# DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

## HANSARD

20 October 1999

**Wednesday, 20 October 1999**

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The Assembly met at 10.30 am.

(Quorum formed)

**MR SPEAKER** (Mr Cornwell) took the chair 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 278 residents, requesting that the Assembly ensure that resources for the ACT's public oncology services be fully maintained and that resource allocation decisions be based on present and future patient needs rather than on financial or administrative decisions.

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

### ACT Oncology Units

*The petition read as follows*:

> To the Speaker and Members of the Assembly for the Australian Capital Territory:
>
> The petition of certain residents of the Australian Capital Territory draws to the attention of the Assembly that ACT cancer patients, their families, friends and residents generally are concerned that the ongoing Budget cuts imposed on ACT public hospitals will reduce the invaluable facilities and services provided by these hospital's devoted Oncology Units. Around 600 new cancer cases present each year and approximately 1 in 4 ACT residents will develop a cancer in their lifetime.
>
> Your petitioners therefore request the Assembly to ensure that resources for the ACT's public oncology services are fully maintained and that resource allocation decisions are based on present and future patient needs, as assessed by the professional staff of Oncology Units, rather than on financial or administrative considerations.

Petition received.

**MR STANHOPE** (Leader of the Opposition): Mr Speaker, I wish to make a brief statement in relation to the petition.

Leave granted.

**MR STANHOPE**: I simply wish to record the fact that the 278 signatories to this petition are either people who are currently undergoing treatment in an oncology unit or their family or carers. The point that was made to me by the people who prepared the petition was that they did not go out and seek public support for this particular petition; it was simply circulated by people using those facilities and by their families and carers. It represents a group of consumers of oncology services at the Canberra Hospital. I thought it was relevant that I make that point in relation to this very important matter.

## HOLIDAYS AMENDMENT BILL 1999

**MR BERRY** (10.34): I present the Holidays Amendment Bill.

Title read by Clerk.

**MR BERRY**: I move:

> That this Bill be agreed to in principle.

The Holidays Amendment Bill 1999 will make a relatively minor amendment to the Holidays Act 1958. As members will appreciate, the Holidays Act controls public holidays in the ACT and has been the subject of consideration by the Assembly in the last few years because of union picnic day. Happily, the Assembly supported my moves on that occasion to entrench the longstanding union picnic day in the Holidays Act. In the Bill I introduce today, I am seeking to add a half-day public holiday in the ACT on 31 December. Remember, Mr Speaker, that the Government has allocated $500,000 for an end of year celebration. So it is an important year in the scheme of things.

**Ms Carnell**: It is all right; we are not starting the celebration until 9 o'clock.

**MR BERRY**: She is not starting the celebrations until 9 o'clock.

**Ms Carnell**: Sorry, 6 o'clock.

**MR BERRY**: I will come back to that later. The Bill contains a simple amendment intended for this year only. It is a one-off holiday for the coming of the year 2000. The same thing might happen towards the end of the next millennium. I am happy to be here, if anybody can arrange that, to move a similar motion for another half-day holiday, but I rather suspect that will not be the case.

This year is a special year. All the community is preparing to celebrate the transition from 1999 to 2000, with a greater sense of moment and history than we usually reserve for New Year's Eve. It has also been recognised as a special year in the ACT, with the Carnell Government's allocation of $500,000 for a big New Year's Eve celebration.

Ms Carnell tells us that that will start at 6 o'clock. This half-day holiday will give workers time to steel themselves for the event or even enough time to escape it. This is a once in a millennium New Year's Eve. All elements of the community are preparing for it, most with a great sense of anticipation. Some are readying themselves for Y2K, and they are doing that with some trepidation. I believe all should have extra time to prepare, and extra recognition.

I should add at this point that anybody who might have a notion in the back of their minds of voting against this half-day public holiday will have to be at work on Friday afternoon, New Year's Eve. So keep in the back of your mind that you have to be here. If you are considering voting against this, you have to come to work on Friday afternoon, New Year's Eve. I will be ticking you off. For those who vote against it, I will be here ticking you off.

In New South Wales, 31 December 1999 has been declared a half-day holiday. The Attorney-General, Jeff Shaw, cited assistance in planning for Y2K as well as a need to ease anticipated transport pressures as reasons for the holiday from 12 noon. People in Queanbeyan are going to have a holiday from midday on 31 December. If this Bill is not enacted, people from Queanbeyan who work in the ACT will not have a holiday.

**Ms Carnell**: Queanbeyan do not have a picnic holiday, do they?

**MR BERRY**: Ms Carnell interjects that Queanbeyan do not have a picnic holiday. I wish they did. The Chief Minister always says that the Territory has to line itself up with New South Wales. Whenever it is a new tax or some other problem that has to be borne by the ACT, we are told that we have to line ourselves up with New South Wales. It would be silly, she often says, if we did not. We have to line up with New South Wales; otherwise it would be silly. Here is a chance to line up with New South Wales without any negative effects. This is a positive for workers.

It is no wonder that the conservative Liberal Government has not come up with this measure, because it is a positive for workers. Ordinary working people will be able to enjoy the celebration in the ACT or in other places with their families. They will be able to join with the rest of New South Wales in the celebrations and enjoy a similar public holiday. It is commonsense - a word that the Government often uses - for the ACT to legislate for consistency. That is so often the message that we get from this Chief Minister. We have to be consistent with New South Wales when it is bad for us, and when there is a bit of a sting in the tail we have to be consistent. This is a situation which will be welcomed by people. It will provide some consistency, which is a benefit for workers in the ACT.

Bear in mind that many workers will not be at work at that time anyway, because for many it is traditionally a holiday period. Rollcall in offices at that time of the year would not turn up too many heads, but there are a lot of people who work in other areas of employment, for example, the retail industry, who have to work on those sorts of days. They are low paid workers who would enjoy this time off. I do not expect the Carnell Government to be delighted about this - - -

**Mr Stanhope**: The Chamber of Commerce will support this, won't they?

**MR BERRY**: The glove puppet? I do not expect the Chamber of Commerce to support this. It was one of the things that were holding me up for a brief moment. I thought, "What will the Chamber of Commerce and Industry think about giving an extra benefit to workers no matter how well it has been justified?". I wondered for a moment whether I should seek their approval before I moved one inch on this. I thought that would be a waste of time because I do not think they would support it.

**Ms Carnell**: So you only consult with people who agree with you.

**MR BERRY**: Mr Speaker, there is an old saying: "No point in flogging a dead horse".

**Mr Moore**: Is that good consultation?

**MR BERRY**: We will have plenty of time for consultation. The Bill is relatively simple and - - -

**Mr Stanhope**: Very straightforward.

**MR BERRY**: It is very straightforward. It is consistent with government policy on a whole range of other areas where we have to line up with New South Wales. There will be ample time for the Chamber of Commerce to fully understand the legislation. They can come and see me if they have a very special argument that they want to put to me.

**Mr Stanhope**: Mr Peters will bring a bottle of champagne.

**MR BERRY**: I would be happy to receive from the chamber a magnum of champagne to celebrate, but I rather think that will not be the case. I know that workers who have put in a tough year in the ACT will welcome this very small measure. It is basically tokenism. It is a very small half-day holiday. What are you laughing at, Mr Speaker? Do you think this is funny?

**MR SPEAKER**: I am just listening to the debate, Mr Berry, with increasing amazement.

**MR BERRY**: Why? Will you be here on New Year's Eve, Mr Speaker? I am giving you a chance to have it off.

**MR SPEAKER**: I was wondering whether the Select Committee on the Workers' Compensation System could meet that afternoon.

**MR BERRY**: Well, you will not if this public holiday goes through.

**MR SPEAKER**: No, we could do it otherwise.

**MR BERRY**: Mr Speaker, since you have mentioned the Select Committee on the Workers' Compensation System, if you want us to meet on any special day, please raise it in the committee meeting and we will deal with that - if you are insisting on any particular date.

As I said, this is a move towards consistency with New South Wales. It makes no sense for this small island in New South Wales not to have this small public holiday, this small benefit. We should at least give this benefit to ACT workers and not rely on the lowest common denominator, which is usually the case with the conservative Carnell Government. The conservative Carnell Government hates anything that goes to the workers. We will debate later another issue later which will demonstrate their mean-spiritedness in relation to a whole range of issues. There is no difference in their attitude to these sorts of things, and I expect that that will not surprise the community. I am never embarrassed about providing benefits to workers, and I am never embarrassed to rise to prevent people like you taking their benefits off them.

Debate (on motion by **Ms Carnell**) adjourned.

## AUDITOR-GENERAL AMENDMENT BILL 1999

**MR QUINLAN** (10.45) I present the Auditor-General Amendment Bill 1999, together with its explanatory memorandum.

Title read by Clerk.

**MR QUINLAN**: The Auditor-General Amendment Bill 1999 will permit the reports of the Auditor-General to be published without first having been presented to the Assembly. The Auditor-General will hand the completed report to the Speaker or the Deputy Speaker in the Speaker's absence. As soon as the report is handed to the Speaker, it will be considered to have been officially presented. The publication of the report is taken to have been ordered and authorised by the Legislative Assembly once this report is handed to the Speaker. Upon receipt of the report, the Speaker may give directions for the printing and circulation of the report as soon as practicable after receiving the report.

As members are aware, the winter break in this place is the best part of eight weeks in duration, and the summer break is closer to 10 weeks. These are long periods for information to wait for publication. There may well be times when a report warrants immediate publication in the interests of informed public debate. We are all interested in open government and open public debate, are we not?

There is nothing unique about this particular Bill. Similar provisions apply in Western Australia, New South Wales and in the Federal Senate. In fact, the provisions of this Bill are modelled on those that operate in the Australian Senate. Let us face it: The presentation of audit reports by the Speaker is purely a ritualistic process. We do not debate immediately whether or not they should be published. Reports are simply presented, and they immediately become public documents and available to all. This Bill simply removes possible artificial hold-ups. I move:

That this Bill be agreed to in principle.

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

## DISCRIMINATION AMENDMENT BILL 1999

Debate resumed from 25 August 1999, on motion by **Mr Stanhope**:

That this Bill be agreed to in principle.

**MR HUMPHRIES** (Treasurer, Attorney-General and Minister for Justice and Community Safety) (10.48): The Discrimination Amendment Bill 1999, which is before the Assembly, is an amendment to the Discrimination Act, which provides for discrimination on the basis of a woman breastfeeding becoming discrimination which is illegal under the legislation. The Government welcomes the legislation and will support it. Indeed, the amendments are to the same effect as changes that I announced to the media on 3 August this year during Breastfeeding Awareness Week. It was my intention to bring it into the house in my own capacity as Attorney-General, but Mr Stanhope has done it for me. I am very happy to welcome his amendments and to indicate that the Government's view is that discrimination of this kind is clearly out of step with community expectations.

The benefits of breast milk are evident to anybody who examines the nature of a healthy lifestyle for very young children. It is the most healthy, balanced and appropriate food available for infants, bar nothing. It is full of antibodies to protect children from various illnesses. It is a known factor in the prevention of sudden infant death syndrome. It is available on demand and does not need to be heated up, opened or prepared in any way, and it provides opportunities for mothers and babies to bond and to build a healthy relationship.

Breastfeeding should be encouraged by the community. Breastfeeding mothers ought to feel supported by those around them, not just by other mothers but also by the general public and, in particular, by employers. Mothers should not be made to feel embarrassed or inhibited. We have all heard stories about women in restaurants feeling embarrassed by glances or comments being made about their breastfeeding a child. This is a perfectly natural process which has gone on for countless generations, and we need to encourage women to feel comfortable in providing that kind of nourishment to their children. While social values put pressure on women that discourages them from taking that step, then clearly there are incentives for women not to breastfeed or to cut short the period of breastfeeding.

A couple of generations ago, breastfeeding was discouraged, and women were encouraged to move onto formulas as quickly as possible after a child was born. We are more enlightened these days. We understand that breastfeeding plays a very important part in the process of raising healthy children and therefore should be encouraged. This legislation will facilitate that.

Under this legislation, breastfeeding becomes a specific ground of discrimination, and thus the whole provisions of the Act apply to protect a breastfeeding mother from discrimination. She cannot, for example, be refused services in a restaurant. She cannot be discriminated against for breastfeeding in the workplace. She can breastfeed anywhere and any time her baby demands, so long as it is not unreasonable to do so. We are not saying that there are absolutely no other problems associated with breastfeeding.

There are other issues, such as the way in which it occurs, but the Act provides that the exercising of those rights, if they are done reasonably, is a matter for which people ought to be afforded protection. For example, under this legislation, a woman who wished to breastfeed in the workplace would not be prevented from doing so. A woman who needed to have her child with her in the workplace to do so may be in a different position, however, from that of another employee who did not require child care to be able to attend to their duties as an employee.

I am not sure whether one would construe the passage of this amendment as a decision that required an employer, for example, to ensure that a woman who was still nursing small children would have to be provided with employment. That may be going too far. That is not a matter on which this legislation needs to touch at this stage. I simply flag that as an issue which will need to be examined in due course. However, as long as it is reasonable to do so, it seems to me quite appropriate that a woman should be able to breastfeed her children in the workplace or in some other appropriate setting.

The Discrimination Act allows a person to impose a condition or requirement that is reasonable in the circumstances. As I said, that would be a relevant factor to be considered in determining whether an employer discriminated against a woman who sought time off, for example, to breastfeed her baby. I note that other jurisdictions, particularly, the Northern Territory and Tasmania, have legislated to this effect. In Queensland, discrimination against breastfeeding is unlawful only in the provision of goods and services but perhaps not in other circumstances.

Consequential amendments are necessary for completeness and I think will enhance the effectiveness of the legislation. The amendment to section 37 will mean that, if an employer allows a woman to take some time off work to breastfeed a baby or express milk for storage, a man who of course does not have the same privilege has no cause for complaint. The amendment to section 39 will allow an employer to provide private living accommodation instead of shared accommodation to a breastfeeding mother to afford her greater privacy without this action amounting to discrimination against other workers who do not have non-shared accommodation.

I have to admit that there is some doubt about whether this legislation is strictly necessary. There is an argument which has been put to me that the provisions of the Act regarding the outlawing of discrimination on the basis of status as a parent would, in itself, carry the connotation that discrimination on the basis of breastfeeding was also illegal. However, I think it is important to put that matter beyond doubt. Apart from anything else, these amendments amount to an important step in raising public awareness about the benefits of breastfeeding, about increasing its acceptability and about encouraging women to not alter their lifestyle or have to end early the

breastfeeding of their child because there are societal pressures on them apparently to do so. I think it is important that we encourage the practice of breastfeeding, and I believe this legislation will do that. As I said, the Government will support the Bill.

**MS TUCKER** (10.55): The Greens will certainly be supporting the Discrimination Amendment Bill 1999. By passing this legislation, the ACT will be joining Queensland, Tasmania and the Northern Territory in having legislation that specifically mentions breastfeeding, thus affirming that we as a community recognise the importance of breastfeeding and welcome breastfeeding in our midst.

Some literature from the Nursing Mothers Association of Australia makes the point - and I think it is important - that some young women may rarely have seen, if ever, a baby at the breast before becoming pregnant, and they may feel uncomfortable or even embarrassed about breastfeeding in front of friends and families, much less when out and about in their daily lives. Men who see breasts as sexual objects may worry about their partners or daughters feeding in public, and some can be jealous of the breastfeeding relationship. Women who feel that they must hide themselves away to breastfeed are likely to see breastfeeding as unnecessarily difficult or restrictive and may choose to wean early.

Our babies are the most vulnerable members of our society. They are totally dependent on us for their survival. Biologically, they need frequent feeding because their stomachs are small, and breast milk is so efficiently absorbed. Hungry babies should not be expected to wait. They have the right to be offered the breast whenever they need a feed. As Mr Humphries has already listed the benefits of breastfeeding, I will not repeat them because they are on the record. It is clearly demonstrated that breastfeeding is the appropriate way to feed a young baby. Breast milk is easily digested, and it is normal for young babies to feed frequently. So it is obviously very important that there not be limitations on when women can feed their babies.

I experienced discrimination on only one occasion. It occurred at a cafe in Melbourne. I remember it very clearly because it took quite a long time for the penny to drop. I sat down in the cafe with my very young baby and one of my other children who was about four at the time, and ordered two orange juices. The waiter said that they did not have orange juice, which was a bit interesting. I was breastfeeding, by the way. I said, "You don't have orange juice. Okay, I will have two apple juices". "We don't have apple juice". I said, "Right. Could we have a glass of water?". "No". Then the penny dropped. I realised these people did not want to serve me because I was feeding my baby.

I was not very assertive in those days. I was not as assertive as I am these days. I was utterly embarrassed and uncomfortable and had to leave the cafe. I was very surprised and hurt as well. I found a more friendly place to buy a fruit juice. But it was terribly inappropriate, and it was clearly discrimination. I do not know if that still happens. Maybe it does still happen. It never happened to me in Canberra. But I think it is important that we, as parliamentarians, make a really strong statement by enacting legislation such as that which has been proposed by Mr Stanhope and by Mr Humphries, I understand. It is a very good statement for us to make, and I am delighted to be able to support it.

**MR STANHOPE** (Leader of the Opposition) (11.00), in reply: Mr Speaker, I acknowledge that the Government and the Attorney indicated that they had proposed to proceed with legislation similar to this. It was at a time that I had already issued instructions and received a draft. Hence we have had this rush to legislate on breastfeeding. It is quite interesting that we both sought to proceed at the same time, or roughly the same time. I acknowledge the previous support that the Attorney has indicated on behalf of the Government for the need to ensure that women breastfeeding were not discriminated against.

I think the case has been made quite clearly and patently by Mr Humphries, Ms Tucker and me in relation to the importance of breast milk and breastfeeding to young children, and also the importance of us ensuring as a community that breastfeeding mothers are not discriminated against in any aspect or facet of their lives or the lives of their baby. This particular amendment to the Discrimination Act achieves that, to the extent that it protects women, whether they are at home, in the workplace or in public places. It protects them in circumstances in which they choose to meet their child's needs by breastfeeding.

I think this Bill is an important addition to our anti-discrimination legislation. As the Attorney has just indicated, it is a move that has been taken in some other jurisdictions. It is appropriate and timely that we take it here, and send the message to this community that this legislature also accepts the right of women to breastfeed their children without fear of discrimination as a result of simply meeting their child's needs in the best way possible. I thank members for their support.

Question resolved in the affirmative.

Bill agreed to in principle.

Leave granted to dispense with the detail stage.

Bill agreed to.

## SCHOOL BURSARS – REPAYMENT OF MONEYS

**MR BERRY** (11.02): I move:

> That the Government repay all moneys deducted from the pay of school bursars as a result of the long running dispute with the bursars over pay and conditions.

This motion arises because of the ACT Government grinding their heel in the face of a small group of workers in our schools. These workers, about 29 of them according to a press release from the Chief Minister, are part-time workers, middle-aged women mostly, isolated in schools away from colleagues, and, of course, an easy target for a mean-spirited government. Mr Speaker, these workers have been carrying out the role

of bursars in our schools successfully for eons. They are part of the success story of our school system, and they have been engaged in a debate with the Government about their wages and conditions.

These workers shouldered the additional duties which came to them as a result of school-based management. None of this was taken into account in their enterprise bargaining arrangements. They soldiered on, carrying out these significant additional duties. Bear in mind that there were significant numbers of employees in central office made redundant, and their duties were shifted to bursars in our school system. Nevertheless, the bursars soldiered on with their work, as it was loaded on to them, and continued to try to negotiate with government for increased wages and conditions, resulting from the increased responsibility that they had taken on.

The department prevented them from reaching a successful outcome, and it was made impossible for the bursars to continue on. Out of frustration they were forced to withdraw their goodwill. Let us not forget that these bursars were carrying out extra duties over and above those which they were being paid for, because they had been loaded up by the department when the department moved to school-based management. Mr Speaker, some of the things that the bursars had to take on involved accrual accounting and complex financial statements. They were also required to let contracts for building maintenance, and they had increased budget responsibility as a result of school-based management.

There was an examination of this following the industrial confrontation between the Government and the bursars, and the bursars' claims were vindicated when it was discovered that there was high work value incurred. And I understand that the bursars have endorsed, in principle, an offer which includes significant upgrading of their positions because of the additional workload they were subjected to. It is a matter of great shame for this Government that this particular dispute was allowed to elevate to the temperature that it rose to in the end. There has now been, and I emphasise, a recognition of the additional workload that these workers were subjected to.

Bill Stefaniak, trying to mirror image Peter Reith, waded into the bursars, and all that was missing was the dogs and the balaclava. That was all that was missing. He waded into the bursars, and of course they were stood down on instructions from the department, as I understand it. Now, why would this Government wade into this group of workers? Why do you think? Well, it is pretty obvious; because they were an easy target. As I mentioned earlier, they were low-paid, part-time, middle-aged women, isolated in their workplaces, away from industrial colleagues where they could struggle in unison.

