to Bruce Stadium.

Let us not forget what Mr Quinlan said about that either. I know he has put out a press release saying that that was his view on that day, but he told the Estimates Committee:

> I am sure the intention was not to commit an illegal act.

Mr Kaine has the absolute hide to come in here today and use one standard to judge Mrs Carnell and her colleagues, including me, but he applies a completely different one to himself and to his actions when he was Chief Minister and was leading a government in this Territory. Mrs Carnell has done nothing wrong and she has my full support. She is innocent. She has broken no laws.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (5.41): Mr Speaker, I want to start by trying to find some common ground between the Government and the Opposition over this motion. It might seem a strange notion to try to do that, but I think that in fact the level of disagreement between us is not as great as some might pretend that it is. The Opposition says that the spending of public moneys must be authorised by parliament. We agree. The Opposition says that there are a number of ways of parliament authorising spending, and they particularly talk about an Appropriation Bill. I think that they acknowledge that there are other ways in the Financial Management Act for parliaments to authorise the spending of money. We agree.

The Opposition says that the Government has failed to put Bruce expenditure under a heading of parliamentary authorised expenditure, at least initially, and thus broke the law. Mr Speaker, we agree, with regret but not reluctantly, that we did indeed break the law. The Government did break the law in the way in which it handled this process. The Government says that this breach of the Financial Management Act was inadvertent. Some members of the Opposition have said that it was deliberate, but they have not put any evidence forward to support the proposition that it was deliberate, except for supposition, except for the argument Mr Quinlan used when he said, "Mrs Carnell is involved with everything that goes on in Canberra. She must have known what was going on. She must have deliberately set out to break the Financial Management Act".

Mr Speaker, on this particular issue - and I divert slightly for a moment here - I would ask members to consider this question: What motivation would the Government have for deliberately wanting to breach the Financial Management Act, particularly section 38?

Mr Hargreaves: There was an election on, to hide a stuff-up.

MR HUMPHRIES: The use of section 38 of the Financial Management Act did not remove any requirement for disclosure, because it was still necessary for the Government to put on the table all the records, all the accounts, all the audit statements and so on of what had gone on in respect of this particular proposal. So we escaped no level of scrutiny by using section 38 as opposed to a line in the Appropriation Bill. So why is it that we would set out deliberately to break section 38 of the Financial Management Act? I think if we are being accused of a crime here - and the Chief Minister is being accused particularly of a specific crime - and they cannot prove any intent on her part, at the very least those charging her should indicate some motive. But we have heard no plausible explanation of a motive.

Indeed, Mr Speaker, why would we deliberately have gone about not using a guideline? Guidelines are not tabled on the floor of the Assembly. By failing to use a guideline, we were not avoiding having to table some document. We would not have had to table it anyway, even if we had executed the guideline at the appropriate point. So what is the reason? The fact is that there is no plausible reason why the Government would avoid using some other device than section 38.

There was a difference about whether the Chief Minister herself broke the law or whether it was broken by her department and she bears some responsibility for that under the notion of ministerial responsibility. I have yet to hear anybody give a reason or

provide any evidence that the Chief Minister did deliberately break the law. Indeed, no section of the law has been quoted that suggests that she deliberately broke the law. For example, I ask members to look at section 6 of the Financial Management Act. It states:

> No payment of public money shall be made otherwise than in accordance with an appropriation.

It talks about the payment of public money. Who pays public moneys in the Territory? Not Ministers. We do not have the capacity to sign cheques in this place to pay public moneys. In fact, we very rarely authorise in any sense the payment of public money by some kind of ministerial document. Occasionally we do, but it is not actually very common, particularly for certain Ministers. The payment of public money almost invariably occurs as an act of a public servant, generally pursuant to an appropriation, whether it is an Appropriation Act or an appropriation of the kinds that are found in the Financial Management Act. Precisely what section of the legislation is it alleged the Chief Minister breached if she deliberately set out to break the law? Presumably not section 6, because the Chief Minister does not actually act to pay public money on most occasions - in fact, on any occasion that I can conceive of at this stage.

If we exclude those things which the Government and the Opposition agree about - that is, we agree about the need for accountability, we agree that public spending must be authorised and we agree that the legislation was breached in respect of this matter - and if we have no evidence for those things that we do not agree about, such as deliberate breaking of the law and the Chief Minister's role in that, then the essential point of difference between the Government and the Opposition in tonight's debate is whether or not the consequences of the Government breaching the law should be the dismissal or removal of the Minister from office, or the Government for that matter. If the law has been broken, inadvertently or otherwise, should the Government, should the Minister, pay the ultimate price and leave office?

The Government says that the notion of ministerial responsibility requires us to come back to this place and explain what has happened in the law being breached, to remedy any damage which has been done and to apologise to the house for any breach of the law. It has done all those things. The Opposition says, however, that we should go beyond that; that the Government, or at least the Minister, should resign. It says, "It does not matter that it was inadvertent. It does not matter that you did not mean to break the law". Mr Quinlan, I think, told us about the truck driver who drove off the road but had good intent.

Mr Quinlan: No, wrong bloke.

MR HUMPHRIES: Mr Stanhope, or whoever it was. He said, "Your intention is irrelevant. If you break the law, you go". Mr Speaker, that is a very high standard which the Opposition is setting out for us tonight in this place. It is a standard which says that if the Government breaks the law, even if its servants break the law and the Minister has no personal role in that, the Minister must resign. I think that is a stupid exposition of the standard which applies under ministerial responsibility. But let us take it seriously for a moment and explore just what it means.

Which of us is right, the Government or the Opposition, in this debate? I would ask members in this place to apply a few tests to the standard which the Opposition is stating - that if the Government breaks the law, even via its servants, even inadvertently, then the Minister must resign. There are three tests I would apply. First of all, how does this particular test operate in practice? What are the precedents for a Minister or a government resigning or being sacked because there has been a breach of the law? Secondly, in respect of the standard which the Australian Labor Party is stating tonight before this house as the standard it believes governments must live by, I assume that, in respect of its own performance in government, it will be able to prove that during Labor administrations in this city there have been no cases of a breach of the law or, if there have been such cases, the Minister concerned resigned immediately on discovering that the law had been broken. The third test would be the support that they derive from this proposition in texts and in academic statements of what the standard of ministerial responsibility is. They are the three tests I want to apply in this debate tonight.

Let us go through those tests one by one. Mr Speaker, if they say that a Minister should resign because the law has been broken, then presumably there will be some precedents for this having taken place - if not in the ACT, because apparently we are very well behaved here, then somewhere else in Australia or at least in the Westminster world. My colleagues and I have spent much of the last couple of weeks searching for a precedent for what the Assembly proposes to do tonight, searching for a precedent where a Minister has resigned because the law has been broken through the agency of a public servant working beneath that person. We have searched fruitlessly, because we have not found anywhere - not just in the ACT, not just in the Commonwealth of Australia, but anywhere in the Westminster tradition - where a Minister has resigned in these circumstances.

Interestingly, after a debate in which there have been five speakers from the Opposition and two from their colleagues on the crossbenches on this particular matter, after seven speeches on this matter, we have not been given a single precedent for the course of action that they propose to adopt tonight. Is it not tempting for us to assume that they are not stating some long and ancient principle, as they purport to be the case, but in fact they are making a new principle tonight which no-one else has ever had to follow before anywhere in the Westminster tradition? Mr Speaker, that is what it is.

There are many examples of Ministers resigning or being sacked for a variety of other reasons - misleading parliament, inadequately disclosing their personal interests in matters that might cause a conflict of interest and being charged with, or being accused of, particular criminal behaviour. There are plenty of examples to find in each of those categories, but none in the category of a Minister resigning because inadvertently they broke the law through the agency of a person working beneath them.

I think you can see a level of malfeasance in the cases I have referred to. That is the thread that runs through all of those cases of resignation or sacking before - an actual level of malfeasance, either a commission or an omission on the part of a Minister. But that is not evident in this case here. Some members opposite realise that the absence of that has been a problem and so they have alleged in this debate, particularly Mr Quinlan, that it has been there somewhere; that actually there has been a level of deliberation about this; that the Chief Minister intended to set out to break this law; that she knew

what she was doing. But they have not presented any evidence to support that proposition, and I believe that the house is entitled to abandon that assertion if it is not backed up with evidence.

There are plenty of precedents for the other side of the coin, where Ministers do not resign in those circumstances. The most recent example is just a few days ago, when in the Commonwealth Parliament it was alleged that a public servant had defrauded the Department of Finance and Administration of something like $8m. The matter is still before the court. An $8.7m fraud is alleged.

Mr Moore: In an illegal act.

MR HUMPHRIES: In an illegal act - not just a breach of an administrative law but a breach of a criminal law. Curiously, the Labor colleagues of those opposite - - -

Mr Corbell: The public servant in this case was implementing the directions of the Government. What an absurd parallel!

MR HUMPHRIES: No, it is not an absurd parallel, Mr Corbell. The Labor colleagues of those opposite have not called for the resignation of Mr Fahey, the Minister for Finance. Yet here is a public servant breaking the law. Why is that Minister not responsible for that act? I take it that there is some reason why in those circumstances the Minister should not have to resign or be sacked.

Mr Stanhope: Yes.

MR HUMPHRIES: We have not heard those reasons yet in this debate, Mr Stanhope. We have not heard why you distinguish that kind of situation from this. After seven speakers in favour of this motion, I think we are entitled to know why those sorts of cases do not apply. But we have not yet heard the reasons. As I have said, there are no precedents available anywhere that I have been able to find, and I invite those opposite to complete the record. There are no precedents for Ministers resigning in these circumstances, and there are many precedents for Ministers not resigning in these circumstances. Will they please enlighten us with the precedent upon which they rely?

Let us assume, however, that they are still right; that there is this standard that is being applied. *(Extension of time granted)* The question now has to be asked: Has the ALP lived up to the standard itself when it has been in office in the ACT? Let us forget about other places. They might have lower standards than we do. In the ACT, do we have a standard which says that when a public servant breaks the law beneath a Minister the Minister resigns? We have gone back to look at the circumstances where the law has been broken in the past and public servants have been complicit in that, and we have tried to see what happened in periods of Labor administration. Members have already heard about the X-rated video tax. That was a tax that was enacted originally by Mr Kaine as Chief Minister and Treasurer in the Alliance Government. Incidentally, it was opposed, as I recall, by the Labor Party. When the Labor Party came to office, it decided the tax was not all that bad and kept collecting the tax and, as it turned out, the collection of that tax was illegal.

Mr Moore: Not by a legal opinion.

MR HUMPHRIES: No, not by a legal opinion of some QCs but by a decision of the High Court of Australia in December 1993. What does illegal mean in that sense? Does it mean that at the point of the decision they decide that from then on there will be no more collection of the tax? That is not what they said. It was illegal ab initio. It was unconstitutional from the beginning. Every dollar collected under that tax would have been illegally collected.

The public servants under the Minister were collecting that tax. The Minister was presiding over a regime where that tax was being collected. Did the Minister come to this place and resign? It was Ms Follett at the time. The answer is no, she did not. In fact, not only did the Minister of the time not resign; she came back to this place and asked the Assembly to legislate to allow the Government to keep the money which had been illegally collected, according to the High Court, for the preceding three years. She asked for that authority retrospectively. I might say, Mr Speaker, that she got it, with the support of those on the Liberal side of the chamber. We have consistently adopted the standard that the illegal acts of people in those circumstances where they are inadvertent should not have any consequence of the kind which is now being put forward by those opposite. Now we hear that when you do those sorts of things you have to resign. I hear those opposite muttering in very low voices, not wishing to be on the record perhaps, that there is some distinction between these circumstances and the circumstances presently. I look forward to hearing the difference, to hearing why those circumstances are different.

Another example was the much broader decision which the Capital Duplicators case ultimately led to in Ha and Lim, where the High Court struck down the entire collection of petrol, tobacco and liquor franchise fees. Whereas in Capital Duplicators tens of millions of dollars of revenue had been invalidated, in this case hundreds of millions of dollars of revenue was invalidated. Again the parliament was asked to validate that decision retrospectively. Those opposite - I am trying to anticipate what reason they will give for the distinction between these situations - might say, "That was not really a case in point either because, let us face it, the parliament was involved in that exercise and parliament agreed to that, so all the parliament was at fault, not just the particular public servants and particular Minister responsible at that time". Okay. Let us go to another example. I have plenty of examples to distinguish all these cases from the present one.

In May 1992, under a Labor government, there was a payment to the New South Wales Office of Racing of almost $15,000, $14,499, for its share in a study that was being set up apparently between the ACT and New South Wales. That payment was made out of the Racecourse Development Fund. That payment was illegal.

Sitting suspended from 6.01 to 7.30 pm

MR HUMPHRIES: At the point of being interrupted by dinner I was making an observation about payments from the Racecourse Development Fund in 1992. In August 1991, a legal opinion was obtained by the Office of Sport and Recreation which confirmed that administrative costs could not be paid from the Racecourse Development Fund. In May 1992, notwithstanding that earlier advice, a payment of $40,500 was made by the Office of Sport and Recreation to the New South Wales Office of Racing. That payment was caught by the advice that had been given the previous year and was clearly

illegal. Some further payments were also made at about that time. A payment was made to the Esanda Car Rally by way of assistance from the Racecourse Development Fund, and payments over a number of years of $2,500 each year were also made out of the Racecourse Development Fund and were also illegal.

When I say that they were illegal, that was the opinion of the Auditor-General, who in his Report No. 3 of 1993, entitled "Publicly Unaccountable Government Activities", under the heading "Illegal Payments", said that those payments were illegal and that he found a serious lack of accounting and internal control procedures in the way in which they were made. There had been a number of serious breaches of the provisions of the Act, including in contravention of legal service, and one case had even been referred to the Investigations Unit of the Chief Minister's Department. They were clearly, unequivocally, illegal payments made by the government of the day, by public servants in that government, out of a fund which did not have the authority to have payments made from it.

Who was the Minister at the time? The Minister at the time was Mr Berry, Minister for Sport and Racing. Did he resign? No, of course he did not resign. Did he come back to this place and eat even a little of the humble pie which the Chief Minister has been gorging herself on, in the last few hours? Not so much as a tiny morsel. Yet we are expected to believe that the Australian Labor Party believes in this standard which says that when a Minister breaks the law he or she must resign and that when a Minister's delegates or servants break the law he or she, the Minister, must resign.

Mr Speaker, what does that say about the Labor Party standard? Does it not suggest to you that the standard is being applied most un-uniformly or does not exist at all; that it is a figment of the imagination of those opposite put up in this debate as a tool with which to beat the present Chief Minister and Treasurer, designed to force her out of office? Mr Speaker, in none of those situations I have referred to - the illegal collection of business franchise fees for X-rated videos, the illegal collection of petrol franchise, liquor franchise and tobacco franchise fees or the illegal payments made from the Racecourse Development Fund to a variety of sources - did the Ministers responsible come back to this house and apologise for having made a mistake, much less come back and seek to offer their resignation to the Assembly or to the leader of the day. We have to ask ourselves why we would expect tonight to apply that standard to this Chief Minister and Treasurer, when it has not been applied in the past to Labor Ministers.

Mr Speaker, I do not cite these examples to suggest for one instant that two wrongs make a right. I am not saying, "You broke the law so we are allowed to break the law as well and get away with it". I am not saying that at all. What I am saying is that these illustrations from the past make the point very eloquently that it never was regarded as a hanging offence for a Minister to have a public servant make a mistake and make illegal payments or otherwise break the law under that particular Minister. *(Further extension of time granted)* It never has been the case that Ministers have had to resign in those circumstances, so why should it be the case now? Why should we accept a standard, a test, which the Labor Party is putting on the floor in this place, a test which we have never seen before today, which as far as we can tell no Westminster parliament

anywhere in the world has seen before today, which is a new invention which does not deserve to be given ventilation in this place because it is a silly, ridiculous standard to have to expect any government to live by?

Those opposite say that this is the standard which governments should live by. If governments find that they have people breaking the law underneath them, the Ministers concerned should accept, under the Westminster tradition of ministerial responsibility, their part in that exercise and they should resign. That is what they say opposite. Presumably if this is an ancient and much valued element of the democratic process, there will be some academic exposition of this principle. There will be some place we can go to open a book and read where this principle is outlined. Is it not strange that after five speeches in favour of this motion nobody has yet cited an example from a textbook, from *House of Representatives Practice*, from anywhere, in support of this proposition?

In fact, Mr Speaker, when I go to *House of Representatives Practice*, which is pretty much the bible for this particular chamber when in comes to matters of this kind, I find a very clear exposition of ministerial responsibility made out at some length in that document. I am amazed that it has not been quoted by the people who supported this motion. Let me fill in where the Opposition has failed to do so. I will read from *House of Representatives Practice* under the heading "Individual ministerial responsibility" from page 87 onwards. It quotes the 1976 report of the Royal Commission on Australia Government Administration, the Coombs report, and it says:

> ... there is little evidence that a minister's responsibility is now seen as requiring him to bear the blame for all the faults and shortcomings of his public service subordinates, regardless of his own involvement, or to tender his resignation in every case where fault is found. The evidence tends to suggest rather that while ministers continue to be held accountable to Parliament in the sense of being obliged to answer to it when Parliament so demands, and to indicate corrective action if that is called for, they themselves are not held culpable - and in consequence bound to resign or suffer dismissal - unless the action which stands condemned was theirs, or taken on their direction, or was action with which they ought obviously to have been concerned.

Further, the Coombs royal commission said:

> I continue to believe that in the matter of ministerial responsibility, in the strict sense of actions done in his name for him or on his behalf in his role as a minister -

they were still sexist in those days, obviously -

> his responsibility is to answer and explain to parliament for errors or misdeeds but there is no convention which would make him absolutely responsible so that he must answer for, that is, to be liable to censure for all actions done under his administration.

That is what the textbook on this subject says. That is what the bible, if you like, says about this subject, Mr Speaker. We have heard a lot about deceit today, about how this side of the chamber is being deceitful. Is it not strange that they have not bothered to quote from this textbook on ministerial responsibility to explain to the house what the standard actually is.

That text, unfortunately, is some years old and you might say, "Maybe it is out of date now. Maybe that standard no longer applies. Maybe we have a high standard these days". I would like to quote a slightly more contemporary exposition on this subject. It is a paper - and I hesitate to name the person, since he has already been referred to today in the debate - by the editor of the *Canberra Times* in a paper he presented entitled "Ministerial Responsibility for Personal Staff". This is a very interesting quote, and I want to put it on the record:

> In a golden age, some think, a minister of the Crown took absolute responsibility for everything which occurred under his administration and, if some mistake or malfeasance occurred, then the minister bravely took responsibility for the error, no matter how remote his own personal responsibility was, and submitted his resignation to the Prime Minister.
>
> Since this golden age, if ever it existed, much has changed. Government has moved into the social welfare field, intervenes far more actively in the economy, has acquired a much more centralised role in law and order, and regulates in almost every area of human life.
>
> It would be beyond the wit of any mortal to be across the details of each individual piece of administration, in which probably several million decisions a day are made touching the rights or property of its citizens.

He went on to say:

> ... it was unreasonable to hold that a minister must go for any mistake in routine administration.
>
> We develop thus a notion of some separation between administration and policy, some allowance to the level of remoteness of incident in question from the minister.

They are the expositions of ministerial responsibility today, not the claptrap which we have heard from those opposite.

Mr Wood: That has nothing to do with this.

MR HUMPHRIES: It is exactly to do with this, Mr Wood. It is precisely to do with this. It is a question of appropriate delegation of the administration of decisions made by government to those who are expected to perform that implementation, that administration, within the terms of the law. Obviously, every task which is given to a public servant is given with the implication that they will pass that work on and

continue to implement that decision within the terms of the law. It does not need to be stated expressly every time, "Here is a job to go and do, Joe, but make sure you do it within the terms of the law". It is implicit in every task given to a public servant. The Minister, according to those statements I have outlined, is not responsible for the actions of that public servant, in the sense of him having to sacrifice himself or herself or to resign or be sacked merely because a mistake was made, unless there is a level of personal involvement. *(Further extension of time granted)* The Minister is not responsible "unless the action which stands condemned was theirs" - and I am quoting again - "or taken on their direction, or was action with which they ought obviously to have been concerned".

