DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

2 September 1999

Thursday, 2 September 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.

PETITION

The Clerk: The following petition has been lodged for presentation:

By **Mr Stanhope**, from 2,154 residents, requesting that the Assembly conduct an investigation into the use of haematology and oncology services to acknowledge the need to maintain existing funding.

The terms of this petition will be recorded in *Hansard* and a copy referred to the appropriate Minister.

Haematology and Oncology Services

The petition read as follows:

> To the Speaker and members of the Legislative Assembly for the Australian Capital Territory
>
> The petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly: that the reductions to the health budget will have a direct, detrimental impact on patients needing cancer services.
>
> Your petitioners therefore request the Assembly to: conduct an investigation into the use of haematology and oncology services to acknowledge the need to maintain existing funding.

Petition received.

LAW REFORM (MISCELLANEOUS PROVISIONS) BILL 1999

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (10.33): Mr Speaker, I present the Law Reform (Miscellaneous Provisions) Bill 1999, together with its explanatory memorandum.

Title read by Clerk.

MR HUMPHRIES: I move:

That this Bill be agreed to in principle.

This Bill makes an array of technical and housekeeping amendments to the law of the Territory. It is designed to improve the statute book by correcting errors, replacing out-of-date references and repealing legislation of no current use. Members will be pleased to hear that it finally sets to rest a longstanding academic debate about the status of certain New South Wales laws in their application to the Territory. In 1985 the New South Wales Acts Application Ordinance purported to repeal a large number of New South Wales Acts that were in force in the ACT. However, this ordinance was in turn disallowed by the Senate on the ground that it did not identify the laws being repealed. The effect of the disallowance on the repeal was the subject of contrary legal opinion and even today the issue is not free of doubt.

This Bill removes any question about the status of those New South Wales Acts by making express provision for their repeal. More importantly, to meet the objection the Senate had in 1985, it gives a comprehensive list of the names of the Acts subject to the repeal. This Bill enables the remaining New South Wales Acts applying in the Territory to be identified with complete certainty for the first time since 1910.

Of more practical significance to members are the series of changes to the Interpretation Act. Traditionally, interpretation Acts have been complex laws accessible only to those with years of legal training. The amendments, replete with useful notes and examples, make the law accessible and crystal clear.

In particular, the Bill will also provide for Bills passed by the Legislative Assembly to be notified under an ACT enactment, the Interpretation Act, rather than under section 25 of the self-government Act; simplify the commencement provisions in Bills, including a standing Macklin clause that would automatically commence new Acts after six months; clarify which provisions form parts of Bills, for example punctuation, and which do not, for example readers' guides; provide more flexibility in the use of approved forms; define a greater range of commonly used terms and facilitate the more flexible use of definitions in legislation; enable penalty provisions in legislation to be simplified; clarify the effect of the repeal, expiry, amendment and modification of legislation; provide for the automatic repeal of new amending Acts once they have commenced; and simplify the citation of Acts, including New South Wales Acts applying in the Territory, and instruments. The changes to the Act bring it up to date. They are designed to help foster the development of a simpler and more accessible statute book.

Mr Speaker, the Bill amends legislation concerning a number of tribunals to provide a common set of standard provisions dealing with the administration and membership of tribunals to foster greater efficiency and flexibility. A number of technical amendments are to be made to the Magistrates Court (Civil Jurisdiction) Act 1982. Of particular interest is an amendment to section 402 which provides for a limit of $10,000 for the

jurisdiction of the Small Claims Court. Surprisingly, section 453 limits the amount of counterclaims and set-offs to $5,000. The amendment makes the set-off amount consistent with the jurisdictional limit of the court.

A number of technical amendments are also made to the Residential Tenancies Act 1997. In particular, section 102 is amended to include a provision for the tribunal to vary or set aside an order on the application of the party in whose absence the judgment was given or entered or the order made. In addition, subsection 115(1) is amended to make the jurisdiction of the tribunal expressly subject to section 48A of the Australian Capital Territory (Self-Government) Act 1988. Section 48A provides that the Supreme Court has all original and appellate jurisdiction necessary for the administration of justice in the Territory. This amendment will avoid any argument that section 115 is inconsistent with section 48A.

I draw the attention of members to a number of other amendments of interest. The Bill amends the Building and Services Act to correct the effect of a consequential amendment in 1988 and to update the language of the Act. The Bill repeals a couple of old archaic laws, including the Printing and Newspapers Act 1961, which despite its 1961 date can actually be traced back to the days of King Henry VIII. It required the registration of newspapers and printers to better enable the state to exercise its powers of censorship and control of the media. Perhaps we should not repeal it after all.

The Bill amends a number of laws to change the name of the Consumer Affairs Bureau to the Office of Fair Trading, to reflect the diverse duties of that office. The Bill amends the Fair Trading Act 1992 to allow for judicial recognition of a code under the Act, as is the case with Acts and regulations, without the need to resort to producing the original approved copy and approved copies of amendments.

The Bill amends section 3 of the Mediation Act 1997, which requires approved agencies and competency standards to be declared in the regulations. This process is administratively time consuming and costly, and it is proposed that it be replaced with a provision enabling the Minister to make a disallowable instrument approving agencies and identifying the required competency standards.

The Bill amends section 19 of the Pawnbrokers Act 1902, New South Wales, as the requirement to hold a public auction for forfeited goods where the loan is over $10 is a burden on the industry. Instead, pawnbrokers will be required to conduct an auction only where the goods are forfeited and have a value of $500 or over, in line with the monetary levels of the Uncollected Goods Act 1996.

Along with the repeal of the 690 old New South Wales Acts, the Bill repeals a number of other laws. For example, the Bill repeals the Maintenance Act 1968. Maintenance is now dealt with by the Family Law Act 1975 of the Commonwealth. In addition the Bill repeals a number of "shell" Acts which are now essentially of historical interest only but which previously housed a number of New South Wales and Imperial Acts. Instead, these Acts will apply as ACT Acts in their own right or be incorporated into more appropriate ACT laws. Mr Speaker, I commend the Bill to the Assembly.

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

JUSTICE AND COMMUNITY SAFETY LEGISLATION AMENDMENT BILL 1999

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (10.41): Mr Speaker, I present the Justice and Community Safety Legislation Amendment Bill 1999, together with its explanatory memorandum.

Title read by Clerk.

MR HUMPHRIES: I move

> That this Bill be agreed to in principle.

Mr Speaker, the Justice and Community Safety Legislation Amendment Bill 1999 includes several amendments that might be thought of as technical but which I have asked to be particularly extracted from the Law Reform (Miscellaneous Provisions) Bill because members might have a particular interest in these amendments.

The first amendment updates the review powers of the Coroners Act which deal with the powers of the Supreme Court to order an inquest or an inquiry into a death or fire, or quash or order a fresh inquest or inquiry into the cause of a death or fire or disaster. This brings the law into conformity with other States by providing that either the Attorney-General or any other person may make an application under sections 92 and 93 of the Act. A person will now be able to make an application independently of the Attorney-General under these provisions, although the Attorney-General is required to be served with notice of and may appear at the hearing of the application.

The second amendment allows the Government Solicitor to act for any body corporate or trust which is at least 50 per cent beneficially owned or controlled by territory government owned corporations and former public employees. This amendment will permit the Territory to protect its interests where the Territory may be liable for damages.

The third amendment is an exception to the confidentiality of jury deliberations. It permits a juror to disclose protected information to a legal practitioner for the purpose of obtaining advice where the jury deliberations are in issue or where information is sought by a legal practitioner if a juror becomes involved in court proceedings, a criminal investigation or a royal commission.

The fourth amendment deals with a number of tribunals and the lower courts to clarify and standardise the application of fees and charges in these jurisdictions. The new scheme is based on the existing structure of Part 13A of the Magistrates Court Act, which has been operating successfully for many years in the Magistrates Court. The amendment provides for internal review rules in relation to decisions made.

Mr Speaker, the final amendment will repeal section 112 of the Supreme Court Act, which required decisions of the President, whether or not he or she was a judge, to be reviewed by a Full Court only. In the Commonwealth, this may have made sense where a President was a Federal Court judge, but it is a costly and inappropriate procedure for the ACT, where the normal practice is that appeals are heard by a single judge. The repeal will still allow the Supreme Court to sit as a Full Court if it considers that circumstances warrant a Full Court hearing. Mr Speaker, I commend the Bill to the Assembly.

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

LAND PLANNING AND ENVIRONMENT AMENDMENT BILL (NO. 3) 1999

MR SMYTH (Minister for Urban Services) (10.44): Mr Speaker, I present the Land Planning and Environment Amendment Bill (No. 3) 1999, together with its explanatory memorandum.

Title read by Clerk.

MR SMYTH: I move:

> That this Bill be agreed to in principle.

Mr Speaker, the Land Planning and Environment Amendment Bill (No. 3) 1999 deals with elements of the Government's rural policy. Members may recall that in June 1997 the Government received the recommendations contained in the Rural Policy Taskforce Report "Towards a Sustainable Future". That report gave 30 recommendations covering rural land use, lease tenure, rural rent issues and the protection of environment and conservation values on rural holdings.

The Government's response, which was released in December 1997, was broadly supportive of the recommendations of the task force, as they balanced the needs of the rural lessees with the Government's responsibility to ensure that the long-term planning and environmental requirements for the Territory are protected. The Government's response outlined the broad implementation strategies, including both legislative and administrative mechanisms. Since that time the mechanisms for implementation have been refined and have resulted in a comprehensive package which includes this amendment Bill.

This Bill makes the necessary amendments to the Land Act to enable the Government to meet three of the key commitments outlined in our response to the task force report: 99-year leases, lease transfer arrangements and land management agreements. The first key element of this amending Bill is part of the package that will enable a large number of rural lessees to be granted 99-year leases, something that is currently not possible. The Government agreed that there were many rural leases in the ACT that were unlikely ever to be required for non-rural uses in the future. The details of the available lease terms and other conditions are contained in new disallowable instruments that have been prepared under section 161 of the Act, for direct grant of rural leases, and section 171A,

for the grant of a further rural lease. The only people who will be able to apply for the direct grant of a rural lease are those who have held a licence or other formal contract over a parcel of land, or land adjoining the parcel, for a period of more than 15 years.

Where a rural lessee can apply for a grant of a further lease for 99 years, additional conditions will be attached to the granting of that lease. The principal condition, in addition to the requirement for a land management agreement, will be that the lessee must pay out their land rent commitment and purchase all government owned improvements, excluding timber treatment.

Section 171A of the Act, which deals with the grant of a further rural lease, has been amended to allow rural lessees a period of 18 months from the commencement of these amendments to apply to pay out their land rent. The new disallowable instrument under section 171A contains the formula to be applied when calculating the payout figure.

The 18-month period has been specified because the formulae in the disallowable instrument are not based on market value and include a 15 per cent discount for landcare requirements. The Government agreed to this approach, recognising that current rural lessees have not had the opportunity in the past to engage in long-term management planning. This was because there was no guarantee of long-term tenure. The 18-month period will provide sufficient time for rural lessees to assess their personal circumstances and make business decisions around primary production activities. Once the 18-month period has elapsed, eligible rural lessees will still be able to apply for 99-year leases, but the payout requirement will be calculated at market value.

If an eligible lessee applies within the 18-month period, the disallowable instrument provides three options for the payment of the amount owing. The first option is a lump sum. The second option is a partial lump sum, with the remaining amount to be paid out over 30 years at 8 per cent interest on a reducing balance. The third option is for the entire sum to be paid out under the 30-year payout arrangements. The lessee will be required to purchase any government owned improvements, excluding timber treatment. Any outstanding rent or other moneys owing under the lease must also be paid before the new lease will be granted. The cost of purchasing the improvements can be included in the lump sum or the 30-year payout arrangements.

In the government response to the task force report, 99-year leases for the Tennent and Booth districts were supported. Recent advice from the NCA indicated that the National Capital Plan does not allow for long-term tenure in Tennent and Booth. Unfortunately, when the Government consulted with the NCA in 1997, there were no indications from the NCA that long-term leases in the Tennent and Booth districts were inconsistent with the National Capital Plan.

The Government is still committed to offering a maximum lease term of 99 years in the Tennent and Booth districts. The NCA has been formally requested to consider the issue of the lease terms as part of the proposed review of the National Capital Plan. Recent advice from the NCA indicates that they would be willing to prepare an amendment to the National Capital Plan to allow for long-term tenure. Any amendment prepared by the NCA would require the approval of both houses of the Federal Parliament. This Government will be pursuing this issue with the Federal Government as a high priority.

One other area which the Government indicated would have a maximum lease term of 99 years is Pialligo. Again, the Government is still committed to delivering on this recommendation. However, the recent developments regarding the proposed transport hub adjacent to the airport have raised the issue of land requirements to provide for such a proposal. The Government will be able to finalise the conditions under which 99-year leases will be offered once there is a clear picture of the land requirements for the proposal.

Following on from the lease term and payout options is the second key element of this amending Bill, which implements part of the Government's response to recommendation 26 of the Rural Policy Taskforce report. The task force recommended restricting the transfer of rural leases for lessees who pay out their rents as a requirement for the granting of the 99-year lease. This recommendation also covered rural lessees in short-term areas who are granted a further short-term rental lease. In the short-term areas rural lessees will also have 18 months to apply for a further short-term rental lease, which will be granted at less than market value. As with the long-term leases, all applications for short-term rural leases after the 18 months will be granted at market value.

The Government agreed with the principle of restricting the transfer of these leases in order to prevent the rural lessees reaping windfall gains by being granted a lease at less than market value and then selling at market value. The Act has been amended to require the rural lessee to gain the Executive's consent to transfer their lease. In addition to that restriction, the amendment specifies that if any transfer for a 99-year lease is sought within 10 years of the grant of the lease then the lessee will be required to pay a sum of money to the Territory. That sum of money will be 50 per cent of the difference between the land value at sale and the land value paid when the lease was granted. Lessee owned improvements are not included in the land value. For short-term leases, if any transfer is within one-third of the term of their lease, the sum payable to the Government will be 50 per cent of the land value at sale, less the capitalised rent, less the lessee purchased improvements. If the lessee took up either 30-year payout arrangement, the lessee will also be required to pay out any moneys owing under the arrangement before the Executive's consent to transfer will be given.

The task force also recommended that transfers to immediate members of family and family companies be exempt from the 50 per cent payment. This was to recognise that financial penalties on lessees who wish to pass on their farm to the next generation would be inappropriate. While the Government accepts the principle behind that recommendation, the exemption will only apply to transfers to an immediate member of the family, which has been defined in this amending Bill.

Transfers to family companies will, however, not be exempt from the payment. This is because a rural lessee could, with Executive consent, transfer the lease to a family company and be exempt from payment. The lessee, as a shareholder in the family company, could then sell their shares in the company, as the lease is a company asset. This is a very simple way to avoid the 50 per cent penalty. The options for drafting an amendment that could allow a family company to be exempt without creating this loophole were looked at in great detail. However, it became clear that it would be

extremely difficult to legislate to ensure that these transactions were notified so that the 50 per cent payment due to the Territory could be demanded. For this reason it would be inappropriate and irresponsible to exempt transfers to family companies from the 50 per cent payment.

The third element of this Bill is the requirement for rural lessees to have land management agreements. One of the most difficult tasks which face all governments in relation to rural holdings is the need to balance the rights of farmers to earn a living from the land against the environment conservation requirements which increase with our improving knowledge of the fragility of our environment. Existing rural leases have a clause that require rural lessees to have property management agreements. The task force report recommended that the requirement for a management agreement be removed from the lease and put into the Act.

The Government agreed that a legislative requirement for management agreements was a sensible approach. A new division within Part VI of the Land Act has been drafted. This division specifies that the Executive will grant a rural lease, grant a further rural lease, vary a rural lease or consent to the assignment or transfer of a rural lease only if the proposed lessee has entered into a land management agreement with the Territory.

The Government has taken the opportunity to develop, in consultation with rural lessees and community organisations, a pro forma land management agreement that will provide detailed guidance to rural lessees on what management regimes are required for their property and identify any special conservation areas within their lease requiring special management. This has been a cooperative effort, recognising that both the rural lessees and the Government have a responsibility to protect our ecological communities, while enabling rural lessees to continue their business as farmers.

In order for the land management agreements to be effective management tools, the Act has also been amended to make the land management agreements subject to the "Orders" provision in Part VI of the Act. This means that if a rural lessee does not manage their lease in accordance with the approved land management agreement action can be taken to require them to meet their responsibilities under the agreement. Schedule 5 of the Act has also been amended to provide for a financial penalty of 50 penalty units, which is $5,000, where the lessee continues to manage their lease contrary to their agreement. The land management agreement has been trialled with some rural lessees, and if this amendment is passed I will, in accordance with the new provisions, approve that pro forma for immediate use.

The task force also made recommendations on the development of farm tourism on rural leases. I wish to advise members that I intend to table a new regulation under the Land (Planning and Environment) Act 1991 that permits farm occupations and farm businesses where rural purposes are permitted by a lease. As with existing home business approvals, there will now be levels of farm occupations and businesses which will not require approval under the Land Act. However, where the level of activity is more intense, a development application will be necessary to fully assess the impact of that proposal.

As I have mentioned, two new disallowable instruments have been prepared which complement this Bill and deal with other aspects of the rural policy package. I will table these instruments once this Bill and the Lands Acquisition Amendment Bill have been debated and passed by the Assembly. This is a logical order for the Assembly to deal with the many elements of this complex package, as the contents of the disallowable instruments are reliant on the passage of the two amendment Bills.

For the information of lessees and the community, a guide to this rural policy package, called "Farming in the ACT", has been drafted. The content of the document can be finalised once the Assembly has dealt with the amending Bills and disallowable instruments. I will be happy to provide copies of the guide to members when it is finalised.

The Government has produced a comprehensive rural policy package which provides rural lessees with a blueprint for the future of rural leasing and land management in the ACT. The Government's rural policy provides an appropriate balance between many competing issues, and this amending Bill contains the critical elements required to enable rural lessees to plan for and implement sustainable management strategies for their leases.

Mr Speaker, it would be remiss of me on this occasion not to acknowledge the vast amount of cooperation the Government has had from groups such as the rural lessees and others. The president of the Rural Lessees Association, Mr Harold Adams, is with us today. I am very grateful for the support that Harold and the lessees have lent. We have agreed on many things; we have disagreed on some. It has been worked through very reasonably. The other people I would like to congratulate are the staff in Planning and Land Management, who have laboured over this for some two years. What at first seemed to be perhaps a simple implementation turned into a very serious drafting exercise. I congratulate the staff in PALM who have been working on this Bill and the rural lease issue on their perseverance and the high standard of work that they have put in.

There will be a need for amendments to this package. I will circulate those to members as soon as they are drafted. Some other issues have been raised with us recently that the Government will consider. Members may have amendments themselves.

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

LANDS ACQUISITION AMENDMENT BILL 1999

MR SMYTH (Minister for Urban Services) (11.00): Mr Speaker, I present the Lands Acquisition Amendment Bill 1999, together with its explanatory memorandum.

Title read by Clerk.

MR SMYTH: I move:

> That this Bill be agreed to in principle.

This Bill implements in part the Government's response to the Rural Policy Taskforce report, which was released in December 1997. One of the issues raised in the Government's response was the need to clarify the application of the Lands Acquisition Act 1994 to the acquisition of short-term rural leases. Rural leases on the fringe of urban areas have in recent years been short-term leases. This is because the long-term planning of Canberra's development may eventually require many of these areas for urban development or uses associated with urban development. One of the disadvantages of this need to balance the rural and development needs of the ACT has been the uncertainty created for those rural lessees in short-term lease areas. The Government responded to these issues in other elements of the response to the task force report.

A new rural lease term map has been developed which identifies the maximum lease terms available to rural lessees, many of whom now have the opportunity to obtain 99-year lease terms. Some rural areas are still under investigation, but as those studies are finalised the rural lease term map will be updated.

For many sound planning reasons, there are a number of rural blocks that will remain on short-term leases as they are in areas identified for future urban expansion. The existing rents were calculated to take into account that these leases are short term, and the new rent provisions have been calculated on the carrying capacity of the properties, with a 15 per cent discount, as specified in the Government's response to the task force report. Should the Government need to acquire these leases prior to the end of their lease term, the appropriate legislative mechanism will be the Lands Acquisition Act. It is a requirement of the Act that the lessees be compensated on just terms.

Experience highlighted a problem with the current provisions of the Act where a position was argued that it could be assumed that a further lease would be granted on application. This would then mean that compensation for a short-term lease would be calculated assuming guaranteed long-term tenure, which would result in inappropriately high compensation values being assessed. By being in a short-term lease area, it is clear that the likelihood of a grant of a further lease cannot be assumed. In fact, it would be more appropriate to assume that a further lease may not be granted as the areas are identified for future urban expansion. Mr Speaker, for this reason the Government, in its response to the Rural Policy Taskforce report, flagged its intention to amend the Lands Acquisition Act to limit the amount of compensation for these short-term leases to the remainder of the term in the existing lease.

Section 45 of the Lands Acquisition Act deals with matters that can be considered for assessing compensation. Paragraph 45(1)(d) identifies the likelihood of a grant of a further lease under the Land Act 1991 as a matter to be considered in assessing compensation. That paragraph has been amended to subject it to the provisions of section 50, which deals with matters to be disregarded in assessing compensation. Section 50 has been amended to specify that where a rural lease has been granted for a term of less than 21 years the right to apply for a further lease is not to be considered when assessing compensation. This means that only the remaining term of the existing lease can be taken into account.

These amendments ensure that there is no uncertainty about the basis on which compensation for a short-term rural lease will be calculated. It is necessary to ensure that rent paid at less than market value on short-term rural leases, and the limited tenure attached to the leases, are taken into account when assessing compensation. By including these restrictions on the assessment of compensation, the Government has ensured that the compensation will be on just terms, as required by the Act. However, the Bill removes the opportunity for windfall gains through high compensation payments based on any inappropriate interpretations of the existing provisions.

This Bill is part of the Government's comprehensive approach to rural policy, which seeks to clarify areas of ambiguity and uncertainty for rural lessees. Without the amendment, this Government and future governments will be left open to the possibility of inappropriately large compensation payouts for short-term rural leases. It would be irresponsible to allow that opportunity to remain.

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

JUSTICE AND COMMUNITY SAFETY - STANDING COMMITTEE
Printing, Circulation and Publication of Reports

MR OSBORNE (11.04): I move:

That:

(1) if the Assembly is not sitting when the Standing Committee on Justice and Community Safety has completed its reports on:

(a) the establishment of an ACT prison (second interim report); and/or

(b) its inquiry into the Joint Emergency Services Centre

the committee may send its report on the inquiry to the Speaker or, in the absence of the Speaker, to the Deputy Speaker who is authorised to give directions for its printing, publication and circulation; and

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

The committee hopes to report in the next month on those two issues. That is the reason behind this motion.

Question resolved in the affirmative.

STANDING COMMITTEES
Reference - Annual and Financial Reports 1998-99

MS CARNELL (Chief Minister) (11.05): Mr Speaker, I move:

That, notwithstanding the resolution of the Assembly of 28 April 1998 establishing standing committees:

(1) the annual and financial reports for the financial year 1998-99 presented to the Assembly pursuant to the Annual Reports (Government Agencies) Act 1995 stand referred, on presentation, to the relevant standing committee for inquiry and report by 25 November 1999;

(2) if the Assembly is not sitting when a committee completes its inquiry, that committee may send the relevant report to the Speaker or, in the absence of the Speaker, to the Deputy Speaker who is authorised to give directions for its printing, publication and circulation; and

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

At the time the Estimates Committee was established on 22 April 1999, Mr Kaine moved amendments to the Government's motion to remove the reference to the Estimates Committee also examining annual reports. Mr Kaine foreshadowed that, if the Assembly supported his amendments, at a later time amendments would be moved placing the responsibility for examining annual reports on the appropriate portfolio committees. The Government has moved this motion to facilitate Mr Kaine's position and the Government's position on annual reports.

Under the Annual Reports (Government Agencies) Act 1995, all reports must be presented to Ministers within 10 weeks of the end of the reporting year. This means that all financial year reports must be presented to Ministers by 8 September 1999. Ministers then have six sitting days in which to table the reports. The practice has been to table reports during the late September sitting week. This year it will be during the sitting week of 12 to 14 October, simply because we are not sitting at the end of September this year. That week is as early as possible after the reports are presented to Ministers.

The motion will allow an annual report to be examined by the committee that has built up expertise in the area of operation of that particular portfolio. It allows a greater level of scrutiny of the department, as the committee will already be familiar with the activities of the department. The reference of annual reports to standing committees is also consistent with the recommendations of the report of the Review of Governance, which has been tabled and debated in this Assembly. I note that Mr Berry proposes to move an amendment which appears to be quite sensible.

MR BERRY (11.07): Mr Speaker, I move:

After paragraph (2) insert the following new paragraph:

"(2A) that, notwithstanding standing order 229, only one standing committee may meet for the consideration of the inquiry into 1998-99 annual and financial reports at any given period of time;".

This amendment has been applauded by the Chief Minister. It merely introduces into the scheme proposed for the assessment of annual reports the requirement that no standing committee meet at the same time as another one is meeting. Bear in mind that some members are on more than one committee. They would have a great deal of difficulty dealing with a committee in formal sessions if they were attending another one. You cannot attend them all at once, not even Mr Hird. It is important for the rest of the Assembly that we are able to gain access to committees and observe the usual practice of all members being involved in the process. This is an amendment described as sensible by none other than the Chief Minister, which might cause some people to worry, but they need not worry about it, because it has my endorsement too.

MR HIRD (11.09): Mr Speaker, I find myself at a loss in voting for this amendment and endorsing the proposal by our colleague Mr Berry. A bolt of lightning has hit Mr Berry. I certainly appreciate his amendment because of the number of committees I am involved with. I thank him for a sensible amendment, one that does him credit on this occasion.

MR KAINE (11.10): Mr Speaker, I support the motion put forward by the Chief Minister. Of course, we did discuss it, and it is generally in accord with what we discussed. I am happy to support Mr Berry's amendment, particularly as it suits my colleague Mr Hird. But there is yet another aspect which I think we need to have regard for. If all of the committees are to meet in succession over the period until 25 November and consider their reports in some detail, I think 25 November is far too tight a target. Not only does Mr Hird have to attend all of them but he also has to participate in the writing of the subsequent reports. I think that is a bit tight. There is no great urgency, so I will move a further amendment to delete the date 25 November 1999 and insert in lieu the date 1 February 2000. That will give everybody a fair opportunity to deal with the business that they have to attend to.

I have one additional comment. As I have said before in this place, the public accounts committee, currently incorporated in the Chief Minister's Portfolio Committee, has a statutory role to play in these matters. Its terms of reference require it to examine the accounts of the Government, as opposed to examining the estimates, which of course is the function of the Estimates Committee.

Referring all of these reports to the various committees of the Assembly in a sense removes the responsibility from the public accounts committee for doing what it was established to do. In any case, looking at the performance of the Government in the accounting sense, if done in a fragmented way by each of the various portfolio committees, in my view would only be half doing the job. Despite the allocation of particular agency annual reports to particular Assembly committees, I think there is still an overriding responsibility on the public accounts committee to look at the total picture.

From the PAC viewpoint, regardless of what the other committees might be doing, I think there still is a responsibility on the PAC, and I would be urging the PAC to accept the responsibility that is imposed on it by its terms of reference, to look at the

overall picture and not only to give a report in connection with the reports that fall within the ambit of the Chief Minister's Portfolio Committee but also to give a much broader report on the whole performance of the Government in the financial sense.

Every parliament in Australia essentially has a public accounts committee. Ours has been in place ever since this house was established in 1989. A move such as this to break down the function that is properly that of a public accounts committee, I think, is something that we need to be vigilant about. The PAC still has a role, by definition, and I believe that the PAC will still continue to perform that role, regardless of what the other portfolio committees do.

MS TUCKER (11.14): This motion raises the issue of what is the best committee process for dealing with both budget papers and annual reports. As members are aware, the Greens' policy on the budget process is that there should be an ongoing budget accountability committee which would operate on an annual cycle, firstly, in the development of next year's budget through discussion of budget priorities and reviewing draft budgets. The committee would then publicly examine the budget that is tabled and review the annual reports to see whether agencies performed as was projected in the previous year's budget.

I have therefore not supported the call that has been raised by the Government in the past for the abandonment of the Estimates Committee process and just referring different budget papers to the relevant portfolio committee. There is great value in having the Estimates Committee look at the budget as a whole in order to review the overall strategy of the Government and the balance of priorities and funding between the different sectors of government. However, I note that the Select Committee on the Report of the Review of Governance agreed with the Pettit review that it would be appropriate for the performance of individual agencies to be assessed by the portfolio committees through inquiries into annual reports.

I can see that there could be some value in the portfolio committees looking in detail at the annual reports relevant to their portfolios. The committees obviously would have developed some expertise and knowledge in the area and they would be able to focus on problems in the portfolio area more quickly than an Estimates Committee having to go through all the annual reports in a rather fast and sometimes superficial manner. I am concerned, though, that what you are losing with this arrangements is the ability for members who have an interest across all portfolios to become involved in discussions. Obviously they could still attend meetings but they could not be part of the deliberative discussions.

However, as I said, I am prepared to support this motion, because I do not think Assembly processes should be fixed in concrete. It will be interesting to see how this works. I am prepared to support this motion for a year as a trial to see how it works. I intended to put up an amendment which is almost identical to Mr Kaine's. I will not move it unless members have a problem with his reporting date. I was going to suggest that we delete the date in the first paragraph of the motion and just say "to the relevant standing committee for inquiry and report" without a date. I have conferred with my

secretary, and I believe that it was an inappropriate date that was put there. Initially, it is not going to be possible in that timeframe to do a good job, considering the other commitments my committee has made for that period of time.

I will be supporting Mr Kaine's amendment. I will also be supporting Mr Berry's amendment, which , as Mr Hird pointed out, seems quite reasonable.

Amendment agreed to

MR SPEAKER: Mr Kaine, would you like to move your amendment?

Amendment (by **Mr Kaine**), by leave, agreed to:

Paragraph (1), omit "25 November 1999", substitute "1 February 2000".

Motion, as amended, agreed to.

POSSIBLE CONFLICT OF INTEREST

MR OSBORNE: I seek leave to make a short speech in relation to the two Bills tabled by Mr Smyth.

Leave granted.

MR OSBORNE: I inform the Assembly that I will not be taking part in the debate or the vote on these two Bills because I am a rural lessee.

Mr Kaine: Are you going to abstain from the debates on rates because you are a ratepayer?

MR OSBORNE: I take on board what Mr Kaine says, but I think this is perhaps a little bit different. I have a long-term, 45-year lease. There are no government improvements, so it really does not have any bearing on me, but I think the right thing to do would be not to take part in the debate. When I get lobbied by my neighbours, I will be able to say I am not involved. I think it is the right thing to do. I did seek advice from the Clerk a while ago. It was not clear-cut but, as with the issue of poker machines, if there is a grey area I think the right thing to do is not to take part in the debate.

HEALTH REGULATION (MATERNAL HEALTH INFORMATION) ACT - MATERNAL HEALTH INFORMATION REGULATIONS 1999 (SUBORDINATE LAW NO. 15 OF 1999)
Motion for Disallowance

MR BERRY (11.19**)**: I move:

> That, pursuant to the Subordinate Laws Act 1989, this Assembly disallows Subordinate Law No. 15 of 1999, being the Maternal Health Information Regulations 1999 made under the Health Regulation (Maternal Health Information) Act 1998.

Mr Speaker, this disallowance motion is the culmination of much debate about whether or not, in the first place, Ministers have the power, under the Health Regulation (Maternal Health Information) Act 1998, to make such regulations. There has been debate about that, and I see media reports that there may well be a debate about it in front of the judiciary one way or another.

For the purposes of this debate, I merely put it to members that it was never the intention of the legislation that Ministers would override the expert panel set out in the legislation. That expert panel was to consist of a specialist in obstetrics nominated by the ACT Health and Community Care Services Board, a specialist in neonatal medicine nominated by the ACT Health and Community Care Services Board, a specialist in obstetrics nominated by the Calvary Hospital Board of Management, a specialist in neonatal medicine nominated by the Calvary Hospital Board of Management, a specialist in psychiatry nominated by the territory branch of the relevant specialists college or institution, a registered nurse currently specialising in women's health issues nominated by the Calvary Hospital Board of Management, and a registered nurse currently specialising in neonatal medicine nominated by the ACT Health and Community Care Services Board. Seven specialists have been endorsed as the appropriate decision-making body in relation to the information which women ought to be forced to receive pursuant to the Health Regulation (Maternal Health Information) Act 1998.

Let me make myself clear, Mr Speaker. I do not believe that the Health Regulation (Maternal Health Information) Act should ever have been made. There is no compelling reason at all for information to be forced upon women who are considering an abortion. This is the only medical procedure where this sort of emotive information has been attempted to be prescribed by legislators.

I look around this place and I see no specialists in any of the areas which have been prescribed in the legislation who might make a judgment about what is appropriate and what is not appropriate for the prescription which has been attempted by Mr Humphries. Mr Moore, Mr Humphries, Mrs Carnell and I might come closest, as we were Health Ministers, but I am not sure that there are too many people out there in the community who would accept our advice on any particular health matter.

Mrs Carnell is a pharmacist of long standing, but I am not sure that her experience goes to the issue of providing abortions, psychiatry, neonatal services and so on. In fact, she does have a long history of providing medications for various things. If we, here, attempted to prescribe what Mrs Carnell was going to put in her cough mixtures or other mixtures, I wonder whether she would find that acceptable. I would not, because I do not think it is within my bailiwick to make those sorts of judgments about the professional ethics of people who are registered under different legislation made in this house.

Mr Speaker, there is absolutely no justification for these people to override the professional judgment of the specialists who were appointed by law, by this house, not so long ago to make this judgment. What did they say? They said, Mr Speaker, that the provision of pictures in abortion information was inappropriate and, possibly, counterproductive. So we have a situation where the expert committee has said no, it could be counterproductive; it could do injury.

Imagine, Mr Speaker, that a woman has been informed that she has a compromised foetus and is considering an abortion because of that, but she is forced to consider information and issue a joint statement that she has considered information which describes foetuses which have not been compromised. I do not have any special knowledge about psychiatry, but I can imagine, with my meagre knowledge, that there are strong possibilities that this would be unnecessary and counterproductive. I cannot see, for the life of me, why people would want to force this on women unless they had a twisted view about abortion. Abortion is a matter of a woman's control over her reproductive system, and it is not a matter in which politicians should interfere. It is certainly not a matter that the churches should interfere in. Most importantly, it is not a matter that politicians should interfere in.

Mr Speaker, the decision today, it appears, will depend on whether Mrs Carnell votes for these regulations or not. Mrs Carnell has oft claimed that she is pro-choice – pro-choice, it appears, except for allowing a woman to choose whether she wants to see information or not in relation to these matters. Mrs Carnell, in the debate last year, spoke in support of the preparation of the information by this panel. Let us reflect on that. Speaking in support of the preparation of the information by this panel, she said:

> They will give us information approved by an independent group of people - a balanced, independent, full suite of information.

It is not balanced enough, it appears. So here we have a closet right-to-lifer, it appears, deciding that it is not enough. Well, those of you who chuckle only have to look at the performance. Mrs Carnell opposed my moves to decriminalise abortion. She has supported moves to introduce this absolutely disgusting legislation and have it brought into this house. Now she supports taking away a woman's choice in relation to the provision of foetal pictures.

Let us turn to the pictures for a moment. I see that there are three or four pictures prescribed in the regulations. These are pictures which are designed to be used as emotional leverage at a point when a woman is considering an abortion. I cannot judge this because I have never been in the position - I can only go on what I have been told in relation to the matter - but this is at a point when a very serious decision has been made about the future of a pregnancy. At that point, after the woman has made up her mind that she wants to consider a termination, she goes to her GP and others and she is then told that Mr Humphries and Mrs Carnell want her to see these pictures, three of them - one that describes a foetus at six weeks, one at 11 weeks and one at 12 weeks.

Mrs Carnell says, "Well, they are only pictures". They are only pictures, but they are pictures shown to some women at what may be described as a crucial time in their lives, and that is why the expert panel of specialists said that this could be counterproductive and inappropriate.

Mrs Carnell said at the early stage of the public debate on this matter that she would not support emotional claptrap. Well, here she is, supporting the worst type of emotional claptrap that has been brought to this place. If these regulations made under the Health Regulation (Maternal Health Information) Act are not disallowed today, there is a fair argument for a lot of women out there to ask what self-government has done for them.

