DEBATES

OF THE

LEGISLATIVE ASSEMBLY

FOR THE

AUSTRALIAN CAPITAL TERRITORY

HANSARD

1 March 2000

Wednesday, 1 March 2000

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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.

FINANCIAL MANAGEMENT AMENDMENT BILL 2000

MR STANHOPE (Leader of the Opposition) (10.34): I present the Financial Management Amendment Bill 2000, together with its explanatory memorandum.

Title read by Clerk.

MR STANHOPE: I move:

> That this Bill be agreed to in principle.

Mr Speaker, this is a Bill to amend the Financial Management Act 1996 to limit the use of clauses that prevent or impede, or purport to prevent or impede, disclosure to the Legislative Assembly of information in government contracts. As you are aware, Mr Speaker, there has been much public debate recently over the meaning and use of the term "commercial-in-confidence". The term has, in the view of some, become a cloak for withholding information about government dealings from the public and from this Assembly.

This Bill does not attempt to define "commercial-in-confidence" or to set guidelines for the Government as to when it is appropriate to withhold information from the taxpayer and the Assembly. The Bill is more direct than that. It makes void any provision of a contract that prevents or impedes, or purports to prevent or impede, the disclosure to the Legislative Assembly of the terms and conditions of the contract. The Bill also declares void any provision of a contract that prevents or impedes, or purports to prevent or impede, production to the Assembly of any document containing the contract or part of the contract. The proposed section does not affect the validity of any other clause of the contract.

The Bill recognises that there may be appropriate occasions for withholding sensitive information, so it provides that a Minister may certify that a provision that would otherwise be void under the proposed section is reasonable and necessary in the circumstances of the particular contract. The Minister must give to the Auditor-General for examination a copy of each contract for which a certificate is given. Under the

proposed legislation, every six months the Auditor-General will report directly to the Assembly on the appropriateness of the Minister's certification. I commend the Bill to the house, Mr Speaker.

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

CRIMES AMENDMENT BILL 2000

MR RUGENDYKE (10.37): I present the Crimes Amendment Bill 2000, together with its explanatory memorandum.

Title read by Clerk.

MR RUGENDYKE: I move:

> That this Bill be agreed to in principle.

Mr Speaker, I present this Bill today as an extension of and follow-up to the knives legislation which the Assembly supported in 1998. The knives laws, which were the first I introduced in this chamber, prevent the possession of knives in public places and prevent the sale of knives to people under 16 years of age. This Bill simply intends to make it compulsory for retail outlets that sell knives to display a notice that it is an offence to sell a knife to a person under the age of 16.

Official police figures show that the introduction of the knives laws has enhanced community safety in the ACT. This morning, I was advised by the Attorney-General's Department that an estimated 32 knives, or more than five per month, have been seized since September last year. I should point out that this figure includes seizures for the purpose of evidence. Those figures certainly indicate that the laws are working, especially when compared with the official figures from the first nine months of operation, where 20 knives were seized.

I congratulate our police on implementing these laws in such a successful manner. In fact, I inspected the confiscated knives last year and I can vouch that a range of implements were impounded. They were in all shapes and sizes, but there was one common theme: They were all potentially lethal. In fact, it was horrifying to think that previously people were allowed to carry these types of weapons in our community without good reason.

Mr Speaker, the early figures also revealed that there were no charges for selling knives to persons under the age of 16. I believe that the retailers have accepted these laws in a responsible manner. However, I feel that this Bill can further assist retailers to communicate and press the laws in the community. It is consistent for retail outlets to display offence notices under other laws, such as the sale of tobacco to minors. This is a similar protective measure for retail outlets in the case of knives. I commend the Bill to the house.

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

AGENTS (AMENDMENT) BILL 1998

Detail Stage

Bill, by leave, taken as a whole.

Debate resumed from 16 February 2000.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (10.40): Mr Speaker, the Government tabled yesterday its response to the report of the Standing Committee on Justice and Community Safety into the Agents (Amendment) Bill and members will have the Government's comments about what it sees as the shortcomings in this Bill reasonably fresh in their minds at the moment.

I repeat for the record that the Government is concerned that there have been no demonstrated cases of abuse of unemployed people in this city which would lead to the Territory imposing an expensive system of regulation on employment agents in this city. The second argument that the Government has advanced is that there has been little or no consultation with the employment agents concerned about the effect of this legislation upon them.

As recently as the last few days, employment agents have contacted my office about this legislation. I assume copies of their correspondence were sent to other members as well. If so, members will have seen many comments made by employment agents about the effect of the imposition of this legislation by government on these employment agencies. Clearly, many of the people concerned actually believed that the Government was advancing this legislation to regulate them.

I do not make excuses for the employment agents. I think that in some cases employment agents have not fully acquainted themselves with the facts about these matters and, if this legislation passes today, will find themselves in a very uncomfortable position when the accounts arrive demanding registration fees for, say, the coming financial year to which, presumably, this new arrangement will apply. But the fact is that these people were not aware of these arrangements. To the extent that they were aware of these arrangements, they have almost universally opposed them.

I know of one employment agent having written to me indicating that they would support the arrangements on the assumption that the level of fees being imposed on employment agents in the ACT were of equivalent order to those in New South Wales. Just for the record, I want to report that the Standing Committee on Justice and Community Safety did get wrong this issue of what the fees were in New South Wales. The committee reported the fee as being $200 in New South Wales and indicated that that would be a reasonable fee to impose in the ACT as well. The fee is not $200 in New South Wales; it is $100.

Mr Berry: And that is what the committee said.

MR HUMPHRIES: Not as I read the committee's report. I read the committee as saying that a fee of $200 would be appropriate.

Mr Berry: No, have another read.

MR HUMPHRIES: I will, Mr Berry. But the point is that, whether it is $200 or $100, we are not going to be able to see fees of that order unless the community seeks to subsidise the regime of registration of the employment agents of this city. I have to say to the Assembly that, as Treasurer, I do not propose to bring forward a final budget in May that provides for the taxpayer to subsidise the registration of employment agents when no community benefit has been demonstrated in respect of these matters and the result would be a system which most employment agents in this town oppose.

Mr Berry: No, they do not.

MR HUMPHRIES: I am sorry, Mr Berry: I am happy to table the correspondence I have received from employment agents in this city which is almost universally opposed to your legislation.

Mr Berry: Not to me. Not to the committee.

MR HUMPHRIES: We have a dispute here between Mr Berry and me as to whether agents support this proposal. I will table my responses in writing from the employment agents showing what those views were and I invite Mr Berry to table the responses he has on the legislation as well.

Mr Berry: Sure. I have had 10.

MR HUMPHRIES: Can you put them on the table today?

Mr Berry: I do not see the relevance of doing that.

MR SPEAKER: Order! I do not want dialogue across the chamber.

MR HUMPHRIES: Mr Berry, strangely, finds it irrelevant. In a debate about the Agents (Amendment) Bill where we are talking about the impact on agents in this town of legislation Mr Berry has brought forward he does not think it is relevant to table the correspondence he has had on this Bill. Mr Speaker, I want to quote a few bits and pieces from letters I have had from agents on these matters. I have had a letter from the Recruitment and Consulting Services Association, RCSA.

Mr Berry: Everybody has had that one.

MR HUMPHRIES: That is fine. They say in this letter:

> Of great concern is that, as the industry association, we have not been included in the information dissemination, discussion or reviews pertaining to this Bill. This is particularly disappointing when it must be noted that a like review is being undertaken by the Department of Fair Trading in New South Wales and the RCSA is a central player in the process.

The RCSA is a body which purports to represent at least a number of employment agents in the ACT. I wonder whether Mr Berry consulted this organisation before or even after he introduced his Bill. I assume by his silence that he did not consult it.

I want to put a question to the crossbenchers in this place - particularly Ms Tucker, who has been very concerned in this place about consultation - about whether they think that this sort of introduction and passing of legislation without consultation with the people affected is really fair. Do they think that it is fair to have this level of imposition on the people of the ACT who are affected by these kinds of changes?

Mr Speaker, a number of other agents have expressed the view that they do not believe that there is any basis for the legislation. They do not charge fees for genuinely unemployed people; therefore, they cannot understand why legislation should be introduced to be able to effect this change. There are, of course, cases where people wish to obtain the services of employment agents for the purpose of upgrading or improving the position that they currently hold. If a person rocks in to the office of an employment agent and says that he is a chef but wants to become a public servant and would like some help on developing a resume or would like to be able to get some skills by consulting an employment agent, the employment agent obviously would have to turn that person away because the employment agent cannot charge that person for that kind of service.

Mr Berry: They cannot do it in New South Wales, either.

MR HUMPHRIES: Mr Speaker, I do not believe that the case has been made out for us to adopt the expensive regime used in New South Wales when most of the smaller jurisdictions in Australia do not have such a scheme of registration. The difference between the ACT and New South Wales in this matter is that there are over 2,200 employment agents in New South Wales and they can levy $100 a year on employment agents and still achieve a pool of about $400,000 a year with which to regulate this industry. In the ACT, we cannot possibly generate anything like that amount of money but, because of the lack of economies of scale, our costs are quite high. You cannot have it both ways. You cannot liken us to New South Wales and then seek reasons why we should be different from New South Wales in terms of the amounts that we charge.

Mr Speaker, I table the correspondence I have received on these matters from a large number of ACT employment agents. We wrote to people twice in the last 18 months - shortly after Mr Berry's Bill was introduced in, I think, July 1998 and in October of last year when the issue was before the Standing Committee on Justice and Community Safety. I do not know how many replies there are in these documents, but I table the replies, for the interest of members.

As I have said, the problem we face is that this Bill has not been consulted about with agents. Mr Berry claims to have consulted agents, but cannot table the positive responses he believes he has had from those agents. I would ask him to do that if he is serious about his belief that we should have consultation on these sorts of issues. Members can judge this matter for themselves. They would have received letters in recent days from agents making the observation that they have not been consulted.

Mr Berry: Form letters.

MR HUMPHRIES: I do not know whether they are form letters, but they have been prepared to sign these letters on the basis that they have a concern about this matter. *(Extension of time granted)* They were concerned enough to sign these letters. Everyone I spoke to about the matter after they had written to me expressed the same concerns. It was not a case of someone asking them to write a letter, so they have done their job and written. They have all expressed concern about this matter. I dare say any of us who have spoken to employment agents in the ACT have had the same reaction. Every one of us would have had the same reaction.

Mr Speaker, I want to touch on a few specifics about the amendments Mr Berry has moved. I refer first of all to proposed clause 8A, dealing with annual reports of the board.

Mr Berry: Move to adjourn it again, if you want.

MR HUMPHRIES: Mr Speaker, I would be happy to move to adjourn debate on this Bill because I think it is ill conceived and we have not had adequate consultation with the industry in the ACT, but I cannot move for such an adjournment because I am halfway through my speech. If you are serious about adjourning it, Mr Berry, I am happy to have one of my colleagues on this side of the chamber move for the adjournment.

Mr Berry: I will oppose it.

MR HUMPHRIES: You cannot have it both ways, Mr Berry. Either there has been consultation on this matter or there has not. If there has been consultation, you should table the responses that you say you have had from people supporting your legislation.

Mr Berry: The same ones that you have had.

MR HUMPRHIES: The ones that I have had oppose the legislation. Mr Speaker, I come back to proposed clause 8A of this Bill. The Government opposes the provisions dealing with the annual report of the board because they demonstrate a lack of understanding of the statutory scheme under the annual reports legislation. First of all, most of Mr Berry's provisions are unnecessary because they are already available through the Chief Minister's directions and they have been included in the board's publicly available annual report.

The provision requiring the number and outline of the nature and outcome of complaints made to the board shows a misunderstanding of the procedural operation of the Act. Complaints are not made to the Agents Board; they are received by the registrar of the board. The registrar filters complaints and conducts his own investigations, including investigations of agents, and only refers appropriate matters to the board for inquiry. Disciplinary hearings conducted by the board represent only a subset of all the complaints that may be made to the registrar.

Mr Berry's provisions also require all agents who were the subject of an inquiry by the board to be publicly named. The Government opposes this provision on the basis that it would be inappropriate for the board's annual report to name those agents against whom no wrongdoing has been found. I want to emphasise that. Mr Berry's amendment would name in a public report people who have been found innocent through a process of investigation.

Mr Berry: No.

MR HUMPHRIES: I am sorry, Mr Berry, your amendment does do that. Everybody who is investigated is named. Read your own bloody Bill and your amendments. Every person who is investigated is named.

Mr Berry: That is right. Even if they are found innocent, that is right.

MR HUMPHRIES: Even if they are found innocent, that is right. So it is the case that people who are innocent in this process are going to be named in an annual report - - -

Mr Berry: That is fine.

MR HUMPHRIES: Mr Berry says that that is fine. The Agents Board does not do that in respect of any other class of agent in the ACT. There is no other class of agent who is in this position. Agents are regularly investigated and a number are found guilty of offences. I gather that most are exonerated or at least given very minor penalties, such as warnings. We do not have people being named in legislation for other sorts of agents. Why should we do it in respect of employment agents? What has Mr Berry got against employment agents in this town that he seeks to bring in these sorts of provisions.

I want to put it on the record that employment agents in the ACT have a good record; they have an excellent record. As of the last report to me from the Bureau of Fair Trading there are no complaints outstanding about employment agents in this Territory. For as far back as anyone in that bureau can recall there has not been one complaint. Today, we are going to pass legislation which imposes a costly and cumbersome regulatory regime on those employment agents for which not one iota of justification has been advanced.

Mr Speaker, the Government opposes Mr Berry's amendment to clause 26 of the Bill on the basis that it is a duplication of existing provisions in the Fair Trading Act. I think that a more appropriate legislative framework for the development of a code of practice for employment agents is the Fair Trading Act itself. Certainly, it is a less costly method of achieving the goals Mr Berry seeks. I can say to the Assembly that, if Mr Berry's Bill

is rejected today, the Government will advance the question of dealing with whatever issues there are out there concerning the work of employment agents by having a code of practice under the Fair Trading Act if that is the view that members take about the need to regulate this area of operation of employment agents.

Mr Speaker, very briefly, the Fair Trading Act does have that power to create a code of practice to regulate this area. It is unnecessary to set in place a registration system around that because that would impose a considerable cost on the industry which is simply not justified. I ask members to reconsider the position that has been taken on this Bill.

MS TUCKER (10.56): I have listened to Mr Humphries today and, obviously, I listened to Mr Berry previously and will be supporting these amendments. Mr Humphries raised firstly the issue of consultation. I can see from going through the file that Peter Quinton from the general law group sent a letter to the industry on October 1998 letting people know about Mr Berry's Bill. I have another letter from the same person, Peter Quinton, of September 1999 informing people of the committee inquiry, so it was for quite a long time that people were invited to comment. I cannot see how the argument from Mr Humphries that there has been no consultation on this issue is particularly strong at this point. My office has received from people in the industry quite a number of letters and telephone calls and we have discussed these issues with them on those occasions. On balance, we have decided that it would be useful to implement Mr Berry's legislation at this point.

Mr Humphries says that there is no justification for having it, but we know that with the deregulated job market there is now much greater onus on private and community sector agencies to provide these services and there is less support and there are fewer resources from the Commonwealth. Basically, when you have deregulation, you need to ensure that standards are met. That is something that the Greens have always been consistent on. We do not believe that having a voluntary code of practice is sufficient. Voluntary codes of practice have been made to look quite ridiculous recently with the cash for comment investigation. The broadcasting practices in this country would be one good example.

I think that having regulation is a good policy position to take as regulation is wanted. I understand that the Government is concerned about the costs involved in administering the licensing fee. The amount of the licensing fee was a concern of many people who contacted my office originally, but the fee will be significantly less than I think people thought it would be in the beginning. The Government is now saying that that means that the licensing fee will not cover the administration cost. We had this discussion yesterday with respect to the Independent Competition and Regulatory Commission Amendment Bill.

If the Government is taking responsibility for the wellbeing of the community, it will have to cover the cost of ensuring that there are regulatory regimes in place that ensure standards are met. The Government may be very attracted to the user-pays concept, but I will continue to argue, as I did yesterday, that it is a fundamental responsibility of government to ensure that there are standards and that they are met. I do not think that that is something that this Government should argue about, particularly in light of the

amount of money we are talking about compared with what they are prepared to dish out for V8 car races or sports events of various kinds. This Bill is about ensuring that there is accountability and it is ensuring that a good system is in place for an industry that is often dealing with the most disadvantaged people in our community, people who are not necessarily able to pursue complaints mechanisms if they happen to exist.

One of the issues raised with me recently by a recruitment agency was that Mr Berry's Bill was dragging them in and they had not been consulted. Apparently that is an issue generally about who was sent the correspondence by Mr Humphries. If recruitment agencies feel somehow that their existence is not being acknowledged, that is something that needs to be taken into account in the consultation processes. From the phone calls I have had in the last couple of days, the main issue that they are concerned about is that they will be dragged in and they will not be able to charge employers to do recruitment work. Mr Berry assures me that these amendments to the legislation do not do that. For those reasons, the Greens are quite happy to support Mr Berry's amendments. However, I will take on board what Mr Humphries said about the annual reports. I will listen to the argument, but I think it sounds reasonable to support Mr Berry's amendment on that.

MR BERRY (11.01): The first issue that I think I should go to is the principle of this piece of legislation. Mr Humphries was careful to skirt around the issue of protection for those who are seeking employment and the need for it. He was also careful to skirt around the fact that in New South Wales identical legislation applies in relation to the protection of employees who are seeking employment. The system in New South Wales is different in the sense that the employment agents are dealt with quite separately from agents generally, whereas the legislation I have proposed for the ACT seeks to incorporate employment agents in the general scheme of administration of agents in the ACT.

Another issue on which Mr Humphries complained was the amendment about annual reports of the board in proposed new clause 8A of the Agents (Amendment) Bill, an amendment which I tabled in this place following the committee's report on the matter. I have already spoken about the impact of the committee's report on the amendments I have put forward. I have reflected the committee's wishes in relation to that matter by seeking to ensure that the committee's recommendations are included. Mr Humphries referred to what he described as some weakness in proposed new clause 8A. I suggest that he make out a case for amending it if he thinks that it wrong. I am quite happy to entertain the argument if he is prepared to make it. If he is not prepared to make it, I will support that which has been put forward.

Mr Speaker, some other things need to be discussed. I go firstly to the issue of funding in the ACT. I think that it has been quite disingenuous of Mr Humphries to reflect badly on the committee's report by suggesting that the committee had recommended a $200 fee in parity with New South Wales. That is quite inaccurate. The committee, in its comments, said:

> The committee strongly supports the introduction of regulation for employment agents but the costs should be in line with the costs under similar schemes in NSW, that is $100 for registration -

I suggest that is the initial registration -

> and $100 annual fee.

Mr Humphries: Where are you reading from?

MR BERRY: Look at page 11.

Mr Humphries: Whereabouts on page 11?

MR BERRY: Try the top paragraph

Mr Humphries: Yes, but it is cumulative, they think.

MR BERRY: It is $100 for registration and $100 for an annual fee. That is the initial registration. I think you have had a bad case of reading between the lines.

Mr Humphries: Look at paragraph 52(1), Wayne, $200. They thought that it was cumulative, not sequential.

MR BERRY: Yes, that is right, approximately $200. A $100 initial application fee and a $100 annual fee. Talk about selective reading: There is very clearly a $100 annual fee and a $100 application fee; so it is not $200 a year. It is $100 a year; $200 for the first year, on application. Let us not misinterpret deliberately what the committee said in relation to this matter. It did not say $200 a year at all. The committee members can speak for themselves, but it is quite plain to me what occurs in New South Wales. I think that it was quite disingenuous of Mr Humphries to attempt to give us misleading information.

An important issue which Mr Humphries raised in his argument was that of consultation. He tells us today that he wrote twice to the agents. I know that to be a fact because that is also reported in the committee's report. I think that it thanked the Government for writing to all of these employment agents to inform them about this matter. Indeed, I think it is fair to say that the employment agents knew that this Bill had been introduced 18 months ago or so and knew about the committee inquiry. Some responded to it. In fact, Mr Chris Peters of the Chamber of Commerce and Industry, obviously cranked up about a piece of legislation in the ACT Assembly, wrote on 16 February to all career people, as he described them, saying:

> We understand that, today, the Legislative Assembly adjourned, for one week only, consideration of a Bill introduced by Mr Wayne Berry to amend the Agents Act. The amendment, if carried, would introduce a licensing system for private employment agencies and would include the payment of annual licence fees to Government.
>
> When Mr Berry's proposal was initiated (about a year ago) -

it was longer than that -

> the Chamber advised our recruitment members of this and suggested the industry may wish the Chamber to organise an industry meeting to discuss the issue. We received no response at that time. We understand the ACT Government received only one submission from the industry opposing the amendment.

Mr Humphries: That is not true.

MR BERRY: Hang on a minute. Mr Peters was talking about a year ago. He went on to say:

> The ACT Government has been opposing the amendment. The Chamber has also been opposed to the amendment -

they did not ever tell me that -

> on the basis of unnecessary regulation or "red tape".

Who is surprised? He said that every concerned business should fax the Attorney-General, the Independents and so on expressing their opposition to this Bill. I received, I think, about 10 form letters which had been geed up by this letter from the chamber. Essentially, they said that they wanted clarification of the proposed fee structure. That is a matter for the Government. The Government has decided that it wants $1,000. The committee has recommended $100 a year and the Government is saying, "If you introduce this, we are going to feel miffed about it and we are going to hit them with a fee of $1,000". You will have to include it in your budget and see if your budget survives the place. If you are not prepared to accept the committee's recommendation, be it on your own head.

Requests for a copy of earlier correspondence and documentation and a further adjournment of four weeks to allow further advice and input were generally the proposals put to me by about 10 of these people. I assume, therefore, that there are about 60 or so out there who are not that troubled about this issue. Indeed, I think that there has been adequate opportunity for consultation. There will always be an opportunity for the Chamber of Commerce and Industry predictably to argue the case for unnecessary regulation and red tape. Nobody in business wants to be regulated. I have not seen too many of them come forward and say that they want to be regulated. They never rush forward for that sort of thing. Indeed, some have said on the public record - I have seen them say it on television - that there are some advantages in this Bill because it provides a level playing field for all of them and they know that the rules for everybody will be the same, whereas right now we have Rafferty's rules.