Mr Speaker, they were an easy target. I am told that it was recognised by the Industrial Relations Commission that the bursars were left with little alternative but to withdraw their goodwill for the additional work that they had been carrying out. This flies in the face of what Ms Carnell said in her amazing press release which was issued either today or yesterday. She talks about this work as core work of the bursars. Of course, that is completely untrue.

This was additional work that had been loaded on to the bursars. And she goes on in great detail about how this would be unlawful, if we were to force the Government to pay the bursars. Well, all I want is consistency. Why is it not unlawful to pay hundreds of other workers who are involved in industrial disruption in various departments, but it is unlawful to pay bursars? Where is the consistency here? I will tell you why it is unlawful to pay bursars. Because they do not want to pay bursars, because it would be a loss of face for them.

**Mr Stefaniak**: It is in their duty statement, Wayne; come off it.

**MR BERRY**: And of course Bill the bursar basher interjects, "It was in their duty statement".

**MR SPEAKER**: Mr Berry, please use the right title for the Minister for Education.

**MR BERRY**: I reckon that is close enough. Jackboots Bill, would that go all right?

**MR SPEAKER**: Mr Berry, withdraw that remark and use the right title.

**MR BERRY**: Mr Stefaniak---

**MR SPEAKER**: You have not withdrawn it.

**MR BERRY**: I withdraw that, Mr Speaker.

**MR SPEAKER**: Thank you.

**MR BERRY**: All that was missing from Minister Stefaniak's attack on the bursars was the balaclava and the dogs. Peter Reith launched into the wharf labourers right across Australia, involving the use of security agents with balaclavas and dogs. We saw all the pictures and the horror of the attack on workers on the wharves, which blew up in his face. It was an attack similar in principle to that of Bill Stefaniak's and this Government's. The only difference with the wharf labourers is that they got every dollar back.

Why was it legal for the wharf labourers to get their money back, but it is too hard to give it to bursars in our school system - 29 nine bursars, 29 low-paid, isolated, middle-aged women, part-time workers in a weak industrial position? Why is it wrong to pay them, but it was okay to pay the wharfies? Why is it wrong to pay the bursars their lost wages when they were involved in a withdrawal of goodwill, when hundreds and hundreds of other ACT workers, who withdrew their goodwill, were paid?

Now, I do not pretend that I am an advocate of Peter Reith's laws. These are terrible, terrible industrial laws. They are meant to grind workers down, and reduce their wages and working conditions. That is what they are intended to do. That is what was intended with the wharfies across Australia. But it failed, it failed abysmally, because the

wharfies were in a position to fight back, and the rest of the community fought back with them, and in the end, even Peter Reith accepted that they get paid. Do not give this nonsense to me that you are going to rely on the illegality of the payment to bursars.

**Mr Stefaniak**: It is not a nonsense.

**MR BERRY**: Mr Stefaniak says it is not a nonsense.

**Mr Stefaniak**: It is in the bloody Act.

**MR BERRY**: Why is it not a nonsense in respect to bursars, when it is quite okay for you to pay others who have withdrawn their goodwill within the public sector? Why is it so? Why is it so for hundreds of other workers? Are you telling me that there has never been any industrial action within your portfolio?

**Mr Moore**: I have docked the nurses for striking.

**MR BERRY**: No, no, hang on a minute. What about bans and limitations? These people were not out on strike, Mr Moore, they had taken minor industrial action. They were on extra duties that had been loaded on to them since their last EBA.

**Mr Moore**: And when the nurses went out on strike they lost their pay.

**MR BERRY**: Look, the metamorphosis is complete with you, Mr Moore. You have completely changed colour. It is a waste of time. Do not bother interjecting.

**MR SPEAKER**: Order, please!

**MR BERRY**: Your contribution means nothing to anybody out in the community. These bursars were attacked in the most vicious way, when the Government was prepared to accept that it was a legitimate part of the industrial process for other workers to withdraw their goodwill and implement industrial bans. It is not illegal. It is not an offence, Mr Stefaniak. It is not an offence for you to pay workers.

**Mr Stefaniak**: Have a look at 187AC and AD, Wayne.

**MR BERRY**: Look, mate, all you have got to do is have a look at the bottom of 187AA, sub-paragraph (3), "A contravention of subsection (1) or (2)" - they are the relevant parts that you are talking about - "is not an offence".

**Mr Stefaniak**: Not a criminal offence, Wayne. Have a look at it.

**MR BERRY**: It is not an offence. I will lend you a copy.

**Mr Stefaniak**: AD, AD, mate.

**MR BERRY**: Okay, I will have a look at that one. Which one?

**Mr Stefaniak**: One (a).

**MR SPEAKER**: Order, please! You will have your chance, Mr Stefaniak, to reply to Mr Berry.

**MR BERRY**: That is in relation to orders that a court may make. But that is only on the intervention of---

**Mr Stefaniak**: In relation to contravention of 187AA and AB, Wayne.

**MR BERRY**: That is right. But, Billy, that is only on the intervention of the Minister.

**Mr Stefaniak**: Or another party, Wayne.

**MR BERRY**: The Minister is Reith, and Reith never intervened in relation to the wharfies. Why didn't he? Because in the end he wished it would go to hell, go away. He said, "I do not want to hear any more about it; I have been flogged enough by this". The community turned against him on this issue and he knows it. The community needs to understand that what you have done to those bursars is no better than what happened to the wharfies. The only thing that was missing was the balaclava and the dogs. The principle is the same.

Mr Speaker, these workers deserve to be treated compassionately. They deserve to be treated the same way as other workers throughout the ACT government service. There are hundreds of them who have taken industrial action legitimately, and it has been accepted, and they have been paid by the Government. A little bit of consistency, please!

I will tell you why you did not take on other workers. They were in a position to fight back. But you saw the opportunity to impose your ideological, mean-spirited views on these workers, and you knew they were not in a position to belt you up. That is why you took the action. It was gutless. It was mean spirited, and it was intended to hurt. And it did. Mr Speaker, I cannot abide the hypocrisy of people who would claim that to repay these bursars was too difficult, when they are quite happy to pay other workers engaged in the same sort of disruption.

The disruption across government has been legitimate in the pursuit of wages and working conditions, and they have been pursued in a commendable way. There has not been a major disruption of services to the community, but the mean-spirited nature of the Government's approach to wages and working conditions has meant that confrontation has been inevitable. Mr Speaker, it sickens me to read the press releases of our hospital-busting Chief Minister, and to hear her criticise workers who take industrial action, particularly when this action is the same as that taken by many other workers in government employment, and those workers have been paid.

I think it is appalling, and I urge members to support this move to ensure that these bursars get paid. They are out there working in our school system and making sure that conditions for our children are improved. The Government and the department ought to be censured for the delays which led to this position. In the end there has been a survey

of what bursars do and they will get significant improvements in their wages and working conditions. You have pushed them to the line, and in the end they had to withdraw their goodwill.

**MR SPEAKER**: The member's time has expired. Would you like an extension.

**MR BERRY**: No, thanks.

**MR STEFANIAK** (Minister for Education) (11.18): Mr Speaker, what Mr Berry has put to the Assembly is quite preposterous, because he is seriously suggesting that the Assembly sanction illegal action. The department took the action it did because it had to in terms of this particular Act. As I have said before in this place, the duty statement of the bursars listed duties including the one which was initially the subject of the work ban. Now, Mr Speaker, this issue of what is called the lock out was raised for a conference before Commissioner Deegan at 11 o'clock on 26 July. That was fine, the Government would have been very happy abiding by whatever decision was made there.

It was interesting that the head office of the CPSU withdrew that particular matter from consideration, and I think one can only assume that was because the action of the department was in fact legal. I tender a letter from Steve Ramsey, the national legal industrial officer, advising the commission that it was withdrawing that action. Mr Speaker, the Act is quite clear. Mr Berry says, "It's not an offence". Mr Berry, it is not a criminal offence, but it is an offence, and it can be punishable if it goes to the Industrial Relations Court. I think that is the name of the court. The Workplace Relations Act, Mr Speaker, section 187AA, states in subsection (1):

> An employer must not make a payment to an employee in relation to a period during which the employee engaged, or engages, in industrial action if: (a) the employer or employee was or is a member of an organisation during that period; -

yes, I think that applies -

> (b) the employer was or is a constitutional corporation bound by an award, a certified agreement or an AWA during that period; -

that probably applies too -

> (c) the industrial action was taken, or is being taken, in connection with work regulated by an award, a certified agreement or an AWA;
>
> (d) the industrial action was taken, or is being taken, in relation to an industrial dispute;

All of those things, I think, Mr Speaker, apply. Only one of them needs to. As Mr Berry says, subsection (2) is interesting too in that it says:

> An employee must not accept a payment from an employer if the employer would contravene subsection (1) by making the payment.

And, yes, Mr Berry, it is true in (3) that it is not an offence and it is not a criminal offence. What it is, Mr Speaker, when one goes to section 187AD of the Act, is that it is a civil matter. There are other ancillary matters in section 187AA, or in section 187AB which deal with organisations, but section 187AD, which relates back to 187AA, states that a court can make certain orders. And the crucial point here is 187AD(1) says:

> In respect of contraventions of sections 187AA or 187AB, the Court may, if the Court considers it appropriate in all the circumstances of the case, make one or more of the following orders:
>
> (a) an order imposing on a person who contravened or is contravening that section a penalty of not more than $10,000;

I will read that again:

> ... an order imposing on a person who contravened or is contravening that section a penalty of not more than $10,000;

And it makes certain other orders including injunctions and interim orders to stop the contravention of that, or indeed to remedy the effects. That is 187AD, subsection (c). Mr Speaker, quite clearly that could be taken against the department.

Now, who can make an application? As Mr Berry said, it can be made by the Minister. Yes, it is the Federal Minister. But it can also be made by any person who has an interest in the matter, or any other person prescribed by the regulations. It is quite broad. Mr Speaker, I am happy to table those documents in the Assembly, as I think that is important for this debate.

Now, clearly, the department did not have any real options in this. It was not a situation where it could continue paying, and the department took the action that it did. Mr Speaker, in fairness to the bursars, no-one disputes that our bursars do a good job. I will come to a couple of points Mr Berry raised shortly.

But the department made sure that the bursars were well aware of what the department had to do and what their rights were. On 20 July, Anne Thomas, who is the Director of Human Resources, sent a letter to the bursars in relation to industrial action taken, quoting what the department had to do, and emphasising the Act stipulates that payments must not be made by an employer during a period of industrial action and informing bursars that the principal of the school would inform the school's pay centre, if they failed to undertake the full duties, what the ramifications would be. The letter concluded that not every bursar may do it, but was merely pointing out to them what would occur if they decided to take action.

Mr Speaker, I will table that letter too. Twenty-nine bursars subsequently did take action. It was quite clear that they were well aware of their rights and what would occur if they took action. There is nothing wrong, Mr Speaker, under this Act with people

taking industrial action. It is simply that, when action is taken, the employer cannot pay them, and cannot pay them for the time of that action. It is as simple as that, and to suggest now that the department or the Government should pay back the money is really asking the department and the Government to do something that is unlawful.

We had a debate here not long ago in relation to the Bruce Stadium, where people were having a go at the Chief Minister because they suggested she was acting unlawfully. Well, you cannot have one standard for one and not for the other, Mr Speaker. I think that is just crazy. Indeed, it is quite preposterous. If this motion were passed, the Assembly would be sending a message to the rest of the ACT Public Service, and indeed the whole community, that industrial action can be taken with impunity, and without employees suffering any consequences as a result.

In the past, people have taken industrial action, and no doubt will continue to do so when they are dissatisfied. That is a democratic right which I am sure we would all fight for. That is one of the tenets of our civilised Western democracy. But there are consequences, and that is fair enough. I do not think anyone quibbles with that. I think Mr Berry is being hypocritical here, because there was industrial action under the Labor Government. I have got some figures here in terms of education. On 23 September 1993, 1,102 work days were docked from teachers taking industrial action;1,917 work days were docked from teachers on 28 October 1993 for taking industrial action. That was over cuts to staffing. I bet they did not get their money back.

It is hypocritical of Mr Berry and the Labor Party to bring a motion such as this. If Mr Berry's motion were to succeed we would have a recipe for industrial chaos. Thankfully, due to the commitment of government, and the approach taken by my department based on a genuine commitment to reach a fair agreement with the bursars, we are now very close to reaching an agreement with bursars on their working conditions and remuneration. Mr Berry talks about the department stuffing it up all the way along, never wanting to compromise, always wanting to force them into this position. I think that is a bit of nonsense.

Mr Speaker, there were, I think, two out of four meetings, which were due to be held between June and July in relation to this dispute, when the CPSU representative did not turn up. If he wants to point the blame he can probably point it all around if he wants to be fair. And now, Mr Speaker, we are very close to an agreement. I think it is important members note that the department has always been keen to progress discussions on bursars' working conditions. The CPSU failed on several occasions leading up to the industrial action to actually attend those scheduled meetings, and that stalled negotiations.

The Government is certainly committed to continuing the discussions, and the department met with the union while industrial action was in progress. In fact, I met with the union and some bursars on an occasion as well. The fact that they were continuing to meet while the industrial action was in progress is indicative of good faith.

**Mr Berry**: Oh!

**MR STEFANIAK**: Well, it is, Mr Berry. I think it is indicative of a commitment to try to reach an agreement with the union and with bursars, and to negotiate in good faith. As I have indicated, the CPSU had the opportunity to test this decision in the commission. I understand that case was withdrawn with less than four hours' notice. Now, it looks at this stage that we may have agreement in principle on the major points of a new working structure for bursars, and we would expect to hear from the bursars to finalise this. I would hope by the end of this week, and if not that early, then next week, Mr Berry.

**Mr Berry**: Back-pay them, Bill; then you will not have to worry about it.

**MR STEFANIAK**: Well, Mr Berry, we have heard that the CPSU paid bursars who were taking industrial action, so you might like to check that as well.

**Mr Berry**: What, strike pay?

**MR STEFANIAK**: Yes. I am not too sure what it was, but I understand they certainly paid for them. So I would wonder, even if your motion was successful, whom we would actually pay it to.

Mr Speaker, it is important to note that the new structure recognises the additional skill development that has become necessary, and the increased levels of school board management. Importantly, the main sticking point for the department - the hours of duty of the bursars - has been resolved, Mr Speaker. This new structure puts bursars who were basically part time, by doing about 6.5 hours a week, onto a full-time basis.

There are a number of conditions which will be in these awards, and it looks like an agreement has been reached. Basically, bursars will go to full-time awards, and that is something for all the parties to agree, and I understand that is pretty close. The new structure establishes two tiers of office managers in primary schools, with salaries increasing in line with the skills and qualifications that bursars in individual schools need to do their jobs. And those levels are linked to the ASO 4 and the ASO 5 level. Along with that, based on productivity and efficiency, there are some trade-offs, because they will be working full time and they will have four weeks' annual leave. But there are arrangements where they can purchase additional leave should the demands of their work and their personal requirements allow it.

We now have a pretty good result, and it would be a great pity, when we are so close, for Mr Berry to politically grandstand and completely cloud the very important issues at hand and effectively to call on this Government to breach a Federal law. I would reiterate, Mr Berry, that bursars are valued members of staff. They fulfil important roles in the running of our schools. It is important they have work conditions and a career structure in line with the importance of their work, and with their skills and qualifications.

Whilst, Mr Berry, compared with other bursars interstate and in the Catholic system, they were pretty well paid beforehand, we have recognised the additional work they do. We want to give them a better career structure, because clearly there are some very capable people there who might want to advance into other areas of the Public Service.

This would have been far more difficult under the old structure. We are committed to achieving this. The Government is not interested in being diverted by what we regard as an absurd suggestion put up by Mr Berry. Really, Mr Berry, what you are proposing here has very serious ramifications, certainly to other workers in the Territory, and especially in asking us to effectively break a law.

Now, Mr Berry, maybe your bringing this matter before the Assembly has got something to do with the timing of the CPSU election, which I understand is going to be held this Friday. There may be a bit of cynicism in what you are proposing here, Mr Berry.

**Mr Moore**: Cynicism from Wayne?

**MR STEFANIAK**: Cynicism from Wayne, I suppose so, yes. What I look forward to seeing finalised, Mr Berry, is a very good offer, and a very workable proposal, which will benefit both the bursars and the ACT school system. On this side of the Assembly, Mr Berry, we are interested in achieving a result, rather than being a party to you trying to help some of your mates in the union movement for an election, or whatever. I am not quite sure why you are doing this. Are you just grandstanding? Have a good look at those sections, Mr Berry, and I think you will see quite clearly, if you have not already, that what you are asking us to do is actually break the law.

**Mr Berry**: You are already doing it.

**MR STEFANIAK**: I do not think so, Mr Berry. It is quite likely that someone could take the Government to court, and the Government could then be faced with a penalty of up to $10,000. That is a crazy suggestion. Are you asking two ex-policeman to condone something like that? Are you asking the other crossbenchers too? Have you convinced your own party that is a sensible idea? I think that really is very, very stupid, Mr Berry, and I would ask you to think again.

We are now very close to an agreement, after lengthy negotiations. It was a very good process, once everyone started talking properly and exercised a bit of sense. A good work value study was done in terms of the bursars and the department. I think someone else went out to a number of the schools, both small, medium and large, to look first hand at what was the best way of advancing a fair deal for these very valued workers in our system. And for you to come up with your crazy comments about dogs and leashes and balaclavas - - -

**Mr Berry**: Well, that is what happened, Bill. Did you turn off the television then?

**MR STEFANIAK**: What absolute rot, Mr Berry. What I look forward to now is a good agreement with our bursars, which gives them a good career structure, recognises the value of their work and which has been worked out in a sane, sensible, civilised and logical way, instead of a rather cheap stunt by you here today in this place.

**MR MOORE** (Minister for Health and Community Care) (11.33): Mr Speaker, I rise to oppose this motion of Mr Berry's. I have to say, even if this motion were to pass the Assembly, as the Government, we would have no choice but to refuse to implement it anyway.

**Mr Berry**: That is rubbish; you are doing it already.

**MR MOORE**: That is my position, Mr Berry. I want to start first of all with Mr Berry's approach to industrial relations. He certainly knows and understands the legislation. He has been an Industrial Relations Minister, or shadow Minister, for a little longer than 10 years, I believe, and was involved in industrial relations long before that. But most importantly, I would like to take Mr Berry back to the time when he was Health Minister and there was a significant dispute with the doctors. Mr Berry, I would like you to put on record whether or not you docked the pay of the doctors when they were out on strike. When the doctors refused to work, did you dock their pay?

When you were Health Minister, Mr Berry, you had a dispute, not just with doctors, but you had quite a long-running dispute with the nurses. When those nurses were on strike, did you dock their pay?

**Mr Berry**: The bursars were not on strike.

**MR MOORE**: You did dock their pay and you and I know it; just the same as when the nurses were on strike in the recent dispute, I spoke to the management of the Canberra Hospital and I said, "I hope you are going to dock their pay when they go on strike". As a manager you would have no choice, otherwise there is no disincentive for people to go on strike. Now, of course all of us want to avoid a strike situation. Nobody enjoys it, and nobody believes it is appropriate. But it is a most inappropriate thing for this Assembly to dictate industrial relations, other than in legislation.

**Mr Berry**: We cannot do that.

**MR MOORE**: Mr Berry correctly says, "But we can't do that". Yes, you can, provided it is consistent with the Federal legislation.

**Mr Berry**: Well, why would you want to do that?

**MR MOORE**: Mr Berry, what we have to do is obey the law. That is what we do. Nobody here deliberately or negligently disobeys the law. We avoid doing that. Indeed, the two police officers who sit here next to us would not support a motion that would have us act in opposition to a Federal law. As a legislature, if we do not respect the law of the Federal Parliament, and some of those laws are very unpalatable, then how can we expect to make laws here, and have people within the ACT obey the laws that we pass? We have a greater responsibility than most people to ensure that we obey the law.

Now, there are laws that the Federal Parliament passes that I hate - their overriding of our euthanasia law, for example. I know a number of people here support it, but I also recall that unanimously, bar Mr Osborne, we felt they ought not do it. But they did do it. When they did it, we said, "That's the law and therefore we will abide by it". On that

occasion I withdrew the legislation that I had before the Assembly, because I recognised the Federal Government's right to make laws that govern the actions of this Territory. It is unpalatable, but that is the way it is, and that is the way it ought to be.

It seems to me that our shadow spokesman on industrial relations, a former Minister for Industrial Relations, does not seem to know what happened to the legislation in 1996, or he is urging people to break that law. It is one or the other.

**Mr Berry**: I am urging them to be consistent.

**MR MOORE**: I cannot believe that Wayne Berry does not know what happened in 1996 with the Federal legislation. He has been involved in industrial relations either as a Minister or shadow Minister since this Assembly - - -

**Mr Berry**: I know exactly. I understand it like the back of my hand.

**MR MOORE**: I believe I am correct in saying that the whole time that this Assembly has existed, you have been either shadow Industrial Relations Minister or the Minister for Industrial Relations.