Mr Speaker, one of these pictures at least, as far as I can make out, comes from a book called *A Child is Born*. It looks like a mirror reversal of an image in this book. At first, pictures from this book were proposed in colour format by Mr Humphries. Mrs Carnell described them as emotional claptrap. One of them at least remains. This publication, *A Child is Born*, is by Lennart Nilsson, and I will read from it. It is a quality publication which I would recommend as reading for anybody. In my view it is a quality publication which tells us about life - where it starts and how it all happens - in graphic detail, but it is well presented. Mr Speaker, if this mob opposite were serious about providing information out of this book, they might have provided all of it. If they had provided all of it, they would have come to this passage:

> For most women, it is a heady feeling to know that a baby is on the way. For others, questions are raised: Can I, and should I, stay pregnant? Around the world, somewhat over one-quarter of pregnant women answer these questions in the negative and opt for abortion instead. The earlier an abortion is carried out, the less complicated the procedure. Within the first three months, an abortion is technically very simple, and usually the woman can leave the clinic or hospital after a few hours. In certain countries, drugs are becoming available which, taken in the early weeks, lower levels of progesterone and bring on an abortion similar to a heavy menstrual period. Whatever the regulations surrounding abortion in any particular country, or procedure, the decision to terminate pregnancy is difficult for a woman, and very often also for the man concerned.

So, Mr Speaker, here we are being very selective. Not only are we emotionally bludgeoning women into a decision or away from a decision, we also are being very selective in the information that we provide. How ethical is that, Chief Minister? How ethical is it to be so selective as to use this as an emotional lever on women who might be considering the termination of a pregnancy? Mr Speaker, this is a disgraceful episode in the life of this Assembly.

I need also to point to Mr Humphries' actions in this, the self-righteous Mr Humphries. We heard him speak in the debate when this matter was last before the house. Here is what the mild mannered Mr Humphries said:

> The information in this case needs to be approved, in its presentation and format and accompanying information, by a panel of five or perhaps more specialists.

Seven as it turns out. He continued:

> I feel confident that that process is going to lead to a document which is balanced, reasonable and medically accurate, and designed to do what this whole Bill is about doing, which is providing accurate information to a woman about the total picture confronting her as she considers an abortion.

That is not good enough, Mr Humphries, so you want to provide them with inaccurate information. That is what you want to do. You want to adopt the practices more at home in North America where fringe dwellers blow up abortion clinics and kill abortion workers. That is where these ideas come from, Mr Humphries. This is one of the strongest samples of hypocrisy that I have seen for some time in this place. You and Mrs Carnell stand up in this place and boast about the balanced information that is going to come from this expert panel, yet you come forward with a piece of legislation, disallowable legislation, which seeks to override that balanced view described by not just a majority of these experts but all of them, every one of them. *(Extension of time granted)* You are trying to impinge upon the medical ethics of people who are involved in this procedure.

It is not as if these people were appointed to this panel because of their particular views on abortion. They were not appointed for those reasons. In fact, the legislation requires that they be selected because there is a possibility that they might have different views on abortion, entirely different views, but at the end of the day their professional ethics drove them to a decision which would have excluded forcing women to receive this information. Mr Speaker, this episode in the Assembly's history is one that will be remembered.

I understand, Mr Speaker, that there is a chance of some legal action. I wonder whether there was a financial impact statement made before this regulation was put by this economically rational government that wants a financial impact statement on everything. I wonder whether a financial impact statement was prepared on the effect of moving this law. How much will it cost the Territory to defend the action in relation to the matter? I do not know what it will cost the people who want to take this to the courts. I assume they have good reasons to consider that they might succeed. I will announce now that I am happy to participate in fundraising to assist them in the case. That may in turn cause a financial impact on the Territory. I wonder whether that was considered at all. Anybody who is interested can name me as a point of contact for fundraising on the issue because this is so horrible that every avenue has to be exhausted to stop this ratbaggery. That is all it can be described as.

You have to wonder why it is that people will do this. Are they doing it for the good of the women involved? Don't they think that women are capable of making their own decisions about this? Don't they think that women are intelligent enough to determine

when they want to see more information about the matter? Apparently not. Don't they worry about the effects of imposing this on women, contrary to the credible specialist advice? Don't they even worry about that?

Would you be comfortable with prescribing regulations which dictate certain procedures in relation to medical procedures in our hospitals, such as what information might be provided, for example, for people with a mental illness before they receive treatment? Would you be comfortable doing that? Would you be comfortable with saying, "You shall prescribe certain drugs", or, "You shall give people certain information."?

Ethically, the medical professions all have the obligation to fully inform their patients. Would you see us as a group of experts to override these medically qualified people? I do not. I do not know of anybody here who might want to turn their hand to brain surgery or something like that. Who would feel qualified? None of you. This is an absolutely horrible act to try to impose upon women.

Mr Speaker, I will not rest. If this legislation gets through I will not rest until it is overridden at some stage. I do not intend to rest. I do not intend to rest, Mr Speaker, until I see the crime of abortion wiped from the statute books. If you people over there have a personal view about what abortion is, keep it to yourselves. Most of you will never have to face it. Only two people in this chamber will ever have had to consider such an issue. The rest of you will not, unless you want to impose your views on somebody else. That is why this particular move is so crook, because it is about you people imposing your views on women and not accepting that they have the intelligence to make up their own minds about this. You are treating them like they were treated in the nineteenth century, as chattels, as goods owned by men. If you are comfortable with that, support this move by Gary Humphries, Kate Carnell and Brendan Smyth. Support it if you are comfortable with that position. I am not comfortable with it and I will not be supporting it.

MS CARNELL (Chief Minister) (11.40): Mr Speaker, I will start by saying that I think it is very important for every member of this Assembly to respect others' views on this because I am sure that every member of the Assembly has spent many hours over the years looking at this issue from a moral, personal and in some cases religious point of view, and certainly from the perspective of the rights of the people involved. It always concerns me that Mr Berry does not take that line. He used a very large percentage of his speech to attack other people's views on what is a very important issue. I have no intention of doing that because it is simply unacceptable in an area that I know all members take very seriously.

Mr Speaker, my position on this is as it has always been, and that is that full information, correct information, can never be a bad thing. Mr Berry said, "Would any of you support a situation where full information on, say, the treatment of somebody with a mental illness was given to them before treatment?". I put up my hand. Yes. In fact, throughout my professional career I have supported full information, both the good information and also the information that may cause some concern.

I will use as an example something that may be relevant for today, and that is the contraceptive pill. Would we as an Assembly suggest that women should not be given all of the information about the contraceptive pill? The information says that one in a million people will get a blood clot and die, or lose their legs or end up with a stroke. Do we believe that because it is only one in a million we should not give that information because it may concern some women? Some women might get scared and not take the contraceptive pill and end up with an unwanted pregnancy. I hope not. I hope all of our views would be the same as mine, and that is that all information should be given. In fact, we do have a High Court case to suggest that that is the case. I believe people should be told both the good bits and the bad bits, the bits that might be of concern in some circumstances.

I believe it is absolutely appropriate that a full range of information should be given, whatever the medication or treatment might be. Take someone going in for bypass surgery at Canberra Hospital. Do we believe that because there is only a very small incidence of people dying we should not tell them about that? Do we believe we should not tell them about the incidence because it might scare them and stop them having the surgery and therefore they might end up with a heart attack and that would be a problem? I hope not, Mr Speaker. Certainly, my view on medical information is that full information should be made available, and that information must be correct.

I have looked at the information that has been put forward in these regulations and it is certainly my view that it is factually correct. Comments have been made in the media and in other places, even here this morning, that we are somehow taking a very paternal view in putting forward this information. Mr Speaker, I think quite the opposite. I think that women have a total capacity to determine what information is appropriate to them, or what information they want to take on board and what information they do not.

To suggest for one moment that I, as a woman, seeing the same pictures that I have seen in biology books all my life, would somehow not be able to cope with that when considering whether or not I may have a termination is, I think, an enormous put-down. To assume that I would be too emotional to handle factual information is a huge put-down to women. Women have a total capacity to take on board all factual information and make the decision that is right for them. For me, Mr Speaker, that is what pro-choice is about. I know it is not what Mr Berry or others think, but my personal view is that you cannot make a choice on whether you take a particular medication, have bypass surgery or have a termination without the full range of information. If you do not have the full range of information you are not making a choice based upon all of the information.

One of the things that are important here is that the legislation does not require anybody to read the information if they do not want to. What it requires is that the information be provided. A woman who says, “Look, I do not need any of this; I know exactly how I feel; I know exactly what I want; I have made my choice”, can decide to go ahead with the termination. No problems. If a woman says, “Look, I would like to know more; I am still trying to make a decision”, she can read the information and other information and the book that Mr Berry had and whatever else helps her to make the decision that is right for her - in other words, information that gives her real choice. Nobody is sitting

there saying, "You will look at these pictures even if they upset you". If women do not want to look at it, they do not have to, but they do have to be provided with the information.

Mr Berry and others have commented that somehow the information that is being provided is undermining the information put together by the expert committee. It is my understanding that all of the information put forward by the expert committee will be part of the package. There will be some extra information. It is my understanding that the information that is being added, and I have looked at it, is factually correct. There is nothing factually wrong about the information. Those pictures, as everybody calls them, and others very similar, were in my biology books when I was at university, so I assume others have seen them regularly as well. Mr Speaker, to assume that women cannot cope with a full range of factual information is very, very paternalistic. From my perspective, it is simply not true.

Mr Speaker, I would like to finish by saying that I find the views of Mr Moore in this area very contradictory. Mr Moore has been absolutely adamant about full disclosure in all sorts of areas, such as recently in the genetically modified food area. He says it has to be on the label; we have to disclose everything. Ms Tucker, on the eggs issue, says that we have to know where eggs come from. In both those areas, even if the actual product is virtually the same, both Mr Moore and Ms Tucker have argued quite specifically that people should know and that there should be full disclosure. I agree. That is the reason why I have supported and do personally support both of those things. Why then in this case would Mr Moore and Ms Tucker not go down that path? I respect their views on it. I just, as I said, do not understand. From my perspective, full information is important.

I would like to finish with one comment about Mr Berry's comments about doctors. He went through all the specialists. In my experience doctors are the last people to ever support information going to patients. In the whole time that I have been involved in pharmacy and practising pharmacy, when we have gone down the path of patient information leaflets, and all sorts of what I think are huge steps forward in what people are provided with their medication, the people who have opposed them have been exactly those people. Why? Mr Berry actually hit the nail on the head. It is because they believe they should control the information that goes to a patient. They believe they know what a patient should have and what information they should have; what they can cope with.

I have to say I disagree. I have disagreed on this issue for my whole professional career. I believe that the patient, whether in respect of taking a medication or having a medical procedure, or a woman who is considering whether to have a termination, is the person who should determine what information they take on board and how they balance competing views, not doctors.

It being 45 minutes after the commencement of Assembly business, the debate was interrupted in accordance with standing order 77.

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

> That so much of the standing and temporary orders be suspended as would prevent order of the day, Assembly business, relating to the disallowance of the Maternal Health Information Regulations 1999, having precedence over Executive business in the ordinary routine of business this day.

MS CARNELL: Mr Speaker, to sum up, my view on this is very clear and I have been consistent all the way through. I am pro-choice, but I believe very strongly that pro-choice is about giving women the capacity to choose based upon a full suite of factual information. Nobody has indicated in this place that any of the information put forward is not factual. Certainly, having had a look at it, it looks factual to me.

We are giving all of the information that the expert panel put forward, plus some extra information. I think I have been really consistent all the way through my professional and political career in saying that I believe in full disclosure, full information, and real choice for people in all sorts of areas, and this is just one of them. I believe that women should have a capacity to choose whether they have a termination or not, but I believe that when making a very difficult decision, as this one is for any woman, more factual information cannot hurt.

Nobody is forcing a woman to read something they do not feel a need for. Give them a booklet and if they want to throw it in the bin they can do so. If they feel a need for more information to make a decision, they can read it. How can this, Mr Speaker, be somehow negative to choice, negative to women's rights? Next we will be saying we should not be giving full information on the contraceptive pill or other things, or other areas like that, just in case it might somehow cloud women's capacity to make a decision. I just do not accept that, Mr Speaker. Again, I respect others' view on this. From my perspective it is something that I believe very strongly in, and I would expect everyone - I suppose everyone but Mr Berry - to respect my views as well.

MR MOORE (Minister for Health and Community Care) (11.53): I think we have to be very careful we do not get sidelined here on the issue that we are dealing with. The main issue on the matter of abortion as far as I am concerned is that women have access to safe, medically provided terminations. They still have that in the ACT, although I remind members that not so long ago it looked likely that that was not going to happen.

What is my view with regard to this specific regulation? I just say, "No, we should not be doing it". We should not be doing it, I think most importantly, because there are women who will be particularly distressed by this material, and I speak specifically of women who find they are carrying a foetus with a foetal abnormality. I think that is the strongest of all arguments against this. But there is a second argument. My view is that we should have no legislation at all that deals with the medical procedure. I see termination simply as a medical procedure, and it requires no legislation at all.

There is another factor. I recognise what Mr Humphries and Mr Smyth were trying to achieve here, and what Mr Osborne was trying to achieve with his original legislation, and that was to get more information out. The Chief Minister has put quite a lucid argument about that. But what will happen, I think, is that the booklet that we currently put out will wind up in the bin much more often when it has this information in it as well. The booklet that is currently available is one that women will take and will read. They could find out about actual services. But in this case I think we will wind up seeing many more of the booklets in the bin, so it may be counterproductive to what you are trying to achieve.

In terms of the community generally, I think the court case that Mr Berry spoke about that is foreshadowed on this will mean that the issue will continue and continue in the community. Indeed, I have to say that the matter will continue in this Assembly as well, for a series of reasons. I think this will not be the final case we see in this Assembly if this legislation is not disallowed.

Mr Speaker, I will be careful not to reflect on a vote of the Assembly, but the last time we debated the matter of abortion we did not come out with my preferred result. My preferred result is to have no legislation at all that deals with terminations. We came out instead with a compromise that still allowed safe, medically provided terminations. We set up a compromise that allowed an expert medical panel to determine what was in the booklet, and I think that that compromise is what we should be standing for. It is for those reasons, Mr Speaker, that I will be supporting the motion to disallow these regulations.

MR CORBELL (11.57): Mr Speaker, we should not be here today debating this motion. We should not be here today having to attempt to disallow these regulations that have been proposed by Mr Humphries and Mr Smyth. We should not be here today debating this because we should have accepted that the legislation passed by this Assembly previously made provision for how the information in relation to an abortion would be provided to women. We set up a mechanism for doing that. I disagreed with that at the time, Mr Speaker, and I also voted against that legislation. But this Assembly decided and we set up legislation. We set up a mechanism for determining how this information would be provided and what the information would be.

Mr Speaker, if we had accepted that, we would not be dealing with this today. But some members of this place feel that they know better; that they have more wisdom, insight or expert knowledge to make the judgment necessary about what information will be provided in this leaflet. They are unhappy that a panel of medical experts made a decision which they disagreed with, even though they would not come anywhere close to being able to question the ability or expertise of that panel to make that judgment.

It is disgraceful that we are today debating an issue that should have been resolved by that panel. I do not accept that, as a politician, I have the expert ability to decide what information should be provided on a medical matter. I rely on expert opinion on these matters. This Assembly relies on expert opinion on other similarly technical and complicated matters when it comes to all sorts of other pieces of legislation, so why should we not do so here?

Mr Speaker, I have to question the process we have gone through to reach this point. First of all, I have to question why this matter has arisen at all, given that we have had no indication from the Government or from any other member proposing this course of action that the advice of the advisory panel is contrary to the Act itself. There is nothing out there which argues that the advice that the expert medical panel came up with in relation to the provision of information in the pamphlet was contrary to the Act. In fact, it appears that they acted entirely in accordance with the Act.

So why are we overriding their decision? Have they acted illegally or contrary to the Act? I have not seen any legal advice. Perhaps Gary Humphries can get on the phone and get some really quickly, but we have not seen that and it has not been advanced in this debate - not one speck of it.

Mr Speaker, the other point I want to make in this regard is that the Act, according to my reading of it, and any reasonable reading of it, I believe, says that the panel may approve pictures - not shall or will, but may. It has the discretion. It has the discretion to decide whether or not pictures or other non-verbal types of information will be provided in this pamphlet. The panel members exercised their discretion, Mr Speaker. They exercised their discretion and they decided, on medical grounds, that it was not appropriate to include this information. I would like to read for the record what the panel said. The panel said:

> It is the unanimous view of the panel that the presentation of pictures or drawings of foetuses is irrelevant and in some cases could be counterproductive and cloud the issues.

My colleague Mr Berry and Mr Moore earlier outlined why, in some cases, it would be counterproductive, such as in cases of foetal abnormality. Mr Speaker, that is the view of the panel. The panel represents people from the public health system and people from a hospital, Calvary Hospital, which, obviously, is a hospital run by a Catholic order. Mr Speaker, you would have expected that there would have been some conflict there. I certainly did when I saw the composition of the panel when it was first proposed. But that did not occur. Why did it not occur? I believe it did not occur, Mr Speaker, because that panel went out of its way to reach the most sensible decision possible about the provision of information. Its members worked together to decide what was in the best interests of women receiving this pamphlet, what was the best possible information to further their interests in making an informed decision, and they came to the conclusion that pictures were not part of that mechanism. I would have thought, Mr Speaker, that that was a pretty strong statement about the relevance of including pictures in this type of information.

Mr Speaker, those are the two grounds on which I find this proposal by some members of the Government most objectionable. Firstly, there is no advice that the panel acted contrary to or outside the Act and, secondly, the panel itself made an expert medical decision and we, as politicians, think we know better. I just cannot accept that, Mr Speaker.

I challenge members of the Government proposing this action to produce legal advice which demonstrates that the advice of the panel and the actions of the panel are contrary to the Act. Let us see it. I have not seen anything to date. Maybe then they might have grounds. Until they do, Mr Speaker, I cannot accept this. I cannot accept the Government's proposal because it is patronising in the extreme.

One final point I want to make, Mr Speaker, relates to a point made by Mrs Carnell earlier when she said, "I believe in the provision of information". So do I, Mr Speaker, but I do not think there is any other piece of legislation around or emanating from this place which specifically states exactly what type of information we should give to a person when that person is to be informed about a medical operation. I cannot think of any other piece of legislation that specifies that in the level of detail we are dealing with here today. Yes, there are other pieces of legislation that require information to be provided that set up mechanisms for determining what that information shall be, but I cannot find any other piece of legislation that specifically states the type of information about a medical operation in the level of detail proposed in these regulations.

Mr Speaker, we should not be having to take this course of action today. We should have accepted what the Assembly decided when it passed the Health Regulation (Maternal Health Information) Bill last year. That is where we should have left it. We should not be dealing with this here today. I will be voting to disallow these regulations.

MR STEFANIAK (Minister for Education) (12.06): Mr Speaker, I will be voting against Mr Berry's motion. I have listened with interest to what members have said so far and I also refreshed my memory by going back to the debate on 25 November which went into the early hours of the morning.

Mr Speaker, there are a couple of relevant sections in this Act. I think these regulations that my two colleagues have brought forward go some way towards clarifying a problem and, indeed, a potentially difficult situation. The relevant section is section 14 of the Act, which I think was described as clause 16 during the debate last year, although I am not absolutely certain of that but it seems to jell, and it deals with a number of things. Section 14 deals with the approval of information pamphlets. Subsection 14(1) sets up the advisory panel. Then there are three very relevant subsections. Subsection 14(2) says:

> The Advisory Panel appointed under subsection (1) may, for the purposes of paragraph 8(1)(c), approve materials containing information on the medical risks of termination of pregnancy and of carrying a pregnancy to term.

Subsection (4) then goes on to say:

> The Advisory Panel appointed under subsection (1) may, for the purposes of paragraph 8(1)(d), approve materials which present pictures or drawings and descriptions of the anatomical and physiological characteristics of a foetus at regular intervals.

Subsection (14)(5) says:

> The Minister may, for the purposes of paragraphs 8(1)(e), approve materials containing information on -
>
> (a) agencies operating in the Territory which provide assistance to women through pregnancy;
>
> (b) agencies operating in the Territory that make arrangements for the adoption of children; and
>
> (c) agencies operating in the Territory that provide assistance with family planning.

Section 8, which is referred to in section 14, makes a number of points. Subsection 8(1) says:

> Where it is proposed to perform an abortion a medical practitioner shall ...

Then it lists a number of things. The relevant things there relate to subsections (14)(2), (14)(4) and 15(5). Subsection 8(1) states:

> Where it is proposed to perform an abortion a medical practitioner shall -
> … … …
>
> (c) provide the woman with any information approved under subsection (14)(2);
>
> (d) provide the woman with any information approved under subsection (14)(4) -

that is the one we are effectively dealing with here -

> (e) provide the woman with any information approved under subsection (14)(5).

The key word in section 8 is “shall”. Whilst section 14 says “may”, I would submit that if the panel decided that none of the information set out in subsections 14(2), (4) and (5) were to be provided, it would then make a complete nonsense of section 8.

It is important in a situation like this, I think, to clarify the point, and that is why it is important to go back to the debate at the time. There was a fairly free-ranging debate on this particular question. It ranged from pages 2988 to 3002 of the *Hansard* of 25 November 1998. I am not going to attempt to read out all of that but the question of showing pictures was an emotive one. It was described as a cornerstone too, I think, of

Mr Osborne's compromise Bill, and it was debated at some length there. I think the clear intent of a majority of the members of the Assembly at that time was that the material referred to in subsection 14(4) of the Act would be provided. I think that intention could be shown also when one looks at section 8. Maybe the use of the word "may" in subsection 14(4) is unfortunate - I do not know - but it is something that I think needs clarification. Whilst it would have been nice perhaps if this panel had just come up with some pictures, it has not, and that has led us back to discussing this matter in this place.

Quite clearly the intent and expectation of the majority of the members of the Assembly was that part of the information that would be given to women - the panel would look at it and make sure it was appropriate information - would include pictures or drawings and descriptions of the anatomical and physiological characteristics of a foetus at regular intervals. There was a lot of debate last November in this place in relation to that. The debate ranged about the appropriateness of that. My recollection, quite clearly, is that the majority of members thought that would be appropriate and that the panel would have some suitable material.

We have had further debate too, Mr Speaker, about what is suitable material. I think the Chief Minister has made her point known in the lead-up to this debate today as to what she felt was not suitable, was highly emotive and was not appropriate. There seemed to be a consensus, though, that the material which New Zealand used was suitable and, accordingly, I understand that that is what my colleagues have proposed. That was proposed after discussion with a number of people in terms of what was suitable. Given, Mr Speaker, that we have this legislation, given that there was a clear intent that women be provided with material, including, I would submit, pictures and drawings and descriptions, it is appropriate for my two colleagues to bring forward these regulations.

My views, substantively on the question of abortion, I think are well known. However, in terms of this particular matter, I think the majority of the Assembly on the last occasion quite clearly expected that appropriate pictures and drawings would be included. Accordingly, I think Mr Berry's motion to delete that is inappropriate. There are times when all members in this house will have to vote on issues on which we are not expert. You cannot expect in a small house of 17 members to have people who have had experience in every single walk of life that is relevant in terms of any legislation or regulations that come before this house. We have to exercise our commonsense on other issues and, of course, we have to exercise our conscience. We also have to look very carefully at what was expected. In a situation like this, I submit, we would certainly have to look very carefully at what the majority of the Assembly expected on the last occasion. I think that should give considerable guidance to members who may be having difficulty in terms of this particular issue of pictures.

I have always indicated that I am anti-abortion, but, putting aside any personal opinion of mine, just on this issue of the pictures of foetuses, quite clearly, I think the expectation of the majority of members on the last occasion, and perhaps the expectation of most members as they walked away, was that appropriate pictures would be included in the information given to women who are considering a termination of their pregnancy. Accordingly, Mr Speaker, I will be voting against Mr Berry's motion.

MR STANHOPE (Leader of the Opposition) (12.14): I listened with great interest to my colleague Mr Stefaniak. I have to say, Mr Stefaniak, that I disagree with your interpretation. I will get to that and explain the basis on which I disagree.

I would like to commence my contribution to this debate by addressing the process at issue here, Mr Speaker. There are two issues here. There is the issue of the process that is being applied in this matter, and the underlying issue of the rights that women do have.

I think this process is simply wrong. I think the fact that the Government is legislating on this issue through regulations has some very serious implications for the way the parliament works, and that is an issue that has not been dwelt on very much. I think this may be the first instance. This is the only instance I am aware of in any parliament in Australia where a government has chosen to legislate on a conscience issue. I have not done any research on this, but I have racked my brains to identify a single other instance in which a government, not a private member, has chosen to legislate on a conscience issue. I refer to the Maternal Health Information Regulations which were tabled yesterday. On the cover sheet of the regulations it says:

> The Australian Capital Territory Executive makes the following regulations under the Health Regulation (Maternal Health Information) Act 1998.

These are not Mr Humphries' regulations, and they are not Mr Smyth's regulations. These regulations were made by the Australian Capital Territory Executive. The Australian Capital Territory Executive is defined as the Chief Minister, the Deputy Chief Minister, the Minister for Health, the Minister for Urban Services and the Minister for Education. That is who makes these regulations. It says on the cover sheet, "The Australian Capital Territory Executive makes the following regulations". These regulations are made by the Government's front bench, five Ministers acting collectively. That is who has made these regulations, and we ask why, and what are the implications of that?

Let us just put to rest this theory that these are Mr Humphries' and Mr Smyth's regulations. They are not. These are the Government's regulations. Only the Government may make regulations. The Health Regulation (Maternal Health Information) Act provides a regulation-making power. Section 16 of that Act says:

> The Executive may make regulations for the purposes of this Act.

That was the power under which these regulations were made. The Executive, acting in accordance with that power under section 16, has made these regulations - five Ministers, acting collectively. One assumes that there was some debate. One hopes there was some debate on such a divisive and serious issue as this. One hopes there was some debate in the Cabinet about this.

I was a bit disappointed, in fact, that Mr Moore, in his presentation, did not give us the benefit of the arguments that he would have applied in the Cabinet to dissuade his Cabinet colleagues from making these regulations which have been made on his behalf

as well as on behalf of the other four members of the Executive. This is a very interesting issue we have here - that Mr Moore is one of the five Ministers who have made these regulations. Only the Executive may make regulations. Mr Moore is one of the five Ministers who have made these regulations and he has foreshadowed that he proposes to vote against them. So, this is a very interesting situation.

I think this is the first time that a government, acting collectively, has decided to legislate on a conscious issue, and we are presented with this very interesting scenario: An Executive, which by definition is comprised of five Ministers, is legislating through regulations, and one of the five Ministers then says, "Well, the Executive made the regulations and I as a member of the Executive am a part of this collective decision-making process, but I propose to vote against the regulations which my Executive colleagues have made". This does raise very interesting questions about process.

My colleague Mr Stefaniak has faced this very same issue in relation to safe injecting places. This is an issue which this Assembly really does need to deal with - the issue of members of the Executive simply stepping out of collective responsibility when it suits them by having an issue declared a conscience issue. The point must be made in relation to our system of governance here in the ACT that we cannot afford to simply make up the rules as we go along, and this is an issue that has been raised because of the way in which this matter has been dealt with.

There are other aspects of the process that really should be commented on. I think these regulations should not have been made in the first place and must now be opposed. I just make those points - that the process is badly flawed, and we do need to keep in mind that only the Executive may make regulations. The enabling Act says that, and that is what is said on the face of the regulations that the Government chose to legislate.

I will go back to some of the points that Mr Stefaniak dwelt on in his presentation and which were raised by Mr Moore's letter of 7 June to each member of the Assembly. I think Mr Moore's letter does highlight the inherent contradictions in what we are doing here. Mr Moore advised us in his letter of 7 June that the expert panel had clearly made its decision on professional grounds, and its decision appears to be strictly within its legal powers. But then he went on to say this:

> It is certainly possible that pictorial material intended by the Assembly can be included in the pamphlet by administrative action.

He went on further to say:

> However, there is an issue that in making such an administrative step we would be effectively disregarding the decision of the Advisory Panel which was given the powers of approval under this Act.

It seems to me that this highlights the contradictions we are faced with in this debate and the issue that Mr Stefaniak raised as well - that the expert panel, the advisory panel, was acting strictly in accordance with its legal powers. In other words, its members were

invested with the power and the discretion to decide what to include in the information, if anything at all. The pages that Mr Stefaniak quoted from *Hansard* actually go to this very point, and this point was raised in debate.

This is where I think Mr Moore's letter is so self-contradictory. He acknowledged that the advisory panel, the expert panel, was acting strictly within its legal powers, but then went on to say that it was obviously intended by the Assembly - Mr Moore used the phrase "by the Assembly", not "by individual members of the Assembly", speaking for all of us - that there be pictures. The Assembly made no such decision. The Assembly invested a discretion in the advisory panel. In the debate on that particular clause, Mr Moore, responding to advice we had received that very day from Mr Richard Refshauge, the DPP, acknowledged the fact that we were investing a discretion in the advisory panel. Mr Moore, when talking about clause 15, the clause of the Bill that dealt with the powers of the advisory panel, said this:

> Clause 15 deals with putting the panel together in order to get the information. That is where the real concern of the DPP comes out. His concern is the way that my amendments have been constructed. It is actually "may" rather than "shall". As members would be aware, "shall" demands, "may" is facilitative.

(Extension of time granted)

Mr Moore: Hey, Jon, I am on your side. I am voting for disallowance.

MR STANHOPE: I am responding to Mr Stefaniak's comments in the debate, Mr Moore. I am making the point that Mr Moore quite clearly pointed out in that debate that the advisory panel was to be given a discretion. I go to the point that Mr Stefaniak made - that it was the clear intention of the Assembly that there be pictures in the information. It quite clearly was not. The only member other than Mr Moore to address this question of "shall" and "may" was my colleague Mr Hargreaves. Mr Hargreaves followed Mr Moore in the debate. Mr Hargreaves addressed the issue directly in debate for the information of all members of the Assembly, and he said this:

> Mr Speaker, I take up the point that Mr Moore has just made on the presence of the word "may" instead of "shall". The reason I have sat quietly and listened to most of the people that have spoken so far is that I wanted to satisfy myself that the word "may" did actually apply.

Mr Hargreaves stood up in this place during the debate and said he needed to satisfy himself that the word "may" applied in relation to the powers of the advisory panel. So this bunkum that has been put about that it was always intended that there be pictures can be put to bed just through these two contributions by Mr Moore and Mr Hargreaves. There were speeches in this place applauding the fact that the advisory panel was to be given a discretion and was not to be dictated to in relation to the content of the material.

Mr Hargreaves addressed the issue further and talked about how important it was that there be discretion. In the context of that he foreshadowed the amendments that he proposed to move so that there would be at least some women on the advisory panel.

He went on to explain why he felt it was important, in order that the information that the advisory panel may give as a result of its discretion did reflect the world view of women, was balanced and appropriate, and was material that it thought would be appropriate.

That debate about whether or not it was mandatory or discretionary that there be pictures arose as a result of concerns which Ms Tucker pursued persistently throughout the debate about the nature of the obligation on medical practitioners to provide the information. The legislation, as Mr Stefaniak once again has pointed out, says that it must be properly, appropriately and adequately provided, and Ms Tucker pursued this point relentlessly during the debate and did not get a satisfactory response from anybody as to what that meant. In that context, members will recall that the DPP, perhaps the second or third most senior legal officer on the public payroll in the ACT, had given us the benefit of his view on this issue.

Members will recall that he faxed every single member at 3.36 pm on the day of the debate to outline his continuing concerns about the legislation and the lack of certainty in relation to this particular issue of the nature of the obligation to provide information and what information. I will paraphrase what Mr Refshauge said was the difficulty with Mr Moore's amendments in relation to the abortion Bill. This is what Mr Refshauge told us and warned us about and foreshadowed. Mr Refshauge said that, because the advisory panel was to be given a discretion, it may be that the advisory panel would utilise that discretion to not provide any information at all.

Mr Refshauge, this senior legal person within the ACT Government, wrote to each of us and said, "You must understand that there is an issue here. It may be that the advisory panel, because of the discretion that has been provided to it, will chose to not approve any information at all". This went to the point that Ms Tucker dwelt on of what was the proper, appropriate and adequate information that would then be provided under the scheme that was being arranged. So every member was fully aware, through advice from Mr Richard Refshauge, and as advised by Mr Moore and Mr Hargreaves, that there was a clear discretion about whether or not pictures would be included in the material, if any material was to be provided at all. *(Further extension of time granted)*

We do need to debunk this notion that this Assembly, as an assembly, thought that there would be pictures. I had no such illusions. Mr Moore addressed directly the point that there was a discretion. He said it was facilitative only; it was not mandatory. They are Mr Moore's words. Mr Hargreaves applauded the fact. He said he sat and waited for clarification of the fact that there was to be a discretion. It was important to Mr Hargreaves that there be a discretion. The DPP told us of his concerns about the legislation because of the fact that there was a discretion. So, for us now to be debating this on the basis that the expert panel in some way has subverted the will of the Assembly by not including pictures is a simple nonsense. It is simply not true, and I think it strengthens the arm of those in the community who will seek to legally challenge this information.

There was a clear understanding in this place that the expert panel was to have a discretion. There was a clear understanding to that effect. Making regulations now to subvert the obvious will, as expressed through the language of the legislation, almost certainly will lead to the regulations being struck down.

I will make a couple of other points before I conclude, Mr Speaker. One of the things that concern me greatly about these regulations, and Mr Moore alludes to this in his letter, is the extent to which they are a vote of absolutely no confidence in the expert panel. That is what this is. We thought long and hard about the nature of that expert panel, who should be on it and how it should be comprised. We added to the original proposal. There are seven eminent people on that expert panel and they acted according to the law. They did precisely what was asked of them. Now the Government is saying, "No, we don't like that; we know best". It is as if the panel did not exist. It is as if its members were never appointed.

I think this is a terrible precedent. I think the Minister has generated a terrible precedent by simply not acting as the Minister for Health, accepting the expert panel's advice and position on this, and saying, "I am the Minister; I administer this Act". This is what should have happened. Mr Moore, when he got the expert panel's position on this, should have said, "I am the Minister for Health. This is my expert panel. I either accept or reject that advice". If he rejected it he should have sent it back and asked them to do it again.

If he accepted it, if it accorded with his own beliefs and principles, then he should simply have adopted it. He should have advised his colleagues in Cabinet to mind their own business. If they do not like the way the abortion legislation is constructed, they should have come into this place with a private members Bill and opened the issue up for debate.

I find it completely wrong and a subversion of proper process for the Government to come in like this. Let us not be mistaken about this; only the Government may make regulations. I cannot make a regulation. Ms Tucker cannot make a regulation. I cannot come into this place and introduce regulations to direct the expert panel to include pictures. If I would like the expert panel to include pictures in this information I would have come in here and introduced a private members Bill, and that is what should have happened. Those who seem to have some particular conviction about this matter should have shown the courage of their conviction and come into this place and introduced a private members Bill. To use the power of the Government, the power of the Executive, to overwhelm the intention of this Assembly that the expert panel have a discretion about what should be in that information package is simply an abuse of the power of the Executive.

Sitting suspended from 12.35 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Bruce Stadium

MR STANHOPE: Mr Speaker, my question is to the Chief Minister. Will the Chief Minister confirm that the unsuccessful tender bid by Lend Lease for the Bruce Stadium redevelopment project included warranties on design and construction costs and time? Was the effect of these Lend Lease Corporation warranties that the company guaranteed it would carry the risk of cost over-runs for the redevelopment of Bruce Stadium rather than, as has eventuated, the ACT taxpayer?

MS CARNELL: I have answered this question in another way before by indicating that it would be totally inappropriate for me or for that matter any other Minister to be involved in a tender process. Surprising as this may seem, I have not read the Lend Lease losing tender, nor should I have been involved in the process at all. The only time those opposite would have an argument with regard to the Lend Lease tender is if I had read it and if I had been involved in the tender process. I can guarantee that I was not involved in the tender process. There was a tender evaluation committee who made a decision. That decision or recommendation was followed through.

MR STANHOPE: I ask a supplementary question. Acknowledging that the tendering for the Bruce Stadium is a matter of significant public interest, will the Chief Minister undertake to determine the contents of the Lend Lease tender? Having done so, would she be prepared to confirm that Lend Lease guaranteed to meet any cost over the redevelopment's projected $27m budget and in fact warned that a government commitment of only $12.3m was unrealistic? Will she also then confirm that it was the case that the Lend Lease bid clearly represented a better deal for the ACT than that of the eventual contractor, CRI Ltd? Was the bid favoured in writing by both the Raiders and Brumbies management?