Mr Speaker, in recent years there have been significant changes to the way that employment agents operate in this country. In other States and Territories, particularly in New South Wales, employment agents have been regulated. The last legislation in New South Wales was - - -

Mr Humphries: In which Territories have they been regulated, Wayne?

MR BERRY: In the other States. In particular, New South Wales has been regulated. The last piece of legislation was a 1996 piece of legislation, so it is not something that just popped up yesterday. Mr Speaker, we have an obligation to provide a safety net at the top of the cliff rather than an ambulance at the bottom, using the old analogy. It is important to ensure that agents who are dealing with people at a sensitive stage in their life - when they are unemployed - fully understand that there is no room to exploit the situation.

Mr Humphries: Why regulate?

MR BERRY: Because there is an opportunity for unscrupulous operators to set themselves up and exploit workers.

Mr Humphries: We have never had complaints.

MR BERRY: How many workers are going to complain about the behaviour of these people when they are in the process of receiving support for them at a cost? Imagine this: Mr Humphries, with his view, could go outside and set up an employment agency, hang up a shingle, and start operating from this point forward. Mr Humphries said that we should be setting up a code of practice under the Fair Trading Act. He complains that it is too expensive to do it under this legislation, but it is not so expensive and it is worth doing under another piece of legislation. Members of the Government oppose this piece of legislation merely because it was Labor that put it forward and they did not think of it themselves. The Government is being bitter and twisted about a sensible piece of legislation which has survived very well, thank you very much, through the committee process, where it has been closely examined. The committee made certain recommendations in relation to the Bill. I have incorporated them in as much of the amendments as I could deal with. The remaining recommendation which has been put forward by the committee is a matter for the Government.

As I said earlier, Mr Humphries was quite inaccurate in the way that he interpreted the committee's proposal. There is a $100 annual fee in New South Wales and a $100 application fee. There is no case for arguing anything else. The committee was quite right in its assessment of the matter. Mr Speaker, this legislation is sensible. It has been put forward to provide protection for people who could be in a vulnerable position, it has been supported by a committee of the Assembly and there is no reason for the Assembly not to support it.

MR SMYTH (Minister for Urban Services) (11.13): Mr Speaker, there is every reason for the Assembly not to support this Bill. Mr Berry, in his comments just then, revealed his own ideological bias against business. To him, if you are in business, in some way you are guilty of abusing workers. He does not understand the way the new system works. It is based on performance. Instead of just handing out money to anybody in the employment business, as was done previously under the Labor Party, the new system is based on getting results. It is about caring for the unemployed by getting them jobs.

All Mr Berry wants to do is to put another impost on business. Why do we need it? It is needed because somebody might abuse it; that is Mr Berry's logic. Let us look at the record. The fair trading people in Mr Humphries' department have had no complaints

about this matter. There is no history of abuse of people seeking jobs through agencies in the ACT; but, because Mr Berry has an ideological bias against everybody in business, he wants to put regulation in place to make sure that we do not have Rafferty's rules. But do we have Rafferty's rules?

Mr Berry: You sure have.

MR SMYTH: Where is the evidence? Mr Berry says that we do, but where is the evidence that we have Rafferty's rules out there? There is none. There is no evidence that, for some odd reason, the businesses involved in employment as an industry are doing things that are hurting those that they should be looking after. Mr Berry throws a blanket coverage over all of it and says that all the other States and Territories have done so. When Mr Humphries asks which Territories have done so, Mr Berry retracts and says that the States have done so, but when Mr Humphries asks which States have done so we get back to New South Wales having done so.

My understanding is that the smaller States have not done so, that they have rejected it because there is no need for it. What we have out there now is an industry which, instead of just taking loads of money from Federal governments, only gets paid on performance. The industry is actually being paid to look after people and it is doing so. We have had a dramatic change in the numbers unemployed and we are now seeing them being looked after with a view to getting them a job instead of the view that we can continue to take Federal government money to maintain them in their unemployment. That is the whole point of the new system. It is about outcomes, it is about finding a job, and it is about looking after the individual.

Mr Berry, in one of his retorts to Mr Humphries about the fee structure, said that it is up to the Government to find the money to fund this proposal. He does not care. He is talking about charging only $100 and there are about 100 agents, which would bring in $10,000. If it costs $100,000 to administer, it is not his responsibility to find the money. This is the all care and no financial management policy that we see so often from the Labor Party. They lost two elections because people knew that they could not balance the books. They will not be re-elected because they are willing to do things to protect somebody but just do not care who pays for it. The taxpayers have to pay for it and they know, they care and they understand that the lot over there are totally incapable of running any sort of reasonable financial management. That is why they are over there.

The mathematics are very easy. Mr Humphries has been told that it would cost approximately $100,000 to administer such a system. You are saying that for 100 agents at $100 each you will get $10,000 and the taxpayer can pick up the other $90,000. That would be for something that is not necessary. That is why under the lot opposite we had blowouts in our budgets and that is why the lot opposite will not get re-elected. What was the name of the document they put out - "Working Capital"? Did the figures add up? Did it balance then? No. Everybody knows that you cannot balance the figures. This is just another example of that. What does Mr Berry say? He says, "That is your problem. Find it in the budget; it is only money. Let the taxpayers pay".

Why are we putting imposts on people when the No. 1 complaint about growth and employment and the No. 1 complaint about keeping business viable is about red tape and the imposts that government puts on industry for no good reason. There is no good reason here. In looking at the critical issues that Mr Berry's Bill fails to address, we find that one is about how the administration of this scheme will be funded. He says, "It is your problem. I do not care. I have just come up with an idea; you fix it". That is why Mr Berry and his colleagues are on the Opposition benches. The second issue is that there is no reason, when you judge this proposal against national competition policy, for it to be put in place. There is no public benefit to be gained from having it. The third is that if there is a problem - we do not believe that there is a problem because the fair trading people in the ACT have had no complaint about it - the remedy for fixing it should be in a Commonwealth Bill. It is a Commonwealth issue. We should not be trying to fix perceived problems in Commonwealth legislation; the Commonwealth should. But I am sure that Federal Labor do not want to touch this issue either because they know what a furphy it is.

Mr Speaker, we get back then to consultation, the old consultation line, get out there and consult. The Government is always being slammed by those opposite about not consulting properly, but what do we have here? We have no consultation. Mr Berry said, "The chamber did not come and tell me that they were upset by this". Did he ask? Did he actually step out of the little cloister that he lives in up there, the sheltered workshop that he lives in, and ask somebody? No, he did not. Mr Humphries challenged Mr Berry to table the letters he received on it. Will he table them? No. Why? It is because he knows that the position is exactly what Mr Humphries is saying, that the industry itself does not want this to happen. Why? It is because the industry is functioning perfectly well. Mr Speaker, this is just another piece of legislation from Labor that uses a sledgehammer to crack a walnut. Actually, you have to give Mr Berry some credit. Mr Berry is the only one in the Labor Party who is actually putting forward legislation. It is a shame that it is of such low quality and of such low consequence and it is a shame that what it does is put just another impost on the taxpayers of the ACT. This legislation is flawed. It is unnecessary, it is unfunded and it is not about doing something that this Assembly should be doing.

Mr Speaker, the whole purpose of the new employment system is to make sure that those who choose to enter that industry to provide services for the unemployed actually get out there and work for the unemployed. It is not some sort of "self-maintenance of my business" system. The Federal Government is demanding outcomes and those outcomes are jobs, real jobs for real people. We understand the importance of making sure that people are employed. We should not be putting another impost, albeit small, on business when, firstly, there is no need; secondly, there is no evidence to suggest that it is necessary; and, thirdly, Labor cannot tell us how they would fund it, saying. "That is your problem. You are the government. We do not have to be financially responsible. We were not in the previous five years; why should we start now?". Mr Speaker, the legislation is flawed and it should be voted down.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (11.21): I wish to make a couple of points briefly about this matter. I want to pick up Ms Tucker's point about consultation. Ms Tucker says that there has been consultation, that the Government has conducted consultation and therefore the

issue of consultation has been addressed. It is interesting that she should say that because on a number of occasions in the past she has raised, first of all, the criticism that when the Government has done something the consultation has had to be conducted by other members of the chamber or other people to find out about the reaction of the public to the - - -

Ms Tucker: Yes, I said that I had done consulting, too, that I had consulted as well. I said that.

MR HUMPHRIES: Fine. But you said at the beginning of your remarks that the fact that the Government had had consultation through those two letters of Peter Quinton's addressed the problem of consultation, that we had had consultation, so why were we complaining about Mr Berry's Bill. The fact is that Ms Tucker has complained in the past when someone other than the person bringing forward the proposal has had to do the consultation necessary on that proposal. You have complained about it, Ms Tucker.

Ms Tucker: But he says he consulted, too.

MR HUMPHRIES: He has not done any consulting. Come on, he said that he had received 10 letters and all of them as a result of - - -

Ms Tucker: I have talked to people who have talked to him, so he has consulted.

MR HUMPHRIES: I know, but the fact is that these people have come to Mr Berry only because somebody else - he says Mr Peters from the Chamber of Commerce and Industry - has gone out there and said, "This is what the Legislative Assembly is about to do", and, as a result, these people have had to go and seek out Mr Berry. Is that the sort of consultation you support, Ms Tucker? If people are reminded, forced or cajoled to go and talk to you about a proposal of yours that you are about to impose on them, is that the right sort of consultation, rather than your going to them and saying, "I am proposing to do this to you. I am proposing to regulate you. How do you feel about that"? If you are on the record, Ms Tucker, as saying that that is okay, that consultation generated by having made the decision to do it rather than asking about the decision in the first place is okay, I am glad because that is not what you have said in the past.

The second point is about whether the amount involved is $200 or $100. Mr Speaker, I refer members to recommendation 6 of the report of the Standing Committee on Justice and Community Safety. It says:

> The committee recommends that
>
> (i) licence fees for employment agents be set at a rate in parity with New South Wales (approximately $200 including $100 application fee and $100 annual fee...

Mr Berry: That is $100 a year.

MR HUMPHRIES: But that is not what the committee says. The committee clearly was quoting a figure. Why were they quoting a $200 fee? Mr Berry is trying to tell us that they were actually quoting a two-year impost when they said $200.

Mr Berry: You are deliberately misleading us now.

MR HUMPHRIES: No, I am not deliberately misleading. It is clear from that that the committee thought that the figures were cumulative. Why would they refer to $200? Why did they not say $300, that is, one year's application fee, the next year's annual fee and the annual fee for the year after? Why did they not say that, Mr Berry? They could have, on your logic. They said $200 because they thought that that was the annual fee, the fee that persons would have to pay when they first entered the scheme in New South Wales. As we know, that is not the case. They have to pay $100 in New South Wales.

I turn to the final point, Mr Speaker. Mr Berry says that the reason nobody has complained in the ACT about employment agents is that people are frightened to make complaints, that people have dealt with employment agents and received a raw deal, being charged for the services that have been provided by the employment agents, and have been too frightened to come forward and complain to anybody about it. You would think that with the debate generated on this matter someone would have come forward to one of our officers and said, "Yes, you need to pass legislation. I got a really raw deal from an employment agent". You would think that one person would have come forward on that basis. Mr Rugendyke, have you had such a person come to your office? Ms Tucker, have you had someone come and tell you about the raw deal that they got from an employment agent?

Mr Wood: Yes, I have.

MR HUMPHRIES: You have, have you?

Mr Wood: I will tell you the story one day.

MR HUMPHRIES: Okay. Mysteriously, evidence that has not been advanced so far in this debate, now suddenly materialises. Labor now has an example which they are prepared to advance in the final five minutes of debate on this Bill. That is great. That is very convenient, Mr Wood. I am afraid that it is not very convincing. The people who are there to receive complaints about these sorts of matters - government agencies; the Bureau of Fair Trading and others - have received no complaints about employment agents in the ACT.

Mr Stanhope: Why would any working person in the ACT bother to go and see you, given your attitude?

MR HUMPHRIES: The fact of the matter is, Mr Stanhope, that they did not come and see your people when you were in office, either, because this provision has been around for some time. Why did they not go and see Labor Party when it was in office? I wonder.

Mr Stanhope: They do.

MR HUMPHRIES: But they did not. I can assure you that they did not because there are no records of any complaints.

Mr Hargreaves: And we believe you, absolutely! I would believe you in the same way as you believe Mr Wood, with some degree of cynicism.

MR HUMPHRIES: Mr Hargreaves says that that is not the case. Mr Hargreaves, did the committee of which you are a member call the Bureau of Fair Trading to give evidence about this matter? No, it did not. The fact is that the Labor Party knows very well that there is no problem in the ACT with this issue. We are about to impose on the industry a system of regulation which is going to be a significant cost to that industry and which is not justified; there has been not one complaint. The next time a business person comes through your door and complains about the level of red tape in the ACT, I dare you to tell them about the day that you imposed a system of regulation on a whole sector of an industry when not one complaint had been made about that industry on that score. I do not think that you will be able to do that if you vote for this legislation today.

MR BERRY (11.27): I do not know why I bother responding to Mr Smyth's air-headed contributions to debates, but I have to on this score. He is starting to believe his own propaganda. Let us take a little look at the committee's report. Mr Smyth, before you speak about these issues, I recommend that you get yourself properly briefed. Turn to the penultimate page of the report and look at the number of other jurisdictions which provide this sort of legislation. It happens in New South Wales. We are a little island in New South Wales and just over the border, in Queanbeyan, it is regulated. Take a look at Victoria, a former Liberal state. Yes, it is regulated. Take a look at South Australia, still a Liberal state. Yes, it is regulated. It is regulated in Western Australia, a Liberal state, and it is regulated in Queensland. Let us stop kidding ourselves about this matter. It is seen to be an issue in the majority of Australia. Why should it not be an issue in the ACT? Why should the ACT job seekers not be worthy of protection?

ACT job seekers never needed protection under the earlier model for employment agencies. The situation has changed, as you have properly informed the Assembly, and there is a need for protection, otherwise I am sure that these other States, these Liberal States, would have repealed the legislation they have in place which provides the protection that the legislation I introduced sets out to provide. It also provides a level playing field for business. How many times have we heard businesses say that they need to have a level playing field? Over and over they say that they need to have a level playing field. When they have a level playing field with regulation, they will all know what the rules are. They will have a code of practice which they will have to conform with. It will be a fair code of practice, one trusts, that this important industry in the ACT will have to comply with. Any unemployed person who is seeking a job will get treated in accordance with the same code of practice, with the same laws. There will be no variance and there will be penalties if people break the rules. We are providing a protection for a vulnerable sector of society. That is what this is about.

I do not want to belabour the consultation phase, but I must say that people in the Government seem to want to ignore the committee process. So often we climb up in this place and applaud the committee process for the consultation feature that it provides for the community. This Bill was sent off to a committee at the insistence of this place and a committee properly examined it. Notice of the inquiry was advertised in the *Canberra Times* and the committee gave due notice of its deliberations. The industry was informed by the Government on no less than two occasions before the matter came before the committee.

I never exactly hid my light under a bushel on this one. I was actively out there boasting about it because I thought it was a good idea, so I was not exactly keeping it a secret and there certainly was not a flood of people banging on my door saying, "Wayne, do not do this". The only time I had a number of letters was when there was a rush of blood to the head in the last week or so after the Chamber of Commerce and Industry called on a few employment agencies to write to me to ask for more time. I received about 10 letters. I suspect they are the same as the 10 letters that Mr Humphries has tabled today. I just think that we should get on with the business of providing protection for job seekers out in the community, instead of having all the artificial fuss and bother which the Government has constructed quite artfully.

Question put:

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

The Assembly voted -

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

Question so resolved in the affirmative.

Amendments agreed to.

Bill, as a whole, as amended, agreed to.

Bill, as amended, agreed to.

MANDATORY SENTENCING – SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE INQUIRY

MS TUCKER (11.36): I move:

> That this Assembly condemns and dissociates itself from the ACT Government submission to the Senate Legal and Constitutional References Committee inquiry into mandatory sentencing laws because of the submission's failure to acknowledge that these laws:
>
> (1) are racially discriminatory in effect;
>
> (2) are inconsistent with recommendations of the Royal Commission into Aboriginal Deaths in Custody, which the Commonwealth and all States and Territories have agreed to implement;
>
> (3) are inconsistent with the goal of reconciliation with indigenous people, which the Commonwealth and all States and Territories have agreed to;
>
> (4) may be in breach of the UN Convention on the Rights of the Child and the International Covenant on Civil and Political Rights; and
>
> (5) are manifestly unjust because they take away the possibility of individual circumstances being taken into account by magistrates and judges and alternative socially constructive rehabilitation options being pursued.

Mr Speaker, I have a feeling that my speech is going to go over time. Could I seek leave from the Assembly to speak without limitation of time?

Leave granted.

MS TUCKER: Last November the ACT Government put a submission to the Senate inquiry into mandatory sentencing laws. I reject the manifestly unjust position this submission takes. It basically puts states rights above human rights. In refusing to discuss mandatory sentencing laws, it refuses to discuss a fundamental human rights issue which has tragic and significant implications for the indigenous people of this country. Like many people in our community, I am shocked at the mandatory minimum sentencing laws in the Northern Territory and Western Australia and at the recent death of a child in detention for stealing textas and paints.

The response of the Northern Territory and Western Australia to complex social problems is brutal and frightening. The response of our Prime Minister and the Chief Minister is reprehensible. I was not consulted on this matter and, as far as I know, neither were other non-government members of this place. As far as I know, neither were the people of the ACT. I acknowledge that the Government has a right to put its

position, but as they are a minority government which claims to have an interest in cooperation and consultation, it would have been better if they had initiated some sort of discussion about this issue.

I am doing that today by putting this motion. I am asking this Assembly to condemn, and disassociate itself from, the ACT Government's submission. In the submission it was noted that the inquiry was linked to the introduction of Greens Senator Dr Bob Brown's private members Bill, the Human Rights (Mandatory Sentencing of Juveniles) Bill. The Chief Minister wrote in this submission:

> … I do not propose to address the policy issue of the mandatory sentencing of juveniles which I consider to be properly a matter for which each State and Territory Government should legislate. The concern of the ACT is the threshold issue of the proposed exercise of the external affairs powers to permit the Commonwealth Government to legislate in respect of a matter traditionally and appropriately the responsibility of the States and Territories.
>
> … … …
>
> The technical Constitutional power of the Commonwealth to act to implement the relevant clauses of the Convention on the Rights of the Child is acknowledged. What is disputed is the propriety of the Commonwealth seeking to exercise this power.
>
> … … …
>
> The use of the treaties power to directly interfere in traditional State/Territory areas of responsibility should only be considered by the Commonwealth in the most extreme, urgent and compelling cases.

Mr Speaker, as I said, this submission basically puts the states rights position. It also raises a number of questions, some of which I asked in the Assembly in question time last sitting week. The first question was in response to the statement that the use of treaties powers should be considered only in most extreme and compelling cases. The obvious question was: Is a child's incarceration for stealing textas and pens and consequent death not an extremely compelling reason? The Chief Minister, after avoiding the question initially, in answer to the supplementary question said she did not believe it was of such national moment as to support the Federal Government taking away the democratic rights of the Northern Territory parliament. This is a statement I cannot support. It is a statement that indigenous people reject, our religious leaders reject, the legal community reject, the human rights community reject and many other people in our community reject.

These laws are racially discriminatory in effect. They are inconsistent with recommendations of the Royal Commission into Aboriginal Deaths in Custody. They are inconsistent with reconciliation with indigenous people and, according to overwhelming legal opinion, they may breach the International Convention on the Rights of the Child and the International Covenant on Civil and Political Rights.

Last but not least, these laws are manifestly unjust because they prevent the judiciary from determining what punishment fits the crime. They take away the possibility of individual circumstances being taken into account by magistrates and judges and alternative socially just constructive rehabilitation options being pursued.

I address the first point, that these laws are racially discriminatory in effect. A letter to the Prime Minister from 23 legal experts from faculties of law at 11 universities said:

> The Western Australian and Northern Territory Governments assert that mandatory sentencing laws are not discriminatory … [they apply to all people] regardless of racial origin. This argument [does not take into account] the existence of a prohibition against indirect discrimination. The Preamble and Articles 1(1), 2 and 5 of CERD prohibit acts which have a discriminatory purpose or effect … Equal treatment before courts administering justice in Western Australia and the Northern Territory requires consideration of the different impact of sentencing options on different racial groups … [These laws ensure] the disproportionate imprisonment of Aboriginal people …

We know that since the introduction of the laws in Western Australia indigenous people have been detained at 60 times the rate of non-indigenous people and you are six times more likely to be imprisoned if you are Aboriginal in the Northern Territory. The ACT Government's submission ignores this. The ACT Government apparently thinks that rights are more important than racial discrimination.

I turn to the second point, the inconsistency of these laws with recommendations of the Royal Commission into Aboriginal Deaths in Custody. This royal commission was established in 1987 to investigate the deaths of 99 Aboriginal and Torres Strait Islander people who had died in custody. The commission considered the social, cultural and legal factors that contributed to these deaths and subsequently listed 339 recommendations to be implemented by Commonwealth, state and territory governments. Key issues identified by the commission were the social and economic disadvantage of indigenous people as well as the need to empower indigenous people to reclaim control over their lives and communities. Commonwealth, state and territory governments are responsible for reporting, and have agreed to report, on an annual basis on the implementation of the recommendations.

I will now list some recommendations these laws breach. Recommendation 62:

> That governments and Aboriginal organizations recognize that the problems affecting Aboriginal juveniles are so widespread and have such potentially disastrous repercussions for the future that there is an urgent need for governments and Aboriginal organizations to negotiate together to devise strategies designed to reduce the rate at which Aboriginal juveniles are involved in the welfare and criminal justice systems and, in particular, to reduce the rate at which

> Aboriginal juveniles are separated from their families and communities, whether by being declared to be in need of care, detained, imprisoned or otherwise.