Mr Speaker, was the action condemned here the action of the Chief Minister? Was she responsible for drawing up the paperwork that omitted to do the guidelines? No, of course she was not. It is a job that is delegated in the legislation to a public servant. Why would a Chief Minister be doing it herself? Obviously the answer is no. Was the action taken on her direction? Did she direct that the public servant concerned should not complete a guideline under section 38? No, she did not. There is some suggestion that she must have done it deliberately, but where is the evidence that she did that? There is none, of course. Was it a matter with which she ought obviously to have been concerned? The legislation itself foreshadowed that it would be delegated down from the Minister, under section 67. The legislation itself expected that this would be done by a public servant, not by a Minister. Why then is it a matter with which she should obviously have been concerned? When the Chief Minister found out that there had been this omission, of course she was concerned about it, but until that point there was no obligation to have been involved in the matter in any personal, direct way. Under these standards, which are laid out clearly for us in all the texts that we have come across, there is no responsibility to resign or cause to be sacked.

Mr Speaker, that is the state of the law, not what has been put to you by those opposite today. The standard postulated by the Opposition that Ministers must resign if the law is broken in their name does not exist. The proof of that fact is that there are no precedents. Not one precedent has been cited in today's debate for resignation of a Minister or sacking of a Minister in these circumstances. There is no academic authority for this standard anywhere in any text that anyone has been able to point to. Even the Labor Party itself, when its servants have broken the law in the past, has not applied this standard to its Ministers, has not required their resignation or their sacking. Mr Speaker, that is the test before us tonight. Does this so-called requirement to resign exist? It clearly does not exist.

Mr Speaker, I want to run through some of the things that have been said earlier in the debate today by other people. Mr Stanhope said that there had been arrogant disregard of the law and he went on to say that there had been a past refusal to comply with the law. This again was referring to the Chief Minister. He implied very gingerly that there had been something deliberate on the Chief Minister's part but, as I have said before, he cited no evidence for that proposition. He did not offer any proof of that fact.

He did, however, go on to talk about the question of treating the loans in respect of Bruce as an investment. He did say in his remarks that he could guarantee that before 30 April of this year, or thereabouts, no-one in government had considered that spending on Bruce was an investment under the terms of the Financial Management Act. I make two

comments about that. First of all, that may well be very substantially true. It may well be that nobody in the government, until much later in this exercise, addressed their minds to the question of what particular head of the law was enabling these transactions to take place. They were making these decisions on the basis of a practice which had grown up under the previous Audit Act of the Territory. The Audit Act did allow these sorts of transactions. The new Financial Management Act imposed a different and slightly higher standard, requiring the making of a guideline, but that had not been executed through this oversight, and therefore nobody did look at that particular question.

Mr Speaker, what does that statement of Mr Stanhope's say about intention?. Where is the intention in all of this to break the law if nobody, as he puts it, until 30 April this year had adverted to the possibility that there was a problem with a breach in the law? Where is the intention that he suggests must have been present to break the law and that Mr Quinlan says directly was there to break the law of the Territory? Of course, his own words suggest that there was no such intention. Mr Speaker, what does that say about a refusal to obey the law? Of course, it suggests that there was no such refusal.

Mr Quinlan made some remarks in this debate after Mr Stanhope. Whereas Mr Stanhope's comments about Mrs Carnell were not especially personal, I cannot say the same about Mr Quinlan's remarks. He says that the Chief Minister's mistakes could not have been mistakes; that they must have been deliberate. Why were they deliberate? He says that Mrs Carnell is involved with every decision that gets made in this city and therefore she must have known that down in the bowels of her department a public servant was breaking the law. Mr Speaker, it sounds to me a bit like saying that if a member of a Minister's staff goes to someone's house therefore the Minister must have known it was happening and must have authorised everything that particular person happened to say at that time. It sounds very much like that, if you ask me, Mr Speaker.

I am not particularly concerned about those comments. I am concerned about another comment, though. I hope that Mr Rugendyke in particular shares my concern about these particular remarks. I want to quote what Mr Quinlan had to say in the course of the debate today:

> ... I am yet to hear substantiated claims of brown paper parcels or other forms of direct corruption. On the other hand, the Chief Minister has a lot to gain by squeaking past this latest disaster ...

The reference to brown paper bags is unmistakable in this debate. I cannot take a point of order on Mr Quinlan's remarks, because the Chief Minister is subject to a motion which is impugning her. However, I appeal to Mr Quinlan not to let that remark stay on the record. If he has no substantiated claims of brown paper bags, as he puts it, he should remove any reference to that and any inference that flows from that. *(Further extension of time granted)*

Mr Speaker, the reference to the Chief Minister having a lot to gain by squeaking past this latest disaster is unmistakable. I just make the point to members in this place that at the height of the VITAB debate, with money going off to offshore betting agencies and people with criminal records coming onto the scene and so on, it would have been extremely easy to have made claims about Mr Berry that he had been taking brown paper parcels as well. Nobody did, to the credit of those on this side of the chamber, and I ask

that in their desperate attempt to pass this motion today members opposite not use the privilege of this place, the right to speak in this place, to make these sorts of innuendos and slurs. I ask for the sake of the Chief Minister's reputation that those opposite withdraw what they not only cannot prove but cannot even offer any evidence of in the course of this debate. It is beneath Mr Quinlan and all those who sit beside him.

Mr Hargreaves, in the debate, quoted Mr Sackar of counsel at length to prove the proposition that the transactions concerned were illegal. We have conceded that already, so I do not see that there is a great deal at issue in that particular respect. He went on to quote Mr Sackar for other propositions, particularly those going to the effect of retrospective guidelines. I would say to those in this place tonight that until we see the instructions which were given to Mr Sackar - the Government has already made available instructions given to Mr Tracey of counsel - we should not give much weight to that opinion of Mr Sackar, because obviously some things were said to Mr Sackar which did not appear in any written documentation and which must presumably explain some of the extraordinary remarks made in that particular advice.

In particular, we have had some comment on his remarks about referring these matters to the Director of Public Prosecutions. For the record, Mr Stanhope has written to me asking me whether I would refer these matters. I have written back to Mr Stanhope saying that unless he gives me any evidence - presumably the evidence he gave to Mr Sackar before Mr Sackar wrote his opinion - I have nothing to refer to the Director of Public Prosecutions. Again, in light of the remarks I have just made about Mr Quinlan, I would ask those opposite, before they make these sorts of slurs, to produce the evidence for them. You do not need me, Mr Stanhope, to refer anything to the Director of Public Prosecutions. You can do that yourself. I would ask you now: Have you?

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

MR HUMPHRIES: Mr Stanhope does not want to answer this question. He wants to appeal to the Speaker. I am inviting interjection. Have you referred these matters to the Director of Public Prosecutions, Mr Stanhope? No, of course, he has not, because he has no evidence of them. He has no evidence of any allegations in this matter that would substantiate any matter going before the Director of Public Prosecutions, and he knows it. He was prepared to whisper in Mr Sackar's ear and say, "Mr Sackar, there are some things going on here which are pretty nefarious. You had better make a comment in your opinion about criminal behaviour and get the DPP involved". And Mr Sackar duly obliged. Mr Stanhope is not prepared to tell us tonight what evidence, if any, he provided to Mr Sackar to support that allegation. It was oral advice. Where is the evidence? Of course, there is none. I say to those people who are on the crossbench that if we have allegations being made in this debate which cannot or will not be substantiated - - -

Opposition members interjected.

MR HUMPHRIES: Mr Speaker, I ask for some silence. I heard all the speakers on the other side in silence.

MR SPEAKER: Order! I know it is late, but the fact of the matter is that we have had a very good debate today and I want to keep it that way, thank you. It is an important issue. I do not want constant interjections from either side.

MR HUMPHRIES: If there is evidence which has not been referred to this place, put on the table, articulated or presented under the protection of parliamentary privilege but which those opposite still seek to rely on - and the DPP has already been referred to by Mr Hargreaves - if they want to rely on this evidence but are not prepared to produce it, then those on the crossbench should reject this case out of hand.

Mr Speaker, I come to Mr Corbell's remarks. I do not want to say much about Mr Corbell except to say that he had obviously spent very little time researching his particular remarks. He said that there were a number of Australian governments which had fallen by way of a motion of no confidence. I want to quote from *House of Representatives Practice* again, page 342:

> On no occasion has a direct vote of want of confidence in, or censure of, a Government been successful in the House of Representatives.

Mr Speaker made reference to that in his remarks. Governments have fallen on other issues, on other votes, for things like rejection of their budget, rejection of amendments to certain Bills and so on, but never on the basis of a direct vote of no confidence in the House of Representatives. There was a motion of no confidence in Prime Minister Fraser on 11 November 1975, I might point out for the sake of completeness of record, but he had already called an early election and parliament was therefore prorogued at the point where that particular vote occurred. For Mr Corbell's information, the Curtin Government was not preceded by the Menzies Government but by the Fadden Government. Mr Corbell got his information wrong.

I mention one more thing that Mr Corbell said in this debate. He said that ignorance of the law is no excuse. That is quite true. He said, "Imagine if a person gets in his car and drives down the road in front of his own house and tells a police officer that he did not know that the speed limit was 60 kilometres an hour". I have a better metaphor to use in this debate. My kids or somebody has taken the rear numberplate off my car. I get in my car and I drive down the street. A police officer pulls me up and says, "Do you realise that you do not have a rear numberplate and that you are breaking the law?". I say, "No, I did not realise that". Am I ignorant of the law? No, I am not. I am perfectly well aware that my car has to have a numberplate on the front and the back. Was I aware that the law was being broken? No.

Mr Moore: Do you know the section?

MR HUMPHRIES: Do I know the section in the legislation? Can I cite the particular provision of the Motor Traffic Act which makes it illegal to do that? No, I cannot. But I do have an idea of what my obligations are under the law. *(Further extension of time granted)* Again I say to those people in this debate that if the Minister concerned was not aware that the law was being broken, on what basis should she be condemned tonight in this place? On what precedent? Of course, there is none.

Ms Tucker gave a prepared speech. Everything she said in the house today she had obviously written before she came down here, so I do not add anything to what has been said already about her remarks.

Mr Kaine gave a speech in this place which dripped with venom. He made a number of mistakes in the course of his remarks. I want to touch on those as briefly as I can. Mr Kaine said that the cost of the Bruce Stadium development is now up to $44m. That is not true. The total cost, when you exclude recurrent matters or one-off matters, is in fact more like $34.6m. It is exaggeration to suggest the cost is now $44m.

Mr Kaine said that the Chief Minister claimed that public money could be spent without an appropriation and that this was preposterous. The Chief Minister said that money could be spent publicly without an Appropriation Act but reliance could be placed on the Financial Management Act as an alternative source of appropriations - what are called standing appropriations. That is what she said, and that is true.

Mr Kaine is critical of the Government for having tided the Bruce Stadium project over the end of the financial year by borrowing a sum of money on the last day of the financial year. I simply draw to members' attention in this debate that in June 1990, when Mr Kaine was Treasurer and Chief Minister, the Alliance Government borrowed $23.7m to balance the books because its budget otherwise would not balance by the end of the financial year.

Mr Moore: To balance the budget.

MR HUMPHRIES: To balance the Government's budget. Lastly, I want to read a line which somehow just seems appropriate. It is from a *Star Wars* movie. They are the words of Yoda advising Luke Skywalker. He said, "Once you start down the dark path, forever it will consume your destiny, and consume you it will". I do not know why, but those words seem to ring a certain bell. I am not suggesting that Mr Kaine is Darth Kaine, but I am suggesting that his transformation in the last year-and-a-half has been pretty profound and that much of what he has said tonight - - -

Mr Kaine: You had better watch out.

Mr Moore: The Darth side is coming out.

Mr Smyth: He will get his light sabre out.

MR HUMPHRIES: I am confident that the force is with me and that I am going to get by. The only other comment I want to make about other speakers in this debate is about Mr Berry. Mr Berry declined to speak in this debate until I had spoken, even though we have now had two speakers against the motion. But that is Mr Berry's wont. He will repeat in his remarks, endlessly, I am sure, that the Chief Minister broke the law. I ask members to ask themselves whether there has been any evidence put forward in this debate that the Chief Minister has actually broken any law at all. I ask those opposite to produce at last, at 8 o'clock at night after a long day of debate, the evidence that the Chief Minister has actually personally broken the law. We on this side of the chamber know that they cannot, because there is no such evidence. There is not any such evidence, although she fully accepts and apologises for the breach of the law which has

occurred under her leadership as Chief Minister and Treasurer. She accepts that responsibility but to sack her in circumstances where there is no personal culpability would simply be wrong.

I want to ask one further question of members in this place. If we pass this motion tonight we are, as I have made clear, setting a very big standard that imposes an extraordinary weight on every Minister who sits on these treasury benches. Are members confident that they will be able to apply this standard which, according to those opposite, should be applied tonight to this Government to each successive government which sits on this side of the chamber? Would they be able to require that every Minister in that circumstance should resign?

Let me give you a small illustration of how heavy that burden might be. Just a few days ago a judge of the Supreme Court ruled that something like 600 domestic violence orders made over the last few years by the Magistrates Court had been made unlawfully. Each of those 600 orders, potentially, is illegal. It is not a case of the law being defective. It apparently is a misreading of the law by the Magistrates Court. I say this without having seen Justice Higgins's written judgment, but that is what I understand from the people in the court is the gist of what he has ruled. Mr Speaker, who should resign for that - the magistrates, the Chief Magistrate, the first law officer of the Territory, or perhaps the whole Government? There are a few giggles and laughs about this, but what is the standard? You are saying that when the law gets broken someone has to pay for that. The law has been broken here in a big way. There are 600 people out there, not counting children of a particular partnership, who may be at risk because of the absence of those orders. If I am still Attorney-General after tonight, I am coming back into this chamber in the next couple of days with legislation to retrospectively reinstate those orders.

You ask yourselves this question: If you are imposing a standard here tonight that Ministers must resign when the law is broken in an area under their control, can you live by that standard in government? You do not need much sense to realise that the answer to that must be no. Of course, you cannot live with it.

Mr Speaker, I want to put on the record that I will not be nominating for Chief Minister in the event that the motion tonight is carried. I will treat it as my very pleasant duty and privilege to be able to nominate Kate Carnell as Chief Minister of the ACT if this motion is carried tonight. If you do not believe me, put me to the test.

In closing, I ask you to contrast the behaviour of this Minister with that of the Minister who was last sacked by the Assembly, namely, Mr Berry. Five million dollars was flushed down the drain, never to be seen again, in the VITAB scandal. By contrast, no money has been lost to the Territory in respect of the Bruce matter. *(Further extension of time granted)* Certainly, the cost of the project has increased but, traditionally, governments do not resign because costs blow out. They never have in the past that I am aware of, and I do not think they should tonight either.

Tonight the present Chief Minister and Treasurer has come back to this place - as she has done before today, incidentally - and apologised to the public of the ACT for making a mistake in respect of this matter. The man over there who made, arguably, an horrendous mistake in respect of VITAB took nearly three years to come back to this place and apologise for the mistake that he had made in respect of VITAB - almost three

years. What sort of Minister do you want sitting on these benches - one who is prepared to own up, to correct the mistake and to get on with providing effective government in this Territory, or the other sort? I think it is pretty clear. I am proud to support the Chief Minister in this debate tonight, because I think she is the most worthy person in this place to sit in the position of Chief Minister and lead this Territory into the future.

MR QUINLAN: Mr Speaker, in response to Mr Humphries' call, I do wish to make a withdrawal.

MR SPEAKER: You wish to make a personal explanation? Yes.

MR QUINLAN: Yes. In respect of any imputation that the Chief Minister received a brown paper parcel, even though my statement was in the negative, I do wish to withdraw any inference of that because I do not want Mr Humphries' sanctimonious feigned outrage to distract us from the substance of this debate, as most of his speech attempted to do. So I do withdraw any inference.

MR BERRY (8.09): Mr Speaker, the first thing I would like to deal with is some remarks made by Mr Moore. I will not waste too much time on these. I must say that I felt that Mr Moore's intemperate and personal contribution to the debate was not that helpful. Judged against past utterances from this Minister, Mr Moore, I think what he said tonight means that in future very little of what he says could possibly be taken seriously. He did say of the Bruce Stadium disaster that "it's like putting an extension on your home". No, Mr Moore, it is like putting an extension on a house you are renting and paying for it with money you have misappropriated. That explains the position that the Government has found itself in, and it explains the serious nature of this issue and how the Government is now trying to squirm out of an awful disaster. We do not own Bruce and you used taxpayers' money without approval. That is how it can be simply explained.

This episode has all the usual characteristics of this Chief Minister's behaviour. When I first heard the Chief Minister talking about this on radio after the illegalities were exposed she was keen then, because it was the popular thing to do, to take responsibility for this. At that time I am sure she felt confident that she would be able to worm her way out of the position she was in, but things have changed now. It seems now that the heat is going to be turned back on the public servants because Minister after Minister is now saying that it was not the Chief Minister's actions that caused these sorts of things to happen.

Look, let's face it. When a mistake, large or small, has been discovered in the Territory, the first response in this place or outside has been a tirade of abuse, followed by a smokescreen of excuses and artful media management. This is no different. From the days when a former member of this place, Andrew Whitecross, was viciously ridiculed when he found the first holes in this now proven folly, in the attendance projections at the time and seating arrangements through to the ultimate exposure of the illegality of the Chief Minister's actions, nothing has changed. The approach has always been the same - that same old smokescreen of excuses and artful media management. Mr Speaker, the same tactics, as I said, have emerged here. In this case, once caught out, there was a humble apology, but only once caught out, and that pattern of behaviour persists.

Should members feel that more is necessary to vote for this motion than relates to the Bruce Stadium matter, members will recall the attempt by the Chief Minister to sell ACTEW, and the remaining commitment to sell ACTEW, the secret Hall/Kinlyside bungle, the massive expenditure on that hated slogan, the damage done to the tourism industry by the Floriade fee bungle, and whatever might still emerge from the decision to bomb the Canberra Hospital. These are issues that mount up. This debate is the culmination of a whole range of issues which have caused a great deal of disquiet and about which members of this Assembly should be concerned.

But let me return to this disaster of Kate Carnell's at Bruce. This imbroglio began with untrue, misleading, attention-getting "good deal for Canberra" claims that there would be mountains of private sector funding. They were the phoney claims that were made in relation to this matter. Those claims have now dramatically collapsed, leaving Territory taxpayers with a bill which will weigh them down for generations. The bill is $44m, according to the *Canberra Times* this morning. That leaves aside the Olympics or the upgrade of the Manuka Oval for other codes of football and cricket. It sounds to me like it is going to be close to $60m. This bungle alone, in my view and in my submission, is a good enough reason to sack this Chief Minister.

When this illegal spending started in 1997, did the Chief Minister repeat her brash, open and transparent additional appropriation which she trumpeted when her health budget blew out massively? Did she repeat that performance? No. Why not? Well, maybe she did not want to be open and transparent then. That is the immediate issue that comes to mind for me, and I think that is the basis of the issue. She knew that to spend money which was not appropriated was illegal, was against the law. She knew because she had dealt with this matter before in relation to the health budget. It was not something about which the Chief Minister had no knowledge. It was something that the Chief Minister was very familiar with. That is why we went through the additional health appropriation after that budget collapsed. So you cannot say that the Chief Minister would not know about this. It is something that she was intimately familiar with.

Mr Humphries asked us to give some evidence that there was a knowledge of the events, a knowledge of the matters which were going on, a knowledge of appropriation standards which are required under the Westminster system. There was a knowledge; there was a clear knowledge. It was demonstrated in this place with that additional Appropriation Bill, and it was breached with the Bruce Stadium debacle, knowingly breached.