MR SPEAKER: No expressions of opinion or legal opinions, please.

MS CARNELL: Mr Speaker, the Lend Lease tender and all other documents have gone to the Auditor-General. I think it is very appropriate that we allow him to make those decisions.

ACTEW

MR QUINLAN: Mr Speaker, my question is to the Treasurer. I hark back to the Fay Richwhite report on ACTEW. We have had debate regarding risks faced by ACTEW in public hands. Fay Richwhite dredged up financial risk, regulatory risk and market risk. Later ABN AMRO, when they talked about financial structures, set an implied upper limit of about 33 per cent for a debt-to-equity ratio for ACTEW. Can the Treasurer tell the Assembly what his preferred upper limit is in relation to a debt-to-equity ratio for the proposed or possible merged ACTEW entity in the future?

MR HUMPHRIES: I thank Mr Quinlan for that question. He made reference to the recommendation that we received as the Government on an appropriate debt-equity ratio for ACTEW. The Government, on receiving that report, did not go through the report and decide whether it accepted or rejected each particular comment or recommendation in the body of the report as to things like the appropriate long-term debt-equity ratio. I have no opinion at this stage about the appropriate ratio. Obviously it should be one which minimises the exposure of the organisation and reduces any likelihood of not being able to appropriately cope with changes in the financial position in the future. The Government has put on the record very clearly its concern that ACTEW's future is less than assured, given particularly the changes in the electricity market in Australia.

The short answer is that I do not have a particular preferred debt-equity ratio. The Government will assess the situation from time to time. If ACTEW, for example, through the process of developing documents that will plan its course over the next few years sets a ratio which is too high, the Chief Minister and I, as shareholders, will take the time to consider whether we should recommend to the board that it should be lower.

MR QUINLAN: I virtually have no supplementary question other than to ask the Treasurer to confirm for the sake of *Hansard* that neither the past nor the present Treasurer has given the working party evaluating the merger any guidelines in relation to the level of financial risk that government might consider appropriate.

MR HUMPHRIES: I have given no such directions or guidelines to the working party. The former Treasurer advises me that she has not either.

Eco-Land Development - McKellar

MS TUCKER: My question is directed to the Treasurer, who is responsible for land development in the ACT. I did give Mr Humphries notice of this question. Minister, last week, in an MPI regarding the direct grant of land at McKellar shops to Tokich Homes, you suggested that you were happy with the process followed by your department in granting the land to Tokich Homes, despite the fact that they were a different entity to the Eco-Land group which originally proposed this development. I have since received legal advice that it appears that the director of Tokich Homes must be guilty of at least one offence under the Business Names Act or the Statutory Declarations Act in applying for this land in the name of Tokich Homes, trading as Eco-Land Development, because there was no evidence that they traded under that name and the business name of Eco-Land was registered by someone else. It may be that other offences are also applicable, such as fraud under the Land Titles Act. The legal advice suggests that the matter be turned over to the Australian Federal Police and/or the Director of Public Prosecutions. I seek leave to table this advice.

Leave granted.

MS TUCKER: Minister, in light of this advice, will you undertake further investigation of this matter and report back to the Assembly in the next sitting week on the outcomes of this?

MR HUMPHRIES: Mr Speaker, the short answer is yes, I will. Obviously I am concerned if there is a suggestion of a lack of propriety in any arrangements or dealings the Government has. I have not had long to examine the opinion that Ms Tucker has sent to me, but obviously its bottom line - the conclusion, according to the person writing the opinion, that offences have probably occurred - concerns me. I have been advised in the short period of time that I have been able to obtain advice from the Office of Asset Management area within my department that there are some assumptions in the opinion which may not be accurate, but obviously they would be part of the investigation that Ms Tucker has urged me to undertake, and I am very happy to indicate that I will undertake that.

MS TUCKER: I ask a supplementary question. Could you also explain to the Assembly why departmental officers did not do the simple checks that could have been done at the time the application was made in 1997 to determine whether Tokich Homes did indeed trade as Eco-Land and that other members of the Eco-Land group had authorised Tokich Homes to act on their behalf?

MR HUMPHRIES: Ms Tucker has just asked me to conduct some investigation of what is going on and now wants me to explore the issues that will be covered by that investigation. I am sure she would appreciate - - -

Ms Tucker: This question is about your department.

MR HUMPHRIES: Does she want me to have the investigation conducted without examining the issue she has now asked me questions about?

Ms Tucker: Okay, you can report back on that issue too.

MR HUMPHRIES: She does not answer my question. I can only assume that she does in fact want me to investigate as well the appropriate - - -

Ms Tucker: If you have not already looked at it, you can report back. I thought you would have already looked at it.

MR HUMPHRIES: Mr Speaker, I am quite happy to exclude the things that Ms Tucker would like to ask me questions about now, in which case I will answer now those questions that she has just raised with me, or I will include them in the investigation. But, with great respect to Ms Tucker, she cannot have it both ways. She cannot have me give an answer now but have the issue about which I have answered investigated in a separate investigation. I think she wants me to investigate all the issues to do with this. Therefore, I will do that and answer her question more fully when I have the result of the investigation.

Supercar Race

MR KAINE: Mr Speaker, my question, through you, is to the Chief Minister. Chief Minister, just an hour or so ago you launched the V8 supercar race for Canberra. I regret that I was unable to be there, because I do support this, but there seems to be a bit of a problem or a potential problem. I understand that the chief executive officer of the National Capital Authority, Ms Annabelle Pegrum, on public radio this morning said that no application to run this event on Commonwealth controlled land had been received, nor did she expect an application very soon. If that is the case, can we be sure that approval will be given? In other words, is there some sort of understanding, tacit or otherwise, between the ACT Government and the NCA that this event will be approved?

MS CARNELL: Thank you, Mr Kaine, for the question. The event was approved by the Joint House Committee this morning, which was one of the hurdles, you could say. Ms Pegrum and the chairman of the National Capital Authority have been very supportive of the whole approach. In fact, they have been part of the presentations that have been made on behalf of the Territory. They have been extraordinarily cooperative. I am not sure whether the final approval from NCA has been sought yet, but I understand that there is a process that will be gone through. Ms Annabelle Pegrum and David have both been very positive. The Joint House Committee have given it the tick.

MR KAINE: I ask a supplementary question. Chief Minister, when the NCA approval is given, in the interests of openness and so that we can all be informed, will you publish the details of that approval and any constraints or qualifications that are placed on it by the NCA?

MS CARNELL: Absolutely. I am just not sure of where the process with NCA is up to. I do know the Joint House Committee gave it the tick. I am also aware that a representative from NCA went to the Adelaide event, so they have been part of the process the whole way through. I thank them for being so supportive on what is, I suppose, an event that is somewhat unusual in the triangle. Mr Kaine, I know, is a supporter. Mr Berry was there today. I think Mr Rugendyke was there. Mr Hird was there as well. I am sure that everybody who was there would agree that they are a very professional organisation. They are very supportive and very enthusiastic. The race looks like it is going to be a great success.

Eco-Land Development - McKellar

MR CORBELL: My question is to the Treasurer as Minister responsible for infrastructure and asset management. Treasurer, in the Assembly on 26 August, during a debate on the matter of public importance in relation to the handling of a direct grant of land to Tokich Homes, you stated:

> The name of the organisation or person wanting to lease had changed, but the legal advice to the Government from the Government Solicitor was clear ...

On 24 August in question time you further stated in relation to the same issue:

> I have looked at the legal advice, Mr Stanhope, if you wish to see it.

Will the Minister tell the Assembly when he sought the legal advice in relation to the Tokich Homes direct grant at McKellar and, given his offer to Mr Stanhope, will he table it?

MR HUMPHRIES: I did not seek legal advice. Legal advice apparently was obtained but not by me. I was asked whether I will table it. No, I cannot table it, because it is not written advice; it is oral advice. It was transmitted to me. If in the course of the MPI debate or question time I referred to having seen the advice, then I regret it. That was inaccurate. I certainly saw information supplied to me which summarised the advice. The advice was contained within the brief I received. I am very happy to admit that to Ms Tucker. I have not tried to conceal that matter. As far as I am concerned, that information was conveyed to the house accurately, but the advice was not in written form.

MR CORBELL: It is typical to look at legal advice which does not exist on paper! My supplementary question is: Did the Department of Treasury and Infrastructure or its predecessor seek legal advice prior to the issuing of the direct grant to Tokich Homes of land at McKellar, and when was this advice obtained?

MR HUMPHRIES: I cannot answer that question without looking at the matters that Mr Corbell has raised. I am sure Mr Corbell observed me a few moments ago saying I would have an investigation of the matter raised by Ms Tucker.

Mr Corbell: Does that mean we cannot ask questions?

MR HUMPHRIES: No, it does not mean you cannot ask questions. It is the last day of this sitting period. I am not in a position to be able to provide this information to you. Ms Tucker was good enough to put the issue she wanted to raise on the table so I had a chance to look at the matters she raised. You have that same privilege if you wish to do that, Mr Corbell.

Mr Corbell: This is straightforward.

MR HUMPHRIES: It is not straightforward.

Mr Corbell: When? It is easy to find out when. Make a phone call.

MR HUMPHRIES: With great respect, Mr Speaker, if I could be heard - - -

MR SPEAKER: Order! Just a moment, please. Mr Humphries is answering a question.

Mr Corbell: If the Minister wants to engage in conversation across the chamber, I cannot help but respond, Mr Speaker.

MR HUMPHRIES: I am trying to answer Mr Corbell's question, Mr Speaker. He asked me a question. I am trying to give him an answer. You were asking me about what may have happened under the predecessor of the Department of Treasury and Infrastructure. I was not responsible for the department at the time potentially when the advice was obtained, so how am I supposed to know the answer to his question without seeking further advice?

Mr Corbell: You are now. What nonsense.

MR HUMPHRIES: Members opposite can say, "What a dreadful thing. The Minister does not know what happened before he became Minister". That is their lookout. If they want to put out a press release about that, they can go for it. I am sure the media will run that with great joy - "The Minister does not know what happened before he became a Minister". That is probably at the standard of some of the releases we have seen in recent days from the Opposition. I propose to examine the matters Mr Corbell has asked me about in the context of the investigation Ms Tucker has asked me to undertake.

CityScape Staff

MR BERRY: My question is to the Minister for Urban Services, through you, Mr Speaker. Minister, in a meeting with unions on Tuesday CityScape management indicated that it would like to move any injured staff out of CityScape into another section because of the "considerable time involved in management and supervision of compensation cases". Minister, is it now the Government's policy to treat its work force as it treats its machinery, as expendable? If it does not work, get rid of it.

MR SMYTH: No, it is not, Mr Speaker.

MR BERRY: Mr Speaker, the Minister seems to deny that such a decision was made.

MR SPEAKER: No, he does not. He answered your question.

MR BERRY: Minister, will you deny that this statement was made by CityScape - that is, that it would like to move any injured staff out of CityScape into another section because of the considerable time involved in the management and supervision of compensation cases?

MR SMYTH: Mr Berry knows that I was not at the meeting and therefore I cannot confirm or deny what was said there.

Tuggeranong Lakeshore Master Plan

MR OSBORNE: My question to the Minister for Planning, Mr Smyth, is about the Lake Tuggeranong master plan. Minister, I understand that you intend today to table the Lake Tuggeranong master plan. I understand that there are no direct provisions in the Land (Planning and Environment) Act on the processes concerning a large-scale town planning modification, as this master plan is. What processes are you intending to use in

the public's consideration of the master plan, and will you consider directly referring the plan to the Urban Services Committee as a whole instead of having PALM break it up into separate draft variations?

MR SMYTH: I thank Mr Osborne for his question. It is very important to put this into context. There seems to be some perception that there was no community consultation on this.

Mr Hargreaves: No, it was flawed.

MR SMYTH: When members opposite do not like something, the process is flawed. When you cannot attack an outcome, you go for the process. It is quite simple. Let me talk about the coverage that this has received. We first and foremost had a young people's and planning workshop. They talked about it. The *Chronicle* reported the young people's workshop; the *Valley View* reported the planning workshop. There was a *Canberra Times* article. I put out press releases. There were further *Canberra Times* articles. I put out another press release.

We then put up a public display and gave out some 2,500 questionnaires. We then had it on display in the Hyperdome, in the Tuggeranong Library, at social clubs and in other centres. There was a further *Valley View* article and *Chronicle* article. We then had a Tuggeranong Community Council presentation. It was reported yet again in the *Valley View*, and interviews were then done on the ABC. There was even a phone-in so that people could give their opinion.

That was all before the first public meeting. Then we had a public meeting. Seventy people with an interest in what goes on in their valley turned up. It was a well-received meeting, and the planning officials took on board what was said. But did it stop there? No. We then had a further *Valley View* article on it. We then had lake user consultation. We went out and we talked to groups like the sea scouts and the sailboarders. We talked to residents. We talked to the Tuggeranong Community Arts Council. Mr Speaker, it goes on and on. There were further reports in the *Valley View* on another two occasions. Then the *Canberra Times* did another article on the consultation and people helping develop the plan.

But it did not stop there. We then had some TV coverage, then the *Valley View* made another reference to it. The *Chronicle* made another reference to it, and we then went out for another round of public displays and questionnaires. This was again reported in the *Valley View* and the *Chronicle*. We then had another phone-in session on 18 June on ABC radio - a 30-minute interview, lots of phone-ins and lots of conversations. I then put out another press release. We then had another round of public displays and questionnaires at the Hyperdome and at the Tuggeranong Library. Another 500 questionnaires were distributed.

We then had another public meeting. It just goes on and on. There were follow-up meetings with the residents, with the sea scouts and with Business Tuggeranong. There were more reports in the *Valley View*. We have had quite a fine process. Some residents

have not got exactly what they wanted out of it, but the consultation process has been wide; it has been far-reaching; it has been fair. Where we have been able, we have taken on board residents' concerns.

Mr Hargreaves: It has been disgustingly flawed.

MR SMYTH: Mr Hargreaves just cannot help himself. He says that it is disgusting.

Mr Hargreaves: Disgustingly flawed.

MR SMYTH: He says it is disgustingly flawed. I am not sure what he thinks consultation means. Consultation means communicating with the public. We have had public meetings. We have had talk-back on radio. We have had questionnaires. We have gone back to the people on a number of occasions. We have had follow-up meetings. We have gone to talk to the broad community represented by the Community Council. We have had meetings where those interested have been able to turn up. We have gone specifically to residents groups, the sea scouts and groups like Business Tuggeranong.

Mr Hargreaves: Business Tuggeranong, your own lot.

MR SMYTH: Mr Speaker, what can one say? He exposes his own inadequacy by the gibes that he throws across the chamber. The public consultation was then followed up with distribution through the Tuggeranong Hyperdome, the Tuggeranong Library, the Tuggeranong Community Centre, the Tuggeranong government shopfront, the Valley Rugby Union Club, the Southern Cross Club, the Burns Club, some residents groups, the Community Council, the Directory of Community Groups, Business Tuggeranong, the PALM shopfront and the PALM Web page. I am sorry it is inadequate to meet the needs of consultation as the Labor Party see them. Whom do they consult with? You do not see them anywhere. They are never anywhere.

Mr Hargreaves makes the mistake of equating consultation with acquiescence or giving in. Consultation is about meeting the needs of the whole, not about meeting the needs of sectional interests. This has been a very good process. RAPI did a planning workshop with young people. We did a specific consultation with young people, and they came up with some very good ideas and some interesting ideas which were incorporated in the final document.

Mr Osborne asked whether I would refer the matter to the Urban Services Committee. I am happy to refer it to the Urban Services Committee. I have no dilemma at all about sending it to the Urban Services Committee. If you want more consultation, we can give you more consultation because we are the government that cares and we are the government that will consult with the public. We believe that is the appropriate thing to do.

MR OSBORNE: I ask a supplementary question. I thought you knew, Minister, that the process is always flawed when we do not agree with the outcome. I agree that some life should be brought into the lake. My concern is over residential development. What would you as Minister like to say to the residents of Oxley, for example, your constituents, who bought property with a view of the lake and the Brindabellas?

They would have looked at the plan and felt that their vista would not have changed. What would you like to say to them when they are faced with the real possibility that it could change and they could suffer?

MR SMYTH: Oxley residents have raised some concerns, and some misinformation has been put out on this. The reporting of it would have it that the Government is going to build a Queensland-style development right on the lake foreshore, right on the water. That is not so. There is an area bound by Mortimer Lewis Drive that already has an allowance for development in it. We have said that it would also be appropriate to allow residential development inside that area. This is an area that maintains the green buffer between development and the lake foreshore itself, the same green buffer that goes around the entire foreshore of the lake. In regard to those specific concerns, the experts from PALM went out and did a line-of-sight study, and they tell me that the impact on views will be minimal, if any at all.

Apprenticeships and Traineeships

MR HIRD: My question is to the Minister for Education, Mr Stefaniak.

Mr Berry: Bill the bursar basher.

MR HIRD: Listen, you lot. This is a bit of good news. Minister, how is the ACT performing in the provision of apprenticeships and traineeships?

MR STEFANIAK: I thank the member for the question. Prior to answering it, I congratulate the member. As people know, he is a good local member in his electorate who always supports a lot of charities and regularly buys a lot of raffle tickets, usually very unsuccessfully. Ladies and gentlemen, I can say that last night I was there when Harold Hird actually won a prize in a raffle. It was a 10-piece home hair-cutting and grooming kit. But being such a generous fellow and having such a big heart, he is going to donate it back so that it can be a prize in another worthy raffle. Congratulations on that, Harold. It is great that you have donated it back, because you never know - an apprentice or trainee might win. Which comes back to the question.

In answer to your question, the ACT has been doing very well indeed. We have more than 4,500 trainees and apprentices in the current year. This compares with the 2,000 we had back in June 1995. Just this year, 593 people have commenced apprenticeships under the new flexible training system. This is a 12 per cent increase. We expect a 23 per cent final increase for this year. The figures are just continuing to track upwards and are going very well indeed.

There is even more good news in the area. There are now some 18,500 students in our vocational education and training programs in the ACT. Young people make up almost half of that number, and that is the highest proportion in Australia. The ACT is leading Australia in many areas of vocational education and training, and we are providing more vocational education and training than ever. In 1998 publicly funded vocational education and training hours delivered in the ACT increased by some 3.5 per cent, taking it to around almost six million hours.

We have exceeded all targets set for vocational education, and we have provided new options for our secondary students, 37 per cent of whom go on to university, which is more than the Australian average of about 30 per cent. Even so, a significant number, well over 60 per cent, do not. For those kids who do not go on to university, vocational training means significantly more opportunities for them. Very importantly, at the other end of the spectrum, a lot more older workers are coming back into traineeships and apprenticeships. We have also provided new options for adults to enter a wide variety of trade and semi-professional careers which were previously not available.

In the traditional trade areas where employers and apprentices were critical of the unresponsive and rigid nature of the training, we now have a program to support training providers to deliver flexible workplace focused training. This involves training and case studies which include an effective mix of class based and work based training; support for employers in training and assessing in their workplace; the use of on-line training materials; and the use of new training packages to customise training for the best skill mix required for the business.

I think the ACT can be rightly proud of its record, which has contributed to the excellent economic development that we are currently experiencing, with unemployment down to its lowest level in a decade and employment at an absolute record high. This all contributes to jobs, jobs, jobs for our community.

MR HIRD: I ask a supplementary question. That is very pleasing but on the matter that the Minister raised with respect to the prize let me just say that Bill is a mate of mine but he is off my Christmas list. Minister, is this another example of the importance which the Carnell Government places on job creation?

MR STEFANIAK: It certainly is. I am sorry to hear about the Christmas list, mate, but do not worry. I will still give you a present, and it will not be like the one you won. This is another classic example of the importance which our Government places on job creation. Training and jobs go hand in hand. If the training is available, if the new apprenticeships are available, they assist in ensuring that our work force is able to go into jobs or change jobs. It creates that many more opportunities. I think we can be rightly proud of the figures. They are a great result for the ACT.

CityScape Staff

MR HARGREAVES: My question is to the Minister for Urban Services. Minister, I understand that your department has slashed $650,000 from the CityScape budget, which will eliminate weekend overtime. What this will mean, of course, is that the state of shopping centres and public toilets will deteriorate. How do you expect these facilities to be cleaned on weekends, and why is your department withdrawing from providing government services?

MR SMYTH: Mr Speaker, it is funny that Mr Hargreaves should ask this question. These are the people who have stood in the way of all government reforms to deliver better services to the people of Canberra. When we outsourced the first area, the Woden-Weston area, for services we made a saving of some $500,000. What are we actually getting? We are getting better service and we are getting better conditions.

That is not to say that CityScape has not done its part. CityScape over the last couple of years have performed well to get into the shape where they can compete. The Government will make some savings out of getting better value for its contracts.

In the recent contract which CityScape won we saved another $150,000. Mr Hargreaves fails to realise that the standards set inside the new contracts will ensure that standards are met. We now have standards that have to be met under contract. We end up not only saving the people of Canberra money but getting better service for that money.

MR HARGREAVES: I ask a supplementary question. I have noticed that there has been an increase in volunteers cleaning up their local area in the ACT, and I am sure the Minister will join me in congratulating the people involved. Do you consider it is the responsibility of the taxpayer to perform jobs that their taxes should pay for?

MR SMYTH: I think it is always very important that the community be involved in looking after their city. The thing that strikes me across my portfolio is the number of community groups that are willing to put something back into the city that is their home. At the BAC flats we have a group of tenants who regularly put together a concert to build community spirit there. Across the Territory we have something like 100 landcare, watercare, waterwatch and parkcare groups putting something back into their community. A huge number of people and groups have taken up the Adopt a Road program. It is very encouraging that people put things back into their community.

Mr Hargreaves: It is your job.

MR SMYTH: It is the job of all of us. Mr Hargreaves says it is my job. I would have thought it was the job of all of us as a community to make sure that the city is always clean. It is curious that Mr Hargreaves speaks about unions, because what he is actually talking about - - -

Mr Hargreaves: I beg your pardon. I take a point of order, Mr Speaker. I did not mention unions at all, so I would ask you about relevance.

Ms Carnell: It is not a point of order.

Mr Hargreaves: Would you please zip up the Chief Minister as well?

MR SPEAKER: There is no point of order, Mr Hargreaves. You have been interjecting continuously, even when it has not been your question.

MR SMYTH: Another long lunch, Mr Speaker. I understand that it is the Community and Public Sector Union, who apparently have only six members in CityScape, that have put out a media release. The media release referred to union concerns about a $653,000 budget cut and the assumed implications for cleaning services in the city. It was claimed, only by the union, that the public toilets will not be cleaned at weekends. I guess when you make an assumption it is like the old adage that you always make an arse out of somebody anyway. No agreements on changes to services have been reached, and weekend toilet cleaning is not even on the agenda.

Hospice

MR WOOD: My question is to Mr Moore, Minister for Health. Minister, you attended a joint public meeting of the Manuka and Burleigh Griffin LAPACs last night about the hospice relocation.

Mr Moore: The night before.

MR WOOD: Do you accept their view, as detailed in the media release today, that an appropriate planning process would be to take more time by undertaking an adequate relocation assessment rather than rushing an ad hoc process that puts at risk the possibility of finding a new site with the amenity a facility of excellence deserves? Secondly, will you add to whatever process you have the new sites suggested by the LAPACs, including Weston Park, Stirling Park and Grevillea Park?

MR MOORE: The answer to the last part of the question is no. We will look at some sites. I think it is really important to give a sense of what happened at that meeting. Mr Speaker, you were there and you know what happened. Not surprisingly, it was somewhat different in tone from the press release that Mr Wood has. Many people who spoke there said, "In Griffith we would welcome a hospice". Some of them said, "However, we think that a better place for a hospice than Griffith would be on Lake Burleigh Griffin". Of course, that will always be the approach when somebody feels that something is infringing on their area. They will always point to somewhere else as a better site.

Mr Smyth was there with me at that meeting, as was the Speaker. Unfortunately there were no members of the Labor Party or you would have got a much better sense - - -

Mr Stanhope: No, we trust the community. We trust the two LAPACs, which you obviously do not. We would not have stood up here and said that they could not reflect the meeting.

MR MOORE: Mr Stanhope says, "We trust the community. We do not need to trust anybody else". Mr Stanhope, perhaps in this case the community have a different view from that of the Hospice and Palliative Care Society. Which one are you going to trust? There is a problem about it. But let me tell you what happened. I took the meeting seriously. The Hospice and Palliative Care Society were there at the meeting. I spoke to them after the meeting and said, "This raises some extra issues for us. What if you come into my office tomorrow morning, Wednesday, and have a meeting with me?". They did that for about an hour

At that time they put the issue of possible sites around the Acton Peninsula. I raised with them the issue of the extra time it would take to assess any possible sites on the Acton Peninsula. Out of that meeting came two more possible sites, and of course at the next meeting we have there will be another three or four sites, and at the meeting we have after that there will be another five or six sites. When I discussed these - - -

Mr Wood: A reasonable planning process would have done all that.

MR MOORE: Mr Wood says, "Perhaps you should have done all that". We did. Let us put this into perspective. I was very pleased with the meeting I had with the Hospice and Palliative Care Society. Mr Dyer, the chief executive of Calvary Hospital, was there. When the same sort of question was raised by them, Mr Dyer said, "Wait on. You ought to realise that Mr Moore and I have discussed almost monthly for a year where the best sites are". Let us remember that he was working within the context that the Liberal Party - no, that is not the full Government - had gone to a previous election saying that the hospice, if relocated, should be co-located with Calvary Hospital. That was two elections ago, and they have been to an election without that promise in the interim. If that had not been said, the Liberal Party would not have the majority of seats in this Assembly. I discussed with them that point of view, I discussed it with Mr Dyer and I discussed possible sites, and we came up with a very sensible range of sites. The department came up with those and put them to me. They included the sites around Calvary and the site at Yarramundi Reach. When they were put to me I said, "Do not do any further investigation of Yarramundi Reach". On the surface of it we can see that it is not worth doing any more investigation. It has just too many problems.

Recently somebody put to me the site at Attunga Point next to the Canberra Yacht Club. I said, "Yes, they had a very quick look at it but I know there is no public transport there and we really do not want to go into that in much more detail". I have looked at it and realise that it does not have a good frontage but a steep one. There are also other issues about services. I said, "Do not do any further investigation into it". A lot of these sites we can eliminate without spending large sums of money doing it. Even today people have suggested a couple of further sites to me.

We have taken it seriously and I have taken the motion of this Assembly seriously. I am looking at sites on Lake Burley Griffin. I am trying to get ones that are viable. I am talking to the National Capital Authority about that. I have personally spoken to the National Capital Authority a couple of times in the last week after the motion. One was a social occasion I mentioned last week and one was earlier this week. I have also asked my departmental officer who is dealing with this to do the same. We are pursuing it very carefully.

Following that meeting I have had a letter from Calvary Hospital which, amongst other things, says that the views expressed in the letter include those of the management of both the Calvary Hospital and the ACT Hospice. The thrust of the letter is that they would like me to continue pursuing a site on Lake Burley Griffin. If there is a chance that a site will go through the relevant planning processes, then they are prepared to wait some extra time, and they are prepared to allow the hospice to move into the Canberra Hospital during that time. I hope that is acceptable to members.

Mr Berry: No, not to me.

MR MOORE: Mr Berry shakes his head and says no. I am sure Mr Stanhope has a different view. The Hospice and Palliative Care Society agree with this view. That gives me more time. I will try to avoid that, but they recognise that that is the sort of choice they are making - a short-term problem for a long-term benefit.

Mr Stanhope: Who is going to wheel the dying people out into the car park, Michael? Are you going to get down there and help John Howard do it? Who is going to kick dying people out of the hospice?

MR MOORE: Mr Stanhope says, "Who is going to go down there with John Howard and wheel those dying people out?". There is a little bit of credibility between governments, Mr Stanhope. When governments make an agreement, they want it respected on the other side. If an agreement has been made, good faith would dictate that we abide by it.

Mr Stanhope: There is no hard and fast deadline. The Commonwealth has allowed a period of grace, as you very well know.

MR MOORE: Mr Stanhope, you are wrong. So many times you make mistakes. This is another one of them. Mr Stanhope, there is a hard and fast deadline. We have a year and then we have a six-month grace period. It will take us that long to build a hospice. I am doing my best to try to make sure it is built before that time. Even if we find a site near Lake Burley Griffin - and that is what I am trying to do - I will still try to make sure there is no transition through a ward in the Canberra Hospital.

What Mr Dyer is saying, what the hospice management is saying and, to get back to Mr Wood's question, what the LAPAC is saying is that that is a better solution than not considering Lake Burley Griffin at all. I accept that. Members, that is what you indicated to me that I should do. That is why I am responding in this way, even though I was very comfortable with the site on Lake Ginninderra. Mr Dyer says, amongst other things, that in taking this position it is recognised that it will be necessary to move on a temporary basis to an interim location within the ward block at the Canberra Hospital. He says that the implications of this have been considered but believes that in the interests of a long-term solution short-term inconvenience is surmountable.

Members, if you think that that is not appropriate, please tell me today so that I can eliminate the option of Lake Burley Griffin. You have to understand that in following the instruction of this Assembly it is likely that if we do find a site on Lake Burley Griffin the interim solution will be for the hospice to go into the Canberra Hospital. Much as I will try to avoid it, you must understand that that is the case. Mr Osborne indicates to me he is comfortable with that. Mr Rugendyke is not sure. What about you, Ms Tucker? Are you comfortable with that? Mr Kaine, are you happy with that interim solution.

Mr Stanhope: What is this nonsense?

MR MOORE: The reason I am doing it, Mr Stanhope, is that I have seen the way you operate.

Ms Tucker: Do we have a new standing order in this place?

MR MOORE: They are rhetorical questions, Ms Tucker. The reason I am doing it, Mr Stanhope, is that I have seen the way you operate. I am damned if I do, damned if I don't. I am just trying to tie you down to make sure that you understand the

ramifications of the decision that you have made and put on me. Mr Stanhope, I know you love to play political games. You are interested in short-term political gain every single time. That is what it is - just the short-term political gain. Nothing else matters.

Mr Osborne: I raise a point of order, Mr Speaker. I refer the Minister to standing order 118(b), "shall not debate the subject to which the question refers".

MR SPEAKER: Thank you. I uphold the point of order.

MR WOOD: I ask a supplementary question. Mr Moore today presents a remarkable new view on planning processes which are substantially private and semi-public at best. My supplementary question touches on comments he made. Does the Minister not accept the view of the LAPACs and others that the Commonwealth Government would not forcibly evict the existing hospice from Acton Peninsula if good progress was being made to find and develop the best available site? Is that not the general expectation? If you could show that you were doing something, they would not turn you out at a moment's notice.

MR MOORE: I think that is true within the first year of the agreement, and even for the next six months. Remember the agreement says, "You can stay for a year and if you are well under way with processes then you can stay another six months". What happens beyond that six months? The Chief Minister indicates to me it is not quite as simple as Mr Stanhope thinks. There will be issues such as insurance that may well be put in jeopardy if the hospice remains on Acton Peninsula, squatting.

However, I should share with members that in the discussions I had with the chief executive of the National Capital Authority I said, "If we have the thing almost built and we are just doing the last part of the fitout and it is 31 December, are you going to force us out?". Her response to me was that there was an agreement between the Chief Minister and the Prime Minister and that, although she cannot give advice that goes contrary to that, she would believe that both the Federal Government and the National Capital Authority would be receptive to a few weeks either way. I have been exploring each of those issues, Mr Wood. I am genuinely - - -

Mr Wood: Even if you had started work, that would happen, would it not?

MR MOORE: Not necessarily, because the National Capital Authority and the Government are very keen to have the hospice out of that site by the time the National Museum opens early in the following year, predicted to be March. They want to make sure that it is completely out of there. That is why I think it is a very strong possibility that a ward at the Canberra Hospital will be necessary if we can find a site, or even if we go through the process of trying to find a site.

I would like to emphasise to members that I have taken your views seriously. I take the view of the people who met at Griffith seriously, and I am doing my best to deliver the best possible site in Canberra. But do understand the ramifications of the decision that you made.

Cannabis Laws

MR RUGENDYKE: My question is to the Chief Minister. Prior to the 1995 election the Liberal Party policy statement said the following:

> Recent studies have shown a continuing increase in substance abuse among Canberra teenagers in the last three years.
>
> If elected, we will examine how effective the decriminalisation of cannabis has been in Canberra. If it is working properly then we see no reason to change.

Could the Chief Minister advise the Assembly what this Government has done to rectify the increase in substance abuse following the decriminalisation of cannabis and what examination has been carried out of the relaxed cannabis laws in the five years that you have been in government?

MS CARNELL: Research has been done in that timeframe. Mr Moore informs me that the person who did that research was Dr Ali. We have seen quite a lot of work done in this area over that period of time, looking at the South Australian legislation, which is fairly similar to ours.

Mr Rugendyke: I take a point of order, Mr Speaker. My question relates to the policies of the ACT Liberals. I am talking about ACT research and evaluation, et cetera.

MS CARNELL: Mr Speaker, that is not a point of order.

MR SPEAKER: No, it is not. I take the opportunity to point out that standing order 117(f) states:

> Questions may be asked to elicit information regarding business pending on the notice paper but discussion must not be anticipated;

MS CARNELL: Research done of similar legislation in other jurisdictions is obviously appropriate to look at and to use when we assess our position here in the ACT. I certainly have seen no indication that the current cannabis laws in the ACT have in any way increased the usage of marijuana over that period of time. The work that has been done in South Australia would tend to back that up. I understand Mr Rugendyke's view. It just happens to be different from mine. I have shown Mr Rugendyke the policy with which we went to the last election last year - - -

Mr Osborne: I raise a point of order, Mr Speaker. I think the Chief Minister may have inadvertently misled the Assembly in saying that there has been no increase in cannabis use.

MS CARNELL: What I said was that I have seen no evidence that there has been an increase in cannabis use as a result of the laws, and I think that has been documented in a number of cases. There has certainly been an increase in cannabis use but in States that have some of the toughest laws in Australia. There is simply no way anybody can

suggest that the laws that exist in South Australia and the ACT have themselves caused an increase. Mr Speaker, this side of the house went to the election last year with a policy to suggest that we did need to do some legislative work to ensure the enforcement of the current legislation, and we certainly stand by that.

MR RUGENDYKE: I ask a supplementary question. Chief Minister, what examination or evaluation, as promised by the Liberal Party prior to the 1995 election, has been done in the ACT? The answer is none.

MS CARNELL: Mr Speaker, I would have to take that question on notice. We do a lot of work in the area. The Minister responsible will assist.

MR MOORE: Perhaps I can assist , Mr Rugendyke.

Mr Osborne: I raise a point of order, Mr Speaker. I think Mr Rugendyke was asking the Liberal Party. Hang on. That is right - you are Liberal Party. It is okay.

MR MOORE: The Chief Minister answered the question about Liberal Party policy. Mr Speaker, there is a danger that Mr Osborne may have misled the Assembly. The supplementary question was totally about what research has been done into the ACT. I think it is important to understand that of course we can extrapolate from the research of Dr Ali and others comparing the similar system in South Australia with ours and with Western Australia. That study was presented to the Ministerial Council on Drug Strategy.

Mr Rugendyke: It is totally flawed.

MR MOORE: I understand that Mr Rugendyke believes that study to be totally flawed, but I have to say that the professionals who did that study have done a huge amount of research and have all been published in peer review journals, Mr Rugendyke. When you are putting your criticisms in those sorts of fora - or forums, as you may prefer - that would be a reasonable comment. I think Mr Humphries was at that meeting, but certainly at one of the meetings we did request that the Commonwealth continue the study they had done in South Australia to take in the ACT. They have not agreed to that at this stage, but we will be pursuing that.

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

Impounded Trailer

MR SMYTH: The other day Mr Berry asked a question about the trailer owned by Mr Murphy and Market Cellars. Given that the portfolio responsibility is mine and not the Chief Minister's, I sought additional information and would seek an opportunity to read it into the record. Mr Speaker, the trailer advertising Market Cellars has been regularly parked on the road or the verge beside Canberra Avenue in Fyshwick. The trailer had been registered so had been subject to the provisions of the Motor Traffic Act. It was occasionally issued with parking infringement notices.

On 26 January 1998 the trailer was confiscated and impounded by the city ranger's office. By that time the trailer no longer carried registration plates. However, within the department it was understood that the legality of the confiscation was uncertain. The Roads and Public Places Act and Protection of Lands Act provide that objects and advertising signs should not be placed on territory or unleased land and prescribe penalties for breaches of the Acts, but they did not provide a power of confiscation or impoundment at the time the trailer was removed. This understanding of the legislation was based on the findings in the case of Munday v. the Territory in relation to the confiscation of signs.