Recommendation 92:

> That governments which have not already done so should legislate to enforce the principle that imprisonment should be utilized only as a sanction of last resort.

Recommendation 104:

> That in the case of discrete or remote communities sentencing authorities consult with Aboriginal communities and organizations as to the general range of sentences which the community considers appropriate for offences committed within the communities by members of those communities and, further, that subject to preserving the civil and legal rights of offenders and victims such consultation should in appropriate circumstances relate to sentences in individual cases.

Recommendation 109:

> That State and Territory Governments examine the range of non-custodial sentencing options available in each jurisdiction with a view to ensuring that an appropriate range of such options is available.

The ACT Government's submission ignores these. states rights are more important. The question that has to be asked here is: What value was the royal commission as a nationally agreed set of steps towards addressing deaths in custody? How is the indigenous community to have faith in our sincerity or commitment if we can so easily slip away when the politics of the day are not favourable? How could we possibly expect anything other than cynicism and anger from the community, both white and indigenous?

The third point of my motion is the reconciliation process. We have had so many claims, so many press releases, from this Government and from the Federal Government about commitment to reconciliation with indigenous people, although I noticed yesterday that the Prime Minister is thinking it might be a bit difficult to achieve in the near future. Yes, Prime Minister, you seem to be working pretty damn hard to set it back. If you do not think incarcerating a hungry indigenous child for taking biscuits and cordial on Christmas Day is inconsistent with a proclaimed desire to reconcile, if you do not think incarcerating a child for taking textas and paints, a child who subsequently took his life after punishment in detention, is inconsistent with a proclaimed desire to reconcile, if you do not think sentencing a 24-year-old indigenous mother to 14 days' prison for receiving a stolen $2.50 can of beer is inconsistent with reconciliation, then we do have to wonder what you think reconciliation means.

I quote from "A Call to the Nation", adopted at the Australian Reconciliation Convention in May 1997:

> … reconciliation between Australia's indigenous peoples and other Australians is central to the renewal of this nation as a harmonious and just society which lives out its national ethos of a fair go for all …

Members here today who do not support this motion need to explain what they think reconciliation means. They need to explain how it is a fair go when white-collar crimes such as fraud, obtaining financial advantage by deception and related offences are not subject to mandatory detention. How is this policy in the interests of reconciliation when the evidence is clear that the more access juveniles have to the criminal justice system, the more frequently and deeper they will become involved in crime. They need to explain why, according to the ABS, since mandatory sentencing in late 1997 the Northern Territory prisoner population has increased by 42 per cent and why, according to the National Children's and Youth Law Centre, the majority of those sentenced have been young Aboriginal men. In Western Australia indigenous children constituted 80 per cent of cases under mandatory detention laws before the Children's Court of Western Australia between February 1997 and May 1998. All members in this place have supported reconciliation. The ACT submission ignores this. States rights are more important.

The fourth point of my motion is the matter of the International Convention on the Rights of the Child and the International Covenant on Civil and Political Rights. The following groups and individuals are of the view that this law may be in breach of the Convention on the Rights of the Child: The Law Council of Australia; the Human Rights and Equal Opportunity Commission; ATSIC; the National Children's and Youth Law Centre; Sir Ronald Wilson, former High Court judge; former Chief Justice of the High Court, Sir Gerard Brennan; the Criminal Lawyers Association of Western Australia; Amnesty International; the Australian Bar Association; Martin Flynn, lecturer, Law School, University of Western Australia; John Willis, associate professor, La Trobe University; the Law Society; the International Commission of Jurists and the Australian Law Reform Commission, to name just a few.

Obviously, this is an important point, because it is through this that the external affairs powers can be used by the Federal Government. But it is also important because it raises the issue of international conventions and whether or not they are binding. It is true that Mr Burke from the Northern Territory does not think it has anything to do with the Northern Territory if we are signatory to an international convention. However, 23 experts in law from 11 university law schools which I have already mentioned say:

> The submissions of the West Australian and Northern Territory Government both refer to a popular mandate to implement mandatory sentencing laws. This argument overlooks the obligation upon the Federal Government to implement the terms of treaties to which it is a party. Article 27 of the *Vienna Convention on the Law of Treaties* provides that a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. Article 50 of the ICCPR provides that the provisions of the Covenant shall extend to all

> parts of Federal States without any limitations or exceptions. In addition, there is a general duty on States - including a federal State such as Australia - to bring their internal law into conformity with their obligations under international law. Popular sentiment in one state or territory is no justification for inaction by the Federal Government to ensure conformity with international human rights standards in all parts of Australia.

I would like to read also a letter to the Prime Minister from the aforementioned legal experts. I will seek leave to table the full submission after this debate. The letter says:

> Dear Prime Minister,
>
> In submissions to the Senate Legal and Constitutional References Committee, the Western Australian and Northern Territory Governments argue that mandatory sentencing laws in those jurisdictions do not infringe the Convention on the Rights of the Child (CROC) or any other international treaty to which Australia is party. We disagree.
>
> For the reasons set out in the attached submission, it is our opinion that the impact of Western Australian and Northern Territory mandatory sentencing laws amount to a violation of Australia's obligations under CROC, in particular those provisions which provide that
>
> . the best interests of the child shall be a primary consideration in actions by courts of law and legislative bodies (Article 3);
>
> . detention of a child shall be used only as a measure of last resort for the shortest appropriate period of time (Article 37); and
>
> . a variety of dispositions shall be available to ensure that children are dealt with in a manner appropriate to their well-being, and proportionate both to their circumstances and the offence (Article 40).
>
> We are also concerned that mandatory sentencing laws infringe a range of further international treaty obligations including those which relate to the administration of justice (for example, the prohibition of arbitrary detention in Article 37 CROC and Article 9 ICCPR), equality before the law (for example, Article 5 CERD and article 26 ICCPR) and the protection of Aboriginal culture (for example, Article 30 CROC and Article 27 ICCPR).

Now I will deal with the arguments we have heard about consistency of approach from politicians on the use of international conventions to override state or territory laws. I will deal with these arguments because I know the Chief Minister used this argument

to avoid answering my questions on the ACT Government's submission to the Senate inquiry. Of course, this argument is just a smokescreen argument to avoid facing up to the reality of the issues. Let us look at the two cases that politicians like to mention. The first concerns supervised injecting places. The Greens and the Government and Labor have challenged the importance and status of the view of the International Narcotics Control Board, the body which is charged with administering the conventions and protocols on narcotics. There are two main differences here. Firstly, whether it is in breach of the convention at all is questionable. There is solid legal advice that a supervised injecting place of a certain kind will not be in breach of the convention.

Secondly, the International Narcotics Control Board does not have a role under the treaty to adjudicate or interpret, only to recommend. So when they make their statements it is their opinion and unenforceable at international and national law. As was reported today in the *Canberra Times*, Professor Pennington said the agency described itself as a quasi-judicial body making judgments on anything to do with illicit drugs. But there are no such words in the international treaties that govern the board. This is a body which is operating right outside its authority under the treaties, according to Professor Pennington. I am assuming that the Government would not presume to suggest that this situation is the same as with mandatory minimum sentencing laws and the conventions that I have outlined, considering the legal opinion in this country and internationally which I have referred to.

The other issue that is brought up in this smokescreen argument of consistencies is euthanasia. That was not a treaty issue at all. There was no breaking of promises to uphold principles on behalf of the ACT people. The Federal Government was able to override the Northern Territory legislation in that case simply because it is a territory. Much as some members here might want to paint it as a simple black-and-white issue of consistency of response to all matters of overriding state and territory laws, I am sorry but it is just not that simple and you will not get away with it. People in the community know it is about all these other important factors I am raising.

As elected representatives we all have a responsibility to look at the deeper issues and make a considered and principled decision. I do not claim that it is always easy to be clear on what the principled position is, neither do I claim to have always reached it, but I understand that my first responsibility is always to attempt to find such a position and to explain it in this place. I would argue the need to be consistent too, but to be consistent in standing up for justice, for fairness and for human rights.

The fifth point of my motion is that mandatory sentencing laws are manifestly unjust and, I would add, morally reprehensible. Such laws take away discretion from a judge or magistrate so that he or she has to imprison children and adults for pathetically small property crimes. How can we call it justice when bewildered people are held hundreds of kilometres away from family, friends and country for such crimes as stealing a can of cordial, when every single major investigation of indigenous communities and culture and every attempt to reconcile with indigenous people have pointed not in the direction of brutal punishment and revenge but in the direction of positive social support and empowerment of the people?

What does this mean for the role of the judiciary in this country? While case law supports that mandatory sentencing is legally permissible, Hon. Justice Michael Adams put it well:

> The assertion by the elected politicians of the right, in effect, to impose particular sentences for particular crimes, as a response to immediate political exigencies is a significant interference with traditional and well settled principles of the separation of powers.

The ACT Government's submission ignores this. Please, members who support this submission, explain your position on this to us - Mr Moore in particular, who explained the importance of the separation of powers to me in my early days here.

It will also be interesting to hear what the men of faith in this place say, considering church leaders have spoken out on this and called for intervention from the Federal Government. The church sees it as a moral issue. Members here were happy to put their moral view in this place when we debated abortion. Let us hear them address the morality of imprisoning children for minor property offences, children who are mostly Aboriginal.

We are all interested to hear whether each member of this place does support the statement by the Chief Minister that this is not of such national moment as to take away the democratic rights of the Northern Territory. If they do, we would like to hear what, in their view, would be of such national moment. While we are at it, they could tell us whether they think it was wrong for the Federal Government to override the Tasmanian gay laws or the Franklin Dam decision. They could tell us what circumstances they think would be extreme and compelling enough if this is not.

There is one other area of this debate that is very important and that I think everyone would agree on - that crime in the community is a problem and that victims of crime suffer. However, the debate is about how we address that problem. It is nonsensical to say that these laws will solve the crime problem. The evidence does not suggest it works. It seems the only thing it achieves is political gain for a few politicians who shamefully promote greater division in the community through the politics of blame instead of engaging in the serious policy discussion which has at its centre the desire to promote wellbeing for all the people of their community.

We must as a nation focus on understanding the causes and finding ways to prevent the social problems which have as their base despair and alienation. Mr Speaker, in the national debate on this issue, I have heard Mr Burke talk about do-gooders from down south intervening. I have lived in Darwin, and I know there are do-gooders there too. They are the people who are working to support the indigenous communities to find solutions to the problems they face. They are the people who are working with communities in their country in ways which do not force them to deny their aboriginality, supporting them to work with health issues, respecting the need for community control. They are people who are working with education to make it relevant and appropriate. They are people who are working against the mandatory sentencing laws. In fact, they are people who working on all the things that do-gooders do here. I find it bizarre that suddenly doing good is seen to be a problem.

Members who have the opportunity to stand against mandatory sentencing laws and do not do so are as responsible for the outcomes as those who actually created the situation. Those members who hide behind simplistic political arguments about consistency of response to the existence of international treaties, those who claim states rights are more important than human rights, need to understand that, in their silence on this, they are committing a serious breach of faith with the indigenous community and many in the broader community as well.

I remind members of this, because on many occasions in this place we have joined together to support reconciliation with indigenous people, to say sorry for the shameful and tragic removal of children from their families, to shed tears as we heard in this Assembly first-hand stories from members of our community, to acknowledge the crushing blow this was to the spirit and culture of the people, to acknowledge also the devastating impact of loss of country and land to the people, to accept and report on the progress of recommendations of the Royal Commission into Aboriginal Deaths in Custody, to acknowledge the need to work with indigenous people to find solutions to the social problems which are a manifestation of the despair that has resulted from the unjust and shameful treatment. We have also joined together with the community to celebrate their successes, to celebrate the fact that, despite all this, the spirit is alive and well and there is great energy in the community to find solutions.

The Government has an opportunity today to acknowledge the strong concern in the Australian community on this issue by agreeing to put an amended submission which would reflect the broad community distress and anger about these laws, which are short-sighted, unjust and brutal and appear to be based on an impulse of revenge rather than any desire to understand and solve the problems. I will withdraw this motion of condemnation if the Government today gives a commitment to do this.

I am aware that members of this parliament, including the Chief Minister, and I understand also the Prime Minister, seem to be telling us that personally they do not approve of or support what is happening in the Northern Territory and Western Australia, but it is none of their business. I reject that proposition totally. I ask members to reflect on Edmund Burke's statement:

> All that is necessary for the triumph of evil is that good people do nothing.

MR STANHOPE (Leader of the Opposition) (12.02): Mr Speaker, the Labor Party will be supporting Ms Tucker's motion. If the Royal Commission into Aboriginal Deaths in Custody and the national inquiry into the separation of Aboriginal and Torres Straight Islander children from their families told us one thing, it was how to prevent the deaths in prison of indigenous people. The commission gave us numerous safeguards and procedures to follow to protect prisoners and safeguard indigenous people at risk. Jurisdictions around Australia have, in different measure, acted on its recommendations.

The royal commission and the Bringing them home report had a fundamental message. It was clear and simple: Keep people out of gaol. The large numbers of Aboriginal deaths in custody reflect the disproportionate rate of imprisonment of indigenous

people, yet still in parts of Australia we are finding new ways of putting Aboriginals in gaol. Mandatory sentencing is the latest and most devastating of these. As we all know, two weeks ago a 15-year-old orphaned Aboriginal child took his life in prison. The boy was serving a 28-day mandatory sentence for stealing pencils and stationery. He died far from home, in Darwin. His sentence was imposed under a mandatory sentencing regime that applies in the Northern Territory. Western Australia has a similar regime.

Mandatory sentencing does not have a lot of support outside these jurisdictions. For most, the pressing question today is: Should the Commonwealth intervene to overturn these provisions? Mr Speaker, I oppose mandatory sentencing on two main grounds - on the effect it has on the justice system and on the unfairness of its application. Victims of crime and their families often feel that sentences are too lenient. Society wants to be protected from persistent offenders. These are certainly legitimate concerns. On top of these concerns and feeding on them are the law and order merchants, the people who see issues in simple terms and have solutions ready to take off the shelf for every problem. Mandatory sentencing is one of these simple off-the-shelf so-called solutions.

Courts have an obligation to sentence each offender on the justice of the case. Mandatory sentencing prevents the court from applying justice to cases before them. In determining sentence, a court should consider the circumstances both of the offence and of the offender. The court has to address the issue of deterrence, rehabilitation, punishment and restoring the offender to the community. These considerations draw the court in different directions and can be addressed only in the circumstances of a particular case.

Removing discretion from the courts means that in almost all cases it will be exercised elsewhere. If it is not exercised by the judge in court, it will be exercised in the main by the police and by prosecutors. It will be exercised in private and in a haphazard way. It will be immune from appeal. Many cases will go to court and the convicted offender will automatically go to gaol. Offenders will clog the court system as they respond to mandatory sentencing with not guilty pleas. Prisoners will clog our prisons, imposing a huge cost on the community and a huge cost on the individual - the offender sent to prison for a minor offence but subjected to many of the dangers of prison.

I take the opportunity, Mr Speaker, to quote from the ATSIC submission to the current Senate inquiry into mandatory sentencing in relation to juvenile sentencing principles. I think it is a good summary of the situation around Australia. ATSIC, in their submission, comment:

> Mandatory sentencing is completely out of kilter with the sentencing principles which have been developed by the superior courts in Australia. Mandatory sentencing overturns the principle that special considerations are relevant to sentencing juveniles. As the case law shows very clearly -

and ATSIC give very detailed explanations of the case law -

> rehabilitation is seen as an important consideration when sentencing young people.

To the extent to which there is difference between superior courts on this question, it is essentially over the issue of whether rehabilitation is the primary consideration or merely an important consideration. What the courts agree on is that mandatory sentencing contradicts that position because it places incapacitation - that is, imprisonment, getting people off the streets - as the primary consideration and prevents the court from taking into account any other sentencing objectives in relation to rehabilitation or returning a person to the community. Ms Tucker, in her detailed speech, touched on those issues, and I will not quote the examples she did.

More importantly, I oppose mandatory sentencing because of its impact on the poor and disadvantaged in our society and, in Australia, particularly its impact on indigenous people. Mandatory sentencing requirements apply to minor property offences, the very offences most likely to be committed by those who have been marginalised in our society and by our society. It is the disadvantaged in our community who suffer disproportionately as a result of these penalties.

As we all know, indigenous people have a disproportionate contact with the justice system. Indigenous young people are most likely to be arrested for public order offences; they are less likely to be cautioned by police and more likely to be charged with a criminal offence; they are more likely to be arrested than given a summons. This means young indigenous people are more likely to appear in court and are therefore more likely to have a record and to come into the scope of the mandatory sentencing regime.

For those offences covered by mandatory sentencing, the overwhelming majority, 70 per cent, of adults and juveniles appearing before the Northern Territory courts are Aboriginal. It is ironic, and I guess we can be a little bit cynical about it, that not all property offences are subject to mandatory sentencing in the Northern Territory. Fraud and embezzlement are excluded. Fraud and embezzlement are almost exclusively property offences committed by non-indigenous people.

Across Australia young indigenous people are 25 times more likely to be in detention than are non-indigenous people. In the Northern Territory the rate is 32 times greater and in Western Australia is it 38 times greater. These are shameful figures, and mandatory sentencing only makes them worse. A recent report in the Northern Territory claimed that since the introduction of mandatory sentencing the number of juveniles gaoled in the Territory had increased by 145 per cent. Almost all of them were Aboriginal. The report also found that there had been no reduction in crime or in property offences.

What are the offences for which these people are being imprisoned? Many examples have been reported in the press and in submissions to the Senate inquiry. I take the opportunity to refer to some of those mentioned in the ATSIC submission. A 22-year-old Aboriginal woman was sentenced to 14 days' gaol for stealing a can of beer. She was employed and had no prior convictions. In July 1998 a 13-year-old girl was sentenced to 21 days' detention at the Don Dale Centre in Darwin for stealing and for breaching previous court orders. She had previously been convicted of stealing food. She was incarcerated 1,500 kilometres from her community.

A 17-year-old Aboriginal boy who was a petrol sniffer in an Aboriginal and Torres Strait Islander community was sentenced to seven months plus 120 days' mandatory sentence imprisonment for stealing food, alcohol and petrol. A 15-year-old Aboriginal boy received a mandatory detention sentence after he broke a window. He broke the window after hearing of a friend's suicide.

A 17-year-old Aboriginal youth was sentenced to 12 months' imprisonment after his third stealing conviction. His third offence was stealing a packet of biscuits. Four Aboriginal youths were subject to a mandatory sentence after jointly stealing $1.60 worth of petrol. An 18-year-old indigenous man obeyed his father and reported to the police that he had stolen a cigarette lighter. He was sentenced to 14 days' imprisonment.

In presenting these case studies to the Senate committee in their submission, ATSIC commented on what emerges most clearly from them. What emerges, in the view of ATSIC - and I support the view - is that a great deal of theft and property damage, particularly by indigenous children, is a direct result of poverty. Many of the indigenous children sentenced under the mandatory sentencing laws have had extensive previous contact with welfare authorities, have low literacy levels and may have English as a third language. Many have a history of substance abuse. Many of the adult Aboriginal and Torres Strait Islander people who come before the court are there for offences which were committed whilst intoxicated. Many have an alcohol dependency. Large proportions are reliant on social security and have no opportunity to make restitution for the property loss or damage arising from their offences.

There has been much recent discussion of the poor socioeconomic conditions of indigenous adults and youth and young people which make them so much more susceptible to criminalisation. This is an issue that was discussed extensively in the Bringing them home report. I commend this discussion on the impacts of poverty and the impacts of marginalisation in indigenous communities, and their relationship with the criminal justice system and the impact that these laws have. I commend to members the many submissions that have been made to the Senate inquiry in relation to that.

The corollary, that which flows from that, is the extent to which mandatory pre-sentencing is obviously so discriminatory in its impact on indigenous people because it punishes the poorest people in our community for what are, in effect, crimes of poverty and social marginalisation. The mandatory sentencing laws of the Northern Territory and Western Australia - all thinking people throughout Australia know this - essentially punish people for being poor and for being socially marginalised.

In May this year the Council for Aboriginal Reconciliation will launch its draft document for reconciliation. That document will be fundamental to the reconciliation process, but reconciliation is more than a document. The document will be supported by strategies that will give effect to the intention of reconciliation. One of these strategies will look to ways to address indigenous disadvantage. It seems rather banal that we have to repeat some of the statistics or some of the indicators in relation to indigenous people, but we need to keep doing it, as Ms Tucker has suggested. It seems that it is necessary

that we have to stand up in parliaments around Australia and continually repeat the extent of the poverty and social marginalisation suffered by indigenous people in this country.

Indigenous people are the poorest, on all indicators. Indigenous people are the poorest, the least healthy, the least employed, the worst housed and the most imprisoned Australians. The strategy on addressing disadvantage will look to practical ways of reversing these deplorable results. A start can be made by overturning the mandatory sentencing regimes of the Northern Territory and Western Australia. The ACT Government and all members of our Assembly support reconciliation. Most, I am sure, oppose mandatory sentencing.

As Ms Tucker has pointed out in her motion, for Mrs Carnell and the Government in their submission to the Senate inquiry the overriding concern was Commonwealth intervention in the affairs of the States and Territories. In the Government's submission to the Senate committee examining mandatory sentencing of juvenile offenders the Government said:

> The use of the treaties power to directly interfere in traditional State/Territory areas of responsibility should only be considered by the Commonwealth in the most extreme, urgent and compelling cases.