**Mr Berry**: Except for six months.

**MR MOORE**: Except for six months.

**Mr Berry**: No, no, no, longer than that. It was about two years.

**MR MOORE**: For a short period, but in the vast majority of time, and certainly over the last five years or so, that has been the case. He does know what happened. But he has here an opportunity to make a bit of political mileage, to demand of the Government that they take action which is clearly not legal.

**Mr Berry**: No offence. Not an offence.

**MR MOORE**: And he relies heavily on subsection 3 that Mr Stefaniak quoted. At that stage the contravention of subsection 1 or 2 is not an offence. If you read the legislation, it says, "Yes, well, it's not an offence". But we all know that Mr Berry is not a lawyer, and that his legal opinions are the legal opinions of a bush lawyer, the same level as mine. I do not claim to be a lawyer, but at least when I read the legislation I read on and see what else is there. I ask for advice from people qualified in the law, people with law degrees, and the verbal advice to me concerns the distinction between a criminal offence and a civil offence.

But let us put the legal part aside. How are we going to run industrial relations when there is an expectation that people will go on strike, take industrial action, and still get paid? It is an extraordinary notion that we pay people for refusing to go to work. It is a very serious matter. Now, there are times when people take strike action because they feel strongly about something. Indeed, I have advocated strike action when I was a teacher. I have to say it is very rare that teachers went out on strike, but it did happen

on odd occasions, and I participated in that, and I expected my salary to be docked. Because I felt strongly about the issue, I was still prepared to do it, and that is the case here.

Mr Speaker, the hypocrisy of this motion is extraordinary. Mr Berry was responsible for ensuring that nurses - and "nurses" sounds like "bursars" - who took industrial action when he was Minister had their pay docked. I am sure of it. Let him tell me I am wrong, because I am sure that is the case. In opposition he suddenly changes his view. He suggests that I have gone through a complete change. Not at all, Mr Berry. When you were the Minister I supported the fact that you docked their pay when they were on strike.

This particular motion, even if it were passed by the Assembly, would have to be refused by the Government. In the end that is not my choice. That is the choice of the Chief Minister, and probably a choice of the Cabinet, because we would never do that lightly. It is the same approach that you took as Minister, with your Cabinet and Rosemary Follett. But if you are going to demand something be delivered by the Assembly, then it has to be done by legislation. To suggest, as you do here, that we should break the law is just unacceptable.

**MR OSBORNE** (11.43): I found it interesting that Mr Berry would argue that there is no offence for breaking the Industrial Relations Act, yet he seems to think that is reason enough to break the law. I recall only a few months ago that, on the issue of the Government breaking the law in relation to the Financial Management Act, where there was no penalty for breaching that law, it was not okay. It is an interesting aside.

**Mr Berry**: I think it is a different issue.

**MR OSBORNE**: It is the same issue, Wayne. It is okay for Mr Berry to force the Government to break the law but when they do it - - -

**MR SPEAKER**: Order!

**MR OSBORNE**: Obviously, Mr Speaker, most of us are sympathetic to the bursars' plight. I am pleased that it appears to be close to being resolved. At the end of the day I cannot support this stunt. It is quite clear that it does breach the Commonwealth Act. The Act says that an employer must not pay an employee for the period for which they have engaged in industrial action. The Act also does not allow an employee to accept payment if it has been offered for that period. While the above points do not automatically constitute an offence, nonetheless, under section 187AD of the Act a fine of up to $10,000 can be imposed on either, or both parties, by the court.

I doubt that the Government would be able to pay the bursars even if this motion were passed. I understand that, at the time that the dispute with the bursars was being formally negotiated, the Government did write to the bursars prior to their action, warning them that they would be stood down for the duration of the action. I understand that most of the bursars went to work, leaving only about 30 or so undertaking action, and the bursars were also warned by Commissioner Deegan about not being paid for the day.

Mr Speaker, it saddens me that, once again, we are debating a motion which is a complete waste of time. It has been put up by Mr Berry in an attempt to embarrass those who are going to vote against it, when he must have known well beforehand that it would be impossible for the sensible people in this place to support it. It is an impossible motion to support. I fully expect Mr Berry to go on radio today and condemn me - and Mr Rugendyke, if he votes against it - for not supporting the motion, but that is how he operates. It is a motion that cannot be supported. So, Mr Speaker, I have no alternative but to vote against it.

**MR QUINLAN** (11.46): I had not intended to speak in this debate, and I will not try to add my bush lawyer's opinion or barrack room lawyer's opinion to the others. I have to confess that I did not closely watch the Michael Moore of the past when he was a bit more oatmeal than he is navy blue now. I would have expected a different approach from the image he projected back then.

The pivotal point is whether or not these people were stood down, and whether the Government is consistent in standing down people who impose bans and limitations. If they are not consistent then the hypocrisy that we talk about is over there - because we happen to have a group whom we thought were relatively weak, so we will stand them down. But if the group is stronger, and more ramifications flow back from it, then we will not stand them down. The point needs to be made in this debate that there is hypocrisy in the approach that was taken.

**MR HUMPHRIES** (Treasurer, Attorney-General and Minister for Justice and Community Safety) (11.48): Mr Speaker, I have not been here for all of this debate, but I do want to make a contribution based on legal advice which I have received on this matter. I understand that there has been a contention in the house on whether or not it is legal under section 187AA of the Workplace Relations Act 1996 to pay bursars who engage in industrial action. Mr Speaker, the point has been made that the provisions of section 187AA do not amount to an offence, and that is clear on the face of the legislation, and indeed that point is worth making. But my understanding of the term "offence" in that context is "criminal offence".

**Mr Berry**: An offence against the Industrial Relations Act.

**MR HUMPHRIES**: No, Mr Speaker, that is not the interpretation I think we would take from that.

**Mr Berry**: An offence against the Industrial Relations Act.

**Mr Moore**: We know you are a lawyer, Wayne.

**MR HUMPHRIES**: Yes. Look, Mr Berry might have better advice than I do.

**MR SPEAKER**: Order, please! Mr Humphries is explaining a point of law, as I understand.

**MR HUMPHRIES**: Mr Speaker, I am proposing to table the advice I have received from the ACT Government Solicitor. He argues, based on the allegation that the bursars were engaged in industrial action - and there might be some debate about what exactly that is:

1. Section 187AA(1) provides that an employer, "must not make a payment to an employee in relation to a period during which the employee engaged, or engages, in industrial action", in certain circumstances. Those circumstances have been satisfied, with the result that the Territory (as employer) is prohibited from making a payment to the bursars in relation to the period during which they engaged in the industrial action.

2. The provisions of section 187AA are mandatory and not discretionary. In other words, the Territory is prohibited from making the payments referred to in the proposed motion.

3. Neither the Assembly nor the Territory has the power to engage in conduct which is unlawful under a Commonwealth Law, such as the Workplace Relations Act.

Mr Speaker, I table that advice delivered to me today from the ACT Government Solicitor. Mr Speaker, I want to make a couple of points about that advice. First of all, it is clear that an employee of the Territory engaged in industrial action could run some risk of being subject to the provisions of that legislation. According to the terms of the legislation, an offence is not committed, but nonetheless a breach of the law can occur without it amounting to a criminal offence. Mr Speaker, a very good illustration of the distinction between a criminal offence and an offence which is not criminal, but nonetheless unlawful, is the Financial Management Act of the Territory.

Members opposite were quick to point out that breaches of the Financial Management Act are unlawful. And it is a breach of the law to breach the terms of that Act. While that is the case, it is not a criminal offence to engage in offences of that kind under that Act. Similarly, a breach of the criminal law is regarded as a more serious act, and certainly carries with it penalties which are more serious. Generally, more serious offences of that kind may even include a prison sentence.

Mr Speaker, there are regulatory offences, and there are criminal offences. The offence being talked about here is a regulatory offence of the kind that was unintentionally engaged in by the Government in respect of the Financial Management Act with regard to Bruce Stadium.

**Mr Berry**: That's our law, this is Federal law, it's different.

**MR HUMPHRIES**: Mr Berry says it is a different law. Well, of course it is. But all we are talking about here is the superior law, a law which has greater effect in the ACT. We may pass laws in this Territory.

**Mr Berry**: On industrial relations but not on the Financial Management Act.

**MR HUMPHRIES**: Mr Speaker, in any area, where the ACT passes law which is inconsistent with Federal law, our law gives way. Our law is invalid to the extent that it is inconsistent with Federal law. That is clearly the constitutional position.

**Mr Berry**: But you may have noticed this is not legislation.

**MR HUMPHRIES**: Mr Speaker, that Workplace Relations Act, like it or not, applies in the ACT, as it applies everywhere else in this country, and it makes it clear that it is a breach of the law.

**Mr Berry**: It is not an offence.

**MR HUMPHRIES**: No, it is not an offence. But, Mr Speaker, it is a breach of the law in the same serious sense as that when members opposite said that the actions in respect of Bruce Stadium were a breach of the law. Now, cast your minds back to what those opposite said about Bruce Stadium. They intoned the seriousness of that matter in the most grave language you can imagine. In fact, Mr Speaker, the Chief Minister was censured on that occasion for a breach of that provision.

**Mr Moore**: You wanted a no confidence.

**MR HUMPHRIES**: Those opposite wanted to sack the Chief Minister of the Territory because that regulatory provision was breached. Now, Mr Speaker, those opposite are arguing that we should not just unwittingly, as was the case with the Financial Management Act, but intentionally break the law with respect to the Workplace Relations Act.

**Mr Berry**: No, no, no.

**MR HUMPHRIES**: Yes. Yes, that is precisely their argument, Mr Speaker.

**MR SPEAKER**: Sit down, Mr Berry, you will get the chance to speak later, if you wish.

**MR HUMPHRIES**: Mr Berry shakes his head but the fact is he is saying to us, "You should break the law". Mr Speaker, I do not understand the difference, and I look forward to those opposite explaining it to me. In both cases they are regulatory provisions, and in both cases they amount to breaches of the law.

**Mr Moore**: Except that this one can get a penalty.

**MR HUMPHRIES**: Well, indeed, Mr Speaker, there is another difference here. The provisions in the Workplace Relations Act do carry financial penalties.

**Mr Moore**: Ten thousand dollars.

**MR HUMPHRIES**: They are not criminal offences, as I understand it, but they are, nonetheless, matters that carry financial penalties and those penalties are $10,000. There are no penalties provided in the Financial Management Act. Those opposite, as I recall, argued very strongly that we need to look at the Financial Management Act and change it to put in financial penalties. Mr Quinlan took a personal explanation yesterday based on the argument that there had not been any criticism on their side of the chamber, at least by him and Mr Stanhope, of the Financial Management Act.

**Mr Quinlan**: You misquoted. Based on the fact that you misled this place on what I said.

**MR HUMPHRIES**: Mr Speaker, I ask that Mr Quinlan withdraw.

**Mr Berry**: Withdraw what?

**Mr Moore**: That he misled the house.

**MR SPEAKER**: Mr Quinlan, if you said that, would you withdraw it please.

**Mr Quinlan**: Mr Speaker, if what I said is unparliamentary, then I withdraw it. I made a personal explanation yesterday based on Mr Humphries putting words in my mouth last Thursday, purely that.

**MR HUMPHRIES**: I take it that is a withdrawal, Mr Speaker?

**MR SPEAKER**: He has withdrawn.

**MR HUMPHRIES**: Mr Speaker, the fact remains that you are asking us to do today, what you censured us for in June, with respect to the Financial Management Act.

**Mr Berry**: No.

**MR HUMPHRIES**: Now, Mr Berry says no. What are the differences here?

**Mr Berry**: Well, I'll tell you. You asked the question, I'll answer it.

**MR HUMPHRIES**: Mr Speaker, I am speaking.

**MR SPEAKER**: Mr Berry, sit down, you will get a chance to answer later.

**MR HUMPHRIES**: Mr Speaker, one difference is that the Workplace Relations Act carries financial penalties, while the Financial Management Act does not. As I recall, members opposite were critical of the fact that the Government had passed legislation without there being financial penalties in there. That was a criticism of the Financial Management Act, Mr Speaker.

Secondly, the Workplace Relations Act applies to the ACT by paramount force, and the ACT cannot change that legislation. The Federal Parliament can, but the ACT cannot. We can change ACT legislation, we cannot change the Workplace Relations Act. The third point, Mr Speaker, is that the breach of the Financial Management Act was unintentional. The breach which is being urged on us with the Workplace Relations Act is not only intentional but quite deliberate and quite calculated, and at the behest of the parliament. So, Mr Speaker, there are differences between the two situations, but all of them point to the fact that what is being urged in this motion is a more serious breach of the law than was the case with the Financial Management Act. But Mr Berry thinks there is a difference.

**Mr Quinlan**: That is really a long bow, Gary.

**MR HUMPHRIES**: Well, Mr Speaker, I have tabled the advice. That is what the advice clearly says; I am not making it up. The advice I have tabled is quite clear, and I say to members that, if they believe the advice is untrue, well, then that is fine. *(Extension of time granted)* It is open to them to argue against the Government Solicitor's advice if they believe it to be inaccurate. But I expect that they will produce other advice to indicate that there is some flaw in the Government Solicitor's advice. But it is absolutely clear. It refers to what the Assembly is being asked to do. So, assuming that what the bursars did was considered industrial action, then that is illegal and beyond the power of the Assembly or the Government. Mr Speaker, that is where it stands.

I do not know what the Assembly wants the Government to do. The Assembly was most adamant that the Government not break the law, and that the Government be punished for breaking the law earlier this year. Now it says that the Government should break the law. I look forward to elucidation from the Assembly about exactly what they want this Government to do.

**MR KAINE** (11.59): Mr Speaker, I find myself in a quandary and I am sure other members of this place do also. Instinctively, and in the interests of natural justice, we tend to support the proposition put forward by Mr Berry. It would seem that there is some justice in adopting this motion. The Government now tells us that there is an illegality in that. Clearly, we would be foolish to support a motion that would be condoning something that was illegal. In any case it would go nowhere because the Federal law overrides it. But, Mr Speaker, we have had competing legal opinions in this place quite recently. One was on the matter that the Attorney-General has been referring to, where the Government got a legal opinion that favoured it. Of course, there were two other legal opinions that were not so supportive of the government view.

In this case the Government has been quick to get a legal opinion, but are we to accept, without question, that that legal opinion is the final say on the matter? I suspect not. The Government has proposed that what this motion seeks to do would be ineffective, because it deals with an illegal act and would therefore be overwritten by Commonwealth law. I think that is what the Government is saying. I think that Mr Berry, the proponent, should have an opportunity to test that. If I was forced to vote on this issue now, based on the Government's advice, I would have to vote against Mr Berry's motion.

But I suspect that he does have an option, and that is to seek to defer the debate, and to adjourn. He can then test the Government's legal opinion and see whether or not he agrees with it, and whether he wants to argue that point.

Debate (on motion by **Ms Tucker**)adjourned.

**Sitting suspended from 12.02 to 2.30 pm**.

## QUESTIONS WITHOUT NOTICE

### COOOL Houses in Macquarie

**MR STANHOPE**: Mr Speaker, my question is to the Minister for Health and Community Care. On 14 October I asked the Minister a series of questions about COOOL houses at Macquarie and the rejection of an application by residents of those houses to provide their own care. In a supplementary answer to my question after question time the Minister said that ACT Community Care had not been offered a two-year contract to provide the service pending a review of the decision. In light of the Minister's assurance that Community Care had not been offered a contract, can the Minister explain a minute of the same date from Community Care's regional manager and accommodation support manager to staff at Macquarie COOOL houses which says:

> …the Disability Program has been advised that it will be managing the COOOL Project for two years. As a result of this Disability Program will be advertising for permanent employees to staff the project. Existing staff members, currently on temporary contract with the Disability Program are being offered the opportunity to apply for these positions.

**MR MOORE**: Mr Stanhope, my advice was as I said to the Assembly, but I will take that part of the question on notice and get back to you because that minute certainly disturbs me. Let me say though that there is an appeal mechanism available. I would also like to add that I had a letter from the members of CHOM requesting that the appeal mechanism be changed so that instead of the chief executive of the Department of Health, David Butt, being the arbiter, it be somebody else agreed to by us. I am unlikely to accept that because my understanding - I am going to look at the documentation - is that there was an agreed process prior to this approach being taken and that the person set out in that agreed process to settle any dispute was the chief executive of the Department of Health. If the approach was as I understand it to be, then that is who will be resolving this issue.

I must say, Mr Stanhope, I am distressed if what you say is the case, but it is not my advice. I will be looking at that and I will get back to you to explain the situation.

**MR STANHOPE**: I have a supplementary question. Minister, I accept that you are concerned about the substance of the question, but do you agree that the obvious conflict between your answer to the Assembly last Thursday and this minute from your department seriously compromises the independence of the review into the decision to

reject the residents' tender and as a result of this apparent conflict there is now a perception that the review will not be independent? Will you, in light of the conflict that now exists, agree to appoint a reviewer who can be seen to be truly independent of the department and the tender process?

**MR MOORE**: Mr Stanhope, in regard to your supplementary question, I have in front of me an email sent at 15.16 on 14 October, the date to which you are referring. My advice is that ACT Community Care is seeking to recruit long-term workers in anticipation that they may be asked to take on the contract for a period of two years. Point 3 is that the ACT - the words "Community Care" have been left out but from the context it is clear that this relates to ACT Community Care - has been advised that it has not been offered a contract of two years at this stage pending the review process. I have to work on the advice that is provided to me, but, if there was an agreement in the initial instance that should difficulties arise the review process should be conducted in this way, then that is how it should proceed, and that is certainly my intention now. What I have not personally done is check that there is an agreement to that effect. That is what I will be doing and I am quite happy to report back to this Assembly on that matter within the next 24 hours.

## Open and Accountable Government

**MR KAINE**: Mr Speaker, my question is to the Chief Minister. Chief Minister, a little less than two weeks ago a man that I know you admire, a person who some say is one of your role models, in a bid to stay in office offered to do a number of things. Among those things were that he agreed to increase the powers of the Auditor-General in his State; he agreed to publish government contracts on the Internet; he agreed to set up a judicial inquiry into a threatening contractual scandal; he agreed to review the freedom of information laws; he agreed to lift a ban on public servants speaking out; and he agreed, in brief, to make himself and his Government more accountable. This man, of course, was Jeff Kennett, who displayed all of this commitment to open his Government, and in fact regrettably failed to keep his job. In the light of that, I ask the Chief Minister: In the same spirit of open and accountable government, will you agree to increase the powers of the ACT Auditor-General? Will you agree to publish government contracts on the net? Will you agree to strengthen the freedom of information laws? Will you agree to remove the gag from critical public servants? Will you agree to an independent inquiry into such matters as the failed Feel the Power deal, the failed futsal slab deal, and the failed Kinlyside land deal; and will you show the same moral fibre and accept full responsibility for your actions as Jeff Kennett has done?

**MS CARNELL**: Mr Speaker, I am very pleased that Mr Kaine has asked me a dorothy dixer. This is very good. The ACT FOI legislation is the best in Australia. The powers of our Auditor-General are up there with the best in Australia. Jeff was coming off a low base in this area. In terms of being an open and accountable government, we are, if not the best, one of the best in Australia in terms of capacities for our public servants to speak out. Contracts, tenders and so on, to my knowledge, are already on the net. Our Auditor-General already has a full range of powers. The Auditor-General has not indicated any concerns to me. Our FOI is the best in Australia. There is no gag on public servants. I think Mr Kennett was probably trying to emulate the ACT.

**MR KAINE**: I have a supplementary question. I take it, in view of the brevity of the response, Mr Speaker, that the Chief Minister's answer to that question was no, she will not. So I have to ask this question: Since Jeff fell on his sword, will the Chief Minister emulate his admirable conduct and offer her resignation too?

**MS CARNELL**: Mr Speaker, the answer to that is no. My answer to the first question was that we already have. I would have to say, Mr Speaker, that if we look at the level of support from the Canberra community for any of us here, it should be Mr Kaine who gives his resignation.

**Mr Kaine**: Well, your deputy and the Speaker had better go at the same time.

**MS CARNELL**: The one person who would not go is me.

## ACTEW

**MR QUINLAN**: My question is to the Treasurer and it relates to the ACTEW merger proposal. Can the Treasurer acquaint the Assembly on his involvement in the review of the report on the proposed merger prepared initially by ABN AMRO? It is clear from remarks by the immediate past Treasurer before she abdicated that the report was prepared at arm's length from the Executive. So, did you have any input into the final version before it was sent off to the New South Wales Government? Do you own all the propositions contained in that report, or did we just send off the raw product to New South Wales without any review, qualification or comment?

**MR HUMPHRIES**: It is a very strange question, Mr Speaker. Are we talking about the joint working party or the earlier work that ABN AMRO did?

**Mr Quinlan**: The joint working party on a merger.

**MR HUMPHRIES**: The joint working party merger document. Well, Mr Speaker, as members are well aware, there was a joint working party. It consisted of four officers, two nominated by the ACT Government and two by the New South Wales Government.