Subsequent to the confiscation a departmental officer instructed the chief ranger that the trailer should be immediately returned to the owner. As the numberplates had been removed from the trailer, it could not legally be driven on the road except in the interests of public safety. A haulage contractor was therefore engaged to return it. The trailer was returned to the owner that same evening but not placed back in the position from which it had been confiscated. The haulage contractor's fee for the job was about $300. The department did not give consideration to recovering this amount from the owner of the trailer.

The Roads and Public Places Act was amended in November 1998 by the insertion of section 12F, which provides a legal right of removal and retention of signs and objects placed in public places. It also allows for the recovery of costs incurred in removing and storing objects. Costs of returning objects are not addressed as it is assumed that owners will collect them, given that the legal right to remove has been clarified by this amendment.

AUDITOR-GENERAL - REPORT NO. 3 OF 1999
Annual Management Report

MR SPEAKER: For the information of members, I present the Auditor-General's Report No. 3 of 1999, entitled "Annual Management Report for the year ended 30 June 1999".

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety): I ask for leave to move a motion authorising the publication of the report.

Leave granted.

MR HUMPHRIES: I move:

> That the Assembly authorises the publication of the Auditor-General's Report No. 3 of 1999.

Question resolved in the affirmative.

FINANCIAL MANAGEMENT ACT - AUTHORISATION OF EXPENDITURE FOR 1998-99
Papers and Ministerial Statement

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety): Mr Speaker, for the information of members, I present, pursuant to section 26 of the Financial Management Act 1996, the authorisation of expenditure for 1998-99 under section 18 of the Act, including the statement of reasons for expenditure against the Treasurer's Advance, and ask for leave to make a short statement.

Leave granted.

MR HUMPHRIES: Mr Speaker, as required by the Financial Management Act 1996, I have tabled a copy of the authorisations for expenditure under section 18 of the Act and a statement of the reasons relating to the expenditure. Section 18 of the Act allows the Treasurer to authorise expenditure from the Treasurer's Advance. The authorisation may be to provide for expenditure in excess of an amount already specifically appropriated or an expenditure for which there is no appropriation. The Act states that where the Treasurer has authorised expenditure under section 18 a copy of the authorisation and a statement of reasons relating to the expenditure are to be laid before the Assembly as soon as practicable after the end of the financial year.

The 1998-99 Appropriation Act provided $15.1m to the Treasurer's Advance. The final expenditure against the Treasurer's Advance in the 1998-99 financial year totalled $14.176m, leaving $924,000 unallocated. The major expenditures from the Treasurer's Advance included $1.72m for an AFP pay rise, $4.463m for criminal injuries compensation, $1.345m for the increased costs of sentenced prisoners and a $2.518m operating injection for ACTION. I commend those papers to the Assembly. I move:

> That the Assembly takes note of the papers.

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

PAPERS

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

> 1999-2000 Capital Works Program - Call Tender Report (incorporating the Call Tender Schedule).
>
> ACT Administration of Justice - Statistical profile for January to March 1999 and April to June 1999.

TUGGERANONG LAKESHORE MASTER PLAN
Paper and Ministerial Statement

MR SMYTH (Minister for Urban Services): Mr Speaker, for the information of members, I present the Tuggeranong lakeshore master plan, dated August 1999, and ask for leave to make a statement.

Leave granted.

MR SMYTH: Mr Speaker, as part of the 1998 ACT election campaign, the Liberal Party pledged to develop a master plan for Tuggeranong lakeshore and surrounding areas. A consultant was engaged by Planning and Land Management in December 1998 to undertake this study. A final master plan has been published, following a six-month period involving two extensive rounds of community consultation. A wide range of opinions and debate regarding the future of the Tuggeranong lakeshore and the town centre have been stimulated by this study.

Mr Speaker, the master plan is a vision for the future and a development strategy. Contrary to some media comments, the master plan is not a detailed development control plan. The master plan will be used by the Government to help determine public works initiatives and maintenance operations, advise Canberra Urban Parks and Places on the management of public spaces and provide input to the Infrastructure and Asset Management Group's land release program, as well as providing input to PALM's consideration of future variations to the Territory Plan.

The master plan provides a framework to permit additional development, including residential, to revitalise the Tuggeranong Town Centre and to improve the use of facilities and public areas. Furthermore, the provision of a range of housing types within or in proximity to a town centre is in accordance with the principles for sustainable development and the Territory's obligations under the national greenhouse strategy. I have asked my department to work closely with the Infrastructure and Asset Management Group in the Department of Treasury and Infrastructure to ensure that the good ideas of the plan are used to provide a vibrant future for the town centre and effective use of the lakeshore.

Mr Speaker, over time implementation of the plan will see an improvement to public amenities, including pedestrian lighting, increased opportunities for recreation and entertainment facilities, a village green, facilities for the aged and increased opportunities for people to live on the lake edge and in the town centre. I table the Tuggeranong lakeshore master plan for the information of members.

MR OSBORNE: Mr Speaker, I seek leave to move a motion in relation to the master plan.

Leave granted.

MR OSBORNE: I move:

> That the Tuggeranong Lakeshore Master Plan be referred to the Standing Committee on Urban Services for inquiry and report.

Question resolved in the affirmative.

PATIENT ACTIVITY DATA
Papers

MR MOORE (Minister for Health and Community Care): For the information of members, I present information bulletins relating to patient activity data for the Calvary Public Hospital and the Canberra Hospital for June and July 1999.

AUSTRALIAN HEALTH MINISTERS CONFERENCE - OUTCOMES
Ministerial Statement and Paper

MR MOORE (Minister for Health and Community Care): Mr Speaker, I ask for the leave of the Assembly to make a ministerial statement on the outcomes of the Australian Health Ministers Conference held in Canberra on 4 August 1999.

Leave granted.

MR MOORE: The Australian Health Ministers Conference was held in Canberra on 4 August 1999. During the conference, Commonwealth, State and Territory Health Ministers agreed on a number of measures which will drive an agenda for an evolutionary and incremental approach to health reform. This approach by Health Ministers provides a significant opportunity for improvement in the organisation and delivery of health services across Australia.

Coordinated care was one of the key elements of the agreed agenda. There are nine coordinated care trials under way in five States and Territories, including Care Plus in the ACT. The ACT is proud to be involved in this initiative, which emphasises the needs of the consumer and aims to develop effective partnerships between general practitioners and non-medical primary and community care.

Early findings of the evaluation of the nine current trials were considered. I am pleased to say that the commitment of Health Ministers to supporting further trials will ensure a national approach to serious health reform. Trials will be extended over the next four years. In addition to exploring ways to involve residential aged care services and the use of private health insurance, new trials will have a particular focus on primary care. The approach is aimed at benefiting those with chronic or complex needs, many of whom are elderly.

Quality and safety in health care was another key element. The Australian Council for Safety and Quality in Health Care will be established. The council will coordinate a national response to the recommendations of the national expert advisory group on

quality and safety in Australian health care. All States and Territories will contribute to the council's core funding. Subsequent funding will be sought on a project by project basis.

The next key element was the rural medical workforce. The recruitment process for overseas trained general practitioners will be streamlined in an attempt to reduce the shortage of trained personnel in rural areas. The process will be implemented with the assistance of the Royal Australian College of General Practitioners and the Australian College of Rural and Remote Medicine.

Health data was yet another key element. A national health information action plan is proposed. The plan will facilitate progress by bringing coherence and unity of purpose to the national health information management and the national information technology agendas. Nationally consistent health data protection legislation will be developed under the plan. The legislation developed in the ACT was viewed positively by the conference. Health Ministers believe that the ACT legislation will provide a very useful guide for them in further action in this area.

The Commonwealth is keen to bring forward legislation that provides a framework for specific health data collection and sharing arrangements, including electronic medical records. Such arrangements might enable the use of a unique patient identifier and might result in the linking of data from the medical benefits schedule, the pharmaceutical schedule and hospital services. This work has the potential to establish a new national dataset of de-identified clinical and administrative data, information from which would inform health reform in ways previously not possible in Australia.

The health and medical research strategic review, known as the Wills review, has examined the strengths and weaknesses of the Australian health and medical research sector. A strategy to ensure that the Australian health research sector remains internationally competitive and responsive to Australian health sector needs has been endorsed. The strategy involves the development of an effective health and medical research sector built on high-impact fundamental research and a world-class workforce and infrastructure; priority driven research that contributes directly to population health and evidence based health care; an industry sector that mutually reinforces the research sector; and increased public investment in a well-managed research sector.

I turn to national health priority areas. The Health Ministers launched reports on three priority areas - cardiovascular health; diabetes; and mental health, focusing on depression. New and innovative ways to address these major illnesses are needed. The national health priority areas reports are tangible evidence that, in a spirit of national cooperation, we have searched for - and hopefully found - those new ways. The ACT has been extensively involved in the development of these reports.

The proposed national depression action plan that Health Ministers agreed to progress is a timely move, given that the *World Health Report 1999* highlights depression as a major health challenge for the coming decades. As a matter of urgency, we need a greater understanding of the causes of depression and we need more effective treatments. In the ACT, we are continuing to move more to a community focus on care, with an increasing proportion of the resources going to programs that intervene early.

The national diabetes strategy for 2000-04, also launched by Health Ministers, provides five goals and performance measures to guide our actions in this key area. The integrated diabetes disease management model which was implemented earlier this year in the ACT is entirely consistent with the national strategy.

Mr Speaker, with asthma affecting over two million Australians, giving us one of the highest rates in the world, it is another serious health issue for us to address. Asthma is one of the 10 most common reasons that people have for seeing their general practitioner, and the drugs used to treat asthma represent the third highest drug group cost. I, along with other State and Territory Health Ministers, have recognised the importance of well-managed care for people with asthma, not only for their own quality of life but also in reducing the economic burden that asthma has on the health care system.

A national asthma strategy implementation plan has been developed to focus attention, effort and resources on improving health outcomes concerning asthma. The plan has drawn on local, State and Territory expertise for much of its content and represents a high degree of collaboration. The new national health priority area on asthma will achieve a concerted national focus on improving the awareness and management of asthma in Australia.

I turn to the nursing workforce review. Issues around the training, availability and sustainability of the nursing workforce being a key element of the health and community care workforce are reaching a critical point in Australia. Ministers agreed to a national review of the nursing workforce, with the review to be completed by the Commonwealth Department of Health and Aged Care.

At the Australian Health Ministers Conference in July 1998, Ministers agreed that each State and Territory would report annually to the conference on progress made in implementing the framework agreement concerning indigenous health. The report that the ACT tabled was prepared in consultation with members of the indigenous health forum. The report flagged considerable progress in the development of the ACT's indigenous health strategic plan, which identifies future direction and priorities for indigenous health in the ACT.

A progress report was also presented by Mr Puggy Hunter, chair of the National Aboriginal Community Controlled Health Organisation. Mr Hunter's report gave his organisation's perspective of the progress made in implementing the commitments made in the framework agreements. The purpose of the reports from jurisdictions is not to make comparisons, but rather to honestly appraise how we have progressed the intent of the agreement and highlight the areas where we know more work could be done. The reporting framework provides Health Ministers with an opportunity to map activity in key commitment areas and flag new approaches or new programs. The framework provides greater transparency to the public about efforts to improve the health status of Aboriginal and Torres Strait Islander people.

The chronic disease self-management initiative, as part of the enhanced primary care package for older Australians and those with complex chronic conditions, was announced in the 1999-2000 Federal Budget. Health Ministers recognised that this is a major service area requiring a coordinated approach to future reform. Ministers agreed to announce the development of a national framework for chronic disease prevention.

The development of Australia's first national hepatitis C strategy is an exciting activity. The strategy will pave the way for an organised national response to the next phase of Australia's approach to the management of the hepatitis C epidemic. The ACT will be an active participant in the development of this strategy, which will provide a policy framework to underpin some of the excellent work which has already been undertaken.

Measuring and reporting on the performance of the health system nationally and at a state and territory level is an integral part of the business we are involved in. The national Health Ministers benchmarking working group has prepared the third national report on health sector performance indicators.

I turn to the testing of fresh blood products. In accordance with world best practice, the testing of fresh blood products in Australia will be updated by 1 April 2000 to include nucleic acid testing for hepatitis C and HIV. This process will be funded by the States and Territories in accordance with normal funding arrangements. Additional capital and recurrent funding will be required to meet the 1 April 2000 deadline.

The national directory for radiation protection will be developed to provide an overall framework for radiation safety, together with statements able to be adopted within existing Commonwealth and territory legislative frameworks. The adoption of uniform regulatory controls will be considered in the light of a planned national competition policy review of radiation protection.

South Australia recently trialled a modified Spanish model of organ donation, the outcome being a significant increase in organ donation rates. This activity, coupled with a recent increase in the rates in the ACT, has prompted Health Ministers to regularly review the organ donation rates of all States and Territories and examine options for ensuring that the rates continue to rise in the States and Territories. A nationally accessible information system will be developed which will identify on their drivers licences persons willing to be organ donors. Ministers endorsed the use nationally of the death audit tool as a means of identifying potential organ or tissue donors. The tool has been developed mainly for use in hospitals operating intensive care units.

In closing, Mr Speaker, as chair of the Australian Health Ministers Conference, I am pleased to report that significant decisions on a range of important health reform issues were made at that meeting on 4 August. I am also pleased to report on the role that the ACT has played, and will continue to play, in this key forum. It is a role that I am keen to continue at future meetings. Mr Speaker, I present the following paper:

> Outcomes from the Australian Health Ministers Conference held in Canberra on 4 August 1999 - Ministerial statement, 2 September 1999.

I move:

> That the Assembly takes note of the paper.

Question resolved in the affirmative.

LEAVE OF ABSENCE TO MEMBERS

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

> That leave of absence from 3 to 19 September inclusive be given to Mr Quinlan and Mr Humphries.

HEALTH REGULATION (MATERNAL HEALTH INFORMATION) ACT - MATERNAL HEALTH INFORMATION REGULATIONS 1999 (SUBORDINATE LAW NO. 15 OF 1999)
Motion for Disallowance

Debate resumed.

MS TUCKER (3.48): I believe that this debate is of great concern. To be honest, I am very unhappy that we even have to have it because I am totally opposed to the mechanism that has been used by Mr Humphries and Mr Smyth to bring about these regulations. When we debated the Bill last year I challenged those who were voting for the Bill to demonstrate that they really had worked through the legal and health implications of it. We did not get a satisfactory answer from the members who were supporting the Bill. By voting for the legislation, they accepted that an expert medical panel consisting of a specialist in obstetrics and a specialist in neonatal medicine nominated by the ACT Health and Community Care Services Board, a specialist in obstetrics and a specialist in neonatal medicine nominated by Calvary Hospital, a specialist in psychiatry and a registered nurse specialising in women's health nominated by Calvary Hospital, and a registered nurse specialising in neonatal medicine nominated by the ACT Health and Community Care Services Board would determine an information package for women seeking an abortion in the ACT. Section 14(4) of the Act states:

> The advisory panel...may, for the purposes of paragraph 8(1)(d), approve materials which present pictures or drawings and descriptions of the anatomical and physiological characteristics of a foetus at regular intervals.

The crucial word, as many other members have said today, is "may". This legislation gave power to an expert panel to approve materials containing information on the medical risks of the termination of a pregnancy and of carrying a pregnancy to term. At this point, I remind the Assembly of the definition of "expert". According to the *Macquarie Dictionary*, an expert is someone who has special skill or knowledge in a particular field. As other members have already pointed out, no-one in this place is

admitting to having special expertise in neonatal medicine, obstetrics, psychiatry or women's health. How anyone in this place feels that he or she has the right to veto the opinion of this expert panel is absolutely amazing to me.

I remind members why the expert panel approved the material it did. In relation to pictures and drawings, it said that it was the unanimous view of the panel that the presentation of pictures or drawings of foetuses is irrelevant and in some cases could be counterproductive and cloud the issue. The panel noted that the New Zealand material, which was referred to often by members who were supporting this legislation originally as a reason for having these sorts of pictures in there, is now being revised to take into account the perception that pictures may introduce emotional bias. No-one in this place has actually responded to that. It has been raised by other members, but we have not had a response yet about why it is okay, even though New Zealand is now saying that it is not and even though they used New Zealand as an excuse in the original debate.

The panel here has not approved any material containing pictures or drawings of foetuses. I heard the Chief Minister interject that they are only pictures. To me, that is a shocking statement. To say that they are only pictures is to totally deny any concern about impacts on the mental health of women. What does "only pictures" mean? I can show any number of people pictures and they can have a hugely traumatic impact, depending on the person and the picture. These are not "only pictures"; they are pictures of foetuses that are being forced on women who are contemplating having an abortion.

That raises another issue that really has to be responded to. The Chief Minister also said that women do not have to look at them if they do not want to. That was the subject of discussion in the original debate. I have to revisit it because I am still hearing the Chief Minister, at least, saying that they do not have to look at them. The objects of this Act are to ensure - this is the onus on medical practitioners - that adequate and balanced medical advice and information are given to a woman who is considering an abortion and ensure that a decision by a woman to proceed or not to proceed with an abortion is carefully considered. The onus is on the doctor to ensure it.

Anyone having to work with this legislation has to look further into the Act, to section 8, to ascertain what information must be provided - "must be provided". Where it is proposed to perform an abortion, a medical practitioner shall properly, appropriately and adequately provide the woman with advice about certain things. The point that I am making here is that that is still going to be very difficult. Nothing has changed. It is the same as the piece of legislation that we debated originally. It is very unclear exactly what that means for someone who is trying to observe the law. It may well be the case that people believe that they have an obligation to force this information on women. We do not have a clear case of it being optional at all.

The other thing that has to be said is that the underlying sentiment of these regulations clearly is paternalistic. I reject the Chief Minister's argument that it is paternalistic not to offer people full information. For a start, there is no way that you can offer full information to anyone about such a personal decision. What is full information for a woman who is deciding whether to have an abortion? Full information has to include information on all the implications of that decision, which nobody could predict for an individual.

We have here a number of men and one woman deciding that one particular aspect of the information is so important that it must be forced on a woman. The point is that it is not relevant to any particular individual that that is the most critical piece of information. It is imposing on women the view of people in this place on what is full information. I know that there are very many other factors that a woman has to take into account - endless variations of factors for any woman at any given time in making this very difficult decision.

The inference is that such a woman would not have the ability to find information to support her decision, that she would not understand enough about the decision to know what she needs to find out, so nine members of this place will decide for that woman what she has to know. That is being totally paternalistic and is totally insulting. I would like to know why they bothered to pass legislation in this place delegating power to an expert panel if they feel that they can override the view of that panel when it does not suit their particular agenda.

When we debated this legislation last, I heard it said ad nauseam that it was not a Bill about restricting a woman's right to choose and it was not a Bill that would stop all abortions; it was only a Bill to provide information to women so that they could make a full and informed decision. What we are seeing, as I have already said, is that it is about telling women that having particular information is necessary and it is not up to a woman to make the decision on that; it is up to members of this parliament. It is not up to the expert panel which has regard for the mental health of women; it is up to people in this place who have no idea at all about the medical consequences of the decision but who feel, for some bizarre reason, that they have the right.

I noticed in the *Canberra Times* that concern was expressed by the Women's Health Centre about the accuracy of the information and asked my office to follow it up. Three textbooks put a very different interpretation on the weight of foetuses at particular ages. For the information of members, I will draw attention to the variations in the textbooks. Of particular interest is that there is one consistent thread throughout all the weights that are given in the Government's regulations and the other members' regulations, that is, that the weights are much greater than in any text that we have been able to find. I did ask a medical practitioner why that could be and he suggested that it could be because the weights that are put in the pamphlet next to the pictures are of the conception as a whole, that is, it includes the amniotic fluid. *(Extension of time granted)* That would explain why it is so much greater.

For the information of members, I will give the various weights. In the Maternal Health Information Regulations the weight of a foetus at the age of eight weeks is 15 grams. In *Current Obstetrics and Gynaecologic Diagnosis and Treatment* it is one gram - one gram against 15 grams in the pamphlet for the weight at eight weeks. In *Pregnancy: Everything you need to know* it is five grams. In *The Textbook for Midwives* it is four grams. There is a range there of one gram to five grams. However, it is nowhere near 15 grams.

I turn to the weight of the foetus at 10 weeks. In the regulations that were tabled here today the weight is 30 grams. In *Pregnancy: Everything you need to know* it is 18 grams, which is about half. In *Having a Baby - The Essential Australian Guide to Pregnancy and Birth* it is five grams. At the age of 12 weeks the weight in the regulations is 45 grams. In *Current Obstetrics and Gynaecologic Diagnosis and Treatment* it is 12 to 15 grams. We can see a very disturbing disparity between the weights in these texts and what we have in this pamphlet. I am not an expert on this matter. I can only say that there are questions being raised here about whether the information in this regulation, offensive as it is, is even accurate.

The pictures look a bit like the cut-and-paste job of a sixth grade student. The pictures are not an accurate representation if they are trying to give a sense of the development of a foetus. The pictures seem to have been taken from different publications and stuck in there as the 12-weeks-old foetus is much smaller than the six-weeks-old foetus. If they truly are trying to give some kind of educational experience to a woman, you would think that more trouble than this would have been taken. This is a fabulous argument for why politicians should keep their nose out of medical matters. We are faced today with a really disturbing situation. I have heard Mrs Carnell say that she wants to see accurate information provided.

I am hoping that Mrs Carnell will now support this disallowance motion so that the Government, if they are going to insist on producing regulations which have pictures of foetuses - and I understand that it is their view that that is the right thing to do - will at least get it right. I do not imagine that they would attempt to amend it today. That would be really laughable. I think we need to see some kind of rigorous process here so that people in the community can be confident at least that this publication is doing a reasonable job.

I had noticed in the regulations that there is the potential for the panel to produce this information itself. The panel has chosen not to do that. I am wondering whether that is some kind of plot and whether, because the Government and its supporters are doing such a terrible job of it, the panel, in desperation, will say, “For God’s sake, we will do it. At least we will get it right”. One really has to wonder about the process here; it is extremely concerning.

I am asking Mr Rugendyke, Mr Kaine, Mr Osborne and all the members of the Government who are choosing to support these regulations, for the sake of their own credibility if nothing else, to support this disallowance motion until we can get some reasonable agreement from the medical profession and those experts in the area that the information is actually correct. One has to say, given what appears to be an exaggeration of the weight, that it could easily be seen to be a way of manipulating what women will think about the weight of their foetus. It is not as if the inaccuracy is actually reducing the weight. It suits the agenda, obviously, of the people who are supporting these regulations. Maybe we will see this disallowance motion supported so that this can be put right. I really hope that we will see that, otherwise the ACT community is going to be even more worried about the ACT Assembly as it stands at this time.

MR CORNWELL (4.03): I must admit, Mr Deputy Speaker, that I was quite satisfied with the November law. In fact, I thought that this Assembly reached a very sensible, satisfactory compromise on the matter. But I accept that what came forward after what we thought was the end of the matter in November has created a problem, which we are addressing today. However, I must state quite clearly that I am tired of this matter coming up every year in this Assembly and I will have something - - -

Mr Berry: That is okay. Decriminalise it, throw this out and it will not come up again.

MR CORNWELL: If you will stop interjecting, Mr Berry, I will have something to say on the matter later in my comments. I do accept that people who hold strong views on this matter, either against abortion or in favour of it, have a right to put their view. But I have now reached a decision that this right needs to be supported by the public, and only in a referendum. I believe that it is not sufficiently convincing for 17 people in this Assembly - ironically, at this point, as Mr Berry stated earlier today, 15 males and two women - to be making this decision. Politicians have a nasty habit of adopting political and moral elitism. That is why I say that we should think in terms of involving more of the community.

Bear in mind that only nine members of this 17-member Assembly need to be of the one view in, say, the next Assembly and whatever is decided in this Assembly could be turned around. In a subsequent Assembly, perhaps, a majority of nine could have the opposite view and it could be turned around again. I suggest that that is an absurdity. It is certainly not a sensible way of creating or, indeed, administering law, least of all on such an important issue as this one; hence, as I say, my suggestion that matters of this nature in future should be decided by referendum.

Despite the claims that there was an inference in the November debate for pictures to be included, I am aware that the use of the word "may" in the legislation makes it different from the use of the word "shall", as should every other member of this Assembly, otherwise they should not be here, I would suggest. Nevertheless, I do support the Chief Minister's view that full information should be made available to people. It really does not matter what the medical procedure may be. I know that medical practitioners are not always keen to tell you what is going to happen, but I think that there is a right to know.

If an advisory panel such as exists in this case declined unanimously to make a decision on this matter, one could ask why we should override it. I do not see a great problem with that because the requirement is only to include pictures in this brochure. Women need not read the brochure. In fact, as somebody expressed earlier, women may put the brochure in the bin. However, it is not the case, as Ms Tucker implied it is, that a Minister must ensure - I do not know how a Minister would ensure it, by the way - that these brochures are read. I suppose a Minister can ensure that they are available, but a Minister cannot ensure that they are read, Ms Tucker.

Of course, you omitted to add the other phrase, that is, that the Minister must ensure that, as far as practicable, copies of a current pamphlet are made available. I think "as far as practicable" is a fairly important phrase within that law. I repeat that there is no compulsion on any woman to read the brochure or to look at these pictures.

Indeed, I would suggest to you that by compelling the medical profession - all this regulation is doing is compelling the medical profession, not the woman - it is possible - - -

Ms Tucker: To ensure. She cannot have the abortion if they have not ensured it; that is the whole point.

MR CORNWELL: Yes, but you are drawing a very long bow on that.

Ms Tucker: No, I am not.

MR CORNWELL: The woman does not have to read the brochure.

Ms Tucker: The doctor has to ensure that she has seen it, so if the doctor has not ensured it - - -

Mr Stanhope: I rise to a point of order, Mr Deputy Speaker. They are debating the point across the chamber.

MR DEPUTY SPEAKER: What is the point of order?

MR CORNWELL: That we are having a debate across the chamber, I think.

MR DEPUTY SPEAKER: I did not think I should have to point it out to you, Mr Cornwell.

MR CORNWELL: Mr Deputy Speaker, I have seen the Tuggeranong master plan, but I have not read it. As I say, I believe that the current legislation is an adequate compromise and I believe that it is satisfactory for the majority of Canberrans. I think that has been fairly clearly demonstrated by their overwhelming silence since November. I am talking about the majority. I am not talking about small numbers of people who hold very strong views on this matter. I believe that this proposal only creates a compulsion on the part of a medical professional, not the women concerned.

Nevertheless, I would state for the record, and for the Assembly, that those who may wish to change the existing legislation should do so by the substantive action of a referendum, not by a decision of 17 people in this house. I will not support in this house any subsequent motions or legislation on this contentious issue from either side.

MR QUINLAN (4.11): I will be very brief, Mr Deputy Speaker. Earlier today, Mr Stanhope clearly debunked any claim that this Assembly legislated to force women contemplating abortion to view graphic pictures of foetuses in a government publication. The debate has swung on the word "may". I think enough has been said about that. I compliment Ms Tucker on her rounding out of that question. Let it be very clear today that every member of this Assembly knows that the provision in the original abortion Bill was intended to be a deterrent to abortion, not for the provision of information. That is the guise, but the totality of the original Bill was constructed to inhibit access to abortion, not to inform people.

We have indulged in quite a lot of nonsense in this debate in the claims that there really was an intention to inform. Support for these pictures is support for the intent of the original abortion Bill. No member of this Assembly can honestly - I repeat, honestly - claim to be pro-choice and not support this disallowance motion. Not supporting this motion is either borne of a no-choice philosophy or borne of political expedience.

MR KAINE (4.13): I must say that the debates in this place sometimes range far and wide and very often go a long way from the point of the matter which is the subject of the debate. I do not want to prolong the issue too much, but a couple of the things that have been said need to be refuted. I think that Ms Tucker made the best point when she emphasised - I repeat, emphasised - that this ought to be about full and informed decisions. Those were Ms Tucker's words.

I think that people ought always be able to make full and informed decisions, but on this occasion we have the unusual argument that some information ought to be suppressed. What is the logic behind it that says that we should have full disclosure, full information and full and informed decisions on every issue except this one and that in this case certain information that perhaps does not suit the case of one side of the argument should be suppressed? I am afraid, Ms Tucker, that I will not accept that as being a logical argument on this or any other issue.

Ms Tucker went on to say that politicians should keep out of health issues. That is a pretty broad general statement. Is Ms Tucker suggesting that we should keep out of questions of a health nature about the effects of cannabis, tobacco, alcohol and heroin on public health? Should we keep out of issues such as HIV and AIDS in this community? Should we keep out of such things as reportable diseases other than HIV and AIDS, such as tuberculosis, venereal disease and the like? That is an absurd proposition.

Ms Tucker: I did not say that.

MR KAINE: You did. I suggest, Ms Tucker, that you go and re-read the *Hansard* tomorrow because that is what you said. I do not accept the argument that, as an elected member of this place, I should not participate in debate and be part of the decision-making process. That is what I was elected for. Even our venerable Speaker suggested that a vote of nine members of this place should not be decisive. We vote in this place on issues every day of the week, some of them very significant issues, and they are decided very often on the basis of nine votes to eight. Why is this issue any different, Ms Tucker? If I can sit here as a mere male and vote on a whole range of significant issues that affect this community and affect the vote, whether it passes or not on the basis of a nine-eight vote, why can I not do it on this issue? It is because I am a mere male. I do not accept the proposition that males ought to exclude themselves from this debate.

I make the point that we are not talking here about the question of abortion. We are not arguing whether women should have access to abortion facilities. That is embedded in the law already and this debate, and the outcome of this motion, will not affect that in

the slightest degree. We are only debating one issue. That is the issue that you put your finger on, Ms Tucker: The decisions in this case should be full and informed. That is why I support the notion of including all the available information, not excluding some because it is repugnant to certain people that it should be displayed. I am not even going to get into the debate about whether women are obliged to read it or not obliged to read it. I do not care whether they read it. But the information ought to be available to them to read and to peruse, if they choose to do so.

I do not accept the argument, first of all, that I, as a male, ought not be involved. I do not accept the argument presented by our Speaker that a vote of nine to eight on this issue ought not be the end of the matter. It should be, just the same as it is on any of the range of issues that we debate in this place. I will not exclude myself from such a debate because I happen to be born male. I have an interest in the outcomes of these issues, just as everybody else in this room has - male or female. The proposition that somehow we males should all exclude ourselves from such a debate is, in my view, preposterous.

In the whole of this debate today there has been only one thing of concern to me, that is, the accuracy of the information. If it is to be published, it has to be accurate. Some people have questioned whether it is accurate. I am not a medical specialist; I do not know. But I do ask the Ministers who have enacted this subordinate legislation to satisfy themselves that the information contained in it is accurate and, if it proves not to be so, to correct it forthwith. I do not think that we can ask for anything more than that. When the time comes to vote, I will certainly vote - I would not exclude myself - and my position is quite clear.

MR HARGREAVES (4.19): I would like to take up very quickly a point that Mr Kaine made. I agree with him on it. I do not propose to refrain from considering this issue just because I am a male. It is my view that we have a 50 per cent stake in this matter. But it has to be understood, I think, that at some point there is a final decision to be made and we males do not get to make that final decision. We do not, we never will and we have never been able to. But it is incumbent upon us to assist in making that decision as easy as we possibly can. I accept what Mr Kaine was saying.

I have dug into *Hansard* and picked up a few things that people have said and I would like to quote something that the Chief Minister said. She said:

> I cannot understand why information put together in a medical way by people who are experts in this area could be a problem.

Incidentally, I am quoting from *Hansard* of 25 November, page 2992. She went on to say:

> The people who will decide what is in this brochure are the people set down in this legislation, subject to possible amendment.

I read “subject to possible amendment” to be subject to interference. I was surprised and disappointed to hear that.

The issue for me, as for Mr Kaine, is not whether abortion is available. It is whether we as a bunch of well-intentioned amateurs are best placed to ensure that balanced information is made available to people. I do not believe that we are. I think that the intensity of the debate that we had last time showed how emotionally charged we all are. We need only to consider the depth of some of the comments of people. There were some pretty horrible ones. Therefore, I ask whether our judgment has been clouded a little by this incredibly emotive issue.

One of the things that enabled me to support the Bill last time was the use of the word "may". I believe everybody has said enough about that, so I will not go on about it. The use of the word "may" was to me a demonstration of the independence of this panel that we have put together. I remind members that the panel was originally to consist of seven members and I moved an amendment to make sure that there would be women on it. I would have preferred to have had a majority of women on it; but, as it stands, I was happy to cop three. I believed that we needed to have them having a significant influence on it.

I also wanted one of the people there to be one of the nurses in community health who often have to pick up the pieces after somebody has elected to have an abortion or not elected to have an abortion. I do not wish to denigrate any of the hospital nurses in making this comment, but often our community nurses are the people best placed. They are the people who come in contact with it in real time. I would suggest that hospitals often are not real time places for these people.

I was really keen to have a person with psychology skills on it, but we put someone on it with psychiatric skills or qualifications. I was more concerned with looking after the people - they are probably in predominance - who go into psychological trauma. They are not nutters; they do not go into a psychiatric condition. They go into things such as depression, supreme sadness and supreme trauma. We need to be able to provide some sort of way of helping them out of that. I have to tell you that I would be really scared about being labelled a nutter if I had to go and see a psychiatrist, but I might be tempted to go and see a psychologist. I have been invited to do so often enough by the other side of the chamber.

If you look at the constitution of this panel you will see that it has specialists in obstetrics and neonatal medicine from both hospitals. That means that both the Catholic view and the non-Catholic view are represented there. Women's health issues are represented there and women are represented there; so we have covered religion, medical expertise, gender equity and balanced psychological aspects. Why is there a need for us to say what information should be in it? It seems to me to be a complete and utter waste of time and money.

I come down now to the question of the independence of the panel. I will be supporting this disallowance motion on the simple basis of the independence of this expert panel. I will do that because these people are better placed than I am to determine what goes in that publication. I have had just as much time to think about it in the depths of my soul, probably more, than lots of other people, but I am not well placed and I do not think that there is anybody in this chamber who is well placed to say what should and should not be in there. That is why we created the independent panel in the first place.

The panel is charged with putting balance in the issue. The one big thing that I wanted to see for people contemplating an abortion was the provision of information about the positive sides of carrying to term, including details of the support services that there are for people who decide to carry to term and the support that there is for the father who is faced with participating in that decision. I wanted that every bit as much as I wanted to see balanced information about the other side of it, abortion, which is something that I am not keen on. There comes a time when a judgment on balance and relevance has to be made and this Assembly is incompetent to make that decision. Those who think that they are competent to make that decision are having themselves on.

I turn to the pictures in the brochure. On my first read of it I thought, "Yes, it is okay. It looks pretty reasonable. It is scientific. It talks about embryos, not babies, so it is not trying to lead us somewhere". Later on we started talking about there being language used in there to lead to a certain position. I have no objection to that, but there has to be a balance to it. But there is no balance on the other side. I believe that that is so because we are well-intentioned amateurs, as I have said before, and we are doing the best we can. The panel is an independent body. This is the most serious issue I have been involved in in my life and I hope that I will never have to be again. I might say that I will be voting to try to make sure that I do not have to be again.

I urge members who have not made up their minds about where they stand on this issue to consider not what is in the schedule, but why we created the panel in the first place. It is independent. We all agreed that there needed to be women on it. There was not going to be, I can tell you. Anybody who has a casual look at the gender of the specialists in this town would be able to figure out who was going to be on that panel. I believe that if I can spot somebody who is a lot more competent in making a decision than I am, I should leave it to them. We should give that independent panel the backing of this Assembly. We should say, "You are truly independent".

Heavens above, we give the Auditor-General independence. Why on earth not have somebody who has the power of influence over life and death in this town? I do not want us to be a bunch of well-meaning, well-intentioned amateurs in this place. I urge members very sincerely to disallow this motion and let the independent panel have the independence it should have.

MR OSBORNE (4.28): I noticed with interest some of the things that Ms Tucker said about how males should not be involved in things like this. I am going to use that argument tonight at 2 o'clock when my children wake up. I will say to my wife, "I should not be involved in this. You go and feed the baby".

I will not speak for long. There seems to have been a fair amount of discussion in this place about the use of the word "may". I have to say that my recollection of what went on when this issue was resolved last year is that in my discussions with Mr Moore the issue was not whether something was going to be in a book; it was whether there were going to be pictures or drawings. That was certainly the interpretation that I took from what went on in my dealings with members in this place over the compromise that Mr Moore negotiated last year.