I agree with Mrs Carnell in that respect. Where we differ, however, is that I believe mandatory sentencing and its discriminatory impact on Aboriginal people provide an extreme, urgent and compelling case in the sense proposed in the Government's submission. *(Extension of time granted)*

Unless Western Australia and the Northern Territory are persuaded to change their laws by the weight of evidence presented to the Senate inquiry into mandatory sentencing, unless they are persuaded by the intervention of the United Nations High Commissioner for Human Rights, unless they are persuaded by the enormous outpouring of concern and condemnation from all right-thinking people throughout this nation, then the Labor Party believes that the Commonwealth will have no option but to intervene.

In the context of Ms Tucker's motion, the Labor Party supports her view that this Government, this parliament, in its submission to that inquiry should have seriously addressed the issue of mandatory sentencing. It was an inquiry into the mandatory sentencing of juveniles, not an inquiry into states rights versus human rights. That is the obvious outcome and the implication of the issue insofar as the public debate has gone, but it was an inquiry into mandatory sentencing of juveniles.

In the Labor Party's belief, the Government should have seriously addressed that issue. It should have engaged in the debate about how these laws are simply unacceptable on any notion of human rights or individual liberties, justice or equity or even in relation to the genuineness of our commitment to reconciliation.

The Labor Party will support Ms Tucker's motion and await with interest a response to the request which Ms Tucker made to the Government to volunteer to resubmit to the Senate inquiry, in which case Ms Tucker is prepared to withdraw her motion. I would commend that course of action to the Government. If the Government does not respond to that offer, the Labor Party will be supporting this motion.

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety) (12.19): Mr Speaker, let me start by putting on the record very clearly the Government's endorsement of the views expressed by a number of members around this place about the significant effect on indigenous people in Australia of a program or a policy which results in their imprisonment, particularly imprisonment in circumstances which it might be argued are trivial. There is absolutely no doubt about the need of Australia as a community to come to grips with the very significant social problems which Aboriginal Australians face. The imprisonment of those Australians in much greater numbers than is the case for white Australians is a matter of considerable concern. I do not wish anything I have to say in this debate to be construed as an endorsement of the effect of laws such as those in the Northern Territory or Western Australia on Aboriginal people.

It is the Government's view that the issue which was the subject of the submission to the Senate Legal and Constitutional References Committee was an issue of the appropriate exercise of a very significant power on the part of the Federal Government or the Federal Parliament - a power which, if exercised at random, if exercised without due regard to the impact on the federal system which is a feature of Australia's system of government, will have a most unfortunate, most damaging effect on the way in which Australia and Australians operate.

The submission which is the subject of this motion today makes very little mention of mandatory sentencing at all. It certainly makes no case whatever for the principle or moral right of any jurisdiction to legislate to make a particular citizen go to gaol because a law says that their particular conduct triggers an automatic gaol sentence. The ACT Government's submission in this exercise was entirely about consistency on the basis of the ACT and the Northern Territory and, essentially in this debate, other jurisdictions having the capacity to be able to legislate on behalf of the citizens who elect them on areas of intimate interest and concern for those electors when making that decision.

In other words, it was the view of the ACT Government that we should oppose a possible Commonwealth move against mandatory sentencing laws in the Northern Territory and perhaps Western Australia on the same basis that the ACT Government and others in this place opposed the move by the Federal Parliament to override the laws of the ACT and the Northern Territory with respect to euthanasia. I have no doubt that the same principle will come into play in the future when again people in the Federal Parliament take the view that the self-governing rights of citizens in the Territories, and perhaps in some of the States, should be overridden, using powers at the disposal of the Federal Parliament.

It is extremely difficult to enter into such a debate without triggering an expectation that powers once exercised will not be exercised again. It is very difficult to argue that the Federal Parliament - should it move so far into overriding the views of self-governing,

democratic, elected parliaments - would do so only in very strictly limited circumstances. Believe me, the temptation on the part of some people to intervene in the affairs of places like the Australian Capital Territory is considerable. In many senses we are not viewed favourably by other citizens in this country. The ACT is seen by a great many Australians as a privileged, pampered enclave, and a move to override the laws of the ACT, by itself, would not be seen as a move that would be likely to lose any Federal government an election. I think therefore that we have to invite Federal intervention in the affairs of any State only in the most carefully considered circumstances.

I concede the argument put forward by Ms Tucker that there may well be a head of power - specifically the foreign affairs power - to intervene in these circumstances because of treaties which the Commonwealth Government has signed. But we need to ask ourselves where all that ends. There are approximately 920 active treaties to which Australia is presently a party. They range over a vast number of areas - agriculture, trade, legal proceedings, conciliation and arbitration, working conditions, cultural and education matters, drugs, energy, health matters, heritage. The list is endless. It goes on and on. On any one of those areas potentially the Commonwealth Government/Parliament has a power to intervene against citizens elsewhere in Australia who have made decisions by the democratic process to do certain things.

Let us not forget that if such powers are exercised on a regular basis any one of us is going to be in a position to say, "We disagree with the way in which that power is exercised". We are all going to be in that position sooner or later if such powers are exercised on a frequent basis. I dare say that at some point we have all been in a position of saying, "I wish they had not done that".

We might debate whether it is appropriate to intervene in the case of mandatory sentencing laws. We could have a very spirited debate about that. But I submit to this Assembly that our debate today is not about mandatory sentencing laws; it is about the power of another parliament, albeit the national parliament, to override the democratic decisions made by other elected Australian parliaments.

Mr Stanhope advanced a view that all thinking Australians would be opposed to legislation of this kind, and it would be axiomatic that people would want to take some steps to stop this from happening. I have to say that I do not think that that is the case. I note the very divided views held, even within the Australian Labor Party, not about this issue of mandatory sentencing necessarily but about intervention in the affairs of the Northern Territory and Western Australia premised on a problem, so-called, with mandatory sentencing. I am quoting from a news report on the ABC.

Ms Tucker: Just deal with the issues, Gary.

MR HUMPHRIES: I am dealing with the issues, Ms Tucker. I raise this issue because Mr Stanhope said that all Australians outside Western Australia and the Northern Territory think this is a good idea and there is a strong popular basis on which to act, suggesting that if enough Australians believe this should happen then whatever rules or conventions are in place about non-intervention can go to one side. What Labor leaders have said about this is interesting. Let me quote from this news report. The Federal Opposition Leader, Mr Beazley, said:

> This is an issue on which there's divided counsel here. It's not surprising.

The Northern Territory's Opposition Leader, Ms Clare Martin, said that she had to defend the Territory's right to determine its own fate. She said:

> That law has to be removed in the Northern Territory, and that's the point that I've argued very strongly with my Labor colleagues this morning.

Western Australia's Opposition Leader, Dr Geoff Gallop, also said he had argued strenuously that it was not appropriate for the Commonwealth to intervene against his State's laws. *(Extension of time granted)* Incidentally, I understand - Mr Stanhope can correct me if I am wrong about this - that Dr Gallop not only argues for the right of Western Australia to pass such laws but has argued in favour of the laws themselves. The views of Australians are not united on these sorts of issues.

Mr Bracks, the Victorian Premier, had a very ambivalent set of comments to make. Mr Carr declined to respond directly when asked whether the Commonwealth should intervene in the case of juvenile offenders. The most surprising view, however, came from Mr Rann, the Opposition Leader in South Australia. I quote from this report again:

> The South Australian Opposition leader, Mr Mike Rann, confirmed that he had supported "three strikes and you're in" legislation at the last election, but on the basis that it would apply to adults, not juveniles.

We have here a very clear indication that there is strong division, even within the ranks of the Australian Labor Party, about whether intervention is appropriate in these circumstances. It is right for people to be concerned about intervention in these cases. You cannot cross the line and expect that magically the line will reappear next time you want somebody else not to cross it. It does not happen that way. The more times you cross the line, the more the line disappears. That is the danger we have in this situation.

Ms Tucker asked why she was not consulted about the submission made by the ACT Government. The reason is that she is not a member of the ACT Government. If she joins the ACT Government, she will have the right - - -

Ms Tucker: I did not ask why. I said that you could have consulted.

MR HUMPHRIES: She made the point that we could have consulted about it. Ms Tucker had the right, and I assume exercised that right, to make a submission of her own to the inquiry. I assume she did make such a submission to the inquiry. The ACT Government put its view about the issues I have raised just now.

I have to say that there are a variety of views within the Government's ranks about the desirability of mandatory sentencing. Many people around the community generally would share concerns about mandatory sentencing of the kind that have been expressed

here today. But we need to be consistent about the circumstances in which democratically elected parliaments can be overridden. That is the reason for this Government's submission to the Senate inquiry and the reason I think this motion today should fail. It detracts from that argument, and it would be very hard for us to come back in a year or two's time and argue a different case, a distinguishing set of circumstances, when the same sorts of powers are used, hypothetically perhaps, against possibly the ACT because of something that we have done or propose to do in this place. It is more consistent to take the approach which has been outlined in the ACT Government's submission.

Debate interrupted in accordance with standing order 74 and the resumption of the debate made an order of the day for a later hour.

Sitting suspended from 12.33 to 2.30 pm

QUESTIONS WITHOUT NOTICE

Bruce Stadium – Agreement with Canberra Raiders

MR STANHOPE: My question is to the Chief Minister. Yesterday, in answer to a question, the Chief Minister told me that she had relied on the advice of departmental officers when answering a question from Mr Whitecross about Bruce Stadium hirer arrangements in September 1997. The Chief Minister said that that advice had relied on clauses in the heads of agreement that had been negotiated by those officers between the Government and the Canberra Raiders and that there had been changes between the heads of agreement and the contract that was eventually entered into. Can the Chief Minister now tell the Assembly which clauses were changed and how? Will she table the heads of agreement that was signed by the Government and the Raiders to which she referred in her answer?

MS CARNELL: I cannot say which clauses were changed and how because I was not part of the negotiation of those issues. I am more than happy to table the heads of agreement. I understand when Mr Whitecross asked that question he had a copy. Maybe Mr Whitecross did not give it to Mr Stanhope, which would be a bit sad. If he did not, I am happy to table it. I was not a party to the negotiations, nor should I have been - nor should any politician at any stage.

MR STANHOPE: I ask a supplementary question. When did the Chief Minister first realise that her answer to Mr Whitecross was not correct? Why did she make no effort at any time to correct the very misleading statement she made in answer to Mr Whitecross?

MS CARNELL: I realised there was an issue when a member of the press asked me a question two days ago, which was the day before yesterday, relating to when Mr Whitecross asked the question. Those opposite have to remember that this occurred in the previous Assembly, not this Assembly. The reality is that this was raised a couple of days ago, and yesterday the issues were put on the record.

Nobody has been in any way secretive about the fact that it took a long time to move from the heads of agreement, which is a non-binding document, through to the contract with the Raiders. It took quite a significant amount of time. I believe that is an appropriate approach. What our people in the department did was ensure that the best possible deal was done, that the Raiders stayed in Canberra and that they were willing to sign a long-term contract so they have a future in this city. That is very important to the people of Canberra because of jobs, because of our image to the rest of Australia and because of the way we feel about ourselves.

ACTEW/AGL – Proposed Joint Venture

MR QUINLAN: My question is to the Treasurer. Information received, and confirmed by myself, clearly indicates that neither the Government nor the ACTEW executive has been open to negotiate any other deal than that of a proposed merger of ACTEW and AGL for an extended time. The Treasurer, in answer to my question of 15 February, stated:

> Have we left the door open ... Have we left the door open for some other arrangement? Well, yes, until any deal is stitched up. Yes, the door is still open ...

Were you aware, when making that categorical assertion, that both the CEO of ACTEW and the CEO of your department had informed an interested, substantial organisation that a decision had already been made? Did you either mislead this house or are you simply not in the loop?

MR HUMPHRIES: I am certain that neither Mr Mackay nor Mr Lilley would have told anybody that a decision had been made, because the fact is that the decision is made in this place. After two unsuccessful attempts to deal with this issue, surely the last thing this Government could be accused of is not being aware that the decision is made in this place. I am sure that neither of those gentlemen would have been so stupid as to have made such a statement, and I reject it.

In terms of dealing with parties other than AGL, I recall that in the early part of last year the expression of interest process was under way, simultaneously with consideration of the GSE merger that was then being considered. When the GSE merger fell over, the reasons for which the New South Wales Government has put very clearly on the record, the attention of ACTEW turned to the question of what to do about an alternative process, and we based that on the expression of interest exercise.

Of course the Government was sensitive to the fact that there had been criticism of the Government's involvement in the two earlier exercises. Particularly at the early stages of that process, the Government was anxious for the board of ACTEW to take a steering role in determining what kind of process it should engage in to determine an appropriate commercial partner. It should be able to make recommendations to the Government in due course based on its work in that area. The Government's involvement in that process was relatively light compared with earlier exercises.

When we got to the stage where four companies were shortlisted, which I think was about October last year, the Government was advised of that process and it approved that process. Eventually, in December of last year, the Government was advised that ACTEW was proposing to deal with AGL. Even that particular proposal from AGL had changed somewhat in the process of discussion and negotiation.

The process has been one of examining how best to get an optimal deal to position ACTEW better in the marketplace. The possibility of other parties coming forward and improving on their offers in the expression of interest process was always open to ACTEW to entertain as that process went through to presumably even the stage where four bidders were shortlisted and maybe even beyond that stage. But I do not think it is at all surprising nor should it be criticised that, once ACTEW had shortlisted AGL as the company which presented the best chance of getting a strategic partnership of the kind that would see its objectives met, it said, "That's it. We're not doing any further bilateral discussions with other particular players". The ACTEW board chose to focus on the AGL offer.

Mr Quinlan: The door is still open.

MR HUMPHRIES: Mr Quinlan has made reference to my comment that the door is open. The fact is that this Assembly has not yet approved the AGL offer. If the Assembly chooses not to approve the AGL offer, the Government would have to consider what to do about that. As I have said before, we are open to further consideration and further options. To be perfectly frank, I am not sure that I speak for everybody on this side of the chamber in saying that we are willing to look at alternatives to this particular proposal as I was when I made that statement on the floor of the Assembly.

We have put a number of proposals forward and, if this particular proposal were knocked off by the Assembly, I do not think history would say that the Liberal Government had not tried its damnedest to put ACTEW in a position where it was going to be able to meet the challenges of the future in a way which protected the Territory's investment in that asset. No-one could say that we have not tried our damnedest to find a way around that problem.

Mr Quinlan: You put conditions on it every time. You saddled it up every time.

MR HUMPHRIES: I will rephrase that. No reasonable person would say that we have not tried our damnedest to find a way around the problem. My view is that this is the best option available to us at the moment. I have not examined the details of what the particular company Mr Quinlan referred to yesterday might have presented to the ACT. Thinking about this logically, why would you blame ACTEW, which has now done a lot of work on the AGL proposal, if it was a little bit less than enthusiastic about a party which in the earlier bidding process had put forward a proposal which was much inferior to - - -

Mr Quinlan: Because they are dealing with hundreds of millions of dollars worth of assets.

MR SPEAKER: Order! Mr Quinlan, you will have the opportunity to ask a supplementary question.

MR HUMPHRIES: Mr Speaker, you have to ask what is the point of continually going back to first - - -

Mr Berry: Are you asking us?

MR HUMPHRIES: I am asking a rhetorical question, Mr Berry, so you can relax. What is the point of constantly going down one path, going back again and then going down another path and going back again? All these things amount to the expenditure of large amounts - - -

Mr Quinlan: Because there are hundreds of millions of dollars involved.

MR HUMPHRIES: That is exactly why ACTEW decided to pursue an option which they put before this Assembly on the basis that it makes some sense. Is the Opposition telling us that this ENERGEX proposal is the big one? Is this the one that they will support? Finally there is an option that the ACT Opposition will support.

Mr Quinlan: It indicates other people are interested.

MR HUMPHRIES: Lots of people have been interested, Mr Quinlan, over a long period of time. None of them appeared to have any chance of getting past you in the past. Why should this one be any different?

Mr Quinlan: The door is shut on them. You told this house it wasn't.

MR HUMPHRIES: You tell me that the ENERGEX proposal is acceptable to the ACT Opposition and will be supported by the ACT Opposition, and I will be interested. But so far I have not heard anything which is supported by the ACT Opposition. Until I do, I am going to pursue the present course of action which, on the basis of advice from the ACTEW board, puts a realistic, viable option before the ACT community, one which I believe we should accept.

MR QUINLAN: In his response, Mr Humphries referred to the evaluation of the expressions of interest. Mrs Carnell has already told the house that they are not to be treated as tenders; they are only expressions of interest. Does the Treasurer know by what evaluation criteria these expressions of interest were rated so that AGL came out on top? For example, did they include a provision that they must have substantial asset holdings in the ACT, which would eliminate nearly everybody – if not everybody, everybody bar AGL?

MR HUMPHRIES: The evaluation was conducted by ACTEW. As I recall, the press release that Mr Quinlan was waving around yesterday from the ACT Government listed the criteria that ACTEW was using to evaluate the different expressions of interest. If that is not the case, I am happy to table it. I understand there is no secret about that. I am happy to produce it. As far as the Government is concerned, the process involved

looking at all those factors, which I have enumerated many times in this place - maintaining the ACT community's investment in the asset which is ACTEW, ensuring that ACTEW is able to position itself to weather the storm of competition which will shortly break over this country and ensuring that ACTEW faces the minimal exposure to risk. Those are the main elements that ACTEW has to consider in the exercise before it at the moment.

At the end of the day, another advantage of AGL is that it is an Australian owned company. It is a company of longstanding. It is the second oldest Australian company, I understand. It is also one which has a substantial presence in the ACT. There happen to be additionally good reasons - - -

Mr Quinlan: Which eliminates everybody else, does it not?

MR HUMPHRIES: If that were the only criterion, Mr Quinlan, then yes. But it is not.

Mr Quinlan: If it were one of the criteria, it still eliminates everybody.

MR HUMPHRIES: No, it does not. If you had to satisfy all the criteria, then it would eliminate them. But it was not a criterion which was essential for anyone to have to meet.

Mr Hargreaves: It was a core criteria.

MR HUMPHRIES: Again there is this wave of criticism: "We don't like what you've decided". We put this process on the table some time ago. We explained what we were doing. Where were the Opposition's criticisms then about this process? Why did they not ask, "Why are you going about this the wrong way"?

Mr Quinlan: How many questions have I asked on expressions of interest in this place?

MR HUMPHRIES: It is like 20 questions. "Guess what I am. Am I a plant? Am I a frog? Am I a box?". I keep asking the questions and all I get is a no. It would be nice if you gave me a clue at some stage as to what you want to do with this.

Mr Quinlan: I have said that many times in this place, Mr Humphries.

MR HUMPHRIES: You have given us a partial answer.

Mr Quinlan: Just look at option one in the expressions of interest.

MR HUMPHRIES: I am happy to talk about option one.

Mr Quinlan: You have caught up with it, have you? You did not know it yesterday.

MR HUMPHRIES: I am happy to talk about option one, but I repeat: What the Government wants to do is facilitate an assessment of the best possible option to deal with ACTEW's present predicament. It has put this on the table in a way which

I believe is supportable. It is strongly supported by the ACTEW board. Members who have spoken to the ACTEW board or the chief executive or other members will be well aware of their view about the strength of this proposal. I think it is important to start giving the ACTEW board some credit for having the capacity to make sensible, commercial decisions.

Mr Berry: For toeing the government line? What else would you expect?

MR HUMPHRIES: The ACTEW board does not believe that it is being told by the Government to go out there and do that.

Mr Berry: It toes the government line; it does not have to be told.

MR HUMPHRIES: You know in your heart of hearts that, if you talk to any member of the ACTEW board in private about this matter, they will confirm that what they have put forward to the Government is what we ought to do - every last one of them. You know that. No matter what you might say publicly, you know that is the case.

Mr Berry: They know what you want; they do not have to be told.

MR HUMPHRIES: You can make those claims, Mr Berry. That is your usual approach. You know and I know, and everybody else in this place knows, that the ACTEW board back this proposal, not because they have been told by the Government to back it but because they know ACTEW will be much less secure in the marketplace as soon as competition breaks over the Territory. Protection of employees in that enterprise is dependent on a capacity to get a better position in the marketplace than it presently has.

I need to remind members that the Government briefed Mr Quinlan's committee on the top four options and provided the reasons that they had been chosen some time ago on this matter. Mr Quinlan's committee said, "That's not our business. That's your business. You take care of the subject".

Mr Quinlan: Read the *Hansard*. "Bring them to the Assembly" is what I said.

MR HUMPHRIES: It must be absolutely obvious to everybody watching this debate that the Opposition intend to say no to whatever we put forward. I hope they realise that the rest of the community does not have the luxury of simply sitting on its hands waiting for the future to hit us.

Bruce Stadium – Fun Day
Mr Rob de Castella

MR KAINE: My question is to the Chief Minister. I refer to the question that I asked her some days ago about the open day at Bruce Stadium. I have received an answer, and I thank her for that. However, the answer raises more questions than it answers. For example, in her answer the Chief Minister said that an estimated 4,500 to 5,000 people attended this event. Was this an actual number or was it a best wish list guess? My understanding is that people went through the turnstiles. Can she tell me how many

people went through the turnstiles? I suspect it is less than the number that she has quoted. Regardless of that, does the Chief Minister think that an expenditure of $84,000 of public money, even if 5,000 people did go, was money well spent on this PR exercise?

MS CARNELL: This was part of the promotion of the Olympics. The AIS was also part of it, as members would be aware. Mr Kaine could have gone on a tour of the AIS with Olympic athletes. He could have been given information about the Olympics both in Sydney and in Canberra. It is absolutely essential that we promote Canberra as an Olympic city because that is what it is. The whole event was about promoting Canberra as an Olympic destination. The money was in CTEC's budget. It was part of the promotion approach that was, if not tabled in this place, certainly released publicly last year. I believe it was a great day, and obviously a lot of Canberrans decided that it was a good thing to have a look at the AIS, to have a look at Bruce Stadium and to get more information about the Olympics. I am disappointed that Mr Kaine was not there, because I am sure he would have enjoyed it.