**Mr Quinlan**: How often did they meet?

**Ms Carnell**: Regularly.

**MR HUMPHRIES**: I cannot answer that question. I can take on notice any question about how they operated, whom they spoke to, what research they did, how they prepared their responses and so on. If you want that information I am happy to supply it to you, Mr Quinlan. It was a process undertaken at the behest of both governments to determine fundamental questions about the viability of the merger between ACTEW and Great Southern Energy. It produced its report substantially at arm's length from the Government. I did not have any involvement in that, although I only became Treasurer fairly late in that process of the working party's work, and I received the report and read it with interest.

Of course, the reaction of the New South Wales Government to the proposition is well known to you. That Government particularly had a problem with the political uncertainties that were inherent in the idea of a deal between the ACT and the New South Wales governments which entailed necessarily, on the ACT's part, some oversight and involvement by the ACT Legislative Assembly.

Mr Speaker, we on this side of the house have made it very clear that we believe it is important for government businesses, particularly major businesses such as the Territory owned corporations, particularly ACTEW, to operate in a commercial environment. It is very clear that the commercial environment which they might have been able to operate in was compromised, particularly as a merged entity, given the nature of the involvement which some members of the Assembly believe the Assembly itself ought to have in that process.

My involvement, as I have indicated, was based on my role as the successor of one of the parties that commissioned the report. I read the report with interest. I did not have a particularly large involvement in its formulation, Mr Speaker, and, like other members of the Government, I am disappointed that this major opportunity which was there for the ACT to deal with the unresolved question of ACTEW's future was missed out through matters outside the control of this Government.

**MR QUINLAN**: I want to ask a supplementary question. Given that the immediate past Treasurer assured this Assembly that expressions of interest called in respect of the future of ACTEW would be weighed up against the merger proposal to determine which was best for the Territory, can you inform this Assembly how that weighing up process was conducted, your own involvement in that process, and, in general, the conclusions reached? Surely we did not pass the report straight from the consultants to New South Wales without rigorous evaluation of alternative proposals. Where do we now stand in relation to those expressions of interest?

**MR HUMPHRIES**: Mr Speaker, I think I see the problem with Mr Quinlan's question. He has some confusion about the expression of interest process, which was initiated at much the same time as the joint working party but with a slightly different set of objectives in mind and was designed to offer a possible alternative solution to the problem which the Government has articulated in this place and in the community that relates to ACTEW; namely, we had a particular proposal before us to merge ACTEW and GSE and that proposal went off to a joint working party. At much the same time – I forget the exact sequence - we also initiated a process of seeking expressions of interest from the commercial sector to see who would be interested in commercial arrangements involving ACTEW that might somehow provide a further alternative to the situation that we described ACTEW as being in.

This is about having other strings to your bow. In fact, I think we have had lectures from the Opposition at various stages about not having a fall-back position. You asked us at the time that the ACTEW sale was knocked off, "What is your fall-back position?", if I recall correctly, and I will put that in very cautious terms. I think that is what you said. "Where's your fall-back position?", you asked. Well, our call for expressions of interest was about developing fall-back positions.

**Mr Quinlan**: Was it?

**MR HUMPHRIES**: Yes. Mr Speaker, we have received expressions of interest and they are in the process of being evaluated. It is my desire that the result of that should be put out into the public arena for people to be able to see and to have some information about. I do not think that extends to the full extent of putting on the table in their entirety all the documents that have been presented to the Government, partially on the basis of a confidential proposition, but I do believe that the community deserves the right to see the broad bones of what it is that is being offered by way of those expressions of interest. There was something like 46, I think, different expressions of interest put forward. There was very healthy interest in those sorts of arrangements.

**Ms Carnell**: There were 28.

**MR HUMPHRIES**: There were 28. I stand corrected. Mr Speaker, I think that information will out. Members can evaluate that and decide where they want to go. I have to say that that was not meant to be part of the process of assessing the - - -

**Mr Corbell**: They were going to be weighed up against the merger proposal.

**MR HUMPHRIES**: They will be weighed up against the merger proposal, except that the merger proposal is now dead -I think it is true to say it is now dead - as a result of the action of the New South Wales Government. We would have liked to have had the merger still on the table so that we could talk a bit further about it but the fact is that it is not on the table any longer. The reason it is not on the table is that the New South Wales Government is afraid of what people like you, Mr Quinlan, and others are likely to do with the regulatory regime and the other issues that confronted the way in which ACTEW and a merged GSE was going to operate.

**Mr Quinlan**: So we went to New South Wales with a maybe, did we?

**MR SPEAKER**: Order, please, Mr Quinlan! You have asked a question and you have asked a supplementary question. Mr Humphries is answering.

**MR HUMPHRIES**: If you feel that I have misrepresented the New South Wales Treasurer, Mr Egan, I suggest that you write to him and you table his response. I would be very interested in seeing what he had to say about my comments in this place. If I have misrepresented Mr Egan I would be very happy for you to produce a letter indicating to me how I have done that, but I suspect that Mr Egan would not contradict what I have said in the chamber today. I think it would be good for all of us to be able to just digest what those comments from New South Wales were and then look with fresh eyes at the expressions of interests process and see whether that produces any viable commercial opportunities for ACTEW to explore.

Mr Speaker, we are continuing to work through the issues here. We are continuing to explore possibilities. We have now got on the table the third tranche, if you like, of our endeavours to find a secure future for ACTEW. Well, we are going to put those expressions of interest on the table very shortly. Where is the Opposition's solution to

that problem? In fact, where is the Opposition's recognition that there is a problem in the first place? How are you going to deal with the problems, which have been very clearly put on the table, of ACTEW's increasingly fragile position with respect to competition in a much more dynamic electricity retail market?

**Mr Quinlan**: I would address that problem and not try to flog the whole lot of it.

**MR SPEAKER**: Order, please! Mr Quinlan, if you wish to debate this matter you had better put something on the notice paper.

**MR HUMPHRIES**: I greatly value Mr Quinlan's contribution but I think the community deserves more than interjections saying what the Opposition is going to do about the problem with ACTEW. So far it has just been saying, "We will sit on the sidelines and whatever you say we are likely to say 'No, we do not like it but we are not going to give you too many clues about what we will do as an alternative' ".

**Mr Stanhope**: We won't sell it.

**Ms Carnell**: Nor will we.

**MR SPEAKER**: Order!

**Mr Stanhope**: You won't now. You tried that and you lost.

**MR SPEAKER**: Would you all be quiet, please!

**MR HUMPHRIES**: It is very easy to say, "We are not going to do this". What are you going to do? What is the positive you are going to bring to this debate? We heard that the Opposition was opposed to ripping too much money out of ACTEW the other day; that the idea of repatriating too much money from ACTEW would be a terrible thing to do. Yet they supported recommendations from the Australia Institute when they were put forward in the context of the ACTEW debate to take $500m odd out of ACTEW.

**Mr Quinlan**: Over what period?

**MR SPEAKER**: Order, please! This is not twenty questions.

**MR HUMPHRIES**: We are exploring alternatives. We want to find a way forward for ACTEW, and I look forward to the Opposition taking some constructive role in that debate, not just criticising everything the Government does.

## Federal Golf Club Lease

**MR CORBELL**: Mr Speaker, my question is to the Minister for Urban Services. During the debate in the Assembly last Thursday on the disallowance of variation No. 94 to the Territory Plan relating to the Federal Golf Club housing proposal, the Minister said:

> …I have received a letter from the club this morning saying that if the Assembly approves the draft variation to the Territory Plan No. 94 they will take whatever action is necessary to facilitate the requirement to transfer the land to the ACT ...

Minister, the land you referred to last Thursday was the land identified as being 9.2 hectares of environmentally significant land on the golf club's lease. Minister, what action are you now taking to ensure that this land is incorporated in the Canberra Nature Park as recommended by the Standing Committee on Urban Services' report into this issue and offered by the club last Thursday, or what action are you taking to ensure that the land is appropriately protected?

**MR SMYTH**: Mr Speaker, yet again we get half the story. What about the rest of the quote? I made it quite clear that the generous offer of the club was tied to the application to vary the Territory Plan being successful. The club is quite within their rights to keep that land within their lease and they will be asked to manage it accordingly.

**MR CORBELL**: I have a supplementary question. Minister, if it was all right for the Government to agree to have the land returned to Canberra Nature Park last Thursday during the debate on the golf club disallowance, why have you not pursued the matter further, or was this offer simply an attempt to ensure the passage of the Territory Plan variation?

**MR SMYTH**: Mr Speaker, it was an offer from the club. It was in a letter from the club that I received that morning. They said that to allay the fear of residents they would return that land to secure the variation. Mr Speaker, given the failure of the draft variation, obviously the club will have to reassess all their needs. I look forward to seeing what the club comes up with.

## SACS Award

**MR WOOD**: Mr Speaker, my question is to Mr Moore and concerns all his departmental activity. It refers to the ongoing difficulties experienced by community agencies in meeting the demands of the SACS award. Are you satisfied that these agencies have been given appropriate supplementation over quite a period and into the future to allow them to cover the increased salary bill and maintain their high level of service? What have you provided in broad terms?

**MR MOORE**: The Department of Health, in negotiating with community groups, has looked at the way they are delivering services. Where supplementation has been needed in terms of the SACS award, that has been provided; but it has not been done in the sense of saying, "Here is the SACS award money". It has been done in the sense of saying, "What are the needs? What are the general costs associated with delivering the services? What efficiencies can be made that will help you with the SACS award and what contribution is required from government to assist?".

In general, Mr Speaker, that has been very well received by the community sector. Quite a number of groups within the community sector have spoken to me about the very positive negotiations they have had with the department, and I must say I am very

pleased about that. No doubt there will be some community groups who feel that they could use extra funds. I imagine, Mr Wood, that that will always be the case. It was certainly the case under the Labor Government. It certainly was the case when the current Chief Minister was the Health Minister, and I imagine it is the case in every jurisdiction in Australia.

Of course we would like to be able to have more funding to each of those groups, but we do it in terms of setting our priorities within the budget context. We have taken SACS seriously. We have negotiated with those groups and have tried to make sure we meet those needs. Mr Wood, if you are aware of a particular group that is having difficulties in this area, I would be very happy to respond to an approach from you in a positive way.

**MR WOOD**: I thank the Minister for that response. Could I take it from his answer that some organisations have been told that they will not receive supplementary funding and that they must fund the increases in salary out of their current budget by reducing staff, the hours worked and the level of their service?

**MR MOORE**: It is possible that that is the case in specific areas where the department feels that, in terms of its purchasing priorities that are set by government, we do not wish to add extra funding. The method of effectively reducing the funding of that area is to not supplement SACS. They still receive the same amount of money but do not get that extra supplementation. That is quite possible, but it is not a case of saying, "You are not entitled to that supplementation" in such a straightforward way as I think your question implies.

When it comes to the SACS award, the department has been very thorough in negotiating with each and every agency about what is the best way to do that. In fact it has also used ACTCOSS to facilitate negotiation and understanding of the best way to deal with the SACS award, as I understand it. Mr Wood, it seems to me that there are always community groups who seek to have further funding, and almost always there is a very good reason why they are asking for that funding. One of the difficult things for government, as you would well know, is to set the priorities and deliver where it is needed most.

## Grassy Woodlands

**MS TUCKER**: My question is to the Minister for Urban Services. Minister, in question time yesterday, in response to my question about the endangered state of grassy woodlands, you said that the ACT has 32 per cent of its original yellow box and red gum community still in existence. You then said that of that some 91 per cent is either in reserve or off reserve in areas where they should be reasonably safe. Could you tell me where you got those figures from, because in press statements made by your predecessor when grassy woodlands were declared an endangered ecological community in June 1997, and in the recommendation put forward by the Flora and Fauna Committee for its declaration, it is clearly stated that only 3 to 4 per cent of the original woodland still remains in the ACT? Also, in the action plan for grassy woodlands you released at lunchtime, it is stated that only 57 per cent of the woodland is protected in nature reserves and open space from the direct threat of clearing, and 33 per cent of the

woodland is on rural land or broadacre land which presents opportunities for off reserve conservation but is not protected yet. Could you please clarify for the Assembly what the figures actually are and where you got them from?

**MR SYMTH**: Mr Speaker, before I quoted those figures in this place I think I said I did not have with me the exact figures as written down. My memory of it is that they were the figures. I will confirm those for Ms Tucker.

**MS TUCKER**: So you are going to correct a mislead if there was one? You will get back to the Assembly? Thank you. My supplementary question is this: Of the 19 per cent of grassy woodlands that are on rural land and the 14 per cent of woodlands on broadacre land, how much of this area will be protected under your proposed land management agreements? Are you actually guaranteeing that the full 91 per cent will be protected, because you are giving us reassurances here?

**MR SMYTH**: Mr Speaker, I did not bring a yellow box and red gum action plan down with me so I do not have the figures in front of me. The 91 per cent is the figure that is there. The Government will be endeavouring to protect what we have left.

## Torrens Petrol Station Site

**MR HARGREAVES**: Mr Speaker, my question is to the Minister for Urban Services. Minister, my office has received more complaints from residents at Torrens concerned about the Torrens petrol station site. Used syringes have been found on the site, kids have been seen skateboarding inside the fenced area, and apparently in the early hours of Sunday, 10 October the site caught fire. Clearly the site represents not only a safety risk but also an environmental problem to the residents of Torrens. On 22 April this year Mr Osborne asked you a question about the site and in that answer you said that *A*mpol, on 9 April 1999, had lodged an application to vary the lease purpose clause to allow the construction of eight townhouses. Has this application been approved?

**MR SMYTH**: Mr Speaker, when I gave that answer that was the information that I had at hand. Mr Hargreaves is right. There has been an incident there recently and a fire did occur. I guess that like any open space or unused space in the Territory there is always the prospect that syringes may be found there. Some of that problem might be addressed if we had a safe injecting place where people could go if they feel inclined to do that and they could dispose of their syringes appropriately. As to the progress of the application, I will have to get an answer for the member and get back to him.

**MR HARGREAVES**: I have a supplementary question. Minister, if you do not know whether this application has been approved, I point out that it has been lodged since April. That is an awful long time ago. When will you enforce your Government's policy relating to service station sites and when do you expect the development to take place? Why has it taken so long? You can reply to those questions by taking them on notice if you like.

**MR SMYTH**: Mr Speaker, a huge number of applications go through the planning office and I can assure you that very few are run past me. There is a process in place by which these applications are approved when they are appropriate or rejected when they are not appropriate and to discuss them with the applicants when that is suitable. All I can do is seek an answer to the question. Unfortunately, we are not on line here. Perhaps we should be on line here in the Assembly so that I can access the PALM data base at the convenience of the member. I will get an answer to his question.

## Protection of Endangered Species

**MR HIRD**: Mr Speaker, my question is to the popular Minister for Urban Services, Brendan Smyth. Minister, can you explain to the parliament why the ACT leads the nation in the protection of endangered species, and I am not referring to Mr Berry? What part do action plans for threatened species play in this process?

**MR SMYTH**: Mr Speaker, I thank the member for his question. It is a very appropriate and pertinent question, given the day. Today is, I think, an outstanding day for the environment in the ACT. This morning I was able to launch Aquafest, which coincides with National Water Week, and then at lunchtime I released the final 11 action plans and announced that the Government would put a further 100 hectares of yellow box and red gum grassy woodland into reserves.

The Government is committed to contributing to a national reserve system that is comprehensive, adequate and representative, and ensuring the protection of significant species in our region. I noticed that Mr Corbell, in his usual way, said at the end of my answer, "Oh, he doesn't care". The Government, using an appropriate process - this is something they do not like and Ms Tucker does not like when she does not get what she wants - has now determined that we will add to the already existing 53 per cent of the ACT that is held in reserve in the Namadgi National Park, the Tidbinbilla Nature Reserve, the Canberra Nature Park, and the Murrumbidgee and Molonglo River corridors. Mr Speaker, this is a government that acts on the environment; this is a government that leads the rest of Australia, all jurisdictions, in terms of protecting the most vulnerable and threatened parts of our environment.

Through the Flora and Fauna Committee, Mr Speaker, it has been recommended that some 24 species are at risk. Under the Act and across Australia, where you have a threatened species, you must come up with an action plan. Which is the only jurisdiction that has action plans now in place for all its threatened species? The ACT. This Government, Mr Speaker, this jurisdiction, is leading the way.

The addition of 100 hectares of high-quality yellow box and red gum grassy woodlands to the Canberra Nature Park which we have announced today again adds to our reserve system. How did this occur? It occurred after extensive surveys and in consultation with the Government's expert Flora and Fauna Committee under the leadership of the Conservator of Flora and Fauna, in conjunction with the community.

Mr Speaker, the history of the process is quite interesting. The history is that in 1995 we set aside three reserves in Gungahlin, the Mulanggari, Gungaderra and Crace Reserves. These cover some 500 hectares of native grassland and other habitat for the striped

legless lizard, Mr Speaker. That was no simple feat because the previous Minister, to his credit, moved an entire town centre. He had to redevelop the planning structure that allowed the development of Gungahlin and he saved these 500 hectares. But, Mr Speaker, they did it. Why did they do it? To protect endangered species living in this habitat. Then we get from Mr Corbell: "They don't care. They don't care. They don't care". That is all we ever hear from Mr Corbell.

What happened in 1997, Mr Speaker? In 1997, when we were developing Dunlop, the Dunlop Reserve was established to protect an additional 30 hectares of native grassland zoned for development. This required the renegotiation of a land development lease. Who did it, Mr Speaker? This Government did it, Mr Speaker. Who cares for the environment in this place and acts on it, not just mouth simple platitudes? This Government, Mr Speaker.

What do we have in 1999, Mr Speaker, following on from the process that delivered in 1997 and in 1995? We now have the same process in 1999, Mr Speaker, delivering a further 100 hectares of yellow box and red gum grassy woodlands to protect the environment, to protect our biodiversity. What are we doing this at the expense of? Residential land and land for other development purpose. Why are we doing this, Mr Speaker? One, because it is important and, two, because we have a process in place that allows us to establish which parcels of land are necessary to be saved for our biodiversity and which ones we can reasonably develop.

Mr Speaker, the other announcement today is that the final 11 action plans have now been gazetted, bringing the total to 24. We have 24 actions plans that protect the ACT's endangered species. Why do we do this? Because we care. We are a caring, clever government. We are caring because we want to protect our image as the bush capital. We are clever because we have put in place a process that allows us to progress these matters in a considered fashion so that all issues are addressed. Mr Speaker, we now have action plans for 22 species and two ecological communities declared as threatened with extinction under the Nature Conservation Act 1980. This makes the ACT the first jurisdiction to complete conservation plans for all species and ecological communities that are declared threatened with extinction in the area.

Mr Speaker, the ACT Government was the first jurisdiction to complete its nature conservation strategy. This achievement clearly demonstrates the Carnell Government's commitment to the objectives and actions agreed on by all Australian governments in the national strategy for conservation of Australia's biological diversity. The Carnell Government is the first to deliver on this across the nation. The Carnell Government has supported extensive surveys of threatened species and ecological communities across the ACT, particularly in response to development pressures.

Since 1995 we have undertaken major surveys in the ACT for the striped legless lizard and the grassland earless dragon. We have undertaken surveys of the natural temperate grassland, yellow box and red gum grassy woodland, the golden sun moth, Macquarie perch, trout cod, two-spined blackfish and the Murray cray - and all we get from Mr Corbell is: "They don't care. They don't care. They don't care". Mr Speaker, this Government does care. More than caring, we get out there and make the hard decisions by following a process clearly set out in legislation. We achieve things.

Mr Speaker, we are also an active participant in a regional approach to threatened species surveys. The Government is cooperating with the Housing Industry Association of the ACT, the New South Wales National Parks and Wildlife Service, the Queanbeyan City Council and local shires to identify threatened species and ecological communities in the Southern Tablelands.

Mr Speaker, I am absolutely delighted to announce the inclusion of the 100 hectares of woodlands, thus securing them from development. We will make significant additions to the Territory's nature conservation estate that Canberrans hold so dear by doing this. We are the bush capital, and we know that.

The additional 100 hectares of high-quality yellow box and red gum grassland will be protected. That land is spread across the ACT. Up near Mulligans Flat Reserve, in Gungahlin, we will add a further 28 hectares. At Mount Mugga, near east O'Malley, we will add some 42 hectares and look at an additional 20 hectares, depending on development needs. At Tuggeranong Hill in Conder we will add another 12 hectares, and at Mount Majura a further 18 hectares.

Some members in this place have raised questions about Conder and the woodlands and the grasslands there. The process that we have followed is the process that over the last five years has added Mulanggari, Gungaderra, Crace, Dunlop, Conder, O'Malley, Mount Majura and Mulligans Flat to our reserve system. The same process revealed that it would be appropriate to develop a smaller part of Conder 4A. As part of that planning exercise for Conder, Mr Speaker, four hectares of the woodlands that exist on the steeper slopes of Conder 4A will not be developed but will be managed as part of Canberra Nature Park. A strip of land running through Conder 4A from the floodway to the Tuggeranong Hill Nature Reserve will be set aside for public access and environmental connectivity.