Nevertheless, I think that the fact that the word "may" is in the legislation is irrelevant. It is irrelevant because we have moved away from the issue of whether abortion is accessible or not and we have moved away from whether some of us in this place think that people should have access or not. That fight was fought and lost or won by people last year. I was not able to implement what I wanted in relation to abortion. People still have access to abortion. It then got down to how much information was supplied. That, I think, is what was negotiated last year. I took my guidance on what information should be supplied not from Mr Humphries, not from Mr Moore, not from Mr Berry, not from the Catholic Church, not from the Right to Life Association, not from the Family Planning Clinic, but from the High Court of Australia - yes, that pro-life institution, that institution that is controlled by the Catholic Church.

We discussed this matter in the debate last year. We discussed the 1992 High Court ruling in the case of Rogers v. Whittaker. The decision that was handed down said that, to consent to any medical procedure, the patient must be fully informed. Let me read further. The joint ruling stated that a doctor has a duty to warn a patient of all risks inherent in the proposed treatment. In commenting on Rogers v. Whittaker, Mason CJ said:

> There is a fundamental difference between, on the one hand, diagnosis and treatment and, on the other hand, the provision of advice or information to a patient. In diagnosis and treatment, the patient's contribution is limited to the narration of symptoms and relevant history; the medical practitioner provides diagnosis and treatment according to his or her level of skill.
>
> However, except in cases of emergency or necessity, all medical treatment is preceded by the patient's choice to undergo it. In legal terms, the patient's consent to the treatment may be valid once he or she is informed in broad terms of the nature of the procedure which is intended. But the choice is, in reality, meaningless unless it is made on the basis of relevant information and advice. Because the choice to be made calls for a decision by the patient on information known to the medical practitioner but not to the patient, it would be illogical to hold that the amount of information to be provided by the medical practitioner can be determined from the perspective of the practitioner alone or, for that matter, of the medical profession...no special medical skill is involved in disclosing the information, including the risks attending the proposed treatment.

In Breen v. Williams in 1997, Justices McHugh and Gaudron jointly ruled:

> Rogers v. Whittaker took away from the medical profession in this country the right to determine, in proceedings for negligence, what amounts to acceptable medical standards.

Both justices were Labor appointees, and Mary Gaudron is the only woman on the High Court. Chappell v. Hart in 1998 and Naxakis v. Western General Hospital in 1999 both supported the Rogers v. Whittaker ruling.

In 1993 a checklist of guidelines for informed consent was prepared by the National Health and Medical Research Council, including the following:

There should be no coercion, patients should be encouraged to be frank, ask questions, and make up their own minds. Provide interpreters, and repeat information if required, and look for responses that indicate that information has not been understood.

Give the patient adequate time to make a decision, ask more questions, talk to others, think about the matter, etc.

Advise the patient that he or she can get another medical opinion, and assist the patient to seek it if requested.

Ensure that the patient understands:

the diagnosis, including the degree of uncertainty in this;

the prognosis and any degree of uncertainty in this;

the anticipated effects of not undergoing the proposed treatment;

the nature of the intervention, eg how invasive it is, whether it will be painful, how long it will take, how they will feel before, during and after it;

any significant long and short term physical, emotional, mental, social, sexual, or other outcome which may be associated with the proposed treatment;

the time involved in the treatment;

the costs involved in the treatment;

the availability of alternative treatments, the above information about them, and why they are not recommended.

This involves consideration of the patient's personality, beliefs, fears, values and cultural background.

While these guidelines do not specifically refer to either abortion or pictorial forms of information, their intent to provide comprehensive information is quite clear.

I do not necessarily agree with the stance of everyone on abortion; but, as I said, that debate was had last year. The debate today is about whether we want to hide information from women. To her credit, the Chief Minister, whose view on abortion is different from mine, has agreed with the High Court. I would like Mr Stanhope, for example, who was a lawyer, to offer some assistance to me on his interpretation of Rogers v. Whittaker.

Mr Stanhope: It not that specific, Ossie, I can tell you that now.

MR OSBORNE: It is that specific. I look forward to hearing from Mr Stanhope on what he thought the High Court said. Mr Speaker, this matter is not about whether women have access to an abortion; it is about what information is provided. I will be supporting Mr Humphries and Mr Smyth. The reality is that today not one person opposed to this matter has been able to counter what the High Court has said in relation to the provision of information. I throw it back to members opposite and I look forward to someone from their side disputing what the High Court has had to say.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (4.36): Mr Speaker, I do not want to speak at great length, but I do want to try to cover all the issues that have been raised by members so far in the debate and to try to address points and concerns that have been raised. Let me say, by way of an opening comment, that in the course of this debate we have had accusations thrown backwards and forwards across the chamber about who is being patronising, who is being paternalistic and who is dumping on women. Mr Berry said that the attitude of those who supported these regulations was akin to that of those of society in the nineteenth century who treated women as chattels.

I have to say that the view that I take of those who have opposed this provision about providing information to women reminds me very much of a scene in a movie I saw some years ago - a comedy - where some doctors were attending at the birth of a baby. The woman was there in the stirrups and the doctors were arguing about something or other to do with the birth. At that point, the woman said, "What is going on? What is happening?", and one of the doctors leaned over and said to her, "Do not worry yourself about it, my dear, you are not qualified", and leaned backwards.

That is the attitude we are seeing from those opposite today: "Do not worry about this information, women. You do not need to know about it. We believe that the doctors know best about what is provided to you. We will provide this information in the form that the doctors choose to provide it to you. Do not worry about information that might upset you or disturb you or that might not be in your interests as the doctors define it. We will make sure that none of that information comes before you during a difficult period". I do not think that is consistent with anything that we have been saying in recent years about access to information for people in medical settings. I think that opposition to this regulation owes more to the medical practices of the 1950s and 1960s, where people found out only what it was in their interest to know as defined by the doctor, than it does to attitudes in the late 1990s.

Let me go through some of the arguments that have been put in the course of this debate, Mr Speaker. I will start with the comment that we have had an expert panel decide this issue and we should not be intervening in the matter. I want to quote what members had to say just a few weeks ago when an expert report was handed down in the Assembly on a particular issue to do with assessment of a betterment tax or change of use charge. I quote first of all Mr Corbell, who said:

> ...I am sure that members of the Government are going to stand up in this place shortly and they are going to say, "You do not like the umpire's finding. You want to revisit it again". Well, I invite the

> Government to stand up and make that argument because they know it is an argument which is fundamentally flawed. They know that it is the role of this place to make the final decision about the level of change of use charge levied in the Territory. They know that. They understand that.

He went on to say:

> Because that is exactly the logic behind the Government's argument in saying, "You have to implement the report. You have to accept the umpire's finding". Well, Mr Speaker, we are interested in considering this issue further, but we are conscious of the need to make a final decision on the matter.

He was not the only one in the course of that debate who emphasised the supremacy of the Assembly to make decisions in such matters. Ms Tucker also contributed to the debate. She said:

> I think this inquiry -

an inquiry by the Assembly into the report of Professor Nicholls -

> will also be very useful because I must admit that I found the Nicholls report to be unsatisfactory in a number of respects.

She found it unsatisfactory in a number of respects. Apparently it is all right to find an expert report from an academic at the ANU unsatisfactory in a number of respects, but it is not all right to find something from a particular panel consisting of doctors unsatisfactory in a number of respects.

Mr Corbell was right about one thing: The Assembly does have the final say in these matters. The argument I want to address there is this argument that, by making a decision about the content of a pamphlet, the Assembly is imposing its views on somebody else. Indeed, Mr Speaker, it is imposing its views on somebody else; but, as Mr Kaine observed, that is what the Assembly does every single day of its existence: It imposes its view on somebody else. Why? It is because the members of this place were elected to do precisely that. They were elected to make decisions on a range of issues from the mundane to the extremely important. Mr Speaker, it does not extend just to matters to do with tax or the organisation of the Territory's planning system or anything of a matter that you might describe as being temporal or relating to matters of amenity and quality of life. It also goes to questions of the human body.

For example, it was only a few years ago that members of this place were quick to support the Government's introduction and passage of a Bill concerning female genital mutilation, a Bill which had the effect of regulating what women may do with their bodies. Members of this place were very happy to support that because it was politically correct to do so. The fact is that decisions about such things are grist for the Assembly's mill and it is much too late, it is centuries too late, to claim that the Assembly should not have the power to make decisions in such matters.

We have heard about a legal challenge to this legislation. Mr Speaker, if I had a dollar for every time someone threatened a legal challenge, I would be extremely wealthy by today. I note, incidentally, that there was a claim when we passed the original legislation last November that the passage of the legislation would cause the end of abortions in the ACT. That claim was made on the day that the legislation was being passed. Of course, that has not happened and we should separate hysteria from reality in this debate.

Mr Stanhope makes issue of the fact that the Executive made a regulation and the Minister for Health did not formally take part in the making of that regulation. Mr Stanhope demonstrates a most extraordinary lack of imagination as to the way in which the processes of government work and fails to realise that the conventions of executive government are there to assist the executive government to make decisions, not to satisfy the prerequisites of some author who has written a text on the subject decades before and believes certain rules should be observed. In particular, he fails to acknowledge the need to accommodate matters of conscience within the processes of government decision-making.

Our Government was in the situation where some members of the Executive were not in a position to support the concept of the regulations which have been made. I believe that it is an appropriate reflection of a flexible approach to the processes of government that we allow there to be a chance for members not to be part of the making of a regulation if they so choose. Members opposite - particularly Mr Berry and Mr Wood, who have sat in Cabinet before - know perfectly well that governments do not make every decision unanimously, although they might come out afterwards and purport a decision to be unanimous. They know full well that on many occasions governments make decisions on the basis of majorities. On this occasion, we freely admit, we discussed the matter in Cabinet and Mr Moore took a different view. The majority in Cabinet respected Mr Moore's right to exercise the prerogatives of his conscience and not be part of a regulation and therefore, as such, the regulation was made in the way that it was.

I turn to issues raised by Ms Tucker in the course of her comments. I am sorry that she has left the chamber. She said that there was a move to review the presence of pictures in the New Zealand pamphlet. That simply is not true. I note that on 14 July, Dr Christine Forster, the chairman of the New Zealand Abortion Supervisory Committee, a government committee, was questioned about this very issue by Cathy van Extel and she specifically denied that there had been any move to review the current New Zealand booklet or to remove the pictures. I quote:

> **Cathy van Extel**: In our current debate...there has been talk that the booklet is under review in New Zealand. Is that the case?
>
> **Christine Forster**: Not as I'm aware of.

That is simply nonsense on the part of Ms Tucker. *(Extension of time granted)* Ms Tucker and Mr Kaine also raised an issue concerning the difference in some views about what the appropriate weight and length of a foetus would be at particular ages. I can explain to Ms Tucker and to Mr Kaine that the reason for the difference between some other publications and the regulations that have been tabled by the

Government today is that it is a question of whether one defines the age of a foetus from the last menstrual period, as is the case in the New Zealand booklet, or from fertilisation of the ovum, which is the case in the ACT Government booklet. The decision was made to base the age from fertilisation simply because it was a more accurate reflection of the actual age of the foetus.

The other issue raised by Ms Tucker - a rather sorry exercise, I would have thought - was that some of the pictures were actually larger than life and that we should make them the actual size. A foetus at six weeks would be 1.2 centimetres long. If we put a picture of a 1.2-centimetre foetus in the booklet at actual size, we would also have to supply a magnifying glass for a woman to work out where it was in the picture.

Ms Tucker: I did not say that, Mr Humphries; you misunderstood.

MR HUMPHRIES: I am glad that Ms Tucker has returned to the chamber. I hope she heard my comments before.

Ms Tucker: But that is wrong. I will explain why later. I did not say that.

MR HUMPHRIES: Mr Speaker, if she was saying that the pictures were too large - - -

Ms Tucker: No, I was saying that they should be sequenced appropriately. You have got them all at the same size and there are different pictures from different publications.

MR HUMPHRIES: Mr Speaker, I understood Ms Tucker to be saying something quite different there. I have heard the argument made by other people that we should not have pictures which are larger than the actual size. If that is being suggested by anyone in this debate, I certainly reject it. I think it is a silly argument for this debate.

I close by saying that there has been an enormous amount of hysteria in this debate and an enormous amount of misinformation.

Mr Berry: And disinformation.

MR HUMPHRIES: I heard you in silence, Mr Berry, and I ask for the same privilege to be extended to me.

Mr Speaker, the fact is that we had this debate in a very similar form in November and in November members contributed to the debate as if we were voting on whether there should be photos or pictures in the booklet that was to be authorised by this action. Again and again, members made comment as if the passing of this legislation meant that inevitably there would be photographs under this legislation. Mr Stanhope said:

> ...I find the proposal that women seeking an abortion be required to peruse documentation relating to the development of a foetus at two-weekly intervals completely unacceptable.

Mr Osborne said:

> The pictures must stay. New Zealand does it. Most people have seen the information from New Zealand which was put together with the assistance of Family Planning. I find it interesting that people are afraid of pictures. That is what it boils down to.

I accept that this was a debate about pictures being in the pamphlet. Mr Stanhope also said:

> It is just how insensitive it is to require a woman who has made the decision that it is in her best interests to seek an abortion to be forced to endure having to look at a series of pictures of foetuses from two weeks of conception to 40 weeks.

Other members made those sorts of comments, based on the fact that passage of that legislation meant we would have pictures. Mr Speaker, I could predict very comfortably that those who are today defending the right of the panel to decide on this matter would not be defending the panel if there had been a decision by the panel to include pictures.

Mr Berry: Because it would not have been in here.

MR HUMPHRIES: They would not have been defending the panel's decision out in the community.

Mr Berry: The debate would not have happened.

MR HUMPHRIES: It would have been out in the community, Mr Speaker.

Mr Berry: Yes, that is right, but it would not have been in here.

MR HUMPHRIES: Out in the community there would have been a debate about that, Mr Speaker, and those opposite would have been attacking the idea of pictures being in the pamphlet. They would have been attacking it, Mr Speaker.

Mr Stanhope: And those on your side.

Mr Berry: And we still are.

MR HUMPHRIES: Mr Speaker, I heard those opposite in silence and ask for the same courtesy.

MR SPEAKER: Yes, please.

MR HUMPHRIES: Mr Speaker, the people opposite are defending this panel quite unexpectedly. They were not expecting to be able to come into this place and defend this panel because they were expecting, when the legislation was passed last year, that they were going to end up with pictures in the pamphlet. They have not. They have got to accept that the debate has already been held and, from their point of view, it has been lost.

MR SMYTH (Minister for Urban Services) (4.51): Mr Speaker, what is it that we are talking about today? What is it that has prompted this immediate debate? What great evil do these regulations contain that offends some members here that they would seek to move for their disallowance? It is information, Mr Speaker. It is simply information. The irony of all of this is that those who so loudly and most often chant the mantra of knowledge, who cry for more information and constantly tell us that people have a right to know, are exactly the ones who will vote today against the provision of this additional information.

Mr Speaker, in recent months we have seen Assembly committees set up to consider the change of use charge, rural residential development and housing reforms on the basis that members of the Assembly thought that they needed more information. The Assembly said that it wanted more information to consider these issues properly. Mr Speaker, it is curious that those opposite would attempt to put in place censorship on this issue. What they are trying to do is censor the amount of information provided to suit their case, whereas in reality women deserve to have the full range of information presented to them.

If you have ever picked up a copy of the yellow pages guide to the Internet you would have seen a very curious disclaimer in the front pages of that document. It goes something like this: "When surfing the Internet you will encounter sites that you may find objectionable. In that case, do not go to that site again. Please censor yourself, not others". That is the case here, Mr Speaker. As Mr Moore said and as I think you said of Mr Moore's comments, Mr Speaker, in many cases this information may end up in the bin. If somebody chooses to put the information in the bin, that is their choice. But the information should be there for them to make that decision. If it is not read, that is their choice.

Mr Osborne pointed to the High Court's decision on the responsibility of a doctor to provide adequate information. Does anyone believe that someone here would discuss with their doctor a possible operation for a heart bypass, an arthroscope, the removal of a kidney stone or a tumour and would not insist on seeing the X-ray, the CAT scan, the ultrasound or the MRI, would not consult a medical chart or would not look at a textbook so that they could make an informed decision? If you were not happy, what would you do? You would go off and get a second or a third opinion. You just would not accept the doctor's opinion if he says, "Let us remove this because it is bad for you".

Mr Speaker, what is it that we are talking about when we are talking about removing something in an operation? It is a blockage of some sort, a bone fragment or a growth. What is removed when an abortion is performed? Dependent on your view, it is a lump of cells, a growth perhaps or a human being. Should we not know what it is before we proceed to that choice to have the abortion? This procedure is not like any other operation where there is one life involved. I believe that when an abortion is considered there are two lives involved. How do we know that, Mr Speaker? Just look at the pictures. Quite clearly from the pictures we can see a human being forming. With that information in front of them, people can then go and make their decision.

Mr Speaker, the fundamental question for the entire abortion debate is not the question of choice. That is the easy way out. The real question is: Where does life begin? We have those who say that they are pro-choice, but what they actually mean is that they are pro-abortion and they hide behind the pro-choice line because it takes away the fundamental question of where does life begin. During the debate in November I asked those in this place who are pro-abortion to tell me where life begins. Why, Mr Speaker? If we actually knew that, if we could determine that, we would not have to have this debate because the information would be superfluous. If we could confirm where life began, we would not actually allow abortion. I did not get an answer. I did not get an answer in the last debate and would not have expected to get an answer in this debate.

MR SPEAKER: Order! I would remind members that we are not debating the motion of November. We are debating pictures or something else.

MR SMYTH: No, that is fine, but it is what the pictures refer to, Mr Speaker. Let us not hide behind those lines about pro-abortion or pro-choice. These pictures are of the young unborn. They are pictures of unborn human beings, Mr Speaker. If I were pro-abortion, I would not want my arguments in favour of abortion clearly and easily undermined by the simple, undeniable, irrefutable, clear, distinguishable, recognisable truth that these pictures show. It is information. It is knowledge and that knowledge is power.

I believe that the pictorial information will enable women - in fact, empower women - to make an informed decision. I believe that the right decision is not to have an abortion as that is the destruction of human life. People are afraid that women will receive this information because they know that it destroys their argument.

I have asked those who are pro-abortion to tell me where life begins. Again, I will not get an answer. But there is, of course, the possibility that it will simply come down to conflicting scientific studies and personal opinion. That is okay. I can live with that. But on many occasions in this place, particularly in relation to environmental issues, reference is made to the precautionary principle that if you do not know you should not do any harm. Indeed, this principle was trotted out again a few days ago. Based on that, if those who are pro-abortion do not know when life begins, surely abortion should not be undertaken.

Mr Speaker, reference was made to expert panels. Mr Humphries was quite accurate in saying that the change of use study was conducted by the Assembly's own expert. Members were consulted and asked whom they would like to conduct the review of the change of use charge and they came up with the name of an individual. That individual did a report, a very good report, but because we did not like the answer we disregarded it. Mr Humphries' assessment of the comments that were passed on that day is quite true; members opposite did not like the umpire's decision so they just would not accept it.

Mr Kaine is right in this regard, Mr Speaker. What Mr Kaine has said is exactly true. That is what we are charged with. That is what we are elected for. That is what we do. We make the legislation. We are elected to do it. We are not elected to cop out and say

that these issues are not ones that we should regard ourselves. All issues that come to this place are issues that we regard ourselves, and all members have the right to bring issues of concern to them or the community here for debate.

Mr Speaker, the comment has been made today that if you have a pro-life view you are patronising, paternalistic, perhaps even bigoted, religious, Catholic, anti-woman, anti-choice or even cruel. It is said that women have this information. If so, where is the harm in the addition of pictures? It is said that we hold women in contempt. What does it say of the opinion of women of those who say that women cannot handle this issue?

Mr Berry, true to form, uses this matter as another opportunity just to have a shot at the Chief Minister. Mr Berry speaks about women not being the chattels of a nineteenth century world; yet, when Mrs Carnell exercises her right to make a decision that happens to conflict with Mr Berry's, she is somehow some sort of turncoat or she is not allowed to make that decision. Mrs Carnell is a fine example of what all young women could aspire to. She is a woman who has made it in the business world and made it in the professional world and she is now doing very well in the political sphere. She is a fine example of the fact that women can make their own decisions. But when she exercises her right to make a decision, Mr Berry simply says that she is wrong. How is that for being paternalistic and patronising?

Mr Speaker, it is said that we are being patronising on this issue. It is not we who are acting condescendingly to women in this issue; it is those who would deny women access to information, claiming that women cannot handle it or do not need further information. That is being patronising. It is said that we are being paternalistic. In fact, it is those who are against providing further information who are being paternalistic. They are being censors, in effect, because they are deciding what information women can and cannot handle. That is being paternalistic.

Mr Speaker, words were spoken about religion and I think Catholicism was mentioned, perhaps even that we were bigoted. A bigot is one who is unreasonably prejudiced and intolerant. Why are they so intolerant of providing the additional information? Perhaps it is they who are the bigots. Yes, I hold a religious view.

At 5.00 p.m. the debate was interrupted in accordance with standing order 34; the motion for the adjournment of the Assembly having been put and negatived, the debate was resumed.

Mr Corbell: I rise to a point of order. Mr Speaker, I do not want to labour the point, but Mr Smyth suggested that members who were supporting this motion were bigots. I think that is quite unparliamentary and you should ask him to withdraw the use of that word. It is quite inappropriate in the context of this debate.

MR SPEAKER: I suggest that the word be withdrawn. It could apply to either side.

MR SMYTH: I am happy to withdraw it. The definition is simply unreasonably prejudiced or intolerant. Mr Speaker, comment was made about people having religious views. *(Extension of time granted)* I do hold a religious view, but I am not confined to

any church doctrine. Indeed, my own church preaches the doctrine of informed conscience, the emphasis then being on "informed". That is what this is about; it is simply about providing information.

It has been said that perhaps we are anti-women. Just remember that 50 per cent of those foetuses destroyed are female; so it is hardly anti-female to defend them. It has also been said that it is cruel or unkind. Why is it cruel or unkind to give simple biological facts? The information contained in the brochures put out by women hurt by abortion have said that perhaps it is cruel and unkind not to give women this information because of the effects that some women suffer. Mr Speaker, I will not go through the material. I hope all members have seen it. Again, if we can save a single woman from suffering these ill-effects, the additional information will have been of benefit. I cannot understand why it is that we are so afraid of the additional information. I go back again to the experts. Mr Humphries outlined clearly how our stand on experts in this place is willy-nilly, how we are willing to use them one day and to abandon them as quickly as we can the next.

I concluded my speech in November by referring to a billboard on the side of a building in Newtown in Sydney which said that the greatest violation of a woman's rights is to abort her. Mr Speaker, given the information supplied by groups such as Women Hurt by Abortion, perhaps the next greatest violation of a woman's rights may well be to allow her to have an abortion without access to all the available information.

MS TUCKER: I seek leave to speak again, if I may.

Leave granted.

MS TUCKER: I would like to clarify a couple of things. Mr Humphries did seem to misunderstand what I was saying in my comments about the pictures needing to be representational in terms of the change in the sizes. I was really making a comment on just how shoddy the whole thing looks. In fact, the oldest foetus is the smallest in the pictures. It would be more useful, if you were seriously interested in education, to have the sequence of pictures of foetuses actually increasing in size. It was really just a comment on that.

I am particularly interested in responding to the issue of the disparity in weights. Mr Humphries seemed to be saying that in this pamphlet they are regarding development as beginning on the day of fertilisation, which is usually two weeks after the start of the last menstrual period, and to be claiming that the figures we are comparing it to start on the first day. Obviously, the weight should be lighter, if anything, because in this pamphlet they are counting the beginning of development as being two weeks after the start of the last menstrual period. Mr Humphries might need to come back and give another explanation of the disparity in that matter.

The other point I would like to raise again, because I do not think it has been adequately addressed, is the statement that is being continually made that the information is just being offered. The language in the Act, as I have already said, is very inconsistent and confusing and it would be difficult for a court to interpret exactly what is required and what is adequate and appropriate, et cetera. I have been through all that.

But I will comment for the record on section 8 as to what information must be provided. The only place it says "offer," which is what people have been talking about here, is in paragraph (b) - "offer the woman the opportunity of referral to appropriate and adequate counselling". Paragraphs (c), (d) and (e) all say "provide". Maybe members would like to amend that to "offer". Maybe people would be less concerned about the inconsistencies in this piece of legislation.

MR BERRY (5.06), in reply: The first thing I want to deal with is the issue of whether one's personal view is subject to scrutiny in this place. It is, because once your personal view enters the legislative process it is public property, and it is then that you have to defend it. I do not mind defending mine; it is a personal view. But anybody else who tries to impose a personal view on the legislative process has to expect that they will have to defend it. If they cannot defend it, they should not put it into the process. Anybody can have a bit of a whinge about being attacked because of a personal position, but most of us have personal positions on almost everything that comes into this place. If we used that argument we would never be able to criticise what individuals amongst us were doing on any matter. I think it is a bit rich for the Chief Minister to wander in here and bleat about people disagreeing with her personal views stridently and say that they should drop off. I will not be dropping off because I find her personal approach to this issue quite appalling.

Mr Speaker, somebody said a little while ago that we had had this debate some time ago. We sure did, and this Assembly made a decision. Many of my colleagues and I opposed what the Assembly decided in respect of the legislation from which these regulations have arisen, but at the end of the day this Assembly - Mr Humphries, Mrs Carnell, Mr Smyth and others, including Mr Osborne, despite his different view of what it meant - made a decision to put in place an expert panel. Members opposite sung its praises, while those of us on the other side opposed it.

What has happened is that the expert panel that was appointed to deliberate on the issues under the terms of reference it was given has bitten them and they are embarrassed by it. It does not suit their personal ideological position on abortion. It has nothing to do with the provision of information because they made the decision to put an expert panel in place to provide information. It is about infringing on their personal position on abortion. Not one of the people who are supporting this regulation would stick their hand up and say, "I would like to see abortion decriminalised".

My tolerant colleague Mr Kaine sailed into Ms Tucker, a little unfairly, in relation to this matter. I had mentioned males making this decision, too. I do not think either of us was saying that males ought not to be participating in this debate. What we are saying is that we ought not to be taking from a woman the right to consider these issues. I am happy to participate in the debate. I have done quite a bit of talking in this place over the years in relation to the abortion issue. What I am saying - I cannot speak for anybody else - is that we ought not to be making the decision for a woman in relation to the information that is provided. I go back again to that independent panel of experts. They were put there to decide on appropriate, truthful and factual information that might be useful for a woman considering a termination.

I am not going to comment on what Mr Smyth said, other than to say that it really is a matter for a woman to decide. It really is a matter upon which she should decide on the basis of the evidence that she wants, not that which is imposed upon her, as this legislation sets out to do.

Mr Osborne read into *Hansard* selected passages from High Court decisions. I think he has either misunderstood the High Court's position or misquoted it. The High Court was talking about the relationship between doctors and patients, not legislators and the law. That is the difference. The High Court was making a very clear point about what doctors ought to be providing for their patients. What this legislature decided to do was to put in place an independent panel which would provide information for doctors to give to their patients, not ruling out any further obligation that the doctors might have in relation to the provision of information in accordance with their code of ethics. I think it was a mischievous way of misrepresenting what the High Court actually said in relation to this matter. It was dealing with the doctor-patient relationship, not the relationship between legislators and the law. What we are dealing with here is the relationship between legislators and the law and the effects on the patients of doctors. It has to be understood that the position, quite clearly, is different.

Mr Humphries, as did Mrs Carnell and Mr Smyth, talked about how it was so important to provide extra information. Why, then, was it so important for them to sing the praises of this independent panel to give this information and then seek to override it? The reason that they are arguing so stridently now to change the opinion of the panel is that it did not come up to their expectations because the experts do not agree with them, and neither does most of the community.

Mr Speaker, I turn to your contribution to the debate. I must say that when you mentioned a referendum I thought that we would win easily and we should have one, but then I fell back on my own principles. I did not come here to trigger referendums to make decisions for me. I was elected by the people and I am paid by the people to do a job. I am attracted to the idea because I know that I would win, but it would undermine a principle that I have held for a long time. Although I am attracted to the idea, I think I would err on the side of doing my job and calling on all of the other members of this place to do theirs as well. Mr Speaker, I would urge you not to give away your right to vote on these matters because I think that it is a responsibility that we all have to exercise.

Yesterday we were having a debate about other legislation and Mr Humphries was going on like a cracked record about the necessity for consultation and how a year and three months on one particular piece of legislation was not enough. I know that he has not had any consultation with me or given me the opportunity to talk about this information. He never sent me a copy of his proposal and said, "How do you like this, Wayne?".

Mr Hargreaves: Did he visit?

MR BERRY: He did not visit, either. I would have given him a cup of tea. Of course, his actions in this respect fly in the face of his preaching on the matter yesterday. Mr Humphries also talked at length about how this brochure was information. It is not

information. It is a doctrinaire approach to abortion that has been adopted by Mr Humphries. That is a great shame. It is something that I think will be remembered for some time; I trust until the next election.

This Assembly has deliberated on this expert panel and rejected it if this regulation is passed today. Mr Speaker, how can we, in good faith, abandon the principles which were enshrined in the legislation passed by this Assembly a while ago? Some of us opposed it, indeed; but why have we not got the guts to come in here and amend the legislation if we do not like the outcome? I cannot understand that. Why are we trying to proceed with a regulation which, on the face of it, is doubtful and might be challenged? Why did we not set out to change the legislation? I just wonder. I am curious. If the expert panel is not up to the job, why do we not ditch it and let Gary Humphries decide what women should see?

Mr Humphries' contribution to the debate was quite an unctuous one. He set out to mislead the community on what he was on about. His construction would mislead nobody because it is very clear that what he wants to do is overturn the expert panel that he appointed. *(Extension of time granted)* This Assembly will revisit this matter well into the future. I think that we have made some advances in the past in relation to the provision of abortion in the community. Access to abortion in the ACT has been improved and I hope that in future the law will be changed to decriminalise abortion. Something like 1,600 to 1,700 women now have access to that facility in the ACT. If it was not available here, they would go to New South Wales. It has been provided in the ACT. I cannot for the life of me understand how we can possibly abide by a law which says that it is a criminal offence punishable by 10 years in gaol. That just strikes me as quite odd.

Somebody said that abortion is enshrined in the law of the ACT. It is enshrined in the law as a crime. The courts have seen it to be unreasonable and the legislation that we are now trying to add to seeks to override the judiciary. It is a curious turn of events when you take into account the history of the criminal law on abortion. Somebody moaned about my accusation that in many ways there were some parallels with the approach that was taken in the nineteenth century in relation to women. I do not know what they are moaning about. It is quite clear to me that what we are saying is that women shall receive this information whether it is needed or not. We are interfering with the doctor-patient relationship and we are interfering with medical ethics and no-one will thank us for that.

Many of us declare our vote on this issue as a conscience vote, a personal vote and those sorts of things. I hope that members will sit down and think about their approach to this issue on the basis of their conscience. They do not have to be supporters of abortion, but they have to be supporters of reality and they have to be supporters of decent, proper approaches in our legislative process. You cannot support a situation where you tell the community that you will put in place an independent expert panel, sing its praises and then ignore it. I make no apologies for my position that there is no need for an expert panel and there is no need for this law in the first place - it ought to be handled between the doctor and the patient - but this Assembly has made a decision to hand it over to an expert panel and, to our eternal embarrassment, we will be reminded that we have overridden it if this regulation is passed.

Question put:

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

The Assembly voted -

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

Question so resolved in the negative.

LEAVE OF ABSENCE TO MEMBER

Motion (by Mr Corbell) agreed to:

That leave of absence from 12 to 27 September 1999 inclusive be given to Mr Stanhope (Leader of the Opposition).

URBAN SERVICES - STANDING COMMITTEE
Report on Exhibition Park Car Parking

MR HIRD (5.24): Mr Speaker, I present report No. 30 of the Standing Committee on Urban Services, entitled "Carparking at Exhibition Park in Canberra [EPIC]", together with a copy of the extracts of the minutes of proceedings. I move:

That the report be noted.

Mr Speaker, this report by the Standing Committee on Urban Services is a fine example of the sometimes forgotten role of the Legislative Assembly. I refer, of course, to its municipal role. Car parking is essentially a municipal matter or, if you like, local government issue. Parking in the Exhibition Park in Canberra precincts has become a vexed issue.

The very future of one of the Territory's major people events, the Royal Canberra Show, is at stake if action is not taken immediately to resolve a massive parking problem generated by the emergence of another important territory asset instigated by this

Government, the BRL Hardy winery and tourist complex. For this reason, the Urban Services Committee made a conscious decision on 3 August this year to initiate an inquiry into car parking in the EPIC precincts.

Mr Corbell made reference yesterday in this place to the heavy workload which the Urban Services Committee faces over the next few months. Mr Corbell, on this occasion, was right. But, in spite of the heavy schedule, the committee was able to expedite this inquiry so that some important decisions could be made promptly by this parliament on this extremely important issue. I hope our colleagues in the Assembly will place equal importance on the need to ratify the committee's recommendations as a matter of urgency.

Various recommendations in the report were arrived at after two meetings, one of them on site with the stakeholders - EPIC, the Royal National Capital Agricultural Show Society, Summernats and officers from PALM and the Chief Minister's Department. The report recommends, among other things, that the Government immediately investigate the provision of upgraded car parking facilities at various sites and that it facilitate an overall integrated transport strategy for the entire area covered by EPIC, the BRL Hardy winery and the ACT Racing Club.

Mr Speaker, the urgency of taking these decisions is emphasised by the fact that the Royal National Capital Agricultural Show Society year 2000 show is only five months away. I must stress that members of my committee strongly supports the concept of the BRL Hardy complex and appreciates the importance of the development to the ACT community. But we also share the show society's concerns about some of the ramifications of the development, particularly the loss of up to 2,000 car parking spaces right at the show's front door, EPIC's front door.

This is a comprehensive report covering all the issues canvassed at the inquiry. I thank the other members of the committee - Mr Rugendyke and Mr Corbell - and the overworked secretary, Rod Power, for the time and effort they contributed to ensuring this inquiry was completed without delay. I also thank the various officers of the government departments and agencies and the Minister for Urban Services, Mr Brendan Smyth, for assisting my committee in its deliberations. In closing, I would also like to thank those who gave evidence before the committee on this issue. Mr Speaker, I commend the report to the parliament.

Question resolved in the affirmative.

TOBACCO (AMENDMENT) BILL 1999

Debate resumed from 25 March 1999, on motion by **Mr Moore**:

> That this Bill be agreed to in principle.

Motion (by **Mr Rugendyke**) put:

> That the debate be adjourned.

The Assembly voted -

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

Question so resolved in the negative.

MR STANHOPE (Leader of the Opposition) (5.33): Mr Speaker, the Tobacco (Amendment) Bill 1999 was introduced in March this year by the Minister for Health and Community Care to amend the Tobacco Act 1927 and the Tobacco Licensing Act 1984. The Minister proposes to move 14 pages of amendments to his Bill. These amendments were provided to members on 25 August 1999, that is, last week. The Minister was informed that the ALP did not want to debate this Bill in this sitting period as more time is required to examine his amendments and at least two community organisations wish to examine them before discussing them with me. The Minister may say that he has conducted or arranged briefings for the public and members on his proposed amendments. That is not the same as a close examination of the actual amendments, which are quite detailed.

The Bill does not have an objectives clause, but the Minister has stated that his objective is to reduce tobacco advertising at the point of sale and discourage sales to persons under the age of 18 years. We support those objectives but wish to have the benefit of closely examining the detail of how the objective is to be attained. I would also like the benefit of any report that the scrutiny of Bills committee may make on the amendments, though I understand that perhaps the committee will not be commenting on those amendments.

The Bill and its amendments satisfy no-one either for or against the Bill. The health lobby says the Bill does not go far enough and the tobacco lobby, particularly the retailers, say it goes too far. The adverse comments made by the scrutiny of Bills committee on the original Bill have not been completely addressed. I have received many letters and visits on the subject of this Bill. All submissions received focus on those provisions of the Bill relating to the elimination of point-of-sale advertising, limiting the point-of-sale display and limiting the product information display area. The Bill also imposes various other restrictions on the sale of certain foods and toys that may promote tobacco usage, and it restricts other tobacco advertising or promotion. No-one has objected to me personally about any of these provisions.

The Bill creates an office of Registrar of Tobacco and provides for the appointment of authorised officers with powers of entry, inspection and information gathering. The scrutiny of Bills committee has made extensive adverse comments about these provisions. There are other consequential provisions in the Bill.