Mrs Carnell now asks us to believe that this misappropriation of expenditure was some accident. "Someone slipped up", I think I heard her say, as if no-one understood the fundamental principles of parliamentary appropriation of public money. These shallow pleadings of ignorance on this issue just do not wash. The evidence in this place is clear. This is another reason, Mr Speaker, that is good enough to see the end of this Chief Minister.

Mr Humphries also asked us to give some motive for this unlawful expenditure. We all know that the unlawful expenditure began in the run-up to the 1998 election, and if exposed to the Assembly or to the community that it was going on it would have completely undermined the financial credibility of Kate Carnell and, therefore, her party's political chances in that election. We only know now that this illegal expenditure had commenced before the election.

Mr Speaker, the then Assembly was, at best, recklessly or, at worst, deliberately misled in relation to the beginnings of the now total collapse of that much vaunted Bruce Stadium deal. Everyone in the Assembly and the community was deliberately kept in the dark. The Chief Minister continued creating the impression that all was well, even when it had clearly come off the rails. It was kept quiet, not only during the election campaign but also right through the period when Kate Carnell had to face an election in this place for Chief Minister, because if that had been exposed in that crucial period the outcome of her election as Chief Minister might have been quite different.

Mr Speaker, those who are making decisions in relation to this matter this evening have to keep that in mind. There is a motive. There is a very clear motive. There is an understanding of the issues, and this issue forms part of this deception. This deception, Mr Speaker, is, again by itself, a good enough reason to dump Kate Carnell.

Mr Humphries talked about precedents. He raised the issue of what other parliaments do, but he was very careful, was Mr Humphries, not to tell us about those parliaments and whether or not they were majority governments or coalitions or some other sort of majority government - he was very careful not to tell us that - where Ministers can be protected, like Warren Entsch in the Federal Parliament who was protected by a majority government. Does Mr Humphries want us to set our standards that way, or does he want us to behave like the much-praised system, by him in particular, which produces minority governments and makes them more accountable? Methinks that Warren Entsch would not last too long in this place. That is an extremely important point in the context of the precedents which might have been set elsewhere.

Mr Humphries also raised the issue of some franchise fees which, on my understanding of his contribution, was a matter determined by the courts and was later dealt with by legislation in this place. Well, we have no courts to deal with this. We are the court on this matter. We are the ones who are going to have to determine the legality or otherwise, and the acceptability or otherwise, of this Chief Minister's actions. We must. There is nobody else to do it.

Mr Humphries drew some attention to some expenditure by the Department of Sport and Recreation. My last recollection of that was that the officer involved had acted against policy, against instructions and advice, and was subsequently removed from any area of authority in that department. In this case the officers concerned were acting in accordance with the policy of the Government.

Look; as Mr Rugendyke and Mr Osborne know from their experience in the police force, if unlawful behaviour is tolerated the unlawful behaviour becomes the norm, and the law-breakers move on to bigger and better excesses. Those are the facts of the matter when it comes to law-breakers. They know that from their police experience. If you leave it unattended to, it becomes the norm and it just gets worse. In other words, if you allow these now, you will be endorsing further unlawful behaviour, and you will be putting your name on all of the bungles and behaviour I have drawn attention to today. Do not put your name on these. It is not worth it.

Criminal sanctions exist in other places in relation to this sort of behaviour, and that has been referred to in the course of the debate. They were discarded in this place when legislation to discard them was introduced by the Chief Minister, Kate Carnell. On reflection, I am happy to say that Labor may have been too trusting of the Chief Minister and Treasurer when we supported that legislation. The important point that I make here is that the absence of any criminal sanction shifts the responsibility of accountability from the courts to this place. It comes back to us. We have to deal with this. There is nobody else left to deal with it. The courts have been taken out of the equation.

This is appropriate, members and Mr Speaker, where the legislature is prepared to take its responsibility seriously, and that brings me to this important point. We have to take the law-breaker to task when such actions occur. Keep in your mind while this debate goes on that this law-breaking was in relation to a massive attention-grabbing exercise at Bruce Stadium which was supposed to be very good value for the Territory. That side of it has fallen apart. The administration of it has fallen apart. The Chief Minister said she took responsibility for it. The law was broken. The Chief Minister should take ministerial responsibility.

It is our job to ensure that these things are carried through. No court will do it now. It is up to this place. That is what we are paid for and that is what our electors expect us to do. Indeed, we all swore or affirmed our commitment to the law, and I will read just one: "I, so-and-so, swear that I will faithfully serve the people of the Australian Capital Territory as a member of the Legislative Assembly and discharge my responsibilities according to law. So help me God".*(Extension of time granted)* By making that affirmation, Mr Speaker, or swearing that oath, it becomes our solemn duty to hold this Minister accountable. We would be abandoning our post, abandoning our responsibilities, if we were not to do so. Her feeble pleadings that she is free of personal guilt just do not wash. The well-known principles of ministerial accountability demand that if she is not prepared to accept her responsibilities for these illegal actions and resign, as she has been called upon to do, then we must act. She must be forced to do so. If we fail as legislators to hold this Minister accountable, the Assembly will have failed our electors.

If this motion fails, Labor must consider reinserting criminal sanctions and handing back to the courts the responsibilities we have not had the courage to shoulder. We must consider that option. We cannot let this lie. We have the responsibility now. If we are not up to the job we have to give it to somebody who is. It appears that the Government would have us ignore our responsibilities. The Opposition will not. At least then, when public servants are called on to take illegal action under circumstances where there are criminal sanctions, the full force of the law might cause them to pause, even if their political masters seek to disregard it.

Members must not be swayed from the challenge because of the Liberals' contrived refusal to have anything to do with government if Kate Carnell goes. If Kate Carnell is all that those opposite have going for them, then this admission weighs further in favour of the motion of no confidence. It also tells us that they themselves, all of them, reject due process, and they reject their responsibilities, along with the Chief Minister. No ACT government should be the realm of one person, and certainly not of one who argues that unlawful misappropriation is a good thing. Their decision for an all-or-nothing approach is a welcome admission that they are not up to it. But it will be ditched at the

first opportunity, because I can see some green eyes over there, and I would be prepared to put money on it. In any event, Mr Speaker, Labor is well equipped to take on this role at a moment's notice. We have set ourselves the task of being the alternative government, but we accept also that the Assembly might decide otherwise, as they have done in the past. That does not cause us to shirk our responsibility to bring this matter to attention and carry it through. If called on, we will respond to the call without hesitation. A Labor government would be a law-abiding, honest and socially just government which acts in the interests of the community as a whole, not on whims and in the interests of self-promotion for just a few. Mr Humphries talked about precedent. May I put this question to Mr Humphries, through you, Mr Speaker: If we do not pass this motion tonight, what sort of precedent will we set?

MR RUGENDYKE (8.28): Mr Speaker, like every issue discussed in this Assembly, my sole aim is to do what I believe is right and what I believe is fair. I must say that I have wrestled with this decision over the past week. Even when we went to the dinner break earlier this evening, I was still grappling with it and what I have been hearing during the day. In fact, I had two speeches written and I had not decided which one I was going to deliver. My heart was saying, "Kick her out", and my head was asking, "Are the matters raised at this point in time sufficient to justify a genuine lack of confidence in the Chief Minister?".

This has been an emotive, passionate and political debate, and I have therefore had to differentiate between the political spin doctoring and fact. I have listened to both sides of the argument in this past week, hoping to be told the complete facts. The Government has not made this any easier by declaring that they will sacrifice government if this motion succeeds. I think it would be a sad blight on the party if they could not put up a replacement candidate for the Chief Minister. Why, for example, is Mr Humphries Deputy Chief Minister if he cannot take on the Chief Ministership in a crisis? But this is the Liberal Party's prerogative. While I believe this is a foolish tactic, it has not clouded the job at hand. As I have told people who contacted my office, "That is an issue you can take up with the Chief Minister. If there is a change of government over this motion, it will not be Dave Rugendyke's fault". It was the Chief Minister who increased the stakes. In fact, the only threat of instability has been created by the Liberal Government.

Mr Stanhope knows how high I set the bar on these motions. He knew that he would have to prove his case beyond reasonable doubt. The difficulty that Mr Stanhope has in proving his case beyond reasonable doubt is establishing intent, as we have heard today. Apart from the debate here today and in the media over recent weeks, I have been through every possible piece of information in regard to the Bruce affair. The majority of members here were not privy to meetings on Bruce Stadium which could have established intent.

Mr Speaker, there is no doubt that Bruce Stadium is a magnificent arena, and I have no doubt that it will be the scene of enormous enjoyment for Canberrans in the years ahead. But this debate is not about whether redeveloping the stadium was a good thing or not. It is not about whether the Government had its priorities right in deciding to go ahead with the project in the first place. The issue here is, quite clearly, whether we can prove intent on the part of Mrs Carnell to spend taxpayers' money in an improper way.

My colleague Mr Osborne has been consistent with his belief that he would like to view the Auditor-General's performance audit on Bruce Stadium. This was also my initial preference - to wait until the Auditor-General reported before dealing with a motion of this magnitude. The Auditor-General is going through all the evidence with a fine toothcomb, and it appears sensible to wait for him to release his findings. I am impressed with the thorough nature of the Auditor-General's objectives.

Looking at the legal aspects of the case, it is clear that the process by which government has spent taxpayers' money was flawed. As has been stated earlier today, section 6 of the Financial Management Act reads:

> No payment of public money shall be made otherwise than in accordance with an appropriation.

Mr Speaker, it is extremely difficult for me to come to terms with the fact that the Treasurer was unaware that roughly one-third of the original budget of the Bruce Stadium redevelopment had not been appropriated in accordance with section 6. I said publicly earlier this month that I had a problem with the Government's lack of attention to detail with the Bruce Stadium financial transactions. The Chief Minister's Department should have been more familiar with the Financial Management Act. The Government has set the standard for financial management with this Act. Its predecessor, the Audit Act 1989, had criminal sanctions for poor financial management. The Financial Management Act did away with criminal sanctions, so if this motion succeeds the penalty must be political. We will, however, have to assess the degree of culpability and appropriate sanctions. In the ACT we have a minority government. The reason the community has supported a minority government is that it enhances accountability.

Mr Speaker, the money which had been appropriated under the capital works program to see the project through until June 1998 ran out in December 1997. The Government knew that they were out of money with more than six months remaining in the financial year. In a letter from Bruce Stadium Redevelopment to OFM on 22 December 1997 the project officer wrote:

> Invoices are now being received for Stage 1a and 1b of construction and have already exceeded the budget allocation for 1997-98 of $5.558m. As per Cabinet Decision Number 6543, Cabinet has agreed that the Central Financing Unit will provide funds for the full redevelopment until private sector financing is in place. The estimated shortfall of funds at present is $700,000. This should be sufficient funds until the end of January, 1998.

The project officer also wrote:

> In order for the construction deadline of December 1998 to be achieved, construction contracts for Stage 1a and 1b have been let and are well underway. The let value of these contracts is approximately $11.2m. Stage 2, the redevelopment of the eastern Grandstand, is about to be let for around $9.9m.

So here we have the appropriated money used up and a further $21m worth of work under way. The alarm bells were ringing, Mr Speaker. The Government was obviously optimistic of acquiring the private sector funding and there was an election around the corner, so obviously the Government was sensitive about any negative news about the Bruce Stadium redevelopment being reported at this time.

The question has to be asked: If the project was out of cash at this point, why were moves not being instigated to establish a capital injection for Bruce Stadium? The Government banked heavily on getting the private sector finance. Let me point out at this stage that there has been no mention of investment, and no mention of section 38 of the Financial Management Act. Section 38(2) confers discretion on the Government to proceed with "prescribed investments" without appropriation from the legislature. I am of the view that this provision was surely not intended to authorise an investment of $9.7m in circumstances where the Government had consistently stated that the limit upon the expenditure of public money was $12.3m. The Government's conduct, even if lawful, had the potential to mislead.

The precedent needs to be established that the discretion conferred upon the executive government to invest without appropriation should be exercised in a way which respects the role of the legislature in ensuring that the executive government remains accountable. The Government, by putting all its efforts into acquiring private sector finance, was not consistent with the responsible budget approach in these situations. It is certainly odd, according to accountancy advice I have received, that the Government did not seek to create a capital injection.

It is even more curious that in December 1997, the same month that the Bruce funds were exhausted, an amendment to the Government's Financial Management Act was passed by the Assembly. On 2 December 1997 the Bill was passed with a clause specifically relating to capital injections. The Chief Minister's own presentation speech for this Bill said:

> While some capital injections are used for approved purposes, other capital injections are in the form of working capital advances or "loans". Where capital injections are in the second form, budget papers will clearly differentiate between these purposes and indicate the intent of the appropriation. Where the amount is repayable, the budget papers will indicate the period and terms of repayment.

This amendment, Mr Speaker, was freshly passed, and you would think still fresh in the Government's mind. The Treasurer knew it was there. For a government which claims to set the standard for prudent financial management, would that not have been a prudent option - to disclose a capital injection, rather than rely on the hope that external finance would materialise?

When you turn to page 422 of Budget Paper No. 4 of 1999, it outlines procedures for capital injections. The loan is provided by the Central Financing Unit, is supported by an appropriation and meets the disclosure requirements of the Financial Management Act. In my view, the $9.7m loan fits this section perfectly. Loans for projects such as the Kingston Foreshore Authority, the Gungahlin Development Authority, and the Tidbinbilla Visitor Centre are listed in this way in the current budget papers.

It is clear to me that it would have been an appropriately conservative approach from the Government to undertake a capital injection for Bruce. This is the mechanism designed to cover appropriation requirements and remove exposing the Government to unlawful risks. If external finance was secured, it still could have been utilised to offset the loan repayments. Still the Government backed itself to secure the private sector finance before its self-imposed deadline of 30 June 1998. It did not come. The Government knew for more than six months that it had to come up with the money, and, rather than taking the safe option, gambled on the money coming through.

When the private sector finance did not materialise, on 28 June, the Chief Minister approved the Commonwealth Bank overnight loan. There was no problem, according to Mr Tracey, with taking out the loan. The problem was with paying it back 24 hours later, with Territory money that was not appropriated.

The Government failed to meet its responsibility in seeking appropriation for the Bruce Stadium transactions. It is difficult to accept that it was merely a technical breach. There is no question that it was unlawful, but I believe we also have to be able to prove intent, and it is in this area that the evidence for the level of intent is light.

The Government has said it made a mistake, and I have sat here today waiting for a conclusive case otherwise. I have heard speculation and suggestions, but I am yet to hear or see conclusive proof. But that does not mean I am about to let the Government off the hook, Mr Speaker. I suggest that I have enough evidence to warrant imposing a censure on the Chief Minister here today, and I ask the Clerk to circulate an amendment to the motion seeking to achieve this. Mr Speaker, I do not see this as being the end of the case. As far as I am concerned, the case will still remain open, hanging over the Government's head, until the Auditor-General reports. *(Extension of time granted)*

Mr Speaker, with my limited resources, I have been trawling through the Bruce redevelopment papers over the last week. I have tried to plough through the paper trail, but in view of the time constraints have not been able to analyse with as much detail as I would have liked. The Auditor-General does have the resources and he will be analysing the same papers in his performance audit. As far as I am concerned, the jury is still out on the dealings on the Bruce Stadium redevelopment, but the Auditor-General will give us the complete picture of the Bruce redevelopment financial situation.

I know that Mr Stanhope and his supporters see the evidence on the table as an immediate cause for conviction, but my background and instincts tell me that intent has not been proven and I need more evidence before deciding whether to convict. While I do not think we can prove conclusive intent for the misappropriated funds today, I would be willing to support Mr Osborne in bringing back a no-confidence motion against the Chief Minister later in the year, pending the findings of the Auditor-General's report. As I said at the start of my address, in making this decision I have done what I believe is right. However, I would like to make it clear to the Government that this proposed censure is not the end of the road.

I look forward to examining the Government's response to the matters identified by Mr Tracey, not only in relation to the Bruce Stadium redevelopment but across the whole of the Government's financial activities. This is an issue that will be hanging over the Government until the Auditor-General reports or until further information becomes available. In short, I am putting the Government on notice. They must respect the role of the Assembly in supervising the appropriation of moneys in whatever form.

I must say, Mr Speaker, that Mr Stanhope has run a good case and has shown that the ACT now has the benefit of a genuine and constructive Opposition, but I cannot establish the level of intent on the evidence that we have. I would like to gather more evidence. The cloud of no confidence is still hovering. If the Auditor-General comes back with the knockout punch I will have no hesitation in supporting a no-confidence motion. In the meantime, I believe that the Chief Minister ought to be censured and I ask the Assembly to consider this amendment. Mr Speaker, I move:

> Omit all words after "this Assembly", substitute the following words:
>
> > "censures the Chief Minister, Ms Carnell, MLA for her failure to ensure the requirements of the *Financial Management Act 1996* were met in relation to the funding of the redevelopment of the Bruce Stadium.".

MR STANHOPE (Leader of the Opposition) (8.47): Mr Speaker, I am disappointed in the decision that Mr Rugendyke has taken. I am similarly disappointed in the decision of Mr Osborne in the present circumstances. I would like to wrap up and conclude the debate on some matters in relation to that. I will go straight to the issue that Mr Rugendyke has indicated is of significant concern to him, the so-called intent defence and whether we need to prove some actual intent on the part of the Chief Minister. That has been the major, if not the only, significant defence that has been sought to be raised today. Mr Rugendyke made his decision at the end of the day on the question of whether there was this so-called intent: Did the Government intend to break the law?

Mr Speaker, that is just a distraction that has been put around today by the Liberal Party. No-one on this side has said that Mrs Carnell has any criminal liability, because there is no criminal penalty or sanction within the Act. We have said and repeated that often. What is being said is that Mrs Carnell's Government broke a fundamental law that prohibits the expenditure of public money without the authorisation of the Assembly. What we are saying, Mr Speaker, is that section 6 of the Financial Management Act provides for an absolute liability. It does not require the formation of intent. It simply says, "No money shall be paid out without proper appropriation". The penalty for the breach is not a criminal penalty; it is not a criminal prosecution. It is a political penalty, one that can be imposed only by the Assembly. Having regard to the weight which others in this place put on this issue, particularly Mr Rugendyke and Mr Osborne, I draw attention to the leading case on the question of criminal intent or intent, He Kaw Teh v. The Queen, which was heard in the High Court in 1985. At this stage, all I can say is that I hope that the Auditor-General in his report on this matter, which we now all await before this matter can be finally concluded, will deal with the question of intent and the fact that it is an absolute matter.

There are a range of other things that I could go to, and I feel inclined to, just to debunk some the nonsense that has been presented to us here today by those on the other side. They go to the question of the so-called appropriation defence. The Chief Minister said earlier that it had been suggested that all money spent by the ACT Government must be included in an Appropriation Act. That was not said in my speech; it was not said by the Labor Party. In fact, the Labor Party agrees with the Chief Minister, who wrote in the explanatory memorandum to the Financial Management Act that section 6 went to the fundamental proposition that the expenditure of public money requires formal parliamentary authorisation. Section 6 is clearly expressed:

> No payment of public money shall be made otherwise than in accordance with an appropriation.

That is "appropriation" without a capital "a". It is "appropriation" without the word "Act" appended to it. Labor accepts that expenditure can be authorised without an Appropriation Act. We accept that; we know that. The clear fact in this matter is that the expenditure on Bruce Stadium over and above the $12.3m was not authorised and has never been authorised.

We have had the "it is only a technicality" defence. A breach of section 6 - and Mr Rugendyke at least has acknowledged this - cannot be brushed off lightly as a technicality. Giving evidence before the Estimates Committee on 4 June, the Auditor-General was asked by Mr Hird if he would accept the view that there was always likely to be technical problems with complex pieces of legislation. It is interesting to note and recall that the Auditor-General said no, he did not agree that we should accept that there would be technical difficulty with pieces of financial legislation. As those on this side have said during the day, we are not here debating a trifling law, some mere bagatelle; we are talking about the Self-Government Act, that is, the ACT's constitution. We are talking about the Financial Management Act, a piece of legislation which Mr Osborne has indicated confers on us a sacred trust to protect the taxpayers' money.