We have already developed and put considerable physical and social infrastructure into north Lanyon and there is a definite need to provide access for the residents of Templestowe Avenue and Charterisville Avenue to Tom Roberts Avenue. Construction of a further bridge would be at direct cost to the Government and it would not be offset by revenue from land sales. Mr Speaker, we should develop Conder 4A but, by the same token, we acknowledge that there are areas there that really are worthy of retention. The same process that said we should go ahead and develop Conder 4A is the process that says that at Eaglemont Retreat there is an area bordered by two stable gulleys that should be preserved.

Mr Speaker, the Government is serious about conservation. It is those opposite who are not serious about conservation when they deny the process that delivers. This process has delivered many reserves and many extra hectares into the reserve system. When those opposite do not get what they want, somehow the process is flawed. When the judge is on their side he is right. When the judge is not on their side he is wrong. They cannot have it that way, Mr Speaker. We have a process in place so that where appropriate we will deliver. We will save biological and ecological communities that are worthy of saving, but we will also allow this city to progress and become the great city that it should be.

**MR HIRD**: Mr Speaker, I have a supplementary question. Minister, that is music to my ears.

**MR SPEAKER**: No preamble.

**MR HIRD**: He would have to be an environmental saint.

**Mr Quinlan**: Is that the question?

**Ms Carnell**: No, it is out of order.

## Security Cameras

**MR OSBORNE**: My question is to the Attorney-General. Minister, yesterday I drew your attention to the number of security cameras currently operating in Canberra and commented that perhaps quite a few of them were installed by either Commonwealth agencies or the private sector. As a clarification, 10 cameras are in use at various police stations in Canberra, which are Commonwealth agencies, and 69 are installed at the Canberra Casino, a private company which operates under the jurisdiction of the Casino Surveillance Authority. Incidentally, this number is only two more than were operating three years ago. The real growth, around 75 per cent, is in the remaining 280 or so cameras which have been installed and which are operated by ACT government agencies. You also seemed unclear, Minister, as to whether or not the signs which inform the public that they are under surveillance were government policy. I can assure you from your own words, from your answer to question on notice No. 187, that these signs are indeed government policy and I will quote:

> When this set of questions was put in 1996, some government agencies advised that they did not have signs erected alerting the public to the use of CCTV in the area. All agencies were advised at that time of the Government policy that such signs should be erected, and the relevant agencies agreed that they would respond accordingly.

I note, Mr Humphries, that yesterday you could not give us an assurance, without first checking, that in accordance with government policy all cameras currently in operation are accompanied with signs. However, you did not go on to say that you would check that each government agency site which operated cameras had signs and then provide the Assembly with an assurance that your policy was faithfully being followed. If you have not already done them, will you agree to undertake the necessary checks and then give the Assembly an assurance that all the signs are in place? There is one question there, Mr Speaker.

**MR HUMPHRIES**: Mr Speaker, I will confess to the Assembly that when I gave the answer to Mr Osborne's question on notice about what cameras were out there, where they were, who operated them, whether there was signage associated with them and so on, I was quite surprised by the very long list. It certainly surprised me that there were so many out there that had been installed and, moreover, installed by government. As

I said yesterday, I am sure that that list is relatively short compared with the number of cameras operating in the private sector. So there is no doubt that this is a heavily surveyed society, as could be said of most other larger urban areas in Australia.

Mr Speaker, without knowing the extent of the commitment I would make by saying this, I would be happy in principle to give the assurance that Mr Osborne has sought. I think it is important that signage should be appropriately placed for cameras. I think, from memory, that there is signage outside this building, Mr Speaker, in relation to the cameras that work here. It is not in huge letters a metre wide, but it is certainly enough for people to know that they are there, notwithstanding the fact that some people who come here, late at night for example, do not always see them when they do things outside the windows of the Assembly, as was the case the other night. However, it does need to be addressed.

I should make it clear, Mr Speaker, that there has been a program to put cameras in various public places for quite a few years. It is interesting that this issue of appropriate signage and appropriate controls has only arisen since this Government came to office and we started to talk about these issues. In fact, cameras have been installed for a much longer period, including by the former Government which now professes concern about the use of those cameras. Many of those cameras, in fact most of those cameras, were unsigned - that is, there was not any signage about them - and they were installed without any sorts of protocols or advice about how they should operate, who should operate them, and so on.

Mr Osborne has raised an issue of genuine concern that we need to address. As I said, I will be producing in a little while the Government's proposed protocols for the operation of cameras in Civic. I hope that I can deliver on the commitments that Mr Osborne sought from me in order to make sure that the community is at least aware of the implications of doing things in certain public places in this city and is able to act accordingly.

## Year 12 Certificates

**MR BERRY**: My question is to the Minister for Education, the one who has control of those poor bursars.

**MR SPEAKER**: Is that your question?

**MR BERRY**: No, that was not the question. Is the Minister completely satisfied that the certification of Year 12 students will go through without incident, given the problems with the MAZE administration? These problems led to delays earlier this year, when results were not ready until the second or third week of the next semester. Is it not a fact that the schools are diverting teaching and administration resources - that is, teachers and school assistants -away from the classroom to attempt to ensure the viability of the ailing system?

**MR STEFANIAK**: I thank the member for the question. I think I indicated on the last occasion that in any new system there are always some bugs that have to be ironed out. Whilst some schools, I think, continued to manage to do the certificates on times, others

were about one or so weeks late. It might have been two weeks, Mr Berry. I think some did it in the third term. As far as I can tell though, Mr Berry, priority is given to it, and I think that is essential in terms of the importance of the Year 12 Certificate. Improvements have now occurred.

I suppose it is impossible with anything technical to give a 100 per cent cast iron guarantee that nothing will go wrong. I think all that reasonably could be expected to be done has been done. I understand that took place some time ago and I certainly hope we will not see any more problems. It is absolutely essential that the crucial Year 12 systems are up-to-date and running effectively for that cohort of students.

**MR BERRY**: I have a supplementary question. Minister, will you give this Assembly an assurance that the MAZE system is adequately staffed to the extent that there are adequate backup staff to manage and control the system in order to prevent any failure in relation to the production of Year 12 Certificates this year?

**MR STEFANIAK**: Mr Berry, it is impossible, I think, to guarantee anything absolutely 100 per cent in case something goes wrong. Murphy's law says that if you do that something may happen which you would never expect or realistically would be able to expect. So I put that proviso there. As far as I am aware, Mr Berry, everything that the department could reasonably do in terms of getting that system up and running properly has been done. Everyone in the department realises the importance of having a system that will do what is required for our Year 12 students.

## Tyre Deflation Devices

**MR RUGENDYKE**: Mr Speaker, I apologise for arriving late for question time.

**MR SPEAKER**: That is all right. I wish a few others were, Mr Rugendyke, from time to time.

**MR RUGENDYKE**: My question is to Mr Humphries, the Minister for Justice and Community Safety. Minister, I understand that earlier this year the Government purchased a number of tyre deflation devices, otherwise known as road spikes, for the Australian Federal Police. I am told that the cost of these devices was more than $20,000. I understand that this decision was taken on advice in order to provide police with another avenue to stop high speed chases in our streets. I am also told that the devices were purchased and delivered to the AFP in July this year, about four months ago. Minister, is it true that the road spikes are sitting at the Weston complex and are not deployed to patrols? Why has there been no training of officers in the use of these devices?

**MR HUMPHRIES**: Mr Speaker, I thank Mr Rugendyke for that question. Yes, it is true that the devices have been available since about the time of year that he mentioned and that they have not yet been deployed. That matter came to my attention a couple of weeks ago and I have to make it quite clear to the house that I was quite angry about the fact that that was the case. I think it was inconsistent with commitments the Government had given to use the devices.

I have spoken to the Chief Police Officer and indicated that I think it is unacceptable that the Government should have contributed in some way towards the cost of those devices and not have them deployed. In the Chief Police Officer's defence, he indicated that the AFP had obtained legal advice concerning the power of police to use those devices. I indicated that in my view there was no issue about legal powers. There is an issue about legal powers to use a tyre deflation device, and there is the same issue about using a set of handcuffs, or a baton, or a torch, or any other implement that a police officer uses to carry out his or her duty.

So, Mr Speaker, I have indicated that I want those devices to be on the streets in the hands of properly trained officers as soon as possible, and I am looking forward now to advice from the Chief Police Officer as to when exactly that is going to be.

**Ms Carnell**: Possibly just in the carpark outside, Mr Humphries. That would be very good.

**MR HUMPHRIES**: That is an idea, yes.

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

## Safe Injecting Room

**MR MOORE**: Mr Speaker, I have a further answer in reply to Mr Rugendyke's question when I was not here yesterday with regard to the budget forecasts for the first and second year of a supervised injecting facility. The proposed model for a supervised injecting place is costed on the basis that it is a health care facility, Mr Rugendyke.

**MR SPEAKER**: Order! Mr Rugendyke, excuse me, but I think Mr Moore is giving you an answer.

**Mr Rugendyke**: I am sorry; I am paying attention.

**MR MOORE**: This is for your information. The costing for a supervised injecting place is on the basis that it is a health care facility staffed by qualified health care workers. Education, rehabilitation and counselling are also to be provided, so that pushes up the cost on something like this. It is more than just an area where someone can go and shoot-up. They can already do that, and they do do it in toilets and so forth around Canberra.

As the Chief Minister stated yesterday, the cost of operating the facility in 1999-2000 is estimated to be $500,000, of which $250,000 is establishment costs and about $250,000 is operational costs, but that will depend on when we begin it. The cost of operating the facility in a full year is projected to be $725,000. In the following year, in addition to the operating costs, the Government will allow for a full evaluation of the trial.

**Mr Kaine**: Mr Speaker, I want to raise a point of order under standing order 117(h). It flows from what happened yesterday when you said you would take a matter on notice and come back with a response. I do not know whether you have had time to do that or not. The question seemed to hinge on whether or not my question had been asked

before. In considering the matter, Mr Speaker, I would refer your attention to 117(h), which does not deal with whether a question has been asked before but whether it has been fully answered, and I emphasise the words "fully answered" which appear in the standing order.

It raises the question of whether a Minister, having been asked a question, can get up and say what he or she likes and not answer the question, and then sit down and say, "But the question has been fully answered". That is one point. I am referring to the *Hansard* where the Chief Minister claimed the question was out of order and you said you would check to see whether the question had been asked. I submit that that is not the question that you should be looking at, but the main point is: Have you had an opportunity yet to look at that?

**MR SPEAKER**: I will also take on board what you have just said, Mr Kaine. The answer to your question is no, I have not yet, but I promise to get back to you no later than tomorrow.

## Family Services Database

**MR STEFANIAK**: Last week I took a question on notice from Mr Osborne. The question was: "Is it true that the family services branch is establishing a database of foster carers? What consultation was undertaken with foster carers? Who will have access and what privacy measures are being taken?".

Mr Speaker, a new computerised client database will be introduced into Family Services before the end of this year. This will replace the existing database which is not year 2000 compliant. Currently, substitute care services in Family Services holds a paper file record for each carer family in the Family Services foster care program. These contain personal details, assessment and review reports, and file notes of contacts with the support worker. The files are accessed by foster care staff and foster care managers only, as needed, and are stored in a secure environment. These files will not be entered onto the new database. The only personal information relating to foster carers on the database will be the name of the foster carer and the placement address on the child's file. This is secured to Family Services staff only. The Foster Carers Association and the agencies providing foster care will be briefed on this matter at their next regular meeting with Family Services in November.

## Torrens Petrol Station Site

**MR SMYTH**: Mr Speaker, I have two additional pieces of information. The first is for Mr Hargreaves and relates to the block at Torrens. The application was approved with conditions on 2 May 1999 and amended plans were required. It has been assessed that no change of use charge is payable. The proponent has been given a draft new lease and is considering this lease at the moment. If they accept that lease they will surrender the old lease and register the new one. The lease is for the purpose of building eight single residential units.

## Grassy Woodlands

**MR SMYTH:** For the information of Ms Tucker, I believed it was 32 per cent. Originally we had 32,000 hectares of yellow box and red gum in the ACT. There are approximately 8,000 remaining. So, clearly, it is not 32 per cent but in fact 25 per cent of the yellow box and red gum woodland community still in existence in the ACT.

## PUBLIC SECTOR MANAGEMENT ACT - EXECUTIVE CONTRACTS
## Papers and Ministerial Statement

**MS CARNELL** (Chief Minister): Mr Speaker, I present, for the information of members and pursuant to sections 31A and 79 of the Public Sector Management Act 1994, copies of short-term contracts made with David Ellwood and Desmond McKee and schedule D variations made with Irene McKinnon, Allan Schmidt, Hugo Harmstorf. Mr Speaker, I ask for leave to make a short statement with regard to these contracts.

Leave granted.

**MS CARNELL**: Mr Speaker, the short statement is as it is always. Could members please take the information that is provided in these contracts in the appropriate confidential manner as the Assembly always has?

## GAMING MACHINE ACT - COMMISSIONER FOR A.C.T. REVENUE SECOND REPORT
## Paper

**MR HUMPHRIES** (Treasurer, Attorney-General and Minister for Justice and Community Safety) (3.29): Mr Speaker, for the information of members and pursuant to section 54D of the Gaming Machine Act 1987, I present the second report by the Commissioner for ACT Revenue concerning the contributions made by gaming machine licensees to charitable or community organisations for the period 1 July 1998 to 30 June 1999. I move:

> That the Assembly takes note of the paper.

Mr Speaker, I have just presented the second report that the ACT Revenue Commissioner has made on the contributions by gaming machine licensees to charitable or community organisations. The report is for the financial year ending the middle of this year. Members will recall that the Government amended the Gaming Machine Act two years ago because of its concern that, despite having a monopoly on modern gaming machines, many clubs were not contributing a fair share of their gaming revenue to the wider community, specifically the charities, the poor and the needy in our community.

The commissioner's report provides information on three main aspects - reporting compliance by licensees, details of contributions declared by licensees, and the extent of community contributions as a share of gaming revenue. Mr Speaker, the report is similar

in structure to last year's report and includes data on both club and hotel contributions. It is largely a statistical report and therefore can be used to make, for the first time, year-to-year comparisons of what is going on in that sector.

Some of the figures on the industry are worth bringing to the attention of members. In the reporting period the club industry had gross gaming machine revenue of $147m, an increase of nearly $21m on the previous financial year, 1997-98. After tax and an allowance of 15 per cent of gross gaming machine revenue for operating costs, the net gaming machine revenue is estimated at $92.6m - that is, $92.6m net profit available to the clubs to provide services to members and to the community. The majority of it, $80.3m out of $92.6m, remained in club operations, while $12.3m was reported to the Commissioner for ACT Revenue as community contributions.

Breaking that figure down further, of the reported $12.3m, contributions that were directed to associated organisations, infrastructure assets and political and union organisations totalled $7.7m. These contributions are not donations to the wider community. They are contributions to matters or organisations closely associated with individual clubs and their membership. That leaves $4.6m in cash or in kind that was donated for the benefit of the wider ACT community - that is, outside the club membership base. That $4.6m comprised donations to sport, $2m; donations to charity, $1.34m; in-kind donations, $581,000; donations to non-profit organisations, $575,000; and the use of club premises by the public at no charge, $112,000.

From a net profit of $92.6m, after tax and after reasonable overheads, the club industry gave only $1.34m to charitable organisations and activities. This equates to 1.45 per cent of net gaming machine revenue. While this reflects a marked improvement on the 1997-98 contributions, the fact is that this still falls short of what this Government believes a reasonable level of contributions to the needy and disadvantaged groups in our community should be. Mr Speaker, in making these comments, I do not in any way denigrate the fine work done by many clubs in this community to help many community organisations. There are outstanding contributions made by the club industry in this city.

However, even if you include donations to sport, in-kind donations and use of club premises - if you put all those things into the one basket - just $4.6m for charitable organisations and activities out of $92.6m is, at its most charitable, a very low figure. I strongly believe that many clubs still have the capacity to contribute more to charity and, given their level of profits, this certainly can be achieved without any need for reductions on the current level of contributions to sport and other non-profit activities.

The Government tabled in the Assembly in May this year a further amendment to the Gaming Machine Act. The amendment would require a mandatory minimum level of contributions to be made to the wider community - 3 per cent of gaming machine revenue to go to charity or charitable purposes and 2 per cent of net gaming machine revenue to go to other activities or organisations, such as sport and the arts, to enhance the social fabric of our community.

The Government has to defer debate on the amendment Bill, Mr Speaker, because it cannot get sufficient support in this Assembly to have the Bill passed. I am astonished that the stumbling block is the 3 per cent of net gaming machine revenue to go to charity

and for charitable purposes. We have heard questions in the last two days in this place about the impact on community organisations of the SACS award. I have little doubt that organisations which were to benefit from the proposed 3 per cent of net gaming machine revenue would find the problems occasioned by the SACS award increase much easier to manage were that 3 per cent to be available to them as proposed in the Government's Bill.

Should the Bill be passed, the club industry as a whole needs to contribute, based on 1998-99 figures, about $2.78m to charitable groups out of its $92.6m profit. I ask members to go back and look at that figure. We are talking about clubs taking out of their $92.6m worth of profit just $2.78m for charity. Are members seriously suggesting that the club industry in this town cannot afford contributions of that order, particularly when you work out that we are going to exclude very small clubs from the need to be in that arrangement? Do they seriously believe that $2.78m out of $92.6m is too tall an order? I do not think anyone in this place seriously takes that view, but I have to ask those opposite who have opposed this legislation where their sense of social justice is.

Mr Speaker, the report I have just tabled contains comprehensive data which will be useful to Assembly members and the ACT public in the ongoing debate on government policy with respect to gaming machines and related matters. I commend the report to the Assembly and hope that we can return to the debate on the Gaming Machine (Amendment) Bill and consider the implications that would flow to the broader community if that Bill were to pass.

**MR QUINLAN** (3.37): Mr Speaker, in the first instance, I would like to refer to a process that I find disturbing or astonishing. This report was issued to the press of this town yesterday, with an apparent embargo on the reporter who received it from seeking any comment from anybody else.

**Mr Humphries**: You would never do that, would you?

**MR QUINLAN**: Actually, Mr Humphries, I would not. It strikes me as the action of an increasingly desperate government that does not wish to have a balanced comment. This is supposedly open government, and you take this report down to the reporter and you place an embargo on comment on it. You give her the spin that the Government wants on it.

**Mr Moore**: And you do not spin at all?

**MR QUINLAN**: Let us have equal and opposite spins, shall we, so that we have balanced open public debate. This is not a process designed for open government. It is, in fact, the very antithesis of open government. I cannot think of any better term than "weak". To her credit, the reporter from the *Canberra Times* did not quote comments from the Government, but certainly the Government's spin on this report comes through in the article in the *Canberra Times* today. That is an indication of the standards that this Government is prepared to operate under.

As Mr Humphries quite correctly pointed out, this report is structured as last year's report was, despite the fact that points were clearly made that last year's report could well mislead people or could well provide people with a misinterpretation of exactly what clubs are providing within the community. Let me refer to some of the content. Let me start with contributions to non-profit organisations that are not included as charities. There is a huge list of them. Beneficiaries have been ACT Emergency Services, ACT Tourism, a myriad of schools, the Canberra Hospital, the Canberra Symphony Orchestra, Canberra Tourism, the Dickson Festival, the Greek community, the Croatian Folkloric Group, the Lions Club - a service club, as we all know - the Rats of Tobruk, Rostrum, Rotary, the RSPCA, more schools, National Council of Women, Neighbourhood Watch, Skyfire, Tuggeranong Community Festival, Polish Scouts Association, the Woden Special School, War Memorial guides and Weston Creek Community Centre. These are not charitable contributions.

According to the speech that the Treasurer just made, donations to sport amounted to $2m. A further $2.3m in contributions went to category 6, associated organisations. What are they? They are sporting organisations associated with clubs. They are separate bodies from clubs only to satisfy the needs of banks and insurance companies. Then we have the further criticism that says, "The clubs applied it to infrastructure". Guess what some of the infrastructure is. This category includes bowling greens and Wanniassa Oval. The Government used to maintain Wanniassa Oval. Now the Tuggeranong Valley Rugby Union Club maintains it. The burden is off government. Is that a contribution to a sporting facility in the ACT? No. That is a bad thing. That is selfish. It is a contribution to infrastructure. Ainslie Football Club have totally refurbished Ainslie football ground and now maintain it as a facility. Do they use it exclusively? No, they do not. They provide it for other sports.

This document is a distortion of what clubs contribute in this town, and I contend it is a deliberate distortion. We had this debate last year. These points were made last year and could not be refuted then, but we are still doing it. We have an agenda and we are just going to repeat it in the propagandist style until we satisfy our agenda.

The clubs contribute far more than this document claims. The structure of the report does not give the true picture, whether it is the Government's fault or whether it is the clubs' fault. There are a whole raft of bowling clubs that maintain bowling greens. They are maintaining their infrastructure and they are providing sport to people in this town. Is that in the report? No. It does not get a mention; it does not get recognition.

Clubs provide very many people in Canberra with a non-threatening, comfortable environment in which they can spend some leisure time. Clubs are reasonably well appointed, well managed and non-threatening. They are one venue that many people of limited means can attend without inordinate expenditure. If the clubs did not exist, if some of them went out of business, then those people would effectively not have any venues to attend.