MR KAINE: I ask a supplementary question. I can only assume the Chief Minister's answer is: "Yes, $84,000 estimated, not actual, was a good expenditure". In the same answer, the Chief Minister confirmed that her Government was paying Mr Rob de Castella to, among other things, write a series of presumably favourable articles for the *Canberra Ti*mes. I have an example of one here in which Mr de Castella is obviously knowledgeable about Auditor-General's reports and the like. I ask the Chief Minister: Precisely how much public money is Mr de Castella being paid for this public relations exercise through the *Canberra Times*? Or is this information, like so much other information from the Government, commercial-in-confidence?

MS CARNELL: If Mr Kaine had been absolutely honest, he would have quoted the answer to that question. What the answer said was that Project 2000 was paying - - -

Mr Kaine: That is the Government. It is a government entity.

MS CARNELL: Sorry, Project 2000 was paying Mr de Castella to do a number of things in terms of Olympic promotion. One of those was to write a series of columns. Another was to appear at, I think, three events a year and to do promotional activity with regard to the Olympics. The answer went on to say that there was no editorial input into Mr de Castella's articles.

It is atrocious for anyone to think that Rob would in any way prostitute his honest beliefs because he was being paid to do so. Anyone who thinks that is running down a great Canberran and a great Australian. What Mr Kaine has intimated is that Mr de Castella has been paid to make particular comments. That is simply not the case. It is quite clear in that answer that there is no editorial input into Mr de Castella's articles.

Mr Stanhope: That is what John Laws says.

MS CARNELL: If Mr Stanhope is also suggesting that Rob de Castella, who is a great Canberran, is of that ilk - - -

Mr Humphries: I rise on a point of order, Mr Speaker. Mr Stanhope made an interjection just a moment ago which likened Mr de Castella to Mr John Laws.

Mr Stanhope: No, no.

Mr Humphries: Yes, he did, Mr Speaker. I think we all heard that remark. The clear inference that Mr de Castella has been paid to say or write certain things and that this is the result of a cash for comment episode in the ACT is a very unfortunate slur on a very distinguished Australian, as the Chief Minister has said. I ask Mr Stanhope to clear the record on this matter.

MR SPEAKER: Would you mind withdrawing it?

Mr Stanhope: On the point of order, Mr Speaker - actually not on the point of order, on the Gary: I said no such thing.

MR SPEAKER: If you made the comment, withdraw it.

Mr Moore: He did say it.

Mr Stanhope: I did not make the comment. I will not withdraw it. I did not cast any aspersion on Robert de Castella at all. I referred to your nonsensical suggestion and said that, if any suggestion could be made that he was being paid for editorial comment, that is the argument John Laws uses. That was the thrust of my comment, responding to your nonsensical suggestion - - -

Mr Humphries: That is the suggestion that he was paid for his comments.

Mr Stanhope: No, I was referring to the Chief Minister's nonsensical answer to the very serious question that was asked. John Laws would applaud the answer that the Chief Minister is giving to the very serious question that was made. I cast no aspersion on Robert de Castella. I regard him as a great Australian, a great Canberran and a personal friend.

MS CARNELL: Well, do not do what you did.

Mr Stanhope: Well, do not make outrageous and absurd claims.

MR SPEAKER: Order! You have explained your position, Mr Stanhope.

Mr Kaine: On the point of order, Mr Speaker: I notice that the Chief Minister has in fact affirmed that the Government is paying Mr de Castella to do this, but she has not answered how much.

MS CARNELL: Mr Speaker, that is not a point of order. What I said, quite clearly, is that Mr de Castella is paid, as was indicated in the answer to the question, for a number of Olympic promotion events and for an article on the Olympics. I also said that

Mr de Castella got no editorial input. It is up to Mr de Castella as to what he writes. He writes what he believes. Any imputation that that is not the case is unacceptable and should be immediately withdrawn by Mr Kaine as well. Nobody could suggest that Mr de Castella is not absolutely committed to sport, to this city and to this country.

Bruce Stadium – Media Facilities

MR CORBELL: My question is to the Chief Minister. Chief Minister, yesterday in answer to a question from Mr Rugendyke, you offered an explanation for the comments you made on ABC Radio on Monday about new media facilities at Bruce Stadium. You said:

> I do not think Mr Rugendyke was listening to me properly yesterday morning. I was talking about getting games on television.

We were all rightfully bowed by that response. However, on Monday the Chief Minister told ABC Radio, as Mr Rugendyke said yesterday:

> Media facilities weren't up to much either. So our capacity to sell the stadium for television rights and so on wasn't high.

Can the Chief Minister tell the Assembly what part of "sell the stadium for television rights" she does not understand?

MS CARNELL: I answered that question yesterday, and I explained exactly what I meant yesterday. But I am happy to answer exactly the same question again.

Mr Moore: Mr Speaker, the question is out of order because a question fully answered does not need to be answered again.

MR SPEAKER: Order! The question has been asked. The least you can do is listen to the answer.

MS CARNELL: Mr Speaker, I did answer it fully yesterday. I indicated what I was talking about on radio that morning. Quite seriously, we do need to ensure that the stadium's media facilities are up to scratch, that they are the best they can be so that Olympic football matches attract the media to our stadium to broadcast the games that happen there. It is really that simple. If anybody doubts it, go and speak to the media outlets and find out - - -

Mr Stanhope: I raise a point of order, Mr Speaker. What the Chief Minister is saying now is simply not true. Yesterday, in answer to Mr Rugendyke, she said, "I do not think Mr Rugendyke was listening to me". That is what the Chief Minister said yesterday.

MR SPEAKER: There is no point of order, Mr Stanhope. Resume your seat.

MR CORBELL: I raise a supplementary question, Mr Speaker. I hope I get a clearer answer than I got last time. Mr Rugendyke asked the Chief Minister whether there were current negotiations about television rights, a question which she ignored. Can she now

tell the Assembly if BOPL, the Government or its marketing agents have ever engaged in any discussions or negotiations about the sale of television rights to any game or event staged at Bruce Stadium? If they have, will she give details?

MS CARNELL: That was answered yesterday. We have not been involved in any television rights discussions, and there is no item in the budget. Quite simply, as I said yesterday, there is no line in the budget for Bruce Stadium for television rights.

ACTEW/AGL – Proposed Joint Venture

MR OSBORNE: My question is to the Treasurer and it is in regard to the ACTEW/AGL joint venture. Would the Minister please explain the processes involved in determining the value of compensation that ACTEW will receive from AGL in forming the joint venture partnership, estimated at about $100m from AGL to ACTEW? Is it intended for the compensation to be strictly payable in cash as opposed to cheaper electricity or services? What will the compensation payment be used for?

MR HUMPHRIES: The intention is that ACTEW and AGL will be 50/50 partners in the joint venture. That result is achieved where partners come to the partnership with assets of different value by the making of an equalisation payment between the parties so that they stand as equal partners. Mr Osborne has suggested that there could be a payment of up to $100m. I have heard that figure used.

I think it is important to put on the record that the Government intends to have negotiations proceed between ACTEW and AGL about the nature of a partnership. Having established that they can enter into a partnership arrangement which would result potentially in some equalisation payment, there would then be an independent valuation of the assets involved, and the independent valuation would affirm or not the assumptions about valuations which have been made by ACTEW and AGL.

Clearly, the ACT wants to ensure that none of its assets are being undervalued in that process for the sake of making this partnership work better. Having established that the valuation is acceptable, an equalisation payment could be made. As to whether it will be made in cash or some other form, I do not know whether the agreement between the parties is likely to be explicit about that. I do not know that I can answer that question categorically, but I imagine the payment would be in cash. As to where it is going, that is a matter for the ACT to decide. It would be my view that a payment of that kind should be made to address the ACT's unfunded superannuation liability. If the Assembly has a view about the matter, I am willing to listen to it. But that would be the view that the ACT Government would take provisionally at this stage, bearing in mind that no equalisation payment has yet been determined.

MR OSBORNE: I ask a supplementary question, Mr Speaker. If the Government does place any money in the superannuation pool, do you intend to introduce legislation to quarantine that money?

MR HUMPHRIES: We are not required to announce government policy but, since Mr Osborne has asked so nicely, I feel I should make a statement about it. It is the Government's intention to introduce legislation soon in this place to provide for the

quarantining of payments that are made into the ACT's superannuation account so that such payments may be used only to meet the ACT's superannuation liabilities and attendant costs and overheads relating to the maintenance of that account. If , as a result of this transaction, money were available to be paid into the superannuation account, it would stay in that account until such time as retiring public servants, or whoever, were able to draw upon it.

ACTEW/AGL – Proposed Joint Venture

MR BERRY: My question is to the Treasurer. Mr Humphries, on several occasions you talked about the transfer of assets to the new joint venture. You said that, if the arrangement does not work out, then all the assets would return to the Territory. On the basis of the question you last answered, is it also true that the Territory would have to return the cash to AGL?

MR HUMPHRIES: That is a possibility. If the arrangement between ACTEW and AGL were terminated after a short period of time, and the assets were more or less as they had been put in, there would be an equalisation payment from AGL to ACTEW and hence to the ACT community. If that whole thing were undone, then there would need to be a payment back to AGL to represent a reversal of the equalisation payment.

That represents no loss to the ACT since we would only receive the money as a result of the arrangement. We would have to repay the money. Clearly we will be no worse off as a community as a result of that, except that instead of having to take the $100m or whatever it might be out of the superannuation account – which, as my answer to Mr Osborne indicated, we cannot do – we would have to take it from consolidated revenue or some other source. But the ACT will be no worse off because we have $100m less in consolidated revenue but $100m more in the superannuation account. I am using $100m because it was a figure that was suggested in question time. That may or may not be the accurate figure.

I think that that is a reasonable position to be in. As I am sure every member in this place knows full well, the Territory does need to address the unfunded superannuation liability. It is a mammoth sword of Damocles hanging over this community.

Mr Berry: Oh, get out!

Ms Carnell: That is what the Auditor-General says.

MR HUMPHRIES: If I said it is Wednesday, Mr Berry would say that it was Thursday. How can I get the message across that the community has a huge problem?

Mr Berry: Most of which is of your own making.

MR HUMPHRIES: No. We have put more money into superannuation liability than any previous government has done, and we intend to continue that process to protect the future of this community. If you are telling me, Mr Berry, that you do not believe we have a superannuation problem, then heaven help this Territory if you ever get back into government.

MR BERRY: I ask a supplementary question, Mr Speaker. Is it not true, Treasurer, that, in the event of the partnership falling apart, it would be unlikely that the Government would be happy to pay back the $100m, and we would lose ACTEW forever?

Mr Humphries: What?

MR BERRY: I will start again if the Treasurer does not understand. Can the Treasurer imagine the Government volunteering to pay back the $100m in order to get the assets back?

MR HUMPHRIES: Mr Speaker, you cannot have it both ways. You cannot say we would not be happy about paying the money and taking back the assets and then say that we have not got ACTEW. Mr Berry has misunderstood the nature of this transfer once again. The assets are transferred into the partnership. I want to correct slightly something that Mr Mackay said on the radio this morning. The presenter of one of the ABC's programs said that there is going to be a new company and the assets will be transferred to this new company. I think the answer Mr Mackay gave suggested that that would be the case.

There will not be a company. The assets will be transferred into a partnership which will consist of subsidiaries of ACTEW and AGL. Those subsidiaries which are wholly owned by ACTEW and AGL will operate the business and hold the assets. They will jointly and separately own the assets. That means that, if and when the partnership is dissolved, you take back the assets.

Mr Berry: And the $100m.

MR HUMPHRIES: You would have to repay the $100m, yes. You said that we would not be happy about that. Of course we would not be happy, because we would end up losing the chance of a joint venture. But, if that is the way it worked out, if ACTEW said, "This is not working in the interests of the Territory; undo the deal", we could do so. That is why your claims that this is a sale are wrong.

Mr Berry: It is a sale.

MR HUMPHRIES: With a sale, you cannot get your assets back. If I sell Mr Kaine my car, I cannot go back to Mr Kaine and say, "I want my car back".

Mr Kaine: I would not buy it from you.

MR HUMPHRIES: You probably wouldn't. It is a very good car, but I would not be able to get it back unless Mr Kaine wanted to give it to me. But with this arrangement I can get my assets back in the event that the partnership is terminated. That is why this is not a sale. I do not know why I am explaining this, Mr Speaker. Mr Berry is not listening, and he does not care what I say about the matter. But the fact is that it is not a sale and the assets do come back to the ACT. Yes, we would end up having to pay $100m or whatever the figure might be, but we are no worse off doing that because we

got the $100m out of the business in the first place. It is like going to a bank and borrowing $100 and having to repay it after a period of time. You are no worse off by having done so, except you pay interest. I do not think there would be any interest to be paid in this particular situation. So where is the loss?

Electricity Supply - Green Power Option

MS TUCKER: My question is to the Minister for Urban Services, who is responsible for the implementation of the ACT greenhouse strategy. Minister, in this strategy the Government has committed itself to buy 10 per cent of its electricity requirements from accredited green power sources from 2001, increasing this to 100 per cent by 2008 subject to the availability of sufficient green power electricity suppliers. The Government has also pledged to work with the Federal Government in its commitment to require electricity retailers nationally to source an additional 2 per cent of their electricity from renewable resources by 2010. The Government has also pledged to provide active support for and promotion of green power schemes in the ACT, as is happening in other States, particularly in New South Wales with its sustainable energy development authority. All these initiatives are to be commended. But, given this trend for the increasing use of green power electricity and the current excess generating capacity in the national grid for traditional electricity sources, can you explain from an environmental perspective why the Government is supporting the development of a gas-fired power station in the ACT as part of the ACTEW/AGL joint venture when there is a greater demand for the development of green power electricity sources?

MR SMYTH: There are benefits in having gas-fired power stations. If the option is to have a gas-fired power station rather than a brown coal power station, I know the option that I would be going for. There are a number of strategies in place, but it will be the market, the consumer, who will ultimately decide. I hope all members have signed up to greenchoice, which is a wonderful initiative put in place by the ACTEW Corporation. The marketplace in the end will push this, but the initiative of the Federal Government is encouraging and helping industry to make sure that it takes up the opportunity to supply green power.

What we have to do though through the marketplace is ensure that we provide incentives. In the ACT, greenchoice has been very well accepted. ACTEW has put in a mini-hydro. We are now looking at other opportunities to provide more green power in the ACT, as the market is there. We are securing our share so that we can meet those targets by the year 2008.

MS TUCKER: As I understand your answer, basically you are leaving it to the market to ensure that there will be sufficient green power generating capacity available to the ACT Government, although you did say that you would be trying to initiate or facilitate green power to ensure that there will be enough. Could you give more detail about exactly what initiatives you are going to undertake to ensure that we do have sufficient green power generating capacity available?

MR SMYTH: I did not say that we were just leaving it to the market, but the market will have a big part to play. We can help shape what the industry does by having a marketplace that demands green power. Through the education programs that we have

in place in the ACT, and the encouragement which we provide to people to sign up to something like greenchoice, the people of the ACT are supporting this. We have companies such as ACTEW, which is a very good company with a great environmental record, dealing with Ecowise. It does good work for the environment not only in Australia but all over the world. The Government is playing a role as well. We have opened up a mini-hydro with the Stromlo pipeline. So that is an option.

As to whether we purchase electricity produced from brown coal or from gas, I am sure that gas is the preferable option. I note Ms Tucker has a gas-powered car. Why is she not driving a petrol-powered car? Because she thinks a gas-powered car is a better option for the environment. In this case, a gas-powered electricity station is much better than a brown coal powered electricity station.

The ACT is helping significantly in driving this proposal through our greenhouse strategy. We are the first to set targets. Mr Humphries did that when he was the Minister for the Environment. We are the first to set the strategy. We are the first to deliver on this. We are now entitled to four out of five stars in cities for climate change. In their measure of successful cities, we are the most successful in this country in delivery on greenhouse reform. We are the green government in this country.

Nursing Home Residents

MR WOOD: My question is to the Minister for Health and Community Care. Minister, on 17 February I posed a question about a court report of a man being convicted for molesting a nursing home resident. In view of the variety of serious allegations now being raised Australia wide about the abuse or poor treatment of the elderly in some nursing homes, and in view of the responsible Federal Minister's seeming reluctance to act, what assurances can you give to friends and relatives in the ACT of nursing home residents about their safety and overall welfare? What role does the ACT Government play in monitoring nursing homes in the ACT? Are there areas that need to be covered? Is there action the ACT Government ought to be taking in this respect?

MR MOORE: Nursing homes are a Federal responsibility. I think Mr Wood knows that. I think pressure needs to be kept on the Federal Government in the way in which nursing homes are monitored and nursing home residents looked after. The evidence in the ACT at the moment is that there are none of the sorts of problems which have become evident in Victoria.

There have been some discussions between officers of various Ministers in Australia as to whether we should reintroduce the kinds of systems that were in place prior to the Commonwealth taking full responsibility for the regulation of nursing homes. What has been identified is a specific problem that does need to be rectified. We will continue to monitor what is going on not only in the ACT but also in Victoria to ensure that the Commonwealth lives up to its responsibilities. But it is a Commonwealth responsibility, and I think that is exactly where the action has to be taken.

MR WOOD: I ask a supplementary question. Minister, I would like you to clarify your answer. You used the words "continue to monitor". Is the Government going to continue to monitor the Federal Government or nursing homes? Is there something which the ACT Government does not get involved in?

MR MOORE: I apologise for the lack of clarity. I meant that we will continue to monitor how the Federal Government handles this situation. At this stage to get into the business of monitoring nursing homes and taking over Federal government responsibility is not an appropriate role for us to take. We do have the ability to regulate these things, but I doubt if there will be a great benefit to us in doing that if the Commonwealth system is working. It seems to me that the Commonwealth is looking at that issue very carefully and hopefully very urgently.

ACTEW/AGL – Proposed Joint Venture

MR RUGENDYKE: My question is directed to the Treasurer. Minister, in relation to the proposed ACTEW/AGL joint venture, I understand that ACTEW is prepared to contribute other assets to the joint venture, such as TransAct, Cranos, ACTEW China and Ecowise Environmental. Could you please advise the Assembly why these assets are being considered for transfer to the proposed joint venture?

MR HUMPHRIES: I thank Mr Rugendyke for his question. The idea of bringing many of the assets of ACTEW and AGL together in this joint venture is to create a large enough commercial activity to be able to exercise some weight, some power, in the marketplace. The smaller the trading entity competing in the marketplace, the less likely it will be to effectively muscle in on the territory of much larger commercial bodies.

As Mr Rugendyke would be aware, there have been a number of amalgamations of utilities over the last couple of years. There is a great deal of power exercised in the Australian marketplace and lots of other marketplaces. My perception is that the players are getting larger. The smaller you are, the less chance you have of running loss leaders or of being able to undercut your opponents with cheaper prices. You do not have economies of scale. There are all sorts of reasons why you end up being less well placed in the marketplace.

Putting as many of the assets as we can into this joint venture gives us the chance to do two things: Have a larger enterprise which feeds off synergies and relationships between various components of both businesses and be able to be provide a lower exposure to risk because of the size of the enterprise concerned. For example, if one area makes a serious loss because it has a competitor who can undercut it badly, the other areas can carry it through that period of loss.

The issues Mr Rugendyke mentioned are not especially large. They would not exactly make or break the deal. For example, TransAct has only 19 employees, and I think ACTEW China has fewer than that. So we are not talking about huge numbers of individuals. But there seems to me to be strength in having them together in the one enterprise. If, for argument's sake, the ACTEW/AGL partnership were to be swamped by the competition of other bigger players, how much more would ACTEW by itself be swamped by that same level of competition?

MR RUGENDYKE: I ask a supplementary question. ACTEW has invested considerable resources to TransAct, and this stands to be a highly beneficial network for the ACT. Under what terms is this being added to the proposal? By that I mean, would AGL be required to contribute funds over and above the negotiated joint venture deal or would these assets be part of the basic ACTEW package?

MR HUMPHRIES: Some of the details of those arrangements are still being negotiated between the two parties. As I said on an earlier occasion in answer to a question from Mr Osborne, I am prepared to put on the table the details of the way in which the proposed contract between ACTEW and AGL emerges as those negotiations continue. I think I heard Mr Berry on the radio this morning say that the Government has refused to put the information on the table. That is not true. We are quite prepared to put the information on the table.

Mr Berry: You haven't got it all yet.

MR HUMPHRIES: But it is not yet there to put on the table, and that is the point. So I cannot describe the terms. I think you said that we put a huge investment into TransAct and therefore it is an attractive investment to transfer to the partnership. That may not follow one from the other. Because there is a large amount invested in it, it does not follow that it is therefore a highly valuable asset. Sometimes you invest a lot in an asset which carries a high level of risk.

The TransAct project, in particular, has a large element of risk to it. It is presently being pursued from a number of angles by ACTEW. But because we put a lot of money into TransAct does not mean that ,if we put it out in the marketplace right now and try to sell it separately, we would get a princely sum. That does not follow at all. TransAct would be in this deal mainly to be able to diversify the activities of a joint venture and provide for a more attractive range of business opportunities for the synergies between ACTEW and AGL to develop. That is the main reason - - -

Mr Corbell: It means they can make more money.

MR HUMPHRIES: That is right. Mr Corbell has hit the nail on the head. It is to make more money - money which will be split evenly between ACTEW and AGL, and therefore between the ACT community and AGL. We would get more in that scenario. The ACT community would benefit from that, and I think that is a good proposal. As I said, I will certainly honour the commitment I made about providing to members of the Assembly the details of the contract as it emerges in this process.

Magistrates Court – Parking Matters Listed for Hearing

MR HARGREAVES: My question is to the Attorney-General. Can the Attorney confirm that on 21 January last parking matters listed at the Magistrates Court were dropped due to an overcrowded court list? How often has such an incident occurred?

MR HUMPHRIES: I am sure Mr Hargreaves did not ask that question with even the remotest hope that he would get an answer from me today. I would have to take it on notice. I am afraid I do not get a daily report on the progress of lists in the Magistrates Court. Therefore, he would not be at all surprised to hear me say that I will take the question on notice.