The principal issues that arise with this Bill are limitations on the size of displays, the cost to retailers, particularly small traders, of refitting premises and the impact on personal liberties by the powers given to inspectors. On the question of limitation on size of displays, the Minister's original proposal limited retailers to an area of one square metre for displaying tobacco products. His amended proposal is for one packet of each product line or a representation thereof to be displayed. Submissions from ASH and the Heart Foundation point out that cigarette companies will simply expand their product lines available for sale - one company, I am told, is apparently planning eight new varieties in the near future - and thus expand the display beyond what currently exists.

A product line, as proposed to be defined in clause 4, means a kind of tobacco product distinguishable from other kinds by one or more of four characteristics - brand, flavour, nicotine or tar content, and number of cigarettes in the packet. One way of limiting the display could be to amend this provision so that the products must be distinguished on two or more of the four characteristics. Cigarette companies could still change their branding and packaging to enable greater numbers of product lines to be displayed, but it would be more difficult and impose additional costs on the manufacturer, not the local retailer. This amendment to the proposed new definition would ensure that the display area remains limited in area.

On the question of costs of refitting premises, it is unclear what costs will be imposed on retailers by the requirement to put all displays one metre behind the customer service area. Most retailers have overhead displays above their counters. The Minister has not explained how retailers will move these displays within the limited areas available to suburban shops such as newsagents and petrol outlets. Nor has there been an explanation of who will pay the costs. I understand that in one briefing it was suggested that the overhead displays should be covered up and be used only for storage.

The tobacco displays must be on the seller's side of the point of sale and at least one metre from any part of the customer service area. There are other restrictions on the display of cigars, but they are not quite as significant as these. The requirement for the display to be one metre from any part of the customer service area has been criticised by some lobbyists on two grounds - security and cost. It has been said that attendants will be required to turn away from the customer being served to reach for the product and this will expose them to an increased risk of being assaulted and robbed.

The provisions will be phased in over a period of six months to allow retailers sufficient time for compliance with the new requirements. It is interesting, and I guess it is relevant to be noted in the context of this debate, that these are considerations that we all have taken into account and dealt with in our own ways. Coles, for instance, I understand, have been informing members that supermarkets will face up to $30,000 each for the refitting imposed by the legislation. The Tobacco Retailers Association has

advised all members that it believes the cost to its members will be between $8,000 and $15,000. The Motor Trades Association, on behalf of petrol retailers, inform me that neither the oil companies nor tobacco manufacturers would assist their members with refitting costs.

It is interesting, however, that the Heart Foundation submits quite categorically that the tobacco manufacturers will subsidise the costs of refitting or perhaps even pay the whole cost. I am advised by the Heart Foundation that this has certainly been their experience in relation to requirements pursuant to legislative change in relation to the marketing of tobacco where some refitting or rejigging of premises has been required. It has been suggested to me that the phase-in period for this necessary refitting, particularly for some of the small retailers of tobacco might be extended from six months to 12 months to allow them to spread the cost over a longer period, assuming, as they insist, that they will not be subsidised by the tobacco manufacturers at all in relation to the necessary refitting.

It is relevant that we make some comment on the scrutiny of Bills committee report on this legislation. The committee, in its report No. 6 of 1999, made extensive adverse comments about the provisions in relation to personal liberties. Some of the committee's concerns will be addressed by the Minister in his amendments. From the rather cursory look that we have had at the amendments to date, others appear not to have been addressed.

The Government states in proposed new section 12GA that the powers conferred on an authorised officer who is a police officer are additional to the powers the officer may exercise as a police officer. In other words, under the Bill an authorised officer's powers - and authorised officers are public servants without any particular skills or training in police work - are greater than the powers of a police officer.

The Bill provides for the appointment as authorised officers of public servants employed for the purpose, public health officers, the Registrar and Deputy Registrar of Tobacco and police officers. Authorised officers will have wide powers of search and powers to question persons. The scrutiny of Bills committee has made several adverse comments in relation to the exercise of these powers by authorised officers who are not police officers. If an authorised officer enters any premises for the purposes of the Bill, he or she may, among other things, require any person on the premises to do any or all of the following: Make available anything on the premises; provide information or answer questions; give their name and address.

The Minister and his department have said that these powers are the same as those in other public health legislation. I have been unable to confirm that. The Food Act does allow inspectors to enter premises but limits the entry, except by search warrant, to reasonable hours, defined as when the premises are open for business. Such a limiting definition is missing from this Bill.

An authorised officer may stop, question and search a person in a public place. The authorised officer may also seize or copy anything in the person's possession. The safeguards for the public are as follows: Firstly, the authorised officer must have reasonable grounds for believing that the person can provide evidence about the

commission of an offence against the Tobacco Act. The evidence would be about offences such as the sale or supply of tobacco to minors, food and toys resembling or promoting tobacco, and prohibited tobacco advertising or promotion. Secondly, the authorised officer must present his or her identity card and inform the person that he or she may refuse to give consent to the authorised officer. Thirdly, the authorised officer must ask the person to sign a written acknowledgment that this procedure was followed. It is notable that these safeguards are a nod in the direction of the scrutiny Committee's concerns but ignore many of those concerns.

The scrutiny of Bills committee has commented that the power to stop and search a person should be limited to matters of "serious crime" - that is, those carrying a penalty of six months' imprisonment or more. The committee states that, in relation to this Bill, no extraordinary circumstances have been advanced to justify such a power. Further, even though the person does not have to provide information that is subject to either legal professional privilege or the privilege against self-incrimination the authorised officer is not required to so warn the person.

In any prosecution that follows the authorised officer's actions, if the authorised officer does not produce the written acknowledgment then the court must assume that consent was not given unless the contrary is proved. It would be a better safeguard for the defendant for production of the written acknowledgment to be mandatory in the same way that the roadside certificate of a breath test must be produced. If the written acknowledgment cannot be produced, the prosecution must fail.

Proposed new section 12M requires a person to give their name and address to an authorised officer who produces his or her identity card and requests the information. The scrutiny of Bills committee criticised this provision as an unnecessary extension of a police officer's power to other officials and on the basis of what will happen to the information provided. The committee seems to believe that if the section was to be drafted in the same form as section 349V of the Crimes Act and the power is exercised by an authorised officer who is also a police officer there would be no objection to the provision. It would appear from this Bill that the citizens of the ACT are to have their personal liberties impacted upon in a serious way for what are minor offences carrying fines of not more than $500. I think this is an issue that we in the Assembly must look at seriously in the context of this Bill.

I have said that we support the objective of reducing point-of-sale promotion of tobacco products and increasing point-of-sale warnings about the hazards of smoking. I have gone on at some length in this speech about some of the detailed provisions set out in the Bill and have not spoken about those aspects of the Bill which we do support. There are issues of detail that we will pursue at the detail stage, and we will be moving some amendments. I have concentrated on those aspects that raise questions that I think we need to focus on and concentrate on in debating this Bill in detail. I have not intended to give the impression that the Labor Party does not support this legislation and does not support this extent of action against point-of-sale advertising and the sale of tobacco products. Tobacco and alcohol are two substances within the community that we are fighting a long and difficult battle against as a consequence of the culture that has developed, perhaps over centuries, in relation to the consumption of those products.

Tobacco is an appalling health hazard. Tobacco destroys lives. My father died from emphysema. I have a very personal objection to the ravages of tobacco and its consumption and abuse. I witnessed through my father's decline and death the appalling impact that tobacco can have and the extent to which it destroys quality of life and indeed destroys life itself. I think we need to do whatever we reasonably can to continue to make the availability and purchase of tobacco as difficult as possible and as culturally unacceptable as possible. Indeed, we need a range of processes and programs that will influence particularly young people, who are continuing to take up tobacco and smoking, despite the enormous efforts that we have put into education programs and attempts at preventing the sale and distribution of tobacco products. To that extent, I am happy to applaud the steps the Minister is taking.

As I said, my speech has concentrated on a range of issues that I think warrant some serious additional consideration in the detail stage. We will have some amendments going to some of those issues, but they certainly do not go to the substance of the Bill. We have no difficulty in joining the Minister through this process in seeking to make tobacco not only as difficult as possible to obtain but as unattractive a substance as we can make it.

Significant representations have been made to me that we need to continue to pursue a coherent and broad-scale approach. I know the Minister agrees with this, so I will not go on about it. We need to maintain the strength and the energy of our anti-smoking campaigns. We need to continue to influence those young people in the community who might be attracted to tobacco to lose that attraction. We cannot just have a single-focus approach to the problem. This is an additional good incremental step along the way to us as a community achieving hopefully a situation where almost nobody, if anybody, smokes at all.

MR KAINE (5.49): I have to say from the outset that I have considerable difficulty with this Bill. As the Leader of the Opposition has indicated, the scrutiny of Bills committee wrote a comprehensive report on this matter. The latest development in connection with that is that only today the Minister responded and said that he has some amendments designed to address "some" concerns raised in the committee's earlier report. We are now being asked today to debate and pass the legislation. Until all of the matters raised by the committee are dealt with, I would find quite great difficulty in supporting this legislation. There are many matters about it that disturb me.

I must declare myself as a reformed tobacco user. I last used tobacco on New Year's Eve 1969, when I finally made the decision to give it away, and I have maintained that since. But I do take a Voltairean view on the matter. I no longer use it myself, but since smoking is legal behaviour I defend the right of those who do so to continue to do smoke as long as they understand the consequences of their actions. The detrimental effects of smoking are widely known. It is a major cause of death in the community. Smoking is an expensive, smelly activity which smokers may enjoy but people nearby find offensive. It is aesthetically unattractive and it serves no useful purpose, but it is not illegal. It would be ridiculous for any legislature to consider banning it in today's world. If that were not the case, I am sure the Minister would have moved to do so now.

Nobody, I suspect, wants to see a growth in tobacco crime resembling the crime that arose when the United States prohibited alcohol, but perhaps the Minister should test public opinion by moving to make it illegal and see what happens.

The Minister, of course, acknowledges the obvious - that tobacco is a licit substance. With this Bill he is trying to get as close to banning it as he can get without actually legislating to make its possession or use a crime. This is a dictatorial Bill that the Minister perceives as making it harder for people, especially young people, to become smokers. If that was all it did, it might be acceptable. It is a worthy aim. But it is by no means certain that it will even achieve that objective, and it is certain that it will cause grave damage to a lot of small businesses engaged in the perfectly licit activity of selling tobacco products.

In the past the Liberal Party, as you would know, Mr Speaker, has proclaimed itself to be the party of small business. It has praised small businesses, the engine that drives the nation's and the ACT's economies. Of course, Mr Moore is not a Liberal. Indeed, what banner waves above Mr Moore to manifest his political allegiance or philosophy is rather a mystery, but he is a Minister in a Liberal government. It surprises me that that government has agreed that he in his ministerial capacity, not even as a private member, should introduce a government Bill which will clearly inconvenience and disadvantage many small businesses in the Territory, if not in fact drive some of them to the wall.

That, and not the prevention of young people from becoming smokers, will be the chief outcome if this Assembly is foolish enough to pass this Bill, in my view. This Bill will do little to deter young people from wanting to take up smoking or from finding a means of doing so. This Bill will do nothing to prevent young people determined to smoke from obtaining tobacco products by a number of means - if necessary, from outside the Territory, or illicitly from people of much the same age group. This Bill establishes a fertile environment for the growth of a tobacco bootlegging culture targeting the very people whom the Bill purports to shield from the perils of tobacco. This Bill has potential to turn small business people into criminals for displaying a licit product, in a way that falls a whisker short of onerous, anti-competitive and restrictive conditions.

It is time the Minister, who is noted for his enthusiasm for espousing desperate ethical causes that have the capacity to intrude on the decisions that people make about their personal choices, woke up to one simple fact. It is inescapable that people who, for whatever reason, want to use tobacco are going to get hold of it by whatever means may be available. The evidence lies in the drug situation. On the one hand, he is trying to stop tobacco use, which is licit. On the other hand, he is advocating almost an expansion of drug use, which is illicit. I find it a bit inconsistent.

Another simple fact that the Minister seems not to want to know is that penalising small business people for promoting the availability of tobacco products on shelves bigger than the one square metre that the Minister deems reasonable is not going to limit tobacco availability one jot. All it is likely to do is create confusion and clog the judicial system with cases turning on what constitutes one square metre. Is it, for example, the area of a display case in which tobacco products are visible, or is it the total of the surface area of packages visible within the display case? Whether it is one of those

rather than the other, how on earth will that inhibit people from buying tobacco products? I can see us getting into many an argument about this one square metre, which is totally unproductive.

Mr Speaker, I think that simple example is enough to make the point. This Bill is full of similar follies. I cannot often enough reiterate that the Bill is not going to alter by one iota what happens in the real world. Correction. It will make a difference. It will give employment to public servants whose duty it would be to lurk outside small businesses to check whether they can see tobacco displays or hear the sounds of spruikers declaiming the pleasures of using tobacco. It will give them employment in measuring how big the displays are, presumably with a carefully calibrated one-metre long ruler, which of course is going to have to be flexible because it is going to have to bend around curved surfaces. It will give them the job to swoop with righteous indignation on the small business person who has erected a display of product information set in, heaven forbid, a font type with serifs or type that measures 73 points in a display measuring 1.001 square metres. This is at the point of the ridiculous, Mr Speaker.

It will give these public servants jobs inspecting candy stores to see whether they contain sweets that look like cigarettes. They can attend every screening on every one of Canberra's 31 cinema screens in case somebody slips in a tobacco advertisement. They can examine every rental video in every video shop in the Territory in search of surreptitious tobacco ads. They can examine the clothing worn by tobacco sales staff in case one of them is wearing a garment displaying tobacco advertising. Mr Speaker, the nicotine narks are going to be run off their feet. They will need two or three extra smokos every working day to recover their vigour.

The legal profession must be awaiting the Bill with glee. Imagine the flood of cases in which retailers will pay for defence on grounds, for example, that the specifications for the price cards they ordered clearly stated 72 points sans serifs or that the specifications for the display cabinet were clear about the dimensions but the printer or the shopfitter got it wrong. It is not hard to imagine Mr Moore coming back and trying next year to amend the Act to block that kind of defence by making it a crime for a printer to print price cards for tobacco products to specifications exceeding the permitted sizes or for a carpenter to build a cabinet capable of displaying tobacco products with a display area bigger than what is permitted. Mr Moore has demonstrated some foolishness, I suggest, by introducing the Bill, and such additional foolishness is not beyond the bounds of his future actions.

Some of the restrictions imposed by this Bill are really unbelievable. I find them unprecedented in relation to the selling of any other licit product. I just pull a couple out at random. I have talked about the one metre square surface. That is having an unbroken outer display surface, whether or not the surface is flat, with an area of not more than one square metre. That is why I suggest the inspectors are going to have to have flexible rulers so they can measure round curves. This metre is a very important measure. The point of sale must be located so that the lowest point of display is not less than one metre above the floor and, on the seller's side of the point of sale, not less than one metre away from any part of the customer service area in relation to the point of sale. One metre is becoming a very important matter when it comes to selling tobacco products.

I have referred to the size of the print. Why is that we have to get down to specifying that a product information notice means a notice in sans serif type no character of which exceeds 72 points in size - that is, two centimetres in height and 1.5 centimetres in width? It has to be black lettering on a white background or white lettering on a black background but not both. Mr Speaker, we really are at the point of the absurd. I cannot do a card in red and black. It is illegal.

Then we come to some very interesting aspects of this Bill. You can only place a vending machine in a bar room, a casino or a place where gaming machines are operated. What is so special about them? That means that if you do not gamble and you do not drink you cannot have access to a vending machine for tobacco products. Who on earth thought that one up?

Mr Rugendyke: That is absurd.

MR KAINE: It is totally absurd. Furthermore, an occupier of a retail outlet on unlicensed premises shall not provide more than one point of sale at the outlet, but if you have licensed premised you can have up to five. Why? Where is the logic in all of this, and how in the name of heaven is that going to achieve the stated objective - to prevent children from getting access to tobacco products?

The Bill is an absurdity. Just think of what this is going to cost the public purse to enforce. It will be a pretty penny. At the end of the day it offers no guarantees whatsoever that it will prevent even one young person from becoming a smoker. If Mr Moore can demonstrate to me how anything in that Bill is going to stop a 15-year-old kid from getting hold of a cigarette if he wants one, I would love to hear it. It is not going to have any effect whatsoever.

Of course, this says nothing about the adverse effect it will have on the economy of this Territory, which the Chief Minister holds in such high regard, if Mr Moore does not. Shopfitting companies will enjoy a brief surge in business while they build new display units with unbroken outer display surfaces not exceeding one square metre. How many jobs does that translate to? I am surprised the Minister has not told us. But for the myriad of small businesses which sell tobacco products the Bill promises nothing short of a kick in a very vital part of their anatomy.

It is even possible to envisage an increase in conventional crime flowing from this Bill. I can see Mr Moore asking why. I will tell him. The severe limits on stock inventory at point of sale will increase the frequency with which staff of small businesses - for example, service stations - must leave the counter to restock dispensing units or display cases, presumably from some remote location where the stock is locked away under lock and key so that nobody can get at it. The high risk of theft at service stations means the stock areas must be locked at night. Out-of-stock situations will occur, inconveniencing customers and adding costs to small business while staff go to a locked storage area to bring out fresh supplies, leaving the counter unattended. It is easy to imagine what might happen in a service station when the console operator has to leave his post to restock the tobacco display - an open invitation to thieves.

I reiterate that these negative effects are quite uncompensated by any assurances that the Bill will dissuade even one person from lighting up or from taking that first puff. Mr Speaker, this Bill reflects no credit on the Minister or the Government which appointed him from outside its ranks to absolve a political debt. A Bill cannot of itself be accused of misleading this Assembly, but there is no doubt in my mind that this one does. The Minister should be thoroughly ashamed of it. If there is to be any reduction in the incidence of tobacco use among young people, any increase in the number of young people who do not use tobacco, it is surely the responsibility of their parents, for example, not this Assembly, to institute the necessary measures on a one-to-one basis. We have just been told earlier today that we are not allowed to make decisions about women's pregnancies. What is the difference? We can tell parents how to look after their kids, presumably.

It is not the proper business of this Assembly to inflict a grievous economic and emotional wound on small business proprietors who have committed no sin, who are selling a licit product under trading strictures already more than sufficient to limit access by young people to tobacco products and whom the Bill would turn into criminals for the most petty of transgressions with no identifiable victims.

There is a list of adjectives that describe this Bill, Mr Speaker - wicked, for the injury it does to small business; stupid, for setting up a wicked enforcement regime to punish people who are doing no wrong; futile, for erecting a wicked and stupid mechanism that is totally unsuitable for achieving the outcome the Minister earnestly desires.

The Government and the Minister have got it wrong with this Bill. There is a grave need to reduce the incidence of tobacco use, particularly among young people, but this Bill offers no real hope of achieving that outcome. Mr Speaker, at the present time, if I was asked to vote on this Bill, I would have to vote against it.

MS TUCKER (6.04): I was interested to hear Mr Kaine's concerns. I think he is not aware of some amendments that have been given to members' offices. A number of his concerns have been addressed by those amendments. Hopefully, he will not be quite so alarmed when he sees what government has already done in response to concerns that have been raised by retailers in particular.

Mr Kaine also raised the general issue of how this Bill will affect the likelihood of young people smoking. When I was first presented with this legislation, I asked Mr Moore's office for the references that had informed this policy decision. I am happy to give them to Mr Kaine and Mr Rugendyke if they are interested. I was convinced by the very lengthy list of references, some of which I followed up, that support these initiatives. To put it in a nutshell, this legislation is saying that as a society on the one hand we are saying to young people that they should not smoke cigarettes because they are poisonous and could cause them to die and then on the other hand we are saying to them, "By the way, it is available in supermarkets as a legitimate ordinary product like a bag of sweets or whatever".

If we are going to regard cigarettes as some kind of restricted product, which they are by their nature because we are saying young people should not use them, then there is of course an argument. Mr Kaine was concerned that we were turning people into criminals because of the way they sell this restricted and noxious product. Obviously, he does not apply that to alcohol. In this house this week we passed stronger provisions for penalising people who serve alcohol to minors. We are making people who sell these restricted products criminals. We did it this week in this house. We passed strong penalties for people who sell the restricted product of alcohol in the incorrect way. I believe this legislation is totally consistent with that principle.

I congratulate the Government and the Minister for Health and Community Care on this Bill. As I have said, it is about reducing the visibility of tobacco products in retail outlets. The tougher proof of age requirements, which is what we did with alcohol this week, and associated penalties for breaching those requirements send a clear message to the community, to retailers and hopefully to children that the purchase of tobacco products by children is unacceptable.

Mr Rugendyke: What about cannabis?

MS TUCKER: I am happy to have a debate on cannabis, and I am sure we will, but it is probably not helpful at the moment for Mr Rugendyke to keep interjecting.

Mr Rugendyke: It is double standards.

MS TUCKER: I would not like Mr Rugendyke to think I am not prepared to discuss marijuana and his legislation. I am looking forward to that opportunity, but I will not do it at the moment.

Mr Kaine: I told Mr Rugendyke that I would stop you being nasty to him.

MS TUCKER: I know. I am very careful not to be nasty to Mr Rugendyke now. I believe these are very good initiatives and I commend the Government. Having said that, I feel that the Government could have gone further in a few areas and was downright timid on one particular issue. I am interested to hear Mr Kaine's concerns about vending machines and Mr Rugendyke's affirming sounds when Mr Kaine was putting those concerns. He could not understand why anyone would address the issue of vending machines.

Mr Kaine: I did not say that.

MS TUCKER: I thought you were concerned, Mr Kaine, that vending machines were being moved into licensed premises.

Mr Kaine: You were not listening. That was not my point.

Mr Rugendyke: It was the absurdity and the silliness of it all.

MS TUCKER: Mr Kaine thought it was silly. Mr Rugendyke thinks he said it was silly. Was that correct?

Mr Kaine: I said that I could not see the difference between a vending machine in a bar and a vending machine anywhere else.

MS TUCKER: That is right. He could not see why they were in bars and nowhere else. I would like to address that issue. I agree with Mr Kaine on this in one way. I am concerned that the Government did not propose the complete removal of vending machines from all licensed premises.

Mr Kaine: Now you are getting somewhere.

MS TUCKER: Mr Kaine agrees with that. That is good. Come to the round table when we are looking at the amendments. By the Government's own admission and on the basis of research from the other States and Territories, vending machines continue to provide an easy way for children to purchase tobacco. For example, the Heart Foundation provided me with a survey conducted in Western Australia in 1996 that found that children were 100 per cent successful in their attempts to purchase cigarettes from vending machines on licensed premises in Perth. While small in sample size, the survey included a child of eight who purchased cigarettes from a vending machine within sight of staff of the licensed venue. Other surveys have found that children are only 20 per cent successful in purchasing tobacco products over the counter from retail outlets. Obviously vending machines are an issue.

Removal of vending machines does not mean the removal of tobacco products from licensed premises. These premises could still sell tobacco to adults from their alcoholic and food outlets. As one person has put it to me, and no doubt to other members, we do not have vending machines for other restricted products such as alcohol or pharmaceuticals, so why do we continue to provide them for tobacco products?

Mr Rugendyke: Hear, hear!

MS TUCKER: We look forward to Mr Rugendyke supporting our amendments, even if Mr Moore cannot do that. Then we might get majority support for the amendments we intend to put up on vending machines. It is essential that governments work towards reducing demand, particularly demand by children, for tobacco products.

Mr Kaine: Who is "we"? Are you working with the Government on this?

MS TUCKER: I did not say "we". I said that Mr Moore does not seem to be able to support our amendments but I am hoping we will get support. I think Labor is interested. Mr Kaine has expressed interest and Mr Rugendyke has.

Mr Kaine: I just wondered who the "we" were.

MS TUCKER: I have talked to Labor already. They are interested in the vending machine issue. It is essential that governments work towards reducing demand, particularly demand by children, for tobacco products. One way of doing this, as these amendments to the Tobacco Act strive to do, is to restrict point-of-sale promotion of tobacco products at retail and wholesale outlets. There are other issues on which the Government, while ensuring some progress, could possibly have gone further and been stronger, but I will speak on those concerns at greater length during the detail stage of the debate.

Briefly, I have concerns about the provisions on the size of health warnings at point-of-sale displays, on the size of the point-of-sale tobacco product displays and on product information which is displayed at point of sale. While a number of members have raised the concerns of Scrutiny of Bills Report No. 6 of 1999 on the powers of authorised officers, I had thought those powers were appropriate but I am very willing to listen to concerns that are expressed about the current state of this legislation. I know amendments have already been prepared. I do not know whether Mr Kaine and Mr Rugendyke are aware of those either. Those concerns have been addressed to some degree, but I am happy to listen to the arguments.

Having briefly raised some of my concerns about the Bill and the most recent amendments, I believe the Bill will contribute positively to reducing tobacco use and creating an environment and a society statement about making smoking less acceptable and therefore less attractive to children and making it harder for children to purchase tobacco products. We are all familiar with the arguments for doing this, but they deserve repeating and reinforcing to those in the Assembly who do not understand the arguments behind this Bill and who may be feeling the pressure of the powerful tobacco lobby.

Let us focus on children and tobacco. The information paper provided by the Minister for Health was very useful in summarising the impact tobacco promotion has had on children. The *Medical Journal of Australia* has found that most adult smokers took up the habit of smoking during adolescence, starting between the ages of 12 and 16, and that 80 per cent of new smokers are children. Other studies have found that the earlier a person starts smoking, the more difficult it is for them to quit. The Heart and Cancer Offensive against Tobacco, using census data and information derived from surveys, found that 336,030 Australian children aged 12 to 17 were smokers in 1996.

The World Bank quotes studies undertaken in the US among final year high school students, suggesting that fewer than two out of five smokers who believe they will quit within five years actually do quit. And let us not forget the big one. The use of tobacco is known to be the greatest cause of avoidable death and disease in the community, killing about 19,000 Australians a year. The cries of the tobacco companies and retailers about the impact restrictions on promotion will have on their industry pale in the face of these kinds of statistics.

I have spoken to the retailers and have listened to their concerns. The most recent amendments, as I have said, appear to go some way towards addressing some of their concerns. But, as I have said to them and to this place, the Greens have as their primary concern the public health issues at stake in the continued promotion of tobacco products at retail outlets, particularly to children.

One of the major cries of the tobacco industry is that jobs will be lost as a result of restrictions on their industry. If there are job losses, they will not just be in the tobacco industry if demand for tobacco products goes down as a result of these types of restrictions. I am happy to say that jobs will also be lost in the health industry. We will not see doctors and nurses having to deal with so many people suffering serious illness such as smoking-related cardio-vascular diseases before they die painful and premature deaths. I am sorry. Jobs are important, but not at any cost.

There seem to be contradictions inherent in the tobacco lobby's arguments. How can they argue that the Government's Bill will not reduce smoking and at the same time argue that it threatens the livelihoods and jobs of tobacco retailers? I believe that this Bill will go some way towards reducing smoking. It is a statement from society which will send a strong message to people in the community. Tobacco is a very poisonous product. We do not want to see it displayed equally with all the non-poisonous products as it is now in supermarkets.

In the economic area, as with gambling, I believe that any money not spent on this highly unproductive, dangerous activity will be directed to other areas of the economy where jobs, industries and productive activities will be generated.

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

ADJOURNMENT

Motion (by Mr Moore) agreed to:

> That the Assembly do now adjourn.
>
> **Assembly adjourned at 6.16 pm until Tuesday, 12 October 1999, at 10.30 am**

ANSWERS TO QUESTIONS

Canberra Hospital - Reports
(Question No. 172)

Mr Stanhope asked the Minister for Health and Community Care, upon notice:

For each of the following Canberra Hospital reports:

(a) Picone report
(b) Renfrey report
(c) KPMG report
(d) Steve Anderson study
(e) Fauldings scoping study

(1) What were the costs of producing the reports including

(i) how many reports each of the author's were commissioned to conduct

(ii) what were they required to report on, and

(iii) whether they have all been completed to your satisfaction

(2) How many and which recommendations from these reports have been implemented.

Mr Moore: The answer to Mr Stanhope's question is:

Please note that the "Picone" and Renfrey Reports were not commissioned by The Canberra Hospital and the Steve Anderson Study was commissioned by the Minister for Health and Community Care.

(a) Picone Report

The Report on the Management of Nursing Services (the Picone Report) was commissioned by the ACT Auditor General and was published in the form of Auditor General's Report (Number 13 of 1997).

(1) Ms Picone was commissioned to produce a single report covering nursing services in both The Canberra and Calvary Public Hospitals for the Auditor General.

(2) The Report did not have a list of recommendations as such, however there was a list of eleven suggested future actions identified, of which, nine were directly relevant to TCH. The eight listed actions that have been implemented/progressed/improved at TCH are:

The current number of nurse manager positions in The Canberra Hospital has been assessed periodically.

Cost effective strategies have been identified to alter the staffing profile and maintain quality of nursing services. The specific suggestion of raising the enrolled nurse component has not been taken up due to the intake of first year nurses.

A system has been introduced at The Canberra Hospital to monitor daily replacement of sick leave and to monitor staff who are developing unacceptable patterns of sick leave.

Sick leave and annual relief allocation methodologies have been reviewed and the situation is improving.

Progress is being made on forecasting fluctuations in bed demand, operating and diagnostic service usage. Progress is also being made on improving the efficiency of staffing allocation to clinical units.

TCH has continued to work towards reducing compensation costs.

The clinical service suggestions in the report have been reviewed.

TCH and Calvary have developed partnerships with appropriate interstate hospitals to undertake cost benchmarking reviews. In addition, TCH is part of the South East Australasian Hospital Benchmarking Consortium.

(b) Renfrey Report

This Report analysed the health expenditure within the portfolio and highlighted differences between the ACT and other jurisdictions. Further analysis was undertaken by applying the NSW Resource Distribution Formula to further identify areas of over and under funding across the portfolio.

(1) The total cost of the consultancy was $72,857

(i) one full report was commissioned in two phases.

(ii) The Department of Health and Community Care engaged the services of David Renfrey and Associates in April 1998 to undertake an analysis of ACT Health and Community Care expenditure.

The first stage of the project was to consolidate and provide an analysis of expenditure in the portfolio to highlight expenditure patterns and differences relative to the other States and the Northern Territory. The second component of the first stage was to develop a theoretical model based on the NSW Resource Distribution Formula to determine the likely outcome of such an approach if applied to the ACT.

The second stage of the project involved undertaking a more detailed comparative benchmarking and analysis in order to identify specific service areas which fall outside established cost parameters.

(iii) the report has been completed to the Department's satisfaction

(2) The main purpose of the consultancy was an information gathering exercise for consideration by the Department on possible future purchasing strategies. The recommendations have been considered as part of the process for developing a role delineation process for the ACT and will inform future planning and benchmarking exercises.

(c) "KPMG Report"

KPMG have undertaken a number of studies throughout the Portfolio over the years. Listed below is information pertaining to a study by KPMG that is currently underway. I would be happy to provide further information on other work by KPMG as requested.

This specific report is designed to enhance the consumer feedback into Mental Health Services. This will be used to better tailor services to clients needs and to assess the effectiveness of current services.

(1) KPMG initial cost $10 000

(i) One report has recently been commissioned by Mental Health Services.

(ii) Stage One of the Report details the development of a model consumer feedback survey application within Psychiatric Services. It is planned that the Consumer Feedback Survey will be trialed across five Mental Health Service Areas. Stage 2 is not yet complete, the Mental Health Service is currently planning how the survey will be implemented.

(iii) As the study is not yet complete it is not possible to indicate whether it has been completed to satisfaction.

(2) The recommendations relating to the development of the model application have been discussed and accepted.

(d) Steve Anderson Study

This study examined the current management processes for both the expenditure and revenues within The Canberra Hospital and proposed directions to be taken over the short, medium and long term to address the practices and processes where improvements could be made. The intention is to help make the relevant levels within TCH more financially aware of and responsible for the actions that are taken. A hospital wide working party has been established to work with Mr Anderson on the issues identified.

(1) An indicative cost received from Mr Anderson, in relation not only to the Report but also to the follow-up work that would be required over a total of 12 months was $99 100.

(i) Mr Anderson was commissioned to produce one detailed report and then to work with the hospital in relation to specific implementation procedures and to provide regular updates to the Minister for Health and Community Care.

(ii) The terms of reference for this study were to briefly examine the current financial management practices and processes at The Canberra Hospital, to seek out the incidence of best practice financial management and to recommend how it may be more widely applied throughout the hospital. The Study also looked at any sub-optimal aspects of financial information, advice or management processes and made recommendations on how these may be seized as opportunities to make improvements.

(iii) Although the work being undertaken by Mr Anderson is presently ongoing, I am satisfied with the process to date.

(2) The Anderson Report identified two lists of items, firstly, those in need of urgent attention and secondly, those where there are opportunities to pursue benefits as soon as practicable, these items were broken down into 23 sub-projects. Work is continuing in relation to these matters. Mr Anderson's services have been contracted until January 2000, by which time all of the issues raised will have been considered for suitability and actioned or rejected based on an informed decision making processes.

(e) Fauldings Scoping Study

The Fauldings Study was designed to help TCH identify options for cost containment, specifically scoping for the use of computer controlled vending machines to provide pharmaceuticals and medical supplies at ward level. The Study was to be at no cost to TCH.

Although Hospital management initially saw some merit in the proposal, the study did not proceed as the Department of Health and Community Care had called for expressions of interest for a prime supplier arrangement for the provision of pharmaceutical, medical, surgical and other products to the ACT public hospitals and ACT Community Care. Tender specifications are currently being developed and will be sent to select tenderers in the near future.

Housing Waiting Lists
(Question No. 173)

Mr Wood asked the Minister for Urban Services, upon notice:

In relation to ACT Housing, for each of the following dwelling types:

(a) two bedroom house;
(b) three bedroom house;
(c) four bedroom house;
(d) bedsitter flat;
(e) 1 bedroom flat;
(f) 2 bedroom flat;
(g) 1 bedroom aged persons unit; and
(h) 2 bedroom aged persons unit.

What is the median wait-turn time, by each regional office area, as at (1) 28 February 1999 and (2) 31 May 1999.

Mr Smyth: The answer to the Member's questions is as follows:

ACT Housing has not historically produced reports that provide the median wait-turn. On a quarterly basis, ACT Housing reports average wait times for properties allocated in the previous twelve months, by each regional office, for each dwelling type. For the purpose of this question ACT Housing has generated the figures for the dates requested.

(1) See table below for the median wait time (months) for properties allocated in the 12 months to 28 February 1999 by regional office and the above dwelling types.

DWELLING TYPE	BELCONNEN	CITY	TUGGERANONG	WODEN
2 bedroom house	7.9	3.8	11.9	2.1
3 bedroom house	1.3	0.9	5.0	3.5
4 bedroom house	3.9	2.8	5.7	6.1
Bedsitter flat	*	0.9	*	0.3
1 bedroom flat	3.2	1.3	14.9	0.7
2 bedroom flat	1.2	0.8	11.9	0.6
1 bedroom older peoples' accommodation	1.7	0.9	40.8	18.5
2 bedroom older peoples' accommodation	1.0	0.5	6.8	8.1

* There are no bedsitter flats in Belconnen or Tuggeranong

(2) See table below for the median wait time (months) for properties allocated in the 12 months to 31 May 1999 by regional office and the above dwelling types.

DWELLING TYPE	BELCONNEN	CITY	TUGGERANONG	WODEN
2 bedroom house	7.9	4.4	14.5	3.2
3 bedroom house	1.3	0.8	2.4	1.4
4 bedroom house	6.2	3.5	6.6	7.4
Bedsitter flat	*	0.8	*	0.4
1 bedroom flat	3.2	1.5	19.0	0.9
2 bedroom flat	1.6	0.9	16.0	0.9
1 bedroom older peoples' accommodation	1.6	5.1	40.0	12.9
2 bedroom older peoples' accommodation	1.4	0.6	6.8	3.9

* There are no bedsitter flats in Belconnen or Tuggeranong

NB Reporting median wait times can result in highly variable and unreliable results, particularly when small samples are involved. For this reason ACT Housing adopts average wait times as a more reliable and consistent indicator.

Promote ACT Account
(Question No. 174)

Mr Kaine asked the Chief Minister, upon notice, on 24 August 1999:

In relation to the "Promote ACT Account"

(1) By whom was this account established.
(2) When was it established.
(3) For what purpose was it established.
(4) Noting your comments to the Assembly on 1 July 1999 *(Proof Hansard; p 71)* that the source of funds in the account is "Qantas's money", what is the basis for the provision of funding by Qantas Airways Ltd.
(5) Who authorises access to this account.
(6) Has anyone benefited from the establishment of the accounts, if so
    (a) who;
    (b) on which occasions; and
    (c) by what amounts.
(7) If those who have benefited are Members of the Assembly, has the Chief Minister sought advice on whether this benefit would cause them to vacate their seat under section 14,(c) of the *Australian Capital Territory (Self-Government) Act 1988* (Commonwealth) and if so, will she table the advice.