The point needs to be made that this side of the house has not argued against contributions to charity. What we have argued against, and will continue to argue against, is this prescriptive formula that you wish to impose, in the Treasurer's own words, to relieve you of the burden of paying expenses such as those under the SACS award. In fact, you just want to up the tax.

**Mr Humphries**: SACS is not our responsibility.

**MR QUINLAN**: You just said it in your speech, Mr Humphries. This report is disinformation in its structure. It is incomplete. It does not contain any recognition of considerable amounts of money that are invested by clubs into sporting facilities that the community use, from junior sport to sport that is provided for retirees and the elderly. If that be the clubs' fault, we will see whether we can wake them up and say, "Let us in fact get stuck into government and make sure that this report contains the costs associated with maintenance of bowling greens, bocce lanes or whatever else is provided for the membership and goes to the heart of the community".

It is easy to pin your flag specifically to charities, but let us not denigrate the contribution that clubs make. Let us not get involved in this process whereby the Government is releasing information underhandedly to the media with an embargo on it. That is pretty weak.

**MS CARNELL** (Chief Minister) (3.47): The level of conflict of interest and the level of hypocrisy in that speech were quite stunning. If I got up in this place and gave the sort of passionate speech that Mr Quinlan just gave about how important pharmacy is to the community, which it is, everyone would say, "Kate, just sit down. You have to go. You are too involved. Go away".

**Mr Stanhope**: Did they donate to the Liberals at the last election? How much did they donate to the last election campaign?

**MR SPEAKER**: Quiet please. You are not going to silence the Chief Minister by constantly interjecting. You will not be here to do so.

**MS CARNELL**: The same thing occurs with those opposite. Mr Quinlan has been heavily involved in the Labor Club, to the extent of actually running it for a little while. Those opposite, as you can see from the information we have here, get significant money from the Labor Club, the tradies clubs and others. I can understand why they are embarrassed. A minute ago when I made the comment about pharmacy, Mr Stanhope interjected, "How much money did pharmacy give to your latest election campaign?". Yes, they did. It is all on the public record. That is the reason those opposite would take me on in two minutes if I were to bring forward legislation or oppose approaches with regard to pharmacy. The Pharmacy Guild does contribute. Yes, I do have a pharmacy. It is all on the public record. Those opposite are very good at that. Guess what? The Labor Club gives money to their election campaign, a damn sight more, about 20 times more, than the Pharmacy Guild gives - no, more than that.

**Mr Stanhope**: Just because we are smarter than you.

**MR SPEAKER**: Order, please! I warned you. I will start warning individuals very shortly, and then I will name them.

**MS CARNELL**: He still does not be quiet, even when you say you will warn him, Mr Speaker.

**Mr Stanhope**: I was exchanging comments with Mr Wood.

**MR SPEAKER**: Well, do not anymore.

**MS CARNELL**: Mr Speaker, you have to come down to the tinny tacks here. Those opposite rely on the Labor Club, the tradies club and so on for their election campaign and for their positions in this place. Nobody doubts that; everybody knows. But they are still willing to get up here with hand on heart and present what I would have to say is simply not factual. As members will see, the contribution by clubs as a percentage of net gaming machine revenue is - - -

**Mr Stanhope**: Which page is that?

**MS CARNELL**: It is attachment 1A. That is the basis of the legislation the Government has on the table. Net gaming machine revenue is revenue after we take off wages, taxes and all of those sorts of expenses. As members can see from the first column, the amount of net gaming machine revenue is $92.619m. That is not gross. Gross is on the next page. It is $146.921m. We allow over $50m to be taken off for expenses and taxes. That is a position agreed with the clubs - what the net gaming machine revenue would actually be.

Mr Speaker, as you can see in that attachment, charities get 1.45 per cent; sport, 2.16 per cent; and non-profit organisations, 0.62 per cent. But we even allow in eligible contributions things like in-kind and public assets. When you look along the columns of eligible contributions, it ain't much. It ain't much when you consider that that $92.6m of net gaming machine revenue, not the $146m of gross gaming machine revenue, happens as a result of the Assembly granting a monopoly on gaming machines. No-one doubts that that is where the money comes from. The clubs admit it. It comes from a monopoly granted by this Assembly and also from a special tax situation granted by this Assembly and by the Federal Government.

This Government is not saying for a moment that clubs should not contribute to all of those wonderful things we are talking about. Of course they should. But remember that the basis of the monopoly is that their profits go back to the community. That is what they say a million times. Even allowing for investment in their premises and so on, surely a damn sight more than less than 5 per cent of their net gaming machine revenue can go to the broader community. It is not a lot to ask. We are not asking for $92m; we are not asking for $45m. We are asking for just over $2m to go to charities. The clubs, after they have paid that $2m, would still have $90m left to go to sport, to go to non-profit organisations, to invest in fields, to invest in infrastructure, to upgrade their premises.

The clubs are using a lot of the money to compete with the private sector. I do not have a problem with them competing with the private sector. I like competition. I think it is great. But we should not allow money that was gained from a monopoly given by this house to be used to compete with the private sector, which does not have the same benefits. I hope that everyone in this place would support competition on a level paying field. That is all we are asking for.

If members opposite have problems with the way this report is put together, please put them in writing. Tell us where you think we should change it. But remember that there is $92.3m of net gaming machine revenue here. How much do we believe should go back to the broader community?

**Mr Berry**: It all goes back.

**MS CARNELL**: All of it. Spot on. All of it, as Mr Berry says. I do not believe - and I know my colleagues do not believe, although Mr Berry probably does - that that money should be used to make alcohol cheaper than it would be otherwise or to artificially subsidise things that are in direct competition with other employers in our community.

**MS TUCKER** (3.55): The report of the Commissioner for ACT Revenue on contributions made by gaming machine licensees to charitable or community organisations is useful in identifying contributions made by clubs, although I do note the concerns raised by Mr Quinlan about how accurately it represents what clubs are donating to and the nature of some of the organisations. I do think it is useful to see this sort of information, and I support some of the concerns raised by Mrs Carnell. This document shows that we are talking about an incredible amount of money. The Government has been trying to address this issue by asking for this sort of information. Whether it is perfect or not, it is a good start. As Mrs Carnell said, Labor could contribute to making the report a more accurate representation if they so desired.

This information has been used as a rationale for the proposals from government to bring about a way of regulating how money is spent. As the Assembly knows, I have been calling on the Government to support a different response, the one that came out of the Select Committee on Gambling and the Productivity Commission's draft report on gambling, recently supported by the AMA. It is also supported by ACTCOSS. We confirmed that today. The proposal is to create a 1.5 per cent levy. The 1.5 per cent is negotiable if we need to have discussion on that, but the proposal is to have a levy on net gaming machine revenue and to link the levy directly to a community benefit fund, administered by the Government's Gambling and Racing Commission, for the purpose of funding gambling specific research, public education, counselling and rehabilitation programs.

I am also recommending, as the select committee did, that a Gambling and Racing Commission Bill establish a community reference group to advise the new commission on funding priorities for the community benefit fund. It is clear that the revenues that the licensed clubs earn from gambling machines come at a cost to some individuals and their families, ACT businesses and the wider community. As I always say, while I am

not wanting to restrict the legitimate pleasure that many individuals get from gambling, I believe it is incumbent on gambling providers to fund programs that ameliorate the problems caused by the provision of such services. Going through this report now, I do not see that they are highly represented in this. One organisation specifically related to gambling research, which I understand is no longer in existence, and Lifeline got some money, but that is it, as far as I can see, although I could be wrong. There might be some I do not recognise as doing that work.

As I said, the proposal for a levy is in line with the recommendation of the Productivity Commission that services awareness promotion and research activities related to problem gambling are likely to be most effectively funded from earmarked levies on all segments of the gambling industry, with the allocation of funds independently administered. That is also in line with our select committee report. The Productivity Commission put it very succinctly. Earmarking gambling revenue for problem-related gambling services, gambling research and community awareness is appropriate since gambling creates the need for such services.

We have a very strong argument for a levy rather than the Government's proposal, but I do support quite a number of the concerns the Government have raised. I also acknowledge Labor's concerns about the accuracy of the way this report is set out. There is obviously room for work there.

Members, particularly the Government, might be interested to know that in New South Wales a similar proposal for regulation of how clubs spend money is under review. There is a view that clubs' contribution schemes need to be regulated and that there need to be clear guidelines for contributions, there needs to be good oversight and there need to be funding protocols. The Government's proposal is very loose. I understand that it is also administratively quite complicated and more complicated than our levy proposal.

The New South Wales model for clubs' expenditure on community projects is currently being reviewed by government, clubs and NCOSS, the New South Wales version of ACTCOSS. They are trying to finetune a scheme which does have some value so that social need and priority projects are funded. It is a regulated scheme. It involves all stakeholders. In its refined incarnation, the New South Wales Department of Community Services may be involved in helping to assess applications at a local and regional level to ensure community need is met.

This Government's current proposal does not take into account problem gambling. In light of current experience in New South Wales, I also think there is a reason for them to reconsider their proposal. We could learn from the experience in New South Wales rather than having to go through the experience ourselves and make the same mistakes.

I think the information in this report is useful. It may well need to be refined, but I still think we need to see the levy idea supported, because it is clearly getting support from inquiries and from major community groups, rather than this loose arrangement. As I said, in New South Wales problems have been indicated already.

Question resolved in the affirmative.

## SCHOOL BURSARS - REPAYMENT OF MONEYS

Debate resumed.

**MS CARNELL** (Chief Minister) (4.02): Mr Temporary Deputy Speaker, section 187AA(1)(d) of the Workplace Relations Act 1996 prohibits an employer from making a payment to an employee in relation to a period when the employee is engaged in industrial action. This provision also prevents an employee from accepting payment from that employer. This morning in this place we put on the table a legal opinion from the Chief Solicitor, Phillip Mitchell, with regard to this motion. The opinion that was given by the Government Solicitor, quite clearly - there is no other way to look at it - is that the provisions of section 187AA are mandatory and non-discretionary. In other words, the Treasury is prohibited from making the payments referred to in the proposed motion.

**Mr Berry**: What about firefighters and nurses?

**MS CARNELL**: Mr Berry can bring forward other issues, but what we have here is a very specific motion requiring the Government to do something that our legal advice says we are unable to do.

**Mr Berry**: I am prepared to amend it along the same lines as the firefighters and nurses.

**MS CARNELL**: There is nothing in this motion about firefighters or nurses. This is about the Government's capacity to pay the bursars for time when they were engaged in industrial action. Mr Temporary Deputy Speaker, section 4(1)(b) defines industrial action as including any ban, limitation or restriction on the performance of work. This morning Mr Berry seemed to make the comment that you should pay people as long as they go to work. In other words, you can go to work in the morning, do nothing, and get paid. This Government does not agree with that view.

**Mr Berry**: That's not what happened with the bursars.

**MS CARNELL**: It is true. Absolutely no bursar was stood down. The bursars walked out.

**Mr Berry**: They had their pay taken off them.

**MS CARNELL**: Sorry; they walked out. Mr Temporary Deputy Speaker, 29 bursars put in place bans on submitting financial statements as part of a long-running pay dispute. They had every right to do that. The bans were part of the core work of a bursar's job. I think Mr Stefaniak this morning showed that. I think he might have tabled that information. In a conference on 26 July 1999, Commissioner Deegan was made aware by the Department of Education and Community Services that they were required, under the Workplace Relations Act 1996, to withhold the bursars' pay. The Industrial

Relations Commission did not object to that in any way. Pay was withheld in accordance with the provisions of the Act, but the department did not just say, "Oops, we're not going to pay you".

What happened was that, in total, 1,890 working hours were lost as a result of the industrial action. It is my understanding that the bursars were sent a letter warning them, and they were warned verbally, that should they proceed with the industrial action their pay would be withheld. That is the absolute right of an employer if an employee does not do the job that they are paid to do. Similarly, the bursars had every right to withhold particular functions or not to perform particular functions. Every opportunity was afforded to the bursars, but they decided, as is their democratic right, to engage in industrial action, with full knowledge of the consequences. They had been told, both verbally and in a letter, at least on my advice, that their pay would be docked if they went ahead with industrial action.

**Mr Berry**: They were doing their core duties.

**MS CARNELL**: Remember, that under section 4(1)(b) - - -

**Mr Berry**: They were doing their core duties.

**MR TEMPORARY DEPUTY SPEAKER** (Mr Hird): Order! Mr Berry, you will have the right of reply at the conclusion of the debate. The Chief Minister has the call.

**MS CARNELL**: Section 4(1)(b) defines industrial action as including any ban, limitation or restriction on the performance of work. Mr Stefaniak put on the record this morning exactly what the Act says, but that is not what the bursars were doing. Heavens, they were outside the Assembly for a very large percentage of the time. Obviously, they were not at work. They were not doing the job that they were paid to do.

I understand that an offer now is on the table for the bursars. It is being considered by employees and the unions, and I think things are progressing well. Mr Berry somehow seemed to say this morning that because the Government had put an offer on the table to the bursars it meant that somehow we were wrong and they were right, and therefore we should pay them.

The initial ambit claim of the bursars is not the offer that has been put on the table. What has happened, as happens most of the time in these sorts of arrangements, is that the bursars put a set of requests or demands on the table. They have been negotiated and a position somewhere in between the two has been reached. That would tend to indicate, on Mr Berry's argument, that the bursars were a bit wrong and the Government was a bit wrong. Or were we both a bit right? Certainly, there is no right or wrong on either side in terms of the offers that are on the table.

I come back to the absolute core issue here. There is legislation and advice from the Government Solicitor that is not equivocal in any way. We have seen enough legal advice in this place to know that lawyers are very capable of equivocal advice. They are very capable of putting "may's" and "might be's" and all sorts of things in legal advice.

That is not the case this time. The legal advice is quite clear that subsection 187AA(1)(d) of the Workplace Relations Act 1996 prohibits an employer from making a payment to an employee in relation to a period when the employee was engaged in industrial action. There is also a provision which prevents an employee from accepting payment from an employer for times when they were not doing their full job. It is that simple.

I would urge Ms Tucker to look at the motion. It says nothing about firefighters or nurses or anybody else. This is about a request for the Government to do something that we have categorical legal advice is unlawful.

Taking into account the hand on heart approach that Mr Berry and others took with regard to the Financial Management Act when I suppose officers in a particular department may have contravened the Financial Management Act unknowingly, that was a capital offence. It was a hanging offence for a government unknowingly to contravene an administrative act, or possibly to contravene an administrative act. Now we have a situation where those opposite are directing the Government to break legislation that is law here in the ACT. The level of hypocrisy, Mr Temporary Deputy Speaker, is quite stunning. It is just that Mr Berry does not like this law; so we only obey laws that we like if we take Mr Berry's approach.

**Mr Berry**: Mr Temporary Deputy Speaker - - -

**MR TEMPORARY DEPUTY SPEAKER**: Order! What is the problem, Mr Berry? Are you taking a point of order?

**Mr Berry**: As a matter of fact I am.

**MR TEMPORARY DEPUTY SPEAKER**: Well, would you address the point of order, sir?

**Mr Berry**: Well, I certainly will as soon as - - -

**MR TEMPORARY DEPUTY SPEAKER**: What is your point of order?

**Mr Berry**: Mr Temporary Deputy Speaker, thank you for the opportunity to raise this point of order. I think the former Speaker has ruled allegations of hypocrisy out of order, and I think the Chief Minister ought to withdraw that.

**MR TEMPORARY DEPUTY SPEAKER**: There is no point of order.

**MS CARNELL**: Mr Temporary Deputy Speaker, the ruling in the past has been that you could not say that a member was hypocritical, but you could say that actions, general actions in this place, were hypocritical. I think that is a fair assessment.

**MR TEMPORARY DEPUTY SPEAKER**: As I understand it, you are correct.

**MS CARNELL**: I come back to this, Mr Temporary Deputy Speaker: How could Ms Tucker, who was really happy to support the Labor Party on allegations and motions in this place on the basis that somebody in my department inadvertently may have contravened a particular bit of the Financial Management Act, turn around now and support this motion which requires the Government to knowingly break the law? It is absolutely remarkable that we could have debated this for more than three minutes in this place. It is absolutely remarkable that those opposite let Mr Berry put this motion on the notice paper because it totally undermines everything that those opposite have said about the whole Financial Management Act issue. It totally undermines their joint credibility and it does show the level of hypocrisy that exists in this place. The financial management issue was a purely political go by the Opposition, and, boy, does this prove it.

What this motion does categorically, according to Phillip Mitchell, is require the Government to do something that would contravene a piece of legislation - nothing more, nothing less. We simply cannot support it. I will finish by making just one more comment. If the Assembly does support it, Mr Temporary Deputy Speaker, I will not comply.

**MS TUCKER** (4.15): Well, I cannot agree with a couple of things the Chief Minister said. First of all, I was not happy supporting the Labor motion in relation to the Financial Management Act. I will correct that. I actually found it very difficult. Secondly, it is not quite as simple as Mrs Carnell is trying to paint it, as far as I can work out, although it might be convenient for their arguments to try to present it as a simple statement of fact. That particular subsection says:

> (1) An employer must not make a payment to an employee in relation to a period during which the employee engaged, or engages, in industrial action if: ...

We all know there are a number of circumstances outlined there. We know that subsection (3) says:

> A contravention of subsection (1) or (2) is not an offence.

It is interesting that subsection (3) is there. One has to ask why. It looks as though it must be about allowing some flexibility in how this particular section is interpreted.

In the break I have spoken to some legal people. I have spoken to Mr Moore's office and Mr Humphries' office about how you can, in government, not respect this in some circumstances, because clearly the nurses and the fire people were getting paid and they were involved in industrial action. The explanation that was given to me by both offices was that it was because those two groups of workers were still doing their core duties. Currently, I understand that nurses are still participating in some kind of boundaries operation or whatever they call it around their work. They are participating in some kind of industrial response anyway. It is happening now as we speak, so it is not past tense.

The concept given to me at lunchtime by those two Ministers' offices was the concept of core duties. That is in the press release from the Chief Minister as well as in an explanation about why the bursars are in trouble. The bans by some bursars were in relation to submitting financial statements. In other words, they were part of their core duties as bursars. So we see this concept introduced. Now, I cannot find that concept in the law. I have asked if it is there and I have been told by both Ministers' offices, "No, it is an interpretation". So then I asked, "Okay, is that interpretation supported by case law?". As far as they knew, they had to say no.

**Mr Humphries**: It is a new Act. It is only a couple of years old.

**MS TUCKER**: It is a new Act, okay. That is the interjection from Mr Humphries. It is a new Act; not supported. So what we have is an interpretation of this new piece of legislation around a concept of core duties. You then have to say, "That must be why the Government does not see itself as breaking the law that has been outlined today - because they are using the concept of core duties". So the Government is fine so far. They are not breaking the law.

The next question has to be: "Why can't this concept apply to the bursars?". In fact, it has been applied. It has been applied to the bursars, according to this press release. What we have here is a discussion around what are core duties. As far as I can see, it is perfectly legitimate equally to say that core duties are those duties which you thought you signed onto when you took a job, and if suddenly your responsibilities are increased significantly they are an extra load of duties which have been imposed on you. You could argue that, if you took industrial action which meant you kept doing the duties you thought you were employed to perform but left out some of the new duties, you were in fact doing your core duties. In fact the bursars, so far as I can see, did 99.9 per cent of their duties. The only thing they did not do was press the button to send the financial reports to the department, so it was a small part of their work.

**Ms Carnell**: Is that all?

**MS TUCKER**: The interjection is: "Oh, is that all?". Okay, so now we are going to have an argument about whether it is a core duty or it is not.

**Mr Stefaniak**: Then they were told they had to do their core duties or they would not be paid. They then walked out. It is simple.

**MS TUCKER**: Well, we can have that discussion.

**MR TEMPORARY DEPUTY SPEAKER**: Order! The house will come to order. Ms Tucker, do not encourage interjections. They are highly disorderly.

**MS TUCKER**: I am not encouraging interjections. I am trying to speak and I am ignoring the interjections, actually.

**MR TEMPORARY DEPUTY SPEAKER**: Yes. Well, you have the call.

**MS TUCKER**: If what I say provokes interjections, I am not going to suddenly not speak. It is up to them if they want to interject. Obviously, we can have a discussion about what are core duties and what are not, and I am quite happy to do that, but I do not think that is the point of the debate. The point of the debate is that we have been told that Mr Berry is asking the Assembly to break the law by supporting this motion when the Government arguably has equally broken the law if we apply those standards.

There is also disagreement about whether or not the bursars were stood down. If the bursars were not getting their pay, then I guess they had been stood down. I do not understand how you can argue otherwise and say now that those were lost work hours because these bursars were not working. If the bursars were not being paid then obviously they could not work.