Much has been made today of the forestry loan defence. The Chief Minister and most of those on the other side claim that her Government's funding of the Bruce redevelopment was the same as the loan from the CFU to ACT Forests when Labor was in office. It is interesting, is it not, that when the Auditor was giving evidence to estimates, as we all recall, Mrs Carnell passed to him a list of transactions that she claimed were similar to the Bruce transaction and included the ACT Forests loan. Mr Hird asked the Auditor in estimates whether he was aware that loans had been made to ACT Forests under section 38 of the FMA. The Auditor replied, "No, Mr Hird, they haven't. They were made under the Audit Act, which preceded the FMA". The Auditor confirmed on 8 June that there was no requirement under that Act for payments from trust accounts to be appropriated. The only loan he found of a similar nature to the Bruce transaction from the list that the Chief Minister gave him, seeking to score some cheap point off the Auditor-General, was the CanDeliver loan in which the Auditor-General discovered that $500,000 paid to CanDeliver in the same year was also in breach of the legislation.

The Chief Minister was delightfully hoist with her own petard in seeking to embarrass the Auditor-General and ended up embarrassing herself. When the Auditor wrote back to the Estimates Committee on 8 June he said, "It seems to me that, for the Bruce and CanDeliver loans to be consistent with the other loans, they should have been appropriated". That is the advice of the Auditor-General. That is very interesting, given Mr Rugendyke's position and Mr Osborne's position today that they are awaiting the Auditor-General's report before perhaps taking further action on this matter in September or October - - -

Mr Humphries: I do not think anyone is listening to you, Jon.

MR STANHOPE: I am enjoying myself, Mr Humphries. That is when Mr Osborne will bring back a motion of no confidence in the Chief Minister if the Auditor-General's report is half as bad as he, Mr Osborne, expects it to be. On the point of that comment from the Auditor-General, I do not think that there will be much sleep for the Chief Minister between now and then. The Auditor-General is saying, "It seems to me that, for the Bruce and CanDeliver loans to be consistent with the other loans, they should have been appropriated". How much plainer could Mr Parkinson be?

The pity of the position taken by Mr Osborne and Mr Rugendyke tonight - and I think that it is in a way quite cruel to the Chief Minister and perhaps not helpful to the stability of government in the ACT - is that there will be another no-confidence motion in October. That is what we are now facing if this one fails tonight; we are facing the prospect of doing this all again in 10 to 12 weeks. It would have been better for those members of this Assembly to take their responsibilities tonight. The case is made. There is no need to delay this matter another 12 weeks for Mr Osborne to carry through on his promise to take that action if the Auditor-General's report is half as bad as he expects it to be. There is an acid test for Mr Osborne and Mr Rugendyke to face in this matter if this motion is not successful tonight.

A range of other defences were put to us today. One was the "it was not my fault" defence. On 2 June, the Chief Minister said in a media release that the Government's legal advice had revealed a technical breach of the FMA. She said that the error had occurred in her department, but she regretted it and apologised for it. In her speech today, she said the mistake - note how we are rewriting the language; the mistake, not the breach of the law - was made by staff of the Office of Financial Management. We have beautifully scapegoated faceless and nameless officers in CFU. It is no longer a breach of the law; it is simply an administrative mistake. We have reduced this to a complete failure to accept any real responsibility.

We had a great dissertation from Mr Humphries on notions of ministerial responsibility. Of course, notions of ministerial responsibility are fundamental to the Westminster system. I do note that Sir Ivor Jennings was quoted with approval in a chapter in a book called *The Executive State: WA Inc. and the Constitution*. Sir Ivor Jennings said:

> Each Minister is responsible to Parliament for the conduct of his department.

We had the "it was an investment" defence. Much of the debate in this place today has revolved around the notion of investment and whether the Bruce Stadium transactions fit the definition. On 4 June, the Auditor told the Estimates Committee his view of an investment was as defined in the accounting policy manual, as being for wealth accretion. His view was that the Territory would in normal practice use available cash balances surplus to the immediate requirements of government to invest. The Osborne legal advice from Professor Jack Richardson found, and this is very important:

> ... the loan purported to have been made to the Bruce Stadium Redevelopment unit is not in reality a loan at all and therefore cannot be an investment.

That was Mr Osborne's advice from Professor Jack Richardson, perhaps one of the greatest lawyers Australia has ever produced. Perhaps the most damning was that of the Government's own legal adviser, Mr Richard Tracey, QC, obviously prior to the retrospective issuing of the financial management guidelines. It is interesting that Mr Tracey's advice falls into two sections, that written before the financial management guideline was issued and the one page that was written after it. This is what Mr Tracey, the Government's man, said:

> All that the guidelines can do, relevantly, is to identify institutions and securities in which public moneys which are surplus to the immediate requirements of government, may lawfully be invested.

That is Mr Tracey's view of an investment. This is not an investment and never was an investment, and never was intended to be an investment. Nobody ever thought of trying to make it an investment until the Government realised that it had been sprung, and well and truly sprung, and needed a post facto excuse to try to wriggle out of the fact that it had been acting unlawfully.

Another defence was the retrospective guidelines defence. The Government has relied in great part on the validity of its retrospective financial management guidelines. This defence relies on the Bruce loan transaction fitting the definition of "prescribed investment", as I have just said. If it does, the guidelines can be made retrospective. The Osborne legal advice found:

> In determining whether a statutory power can be given retrospective effect there is a well established legal presumption that a statute is not intended to have such an effect unless it reveals a clear intention to do so.
>
> In our opinion there is no such intention revealed in the Financial Management Act but rather a contrary intention.

The Sackar advice says:

> In my view any such purported retrospective operation is plainly outside the power given to the Treasurer by section 67(2) of the Financial Management Act.

> Further, it is likely that a court will decide that the retrospective operation of the guidelines was made for an improper purpose. The retrospective guideline is thus unlawful.

The Government relies, interestingly, on the advice of Parliamentary Counsel. Mr Speaker, with great respect, the Parliamentary Counsel is a legislative draftsman. He is not senior counsel briefed to provide legal advice. He is not actually a legal adviser. Incidentally, one wonders why the advice on this issue was provided by the Parliamentary Counsel and not the ACT Solicitor. In any case, the section 38 defence, the investment defence, is irrelevant. As the issue developed, the Chief Minister dashed from one defence to another. The investment defence was the last rat hole, and it is as worthless as the others. I have no doubt that the Auditor-General will find that in his report. Mr Speaker, there is no investment defence.

One other interesting claim made today was the "we fixed it at once" defence. The Chief Minister claimed again today that the Government acted to fix the problem with its funding of the stadium redevelopment as soon as it had become aware a problem existed. Mr Speaker, that is ludicrous rubbish. The Auditor-General rang the alarm bells in October last year when he wrote to the ACT Solicitor seeking a legal opinion. The Government's only response to that request last October was to undercut the Auditor by, firstly, seeking a similar opinion on behalf of the Chief Minister's Department and, secondly, never providing the legal advice. The issue of whether the Government had acted legally in this matter was brought to the Government's attention by the Auditor on 22 October last year. It was not until 28 April this year, and only after the *Canberra Times* Assembly reporter had revealed the possibility that money may have been spent without authorisation - a revelation, incidentally, for which that reporter was outrageously upbraided by the Chief Minister and shamefully abandoned by her editor - that the Government engaged Mr Tracey. Mr Speaker, the Government took seven months to act. If the Government had reacted privately in any way to the problems it encountered in funding the stadium redevelopment, that is, in running out of appropriated money, the only private response of the Government to that revelation was to concoct a scheme that saw it break the law. *(Extension of time granted)*

Put simply, the Government's defence today boils down to an admission, and the admission is: "Yes, we did it, but it wasn't really significant. Well, maybe we didn't do it. It was actually some faceless public servants, really. But there was never any intention to break the law. We never intended to break the law. Anyway, we didn't even know that we were breaking the law". Mr Speaker, this Government has spent or committed $31m of taxpayers' money without the authorisation of this parliament, an authorisation it is legally bound to acquire. We are up to $31m now with the revelation in today's *Canberra Times* that the sum expended on this development is now $44m. This Government has expended $31m of taxpayers' money without the approval of those taxpayers through their elected representatives. That is hardly insignificant. Of course, if you add the $8m that the Government announced yesterday it would commit to the redevelopment of Manuka Oval to compensate for Bruce Stadium being reconfigured as a rectangle, the total is now approaching more than $50m that the Government will spend on two football grounds.

Mr Speaker, if the Chief Minister had come to this place in 1996 and asked the people here whether they agreed to the Government spending $50m to upgrade two football grounds, would this Assembly have said, "Yes, Chief Minister. What a great idea. Spend $50m of taxpayers' money on two football grounds."? I am not sure that we would have had agreement from the Assembly to do that. That, of course, is the issue, is it not, that the Government holds the Assembly in contempt? That contempt is revealed in the Chief Minister's assertions earlier today that the Government had been open and transparent in all its dealings over the redevelopment - that everything has been disclosed. Members of this place know that that is not true. Mr Osborne got it right when he said that extracting information about Bruce was like pulling teeth. Even the Assembly's resolution asking for papers to be released has been treated in a cavalier fashion.

The Government continues to refuse to come clean on what is going on at Bruce, as I have just mentioned. Only today we learnt that the final cost - or the cost to date – is $44m.

Ms Carnell: But it is not.

MR STANHOPE: It is in your own papers, Chief Minister, that it is $44m. Mr Speaker, there can be perhaps no better example of how the Government has refused to come clean over Bruce than the fact that negotiations with the Commonwealth to extend the lease - negotiations the Chief Minister referred to in this house on 18 February - have, in fact, been resolved, we understand today. We understand that the negotiations on the future leasing of Bruce Stadium have been resolved. I understand that, in fact, the Chief Minister received a letter from the Prime Minister on 15 April offering to extend the lease beyond 2009. The latest information the Chief Minister provided to the Assembly was that the ACT would be granted a peppercorn rental on a lease of Bruce Stadium to the year 2009. That, of course, is very significant information in terms of thinking about the future of Bruce Stadium and how it might be financed and whether the Assembly should, perhaps, approve a retrospective appropriation. It is important for us to know what the future rental arrangements for Bruce Stadium are. Is the final position as indicated by the Chief Minister to the Assembly the information on which we rely in order to make our decisions? The last information provided to us is that Mr Howard or Mr Fahey has said to the Chief Minister, "Yes, you can have Bruce Stadium to 2009 for a peppercorn rental".

Ms Carnell: But that is what we have had for ages; that is the old lease.

MR STANHOPE: But we understand from the Prime Minister's letter to the Chief Minister of 15 April that, in fact, the Commonwealth is insisting on commercial rental from 2009 to 2024, that we are to take the stadium only on commercial rental after that date and that at the end of that period the stadium is to be revalued and transferred to the ACT. Of course, the prospect of the ACT Government being required to pay a commercial rental has the most significant implications for whether or not the Cayman Islands-type plans actually are workable and are possible, whether or not the sums that go to the amazing financial arrangements that have been developed are, in fact, of any worth at all - have any validity. The Chief Minister has known since 15 April - we have been debating this matter since 15 April - that, in fact, the ACT Government is going to be required to pay commercial rental for Bruce Stadium from 2009 to 2024.

What a significant factor it is not to advise the Assembly as it is debating the future financial arrangements that might get the Government out of this appalling hole that they have dug for themselves and the ACT taxpayer in relation to Bruce! Is this not perhaps an important piece of information? We are today debating this Government's handling of the Bruce Stadium fiasco without a most vital piece of financial information - that the ACT Government is going to have to pay a commercial rental in 10 years' time. It is a vital piece of information. All of the debate we have had about Bruce Stadium today we have had without this vital piece of knowledge and we are being asked, if this motion fails tonight, to debate the Government's budget tomorrow. We are being asked to debate tomorrow an amendment to an Appropriation Bill to retrospectively approve the appropriation for Bruce Stadium and even now the Chief Minister will not tell us what is going on. She will not tell us what the bottom line is. She will not tell us what we are up for. She comes here, throws herself on the mercy of the Assembly, and says, "Look, I am doing really well. I am trying to save the taxpayer money. I am being open and transparent. This is the full monty". And every time you turn the page you find something else, you find another hole, you find another bit of secret information.

Here we are at the conclusion of a long and weary debate about the future of Bruce Stadium and this Chief Minister's complete mismanagement of the issue and what do we discover at the end of the day? We discover that from 15 April the Chief Minister has had in her possession a letter from the Prime Minister of Australia demanding, on behalf of the Commonwealth, commercial rental for Bruce Stadium. The mismanagement, the incompetence and the deceit that characterise the way that this Government has dealt with this issue are just staggering. It is a shamble, it is a fiasco, it is an absolute disgrace, and this Minister does not deserve to survive.

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

MR STANHOPE: I seek a very short extension, please.

Mr Humphries: You have already had a short extenuation.

MR STANHOPE: How many extensions did you have?

MR SPEAKER: Order! The house will come to order. Order! I address these remarks to all members: I have heard requests all day for a short extension. Structure your speeches, please. I direct that to all members. Thank you. Mr Stanhope, please continue.

Mr Humphries: Is this going to be short or long, Jon? Are you going to take the whole time?

MR STANHOPE: It was going to be short.(*Further extension of time granted)* Mr Speaker, the Government has set up its defences like tenpins at a bowling alley and they are just as easily knocked over, as they have been all day. There is no substance to them. There is no defence to the simple fact that this Chief Minister and the Government that this Chief Minister heads have broken fundamental laws. The Government spent taxpayers' money without authority. The matter is grave and demands the gravest sanction.

A majority of the members of this place believe the case has been made. Mr Rugendyke agrees that the law has been broken. He did not pull his punches on it. He was unequivocal. Mr Rugendyke has accepted the merit of the argument that the Opposition has mounted today. He accepts the merit of the argument. He has accepted the merit absolutely. A majority of the members of this Assembly accept the merit of the argument. Mr Rugendyke has some issue around an appropriate penalty. He is disinclined at this stage, it seems, to support a motion of no confidence. He believes, instead, that the Chief Minister should be censured. He thinks that it is that serious that the Chief Minister should be censured. Of course, as a corollary to that, he proposes, as does Mr Osborne, to look with interest at the Auditor-General's report and then he will consider whether to support Mr Osborne's no-confidence motion in October.

Mr Rugendyke's approach is a two-step approach. At this stage, the matter is bad, the matter is serious, the matter demands condemnation, the matter demands that the Chief Minister be censured. For that, at least, I am pleased that Mr Rugendyke has accepted the merits of the argument and sees what this Chief Minister and this Government have done. At the least, the Chief Minister will be censured. Of course, it is just a holding position by Mr Rugendyke, just as Mr Osborne's position is a holding position. But Mr Osborne, expecting the Auditor-General's report to be particularly bad, has promised tonight that he will pursue a no-confidence motion in October if it is half as bad as he thinks it will be. Mr Rugendyke comes in behind him on that. As I said before, I am not sure that that is an appropriate response. It seems to me to destabilise the Government quite significantly and, in a way, it is personally a cruel thing to do to the Chief Minister as she now knows that she is on three months' grace and almost certainly will face a successful no-confidence motion in October if this one is not successful tonight. I urge Mr Osborne and Mr Rugendyke to take the decision tonight. There is no sense in putting it off. I urge them to do that and I continue to commend my motion to all members of the Assembly.

Question put:

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

The Assembly voted -

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

Question so resolved in the affirmative.

Mr Berry: I seek leave to move that the vote of no confidence be recommitted.

Mr Moore: You cannot. You have to give seven days' notice.

Mr Berry: I seek the leave of the Assembly to submit that - - -

Mr Moore: You cannot under the Self-Government Act. Seven days' notice, Wayne.

Mr Humphries: It is the standard practice. You have done it as well.

Mr Berry: If you want to stare it down! We are not going to vote for it. You can say no if you like.

Mr Moore: Seven days' notice, Wayne.

Mr Berry: Deny me leave; please do.

Mr Moore: Yes, you are denied leave.

Mr Humphries: You can vote in favour of it, if you want to censure us.

Mr Berry: We want to vote no confidence in you.

Mr Moore: You cannot do that now because your no-confidence motion has been amended. You have a choice now of censure or nothing. You also know that you have to give seven days' notice.

Mr Berry: Not if I have leave.

Mr Moore: Yes, you do, under the Self-Government Act.

MR SPEAKER: Order! The question is: That the motion, as amended, be agreed to. I have not called the result of that question.

The Assembly voted -

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

Question so resolved in the affirmative.

DISTINGUISHED VISITOR

MR SPEAKER: I acknowledge the presence in the gallery of Ms Annette Ellis, MHR for Canberra and a previous member of this Assembly.

REPORT OF THE REVIEW OF GOVERNANCE - SELECT COMMITTEE
Report

MR SPEAKER: Is it the wish of the Assembly to debate this order of the day concurrently with the order of the day relating to the presentation of the report of the Select Committee on the Report of the Review of Governance on the report on the Electoral Commissioner's report entitled "Review of the Electoral Act 1992 - The 1998 ACT Legislative Assembly Election" and associated matters pursuant to the order of the Assembly of 10 December 1998, as amended on 18 February 1999 and 9 March 1999? There being no objection, that course will be followed. I remind members that in debating order of the day No. 1 they may also address their remarks to order of the day No. 2.

MR OSBORNE (9.24): Pursuant to order, I present the report of the Select Committee on the Report of the Review of Governance, including the committee's consideration of the report of the Electoral Commissioner entitled "Review of the Electoral Act 1992 - The 1998 ACT Legislative Assembly Election", together with the minutes of proceedings. I move:

> That the report be noted.

I will be brief, Mr Speaker. This report is a majority report. There is no dissenting report because each of the members who did not necessarily agree with a recommendation has made a comment in the text of the report. After the events of today, perhaps it would be best if all members spoke at length on another day about the report. I would like to make just a couple of points, Mr Speaker. One is that there are over 40 recommendations in the report. I think that it would be fair to say that all members of the committee had to concede a little bit in the view that they have brought into this report. Certainly, there are a number of areas in which I would have liked to have gone a bit further, but I think all of us on the committee agreed that the best result would be a report that would achieve something, rather than having extremes on either end of the scale.

I thank the other members of the committee - Mr Stanhope and you, Mr Speaker - for the time that they put into this report. It was obviously a very lengthy process, but a number of issues came up while the inquiry was in train. A number of things arose for the committee that forced this report onto the backburner a little, but I think at the end of the day we have a good report. Someone suggested to me that it is a cautious report, and I would agree, but I think it is a report that can achieve something. I have come to the conclusion, Mr Speaker, that reviews of the way in which this place operates should never finish. I think that we should continue to look at ways of improving it.

Obviously, there are things I would like to have seen in the report that just were not achievable, given the numbers; but, as I said earlier, I think all of us on the committee felt that it was more important to have a report that would take us forward, rather than everyone drawing a line in the sand. Things in the report do not go to the extent that I would have liked and perhaps went a little bit further than you would have liked, Mr Speaker, but I think overall the system that we undertook was a good one and a fair one. I would like to thank the different jurisdictions that we visited. We made a trip down to Tasmania and up to Brisbane. I think Mr Stanhope is going to adjourn the debate today, Mr Speaker. I will seek leave to speak further to the report.

I would like to sincerely thank the very patient and, dare I say it, cranky at times secretary to the committee, Mr Cummins, for his efforts. He put a hell of a lot of work into this report and really carried it on his own bat for a long time. I thank him for his professionalism and for his assistance. I commend the report to the Assembly.

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

HEALTH AND COMMUNITY CARE - STANDING COMMITTEE
Inquiry - Public Hospital Waiting Lists - Alteration to Reporting Date

MR WOOD (9.29): Mr Speaker, I ask for leave to move a motion to alter the reporting date for the Standing Committee on Health and Community Care's inquiry into public hospital waiting lists.