MR HARGREAVES: Thank you very much for the cute comments, Minister. I would like to ask a supplementary question, since the Minister is going to go away and fossick for the information. No doubt he will have people scurrying for it. Can the Attorney say what value of parking fines was forgone when the cases were dropped on 21 January? Does he agree that such a mismanagement of court listings creates a loophole for unscrupulous motorists to exploit by simply opting to defend such minor matters?

MR HUMPHRIES: I will take this question on notice, but I think Mr Hargreaves is suggesting that on 21 January because the list was deferred - - -

Mr Hargreaves: I did not say "deferred"; I said "dropped".

MR HUMPHRIES: Well, because the list was not proceeded with, the matters have been dropped and people are not getting prosecuted. I have not heard about that before. I will take that matter up. I would be very surprised if prosecutions were dropped simply because the list on the day was clogged. Mr Hargreaves could be right. I will check it out.

Chief Minister's Department

MR HIRD: My question is to the Chief Minister. I refer to a document released by the Chief Minister's Department in February last year entitled "Principles and Guidelines for the Treatment of Commercial Information held by ACT Government Agencies". Firstly, can the Chief Minister advise this parliament whether the Government has implemented these principles and guidelines in its dealings with the private sector? Does this represent a change in the approach that territory governments have taken to their management and release of commercial information?

MS CARNELL: I am not at all surprised that those opposite do not like this question, because for a long time - - -

Mr Stanhope: We do.

MR SPEAKER: Then you might like to listen to the answer.

MS CARNELL: For a long time now the word "secrecy" has been bandied around this Assembly. I know for a fact that debates about whether or not governments were being secretive go back a long way – right back to 1989 when the Assembly first started.

Mr Wood would remember his reluctance to discuss some aspects of the Australian International Hotel School during estimates in 1993. Why? Because of commercial sensitivities. Then there is the Harcourt Hill joint venture. Who knew at the time the

deal was done that the ACT Labor Government was underwriting a $25m loan to the joint venture, of which one of the partners was a $2 shelf company? When we asked for the contracts, what was the answer? Commercial-in-confidence.

What about my repeated questioning of the Labor Government on how much taxpayers' money was being paid by Canberra Milk to the Raiders as part of the sponsorship deal of the then Canberra Milk Raiders? What was the answer to that one? Commercial-in-confidence. All of those issues and many more have been part of this Assembly right from the beginning. We still do not know today many of the details with regard to those questions. We still do not know, for example, how much money did go from Canberra Milk to the Raiders to pay for naming rights.

Who could forget Mr Berry's strident defence of the confidentiality of the VITAB agreement, which led to his immortal statement:

> It is fair enough that people who have commercial contracts with the ACT would expect them to be kept in confidence.

There are plenty of examples littered through the debates of the past decade leading up to the recent episode relating to the Bruce Stadium hiring agreements. In that time a lot has been said but, until we acted, not much was done in the past. Unlike those opposite, who did not see any need when in office to do anything, for the past three years this Government has been developing and implementing a policy in relation to the handling of commercial information, particularly information which could be considered sensitive.

Some time ago we presented a discussion paper which arose, as some members will recall, out of concerns expressed about the amount of information provided in relation to business incentive arrangements. That discussion paper was subject to extensive consultation with the Assembly and the business community. It resulted, as Mr Hird has noted, in the release of a document known as "Principles and Guidelines for the Treatment of Commercial Information held by ACT Government Agencies".

Since February 1999, as part of the Government's policy to promote open and accountable processes across all its agencies, there has been an information campaign to inform Canberrans about the new requirements. A summary brochure pamphlet headed "Doing Business in the ACT" was produced and distributed throughout the business community. I think it is worth while tabling this brochure – which, I am sorry to disappoint Ms Tucker, is not particularly glossy - because some members may not realise just how far we have come in tackling this difficult issue. I table this document, Mr Speaker.

The brochure sets out neatly and concisely exactly what is expected of both the Government and other parties, and highlights the balance that needs to be struck in protecting commercial information against the right of the community to know what taxpayers' funds are being spent on. I understand that tomorrow Mr Moore will be tabling a Bill which goes to heart of this matter. It follows on from this consultation and puts the whole issue into legislation.

On two fronts, this Government has been taking tangible steps to improve the accountability and openness of the public sector. Put simply, what we have done is a first for the ACT. We have established a policy where none existed before. That is right; none existed before, despite the bleating of those on the other side of the Assembly.

To answer the second part of Mr Hird's question directly, it certainly does represent a change in the way in which issues of commercial-in-confidence have been approached by successive territory governments. I spoke before about the International Hotel School, VITAB, Canberra Milk and Harcourt Hill, to mention just a few of the secret issues that have come before this place. I want to talk about another concept that is alive and well in this place, and that is hypocrisy. In a media statement about the Bruce Stadium contract issued on 23 February, Mr Stanhope said:

> We are talking about taxpayers' money. Taxpayers have a right to know how their money is being spent and with whom. That is particularly the case when taxpayers' money is committed to private companies who are tenants of a publicly owned facility.

Mr Speaker, remember that quote. I think it is high time that we shared with the people of Canberra some information that only recently came to my attention. In late 1994, just a few months before we came to office, the AFL for Canberra Committee presented a bid to the former Fitzroy Football Club in Melbourne to relocate to the national capital. It was a fine and worthy idea, and one that I am sure all members, with the possible exception of Ms Tucker, would have endorsed. But did you know that this bid was backed by the ACT Government? I did not know that. Mr Speaker, did you know that included in this bid was a commitment to a relocation payment of $1.25m, loans totalling some $900,000 over three years and payments of $550,000 each year for at least the first five years of the new club's operation? I did not know. Did you, Mr Speaker? I do not think so.

Did you know that a feasibility study was carried out on behalf of the ACT Government and paid for by taxpayers, Mr Speaker? This feasibility study was presented to Fitzroy and it contained the kinds of projections I have already spoken about. Did you know about a feasibility study funded by the taxpayer, Mr Speaker? I did not and I do not believe anybody else did. Did you know that feasibility study even existed? I did not. Did you know that it contained commitments totalling several million dollars, including access to Bruce Stadium as a tenant? I did not know that. Remember Mr Stanhope said just the other day:

> Taxpayers have a right to know how their money is being spent and with whom. That is particularly the case when taxpayers' money is committed to private companies who are tenants of a publicly owned facility.

Is that not the exact concept of bringing the Fitzroy Football Club to Bruce Stadium? Is it not the case that we were potentially committing taxpayers' money to a private company which would be the tenant of a publicly owned facility? Too right it is; it is

straight hypocrisy. Quite simply, this is yet another example of the absolute hypocrisy that is evident in the Labor Party. They say one thing when in opposition and the opposite when in government.

To come back to Mr Berry's comments about the VITAB contract, this is the politician who as Minister said it is fair enough that people who have commercial contracts with the ACT would expect them to be kept in confidence. This is the politician who, when I asked him to table the contract, said:

> I have told you before that you are not going to get a copy of the contract from me, no matter what means you choose to pursue.

Mr Hird: Who said that?

MS CARNELL: Mr Berry said that. I will quote it again:

> I have told you before that you are not going to get a copy of the contract from me, no matter what means you choose to pursue.

This is the same man who claims that this Government and not him is secretive. I will finish by sharing with members perhaps the best example - at least for today - of the hypocrisy of the Labor Party. On 6 August 1991, Mr Humphries asked Mr Berry, the then Minister for Health, a very simple question: "How many expressions of interest were received for the proposed private hospital in Belconnen?". The question did not ask for the release of the submissions or the tender documents. It did not ask for details about the names or the prices. It simply asked how many expressions of interest had been received. The answer from Mr Berry was: "This information is commercial-in-confidence". Mr Humphries asked for the number of submissions that were received, and the answer was that it was commercial-in-confidence. To use a lawyer's phrase, Mr Stanhope, I rest my case.

MR HIRD: Mr Speaker, I was not going to ask a supplementary question, but one thing I would say about Mr Berry is that he is very consistent and should be nicknamed "Commercially in Confidence".

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

Mr Rob de Castella

MS CARNELL: I would like to present more information from question time. The answer to Mr Kaine's question was that Mr de Castella has a three-year contract which started on 1 January 1998 and finishes at the end of this year. He is paid $10,000 per year.

PERSONAL EXPLANATIONS

MR QUINLAN: I seek leave to make a personal explanation, Mr Speaker.

MR SPEAKER: Do you claim to have been misrepresented?

MR QUINLAN: I do, Mr Speaker.

MR SPEAKER: Proceed.

MR QUINLAN: In the course of answering questions, I think the Treasurer and the Chief Minister stated that I had washed my hands of the expressions of interest. Let me put the case right. My committee received a presentation by three gentlemen, Mr Lilley, Mr Mackay and a fellow from ABN AMRO. No names, no paper can be given out. We had about 29 or 30 firms with up to five or six options each. We were quite happy to receive that particular presentation. The committee thanked its presenters but expressed the hope that the presenters did not consider that this presentation in any way removed the responsibility of government to bring the findings and evaluation of the expressions of interest to the Assembly. It appeared to us that they were fairly cursory at that stage. I suspected at the time that the presentation was a ploy to allow the Government to sit there and say exactly what it is saying now.

MR SPEAKER: Order! This is beyond the realms of a personal explanation.

MR QUINLAN: Mr Speaker, this is a dishonest representation of what occurred, and it needs to be explained.

MR SPEAKER: You are here to make a personal explanation, Mr Quinlan. That is perfectly acceptable, but you cannot debate the issue or attack the Government. Just explain the situation.

MR QUINLAN: I am, Mr Speaker.

MR SPEAKER: Until just now you were going fine.

MR QUINLAN: The committee, of which you, Mr Speaker, and Mr Kaine are members, decided unanimously that we ought to advise the Government that it still has a responsibility to bring the evaluation of those expressions of interest to the Assembly. Since that time, I have asked several times in this place about those expressions of interest. I was told that they were going to be evaluated with the Great Southern Energy proposal. I was told that they were coming. What we have received so far is four flimsy pages.

I was thoroughly misrepresented. I have not washed my hands of this issue at all. I merely advised that you cannot take something to a committee and claim that you have advised the members of the Assembly, because you did not. I think that fits under the heading of hypocrisy - the word of the afternoon.

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

MR SPEAKER: Do you claim to have been misrepresented?

MR KAINE: I do, Mr Speaker.

MR SPEAKER: Please proceed.

MR KAINE: During question time the Chief Minister accused me of being an iconoclast. She referred to Mr Rob de Castella as a national icon and accused me of somehow attacking him. I refute that. I want to set the record straight. I have known Rob de Castella for a long time. As an athlete, I have a great deal of respect for him. What I did today was not an attempt to attack Mr de Castella. When Rob steps out of the field of sport and gets onto the payroll of the ACT Government, I think I am entitled to ask how much he is being paid. That was the question which I asked and which the Chief Minister skilfully avoided answering. She went on the offensive and accused me of attacking Rob de Castella. It is a good ploy of the Chief Minister. If you ask questions about Bruce Stadium, you are anti-Olympics - - -

MR SPEAKER: You are now moving beyond a personal explanation, Mr Kaine.

MR KAINE: I will bow to your ruling, Mr Speaker, but I think you are a bit premature. It would seem that Mr de Castella is on the government payroll. The Chief Minister did not deny that. He is no doubt on the payroll to make supportive comments. Or is the Chief Minister going to suggest that he is on the payroll to make unsupportive comments? That seemed to be what she was saying before. I refute the implication of the Chief Minister that I was attempting somehow to denigrate Mr de Castella; I was not. I would still like an answer to the question that I put to the Chief Minister of how much he was being paid for his services to the Government.

PRESENTATION OF PAPERS

The following papers were presented by **Ms Carnell**:

> Cultural Facilities Corporation Act, pursuant to subsection 29 (3) – Cultural Facilities Corporation – Quarterly report (for the second quarter of 1999/2000: 1 October to 31 December 1999).
>
> Canberra Tourism and Events Corporation Act, pursuant to subsection 28 (3) – Canberra Tourism & Events Corporation – Quarterly report – October – December 1999.

PUBLIC SECTOR MANAGEMENT ACT – EXECUTIVE CONTRACTS
Papers and Ministerial Statement

MS CARNELL (Chief Minister): Pursuant to sections 31A and 79 of the Public Sector Management Act 1994, I present copies of long-term contracts made with Mark Kwiatkowski and Aidan O'Leary, and schedule D variations made with Michael White, Sue Birtles and Gerry Cullen. I seek leave to make a short statement in relation to these contracts, Mr Speaker.

Leave granted.

MS CARNELL: In tabling these contracts, I ask members to view them with their normal confidentiality. I thank members for respecting confidentiality in the past.

PRESENTATION OF PAPER

The following paper was presented by **Mr Humphries**:

> ACTEW Partnership – Expressions of interest – Answer to question without notice asked of Mr Humphries by Mr Osborne and taken on notice on 29 February 2000.

ACT GOVERNMENT WORKFORCE STATISTICAL REPORT – SECOND QUARTER OF 1999-2000
Paper and Ministerial Statement

MR HUMPHRIES (Treasurer, Attorney-General and Minister for Justice and Community Safety): I present, for the information of members, the ACT government workforce statistical report for the second quarter of 1999-2000. I seek leave to make a statement.

Leave granted.

MR HUMPHRIES: I thank the house. The ACT government workforce statistical report for the second quarter of this financial year shows the total number of staff in the ACT government workforce at the end of December 1999 as 16,889. That is actual bodies rather than full-time equivalents. It should be noted that, in comparing these figures with those of previous quarters, the second quarter traditionally has fewer staff numbers because of falls during the Christmas period when fewer casuals are employed. I table this report for the information of members.

AUTHORITY TO BROADCAST PROCEEDINGS
Paper

The following paper was presented by **Mr Speaker**:

> Legislative Assembly (Broadcasting of Proceedings) Act, pursuant to subsection 8 (4) – Authority to broadcast proceedings concerning:
>
> The debate on mandatory sentencing for today, Wednesday, 1 March 2000, dated February 2000.
>
> The public hearings of the Standing Committee on Finance and Public Administration and the Standing Committee on Justice and Community Safety, dated 24 February 2000.

MANDATORY SENTENCING – SUBMISSION TO THE SENATE LEGAL AND CONSTITUTIONAL REFERENCES COMMITTEE INQUIRY

Debate resumed.

MR WOOD (3.51): The Assembly should make the strongest protest about the mandatory sentencing legislation of the Northern Territory and Western Australia. It is bad legislation; it is wrong legislation. We are right to oppose it and to do so strongly. It has been said in this chamber that the law is discriminatory. Because of the circumstances that apply in certain areas, perhaps across Australia, by nature the people who come under the impact of this law are overwhelmingly Aboriginal.

I recall one occasion in the Northern Territory when a son of a member or a son of a Cabinet Minister of the Northern Territory Assembly was arrested and gaoled because of this law. But, for the most part, almost all the people who are brought under this law and who suffer because of it are Aboriginal. Mr Stanhope outlined the background to that. They are the poor in the community. Laws always seem to impact upon the poor in the community, never the rich. So it is a discriminatory law.

Some people believe this law is an answer to the problem. That is simply not the case. Indeed, it makes the problem worse. This heavy-handed approach does not solve the problem. A well-known and often used phrase is: "Let's attend to the causes of crime". This legislation does nothing to attend to the causes of the crime. It is a useful phrase to use. The years have demonstrated that heavy-handed approaches like this simply do not attend to the problem. Governments go out and say to the people, "We're fixing the problem", but they are not. They are in fact exacerbating the problem.

For petty crime - very petty crime, as we have seen instanced recently - it is much more appropriate for local penalties to be enforced by local people who are understood by those who have committed the offence. At the moment I am sure the law is confusing for the people who are punished by it. We should resist those measures of other places because they are high risk. The report of the Royal Commission into Aboriginal Deaths in Custody, from which we all learnt a vast amount, said, "If you take this sort of action, it will produce deaths in custody". This is well known and yet it is happening. There have been more deaths in custody, and along with that comes further alienation by one sector of the community.

These laws have brought discredit to Australia and I think that is unfortunate. But it is also a good thing. It has broader benefits, and let us acknowledge that. The UN is interested; other nations are interested. It has an international focus now. That seems to be the necessary impetus for something to occur. While we may be humiliated in some respects by international focus, I think it is necessary to bring some action.

I think there is a greater concern behind this legislation. The United Nations, nations separate from the United Nations umbrella and people around Australia do not have to convince just the Northern Territory and the Western Australian governments that this law is wrong. That task can possibly be accomplished or forced upon those two

administrations, although it is a difficult task. The biggest problem, the overwhelming problem, is to convince the people of the Northern Territory and Western Australia that this law is bad. That is the difficult task.

I believe the governments in the Northern Territory and Western Australia are not dominating an unwilling population. I believe they have the general, but not total, support of large sections of their community. The law may be changed. There may be pressure to have it changed. But the more important task is to convince those populations that the law is bad and is working against Aborigines and against reconciliation.

It is unfortunate that the governments in those jurisdictions have not provided the leadership that is necessary. It shows us that there is so much more to be done in terms of reconciliation. Efforts in that area should be accelerated, not, as the Prime Minister has announced recently, put on the backburner. Delay can only cause further difficulty and further alienation.

Mr Humphries went to a small amount of trouble to try to point to some division in Labor across Australia about the way we should proceed in this case. I say to Mr Humphries, thank heavens there are some Liberals in the Federal Parliament who appear to be very strong in telling their recalcitrant Prime Minister that he should change their attitude. Thank heavens there are some Liberals in the national parliament and across Australia who understand the significance of this issue. I hope they can convince the Prime Minister that he should change his view.

MR STEFANIAK (Minister for Education) (3.58): Mr Speaker, I am a bit late to join in this debate. Mrs Carnell just gave me some documents from the Northern Territory which are probably worth while tabling. What concerns me the most is that a young person has died in custody - after the Royal Commission into Aboriginal Deaths in Custody. I wonder whether so much attention would have been given to young Johnno's case had he been sentenced by some law other than mandatory sentencing. That in itself is a question that needs to be asked.

The people of the Territory have been lucky in having only a small number of people die in custody. We have had three deaths - two in the Remand Centre and one in Quamby. That is three too many. I hope that the coronial inquest into young Johnno's death in the Northern Territory is as thorough and comes up with as many good outcomes as that of the coronial inquest into the Remand Centre deaths and the Quamby death.

I do not profess to know a huge amount about mandatory sentencing in the Northern Territory and Western Australia. The law applies to property offences. I will table the documents from the Attorney-General's office. I note from the documents that people have to be over 15 and 16. I also note from the documents that a person does not necessarily go straight to gaol. Perhaps if those documents were tabled, that would assist this debate.

For relatively minor crimes, I do not favour mandatory sentencing. I think it would be more appropriate for much more serious crime, such as armed robbery. I listened with great interest to the contribution of Mr Wood and, in particular, his comment that the

communities of Western Australia and the Northern Territory will need a fair amount of convincing to change their laws. That is a matter for people in those communities.

From my own experience in the courts - nine years as a prosecutor and six years as defence counsel – I can well understand community attitudes to sentencing. I can well understand the attitudes of a number of people whom Ms Tucker has pointed out – that is, academics and some members of the Bar Association. However, having dealt with a large number of victims during my criminal law career, I can well understand the very real concerns in the community in terms of how the criminal justice system in this country is administered.

We are dealing with humans; judges and magistrates are human. The fact is that there are many instances of great disparities in sentencing for very similar crimes within the court systems of Australia. There are many victims and many people associated with the system who have great disquiet over the way in which the courts handle some of these matters. There are certainly many victims who feel that criminals have a tendency to be treated like treasured citizens while they are treated like dirt.

A lot has been done in recent years, and I am pleased to have played a small part in a couple of cases in the Territory where the rights of victims were respected. Much has been done, but there is certainly community disquiet in this country and even in this town, as evidenced by letters to the editor about the operation of courts and consistency in sentencing.

Mention has been made of UN treaties. I have had a good look at Mrs Carnell's letter to Senator Jim McKiernan, the chair of the Senate Legal and Constitutional References Committee, and I think a lot of it makes sense. People in Australia have had a number of concerns about certain aspects of UN treaties. One of the biggest concerns is that until now States and Territories have had very little say in what the Commonwealth ratifies. I certainly agree with the comments made by Mr Humphries in terms of how many treaties have been ratified.

Despite some of the tragic aspects of this particular case and other cases in the Northern Territory, it is true to say that Australia generally has an excellent record in human rights and in respecting UN treaties. As a community we should respect UN treaties which have noble aims and which have aspects which are well deserving of support. However, I think it is hypocritical of a number of nations in the UN which have signed these treaties and which quite clearly do not respect the human rights issues involved to be critical of Australia, which is one of the most free and most respectful countries of human rights in the world.

The Soviet Union, China, a number of countries in Africa, the Middle East and South America have all signed certain UN treaties. In many instances those countries have appalling human rights records. That is something that needs to be acknowledged. The real issue here - and I think the Chief Minister has addressed this in her letter to the Senate inquiry - is when should the Commonwealth dictate to States. The Chief Minister has been very forceful in her answers to Ms Tucker's questions last week.

I know the Chief Minister does not like mandatory sentencing. I know the Chief Minister has some views on sentencing which would not see very many people at all go to gaol. We have some very different views on sentencing.

Mr Berry: She likes move-on powers.

MR STEFANIAK: I am glad to hear that, Wayne, because that is a very practical power. But the Chief Minister has argued a principle here - just as my colleague Mr Humphries, who has very strong views on euthanasia, argued a similar principle. His views - and I largely support his views on that particular point - on euthanasia are that the Commonwealth should not override the sovereign power of the States and Territories in relation to legislation desired by citizens and passed by their parliaments. Mr Humphries' views on euthanasia are quite well known, as I think are mine. I fully endorse that principle.