There are some other issues around this that I would like to raise generally about what Peter Reith's so-called reforms are doing. I was interested in something that came across by email from the ACTU recently. It is an analysis of what is happening to women workers under Reith. Why this is important to raise in this debate, I think, is because we have seen quite different treatment in a way for the firemen and the nurses and this group of women working as bursars. What people have always said about Reith's so-called reforms is that the industrially weak will suffer. Many women are in occupations which do not give them industrial strength. Nurses are probably an exception. This is a quote from this release from the ACTU:

> Most women workers are clustered in a few industries and occupations. These include retail, health and community services, clerical and sales.
>
> "These industries and jobs are amongst the lowest paid in the community and workers in them are dependent on award rates, because they do not have bargaining power.
>
> "More than a million working women are dependent on awards to set minimum employment standards. Half of all part-time women workers, and one in five full-time women workers do not have agreements with their employers," she said.
>
> Nor are they paid over-awards which are generally set unilaterally by employers and are based on traditional notions of skill and merit which can seriously disadvantage women workers.
>
> Recent ABS statistics reveal that in 1998 women earned only 43.7 per cent of the over-award payments paid to men, compared to 48.1 per cent in 1996. De-regulating the bargaining process is likely to see that gap continue to increase.
>
> Even comparing base award or certified agreement wage rates, full time non-managerial women earned less - 90.6 per cent - of their male counterparts in 1998. It is of concern that this gap is growing. In 1996,

> women earned 91.5 per cent of male base award or agreement rate. Removal of skill related relativities would see this gap expanding as well.

The Chief Minister has said that she is interested in seeing an audit across government on women's issues. I understand that the Consultative Council on Women is managing that. This is an issue that should be of concern when you see really quite different treatment given to different groups of workers. It does signal alarm bells when you see that, predictably, it is part-time women workers who do not have a lot of industrial strength, although they did surprise us all by their strong response. Of course, the community support they got as well was significant.

I think what would be really good to see in this place is an acknowledgment from the Government that what the bursars were complaining about was legitimate. That has been shown by the fact the Government has finally responded by acknowledging that the imposition of school-based management on their work has indeed had an impact and has indeed required greater skills and does deserve to be remunerated. That is there. We have already got acknowledgment of that just by the events that are occurring now. *(Extension of time granted)* If the Government are suddenly generally concerned about this, if they had goodwill and took an ethical position on this, I believe they could find another way of ensuring that the bursars are paid what they are morally entitled to. There are other ways that they could do that within agreements, if the will was there.

I would ask the Government at this point to put forward some other proposal if they are so concerned about this process. They have acknowledged that the bursars deserve to be paid better. They have acknowledged that the work has increased. Why do we not work together on this and find another way, if this one is so worrying for the Government? The Government can easily speak to this motion again and say yes, they are happy to look at that.

There are ways that it can be done. I have talked to various people working in industrial relations who say that there can be ways within enterprise bargain agreements. There are productivity bonuses, there are allowances, there are all sorts of things. It would be quite an open process. They would just be saying, "Yes, we acknowledge that the bursars have a pretty hard time here. They were right. We will make sure that they get recompensed for that".

**MR BERRY**: Mr Temporary Deputy Speaker, I would like to seek leave to move an amendment, but I am not able to in the normal course of events.

**MR TEMPORARY DEPUTY SPEAKER**: You are not closing the debate?

**MR BERRY**: No, I am just seeking leave to move an amendment, although I could get one of my colleagues to do it.

Leave granted.

**MR BERRY**: Mr Temporary Deputy Speaker, I will circulate this amendment, but I will read it first so that people understand what it is all about. I move:

> After "Government" insert the words "adopt the same policy of wages payment for bursars as applies to other ACT Government employees engaged in industrial disruption and".

I will speak to the amendment. I am not closing the debate. During Mrs Carnell's contribution to the debate she said that there was no mention of firefighters or nurses or anybody else for that matter in the motion that I put this morning, and I think she made a good point. They were not mentioned, and they were deliberately not mentioned. It was merely a matter to deal with bursars. So what I have done in the amendment which is being circulated is mention the Government's policy on payment for other ACT government employees involved in industrial disruption. These employees have continued to be paid as they have been involved in industrial disruption.

The Government referred in its press release to one of the reasons why the bursars were not paid. I heard the earlier comments about core duties. The Government has said the bursars were not carrying out their core duties so they should not be paid. Their payment was stopped because they refused to carry out some of their core duties.

Well, I chose to find out just what sorts of duties bursars do. There are something over 50 of them, one of which is the 12-monthly report with accrual accounting at the end of the financial year. That is the one that they refused to submit in the course of the industrial action. That is the one that they were told would end up in their pay being stopped. Their pay was eventually stopped as a result of refusal to carry out that one duty. I can table this or give copies to members, whatever they want, but I am sure government members would be able to get access to it. I will read some of these things into the transcript because I think it is important to demonstrate that the issue that they decided to take industrial action on was not a core duty, it was one of their other duties. It was a very small part of the work that they carry out in a financial year.

These are the things that they do: Produce purchase orders; phone, fax or deliver it personally to the relevant firm; enter invoices, payments, credit notes; print cheques; produce receipts on a receipt printer; reconcile bank statement at the end of the month; produce finance report when requested; produce bulk collection books; write in names of students; budget-bursar discussions with principal, then prepare budget, check by principal, then submit to board; produce six-monthly report in December; and 12-monthly report with accrual accounting at the end of the financial year - that is the area of industrial disruption that their pay was stopped over.

They deal with petty cash; CPM - I do not know what that is; banking, reconcile bank statement each month; check and pay electricity, fire protection, heating, sewerage and water bills; look at ways to minimise usage; postage, maintain book and postage stamps; two computers, repair and rebuild as instructed by department; back up the server daily; enter new students into MAZE if it is working; update as necessary; produce class lists and class rolls; provide house lists for sports carnivals, et cetera; run census reports to verify daily; collect immunisation records, copy to Department of Health; collect claims and leave forms; input teachers and administrative staff; produce reports and send to Manning Clark offices. That is under the heading of CRS. I should have mentioned that.

When vacancies occur, they participate in selection panels and then write up; maintain a relief register of administrative staff; request contracts for two temporary SDAs each term; train administrative staff as required; peruse courses available and bring to attention; send off enrolment forms; pay invoices. There is a list of over 50 duties there.

**Mr Stefaniak**: That is not the duty statement.

**Ms Carnell**: That is not the duty statement. Where did that come from, Mr Berry?

**MR BERRY**: I am happy to supply you with a copy if you want it. This is a list of the duties that bursars carry out. It came into my possession from someone concerned about - - -

**Ms Carnell**: So, it is the duty statement and you would not be misleading this place? It is their duty statement?

**MR BERRY**: Mr Temporary Deputy Speaker, this clearly demonstrates that the core duties argument is shallow. I will bet that there has been no assessment of what are or are not core duties in relation to those other ACT government employees who may or may not have been taking industrial action of some sort or may or may not have been involved in some sort of industrial disruption or confrontation. All I want the Government to do is maintain the same standards in respect of payment back to the point when they said, "We are going to stop your pay". Let us not try to re-create history about what happened and who walked out after who said what. The Government said to these people, "If you do not hand in those financial reports, we are going to stop your pay". That order stood. The bursars said, "We are not going to hand in those reports because that is legitimate industrial action", and the Government of course stood by their threat.

**Ms Carnell**: And the industrial tribunal didn't back up the bursars.

**Mr Stefaniak**: It still doesn't work like that, Wayne. I will explain in a minute.

**MR BERRY**: That is what happened. In the case of the other employees, similar industrial disruption - action, if you want to look at the Federal legislation probably - is occurring, and people are being paid. I have heard news reports of some threats, but people are being paid.

**Ms Carnell**: Are you suggesting we don't?

**Mr Humphries**: Are you saying we shouldn't?

**Mr Moore**: What are you suggesting?

**MR BERRY**: My view is that it is quite appropriate to pay people involved in minor industrial disruption in the course of negotiations if it suits - - -

**Mr Humphries**: It is actually ours as well in certain circumstances.

**MR BERRY**: In certain circumstances. In a black and white reading of the Reith law you could say, perhaps, that you are not supposed to pay them anything.

**Ms Carnell**: Is that what you are telling us to do?

**MR BERRY**: But I also say that the Reith law is pragmatic in the sense that it provides a back door to anybody who decides to pay.

**Mr Humphries**: Not according to our legal advice, it doesn't.

**MR BERRY**: I know. That is your legal advice. I have nothing to do with it. I did not ask for it. It is merely a legal advice. This is not a court, Mr Humphries. This is a legislature and this is - - -

**Ms Carnell**: Sorry; it did not make any difference last time.

**Mr Humphries**: It was a court back in June.

**MR TEMPORARY DEPUTY SPEAKER**: Order! Mr Berry has the floor.

**MR BERRY**: We are not in the business of behaving like a court. So what - - -

**Mr Rugendyke**: Well, what are we in the business of then?

**MR BERRY**: We are in the business of applying natural justice. We are in the business of applying fairness if we see signs where there is no fairness - - -

**Mr Rugendyke**: Within the law.

**MR BERRY**: And we are obliged to take account of the law. I accept that. The Government is saying that in their opinion it is okay to pay certain workers who are doing their core duties but not others. What I am attempting to say here, Mr Rugendyke, is that we should be fair. If all of these workers are doing their core duties - - -

**Ms Carnell**: They are not.

**MR BERRY**: Well, there is an argument now. I am happy to go through the argument about what are and what are not core duties. I think the core duties argument is a recent revelation. Who is to say, and I suggest to you it is us, that handing in a December report is a core duty? I suggest to you that it is not a core duty. There are lots of things that bursars do at the schools. I read out a great list of them.

**Ms Carnell**: Financial statements.

**MR BERRY**: Certainly, the end of year financial statement is not the fundamental of all their work. It is one of the things they do.

**Ms Carnell**: It is pretty important.

**MR BERRY**: Yes. Wait a minute. Incidentally, it is one of the additional duties they received with school-based management which was not included in the payments that they received as a result of the last EBA, and it is one of the issues that featured in the survey of a bursar's duties which gave rise to the recent improvements to their wages and working conditions.

Mr Temporary Deputy Speaker, it is clear that there were different standards applied to the bursars than were applied to other ACT government employees, and that is why I have moved this amendment. It is to make it clear that all we require is the same standard. That is exactly the point when the Government took action against these bursars. It is no good coming in here and saying, "Yes, but they walked out". Of course they walked out. Their pay was going to be stopped when there was industrial action. They would not go to work when there was no pay, but they did not go on strike. They were threatened with having their wages cut if they continued with industrial action. They took a decision on the industrial action and their wages were cut. *(Extension of time granted)*

In the other cases I am sure that all of the members were aware, as all of the employers were aware, of the implications of the Federal industrial relations law, but a pragmatic approach - a sensible pragmatic approach, I suggest to you - was taken because if you were to have stopped the payments in relation to these workers it is possible you would have ended up with a more serious confrontation which might have affected services to the community. So, in that sense, it is sensible to try to work your way around these things, as far as you can. But if you use the argument that we cannot do this in the case of the bursars because it is contrary to the Federal Industrial Relations Act, then the same argument applies in the case of the rest of them. What I am saying is that this has to be about fairness. Okay, the Federal law gives us a pragmatic way out of this - - -

**Mr Humphries**: He is praising it now. He is praising this Federal law because it is pragmatic.

**MR BERRY**: No, no. I think it is an outrageous piece of law. It is an outrageous piece of law. Even you have recognised that because you have not acted in a black and white way about it, and that is fair enough because this law enables employers to do this. It also sets a pattern of intervention from the Federal Minister, if he so chooses, or from other parties. You may have read that. I think it was in applications to the court, section 187 AC. An application may be made to the court for orders in relation to contraventions of those earlier matters. It refers to a person who had an interest in the matter, the Minister, or any other person prescribed by the regulations.

If the bursars are paid is any Minister, any one amongst these employers here, going to intervene and say they should not have been paid? No, of course they are not. Are any of the bursars going to kick up a fuss about it and go to the court and ask for an order to do something about it? No, of course they are not. Neither are any of the other ACT government employees. Is Peter Reith going to go to the courts and say, "Bloody Bill Stefaniak, he's paying those poor bursars. I think I'll nail him."? No, he is not.

**Mr Humphries**: Well, his department might.

**MR BERRY**: No, no. Only the Minister can.

**Mr Humphries**: No, no, no, no.

**Mr Stefaniak**: No, no, Wayne.

**MR BERRY**: It says, "The Minister".

**Mr Stefaniak**: The Minister, or a person who has an interest in the matter, or any person prescribed by the regulations. That is quite a few people, Wayne.

**Mr Humphries**: The Minister can delegate.

**Mr Stefaniak**: You can.

**MR BERRY**: Well, the Minister can delegate. That is true. Okay, but is this going to happen? Is he going to go after Bill Stefaniak because he paid 29 bursars, or is he going to go after him because he paid several hundred other ACT government workers? Well, there is no sign of that, because he never went after the employers who paid the thousands of wharfies who got every dollar from the industrial dispute. This law has been emasculated by inaction. So it is a rubbish argument.

**Mr Humphries**: Oh, so it's illegal but we can get away with it.

**MR BERRY**: No, it is not. Mr Temporary Deputy Speaker, it is not a question - - -

**Mr Humphries**: I see. It's illegal, but we are allowed to do it if we can get away with it. I see. We thought we were going to get away with Bruce Stadium. We could break the law at Bruce Stadium.

**MR TEMPORARY DEPUTY SPEAKER**: Order! Mr Berry has the floor.

**MR BERRY**: Well, the interjection was: "We thought we would get away with Bruce Stadium". If it said at the bottom that this is not an offence, you would have.

**MR HUMPHRIES** (Treasurer, Attorney-General and Minister for Justice and Community Safety) (4.41): I think Mr Berry has rather complicated and probably sunk his own argument by what he has just said. First of all, the amendment does nothing to solve the basic problem with this motion. The basic problem with this motion is that it requires us to do something which, on the face of it, is or could be illegal - to breach the Workplace Relations Act. So adding the words he wants to add in this amendment is useless in respect of solving that problem. It makes no contribution to that problem at all.

Mr Temporary Deputy Speaker, we can argue about whether we are already adopting a process of trying to be consistent across government. We believe that we are, at least, trying to be consistent. The problem with the motion is the words that are already there. He is not taking any words out, and I submit that we are not going to get anywhere by supporting the motion's words as they now appear.

There are two possible interpretations which now emerge from the situation we are faced with here.

**Mr Berry**: Tell us about core duties. You can speak again too, Michael.

**MR TEMPORARY DEPUTY SPEAKER**: Order!

**MR HUMPHRIES**: Could I have a little bit of order, Mr Temporary Deputy Speaker. Either it is all right to pay some of the workers involved in industrial action some of the time but not other times, or it is illegal to pay workers involved in industrial action at any time under the terms of the Workplace Relations Act. The third interpretation, that the Workplace Relations Act has no application here, I think we have all ruled out. It does not apply. So there are two possible interpretations. Either we can pay sometimes or we cannot pay at all.

**Mr Berry**: Sometimes.

**MR HUMPHRIES**: That is what I said. So the question in this debate is: "In which direction are we tending?". I admit that the legal advice that I tabled earlier today does depend on what is industrial action, so that is a threshold question before we can rely on that advice. Is it industrial action or is it not? That question about industrial action is an issue which is at the core of the debate, but we are tending, in this debate, to suggest - and Mr Berry seemed to be suggesting this - that there is a point at which you are in breach of the law if you pay your workers in the course of an industrial dispute.

We have been urged to be cautious about these things and to exercise greater care about these matters. Yet Mr Berry is saying, when there is a serious doubt about this matter, when we really do not know and we have not got any advice about the matter which is clear, that we should press on and make the payments almost recklessly, whether or not that might breach the law.

Mr Temporary Deputy Speaker, that language is totally inconsistent with what has been said to the Government on earlier occasions. It just is not consistent. It is hypocritical in the extreme to censure the Government for inadvertently breaking the Financial Management Act, an Act which contained no penalties, financial or otherwise, and yet say it is all right for the Government to do its best to bend the law and see whether we can go in under the radar in respect of the Workplace Relations Act.

What Mr Berry has established in this debate is that the Government may have come a cropper with respect to the law. He may have made a case for saying that some of the payments the Government has made in respect of other industrial disputes which could be classified as falling under the terms of section 187AA of the Workplace Relations Act were illegal. I do not think Mr Berry has established that it is okay to pay

everybody. He certainly has not shown that. He has not even tried to argue that. What he has tended to show in this debate, if anything, is that we may have gone too far in the payments that we have made. I would suggest, given the rhetoric used only a few months ago in this place by the Opposition, that it behoves the Government to be cautious about breaking the law and to not - - -

**Mr Stanhope**: You do it well.

**MR HUMPHRIES**: Well, yes, I do. That would tend to argue - - -

**Mr Stanhope**: You do break the law well? You did. You certainly did.

**MR TEMPORARY DEPUTY SPEAKER**: Order! The Attorney-General has the call.

**MR HUMPHRIES**: That would tend to suggest, Mr Temporary Deputy Speaker, that if we are not sure about whether these payments are legal or not we should not make them. Would that not suggest that to you, Mr Temporary Deputy Speaker? Members of the crossbench and members, would that not be the cautious and prudent course of action to take?

**Ms Carnell**: Yes.

**Mr Rugendyke**: Say it again. I missed it, Gary.

**MR HUMPHRIES**: If we are not clear on whether this breaks the law or not, would it not be better either to get clear advice on the subject or not to make the payments at all?

**Mr Rugendyke**: I did. I got legal advice.

**Ms Carnell**: He did, and his advice is the same as ours.

**MR HUMPHRIES**: Mr Rugendyke indicates that his advice is consistent with that argument. Mr Berry, in his rhetoric about this matter, has said that we, the Government here, are out to do a Reith in the ACT. We have this draconian legislation; we want to impose it on the workers of the ACT; we want to do a Reith; we want to emulate the activities of Peter Reith in respect of the ACT and hammer the workers into the ground. Mr Temporary Deputy Speaker, the fact that we have paid workers when they have been involved in industrial disputes at the edges of what we would consider to be their core activities or their core duties as workers in the ACT surely demonstrates that we are actually interested in trying to prevent industrial disputes boiling over. We are actually interested in trying to keep industrial disputes on the basis of discussion and consultation rather than go into a process of conflict and confrontation any earlier than need be the case. That is what we have been trying to do.

In that context, I have to say in this place that the Workplace Relations Act has not been very helpful. If it provides that we have no flexibility to continue paying wages at the point where industrial dispute in the terms laid out in the legislation actually

arises - "industrial action", I think, is the phrase - and that removes our flexibility, in that respect the legislation is quite inconvenient to the Government and I have to say I would be happier if it was not there in those terms.

Mr Temporary Deputy Speaker, let us get away from this rhetoric that we have been using in this debate, or some of us have been using in this debate, that the Government is basically out to smash the workers and to deprive them of the money. We want to be able to keep the debate on the level of being able to keep talking with our employees, but at some point it becomes impossible to avoid conflict. We want to avoid getting to that stage if we can, at least on most occasions.

Our argument in this debate is that Mr Berry's observations in this debate have given rise to a doubt about whether or not the Government has legally been able to make payments in the past. The Government, as a result of Mr Berry's arguments, will have to go back and examine whether we have made those payments legally.

**Mr Berry**: You can't blame me, Gary.

**MR HUMPHRIES**: Well, you have put up a motion that we have to start being consistent; that we have to adopt the same policy with respect to all workers in the ACT.

**Mr Berry**: No, no. I have been Gary-ed. Mr Temporary Deputy Speaker, that was untrue.

**MR TEMPORARY DEPUTY SPEAKER**: Excuse me, Mr Berry. Are you raising a point of order?

**Mr Berry**: Yes, Mr Temporary Deputy Speaker.

**MR TEMPORARY DEPUTY SPEAKER**: Well, do it in the appropriate manner, sir. What is your point of order?

**Mr Berry**: Well, I have just been Gary-ed, Mr Temporary Deputy Speaker. He said something that was just untrue. I never said that they had to apply the same standards that they have applied for bursars to nurses and firefighters. I said that they should apply the same standard to bursars as they apply to nurses and firefighters.

**MR HUMPHRIES**: I did not mention nurses.

**MR TEMPORARY DEPUTY SPEAKER**: Order! There is no point of order, Mr Berry. Resume your seat. Attorney-General, address your remarks to the chair, sir.

**MR HUMPHRIES**: I did not mention nurses, Mr Temporary Deputy Speaker. I mentioned consistency, which is what his amendment does. It reads:

> … "adopt the same policy of wages payment for bursars as applies to other ACT Government employees engaged in industrial disruption…

He has sought consistency. If there has not been consistency, it would tend to be, I suggest, given what Mr Berry has said, in favour of paying people when they should not have been paid.

Mr Temporary Deputy Speaker, the Government will have to go away and examine the issues Mr Berry has raised. We are certainly very sensitive about either the reality or the appearance of breaking the law. We are very keen to make sure that any perception that we may have broken the law is addressed very quickly.

In the meantime, the motion that Mr Berry has put on the table is nonsense. It is unhelpful nonsense. It is a stunt. Mr Berry is urging us to pay workers in circumstances where he, as Minister, did not pay workers. I think we need to get away into an environment where we can have a debate which is calm and sensible about this and not use the inflammatory language that Mr Berry has used to introduce his motion. I think we should reject both the amendment and the motion.