Leave granted.

MR WOOD: Mr Speaker, I move:

> That the resolution of the Assembly of 19 November 1998, referring public hospital waiting lists to the Standing Committee on Health and Community Care, be amended by omitting "by the last sitting day of June 1999" and substituting "by 24 August 1999".

The report is well under way.

Question resolved in the affirmative.

JUSTICE AND COMMUNITY SAFETY - STANDING COMMITTEE
Report No. 2 - Victims of Crime (Financial Assistance) (Amendment) Bill 1998

MR OSBORNE (9.30): Mr Speaker, pursuant to order, I present the report of the Standing Committee on Justice and Community Safety entitled "Victims of Crime (Financial Assistance) (Amendment) Bill 1998", including a dissenting report, together with extracts of the minutes of proceedings. I move:

> That the report be noted.

If another member of the committee would like to adjourn the debate on this matter, I will be happy to speak about it at another time, Mr Speaker. The only point I would like to add is that I thought all members of the committee attempted to come to what we thought was a fair compromise in relation to this report. Three of us were intrigued when the dissenting report arrived from the government member on the committee and a little bit disappointed that it was not spoken about during deliberations on the report; nevertheless, I will speak further about the report at a later date, Mr Speaker.

MR HIRD (9.31): I take issue with Mr Osborne. I did raise on a number of occasions the question of the cost to the community and I outlined in my dissenting report my concerns as to who was paying and the total lack of concern for the cost to the taxpayers of the ACT. I say no more than that.

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

JUSTICE AND COMMUNITY SAFETY - STANDING COMMITTEE
Scrutiny Report No. 6 of 1999 and Statement

MR OSBORNE: Mr Speaker, I present Scrutiny Report No. 6 of 1999 of the Standing Committee on Justice and Community Safety performing the duties of a scrutiny of Bills and subordinate legislation committee, and I ask for leave to make a brief statement on the report.

Leave granted.

MR OSBORNE: Scrutiny Report No. 6 of 1999 was circulated on 17 June 1999 when the Assembly was not sitting, pursuant to the resolution of appointment of 29 April 1998. I commend the report to the Assembly.

URBAN SERVICES - STANDING COMMITTEE
Report on Draft Variation to the Territory Plan - Canberra Centre Consolidation

MR HIRD (9.32): Mr Speaker, I present report No. 26 of the Standing Committee on Urban Services, entitled "Draft Variation to the Territory Plan (No. 111) relating to the Canberra Centre Consolidation", together with a copy of the extracts of minutes of proceedings. This report was provided to you as Speaker for circulation on Monday, 21 June this year, pursuant to the resolution of appointment. I move:

> That the report be noted.

I am very pleased that it is another unanimous report on behalf of the standing committee and I would like to thank my colleagues - Mr Rugendyke and Mr Corbell - and Mr Power, our secretary. We consider that the revised proposal should be endorsed because of three important factors. Firstly, it will improve the amenity of business in the shopping area; secondly, it does not provide for excessive retail space. The proposal is very much watered down from the original plan, which had 6,000 square metres of retail space. That has been cut back to 4,000 square metres in the revised proposal.

Thirdly, proposal No. 3 for eight cinemas has been removed. It was this proposal which generated most criticism by the community, because of the impact it might have had on the existing small business operators in the Civic area. The cinemas are no longer included in the revised plan. Even the proprietor of Electric Shadows Cinemas informed the committee that he supported the revised proposal. I commend the report to the house, Mr Speaker.

Question resolved in the affirmative.

FINANCIAL MANAGEMENT (AMENDMENT) BILL 1999

MR KAINE (9.34): Mr Speaker, I present the Financial Management (Amendment) Bill 1999, together with its explanatory memorandum.

Title read by Clerk.

MR KAINE: I move:

> That this Bill be agreed to in principle.

Mr Speaker, I will be brief. I have in the past brought amendments and Bills such as this to the Assembly to correct situations where Ministers were able unilaterally and without challenge or review to make instruments under the law. The most recent case on which I did that was in connection with the Casino Control Act. This is yet another case of a Minister being able to make an instrument - in this case, to issue guidelines - which is not a disallowable instrument. In the case in point, I am quite sure that, had that document come to this Assembly before it was signed into law, it would not have passed the scrutiny of this place. I am moving to close that anomaly, to require that guidelines of this kind issued by the responsible Minister shall become disallowable instruments and subject to review by this house.

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

LONG SERVICE LEAVE (CLEANING, BUILDING AND PROPERTY SERVICES) BILL 1999

MR BERRY (9.36): I present the Long Service Leave (Cleaning, Building and Property Services) Bill 1999, together with its explanatory memorandum.

Title read by Clerk.

MR BERRY: I move:

> That this Bill be agreed to in principle.

In introducing this Bill today, I would like to set out why I am doing so. This Bill, if passed, will provide for workers in the cleaning, building and property services industry to accrue long service leave benefits. At first glance that might seem unremarkable, and it should be unremarkable. Long service leave, as you would appreciate, has been a fact of life for most workers in this country for many years. In July 1951 the New South Wales Industrial Arbitration Act was amended to provide for paid sick leave and long service leave. It became a standard benefit in Federal awards by the mid-1960s. However, for some workers it remained a dream. Many have never had long service leave, in spite of spending many years in the same industry doing the same job.

The fact is that some workers, while remaining in a single industry, find that their workplace changes or that their employer changes and they have to start all over again with their long service leave. The cleaning, building and property service industry is one such industry. It is an industry whose workers are often invisible. They work what is known as unsociable hours. They are not on high incomes and their work is not glamorous. They are the quiet achievers. But that should not mean that they are denied benefits which many other workers enjoy.

Another industry where this situation once occurred was the building and construction industry. In 1981 a similar situation to the one I propose was put in place for the building industry. The Bill I am introducing today mirrors the Long Service Leave (Building and Construction Industry) Act 1981 insofar as it affects the cleaning industry in the ACT. That legislation has served the building and construction industry well. It is accepted by employers in that industry and is welcomed by the workers who now have access to long service leave, whereas in many cases prior to the legislation long service leave was not available to them. I hope that the success of that legislation will encourage all in the Assembly to support this legislation.

As part of the development of this legislation, I have consulted with the union which represents cleaners as well as the employers during the drafting stage. The principal concern of the unions was, of course, the lack of access to these conditions for all their members. The employers on the other hand expressed concern that there ought to be a level playing field for all ACT employers, which this legislation achieves.

This Bill provides for long service leave payments by employers to be made into a central fund. It provides for registration of employers and employees, annual statements and, once the required benefits have accrued, payment to be made. The benefit is set at the rate generally applying in the private sector - two months after 10 years of service. The fund is to be controlled by a board which is appointed by the Minister and has an employer and an employee representative. There are also safeguards and appeals processes to protect the interests of both employers and employees. This Bill will ensure basic long service leave benefits for a group of workers who are not high-flyers in our work force. Many people will, for the first time, enjoy benefits which for nearly 50 years have been considered routine by other workers.

In conclusion, Mr Speaker, I would like to say that I am proud and honoured to present this Bill today and would like to say thank you to the many people who helped in its preparation. These include workers in the industry, the union and its officials, the employers and also Parliamentary Counsel for their care and attention and helpful advice in the preparation of this Bill.

I look forward to the support of other members for this worthwhile Bill. This legislation will cover over 2,000 workers in the cleaning industry and, if successful, will be warmly welcomed by a group of workers whose work and conditions of employment often go unnoticed. Mr Speaker, it gives me a great deal of pleasure to introduce this Bill today.

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

OCCUPATIONAL HEALTH AND SAFETY (AMENDMENT) BILL (NO. 2) 1999

MR BERRY (9.41): I present the Occupational Health and Safety (Amendment) Bill (No. 2) 1999, together with its explanatory memorandum.

Title read by Clerk.

MR BERRY: I move:

> That this Bill be agreed to in principle.

Mr Speaker, the Occupational Health and Safety Act 1989 was the first piece of legislation considered by this Assembly and, as the then Minister said, it is a subject to which our party is heavily committed. I should say at this time that I think that it is a measure of the interest that this Assembly then took in the conditions of workers that that piece of legislation took such priority. It is legislation that has as its primary aim the fulfilment of a worker's entitlement to return to his or her family after a day's work without an impairment due to illness or injury. Labor later strengthened this legislation in accordance with the continuing commitment which I mentioned earlier. This Bill, the Occupational Health and Safety (Amendment) Bill (No. 2) 1999, should be regarded as another move to strengthen the operation of the Occupational Health and Safety Act. It is the continuum of my commitment to ensure a safer workplace for workers in the Australian Capital Territory. It is the continuum of Labor's commitment in this regard.

This Bill sets out to strengthen the legislation by providing a statutory commissioner to ensure the necessary independence of those responsible for the implementation and application of the legislation in private and public workplaces throughout the Territory. Mr Speaker, that need was first highlighted in what I felt was an unfortunate incident when a political staffer from the office of the then Liberal Minister responsible for industrial relations was dispatched by the Minister and effectively intervened in investigations by WorkCover inspectors involved in an occupational health and safety matter at a Territory building site. I found that to be a disgusting piece of activity which, in fact, flew in the face of everything that the legislation was intended to achieve. It was not meant to be legislation which could be interfered with politically. For me, Mr Speaker, this unfortunate incident rang alarm bells and pointed to a need to take effective action to prevent these sorts of events interfering with the proper application of the legislation and the proper protection of workers in the workplace. It was not you, Mr Smyth. It was clear that it was the intention of the then Minister to interfere in the operation of WorkCover inspectors engaged in this extremely important investigation.

In October 1995 an Assembly committee of inquiry was established to look into workers compensation provisions. In the course of that investigation, the committee's attention was drawn to occupational health and safety matters. Mr Speaker, the committee heard "strong arguments", to quote from the committee report, for the establishment of statutory independence for WorkCover.

It also received evidence on the differing standards of accountability which applied between private employers and ACT government workplaces. An example of that was an inspection at an ACT government office, where it was found that major safety issues had not been communicated by management to health and safety representatives or employees for some months. Subsequently, Mr Speaker, the committee recommended that the Government legislate to establish a statutory authority, a key recommendation of the committee, which was later rejected by government.

At the last ACT election, Labor promised that it would legislate for the statutory independence of WorkCover and this legislation, if supported by the majority of members, will deliver that promise to ACT workplaces. The centrepiece of this legislation is the appointment of an Occupational Health and Safety Commissioner, in section 25A. The appointment, functions, resignation, retirement, removal and suspension and ministerial directions provisions of Part 2A set out a framework which guarantees the Occupational Health and Safety Commissioner freedom from government interference in the performance of his or her duties.

In addition, provision is made for an acting commissioner and the employment of staff, provided that they are employed under the Public Sector Management Act. The remaining provisions and the transitional provisions of this Bill provide the necessary features to ensure that this new statutory position dovetails into the existing law. The consequential amendments and schedules attached to the legislation make the necessary adjustments to other Acts affected by this Bill.

As I said in my opening remarks, occupational health and safety is a fundamental issue for the Labor Party and for me personally. Members will know that a substantial part of my former life was in the fire service, potentially a very dangerous occupation, and as a union official. During this period it was my misfortune, in one way or another, as a senior supervising officer and as a union secretary to deal with the impost of injury and illness on workers and their families. Reliance on the old adage that accidents do happen is the most inadequate defence in workplace injury cases, in my view. Most, if not all, workplace injuries can be avoided if appropriate standards of occupational health and safety are observed.

The aim of occupational health and safety legislation is to reduce the impact of workplace illness and injuries on individuals and those dependent upon them. It has an important impact and effect on the cost to the community in terms of lost work and health expenses. These result in mountainous costs across Australia and a serious loss of life. It is our job as legislators in the first place to protect workers and their families from the impact of workplace injury, but equally important is our obligation to ensure that the community generally is not burdened as a result of the financial impact of workplace injuries.

This legislation is not only good for workers; it is also good for government and it is good for business if strengthened laws improve the situation. Mr Speaker, this legislation will make advances in all respects and I urge members to support it.

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

CANBERRA INTERNATIONAL DRAGWAY - LEASE ARRANGEMENTS

MR CORBELL (9.48): Mr Speaker, I move:

> That this Assembly:
>
> (1) notes the significant contribution the Canberra International Dragway makes to tourism activity in Canberra, attracting over 18,000 interstate visitors worth $2,000,000 in revenue to the ACT economy each year;
>
> (2) recognises the important role performed by the Canberra International Dragway in providing a safe, controlled and professional venue for dragracing and other motor sport;
>
> (3) expresses its serious concern that since the closure of the Canberra International Dragway in December 1998 the ACT has lost $1.2 million in revenue due to the cancellation of dragracing events and activities forced by the failure of the ACT Government to fulfil its responsibilities under the lease arrangements to set rent and other conditions; and
>
> (4) urges the Minister for Urban Services to fulfil all of his obligations under the leasing arrangements as a matter of urgency.

Mr Smyth: I raise a point of order, Mr Speaker. I alert the Assembly to the fact that this matter has now been lodged with the courts and some of the issues that may come up here may well end up being sub judice.

MR CORBELL: What is the point of order?

Mr Smyth: On many points the Government may not be able to answer, or would not like to jeopardise any case.

MR SPEAKER: Thank you. Mr Corbell, I am sure you will be aware of that and will take account of the matter when you are debating.

MR CORBELL: Indeed, Mr Speaker. Thank you. Mr Speaker, it has been a while since this notice of motion was placed on the notice paper. It is unfortunate that the Assembly has not had an opportunity to deal with it before now, but I am pleased, even at this relatively late hour this evening, to address this very important motion. It is important, Mr Speaker, because the Canberra International Dragway is a significant

sporting facility in the ACT community. It is a significant facility which attracts over $2m a year in revenue to the ACT community and for at least six months now it has been closed. It has been unable to operate. The operators of the dragway are going broke because they have been unable to conduct events, but they still have all their bills to pay. They still have their loan requirements to meet, and they still have all the obligations to their creditors.

Mr Speaker, this is a disgraceful state of affairs. It is a disgraceful state of affairs because that facility should, this very day, be open and operating. One of the reasons why it is not open and it is not operating is that this Government, the current ACT Government, has not fulfilled its obligations to the dragway.

Canberra International Dragway attracts over 18,000 interstate visitors every year. Between November 1997 and September 1998 it attracted 43,420 people to its events in total. You can see from that figure that not only are there a significant number of interstate visitors coming to the ACT for dragway events but there are also a very large number of ACT residents who attend events, or attended events, at the facility.

Mr Berry: Now they have to do it on the streets.

MR CORBELL: Now, as my colleague Mr Berry points out, they have to do their sporting activities illegally, which I know most of them would not do because they are responsible individuals, and the investment they have made in their sport, legitimately, has been stopped. Why has it been stopped? It has been stopped because the ACT Government has not lived up to obligations under the lease arrangement that the dragway has. The Commonwealth also has to share some of the blame here, and I do not walk away from that for a moment, but my dispute, the Labor Opposition's dispute, is with the Government over its failure, because it has obligations too and it cannot, for all that it has said, walk away from those.

Those obligations primarily relate to conditions in the dragway's lease. That lease sets out what the ACT Government is required to do. The specific section of the lease that I want to refer to is clause 6(e) which reads:

> That if at the expiration of this lease -

that is the dragway lease -

> the Territory shall have decided not to sub-divide the land and that it is not required for any Territory or National Land purpose and shall have declared the premises to be available for lease AND if the Lessee has duly paid the rent and observed and performed the covenants and stipulations on the part of the Lessee to be observed and performed and giving the Territory not less than three months PREVIOUS notice in writing of his desire to extend the lease the Lessee shall be entitled to a further lease of the premises for a term of ten years and at such rents and subject to such conditions (including reappraisement of rents) as may then be determined by the Territory.

Not the Commonwealth, Mr Speaker, the Territory. The Territory has a clear responsibility to uphold its obligations under this lease. The Territory is required to make certain declarations before the lease can be issued anew and these include, as that clause outlines, that the land is not required for subdivision, that the land is not required for any Territory purpose, that the land is not required for any national land purpose, that the premises are declared to be available for lease, that the level of rent and reappraisal of rent has occurred, and that other terms and conditions are determined. Those are all requirements on the ACT Government, not on the Commonwealth, and the ACT Government has not made all of those determinations. Because the ACT Government has not made all of those determinations the Commonwealth is saying to the dragway, "Your lease is unenforceable. We cannot give you a new 10-year lease". It is as simple as that, Mr Speaker. This Government has not lived up to its obligations.

The Minister has consistently claimed in this place and outside in the media that this is not an issue for the ACT Government because the ACT is not the landlord - they are his words - and that the land is national land. I think Mr Smyth, in some comments on 25 March, said I was wrong to make the claim that this was a responsibility of the ACT Government and in fact it was a responsibility of the Commonwealth Government because the land was a particular colour on the Territory Plan. The colour that is used for national land - I forget the colour that Mr Smyth used - is a lovely grey colour. Well, I had a look at the Territory Plan, Mr Speaker, and this is not a grey bit. It is a different colour. It is a colour relating to land which is vested in the Territory, so we just need to be conscious of that, Mr Speaker. There are, however, certain covenants on the use of that land which do relate to national land purposes. I think it is important to make that distinction to the Minister. Nevertheless, the point is this: The Territory has obligations under the lease. It must make those determinations, not the Commonwealth Government.

The ACT Government, I have to say, Mr Speaker, has been intensely hypocritical on this issue. The ACT Government has been saying in the Assembly and to the dragway and to the ACT community that it supports the dragway; that it wants to see it have a long-term lease at its current site and that it is doing everything it possibly can. Indeed, on 29 January this year, the chief executive of the Department of Urban Services, Mr Rod Gilmour, as he was then, wrote to counsel representing the Drag Racing Club and in that he said:

> The Minister for Urban Services, however, is supportive of the activities of the club and is keen to assist it, wherever possible, in achieving a longer term lease.

That is what the Minister for Urban Services has been saying. Mr Speaker, it is very interesting to note that on 28 August last year, four months before Mr Smyth wrote his letter, the Chief Minister received a letter from Mr Terry Snow, the executive chairman of the Canberra International Airport Group. In that letter Mr Snow said:

> We strongly urge you not to consider extension of the lease for Canberra International Dragway and recommend to the Department of Defence not to renew the lease.

That was a request from Mr Snow, representing the airport, to the Chief Minister. What did the Chief Minister say in reply? The Chief Minister wrote to Ms Annabelle Pegrum, the head of the National Capital Authority, on 2 September last year. She said in part:

> I would appreciate your giving the issues raised sympathetic consideration.

In respect of the issues raised by the Canberra International Airport Group, she said, "I would appreciate your giving the issues raised sympathetic consideration". What issue was that, Mr Temporary Deputy Speaker? That issue was the request by the Canberra International Airport Group not to extend the lease. So, we have a hypocritical approach by this Government, a very hypocritical approach by this Government.

Mr Temporary Deputy Speaker, that is further highlighted by a comment that the Chief Minister has made in this place. She took a point of order against me on 25 March and she said:

> I take a point of order, Mr Temporary Deputy Speaker. Telling untruths in this place is, I would have thought, contrary to standing orders. If those opposite want to join with us in writing to the Commonwealth to get them to extend the lease, I would be in it.

That is what the Chief Minister said to this place. She went on to interject and say:

> Okay. I will draft a letter and you will sign it with me.

The Chief Minister was saying she was going to do everything she could do to extend the dragway's lease. But she knew, back on 2 September last year, that she had asked the National Capital Authority to give sympathetic consideration to the request by the Canberra International Airport Group not to consider extending the lease for Canberra International Dragway. That is a disgraceful situation, Mr Temporary Deputy Speaker.