Ms Carnell: The answer to the Member's question is as follows:

(1) The Travel Assistance Account was established by Qantas Airways Ltd.
(2) The Account was established on 1 May 1997.
(3) In accordance with the Qantas Travel Contract, Travel Assistance can be utilised on Qantas services for, but not limited to:
promoting and encouraging business in the Canberra Region
visiting guest speakers to address forums; and
promoting sport in Canberra.
As part of the tender process Qantas was able to demonstrate that they would assist in attracting business to Canberra and the Australian Capital Region.
(4) Qantas Airways Ltd. provides $35,000 per annum in the form of free of charge air travel to assist in the promotion of the Canberra Region, with the Department being able to draw upon the assistance at its discretion The Account finishes with the contract when it expires at the end of April 2000, and no other funds will be credited to it before then.
(5) Until the end of July 1999 the Executive Director of The Office of Strategy and Public Administration (OSPA) authorised access to the Account. The Chief Executive of the Chief Minister's Department now authorises access to the Account.
(6) (a) The Territory benefits from the establishment of the Account.
(b & c) Refer to Attachment A.
(7) No Members of the Assembly other than myself have accessed the account.
The Government Solicitor's Office (GSO) advised in July 1999 that this travel is for a purpose of executive business, unrelated to any business of the legislative program or of an Assembly committee. The use of the Qantas travel assistance for

travel by Ministers on such executive business is most unlikely to result in the vacation of office of the member under paragraph 14(1)(c) of the ACT Self Government Act.

The GSO advised that his proposition is supported by the decision of the Full Federal Court which held that payments to Ministers for services as members of the executive did not breach the counterpart provision of the Norfolk Island Self Government Act.

The operation of paragraph 14(1)(c) depends on the existence of specific circumstances where a member takes or agrees to take a benefit for services to be rendered in the Assembly. Such circumstances do not exist in this case.

The advice I have received on this is tabled.

QANTAS TRAVEL ASSISTANCE FUND ATTACHMENT A

	Traveller	Designation	Sector	Date	Purpose	Cost $
1	J Walker	CE, CMD	Cbr-Syd-Chc-Syd-Cbr	2-6.7.97	Meetings with CEO's Christchurch City Council & Airport on charters & management	$1,628.40
2	L Webb	ED, OSPA	Cbr-Syd-Chc-Syd-Cbr	2-4.7.97	Meetings with CEO's Christchurch City Council & Airport on charters & management	$1,722.40
3	G Tomlins	CMD	Syd-Chc-Syd-Cbr	3-4.7.97	Meetings with CEO's Christchurch City Council & Airport on charters & management	$1,564.40
4	R Bornball	Consultant	Syd-Chc-Syd-Cbr	3-4.7.97	Meetings with Christchurch	$1,406.40
5	Peter Phillips	CANTRADE	Cbr-Syd-Taipei-Syd-Cbr-	26-31.5.98	World Mayors Forum, Taipei & other business in his capacity as member of CANTRADE	$1,601.00
6	S Latimer	CM's office	Cbr-Syd-Dar-Syd-Cbr	25-28.6.98	Represent ACT at NT Expo 98	$1,365.70
7	K Carnell	CM	Cbr-Syd-Dar-Syd-Cbr	25-28.6.98	Represent ACT at NT Expo 98	$1,365.70
8	K Carnell	CM	Cbr-Mel-Cbr	17.9.98	Guest speaker to promote Canberra at Arnold Bloch Leibler Organisation luncheon	$464.00
9	K Carnell	CM	Cbr-Syd-Cbr	4.2.99	Keynote speaker at National Power investment forum	$309.70
10	K Carnell	CM	Cbr-Syd-Bri-Syd-Cbr	12-14.2.99	Keynote speaker International Conf: Govt & Business integrity & accountability – Brisbane & ACT brumbies cocktail party - Sydney	$824.40
11	K Carnell	CM	Cbr-Syd-Cbr	19-20.3.99	Telstra Function	$163.00
12	K Carnell	CM	Cbr-Syd-Cbr	7.4.99	Business lunch with deacons Graham James to promote ACT To senior business leaders	$326.00
13	Ian Wearing	CM's office	Cbr-Adl-Cbr	10-11.4.99	Represent Chief Minister at Australian V8 Supercar event	$666.90
14	K Carnell	CM	Cbr-Syd-Cbr	15.4.99	ABN-AMRO luncheon - to promote ACT	$326.00

15	K Carnell	CM	Cbr-Syd-Cbr	28.4.99	Promote ACT at Commonwealth Bank luncheon	$326.00
16	Gary Sturgess	Private sector	Syd-Cbr-Syd	11-12.5.99	Guest speaker - 10th Anniversary conference of ACT Self Government	$326.00
17	Dr McPhail	Academic	Bri-Cbr-Bri	11-12.5.99	Guest speaker – 10th Anniversary conference of ACT Self Government	$682.00
18	R Burchmore	Private sector	Mel-Cbr-Melb	13-14.5.99	Promote the ACT - 10 th Anniversary dinner of ACT Self Government	$546.00
19	I Knowles	Private sector	Syd-Cbr-Syd	13-14.5.99	Promote the ACT - 10 th Anniversary dinner of ACT Self Government	$326.00
20	R Senior	Private sector	Syd-Cbr-Syd	13-14.5.99	Promote the ACT - 10 th Anniversary dinner of ACT Self Government	$326.00
21	Elizabeth Whitelaw	Private sector*	Cbr-Gladstone-Cbr	16-18.6.99	Attend joint QLD Govt/CCF convention – QLD constitutional convention	$1,230.00
22	K Carnell	CM	Cbr-Syd-Dar-Syd-Cbr	7-10.7.99	Represent ACT at NT Expo 99	$ 2,500.00
23	S Latirner	CM's office	Cbr-Syd-Dar-Syd-Cbr	7-10.7.99	Represent ACT at NT Expo 99	$2,320.00
24	K Carnell	CM	Cbr-Melb-Cbr	10.8.99	Represent National Power Forum	$413.00
				TOTAL		**$23,255.50**

* ACT appointee to Committee of the Constitutional Centenary Foundation

AUSTRALIAN CAPITAL TERRITORY
GOVERNMENT SOLICITOR

Your Reference:
Our Reference: 98-2-320384; 93-2-144444
Dr Douglas Jarvis
Ph: (02) 6207 0628

1st Floor
GIO House
City Walk
CANBERRA CITY 2601

5 July 1999

Mr Ken Douglas
Communication and Customer Service
Chief Minister's Department
BY FAX 76366

RE: TRAVEL ASSISTANCE TO MINISTERS - ACT SELF GOVERNMENT ACT SECTIONS 14,73

I refer to your memorandum of 5 July 1999 seeking urgent advice concerning the above matter.

You have asked in effect whether there is any legal problem in the Chief Minister or other Ministers accepting travel assistance. The assistance would be provided under a scheme whereby Qantas makes available each year $35,000 in free travel to the Chief Minister's Department, and the Department may draw upon the assistance at its discretion. The Department proposes to use some of the assistance for travel by the Chief Minister and other Ministers.

Short answer

No, provided the travel assistance does not fall within paragraph 14(1)(c) of the ACT Self Government Act.

Reasons

Paragraph 14(1)(c) of the ACT Self Government Act provides for the disqualification of a member of the Assembly if the member -

> "takes or agrees to take, directly or indirectly, any remuneration, allowance, honorarium or reward for services rendered in the Assembly, otherwise than under section 71"

Section 73 provides in effect that Ministers' remuneration is to be determined by enactment or by the Remuneration Tribunal.

If it can be assumed that the travel assistance is a form of "reward", the critical question is whether it would be "for services rendered in the Assembly".

It is as well to be cautious in matters which may enliven section 14 of the ACT Self Government Act as the consequences of its operation are harsh -vacation of office. The Chief Justice of the High Court described the counterpart provisions of the Commonwealth Constitution as having "penal consequences" and therefore being subject to strict construction: *Re Senator Webster* (1975) 6 ALR 65, 71.

The provisions are designed to secure the independence of the parliament and the particular mischief to be addressed is such activities as bribery or taking payment for voting in a certain way or for raising matters in the parliament. The Commonwealth provision also refers to services "to the Commonwealth" in addition to services "rendered in the Parliament" and was designed to catch barristers and other professionals in Parliament from engaging in work for the Crown. The counterpart provision of the Commonwealth Constitution (section 45(iii)) does not contain the terms “allowance” or "reward" and refers only to "fee or honorarium". Those latter terms would not in their ordinary sense include, for example, reimbursement of out-of-pocket expenses: see Evans "Pecuniary Interests of Members" (1975) 49 ALJ 464, 470. The additional terms included in paragraph 14(c) must be taken to widen the scope of the paragraph as compared with the Constitutional provision.

There is also a distinction, in my opinion, between a gratuity and an allowance or reward "for services". There is no suggestion in your instructions that any services at all are to be given in return for the travel assistance. However, it may be considered imprudent for any member to accept any gratuity, as the suggestion could be made that even by omission or silence the member has advanced the giver's interests if any question which affected those interests were aired in the Assembly.

There have been no recorded cases of any substantive action taken under section 45(iii) of the Commonwealth Constitution.[1] However, some guidance on the approach which should be taken is to be found in *Brown v Administration of Norfolk Island* (1991) 101 ALR 201 in which the Full Federal Court considered paragraph 39(2)(e) and section 65 of the *Norfolk Island* Act 1979 (Cth) which are in substantially the same terms as sections 14(1)(c) and 73 of the ACT Self Government Act.

The case concerned an allowance payable to members holding executive offices of Minister created pursuant to the Norfolk Island Act. By an oversight payments were made to the holders of new ministerial offices in the Fifth Norfolk Island Assembly (1989) which offices were not referred to in the relevant determination of the Remuneration Tribunal, and so the question of vacation of office arose. It was held by all members of the Court that remuneration for services as a member of the executive did not fall within the vacation of office provision. In doing so the Court rejected an argument that, under the system of responsible government established for Norfolk Island, members of the executive were required to perform services in that capacity in the Assembly, eg by answering questions as Ministers in question time, introducing Bills relating to departmental activities etc, and that therefore their service as members of the executive should be characterised as services rendered in the Assembly. The Court held that it did not follow from the fact that Ministers were responsible to the Assembly that the remuneration they received as executive members was related to rendering services in the Assembly.

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1 Browning, *House of Representatives Practice*, 2nd ed (1989), p. 176.

The case does assist in illustrating that the words "services in the Assembly" are partly words of limitation.

On the assumption that the travel assistance would be for travel on executive business, it is difficult to see how the use of the Qantas travel assistance as suggested could constitute reward "for services rendered in the Assembly".

ACT GOVERNMENT SOLICITOR Per:

D R Jarvis
A/Deputy Chief Solicitor

Bruce Stadium Redevelopment
(Question No. 175)

Mr Stanhope asked the Minister for Education, upon notice, on 24 August 1999:

In relation to the Bruce Stadium redevelopment

(1) What was the basis for your statement to the Assembly on 2 July 1999 that the redevelopment "costs about $1,750 a seat"(Proof *Hansard p.* 187).

(2) In making the calculation were (a) one-off costs, such as those related to stadium marketing, and (b) consumables, such as those associated with furnishing and fitout, included with construction costs.

(3) Can a breakdown of the components of this calculation be provided.

(4) Is it the case that this calculation of cost-per-seat reflects a total redevelopment cost in the order of $43.75 million.

Mr Stefaniak: The answer to Mr Stanhope's question is:

On the 12 September 1999 I circulated an amendment to the estimate quoted on 2 July 1999. A copy of the letter explaining the basis of my estimation is attached.

Minister for Education
Responsible for
Schooling
Vocational Training
Children's, Youth and Family Services
Sport and Recreation

Member for Ginninderra
Australian Capital Territory

Mr Jon Stanhope MLA
Leader of the Opposition
ACT Legislative Assembly
CANBERRA ACT 2601

Dear Mr Stanhope

On checking the Hansard of 2 July during debate on the Budget I note I referred to the cost of Bruce Stadium as being about $1750 per seat.

As Members will be aware, debate on the costs of Bruce Stadium later that evening resulted in the passage of a Bill to provide an additional $22.4 million, taking the total to $34.7 million for the construction costs of the stadium. This is a cost of $1388 per seat, not the figure I had inadvertently used earlier.

If any confusion arose as a result of my above comments I apologise for it.

Bill Stefaniak MLA

Bruce Stadium – Marketing and Sales Promotions
(Question No. 176)

Mr Stanhope asked the Chief Minister, upon notice, on 24 August 1999:

In relation to the marketing campaign and sales program for The New Bruce Stadium

(1) Why did the repositioning and promotional brief presented to The Campaign Palace, the company nominated by Spotless Services Australia Ltd's winning bid for Tender No. T980083 (marketing campaign and sales program for Bruce Stadium) to implement a communications strategy to reposition the stadium, refer in June 1998, to the redevelopment as a "$40 million dollar upgrade".

(2) Was the primary objective of the campaign to raise private capital, from the sale of naming rights, corporate suites, memberships, signage and advertising, and other items which would total $12-$13 million gross in its first year, ending on 7 July 1999.

(a) If so, was the objective achieved.
(b) If not, what revenue was achieved by the successful tenderer against each of the product categories.

(3) Why did the "grand opening" foreshadowed for December 1998, featuring either an international sporting event or a concert by a "world renowned performer or group", not eventuate.

(4) Does the Government intend to take any action under the tender's default clauses to address the contractor's failure to achieve the primary objective.

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

(1) The repositioning and promotional brief to The Campaign Palace was part of a tender document submitted by Spotless Services Australia Ltd. Spotless Services Australia Ltd did refer to the redevelopment cost in June 1998 as being $40 million. The redevelopment at that point in time was always recognised as costing $27.3 million which did not include operational assets associated with fitout of approximately $6 million. Combined, this at the time would have shown a total cost of $33 million. It is not known how the figure of $40 million was derived by Spotless at that time.

(2) The primary objective of Spotless Services Australia Ltd in performing the marketing and sales services was to reposition the Stadium and develop sales and marketing strategies and programs that would assist in generating revenues not just in year one, but over the longer term. A revenue target of $13m was outlined as part of its tender.

(a) no.
(b) The revenue that was achieved by Spotless Services Australia Ltd (SSL) can be seen as follows:

sale of naming rights - $0
not including major hirers' suite sales, 6 corporate suites were sold – $166,037:
19 memberships were sold (Gold and Double Diamond Membership) – $29,200; and

no significant signage and advertising revenue was generated.

(3) The "grand opening" could not occur in December due to the construction of the Stadium not being complete. It was more appropriate that this occurred once the redevelopment was finished. Accordingly, SSL proposed that John Farnham could be billed as the opening event. Working in with entertainers schedules, the only date the promoter could secure was in April 1999. SSL was to provide an event schedule for the Stadium, however the only act which they secured was the John Farnham concert, which, in the event, was not proceeded with.

(4) The Government is currently seeking legal advice in relation to this matter and is unable to comment further.

Planning Approvals
(Question No. 178)

Mr Corbell asked the Minister for Urban Services, upon notice:

In relation to the planning approvals granted under section 230/235/247 of the *Land (Planning and Environment) Act 1991* (to Bryan Dowling and Associates) for Blocks 1-4 (now known as Block 21) Section 9 Braddon:

1. *Why was a four storey building constructed in a three storey zone?*

2. *Why were major changes made to the plan that was approved under section 247 of the Land (Planning and Environment) Act 1991?*

3. *Have new plans been lodged?*

4. *Why did PALM approve the amended M plan despite its own requirement that there be a 4 metre setback from the western boundary?*

5. *Why have the North Eastern and North Western brick walls containing the 3rd and 4th floor units not been built according to the amended plan?*

6. *What is the height of these walls?*

7. *What action if any has PALM taken to correct the procedural problems this development raised?*

Mr Smyth: The answers to the Member's questions are as follows:

1. The development, as constructed in accordance with the approved plans, meets the requirements of the Territory Plan for a three storey development. The three storey development of residential apartments has been constructed above a basement Car park. A section of the three storey construction contains some attics within the roof space. Neither *attics* nor *basements* count as a storey/s under the Territory Plan.

2. The amended approvals granted to the development were to remedy minor errors and/or omissions or to comply with the conditions of approval. This process was necessary so that approved plans could be lodged with BEPCON to enable a building permit to be sought and subsequently granted. No major changes were approved under the s247 provision of the Act.

3. All approvals were on the basis of amended plans being lodged, successively assessed and approved or rejected. In the case of rejection there was a need for subsequent application/s and re-assessment by PALM. This process continued until a satisfactory proposal was received, and then it was approved. Approval of DA # 943420 [M] on 19 November 1998 constituted the approved plans. A subsequent minor amendment DA # 943420 [N] was approved on 29 July 1999, this involved internal changes.

4. The setback to the western boundary is shown on the approved plans as 4 metres. It has not changed by the approval to the drawings with Development Application # 943420 [M]. BEPCON have a survey report, and indicates that the 4 metre setback reduces in the south-western corner of the development and is 10mm under the precise approved measurement of 4 metres. This is quite within acceptable tolerances permitted under the Building Act.

   The setback requirements in the Territory Plan are performance measures in the Residential Design and Siting Code for Multi Dwelling Developments, and as such, are not mandatory. The test of whether or not setbacks are regarded as adequate is whether or not they comply with the relevant objectives and performance criteria of the Code.

5. The particular walls in question have been difficult to identify positively as the building is on north-south axis. The question is addressed on the basis that it refers to the eastern wall at the northern end and the western wall at the north end of the development.

   A recent Surveyors confirmation of floor and roof levels indicates the maximum height of the north elevation roof ridge is at RL 584.60 [approved plan showed RL of 585.20] which means the roof's ridge is 920mm lower than the original approved height.

   The major change to the heights was achieved by an overall reduction in thickness of the floors height due in part to the lowering of the building, and the builder's change from *corcon* floor slabs (600mm deep) to conventional structural slabs of about 170mm thickness. This has resulted in the spandrel height of brickwork below roof level to increase from about 890mm to 1204mm. This has been approved by BEPCON as part of the structural amended plans for the floor slab changes which achieves the mandatory compliance of height.

6. The height of the walls shown on the approved plans measure 7.5.metres for the western wall, and 6.9.metres for the eastern wall.

7. PALM has made significant improvements to the pre-application and development appraisal processes, to provide a better guidance to applicants at early stages, and reduce the necessity for subsequent amendments.

The Land Act was amended in 1997 to impose a maximum time for dealing with applications of 6 months. This would reduce significantly the period involved in dealing with the application.

Government Shopfronts
(Question No. 179)

Mr Hargreaves asked the Minister for Urban Services, upon notice:

In relation to ACT Government Shopfronts:

(1) (a) How many Shopfronts are there and (b) where are they located?

(2) How many staff were/are employed at the Shopfronts in (a) 1997/98, (b) 1998/99, and (c) at present?

(3) What was/is the average waiting time at a Shopfront in (a) 1997/98, (b) 1998/99, and (c) at present?

Mr Smyth: The answers to Mr Hargreaves' questions are as follows:

(1) (a) There are four ACT Government Shopfronts.

(b) Their locations are:

Ground floor, Swanson Plaza, Swanson Court, Belconnen;

Ground floor, Saraton Building, East Row/City Walk, Civic;

Ground floor, Homeworld Centre, Tuggeranong; and

Ground floor, Woden Library, Furzer/Corinna Street, Woden.

(2) The number of full-time equivalent staff employed at the Shopfronts was:

(a) average in 1997/98 - 38.3 staff;

(b) average in 1998/99 - 39.0 staff; and

(c) at the end of August 1999 - 41.4 staff.

(3) The waiting times at Shopfronts were:

(a) average in 1997/98 - 1.7 minutes;

(b) average in 1998/99 - 4.2 minutes; and

(c) at the end of August 1999 - 2.5 minutes.

Healthpact Funding
(Question No. 180)

Mr Hargreaves asked the Minister for Health, upon notice:

In relation to the allocation of Healthpact funding for 1999-2000 to a) Tuggeranong based organisations or b) community groups.

1) How much has been allocated

2) Which organisations were they

3) How much did each receive.

Mr Moore: My answer is as follows:

I am aware that the ACT Health Promotion Board has made offers of grants and sponsorships to over 100 community groups and organisations. These allocations are detailed in Healthpact's Media Release on funding for the year. There are some further sponsorships that have not yet been made public and sponsorship support arrangements with health agencies such as the ACT Cancer Society, the Heart Foundation ACT and Diabetes ACT which still have to be finalised. When these grants and sponsorships have been completed it is expected that $1.65 M will be allocated in community funding program for the year. In addition Healthpact is undertaking a health promoting schools program with allocation of $50,000 to assist three schools in Tuggeranong implement the health promoting schools initiative. The Media Release indicating current status of grants and sponsorships is provided for members information.

In relation to grants and sponsorships to Tuggeranong based organisations or community groups the following amounts were allocated:

1. a) Tuggeranong based organisations - $1,600
   b) Tuggeranong community groups - $52,000

2. These organisations and community groups were; the Active Leisure Centre, the Tuggeranong Vikings Cycling Club and Tuggeranong Community Arts.

3. The amounts allocated were $1,600, $2,000 and $50,000 respectively.

Further grants and sponsorships totalling in excess of $400,000 are considered directly relevant to the people living in Tuggeranong and many other projects draw participants from all regions of Canberra.

Prisoners in Interstate Gaols
(Question No 181)

Mr Hargreaves asked the Minister for Justice and Community Safety, upon notice, on 24 august 1999:

In relation to prisoners sentenced in ACT courts but serving sentences in interstate prisons as at 30 June 1999 -

(1) What is the total number of prisoners, by type of offence.

(2) How many prisoners are;
(a) male;
(b) female;
(c) under the age of 18;
(d) under the age of 18 and female; and
(e) under the age of 18 and male.

(3) How many prisoners are held in: (a) maximum-security prisons; (b) medium security prisons; and (c) low security prisons.

(4) What is the reason for the allocation of each of the level of security listed in (3).

(5) How many prisoners are serving sentences in prison farms.

(6) How many prisoners have
(a) less than 12 months to serve.
(b) 12 months to 2 years to serve.
(c) 2 to 5 years to serve.
(d) greater than 5 years to serve.

(7) How many prisoners are in protective accommodation
(a) what was their offence; and
(b) what is the reason for such allocation.

Mr Humphries: The answer to Mr Hargreaves' question to Attorney General is as follows:

(1) Total number of prisoners by type of offence (note that only the most serious offence is listed);

Homicide	17
Assault	21
Sexual Assault	10
Other Sex Offences	6
Robbery, Armed	15
Robbery, Unarmed	1
Unlawful Entry Offences	12
Fraud	3
Handling Stolen Goods	1
Vehicle Theft	2
Other Theft	6
Property Damage	3
Justice Procedure Offences	8
Weapons Offences	1
Drugs Offences	16
Traffic Offences	2
Other	0
Unclassified	1
Total	**125**

(2) (a) There are 118 male prisoners.

(b) There are 7 female prisoners.

(c) There are nil prisoners under the age of 18 in the adult correctional system.

(3) (a) There are 15 prisoners held in maximum-security prisons.

(b) There are 24 prisoners held in medium security prisons.

(c) There are 86 prisoners held in low security prisons.

(4) The level of security that prisoners are allocated is determined by the Inmate Management and Classification Unit in NSW. A Custody Evaluation tool is used for this purpose and involves rating the prisoner on the following issues:

severity of current charges/convictions;
offence history;
escape history;
institutional disciplinary history;
alcohol/drug abuse; and
stability factors.

There are three classification committees for this evaluation purpose and a prisoner's security level classification is reviewed every six months.

(5) There are 17 prisoners serving sentences in prison farms.

(6) (a) 69 prisoners have less than 12 months to serve.
(b) 27 prisoners have 12 months to 2 years to serve.
(c) 17 prisoners have 2 to 5 years to serve.
(d) 12 prisoners have greater than 5 years to serve.

(7) There are 25 prisoners in protective accommodation.
(a) Their most serious offence is follows;

Offences

Robbery whilst armed (x 6)
Sexual intercourse w/o consent (x 3)
Incest
Act indecent with under 16 yrs
Commit act of indecency
Maliciously inflict grievous bodily harm
Threaten life
Burglary
Theft
Theft/burglary/breach parole condition
Theft/aggravated burglary/receive stolen property
Trespass with intent to steal
Theft/damage of property/drive in menacing manner
Burglary/ride known stolen motor vehicle/theft
Supply prohibited drug/supply traffickable qty drug
Breach parole order/supply and sell restricted substance
Redetermination
Breach of recognizance

(b) NSW Corrective Services was not able to provide the reason that each ACT prisoner was in protective accommodation in June of this year within the existing time frame. However, it did supply fairly broad information pertaining to the reasons behind the allocation of protective accommodation. Any prisoner may apply and receive protective accommodation. Reasons for the application of protective accommodation vary widely, one of the most common being the owing of drug money. A prisoner's protective accommodation status is reviewed every three months. The Governor of a correctional facility may also choose to place a prisoner into protective accommodation for up to 14 days if the Governor considers a prisoner's safety is in danger.

As ACT Youth Justice Services has recently been amalgamated with ACT Corrective Services, information regarding young persons serving committal sentences in NSW is included here for your information.

(1) Two young people are imprisoned in NSW, one for armed robbery, the other for sexual assault.

(2) They are both male and under 18.

(3) They are both being held in medium security facilities.

(4) Young offenders can be transferred from low security facilities to maximum or medium facilities if they:

- are a risk to others,
- attempt to escape, or
- require special intervention (e.g. sex offenders program).

(5) Neither of them are serving sentences in prison farms.

(6) (a) One of the young persons has less than 12 months to serve; and
(b) the other has 12 months to 2 years to serve.

(7) Neither is in protective accommodation.

Public Service - Employment
Question No. 182

Mr Quinlan asked the Chief Minister, upon notice, on 24 August 1999:

In relation to the transfer of an engineer from ACTEW to the Department of Urban Services, it is alleged that the employee received a redundancy package with the knowledge of a new position in the ACTPS.

1. Can you confirm that it is possible to take a redundancy from ACTEW in the knowledge that you have another position in another ACT Government agency,
   a. if yes, can you explain why.
   b. If no, what are the ramifications for the employee concerned.

2. When a redundancy is paid to an employee what is the amount of time required before accepting the redundancy and taking employment in another ACT Government agency.

3. Are there any avenues to protect ACT revenue by requiring a period of time between redundancy and re-employment. If so, why. If not, why not.

Note: There has been no transfer of an engineer from ACTEW to USD. The person in question works for an independent contractor, ADDECO, who recently won a contract with USD in open tender.

Ms Carnell: The answer to the Member's question is as follows:

1. Can you confirm that it is possible to take a redundancy from ACTEW in the knowledge that you have another position in another ACT Government agency,

Yes, it is possible for a person to take a redundancy from ACTEW in the knowledge that they have a job in the ACT Public Service (ACTPS).

a) if yes, can you explain why.

Entitlements to redundancy payments outside of the ACTPS do not affect the merit principles which regulate the employment of ACTPS staff except as otherwise provided for by sections 114 and 117 of the *Public Sector Management Act 1994* (PSMA). The intention of sections 114 and 117 of the PSMA is to focus on the genuine nature of the redundancy situation ie. if an officer is retired under the PSMA it is because there are no genuine prospects of redeployment available within the ACTPS and therefore swift reemployment back into the ACTPS is usually inappropriate.

ACTEW is a self-funded corporation under the *Territory Owned Corporations Act 1990* with its own employment powers. ACTEW employees are not employed or retired under the provisions of the PSMA and therefore sections 114 and 117 of the PSMA do not apply. ACTEW employees do not have the options available to excess ACT Public

Servants in relation to redeployment to the ACTPS and priority in applications for jobs in the ACTPS. Therefore, it is possible for them to receive a redundancy payment from ACTEW without any constraints on subsequent employment in the ACTPS.

Similar arrangements exist in the Commonwealth in relation to the Australian Public Service and Commonwealth Government Business Enterprises.

b) If no, what are the ramifications for the employee concerned.

A response is not necessary.

2. When a redundancy is paid to an employee what is the amount of time required before accepting the redundancy and taking employment in another ACT Government agency.

Sections 114 and 117 of the PSMA restrict the re-employment of former ACTPS employees, after taking a redundancy from the ACTPS. The restrictions apply for two years in relation to voluntary redundancies and one year in relation to involuntary redundancies. The Commissioner for Public Administration may approve re-employment within these time frames. The restrictions apply to ACTPS employees who were retired under the provisions of the PSMA but do not apply to any person made redundant outside of this framework eg. in the private sector or a body not regulated by the PSMA.

These provisions do not apply to former ACTEW employees or any other person who was made redundant outside of the PSMA framework.

3. Are there any avenues to protect ACT revenue by requiring a period of time between redundancy and re-employment.

Yes, there are avenues to protect ACT revenue by requiring a lengthy delay between being made redundant by the ACTPS and any subsequent re-employment by the ACTPS. In relation to applicants for positions who are not covered by sections 114 and 117 of the PSMA, the merit principles ensure that a new employee is the best available from a competitive field. This approach affords fairness and protects the interests of the ACT ratepayer.

There is no basis to apply the same restrictions to people made redundant outside of the ACTPS who do not have the same extensive options to reduce or avoid redundancy situations.

If so, why.

The application of sections 114 and 117 of the PSMA ensure, as far as possible, that all ACTPS redundancies are necessary and that redundant ACTPS employees are not considered for subsequent vacancies for a reasonable period.

If not, why not:

A response is not necessary.

Housing Waiting Lists
(Question No. 183)

Mr Wood asked the Minister for Urban Services, upon notice:

In relation to ACT public housing:

(1) How many people were on the public housing waiting list in (a) June 1999, (b) June 1995, (c) June 1990 and (d) June 1985.

(2) Of those listed in (1) (a) to (1) (c) inclusive, how many were

(i) single;
(ii) part of a couple;
(iii) part of a couple with dependent children; and
(iv) single parents with dependent children.

(3) As at June 1999, what proportion of people on the public housing waiting list were receiving rent assistance from Centrelink.

(4) What was the average waiting period for people on the public housing waiting list in (a) June 1999, (b) June 1995 and (c) June 1990.

(5) How many public housing dwellings were there in (a) June 1999, (b) June 1995 and (c) June 1990 and how many were:

(i) bedsitters;
(ii) one bedroom;
(iii) two bedrooms, and
(iv) four or more bedrooms

(6) What is the current income requirement for people to be eligible to apply for public housing.

(7) For the years (a) 1990-91, (b) 1995-96, (c) 1996-97, (d) 1998-99 and (e)1999-2000 (projected)

(a) how much CSHA funding was granted;
(b) how much funding was granted to public/community housing as a condition of the CSHA
(c) what are the specific details of the breakdown of CSHA funding; and
(d) was any extra funding granted to public housing by the Territory government, if so (i) how much and (ii) how was the funding used.

Mr Smyth: The answers to the Member's questions are as follows:

(1) (a) 3064
(b) 9013
(c) 3034
(d) 2889

NB. Since February 1996 ACT Housing has conducted a rolling review of the applications on the public housing list to ensure the list is accurately maintained.

(2) The Applicant List at 30 June 1999 was made up as follows:

(i) single - 1262
(ii) couple - 274
(iii) couple with dependant children - 291
(iv) single with dependant children - 733

There were a further 504 on the Applicant List at 30 June 1999 that were not classified into the above categories as a result of the introduction of ACT Housing's Management Information System "Homenet". They have since been categorised.

ACT Housing did not record the household categories listed above for the Applicant List in June 1995 and June 1990.

(3) ACT Housing does not record information on its computer system as to what proportion of people on the public housing Applicant List receive rent assistance from Centrelink.

(4) (a) The average wait time for properties allocated in the 12 months to 30 June 1999 is 6.38 months.

(b-c) The ACT Housing annual reports for both 1989-90 and 1994-95 reported wait time figures but not the overall average wait time as requested in this question. Excerpts from these annual reports are at attachment A and B. As the original data for these reports has not been retained it is not possible to calculate the overall average wait time.

NB. Prior to July 1997 ACT Housing reported wait time numbers by taking the Applicant List at a given time and divided the total time people had waited by the number of applications on the list. Since July 1997 a more accurate method of reporting the wait times for properties allocated in a twelve month period has been employed by ACT Housing. This method is more accurate as it does not report on people that remain on the list for long periods of time by their own choice. Examples include people who had deferred their application due to commitment to a private lease, people who had been offered a property but declined it and were awaiting an offer in a particular location or type of housing, and people with a previous debt to ACT Housing who remained on the list to demonstrate a commitment to repay the debt.

(5) See table below for the number of public housing dwellings at 30 June 1999, 30 June 1995 and 30 June 1990.

Dwelling type	**30 June 1999**	**30 June 1995**	**30 June 1990**
Bedsitter	744	958	*
One bedroom	1,882	1,691	*
Two bedroom	2,847	2,752	*
Three bedroom	5,709	6,312	*
Four bedrooms or more	802	767	*
Transportable houses or boarding houses	3	11	*
Total	11,987	12,491	12,394

* The information dating back to 1990 has been drawn from the Annual Report which did not provide a breakdown of properties as requested in the question.

(6) As from 7 September 1999, the income barriers applying to rental housing assistance are as follows:

Single Applicant with no dependants	$405 gross per week
Two persons	$675 gross per week
Three or more persons	$675 gross per week plus $67 each for the third, fourth, fifth person etc.

(7) The table at Attachment C sets out the total grants provided by the Commonwealth Government under the Commonwealth-State Housing Agreement for each of the years in question as well as the breakdown of the funding.

The only funding provided by the Territory Government under the Commonwealth-State Housing Agreement was the amount of matching funds as stated in that Agreement. No extra funding was provided.

ATTACHMENT A

REPORT OF THE ACT HOUSING TRUST 11 MAY 1989 TO 30 JUNE 1990

Waiting List

There were 3,034 applications registered on the waiting list for rental accommodation at 30 June 1990, compared with 3,278 at 10 May 1989.

Table 2 shows the split of applications by preferred locations and housing types.

Table 2 - Waiting List at 30 June 1990

Location	Houses Flats	Family Flats	Single	APUs	Total
Belconnen	340	61	223	65	689
Central	359	133	623	130	1,245
Woden/ Tuggeranong	597	80	282	141	1,100
Total	1,296	274	1,128	336	3,034

Waiting Times

Waiting times generally remained stable over the reporting period as the number of applicants added to the list closely corresponded to the number who left, either as the result of being allocated a home or not pursuing their applications.

There were, however, fluctuations in waiting times for flats in Belconnen due to the progressive withdrawal of tenants from Melba Flats. This situation is expected to stabilise as the relocation winds down.

Table 3 illustrates the current waiting times in preferred locations and housing types.

Table 3 - Waiting Times (Minimum Months), at 30 June 1990

Location	3 Bedroom House	2 Bedroom Flat	Bedsitter Flat
Belconnen	15	18	N/A
Inner North Suburbs	16	9	11
Inner South Suburbs	8	10	6
Woden/Weston	16	32	6
Tuggeranong	13	N/A	N/A

N/A - Accommodation type unavailable in this area.

ATTACHMENT B

DEPARTMENT OF URBAN SERVICES ANNUAL REPORT 1994-95 VOLUME 1

Table 5: average wait-turn waiting times (months) by dwelling type, all locations, June 1993 to June 1995

Dwelling Type	As at 30 June 1993	As at 30 June 1994	As at 30 June 1995	% change since 30 June 1993
2 bedroom house	48	46	51	+6.2%
3 bedroom house	36	39	40	+ 11.1%
4 bedroom house	38	41	45	+ 18.40/0
Bedsitter flat	22	14	10	-54.5%
1 bedroom flat	46	45	48	+4.3%
2 bedroom flat	39	33	30	-23.0%
1 bedroom Aged Persons Unit	51	53	61	+ 19.6%
2 bedroom Aged Persons Unit	49	54	61	+ 24.5%

Note: The table shows the average current and historic waiting times for types of dwellings. There are considerable and growing waiting times for most categories of dwelling. A notable exception is that of less desirable bedsitters which tend to be occupied by people awaiting transfers to more suitable dwellings. The figures are an overall indicator of the growing demand for public housing.