Similarly, with shooting galleries, Mr Osborne has raised the question of whether the Commonwealth can step in and say to the ACT, Victoria or New South Wales, "No, you can't have shooting galleries". It might be a bit easier for the Commonwealth to override the powers of the ACT and the Northern Territory, but it would be more difficult to do that in Victoria or New South Wales. Whilst I have some grave reservations about shooting galleries - in fact, I think the idea is quite stupid - this parliament, small though it may be, has the right to make laws for the benefit of its citizens without the Commonwealth overriding them.

It is up to the people of a territory or a state to tell the Government or the members of parliament at each election whether they approve of those policies or not. If a majority of people do not approve, then out the government goes. The people of Western Australia and the Northern Territory may well be in favour of these laws. They may need a lot of convincing. Ms Tucker said that she lived in the Territory. Given her strong feeling on this issue, perhaps she should get her friends mobilised to oppose these laws, to change these laws. But is it appropriate for someone else to tell a sovereign democratic state - and I stress the word "democratic" - to change its laws?

I refer to page 3 of the Chief Minister's letter dated 3 November 1999. I wonder why people have not written to the Senate inquiry before now in relation to this issue. This is an issue which raises a lot of views, and people on both sides of the question feel very passionately. I wonder why Ms Tucker or anyone else in the Assembly who felt strongly about this issue did not make a submission to the Senate inquiry. Be that as it may, I think the Chief Minister's comments on page 3 are worth mentioning. Mrs Carnell states:

> The use of the treaties power to directly interfere in traditional State/Territory areas of responsibility should only be considered by the Commonwealth in the most extreme, urgent and compelling cases. Starting from that position, it should not be impossible for States/Territories and the Commonwealth to agree, in the same way as they reached agreement on the Principles and Procedures for

> Commonwealth-State Consultation on Treaties at COAG in 1995, on some broad principles as to when Commonwealth unilateral action might be justified, and what steps might precede its action.
>
> Such an agreement would not necessarily impede the Commonwealth's ultimate capacity to legislate or otherwise implement treaties within the limits of its proper constitutional authority. It would however give all parties, and the Australian community, some reassurance and would open the process to broader participation and scrutiny.
>
> The advantages of this approach in terms of transparency and democracy are obvious; similarly, for preserving good faith and working relationships amongst all jurisdictions. Such an approach is also more consistent with the Commonwealth's efforts since 1996 to improve the consultative arrangements on treaties, which its recent review found to be both successful and well received.

(*Extension of time granted*)

I think it very appropriate that she has indicated to the Commonwealth that it should only act in the most extreme, urgent and compelling cases. It would be desirable to have some broad guidelines indicating when Commonwealth action might be justified. That, it seems, would be eminently sensible, because one of the biggest criticisms from the States and Territories until 1995-96 was that they were not even consulted on the 900 or so treaties which the Australian Government ratified with the United Nations.

I think that is an eminently sensible submission. Indeed, were that submission taken on board by that committee, we would have a set of guidelines which would greatly assist the Commonwealth on when it is appropriate for it to take unilateral action. That is something that all parties - all eight state and territory parliaments and the ninth parliament, the Commonwealth – might be satisfied with. I think that is the real issue. Mandatory sentencing evokes a lot of passion one way or the other. I think in certain instances a large number of people in this community would see it as desirable. There are clearly a number of people who are outraged by the thought of mandatory sentencing, and certainly by the laws that apply to the Northern Territory and Western Australia.

But, at the end of the day, all eight Australian state and territory jurisdictions are democratically elected parliaments, as is the Commonwealth Parliament. As we are part of a democracy, there is absolutely nothing to stop any member in this house making a submission to the Federal Parliament on this particular issue or on any other issue, regardless of what the government of the day is or what its Chief Minister might send. That is a most appropriate course of action if people feel strongly enough about this particular issue or any other issue.

I will certainly not be supporting Ms Tucker's motion. Rather than trying to force the Government to do something completely different, it would be far preferable, given that she feels very strongly about this issue, for her to make her submission to this committee on this particular law that she has addressed us on today.

MR HARGREAVES (4.12): I suggest to members that, had Ms Tucker known about Mrs Carnell's letter before it went to the Senate inquiry, she may have done just that.

Ms Tucker: It is a stupid argument they are putting up. You do not even need to answer it.

MR HARGREAVES: It is indeed. The Minister for Education just spoke about how he as a defender and as a prosecutor had come across a number of victims and how perhaps mandatory sentencing might be a good thing. I will give you the victims of two of the cases to which Mr Stanhope referred today both inside and outside the chamber. A shopkeeper was a victim - he lost a packet of biscuits. Another victim was a petrol station owner who lost $1.60 worth of fuel. In both of those cases people were sent to gaol for many months. So do not give me any rot about victims in this particular instance.

Mr Moore: Twenty-eight days is not "many months".

MR HARGREAVES: Twenty-eight days for $1.60 worth of petrol!

Ms Carnell: It is a long time, but it is not "many months". It is important to get it right.

MR HARGREAVES: I stand corrected. They did not get many months for stealing $1.60 worth of petrol; they got a whole month for $1.60 worth of petrol. That is unbelievable. I just do not believe that. I also heard - and I hope I was wrong – Mr Stefaniak talking about how we should be concerned with the ratification of treaties. I certainly hope he was not talking about us not wishing to ratify the international treaty on human rights, because that is, after all, what we are talking about here.

Sometimes the sovereignty of States has to take second place to the sovereignty of human beings. This is one of those cases. We are not talking about burnout legislation, where if a person has committed his or her second offence we automatically take the vehicle off him or her and sell it, although I suspect that is the thin edge of the wedge. What we are talking about is the inevitable result of mandatory sentencing, where somebody loses their life. The horror of that is that they lose their life for something which is absolutely minimal.

I would like to quote a couple of articles which have come my way. The Institute of Criminology tells us that, at 30 June 1998, 780 people aged between 10 and 17 years had been gaoled in juvenile corrective institutions. That is roughly 37 in every 100,000 in that age group. That is a heck of a lot of kids. New South Wales accounts for almost half of that, and the figure in Victoria is decreasing quite significantly - both Labor States, I point out. We need to understand, as Mr Stanhope said, that when mandatory sentencing was brought in in the Northern Territory the incarceration rate went up by 145 per cent.

The Chief Minister of the Northern Territory fashioned a scheme without consultation with the Northern Territory legal fraternity. Adult first offenders convicted of property crimes must serve at least 14 days. What constitutes property? It is not somebody's crown jewels; it is a packet of biscuits. A second offence gets you 90 days and a third offence gets you not less than a year. For juveniles between 15 and 17, a second offence carries a mandatory sentence of 28 days. Judges have no choice.

If members think for a minute that this does not have a detrimental effect on the indigenous community, they are having themselves on. Even if this legislation were created with no racist intent, the application of the law has been proven to be such. It will always be such when something like 70 per cent of the people in the Northern Territory are indigenous. The most hideous part of this legislation is its application to young people. We sit here and talk about a new gaol for the ACT. We espouse restorative justice and preventative justice. We talk about alternatives, such as diversionary conferencing. I think one member opposite said that in the Northern Territory there is some choice. The fact is that the courts in the Northern Territory do not have a choice.

It has also been proven that, since the introduction of mandatory sentencing in the Northern Territory, there has been little effect on the pattern of unlawful entry offences. So, if this was introduced as a deterrent, it has not worked. Quite apart from it being horrendous, it does not work. An article that I have from Darwin states:

> The Territory's Chief Minister, now Denis Burke, said it was a lie to connect the boy's death to mandatory sentencing.

How insensitive and how stupid is that? The article further says:

> Under Northern Territory sentencing regimes, juveniles aged 15 to 16 face a mandatory 28 days in gaol or diversionary programs when convicted of a second property crime.

If that is so, how come that kid went to gaol and how come that kid killed himself? What Ms Tucker is talking about here is a law in Australia which is nothing short of horrendous. It is racially discriminatory and it has a horrendous effect on young people - and all we have here is a letter to the Senate inquiry saying, "Let's uphold the sovereignty of the States". As I mentioned in conversation with Mr Kaine today, I have a bit of a problem weighing up which is going to come first - the sovereignty of the State or the sovereignty of the people. I am more interested in saving kids' lives and stopping them from becoming young criminals.

It is well known that, if you throw somebody in the clink, all you will do is make them an even better criminal when they come out. The idea is to stop their offending behaviour through some other method and use gaol as an absolute last resort, not the second resort. I am more interested in saving those kids' lives. We know that Aboriginal people will try to kill themselves if taken away from their community. We know that.

We need to make a statement in the strongest possible terms to the States and Territories which are enacting laws which we believe will work to the detriment of segments of the community - particularly ones which have a significant, similar problem around the country - that we do not believe they are doing the right thing. If this is the way we have to express that, then so be it.

Mandatory sentencing takes away the fundamental freedom of going before a magistrate, stating your case and having mitigating circumstances taken into account before he or she dispenses justice. I would like to think our magistrates are not only very wise and very learned people but also compassionate people who would understand the difference between a well-heeled person from one of the best suburbs of Canberra and someone from a particularly disadvantaged suburb or township like Cherbourg, for example. Judges ought to be able to use compassion, but these laws take such compassion away from them. The law is above the people.

We have been talking about sovereignty. Sovereignty is meaningless to the people in the outback, but the law is not. We heard an Aboriginal gentleman today say, "By whose law? Not Aboriginal law, your white man's law". They have enough trouble with the law as it is. This law is killing young Aboriginal people, and we cannot stand by and let that happen. I urge every member to think seriously about their support for Ms Tucker's motion and consider what is more important to them – the sovereignty of the States in this particular issue and only this particular issue and the sovereignty of human beings.

MS CARNELL (Chief Minister) (4.22): I note that Ms Tucker's motion concerns what the ACT government submission did not say on mandatory sentencing rather than what it does say. Let me go through what the submission does say. The submission clearly states that the Government does not propose to address the issue of mandatory sentencing of juveniles because there is a significant threshold issue. The submission does address this threshold issue of the exercise of external affairs powers to permit the Commonwealth to legislate in respect of a matter that is traditionally and appropriately the responsibility of States and Territories.

This Government accepts that the Federal Government has the constitutional power to legislate to implement international instruments, such as the United Nations Convention on the Rights of the Child. What is questioned is the propriety of the Federal Government doing so in an area that is otherwise firmly the responsibility of States and Territories. The ACT government submission to the Senate Legal and Constitutional References Committee advised the exercise of caution in legislating in areas of state and territory responsibility.

The Senate Legal and Constitutional References Committee, in its 1995 inquiry into the Commonwealth's power to make and implement treaties, raised this very issue. The committee specifically referred to the United Nations Convention on the Rights of the Child and the concern which Australia's ratification generated both in the wider community and with state and territory governments generally. These concerns were squarely based on the fear that ratification could allow the Commonwealth to legislate in a particularly sensitive area that is very much the traditional province of the States and Territories. This is the very situation that has come to pass.

The ACT government submission suggested that there should be some broader principles agreed to by the Commonwealth, States and Territories as to when unilateral action by the Commonwealth might be justified. The submission also suggested that there should be some agreed steps before this occurred. Such an approach has obvious advantages in terms of transparency and democracy. These observations are not disputed by Ms Tucker in her motion.

I move to what the ACT Government's submission did not say. The Government did not attempt to comment on the validly made law of another jurisdiction. As I have stated before in this chamber, I think a large number of people in this Assembly would not support the type of legislation passed in either the Northern Territory or Western Australian parliaments. I for one would certainly not support that legislation. However, the fact is that those laws did go through appropriately elected parliaments, and those parliaments are the appropriate avenue to repeal those laws. It is not for the ACT Government to tell parliaments whether they have made good law or bad law – and I have to say that we would be less than impressed if another government tried to do that to us – that is the task of the people who elected them.

This Assembly has been very vocal about any suggestion that its power to make legislation should be in any way fettered. Specifically, the Assembly has expressed its dissatisfaction with the Federal Government passing anti-euthanasia legislation. Ms Tucker herself has said on that issue, "We are also very disappointed that the Federal Government passed the Andrews Bill, which restricted the ACT's power to legislate on euthanasia".

It is hard to think of an issue that is more about life and death than euthanasia. Many people would suggest the same situation applies to human rights – the right of people to live without pain. Similarly, I suggest there would be some consternation expressed by members of the Assembly if the Commonwealth were to legislate away the right of this Assembly to make legislation concerning supervised injecting places. When there was some indication that the Federal Government may have legislated on heroin trials, we were less than impressed.

It is not appropriate for the ACT Government to comment on legitimately made laws of democratically elected governments. If those laws are flawed, then let them be challenged through the appropriate channels or let the electors decide whether or not they are appropriate. If the Federal Government decides that it does need to legislate in this area, as it has the constitutional ability to do, then it should be a considered legislative response subject to appropriate consultation. They are not just my views; they are the views of many other heads of government – predominantly Labor – in this country. In regard to this legislation, Mr Carr said:

> The most effective course is to get rid of the Government that drafted the laws.

Mr Mike Rann, the Opposition Leader in South Australia, confirmed that he supported the three strikes and you are in legislation at the last election but on the basis that it would apply to adults, not juveniles. Mr Geoff Gallop, the Opposition Leader in Western Australia, has argued strenuously that it is not appropriate for the

Commonwealth to intervene in the laws of his State which he goes on to say he supports. Clare Martin, the Opposition Leader in the Northern Territory, has made it very clear that, although she does not support the legislation, she believes it is inappropriate to have Federal government interference in the laws of that State. Her view is that the best approach is to change the government.

That is quite a large number of Labor leaders in this country. Mr Beazley, the Federal Opposition Leader, said after the Labor leaders meeting last week:

> This is an issue on which there is divided counsel here, and that is not surprising.

Mr Beazley also accepts that there is not agreement even amongst Labor leaders in this area. Why? Because the issue of states rights is so fundamental to our system of government in this country and to the rights of States and Territories to legislate on behalf of the people who elect them. I do not believe this parliament should get into the business of putting its oar in. If we do that, it will be five seconds before other States start doing it to us.

If we had a debate on mandatory sentencing in this house, I do not believe it would be within cooee of getting up. I do not believe there would be many people in this Assembly who would support mandatory sentencing laws. But that is not the issue, just as it was not the issue with euthanasia, supervised injecting rooms or any other law that we choose to pass in this place that others – the Federal Government or other States – may believe is totally inappropriate.

This is an important issue, because it will come back to haunt us if we take any approach other than the one that I have put on the table. This Assembly has traditionally led the debate in many social policy areas. I think that is something we should continue to do, but in many areas we have a huge amount of resistance and outright opposition in other States. If we get into the business of interfering in other States' legislation, then it will be extraordinarily difficult to argue that they should not get involved in ours.

MR KAINE (4.31): It is with some regret that I do not support this motion. I say "with some regret" because I know that in putting forward this motion Ms Tucker has all the best intentions. She seeks to achieve something which she believes is in the community interest and for the community good. My problem is that the motion as presented achieves nothing. It is an ineffective motion. It does not even talk about anybody; it talks about an inanimate object, a submission's failure to achieve certain things.

I am not clear what it is that Ms Tucker is seeking to achieve by this motion. What is her objective? What outcome does she desire? Even if we were to pass this motion today, it would achieve absolutely nothing. It calls on nobody to take any action, not even the ACT Government. It expresses an opinion. After listening for some hours, I find there is no view. Almost everybody who has spoken in this debate has a different view. Members have focused on different aspects of the problem. There is no consensus in this place about what the outcome should be, even if it were expressed in the motion, which it is not. I do not know what, if any, practical purpose can eventuate whether we pass this motion or not.

The second difficulty I have with the motion is that it is somewhat conditional. Points two, three and five seem to be soundly based. "These laws are inconsistent with the recommendations of the Royal Commission into Aboriginal Deaths in Custody". That is probably true. I think there is an inconsistency. They are inconsistent with the goal of reconciliation with indigenous people. I think the indigenous people might see it that way, so perhaps there is some validity to it. The proposition that they are manifestly unjust could easily be demonstrated and substantiated.

However, I am not even certain that points one and four stand up. Ms Tucker says that the laws "are racially discriminatory in effect". What is she saying? Is she saying that the law is discriminatory or is she saying that the way the law is administered is discriminatory? I suspect that the law is not discriminatory. The way the law is put into effect and administered by the administration of the Northern Territory may be discriminatory, but it is not clear. Ms Tucker did not make it clear what she meant by that assertion.

Finally, point four says that it "may be in breach of a convention or two". Are we going to act on the proposition that a law "may be" in breach, or can we only reasonably act if it is in breach? So I have some difficulties on three counts. Firstly, I am not sure what the objective of this motion is and what Ms Tucker expects to achieve by it. Secondly, I am not convinced that some of the statements in here are factual or valid. Thirdly, it is not addressed to anybody. It is just a motion and nobody will take any action in response to it.

Although we have spent some hours debating this motion, I do not believe it has any practical effect whatsoever. Mr Hargreaves said that we have to send a message. This is not sending a message to anyone because it is not addressed to anyone. I suspect that if Ms Tucker had been more specific and had said, "We resolve to inform the Government of the Northern Territory that we believe this law is unacceptable", that might have achieved something. They might have listened if the Chief Minister had written a letter telling them that. They might not have, but it might have had some practical effect. The way it presently stands, it does not and it will not.

There is no consensus of opinion. Every member who has spoken in the debate has spoken on a different aspect of the problem. Some have talked about the unacceptability of mandatory sentencing. Some have focused on the fact that it is contrary to international treaties. They have asked whether it is appropriate for the Commonwealth to get involved. Some have focused on the fact that our indigenous people have been disadvantaged by this law, but there has been no consensus reached on any of those issues.

It is not often that I agree with the Attorney-General, but I agree with him that we will be doing the nation a great disservice if we seek gradually and randomly to dismantle the Constitution. I think Mr Humphries said, "The more often you cross the line, the more quickly the line disappears". That is a good analogy because I think it is right. The more we question the rights of the States and Territories under the Constitution and the rights of the Commonwealth to intrude into those areas, the more we dismantle the Constitution. If we continue to do it, we will get to the stage eventually where there will

be no Constitution. It will be a worthless document because we will have denigrated it over successive years by people with individual issues they want to push. They will say, "In this case, it is justified for the Commonwealth to intrude on states rights".

Some of us do not believe – and I am one – that the Commonwealth should intrude on our rights on any occasion. I am opposed to the concept of having a heroin trial. I am opposed to the concept of having a shooting gallery, but I would not for a moment seek the Commonwealth's intervention to tell us that we cannot do it. This place, over my objection, has come to a conclusion about that. Would Ms Tucker suggest for a minute that we should invite the Commonwealth to override our rule on that point? I submit not. Ms Tucker was the first one to complain when the Commonwealth overrode the Northern Territory's euthanasia legislation. I do not agree with euthanasia either, but the Commonwealth acted improperly.

Ms Tucker: It is like I haven't spoken. I have addressed this. You don't listen.

MR KAINE: You can address anything you like, but you clearly do not understand the Constitution. Why don't you listen to me for once? If you continue to invite the Commonwealth to override the States every time an issue comes up that you do not like, whether it is in the Northern Territory, Western Australia, Queensland, Tasmania, Victoria or New South Wales, then you will weaken the Constitution. You might as well do away with it. You cannot invite the Commonwealth to intrude in this case and to butt out in the next one.

The Constitution is quite specific, and we should not be seeking to water it down. If you want to do away with the jurisdiction of the States, then let us do away with the Constitution and have carte blanche, open slather. Let the Commonwealth do what it likes. I do not agree with that. On this issue I stand with the Attorney-General. I do not often agree with him, but this case I do. It is very dangerous to invite the Commonwealth to intrude into the affairs of a state or territory when we do not want them to do the same thing in our affairs. You cannot have your cake and eat it too. I object to the notion that you can nibble away at the Constitution when it suits you and then stand under your constitutional rights when it does not. You cannot have it both ways. I think I have made clear my reasons why I do not support this motion. When the time comes to vote, I will vote against it.

MR RUGENDYKE (4.40): There are many things for which this Government needs to be condemned and from which we should dissociate ourselves, and this submission may well be one of them. But this motion goes on to be a typical broad-brushed greenie motion that endeavours to lock all members into a position that they may or may not fully agree with.

In broad terms, I am able to support the motion in its entirety, given that the debate today has primarily referred to children. I wish to place on record that I believe the type of mandatory sentencing spoken about in relation to juvenile offenders is totally objectionable and inappropriate. However, I reserve judgment on this issue in relation to serious recidivist adult offenders. I will refine any view that I might have when that debate surfaces in this parliament.

MR BERRY (4.41): A lot has been said about this issue. I will try my best not to replicate anything that has been said by other members unless it is absolutely necessary. These laws in the Northern Territory and Western Australia have been proven to kill people. There comes a time when parliaments in other places have good cause to express a view about certain laws. Let us not delude ourselves; these laws are responsible for the death of people. They are laws which most members should find abhorrent and appalling.

Our system of justice has been developed on the basis of the separation of powers. The judiciary has a role in determining the application of penalties in all sorts of cases. Right-wing redneck people sometimes try to infringe upon this role with mandatory and summary offences and with summary powers being handed over to individuals in the community, in particular, the police. I do not think in many cases the police want these powers, but that is the tendency.

The problem is that these laws almost invariably hit first and hardest the marginalised sectors in the community. This is a classic case of that happening. It should be a strong signal, a sentinel, to all of us about these sorts of laws and the effects they have on different classes of people. These laws have been shown to kill indigenous people. The plight of indigenous people is not unknown. We know about the difficulties imprisonment poses to indigenous people. We have been warned about it over and over again. The report of the Royal Commission into Aboriginal Deaths in Custody warned us about these issues.

The Northern Territory and Western Australian governments trumpet these unfair laws as success stories because they are able to inflict heavy-handed penalties with immediate effect on elements of the community who, in normal circumstances, are not well positioned to defend themselves and are not well positioned in the social structure. Invariably these people come from a group whom society has failed. These sorts of laws, in effect, punish the victims. It is unacceptable that laws which punish the victims should be supported.