The Canberra International Dragway has been sold down the drain by this Government because government members have been coming into this place and saying one thing, that they support the dragway, even saying they will write a letter urging for an extension of a long-term lease, yet five months previously the Chief Minister supported a request by the airport group to give sympathetic consideration to not extending the dragway's lease. I think the facts speak for themselves, Mr Temporary Deputy Speaker. I think the facts speak very well for themselves.

Coming back to the points outlined in my motion, the first point that I am asking this Assembly to say today is this: Note the significant contribution the Canberra International Dragway makes to tourism activity in the Territory. Secondly, recognise the role performed by the dragway in providing a safe, controlled and professional venue for drag-racing. Recognise the fact that while we continue to have a problem with burnouts and illegal drag-racing on some streets in Canberra, the loss of this facility makes it all the more difficult to encourage people who put money into their cars to drag-race safely in a controlled activity because one currently does not exist.

I ask that we express our serious concern that the dragway has lost a significant amount of money since its closure, that the ACT has lost $1.2m in revenue, and that the ACT Government has failed to fulfil its responsibilities under the lease arrangements to set the rents and other conditions. As a final point we ask this Government, we urge this Government, to do the decent thing by the Canberra International Dragway, to fulfil its lease obligations, to make all the determinations and to make all the other conditions that it is required to set before the Commonwealth can issue a 10-year lease.

The Territory has responsibility for this lease, not the Commonwealth, and the Territory must make the determinations before the lease can be issued. That is the issue here. That is what this Government has failed to do. As I have just highlighted, there is hypocrisy on the Government's part in its handling of this issue. I would like to ask this Government to do the decent thing, to set the determinations and allow the dragway to get on with its business. I commend the motion to the Assembly.

MR SMYTH (Minister for Urban Services) (10.05): Mr Temporary Deputy Speaker, it is disappointing that at this late hour we are debating this motion because the dragway is very important to the people of the ACT. The Government has no qualms about paragraph (1), paragraph (2) or, indeed, the first half of paragraph (3). Notice of this motion having been given on 23 March, clearly we could have discussed it on 21 April or 5 May or 23 June. We are now forced to discuss this late in the evening of a long day, but, more importantly, Mr Temporary Deputy Speaker, after this matter has been put to the courts.

On 11 June the club announced through a press release that it would pursue legal action against the Commonwealth and the Territory governments and it filed an application with the ACT Supreme Court seeking declaratory relief against both the Territory and the Commonwealth. I have to say that I feel somewhat limited in what I can say here this evening. If this is such an important issue, as Mr Corbell outlines, I really wonder why we did not discuss it much earlier.

To get to the heart of it, the question is: what can I do? What Mr Corbell is urging me to do may be illegal. He is asking me to make declarations or decisions that are outside my control and outside the control of my portfolio. It is curious that throughout all of this Mr Corbell really ignores the heart of it, and that is the fact that it is Commonwealth owned land and it is managed by the Commonwealth. How do we know this? Because, Mr Temporary Deputy Speaker, they owned up to it. On 25 March a letter was written to the editor of the *Canberra Times* and it was made quite public. I think it was published the next day, the 26th. I would like to read the letter into the record because it really is quite important. It says:

> Editor
> *Canberra Times*
> Fyshwick ACT 2609
>
> I refer to a number of recent articles in the *Canberra Times* concerning the Canberra International Dragway.
>
> The dragway is located on Commonwealth-owned land which is managed by the Department of Defence.

Defence makes it quite clear that it is Commonwealth land and it is their responsibility. They go on to say:

> The new owner of Canberra airport, Canberra International Airport, has announced it is proposing changes in the operation of the airport. Following meetings late last year with Canberra International Airport, the National Capital Authority, Air Services Australia, the Civil Aviation Safety Authority and Defence, it was determined that the configuration of the dragway to the east-west runway would, in the longer term, present an unacceptable risk to air safety.
>
> For this reason, a five year lease was offered to Canberra International Dragway, and in view of its three year planning horizon, this should enable the dragway sufficient time to meet its current planned activities and consider future options. I should emphasise that the decision to close the facility and cancel events has been made solely by Canberra International Dragway.
>
> Defence is conscious of the value of the dragway to members and the local economy. It is prepared to enter into a five year lease to allow the dragway to remain in its current location while the issue of a new location which does not impinge on future airport operations is negotiated between the Canberra International Dragway and the ACT Government.
>
> Yours sincerely

It was signed for Ross Bain, Assistant Secretary, Property Management. This letter is dated 25 March 1999.

Mr Corbell: When was the meeting?

MR SMYTH: The gentleman from Defence does not say when this meeting was, unfortunately. I just read the letter. You did not hear me say a date.

Mr Temporary Deputy Speaker, it is quite poignant really that after a day of arguing about illegal advice and illegal activity and whether you should get advice or whether you should not get advice, the advice I have is that I have done everything under my power to assist the dragway. I and my office, and officers from the department, have rung the Minister for Defence's office, faxed them information and have sent letters. I think we have lobbied the Minister for Finance as well. We have done everything in our power to urge the Commonwealth to look favourably upon the dragway. I understand that Mr Corbell has not even managed to dash off a letter to the Minister for Defence expressing his concerns. He could confirm that or deny it.

Mr Corbell raised the issue of Mrs Carnell's letter. Mrs Carnell was approached by a constituent. I do not happen to have a copy of that letter but my memory of it, and I say this late on a very long day, is that the issues that were raised by the Canberra International Airport were issues of air safety. You see, this Government is concerned

about the dragway and we are certainly concerned about air safety. These are both very important issues. One is not mutually exclusive of the other in this case. I do not have a copy of Mrs Carnell's letter with me, but she passed on the concerns of a constituent to the relevant authorities, as we all do.

The issue of the dragway was caused by the changeover of government from the Federal Government to self-government in 1989. The body that was issuing leases was, I understand, issuing leases for both the Federal Government and the Territory Government until the functions were properly devolved. As for the lease itself, this is where it gets tricky for me, because we have a situation where much of this may be considered to be sub judice by the courts. The lease asks me to make statements that, on legal advice, I am told I cannot do. It is a vexed issue. It is about to be solved in the court.

The legal advice I have is that I have done everything that I can do to assist the club. We have said that we will assist the club should they wish to move. We will work with them to find another suitable site, if such a site can be found in the ACT, because we understand the value of the dragway to the ACT. As is clearly outlined in the letter from Mr Bain of the Department of Defence, the dragway is on Commonwealth owned land that is managed by the Department of Defence. I have control over neither the Commonwealth nor the Department of Defence. That is why I move the following amendment which has been circulated in my name:

> Paragraphs (3) and (4), omit all words after "activities".

MR TEMPORARY DEPUTY SPEAKER (Mr Hird): Do members have the amendment moved by Mr Smyth?

MR SMYTH: Yes, it has been circulated. For the reasons given, the Government does support the activities of the Canberra dragway. The issue really is between the dragway and the Federal Government. It is not because of the failure of the ACT Government. I have already fulfilled all my obligations that my legal advice tells me that I can.

MR CORBELL (10.13): Mr Temporary Deputy Speaker, I wish to speak to the amendment. This amendment is not acceptable in the view of the Labor Opposition. The reason for that is that what it essentially does is excuse the ACT Government from any responsibility. Let me make my point perfectly clear.

We do not dispute that the lease the dragway holds is a lease issued by the Department of Defence. Nor do we dispute the fact that the dragway is on land controlled by the Department of Defence. Those issues are not in dispute. What members have to understand is that this lease for the dragway is fairly unique in terms of leases in the ACT. It is unique because it was issued - - -

Mr Moore: Have you been through the legal argument?

MR CORBELL: I would appreciate it if members gave me some courtesy. The lease was issued by the Department of Defence to the dragway, but in the lease there were provisions that gave certain responsibilities and obligations to the ACT Government. So there is a role for the ACT Government and it is written into the dragway's lease. That is

clear. I read out earlier in the debate what those obligations are - to determine rent and other conditions. The lease says the Commonwealth cannot issue a new lease for the dragway unless the Territory makes the determinations in the existing lease. That is what the lease says. What I am saying to this place is that the ACT Government has not fulfilled its part of the bargain. That is why these amendments are not acceptable.

Mr Smyth read out a letter from Mr Ross Bain of the Department of Defence outlining the agreement that had been reached between various parties about the future of the dragway's lease. I have the notes of the meeting that made that decision. I have the notes of the meeting, just for Mr Rugendyke's benefit, because I know he was talking briefly to the Minister. Mr Smyth made a claim about a decision made by the Department of Defence about what to issue to the dragway in terms of a new lease, only five years. He made reference to a meeting held between different parties. Those parties, from the notes of the meeting I have, were the National Capital Authority, the Civil Aviation Safety Authority, the Department of Defence, the Canberra Airport Group and Airservices Australia.

Members should ask themselves: Where was the dragway? Surely this issue affected the dragway. Why were they not invited to attend a meeting at which their fate was being decided? Indeed, where was the dragway if Canberra Airport Group was represented at the meeting? Canberra Airport Group do not control this land. They are not a government instrumentality. They are a private company that just happens to hold a lease right next door. If they were invited to the meeting, why was not the dragway? You would expect that in the interests of natural justice all of the parties affected, including the dragway, would have been represented at the meeting, but they were not. So the meeting came to the conclusion that they would only offer the dragway a five-year lease. Well, how convenient. It is pretty easy to make the decision when the party most directly affected is not present.

That is what happened, Mr Temporary Deputy Speaker. The dragway was not invited to the meeting which decided whether or not they should be issued a five-year lease. The NCA were there, the Civil Aviation Safety Authority were there, the Department of Defence were there, the airport people were there, Airservices Australia were there, but not the people most directly affected, the dragway. How grossly unfair is that? It is completely unfair, Mr Temporary Deputy Speaker.

I reiterate for the record that the ACT Government has obligations that it must fulfil under the dragway's lease. Those obligations are to determine that the land is not required for a Territory or national land purpose, and to set the rent and other conditions for the lease. Those things must be done if a new lease is to be issued. What has occurred is that the ACT Government has not made all the determinations. For what reason, Mr Temporary Deputy Speaker?

The Government has not given us a reason why it is refusing to make these determinations. It has not given us any reason at all. Why has it refused to make the determination that the land is not required for a national land purpose? Why has it refused to make the determination that the premise is declared to be available for lease? Why has it refused to make the determination of rent and reappraisal of rent? Why has it refused to make the determination for terms and other conditions?

The Minister has not answered those questions. He needs to explain to this place why he has not made the determination that the premises are declared to be available for lease. Why has he not made the determination that the land is not required for any national land purpose? Why has he refused to determine a level of rent and make a reappraisal of rent, and why has he refused to determine other terms and conditions as he is required to under the lease? What we are saying today is that he should do that, and we urge him to do that. He should do the decent thing for the dragway. It is a matter of natural justice. The dragway has rights and they just cannot be taken away because the ACT Government refuses to live up to its obligations under the lease. It is that simple. The Labor Opposition will not be able to support Mr Smyth's amendment.

MR RUGENDYKE (10.21): I have just been approached by Mr Smyth who tells me that he is unable to argue the case as the matter is sub judice. These matters that are being discussed are part of the court proceedings. If that is the case, I think it is appropriate to support Mr Smyth's amendment.

MR QUINLAN (10.22): I will rely on Mr Smyth to pick me up on matters that might be sub judice. No doubt Mr Moore will be happy to help him. He seems to be pretty good on this stuff. There seem to be only a couple of points here really. It seems a prime example of poor management and the creation of a problem that should not exist. Is it incompetence or is it deviousness? It is clear that there is an issue. An issue has been festering. It is clear that the issue needed fixing. It is clear that the issue needed fixing by the Minister, and it is clear that the issue needed fixing by the Minister promptly to ensure the future of the club. So why has it festered? It can only have done so because the Minister has not had the wit or has not had the inclination to get off his tail and sort it out. The alternative conclusion is that there has been a conscious and quite devious decision to wait out the dragway people, hoping that they simply wither on the vine.

MR TEMPORARY DEPUTY SPEAKER: Order! Mr Quinlan, I apologise for interrupting. There seem to be some aspects of the matter before us, the amendment and also the motion from Mr Corbell, that may be sub judice. I just warn members to be careful in their comments in respect of this matter.

MR QUINLAN: I am not talking about matters before the court. I am talking about why the bleeding hell they have not fixed it before this.

MR TEMPORARY DEPUTY SPEAKER: I understand that but I am advised that I needed to inform the house.

MR QUINLAN: Okay. I would be very happy to think that the court might take note of how it managed to get as far as the court, given the nature of the matter. Anyway, as I was saying, there is an alternative. Either the Minister has been incompetent by not sorting something out that really needed to be sorted out, or there has been a conscious waiting out of the dragway people, hoping that they would simply just go away. Anyway, Minister, you can be assured that I do not accuse you of deviousness, not all on your own.

Really, this is a simple problem. If there is a new lease for the dragway by the Commonwealth, it cannot be issued until the ACT Government has set rent payment levels and other conditions. The Minister, in reply, I think, to a question without notice, laid the blame at the feet of the Commonwealth, as he did earlier in this debate. He asserted it was a Commonwealth lease and the ACT Government has no responsibility, or that he has done what he can. He could have sorted it out with the dragway people and said, "No, you are not getting any more than a five-year lease". That is quite inappropriate, apparently, for the amount of money they need to invest in the development, so a five-year lease does not work. So we either have a 10-year lease or nothing. Tell them. But no; we keep flicking it and saying it is the Commonwealth's fault, and the Commonwealth say, "We can't do anything until the ACT Government does something". It is real "Yes, Minister" stuff, is it not?

Mr Smyth: No, the Commonwealth is not saying that. The Commonwealth has actually offered them a lease.

MR QUINLAN: For five years, after a meeting that they were not even invited to attend. Ripper consultation. But they have already advised you that they need at least a 10-year future for the money that they wish to put into the place. This is a sporting organisation that apparently draws visitors and their money to Canberra. I have a figure here of 19,000 interstate visitors per year. That represents $2m worth of spending. These figures come from CTEC, I understand, and I am sure the Government would not dispute those. The dragway people are caught in an administrative mess not of their own making. The Government has no sympathy for them. I think the Minister here has a responsibility to at least look at it for five minutes through their eyes.

Mr Smyth: We have done more to help them than you have. You haven't even written to the Commonwealth or rung the Minister.

MR QUINLAN: Yes, it is a Commonwealth lease, but the ACT Government has held up the sorting out of it. The result of the Government's inaction is that the Commonwealth has taken the position that the lease is unenforceable. That means the dragway is left in the lurch, does it not? They need 10 years or nothing. Give them an answer. It has been - - -

Mr Smyth: I cannot. It is outside my responsibility.

MR QUINLAN: Yes, Minister, it is.

Mr Moore: You do not want him to break the law, do you, Ted? Are you urging him to break the law?

MR QUINLAN: Shut up, Michael.

MR TEMPORARY DEPUTY SPEAKER: Order, Mr Quinlan! Address your remarks to the Chair.

MR QUINLAN: Sorry. Michael, would you please desist. The Government's recent record in relation to events has not been all that flash, has it? Floriade fees, the Summer Festival of Sport, and the jury is still out on the Multicultural Festival and the Canberra Festival amalgamation. Why let organisations that bring us visitors and attention go out of business? I suggest that you go back and have a chat with the Canberra drag-racing club. You never know, you might be able to set up a photo opportunity for the Chief Minister, or an appointment as a patron.

Mr Smyth: That is uncalled for.

MR QUINLAN: I am having a bad day. Some arrangement may be forthcoming. I am, in fact, in favour of development at the airport. If looking after the long-term interests of the airport is the Government's objective, then why not set in place relocation arrangements for the dragway? Unless it is the Government's policy to have no dragstrip, there seems no reason for the Government not to do everything in its power to sort out the situation.

Mr Smyth: Which we have done.

MR QUINLAN: Well, you are not very good at it, are you, because it is not fixed.

Mr Smyth: Because I do not have the power. Are you asking me to do something illegal?

MR QUINLAN: Do you or do you not have the power to set rent conditions?

Mr Smyth: It is not my land. I do not.

MR QUINLAN: Is it not a condition of the Commonwealth lease that the ACT Government will set rent payments and other conditions? Are you denying that?

Mr Smyth: It is not my land. I am not responsible for it.

MR QUINLAN: So you are not denying that. Thank you. So far we have seen you do very little and it is your responsibility. I would like to see the Minister explain to this place why the situation now arises where the dragway, which has operated for quite some time, is now facing receivership. The Minister is not doing enough. Quite obviously, I commend the motion.

MR BERRY (10.30): I must say I was quite disturbed to hear that Mr Smyth is not going to argue the case in relation to his amendment because it is sub judice. We are not going to be allowed to hear the arguments. It is curious that he can say that in respect to his possible argument in relation to the amendment, but he is still able to put the amendment. It all strikes me as very curious.

His amendment in fact takes away an acknowledgment by this place that there has been an expression of concern about the failure of the ACT Government to fulfil its responsibilities under lease arrangements to set rent and other conditions. Has the Government briefed somebody to argue that it should not do these things? Has the

Government briefed somebody? It strikes me as curious. It seems to me that if this was to stay here we would be saying to the Government, "Well, we don't want you to brief people that way", and that is the point we make. We are expressing a serious concern about the failure of the ACT Government and so on.

Okay. Let us move on then, if that is not what is worrying the Government. Let us move to paragraph (4), which the Minister seeks to exclude. It says:

> urges the Minister for Urban Services to fulfil all of his obligations under the leasing arrangements as a matter of urgency.

Has the Minister briefed anybody to ensure that we do not fulfil any of our obligations in relation to the matter? If the Minister has, what we are saying to him is that he should say, "No, that is not the way we want to go. We want to fulfil our obligations". This seems to me to be an artificial curtain to hide behind in relation to the matter. If there is some reason why you cannot argue the case in relation to the amendment, you really can use the same logic to prohibit the introduction of it.

It strikes me, Mr Temporary Deputy Speaker, that there is something very curious going on here. There is certainly not enough reason for the amendment to succeed. I think this is an expression of a view of the Assembly which we would ask the Government to take note of. It is a call on the Minister to do certain things. It is not a direction, it is a call, and we would expect him to take note of that too. It is curious that the Minister is submitting an amendment to strike out those expressions of views but will not argue the case. I would like to hear what he has to say in support of it.

MS TUCKER (10.33): I also am a little bit confused by this. The Temporary Deputy Speaker has told me I have to be careful about this because it might be sub judice, but I have no idea why, or of which bits I need to be careful about. I am finding it a bit hard to know what I am allowed to say and what I am not allowed to say. The Minister has put an amendment but you cannot argue it, and we have to be very careful about how we respond to his amendment because it might be sub judice. So I agree absolutely with Mr Berry. Why on earth did he put the amendment up?

Anyway, just generally, I will make a comment. I will not be supporting the Minister's amendment, and I will be putting an amendment of my own if Mr Smyth's is not successful. I might just speak to the motion generally at this point as well. The Greens are a little bit concerned about the sport of drag-racing anyway, which basically involves speeding as fast as possible down a quarter-mile track. It is a waste of petrol and a huge generator of noise. Basically, I cannot see that we have to be so enthusiastic about something just because it brings money into the Territory. Obviously, as a member of the Greens party, I have to take into account broader issues such as the environment. Also, in assessing a contribution of a particular activity to human welfare, we cannot just use as an indicator always how much money it brings into the Territory.

However, despite all that, I have sympathy with the organisation if they have been really badly treated, as it seems, for a long time; so I will be supporting paragraph (4) of Mr Corbell's motion which urges the Minister to fix up the mess, but I will only do that if I can get the first three paragraphs deleted, which is basically my amendment.

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer) (10.35): Mr Temporary Deputy Speaker, I confess that I do not have a great familiarity with much of the details of the issues that the dragway is currently litigating in the ACT Supreme Court, but I do want to sound a very serious warning to members about the sub judice rule.

Mr Berry: We want to tell the Government how it should argue the case.

MR HUMPHRIES: Okay, Mr Berry. You want to tell the Government how it should argue the case. The problem is that to engage in the debate - - -

Mr Wood: If you only realised nobody paid any attention to it.