Community Housing Office
Objectives
- to deliver the operational aspects of the programs it administers;
- to monitor the ongoing delivery of community housing and related services to the ACT community;
- to increase the range of community housing services available in the ACT;
- to represent ACT Housing at local community housing and advisory committee meetings; and
- to adopt a regional focus in the delivery of community housing services.

Description
The community housing office was established to maximise the range of housing and housing related support options available in the ACT by strengthening and expanding the community housing sector while providing an equitable, qualitative client focused service. The Office is responsible for the delivery of a number of community housing and housing related support programs and in maintaining that grant funds are used for the purposes allocated to community organisations.

The Programs
Community Organisations Rental Housing Assistance Program (CORHAP)
To provide a range of appropriate housing services for people with special needs by engaging community organisations which head lease dwellings and provide special expertise in association with ACT Housing.

Community Housing Program (CHP)
To provide organisations with funding under the program and to ensure that funds provided are being used for the purposes approved and that the strategic plan objectives are upheld.

ATTACHMENT C

Commonwealth-State Housing Agreement Funding

	1990-91 $'000	**1995-96 $'000**	**1996-97 $'000**	**1998-99 $'000**	**1999-2000 $'000**
Commonwealth Grant Funding	17,881	21,139	10,876	14,105	19,090
Comprised of:					
Untied Grants	15,681	18,182	19,503	17,728	17,394
Pensioner Rental Housing Program	523	523	0	0	0
Aboriginal Rental Housing Program	0	0	0	0	0
Mortgage & Rent Relief Scheme	179	520	0	0	0
Mortgage & Rent Assistance Program	440	0	0	0	0
Crisis Accommodation Program	655	753	665	663	649
Local Government & Community Housing Program	403	0	0	0	0
Community Housing Program	0	1,161	1,074	1,070	1,047
State Fiscal Contributions	0	0	-10,366	-5,356	0
Total	17,881	21,139	10,876	14,105	19,090
ACT Matching Grants	14,885	18,702	9,611	8,505	8,583
Comprised of:					
Untied Grants	6,534	9,091	9,611	8,505	8,583
Mortgage & Rent Assistance Program	510	520	0	0	0
Home Purchase Assistance	7,841	9,091	0	0	0
Total	14,885	18,702	9,611	8,505	8,583
Total Grants	32,766	39,841	20,487	22,610	27,673

Chief Minister's Department - Restructure
(Question No 185)

Mr Quinlan asked the Chief Minister, upon notice:

In relation to the administrative restructure of the Chief Minister's Department (CMD):

(1) (a) Can the Minister confirm whether the former Director of Business Development and Tourism

(1) has resigned from her position, if so has the officer been fully terminated from the ACTPS; or

(2) is on a formal secondment with SOCOG, if so

(A) is there an arrangement for a return to the ACTPS, if so what is the arrangement;

(B) what was the remaining term of her ACT Government employment contract immediately prior to consideration of the secondment;

(C) what is the term of the secondment including the specific dates of commencement and cessation;

(D) is there a legislative or contractual authority in place for a secondment such as this, if so can the authorities be tabled in the Assembly;

(E) what are the full on-going costs to be met by the ACT Government such as salaries, travel costs, vehicle allowances, rent assistance, accommodation allowance, dog housing allowance etc (by category of cost and amount) over the term of the secondment;

(F) what termination payments or benefits, current or future, actual or implied, have been or will be received by the officer; and

(G) can you clarify/outline the future role of the officer, including information on her re-employment rights, ongoing responsibilities etc,

(AA) in the management of the Business Development and Attraction Unit after her period of secondment;

(AB) in the management of the Business Development and Attraction Unit while on secondment; and

(AC) in her role as a Director of Bruce Operations P/L.

(2) In relation to the implementation of the new administrative which created the new Department of Treasury and Infrastructure, can you provide details of

(a) the expected executive structure of the CMD and the Department of Treasury and Infrastructure, including old versus new salary level profiles;

(b) the full redundancy costs of the recent restructure given that some people will be within the new structure;

(c) the employment profile (by number of employees, category of employment, approximate aggregate salary value) of the sections of the CMD that now form the Department of Treasury and Infrastructure or are expected to form the new Department; and

(d) the employment profile of the 'new' CMD (by category of employment, number of employees and approximate aggregate salary value) as compared to the pre-announcement structure, including any expected changes as a direct result of the reshuffle.

(3) With regards to the transfer of the Chief Executive of the former Office of Financial Management to the position of Chief Executive of Treasury and Infrastructure, can you table any (a) contract variations, (b) salary changes or (c) benefit changes that have accompanied the transfer.

(4) In relation to employing contract executives

(a) how many times has a Chief Executive position been filled without public advertisement or selection on merit; and

(b) can you table the selection criteria and duty statement that was included with the recruitment documentation for the position of Chief Executive of the new Department of Treasury and Infrastructure.

Ms Carnell: The answer to the member's question is as follows:

(1) (a)

(i) The Director Business Development and Tourism has not resigned from her position.
(ii) The Executive Director Business Development and Tourism is participating in the SOCOG Management and Development Program. This program is a formal arrangement whereby executives from both the private and public sector throughout Australian provide management support to SOCOG as part of Australia's support for the Olympics. This is a formal secondment to SOCOG.

(A) At the conclusion of the secondment the Executive Director's employment contract with the ACTPS will be completed and she will not return to the ACTPS.

(B) The nominal end date of the Executive Director's contract was 22 August 2001

(C) The secondment commences 30 August 1999 and concludes 31 October 2000.

(D) The legislative basis for the secondment is Section 121 of the *Public Sector Management Act 1994.*

(E) Normal remuneration of $155,236. The only additional cost will be assistance with rental costs and some removal costs. The total is not expected to exceed $28,000 over the full term of the secondment.

(F) At the conclusion of the secondment and termination of employment the Executive will be entitled to the normal termination payments in accordance with the employment contact and the *Public Sector Management Act 1994.*

(G) (AA) The Executive Director's contract will be concluded therefore there will be no involvement at the conclusion of the secondment.

(G) (AB) While on secondment the Executive Director will have no direct role, except that while seconded to SOCOG she will continue to support the Territory's involvement in the Olympics, particularly in respect of those events to be conducted in Canberra.

(G) (AC) Changes to the structure of Bruce Operations Pty Ltd are currently being considered including an expansion of the Board. At this time, the Executive Director will have no ongoing role with Bruce Operations Pty Ltd.

(2) (a) See attached Chief Minister's Department staff circular, Implementation of Departmental Reforms" and table of Executive Remuneration.

(2) (b) The full redundancy costs of the recent restructure are estimated to be $100,878.

(2) (c) The employment profile of the sections of CMD that now form the Department of Treasury and Infrastructure are as follows:

Department of Treasury and Infrastructure

Category	**Number**
ASO 2	5
ASO/ASO DUS/CMD 3	15
ASO/CMD 4	30
ASO/ASO DUS/CMD 5	26
ASO/CMD 6	27
Chief Executive	1
Contract Executive	7
CMD Graduate	1
CMDP02	1
CMD SO/SOG C/SOG Tech/SOG C DUS/SPOC DUS	39
CMD SO B	1
CMD SO A/SOG A/SPO A	5
CMD Manager	20
CMD Manager/Eng	1
GAA	4
Total	**183**

The expected 1999-2000 salary aggregate for the "new" Department of Treasury and Infrastructure is approximately $10,850,000. (This includes salaries for the Office of Infrastructure and Asset Management which formerly reported separately).

(2) (d) The employment profile of the restructured CMD is as follows:

Chief Minister's Department

Category	**Number**
ACTPS Trainee	1
ASO 2	3
ASO/CMD 3	12
ASO/CMD 4	23
ASO/CMD 5	31
ASO/CMD 6	36
Chief Executive	1
Contract Executive	8
CMD Executive PA	1
CMD SO/SOG C	41
CMD Manager/CMD Man-Eng	29
GAA	18
GSO 2	1
PO 2	1
SOG A/SOG B	7
Total	**213**

The expected 1999-2000 salary aggregate for the "new" CMD is approximately $11,296,000

The following variations have been made in the new structure of CMD compared with the pre-announcement structure.

- three positions have been transferred from Economic Management in Department of Treasury and Infrastructure to Chief Minister's Department Policy Group

- one position has been transferred from Chief Minister's Department to Canberra Tourism and Events Corporation.

- The Workplace and Injury Prevention Management Group will transfer to WorkCover in Urban Services. Salary costing above include the salaries of these officers.

(3) There are no salary or benefit changes associated with the temporary appointment of the Executive Director, Office of Financial Management as Chief Executive, Department of Treasury and Infrastructure. As required under the *Public Sector Management Act* 1994 the contract variation will be tabled in the normal way.

(4) **(a)** The only time that a Chief Executive position has not been advertised was the recent swap that occurred between the Chief Executives of Urban Services and CMD which, you will recall, I announced on 25 March 1999.

(b) The Chief Executive of the new Department of Treasury and Infrastructure is currently acting in the position through a variation to his existing contract subject to the *Public Sector Management Act* 1994. It should be noted that there have been no alterations made to the arrangements of his terms and conditions. Jobsizing of the position will be conducted in the normal course, with remuneration arrangements being progressed in accordance with the *Public Sector Management Act* 1994.

2 September 1999

All Staff
Chief Ministers Department

Implementation of Departmental Reforms

In recent weeks the Government has been considering how best to further progress key strategic Social and Business policy issues

The Government has decided to make some changes to Ministerial responsibilities as a result of these deliberations. Specifically, the Chief Minister will take a stronger role in strategic directions and policy development and monitoring, and the Minister Assisting the Treasurer, Mr Humphries, will become Treasurer.

The purpose of this memorandum is to provide you with detailed advice on the arrangements and associated changes to the role and structure of the Chief Minister's Department and the new Department of Treasury and Infrastructure

In summary the changes involve:

- an enhanced role in strategic policy to support the Chief Minister's broader responsibilities;
- the creation of a separate Treasury and Infrastructure Department; and
- a new focus on business and development to give additional impetus to the growth of our Clever, Caring Capital.

The proposals involve a significant flattening of the structure of the Chief Ministers Department with greater devolution of responsibility and accountability.

The requirement for senior executive management of the Departments will change as a consequence of the new arrangements, with an associated reduction in the number of Executive positions.

A new Executive Committee structure will facilitate broader participation in departmental management. This Committee will replace the previous Board of Management.

A brief description of the roles of each group is set out below.

The Chief Minister's Department

The Chief Minister's Department will be substantially restructured to support the enhanced role. A chart showing the proposed structure of the Department is attached to this Minute (Attachment A).

Policy Group

We will create a new Policy Group and will integrate related policy functions within the Department.

The Policy Group will provide leadership and coordination across government of strategic policy development and review activities. It will be supported in its activities by all departments in a cooperative approach to advising the Government.

With a small allocation of permanent staff the Policy Group will:

• develop an integrated approach to policy advising across portfolio boundaries;
• provide a focus on performance review and reporting on outcomes and priorities;
• deliver major projects in a strategic framework; and
• strengthen support to the Assembly Committee process.

The existing Strategic Development Management Unit (including Regional and Territory Strategy) will be an important element of the Group.

The structure of the Group will closely reflect the portfolio structure of Government and will include an Economic Policy and research function

The full functional description of this Group is attached (Attachment B).

Business Development and International

We will amalgamate the Business Attraction and Strategy Unit and International Development and Marketing (formerly OMIA) to improve of the focus of these important activities. The manager of this Unit will be part of the Department's Executive Committee.

Business Support and Employment Programs

We will improve the support to business and employment by amalgamating the Business Support Unit and Employment and Business Programs Unit to achieve a greater integration of activities. The Manager will participate in the department's Executive Committee.

Public Sector Management (Commissioner)

We will substantially reform the Public Sector Management activities, including reviewing and redefining the role of the Department to ensure that it focuses on what are to be core responsibilities of the Commissioner. The maintenance of standards and ethics, the prevention of fraud and support for Executive arrangements will remain as key responsibilities but, to the maximum extent practicable, we will further devolve and delegate responsibility to Chief Executives, subject to appropriate reporting and performance arrangements.

We will ensure that workforce planning, productivity bargaining and award simplification are less centralised processes and will clarify the roles of the Department and Chief Executives. Improvements in occupational health and safety strategies and workplace injury prevention are key responsibilities of Chief Executives and accordingly we will review the Department's role in this area. The Manager will participate in the Department's Executive Committee.

Community Liaison and Indigenous Affairs

We will amalgamate the Community Liaison Unit and the Customer Commitment and Communication Unit in order to better consult with and report to the community. Elements of the Communications Unit (ACT Homepage and Intranet) will be integrated with OITM.

Indigenous Affairs and the continued progression of Aboriginal and Torres Strait Islander issues will remain a priority

Corporate Services

The Corporate Services and Corporate Finance functions have already been co-located and we will place an increased emphasis on human resource planning and support. The Manager will participate in the Department's Executive Committee.

Office of the Business and Tourism Adviser

We will create an Office of the Business and Tourism Adviser, with the general role of promoting business development and service provision across the whole of the ACT Government and facilitating business access to Government services.

Arts ACT

Arts ACT will report directly to the Chief Executive through Rosemary Walsh and the Manager will participate in the Department's Executive Committee.

Multicultural Affairs

The Office of Multicultural Affairs will remain an important function for the Department and also be directly involved in the Executive management of the department. We will be relocating the International activities of the Office to work with the International Development and Marketing Unit in the business and development area.

Cabinet Coordination

The operation of the Cabinet Office will focus more directly on support to the Cabinet business process, with the Policy Group assuming responsibility for comment and briefing on policy proposals. The manager will also continue to provide Managerial support and development to ArtsACT. The Manager will participate in the Department's Executive Committee.

Government Support Unit

We will establish a Government Support Unit by co-locating responsibilities for Ministerial support to the Chief Minister, support for the Government's Legislative Assembly business and Intergovernmental relations (which will work closely with the Policy Group). The Manager will participate in the Department's Executive Committee.

Office of Information Technology and Multimedia
Cultural Facilities Corporation
InTACT

These offices will report directly to the Chief Executive.

CTEC

CTEC will undertake the organisation of major events and festivals as a service provider, with the Department acting as the purchaser of these services.

Olympics

We will give a special focus to the delivery, and coordination across government, of the Olympics and related activities. Designated Project Managers will report directly to the Manager of this Unit who will assume sole responsibility for managing Olympics activities in the Territory.

Department of
Treasury and Infrastructure

The new Department of the Treasury and Infrastructure will report to Mr Humphries and will be formed by amalgamating the Office of Financial Management with the Office of Asset Management. The new structure is outlined in Attachment C

The new department will have three core components as set out below.

Treasury Group

The Treasury Group will be responsible for financial management, budget management, revenue management, and economic management and source Economic Research services as required.

Infrastructure and Asset Management Group

The Infrastructure and Asset Management Group will incorporate all the current responsibilities of the Office of Asset Management with the addition of the Government Business Enterprise oversight functions.

The Capital Projects unit of the former Office of Business Development and Tourism will be absorbed into the Asset Management Group.

Office of Financial Probity Advisor

The Office of Financial Probity Advisor will have responsibility for probity advising and review of major projects, financing arrangements and investments and will report directly to the Treasurer.

The operation of the Central Financing Unit and the Superannuation Fund Investment Unit are to be reviewed by Bernie Fraser and their reporting arrangements will be resolved in that review process.

The next steps

I will be forming an Implementation Team to assist with the next steps.

In some areas the changes involve the amalgamation of related functions to achieve efficiencies, but this will require more detailed organisational review and planning. At this stage we are clearly co-locating existing functions but we will need to ensure that there is no inherent overlap or duplication of staffing. There is also some urgent work to be completed to clarify the Department's role in devolved public sector administration. David Lamont will be assisting me in oversighting those tasks.

The arrangements will need to be progressively implemented, with opportunities for consultation in the process. I have asked executives and managers to keep staff fully informed as we move towards the new arrangements.

I appreciate that there will be some short-term uncertainty particularly for those staff affected by the changes. I would like to assure you that the changes are not about reducing staffing, but rather to increase the impact of our efforts to achieve the Government's outcomes by more efficient administrative arrangements.

A key task for all staff of the Chief Minister's Department and Treasury and Infrastructure within the next few weeks is to re-examine, redefine and clarify the objects, functions and responsibility of each unit so we are clearly focused on the priorities and outcomes. This will be the first step in revising the strategic and business planning processes for each department.

I am confident that the proposals detailed in this advice will provide us with an opportunity to build more participatory and effective relationships to implement the outcomes the Government expects us to achieve for the ACT community.

Rod Gilmour
6 August 1999

Attachment to QoN No. 185

Executive Remuneration

"Old" Chief Minister's Department

Level	Total Remuneration	Number
3.12	$244,359	1
3.9	$205,812	2
3.8	$195,697	1
2.6	$179,259	1
2.5	$155,236	3
2.4	$145,121	2
1.3	$128,683	7
1.2	$118,568	4
1.1	$108,453	4
		25

"New" Chief Minister's Department

Level	Total Remuneration	Number
3.12	$244,359	1
3.9	$205,812	1
3.8	$195,697	0
2.6	$179,259	1
2.5	$155,236	2
2.4	$145,121	2
1.3	$128,683	1
1.2	118,568	2
1.1	$108,453	3
		13

New Department of Treasury and Infrastructure

Level	Total Remuneration	Number
3.12	$244,359	0
3.9	$205,812	1
3.8	$195,697	0
2.6	$179,259	0
2.5	$155,236	1
2.4	$145,121	0
1.3	$128,683	4
1.2	$118,568	2
1.1	$108,453	1
		9

Totalcare Incinerator
(Question No. 186)

Ms Tucker asked the Chief Minister, upon notice, on 31 August 1999:

In relation to the Totalcare incinerator at Mitchell - Could you provide a list of all current customers of Totalcare's incineration service including:
(1) Name and location of the customer.
(2) The nature of the waste.
(3) The rate charged for incineration of the waste.
(4) The rate charged for collection of the waste by Totalcare, where relevant.
(5) An explanation of how the charge was determined.

Mr Humphries The answer to the Member's question is as follows:

On 31 August 1999 you directed the above question to my colleague, the Chief Minister. I am providing a response as this matter fails within my portfolio responsibilities as the Treasurer.
I have been advised by Totalcare of the following:

(1) Its customers are both Canberra based and interstate businesses. Canberra based customers include public and private hospitals, health centres, medical, dental and veterinary practitioners and pathology laboratories. Interstate customers include hospitals, pathology laboratories and pharmaceutical companies. There are approximately 308 ACT clients, a further 67 from the local region and 68 other clients from interstate. Totalcare considers that it is not ethical for it to publish the names of each of its customers without their express consent and, moreover, their disclosure would compromise the company's competitive position.

(2) All waste incinerated falls within the classifications described in Environment ACT's authorisation and primarily is clinical and pharmaceutical in nature.

(3), (4), and (5) Since Totalcare negotiates prices with its clients on an individual basis there is no one rate - rates charged vary considerably from client to client and over time. The methodology for determining Totalcare's pricing regime takes into account prevailing market conditions and a number of other factors including, but not limited to:
a) volume;
b) location;
c) combustibility; and
d) labour requirements.

Considering the nature of Totalcare's pricing system, it is not possible to attribute a generic single price or price range given the wide range of variables potentially associated with individual arrangements.

Simple Cannabis Offence Notices
(Question No. 188)

Mr Rugendyke asked the Attorney-General, upon notice, on 1 September 1999:

In relation to Simple Cannabis Offence Notices (SCONS)

(1) Since the System commenced in 1992 how many SCONS
(a) have been issued (by year)
(b) have been paid;
(c) have been referred to court (each year) including the breakdown of the outcomes of each referral; and
(d) have not been paid or referred to Court.

(2) For (a) cannabis offences and (b) all illicit drug offences each year since the SCONS system commenced, how many

(i) cautions have been issued;
(ii) summons have been issued;
(iii) diversionary conferences have been conducted; and
(iv) arrests have been made.

Mr Humphries: The answers to Mr Rugendyke's questions are

(1) (a, b & d)

Year	**No. of SCONS Issued**	**No. Paid**	**No. Unpaid**
1993	149	79	70
1994	183	102	81
1995	200	117	83
1996	196	62 *(a)*	131 *(a)*
1997	259	147	112
1998	184	106	78
1999(b)	104	64	46

Source: ACT Region Drug Registry

(a) There is a gap in data collection for the period 1 May 1996 to 15 November 1996. Payment records are not available for this period.
(b) These figures are for the period 1 January to 30 July 1999.

1 (c)

It is not possible to ascertain from Court records whether offences referred to Court link to the non-payment of SCONS. The data set out below represent the total number of offences under Sections 162 and 171 of the *Drugs of Dependence Act 1989* which have been referred to court since 1993.

Year	Referred to Court
1993	266
1994	282
1995	393
1996	527
1997	612
1998	598
1999	275

Source: ACT Magistrates Court

(2) (i,ii&iv)

Prior to introduction of the Police Real Time On Line Management System (PROMIS), data relating to drug offences was stored on the Drug Offence Reporting System (DORS). DORS did not record offence details by drug type nor did it record cautions. DORS did not record summonses and arrests separately.

The following aggregate level information can be provided in response to question 2 (i,ii&iv).

TYPE	1992	1993	1994	1995	1996	1997	1998 11TH MONTH
ARREST/ SUMMONS	180	100	130	193	228	253	221
CHARGE	345	185	265	443	465	525	383

Source: DORS database as at 1 December 1998. After 1 December 1998 drug seizures are reported in PROMIS.

There are a total of 382 drug offences recorded on PROMIS for the period 1 December 1998 to 2 September 1999. Of these, 41 % were cleared by arrest, 22% by issue of a SCON, 15% by summons and 4% by caution. Please note that there is currently no facility in PROMIS to associate specific offences to a drug type.

Cleared	Number
Arrest	155
Caution	17
Charged Before Court	7
Cleared Otherwise	2
Diversionary Conference	1
Not Cleared	38
SCON	85
SUMMONS	57
VATAC	20

2(c) The Number of Diversionary Conferences conducted in response to cannabis related offences since 1992 is five. There have been no conferences conducted for other illicit drug offences.

Date	**Nature of Conference**
24.7.1994	underage drinking/possession of cannabis
24.7.1994	underage drinking/possession of cannabis
17.5.1995	possession of cannabis
17.5.1995	possession of cannabis
19.5.1998	supply cannabis to person under 18 years

Source: Services – ACT Region

Rural Leases
(Question No. 189)

Mr Rugendyke asked the Minister for Urban Services, upon notice, on 1 September 1999:

In relation to the Government's proposals for 99 year rural leases. Noting in the 99 year rural lease package, a 10 year covenant would apply to the subsequent sale of theses leases during which time the lessee would be required to pay the Government 50% of a difference between two valuations.

1) How would the two evaluations be calculated.

2) What appeals rights are proposed to be available to lessees.

3) What is the justification for applying this covenant to existing lessees who hold 50 year full-tenant rights rural leases that were signed in 1956

4) Would the Government pay compensation to 50 year full tenant rights rural lessees who suffered a loss of agricultural productivity as a result of Land Management Agreements.

5) What mechanism would permit 50 year full tenant rights rural lessees to maintain ownership of current assets including pasture improvement, regrowth of native timber and access to natural water

6) Will there be a copy of the new lease document made available to rural lessees before it is tabled in the Legislative Assembly.

Mr Smyth: The answers to the Member's questions are as follows:

1) It is proposed that the two valuations are calculated in accordance with the formula for the payment of the “discharge amount”, which is contained in *the Land (Planning and Environment) (Amendment)* Bill (No.3). The discharge amount is 50% of the difference between the “last amount”' less the "first amount" multiplied by the calculated Consumer Price Index (CP1), plus any "owed amount". The definitions for the "last amount", "first amount", "Consumer Price Index" and “owed amount” are contained in the amendment Bill. The definitions are:

last amount is the sale price of the lease excluding any amount attributed to lessee owned improvements. If the sale price is considered to be less than market value, or the dealing is only for part of the land in the lease, then the **last amount** is the market value excluding any amount attributed to lessee owned improvements.

first amount. If the lease is a nominal rent lease, then the **first amount** is the amount that was paid for the lease when it was granted under section 161 or 171A. If the lease is a short lease then the **first amount** is the value of the lease that was determined when it was granted under section 161 or 171A. If the lease has a 30 year payment arrangement for the amount determined for the lease when the lease was

granted under section 161 or 17 1 A, then the **first amount** is any amount paid at the time the lease was granted, plus any amount that is to be paid under the lease. In all cases, the **first amount** does not include any amount that is attributed to lessee owned improvements.

index number is the All Groups Consumer Price Index (CPI), which is the weighted average of the eight capital cities as published by the Australian Statistician.

later index number is the last index number that was issued before the **last amount** is calculated.

earlier index number is last index number that was issued before the lease was granted under section 161 or 171A.

owed amount is any amount of the **first amount** value that has not been paid plus any unpaid amount for lessee owned improvements that were required to be purchased at the time of the grant of the further lease. For a *long lease* the amount is the amount to be paid as required in the lease. For a *short lease* the amount is any rent and additional rent payable under the lease.

2) There will be no appeal rights on the payment of the "discharge amount".

3) The term 'Full tenant rights lease' refers to leases where the Lessee owns all the **improvements** on the land, including the timber treatment. Timber treatment is the value of the timber clearance on the land and recognition of this value came about as the result of a case in the Supreme Court in the early seventies. Full tenant right lessees do not own the **land** under lease. The only difference between a full tenant right rural lease and any other rural lease in the Territory is the level of **improvements** owned by the lessee. Any payment required by a full tenant right lessee under the provisions of the 10 year covenant will relate to the difference in the land value at the commencement of the scheme (ie the "first amount" determined under 161 or 171A of the *Land* Act) and the market value of the land at the time of sale (ie the "last amount" as defined).

   The pay out provisions of the policy requires the lessee to pay a premium that is based on the carrying capacity of the land rather than the market value. In the case of the 1956 leases, this is the land in its timbered state, which would reduce the carrying capacity and the cost of the pay out.

   The Government has recognised the problems associated with running any agricultural enterprise and the result is the pay out being based on the carrying capacity of the land. Coupled with the 15% reduction for ACT factors, this equates to a lessee paying a concessional rate, but, if the lessee decides to sell, the property will be sold at full market value. It is only fair that any windfall derived from the sale of land (exclusive of improvements) is shared by the Territory.

4) No and it is not expected that any rural lease will lose productivity as a result of Land Management Agreements (LMAs).

Some leases may not be able to reach full agricultural potential due to conservation issues but this would be the case without any LMA being in place. The LMA process will help inform lessees of these issues and identify means where productivity can be maintained or increased without compromising conservation values

5) The lessees of the 50 year full tenant rights leases own all improvements on or to the land. This includes things like buildings, fences, farm dams and pasture improvements but does not include any natural feature like a water course, remnant trees, or native grasslands.

Other jurisdictions, including NSW, are actively encouraging the fencing out of rivers and streams to restrict direct stock access to the banks. (Members would be aware of the advertising campaign currently being run on television.) The lessees will still be able to access the water for use for their stock and domestic purposes but it is preferable that the stock access this water off-stream.

Under normal situations where a lessee decides that the highest and best use of the land is to allow the native timber to regenerate the regrowth of the timber would mean the lease was reverting to it's natural state. This regrowth (or its previous clearance) would not be compensatable. But, where it is decided BY THE TERRITORY that an area should be allowed to regenerate then the value of the previous timber treatment will be recognised and the lessee suitably compensated should the Territory decide to resume the land for any purpose.

It is unlikely that there will be any conservation value in improved pasture so it is hard to see a case where the Territory will request a lessee to revert pasture improved land to its totally natural state.

It should be emphasised that LMA's are negotiated and it is our aim to achieve the best possible balance between protecting the natural values and maintaining a viable rural industry.

6) There will be a standard template lease for 99 year rural leases, which will include new clauses as necessary, as each lease may have different requirements. It is standard administrative practice that lessees are provided with a draft lease prior to the offer of a grant of a further lease. I do not propose to table the template lease in the Assembly.

Public Servants – Conflict of Interest
(Question No. 191)

Ms Tucker asked the Chief Minister, upon notice, on 2 September 1999:

In relation to the general obligations on public employees to avoid conflicts of interest in the performance of their duties under the Public Sector Management Act 1994
could you provide a list of all chief executives and other senior executives who have been (a) given approval to hold other employment, (b) to engage in any business or
profession, or (c) act as a director of a company, outside of their current position,
stating:

(1) Name and position of the officer;
(2) The nature of the additional employment or business;
(3) When approval was granted and by whom.

Ms Carnell: The answer to the Member's question is as follows:

In common with all public employees, Executive employees are obliged under section 9 of the *Public Sector Management Act 1994* to declare and avoid conflicts of interest in the performance of their duties.

Executive employees also make a written declaration of personal and financial interests for themselves and immediate family members in a document often referred to as a Bowen declaration. Given the personal nature of these records, they are stored securely to avoid breaches of privacy. These declarations are made as a record of interests and do not replace the on-going responsibility for identifying and declaring conflicts of interest that rests with each Executive.

Any employment in addition to public duty is considered in terms of the provisions of Executive contracts. Clause 9 of the contract states that "The Executive shall comply with Section 244 of the Act as if the Executive were an officer". This means Executives must seek written approval of their Chief Executive for outside employment. Section 35 requires Chief Executives to seek the written approval of the Chief Minister before accepting or engaging in any remunerative employment outside of their public duty.

Given the personal nature of this information and the approval processes in place, it is considered that provision of the details requested unreasonably breaches the privacy of individuals concerned in the absence of any evidence of wrongdoing.

I have made the point on a number of occasions that it is inappropriate to raise this kind of issue in the context of parliamentary debate. If any Member has specific concerns about an individual, they should raise those with me directly so the issue can be addressed.

Block 1, Section 43, Turner
(Question No. 192)

Mr Corbell asked the Minister for Urban Services, upon notice:

In relation to Block 1, Section 43, Turner (107 Northbourne Avenue)

(1) How long has the block been vacant.

(2) What is the Government's understanding in relation to the current usage of the block.

(3) What action is the Government proposing to ensure compliance with the residential lease.

Mr Smyth: The answers to the Member's questions are as follows:

(1) The residence on this block is vacant, and it has been for some time, quite possibly several years, although, the precise time is unknown.

(2) The lease for this block was varied in 1988 by an interim order of the Supreme Court under Section 11A of the *City Area Lease Act 1936.* This order varied the lease purpose from residential to commercial permitting: offices; professional suites; carparking and a caretaker's flat. The final order in relation to this variation was not granted in the Supreme Court until 23 June 1995. I understand that a long illness and subsequent death of the principal lessee caused the delay. Following an application for a further lease, on 19 May 1998 the lease was surrendered and re-issued to grant a further lease for a further 99 years.

(3) A proponent on behalf of the Lessee Company has discussed options for redeveloping the site, however, no proposal has resulted from these discussions at this stage. The Director of the Lessee Company is confident that a proposal will be forthcoming in the year 2000. In the meantime the lessee has security surveillance of the site and does regular ground maintenance. The property has not been the subject of any compliance action for breaches of land and planning regulations.

Territory Plan variation number 96 is currently with the Urban Services Standing Committee. This proposes to permit commercial uses at the rear of this block and if passed by the Assembly would be an incentive for redevelopment of this area

Temporary Accommodation Allowance
(Question No 193)

Mr Corbell asked the Chief Minister, upon notice:

In relation to the temporary accommodation allowance for Executives:

(1) How many Executives have received the allowance since the introduction of the contract system.

(2) Who were the Executives in each case.

(3) For how long did each Executive receive the allowance.

(4) What was the cost of the allowance in relation to each Executive, yearly and in total since the introduction of the contract system.

Ms Carnell: The answer to the member's question is as follows:

(1) It should be noted that the provisions relating to temporary accommodation allowance (TAA) are a long established condition that applied to both non-Executive and Executive employees in the Commonwealth, and subsequently the ACT Public Service (ACTPS) as the Commonwealth conditions continued to be applied after selfGovernment and were retained with the establishment of the ACTPS in 1994. The conditions applied to contract Executives are the same as for the senior executive service (SES) where an SES officer was on temporary term transfer to Canberra.

Many officers at Executive and other levels have received these entitlements both prior to and since self-Government and the establishment of the ACTPS.

As ACTPS contract Executives are temporary employees under the Public Sector Management Act the same provisions for TAA were prescribed in the Public Sector Management Standards up until April 1998. At that time the Remuneration Tribunal adopted this Government's submission to limit all forms of assistance for contract Executives taking up an engagement in the ACTPS to a maximum of $30,000, except in exceptional circumstances when the Commissioner for Public Administration may approve payments above this amount.

Under the provisions applying both before the introduction of contract Executive employment and the current employment provisions for both Executives and nonExecutives the range of entitlements includes removal of household furniture and effects to Canberra, removal of pets to Canberra, conveyance of the officer and family to Canberra, removal of motor vehicles, boat, trailer etc, accommodation costs while settling in to Canberra, TAA, payment of utility connection fees and registration transfer, legal, agent and mortgage costs associated with the sale or purchase of a home, disturbance allowance, assistance with school expenses, and reunion visits if family members are left behind, subject to the maximum of $30,000 for Executives.

Since the introduction of contract Executive employment twenty five Executives have received temporary accommodation allowance.

(2) Messrs Butt, Clarke, Cusack, Ellis, Gilmour, Hawkins, Hughes, Johnston, Keady, Lee Koo, Lilley, MacDiarmid, Murray, Ockwell, Rayment, Ryan, Spencer, Thompson, Tiball, Veenker, Walker and White, and Ms Bondfield, Ford and Lennon.

(3) The duration of temporary accommodation allowances varies from individual to individual. Executives who have purchased homes in Canberra cease to be eligible for temporary accommodation allowance; others have left the Service; while still others continue to receive the allowance in accordance with the provisions of their contracts.

(4) The yearly average cost for each Executive in receipt of allowances is $6,057 over the four years since the introduction of the contract system, or $116 per week. Details of the individual amounts, totals and average are contained in the attached table.

Attachment A
to Question on Notice No. 193

Bondfield	V	$20,463
Butt	D	$7,371
Clarke	R	$36,787
Cusack	R	$39,857
Ellis	G	$22,527
Ford	M	$2,953
Gilmour	R	$1,600
Hawkins	L	$20,540
Hughes	A	$25,302
Johnston	B	$26,764
Keady	T	$53,571
Lee Koo	G	$6,300
Lennon	A	$34,564
Lilley	M	$45,845
MacDiarmid.	R	$20,670
Murray	M	$4,704
Ockwell	M	$43,955
Rayment	E	$34,221
Ryan	J	$45,845
Spencer	T	$9,041
Thompson	A	$10,628
Tiball	M	$18,664
Veenker	P	$7,310
Walker	J	$42,383
White	M	$23,878
	Total	**$605,743**

Average per Executive	**$24,230**
Average per Executive p/a over 4 years	**$6,057**
Average per Executive p/w over 4 years	**$116**

Nara Building Car Park – Fingerscan System
(Question No. 194)

Mr Wood asked the Chief Minister, upon notice, on 2 September 1999:

"Noting that the fingerscan system operating in the Nara Building car park has been plagued by unreliability and delays culminating in massive failures over the last two weeks".

(1) When will the system be fixed.

(2) For safety reasons, will the operators of the car park reinstate push button or automatic releases for the exits.

(3) What has been the total cost of maintaining and repairing the system since it was introduced in 1997, including the cost of time of the public servants who scan new staff and assist all users with problems.

Ms Carnell: The answer to the Member's question is as follows:

(1) Fingerscan was fixed by Aulich & Co on 1 September, 1999.

(2) The Fingerscan system has proved to be generally effective. My Department will increase the level of user education to minimise the number of problems encountered by users.

(3) The total maintenance fee since the installation of Fingerscan in March 1997 has been $11,000 which includes all service calls, parts and labour.

Payment to Former Director of Quamby
(Question No. 195)

Mr Wood asked the Minister for Education, upon notice, on 2 September 1999:

What redundancy or other payments were made to the former director of Quamby on his departure from the department.

Mr Stefaniak: The answer to Mr Wood's question is:

While public service salaries are not private, being a matter of public record, the actual amounts paid to an individual on separation are particular to that individual and thus restricted for privacy reasons.

On his retirement the former director of Quamby was paid in accordance with the award provisions and legislation applying to redundancy. The *Australian Public Service Redeployment and Retirement (Redundancy) Award 1987* provides for severance payment at the rate of 2 weeks for every year of eligible service, to a maximum of 48 weeks' salary. The *Workplace Relations Act 1995* sets out periods of notice, or payment in lieu, and in this case the prescribed notice period was 5 weeks.

The former director of Quamby was also paid final entitlements including salary owed, and payment in lieu of accrued recreation leave, leave loading and long service leave.