My comments in this place on the rights of Territories are on the record. I believe the citizens of Territories should not be treated any differently from the citizens of States. I know constitutionally we touch upon a sensitive area if we delve into states rights and argue for changes to the Constitution or for intervention. But there comes a time, when human rights have been seriously infringed upon and where people are being killed because of bad law, when you have to do something. That is about as blunt as I can be. People are being killed by bad law. In my view, something has to be done about this.

Ms Tucker's motion is worthy of support because initially it will warn Mrs Carnell that what she has done is totally inadequate and we need to distance ourselves from it. Furthermore, it is a statement that we are upset by these deadly laws. Supporting this motion will show that we stand in strong opposition to what is occurring in the Northern Territory and Western Australia. Whether or not it comes to intervention at a political level federally is another question. I think Ms Tucker in her speech mentioned a quote from a notable person along the lines that "evil is only furthered when good people sit on their hands".

This motion has good intent - to send a better, stronger message to people in other parts of Australia that what they are doing in terms of human rights is totally unacceptable. It is sending a message to the Carnell Government that its statement to the Senate Legal and Constitutional References Committee is just not good enough and does not reflect our views.

I go back to my earlier comments in relation to the separation of powers and the attempts by political bodies to inflict their will on the judiciary. It is, and has been proven over and over again to be, a dangerous step. Recent events in relation to these laws in the Northern Territory and Western Australia are something that we ought to be embarrassed about. If we are not embarrassed about it, then we are insensitive and uncaring about the beneficial aspects of the separation of powers and the obligations of the judiciary in our political system. It is to the peril of society generally if we undermine them.

I will be supporting this motion. This motion does not interfere in states rights; it sends a message to the people who oppose these laws in other States that they have supporters elsewhere in Australia. I think that is important. There are those among us who will stand fast against these sorts of laws and the effect they have on marginalised people in our community – people whom our social structure has failed. This motion also sends a message to the conservative Carnell Government that what they have done in respect of this matter is just not good enough, and more needs to be done.

MR MOORE (Minister for Health and Community Care) (4.50): During question time today, the issue of hypocrisy was discussed. It seems to me that there is an element of hypocrisy in a number of people accusing the Government of putting in an inadequate submission when they did not even bother to put in a submission themselves. Having said that, I think the submission of the Government concentrated on the independence of the Australian Capital Territory. For a Senate committee's consideration, that was a perfectly appropriate and rational thing to do. It was reasonable for Ms Tucker to then make a range of points which – surprise, surprise – I agree with about mandatory sentencing having a series of problems.

I am going to oppose the motion – not because I disagree with Ms Tucker's view on mandatory sentencing but because I believe the Government was entirely within its rights to put in a submission on the issue of the States and Territories. In focusing on the independence of the Territories and the view that they should not be controlled by the Commonwealth, the submission deliberately avoided commenting on mandatory sentencing itself. The Government ought not be condemned for not commenting on a particular issue like that.

My view on mandatory sentencing is well known. I believe I was the first person to speak in this chamber on the issue of mandatory sentencing. Indeed, on quite a number of occasions I have said that there is a basic civil liberty involved. There is no place in the administration of justice for mandatory minimum sentencing. As members would know, I have presented that view to the chamber on a number of occasions, and my view has not changed.

Before I go on to explain my view on this issue, Mr Stefaniak asked me to present something so that he would not have to seek leave to speak again in this debate. I will present it for him and then explain why I think it is wrong. He said that he believes the vast majority of victims of crimes are not well off. Some people have put the view that it is the poor who are affected by mandatory sentencing, but Mr Stefaniak argues that the victims of crime are also often poor. I do not think Mr Stefaniak has any evidence to back up that statement. It would be an interesting study to determine where the victims of crime come from. My gut reaction is that there would be a very large number of victims of crime who are poor, particularly when it comes to crimes of violence.

I agree with the government submission that the use of international treaty powers is not a sensible way to help address this issue. Treaties cover only some issues and, although it might be nice in the short term to use those international treaty powers to overrule the Northern Territory and Western Australian laws, the result would be a patchwork of policy. I think the general principle against mandatory sentencing ought not be achieved by this route. One of the biggest problems we had with the Andrews legislation which overrode the Territory's euthanasia legislation was that it is an ad hoc approach. One thing I believe we should be avoiding is an ad hoc approach.

Since the issues in this submission have been raised, I have had a deal of time to think about this issue and the associated problems. I have reached the conclusion that there is a case for amending the self-government Acts of both the Australian Capital Territory and the Northern Territory – and hopefully one day the state and Commonwealth constitutions. This particular case highlights a problem we have with the state and territory constitutions, which are also known as self-government Acts.

The separation of powers that we maintain between the Executive and the courts is a vital element in our system of democracy. When that breaks down, we see a fundamental interference with civil liberties. The imprisonment of our citizens is such an important matter that it should occur only in a justice system where the independence of the courts is guaranteed. Most of us would consider that to be a fundamental principle in the issues that we are dealing with.

I have argued many times in this Assembly that the responsibility for delivering justice in individual cases must lie with the courts. For the legislature of the executive government to force sentences of imprisonment in individual trials has great potential for injustice. I think that is the fifth point in Ms Tucker's motion. I agree with the points she makes in her motion; it is the general thrust of the motion itself which I am unhappy with.

To protect the balance of powers, legislatures should not have the legislative power to direct courts to impose mandatory or minimum sentences of imprisonment. This is the fundamental difficulty. Legislatures are stepping beyond their fundamental rights, as understood by anybody who has looked at the separation of powers. We ought to ask the Federal Government to amend the Australian Capital Territory (Self-Government) Act 1988 to guarantee judicial independence against courts being forced to impose mandatory or minimum sentences of imprisonment. There should be a section in the Australian Capital Territory (Self-Government) Act which deals with the judiciary. Off the top of my head, I think it is subsections 48(a) to (d).

The Australian Capital Territory (Self-Government) Act should guarantee judicial independence. I know Mr Kaine has been very keen on Jefferson, and others would recognise that they argued in this way on many occasions about the American system. Such a system would not undermine the rights of ACT people to be governed by their directly elected representatives, which was a principle that was overridden by the Andrews Bill. Rather, such amendments would improve constitutional rights and protections. I think it is entirely appropriate that we look for amendments that improve the constitutional rights and protections of the people of the ACT. I think we need time to work it through, but I would ask members to consider the possibility that this Assembly ask the Federal Government to consider amending our constitution, the Self-Government Act, in order to deal with these issues.

I have heard many people argue that mandatory sentencing is a very good thing. There is no doubt in my mind that, if we polled the ACT, a majority of people would say ,"Yes, just do it". If we polled across Australia, I imagine you would get over two-thirds supporting it. If there were a referendum on the matter, I believe in the initial instance, until people understood the ramifications, a two-thirds majority would support it. People are unhappy with the level of sentencing. I think we have to look for solutions at that end rather than interfere with the separation of powers. That is the fundamental mistake that has been made in Western Australia and the Northern Territory.

I think they are wrong. People believe the judiciary is too soft not on first, second or third offenders but on recidivists. Why is the judiciary not more proactive in relation to repeat offenders? Why is it not stronger towards recidivists? That is the issue that people want dealt with. It has been dealt with badly in the past. Perhaps there is a message to be learnt for the ACT. I think the ACT community has fewer rednecks than the Northern Territory does. We have a community that is looking for a solution. We need to discuss those issues.

Perhaps the solution lies in having a varying penalty for the first, second and third offences. I do not think that has been done anywhere, but I imagine under our Acts Interpretation Act we could draft an amendment that said the penalty that applies at the moment is for the first offence. If it is a second offence, the penalty should be doubled. If it is a third offence, the penalty should be doubled again or something to that effect. (*Extension of time granted*) As Mr Stefaniak has said, we could apply that to property crime and certainly crimes of violence, where we would expect a much more rigorous approach from the judiciary. I do not know if, in the end, that particular solution will be a good one. But it does show that there are other ways to deal with this issue than mandatory sentencing, which results in the very poor outcomes that Ms Tucker has outlined.

Having said that, I reiterate that I will be opposing the motion. Although I was free to make a submission to the Senate committee, I chose not to. It seems to me that the first thing the people supporting this motion should ask themselves is why they did not put in a submission on such an important submission – as indeed the Government made the effort to do.

I recognise that there are many issues before us at any time and we choose to follow some and not others. But we have chosen to make this a more important issue. Perhaps the catalyst for doing that was a young boy's death in custody in the Northern Territory. But to point the finger at the Government and say, "Yes, you made a submission but you did a really bad job because these things aren't in it", is not acceptable when you did not make a submission. The Labor Party did not make a submission either. I think we have to be very careful when pointing the finger at other people.

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.

MS TUCKER (5.02), in reply: Firstly, I would like to address Mr Kaine's concerns. I will clarify for him exactly why I have worded the motion in the way I have and why I did not directly call on the Government to change its submission. My understanding of the separation of powers is that we have an Executive, a parliament and a judiciary. My understanding is that, in this particular instance, because it is not a matter of administration of territory affairs, the ACT Government did have the right to put the position that it put.

Rather than call on the Government to change its submission, I have called on the Assembly to distance itself from the submission and condemn it. Some members have said that, if I did not like it, I should have put in a submission. I believe the Greens' position is very clearly put; it is a Greens' Bill in the Senate. The point I have been making today is that, if this Government is genuinely interested in being open, cooperative and consultative, even while I respect its role as the Executive, I think it would have been consistent with its claims to be cooperative and open to discuss the matter, to give the ACT community an opportunity to have a voice in the decision.

The ACT Government has put forward this submission, and I am condemning and dissociating myself from it, as other people have chosen to do. It is quite clear what our position is. Mr Kaine asked what action would come from this. If I had the support of nine people, I would have communicated that to the Senate inquiry as a matter of interest. If there were a majority of people in the ACT Legislative Assembly who did not support the particular submission, people in the Senate inquiry would be interested to know that. So that is the position.

Mr Kaine was also concerned about the language that I used. I did explain this in my speech, as I have explained many things which appear to not have been heard because the same arguments are being put without taking into account any of the matters I raised in my speech. Mr Berry tells me that people are not here to listen, and I was silly to think that they would have listened.

The first issue concerned the use of the words "racially discriminatory in effect". As I explained in my speech, the legal opinion to the Prime Minister from 23 legal academics was as follows:

> The WA and NT Governments assert that mandatory sentencing laws are not discriminatory because they apply to all people regardless of racial origin. This argument does not take into account the existence of a prohibition against indirect discrimination.

That is what the effect is about, Mr Kaine, indirect discrimination. The legal opinion continues:

> The preamble and articles of 112 and 115 of SERD prohibit acts which have a discriminatory purpose or effect. Equal treatment before courts administering justice in WA and NT requires consideration of the different impact of sentencing options on different racial groups. These laws ensure disproportionate imprisonment of Aboriginal people.

That is why I said "in effect". It is a legal explanation of the type of indirect discrimination which these laws bring about.

Interestingly, during the lunch break I have been provided with more information which shows that, in effect, it is also discriminatory on the grounds of gender. In November 1997 research was conducted which raised concerns about the likely impact of the Northern Territory's mandatory sentencing legislation on the imprisonment rates of women. Unfortunately, this concern has proved to be well founded. The impact of mandatory sentencing on the imprisonment rates of indigenous women has been astounding, with an increase of 232 per cent in the first year of operation of the legislation. Since mandatory sentencing commenced, the number of women sentenced to periods of imprisonment has increased from 50 in 1995-96 to 225 in 1997-98. It is understood this figure has increased in 1998-99.

Traditionally – and it is almost an accepted sentencing principle – women have received more lenient sentences than men. There are often many reasons for this. For example, women defendants often have more mitigating circumstances, such as economic hardship and responsibility for children. Courts have also suggested that it has been due to lower recidivism rates for women and less prevalence of offences committed by women. Therefore, there is less need to impose sentences which have a deterrent aspect.

Mandatory sentencing flies in the face of these sentencing principles. The dramatic and disproportionate increase in the rate of imprisonment of women, particularly indigenous women, raises questions as to whether the effect of the NT's mandatory sentencing legislation is discriminatory on the basis of both gender and race and therefore placing Australia in breach of its international obligations under the United Nations Convention on the Elimination of All Forms of Racial Discrimination, SERD and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women and Children. We know that, if more women are being imprisoned, more children are going to suffer.

The other point Mr Kaine raised was that he was not clear why I said "may be in breach" of the international convention. Once again, because I have researched this subject deeply, I have been told by lawyers that you cannot say it is in breach until it has

been found to be in breach by the UN. So I used the language "may be in breach". That is the explanation, if that makes any difference to how Mr Kaine thinks about this motion.

To turn to the points raised by other members: I do not know how I can respond to Mr Rugendyke. Once again, he has made a broad statement which has no substance and which does not address any of my arguments. He said that it is "a broad-brush greenie motion". That tells me a lot. How can I respond to that? Maybe I should go back and argue every point again. I did not think it was broad-brushed; I thought it was very specific. That was why I asked for unlimited time to get through the detail of this motion.

The basic position being put by government – and I am particularly disappointed in Mr Moore – is that they care. Of course they care; they are good people. This reminds me of the discussion that took place on corporate morality in the late seventies. Maybe some members remember it. The example used was that of executives of tobacco companies and how these people as executives of tobacco companies could have a particular corporate morality and then on the weekends go to church like good people. They are moral people, they go to church. But there are two different moralities there. I believe we have political morality, which is the immorality being demonstrated here today.

The members who have said they will not support this motion say their reason is that of states rights. That was the position put forward in the submission of Mrs Carnell. Those members are supporting the submission of the Government. That position is so offensive to so many people in this country.

Another question that has to be asked from listening to the statements of Mr Moore, government members and Mr Kaine is: What is the purpose of international conventions and treaties? Why do we sign them? What these members should be saying now is: "We don't want conventions".

I also read out the legal advice. Members probably do not remember, because Mr Berry tells me that people are not here to listen. What I read out in my speech was the legal interpretation of the relationship of State and Territories to international conventions. That is an issue of Australian law. What I do not understand is members who are saying, "No, no, it's fine. We have to worry about states rights and our right to enact laws". What are you saying about conventions then? Are you saying we should not have any? What do you say about past conventions used for the Franklin Dam and gay rights? Do you think that should not have happened? Maybe that should have happened; maybe that was extreme and compelling enough. No-one has told me here what would be extreme or compelling enough.

Some people are implying that nothing could be compelling enough. In that case, I would want to rewrite everything. We will put in a submission saying that we do not want international conventions – except the WTO, which the Liberals quite like because it is about liberalising trade. The argument has to be followed through. Mr Moore tries

to take it sideways by saying he is going to look at the relationship between the Territories. Mr Moore is avoiding the issues, just as other members of the Liberal Party have. I am very disappointed in that, because I thought he might be prepared to stand up.

Mr Moore: I was very clear on what my view of mandatory sentencing was. I taught you about mandatory sentencing.

MS TUCKER: That is exactly right, Mr Moore, you did. I said that in my speech. You did not listen either. That was why I was really interested in what you had to say. Once again, Mr Moore is saying what everyone else is saying here. "I do not like this. Everyone vote for me, I am a good person, but I will not speak out on this". Children are dying and are being incarcerated. Women are being incarcerated at a much greater rate. Their children are being left without their mothers, but it is not our business. That is the position that has been put today, and I reject it.

I think I have covered most of the issues put by the Government. There was nothing new. It was all in the original submission. I have explained Mr Kaine's concerns. I would like to seek leave to table this weighty legal opinion on mandatory sentencing, so it is on the record for those people in future who might like to know what went on here.

Leave granted.

MS TUCKER: Mr Humphries talked about Canberra bashing. He said this would be really bad for the Territory. There was an argument about inconsistency. I did address that in my original speech. I am going to have to ask members to read the speech because I realise it is getting late. They can read it in *Hansard*. I did address the consistency argument. I said that the consistency arguments were a smokescreen. It was another way of not dealing with the issue that we are debating today.

Euthanasia is not the same issue. It was not related to international conventions. SIP is totally different. Mr Moore says it is different. I got information from his office. We know it is different. We know that administrative body which is setting itself up as some quasi-judicial body has not got the right to do that. It is not about that. That is a senseless argument. It is another avoidance method being used by the Government so that it does not have to deal with the issues that I have listed. It is not broad-brush at all, Mr Rugendyke; it is detailed, weighty legal opinion and opinion from all the submissions that have gone to the Senate inquiry. Mr Rugendyke does not seem to want to argue any of the detail, as usual.

In conclusion, I am very disappointed with the response of members in this debate. I had hoped to see a positive outcome. The Government did have the opportunity to reconsider its position. There is such concern in the Australian community. Churches are calling for intervention. Many community leaders are calling for intervention and principled leadership on this matter. That has fallen on deaf ears, and I am very disappointed.

Question put:

That the motion (**Ms Tucker's**) be agreed to.

The Assembly voted -

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

Question so resolved in the affirmative.

ADJOURNMENT

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

That the Assembly do now adjourn.

Solar Car Race

MR WOOD (5.19): On Monday, 21 February a group of young people from Brindabella returned home after their participation in yet another successful solar car race and electric vehicle race. The team supporting the solar car, the Spirit of Canberra, and the electric vehicle, the Viper, comprised students of Lake Tuggeranong College, both past and present, and staff.

The college team competed in this year's Sun Race, a race from Sydney to Melbourne, with daily stages and nightly stopovers in Canberra, Wagga Wagga, Hay, Mildura, Swan Hill and Bendigo. The race started from Sydney on 13 February and finished in Melbourne on 19 February. I believe that there were nine entrants in the solar car section and four in the electric vehicle section.

The Spirit of Canberra led the race through part of the first day, but was slowed by increasing and unexpected cloud cover. It finished third overall behind university teams from Queensland and the Northern Territory. The electric vehicle, the Viper, came second overall. Last October the Spirit of Canberra came seventh overall in the very prestigious world solar challenge which ran from Darwin to Adelaide. This event was keenly contested by teams from all around the world,. all backed by millions of dollars

in sponsorship. Lake Tuggeranong College has received sponsorship and support, but not millions, for its race entries from the ACT community and the corporate sector, notably ACTEW and TotalCare.

Mr Smyth: And Urban Services.

MR WOOD: And Urban Services. Thank you, Mr Smyth. The solar car was designed and built at the college. This was an opportunity for the students involved to work with materials and technologies not usually part of a secondary curriculum. The students come from all areas of study and, as well as the technical skills they acquire, they develop less tangible skills such as problem solving and team work.

Mr Moore: And public relations.

MR WOOD: It is a good product, Mr Moore, isn't it? This year they are planning to re-build the base of the solar car and completely re-build the electric vehicle. The constant quest for improvement, faster times, more reliability, and smarter technology never stops. A project such as this requires a huge commitment from all involved. Both staff and students give up hours of their holidays, weekends and evenings in order to work on the project.

They are all very proud of what they have achieved, and so they should be. I know that members, from their comments, congratulate all involved in the Sun Race for their successful efforts. I know that the students have further events planned for this year, and I will follow their progress with interest. They covered nearly 1,800 kilometres in the Sun Race, and they are great ambassadors for Canberra wherever they go. They have been invited to return to Melbourne in a few days to showcase the Spirit of Canberra at the Grand Prix.

I wish them good luck with their next venture, the 4,000-kilometre transcontinental from Perth to Sydney in November. They will be one of the 15 teams, mostly international, invited to compete. To receive an invitation is itself a great honour. We congratulate those people and wish them all the best in the future.

HMAS Canberra - Freedom of the City

MR HIRD (5.23): Mr Speaker, this weekend the freedom of the city will be given to *HMAS Canberra*. For the information of members of this parliament, the original *HMAS Canberra* was built in the John Brown shipyards in Glasgow, Scotland and launched in 1928. She had a commissioning crew of 679. *Canberra* was a Kent County Class heavy cruiser. She displaced 10,000 tonnes, was over 200 metres long and had a top speed of 31 knots. In 1931 she became the Australian Squadron flagship and held this role until she was eventually scuttled. She was heavily armed and during World War II she steamed tens of thousands of miles, protecting convoys of troop ships such as the *Queen Mary* and the *Queen Elizabeth*. She sank two German ships, the *Coburg* and the *Ketty Brovig*, which were supplying German raiders at the time in the Indian Ocean.

In 1942 the *Canberra* was part of a naval force covering the amphibious landing on Guadalcanal. On the night of 8/9 August 1942 a Japanese force attacked the joint US/Australian escort force. The Japanese force first sighted *HMAS Canberra*, and consequently she was hit by a large number of shells and torpedoes. She was badly damaged but did not sink immediately. In that action, which became known as the Battle of Savo Island,. 85 personnel were killed or mortally wounded.

The proud tradition of the first *HMAS Canberra* was revived by the commissioning of the present ship in 1982. Mr Kaine and you, Mr Speaker, will recall that in 1982 I had the honour of serving on the Sister City Ship Liaison Committee to raise funds to supply certain objects from this city for *HMAS Canberra*.

Today's *Canberra* is a guided missile frigate. It is less than half the size of the previous *HMAS Canberra* and has one third the crew. It is customary for a ship to be linked with its city namesake. *HMAS Canberra* was granted freedom of entry to the city of Canberra by the Hon. Michael Hodgman, Minister for Territories, in 1982, and last exercised that right in 1990.

The granting of freedom of entry to the city is an ancient custom and dates back to William the Conqueror when bodies of armed men were challenged at the city gate and subsequently allowed to enter with arms sheathed to ensure their peaceful intention. This custom has now evolved into a ceremonial event which acknowledges the relationship between the city and the ship.

I am pleased to say that officers and crew of *HMAS Canberra* will be exercising that right once again as part of the National Multicultural Festival this Saturday, 4 March, commencing at 4.45 pm at Civic Square. Following the challenge, to be issued by the Chief Police Officer, Mr Bill Stoll, and a brief address by the Chief Minister and the captain of the ship, Commander Tony Aldred, *HMAS Canberra* will lead the festival parade for 2000 through the streets of the city. *HMAS Canberra* will continue to serve the Australian community and proudly represent our city.

Question resolved in the affirmative.

Assembly adjourned at 5.28 pm