MR HUMPHRIES: Mr Temporary Deputy Speaker, I don't - - -

MR TEMPORARY DEPUTY SPEAKER: Order! Well, it would help. I know it is getting late, Mr Attorney, but if you did not canvass questions across the chamber - that applies to both sides - and addressed your remarks to the Chair, we might get on with the business. The Attorney-General has the call.

MR HUMPHRIES: Mr Temporary Deputy Speaker, there is a matter in the ACT Supreme Court at the moment in which the Government is a party. For the Government to enter into debate on the matters that are, as I understand it, part of this motion would involve the ACT putting on the table issues which will be part of the matter to be litigated before the Supreme Court. I can advise the Assembly that the ACT Government Solicitor has advised that we should be circumspect about any comments that we make in the course of this debate about those matters.

The Government is in a difficult position. There is a motion before the house which suggests that the Government should do certain things, and condemns the Government supposedly for a failure to fulfil its responsibilities under the lease arrangements, such as to set rent and other conditions. To properly defend that matter involves putting on the table issues which will be litigated in the court.

Mr Temporary Deputy Speaker, that constitutes the classic illustration of where matters should not be before the Assembly when they are sub judice, when the debating of issues here could involve the raising and assessing of issues which are themselves going to be put before a court. In a civil matter, this is about as close as it gets to what should not be debated on the floor of a parliament while the matter is before another arm of government, namely, before a court. Although, as I say, I do not know a great deal about the - - -

Mr Moore: The age-old precedent that we were talking about today.

MR HUMPHRIES: Indeed. To quote an earlier remark today, this is "an age-old precedent". Sub judice is a very important principle and this is an illustration of when it should apply. I would say to members that I do not think we should be debating this matter at all, to be perfectly frank, but if Mr Corbell wants to debate it today I do not think he should put the Government to the test of having to debate the issues which are in the clauses which Mr Smyth wants to delete. Rather, we should leave those for debate

on another day. The Government is perfectly happy to consider a motion on its failure to fulfil certain obligations once the matter has been litigated, but to debate those things now would potentially put the Government in a difficult position in respect of the litigation to which it is a party.

Amendment (**Mr Smyth's**) agreed to.

MR CORBELL (10.39): Mr Temporary Deputy Speaker, I will close the debate. I have had some discussions with Mr Rugendyke on this issue and he has indicated to me that he feels he is unable to support the motion in the form that I moved it, and we just dealt with the amendment. I am disappointed that the Assembly has chosen to take that course of action.

Mr Moore: You are reflecting on a vote of the Assembly.

MR CORBELL: I am disappointed but, Mr Moore, I accept the decision of the Assembly. I continue to believe that the dragway has received a very raw deal on this issue and has not been dealt with fairly or openly.

Mr Moore: Be open and tell us what you have done about it.

MR CORBELL: In fact, Mr Temporary Deputy Speaker, I believe that the Government has been hypocritical about this issue. I demonstrated that earlier in the debate. Mr Moore asked what would I have done about it. Mr Moore, if I had been Minister I would have lived up to my obligations and the obligations of the ACT Government, and I would have made the determinations that the Territory is required to make under the dragway lease. That is what I would have done, and that is what any reasonable and fair government would do. But that is not the sort of government we are dealing with, Mr Temporary Deputy Speaker, aided and abetted by that Independent, Mr Moore.

I can understand that some members have a concern about treading on the fingers of the Government's solicitors and potentially creating difficulties for the Government's case in court. I am prepared to accept that this evening. I do so reluctantly, but I am prepared to accept that.

What I will say, Mr Temporary Deputy Speaker, is this: The dragway is a valuable community facility. It allows for a very large number of people, over 40,000 people, from both within and outside the ACT, to race and watch races in a safe and controlled environment. It is a facility which is entitled to a long-term lease, and under its current leasing arrangements it is entitled to the renewal of its lease next to the Canberra international airport site for 10 years. That is what it is legally entitled to and I am confident that the dragway will be successful in its action against the Government.

It is a pity that this Minister has chosen to go down this path because he has, through his inaction, embroiled the ACT Government in a needless dispute that it could have easily avoided had it simply done the decent thing. It is going to cost the Territory many thousands of dollars defending itself in court, and, God forbid, it might cost us many

thousands more in compensation if the dragway has to go bankrupt and sue this Government. I have said to the Minister before in this place that he has a responsibility that he has not lived up to. He cannot say that he has not been warned if that string of events comes to pass.

Motion, as amended, agreed to.

LOCAL SHOPPING CENTRES - REDEVELOPMENT

MS TUCKER (10.43): I move:

> That this Assembly calls on the Government to prepare, with full public consultation, precinct master plans for local shopping centres which shall identify the preferred pattern of any redevelopment of the existing commercial buildings and any relevant adjacent land, before approval is given for any redevelopment of part or all of these shopping centres as allowed in Territory Plan Variation No. 64.

This motion is about the orderly planning of our local shopping centres. It is about setting up a process to ensure that redevelopment of these centres is done in an integrated, forward-thinking way that will give us a better outcome than just leaving redevelopment to be an ad hoc process.

I give some background to this motion. Members will recall that there has been an ongoing issue about the viability of the local shopping centres in Canberra. The Government released a retail policy in 1996 to address the decline in the local shops. One initiative in that policy was to encourage a greater range of land uses in the local shopping centres and to encourage the redevelopment of the existing buildings to provide a better mix of shops, offices and residential space that would revitalise the centres and maintain their viability. This led to the Territory Plan variation No. 64, which allowed for the wholesale redevelopment of a local shopping centre if it could be demonstrated that the centre was no longer economically viable in its current form.

After a few delays, this was implemented in 1997, and since then two proposals have come forward for local shopping centre redevelopment, in Aranda and Latham. Both of these proposals attracted considerable criticism when they were first released, mainly because of the proposed overdevelopment of the sites with three-storey residential apartments that bore little relation to, and overshadowed, the surrounding neighbourhoods. The Aranda redevelopment has not yet proceeded to a formal development application, but the Latham proposal has been the subject of further refinement, and a formal development application is expected soon. One issue that has been raised with me by residents about the Latham proposal and also about another shopping centre, O'Connor, which is also undergoing change at the moment, is that there does not appear to be any overall plan for how new developments on particular blocks within the centres will be integrated with each other and with the surrounding residential areas.

A feature of local shopping centres that has caused difficulties in encouraging redevelopment is that often these centres are made up of a number of blocks of land owned by different people. It can therefore be difficult to organise in one hit the redevelopment of a centre that goes over a number of blocks. In the case of Latham, redevelopment is being proposed for the existing shop building, but next door is an old service station and another block of vacant land which are ripe for development. However, in the redevelopment of the shops no consideration has been given to the integration of potential development on the other blocks. The integration of this development is quite important in terms of avoiding problems with vehicle access in the future.

In the case of O'Connor, there is a vacant service station behind the shops, and the Government has proposed the redevelopment of Macpherson Court next door, but again there appears to be no consideration of how developments on these three pieces of land could be integrated to address some of the access and parking problems at the O'Connor shops and to improve the public spaces there.

I have therefore put up this motion to call on the Government to prepare what I have called precinct master plans for local shopping centres before approval is given for redevelopment within these centres. These precinct master plans would identify the key features of the local centre and the surroundings and work out the preferred pattern of redevelopment of the existing buildings and any adjacent vacant land so that the essential attractiveness of the area is preserved and the amenity of the surrounding neighbourhood is protected. It is really just about undertaking good planning for our local shopping centres, what PALM should really be doing already.

There is a definite precedent for these precinct master plans in the section master plans that are currently being prepared by PALM for sections in Braddon, Turner and O'Connor. These section master plans were commenced in response to public criticisms that the residential redevelopment in those areas was being done in a very ad hoc way and that the new developments took no account of the relationship with the old or new buildings on the surrounding blocks. The section master plans were to provide certainty to existing residents and to developers about what scale and pattern of redevelopment would be allowed in those sections.

I am really just putting up the proposition that if we can have section master plans for residential areas undergoing redevelopment then we should also have precinct master plans for commercial areas undergoing redevelopment. I have called them precinct plans as they may involve more than one section of land – for example, where there are some commercial areas separated by a street. This may distinguish them from the pure section plans being prepared in the inner north, but the principle is the same. It is about local area planning which the Territory Plan is not well equipped to deal with.

The process being used by PALM to develop section master plans in the inner north is not perfect, but it provides a good model that could be refined for use in commercial areas. The public consultation involved in the development of master plans is a good feature that must be continued. This work should not be a major task for PALM, as the number of local shopping centres currently facing redevelopment is not that great.

I believe, however, that this process of precinct planning will lead to much better outcomes for residents around these centres and will hopefully reduce the disputes and appeals that could arise when specific development proposals are put forward, which I am sure the Government and developers would like. Mr Rugendyke, I am sorry that you are not able to listen to my arguments.

Mr Rugendyke: I am listening.

MS TUCKER: Good. I look forward to hearing your comment on my arguments in your response. This is the expectation with the section master plans in the inner north, and it should equally be the case for my proposed precinct master plans in commercial areas. The development of these precinct master plans makes good planning sense, and I commend my motion to the Assembly. Otherwise, we have lost a golden opportunity to assist our declining local shops to become the popular, attractive and well-planned centres that they have the potential to be and that Mr Smyth has often said he wants to see them be. Mr Smyth has already said that he embraces the concept of the section master plans for residential development. All this motion does is ask for a more holistic approach to planning of commercial centres, using exactly the same principle, so I will be very disappointed if I do not get support from the Government on this issue.

MR MOORE (Minister for Health and Community Care) (10.50): While you are still here, Ms Tucker, I ask you whether you consulted with the shopping centre people right around Canberra to see whether they wanted to do this.

Ms Tucker: Yes.

MR MOORE: No, you did not. This is the same Ms Tucker who always talks about consultation but the irony is that in one of the most serious motions that were considered today she did not consult with one member of the Government. So much for her attitude to public and/or any other consultation. It seems to me that the work that is already in place and done by the Government resolves all of these issues very well, and the last thing we need is a motion like this which will undermine small business.

Debate interrupted.

SUSPENSION OF STANDING ORDER 76

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

> That standing order 76 be suspended for the remainder of this sitting.

LOCAL SHOPPING CENTRES - REDEVELOPMENT

Debate resumed.

MR CORBELL (10.52): Mr Speaker, I have had some brief discussions with Ms Tucker's office about this motion.

Mr Moore: Did she consult with you?

MR CORBELL: What I can say, Mr Moore, is that Ms Tucker extended an invitation for me to discuss the matter with one of her staff, and I have done so. The Labor Opposition is conscious of the concerns raised by Ms Tucker about the need for coordinated planning, wherever that may be in Canberra, and for planning to take place in an orderly way. Mr Speaker, we share those concerns. That is one of the reasons why the Labor Party has supported the development of section master plans for the B11 and B12 areas in the inner north. We have also supported provisions for strategic planning and for master planning in areas such as Civic, an issue which the Government has yet to address to the full extent required.

I have looked at the motion Ms Tucker is proposing today, and I agree with her that the Government should be preparing precinct master plans for local shopping centres which identify the preferred pattern of any new development. But I do not accept her proposal. The Labor Party does not accept her proposal that this should be a requirement before approval is given for any redevelopment of part or all of these shopping centres as allowed in Territory Plan variation No. 64.

I will give some very good reasons for that. One reason is that this Assembly has gone through a very extensive inquiry process already in relation to the redevelopment of local shopping centres. Variation No. 64 was an issue of considerable debate and examination by the former Planning and Environment Committee of this Assembly. That committee's successor, the Standing Committee on Urban Services, of which I am a ember, currently has a standing brief to examine the way in which variation No. 64 is implemented. It has self-referred the issue and continues to receive briefings from the Minister for Urban Services on the implementation of variation No. 64 and is also continuing to receive comments from local communities and developers affected by proposals for redevelopment of local shopping centres.

If Ms Tucker believes that this issue should be part of issues to do with the implementation of variation No. 64, I think it would be more appropriate for her to ask the Standing Committee on Urban Services to look at the matter. That is the process that I believe is most appropriate. We now have a variation which is in place. We now have communities affected by redevelopment of local centres and those who want to redevelop local centres working on the basis of the decision the Assembly made some 18 months to two years ago. I do not accept that we should just arbitrarily change that now after all that work.

I am prepared to accept that there may be an argument for change in variation No. 64, but that should be done through the processes that this Assembly uses for changing the provisions of the Territory Plan, and that is through the Standing Committee on Urban Services and a formal variation to the plan, either through a recommendation from the committee or initiated by the Government. That, I believe, is the most appropriate course of action.

The Labor Party is prepared to support a statement from this Assembly that precinct master plans for local centres should be developed, but we are not prepared to support that part of the motion which deals with a requirement for those plans to be developed before approval is given for any redevelopment. The requirements for redevelopment

are set out in variation No. 64. We should not be adding to requirements for approval without going through the proper process. I would invite Ms Tucker to raise this issue with the committee. I am sure the committee would give it due consideration, because it already has a reference in front of it. But I do not believe we should be making arbitrary changes to the Territory Plan from the floor of this Assembly without referral to the planning committee of this place.

Mr Speaker, I move the following amendment, which I am sorry I have not yet circulated:

Delete all words after "land".

MR SMYTH (Minister for Urban Services) (10.58): Mr Speaker, I call on Mr Corbell to clarify his intent with that amendment. On a first hearing of what he has suggested, it sounds reasonable. Is Mr Corbell suggesting that area master plans be prepared for all local shopping centres immediately? Is that the intent of his amendment? Are you asking for all shopping centres to have it done, whether there is any development going on there or not?

MR CORBELL: Mr Speaker, I seek leave to speak again.

Leave granted.

MR CORBELL: My intention would be to indicate to the Government that the Assembly believes that the development of precinct master plans would aid the redevelopment of local centres but it should not be a requirement of the process which takes place under variation No. 64.

Mr Humphries: If no redevelopment is proposed, we do not have to go ahead with the master plan just at the moment?

MR CORBELL: Mr Speaker, I can understand the point raised by the Government - that that leaves them in a quandary as to what they should be doing. I suggest that as an alternative the Assembly refer this motion to the Standing Committee on Urban Services as part of its inquiry into variation No. 64. I think on reflection, Mr Speaker, that that would relieve any ambiguity that may result but still allow the issue to be addressed through the appropriate processes. I seek leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Reference to Urban Services Committee

MR CORBELL: I seek leave to move that this motion be referred to the Standing Committee on Urban Services.

Leave granted.

MR CORBELL: I move:

> That the motion be referred to the Standing Committee on Urban Services for inquiry and report in conjunction with its inquiry into implementation of Variation No. 64 to the Territory Plan.

MS TUCKER (11.01): I just want to clarify for members what is happening here. It is quite ironic, considering Mr Moore's interjections and outraged comments. We are setting up a process of consultation here which should, hopefully, assist the Government in setting up some way of getting local area planning and working with the community to see what they think should happen in a holistic way around a shopping centre. The reason I put the motion in the way I did with the words "before approval is given" is that we are getting very strong sentiments of concern from the community, who see the ad hoc process at the moment not taking this local area planning approach, or what we are calling the precinct master plans. People are concerned about that.

It is fine for the committee to look at this as a concept, and I am delighted that the committee is interested in looking at it, but meanwhile we are going to be getting developments occurring in a piecemeal way. In six months poor Latham is going to end up with a good statement coming out of the committee about a process to involve the community in local area planning or precinct section planning concepts for commercial areas. They have seen this sloppy ad hoc process occurring in their shopping centre. That is why I have set up a process for involving the community in local area planning, which is fundamental, good planning, before you have the ad hoc development occurring. It is a bit silly. Obviously, on the numbers, it will go to the committee, but it is not going to stop what is happening at Latham.

MR SMYTH (Minister for Urban Services) (11.02): Mr Speaker, the Government is pleased that Liberal and Labor can agree on something which is a commonsense move for small business. The Government is already preparing such master plans. To date PALM has prepared guidelines for both Aranda and Latham local shopping centres. These guidelines involved extensive consultation with LAPACs and residents, and in both cases there was significant input from both groups. The guidelines have addressed the changing retail pattern and the needs of the community and have proposed a significant restructuring of both centres. They have looked beyond the retail areas of the centres and addressed issues of access, parking, pedestrian connections and safety, and presentation and recognition of the centres. They have also considered the range of uses and forms of development in areas adjacent to the centres. It is already happening.

The peril with Ms Tucker's motion is that before any redevelopment can go ahead you have to do an area master plan or a section master plan on any relevant area of adjacent land. How big is that; how small is that; how wide is that? But even more disturbing - and I cannot imagine that any small business or trader has contacted Ms Tucker and said that they want this - is that the motion talks about the redevelopment of part or all of these shopping centres. That means that if you are changing from a shop that sells books to a restaurant, which is a redevelopment, you have to do a master plan for the whole area. All you are doing is changing the type of business.

I think Mr Corbell is quite right on this. Territory Plan variation No. 64 covers all of this. The watching brief the Urban Services Committee have on this and their ongoing work on this, including the development of the kit, can clearly cope with all of this. The Government would support a referral to the Urban Services Committee.

Question resolved in the affirmative.

BRUCE STADIUM REDEVELOPMENT
Papers

MR SPEAKER: For the information of members, I present documents relating to the Bruce Stadium redevelopment provided to me prior to 29 June 1999, pursuant to the resolution of the Assembly of 5 May 1999, and an authorisation of publication dated 25 June 1999 for the documents provided on 18, 22 and 25 June 1999. They are all on the Serjeant-at-Arms' desk to my right.

AUTHORITY TO BROADCAST PROCEEDINGS
Paper

MR SPEAKER: Pursuant to subsection 8(4) of the Legislative Assembly (Broadcasting of Proceedings) Act 1997, I present authorisations to broadcast given to a number of television networks and radio stations in relation to proceedings on the debate on the motion relating to the tenth anniversary of self-government on Tuesday, 11 May 1999; the debate on the motion relating to the want of confidence in the Chief Minister on Wednesday, 30 June 1999, and any subsequent proceedings; the public hearings of the inquiry into educational services for students with a disability by the Standing Committee on Education on 20 May and 10 June 1999; the public hearings of the Select Committee on Estimates 1999-2000; and the public hearing on the inquiry into respite care by the Standing Committee on Health and Community Care on 16 June 1999.

PUBLIC SECTOR MANAGEMENT ACT – EXECUTIVE CONTRACTS
Papers and Ministerial Statement

MS CARNELL (Chief Minister and Treasurer): Mr Speaker, I present, for the information of members and pursuant to sections 31A and 79 of the Public Sector Management Act 1994, copies of long-term contracts made with Rod Gilmour, Alan Thompson, Rosemary Walsh, Trevor Wheeler, Phillip Thompson and Alan Towill; short-term contracts made with Russell Bayliss and Brian Jacobs; performance agreements made with Julie McKinnon and George Tomlins; and Schedule D variations made with Philip Mitchell, Douglas Jarvis and Vlad Aleksandric. I ask for leave to make a very short statement with regard to these contracts.

Leave granted.

MS CARNELL: I would like to alert members to the issue of privacy of personal information that may be contained in these contracts, and I ask members to deal sensitively with the information and to respect the privacy of the individual executives.

CAPITAL WORKS PROGRAM
Progress Report

MS CARNELL (Chief Minister and Treasurer) (11.08): Mr Speaker, for the information of members, I present the March quarter progress report on the 1998-99 capital works program, and I move:

That the Assembly takes note of the paper.

Mr Speaker, I ask for leave of the Assembly to incorporate my statement in *Hansard*.

Leave granted.

The statement read as follows:.

I present the March quarter report for the 1998-99 Capital Works Program.

Mr Speaker, this report is the first to be tabled in the Assembly under reforms that were introduced this financial year. An important part of these reforms is the introduction of quarterly expenditure reporting against the capital works program. This initiative reemphasises the accountability of the Government by providing a detailed capital works program with a project focus, rather than simply a program focus.