**MR RUGENDYKE** (4.51): Mr Temporary Deputy Speaker, I have yet to speak on the substantive motion, so I will address my remarks to the amendment as well, if that is appropriate.

**MR TEMPORARY DEPUTY SPEAKER**: It is.

**MR RUGENDYKE**: This is a typical Wayne's world stunt where, suddenly, what appears on the notice paper is a motion he knows full well cannot be supported. But it does not matter, does it? The press release was written prior to this.

This morning I started out considering that I would be able to support the motion for the sake of the bursars, who do seem to have been treated poorly. I phoned a couple of bursars I know and I asked them questions about some of the guff that the Government was peddling. It turned out to be untrue. I suggested to them that I would have to take account of what the Chief Minister said on radio as I was driving in, but I would have a go for them. However, when I look at section 187AA and the rest of it it is quite clear and unequivocal that it is not possible, not reasonable and not parliamentary to support a motion that forces the Government to break a law. It might well be the case that Mr Berry does not like this particular law, but how can I be asked to force the Government to break the law?

I sought my own legal advice this morning, looking for a way to work around section 187AA to see whether the bursars could be helped in this matter. A long bow drawn by my legal adviser was to find out whether or not there is a possibility that the bursars had been stood down as a result of disciplinary action rather than industrial action. So I asked Mr Berry, "What was it, industrial action or disciplinary action?". The reply was: "No, no; it was industrial action". So that took away that option. I cannot argue for the bursars that maybe they were stood down for disciplinary reasons.

**Mr Berry**: They have not been disciplined.

**MR RUGENDYKE**: You are right; it is industrial action. So section 187AA and the rest of them apply. I do not understand Mr Berry's argument that because no-one has gone after the $10,000 fine that makes it okay. The fact that no-one has pursued the provision for the $10,000 fine does not make it okay. What are we saying? Are we saying it is okay to drink-drive as long as we do not get caught? That is great, but what if we get caught? There is a penalty.

Mr Temporary Deputy Speaker, I find it necessary now to call the credibility of the union into question. What advice did the union give the bursars when they were instituting this industrial action? Was their advice consistent with the provisions of Part VIIIA of the workplace relations legislation? Obviously it was not, because now we are in the chamber trying to do something illegal. So it was the union that failed to advise its people of the consequences of the industrial action they were taking. The union must be held accountable to its constituency. If it were otherwise we would not be here. It is that simple.

Mr Temporary Deputy Speaker, my legal advice supports the legal advice of the Australian Government Solicitor. I see no other legal opinions on the table. We could play barristers at 20 paces, but I do not see any other legal opinions. However, I will wait for the speech of Mr Stanhope, the lawyer amongst us, who no doubt will get up and tell us how we are able to circumvent Part VIIIA.

**Mr Stanhope**: I noticed you took great notice of the legal opinions on the no-confidence, Dave. You didn't have the guts.

**MR TEMPORARY DEPUTY SPEAKER**: Order! The Leader of the Opposition will come to order.

**Mr Stanhope**: Oh, was I out of order?

**MR TEMPORARY DEPUTY SPEAKER**: You were, sir, and you should know better, as Leader of the Opposition.

**Mr Kaine**: I raise a point of order, Mr Speaker. We have at least three lawyers in this place. Can we get an opinion from all of them before Mr Rugendyke votes?

**MR TEMPORARY DEPUTY SPEAKER**: There is no point of order.

**MR RUGENDYKE**: The point of my remark is that I eagerly await Mr Stanhope's speech so that he can tell us how we are able to circumvent Part VIIIA. If he cannot, I will be interested to see how he supports his ex-leader when the time comes for a vote. I am sure that Jon will be able to support Mr Berry on this, knowing full well that the motion is unsupportable and knowing full well that the numbers are not there.

*At 5.00 pm 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 STEFANIAK** (Minister for Education) (5.00): Mr Kaine has sought my legal opinion. It is that I concur with the Government Solicitor's advice and Mr Berry's motion changes absolutely nothing because of the course of events outlined earlier. I refer members to the terms of the letter I tabled of 20 July 1999. I will come back to that in a minute. I was going to raise a point under standing order 46, but, because of the amendment, I think I can incorporate it into my contribution to the debate. I am a little bit annoyed with Mr Berry's comments during the dispute - indeed, Ms Tucker made them, too - that the Government was picking on lowly paid workers, that the Government was picking on a group of middle-aged women. I take great offence at that. The Government has a duty to uphold the law. If a department is upholding the law, a Minister and, indeed, a government have a duty to agree with it and ensure that due process is followed, which is what occurred here.

Might I say that Mr Berry was wrong in saying that nothing was done in relation to upgrading the bursars. Once the issue got to the stage of being a bit of a dispute and a meeting was arranged with me, I found out that, in fact, there had been some movement in this matter in that a number of bursars had already been put on higher duties. I am not too sure, but I think they were acting in positions pending a decision on the claims which had been put in by the parties. But there were some bursars who were actually on higher duties pending an upgrade. It was not a big number, but they were there. Mr Berry, I assure you that it is absolute nonsense to speak of picking on a small group of defenceless workers. I do not think that it would be appropriate for any government to do that. That would be a quite improper way of going about it. Governments have to be consistent, whether they are dealing with a small group or a big group.

Mr Berry said something about the bursars running a surprisingly good campaign. I did not agree with the bursars going out and not doing their duties. It was put to them that, if they did not perform the duties in the duty statement dated 7 August 1999, the department would have no choice but to indicate that they would not be paid. What occurred then, of course, was that some bursars - it ended up being 29, I understand - decided to walk out and strike. That was their right. That is fine. I suppose some of them could have said, "No, I am not going to do the duties, but I will stay here and not get paid", but that did not occur. They took action. They were not going to perform the duties as directed and, knowing what would occur, they went out and were not paid.

Mr Berry said that, through the union, they would get strike pay. It is not necessarily the case that they would be fully compensated for their actions, but they took industrial action. They took industrial action in accordance with the Industrial Relations Act.

**Mr Berry**: They do not get strike pay.

**MR STEFANIAK**: You said that they did. Industrial action includes a ban, limitation or restriction, and such a course of action was followed. During the dispute, I said on a number of occasions that I would like the bursars to go back to work and perform their duties so that they could be paid and we could go through the various points that had been raised in a sensible manner and look at whether an upgrade should take place.

Some bursars did take industrial action. Again, that is their right, but certain consequences do flow from that in accordance with the Act. A government has a duty to uphold the law, and that is what occurred. The bursars had the right to take the action that they did; but, in accordance with the Act, the Government could not pay them, and that is what occurred.

In terms of the attention that they got, I think that the bursars conducted a very effective industrial campaign. It would not matter to me who it was; I would expect everyone to be treated equally regardless of whether they were part of a group of three or a group of 4,000. I do resent the comments Mr Berry made about picking on a small, defenceless group. I think that those comments were totally inappropriate. It is certainly something at which I take offence.

For the information of members, I will table the approved duty statement. Clearly, what happened was that the bursars were told that their principals would formally ask them whether they would perform their duties, including the normal preparation of school financial statements. Incidentally, that is in accordance with paragraph 1(b) of the duty statement. It is a fairly small duty statement. I do not know what document Mr Berry referred to, but that is the one and I table it.

The bursars were advised that, if the principals believed that they were failing to perform all of their duties as a result of industrial action, the principals would then advise them that they would be taken off pay until they advised that they were prepared to perform all the duties of the position. The period of no payment was to be considered to be a minimum of one day at a time. If they were taken off pay, they were advised that following their advice that they would perform all the duties, the principals would arrange that their pay be reinstated. I read out earlier in the debate how they were referred to section 187AA of the Act. So things were done in accordance with the Act.

I think that it is regrettable that some of the bursars actually went ahead and took industrial action and therefore, in accordance with the Act, were not paid. I am pleased that they do get some recognition from their union in terms of strike pay, but they took that action. Whilst it is regrettable that they did so, it was their right to do so. But Mr Berry's motion, as amended, makes absolutely no difference at all to the law and, quite clearly, the Government would be breaching the law were it to accede to Mr Berry's motion as amended.

Finally, for Mr Berry's benefit, I indicate that I have been advised by the Department of Work Relations and Small Business, the Federal department, that the enforcement of these provisions may occur through an application to the Federal Court by a Minister or another category of person, including "a person who has an interest in the matter", the latter being very broad.

**MR BERRY** (5.07): First of all, I will deal with some remarks that Mr Moore made earlier this morning. He tried to taunt me with some rhetoric about the doctors, asking me what I did when the doctors went out on strike. The doctors would claim that they never went out on strike; that their contracts ran out and they would not renew their

contracts, so they could do no work at the hospital and they got no money. I do not recall anybody going out on strike when I was in a ministerial position. There would have been people who took industrial action; I have no doubt about that.

**Mr Stefaniak**: In your department.

**MR BERRY**: No. I was the IR person and there would have been people involved in industrial action; certainly, no pay was docked for industrial action. If people went on strike and did not come to work, they would not have been paid; that would be for certain. The only ones that I can recall were the ones when the doctors' contracts ran out. You can argue the case whether they were on strike, but it had the same effect in that they did not get paid, either. There may have been some cessation of pay for stop-work meetings, but I am not entirely clear about that. That is the normal course of events. But this is an entirely different matter and it cannot be described as having any relationship to strike action.

I turn to the remarks of Mr Rugendyke, first of all. It would appear to me that Mr Rugendyke has not been listening to the debate. Does that surprise many of us? I think that he made up his mind very early in the piece in relation to this matter. He seems to have adopted an anti-union stance, which I find a little disturbing. I thought that he was a fairer man than that and I thought that he stood for fairness, equity and those sorts of things because that is the persona that he has presented on a whole range of issues.

Mr Rugendyke talked at length about the effect of the law and how he as a lawyer interpreted it. All I have asked Mr Rugendyke to do is support my amendment in the first place and then my motion as amended - or the motion by itself, for that matter - which makes clear that there is an approach which has at its heart fairness and equity, that is, that the Government treat the bursars in the same way as they treat their other employees. I do not want to go to the issue of what the other employees are involved in, which is not a matter of any relevance to this debate, except to draw attention to the issue about core duties. I think that it has been made very clear that the industrial action that the bursars were involved in could not be described as being about their core duties. It was about a very minor part of their duties, 2 or 3 per cent of their duties. It was an insignificant part of their industrial action. So the argument as far as the Government is concerned has been lost.

I understand from Ms Tucker's contribution to the debate that she had been advised by other Ministers who had had industrial disruption somewhere in their portfolios that they were paid because they had done their core duties. If the bursars had been paid for it, they would have continued to do their core duties as well, but the Government stopped their pay because they took very minor industrial action. It was an ideological strike at unionists who were mostly middle aged, many of them part time. Being isolated, they were an easy hit and they could not fight back. There is no question about that. The Government would not have been game to do that to other areas of their work force which would have been more organised and prepared to fight back.

As to the Government's approach in relation to the Reith laws, you could argue that they were in contravention of them; but I think that the laws have been put together in such a way as to allow some pragmatism in the assessment of them. That has been shown by the way that the Government handles its own affairs. I do not like the fact that people are being forced to take industrial action because it is not a very pleasant thing to get involved in. It is disturbing for individuals and their families and it is disturbing for those management people who have to deal with it as well. The industrial action is happening because of government policy, because the Government is not providing for a pay rise and so on and so forth. That is what flowed into the area of the bursars' dispute.

As I said, I do not think that Mr Rugendyke was listening to this debate at all. I will not try to give him some circuitous advising on how he can circumvent the Reith laws. That is completely unnecessary. Mine is a simple argument: Treat the bursars in the same way as you treated the rest. That is all I want. The Government in its wisdom has treated a bunch of ACT government employees in one way. Just treat the bursars in the same way and pay them the money that they have lost. Mr Rugendyke's contribution to the debate was extremely unhelpful. He failed to listen to the debate in respect of the issues of fairness and equity, which was disappointing given his stand in relation to these matters.

Mr Osborne and several government members raised the issue of the relationship between this matter and the Financial Management Act. There is no relationship. If the provision of the Financial Management Act which dealt with the Chief Minister's failure to seek an appropriation for the massive spending on Bruce said that it was not an offence to do so, we would have been snookered. There would not have been much we could have done because it would have been very clear that it was never intended that there be any problem with breaching the law. This law says that contravention of a couple of subsections is not an offence.

Of course, there is another relationship that does not stick in that it is quite open for the Chief Minister to come in here and get an appropriation of funding for Bruce Stadium, but she chose not to do it. She chose to avoid the law. In the case of the Federal industrial relations law, the Government has chosen to find a way of managing it, shall I put it. It is an unfair law. The difference between it and the Financial Management Act is that the Financial Management Act is a fair law, based on hundreds of years of tradition.

**Mr Moore**: But you cannot make a decision on whether something is fair or unfair; the law is the law.

**MR BERRY**: How the four Ministers sitting opposite can rise in this debate and treat these lowly paid workers in such a tawdry way is beyond me. It is being mean spirited to the worst extent. I am absolutely surprised at you, Mr Moore. I know that the metamorphosis was complete some time ago and the colours have all changed and all of that, but I did not expect you to stand up in here and say that it is okay to treat a group of government employees in a different way and the bursars got what they deserved.

I know that you have lost interest in education, Mr Moore. You have demonstrated that. But I did not think that you would take it this far. I would expect this sort of thing from Mr Humphries as I have seen it before.

Mr Stefaniak mentioned the word "consistency". I would have hoped that he would take the approach to workers in his portfolio that was taken by the other two Ministers. That would have been consistent and we would not be having this debate today. Mr Stefaniak made some false accusations. Maybe he is trying to build a reputation like the one that Mr Humphries has. There is no strike fund for bursars; it is all in your dreams, Mr Stefaniak. You dream about these things and in your ideological dreams you believe that lowly paid unionists have massive strike funds that they can use to take industrial action and torture employers. It is ideological claptrap. There is no strike fund. The union does not have that sort of money to throw around. Those workers went without money when their wages were cut. They went without it; it was taken from them.

**Mr Humphries**: The nurses you did not pay went without wages as well.

**MR BERRY**: Enlighten me. Which nurses were they?

**Mr Humphries**: I could not enlighten you if I put a blowtorch under you.

**MR BERRY**: I know that you could not enlighten me because you are not up to the job. I will conclude on this note: Anybody who opposes this motion opposes fairness and equity.

Question put:

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

The Assembly voted -

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

Question so resolved in the negative.

Amendment negatived.

Original question put:

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

The Assembly voted -

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

Question so resolved in the negative.

## POSTPONEMENT OF ORDER OF THE DAY

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

> That order of the day No. 2, private Members' business, relating to the Territory Owned Corporations (Amendment) Bill 1999, be postponed until the next day of sitting.

## CHILDREN'S SERVICES AMENDMENT BILL (NO. 2) 1999

Debate resumed from 13 October 1999, on motion by **Mr Rugendyke**:

> That this Bill be agreed to in principle.

**MR OSBORNE** (5.23): Mr Speaker, I will be brief. I toyed with the idea of speaking at length about the role that the Chief Magistrate has undertaken, but the documents tabled and the fact that, I think it would be fair to say, you have come to the conclusion that he did make political comments in relation to the legislation expose the role that he took and expose how he has attempted to undermine the legislation since it was tabled. In saying that, though, I feel that I have no alternative but to support this amendment of Mr Rugendyke's. It disappoints me that there have been two lengthy committee inquiries into this subject and both recommended some legislation in the form of the original Bill, but that was not good enough for Mr Cahill.

Unfortunately, we are now in a position where we have to amend the original legislation. I accept that; but, like Mr Stanhope, I intend to pursue this issue. I think it is a very important one. I suppose the situation could have been resolved earlier if the Government had appointed another magistrate to fill the role, but Mr Humphries chose not to do that. I am hopeful that that is an option that will be pursued some way down the track. Once again, I am encouraged that a majority of members still see this issue as something which is not finished. I put the Chief Magistrate on notice that it is not finished as far as I am concerned and I will work with other members of this Assembly to try to move forward. I will be supporting reluctantly Mr Rugendyke's legislation.

**MS TUCKER** (5.26): The Greens will be supporting this amendment to the principal Act, although slightly reluctantly as well, because it retains enough of the original intent of the amendment which the Assembly agreed to in March and is likely to improve the situation for at-risk children who come before the courts in the ACT. The current amendment introduces flexibility to the selection of an acting Children's Court magistrate in recognition of the complaints from the magistrates and their unwillingness to work with the previous arrangement of an assigned deputy.

The Bill describes the conditions under which the Chief Magistrate can assign an acting Children's Court magistrate, which is when there is no Children's Court magistrate, when the magistrate is away or when, for another reason, he or she cannot carry out the duties of Children's Court magistrate. Obviously, the last phrase "for another reason" is intended to cover the situation where there is a genuine problem. If this change is just about practical work arrangements in the Magistrates Court, as it has been presented, that is fine and we have accepted it as a compromise to meet this practical need.

In light of some of the reactions to the previous amendments, which I will outline, I would like to remind the Assembly of the original reasons for having a specialised Children's Court magistrate and why it matters and why it is important. I will do that later, but I want to point out that the success of this Bill will depend on its interpretation and application. That is why I think people have been concerned about the politicisation of this issue by the Chief Magistrate. I was also concerned to see the letters from other magistrates circulated by Mr Humphries to members of this place. I am not sure why Mr Humphries actually did that. In a way, if anything, he was complicit in the politicisation of this issue by actually forwarding those letters.

The Chief Magistrate asked other magistrates for their views. That, in itself, is interesting. It was not just whether they would take up the position, but for their views. Most of them, not all, were very willing to give their views, and they were certainly political views, about this piece of legislation. Mr Humphries, for his own reasons, chose to circulate those views, making them widely available, thereby politicising the whole matter even more. I do not intend to go into the detail of those political comments, but I am very concerned, I have to say, to have seen that reaction. For that reason we are, quite legitimately, concerned and, as Mr Osborne said, we will be keeping a watching brief on this issue because it has been seen to be definitely in the interests of children to have a specialised children's magistrate.

I would like to raise just a few of the comments that were made to the Social Policy Committee I was chairing in the last Assembly when we looked at services for children at risk. The Law Society, in its submission to the inquiry about the situation where all magistrates deal with children's issues, explained that, though they do a good job under the circumstances, a specialist children's magistrate would be able to build up a detailed knowledge of cases, options and services available. The Law Society submitted that the lack of a children's magistrate was a critical factor in the coordination of services for children who come before the courts, that with a number of different magistrates dealing with the area there may be an inadvertent degree of inconsistency, that magistrates dealing with care proceedings are faced with even greater difficulties in gaining knowledge about what is relevant, and that a specialist magistrate would not only have knowledge of the young person's background but also be able to look for alternatives to assist them, such as diversionary conferencing or placement options.

As I have said before, the committee pointed out that the position of children's magistrate had the potential to deliver long-term benefits to the community by ensuring that at least some of the many vulnerable children who come before the courts do not continue onto the road to incarceration because their needs will be better and more consistently met. But overall this matters because it is about furthering equity and justice for vulnerable young people by arranging our justice system to give them the best possible opportunity to find their way in life.

**MR RUGENDYKE** (5.30), in reply: Mr Speaker, I thank members for their support of these sensible amendments to what has been a difficult question. The Assembly has put the magistracy on notice not to abuse the flexibility that these amendments have given and to maintain the integrity of what is desired, that is, a Children's Court magistrate. I thank members. I foreshadow that I have a small amendment to move in the detail stage.

Question resolved in the affirmative.

Bill agreed to in principle.

**Detail Stage**

Bill, by leave, taken as a whole

**MR RUGENDYKE** (5.31): I move:

> Clause 2, page 1, line 5, omit the clause, substitute the following clause:
>
> "2 **Commencement**
>
> (1) Section 1 and this section commence on the day this Act is notified in the *Gazette.*
>
> (2) The remaining provisions commence on 1 December 1999.".

Mr Speaker, this amendment simply alters the commencement and it is to ensure a smooth transition from what is existing to what is proposed. Nothing more needs to be said other than that it is sensible to have the commencement in this form.

Amendment agreed to.

Bill as a whole, as amended, agreed to.

Bill, as amended, agreed to.

## ADJOURNMENT

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

That the Assembly do now adjourn.

### Ms Angela Wood

**MR RUGENDYKE** (5.33): I rise briefly in the adjournment debate to advise members of the Assembly that Angela Wood is in town until Friday. Angela is a charming lady I met some months ago in Sydney and invited to Canberra to speak on her personal experiences and the experiences of her family regarding the death of her daughter, Anna, as a result of drug use. I listened today to her talk at Kaleen High School. It was a very moving talk, with a very strong message, and the young people at Kaleen High School received her words well. I left the room deeply moved by what she had had to say. I invite members and other interested people to hear Angela again this evening at 7.30 at Kaleen High School.

Question resolved in the affirmative.

**Assembly adjourned at 5.34 pm**