The report enables regular and thorough monitoring of project expenditure. It also highlights those projects that are unlikely to be complete at years end, thus allowing for the substitution of other projects into the program.

Mr Speaker, Territory Departments incurred expenditure on capital works of $44.5m in the March year to date. The Department of Health and Community Care was the largest contributor, with projects such as the Phillip Health Centre refurbishment and the Health Protection Service Co-location. They were closely followed by the Department of Urban Services with expenditure of $12m in the year to March.

Mr Speaker the quarterly report is project specific. It recognises that changes to expenditure estimates do occur, and where applicable these updates have been provided. Details of any known project rollovers to 1999-2000 are identified in an attachment to the report.

Capital works is one area where significant progress and improvements have been achieved in program formulation, accountability and reporting. This has only been possible through the assistance and cooperation of the Assembly, and particularly the suggestions put forward by the Standing Committee for the Chief Minister's Portfolio.

> Mr Speaker the Government hopes that we can continue these improvements in the compilation of future Quarterly Capital Works Reports.

Question resolved in the affirmative.

WORKFORCE STATISTICAL REPORT
Paper and Ministerial Statement

MS CARNELL (Chief Minister and Treasurer): Mr Speaker, I present, for the information of members, the ACT Government workforce statistical report for the third quarter of 1998-99, and I ask for leave to make a very short statement

Leave granted.

MS CARNELL: I am tabling for the information of members the workforce statistical report for the third 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 March 1999 was 18,220.

GAMBLING – SELECT COMMITTEE
Final Report – Government Response

MS CARNELL (Chief Minister and Treasurer) (11.09): Mr Speaker, for the information of members, I present the Government's response to the Select Committee on Gambling's final report, entitled "The Social and Economic Impacts of Gambling in the ACT", which was presented to the Assembly on 25 March 1999. I move:

> That the Assembly takes note of the paper.

I ask for leave for my speech to be incorporated in *Hansard*.

Leave granted.

The speech read as follows:

> Mister Speaker, in May 1998, over twelve months ago, this Assembly resolved to establish the Select Committee on Gambling to undertake an inquiry into the social and economic impacts of gambling in the ACT.
>
> The resolution of appointment of the Select Committee into Gambling was to "inquire into and report by the 25th March 1999 on the social and economic impacts of gambling in the ACT, with particular reference to poker machines and the report entitled *Gambling and related legislation in the ACT: a National Competition Policy review* prepared by the Allen Consulting Group."

In the ten months that the Committee took to complete its terms of reference, two interim reports were tabled and the final report was handed down on 25 March 1999.

Mr Speaker, the final report of the Select Committee on Gambling has not addressed the core issue. Unfortunately, the report does not identify or quantify the social and economic impacts of gambling in the ACT.

The report simply calls for more research and data collection programs, to be established.

Similarly the report does not appear to provide a balance of experiences and observations between gambling counsellors and policy makers.

Finally, the Select Committee appears to have drawn a number of conclusions from interstate evidence without fully considering the differences between the mature gaming market in the ACT to those jurisdictions that have only recently seen exponential growth in the numbers and accessibility of gaming machines.

Mr Speaker, aside from the criticisms about the lack of research undertaken by the Select Committee to determine the social and economic impacts of gambling in the ACT and the inadequacies in achieving a balance of opinions, the Select Committee has made a number of recommendations that, if implemented, may improve the social fabric relating to gambling in the ACT.

The Government has adopted a number of the recommendations of the Select Committee on Gambling.

In regard to the recommendations, the Government has:

established a gambling project fund to facilitate the conduct of research and the oversight of monitoring activities, data collection and social programs in respect of gambling;

agreed that the proposed research, data collection, education campaign, needs assessments will be undertaken with funding provided by the gambling project fund.

broadened the range of functions of the proposed Commission to acknowledge its role in research and monitoring of gambling;

renamed the proposed Commission as the ACT Gambling and Racing Commission;

agreed to a change in the proposed structure for the ACT Gambling and Racing Commission by making provision for three Commissioners, one of whom shall be the chairperson, plus the Chief Executive Officer; and

established a complaints mechanism for the Commission.

As an indication of the Government's acceptance of these recommendations, the 1999-2000 budget includes funding of $500,000 toward the gambling project fund to implement a number of the recommendations of the Select Committee.

The budget also includes provision for the establishment of the ACT Gambling and Racing Commission. The delays in the establishment of the Commission relate solely to the unwillingness of members of the Select Committee to debate the legislation.

Mister Speaker, the Select Committee also considered the report of the Allen Consulting Group. The Committee's response to the Allen Report was modest at best. Apart from comment that the Select Committee opposes any extension of gaming machines beyond licensed clubs, and does not accept recommendations 7 and 18 of the Allen Report, the Allen Report received little further comment.

On the issue of an extension of gaming machines, the Government supports a review of the distribution of electronic gaming machines in line with the Government's obligations under national competition policy. However, the reality is that the majority of Assembly members do not support the removal of the current monopoly on gaming machines by clubs. Given the circumstances, the Government does not oppose the recommendation of the Select Committee.

A number of the Select Committee's recommendations closely reflect the recommendations contained in the Allen Consulting Report.

They include the :-

provision of better gambling counselling services;

allocation of a percentage of gambling-related tax revenue for gambling research, prevention and counselling services; and

replacement of the voluntary code of practice with an enforceable code of practice.

I expect that the ACT Gambling and Racing Commission will have the responsibility of implementing the recommendations of the Allen Report.

Mister Speaker, the Government has only rejected or opposed five of the Select Committee's twenty eight recommendations. Thirteen recommendations are accepted or not opposed and ten recommendations are agreed to in part with further examination considered necessary.

The recommendations that have been rejected and the reasons for the rejection are:-

Recommendation 6 regarding mandatory changes in electronic banking practices and Recommendation 25 regarding legislation to reject future technological change. These recommendations are unable to be implemented;

Recommendation 21 regarding the Assembly initiating inquiries to be undertaken by the Commission and Recommendation 22 regarding improved access to information. Structures already exist to achieve these objectives; and

Recommendation 12 regarding the hypothecation of a percentage of gambling revenue to a Community Benefit Fund. Revenue hypothecation is against good financial management principles.

Mister Speaker, I commend the Government's response to the final report of the Select Committee on Gambling and seek all members cooperation to expedite the process to establish the Gambling and Racing Commission.

Question resolved in the affirmative.

ADMINISTRATIVE ARRANGEMENTS
Paper and Ministerial Statement

MS CARNELL (Chief Minister and Treasurer): Mr Speaker, for the information of members, I present the Administrative Arrangements as contained in *Gazette* No. S26 of 17 May 1999, and I ask for leave to make a very short statement.

Leave granted.

MS CARNELL: Mr Speaker, this is an update on the Administrative Arrangement Orders. It was gazetted on 17 May 1999 and came into effect on that day. The arrangements have been revised to reflect the legislative activity of this Assembly during 1998 and the first sitting weeks of 1999. In addition, the Native Title Act has been moved from my portfolio to that of the Attorney-General. Some minor changes have been made to the division of responsibility for the Milk Authority Act to reflect the amendments to the Act made by the Assembly earlier this year.

SUBORDINATE LEGISLATION AND COMMENCEMENT PROVISIONS
Papers

MR HUMPHRIES (Attorney-General, Minister for Justice and Community Safety and Minister Assisting the Treasurer): Mr Speaker, for the information of members, I present subordinate legislation pursuant to section 6 of the Subordinate Laws Act 1989, in accordance with the schedule of gazettal notices circulated.

The schedule read as follows:

Agents Act -

Appointment of a specified person as member and Chair of the Agents Board - Instrument No. 86 of 1999 (No. 18, dated 5 May 1999).

Determination of fees - Instrument No. 102 of 1999 (S29, dated 4 June 1999).

Board of Senior Secondary Studies Act - Appointment of a specified person as Alternate Member of the Board of Senior Secondary Studies - Instrument No. 89 of 1999 (No. 20, dated 19 May 1999).

Building Act - Publication of Building Code and the Australian Capital Territory Appendix - Instrument No. 88 of 1999 (S25, dated 17 May 1999).

Dangerous Goods Act -

Dangerous Goods (Exemption) Regulations (Amendment) - Subordinate Law No. 5 of 1999 (No. 21, dated 26 May 1999).

Dangerous Goods Regulation (Amendment) - Subordinate Law No. 7 of 1999 (S30, dated 11 June 1999).

Duties Act -

Exemption guidelines for corporate reconstructions - Instrument No. 90 of 1999 (No. 21, dated 26 May 1999).

Exemption guidelines for intergenerational rural transfers - Instrument No. 91 of 1999 (No. 21, dated 26 May 1999).

Declaration notice to ensure duty on the transfer of marketable securities is not levied in more than one jurisdiction for the one transaction - Instrument No. 92 of 1999 (No. 21, dated 26 May 1999).

Energy and Water Act - Determination of fees - Instrument No. 97 of 1999 (No. 22, dated 2 June 1999).

Health Act - Appointment of the ACT Mental Health Services Clinical Incident Review Committee - Instrument No. 93 of 1999 (No. 21, dated 26 May 1999).

Hotel School Act - Appointment of specified person as a member of the Hotel School Board of the Australian Capital Territory - Instrument No. 100 of 1999 (No. 23, dated 9 June 1999).

Justices of the Peace Act - Appointment of Justices of the Peace -

Instrument No. 85 of 1999 (No. 18, dated 5 May 1999).

Instrument No. 103 of 1999 (No. 23, dated 9 June 1999).

Land (Planning and Environment) Act -

Appointment of a specified person to be Deputy Chairperson of the ACT Heritage Council - Instrument No. 80 of 1999 (No. 18, dated 5 May 1999).

Appointment of a specified person to be a member of the ACT Heritage Council - Instrument No. 81 of 1999 (No. 18, dated 5 May 1999).

Legislative Assembly (Members' Staff) Act -

Terms and conditions of employment of staff of Members pursuant to subsection 11(2) - Instrument No. 77 of 1999 (No. 21, dated 26 May 1999).

Terms and conditions of employment of office-holders and the Speaker pursuant to subsection 6(2) - Instrument No. 78 of 1999 (No. 21, dated 26 May 1999).

Liquor Act - Determination of fees - Instrument No. 101 of 1999 (No. 23, dated 9 June 1999).

Meat Act - Determination of fees and charges - Instrument No. 95 of 1999 (No. 21, dated 26 May 1999).

Motor Traffic Act -

Determination of parking charges (Voucher parking) - Instrument No. 82 of 1999 (No. 18, dated 5 May 1999).

Determination of registration fees - Instrument No. 105 of 1999 (S32, dated 15 June 1999).

Motor Traffic Regulations - Declaration of declared holiday period (11 - 14 June 1999) (inclusive) - Instrument No. 99 of 1999 (No. 22, dated 2 June 1999).

Motor Vehicle (Third Party Insurance) Regulations (Amendment) - Subordinate law No. 6 of 1999 (S29, dated 4 June 1999).

Motor Traffic (Amendment) Act 1999 - Notice of commencement (18 June 1999) of provisions other than sections 5, 6, 47 (1) and 47 (2) (No. 24, dated 16 June 1999).

Public Health Act - Determination of fees and charges - Instrument No. 94 of 1999 (No. 21, dated 26 May 1999).

Public Place Names Act - Determinations of nomenclature in the Division of -

Dunlop - Instrument No. 76 of 1999 (No. 17, dated 28 April 1999).

Nicholls - Instrument No. 84 of 1999 (No. 18, dated 5 May 1999).

Remuneration Tribunal Act - Determination of fees and allowances - Instrument No. 75 of 1999 (No. 17, dated 28 April 1999).

Taxation Administration Act - Scale of allowances for expenses of witnesses for the purposes of subsection 82(5) - Instrument No. 83 of 1999 (No. 18, dated 5 May 1999).

Tenancy Tribunal Act - Variation to the Commercial and Retail Leases Code of Practice - Instrument No. 104 of 1999 (No. 23, dated 9 June 1999).

Traffic (Amendment) Act 1999 - Notice of commencement (18 June 1999) of section 4 (No. 24, dated 16 June 1999).

Veterinary Surgeons Act - Determination of fees - Instrument No. 96 of 1999 (No. 21, dated 26 May 1999).

Water Resources Act -

Approval of environmental flow guidelines - Instrument No. 98 of 1999 (S28, dated 2 June 1999).

Determination of fees - Instrument No. 79 of 1999 (No. 17, dated 28 April 1999).

Corrigendum to the Water Resources Act 1998 – Instrument No. 79 of 1999 (No. 18, dated 5 May 1999) (published in *Gazette* No. 17, dated 28 April 1999 as the Water Resources Act).

PAPERS

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

Financial Management Act, pursuant to section 26 - Consolidated financial Management Reports for the months and financial year to date ending 30 April 1999 and 31 May 1999.

Remuneration Tribunal Act, pursuant to section 12 - Determinations, together with statements for:-

Members of the Legislative Assembly for the Australian Capital Territory - Determination No. 44, dated 17 May 1999.

Part-time holders of public offices - Determination No. 45, dated 28 May 1999.

ACT Business Incentive Scheme - Report on outcomes for the period 1995-98.

Cultural Facilities Corporation Act, pursuant to subsection 28(3) - Quarterly report (for the period January to March 1999).

Ministerial Travel Report for the period 1 January to 31 March 1999.

LAND (PLANNING AND ENVIRONMENT) ACT - VARIATION NO. 111 TO THE TERRITORY PLAN
Papers and Ministerial Statement

MR SMYTH (Minister for Urban Services) (11.11): For the information of members, I present, pursuant to section 29 of the Land (Planning and Environment) Act 1991, variation No. 111 to the Territory Plan, relating to the Canberra Centre consolidation. In accordance with the provisions of the Act, this variation is presented with the background papers, a copy of the summaries and reports and a copy of any directions or reports required. I ask for leave to make a short statement.

Leave granted.

MR SMYTH: Mr Speaker, as the Chief Minister did, I will incorporate my prepared statement, but I would just like to say that we are delighted that the committee has considered and approved this variation. The Government worked with the QIC and is very pleased with what they propose. We believe it will be a real asset for the ACT. Not only will it bring jobs in the construction phase; it will become a real asset in Civic in general. I seek leave to have the formal statement incorporated in *Hansard*.

Leave granted.

The speech read as follows:

Mr Speaker, Variation No.111 to the Territory Plan changes the Territory Plan Map and Written Statement by:

- changing the land use policy on the Territory Plan Map for part of Ainslie Avenue from 'Designated Area' to 'Civic Centre (Commercial A)' and 'Major Road'

- removing the overlay symbol on the Territory Plan Map indicating that special requirements apply in the National Capital Plan flanking Main Avenues and Approach Routes

- amending Figure 1 of the Civic Centre policy in Part B2A of the Territory Plan Written Statement to include part of Ainslie Avenue from Bunda Street to the west side of Ballumbir Street in the Precinct 'd' Car parking area and adjusting the boundary of the Precinct 'al' Retail core area, and

- adding controls for development over Ainslie Avenue to the controls for the Car parking precinct at Clause 4.8 of the Civic Centre policy in Part B2A of the Territory Plan Written Statement.

A Preliminary Assessment of the impacts of the proposal was released for public comment in April 1998. The issues raised during this process were considered in preparing the draft Variation.

The draft Variation was released for public comment, in conjunction with the Amendment to the National Capital Plan, in July 1998.

The Amendment to the National Capital Plan has been approved and tabled in Federal Parliament.

The exhibited draft Variation was revised following the public consultation.

In particular, the controls relating to development over the Ainslie Avenue Alignment at Clause 4.8 of the Commercial A polices have been amended to address urban design, landscaping and access issues as follows:

- the setback requirement from Ballumbir Street has been increased to 60 metres and the controls relating to forecourt landscaping have been clarified so that the standard and quality will reflect existing landscape and paving treatments in Garema Place.

- the controls relating to development over Bunda Street have been amended to specify a maximum building width of 48 metres and a requirement for at least 80% of the width of both facades to Bunda Street to be visually connected to street level through the generous provision of openings, glazed walling, verandahs, terraces and/or balconies. In addition, controls have been included to preserve sightlines from Bunda Street and ensure that natural light to the Bunda Street / Ainslie Avenue intersection is maintained by the provision of a significant skylight to the bridging building.

- the controls relating to access have been amended. Ainslie Avenue between Ballumbir Street and Bunda Street shall remain permanently opened to the public for pedestrian access at ground floor level. The Territory shall retain the right through relevant provisions in any lease for the land to utilise this section of Ainslie Avenue as a public transport corridor.

In addition the Development conditions have been amended to address specific concerns raised during the consultation process. In particular, the following amendments have been made:

For the guidelines relating to Active Retail Frontages at 2.2

- References to development of retail areas outside the current alignment of City Walk and Petrie Plaza have been deleted.

- As part of the redevelopment of the facades facing Petrie Plaza and City Walk, provision shall be made for public toilets which are directly accessible from public spaces.

For the guidelines relating to Pedestrian Amenity and Access at 2.3

- A requirement has been included for the design of any bridging building to be physically and visually open and allow for adequate natural light to the intersection through a generous skylight.

- The fit out of the building is required to preserve outlooks to and from Bunda Street and provide for views to the transparent roof.

The Standing Committee on Urban Services considered the Revised draft Variation and, in Report Number 26 of June 1999, endorsed the Revised draft Variation proposal.

I now table Variation No.1 11 to the Territory Plan for the Canberra Centre Consolidation.

ADJOURNMENT

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

That the Assembly do now adjourn.

Mr Chris Cook - Death

MR STANHOPE (Leader of the Opposition) (11.12): Mr Speaker, I take this opportunity to speak to celebrate the life of one of Canberra's and the district's best and most popular athletes, Chris Cook, who died while representing the ACT in a national running competition in Brisbane last weekend. Chris was an ACT representative in the Australian national mountain running championships in Brisbane last weekend. Chris was the 1997 Australian national champion mountain runner, and he was hoping in Brisbane last Saturday to regain the title that he had won a couple of years ago. He was a pioneer of mountain running in Australia and had competed in all national events over the last few years.

Chris Cook, who was known to all his very many friends as "Cookie", was a long-time resident of Queanbeyan. He was a very successful and popular member of the Canberra running fraternity for the last 20 years or so. Chris was a friendly and very successful runner and in his time won many, if not most, of the local runs in the Canberra community. He was a regular, if not one of the most regular, competitors in fun runs, and it is quite ironic that only the week before last Chris won the Terry Fox Fun Run, which is conducted annually by the Canadian High Commission. The week after winning the Terry Fox Fun Run, Chris travelled to Brisbane to represent the ACT in the national mountain running championships. It is unfortunate that Chris, who had complained of not feeling well before the race commenced, collapsed a couple of kilometres into the race and died.

As a younger runner, Chris specialised in the 3,000-metre steeplechase and became an expert in, and a proponent of, the steeplechase. He was at that time in the top two or three steeplechase runners in Australia and regularly represented the ACT nationally in that particular event.

Chris had a very distinctive running style. He had a very high knee lift and a bouncy style and was easily distinguished by all of those of us who are part of the running fraternity here in Canberra. He was always friendly and incredibly popular. He had a special, down-to-earth and very unassuming, self-deprecating quality that endeared him to everybody who knew him.

As I mentioned, Chris died last weekend in the national mountain running championships, at the age of 40. He will be a great loss to all of his friends and to his family. He is survived by his wife, Emily, and children, Heide and Daniel. He was a wonderful family man, and he was a very good friend of mine. He will be missed by everybody associated with athletics in the ACT.

Mr Chris Cook - Death

MR STEFANIAK (Minister for Education) (11.16): Mr Speaker, I was upstairs when I heard Jon Stanhope saying those words. I would like to wholeheartedly endorse everything he said. The ACT, indeed Australia, have lost a fine athlete.

Question resolved in the affirmative.

Assembly adjourned at 11.16 pm